



MONTSERRAT

CHAPTER 11.21

CO-OPERATIVE SOCIETIES ACT and Subsidiary Legislation

Revised Edition

showing the law as at 1 January 2008

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

This edition contains a consolidation of the following laws—

CO-OPERATIVE SOCIETIES ACT

Act 2 of 2003 .. in force 8 April 2003

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CO-OPERATIVE SOCIETIES REGULATIONS

S.R.O. 44/2006 .. in force 5 October 2006

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CHAPTER 11.21

CO-OPERATIVE SOCIETIES ACT

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CHAPTER 11.21

CO-OPERATIVE SOCIETIES ACT

(Act 2 of 2003)

AN ACT TO MAKE NEW PROVISION WITH RESPECT TO THE REGISTRATION, SUPERVISION AND MANAGEMENT OF CERTAIN SOCIETIES, THE MEMBERS OF WHICH HAVE A COMMON BOND OF PHILOSOPHY AND SOCIO-ECONOMIC OBJECTIVES AND FOR RELATED PURPOSES.

Commencement

[8 April 2003]

PART I

PRELIMINARY

Short title

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

Interpretation

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

“**articles**” means the Articles of Association of a society;

“**board**” means the Board of Directors of a society;

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

“**by-laws**” means the registered by-laws made of a society;

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

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

“**Credit Union**” means a registered society the objects of which include the promotion of thrift and the creation of a source of credit for its members for provident and production purposes;

“**director**”, means a member of the Board elected in accordance with section 69;

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

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

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

“**national league**” or “**National Council**” means the apex body established under section 214;

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

“**registered society**” or “**society**” means a co-operative society registered under this Act;

“**Registrar**” means Registrar of Co-operatives.

Conformity to co-operative principles

3. A society shall, conform to the co-operative principles set out in section 4.

Co-operative principles

4. For the purposes of section 3, a society conforms to co-operative principles if—

- (a) except in the case of a secondary or tertiary society no member or delegate has more than one vote;
- (b) no member or delegate is entitled to vote by proxy;
- (c) its business is carried on primarily for the benefit of its members;
- (d) its membership is voluntary and available without any artificial restriction or any unlawful basis of discrimination, to any person who can use its services and is willing to accept the responsibility of membership;
- (e) the rate of dividends on share capital that it pays does not exceed the rate prescribed in the Regulations;
- (f) any surplus or savings arising out of its operation is—
 - (i) used to develop its business;
 - (ii) used to provide or improve common services to members;
 - (iii) used for the payment of dividends on share capital;

- (iv) distributed among members in proportion to their patronage with the society;
 - (v) used to educate its members, officers or employees or the general public in the principles and techniques of economic and democratic co-operation; and
 - (vi) distributed for non-profit, charitable, benevolent or cultural purposes.
- (g) cooperation with other societies is pursued; and
- (h) it provides for continuing education.

PART II

ADMINISTRATION

Registrar of co-operative societies

5. (1) There shall be a Registrar of Co-operatives appointed by the Governor in Council, who shall have such professional, administrative and other staff as are necessary to assist him in the execution of his duties, and exercising his powers under this Act.

(2) The Registrar shall perform the following functions—

- (a) the registration of all societies;
- (b) the supervision of all societies;
- (c) liaise with all societies;
- (d) stimulate community awareness;
- (e) the initiation and encouragement of organized activities for the development of societies.

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

(4) Nothing in subsection (2) shall authorise the Registrar to delegate the power of delegation that is conferred on him by that subsection.

Certificate of Registrar

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

- (a) a document required to be sent to the Registrar has or has not been received by him;

- (b) a name, whether that of a society or not, was or was not on the register; or
- (c) a name, whether that of a society or not, was or was not on the register on a stated date.

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

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

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

Power to refuse documents

7. (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 pursuant to subsection (1)—

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

Verification of documents

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

Application for registration

9. (1) No society may commence or continue business unless it is registered in accordance with this Act.

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

- (3) An application for registration shall be signed—
- (a) in the case of a society of which no member is a registered society, by at least one-third of the members specified in paragraph (c) of section 12(1) for such a society;
 - (b) in the case of a society where all members of the society are not registered societies, by at least 3 quarters of the total membership of the society; and
 - (c) in the case of a society where all the members are registered societies, on behalf of at least two such societies.

- (4) An application must be accompanied by—
- (a) 3 copies of the proposed by-laws of the society;
 - (b) the prescribed application fee; and
 - (c) such other information in respect of the society as the Registrar requires.

Content of by-laws

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

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

(2) Subject to subsection (3), where the by-laws requires a greater number of votes or directors of 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.

Effect of by-laws

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

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

Conditions for registration

12. (1) No society may be registered, or having been registered, continue to be so registered under this Act—

- (a) unless its membership consists—
 - (i) in the case of financial co-operatives, not less than 50 members; and
 - (ii) in the case of any other co-operative not less than 10 members;
- (b) unless it is considered to be economically viable by the Registrar and has provision for equity capital expansion and continuous business growth;
- (c) unless subject to subsection (2), its membership consists solely of members of a school, club, or cultural organisation who are all under the age of 15 years;
- (d) unless there is conformity among membership, none of which is another society, with all the co-operative principles as set out in section 4;
- (e) unless the word “Co-operative” or “Credit Union” forms part of the name of each such society, and in the case of a society whose membership falls within the description contained in paragraph (c) the words “Junior Co-operative” forms part of the name of that society;

- (f) unless the word “limited” is the last word of the name of a society to be registered with limited liability;
 - (g) if the name of the society is identical with that of another registered society or which so nearly resembles that name as to be likely to mislead the members of the public as to its identity;
 - (h) unless it has and maintains an address to which all notices and communications may be sent;
 - (i) unless its by-laws are in conformity with this Act;
 - (j) unless, within a reasonable time after the issue of the certificate of registration, the society paints or affixes its registered name in letters that are easily legible in a conspicuous position on the outside of the building in which the society’s business is carried on, and in the case of a society registered under section 15, its registered name bears the words “Probationary Society”.
- (2) Notwithstanding anything contained in paragraph (c) of subsection (1), the Registrar may register as a junior co-operative a society the substantial majority of whose members are under the age of 16 years.
- (3) In the determination of the viability of a society the Registrar shall have regard to the following—
- (a) the demand for the proposed services;
 - (b) the capital base of the society; and
 - (c) the membership size and potential of the society.

Registration of societies

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

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

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

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

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

Effect of certificate of registration

14. (1) Except for a society that is deemed to be registered under this Act, a society comes into being on the date inscribed on the certificate of registration.

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

Probationary societies

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

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

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

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

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

Capacity and powers

16. (1) The registration of a society shall render it a body corporate with perpetual succession and with power to hold property, to enter into contracts, to institute and defend suits and to do all things necessary in accordance with this Act and its by-laws.

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

(3) No person is affected by, or presumed to have notice or knowledge of, the contents of a document concerning a society by reason only that the document has been filed with the Registrar or is available for inspection at any office of the society.

(4) Subject to the approval of the Registrar and unless the societies have agreed in writing thereto, no person shall be a member of more than one registered society whose primary object is to grant loans to its members.

Registered Office

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

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

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

Maintenance of mandatory records

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

(2) There shall be made available at all reasonable times at the registered office of the society—

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

Access to records

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

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

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

Suspension and cancellation of registration

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

- (a) the society is in breach of any condition of registration;
- (b) the society is in breach of any requirement of section 3 or 12 of this Act;
- (c) the society or any officer thereof has failed or refused to comply with any obligation imposed by, or any requirement of this Act, the Regulations or by-laws;
- (d) he does not receive any return notice or other document or fee required by this Act or the Regulations to be sent to him.

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

- (a) at any time it is proved that the number of members has been reduced to less than the amount required for the registration of the society; or
- (b) it is proved that the registration has been obtained by fraud or mistake;

but a cancellation under paragraph (a) shall not apply to a society which includes among its members one or more registered societies.

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

(4) No suspension or cancellation may be made by the Registrar until he has given the society a chance to be heard.

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

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

Seal

21. (1) The Board may by resolution—

- (a) adopt a corporate seal; and
- (b) change the corporate seal adopted pursuant to paragraph (a).

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

Pre-registration contracts

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

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

(3) Where a society adopts a contract pursuant to subsection (2)—

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

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

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

(5) Where a written contract expressly provides that a person who purported to act in the name or on behalf of the society before it came into existence is not bound by the contract or entitled to the benefits of the contract, the person is deemed not to be bound by the contract nor to be entitled to the benefits of the contract.

PART III

MEMBERSHIP AND MEETINGS

Application and qualification for membership

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

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

(a) must be a believer to, or resident of Montserrat;

(b) must not be an undischarged bankrupt;

(c) must not be of unsound mind; and

(d) must be 16 years of age or older.

(3) The Board shall notify each applicant for membership whether his application has been approved or disapproved.

(4) A society may not without the permission of the Registrar register as a member a person who is a member of another society whose primary object is to grant loans to its members, nor may a registered society become a member of another registered society of the same type.

Joint account

24. Subject to the by-laws, where individuals have separate and independent membership in a society, they may also hold joint accounts.

Membership fees and membership register

25. (1) No person may exercise the rights of membership of a society unless and until he has paid the prescribed membership fee and has satisfied any other requirement which may be prescribed by the by-laws.

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

(a) the names and addresses of members; and

(b) the date on which each member became a member and the date, if any, on which he ceased to be a member.

Liability of past and present members

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

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

Withdrawal of membership

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

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

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

Termination of membership by Board

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

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

(a) the Board shall—

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

(b) the Secretary of the society shall, within ten days from the date on which the order is made, notify the member of the order;

(c) the member may appeal from the order to the next general meeting of the society by giving written notice of his intention to appeal to the Secretary within thirty days from the date he received notice of the order pursuant to paragraph (b); and

(d) where the member appeals pursuant to 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 pursuant to subsection (1) is unknown to the society after all reasonable efforts have been made to ascertain his address for the purpose of making payment to him of amounts held to his credit, the society shall transfer those amounts to its Reserve Fund.

(4) Where any amount is transferred pursuant to subsection (3), the society shall pay that amount to the person entitled to it or to his legal representative on proof of his claim that is satisfactory to the society.

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

(a) the member's name;

(b) the member's last known address; and

(c) the amounts transferred.

Termination of membership by members

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

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

Suspension of membership for misconduct

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

Appeal

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

(2) No person whose membership is terminated for failure to pay fees, assessments, rent or occupancy charges or to fulfil other financial obligations to the society is eligible to appeal against the termination to the Registrar pursuant to subsection (1).

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

Re-admittance

32. A person whose membership is terminated pursuant to section 28 or 29, may be re-admitted to membership only by a two-thirds majority vote of members present and voting at a general meeting.

Voting rights

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

(2) Delegates elected in accordance with the by-laws of a society may, unless otherwise provided in the by-laws, exercise at annual and

special meetings of the society all the powers of members, and in such cases all references in this Act to the exercise of powers by members shall be deemed to include the exercise of powers by delegates.

Representative of member who is not an individual

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

(2) An individual authorised by a resolution of the directors to represent a society may exercise, on behalf of the society, all the powers of that society as if it were an individual member.

Voting procedure

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

(a) by a show of hands; or

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

(2) The Chairman of the meeting shall in the event of a tie be entitled to a second or casting vote.

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

Place of meetings

36. General meetings of members must be held in Montserrat—

(a) at the place provided in the by-laws; or

(b) where the by-laws contain no provision, at the place determined by the Board.

Members not to exercise rights until due payments

37. No member of a registered society shall exercise the rights of a member unless he has made such payment to the society in respect of membership or acquired such interest in the society as are prescribed by the regulations or by-laws.

First general meeting

38. (1) This section does not apply to a society if it is continued pursuant to this Act.

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

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

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

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

Annual meetings

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

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

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

Special Meetings

40. (1) The Board may call a special meeting of members at any time.

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

(3) The Board shall call the special meeting mentioned in subsection (2) within 20 days of the receipt of the request and the special meeting shall only deal with and dispose of the specific business outlined in the request.

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

- (a) for the purpose of reporting to the members the results of any audit, examination or other investigation of the society's affairs ordered or made by him; or
- (b) where the society fails to hold an annual general meeting in accordance with section 38 (1) or (2), for the purpose of enabling members to secure any information regarding the

affairs of the society that they are entitled to receive pursuant to this Act and to deal with any matters affecting the society.

Meeting called by Registrar

41. (1) Where —

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

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

(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 pursuant to this section.

(3) A general meeting called pursuant to this section is deemed to be a valid meeting.

Resolution in lieu of meeting

42. (1) Except where a written statement is submitted by an auditor pursuant to section 136—

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

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

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

Notice of meetings

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

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

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

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

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

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

Fixing record date

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

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

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

(2) The record date mentioned in subsection (1) shall not be more than 50 days prior to 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 be more than fifty days nor less than eleven days prior to the date on which the meeting is to be held.

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

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

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

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

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

Quorum

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

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

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

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

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

Delegates

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

(a) the delegates shall exercise the powers of membership at any annual or special meeting; and

(b) 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 an annual meeting—

(a) remove the delegates in any manner provided for in the by-laws; or

(b) notwithstanding subsection (1), amend the by-laws to eliminate the nomination and appointment of delegates.

Proposals

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

(a) submit to the society notice of any matter that he 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 proposal.

