



ANGUILLA

CO-OPERATIVE SOCIETIES ACT, 2023

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CO-OPERATIVE SOCIETIES ACT, 2023

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I Assent


Dilceeni Daniel-Selvaratnam
Governor17. iv. 23.
Date

ANGUILLA

No. 1/2023

CO-OPERATIVE SOCIETIES ACT, 2023

[Gazette Dated: 17th April, 2023] [Commencement: Assent under section 57 of the Constitution]

An Act to make provision with respect to the registration, supervision, governance, operation and management of co-operative societies including credit unions, the members of which have a common philosophical bond and socio-economic objectives, and for incidental and related purposes.

ENACTED by the Legislature of Anguilla.

PART 1

PRELIMINARY

Interpretation

1. (1) In this Act, unless the context otherwise requires—

“apex body” means a body established under section 232;

“associate”, like “connected party” and “related party” means—

- (a) a member of the Board or a committee of the Board or a statutory committee, or an employee of a co-operative society, or a business partner of such a person;
- (b) any company or co-operative society in which a co-operative society holds 20% or more of the company’s or co-operative society’s shares to which voting rights are attached;
- (c) any company or co-operative society over which a co-operative society has control;

- (d) any co-operative society which holds 20% or more of a co-operative society's shares in accordance with section 99;
- (e) immediate relatives of persons including a spouse or children (including step-children) and their spouses, a parent, brother or sister; or
- (f) any company or co-operative society of which any of the persons referred to in paragraph (e) is a director, manager or has control;
- (g) a trust or estate in which that person has a substantial beneficial interest or in respect of which he or she serves as a trustee in a similar capacity;
- (h) a spouse;
- (i) a child, whether born in or out of wedlock, a step-child or an adopted child;
- (j) a parent, including a step-parent or adoptive parent;
- (k) a sibling, including a step-sibling or adoptive sibling; or

any other relative of that person or of his or her spouse if that relative has the same place of residence of that person, notwithstanding that at the relevant time any of the persons in question, not being individuals, have not yet come into existence or have ceased to exist;

“auditor” means a certified financial accountant who meets the requirements for conducting the external audit of the financial statements of a registered society under sections 129-145 of the Act.

“Board” means the Board of Directors or other directing body, by whatever name called, to which the management of the affairs of a co-operative society is entrusted;

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

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

“capital base” means—

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

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

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

“central co-operative society” means a co-operative society whose membership comprises co-operative societies and which provides technical and other services for its members;

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

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

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

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

“delinquent” means a loan or an account where a borrower has defaulted by 1 day or more on the agreed terms of repayment;

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

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

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

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

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

“deregistration” implies that a co-operative business ceases to be registered and therefore no longer has any legal persona or standing, since it no longer is doing business and it has no outstanding assets or liabilities; but the society can rebound and be re-registered;

“director”, means a member of the Board who is elected in accordance with section 71;

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

“doubtful loan” means a loan that is 12 or more months in default;

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

“FATF” means the Financial Action Task Force an international policy making body that sets anti-money laundering standards and counter-terrorism financing measures worldwide;

“Financial Services Commission” means the Financial Services Commission established under section 2 of the Financial Services Commission Act, R.S.A. c. F28;

“former Act” means the Co-operative Societies Act, R.S.A. c. C115;

“guidelines” means the guidelines issued under section 7;

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

“housing co-operative society” is a co-operative society that owns real estate and where each shareholder in the society is granted the right to occupy 1 one housing unit;

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

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

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

- (a) statutory reserves;
- (b) earnings retained after distribution of surplus;
- (c) other non-distributable general reserves; and
- (d) any other funds which may be received by way of non-refundable donations for no specified purpose and which are not available for distribution;

“legal representative” in relation to a co-operative society, member or other person means a person who stands in place of and represents the co-operative society, member or other person and includes a trustee, executor, administrator, assignee, or receiver of the co-operative society, member or other person;

“liquidation” means that the business ceases to operate, typically as a result of financial problems; the remaining assets are disposed of with no chance of recovery;

“member” includes a person or co-operative society joining in the application for the registration of a co-operative society, and a person or co-operative society admitted to membership after registration;

“minor” means an individual under the age of 14 years;

“non-withdrawable” means that the share capital paid by a member cannot be reduced or removed;

“officer” includes a president, vice president, secretary, treasurer, director or other person empowered under this Act to give directions in regard to the business of a co-operative society;

“PEARLS” means the International Prudential and Operating Standards and Monitoring System as produced and approved by the World Council of Credit Unions in respect of protection, effective financial structure, asset quality, rates of return and costs, liquidity and signs of growth;

“person” means a natural or legal person;

“primary co-operative society” means a co-operative society that is owned by individual members;

“qualifying shares” means the mandatory, non-withdrawable minimum shares to be purchased by an approved applicant to be admitted and to enjoy the full rights and privileges of becoming a member of a co-operative society;

“redeemable” means members can be refunded for shares they opt to sell to other members or which have been purchased from them for resale by the credit union;

“Register” means in the case of—

- (a) co-operative societies other than credit unions, the Register of Co-operative Societies to be kept under section 5(a);
- (b) credit unions, the Register of Credit Unions to be kept under section 5(b);

“Registrar” means in relation to—

- (a) credit unions the Financial Services Commission established under the Financial Services Commission Act, R.S.A. c. F28; and
- (b) co-operative societies other than credit unions the Registrar of Co-operatives appointed under section 4(1);

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

“security” when issued by a co-operative society—

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

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

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

“special resolution” means a resolution at least 10 days’ notice of which has been given—

- (a) specifying the intention to propose the resolution as a special resolution, that is passed by a majority of at least $\frac{3}{4}$ of the members or delegates of a co-operative society who voted at a general meeting with respect to that resolution; or
- (b) that is approved by written affirmative vote of at least $\frac{3}{4}$ of the members of the co-operative society who—
 - (i) voted on that resolution within the prescribed time and in the prescribed manner,
 - (ii) cast a written vote in the manner and within the time specified in the notice, or
 - (iii) that is consented to in writing by all of the members or delegates of the co-operative society who are entitled to vote at a general meeting on that resolution;

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

“statutory reserves” means the reserves established under section 124;

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

“Tribunal” means the Co-operative Societies Appeals Tribunal established under section 206.

(2) For the purposes of—

- (a) sections 185, 186 and 189—

“agent” includes in relation to a co-operative society its bankers, accountants, attorneys-at-law, auditors, financial and other advisers; and

- (b) section 236—

“consideration” includes valuable consideration of any kind.

Co-operative principles

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

- (a) each member or delegate, other than in a secondary or tertiary co-operative society, has no more than 1 vote;

- (b) no member or delegate is entitled to vote by proxy;
 - (c) its membership is open, voluntary and available without any artificial restriction or any unlawful basis of discrimination, to any person who can use its services and is willing to accept the responsibility of membership;
 - (d) its business is carried on primarily as an economic activity for the benefit of its members;
 - (e) its rates of interest on loans and its fees for services and products are not exorbitant when compared to commercial banks and other for-profit entities;
 - (e) its primary concerns are its institutional capacity and financial strength, including adequate reserves, retained earnings and internal systems designed to ensure continuous growth and service to members;
 - (f) it utilises any surplus or savings arising out of its operations—
 - (i) to strengthen its business,
 - (ii) to provide or improve common services to its members,
 - (iii) for the payment of dividends on permanent ownership capital purchased by its members at a rate it thinks fit,
 - (iv) for redistribution among its members in proportion to the business done by each member with the co-operative society,
 - (v) to educate its members, employees, directors, committee members and the general public in the principles and techniques of economic and democratic cooperation, and
 - (vi) for non-profit, charitable, benevolent or cultural purposes;
 - (g) it pursues co-operation with other co-operative societies;
 - (h) it provides for continuing education and training; and
 - (i) it contributes to the social and economic development of its community.
- (2) A co-operative society shall conform to the co-operative principles set out in subsection (1).

PART 2

REGISTRATION OF CO-OPERATIVE SOCIETIES

Requirement for registration

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

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 3 years or both.

Registrar

4. (1) The Registrar of Commercial Activities shall be the Registrar of Co-operative Societies whose duty shall be to inspect, monitor, supervise and regulate producer and service co-operative societies.

(2) For the purposes of registering, inspecting, monitoring, supervising and regulating credit unions, the Registrar shall be the Director of the Anguilla Financial Services Commission.

(3) The Registrar, in each case, shall be assisted by professional and administrative staff, and may delegate duties to any person under his control to assist in the performance of his regulatory and other duties.

(4) The Registrar shall—

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

Register

5. The Registrar shall in the case of—

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

Registrar’s regulatory powers

6. (1) Where—

- (a) after an examination of a co-operative society or on the receipt of any information, the Registrar is of the opinion that the funds of the co-operative society are not being properly managed or protected; or
- (b) the Registrar has reason to believe that a co-operative society is likely to take any action that would affect its financial soundness the Registrar may—
 - (i) by notice in writing, direct the Board to cease that action or practice within a specified period or to take measures as the Registrar considers necessary to protect the funds of the co-operative society and the interests of its members, or

- (ii) place the co-operative society under administrative supervision and appoint a person who in the Registrar's opinion, has the necessary experience and training to supervise or advise the co-operative society on the action to be taken to remedy the situation.

(2) A person appointed under subsection (1)(b)(ii) shall hold office for a period not exceeding 12 months and on the terms and conditions that the Registrar specifies.

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

(4) Where it appears to the Registrar that a provision of this Act, the Regulations or the by-laws is being contravened, but the circumstances do not justify the taking of action under section 238 or the suspension of registration under section 22, the Registrar may give directives to the co-operative society or person, as seems appropriate.

(5) A director, committee member, employee or agent of a co-operative society shall at all times give all information required by a person appointed under subsection (1)(b)(ii), for the full and satisfactory performance of his duties; and for this purpose, sections 185, 186 and 188 shall apply as if any reference therein to the Registrar includes a reference to a person appointed under subsection (1)(b)(ii).

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

(7) A co-operative society or a person who is required to take any action under this section, may within 21 days of the service of the notice by the Registrar, make representation in writing to the Registrar stating why the action required should not be taken.

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

- (i) remove from office, or

- (ii) suspend from office for the period as the Registrar considers appropriate;

all or any of the directors of the co-operative society and direct that it shall be managed by the persons he appoints for a period not exceeding 15 months.

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

(10) Where all the directors are removed under this section the person appointed under section 1(b)(ii) shall exercise all the powers and perform all the functions of a duly constituted Board and shall make arrangements prior to the end of his term of management for the election of a new Board in accordance with the by-laws of the co-operative society.

Power to issue guidelines

7. (1) The Registrar shall, after consultation with the representatives of registered non dormant co-operative societies, issue guidelines in respect of—

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

(2) In the case of credit unions, the guidelines issued under this subsection shall be consistent with PEARLS.

(3) Where the Registrar intends to make any substantive modification to the guidelines, the Registrar shall consult with the representatives of registered non dormant co-operative societies.

(4) The Registrar shall—

- (a) make the guidelines and all amendments to the guidelines available for inspection by the public; and
- (b) on payment of any prescribed fee, provide copies of the guidelines and all amendments available to the public.

(5) The Registrar shall constantly keep the guidelines under review.

(6) The Registrar shall publish the guidelines issued under this section and any amendment to the guidelines in the *Gazette*.

Certificate of Registrar

8. (1) The Registrar may issue a person with a certificate stating that—

- (a) a document required to be sent to the Registrar has or has not been received by the Registrar;
- (b) a name, whether that of a co-operative society or not, is or is not on the Register; and
- (c) a name, whether that of a co-operative society or not, was or was not on the Register on a stated date.

(2) A certificate issued under this section shall be signed by the Registrar or an authorised officer.

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

(4) A certificate issued under subsection (1) is admissible in evidence as conclusive proof of the facts stated in the certificate without proof of the office or signature of the person purporting to have signed the certificate.

Power to refuse documents

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

Verification of documents

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

Application for registration

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

(2) An application under subsection (1) shall be signed in the case of a co-operative society—

- (a) of which no member is registered as a co-operative society, by at least $\frac{1}{3}$ of the total membership of the applicant co-operative society;
 - (b) where not all members of the co-operative society are registered co-operative societies, by at least $\frac{3}{4}$ of the total membership of the applicant co-operative society; and
 - (c) where all the members are registered as co-operative societies, by at least 2 member co-operative societies.
- (3) An application under subsection (1) shall be accompanied by—
- (a) 3 copies of the proposed by-laws of the co-operative society;

- (b) the prescribed application fee; and
- (c) any other information in respect of the co-operative society as the Registrar may require.

Content of and amendment to by-laws

- 12.** (1) A co-operative society shall include in its by-laws provisions in respect of—
- (a) its objects, core business and conditions of membership, including the—
 - (i) rights of joint members,
 - (ii) qualification for membership including the minimum value of qualifying shares, the withdrawal of members and the transfer of membership,
 - (iii) amount of the membership fee and the annual subscription, if any, to be paid by members,
 - (iv) the conditions on which membership ceases or may be terminated,
 - (v) 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
 - (vi) the minimum value of other equity shares that must be held by each member;
 - (b) voting rights and the rights of making, amending and repealing the by-laws, the right of a member to vote by ballot and the manner, form and effect of votes at meetings;
 - (c) the quorum for meetings;
 - (d) directors, officers and members of the committees of directors—
 - (i) their qualifications, terms of office and removal,
 - (ii) the filling of vacancies, and
 - (iii) their powers and duties;
 - (e) the address of the co-operative society;
 - (f) the distribution of the property of the co-operative society on dissolution;
 - (g) the borrowing powers of the co-operative society and the procedure for exercising those powers; and
 - (h) any matter that the members may 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.

(4) The members of a co-operative society may, at an annual general meeting or a special meeting, amend the by-laws by special resolution where notice of the proposed amendment together with notice of the meeting is served by—

- (a) sending the notice by mail to the members, at the addresses given in the register of members; or
- (b) publishing the notice in not less than 2 issues of a newspaper published and circulated in Anguilla, or by posting the notice in a place or through a medium of communication that, as stipulated in the by-laws and in the opinion of the Board, is prominent and accessible to members.

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

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

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

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

(9) Where the Registrar refuses to register an amendment the Registrar shall notify the co-operative society in writing of the refusal, reasons for the refusal and of the co-operative society's right to appeal the decision.

10. The co-operative society may, within 21 days of the notice of refusal, appeal to the Tribunal.

Effect of by-laws

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

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

Conditions for registration

14. (1) A co-operative society shall not be registered, or having been registered, shall not continue to be registered where—

- (a) its membership consists in the case of—
 - (i) a credit union of not less than 100 members, or
 - (ii) any other co-operative society of not less than 20 members;
- (b) it is not economically viable and does not have provision for equity capital expansion and continuous business growth;
- (c) there is non-conformity among its membership with all the co-operative principles as set out in section 2;
- (d) the word “Co-operative” or “Credit Union” as the case may be does not form part of the name of the co-operative society, and, in the case of a co-operative society registrable under subsection (2), the words “Junior Co-operative” does not form part of the name of the co-operative society;
- (e) in the case of a co-operative society to be registered with limited liability—
 - (i) the word “Limited” is not the last word of the name of the co-operative society, and
 - (ii) in the case of a primary co-operative society each member of the primary co-operative society is not a shareholder and does not have 1 vote in the democratic proceedings of the co-operative society;
- (f) the name of the co-operative society is identical to that of another co-operative society or so nearly resembles the name of another co-operative society as to be likely to mislead the members of the public as to its identity;
- (g) it does not have and maintain an address in Anguilla to which all notices and communications may be sent;
- (h) its by-laws do not conform to this Act;
- (i) it does not comply with the guidelines issued under section 7;
- (j) its policies in respect of shares, loans, deposits and investments are not documented and do not comply with this Act;
- (k) within 60 days after the issue of the certificate of registration, the co-operative society does not paint or affix its registered name in letters that are easily legible in a conspicuous position on the outside of the place where its business is carried on;
- (l) it has not commenced business within 90 days of its registration; or
- (m) it does not comply with the law in force in Anguilla relating to anti-money laundering, proceeds of crime and anti-terrorism,
- (o) is in default by more than 6 months in respect of the fee payable to the Registrar for the Annual Certificate of Licence Renewal, as prescribed in the Regulations.

(2) The Registrar may register as a junior co-operative a co-operative society whose membership consists solely of members of a school, club or cultural organisation who are under the age of 14 years.

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

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

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

(5) Notwithstanding the generality of subsection (4), every registered Co-operative society shall, in addition to complying with the provisions of this Act comply with the following—

- (a) the provisions pertaining to anti-money laundering made under the Proceeds of Crime Act;
- (b) the relevant provisions of the Financial Services Commission Act; and
- (c) any other relevant financial services legislation promoting good governance and financial accountability which strengthens the fight against money laundering and the financing of terrorist activity.

Registration of co-operative societies

15. (1) Where the Registrar is satisfied that an application has been made in accordance with this Act, the Registrar shall, within 3 months of the receipt of the complete application, approve or deny registration of the co-operative society and its by-laws. If approved, he shall issue the co-operative society with a certificate of registration in the prescribed form.

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

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

(4) Every credit union shall upon the issuance of a certificate of registration pay to the Registrar—

- (a) a registration fee; and
- (b) an annual renewal fee within 1 month of the end of each calendar year;

as prescribed in Regulations.

Effect of certificate of registration

16. (1) With the exception of a co-operative society that is deemed to be registered under section 249, a co-operative society registered under this Act comes into existence on the date shown in its certificate of registration.

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

Capacity as body corporate

17. A co-operative society on registration is deemed to be a body corporate and, subject to this Act and its by-laws, it shall have the capacity, rights, powers and privileges of a body corporate.

