

COMMONWEALTH OF DOMINICA**ARRANGEMENT OF SECTIONS**

SECTION

PART I**PRELIMINARY**

1. Short title.
2. Interpretation.
3. Co-operative principles.

PART II**REGISTRATION OF CO-OPERATIVE SOCIETIES**

4. Requirements for registration.
5. Registrar.
6. Register.
7. Registrar's regulatory powers.
8. Power to issue guidelines.
9. Certificate of Registrar.
10. Power to refuse documents.
11. Verification of documents.
12. Application for registration.
13. Content of and amendment to bye-laws.
14. Effect of bye-laws.
15. Conditions for registration.
16. Registration of co-operative societies.
17. Effect of certificate of registration.
18. Capacity as body corporate.

19. Prohibition on carrying on business contrary to bye-laws and law.
20. Registered office.
21. Display of certificate and maintenance of mandatory records.
22. Inspection and access to records.
23. Suspension and cancellation of registration.
24. Seal.
25. Pre-registration contracts.

PART III

MEMBERSHIP AND MEETINGS

26. Application and qualification for, and limitations on, membership.
27. Joint accounts.
28. Membership fees and membership register.
29. Liability of past and present members.
30. Withdrawal of membership.
31. Termination of membership by Board.
32. Termination of membership by members.
33. Suspension of membership.
34. Appeal.
35. Re-admittance.
36. Voting rights of member who is not an individual.
37. Representatives of member who is not an individual.
38. Voting procedure.
39. Place of meetings.
40. Members not to exercise rights until due payment.
41. First general meeting.
42. Annual general meeting.
43. Special general meeting.
44. Meeting called by Registrar.
45. Resolution in lieu of meeting.
46. Notice of meeting.
47. Fixing of record.
48. Quorum.

2010

CO-OPERATIVE SOCIETIES

ACT

49. Delegates.
50. Notice of motion.
51. Power to make bye-laws.
52. Effective date of bye-laws.

PART IV

MANAGEMENT

53. Board of directors.
54. Officers.
55. Provisional directors and elected directors.
56. Powers of Board.
57. Committees generally.
58. Tenure of committees generally.
59. Credit committee.
60. Duties of credit committee.
61. Approval of loans.
62. Credit committee reports.
63. Removal of members of credit committee by members.
64. Removal credit committee by Board.
65. Supervisory and compliance committee.
66. Duties, functions and powers of supervisory and compliance committee.
67. Compliance officer.
68. Misappropriation and other contraventions of the Act.
69. Meetings of the supervisory and compliance committee.
70. Removal of member of supervisory and compliance committee by the committee.
71. Removal of member of supervisory and compliance committee by members.
72. Election of directors.
73. Tenure of directors.
74. Additional powers of the Board.
75. Validity of acts of directors and officers.
76. Indemnification of directors and officers.
77. Duty of care of directors and officers.
78. Ambit of duty.

79. Liability of directors.
80. Misuse of confidential information..
81. Declaration of interests.
82. Disclosure of interest at meetings.
83. Pecuniary interests for the purposes of section 82.
84. Removal or exclusion of disability.
85. Meetings of directors generally.
86. Meetings by telephone, etc.
87. Attendance at meetings.
88. Organisational meeting of directors.
89. Director ceasing to hold office.
90. Removal of directors.
91. Notice of change of directors.
92. Declaration by directors and officers.
93. Bonding.
94. Remuneration of directors.
95. Remuneration of officers and employees.

PART V

FINANCING

96. Shares.
97. Share capital.
98. Issue of shares.
99. Alteration of authorised capital.
100. Limitation on purchase of shares.
101. Transfer of shares generally.
102. Transfer of shares of member of unsound mind.
103. Transfer of share or interest on death of member.
104. Restrictions on transfer of shares.
105. Conditions for the validity of transfer of shares.
106. Power of nomination.

PART VI**BUSINESS OF CO-OPERATIVE SOCIETY**

107. Marketing of produce through the co-operative society.
108. Creation of charge in favour of a co-operative society.
109. Execution of registration of charge.
110. Claims unaffected by charge.
111. Prior claims in favour of co-operative society.
112. Enforcement of charge.
113. Assignment of charge.
114. Bond as security for charge.
115. Lien on shares.
116. Deductions applied to loans and shares.
117. Purchase of shares.
118. Prohibition on purchase of shares.
119. Compulsory sale of shares.