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

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

(a) a statement by the member of not more than 200 words in support of the proposal; and

(b) the name and address of the member,

the society shall comply.

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

(a) the proposal is not submitted to the society at least forty-five days before the anniversary date of the previous annual general meeting of members;

(b) in the opinion of the directors, the proposal is submitted by the member primarily for the purpose of—

(i) enforcing a personal claim or redressing a personal grievance; or

(ii) promoting general economic, political, racial, religious, social or similar causes;

(c) the society, at the member's request, included a proposal in a notice of a meeting of members held within 2 years

preceding the receipt of the proposal submitted pursuant to subsection (1), and the member failed to present the proposal at the meeting;

- (d) substantially the same proposal was submitted to members in the notice of a meeting of members held within 2 years preceding the receipt of the member's request, and the proposal was defeated; or
- (e) in the opinion of the directors, the rights conferred by this section are being abused to secure publicity.

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

(6) No society and no person acting on behalf of a society incurs any liability by reason only of circulating a proposal or statement in compliance with this section.

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

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

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

(9) In this section “**proposal**” means a notice submitted to a society pursuant to subsection (1)(a).

Power to make by-laws

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

- (a) is forwarded to each member of the society with the notice of the meeting at which the making, amendment, repeal, replacement or confirmation is to be considered by a majority of members present and voting at that meeting; or
- (b) where the proposed is not forwarded to each member of the society with the notice described in paragraph (a), may do so by a three-fourths majority of the votes cast at the meeting.

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

Effective date of law

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

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

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

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

PART IV**MANAGEMENT****Board of directors**

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

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

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

(4) A person who—

- (a)* has been sentenced by a court in any country for an offence involving dishonesty and has not received a free pardon for that offence;
- (b)* is in default of debts owed to the society or compounds with his creditors;
- (c)* is of unsound mind and has been so found by a court in Montserrat;
- (d)* is or becomes bankrupt;
- (e)* is under the age of 18 years;
- (f)* is not a member of the society or a duly appointed representative of a member society; or

(g) is already part of the management of another society of the same type,
may not constitute part of the management of a society until his disability is removed, but he may retain his membership of the society during the period of such disability.

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

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

Officers

51. (1) Every society—

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

(2) Subject to the by-laws—

- (a) the Board may designate the offices of the society, appoint persons as officers, specify the officers’ duties and delegate powers to manage the business and affairs of the society to them; and
- (b) a director may be appointed to any office of the society created under the provisions of 51(1)(a) and (b).

(3) Subject to the by-law no person shall be president or vice-president of a society unless he is a director of the society.

Provisional directors and elected directors

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

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

(2) After the first general meeting, the directors must be elected in accordance with this Act, the Regulations and the by-laws.

Powers of Board

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

- (a) exercise the powers of the society directly or indirectly through the employees and agents of the society;

- (b) direct the management of the business and affairs of the society.

Committees generally

54. (1) Without prejudice to anything contained in sections 50 and 51, the members of the society shall in each year elect a Supervisory Committee which shall perform such duties as are prescribed by the by-laws.

(2) Without prejudice to subsection (1), the Board may establish committees for the more efficient management of various aspects of the business or affairs of the society.

(3) A committee for the purposes of subsection (2) may consist of members of the Board and other members of the society.

(4) No committee of the Board may—

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

Tenure of committees generally

55. (1) Committees appointed pursuant to section 54 shall hold office for a period not exceeding one year.

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

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

(4) A committee shall—

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

Credit Committee

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

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

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

(4) No person who is a member of the Board or of the supervisor committee or who is an employee of the credit union shall be a member of the Credit Committee.

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

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

(7) Where a vacancy occurs in the Credit Committee, the Board of Directors may fill the vacancy until the next annual meeting of the credit union.

(8) The by-laws of the credit union may provide for the election and retirement of members of the Credit Committee in rotation so that no member of the Credit Committee shall be elected for a term of more than 3 years but no person may serve as a member of the Credit Committee of a society for more than 2 consecutive terms or an aggregate of 6 successive years.

Duties of Credit Committee

57. The Credit Committee shall consider all application for loans and make recommendations to the Board in respect of the applications and perform such duties as are prescribed by this Act, the regulations and the by-laws of the credit union.

Approval of loans

58. (1) The Credit Committee may approve loans upon such terms and conditions as specified by the Board.

(2) The Credit Committee may, upon such terms and conditions as the Board specifies, authorize the treasurer, manager other employees of the credit union to approve loans to members.

(3) Any person authorised by the Board to approve loans under subsection (1) or (2) shall submit a written monthly report to the Credit

Committee stating the number of loan applications received, the number of loans granted and the security, if any, obtained for such loans.

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

Credit Committee reports

59. (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 of directors stating—
 - (i) the number of loan applications received;
 - (ii) the number and category of loans granted;
 - (iii) the security obtained for such loans granted;
 - (iv) details of applications denied, and delinquent loans; and
- (d) submit an annual report on the matters referred to in paragraph (c) to the annual meeting of the credit union.

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

Removal of member of Credit Committee

60. (1) The members may, by resolution passed by two-thirds of the votes cast at a general meeting called for the purpose, remove a member of the 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 specifically state that the purpose of the meeting is to remove the member of the Credit Committee who is named in the notice.

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

Removal of member of Credit Committee by Board

61. When a member of the Credit Committee fails to attend 3 consecutive meetings without, in the opinion of the Board, having reasonable cause therefor or fails to perform any of the duties allotted to him as a member of the committee, his position on the committee may be

declared vacant by the Board who may then appoint a qualified person to fill the vacancy until the next annual meeting of the credit union.

Supervisory Committee

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

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

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

(4) No person who is a member of the Board or Credit Committee or who is an employee of the credit union shall be a member of the Supervisory Committee.

(5) A majority of the Supervisory Committee constitutes a quorum.

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

(7) Where a vacancy occurs in the Supervisory Committee, the Supervisory Committee may fill such vacancies until the next annual meeting of the credit union.

(8) The by-laws of the credit union or other society may provide for the election and retirement of members of the Supervisory Committee in rotation, but in that case no member shall be elected for a term of more than 3 years, and no person may serve as a member of the Supervisory Committee of a society for more than 2 consecutive terms or an aggregate of 6 successive years.

Duties of Supervisory Committee

63. The Supervisory Committee shall examine the books of the credit union or other security, confirm the cash instruments, property and securities of the credit union or other security and confirm the deposits of the members and perform such other duties as are prescribed by this Act, the Regulations and the by-laws or other security.

Removal of Member of Supervisory Committee

64. When a member of the Supervisory Committee fails to attend 3 consecutive meetings of the Committee without, in the opinion of the Supervisory Committee, having a reasonable cause therefor, or fails to perform any of the duties allotted to him as a member of the Committee, his position on the Committee may be declared vacant by the remaining

members of the Committee who may appoint a qualified person to fill the vacancy until the next annual meeting of the credit union or other society.

Clerks

65. The Board may appoint such persons as it considers necessary to assist the Supervisory Committee in its duties, and pay those persons such remuneration as it thinks fit.

Misappropriation etc.

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

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

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

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

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

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

Meetings

67. (1) The Supervisory Committee shall meet at least once every 3 months, and shall at each such meeting examine the affairs of the credit union or other society.

(2) The Supervisory Committee shall keep minutes of its meetings and shall—

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

Removal of members of Supervisory Committee

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

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

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

Election of directors

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

- (a) the election of directors shall take place annually at the annual general meeting;
- (b) the directors hold office until the conclusion of the meeting at which their successors are elected, and are eligible for re-election;
- (c) where the number of nominees exceeds the number of directors to be elected, the election of directors must be by secret ballot;
- (d) every member has the right to vote for the number of directors to be elected and any ballot that contains the names of more or less than the number to be elected is void;
- (e) where there are vacancies on the Board but the remaining directors constitute a quorum, they shall call a special meeting for the purpose of electing members to fill any such vacancy;
- (f) where there is a vacancy on the Board and there is not a quorum of directors, the remaining directors shall call a general meeting for the purpose of electing members to fill that vacancy;

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

(3) Subject to the by-laws of a society, not more than one-third of the directors may be employees of a society.

(4) Unless a reasonable excuse is received by the meeting, no person may be elected a director if he is not present at the meeting at which the election is being conducted.

Tenure of directors

70. (1) Subject to subsection (2) the directors of a society shall be elected for a term of 3 years, but no person may serve as a director of a society for more than 2 consecutive terms or an aggregate of 6 years.

(2) After the commencement of this Act, the Boards of all societies shall resign at their next annual meeting and new Boards shall be elected to serve as follows—

(a) at least one-third of the directors to serve for one year;

(b) at least one-third of the directors to serve for 2 years;

(c) the remainder of the directors to serve for 3 years,

thereafter, such elected director shall serve for a term of 3 years.

Borrowing powers of the Board

71. (1) Subject to the by-laws, the Board may without authorization of the members of a society—

(a) borrow money on the credit of the society;

(b) issue, re-issue, sell or pledge debt obligations of the society;

(c) give a guarantee on behalf of the society to secure performance of an obligation of any person; and

(d) mortgage, charge hypothecate, pledge or otherwise create a security interest in all or any property of the society, owed or subsequently acquired, to secure any debt obligation of the society.

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

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

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

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

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

(6) Each member of the society has the right to vote with respect to any sale, lease or exchange contemplated by this section.

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

Validity of acts of directors, and officers

72. 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

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

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

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

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

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

(3) No society shall indemnify a director, officer or other person mentioned in subsection (1) with respect to an action by or on behalf of the society to obtain a judgment in its favour to which that person is made a

party by reason of his being or having been a director or an officer of the society, against costs, charges and expenses reasonably incurred by that person in connection with the action unless—

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

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

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

(6) On an application pursuant to 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 or agent.

Duty of care in directors and officers

74. Every director and officer of a society exercising his powers and discharging his duties shall—

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

Ambit of director's duty

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

- (a) the duty to act in accordance with this Act and the Regulations; and
- (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 or which he may be guilty of in relation to the society.

Liability of directors

76. (1) Where directors vote for, approve by resolution or by any other means—

- (a) the purchase of shares contrary to section 94;
- (b) the payment of a dividend on shares contrary to section 123;

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

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

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

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

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

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

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

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

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

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

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

(8) No action to enforce a liability imposed in subsection (1) is to be commenced after 2 years from the date of the meeting at which the vote resolution or approval was taken or given.

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

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

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

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

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

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

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

Misuse of confidential information

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

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

Material contracts

78. (1) A director or officer of a society who—

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

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

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

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

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

- (a) immediately after he becomes aware that the contract or proposed contract is to be considered or has been considered at a meeting of the Board;
- (b) if the officer becomes interested after a contract is made, immediately after he becomes so interested; or

(c) where he has an interest in a contract before becoming an officer, immediately after he becomes an officer.

(4) If a material contract or proposed material contract is one that in the ordinary course of the society's business would not require approval by the directors or members, a director or officer shall disclose in writing to the society or request to have entered in the minutes of meeting of the Board the nature and extent of his interest after he becomes aware of the contract or proposed contract.

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

(a) is an arrangement by way of security for money lent by him to the society or obligations undertaken by him for the benefit of the society or a member of the society;

(b) is a contract that relates principally to his remuneration as a director, officer, employee or agent of the society or a member of the society;

(c) is a contract for indemnity or insurance pursuant to section 73; or

(d) is a contract with an affiliate.

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

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

(8) Where—

(a) a director or officer discloses his interest in accordance with this section; and

(b) the contract in which the director or officer has a material interest—

(i) is approved by the directors or members; and

(ii) is reasonable and fair to the society at the time it was approved,

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

(9) Where a director or officer of a society fails to disclose his interest in a material contract in accordance with this section a Court may,

on the application of a society or a member of the society, set aside the contract on any terms that the Court considers appropriate.

Meetings of directors generally

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

(2) The president—

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

(b) on the written request of at least 2 directors, shall call a meeting within 14 days of the receipt of the request.

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

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

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

(6) For the purpose of subsection (5), attendance of a director at a meeting of directors is deemed to be a waiver of notice 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.

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

Meetings by telephone etc.

80. (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; and

(b) a communication facility other than a telephone,

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

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

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

(2) Where a director—

- (a) resigns;
- (b) receives a notice or otherwise learns of a meeting of members called for the purpose of removing him 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, where because of his resignation or removal or because his term of office has expired or is about to expire,

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

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

(4) No society or person acting on its behalf incurs any liability by reason only of circulating a director's statement sent in compliance with subsection (3).

Organisational meeting of directors

82. (1) Subject to subsection (5), the directors shall hold a meeting as soon as possible after the issue of the society's certificate of registration.

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

- (a) pass resolutions establishing policies of the society;
- (b) adopt forms of corporate records;
- (c) appoint officers;
- (d) authorize 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 and authorise signing officers;
- (h) adopt operating policies; and
- (i) transact any other business.

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

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

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

Director's ceasing to hold office

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

- (a) dies or resigns;
- (b) is removed in accordance with section 84; or
- (c) is no longer qualified in accordance with this Act.

(2) A resignation of a director becomes effective on—

- (a) the date when the resignation was received; or
- (b) the date specified in the resignation.

Removal of directors

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

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

Notice of change of directors

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

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

Declaration by directors and officers

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

- (a) faithful performance of duties;
- (b) secrecy of transactions with members; and

(c) faithful and loyal support of the society.