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

18. A co-operative society shall not—

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

Registered office

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

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

(3) A co-operative society shall inform the Registrar of an intention to change the address of its registered office at least 1 month prior to the change being made.

Maintenance of mandatory records

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

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

- (a) a copy of this Act and regulations made thereunder;
- (b) a copy of its by-laws;
- (c) the register of members;
- (d) the minutes of all meetings and resolutions of its members;
- (e) copies of all notices of directors and notices of change of directors;

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

Inspection and access to records

21. (1) The Registrar may, during the normal business hours of a co-operative society, observe practices, monitor operations and inspect or authorise the inspection of the co-operative society, including any of the records listed in section 20(2).

(2) Members of a co-operative society, their agents and their legal representatives may, during the normal business hours of the co-operative society, examine any of the records specified in section 20(2)(a) to (i) and the returns specified in section 146.

(3) Members of a co-operative society, their agents and their legal representatives may, during the normal business hours of the office of the Registrar, examine the Registers of Co-operative Societies and the Registers of Credit Unions.

Suspension and cancellation of registration

22. (1) The Registrar may by order in writing suspend the registration of a co-operative society for a period not exceeding 12 months where the Registrar is satisfied that—

- (a) the co-operative society is in breach of any condition of its registration;
- (b) the co-operative society is in breach of sections 14;
- (c) the co-operative society or any officer of the co-operative society has failed or refused to comply with any obligation imposed by, or any requirement of this Act, or its by-laws;
- (d) any return notice or other document or fee required by this Act to be sent or paid to the Registrar has not been received; or
- (e) the co-operative society has failed to comply with any directive given by the Registrar under sections 6 or 7.

(2) The Registrar may by order in writing cancel the registration of a co-operative society where the—

- (a) co-operative society does not commence business within 90 days of its registration under this Act;

- (b) number of members has been reduced to less than the number required for the registration of the co-operative society;
- (c) registration has been obtained by fraud or mistake; or
- (d) co-operative society has not within a period of suspension under subsection (1) rectified the reason for its suspension.

(3) The Registrar shall by order in writing cancel the registration of a co-operative society where the co-operative society—

- (a) gives notice to the Registrar that it has ceased to carry on business;
- (b) is dissolved;
- (c) is amalgamated with 1 or more other co-operative societies or bodies corporate; or
- (d) is bankrupt within the meaning of the Bankruptcy Act;

but a co-operative society which includes among its members 1 or more registered co-operative societies may not have its registration cancelled under paragraph (a).

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

(5) The Registrar shall not make an order under subsections (1), (2) or (3) until the Registrar has given the co-operative society an opportunity to be heard.

(6) Immediately after the Registrar has suspended or cancelled the registration of a co-operative society the Registrar shall publish a notice of the suspension or cancellation in—

- (a) the *Gazette*; and
- (b) not less than 2 issues of a newspaper published and circulated in Anguilla; and
- (c) any other appropriate medium of communication that, in the opinion of the Registrar is prominent and accessible to the public.

(7) Where the registration of a co-operative society is cancelled the co-operative society shall, except for the purpose of winding up, cease to exist as a body corporate from the date on which the order takes effect.

Seal

23. (1) The Board of a co-operative society may by resolution—

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

(2) Notwithstanding subsection (1) the Board of a credit union shall by resolution adopt an official seal.

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

Pre-registration contracts

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

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

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

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

(b) a person who purported to act in the name of the co-operative society or on its behalf ceases to be bound by or entitled to the benefits of the contract.

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

(5) Where it is expressly stated in a written contract, a person who purported to act for or on behalf of the co-operative society before it came into existence shall not be bound by the contract or entitled to the benefits of the contract.

PART 3

MEMBERSHIP AND MEETINGS

Application and qualification for, and limitations on membership

25. (1) An application for membership of a co-operative society shall be submitted to the Board in the form specified by the Board.

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

(a) be a Anguillian or resident of Anguilla;

(b) be a citizen of an OECS Member State; or

- (c) be a citizen of a CARICOM Member State; and
- (d) not be an undischarged bankrupt;
- (e) not be of unsound mind; and
- (f) in the case of a junior co-operative be 14 years of age or under.

(3) Where the co-operative society is a credit union, an individual who is over 14 years of age but who has not yet attained the age of 18 years may be admitted as a member and subject to subsection (4) may enjoy all the rights of membership and be subject to all the liabilities of membership.

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

(5) A member of a co-operative society who has not attained the age of 18 years may not obtain credit from the co-operative society of which he is a member.

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

(7) Subject to subsection (8), a person may be a member of more than 1 credit union where the person has—

- (a) disclosed in his application for membership the name of any other credit union of which he is a member; and
- (b) fully disclosed to the other credit union of which he is a member that he has applied for membership in another credit union.

(8) A person who is a member of a credit union shall produce a certificate of good standing from every credit union of which he is a member together with his application for membership of another credit union.

(9) Where a person becomes a member of more than 1 credit union, the Secretary or Manager of the second or subsequent credit union shall so inform the Registrar with 14 days of the grant of membership.

Joint accounts

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

Membership fees and membership register

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

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

- (a) the names and addresses of its members; and

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

Liability of past and present members

28. (1) Subject to this Act, the liability of a current member of a co-operative society is limited to the amount of his paid-up subscription for shares and any other financial obligations.

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

(3) Notwithstanding subsection (2) a credit union may by special resolution—

- (a) decrease the time period specified in subsection (2); or
- (b) subject to conditions if any, stipulate that all debts cease on the death of a member.

(4) The exercise of the power under subsection (3) is subject to the credit union having consultations with the Financial Services Commission and any other regulatory authority to which it is subject.

Withdrawal of membership

29. (1) A member of a co-operative society may at any time withdraw from membership of the co-operative society in the manner prescribed by its by-laws.

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

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

Termination of membership by Board

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

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

- (a) the Board shall—
 - (i) within a period of 1 year, purchase from the member at par value all shares in the co-operative society held by the member, and
 - (ii) pay to the member all amounts held to the member's credit, together with any interest accrued on those amounts and the amount outstanding on any loan made to the co-operative society by the member with any interest accrued on those amounts;

- (b) the secretary of the co-operative society shall, within 10 days from the date on which the order is made, notify the member of the order in writing;
- (c) the member may appeal from the order to the next general meeting of the co-operative society by giving written notice of his intention to appeal to the secretary within 30 days from the date the member received notice of the order under paragraph (b); and
- (d) where the member appeals under paragraph (c), a majority or any greater percentage that may be specified in the by-laws, of the members present at the general meeting shall confirm or rescind the order.

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

(4) Any amount transferred under subsection (3) shall be paid to the person entitled thereto on proof of the person's claim that is satisfactory to the co-operative society.

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

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

Termination of membership by members

31. Members may terminate the membership of a member where the—

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

Suspension of membership

32. Subject to the by-laws, the Board may by notice in writing suspend a member for a period not exceeding 3 months if they are satisfied that the member is guilty of misconduct after voting on a resolution proposed for that purpose.

Appeal

33. (1) Subject to subsection (2), where a person's membership is terminated under section 30 or 31, or suspended under section 32, the person may appeal against the termination or suspension to the Registrar in the prescribed manner and the Registrar shall confirm or set aside the resolution terminating or suspending the membership.

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

(3) Where a person appeals against the termination of his membership under section 30(2)(c) or this section, notwithstanding the resolution terminating his membership, the person continues to be a member until the termination of his membership is confirmed by the meeting of members under section 30(2)(d) or by the Registrar under this section.

Re-admittance

34. A person whose membership is terminated under section 30 or 31 may be re-admitted to membership only by a $\frac{2}{3}$ majority vote of members present and voting at a general meeting.

Voting rights of a member who is not an individual

35. A co-operative society that is a member of another co-operative society shall exercise its voting rights in that other co-operative society through 1 of its members duly appointed in that behalf as a delegate under section 48.

Representatives of member who is not an individual

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

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

Voting procedure

37. (1) Subject to the by-laws of a co-operative society 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 a meeting has the right to vote, and in the event of a tie he is entitled to a second or casting vote.

Place of meetings

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

- (a) at the place stipulated in the by-laws; or
- (b) where the by-laws is silent, at the place determined by the Board.

Members not to exercise rights until due payment

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

First general meeting

40. (1) This section does not apply to a co-operative society which is deemed to be registered under section 256.

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

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

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

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

Annual general meetings

41. (1) A co-operative society shall hold an annual meeting in each year not later than 4 months after the end of its financial year.

(2) Notwithstanding subsection (1), where the Registrar receives a written request from the Board of a co-operative society prior to the expiration of the period of 4 months referred to in subsection (1), the Registrar may authorise the co-operative society to hold the annual general meeting at any date not later than 6 months after the end of the financial year of the co-operative society.

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

(4) In situations where a national or local emergency has arisen and subject to approval from the Registrar, a registered society may convene an annual general meeting by use of a technology platform that facilitates virtual and hybrid meeting participation.

Special general meeting

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

(2) Subject to subsection (3), the Board shall call a special general meeting of the members on receipt of a written request, specifying the purpose of the meeting, from not less than the number of members specified in the by-laws.

(3) The Board shall call a special general meeting within 20 days of receipt of the request and the special meeting shall dispose of the business specified therein.

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

- (a) for the purpose of reporting to the members the results of any audit, examination or other investigation of the co-operative society's affairs ordered or made by the Registrar; or
- (b) where the co-operative society fails to hold an annual general meeting in accordance with section 41(1) or (2).

Meeting called by Registrar

43. (1) Where—

(a) in the opinion of the Board it is impracticable—

- (i) to call a general meeting of members in the manner in which meetings of members may be called, or
- (ii) to conduct a general meeting of members in the manner prescribed in this Act or in the by-laws; or

(b) for any reason, in addition to those described in paragraph (a), and

the Registrar considers it necessary the Registrar on his own initiative may, if satisfied that a meeting is warranted in the circumstances, order a general meeting to be called, held and conducted as the Registrar may direct.

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

Resolution in lieu of meeting

44. (1) Except where a written statement is submitted by an auditor under section 141 a resolution in writing—

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

- (i) satisfies all the requirements of this Act relating to meetings of members, and
- (ii) subject to subsection (2), is effective from the date specified in the resolution.

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

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

Notice of meetings

45. (1) A co-operative society shall give at least 10 days' notice to its members of any annual meeting or special meeting by—

- (a) sending the notice by mail to the members, at the addresses recorded in the register of members; or
- (b) publishing the notice in not less than 2 issues of a newspaper published and circulated in Anguilla, or by posting the notice in a place or through a medium of communication that, as stipulated in the by-laws and in the opinion of the Board, is prominent and accessible to members.

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

- (a) in the notice, inform the members of the document, giving a description of the document that, in the opinion of the Board, 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 shall specify the purpose for which the meeting is being called.

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

Fixing of record date

46. (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 other purpose 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) shall not precede, by more than 30 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) shall not precede, by more than 50 days or 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 shall be—

(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) shall be at close of business on the day on which the Board passes a resolution relating to that purpose.

Quorum

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

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

(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 thirty minutes 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 and may not transact any other business.

(5) Notwithstanding subsection (4) the Registrar or the Registrar's representative may direct that the meeting proceeds where the Registrar is satisfied that the meeting was convened in accordance with the Act and that the members present were properly notified and constitute at least 75% of the number required for a quorum.

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

Delegates

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

- (a) the delegates shall exercise the powers of membership at any annual or special meeting; and
- (b) any reference in this Act with respect to the exercise of any power 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 the manner provided for in the by-laws; or
- (b) notwithstanding subsection (1), amend the by-laws to eliminate the nomination and appointment of delegates.

Notice of motion

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

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

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

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

- (a) a statement by the member of not more than 200 words in support of the motion; and
- (b) the name and address of the member,

the co-operative society shall comply.

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

- (a) the notice of motion is not submitted to the co-operative 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 notice of motion is submitted by the member primarily for the purpose of-
 - (i) enforcing a personal claim or redressing a personal grievance, or

- (ii) promoting general economic, political, racial, religious, social or similar causes;
- (c) the co-operative society, at the member's request, included a notice of motion in a notice of a meeting of members held within 2 years preceding the receipt of the notice of motion submitted under subsection (1), and the member failed to pursue the notice of motion at the meeting;
- (d) substantially the same notice of motion was submitted to members in the notice of a meeting of members held within 2 years preceding the receipt of the members request, and the notice of motion was defeated; or
- (e) in the opinion of the Board, the rights conferred by this section are being abused to secure publicity.

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

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

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

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

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

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

Power to make by-laws

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

- (a) forwarded to each member of the co-operative 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) not forwarded to each member of the co-operative society with the notice described in paragraph (a), by a $\frac{3}{4}$ majority of members present and voting at the meeting.

(2) A member may make a proposal, in the manner provided in section 49, to make, amend, repeal, replace or confirm any by-law.

Effective date of by-laws

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

(2) Subject to subsection (3), where proposed by-laws are certified under subsection (1) and receives the members' approval required in section 50(1), the by-laws shall have immediate force and effect.

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

(4) Where the Registrar approves by-laws, it shall return to the co-operative society 1 copy of the by-laws with the approval of the Registrar stamped on the by-laws.

PART 4

GOVERNANCE AND MANAGEMENT

Board of directors

52. (1) A co-operative society shall be governed by a Board which shall be constituted in accordance with this Act and its by-laws.

(2) The Board shall be constituted by not less than 5 or more than 13 directors, as specified in the by-laws.

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

(4) A person who—

- (a) has been sentenced by a Court in any country for an offence involving fraud or dishonesty and has not received a free pardon for that offence;
- (b) is not in good financial standing with a co-operative society;
- (c) has made an arrangement with his creditors;
- (d) was a director of a failed co-operative society of the same type;
- (e) has been convicted of an offence in connection with the promotion, formation or management of a body corporate;
- (f) has been convicted of an offence under this Act;

- (g) is of unsound mind and has been so found by a court of competent jurisdiction;
- (h) is or becomes bankrupt;
- (i) is under the age of 18 years or, in the case of a junior co-operative, under the age of 10 years;
- (j) has not been a member of the co-operative society or a duly appointed representative of a member co-operative society for the past 12 months;
- (k) is a member who has not transacted any business with the co-operative society for 12 consecutive months, or who represents a member co-operative society who has not transacted any business with the co-operative society for 12 consecutive months;
- (l) is an employee of the co-operative society or of the applicable regulatory authorities, or is a partner or employee of the co-operative society's auditor, or of the apex body;
- (m) holds less than the minimum level of equity shares in accordance with section 12(1)(a)(vi);
- (n) is already part of the management of another co-operative society of the same type;
or
- (o) is a member of a prescribed class.

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

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

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

(6) A person who holds membership of the Board or of a committee of a co-operative society, or who seeks employment with, or is employed or continues to be employed by a co-operative society whilst disqualified under this section commits an offence and is liable on summary conviction to a fine of \$10,000 or to 1 year imprisonment or to both.

Officers

53. (1) A co-operative society—

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

(2) Subject to its by-laws—

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

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

Provisional directors and elected directors

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

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

(2) At the first general meeting and at every annual general meeting the directors shall be elected in accordance with this Act and the by-laws of the co-operative society.

Powers of Board

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

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

Committees of the Board

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

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

(3) The Board shall appoint a Nominations Committee each year, not less than 90 days before the Annual General Meeting, to enable the members to democratically fill vacancies that arise on the Board, Credit Committee and Supervisory and Compliance Committee. Subject to the Regulations and the By-laws, the members of the Nominations Committee will ensure the fitness and propriety of all candidates for elected office.

(4) No committee may—

- (a) fill a vacancy of the Board;
- (b) declare a bonus or a dividend;

- (c) approve any financial statement of the co-operative society;
- (d) submit to the members any question or matter requiring the approval of members;
or
- (e) make decisions where this Act or the by-laws require a $\frac{2}{3}$ majority or a unanimous vote of the Board.

Tenure of committees

57. (1) Committees appointed under section 56(1) shall hold office for a period not exceeding 1 year.

(2) A committee member appointed under section 56(1) may be removed by resolution of the co-operative society or of the Board.

(3) The removal of a committee member who is a director shall not affect his 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; and
- (c) submit to the Board at each meeting of the Board and to the annual general meeting of the co-operative society the minutes of the committee's proceedings since the most recent meeting of the Board or of the co-operative society.

Credit committee

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

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

(3) The members of the credit committee shall hold office for the period specified in the by-laws and until their successors are elected.

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

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

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

(7) The election of members of the credit committee shall proceed in keeping with the procedure specified in sub-sections (a) to (d) of section 71(1).

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

(9) The by-laws of a credit union, central credit union or central co-operative society may provide for the election and retirement of members of the credit committee in rotation so that—

- (a) no member of the credit committee shall be elected for a term of more than 3 years;
- (b) no person may serve as a member of the credit committee of a co-operative society for more than 2 consecutive terms or an aggregate of 6 successive years.

Duties of credit committee

59. The credit committee shall—

- (a) implement and ensure implementation of the approved loan policy;
- (b) provide prudent oversight of the loans portfolio;
- (c) make recommendations to the Board in respect of the loan policy of the credit union; and
- (d) perform the duties as are prescribed under this Act and the by-laws of the credit union.

Approval of loans

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

(2) The credit committee may, in accordance with the terms and conditions specified by the Board authorise the manager, loans manager or other employees of the credit union to approve loans to members.