PART VII**PROPERTY AND FUNDS OF CO-OPERATIVE
SOCIETY**

120. Investment of funds.
121. Loan by credit union.
122. Prohibited loan.
123. Receipt of loans and deposits.
124. Receipt of deposits from minors.
125. Allocation of surplus.
126. Development fund.
127. Pension fund.
128. Charitable contributions.
129. Dividends or bonus.

PART VIII**FINANCIAL DISCLOSURE AND AUDIT**

130. Annual financial statement.

131. Approval of financial statement.
132. Providing financial statement.
133. Appointment of auditor.
134. Qualifications of auditor.
135. Disqualifications for auditor.
136. Cessation of office of auditor.
137. Removal of auditor.
138. Filling vacancy of auditor.
139. Notice of change of auditor.
140. Auditor appointed by Registrar.
141. Auditor's right to notice.
142. Required notice.
143. Auditor's right to make representation.
144. Examination by auditor.
145. Auditor's right to inspect.
146. Error or misstatement.
147. Privilege of auditor.
148. Annual, monthly and special returns.

PART IX

EXAMINATIONS AND INVESTIGATIONS

149. Examinations.
150. Investigations.
151. Investigations by Court.
152. Court Order.
153. Powers of investigator.
154. Hearing in camera.
155. Incriminating statements.
156. Absolute privilege respecting statements.

PART X

RECEIVERS AND RECEIVER-MANAGERS

157. Appointment of receiver or receiver-manager.

-
158. Functions of receiver.
 159. Revival of dissolved co-operative society.
 160. Cessation of Board's powers.
 161. Duty of receiver or receiver manager.
 162. Directions by Court.
 163. Directions by Registrar.
 164. Required actions by receiver.

PART XI

DISSOLUTION

165. Dissolutions by members.
166. Notice of dissolution by members.
167. Dissolution by Registrar.
168. Dissolution for failure to account for business.
169. Dissolution by Court.
170. Revival of dissolved co-operative society.
171. Appointment of liquidator.
172. Commencement of liquidation.
173. Cessation of business.
174. General provisions respecting liquidators.
175. Duties of liquidator.
176. Powers of liquidator.
177. Limitation on liability of liquidator.
178. Costs of liquidation.
179. Closure of liquidation.
180. Custody of records.
181. Remuneration of liquidator.
182. Continuation of actions.
183. Unknown claimant or members.
184. Power of Registrar to surcharge.
185. Appeal against surcharge.
186. Application of Part VIII

PART XII**RECONSTRUCTION OF CO-OPERATIVE SOCIETIES**

- 187. Methods of reconstruction.
- 188. Conversion.
- 189. Effect of certificate of registration.
- 190. Amalgamation of co-operative societies.
- 191. Transfer of assets of co-operative societies.
- 192. Claims of objecting creditors.
- 193. Division of co-operative society.
- 194. Effect of registration of new co-operative societies.

PART XIII**DISPUTES**

- 195. Settlement of disputes.
- 196. Co-operative Societies Appeals Tribunal.
- 197. Case stated on question of law.
- 198. Enforcement of award and recovery of loans.

PART XIV**SPECIALISED CO-OPERATIVE SOCIETIES****Credit Unions**

- 199. Functions of Registrar, immunity, sanctions and corrective action.
- 200. Restrictions.
- 201. Liquid assets.
- 202. Loan loss provisions.
- 203. Loan approval.
- 204. Security on loans.
- 205. Loan limits.
- 206. Reporting loans.

-
- 207. Interest on loans.
 - 208. Acceptance of deposits.
 - 209. Credit union trusts.

Consumers Co-operative Societies and Housing Co-operative Societies

- 210. Restrictions on directorship.
- 211. Relationship with members.
- 212. Bye-laws.
- 213. Amendment of bye-laws.
- 214. No interest on share capital.
- 215. Right to possession terminated.
- 216. Abandoned goods.

Industrial Co-operative Societies

- 217. Membership.
- 218. Bye-laws.
- 219. Restriction on registration.
- 220. Bonus based on labour.
- 221. Employees may be directors.

PART XV

APEX BODY

- 222. Establishment and constitution of apex body.
- 223. Functions.
- 224. Officers.
- 225. Consultation with Registrar.