Bonding

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

Remuneration of directors

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

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

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

Remuneration of officers other employees

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

PART V

FINANCING

Shares

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

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

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

Share capital

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

- (a) an amount of money divided into a specified number of shares set out in the by-laws; or
 - (b) an amount comprising an unlimited number of shares with a specified par value.
- (2) This section does not apply to credit unions.

Issue of shares

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

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

(3) No member is liable to the society or its creditors beyond the sum remaining unpaid on the member's subscription for shares.

(4) No society shall issue a share until it is fully paid—

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

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

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

Alteration of authorised capital

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

- (a) subdivide any shares;
- (b) consolidate shares into shares of a larger par value, but the par value of consolidated shares must not be greater than \$100;
- (c) cancel any shares that at the date of registration of the by-laws, have not been subscribed for or agreed to be issued and diminish the amount of the par value of the shares so cancelled;
- (d) extinguish or reduce the liability on any of its shares with respect to capital not paid up;

- (e) with or without extinguishing or reducing liability on any of its shares, cancel any paid up capital that is lost or unrepresented by available assets; and
- (f) with or without extinguishing or reducing liability on any of its shares and either with or without reducing the number of such shares, pay off any paid-up capital that is greater than the requirements of the society.

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

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

Limitation on purchase of shares

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

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

Transfer of shares generally

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

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

(3) No transfer of a share shall be valid and effective unless and until such transfer has been registered by the secretary on the direction of the Board.

(4) The transfer of a share by a member indebted to the society shall not be registered.

Transfer of shares of a member of unsound mind

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

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

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

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

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

Transfer of share or interest on death of member

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

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

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

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

Restriction on transfer of shares

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

(2) No shares or interest or any part thereof in the capital of a society may 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

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

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

(2) Notwithstanding subsection (1), a transfer of a share is valid for the purpose of evidencing the rights of the parties to the transfer.

Power of nomination

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

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

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

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

PART VI

BUSINESS OF SOCIETY

Marketing of produce through the society

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

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

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

Creation of charge in favour of the society

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

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

- (a) the right upon the happening of any event specified in the charge as being an event authorising the chargee to seize the property subject to the charge and take possession of any such property so subject;
- (b) after an interval of 5 clear days from the date of taking possession of any property subject to the charge, or such less

time as may be specified in the charge to sell such property either by auction or if the charge so provides by private treaty, either for a lump sum or payment by installments;

- (c) to apply the proceeds of sale in or towards discharge of the debt secured by the charge and the costs of seizure and sale and to pay any surplus of such proceeds to the member whose property is sold.

(3) A charge shall, so long as it continues in force, impose on the chargee the obligation to pay to the 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 allows.

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

Execution and registration of charge

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

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

(2) The Secretary shall—

- (a) file one copy of the charge at the registered office of the society and deliver one copy each to the Registrar of the High Court and the Registrar of Co-operative Societies; and
(b) deliver one copy to the member.

(3) The Registrar of the High Court shall keep a book known as the “Registered Societies Charge Book” in which he shall register every charge delivered to him by the secretary of a society, and issue to the society a certified copy of the registration.

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

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

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

- (b) file one copy of such document, deliver one copy each to the Registrar of Co-operative Societies and Registrar of the High Court who shall forthwith make an entry of satisfaction in the Registered Societies Charges Book; and
 - (c) deliver one copy to the member.
- (6) Any person may, on payment of the fee prescribed in the Regulations, inspect the Co-operatives Societies Charges Book and take extracts therefrom.

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

Claims unaffected by charge

104. Nothing in section 102 shall affect—

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

Prior claims in favour of society

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

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

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

Enforcement of charge

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

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

Assignment of charge

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

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

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

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

Bond as additional security for loan

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

(2) Section 107 relating to the assignment of charges shall apply *mutatis mutandis* to the assignment of bonds.

Lien on shares

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

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

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

Deductions applied to loans and shares

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

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

Purchase of shares

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

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

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

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

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

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

Prohibition on purchase shares

112.(1) Notwithstanding section 111, no society shall purchase or otherwise acquire its shares where—

- (a) it is insolvent;
- (b) the proposed purchase or acquisition would render it insolvent; or

(c) subject to subsection (2), the proposed purchase or acquisition would, in the opinion of the Board, be detrimental to the financial stability of the society.

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

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

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

Compulsory sale of shares

113. Where—

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

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

PART VII

PROPERTY AND FUNDS OF SOCIETY

Investment of funds

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

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

(2) Except with the approval of the general membership and of the Registrar, a society may not invest its funds for the purpose of a mortgage of real property.

Loan by society

115.(1) A society may give loans, guarantees, advances and other forms of financial assistance to its members.

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

(3) No loan may be made to a member of the Board or to an officer of a society of a sum in excess of the value of his shares, deposits and accumulated dividend and interest thereon unless adequate security is provided for the amount of the loan in excess of the value of his shares, deposits and accumulated dividends and interest thereon.

(4) No officer of a society shall be present at or participate in a meeting when his application for a loan is being considered.

(5) A loan made in contravention of subsection (4) is void and shall be repaid to the society immediately.

Prohibited loans

116.(1) Subject to subsection (2), no society and no member society shall, directly or indirectly, give a loan, guarantee or other means of financial assistance—

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

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

(2) A society may give a loan, guarantee or other means of financial assistance—

- (a)* to a person in the ordinary course of business, where the lending of money is part of the ordinary business of the society;
- (b)* to a person on account of expenditure incurred or to be incurred on behalf of the society;
- (c)* to a member society or a member of a member society; or
- (d)* to employees of the society or any of its member societies to enable or assist them to purchase or erect living accommodation for their own occupation.

Receipt of loans and deposits

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

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

Receipt of deposits from minors

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

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

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

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

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

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

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

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

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

Reserve Fund liquidity reserve, and adequacy of capital

119.(1) Where a society realises a surplus from its transactions that society shall establish and maintain a Reserve Fund.

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

(3) Every society shall ensure that its statutory and other reserves are, at no stage, less than 10 ten percent of its total liabilities.

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

(5) Subsection (3) applies to credit unions only.

Development Fund

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

(2) Every registered society that realizes a surplus from its operations as ascertained by the annual audit shall make such annual contribution as may be determined by the National League or National Council not exceeding ten percent of that surplus to such fund to be used for the development of registered societies.

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

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

(5) The Development Fund shall be administered by the National League in such a manner as may be prescribed.

Pension Fund

121. (1) A society may establish a contributory Pension Fund for its servants and employees and may contribute to such fund.

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

Charitable contributions

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

Dividend or bonus

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

(2) No registered society shall—

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

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

PART VIII

FINANCIAL DISCLOSURE AND AUDIT

Annual financial statements

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

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

(2) The financial statements mentioned in sub-paragraph (ii) of paragraph (a) of subsection (1) 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 hereto.

Approval of financial statements

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

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

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

Furnishing financial statements

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

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

Auditor's qualifications

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

(2) An individual qualifies for appointment as auditor, if—

- (a) he is a member of a recognised local or foreign accounting body and holds a practicing certificate of that body; or
- (b) he satisfies the Registrar that he was in practice in Montserrat as an auditor of societies on the day immediately preceding the commencement of this Act.

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

Disqualifying auditor

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

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

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

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

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

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

(6) A member of a 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.

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

Appointment of auditor

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

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

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

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

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

Cessation of office

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

(a) he dies or resigns; or

(b) he is removed pursuant to section 131.

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

Removal of auditor

131. (1) The members of a society may, by ordinary resolution at a special meeting remove an auditor other than an auditor appointed by the Registrar under section 132.

(2) The same auditor shall not audit the accounts of a registered society for more than 3 consecutive years.

Filling vacancy of auditor

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

(2) If 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; and if they fail to call a meeting, or if there are no directors, the meeting may be called by any member.

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

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

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

Registrar appointed auditor

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

Auditor's right to notice

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

Required attendance

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

Auditor's right to comment

136. (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;
- (c) receives a notice or otherwise learns of a meeting of members or directors at which another person is to be appointed to fill the office of auditor, whether because of the resignation or removal of the incumbent auditor or because his term of office has expired or is about to expire,

may submit to the society 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 society must forthwith send a copy of the statement to every member entitled to receive notice of any meeting of members and to the Registrar.

(3) An individual may not accept appointment, consent to be appointed or be appointed an auditor of a 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, he is to be replaced.

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

Examination by auditor

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

Auditor's right to inspect

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

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

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

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

- (a) obtain from the present or former directors, officers, employees or agents of any member of the society that is a registered society the directors, officers, employees and agents are reasonably able to furnish and that are, in the opinion of the auditor, necessary to enable him to make the examination and report required under section 137; and
- (b) furnish the information and explanations so obtained to the auditor.

(3) A former director, officer, employee or agent of a member who fails to comply with subsection (2), commits an offence and is liable on summary conviction to a fine of \$500 or to a term of imprisonment of 3 months or to both and to a further fine of \$50 for every day he fails to comply with that subsection after a conviction is first obtained.

Error or misstatement

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

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

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

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

Privilege of auditor

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

Annual and special returns

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

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

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

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

PART IX

RECONSTRUCTION OF SOCIETIES

Methods of reconstruction

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

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

(2) Sections 145 to 148 shall have effect with respect to the procedure that must be followed in relation to the reconstruction of a society.

Conversion

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

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

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

Effect of certificate of registration

144. (1) On the date shown in the certificate of registration issued pursuant to section 13—

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

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

Amalgamation of societies

145.(1) Any 2 or more societies may, by a resolution passed by not less than three-fourths of all the members of each society and voting at a special general meeting called for the purpose, amalgamate as one society.

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

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

Transfer of assets of societies

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

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

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

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

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

Claims of objecting creditors

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

Division of society

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

- (2) A preliminary resolution—
- (a) shall contain proposals for the division of the assets and liabilities of the society among the new societies into which it is proposed to divide the society; and
 - (b) may specify the area of operation of, and the members who will constitute, each of the new societies.
- (3) A copy of the preliminary resolution shall be sent to the Registrar and all members and creditors of the society that is being divided.
- (4) At least ten days notice of the preliminary resolution shall be given to any person whose interests will be affected by the division of the society, and the notice shall be published at least once in a newspaper circulating in Montserrat.
- (5) Any member of a society may, notwithstanding any by-law to the contrary, by notice given to the 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 societies.
- (6) Any creditor of the society may, notwithstanding any agreement to the contrary, by notice given to the society within a period of 3 months from his receipt of the preliminary resolution, state his intention to demand the payment of moneys due to him.
- (7) Any person, other than a member or creditor, whose interest may be affected by the division of a society may, by notice given to the society, object to the division unless his 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 society and of the notice to any other person given under subsection (4), another special general meeting of the society, of which at least 15 days notice shall be given to its members, shall be convened for the consideration of the preliminary resolution.
- (9) If at the special general meeting referred to in subsection (8) the preliminary resolution is confirmed by a special resolution either without changes or with such changes as in the opinion of the Registrar are not material, the Registrar may, subject to subsection (11) and section 13, register the new societies; and upon registration, the original society shall be deemed to be dissolved and its registration cancelled.
- (10) The decision of the Registrar as to whether any changes made in the preliminary resolution are material shall be final and not subject to any appeal.
- (11) At the special general meeting referred to in subsections (8) and (9) provision shall be made by another resolution for—
- (a) repayment of the share capital of all the members who have given notice under subsection (5);
 - (b) satisfaction of the claims of all the creditors who have given notice under subsection (6);

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

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

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

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

the Registrar may refuse to register the new societies.

Effect of registration of new societies

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

PART X

RECEIVERS AND RECEIVER-MANAGERS

Receiver appointed by Registrar

150. Where, in the opinion of the Registrar, based on the results of an examination undertaken pursuant to section 180, it is necessary to appoint a receiver-manager to protect the equity of the members, the Registrar may, subject to the approval of the Minister, appoint a receiver-manager.

Functions of receiver

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

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

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

Functions of receiver-manager

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

Cessation of Board's powers

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

Receiver's duty

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

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

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

(4) A receiver or receiver-manager shall—

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

Directions by court

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

- (a)* appointing, replacing or discharging a receiver or receiver-manager and approving his accounts;
- (b)* determining the notice to be given to any person or dispensing with notice to any person;
- (c)* fixing the remuneration of the receiver or receiver-manager;
- (d)* requiring the receiver or receiver-manager, or a person by or on behalf of whom he is appointed—
 - (i)* to make good any default in connection with the receiver's or receiver-manager's custody or management of the property and business of the society; and

- (ii) to relieve a receiver or a receiver-manager, or a person by or on behalf of whom a receiver or receiver-manager is appointed from any default on any terms that the court considers appropriate;
- (e) confirming any act of the receiver or receiver-manager; and
- (f) giving directions on any other matter relating to the duties of the receiver or receiver-manager.

Directions of Registrar

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

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

Required actions of receiver

157. A receiver or receiver-manager shall—

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

in paragraph (g) within 15 days of the preparation of the financial statement or rendering of the final account, as the case may be.

PART XI

DISSOLUTION

Dissolution by members

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

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

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

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

(5) Where the Registrar—

- (a)* receives notice, in a form satisfactory to him, of an authorisation to dissolve a society; and
- (b)* is satisfied that it is in the best interest of the society and its members,

he shall approve the dissolution.