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

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

Credit committee reports

61. (1) The credit committee shall—

- (a) meet at least once every month;
- (b) keep minutes of its meetings;
- (c) submit a monthly report to the Board stating—
 - (i) the number and category of loan applications,

- (ii) the number and category of loans granted,
 - (iii) the security taken and risks for loans granted, and
 - (iv) applications denied, delinquent loans, classified loans, loans written off, watch listed accounts, large credit exposures and connected party loans; and
- (d) submit an annual report on the matters referred to in paragraph (c), and on the loan portfolio quality and trends, to the annual meeting of the credit union.

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

Removal of members of credit committee by resolution

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

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

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

Removal of members of credit committee by the Board

63. Where a member of a credit committee fails to attend 3 consecutive meetings without, in the opinion of the Board, reasonable cause or fails to perform any of the duties allotted to the member as a member of the credit committee, the member's position on the credit committee may be declared vacant by the Board which may then appoint a qualified person to fill the vacancy until the next annual general meeting of the credit union.

Supervisory and compliance committee

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

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

(3) The members of a supervisory and compliance committee shall hold office for a term of 3 years.

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

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

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

(7) The election of members of the supervisory and compliance committee shall proceed in accordance with subsections (a) to (d) of section 71 (1).

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

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

- (a) be elected for a term exceeding 3 years; or
- (b) serve for more than 6 successive years but shall become eligible for re-election after the expiration of 1 year.

Duties, functions and powers of supervisory and compliance committee

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

- (a) keep minutes of its meetings;
- (b) make or cause to be made not less than twice in the period before the next annual general meeting of the co-operative society, an examination of the books and documents of the co-operative society which shall include an inspection of the securities, cash accounts and all records relating to loans, purchases and sales;
- (c) make or cause to be made, once in the period before the next annual general meeting, a comparison between the pass-book or statement of account of a random sample of at least 10% of all the members of the co-operative society and the appropriate records of the co-operative society;
- (d) ascertain that all actions and decisions of the Board, committees, management and staff relating to the affairs of the co-operative society are in accordance with this Act, the by-laws and the approved standards and policies of the co-operative society;
- (e) submit a written report on the results of its examinations and enquiries under this section to the Board and the management of the co-operative society within 7 days of each meeting of the supervisory and compliance committee; and
- (f) submit a written report on the result of its examinations and enquiries under this section to the next annual general meeting or, if it thinks fit, to a special general meeting of the co-operative society.

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

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

Compliance officer

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

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

Misappropriation and other contraventions of the Act

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

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

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

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

- (a) suspend the person by a unanimous vote of all the members of the supervisory and compliance committee taken at a meeting called for the purpose of considering the person's suspension; and
- (b) convene a special general meeting of the co-operative society to consider whether to remove the person in light of the action or decision taken by that person.

(5) Where the Board or a Board member, the credit committee or a member of that committee or an officer or employee engaged by the Board has been suspended by the supervisory and compliance committee in accordance with subsection (4), the committee shall convene a special general meeting of the society on a date not more than 21 days after the suspension—

- (a) for the purpose of reviewing the suspension; and
- (b) to consider whether to remove the person based on the action or decision taken by that person.

(6) Without prejudice to the requirements of section 45, not less than 10 days before the date of a meeting of the supervisory and compliance committee called under subsection (4)(a) or the date of a special general meeting of the co-operative society convened under subsection (4)(b) or (5), the supervisory and compliance committee shall give written notice of the meeting to the Registrar and to the person concerned.

(7) At a special general meeting of a co-operative society held under this section, the members of the co-operative society, according to the purpose or purposes for which the meeting was convened, may, by secret ballot—

- (a) ratify the suspension of the person concerned and remove him from office; or
- (b) rescind the suspension of the person;

but a person shall not be removed from office without being given an opportunity to be heard by the members present at the meeting.

(8) Where an officer of a co-operative society is removed from office at a special general meeting under subsection (7), the vacancy caused by the removal shall be filled as determined by the meeting.

Meetings of the supervisory and compliance committee

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

Removal of member of supervisory and compliance committee by the committee

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

Removal of members of supervisory and compliance committee by members

70. (1) The members of a co-operative society may, by resolution passed by $\frac{2}{3}$ of the votes cast at a general meeting called for that purpose, remove a member of the supervisory and compliance committee before the expiration of his term of office, and shall by vote cast at the meeting elect another member for the unexpired portion of his term.

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

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

Election of directors

71. (1) Subject to section 72—

- (a) the election of directors shall take place annually at the annual general meeting;
- (b) the directors shall hold office until the conclusion of the meeting at which their successors are elected, and shall be eligible for re-election;
- (c) where the number of nominees exceeds the number of directors to be elected, the election of directors shall be by secret ballot;
- (d) every member shall have the right to vote for the number of directors to be elected and any voting sheet that contains the names of more than the number to be elected shall be void;
- (e) where there are vacancies on the Board but the remaining directors constitute a quorum, they shall call a special meeting of the Board for the purpose of appointing members to fill the vacancy until the next annual general meeting; and
- (f) where there is a vacancy on the Board which causes a lack of quorum of directors, the remaining directors shall call a special meeting of the co-operative society for the purpose of electing members to fill any vacancy.

(2) Where an election of directors required by this Act 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 section 227(1) and 231, not more than $\frac{1}{3}$ of the directors may be employees of a co-operative society.

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

(5) Subject to section 51(3), the Board shall consist of the number of persons as may be fixed by the by-laws.

Tenure of directors

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

(2) A person shall not serve as a director of a co-operative society for more than 6 consecutive years but thereafter the person will become eligible for re-election after the expiration of 2 years out of office.

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

- (a) at least $\frac{1}{3}$ shall be elected to serve for 1 year;
- (b) at least $\frac{1}{3}$ shall be elected to serve for 2 years; and
- (c) the remainder shall be elected to serve for 3 years,

and thereafter each elected member of the Board, the supervisory and compliance committee and the credit committee shall serve for a term of 3 years.

Additional powers of the Board

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

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

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

(3) The Board shall send in the manner provided in section 45, a notice of a special meeting to consider the sale, lease or exchange to each member.

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

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

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

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

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

Validity of acts of directors and officers

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

Indemnification of directors and officers

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

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

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

(2) A co-operative society may indemnify a director, officer, or other person referred to in subsection (1) only where that person—

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

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

- (a) the co-operative society has the approval of the court; and
- (b) the person satisfies the conditions described in subsection (2).

(4) Notwithstanding subsections (1) to (3), a co-operative society shall indemnify a director, officer or other person referred to in subsection (1) who has been substantially successful in the defence of a civil, criminal or administrative action or proceeding to which the person is made a party by reason of the person being or have been a director or officer of the co-operative society or body corporate against costs, charges and expenses reasonably incurred by the person with respect to the action or proceedings.

(5) A co-operative society or a director, officer or other person referred to in subsection (1) may apply to the court for an order approving the indemnity and the court may make the requested order taking into consideration any costs awarded by the adjudicating body.

(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.

Duty of care of directors and officers

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

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

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

Ambit of duty

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

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

Liability of directors

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

- (a) the purchase of shares of another co-operative society contrary to section 99;
- (b) the payment of a dividend on shares contrary to section 128;
- (c) the payment of a bonus contrary to section 128;
- (d) a loan or guarantee or the giving of financial assistance contrary to section 120;
- (e) a payment of an indemnity described in section 75 to a director or a former director, without the approval of the court required by section 75(3); or
- (f) an act not consistent with the purpose of the co-operative society as set out in its by-laws and with respect to which the co-operative society has paid compensation to a person;

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

co-operative society.

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

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

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

(4) Subject to subsection (5), for the purpose of this section, a director who is present at a meeting of directors or of a committee shall be deemed to have cast a vote in favour of a resolution or of granting the approval 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 delivered —
 - (i) to the secretary of the meeting before its adjournment, or
 - (ii) sent by registered mail to the registered office of the co-operative society immediately after the adjournment of the meeting.

(5) A director who votes for or consents to a resolution 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, the director shall be taken 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 co-operative society.

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

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

(8) An action to enforce a liability imposed in subsection (1) shall not be commenced after 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 co-operative society or a defendant—

- (a) join as a defendant a person who received a benefit as a result of the resolution complained of; and

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

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

- (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 on statements—
 - (i) of facts represented to him by an officer of the co-operative society to be correct, or
 - (ii) contained in a written report or opinion of the auditor of the co-operative society or a professional person engaged by the co-operative society who is competent to give advice in respect to the matter.

(11) A director who is found liable under subsection (1) is entitled to apply to a court for an order compelling a member or other recipient to pay or deliver to the director any money or property that was paid or distributed to the member, or other recipient contrary to section 99, 120 or 128.

(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 99, 120 or 128; or
- (b) make any order, other than that described in paragraph (a), that it considers appropriate.

Misuse of confidential information

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

- (a) 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) accountable to the co-operative society for any direct benefit or advantage received or receivable by him associate as a result of the transaction.

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

- (a) director, committee member, officer, employee or auditor of the co-operative society;

- (b) liquidator, receiver or manager, of the co-operative society; or
- (c) Registrar, or
- (d) an officer or staff referred to in section 4,

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

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

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

(4) A person who contravenes subsection (2) commits an offence and is liable on summary conviction to a fine not exceeding \$10,000 or to 1 year imprisonment or to both.

Declaration of interests

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

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

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

(2) The disclosure required by subsection (1) shall be made—

- (a) immediately after the director, committee member or employee becomes aware that the contract or proposed contract is to be considered or has been considered at a meeting of the Board;
- (b) where the director, committee member or employee becomes interested after a contract is made, immediately after he or she becomes so interested; or
- (c) where the director, committee member or employee has an interest in a contract before assuming office, immediately after he or she becomes a director, committee member or employee.

(3) For the purposes of this section, a general notice to the directors by a director, committee member or employee of a co-operative society 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.

Disclosure of interests at meetings

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

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

- (a) summary conviction to a fine not exceeding \$20,000 or to 2 years imprisonment or to both; or
- (b) conviction on indictment to a fine not exceeding \$50,000 or to 2 years imprisonment or to both,

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

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

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

(5) Where a director, committee member or employee of a co-operative society is not entitled to vote at a meeting under subsection (1) and his presence is required to constitute a quorum at the meeting, a decision of the co-operative society, Board or committee is to be taken not to be invalid only by reason of the absence of the director, committee member or employee.

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

Pecuniary interests for the purposes of section 81

82. (1) For the purposes of section 81, a director, committee member or employee shall be treated, subject to the following provisions of this section and to section 83, as having indirectly a pecuniary interest in a contract, proposed contract or other matter where he—

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

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

(3) In the case of married persons the interest of one spouse shall be deemed for the purpose of section 81 to be also the interest of the other.

Removal or exclusion of disability

83. (1) Section 81 does not apply to an interest in a contract, proposed contract or other matter which a director, committee member or employee of a co-operative society has as a member of the public or to an interest in any matter relating to the terms on which the right to participate in any service is offered to the public.

(2) Where a director, committee member or employee of a co-operative society has an indirect pecuniary interest in a contract, proposed contract or other matter by reason only of a beneficial interest in securities of a company or other body and—

- (a) the nominal value of those securities does not exceed \$5000 or $\frac{1}{1000}$ of the total nominal value of the issued share capital of the company or other body, whichever is the less;
- (b) and if the share capital is of more than one class, the total nominal value of shares of any one class in which he has a beneficial interest does not exceed one-thousandth of the total issued share capital of that class;

section 81 shall not prohibit him from taking part in the consideration or discussion of the contract, proposed contract or other matter or from voting on any question with respect to it without prejudice to his duty to disclose his interest.

Meetings of directors generally

84. (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 shall constitute a quorum at any meeting of directors.

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

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

(6) 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 to the directors present at that meeting, but shall be given to any director not present.

Meetings by telecommunication

85. (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 virtual telecommunication facility,

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 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.

Attendance at meetings

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

(2) Where a director—

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

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

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

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

Organisational meeting of directors

87. (1) The directors shall hold an organisational meeting within 10 days after the issue of the co-operative society's certificate of registration.

(2) The directors may, at that meeting—

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

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

Directors ceasing to hold office

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

- (a) resigns;
- (b) dies;
- (c) fails to attend three consecutive meetings without an accepted excuse;
- (d) fails to perform any duty allotted to him as a member of the Board;
- (e) is removed in accordance with section 89; or
- (f) is no longer qualified in accordance with this Act.

(2) A resignation of a director becomes effective—

- (a) with immediate effect where that person notifies the members present at an annual general meeting that he is resigning;
- (b) at the time specified in a written resignation; or

- (c) where no time is specified in a written resignation, at the time the resignation is received by the secretary of the co-operative society.

Removal of directors

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

(2) A vacancy created by the removal of a director may be filled at the meeting of the members at which the director is removed or where not so filled shall be filled under section 71(1)(e).

Notice of change of directors

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

(2) Notwithstanding subsection (1), where a co-operative society sends the annual return in accordance with section 146, within 30 days after a change is made in its directors, it is not required to send the notice required by this section.

Declaration by directors and officers

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

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

Bonding

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

Remuneration of directors

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

(2) Subsection (1) does not prohibit the reimbursement of expenses which—

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

(3) Subsection (1) does not prohibit any director or committee member of a co-operative society, acting in his professional capacity, from tendering for the supply of, and where successful being paid for supplying, goods or services to the co-operative society.

(4) The directors may be granted an honorarium for services rendered which does not exceed an amount recommended by the Board and approved by a general meeting of the members.

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

Remuneration of officers and employees

94. Subject to section 93 and the by-laws, the directors shall fix the salary of all employees appointed by the directors and shall approve a scale of remuneration for all employees of a co-operative society.

PART 5

FINANCING

Shares

95. (1) A co-operative society may sell equity shares to its members only. These shares shall be non-withdrawable, but redeemable in accordance with sections 30 and 102 and as may be prescribed by Regulations; and the shares shall have a par value fixed by the by-laws.

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

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

Share capital

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

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

(2) A co-operative society shall issue qualifying shares as well as equity shares.

Issue of shares

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

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

(3) A co-operative society shall redeem qualifying and equity shares; but the value of the total shares owned by the members shall not fall below the equivalent of 5% of the total assets of the co-operative society, as a result of any redemption of shares.

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

(a) in money; or

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

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

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

Alteration of authorised capital

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

(a) subdivide any shares;

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

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

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

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

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

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

(a) the resolution will not contravene this Act;

(b) the holders of all shares of the co-operative society affected by the proposed resolution have approved the special resolution passed by the members at a general meeting called for the purpose; and

- (c) in the case of a special resolution providing for a reduction in the share capital of the co-operative society—
 - (i) all creditors who are liable to be affected have been notified of the resolution and have signified their approval, or
 - (ii) appropriate steps have been taken by the co-operative society to adequately safeguard the interests of its creditors.

Limitation on purchase of shares

99. Subject to the approval of the Registrar, only a registered co-operative society may purchase more than one-fifth of the shares of another co-operative society where—

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

Transfer of shares generally

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

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

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

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

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

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

Transfer of shares of member of unsound mind

101. (1) Where a member or person claiming through a co-operative society has become of unsound mind or incapable of managing his affairs and no committee, receiver or guardian has been appointed, the co-operative society may subject to this section and section 100 transfer the share or interest of that member to any person nominated by the member for the purposes of section

105 or may pay to the person nominated a sum ascertained in accordance with subsection (5) representing the value of the share or interest of the member.

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

(3) Where 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 thereof to the person who appears to have the care of the member or the management of the member's affairs.

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

(5) For the purposes of this section and section 99, the value of any share or interest shall be represented by the sum actually paid for that share or interest by the member holding it unless the by-laws of the co-operative society otherwise provide.

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

Transfer of share or interest on death of member

102. (1) On the death of a member of a co-operative society, where a person has been nominated by the member in accordance with section 105 and the nominee is admitted to membership of the co-operative society, the co-operative society shall within 1 year of the death of the member by whom the nomination was made, transfer the shares or interest of the deceased member to the nominee.

(2) On the death of a member of a co-operative society, where a person has been nominated by the member in accordance with section 105 has not been admitted to membership of the co-operative society, the co-operative society shall within 1 year of the death of the member by whom the nomination was made pay to the nominee the sum which represents the value of the deceased member's share or interest in the co-operative society.

(3) On the death of a member of a co-operative society, where the deceased member made no nomination, the co-operative society shall within 1 year of the death of the member pay to the legal personal representative of the deceased member, the sum which represents the value of the deceased member's share or interest in the co-operative society.

(4) This section shall be construed as prohibiting a nominee who has been admitted to membership from electing to receive payment representing the value of the deceased member's shares or interest instead of accepting a transfer.

(5) Where after a period of 1 year there is no nominee or legal personal representative of the deceased member to which the shares or interest may be transferred or to which a sum representing the value of the deceased member's share or interest may be paid, the share or interest shall be transferred to the development fund of the co-operative society.

(6) The shares or interest transferred under subsection (4) shall remain in the development fund for a period of 10 years during which period it shall remain available to bona fide claimants, after which it shall constitute a part of the reserves of the co-operative society.

(7) From the second year after the death of the deceased until the tenth year referred to in subsection (6) a notice to the effect that the deceased member's share or interest in the Co-operative society remains unclaimed shall be annually published in the *Gazette* and a newspaper circulating in Anguilla.

Restrictions on transfer of shares

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

Conditions for the validity of transfer of shares

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

- (a) a written application for membership by the transferee is approved and the transfer is authorised by a—
 - (i) resolution of the directors, or
 - (ii) 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 name is entered on the register of members.

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

Power of nomination

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

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

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

(4) A nomination made under subsection (1) may be revoked or varied by a subsequent nomination, or by a similar document in the nature of a revocation or variation, signed, attested and

delivered, and sent or made in accordance with subsection (1), but any nomination may not be revoked or varied by the will or a codicil of the nominator.