PART XVI

OFFENCES

- 226. Corrupt practices and bribery.
- 227. Falsely obtaining property of co-operative society.
- 228. Failure to comply with Act.
- 229. Dealing in property subject to charge.
- 230. Offences with respect to reports.

- 231. Contravention of Act.
- 232. Use of words “credit union” “co-operative”.
- 233. Court order to comply.
- 234. Limitation.
- 235. Preservation of civil remedy.

PART XVII

ABANDONED PROPERTY HELD BY CREDIT UNIONS

- 236. Abandoned property in credit union.
- 237. Report, publication and disposal of abandoned property.
- 238. Sale and handing of proceeds of sale of abandoned property.
- 239. Claims on abandoned property.
- 240. Penalties for failure to file abandoned property report.

PART XVIII

MISCELLANEOUS

- 241. Interpretation.
- 242. Execution and filing.
- 243. Waiver of notice.
- 244. Certificate of co-operative society.
- 245. Document.
- 246. Alteration.
- 247. Rectification and correction.
- 248. Exemption from stamp duty and other taxes.
- 249. Limitation jurisdiction.
- 250. Proof of entries in books and other documents.
- 251. Immunity of Registrar and staff.
- 252. Regulations.

2011

CO-OPERATIVE SOCIETIES

ACT 2

PART XIX**TRANSITIONAL**

- 253. Interpretation.
- 254. Existing directors and officers.
- 255. Co-operative societies, etc., registered under the former Act.
- 256. Repeal

SCHEDULE

2011

CO-OPERATIVE SOCIETIES

ACT 2

COMMONWEALTH OF DOMINICA

ACT No. 2 OF 2011

I assent

NICHOLAS JOSEPH ORVILLE LIVERPOOL
President

15th April, 2011

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

(Gazetted 5th May, 2011)

BE IT ENACTED by the Parliament of the Commonwealth of Dominica as follows:

PART I**PRELIMINARY**

1. This Act may be cited as the -

CO-OPERATIVE SOCIETIES ACT, 2011.

Short title.

Interpretation.

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

“amendment”, in relation to bye-laws, includes the making of a new bye-law and the alteration, substitution or revocation of a bye-law;

“apex body” means a body established under section 222;

“associate” means—

- (a) immediate relatives of a person including a spouse or children (including step-children) and their spouses, a parent, brother or sister;
- (b) any co-operative society which holds twenty percent or more of a co-operative society’s shares in accordance with section 100;
- (c) any company or co-operative society in which the co-operative society holds twenty per cent or more of shares to which voting rights are attached;
- (d) a member of the Board or committee, an employee of a co-operative society, or a business partner;
- (e) any company or co-operative society over which a co-operative society has control; or
- (f) any company or co-operative society of which any of the persons referred to in paragraph (c) is a director, manager or has control,

notwithstanding that at the relevant time any of the persons in question, not being individuals, have not yet come into existence or have ceased to exist;

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

“auditor” means the external auditor appointed under section 133;

“bonus” means a share of the profits of a co-operative society divided among its members in proportion to the volume of

business done with the co-operative society by them from which the profits of the co-operative society were derived;

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

“capital base” means—

- (a) paid up capital being qualifying and equity shares paid up in cash and invested as risk capital by the members and forming a permanent part of the capital of the co-operative society and which are redeemable only upon transfer to another member; and
- (b) institutional capital, less any amount by which that total has become impaired by operating or other losses;

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

“central co-operative society” means a co-operative society whose membership comprises co-operative societies providing technical and other services;

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

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

“co-operative society” means a self-help, collectively owned and

democratically controlled business enterprise registered under this Act, which consists of a group of people linked by a common bond based on community, organizational or employee affiliation that provides socially desirable and economically beneficial services to its participating members on a joint action and not-for-profit basis;

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

“delinquent loan” means a loan in relation to which a borrower has defaulted on the agreed terms of repayment;

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

(a) under which the sum will be repaid, with or without interest or a premium, and either on demand or at a time or in circumstances agreed by or on behalf of the person making the payment and the person receiving it; and

(b) which are not referable to the provisions of property or services or to the giving of security,

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

(i) it is paid by way of advance or part payment for the sale, hire or other provision of property or services of any kind and is repayable only in the event that the property or services is or are not in fact sold, hired or otherwise provided;