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

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

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

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

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

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

(i) in a registered society; or

(ii) a bank registered under the Banking Act.

(b) invest the money in any manner authorised by law.

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

(10) In this section—

(a) “**interest**” means the interest of a member in a society and includes member loans and obligations of any kind that—

(i) arise by virtue of the by-laws of the society; and

(ii) are owed by the society to the members;

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

Notice of dissolution by members

159. (1) When the Registrar approves a special resolution passed pursuant to section 158 he shall, at the expense of the society, cause a notice of the special resolution to be published once a week for 2 consecutive weeks in a newspaper circulated in Montserrat.

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

(a) exempt the society from the requirements of subsection (1); and

(b) cause, at the expense of the Registrar, a notice of the special resolution passed pursuant to section 158(1) to be published in the *Gazette* or in a newspaper circulating in Montserrat.

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

(a) the progress of dissolution;

(b) the distribution of any undistributed surplus or reserve;

(c) the progress of the administration of a trust established in accordance with this section; and

(d) any other information that he may require.

Dissolution by Registrar

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

- (a) has not commenced business within 2 years after the date shown on its certificate of registration; or
- (b) has not carried on business for 2 consecutive years,

he shall send to the secretary of the society a letter inquiring whether the society is carrying on business, or is in operation, and may request that it submits an annual return.

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

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

(3) Where the Registrar—

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

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

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

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

Dissolution for failure to account for business transacted

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

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

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

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

(3) Where—

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

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

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

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

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

Dissolution by Court

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

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

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

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

(4) Where the Registrar receives an order made pursuant to subsection (3), he shall—

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

Revival of dissolved society

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

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

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

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

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

- (a) has all the rights and privileges; and

(b) is liable for the obligations,

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

Appointment of liquidator

164. (1) Where—

(a) a society is to be dissolved pursuant to this Part; or

(b) no liquidator is appointed by the members or the Court,

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

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

Commencement of liquidation

165. The liquidation of a society commences where—

(a) a special resolution for dissolution of the society is approved by the Registrar pursuant to section 158;

(b) the Registrar appoints a liquidator pursuant to section 160 or 161;

(c) the Court makes an order to dissolve pursuant to section 162.

Cessation of business

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

(a) a society continues in existence, but shall cease to carry on its business except insofar as may be required, in the opinion of the liquidator, for an orderly liquidation; and

(b) any transfer of shares, other than a transfer made to or with the approval of the liquidator, and any alteration in the status of the members made after the commencement of the liquidation is void.

General provisions respecting liquidators

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

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

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

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

(5) Where—

- (a) the members appoint a liquidator and do not issue directions pursuant to subsection (4); or
- (b) a liquidator is not appointed by the members,

the liquidator is subject to the directions, orders and instructions of the Registrar with respect to the mode and terms and conditions on which he may dispose of the whole or any part of the property of the society.

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

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

Duties of liquidator

168. 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 printed and published in Montserrat;
- (c) set out in the notice mentioned in paragraphs (a) and (b) a provision requiring any person—
 - (i) indebted to the society, to render an account and pay to the liquidator at the time and place specified;
 - (ii) possessing property of the society, to deliver it to the liquidator at the time and place specified; and
 - (iii) having a claim against the society, whether liquidated, unliquidated, future or contingent, to present particulars of the claim in writing to the liquidator not later than 2 months after the first publication of the notice;
- (d) take into his custody and control the property of the society;
- (e) open and maintain a trust account for the moneys of the society;

- (f) maintain separate lists of the members, creditors and other persons having claims against the society;
- (g) keep accounts of the moneys of the society received and paid out by him;
- (h) where at any time he determines that the society is unable to pay or adequately provide for the discharge of its obligations, apply to the Registrar for directions; and
- (i) deliver to the Registrar and the society, at least once in every twelve-month period after his appointment or more often as the Registrar may require, financial statements of the society in the form required in section 124 or in any form that the liquidator considers proper or that the Registrar may require.

Powers of liquidator

169. (1) The liquidator may, in the course of his duties as liquidator—

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

(2) Where a liquidator has reason to believe that any person has in his possession or under his control or has concealed, withheld or misappropriated any property of the 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 society, the Court may order that person to restore the property or pay compensation to the liquidator on behalf of the society.

(4) Subject to the approval of the Registrar, no liquidator shall purchase, directly or indirectly, any part of the stock-in-trade, debts or assets of the society.

Limitation on liability of liquidator

170. (1) A liquidator is not liable where he relies in good faith on—

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

(i) by an officer of the society; or

(ii) by the auditor of the society in a written report that states that the financial statements reflect fairly the financial condition of the society; or

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

Costs of liquidation

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

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

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

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

Closure of liquidation

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

(a) firstly to the costs of liquidation;

(b) secondly to the discharge of the liabilities of the society;

(c) thirdly to the payment of share capital;

(d) fourthly, if the by-laws of the society permit, to the payment of a dividend at a rate not exceeding the percent per annum

for any period during which no distribution of profits has been made.

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

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

(a) issue directions with respect to the custody or disposal of the documents and records of the society; and

(b) discharge the liquidator.

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

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

Custody of records

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

Remuneration of liquidator

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

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

(a) 5 percent on the first \$1,000 realised;

(b) 2.5 percent on the next \$4,000 realised; and

(c) 1.25 percent on any sum greater than \$5,000 realised.

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

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

Continuation of actions

175. (1) Notwithstanding the dissolution of a society pursuant to this Act—

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

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

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

Unknown claimants or members

176.(1) On the dissolution of a 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 registered society or with trustees appointed by the Registrar.

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

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

(4) Where moneys deposited pursuant to this section are not distributed within 3 years after the dissolution of a society then, subject to the approval of the Registrar, the society or the trustees appointed by the Registrar shall distribute those moneys in accordance with sections 171(1) and 172 or the by-laws.

Power of Registrar to surcharge

177.(1) Where, in the course of the dissolution of a society it appears that any person who has taken part in the organisation or management of such society or any past or present officer of the society has misapplied or retained or become liable or accountable for any money or property of the society or has been guilty of misfeasance or breach of trust in relation to

such society, the Registrar may, on the application of the liquidator or of any creditor or contributory, or on his own accord carry out an examination into the conduct of such person and make an order requiring him to repay or restore the money as the Registrar thinks just or to contribute such sum to the assets of the society by way of compensation in respect of the misapplication, retainer, dishonesty or breach of trust as the Registrar thinks just.

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

Appeal against surcharge

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

Application of Part XI

179. (1) This Part does not apply to a society that is bankrupt within the meaning of the Bankruptcy Act.

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

PART XII

INVESTIGATIONS

Examination

180. (1) The Registrar may —

- (a) on his own motion; or
- (b) on the application of 25 members or 10 percent of the members whichever is less,

appoint a person as examiner who shall examine the books of the society and the affairs of the society and report to the Registrar.

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

- (a) by the members applying for the examination;
- (b) by the society or its officers; or

(c) by any combination of the members, the society or its officers.

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

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

Investigations

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

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

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

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

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

(5) No person may publish anything relating to *ex parte* proceedings conducted pursuant to this section other than with the authorisation of the Court or the written consent of the society being investigated.

Court order

182. In connection with an investigation pursuant to section 181, the Court may make any order it considers appropriate, including an order—

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

Powers of Inspector

183. (1) An inspector appointed pursuant to section 182(b) has the powers set out in the order appointing him.

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

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

Hearing *in camera*

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

(2) The evidence of a person whose conduct is being investigated or who is being examined at a hearing conducted by an inspector appointed pursuant to section 182 shall be heard *in camera*.

Incriminating statements

185.(1) No person is excused from attending and giving evidence and producing documents and records to an inspector appointed pursuant to section 182(b) by reason only that the evidence tends to incriminate him or subject him to any proceedings or penalty.

(2) No evidence described in subsection (1) may be used or received against any person in any proceeding instituted against him, other than a prosecution for perjury in giving evidence.

Absolute privilege respecting statements

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

(2) Nothing in this Part affects the privilege that exists in respect of an attorney-at-law and his client.

PART XIII

DISPUTES

Settlement of disputes

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

- (a) among members, former members and persons claiming through members or deceased members;

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

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

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

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

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

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

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

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

(6) Notwithstanding anything in this section, a registered society may exercise any rights arising by law under any charges, mortgages, bills of sale or other securities duly executed in accordance with this Act or any other law without recourse to arbitration.

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

Co-operative Societies Appeals Tribunal

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

(2) The members of the Tribunal shall be appointed by the Governor in Council for a period of not more than 3 years, and are eligible for re-appointment.

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

(4) The members of the Tribunal shall receive such remuneration as the Governor in Council determines.

Case stated on question of law

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

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

Enforcement of award and recovery of loans

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

(2) Where a dispute relates to the recovery of a loan made by a society to a member of that society, such a dispute may, notwithstanding section 187, be brought before the Magistrate.

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

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

PART XIV

SPECIALIZED SOCIETIES

*Credit Unions***Interpretation and application**

191. In this part—

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

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

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

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

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

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

Restrictions

192. (1) No credit union shall carry on any business that is contrary to this Act, the Regulations or its by-laws.

(2) No credit union shall—

(a) underwrite insurance or the issue of securities by another person;

(b) act as agent for any insurance company or for any person in the placing of insurance; or

(c) subject to subsection (3), require, directly or indirectly, that a borrower place insurance for the society or the credit union in any particular insurance agency.

(3) Nothing in paragraph (c) of subsection (2) prevents a credit union from requiring insurance for the security of the credit union.

(4) No act of a credit union, including the transfer of property to or by a credit union is contrary to this Act or the Regulations.

(5) Without prejudice to the generality of paragraph (a) of subsection (2), a credit union may, with the permission of the Registrar, do all other acts and things as are incidental or conducive to or consequential upon the attainment of its objects.

Liquid assets

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

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

Allowances

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

Loan approval

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

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

(3) Any person who knowingly approves or grants a loan in contravention of this Act or the Regulations shall be held liable for any losses resulting to the credit union in connection with that loan.

Security for loans

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

Loan limits

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

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

Reporting loans

198.(1) Where a credit union is reporting loans on the balance sheet in its annual financial statements, it shall report the loans at their net estimated value after deducting the allowance for doubtful loans pursuant to section 194.

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

Interest on loans

199.(1) The maximum intervals at which interest on loans must be paid may be prescribed in the Regulations.

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

Deposits

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

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

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

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

Credit union and trusts

201.(1) A credit union is not bound to see to the execution of any trust, whether express, implied or constructive, pursuant 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) if the deposit or share stands in the names of 2 or more trustees, all those trustees or any of them who, pursuant to the document creating the trust, may be entitled to receive the deposit or share,

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

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

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

Consumers' Societies and Housing Societies

Restrictions on directorship

202. (1) Subject to subsection (2), no employee of a consumers' society or housing society may be a director of that society.

(2) A society may provide in its by-laws that no more than one-third of its directors may be employees.

Relationship with members

203. The relationship between a housing society and its members is not a relationship of a landlord and tenant.

By-laws

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

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

- (e) the rules governing any leases of housing units by members to non-members.

Amendment of by-laws

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

No interest on share capital

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

Right to possession terminated

207. (1) Where a person's membership in a housing society is terminated, any right of that person to possess or to occupy residential premises acquired by virtue of membership in the society is terminated.

(2) Where a person's membership in a housing society is terminated and the member does not give up possession of the housing unit he occupies, the housing society may apply to the Court to recover possession or to recover any arrears of housing charges.

Abandoned goods

208. (1) Where a member—

- (a) has his membership terminated or has vacated or abandoned the housing unit formerly occupied by him; and
- (b) has left property in the housing unit,

the housing society may apply to the Magistrate's Court for an order authorising it to remove the property from the housing unit and sell or otherwise dispose of it.

(2) The Magistrate may make an order pursuant to subsection (1) where he is satisfied that the housing society has made a reasonable effort to locate the former member.

(3) Where a housing society sells or otherwise disposes of property pursuant to an order made under subsection (2), it shall pay into the Magistrate's Court, to the credit of the former member, any remaining proceeds of the disposition after deducting—

- (a) any amount with respect to costs incurred by it relating to the disposition that it would be authorised to retain if the property were goods sold pursuant to distress for housing charges; and
- (b) any arrears of housing charges and damages that the Magistrate allows.

(4) Where a former member does not claim the remaining proceeds described in subsection (3) within 3 months after the date the money was paid into the Magistrate's Court, the money shall be paid into the Consolidated Fund.

(5) Where a housing society removes, sells or otherwise disposes of property pursuant to an order made under subsection (2), the housing society is not liable in any action taken by the former member with respect to the removal, sale or disposition.

Industrial Societies

Membership

209.(1) In an industrial society, 75 percent of all employees must be members of the society.

(2) Subject to subsection (3), no workers' society shall without the approval of the Registrar sub-contract out more than fifty percent of its work.

By-laws

210. In addition to the matters required to be set out in the by-laws pursuant to section 10, the by-laws of a society must include—

- (a) conditions of admission, expulsion or suspension of its members;
- (b) a procedure for laying off members where there is a lack of work and a procedure of recall to work;
- (c) remuneration of workers involved in the day to day work of the society; and
- (d) allocation of bonuses among members.

Restriction on registration

211. No industrial society may be registered where the acquisition of goods for sale to the public is one of its principal objects stated in its by-laws.