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

PART 6

BUSINESS OF CO-OPERATIVE SOCIETY

Marketing of produce through the co-operative society

106. (1) A co-operative 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 that—

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

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

Creation of charge in favour of a co-operative society

107. (1) A person to whom money has been lent by a co-operative society or who is otherwise indebted to the co-operative society may be required to create a charge in favour of the co-operative society in the form prescribed in regulations made under this Act.

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

- (a) the right upon the happening of any event specified in the charge as being an event authorising the chargee to seize and take possession of the property subject to the charge;
- (b) after an interval of at least 14 clear days from the date of taking possession of any property subject to the charge, to sell the property either by auction or where the charge so provides, by private treaty, either for a lump sum or for payment by instalments;
- (c) the right 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
- (d) the duty to pay any surplus of the proceeds of sale to the member whose property was sold.

(3) A charge shall, so long as it continues in force, impose on the chargor an obligation to pay to the co-operative society towards the discharge of his indebtedness the proceeds of sale of

any property 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 specifies

(4) Property subject to a charge shall not be sold below its market value.

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

Execution and registration of charge

108. (1) A charge created under section 107 that pertains to real property shall be filed with the Lands and Survey Department in keeping with sections 64-82 of the Registered Land Act.

(2) All other charges may be duly executed if signed by the person in quintuplicate in the presence of the president and the secretary of the co-operative society.

(3) The secretary shall—

(a) file one copy of the charge under subsection (2) at the registered office of the co-operative society and deliver one copy each to the Registrar of the High Court, the Registrar of Co-operatives and the apex body; and

(b) deliver one copy to the member.

(4) The Registrar of the High Court shall keep a book known as the “Co-operative Societies Charges Book” in which the Registrar shall register every charge under subsection (2) delivered to the Registrar by the secretary of a co-operative society, and issue to the co-operative society a certified copy of the registration.

(5) The registration of a charge under subsections (2) and (3) shall be deemed to affect with notice any person dealing with the property comprised in the charge.

(6) Where a loan or other indebtedness under subsection (2) in respect of which a charge was created is discharged, the secretary of the co-operative society shall—

(a) cause a document to that effect to be prepared in quintuplicate, and signed by the president and secretary of the co-operative society indicating that the charge has been discharged;

(b) file one copy of the document and deliver one copy each to the Registrar, the National League or National Council where applicable and the Registrar of the High Court who shall forthwith make an entry of satisfaction in the Co-operative Societies Charges Book; and

(c) deliver one copy to the member.

(7) A person may, on payment of the prescribed fee inspect the Co-operative Societies Charge Book and take extracts from it.

(8) A charge subsisting at the commencement of this Act in favour of a co-operative society and which does not pertain to real property shall be delivered to the Registrar of the High Court for processing under subsection (3).

(9) Where action is not taken under subsection (7) in respect of any charge subsisting at the commencement of this Act it is deemed to be registered in the Co-operative Societies Charges Book, and shall, without prejudice to anything contained therein, have the same force and effect as a charge created under this Act.

Claims unaffected by charge

109. Section 108 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 flowing from any prior charge or encumbrance.

Prior claims in favour of co-operative society

110. (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 co-operative society by a member or past member shall, notwithstanding anything contained in section 108, be a first charge upon—

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

obtained or purchased using money granted to the member by the co-operative society.

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

Enforcement of charge

111. (1) A co-operative society may enforce a charge by an application supported by affidavit to the magistrate for the amount due and the magistrate may issue a warrant of distress and may offer the sale of the property by public auction or private treaty.

(2) A magistrate shall have jurisdiction under subsection (1) notwithstanding that the amount due exceeds the limits of jurisdiction of a magistrate as specified in the Magistrates Code of Procedure Act.

Assignment of charge

112. (1) A co-operative society may borrow from any other co-operative society or from any bank approved by the Registrar on the security of a charge.

(2) For the purposes of subsection (1) a charge may be executed and registered in accordance with section 108 and may be assigned to the other co-operative society or bank.

(3) An assignment of a charge under this section may be registered in the same manner as a charge and section 108 shall apply, subject to any necessary modifications, to an assignment so registered.

(4) An assignment of a charge when registered shall operate as a first charge in favour of the assignee subject to section 109.

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

Bond as security for charge

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

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

(3) Section 112 relating to the assignment of charges shall apply subject to any necessary modifications to the assignment of bonds.

Lien on shares

114. (1) A co-operative society shall have 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 co-operative society.

(2) A co-operative society may enforce a lien mentioned in subsection (1) in the manner prescribed in regulations made under this Act.

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

Deductions applied to loans and shares

115. The by-laws of a co-operative society may provide that the co-operative society may—

- (a) deduct an amount from the moneys it receives for the goods, products or services it has marketed, handled, or dealt with for or on behalf of a member or non-member patron; and
- (b) may apply the amount referred to in paragraph (a) towards a loan or the purchase of shares on terms as the Board may determine.

Purchase of shares

116. (1) Subject to section 114, a co-operative society may purchase or otherwise acquire any of its shares that—

- (a) are available for compulsory purchase under section 118; or
- (b) are offered for sale.

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

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

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

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

Prohibition on purchase of shares

117. (1) Notwithstanding section 116, a co-operative 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 co-operative society.

(2) Where a purchase or other acquisition of shares under section 116 or 118, would in the opinion of the Board, impair the financial stability of the co-operative society or would be contrary to the interest of the remaining members the Board may suspend the purchase or acquisition of the shares.

(3) The Board may not suspend the purchase of shares under subsection (2) for a period longer than 1 year unless the suspension is approved—

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

Compulsory sale of shares

118. Where—

- (a) winding-up proceedings have commenced with respect to a body corporate that is a member of a co-operative society; or

- (b) a member of a co-operative society has, during a period of 2 years, failed to transact any business with the co-operative society,

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

PART 7

PROPERTY AND FUNDS OF CO-OPERATIVE SOCIETY

Investment of funds

119. (1) The Board shall establish written policies for investing the accumulated funds of the co-operative society not used in the primary business of the co-operative society and shall ensure they are in compliance with all applicable laws and guidelines and orders of all regulatory authorities.

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

- (a) any central credit union, central finance facility, deposit guarantee or stabilisation fund for credit unions or co-operative societies, or other co-operative society registered under this Act;
- (b) shares or deposits in, loans to, or on the security of, any co-operative society with limited liability;
- (c) any financial institution licensed under the Banking Act, 2015 or any company registered under the Insurance Act;
- (d) stock, debentures, funds or securities issued by the government;
- (e) securities, the payment of interest on which is guaranteed by the government;
- (f) securities issued in a CARICOM Member State by a company incorporated in that Member State and listed by the stock exchange of a CARICOM Member State if the company has paid dividends on its shares for the preceding 5 consecutive years;
- (g) securities issued in a CARICOM Member State by a credit union that is registered in a CARICOM Member State in accordance with the laws of that CARICOM Member State;
- (h) real property but subject to the provision of section 210(5) where the co-operative society is a credit union; and
- (i) any other manner permitted by the Registrar.

(3) The investments referred to in subsection (2) (d), (e), (f), (g) and (i) shall not exceed in aggregate 20% of the unimpaired capital base of a credit union.

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

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

Loan by credit union

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

(2) Except for a loan to another co-operative society, a loan shall not be made to a member by a co-operative society not specified in subsection (1) and a loan shall not be made by a co-operative society mentioned in subsection (1) to a person who is not a member of that co-operative society.

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

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

(5) A credit union shall not directly or indirectly, except with the approval of and subject to terms and conditions as the Registrar may determine make a loan to a member, a group of borrowing members or associates if the loan would cause the aggregate amount of loans to the member, the group of borrowing members or associates to exceed 10% of the net loans outstanding portfolio of the credit union.

(6) In accordance with section 81, a director, committee member or employee of a credit union shall declare his or her interest in a loan at a meeting in which the loan is to be discussed and shall not be present at or participate in a meeting when his application for a loan is being considered.

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

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

Prohibited loans

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

- (a) to a member, director, officer, committee member or employee of the co-operative society or an associate of any such person for any purpose; or
- (b) to any person for the purpose of or in connection with, the acquisition of membership of the co-operative society or the purchase of a share issued or to be issued by the co-operative society or member;

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

Receipt of loans, grants, etc.

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

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

Receipt of deposits from minors

123. (1) A co-operative society may receive deposits from a minor and pay to the minor the 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 that guardian for the use of the minor.

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

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

(5) The Registrar of the High Court shall pay or apply the money to or for the care, maintenance, education or benefit of the person under disability.

Allocation of surplus and capital adequacy

124. (1) The value of the qualifying shares and equity shares owned by members of a co-operative society shall not fall below the equivalent of 5% of the asset worth of the Co-operative society.

(2) Where a co-operative society realises a surplus in a financial year, before it allocates among or credits to members the surplus, the directors—

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

(3) The statutory reserves required by subsection (2)(b) shall be part of the institutional capital of the co-operative society and may, subject to the approval of the Registrar, be used in the business of the co-operative society including unforeseen losses, capital retention, financing of non-earning assets, repairs and maintenance and the avoidance of external borrowing.

(4) A co-operative society shall ensure that its institutional capital is at no stage less than 10% of its total assets and that the aggregate of its capital base is at no stage less than 15% of its total assets or such other proportions as may be determined by the Registrar from time to time.

(5) Where at the end of any financial year the amount standing to institutional capital before any transfer under this section is less than 10% of total assets, the co-operative society shall transfer to statutory reserves for that year not less than 25% of its surplus to increase the institutional capital to 10% of total assets.

(6) The Registrar shall grant a specified period of time as the Registrar considers reasonable, not exceeding 3 years, to enable management to make good any deficiency in the adequacy of its institutional capital and total capital base.

(7) A credit union shall not capitalise its statutory reserves by way of bonus shares or distribute it by way of dividends.

(8) Whenever the Board of a credit union so recommends to the members and a majority of the members present and voting at a general meeting by resolution so approves—

- (a) the allocation to its statutory reserves may be increased; or
- (b) where the aggregate of its statutory reserves and retained earnings at the end of the financial year in question equals or exceeds 10% of assets, the allocation may be reduced.

Development fund

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

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

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

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

Pension fund

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

(2) A pension fund established under subsection (1) shall not be considered part of the assets of the co-operative society and shall be invested in the manner prescribed by the applicable pension legislation.

Charitable contributions

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

Dividend or bonus

128. (1) Subject to this section and sections 124 and 125, any surplus may be distributed by way of dividend or bonus amongst its members in proportion to their business with the co-operative society at the rate as may be determined.

(2) A co-operative society shall not—

- (a) declare or pay a dividend or bonus or distribute any part of its accumulated funds before the financial statements have been certified by a qualified auditor;
- (b) pay a dividend or make any payment on account out of profits until its capital base has reached a proportion of not less than 15% of the total assets of the co-operative society or other proportions as may be determined by the Registrar, provided that at all times its institutional capital shall not be less than 10% of total assets; or
- (c) declare or pay a dividend from unrealised gains including stock grants or share grants or gains arising from asset revaluation.

(3) Notwithstanding subsection 2(b), where the institutional capital of a society is less than 10% but is more than 7% of the value of its total assets, and where the overall performance for a given year is deemed otherwise positive, the Registrar may grant permission for the Board to declare and pay a dividend not exceeding 4% per annum to the members; but this concession shall not be granted more than twice in 10 years per registered society.

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

PART 8

FINANCIAL DISCLOSURE AND AUDIT

Annual financial statement

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

- (a) comparative financial statements relating separately to—
 - (i) the period that began on the date the co-operative society came into existence and ended not more than 12 months after that date, or, if the co-operative 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 co-operative society and the results of its operations required by the by-laws.

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

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

Approval of financial statements

130. (1) The directors of a co-operative society shall approve the financial statements referred to in section 129, and the approval shall be acknowledged by the signature of 2 or more directors.

(2) A co-operative society shall not issue, publish or circulate copies of the financial statements referred to in section 129 unless the financial statements are—

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

(3) A co-operative society shall send to the Registrar a copy of the financial statements, auditor's report and management letter no later than 10 days prior to the annual general meeting of the co-operative society, or any shorter period as the Registrar may permit.

Providing financial statements

131. (1) Not less than 10 days before each annual meeting of members, a co-operative society shall make available to each member a copy the financial statements and report of the auditor referred to in section 129.

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

Auditor's qualifications

132. Subject to section 133, a co-operative society's auditor shall be a member of a recognised professional body satisfactory to the Registrar and qualified to conduct audits.

Independence of auditor

133. (1) An individual shall not be qualified to be an auditor of a co-operative society if he is not independent of the co-operative society and its member co-operative societies, and of the directors and officers of the co-operative society and its member co-operative 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 shall be presumed not to be independent of a co-operative society if he or his business partner—

- (a) is a member, a director, an officer or an employee of the co-operative society or any of its member co-operative societies or a business partner or employee of any director, officer, member or employee of any such co-operative society, or its member co-operative societies;
- (b) is a member of a credit committee or any other committee of the co-operative society or any of its member co-operative societies;
- (c) transacts a substantial amount of business with the co-operative society or any of its member co-operative societies.
- (d) a chief executive officer, chief financial officer, chief accounting officer, or any person serving in an equivalent position for the co-operative society was employed by that individual and participated in any capacity in the audit of that co-operative society during the 1 year period preceding the date of the initiation of the audit; or
- (e) provides to the co-operative society contemporaneously with the audit, any non-audit service including—
 - (i) bookkeeping or other services relating to the accounting records or financial statements of the co-operative society,
 - (ii) financial information systems design and implementation,
 - (iii) appraisal or valuation services, fairness opinions, or contributions-in-kind reports,
 - (iv) actuarial services,
 - (v) internal audit outsourcing services,
 - (vi) management functions or human resources,
 - (vii) broker, dealer or investment adviser services,
 - (viii) legal and related services unrelated to the audit, or
 - (ix) any other service that the Registrar determines impinges on his independence.

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

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

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

Appointment of auditor

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

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

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

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

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

(5) Notwithstanding subsection (4), an individual otherwise qualified may accept appointment or consent to be appointed as auditor of a co-operative society where, within 21 days of making the request referred to in that subsection, the individual does not receive a reply to it.

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

Cessation of office

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

- (a) resigns by giving written notice to the co-operative society;
- (b) is removed under section 136; or
- (c) has held the office for 5 consecutive years.

(2) The resignation of an auditor shall become effective at the time his written resignation is received at the co-operative society or at the time specified in the resignation letter.

(3) The Co-operative society shall notify the Registrar in writing of the resignation of an auditor under subsection (1) within 7 days of receipt of the notice.

Removal of auditor

136. The members of a co-operative society may, by ordinary resolution at a special meeting remove an auditor other than an auditor appointed by the Registrar under section 138.

Filling vacancy of auditor

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

(2) Where there is not a quorum of directors, the directors then in office shall, within 21 days after a 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 co-operative society may provide that a vacancy in the office of auditor be filled only by vote of the members.

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

(6) The Co-operative society shall notify the Registrar in writing of the appointment of an auditor under subsections (1) to (3) within 7 days of receipt of the notice.

Auditor appointed by Registrar

138. Where a co-operative society does not have an auditor, the Registrar may, upon the Registrar's own motion or upon the application of a member, appoint an auditor and specify the remuneration of the appointee, and the auditor shall, subject to section 133, hold office until an auditor is appointed under section 134.

Auditor's right to notice

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

Required notice

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

Auditor's right to comment

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

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

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

Examination by auditor

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

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

Auditor's right to inspect

143. (1) Upon the demand of an auditor of a co-operative society the present or former directors, officers, employees or agents of the co-operative society shall provide to the auditor—

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

as are in the opinion of the auditor is necessary to enable him to make the examination and report required under section 142 which the directors, officers, employees or agents are reasonably able to provide.

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

- (a) obtain from the present or former directors, officers, employees or agents of any member of the co-operative society, the information and explanations that the directors, officers, employees and agents are reasonably able to provide and that are, in the opinion of the auditor, necessary to enable the auditor to make the examination and report required under section 142; and
- (b) provide the information and explanations so obtained to the auditor.

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

(4) A former director, officer, employee or agent of a member who contravenes subsection (2) or (3) commits an offence and is liable on summary conviction in the case of a—

- (a) first offence to a fine not exceeding \$25,000 or to 3 months imprisonment or both; and
- (b) subsequent offence to a fine not exceeding \$40,000 or to 1 year imprisonment or both.

Error or misstatement

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

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

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

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

Privilege of auditor

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

Annual, monthly and special returns

146. (1) Further to section 130(3) of this Act, not less than 10 days, or any shorter period as the Registrar may allow, before the date of its annual meeting a co-operative society shall file with the Registrar an annual return for the previous year that includes an analysis of the key prudential performance ratios that are consistent with the auditor's financial statements.

(2) Within 30 days of the end of each month, a co-operative society shall file a monthly return with the Registrar in accordance with regulations made under this Act.

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

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

PART 9

RECONSTRUCTION OF CO-OPERATIVE SOCIETIES

Methods of reconstruction

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

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

(2) Sections 150 to 153 shall have effect with respect to the procedure that shall be followed in relation to subsection (1).

Conversion

148. (1) A company registered under the Business Companies Act, 2022 or a registered industrial, provident or friendly society may, by special resolution, determine to convert itself into a co-operative society.

(2) A special resolution for conversion into a co-operative society under subsection (1) shall appoint 10 members of the company or the industrial, provident or friendly society who together with the secretary, shall sign the proposed by-laws and who may, by resolution, be given power to act on behalf of the company or the industrial, provident or friendly co-operative society as may be specified in the resolution.

(3) A copy of the special resolution referred to in subsection (1) with three copies of the by-laws shall be sent to the Registrar who may upon receipt register the co-operative society and issue a certificate in accordance with section 15.