(ii) it is paid by way of security for payment for the provision of property or services of any kind provided or to be provided by the person

by whom or on whose behalf the money is accepted; or

(iii) it is paid by way of security for the delivery up or return of any property, whether in a particular state of repair or otherwise;

“deposit guarantee” means a fund set up to insure the deposits of members of a credit union against loss in the event that the credit union fails;

“director”, means a member of the Board who is elected in accordance with section 72;

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

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

“Financial Services Unit” means the Financial Services Unit established under section 3 of the Financial Services Unit Act 2008;

Act No. 18 of 2008

“guidelines” means the guidelines issued under section 8;

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

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

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

“industrial co-operative society” means a co-operative society whose primary purpose is to operate an enterprise in which

its members are the workers necessary for the operation;

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

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

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

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

“Minister” means -

- (a) in relation to credit unions, the Minister responsible for finance;
- (b) in relation to other co-operative societies the Minister responsible for co-operatives;

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

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

“primary co-operative society” means a co-operative society that

is owned by individual members;

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

“Register” means-

(a) in the case of credit unions, the Register of Credit Unions to be kept under section 6(b);

(b) in the case of co-operative societies other than credit unions, the Registrar of Co-operative Societies to be kept under section 6 (a);

“Regulations” means the Regulations made under section 252;

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

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

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

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

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

“special resolution” means a resolution—

(a) at least ten days’ notice of which has been given specifying the intention to propose the resolution as a special resolution, that is passed by a majority of at least three-fourths of the members or delegates of a co-operative society who voted at a general meeting with respect to that resolution; or

(b) at least ten days' notice of which has been given that is approved by written affirmative vote of at least three-fourths of the members of the co-operative society who—

(i) voted on that resolution within the prescribed time and in the prescribed manner;

(ii) cast a written vote in the manner and within the time specified in the notice; or

(iii) that is consented to in writing by all of the members or delegates of the co-operative society who are entitled to vote at a general meeting on that resolution;

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

“statutory reserves” means the reserves established under section 125(1)(b);

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

“Tribunal” means the Co-operative Societies Appeals Tribunal established under section 196;

(2) In this Act a reference to “the Registrar” shall -

(a) in relation to a credit union, be construed as a reference to the Director of the Financial Services Unit;

(b) in relation to a co-operative society other than a credit union, be construed as a reference to the Registrar of Co-operatives appointed under section 5(1).

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

Co-operative principles

- (a) each member or delegate, other than in a secondary or tertiary co-operative society, has no more than one vote;
- (b) no member or delegate is entitled to vote by proxy;
- (c) its membership is open, voluntary and available without any artificial restriction or any unlawful basis of discrimination, to any person who can use its services and is willing to accept the responsibility of membership;
- (d) its business is carried on primarily as an economic activity for the benefit of its members;
- (e) its primary concerns are its institutional capacity and financial strength, including adequate reserves, retained earnings and internal systems designed to ensure continuous growth and service to members;
- (f) it utilises any surplus or savings arising out of its operations—
 - (i) to strengthen its business;
 - (ii) to provide or improve common services to its members;
 - (iii) for the payment of dividends on permanent ownership capital purchased by its members;
 - (iv) among its members in proportion to the business done by each member with the co-operative society;
 - (v) to educate its members, employees, directors, committee members and the general public in the principles and techniques of economic and democratic cooperation; and

-
- (vi) for non-profit, charitable, benevolent or cultural purposes;
 - (g) it pursues co-operation with other co-operative societies;
 - (h) it provides for continuing education and training; and
 - (i) it contributes to the social and economic development of its community.

(2) A co-operative society shall conform to the co-operative principles set out in subsection (1).

PART II

REGISTRATION OF CO-OPERATIVE SOCIETIES

Requirement for registration.

4. (1) A person shall not carry on the business of a co-operative society unless it is registered under this Act.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding three years.

Registrar.

5. (1) Subject to subsection (2), there shall be a Registrar of Co-operative Societies who shall be a public officer appointed by the Public Service Commission and whose duty is to regulate co-operative societies.

(2) For the purposes of regulating credit unions, the Registrar is the Director of the Financial Services Unit.

(3) The Registrar shall be assisted by professional and administrative staff, and may delegate duties to any other person

or agent under his or her control as is necessary to enable the Registrar to perform his or her regulatory duties and to exercise the powers conferred on the Registrar under this Act.