Bonus based on labour

212. When allocating credit or paying a bonus to the members of an industrial society the directors may take into account the labour contribution of each member.

Employees may be directors

213. Notwithstanding any other provision of this Act, the majority of directors of an industrial society may be employees of the society.

PART XV

APEX BODY

Establishment and constitution of apex body

214. Registered societies may establish an apex body which may be called the National League or National Council and which shall be composed of member representatives of all societies which exist in Montserrat.

Functions

215. (1) The National League or National Council shall co-ordinate, assist and promote all registered societies and shall perform such functions as may be determined by its constituent members.

(2) Without prejudice to subsection (1), the National League or National Council shall have responsibility for the administration and management of the Development Fund as established by section 120.

Officers

216. (1) The officers of the National League or National Council shall be elected at the first meeting of that body and shall hold office for a period of one year and thereafter the election of such officers shall be in accordance with the by-laws of the National League or National Council.

(2) The National League or National Council shall regulate its own procedure.

Consultation by Registrar

217. The Registrar shall, from time to time, consult the National League or National Council with respect to matters relating to development of registered societies.

PART XVI

OFFENCES

Corrupt practices and bribery

218. (1) Where—

(a) any member, agent or employee of a society corruptly accepts, agrees to accept, obtains or attempts 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 society; or

- (ii) for showing favour or disfavour to any person in relation to the business of the society; or
- (b) any person corruptly gives, agrees to give, or offers such gift or consideration to any member, agent or employee of a society as inducement or reward for any purpose mentioned in paragraph (a),

he is guilty of an offence and is liable—

- (i) in the case of an offence under paragraph (a), on summary conviction to a fine of \$2,000 or to imprisonment for 2 years or both such fine and imprisonment and on indictment to imprisonment for 3 years;
- (ii) in the case of an offence under paragraph (b), on indictment to imprisonment for 5 years.

(2) In this section “**consideration**” includes valuable consideration of any kind.

Falsely obtaining property of society

219. (1) Any person who—

- (a) obtains possession of any property or is granted any loan by a society by false representation or other corrupt means;
- (b) wrongfully withholds or misapplies any such property or loan; or
- (c) wilfully applies any part of the property or loan to purposes other than those directed or expressed in the by-laws of the society or authorised in this Act or the Regulations,

commits an offence and is liable on summary conviction to a fine of \$1,000 or to imprisonment for one year and on conviction on indictment to a fine of \$10,000 or to imprisonment for 5 years.

(2) In any proceedings under this section the person accused may, in addition to any penalty imposed, be ordered—

- (a) to deliver up any property or repay any sum of money to which the proceedings relate; and
- (b) to pay the cost of the proceedings.

Failure to comply with Act

220. (1) A society or any officer or member thereof or any other person—

- (a) who fails without reasonable cause or wilfully neglects or refuses to comply with any requirement of this Act or the regulations or to furnish any information; or

- (b) who purporting to comply with any such requirement, knowingly furnishes false information,

is guilty of an offence.

(2) Any person who wilfully or without reasonable cause disobeys any summons, order or direction lawfully issued under this Act or the Regulations commits an offence.

(3) Any officer or member of a society who wilfully contravenes the by-laws of the society in relation to his duties or functions as such officer or member commits an offence.

(4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding \$5,000 or imprisonment for 6 months or both and to a further fine of \$50 for each day for which the contravention continues after a conviction is obtained.

Dealing in property subject to charge

221. (1) Any person who—

- (a) fraudulently or clandestinely removes any property comprised in a charge created in favour of a society from the place where such property was situate at the time of the execution of the charge; or
- (b) knowingly disposes of, or deals with or attempts to dispose of or deal with such property without first obtaining in writing leave of the society,

commits an offence and is liable on summary conviction to a fine of \$2,000 or to imprisonment for 6 months or both.

(2) The Court may in addition to any penalty imposed on a person pursuant to subsection (1) require that person to repay such amount of the loan with interest as has not been repaid at the date of the conviction; and the payment of that amount shall discharge the liability of the borrower to repay the loan.

Offences with respect to reports

222. (1) A person commits an offence, who makes or assists in making a report, return, notice or other document, required in this Act or the Regulations to be sent to the Registrar to any other person, that—

- (a) contains an untrue statement of a material fact; or
- (b) omits to state a material fact required in the report or necessary to make a statement contained in the report not misleading in the light of the circumstances in which it was made.

(2) A person who commits an offence under subsection (1) is liable on summary conviction—

- (a) in the case of an individual, to a fine of \$1,000 or to imprisonment for a term of one year or both;
- (b) in the case of a person other than an individual, to a fine of \$10,000.

(3) Where the person who commits an offence under subsection (1) is a body corporate and whether or not the body corporate has been prosecuted or convicted, any director or officer of the body corporate who knowingly authorises, permits or acquiesces in the offence is also guilty of an offence and liable on summary conviction to a fine of \$1,000 or to imprisonment for a term of one year or both.

(4) A person does not commit an offence under subsection (1) or (3) where the untrue statement or omission—

- (a) was unknown to him; and
- (b) in the exercise of reasonable diligence, could not have been known to him.

Contravention of Act

223. Every person who—

- (a) without reasonable cause, contravenes a provision of this Act or the Regulations for which no penalty is otherwise provided; or
- (b) fails to give any notice, send any return or document that is required for the purposes of this Act,

commits an offence and is liable on summary conviction to a fine of \$1,000 and to a further fine of \$100 for each day for which the contravention continues after a conviction is obtained.

Use of words “credit union” or “co-operative”

224. (1) No person doing business in Montserrat shall use the words “**credit union**” or “**co-operative**” or any abbreviation or derivation thereof as part of its name, or with respect to its goods, wares, merchandise or services or its method of conducting its business, or hold itself out to be a registered society unless it is registered under this Act.

(2) A person who contravenes this section commits an offence and is liable on summary conviction to a fine of \$1,000 and to a further fine of \$100 for each day for which the contravention continues after a conviction is obtained.

Order to comply

225. Where a person is convicted of an offence under this Act or the Regulations, the Court may, in addition to any punishment imposed, order the person to comply with the provisions of this Act or the Regulations for the contravention of which he has been convicted.

Limitation

226. The affluxion of time is no bar to prosecution for an offence under this Act.

Preservation of civil remedy

227. No civil remedy for an act or omission under this Act is suspended or affected by reason that the act or omission is an offence under this Act.

PART XVII

MISCELLANEOUS

Interpretation

228. In this Part—

- (a) “**duplicate originals**” means the 2 copies of the by-laws or statements required in section 229;
- (b) “**statement**” means a special resolution stating an intent to dissolve mentioned in section 158.

Execution and filing

229. (1) Where this Act requires that by-laws or a statement relating to a society shall be sent to the Registrar, unless otherwise specifically provided, the society shall send 3 copies of the by-laws or statement signed by a director or an officer of the society.

(2) Subject to the other provisions of this Act, where the Registrar receives duplicate originals of any by-laws or statement pursuant to subsection (1) and they are accompanied by any other required documents and the prescribed fees, the Registrar shall—

- (a) endorse on each of the duplicate originals the word “Registered” and the date of the registration;
- (b) issue in duplicate the appropriate certificate and attach to each certificate one of the duplicate originals of the by-laws or statements;
- (c) file a copy of the certificate and attached by-laws or statement;
- (d) send to the society the original certificate and attached by-laws or statement; and
- (e) publish in the *Gazette* notice of the issue of the certificate.

(3) The Registrar may date a certificate mentioned in subsection (2) as of the day he receives the by-laws or statement issued pursuant to which

the certificate is issued or as of any later day specified by the person who signed the by-laws or statement.

(4) A signature required on a certificate mentioned in subsection (2) may be printed or otherwise mechanically produced on the certificate.

Waiver of notice

230. Where a notice or document is required by this Act or the Regulations to be sent, the sending of the notice or document may be waived or the time for sending the notice or document may be waived or abridged at any time with the consent in writing of the person entitled to receive the notice or document.

Certificate of society

231. (1) A director or officer of a society may—

- (a) sign a certificate stating any fact set out in; or
- (b) certify a copy of the whole or any part of,

the by-laws, or any other contract to which the society is party or the minutes of a meeting of the directors, a committee of directors or the members.

(2) A certificate or certified copy described in subsection (1) is admissible in evidence as *prima facie* proof of the facts contained in the certificate or certified copy without proof of the signature or official character of the person appearing to have signed the certificate or the certification.

Copies of documents

232. Where a notice or document is required to be sent to the Registrar pursuant to this Act, the Registrar may accept a photostatic or photographic copy of the notice or document.

Alteration

233. Where the Registrar is authorised by the person who sent a notice or document or his representative, the Registrar may alter the notice or document, but he may not alter an affidavit or statutory declaration.

Corrections

234. (1) Where a certificate containing an error is issued to a society by the Registrar, the directors or members of the society shall, on the request of the Registrar—

- (a) pass the resolutions and send to him the document required to comply with this Act; and
- (b) take any other steps that he may require,

and the Registrar may demand the surrender of the certificate and issue a corrected certificate.

(2) A certificate corrected pursuant to subsection (1) must bear the date of the certificate it replaces.

Exemption from stamp duty and other taxes

235.(1) A society is exempt from stamp duty, taxes and fees on instruments executed by or on behalf of the society and relating to the business of the society.

(2) A society is exempt from the payment of income tax under the Income Tax Act.

Limitation jurisdiction

236. Except as is expressly provided in this Act, no civil court shall have any jurisdiction in respect of any matter concerned with the dissolution of a society under this Act.

Proof of entries in books and other documents

237.(1) A copy of any entry in a book or other document that is required to be kept by this Act shall, if certified by the Registrar be received in any legal proceedings, civil or criminal, as *prima facie* evidence of the existence of such entry and shall be admitted as evidence of the matters, transactions and accounts therein recorded in every case where, and to the same extent as, the original entry itself is admissible.

(2) No officer of any such society shall, in any legal proceedings to which the society is not a party, be compelled to produce any of the society's books, the contents of which can be proved under subsection (1), or to appear as a witness to prove any matters, transactions or accounts therein recorded, unless the Court for special reasons so directs.

Regulations

238. For the purpose of carrying out this Act according to its intent, the Governor in Council may make Regulations—

- (a) defining, enlarging or restricting the meaning of any word used but not defined in this Act;
- (b) requiring the payment of and prescribing the amount of any fee with respect to—
 - (i) the filing, examination or copying of any document; or
 - (ii) any action that the Registrar is required or authorised to take pursuant to this Act;
- (c) prescribing the procedure for appeals to the Registrar;

- (d) prescribing businesses in which societies or any class of societies may not engage without the prior approval of the Registrar;
- (e) exempting any society or class of societies from any provision of this Act; and
- (f) prescribing any other matter or thing required or authorised to be prescribed by this Act.

PART XVIII

TRANSITIONAL

Interpretation

239. In this Part “**the former Act**” means the Co-operative Societies Act, (Act 27 of 1959).

Existing directors and officers

240. (1) The existing directors and officers shall continue to hold office in accordance with the former Act and the by-laws of the Society.

(2) Where new directors of a society are to be elected after the commencement of the Act, such directors shall be elected in accordance with this Act.

Existing societies

241. All societies which prior to the commencement of this Act were duly registered under the former Act shall be deemed to be registered under this Act.

Savings

242. (1) All rules, Regulations and by-laws made pursuant to the former Act shall continue in force until such time as new rules and Regulations and by-laws are made.

(2) Where a society is being dissolved or liquidated pursuant to the former Act, that Act continues to apply to that society.

CO-OPERATIVE SOCIETIES REGULATIONS

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CO-OPERATIVE SOCIETIES REGULATIONS – SECTION 238

(S.R.O. 44/2006)

Commencement

[5 October 2006]

Short title

1. These Regulations may be cited as the Co-operative Societies Regulations.

Definition

2. In these Regulations—

“**Act**” means the Co-operative Societies Act;

“**association**” means a group of people organised for some common purpose but without corporate personality;

“**bank**” means a bank registered under the Banking Act;

“**corporation**” means a body corporate under law;

“**form**” means a prescribed form as set out in the First Schedule;

“**society**” means a registered primary, secondary or tertiary society as defined in section 21(1) of these Regulations;

“**Unincorporated organisation**” means a body of persons not incorporated under law.

Forms

3. The forms set out in the First Schedule are to be used for the purposes of the Act and these Regulations.

Fees

4. The Fees payable under the Act and Regulations are specified in the Second Schedule.

Filling out of Document

5. (1) Where an item required to be disclosed in a document does not apply, the phrase “not applicable” or the abbreviation “N/A” should be used in the space provided in the document.

(2) Where—

- (a) any provision required to be set out in a document is too long to be set out in the space provided in the document; or
- (b) an agreement or other document is to be incorporated by reference and to be part of the document, it may be incorporated in the form.

(3) A provision, agreement or other document referred to in paragraph (2) may be incorporated by—

- (a) setting out that the annexed schedule (number or name) is incorporated in the form or words to this effect, in the space provided on the document; and
- (b) annexing the provision, agreement or other document to the form; or
- (c) if the form is being completed on a word processor or computer, the provision may be completed through the expansion of the space as is necessary to enter the provision but all pages of the form being completed must be of the same size.

(4) A separate annex or schedule is required with respect to each item that is incorporated by reference in a document pursuant to paragraphs (2) and (3).