Effect of certificate of registration

149. (1) On the date of the certificate of registration issued under section 15—

- (a) the incorporation or registration under any other enactment of the company or the industrial, provident or friendly society shall cease and shall be cancelled by the proper officer;
- (b) the conversion of the company or the industrial, provident or friendly society shall be effective;
- (c) the property of the company or the industrial, provident or friendly society shall become the property of the co-operative society;

- (d) the co-operative society shall be liable for the obligations of the company or the industrial, provident or friendly society;
- (e) an existing cause of action, claim or liability or prosecution against the company or the industrial, provident or friendly society shall not be affected;
- (f) a civil, criminal or administrative action pending against a converted company or an industrial, provident or friendly society may be continued against the registered co-operative society; and
- (g) a conviction against or a ruling, order or judgment in favour of or against a company or the industrial, provident or friendly society may be enforced by or against the registered co-operative society.

(2) An obligation or penalty arising under any of the matters mentioned in subsection (1) for which the former company, or industrial, provident or friendly society is liable or potentially liable at the date of the certificate of registration issued under section 15 shall have priority as against the property of the registered co-operative society over all other rights or claims against, or liabilities of the registered co-operative society.

Amalgamation of co-operative societies

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

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

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

Transfer of assets of co-operative societies

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

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

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

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

(5) Where the vesting of the assets of a co-operative society involves real estate, a copy of the resolution referred to in subsection (1), certified as such by the Registrar and the resolution shall be recorded at the Land Registry and the Registrar of Lands shall transfer the real property accordingly.

Claims of objecting creditors

152. Notwithstanding sections 150 and 151 an amalgamation or transfer shall not be effected unless the creditors of the co-operative societies concerned are given 3 months written notice of the proposal and have signified that they have no objections.

Division of co-operative society

153. (1) A co-operative society may, by resolution in this section referred to as a “preliminary resolution” passed by $\frac{3}{4}$ of the members present and voting at a special general meeting called for the purpose, resolve to divide itself into 2 or more co-operative societies.

(2) A preliminary resolution—

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

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

(4) At least 10 days’ notice of the preliminary resolution shall be given to any person whose interest will be affected by the division of the co-operative society by publishing the notice in the *Gazette* and in at least 2 issues of a newspaper published and circulated in Anguilla.

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

(6) A creditor of the co-operative society may, notwithstanding any agreement to the contrary, by notice given to the co-operative society within a period of 3 months from his receipt of the preliminary resolution, state his intention to demand the payment of moneys due him.

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

(8) After the expiry of 3 months from the receipt of the preliminary resolution by all the members and creditors of the co-operative society and of the notice to other person given under subsection (4), another special general meeting of the co-operative 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) Where at the special general meeting referred to in subsection (8) the preliminary resolution is confirmed by a special resolution either without changes or with changes as in the opinion of the Registrar are not material, the Registrar may, subject to subsection (11) and section 15, register the new co-operative societies; and upon registration, the original co-operative society shall be taken to be dissolved and its registration cancelled.

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

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

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

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

(12) Where within the time specified as the Registrar considers reasonable the-

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

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

Effect of registration of new co-operative societies

154. The registration of new co-operative societies established under section 153 is sufficient to vest the assets and liabilities of the original co-operative society in the manner specified in the preliminary resolution as confirmed in accordance with section 153(8) and (9).

PART 10

RECEIVERS AND RECEIVER-MANAGERS

Appointment of receiver or receiver-manager

155. (1) Where, in the opinion of the Registrar or the High Court, based on the results of an examination undertaken under section 185, it is necessary to appoint a receiver or a receiver-manager to protect the equity of the members, the Registrar or the Court may appoint a receiver or a receiver-manager.

(2) An appeal shall lie to the Court of Appeal against the appointment of a receiver or receiver manager by the Registrar or the High Court within 14 days of the appointment.

Functions of receiver

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

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

(2) Notwithstanding subsection (1) and subject to any order that the Court may make under section 160, a receiver who is not appointed as manager of a co-operative society shall not carry on the business of the co-operative society.

Functions of receiver-manager

157. Where a receiver of a co-operative society is also appointed manager of the co-operative society, the receiver may carry on any business of the co-operative society to protect the equity of the members. A receiver or receiver-manager appointed by a Court or the Registrar shall be discharged by the Court or Registrar where in the opinion of the Court or Registrar the equity of the members has been sufficiently protected as to enable the society to be returned to its members.

Cessation of Board's powers

158. Where a receiver or receiver-manager is appointed by a Court or the Registrar the directors of the co-operative society shall not exercise any directors' powers that the receiver or receiver-manager is authorised to exercise until the receiver or receiver-manager is discharged.

Duty of receiver or receiver-manager

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

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

(3) A receiver or receiver-manager shall—

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

Directions by court

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

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

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

Directions by Registrar

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

(2) Where the Registrar receives an application under subsection (1), he may make any order he considers appropriate including any order specified in section 160(c) to (f).

Required actions of receiver

162. A receiver or receiver-manager shall—

- (a) in the case of a receiver or receiver-manager appointed by the Court, immediately notify the Registrar of his appointment or discharge;
- (b) take into his custody and control the property of the co-operative society in accordance with the Court order or the order of the Registrar under which he is appointed;
- (c) open and maintain a bank account in his name as receiver or receiver-manager of the co-operative society for the moneys of the co-operative society coming under his control;
- (d) keep detailed accounts of all transactions carried out by him as receiver or receiver-manager;
- (e) keep accounts of his administration that shall be available during usual business hours for inspection by the directors of the co-operative society, the Registrar or any person authorised by the Registrar;
- (f) prepare at least once in every six-month after the date of his appointment financial statements of his administration, as far as is practicable in the form required in section 129;
- (g) on completion of his duties, render a final account of his administration in the form he has adopted for preparation of interim accounts under paragraph (f); and

- (h) file with the Registrar a copy of any financial statement 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.

PART 11

DISSOLUTION

Dissolution by members

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

(2) The Board shall cause a notice of a special meeting of members to be sent in the manner prescribed in section 45 to each member for the purpose of authorising dissolution.

(3) Each member of the co-operative society has the right to vote with respect to a 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, of an authorisation to dissolve a co-operative society; and

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

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

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

- (b) claims of any creditors;

- (c) number of members; and

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

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

- (a) named in the special resolution; or

- (b) where not named in the special resolution are appointed by the Registrar.

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

- (a) deposit the money in a special trust account in—

- (i) a co-operative society, or
 - (ii) any financial institution licensed under the Banking Act, 2015 or any company registered under the Insurance Act; or
- (b) invest the money in—
- (i) securities issued by the Government of Anguilla,
 - (ii) securities the payment of interest on which is guaranteed by the government, or
 - (iii) any other manner authorised by the Registrar.

(9) Where a trust is created under subsection (7), the income and principal of the trust shall 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” includes the interest of a member in a co-operative society and includes member loans and obligations of any kind that—
 - (i) arise by virtue of the by-laws of the co-operative society, and
 - (ii) are owed by the co-operative society to the any member; and
- (b) “unallocated surplus” includes any net proceeds from the sale of assets on dissolution of the co-operative society after the liabilities of the co-operative society and the claims of creditors and members have been satisfied.

Notice of dissolution by members

164. (1) When the Registrar approves a special resolution passed under section 163, the Registrar shall, at the expense of the co-operative society, cause a notice of the special resolution to be published—

- (a) in the *Gazette*; and
- (b) once a week for 2 weeks in a newspaper published and circulated in Anguilla.

(2) Notwithstanding subsection (1), where the Registrar receives an affidavit from the officers of a co-operative society stating that the co-operative society has no assets and no liabilities and the Registrar is satisfied that the affidavit was duly sworn, the Registrar may—

- (a) exempt the co-operative society from subsection (1); and
- (b) cause, at the Registrar’s expense, a notice of the special resolution passed under section 163(1) to be published in the *Gazette*.

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

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

Dissolution by Registrar

165. (1) Where the Registrar has reasonable cause to believe that a co-operative society has not—

- (a) commenced business within 12 months after the date shown on its certificate of registration; or
- (b) carried on business for 12 consecutive months; or
- (c) remained in compliance with specific conditions of registration under section 14,

the Registrar shall send to the secretary of the co-operative society a letter inquiring whether the co-operative society is carrying on business, is in operation or will be submitting an annual return.

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

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

(3) Where the Registrar—

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

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

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

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

Dissolution for failure to account for business transacted

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

- (a) may require the directors to call a special meeting of the co-operative society for the purpose of considering the business transacted during the preceding financial year and to provide to the members and to the Registrar a copy of the annual financial statement; and
- (b) shall specify 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 specified under subsection (1), the Registrar shall call the special meeting to—

- (a) review the financial position of the co-operative society and the members' interests therein; and
- (b) ascertain whether the members wish to continue the business of the co-operative society and shall comply with sections 129 and 131.

(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 co-operative society will be carrying on business and shall comply with section 129 and 131,

the Registrar shall notify the directors that, unless sections 129 and 131 are complied with within one month from the date of the notice, the co-operative society will be struck off the register and dissolved.

(4) Notwithstanding subsection (3), the Registrar may extend the period for compliance with sections 129 and 131.

(5) Where a co-operative society does not comply with sections 129 and 131 within the period specified in subsection (3) or extended by the Registrar under subsection (4) the Registrar shall—

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

Dissolution by Court

167. (1) The Registrar or a person with a legitimate interest may, after giving the co-operative society 10 days' notice apply to the Court for an order dissolving a co-operative society where the co-operative society—

- (a) obtained its registration by fraud or mistake;
- (b) exists for an illegal purpose;
- (c) has continued to violate any of the provisions of this Act or its by-laws after notice of the violation by the Registrar;
- (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 in respect of that type of co-operative society.

(2) Where a person with a legitimate interest applies under this section, he shall also give the Registrar notice of the application and the Registrar shall be entitled to appear, be heard and represented by an attorney-at-law.

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

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

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

Revival of dissolved co-operative society

168. (1) Where a co-operative society has been dissolved under this Part, any person with a legitimate interest may apply to the Registrar to have the co-operative society revived by submitting to the Registrar—

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

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

- (a) issue a certificate of revival in the prescribed form and publish notice of the revival in the *Gazette*; and

- (b) impose any condition on the co-operative society that he considers reasonable with respect to the co-operative society.
- (3) A co-operative society is revived on the date shown in the certificate of revival.
- (4) Where a co-operative society is revived under this section it shall—
 - (a) have all the rights and privileges; and
 - (b) be liable for the obligations,

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

Appointment of liquidator

169. (1) Where—

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

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

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

Commencement of liquidation

170. The liquidation of a co-operative society commences where—

- (a) a special resolution for dissolution of the co-operative society is approved by the Registrar under section 163;
- (b) the Registrar appoints a liquidator under section 165 or 166;
- (c) the Court makes an order to dissolve under section 167; or
- (d) the registration of a co-operative society is cancelled by the Registrar under section 22.

Cessation of business

171. From the date of the commencement of its liquidation—

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

General provisions respecting liquidators

172. (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 vest in the liquidator.

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

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

(5) Where—

(a) the members appoint a liquidator and do not issue direction 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 the liquidator may dispose of the whole or any part of the property of the co-operative society.

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

(7) The power of the Registrar under subsections 5 and 6 is subject to any order made by a court of competent jurisdiction.

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

Duties of liquidator

173. On his appointment a liquidator shall—

(a) immediately give notice of his appointment—

(i) in the case of a liquidator not appointed by the Registrar, to the Registrar, and

(ii) to each claimant and creditor known to the liquidator;

(b) immediately publish notice of his appointment in the *Gazette* and once a week for 2 consecutive weeks in a newspaper published and circulated in Anguilla;

(c) set out in the notice mentioned in paragraphs (a) and (b) a provision requiring any person—

- (i) indebted to the co-operative society, to render an account and pay to the liquidator the amount due at the time and place specified,
- (ii) possessing property of the co-operative society, to deliver it to the liquidator at the time and place specified, and
- (iii) having a claim against the co-operative society, whether liquidated, unliquidated, future or contingent, to submit 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 custody and control the property of the co-operative society;
- (e) open and maintain a trust account for the monies of the co-operative society;
- (f) maintain separate lists of the members, creditors and other person having claims against the co-operative society;
- (g) where at any time the liquidator determines that the co-operative society is unable to pay or adequately provide for the discharge of its obligations, apply to the Registrar for directions; and
- (h) deliver to the Registrar and the co-operative society, at least once in every 12-month period after his appointment or more often as the Registrar may require, financial statements of the co-operative society in the form required in section 129 or in any form that the Registrar may require.

Powers of liquidator

174. (1) The liquidator may—

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

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

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

(4) A liquidator shall not purchase directly or indirectly any part of the stock-in-trade or assets of the co-operative society.

Limitation on liability of liquidator

175. (1) A liquidator shall not be liable where he relies in good faith on—

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

(i) by an officer of the co-operative society, or

(ii) by the auditor of the co-operative society in a written report that states that the financial statements reflect fairly the financial condition of the co-operative society at a specified date; or

(b) an opinion or statement of an attorney-at-law, accountant, engineer, appraiser or other professional advisor retained by the liquidator.

Cost of liquidation

176. (1) A liquidator shall pay the cost of the liquidation out of the property of the co-operative society and shall pay or make adequate provision for all claims against the co-operative society.

(2) After the date specified by the liquidator for the receipt of notices of claims against the Co-operative society under section 173(c)(iii), the liquidator may distribute all or any part of the assets of the co-operative society among the parties entitled to the assets having regard to the claims of which the liquidator has notice.

(3) The liquidator shall not be liable for any part of the assets of the co-operative society distributed under subsection (2) to any person notice of whose claim was not received under section 173(c)(iii).

(4) When distributing the assets of a co-operative society under this section, the liquidator shall pay, in priority to the claims of the creditors of the co-operative society, the wages or salaries of all persons, other than directors employed by the co-operative society at the time of the commencement of the liquidation.

(5) Wages or salaries shall not exceed the equivalent of more than 3 months and any claim for an outstanding amount shall have the first priority against any residual asset of the co-operative society.

Closure of liquidation

177. (1) In the liquidation of a co-operative society the funds, including the statutory reserves, shall be applied—

- (a) firstly to the cost of liquidation;
- (b) secondly to the discharge of the liabilities of the co-operative society;
- (c) thirdly to the payment of share capital; and
- (d) fourthly, where the by-laws of the co-operative society permit, to the payment of a dividend at a rate not exceeding 10% per annum for any period during which no distribution of as 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 co-operative purpose the Registrar considers fit.

(3) Where the liquidation is closed in accordance with subsection (1), the Registrar shall—

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

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

(5) The co-operative society shall cease to exist on the date shown in the certificate of dissolution.

Custody of records

178. (1) A person who has been granted custody of the documents and records of a dissolved co-operative 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 specify.

(2) Notwithstanding subsection (1) in the case of a credit union the documents and records shall be kept for 7 years.

Remuneration of liquidator

179. (1) Where there is no agreement or contract fixing the remuneration of a liquidator, the liquidator shall be entitled to a commission based on the net proceeds of the estate of the co-operative society realised after deducting his expenses and disbursements.

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

- (a) 5% on the first \$1,000 realised;
- (b) 2.5% on the next \$4,000 realised; and

(c) 1.25% on any sum greater than \$5,000 realised.

(3) A liquidator is entitled to any fee or charge for his services in addition to the commission specified under this section.

Continuation of actions

180. (1) Notwithstanding the dissolution of a co-operative society under this Act—

- (a) a civil, criminal or administrative action or proceeding commenced by or against, the co-operative society, the Board or any Director before its dissolution may be continued as if the co-operative society had not been dissolved;
- (b) a civil, criminal or administrative action or proceeding may be brought against the co-operative society, the Board or any Director within 2 years after its dissolution as if the co-operative society had not been dissolved; and
- (c) the residue of any property of the Co-operative society held by the Registrar shall be used to satisfy any judgement or order in respect of action taken in relation to paragraph (a) or (b).

(2) Service of a document on a co-operative society after its dissolution may be effected by serving the document on all the persons shown on the records of the Registrar as the last directors of the co-operative society and the Registrar.

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

(4) On the payment of a distribution or distribution of property with respect to any share of a co-operative society the payee shall be notified that a trust in relation to a claim under subsection (1) exists for a period of 2 years in respect of the payment.

Unknown creditor of member

181. (1) On the dissolution of a co-operative society, the liquidator shall convert into money the portion of the property distributable to a creditor or member who cannot be found after a reasonable investigation and shall deposit the money in a trust account in an interest-bearing account at a reputable financial institution in Anguilla in the name of the Registrar.

(2) A payment under subsection (1) shall be in satisfaction of a debt or claim of a creditor or member.

(3) Where a creditor establishes within 6 years after the dissolution of a co-operative society that he is entitled to any money held under subsection (1) the Registrar shall pay the amount standing to the account to that person.

(4) Where moneys deposited under this section are not distributed within 6 years after the dissolution of a co-operative society it shall be distributed in accordance with sections 177(2) or the by-laws.

Power of Registrar to surcharge

182. (1) Where, in the course of the dissolution of a co-operative society it appears that any—

- (a) person who has taken part in the organisation or management; or
- (b) any past or present officer;

of the co-operative society has misapplied or retained or become liable or accountable for any money or property of the co-operative society or has committed misfeasance or breach of trust in relation to the co-operative society, the Registrar may on his own volition or on the application of the liquidator, any creditor or contributor, carry out an examination into the conduct of that person.