(4) The Registrar shall—

- (a) register all viable co-operative societies;
- (b) inspect and monitor all co-operative societies;
- (c) supervise and regulate all co-operative societies;
- (d) lead and manage the regulatory process;
- (e) stimulate community awareness; and
- (f) initiate and encourage capacity development activities beneficial to co-operative societies.

6. The Registrar shall-

Register.

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

7. (1) Where—

Registrar's regulatory powers.

- (a) after an examination of a co-operative society or on the receipt of any information, the Registrar is of the opinion that the funds of the co-operative society are not being properly managed or protected; or

(b) the Registrar has reason to believe that a co-operative society is likely to take any action that would affect the financial soundness of the co-operative society, the Registrar may—

(i) by notice in writing, direct the Board within such period as the Registrar may specify, to cease such action or such practice as the Registrar may specify or to take such measures as the Registrar considers necessary to protect the funds of the co-operative society or the interests of the co-operative society's members; and

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

(2) A person appointed under subsection (1)(b)(ii) shall hold office for a period not exceeding twelve months and on such terms as the Registrar shall specify.

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

(4) Notwithstanding sections 23 and 228 of this Act, where it appears to the Registrar that a requirement in this Act, the Regulations or the bye-laws is being contravened, but the circumstances are not such as to justify the taking of action under section 228 or the suspension of registration under section 23, the Registrar may give such directives to the co-operative society or person, as seems appropriate.

(5) A director, committee member, employee or agent of a co-operative society shall at all times give all information required by a person appointed under subsection (1)(b)(ii), for the full and satisfactory performance of his or her duties; and for this purpose section 149 applies as if any reference in that section to the Registrar included a reference to a person appointed under subsection (1)(ii).

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

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

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

- (i) remove from office; or
- (ii) suspend from office for such period as the Registrar considers appropriate,

all or any of the directors of the co-operative society and direct that the co-operative society be managed by such persons as he may appoint for a period not exceeding fifteen months.

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

(10) Where all the directors are removed under this section, persons appointed under this section shall exercise all the powers and perform all the functions of a duly constituted Board

and shall make arrangements prior to the end of their term of management for the election of a new Board in accordance with the bye-laws of the co-operative society.

Power to issue guidelines.

8. (1) The Registrar may, after consultation with co-operative societies, issue guidelines in respect of—

- (a) prudential standards to be observed by co-operative societies to ensure the safety and soundness of the funds of co-operative societies;
- (b) the management and investment of the funds of co-operative societies;
- (c) the classification of loans, management of delinquent loans, the calculation of the reserve for loan loss;
- (d) self insurance arrangements;
- (e) anti-money laundering and combating the financing of terrorism, and
- (f) any other matter necessary to give effect to this Act and Regulations made under this Act.

(2) Where the Registrar intends to make any substantive modification to the guidelines, the Registrar shall consult with co-operative societies.

(3) The Registrar shall—

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

(4) The Registrar shall, at such intervals as the Registrar determines, review any guidelines in force.

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

9. (1) The Registrar may issue a person with a certificate Certificate of Registrar. stating that—

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

(2) An officer authorised by the Registrar may sign a certificate issued under this section.

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

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

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

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

(*e*) is not legible; or

(*f*) is not durable.

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

(*a*) that it be amended or completed and resubmitted;
or

(*b*) that a new document be submitted in its place.

Verification of documents.

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

Application for registration.

12. (1) Subject to subsection (2), an applicant for registration of a co-operative society under this Part shall submit the application to the Registrar in the prescribed form and in such manner as the Registrar may determine.

(2) An application under subsection (1) shall be signed—

(*a*) in the case of a co-operative society of which no member is registered as a co-operative society, by at least one-third of the total membership of the co-operative society;

(*b*) in the case of a co-operative society where not all members of the co-operative society are registered co-operative societies, by at least three-quarters of the total membership of the co-operative society; and

(*c*) in the case of a co-operative society where all the members are registered as co-operative societies, on behalf of at least two such co-operative societies.

(3) An application under subsection (1) must be accompanied by—

-
- (a) three copies of the proposed bye-laws of the co-operative society;
 - (b) the prescribed application fee; and
 - (c) such other information in respect of the co-operative society as the Registrar may require.

13. (1) A co-operative society shall include in its bye-laws provisions—

Content of an amendment to bye-laws.