Dividend rate

6. For the purposes of sections 4(e) and 123(1) of the Act, no society shall pay a dividend on its shares at a rate that is greater than 2 percent above the savings rate set by the Eastern Caribbean Central Bank.

Transfer of Shares

7. (1) The Registrar may determine the forms to be used for the transfer of shares.

(2) No transfer of a share shall be registered, without the approval of the Board, if made by a member who is indebted to the society, and, until the transfer of share is registered, no right shall be acquired against the society by the transferee nor shall any claim of the society upon the transferor be affected thereby.

Minimum amount of fidelity bond

8. (1) For the purposes of section 87 of the Act, a blanket security or fidelity bond shall be given by all officers including the President, Vice-President, Secretary, Treasurer, Secretary-Treasurer, Manager and any other authorized signing officer, and every employee of the society.

(2) In respect of the credit union the minimum amount of security or fidelity bond required is \$50,000.

(3) In respect of other co-operative societies the minimum amount of the security or fidelity bond is—

- (a) \$1,000 in the case of a society with sales or revenue not exceeding \$25,000 per year;
- (b) \$2,000 in the case of a society with sales or revenue greater than \$25,000 but not exceeding \$100,000 per year; and
- (c) \$5,000 in the case of a society with sales or revenue greater than \$100,000 per year.

Annual financial statements and special returns

9. (1) The comparative financial statements required pursuant to section 124 of the Act must include—

- (a) a balance sheet;
- (b) a statement of income;
- (c) a statement of retained earnings;
- (d) a statement of changes in financial position; and
- (e) a statement of receipts and payments;
- (f) any other statements or reports that the Registrar may require.

(2) Financial statements need not be designated by the names set out in subparagraphs (a) to (d) of paragraph 1.

(3) Additional periodic performance returns, as required by the Registrar under section 141(3) of the Act, shall also be provided in an accurate and timely manner as required by the Registrar, so that the Department's records are up-to-date and reliable and so that the Registrar and Financial Services Commission are able to monitor the financial position.

Auditor's report

10. For the purposes of section 137 of the Act, the Auditor of a society shall indicate in his report whether or not the financial statements contained in his report—

- (a) were prepared in accordance with generally accepted accounting principles or international standards; and
- (b) are presented on a basis consistent with that of the preceding year; and

if they are not, an explanation as to why either or both of (a) and (b) are not met.

Standard of financial statements and auditor's report

11. The financial statements referred to in section 124 of the Act and the auditor's report referred to in section 137 of the Act must, except as otherwise provided by these Regulations, be prepared in accordance with internationally accepted standards.

Election of directors

12. (1) This Regulation applies for the purposes of section 50 of the Act.

(2) Before accepting the nomination of any person, the Chairman of a meeting called to elect directors, shall satisfy himself that the person to be nominated—

- (a) is qualified pursuant to the Act and the by-laws of the society to be director; and
- (b) has consented to the nomination.

(3) Where the number of candidates nominated does not exceed the number of directors to be elected, the Chairman of the meeting called to elect directors shall declare all the candidates elected.

(4) Subject to paragraph (7), only one ballot is to be taken and the number of candidates equal to the number of directors to be elected receiving the highest number of votes are to be declared elected.

(5) Where candidates are to be elected for varying terms, the candidates receiving the highest number of votes cast are to be declared elected for the longest or the longer terms, as the case may be.

(6) For the purpose of these Regulations a term shall not exceed 3 years.

(7) Where 2 or more candidates receive an equal number of votes, the members present at the meeting may by resolution provide that a second ballot be cast to break the tie.

(8) Where the meeting does not decide to hold a second ballot pursuant to paragraph (7), the Chairman of the meeting called to elect directors shall draw lots, and the candidate whose lot is drawn on his ballot, is to be declared elected.

(9) Where a member votes for more than the number of directors to be elected his ballot is not to be counted.

(10) Where a registered society submits a by-law to the Registrar that provides for a method of electing directors other than at a general meeting of members and the Registrar is satisfied that the by-law does not contravene paragraphs (4), (5), (6), (7), (8) and (9), the Registrar may approve the by-law and, on and after the date of that approval, the directors of the society shall be elected in the manner provided for in the by-law.

(11) A society shall not include in any by-law governing the manner of electing its directors, any provision that prohibits its members from nominating as a candidate for election as director any member who—

(a) is qualified to be a director; and

(b) consents to the nomination.

Meeting of Directors

13. The directors of a registered society shall hold at least one meeting every month.

Appointment of Secretary and Treasurer

14. (1) This Regulation applies for the purposes of section 51 of the Act.

(2) The Board of Directors of a society shall—

(a) appoint a secretary and a treasurer to the society, and no secretary or treasurer shall hold office for more than three consecutive terms; or

(b) have power to fix the remuneration for their service unless the secretary and treasurer so appointed are members of the Board, in which case the secretary and treasurer must not attend the meeting at which their remuneration is fixed or affirmed and they must abstain from voting on their remuneration.

(3) No appointment made or remuneration fixed by the Board in accordance with sub-paragraph (2) shall be valid, effective, payable or recoverable until notice of the appointment and remuneration are submitted to the Registrar.

Duties of Secretary and Treasurer

15. (1) The Secretary of a society shall—

- (a) keep the minutes of any meeting of the society or Board;
- (b) ensure that all records, books, papers and other documents of the society are kept in a safe place in the office of the society;
- (c) conduct any correspondence on behalf of the society except in the case of a credit union where the Board may delegate such powers to other members of staff so that they may carry out the duties of their jobs;
- (d) attend all meetings of the society and the Board and have with him the necessary minutes and record books and correspondence relative to the business of the society;
- (e) issue notices for all meetings of the Board and general membership of the society in accordance with the Regulations and the by-laws;
- (f) sign and execute, jointly with the President, all deeds and conveyances of real or personal property, all fixed deposits or share certificates and such other documents as the Board may specify;
- (g) review the minutes of all committees of the society; and
- (h) perform such other duties as are prescribed by the by-laws or authorized by the Board.

(2) The Treasurer of the society shall—

- (a) receive all monies due and payable to the society and issue receipts for the same except in the case of a credit union where the Board may delegate such powers to other members of staff so that they may carry out the duties of their jobs;
- (b) deposit all monies received in the name of the society in such bank or depository as specified by the Board;
- (c) sign all cheques, notes, bills of exchange and other documents necessary to effect the business of the society;
- (d) keep a just and true record of all financial transactions effected by the society in the books provided for that purpose;
- (e) keep charge and control of all cash, securities, books and other documents and vouchers for all payments made and receipts issued on behalf of the society.
- (f) reconcile or cause to be reconciled at least once per month the members' ledger or accounts with the relative general ledger control accounts;

- (g) reconcile or cause to be reconciled at least monthly all passbooks or statements received from depositors with the relevant control accounts in the general ledger;
- (h) cause all members' ledgers and all members' passbooks to be reconciled at least once per year;
- (i) produce a current statement of the society's monies as the Board or Registrar may demand;
- (j) prepare the annual statement of account, the balance sheet, the monthly financial statements and other statements as the Board may request;
- (k) make payments as authorised by the Board and obtain receipts for the same except in the case of a credit union where the Board may delegate such powers to other members of staff so that they may carry out their duties of their jobs; and
- (l) perform such other duties as the Board may prescribe.

(3) The duties of the Secretary and Treasurer may be modified or altered in keeping with the allotment of duties assigned by the Board to the manager and other employees of the society.

Supervisory committee

16. For the purposes of sections 62 to 68 of the Act and subject to the Act and by-laws, the Supervisory Committee shall—

- (a) meet after the first Annual General meeting and after each annual general meeting of the society, as soon as is reasonable, to organize for the current year;
- (b) appraise the policies and operating procedures of the society and make recommendations to the Board and to the Credit Committee;
- (c) attest to the monthly and annual returns filed in compliance with sections 124 and 141 of the Act;
- (d) determine periodically and not less than once every quarter whether the provisions of the Act, Regulations, by-laws and relevant policies have been complied with—
 - (i) in making of loans including loans to officials, business loans and loans to organizations, associations and corporations;
 - (ii) in respect of any overdrawn from deposit accounts;
 - (iii) in administration of members' accounts; and
 - (iv) in the maintenance of the minutes of meetings the Board and Credit Committee;
- (e) receive and investigate complaints made by members of the society about the management of the society;
- (f) monitor the management of the society;

- (g) ensure that the society complies with the Act, Regulations and by-laws; and
- (h) verify the assets of the society and monitor whether the assets are properly protected.

Procedures on appeal of termination of membership

17. (1) Where a person appeals the termination of his membership to the Registrar pursuant to section 31 of the Act, the person shall submit a written statement to the Registrar within 30 days of the date of—

- (a) the members' resolution terminating the person's membership pursuant to section 29 of the Act; or
- (b) the members' confirmation of the directors' order terminating the person's membership pursuant to section 28(2) of the Act.

(2) A person appealing the termination of his membership shall set out in his written statement as required pursuant to subsection (1):

- (a) any reason for the termination of his membership of which he has personal knowledge;
- (b) the grounds on which his appeal lies; and
- (c) any relevant facts or information, in addition to those described in subsections (a) and (b), that the Registrar may require.

(3) The Registrar, on receiving an appeal, will so notify the Credit Union Secretary and within seven days of such notification, the Credit Union will file a copy of the records as set out in subsections (1)(a) or (b) above with the Registrar along with any other relevant facts or information.

(4) The Registrar shall hear an appeal pursuant to section 31 of the Act within 30 days after the date that he receives the completed written statements pursuant to subsections (1) and (3) and inform the appellant, and Credit union, in writing, within 14 days after the hearing of the appeal, of the outcome of the appeal thereof.

Unclaimed amounts in case of terminated membership

18. Where the amount held to the credit of a member whose membership has been terminated—

- (a) the society must send a notice to the last known address of the terminated member setting out the amount of and the consequence for not claiming the funds held;
- (b) if the amount is less than \$25, the society may add that amount to its income from operations; or
- (c) if the amount is \$25 or more, the society shall place that amount in a special reserve fund,

the member may claim the funds without interest up to 10 years after the date of the notice in (a) being sent but after such time the funds in the special reserve fund not claimed shall escheat to the Crown.

Amendment of by-law

19. (1) Where in pursuant to sections 10 and 48 of the Act a registered society amends its by-laws, such amendment shall be by a resolution of the members of the registered society at a general meeting.

(2) Every resolution made under paragraph (1) of this Regulation shall not be valid unless it was approved by a majority of not less than two thirds of the members present at the general meeting at which it was proposed but the meeting must consist of at least 20% of the members or 50 persons, whichever is less.

(3) A copy of the resolution under paragraph (1) of this Regulation shall be forwarded to the Registrar together with 2 copies of the amendment within a reasonable time.

By-laws of housing society

20. For the purposes of section 204 of the Act, a housing society shall provide in its by-laws that—

- (a) the society shall give a copy of the by-law and the occupancy agreement to each member;
- (b) each member is entitled to have quiet enjoyment of his housing unit;
- (c) either the society or the member is responsible for—
 - (i) the maintenance of the housing unit in a safe, habitable and reasonable state of repair;
 - (ii) the repair or replacement of fixtures; and
 - (iii) any damage to the housing unit;
- (d) the society and its agents, except in the case of an emergency are required to give reasonable notice to the member prior to entry into the member's unit;
- (e) the society shall give 3 months notice of any increase in housing charges except where—
 - (i) the Registrar gives his written approval for a shorter notice; or
 - (ii) the members have unanimously approved the increase at a general meeting;
- (f) the society shall give a minimum of 30 days notice to a member of the termination of his membership except where a member contravenes any by-law after having received written notice of the contravention governing—
 - (i) ordinary cleanliness of the housing unit;
 - (ii) the use of the premises for prohibited purposes; or
 - (iii) payment of housing charges; and
- (g) there shall be no acceleration of housing charges.

Liquidity

21. (1) For the purposes of this Regulation—

“**liabilities**” include any deposits of money made in the credit union, any accrued interest on those deposits and any loans taken out by the credit union;

“**line of credit**” means the maximum amount which a credit union is entitled to borrow at any given time;

“**liquid assets**” means Eastern Caribbean currency and deposits of Eastern Caribbean currency made by a credit union with a bank or any other institution that takes deposits, and such other currency or currency deposits and that the credit union is entitled to withdraw on demand as well as readily marketable securities;

“**marketable securities**” includes treasury bills, government debentures, treasury notes and other similar government securities listed on the Eastern Caribbean Securities Exchange;

“**secondary society**” means a registered society which comprises mainly primary societies; and

“**tertiary society**” means a registered society all of whose members are secondary societies.

(2) A credit union shall at all times—

- (a) have in its possession liquid assets; and/or
- (b) maintain a line of credit,

in an amount sufficient to enable the society to meet its normal cash flow requirements as estimated by the society.

(3) A credit union shall at all times maintain an account or accounts—

- (a) with a bank or banks;
- (b) with a loan or trust company or companies incorporated under the relevant Act; or
- (c) with a secondary society or tertiary society whose by-laws provide for the acceptance of deposits, if the deposits can be repaid on demand.

(4) The account referred to in paragraph (3) shall be—

- (a) in an amount that is not less than 10 per cent of the total liabilities of the registered society as shown on the society’s most recent financial statement prepared and submitted in accordance with Regulation 10; and
- (b) in the form of demand deposits or deposits redeemable on notice given by the society.