(2) The Registrar may make an order requiring the person to repay the money or the value of the property with interest at a rate as the Registrar may think just by way of compensation in regard to the misapplication, retainer, dishonesty or breach of trust as the Registrar may think just

(3) This section shall apply notwithstanding that the act is one for which the offender may be criminally responsible.

(4) This section in no way derogates from the right of the Registrar or a liquidator to move the courts for redress.

Appeal against surcharge

183. Any person aggrieved by an order of the Registrar made under section 182 may appeal to the Tribunal within 21 days from the date of the order and the decision of the Tribunal shall be final on any question of fact.

Application of Part 11

184. (1) This Part does not apply to a co-operative society that is bankrupt within the meaning of the Bankruptcy Act.

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

PART 12

EXAMINATIONS AND INVESTIGATIONS

Examinations

185. (1) In addition to the powers of routine inspection under sections 4(4) and 21(1) the Registrar may appoint a person as examiner who shall make an examination of the records and the affairs of any co-operative society.

(2) In its request for an examination and the appointment of an examiner under this section, the Registrar may set limits and conditions on the scope and conduct of the examination as the Registrar considers appropriate.

(3) An examiner requested by the Registrar to carry out an examination under this section may, on production of the examiner's authorisation to any person concerned, at all reasonable times inspect and take copies of, or extracts from, any book or document relating to the co-operative

society, and for any of those purposes may enter any premises at which the books or documents are kept.

(4) For the purposes of exercising his powers under subsection (3) to take copies or extracts, an examiner may remove from the premises concerned, the original documents and return them no later than 24 hours after the removal.

(5) A signed record of all documents removed from the premises by an examiner shall be given to the person in charge of the premises before the examiner leaves the premises.

(6) An examiner who is carrying out an examination under this section may, with the approval of the Registrar, and subject to any limits imposed by that approval, carry out a similar examination in accordance with subsections (3), (4) and (5) in relation to any other body, whether a co-operative society or not, which is or has been at any relevant time associated with the co-operative society.

(7) Where an examination is carried out under this section, the examiner shall make a written report of the examination to the Registrar.

(8) Where required to do so by notice in writing served by the Registrar at any time or by an examiner in the course of an examination—

- (a) a co-operative society;
- (b) any person who is or has been a director, member, agent or liquidator of a co-operative society; or
- (c) any other person who has in his possession or power any book or document relating to a co-operative society,

shall provide the Registrar or the examiner any book, document or information specified in the notice which relate to the co-operative society and is in his possession.

(9) Where a person on whom a notice is served under subsection (8) does not have in his possession or under his control an item specified in the notice but knows where it is, the person shall not be regarded as complying with the notice unless he states to the best of his knowledge and belief where the item is and, if so required, make that statement in the form of a statutory declaration.

(10) Where requested in writing by the Registrar or an examiner, a co-operative society shall provide to the Registrar or the examiner a financial statement or periodic financial statements in the specified form and containing the information requested in the notice.

(11) Where a notice under subsection (8) or (9) requires that any—

- (a) item or information is to be furnished within a period, at a time or place specified in the notice; or
- (b) information is to be verified by a statutory declaration;

the co-operative society or person on whom the notice is served shall not be regarded as complying with the notice unless that requirement is also complied with.

(12) A person who contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 6 months, or to both.

Duty to provide explanation

186 The Registrar or examiner may take copies of or extracts from any item produced in compliance with a notice under section 185 and if so required by the Registrar or examiner, the person on whom the notice was served or a person who is or has been a director, committee member, member, agent or liquidator of the co-operative society shall provide any explanation which may reasonably be required of an item so produced.

Lien and privilege

187. (1) The production by any person of any item forming part of the books and documents of a co-operative society shall not prejudice any lien which that person claims over that item.

(2) The provisions of section 185 do not authorise or require the—

- (a) production by an attorney-at-law of any document containing a privileged communication made by or to him as a legal practitioner; or
- (b) provision of information contained in a privileged communication so made.

Recovery of costs

188. Where the Registrar considers it just he may require by notice in writing that all or any of the expenses incurred by him in the exercise of his powers under section 185 shall be met, either wholly or to such extent as he may order—

- (a) out of the funds of the co-operative society; or
- (b) by the directors or former directors of the co-operative society or any of them;

and any sum payable shall be recoverable summarily by the Registrar as a civil debt.

Obstruction

189 (1) A director, committee member, employee or agent of a co-operative society shall not obstruct—

- (a) any person who is carrying out an examination under this Act; or
- (b) the examination of a co-operative society undertaken under this Act.

(2) A director, committee member, employee or agent of a co-operative society who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding 1 year, or to both.

Investigations

190. (1) Where—

- (a) an application is made to the Registrar by the lesser of 25 members or 10% of the membership of a co-operative society, each of whom has been a member of the co-

operative society throughout the period of 12 months ending on the date of the application; and

- (b) the Registrar is of the opinion that it is necessary to do so in the interests of the orderly and proper regulation of the business of a co-operative society;

the Registrar may appoint 1 or more investigators to investigate the affairs of the co-operative society.

(2) An application under subsection (1)(a) shall be supported by sworn evidence for the purpose of showing that the applicants have—

- (a) good reason for requiring the investigation to be made; and
- (b) not been actuated by malicious motives in their application,

and where required by the Registrar the applicants shall deposit a sum of money as security for the costs.

(3) Where an investigator thinks it is necessary for the purpose of the investigation to also investigate the affairs or any other body, whether a co-operative society or not, which is or has at any relevant time been associated with the principal co-operative society, the investigator may do so with the approval of the Registrar.

(4) A notice of an application under subsection (1)(a) shall be given to the co-operative society concerned and, where applicable, to any other body whose affairs are to be investigated by virtue of subsection (3).

(5) Before appointing an investigator under this section, the Registrar shall notify the co-operative society in writing of the action which he proposes to take and of the grounds on which he relies for taking the proposed action.

(6) The notice given under subsection (5) shall inform the Co-operative society that it may within 14 days from the receipt of the notification submit to the Registrar a written statement showing cause why the investigation should not be pursued.

(7) The expenses of an investigation shall be defrayed by the office of the Registrar, but it shall be entitled to be repaid these expenses from—

- (a) the co-operative society to such extent as the Registrar may direct; and
- (c) any person convicted of an offence in proceedings instituted as a result of the investigation as the court by which the person is convicted may order.

Investigations by Court

191. (1) A member, the Registrar or any person with a legitimate interest may apply ex parte to the Court for an order directing an investigation to be made of a co-operative society and any of its member co-operative societies.

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

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

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

(4) A person shall not publish anything relating to ex parte proceedings conducted under this section other than with the authorisation of the Court.

Court order

192. In connection with an investigation under section 191(1), the Court may make any order it considers appropriate, including an order—

- (a) to investigate;
- (b) appointing an investigator, who may be an employee of the Registrar, fixing the remuneration of an investigator and replacing an investigator;
- (c) determining the notice to be given to any interested person or dispensing with notice to that person;
- (d) authorising an investigator to enter any premises in which the Court is satisfied there might be relevant information, and to examine anything and make copies of any document or record found on the premises;
- (e) requiring any person to produce documents or records to the investigator;
- (f) authorising an investigator to conduct a hearing, administer oaths and examine any person on oath, and prescribing rules for the conduct of the hearing;

- (g) requiring any person to attend a hearing conducted by an investigator and to give evidence on oath;
- (h) giving directives to an investigator or any interested person on any matter arising in the investigation;
- (i) requiring an investigator to make an interim or final report to the Court and to the Registrar;
- (j) requiring an examiner appointed under section 185 to discontinue an examination; and
- (k) requiring the investigated co-operative society to pay the costs of the investigation.

Powers of investigator

193. (1) An investigator appointed under section 192(b) shall have the powers set out in the order appointing him.

(2) In addition to the powers specified in the order appointing an investigator, the investigator may provide to, or exchange information and otherwise co-operate with, any public official in Anguilla or elsewhere who—

- (a) is authorised to exercise investigatory powers; and
- (b) is investigating, with respect to the co-operative society, an allegation of improper conduct that is the same as or similar to the conduct described in section 191(2).

Hearing in camera

194. (1) A person with a legitimate interest may apply to the Court for an order that a hearing conducted by an investigator appointed under section 192 be heard in camera and for directions on any matter arising in the investigation.

(2) A person whose conduct is being investigated or who is being examined at a hearing conducted by an investigator appointed under section 192(b) has a right to be represented by an attorney -at-law.

Incriminating evidence

195. A person shall not be excused from attending and giving evidence and producing documents and records to an investigator appointed under section 192(b) by reason only that the evidence tends to incriminate the person or might subject the person to any proceedings or penalty.

Absolute privilege respecting statements

196. An oral or written statement or report made during the course of, or as the result of, an investigation or examination authorised by this Part by an investigator or an examiner, or by any other person acting in accordance with powers conferred by this Part in respect of an investigation or examination, shall have absolute privilege.

DISPUTES, ARBITRATION AND APPEALS

Referral of dispute to Registrar

- 197.** (1) Where any dispute that relates to the business of a co-operative society arises—
- (a) among members, former members and persons claiming through members or deceased members;
 - (b) between a member, former member or person claiming through a member or a deceased member, and the co-operative society, its Board, or any officer of the co-operative society;
 - (c) between the member and the co-operative society arising out of or under any by-law relating to the disposal of the produce of agricultural or animal husbandry, or under any contract relating to the business of a Co-operative society;
 - (d) between the co-operative society and any other co-operative society; or
 - (e) between the co-operative society and its Board, committee member or employee,
- any party to the dispute may refer the dispute to the Registrar for determination.

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

Mediation and arbitration

- 198.** (1) On a referral of a dispute to the Registrar—
- (a) he shall open a dispute file;
 - (b) he shall serve the other party with particulars of the claim; and
 - (c) he may choose to have the dispute determined by his office; or
 - (d) he may refer the dispute to arbitration or to mediation.

(2) For the purposes of this section “mediation” means mediation in accordance with the Eastern Caribbean Supreme Court mediation procedure.

Determination by Registrar

199. (1) The Registrar may, before proceeding to hear or determine a dispute, make or cause to be made a preliminary investigation in order to ascertain the cause, to define the issues in dispute and to bring about a voluntary settlement between the parties to the dispute.

(2) The Registrar may either hear and decide the dispute himself or delegate authority to hear and determine the dispute to a senior office holder in the office of the Registrar.

Determination by legal practitioner

200. (1) Notwithstanding section 199, the Registrar may refer a dispute to a legal practitioner for determination by arbitration after consultation with both parties in order to avoid a claim of bias of the legal practitioner chosen.

(2) For the purposes of subsection (1) the legal practitioner shall have a minimum of 5 years call at the bar, knowledge of the relevant law and legislation and adjudicative skills.

Power of Registrar and legal practitioner

201. (1) The Registrar, anyone delegated by him under section 199 or a legal practitioner acting under section 200 shall have the power of a Judge of the High Court to summon witnesses, call for the production of books and other documents and to examine witnesses and parties on oath.

(2) All summonses for the attendance of witnesses, parties or other persons or for the production of documents shall be as specified in Schedule 1 and shall be signed by the presiding officer.

Attendance of witnesses

202. Persons summoned to appear and give evidence before the Registrar, anyone delegated by him under section 199 or a legal practitioner acting under section 200 shall be bound to obey the summons served upon them as fully, in all respects, as witnesses are bound to obey subpoenas issued by the High Court.

Allocation of costs

203. The Registrar, anyone delegated by him or a legal practitioner may order the expenses of determining any dispute, including fees to a legal practitioner acting on behalf of any party are to be paid by any party or parties to the dispute.

Right of appeal

204. Any party aggrieved by a decision of the Registrar, anyone delegated by him under section 199 or a legal practitioner acting under section 200 may appeal to the Appeals Tribunal within the time and in the manner as may be prescribed.

Pursuit of rights not affected

205. The rights of a co-operative society arising by law under any charge, mortgage, bill of sale or other security may be pursued without recourse to the Registrar, anyone delegated by him under section 199 or a legal practitioner acting under section 200.

Co-operative Societies Appeals Tribunal

206. (1) There shall be a Co-operative Societies Appeals Tribunal which shall consist of 3 persons, 1 of whom shall be an attorney-at-law of at least 7 years standing who shall be the Chairperson of the Tribunal.

(2) The Chairperson of the Tribunal shall be appointed by the Governor after consultation with the Bar Association.

(3) The Tribunal shall have jurisdiction to hear appeals against a decision of the Registrar, anyone delegated by him under section 199 or a legal practitioner acting under section 200.

(4) Schedule 2 shall have effect with respect to the constitution and procedure of the Tribunal.

(5) The Executive Council may by regulations subject to affirmative resolution of the House of Assembly amend Part 2 of Schedule 2.

Case stated on question of law

207. The Registrar, anyone delegated by him under section 199 or a legal practitioner acting under section 200 may, in the course of or on making a decision in a dispute, refer a question of law arising therefrom to the High Court by way of case stated for the opinion of the Court.

Enforcement of decisions and recovery of loans

208. (1) A decision by the Registrar, anyone delegated by him under sections 198 and 199, a legal practitioner acting under section 200 or the Tribunal may, by leave of the Court, be enforced in like manner as a judgment or order of the Court, and where leave is given, judgment may be entered in terms of the decision.

(2) Where a dispute relates to the recovery of a loan made by a co-operative society to a member of that co-operative society, such a dispute may, notwithstanding section 197, 199 or 200 be brought before the magistrate for the district in which the co-operative society conducts business.

(3) A magistrate shall have jurisdiction under subsection (2), notwithstanding that the amount due exceeds the magistrate's jurisdiction under the Magistrates Code of Procedure Act.

PART 14

SPECIALISED CO-OPERATIVE SOCIETIES

Credit Unions

Functions of Registrar, immunity, sanctions and corrective action

209. (1) The Registrar shall administer the system of regulation and supervision of credit unions registered under this Act for the—

- (a) protection by each credit union of the funds of its members; and
- (b) maintenance of the financial stability and well-being of all registered credit unions.

(2) The Registrar shall have power to do anything which, in his opinion, is necessary to facilitate the exercise of his functions or is incidental to or consequential on their exercise, and, in the exercise of those powers the Registrar may consult other persons with expertise or knowledge in matters relating to financial institutions including credit unions.

(3) The registration of a credit union or the imposition of any prudential, supervisory or reporting requirement or condition thereon is not a warranty as to the solvency of the credit union to which registration is given.

(4) The Registrar shall not be liable in respect of any loss incurred through the insolvency or default of a credit union.

(5) Where after an examination under section 185 or after an investigation under section 190, or on the receipt of any other information the Registrar is of the opinion, that it is necessary to act in the interest of the orderly and proper regulation of the business of a credit union, in addition to the powers conferred by section 4, the Registrar may—

- (a) place the credit union under administrative supervision; and
- (b) take any other necessary action to correct the non-compliance or unsafe or unsound practice, including
 - (i) prohibiting the disposal, conveying or encumbering of any of the credit union's assets,
 - (ii) prohibiting the incurring by the credit union of any debt, obligation or liability,
 - (iii) prohibiting the investing of any of the credit union's funds,
 - (iv) prohibiting the withdrawal of any of the credit union's accounts at other financial institutions,
 - (v) suspending the credit union's acquisition of fixed assets,
 - (vi) suspending or restricting the credit union's lending operations, and
 - (vii) increasing the credit union's allocation to reserves.

(6) The credit union shall comply with the requirements of the Registrar under subsection (5)(b) and where the credit union fails to do so, the Registrar may appoint an administrator for the credit union, for a period not exceeding 12 months.

(7) Where at any time the Registrar determines that the credit union is not able to continue business under the administrator, in the interest of the members, depositors and creditors and in accordance with section 155, the Registrar may appoint a receiver or a receiver-manager for the credit union.

(8) All costs incidental to the period of administrative supervision will constitute an allowable charge against the assets of the credit union and shall be paid as the Registrar may determine.

Restrictions

210. (1) A credit union shall not underwrite insurance or the issue of securities by another person.

(2) Subsection (1) does not prohibit a credit union from obtaining insurance for the security of the credit union.

(3) A credit union shall not demand from a potential borrower that—

- (a) any additional services, including appraisals, valuations or security, be obtained from a specific provider; or

(b) the borrower should utilise any other service of the credit union, as a condition of, or in consideration of obtaining a loan.

(4) A credit union may only hold real property the aggregate market value of which does not exceed 10% of its total assets.

(5) Notwithstanding subsection (4), the Registrar may, where the Registrar is satisfied that the circumstances require it, grant approval to a credit union to hold real property in excess of the percentage specified in subsection (4).

(6) Subsection (4) shall not apply where the credit union exercises its legal right in respect of any property which is the security for any debt, and in such a case, the property shall not be retained for a period in excess of 5 years without the permission of the Registrar unless in the meantime the aggregate value of the real property held by the credit union is reduced to below the percentage specified in subsection (4).

(7) Nothing in subsection (4) shall be interpreted as requiring a credit union to—

(a) dispose of any real property that was acquired; or

(b) terminate any agreement to acquire or hold any real property where the agreement was entered into,

before the coming into force of this Act.

(8) A credit union may do any act which is incidental or conducive to or consequential upon the attainment of its objects.

Liquid assets

211. (1) A credit union shall at all times keep a proportion of its total assets in liquid form as prescribed in subsection (2) and the Regulations, to enable the credit union to meet its liabilities as they arise.

(2) For the purpose of complying with subsection (1), a credit union shall ensure that no less than 15%, or any greater percentage as may be specified by the Registrar, of its members' unencumbered deposits and other short-term liabilities, are maintained in liquid assets.

(3) A credit union may keep liquid assets in excess of the percentage of its total assets required for complying with subsection (1).