- (a) respecting its objects, core business and conditions of membership, including—
 - (i) the rights of joint members, if any;
 - (ii) the qualification for membership, the withdrawal of members and the transfer of membership;
 - (iii) the amount of the membership fee and the annual subscription, if any, to be paid by members;
 - (iv) the conditions on which membership ceases or may be terminated, 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 equity shares that may be held by each member;
- (b) respecting voting rights and the rights of making, amending and repealing bye-laws, the right of a member to vote by ballot and the manner, form and effect of votes at meetings;
- (c) respecting the quorum for meetings;
- (d) respecting directors, officers and members of the committees of directors—

- (i) their qualifications, terms of office and removal;
- (ii) the filling of vacancies; and
- (iii) their powers and duties;
- (e) respecting the address of the co-operative society;
- (f) respecting the distribution of the property of the co-operative society on dissolution;
- (g) respecting the borrowing powers of the co-operative society and the procedure for exercising those powers; and
- (h) respecting any matters, in addition to those set out in paragraphs (a) to (g) that the members may consider necessary or desirable.

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

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

(4) Subject to this Act and the bye-laws, the members of a co-operative society may, at an annual general meeting or a special meeting, amend the bye-laws by special resolution if notice of the proposed amendment together with notice of the meeting is given—

- (a) by sending the notice by mail to the members, at the addresses given in the register of members; or
- (b) by publishing the notice in not less than two issues of a newspaper published and circulated in

Dominica, or by posting the notice in a place or through a medium of communication that, as stipulated in the bye-laws and in the opinion of the Board, is prominent and accessible to members.

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

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

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

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

(9) If the Registrar refuses to register an amendment—

- (a) the Registrar shall notify the co-operative society in writing of the refusal, the reasons for the refusal and of the co-operative society's right to appeal under paragraph (b); and
- (b) the co-operative society may, within twenty-one days of the notice of refusal, appeal to the Tribunal.

14. The bye-laws of a co-operative society when registered

Effect of bye-laws

bind the co-operative society and its members to the same extent as if they—

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

Conditions for registration.

15. (1) The Registrar shall not register, or having been registered, shall not continue the registration of a co-operative society registered under this Part-

- (a) unless its membership consists-
 - (i) in the case of a credit union, of not less than one hundred members;
 - (ii) in the case of any other co-operative society, of not less than ten members;
- (b) unless it is economically viable and has provision for equity capital expansion and continuous business growth;
- (c) unless there is conformity among its membership with all the co-operative principles set out in section 3;
- (d) unless the word “Co-operative” or “Credit Union” as the case may be forms part of the name of the co-operative society, and, in the case of a co-operative society registrable under subsection (2), the words “Junior Cooperative” form part of the name of the co-operative society;
- (e) in the case of a co-operative society to be registered with limited liability—
 - (i) unless the word “Limited” is the last word of the name of the co-operative society; and

-
- (ii) in the case of a primary co-operative society, unless each member of the primary co-operative society is a shareholder and has one vote in the democratic proceedings of the co-operative society;
- (f) if the name of the co-operative society is identical to that of another co-operative society or so nearly resembles the name of another co-operative society as to be likely to mislead the members of the public as to its identity;
- (g) unless it has and maintains an address in Dominica to which all notices and communications may be sent;
- (h) unless its bye-laws conform to this Act;
- (i) unless it complies with the guidelines issued;
- (j) unless its policies in respect of shares, loans, deposits and investments are documented and comply with this Act; and
- (k) unless, within sixty days after the issue of the certificate of registration, the co-operative society paints or affixes its registered name in letters that are easily legible in a conspicuous position on the outside of the place where the business of the co-operative society is carried on;
- (l) unless it has commenced business within ninety days of its registration under this Act;
- (m) unless it complies with the law in force in Dominica relating to anti-money laundering, proceeds of crime and anti-terrorism.
- (2) The Registrar may register as a junior co-operative a co-operative society whose membership consists solely of members of a school, club or cultural organisation who are under the age of fifteen years.

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

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

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

(5) Notwithstanding the generality of subsection (4), every registered cooperative society shall, in addition to complying with the provisions of this Act and Regulations made under this Act, also comply with the following-

- Act No. 20 of 2000. (a) any relevant provisions of the Money Laundering (Prevention) Act 2000 and any Regulations made under it;
- Act No. 31 of 2003. (b) any relevant provisions of the Suppression of the Financing of Terrorism Act 2003;
- Act No. 18 of 2008. (c) any relevant provisions of the Financial Services Unit Act 2008;
- (d) any other relevant financial services legislation promoting good governance, financial accountability and made to safeguard against money laundering and financing of terrorist activity.