(5) A credit union shall maintain the account referred to in paragraph 3, separate from its other accounts or funds.

(6) Notwithstanding paragraph (4)(b) and subject to paragraph (7), where a credit union—

- (a) was registered under the former Act, as that Act existed on the day before the coming into force of these Regulations; and
- (b) maintained at the commencement of the Act, a reserve;

the monies, maintained at the commencement of the Act, in the reserve referred to in paragraph (4)(b) may be used to satisfy the requirements of paragraph (4)(a).

(7) Where—

- (a) a credit union described in paragraph (6) does not otherwise have sufficient monies on account to satisfy the requirements of paragraph (4)(a); and
- (b) any part of the reserve referred to in paragraph (6) consists of unencumbered securities of the Government of Montserrat,

those securities shall mature within 5 years of the coming into force of these Regulations in order to be eligible to be used to satisfy the requirements of paragraph (4)(a).

(8) Where securities will mature after 5 years of the coming into force of these Regulations, the credit union shall, as soon as practicable after the coming into force of these Regulations, sell those securities and use the proceeds of the disposition to purchase deposits in accordance with the requirements of section (3).

(9) Within 6 months of the coming into force of these Regulations, a credit union shall maintain at least 50 percent of the amount required by paragraph (4)(a) in liquid assets if it does not already do so.

(10) Subject to section 119(3) of the Act, where a credit union does not have in its possession liquid assets, does not maintain a line of credit or does not do both of those things in an amount sufficient to enable the credit union to meet its normal cash flow requirements as required by paragraph (2), the credit union may use the amount in its account required to be maintained by paragraphs (3) and (4) to satisfy the requirements of paragraph (2) but only for the period of one month or such extended period, not to exceed three months, as the Registrar may determine.

Loan approval

22. (1) An application for a loan must be made on a form provided by the society and must state—

- (a) the purpose for which the loan is required;
- (b) the security, if any, offered; and
- (c) any other information the Credit Committee or Loans Officer requires.

(2) When a loan application is approved, the Credit Committee or loans officer approving the loan shall do so in writing and ensure that the application and approval specify with respect to the loan—

- (a) the amount approved;
- (b) the terms of payment;

- (c) the rate of interest;
- (d) any security to be held by the credit union;
- (e) any guarantees to be taken;
- (f) any other conditions specified by the Credit Committee or the person approving the loan in addition to those mentioned in sub-paragraph (a) to (c); and
- (g) the date of approval of the loan.

(3) Loan granted by a credit union shall be evidenced by a signed loan agreement between the credit union and the applicant.

(4) No member of the Credit Committee or of the Board or Supervisory Committee or any other person who has been authorised to approve loans shall be present at the discussion of the approval of or approve a loan to himself or any persons with whom such person is related or has a fiduciary relationship.

Borrowing by directors and other officers

23. (1) No officer, director, Credit Committee member, Supervisory Committee member, or employee of a society, may borrow from the society an amount in excess of his holdings therein in shares, deposits and accumulated earnings, unless approved by the vote of two-thirds of the other members of the Board, Credit Committee and Supervisory Committee sitting together.

(2) A meeting referred to in paragraph (1) is not properly constituted unless a quorum of the members of the Credit Committee is present.

(3) No registered society shall lend any member an amount exceeding—

- (a) 10 percent of the aggregate of the registered society's share capital, retained earnings and reserves;
- (b) the aggregate of the members' ordinary deposits and the society's reserves; or
- (c) such lesser percentage as is specified in the by-laws.

Security for loans

24. The Board of Directors, shall by resolution, establish within the credit policy, requirements with respect to—

- (a) the collateral security and/or guarantors required for approved loans; and
- (b) the manner in which the fair market value of any real property obtained as a security for a loan is to be calculated.

Maximum period for interest on loans

25 For the purposes of section 199(1) of the Act, interest on loans may be paid at intervals not exceeding one month.

Loan terms and conditions

26. The terms and conditions upon which each loan shall be granted and repaid shall include but not be limited to the following—

- (a) every application for a loan shall be accompanied by such information about the financial position and income of the borrower as the Credit Committee or loans officer may require;
- (b) no society shall make a loan to an unincorporated organization. Where such a loan is contemplated, it shall be made to one or more of the members or officers of the organisation provided, however; that the society shall, in any such particular case, require such additional security by way of endorsement of the promissory note as may be deemed desirable;
- (c) no loan shall be made to a member if it would cause the total indebtedness of the member to the credit union to exceed 10 percent of the paid-up capital and deposits of the credit union;
- (d) the total of all loans made to associations, organizations or corporations, shall not, at any time, exceed 25 percent of the total shares and deposits of the credit union;
- (e) no loan shall be made to a company unless such loan is personally guaranteed by shareholders of the company holding a majority of the shares in value and in voting rights provided that such personal guarantee shall not be required where the loan is guaranteed by an organization or agency of Government;
- (f) no loan shall be made by a society to a corporation if a majority of the shares of the corporation are held by the officers and directors of the credit union unless the application has been approved by the Registrar;
- (g) transactions in the loan account of a member shall be shown by the necessary entries in a passbook or statement to be delivered to each member;
- (h) where a mortgage on land or building is taken as security for a loan, the amount loaned shall not exceed 90 percent of the market value of the land or buildings;
- (i) before such a loan is made, the Credit Committee or loan officer shall require that an appraisal of the market value of the property be made by an appraiser whom they believe to be competent and who is instructed and employed by the Credit Union independently of any owner of the property on a form approved by the Registrar;
- (j) the expenses, if any, of any appraiser employed pursuant to sub-paragraph (i) may be borne by the applicant for the loan.

Bad and doubtful loans

27. (1) When the whole or part of a loan made by a credit union remains unpaid for a period of 12 months after the date fixed for repayment in full of monies loaned and no payment on account of principal has been made after the date, the amount of the principal remaining unpaid, shall be charged to and paid from the reserve for doubtful accounts fund less than any money standing to the credit of the borrower on the books of the credit union in a share or deposit account and less the market value of any security held by the credit union in respect of the loan. The society may, with the Registrar's approval, reduce the period of 12 months.

(2) Any monies subsequently recovered with respect to such loans shall be taken into income.

(3) All interest which has been collected thereon during the current year shall be deducted from the outstanding loan interest, if not already done so, before the write off is made.

(4) With the approval of the Board, any collection fees or commissions, or legal charges incurred in the collection of the loan may be added to the loan before the write off is made.

Bad and doubtful Loan allowance

28. (1) A credit union shall establish and maintain on its books and accounts a minimum allowance for loan losses in the amount of three (3) percent of its total loan portfolio.

(2) When a credit union identifies a loan as a doubtful or, uncollectible loan, the credit union shall immediately allow for the doubtful loan by—

- (a) establishing on its books and accounts an allowance for the doubtful loan in an amount equal to the difference between—
 - (i) the book value of the loan, including any interest due and unpaid and interest accrued; and
 - (ii) the realizable book value of the loan as estimated by the credit union;
- (b) reporting on any income statement it prepares, including its annual income statement required pursuant to Regulation 10, as a loss from income an amount as an allowance for doubtful loans equal to the sum of allowances for all doubtful loans established in accordance with paragraph (a); and
- (c) reporting on any balance sheet it prepares, including its annual balance sheet—
 - (i) the value, as an asset, of its doubtful loans in an amount equal to the value of all the doubtful loans as stated on its books and accounts less the allowance for the doubtful loan established in accordance with sub paragraph (a); and
 - (ii) any property or other assets acquired in the financial year pursuant to a foreclosure realisation proceedings on a loan that

was a doubtful loan at an amount not greater than the realisable value of the loan—

(A) as estimated by the credit union pursuant to paragraph (a)(ii); and

(B) as stated on the books and accounts of the credit union before the property or assets were realized pursuant to the foreclosure or other proceedings.

(3) Notwithstanding paragraph (2), a society registered under the former society Act in respect of the financial year prior to the society's continuance may, instead of charging its allowance for doubtful loans to its income in the manner required by paragraph (2)(b), charge the amount of the allowance as calculated pursuant to paragraph (2)(a) to the reserve required by the Act.

(4) A credit union shall report, at the end of each financial year to the Registrar—

(a) the number and amount of doubtful loans for which an allowance has been made in accordance with this Regulation in that financial year;

(b) the amount of allowance for doubtful loans made pursuant to paragraph (2) or (3) in that financial year; and

(c) the value of property and other assets recovered in that financial year on doubtful loans.

(5) The Board of directors of a credit union shall cause a list of all doubtful loans to be available at the registered office of the credit union for any examination required by the Credit Committee, Supervisory Committee or the auditor of the credit union, and the Board shall send a copy of that list to the Registrar.

(6) The list referred to in paragraph (5) includes with respect to each doubtful loan—

(a) the name of the borrower;

(b) the amount of the loan; and

(c) the amount of any allowance made pursuant to this Regulation.

(7) Where a credit union determines that the allowance for doubtful loans required by paragraph (2) will result in a net loss on its income statement for the financial year, it shall immediately notify the Registrar in writing of that fact.

Overdue Loans

29. (1) The loss exposure on overdue loans at the end of the fiscal year, shall be calculated in accordance with Schedule.

<i>Duration of period of Overdue Loans</i>	<i>Percentage of Outstanding Loans Balance that is Deemed Loss Exposure</i>
2 months but less than 6 months	25 percent
6 months but less than 9 months	50 percent
9 months but less than 12 months	75 percent
12 months and over	100 percent.

(2) For the purpose of these Regulations, “**overdue loan**” means a personal, mortgage or other type of loan on which the member is in default for more than 60 days on a payment or payments of principal or interest according to any agreement he has with the credit union.

Investments

30. Money not required for current purposes of the society may be deposited or invested in accordance with section 114(1) of the Act. Section 114(1)(d) of the Act shall include shares and securities in a suitably established Stabilization Fund.

Use of Statutory Reserves

31. (1) Subject to the written approval of the Registrar, a society may use its statutory reserves for the following purposes—

- (a) make good deficiencies created by its operations; and
- (b) to recoup losses on its investments that cannot be covered from income for the year in which the loss was sustained.

(2) When the Registrar receives a request for approval pursuant to paragraph (1) he may—

- (a) exempt the society from compliance with regulation 28(2)(a) for any period of time that he considers appropriate;
- (b) restrict the purposes for which the society may use its statutory reserves; or
- (c) do all or a combination of the things mentioned in sub-paragraphs (a) and (b).

Credit Committee

32. (1) For the purposes of section 57 of the Act and subject to the Act and the by-laws, the Credit Committee of a credit union shall—

- (a) recommend to the Board policies and procedures to be followed by the credit union for approving and granting loans made by the credit union;
- (b) monitor, through reports from the credit union’s auditor and other officers of the credit union, loan procedures used by the credit union;

- (c) review all applications for loans, loan extensions and revisions of the terms of loans that are referred to it by the Board or an officer of the credit union; and
- (d) review reports of officers of the credit union that are submitted to it pursuant to paragraph (2).

(2) The Credit Committee shall keep a record, with respect to each application for a loan or a renewal or extension of a loan considered by it, of—

- (a) the name of the applicant;
- (b) the amount of the loan applied for or the change in the terms or conditions applied for; and
- (c) whether the application was approved, declined or deferred.

(3) Where, in the opinion of the Registrar, the policies of the credit union are not sufficient to protect the deposits of the credit union's members, the Registrar, in writing, shall direct the credit union to take such measures to protect those deposits.

(4) Where—

- (a) the Registrar has sent a written directive pursuant to paragraph (3);
- (b) the credit union fails to take measures that protect the deposits of the credit union members, or the measures taken are, in the opinion of the Registrar, insufficient;:
- (c) the Registrar is of the opinion that the credit union has not sufficiently protected the deposits of its members;

the Registrar may direct the credit union to adopt and follow any policies that the Registrar may impose and the credit union shall adopt and follow those policies and the Board of Directors of the credit union shall ensure that the credit union does adopt and follow those policies.

Interest on loans

33. (1) For the purposes of section 199(2) of the Act, no interest payments are to be included in the credit union's income where the interest payments are with respect to a doubtful loan for which an allowance has been made pursuant to Regulation 28 and/or 29.

(2) Subject to paragraph (3), a credit union may include in its income a maximum of 2 months accrued interest with respect to a loan.

(3) The Registrar, in writing, may allow a credit union to include in its income accrued interest on loans where the interest has accrued for a period longer than 2 months.

Deposits

34. (1) Subject to this regulation the terms and conditions for the receipt of deposits by a registered society shall be set out in the by-laws of the society.

(2) No credit union shall establish and operate, without the approval of the Registrar, deposit account that permit funds in the account to be withdrawn or transferred by the depositor by means of—

- (a) a cheque;
- (b) another bill of exchange; or
- (c) any other negotiable instrument,

that allows the holder of the negotiable instrument to have payment on demand made to him from funds in the deposit.

(3) No credit union shall, without the approval of the Registrar, accept funds on deposit for a term that is stipulated in any agreement between the credit union and the depositor to be longer than 5 years.