Loan loss provisions

212. (1) A credit union shall at least annually evaluate the quality and collectability of the loan portfolio and establish adequate loan loss allowance.

(2) The Registrar shall in accordance with the standards prescribed by PEARLS issue guidelines to implement the requirement for an adequate loan loss allowance.

Loan approval

213. (1) A loan made by a credit union shall be approved in accordance with the policies established by the directors before any funds are advanced.

(2) A loan to a director, officer, committee member or an employee of a credit union or an associate of any of them, shall be approved in the manner prescribed.

(3) A person who knowingly approves or grants a loan by a credit union in contravention of this Act shall be held liable for any loss resulting to the credit union in connection with that loan.

Security for loans

214. (1) Subject to any restrictions that may be prescribed in the Regulations, a credit union may take any security for loans and other risk assets that it considers advisable and in keeping with sound business and risk management practices.

(2) For the purposes of this section, “risk assets” means loans, investments and other property of the co-operative society with possible loss results, which form the basis of determining the amount of the co-operative society’s income to be set aside as provision for loss.

Loan limits

215. The limits on the amount of loans made by a credit union shall be in accordance with section 120.

Reporting loans

216. (1) Where a credit union is reporting loans, it shall report the loans at their fair value deducting provision for loan impairment on the balance sheet in its annual financial statements under section 129.

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

Interest on loans

217. (1) The maximum intervals at which interest on loans made by a credit union are to be paid shall be prescribed in the Regulations.

(2) The rate of interest to be charged on loans shall be fixed from time to time by the Board.

(3) Where a borrower has not paid the interest on a loan within the maximum interval prescribed under subsection (1) the credit union shall not include that interest due as part of its income.

Acceptance of deposits

218. (1) A credit union may accept deposits—

- (a) from members;
- (b) from other co-operative societies;
- (d) from government and non-government agencies; and
- (e) bodies corporate.

(2) Deposits may be accepted in the manner and form and subject to any condition that may be prescribed in the Regulations.

Credit unions and trusts

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

(2) 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) where 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 a sufficient discharge to the credit union for the payment of any money payable in respect of the deposit or share, and the credit union is not bound to see to the application of any money paid on the receipt or order.

(3) Where due to any neglect or omission on the part of a credit union to enter a proper description in its books, an executor, an administrator, a guardian, a committee or a trustee who is entered on the books of the credit union as a member, or who is described as representing a named estate, trust or trust beneficiary shall not be personally liable to the credit union with respect to the share that he or she represents in that capacity.

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

Consumers Co-operative Societies and Housing Co-operative Societies

Restrictions on directorship

220. (1) An employee of a consumers' co-operative society, or housing co-operative society or service co-operative society shall not be a director of the society.

(2) A consumers' co-operative society, or housing co-operative society or service co-operative society shall provide in its by-laws that none of its elected directors shall be an employee of the society.

Relationship with members

221. The relationship between a housing co-operative society and its members is not a landlord and tenant relationship.

By-laws

222. The by-laws of a housing co-operative society shall include, in addition to the matters required by section 12—

- (a) the manner in which each member may be required to provide capital for the purposes of the housing co-operative society;

- (b) the manner in which a member may be required to pay for housing charges or other reserves;
- (c) the basis for fixing the amount of housing charges;
- (d) subject to section 29, the manner of withdrawal by a member and the repayment of a member's interests in the co-operative society; and
- (e) the rules governing any leases of housing units by members to non-members.

Amendment of by-laws

223. Where the by-laws of a co-operative society provide that it is a housing co-operative society the co-operative society may not repeal or amend that provision of the by-laws without the consent of the Registrar.

No interest on share capital

224. Where a housing co-operative society has a share capital it shall not pay any interest on the share capital to its members.

Right to possession terminated

225. (1) Where a person's membership in a housing co-operative society is terminated, any right of that person to possess or to occupy residential premises acquired by virtue of membership in the co-operative society is extinguished.

(2) Where a person's membership in a housing co-operative society is terminated and the member does not give up possession of the housing unit he occupies, the housing co-operative society may apply to the Court to recover possession, any arrears of housing charges and damages.

Abandoned goods

226. (1) Where a member of a housing co-operative society—

- (a) has his membership terminated, has vacated or abandoned the housing unit formerly occupied by him; and
- (b) has left property in the housing unit,

the co-operative society may apply to the Magistrates Court for an order authorising it to remove any property from the housing unit and sell or otherwise dispose of it.

(2) The Magistrate may make an order under subsection (1) where the Magistrate is satisfied that the housing co-operative society has made a reasonable effort to locate the former member.

(3) Where a housing co-operative society sells or otherwise disposes of property under an order made under subsection (2), it shall pay into the Magistrate's Court, to the credit of the former member, any remaining proceeds of the disposition after deducting—

- (a) an amount with respect to costs incurred by it relating to the disposition; and
- (b) any arrears of housing charges and damages that the Magistrate allows.

(4) Where a former member does not claim the remaining proceeds after a sale or disposal within 2 years after the date the money was paid into the Magistrates Court, the money shall be paid into the Consolidated Fund.

(5) Where a housing co-operative society sells or otherwise disposes of property under an order made under subsection 1 it is not liable in any action taken by the former member with respect to the removal, sale or disposition.

Industrial Co-operative Societies

Membership

227. (1) In an industrial co-operative society, 75% of all employees shall be members of the co-operative society.

(2) An industrial co-operative society shall not subcontract out more than 50% of its work without the consent of the Registrar.

By-laws

228. In addition to the matters required to be set out in the by-laws under section 12, the by-laws of an industrial co-operative society shall include—

- (a) conditions of admission, expulsion or suspension of its members;
- (b) a procedure for laying off members when there is a lack of work and a procedure of recall to work;
- (c) remuneration of workers involved in the day-to-day work of the co-operative society; and
- (d) allocation of bonus among members.

Restriction on registration

229. An industrial co-operative society shall not be registered where the acquisition of goods for sale to the public is one of the principal objects stated in its by-laws.

Bonus based on labour

230. When allocating among creditors or paying a bonus to the members, the directors of an industrial co-operative society may take into account the labour contribution of each member.

Employees may be directors

231. 25% of the directors of an industrial Co-operative society may be employees of the society.

PART 15

APEX BODY

Establishment and constitution of apex body

232. Co-operative societies may establish an apex body which shall be composed of member representatives of the majority of the existing co-operative societies in Anguilla.

Functions

233. The apex body shall be registered as a co-operative society under this Act and shall coordinate, assist and promote activities for the development, growth and expansion of all co-operative societies and shall perform representational and other functions as may be determined by its constituent members, including—

- (a) assisting with the formation and readiness for registration of viable co-operative societies;
- (b) the initiation and encouragement of capacity development activities beneficial to co-operative societies;
- (c) liaison and coordination with all co-operative societies;
- (d) stimulation of community awareness and public confidence in the Co-operative movement; and
- (e) representation of the interests of the co-operative sector.

Officers

234. (1) The officers of the apex body shall be elected at the first meeting of that body and shall hold office for a period of 1 year and thereafter the election of officers shall be in accordance with the by-laws of the apex body.

(2) The apex body shall regulate its own procedure and may establish its own central credit union or central co-operative society in conjunction with other apex bodies and co-operative societies to provide specialised services and facilities to members.

Consultation by Registrar

235. The Registrar shall, from time to time, consult and advise an apex body, central credit union or central co-operative society with respect to matters relating to the development of co-operative societies and the Co-operative movement.

PART 16

OFFENCES

Corrupt practices and bribery

236. (1) A member, agent or employee of a co-operative society shall not accept, agree to accept, obtain or attempt to obtain whether for himself or another, any gift or consideration as an inducement or reward for—

- (i) doing or forbearing to do any act relating to the business of the co-operative society, or
- (ii) showing favour or disfavour to any person in relation to the business of the co-operative society.

(2) A person shall not give, agree to give, or offer any gift or consideration to any member, agent or employee of a co-operative society as an inducement or reward for any purpose mentioned in subsection (1).

(3) A person who contravenes subsection (1) or (2) commits an offence and is liable on—

- (i) summary conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years, or to both, or
- (ii) conviction on indictment to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 3 years, or to both.

Falsely obtaining property of co-operative society

237. (1) A person shall not—

- (a) obtain possession of any property or the grant of a loan from a co-operative society by false representation or other corrupt means;
- (b) wrongfully withhold or misapply any property belonging to or loan from a co-operative society; or
- (c) use any part of property belonging to or loan from a co-operative society for purposes other than—
 - (i) those directed or expressed in the by-laws of the co-operative society,
 - (ii) authorised by this Act, or
 - (iii) in accordance with an agreement made with the Co-operative society in its normal course of business.

(2) A person who contravenes subsection (1) commits an offence and is liable—

- (a) on summary conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 6 months, or to both; or
- (b) on conviction on indictment to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding 2 years or to both.

(3) A person who contravenes subsection (1) may, in addition to any other penalty imposed, be ordered—

- (a) to deliver up any property or repay any sum of money to which the proceedings relate; and
- (b) pay the cost of the proceedings.

Failure to comply with Act, etc.

238. (1) A person shall not—

- (a) fail without reasonable cause, neglect or refuse to comply with a requirement under this Act; or
- (b) purporting to comply with a requirement for information under this Act, provide information which the person knows to be false,

(2) A person shall not without reasonable cause disobey any summons, order or direction lawfully issued under this Act.

(3) A person shall not knowingly alter, destroy, mutilate, conceal, cover, falsify or make a false entry in any record or document of or belonging to a co-operative society with intent to impede, disrupt or influence an investigation or the proper administration of a Co-operative society.

(4) An officer or member of a co-operative society shall not wilfully contravene the by-laws of the co-operative society in relation to his duties or functions as an officer or member.

(5) A person who contravenes subsection (1), (2) (3) or (4) commits an offence and is liable on summary conviction to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding 2 years or to both.

Dealing in property subject to charge

239. (1) A person shall not—

- (a) fraudulently remove any property comprised in a charge created in favour of a co-operative society from the place where the property was situated at the time of the execution of the charge; or
- (b) knowingly dispose of or attempt to dispose of the property without first obtaining the written authority of the co-operative society.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 6 months or to both.

(3) The Court may in addition to any penalty imposed on a person under subsection (2), require that person to pay any unpaid amount of the loan with interest.

Offences with respect to reports

240. (1) A person shall not make or assist in making a report, return, notice or other document, required to be made under this Act or to be sent to the Registrar or to any other person, that—

- (a) contains an untrue statement of a material fact; or
- (b) omits to state a material fact required in the report or necessary to make a statement contained in the report, return, notice or other document not misleading in the light of the circumstances in which it was made.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction in the case of an—

- (a) an individual, to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 6 months, or to both; or
 - (b) a person other than an individual, to a fine not exceeding \$10,000.
- (3) A person does not commit an offence under subsection (1) where the untrue statement or omission was unknown to him and in the exercise of reasonable diligence, could not have been known to him.
- (4) A director, officer, employee or agent of a co-operative society shall not—
- (a) obstruct any person who is carrying out an examination under section 185; or
 - (b) obstruct the examination of a co-operative society undertaken under section 185.
- (5) A person who contravenes subsection (1) commits an offence and is liable on—
- (a) summary conviction to a fine not exceeding \$5,000 or imprisonment for a term not exceeding 6 months or to both; or
 - (b) conviction on indictment to a fine not exceeding \$20,000 or imprisonment for a term not exceeding 2 years or to both.

Failure to give notice

241. (1) A person shall not fail to give any notice or fail to send any return or document that is required for the purpose of this Act.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction in the case of a—

- (a) first offence to a fine not exceeding \$5,000;
- (b) subsequent offence to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 6 months or both.

Offence by Co-operative society

242. (1) Where a Co-operative society commits an offence under this Act and the offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of any—

- (a) director, manager, secretary or other similar officer of the Co-operative society; or
- (b) person who was purporting to act in that capacity;

he as well as the Co-operative society commits the offence.

(2) For the purposes of subsection (1), “director”, in relation to a Co-operative society whose affairs are managed by its members, means a member who manages its affairs.

Use of words “credit union” and “co-operative”

243. (1) A person shall not in doing business in Anguilla—

- (a) use the words “credit union” or “co-operative” or any or abbreviation or derivation thereof—
 - (i) as part of the name of the business,
 - (ii) with respect to goods, wares, merchandise or services being traded, or
 - (ii) in relation to the person’s method of conducting business;
- (b) hold himself or his business to be a registered co-operative society;

unless the person or his business is registered under this Act.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 6 months or to both.

Court order to comply

244. Where a person is convicted of an offence under this Act the court may, in addition to any punishment imposed, order the person to comply with the provision of the Act for the contravention of which he has been convicted.

Limitation

245. A civil action in respect of a matter arising due to a breach of any provision of this Act may be pursued within 15 years from the date of the breach or the date when the breach was discovered whichever is the later.

PART 17

MISCELLANEOUS

Execution and filing

246. (1) Where this Act requires that by-laws or a statement relating to a co-operative society shall be sent to the Registrar, unless otherwise specifically provided, the co-operative society shall send three copies of the by-laws or statement signed by a director and the secretary of the co-operative 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 document 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 1 of the duplicate originals of the by-laws or statements;
- (c) file a copy of the certificate and attached by-laws or statement;
- (d) send to the co-operative society the original certificate and attached by-laws or statement; and

(e) publish in the *Gazette* notice of the issue of the certificate.

(3) A signature required on a certificate mentioned in subsection (2) may be printed or otherwise mechanically produced.

Waiver of notice

247. Where a notice or document is required to be sent by this Act, the sending of the notice or document may be waived or the time for sending the notice or document may be waived or abridged at any time with the consent in writing of the person entitled to receive the notice or document.

Certificate of co-operative society

248. (1) The President and secretary of a co-operative society may—

(a) sign a certificate stating any fact set out in; or

(b) certify a copy of the whole or any part of;

the by-laws, or any contract to which the co-operative society is a 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 therein without proof of the signature of the person appearing to have signed the certificate or the certification.

Documents

249. (1) Where a notice or document is required to be sent to the Registrar under this Act, the Registrar may accept a photo-static or photographic copy of the notice or document.

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

Rectification and correction

250. (1) Where there is an error in the by-laws, a notice, a certificate or any other document, the directors or members shall on the request of the Registrar—

(a) pass any necessary resolution;

(b) send to the Registrar the relevant documents required to comply with this Act; and

(c) take any other step that the Registrar may reasonably require;

in order that the Registrar may correct the by-laws, notice, certificate or document.

(2) Before making a correction under subsection (1), the Registrar shall be satisfied that the correction would not prejudice any of the members or creditors of the co-operative society.

(3) The Registrar may, at the request of a co-operative society or of any other person with a legitimate interest accept a corrected version of any of the documents referred to in subsection (1) where the—

- (a) correction is approved by the directors of the co-operative society; and
 - (b) Registrar is satisfied that the correction would not prejudice any of the members or creditors of the co-operative society.
- (4) Where in the view of—
- (a) the Registrar;
 - (b) the co-operative society; or
 - (c) any person with a legitimate interest;

a mistake or omission in any of the documents referred to in subsection (1) would prejudice a member or a creditor of the co-operative society, the Registrar, the co-operative society or the person with a legitimate interest may apply to the Court for an order that the document be corrected and for an order determining the rights of its members or creditors.

(5) Where an application under subsection (4) is not made by the Registrar he shall be given notice of the application, and the Registrar shall be entitled to appear and to be heard and where appropriate be represented by a member of the staff of the Registrar's office.

(6) A corrected document shall bear the date of the document it replaces.

(7) Where a corrected certificate materially amends the terms of an original certificate, the Registrar shall without delay give notice of the correction in the *Gazette* and in a newspaper published and circulated in Anguilla.

- (8) The Registrar may on his own initiative correct any—
- (a) linguistic error;
 - (b) error of transcription;
 - (c) clerical error;
 - (d) mistake where the error is made by the Registrar; or
 - (e) any error which is not substantive in nature.

Proof of entry in books and other documents

251. (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 whether civil or criminal, as prima facie evidence of the existence of that entry and shall be admitted as evidence of the matters, transactions and accounts therein recorded.

(2) An officer of a co-operative society shall not, in any legal proceedings to which the co-operative society is not a party, be compelled to produce any of the co-operative society's books, the content of which can be accessed under subsection (1), or to appear as a witness to prove any matters, transactions or accounts therein recorded, unless the Court for special reasons so directs.

Immunity of Registrar and staff

252. The Registrar or any other person exercising a function under this Act, shall not be liable in damages for anything done or omitted in the discharge or purported discharge of their respective functions under this Act unless it is shown that the act or omission was in bad faith.

Abandoned property

253. (1) Subject to subsection (2), where there has been no activity relating to—

- (a) a general deposit, demand, savings or matured time deposit made with a registered credit union or other financial co-operative society, together with any interest or dividend, but excluding lawful charges; and
- (b) a fund paid toward the purchase of shares or other interests in a registered credit union or other financial co-operative society, together with any interest or dividend, but excluding lawful charges thereon;

for a period of 12 years except for the posting of interest and dividends, the property specified under paragraphs (a) and (b) which are held or owing by a credit union or other financial co-operative society is presumed to be abandoned.

(2) The property specified in subsection (1) paragraphs (a) or (b) shall not be deemed to be abandoned unless correspondence by the credit union has been sent to the owner's last known address at least once every 2 years notifying the owner that if no activity is initiated in respect of the property during a period of 12 years, the property is deemed to be abandoned.

(3) For the purpose of subsection (1) the property shall not be deemed to be abandoned where the owner has, during the said 15 years—

- (a) increased or decreased the amount of the deposit or funds;
- (b) presented his passbook for the crediting of interest or dividends;
- (c) corresponded in writing with the credit union concerning the property; or
- (d) otherwise indicated an interest in the property.