(4) Where a credit union accepts deposits for a term that is stipulated in an agreement between the credit union and a depositor, the credit union shall provide a receipt to the depositor showing—

- (a) the terms and conditions pursuant to which the funds are deposited by the depositor and accepted by the credit union;
- (b) the date on which the deposit matures;
- (c) the rate of interest to be paid by the credit union on the funds deposited;
- (d) the date or dates when interest is to be paid by the credit union; and
- (e) any conditions that the Board has stipulated for withdrawal of funds by the depositor prior to the date the deposit matures.

(5) Where a person has deposited funds in an account with the credit union, the person is entitled to receive and the credit union shall provide a statement showing the transaction conducted by the person involving the person's account, the balance of funds in the account and any other information that the credit union considers important.

(6) The Board may, in consultation with the Registrar, determine the form in which the statements required pursuant to paragraph (5) are given.

Maximum liability on deposits and loans

35. (1) In pursuit to Section 117 of the Act, every registered society shall from time to time fix, at a general meeting, the maximum liability the society may incur in loans or deposits from a member or non-member.

(2) The maximum liability fixed by paragraph (1) is subject to the approval of the Registrar.

(3) No society shall exceed the maximum approved by the Registrar pursuant to paragraph (2).

(4) The Registrar may, at any time, review the maximum approved pursuant to paragraph (2) and vary that maximum.

(5) No society shall accept shares or ordinary deposits of more than \$20,000 in any one transaction from a member or non-member without an accepted declaration of the Source of Funds.

Bank account

36. (1) The directors of a registered society may open and maintain an account at any bank.

(2) Cheques drawn on an account mentioned in paragraph (1) shall be signed by the treasurer of the society and a director or by two directors.

(3) Without affecting paragraph (2), the Board may authorize the manager or another senior employee to perform any of the duties of the treasurer, including the signing of cheques.

Branches

37. In this Regulation, “**branch**” means any office of a credit union where the credit union proposes to carry on business, including accepting deposits and operating a chequing service, separate and apart from its Head Office.

Savings

38. Anything lawfully done under or in accordance with the Co-operative Societies Rules 1960 (No. 25 of 1960), now repealed, shall not be invalidated and shall be deemed to have been done in accordance with these Regulations.

FIRST SCHEDULE

FORMS

FORM 1

(Regulation 3)

CO-OPERATIVE SOCIETIES ACT
CO-OPERATIVE SOCIETIES REGULATIONS

APPLICATION FOR REGISTRATION

(Complete in printed or typed form only)

To: The Registrar of Co-operative Societies

1. Application for registration pursuant to the Co-operative Societies Act is hereby made by the persons whose names and signatures appear hereunder.

2. The name of the society is:

3. The registered address of the society is:

4. The area of operation of the society is:

5. The objects of the society as stated in the By-Laws are:

6. The membership fee is:

7. The financial year will terminate on the _____ day of _____ in each year.

8. The liability of the members for the debts of the society is limited/unlimited.

9. The society was established on _____ day of _____ 20__ and at the date of this application there are _____ members in the society.

10. Enclosed herewith are three copies of the proposed By-Laws of the society.

11. The amount of \$_____ is enclosed, being the fee for registration.

12. Particulars relating to the applicants are as follows:

Full Name (Please Print): _____

Date of Birth: _____ Occupation: _____

Address: _____

Signature: _____

13. The following persons have been appointed and have consented to act as provisional directors:

Full Name (Please Print): _____

Date of Birth: _____ Occupation: _____

Address: _____

Signature: _____

Full Name (Please Print): _____

Date of Birth: _____ Occupation: _____

Address: _____

Signature: _____

Full Name (Please Print): _____

Date of Birth: _____ Occupation: _____

Address: _____

Signature: _____

Full Name (Please Print): _____

Date of Birth: _____ Occupation: _____

Address: _____

Signature: _____

Full Name (Please Print): _____

Date of Birth: _____ Occupation: _____

Address: _____

Signature: _____

14. The full name and address of the Secretary are as follows:

Dated the _____ day of _____, 20_____

Secretary

FORM 2

(Regulation 3)

CO-OPERATIVE SOCIETIES ACT
CO-OPERATIVE SOCIETIES REGULATIONS

CERTIFICATE OF REGISTRATION

Certified that the application dated _____ made by _____
to be registered under section 6 of the Co-operative Societies Act as the
_____ has been accepted and that the said society has
been registered accordingly as No. _____ subject to the provisions of the said Act
and the Regulations made thereunder.

Dated this _____ day of _____ 20_____

Registrar of Co-operative Societies

FORM 3

(Regulation 3)

CO-OPERATIVE SOCIETIES ACT
CO-OPERATIVE SOCIETIES REGULATIONS

CERTIFICATE OF CHANGE OF NAME

Certified that _____ pursuant to a directive
given by the Registrar on the _____ day of _____
20 _____ under section 14 of the Co-operative Societies Act has amended its By-Laws
and will hence forth be known as _____ and that the said
amendments have been duly registered.

Dated this _____ day of _____ 20_____

Registrar of Co-operatives Societies

FORM 4

*(Regulation 3)*CO-OPERATIVE SOCIETIES ACT
CO-OPERATIVE SOCIETIES REGULATIONS**CERTIFICATE OF CHANGE OF NAME
(Voluntary Change of Name)**

Certified that _____ by a resolution passed in accordance with sections 10 and 43 of the Co-operative Societies Act and regulation 19 of the Co-operative Societies Regulations has amended its By-Laws and will hence forth be known as _____ and that the said amendments have been duly registered.

Dated this _____ day of _____ 20_____

Registrar of Co-operatives Societies

FORM 5

(Regulation 3)

CO-OPERATIVE SOCIETIES ACT
CO-OPERATIVE SOCIETIES REGULATIONS

NOTICE OF CHANGE OF DIRECTORS

Name of Society:

Registration No:

On the _____ day of _____ 20____, the following
persons ceased to be directors of the above-named society:

Full Name (Please Print): _____

Date of Birth: _____ Occupation: _____

Address: _____

Signature: _____

Full Name (Please Print): _____

Date of Birth: _____ Occupation: _____

Address: _____

Signature: _____

Full Name (Please Print): _____

Date of Birth: _____ Occupation: _____

Address: _____

Signature: _____

On the _____ day of _____ 20_____, the following
persons ceased to be director of the society:

Full Name (Please Print): _____

Date of Birth: _____ Occupation: _____

Address: _____

Signature: _____

Full Name (Please Print): _____

Date of Birth: _____ Occupation: _____

Address: _____

Signature: _____

Full Name (Please Print): _____

Date of Birth: _____ Occupation: _____

Address: _____

Signature: _____

The directors of the society are—

Full Name (Please Print): _____

Date of Birth: _____ Occupation: _____

Address: _____

Signature: _____

Full Name (Please Print): _____

Date of Birth: _____ Occupation: _____

Address: _____

Signature: _____

Full Name (Please Print): _____

Date of Birth: _____ Occupation: _____

Address: _____

Signature: _____

Certified correct this _____ day of _____ 20_____

Signature

Officer

FORM 6

(Regulation 3)

CO-OPERATIVE SOCIETIES ACT

(Sections 102, 103 and 106)

CO-OPERATIVE SOCIETIES REGULATIONS

INSTRUMENT OF CHARGE

I _____
of _____
(hereinafter called "the Borrower"), being owner of the property described in the
Schedule hereto, and being a member of

(hereinafter called "the Society"), in consideration of the sum of _____
_____ dollars lent to me this day by the
Society, the receipt whereof is hereby acknowledged, I do hereby create a charge on
the property described in the Schedule hereto, in favour of the Society as security for
the repayment to the Society of the said sum of
_____ dollars together with interest
thereon at the rate of _____ per cent a year, by _____
installments of _____ dollars as from the
_____ day of _____ 20_____.

Now these presents witness that in consideration of the sum lent to the Borrower as
aforesaid the Borrower hereby created is subject to the following covenants and
conditions, that is to say:

- (1) That he will repay the principal together with interest thereon on the
_____ day of _____ 20_____.
- (2) That he will not, at any time while any moneys remain owing
hereunder, do or allow to be done any act whereby the property may
become prejudicially affected.
- (3) That he is entitled to retain possession and use of the property unless
he makes default—
 - (a) in the payment of any installment or of the principal or interest
thereon; or

- (b) in the observance or performance of any covenant or condition herein expressed in which case the Society may immediately upon such default or at anytime thereafter, through an agent authorised by the Society in that behalf—
 - (i) seize and take possession of the property or any part thereof; and
 - (ii) sell the property so seized and taken possession of either at auction or by private treaty and in either case the property may be sold separately or together or in lots or for a lump sum payment or for payment by installments as the Society may deem expedient.
- (4) That upon a sale of the property or of any part thereof by the Society the following provisions shall have effect, that is to say:
 - (a) the proceeds of sale shall be applied in accordance with sections 102 and 106 of the Co-operative Societies Act;
 - (b) No purchaser of such property shall be bound to inquire to the propriety or regularity of the sale or shall be affected by an impropriety or irregularity of or at such sale;
 - (c) the Society shall not be answerable to the Borrower in damages or otherwise for any loss occasioned to the Borrower by the sale or for any act, neglect or default of the Society or of its authorised agent.

THE SCHEDULE

(Add additional sheet if space allotted is too small)

Executed in quintuplicate at _____
this _____ day of _____ 20_____

Signature of Borrowing Member

Signed in our presence by the said _____

who is personally known to us.

President/Chairman

Secretary

of the _____

NOTE: To be signed in quintuplicate in accordance with section 103(1) of the Co-operative Societies Act.

FORM 7

(Regulation 3)

CO-OPERATIVE SOCIETIES ACT
CO-OPERATIVE SOCIETIES REGULATIONS

DETERMINATION AND ORDER

IN THE MATTER OF A DISPUTE
BETWEEN

_____ (Complaint)

AND

_____ (Respondent) referred to
me pursuant to section 187 of the Co-operative Societies Act.

I, _____ Registrar/Commissioner of Co-
operatives
do order and determine as follows—

(1) _____

(2) _____

- (3) The cost and expenses of hearing and determining the dispute are
\$ _____ be paid by _____
to _____

- (4) I direct that costs and expenses in the amount of \$ _____
be paid by _____
to _____

Given under my hand this _____ day of _____, 20_____

Registrar/Commissioner of Co-operatives

NOTE: This Form is to be adapted in the case of an award by an arbitrator or arbitrators
under section 187.

FORM 8

*(Regulation 3)*CO-OPERATIVE SOCIETIES ACT
CO-OPERATIVE SOCIETIES REGULATIONS**CERTIFICATE OF DISSOLUTION**

Name of Society: _____

Registration No: _____

I hereby certify that the above-named Society, was this day dissolved pursuant to section 158 of the Co-operative Societies Act.

Given under my hand this _____ day of _____ 20____.

Registrar of Co-operative Societies

FORM 9

*(Regulation 3)*CO-OPERATIVE SOCIETIES ACT
CO-OPERATIVE SOCIETIES REGULATIONS**CERTIFICATE OF REVIVAL**

Name of Society: _____

Registration No: _____

I hereby certify that the above-named Society, has been revived pursuant to section 163 of the Co-operative Societies Act.

Given under my hand this _____ day of _____ 20____.

Registrar of Co-operative Societies

FORM 10

(Regulation 3)

CO-OPERATIVE SOCIETIES ACT
CO-OPERATIVE SOCIETIES REGULATIONS

CERTIFICATE OF CONTINUANCE

Name of Society: _____

Registration No: _____

I hereby certify that the above-named Society is this day continued as a registered society pursuant to section 241 of the Co-operative Societies Act.

Given under my hand this _____ day of _____ 20 _____.

Registrar of Co-operative Societies

SECOND SCHEDULE

(Regulation 4)

FEES PAYABLE

	ITEM	FEE \$
1.	For application for registration by a Co-operative Society, other than a Junior Co-operative	25.00
2.	For a Certificate of Registration.....	
	(a) for a Credit Union.....	300.00
	(b) for any other registered society, other than a Junior Co-operative Society	100.00
3.	For reservation of name	25.00
4.	For change of name	25.00
5.	For search.....	5.00
6.	For restoring society's name to register:	
	(a) Credit Union	100.00
	(b) Other Co-operative Society	75.00
7.	For the filing of the annual and special returns:.....	
	(a) on the day that it is due – Credit Union	4,000.00
	- Other Society.....	Free
	(b) for each day after the date that it is due to be filed, a special filing fee	
	Credit Union	10.00
	to a maximum of.....	500.00
	- Other Society.....	5.00
	to a maximum of.....	200.00
8.	For a certificate of continuance.....	25.00
9.	For a certificate of amendment of by-laws.....	25.00
10.	For a certificate of revival	25.00
11.	For a certificate of dissolution.....	25.00
12.	For an examination of any document	10.00
13.	For photocopies of any document:	
	(a) for the first page	2.00
	(b) for each additional page.....	1.00
14.	For certification of any document:.....	
	(a) for the first page.....	2.00
	(b) for each additional page.....	1.00
15.	For a notice that is required to be published in the <i>Gazette</i>	the cost of placing of the notice in the <i>Gazette</i>
16.	For any certificate other than certificate of dissolution or certificate for which a fee is not provided.....	25.00

17.	For filing any document unrelated to anything for which a fee is not provided.....	10.00
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NOTE: The fees (other than those referred to in paragraphs 1 and 2) payable in respect of a Junior Co-operative Society shall be 20% of the fees payable by a registered society, other than a Credit Union.