(4) Where the lease or rental of a safety deposit box has expired and notice of the intention of the credit union to deliver the contents thereof into the custody of the Development Fund Governor has been sent by registered letter to the last known address of the lessee and the lessee fails to respond within 2 years of the posting of the notice the contents shall be deemed to be abandoned.

(5) Before a credit union or other financial Co-operative society presumes or determines property as abandoned, it shall post a notice in a newspaper, its notice board and any other appropriate medium circulating in Anguilla on 2 consecutive occasions notifying the owner that the property may be deemed to be abandoned in accordance under subsection (2) or (4); and the member may within 90 calendar days make representation to the co-operative society.

Regulations

254. (1) For the purpose of carrying out this Act, the Executive Council may make Regulations—

- (a) requiring the payment of and prescribing the amount of any fee with respect to—
 - (i) the filing, examination or copying of any document, or
 - (ii) any action that the Registrar is required or authorised to take under this Act;
 - (b) prescribing the procedure for appeals to the Registrar;
 - (c) prescribing business in which co-operative societies or any class of co-operative societies may not engage in without the prior approval of the Registrar;
 - (d) subject to negative resolution, exempting any co-operative society or class of co-operative societies from any provision of this Act;
 - (e) prescribing any other matter or thing required or authorised to be prescribed by this Act; and
 - (f) generally for giving effect to and for the efficient operation of the Act.
- (2) Regulations under this Act may—
- (a) make different provision in relation to different cases or circumstances;
 - (b) apply in respect of particular persons or particular cases or particular classes of persons or particular classes of cases, and define a class by reference to any circumstance whatsoever; and
 - (c) contain transitional, consequential, incidental or supplementary provisions as appear to the Executive Council to be necessary or expedient for the purposes of the regulations.

PART 18

TRANSITIONAL

Existing directors and officers

255. (1) The directors and officers of co-operative societies in existence on the coming into force of this Act shall continue to hold office in accordance with the former Act and the by-laws of the co-operative society.

(2) Where new directors of a co-operative society are to be elected after the coming into force of this Act they shall be elected in accordance with this Act.

Co-operative societies, etc., registered under the former Act

256. (1) All co-operative societies which prior to the coming into force of this Act were duly registered or deemed to be registered under the former Act shall be taken to be registered under this Act, and—

- (a) the by-laws of a co-operative society, including any amendments of those by-laws, as registered under the former Act, shall be taken as if registered under this Act;
- (b) a register kept in accordance with the requirements of the former Act shall be taken to be part of the corresponding register to be kept under this Act;
- (c) all orders, directions, appointments and other acts lawfully made or done under a provision of the former Act and in force immediately before the coming into force of this Act shall continue to have effect accordingly.

Repeal

257. (1) The Co-operative Societies Act, R.S.A. c. C115 is repealed.

(2) Notwithstanding subsection (1), where a co-operative society is being dissolved or liquidated under the former Act, that Act shall continue to apply to that co-operative society and its dissolution or liquidation.

Savings

258. All By-Laws made under the former Act shall continue in force with any necessary amendment to bring them into conformity with this Act.

Compliance by existing societies

259. (1) Existing co-operative societies shall comply with the provisions of this Act within 3 months of its coming into force.

(2) Notwithstanding subsection (1) where a co-operative society is a credit union it shall comply with the provisions of the Act within 30 days of its coming into force.

Citation

260. This Act may be cited as the Co-operative Societies Act, 2023.

SCHEDULE

(Section 202)

SUMMONS

SUMMONS TO WITNESS

In the matter of:

To: _____ of _____ (name of person summoned and address)

You are hereby summoned to appear before (Registrar or name person delegated and designation or legal practitioner) at _____ (place) on the _____ day of _____, 20____ at _____ o'clock to give evidence (produce books, records etc.) and you are required to bring with you (specify books, records etc.

Therefore, fail to do so at your peril.

Given under my hand this _____ day of _____, 20____

Signature:

Official stamp if any

SCHEDULE 2

(Section 206)

**CONSTITUTION AND PROCEDURE OF THE
CO-OPERATIVE SOCIETIES APPEALS TRIBUNAL****PART 1****CONSTITUTION****Membership**

1. (1) The Co-operative Societies Appeals Tribunal shall consist of 3 persons, 1 of whom shall be an attorney-at-law of at least 7 years standing who shall be the Chairperson of the Tribunal.

(2) The other 2 members of the Tribunal shall be appointed from among persons experienced in agriculture, industrial relations, finance or community service.

Appointment

2. (1) The Chairperson of the Tribunal shall be appointed by the Governor after consultation with the Anguilla Bar Association for a period of 3 years and shall be eligible for re-appointment.

(2) The other members of the Tribunal shall be appointed by the Governor after consultation with the Apex Body for a period of 3 years and shall be eligible for re-appointment.

(3) Where there is no Apex Body the Governor shall make the appointments in his own deliberate judgement.

Resignation

3. A member of the Tribunal may at any time resign his membership by notice in writing to the Governor.

Inability

4. (1) Where the Governor is satisfied that a member—

(a) has been incapacitated by physical or mental illness; or

(b) is otherwise unable or unfit to discharge his functions;

the Governor may by notice published in the *Gazette*, declare the office of the member to be vacant and thereupon, the office shall become vacant.

(2) In case of the temporary absence or inability of a member to act, the Governor may appoint a suitable person to act in that member's place in accordance with section 2(1) or (2).

Publication

5. The Governor shall publish in the *Gazette* notice of the appointment and the termination of the appointment of a member.

Remuneration

6. The Governor may make regulations to prescribe remuneration for members of the Tribunal.

Validity of proceedings

7. The validity of any proceedings of the Tribunal shall not be affected by any vacancy among the members or any defect in the appointment of a member.

Rules

8. (1) The Tribunal shall regulate its own procedure and may make rules for that purpose.

(2) Rules made under subsection (1) shall be published in the *Gazette*.

PART 2
PROCEDURE**Lodging an appeal**

1. (1) An appeal to the Tribunal shall be by notice in writing and sent or delivered to the Chairperson of the Tribunal.

(2) On receipt of a notice of appeal, the Chairperson shall send a copy to the other members of the Tribunal.

(3) The Chairperson of the Tribunal shall appoint a secretary and any other officer he thinks fit.

Statements to be provided

2. (1) The appellant shall, within 14 days of the lodging of a notice of appeal, provide to the Chairperson of the Tribunal a written statement setting out the facts and grounds on which the appeal is based.

(2) A copy of the statement shall be forwarded by the Chairperson of the Tribunal—

(a) to the Registrar, anyone delegated by him under section 199 or the legal practitioner appointed under section 200;

(b) where the appellant is not a co-operative society, to the co-operative society of which the appellant is a member; and

(c) where the appeal is against the decision of the Registrar, anyone delegated by him under section 199 or a legal practitioner appointed under section 200 to any other party to the dispute.

(3) A person or co-operative society to whom a copy of the appellant's statement has been provided shall, within 14 days of the receipt of the statement, submit to the Chairperson of the Tribunal a written response to the statement.

(4) A copy of any response received shall be sent by the Chairperson of the Tribunal to the appellant and to any other person interested in the appeal of whom he has notice.

(5) The Chairperson shall send copies of all statements and responses to the other members of the Tribunal as soon as they are received.

Further particulars

3. (1) On the application by any person interested in the appeal to whom a copy of the written statement of the appellant or of the response has been sent, or in any case where the Chairperson of the Tribunal considers it necessary to do so for the proper resolution of the appeal, the Chairperson may require the appellant or any other person to provide him with further particulars in writing within a specified time.

(2) On receipt of further particulars under subsection (1) the Chairperson of the Tribunal shall provide copies to any other person interested in the appeal and the other members of the Tribunal.

Notice of hearing

4. The Chairperson of the Tribunal shall, in consultation with the other members of the Tribunal, fix a date and place for the hearing of the appeal and shall give 7 days' notice to the appellant, the Registrar and all other interested parties.

Procedure at hearing

5. (1) At a hearing before the Tribunal, the appellant, the Registrar and any other interested party shall be entitled to appear and to be heard and represented by an attorney-at-law.

(2) Notwithstanding subsection (1) the Registrar may be represented by a member of the Registrar's staff.

(3) The Tribunal may admit any duly authenticated written statement or other material as prima facie evidence of any fact or facts in any case in which it thinks it just and proper so to do.

(4) The Tribunal may call for documents and examine witnesses as appear to it likely to afford evidence relevant and material to the enquiry.

(5) The Tribunal may require any party to the enquiry or any witness in the proceedings to give evidence on oath and, for that purpose, the chairperson of the Tribunal shall have power to administer oaths.

(6) Where after notice of a hearing has been given the appellant, Registrar or any other interested party fails to appear at the hearing, the Tribunal may proceed notwithstanding the absence or may give directions with a view to the determination of the appeal as the Tribunal thinks just and proper.

(7) Proceedings of the Tribunal shall be held in public.

Decision of Tribunal

6. (1) The decision on any matter of the majority of the Tribunal shall be the decision of the Tribunal, and the decision of the Tribunal shall be recorded in writing and signed by the Chairperson of the Tribunal, who may correct in any decision any clerical mistake or error arising from an accidental slip or omission.

(2) A signed copy of the decision shall be sent by the Chairperson of the Tribunal to the appellant, the Registrar and any other interested party.

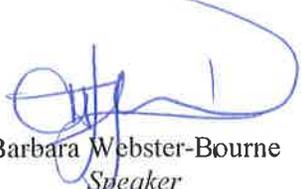
(3) The Tribunal may, on the application of any interested party award costs in relation to an appeal.

General provision as to procedure

7. Save as otherwise expressly provided by this Act, the procedure at any hearing before the Tribunal shall be as determined by the Tribunal.

Proof of decisions of the Tribunal

8. The production in any proceedings in any court of a document purporting to be certified by the Chairman of the Tribunal and the secretary as a copy of a decision of the Tribunal shall, unless the contrary is proved, be evidence of the document and the facts stated therein.



Barbara Webster-Bourne
Speaker

Passed in the House of Assembly on this 14th day of April, 2023.



Lenox J. Proctor
Clerk of the House of Assembly

OBJECTS AND REASONS
(Do not form part of the Bill)

The objects and reasons of the Act are to put in place a modern legal framework to facilitate the development of the co-operative movement in Anguilla.

The Bill for consideration is the Co-operatives Societies Bill.

The purpose of the Bill is to provide for the registration supervision, governance, operation and management of co-operatives societies including credit unions, the members of which have a common bond of philosophy and socio-economic objectives, and for incidental and related purposes.

The Bill is divided into 18 Parts in total.

Part 1 of this Bill provides for preliminary matters including interpretation section (*sections 1-2*). By virtue of section 1, words used throughout the Bill are defined including “co-operative society” and “credit union”. Section 1 provides that a reference to the Registrar in relation to credit unions is a reference to the Financial Services Commission, while a reference to Registrar in relation to other co-operative societies is a reference to the Registrar of Co-operatives.

Part 2 of the Bill (*sections 3-24*) for the registration of co-operative societies. By virtue of section 3, a prohibition is placed on the carrying on of the business of a co-operative society without registration. Section 4 of the Bill makes provision for the recognition of the Registrar of Co-operative Societies for regulating co-operatives, other than credit unions, and for the regulation of credit unions by the Financial Services Commission. Matters that are relevant to registration including, the keeping of a Register, the Registrar’s regulatory powers, the power of the Registrar to issue guidelines, certificate of registration, application for registration, conditions of registration, requirement for a registered office, inspection of and access to records and suspension and cancellation of registration are provided for.

Part 3 of the Bill (*sections 25-51*) stipulates the membership of a co-operative society and meetings of a co-operative society, the procedures for meetings of the co-operative society. These include annual general meetings, general meetings and special general meetings. The Board of a co-operative society approves applications for membership based on certain criteria.

Part 4 of the Bill (*sections 52-94*) provides for the governance and management of a co-operative society. This is to be conducted by a board of directors made up of not less than five members or more than thirteen directors. The election of directors is to take place annually and directors are to serve for a term of three years and cannot be appointed for more than six consecutive terms. The Board is charged with the exercise of the powers of the co-operative society either directly or indirectly through the co-operatives society’s agents or employees. The board is given the power to establish committees for the efficient management of various aspects of the business or affairs of the co-operative society. Further, by virtue of sections 58 and 64 respectively, it is mandatory that a co-operative society establish a credit committee and a compliance committee elected by the members at the annual general meeting.

Part 5 (*sections 95-105*) stipulates the financing of a co-operative society by the sale of equity or ownership shares to members, share capital and transfer of shares.

Part 6 (*sections 106-118*) of the Bill provides for the business of a co-operative society. Provision is made in section 106 for the marketing of produce through a co-operative society while sections 107-118 provide for the creation, execution, registration and effects of a charge in favour of a co-operative society including the liens on shares, deductions applied to loans and compulsory sale of shares.

Part 7 of the Bill (*sections 119-128*) stipulates the property and funds of a co-operative society. It also includes the investment of funds of the co-operative society, loans by a credit union, prohibited loans, receipt of loan, receipt of deposits from minors, allocation of surplus, the establishment of development funds and pension funds by co-operative societies, charitable contributions and dividends and bonuses to members of a co-operative society.

Part 8 (*sections 129-146*) handles financial disclosures and audits. Provision is made for the appointment and terms of appointment of a suitably qualified auditor with powers of examination and inspection to carry out the audit of a co-operative society. By virtue of section 129, it is a requirement that the annual financial statements and reports of the auditor of a co-operative society are placed before the members by the directors. Section 146 requires that the Registrar to require a co-operative society to provide annual, monthly or special returns.

Part 9 (*sections 147-154*), provision is made for the reconstruction of co-operative societies. Reconstruction is effected in three ways - on the approval of the Registrar by amalgamation of one co-operative society with another to form a single co-operative society, by transfer of assets and liabilities of one co-operative society into another co-operative society or by division of a co-operative society into two or more co-operative societies. Importantly, provision is made in Part 9 for the conversion of a company or a registered industrial, provident or friendly co-operative society into a co-operative society (*section 148*).

Part 10 of the Bill (*sections 155-162*) provides for the appointment of a receiver or receiver - manager by the Registrar or the Court to protect the equity of members of a co-operative society. The functions of a receiver or receiver-manager are subject to the rights of secured creditors and include the receipt of income from property in receivership, the payment of liabilities connected with the property and the realisation of the security interests on those on whose behalf the receiver or receiver-manager is appointed. The court or the Registrar may give directions to the receiver or receiver-manager on any matter where an application is made to the court in the case of a receiver or receiver-manager appointed by the court or the Registrar or to the Registrar in the case of a receiver or receiver-manager appointed by the Registrar.

Part 11 of the Bill (*sections 163-184*) deals with the important matter of dissolutions of a co-operative society. A cooperative may have dissolution by its members, the Registrar or the Court and, notwithstanding having gone through a dissolution, a cooperative society may be revived afterwards (*sections 163-168*). The Part also makes provisions for the appointment, remuneration, duties and powers of a liquidator. The commencement of liquidation as well as the closure of liquidation (*sections 169-179*). The power of the Registrar to surcharge as well as the cooperative society's right to appeal such a decision is also included in the Part.

Part 12 of the Bill (*sections 185-196*) covers examinations and investigations. The Registrar is given the discretion to appoint a person as an examiner to examine the records and affairs of

a co-operative society. Provision is made for compliance by the co-operative society and its directors and members with requests by the examiner. The examiner is charged with the power to inspect including the power to take copies and extracts of books and other documents or items relating to the co-operative society (*section 185*). By virtue of section 190, the Registrar may appoint one or more investigators to investigate the affairs of a co-operative society where an application is made by 25 members or 10% of the membership of the co-operative society whichever is less and the Registrar is of the opinion that it is necessary to do so in the interest of orderly and proper regulation of the business of a co-operative society.

Part 13 of the Bill (*sections 197-208*) provides for the settlement of disputes relating to the business of a co-operative society. This Part stipulates that disputes may be determined by the Registrar, a legal practitioner, mediation or arbitration. Importantly, this Part also creates the Co-operative Societies Appeals Tribunal where parties may appeal decisions made by the Registrar or an arbitrator by the (*section 206*). This tribunal may refer questions of law to the High Court for determination.

Part 14 of the Bill (*sections 209-231*) allows specialised co-operative societies. This covers credit unions, consumers cooperative societies, housing societies as well as industrial cooperative societies. The Part speaks to the membership, byelaws and various restrictions involved based on type.

Part 15 (*sections 232-235*) handles the establishment and constitution of apex bodies by co-operative societies and the functions of such apex bodies.

Part 16 (*sections 236-245*) of the Bill makes provision for offences, namely, corrupt practices and bribery, falsely obtaining property of a co-operative society and use of the words “credit union” or “co-operative” without being registered.

Part 17 (*sections 246-254*) covers miscellaneous provisions. The Part includes the execution and filing of bye-laws and statements, waiver of notices, rectification and correction of documents, abandoned property in credit unions and the power to make Regulations.

Part 18 of the Bill (*section 255-260*) provides for transitional matters including the continuation of office by officers and directors of co-operative societies on the enactment of the Bill, the due registration of co-operative societies registered under the former Act and the short title of the Bill.

Schedule 1 prescribes the form to be used for summons to witnesses as stipulated by section 202 of the Bill.

Schedule 2 stipulates the constitution and procedure of the Co-operative Societies Appeals Tribunal and requires that the Governor appoints the members of the Appeals Tribunal and appeals are made by notice in writing sent or delivered to the Chairperson of the Appeals Tribunal.