Registration of co-operative societies.

16. (1) Where the Registrar is satisfied that an application has been made in accordance with this Act, the Registrar shall,

within three months of the receipt of the application, register the co-operative society and its bye-laws and issue the co-operative society with a certificate of registration in the prescribed form.

(2) The Registrar shall register the name under which a co-operative society is registered under this Act in the Gazette and note it in the Register.

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

17. (1) Except for a co-operative society that is to be taken to be registered under section 255, a co-operative society comes into existence on the date shown in its certificate of registration.

Effect of certificate of registration.

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

18. The registration of a co-operative society renders it a body corporate and, subject to this Act and its bye-laws, it has the capacity, rights, powers and privileges of a body corporate in accordance with section 55 of the Interpretation Act.

Capacity as body corporate.

19. A co-operative society shall not—

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

Prohibition on carrying on business contrary to bye-laws.

20. (1) A co-operative society shall at all times establish and maintain a registered office and it shall specify the address of the

Registered office.

office in the bye-laws.

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

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

Display of certificate and maintenance of mandatory records.

21. (1) A co-operative society shall display a copy of its certificate of registration and keep a copy displayed in a conspicuous place in the public part of any place of business of the co-operative society.

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

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

-
- (i) a copy of the monthly financial statements of the co-operative society;
 - (j) a copy of the last audited financial statements of the co-operative society;
 - (k) a copy of the auditor's report;
 - (l) a copy of the shares transfer register and investment reports; and
 - (m) the minutes of all meetings and resolutions of its directors and committees.

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

Inspection and access to records.

(2) Members of a co-operative society, their agents and their legal representatives may, during the normal business hours of the co-operative society, examine any of the records specified in section 21(2)(a) to (k).

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

Suspension and cancellation of registration.

- (a) the co-operative society is in breach of any condition of registration;
- (b) the co-operative society is in breach of any requirement of sections 4 or 15;
- (c) the co-operative society or any officer of the co-operative society has failed or refused to comply with any obligation imposed by, or any requirement of this Act, regulations made under this Act or its bye-laws;
- (d) the Registrar has not received from the co-operative society any return notice or other

document or fee required by this Act or the Regulations to be sent to it; or

- (e) the co-operative society has failed to comply with any directive given by the Registrar under section 7 or guidelines issued under section 8.

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

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

but the Registrar shall not cancel the registration of a co-operative society under paragraph (b) if the co-operative society includes among its members one or more registered co-operative societies.

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

- (a) the co-operative society gives notice to the Registrar that it has ceased to carry on business;
- (b) the co-operative society is dissolved;
- (c) the co-operative society is amalgamated with one or more other co-operative societies or bodies corporate; or

(d) the co-operative society is bankrupt within the meaning of the Bankruptcy Act.

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

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

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

(a) the *Gazette*;

(b) not less than two issues of a newspaper published and circulated in Dominica; and

(c) any other appropriate medium of communication that, in the opinion of the Registrar is prominent and accessible to the public.

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

24. (1) The Board may by resolution-

Seal.

(a) adopt an official seal;

(b) change the official seal adopted under paragraph (a);and

(c) determine which of its directors, officers or agents shall sign instruments to which the official seal is affixed.

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

Pre-registration
contracts.

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

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

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

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

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

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

(5) If expressly so provided in a written contract, a person

who purported to act for or on behalf of the co-operative society before it came into existence is not bound by the contract or entitled to the benefits of the contract.

PART III

MEMBERSHIP AND MEETINGS

26. (1) An application for membership of a co-operative society shall be submitted to the Board in such form as the Board may approve.

Application and qualification for, and limitations on membership.

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

- (a) shall be a citizen or resident of Dominica or a citizen of another CARICOM member state;
- (b) shall not be an undischarged bankrupt;
- (c) shall not be of unsound mind; and
- (d) except in the case of a junior co-operative, shall be fourteen years of age or over.

(3) Where the co-operative society is a credit union, an individual who is over fifteen years of age but who has not yet attained the age of eighteen years may be admitted as a member and subject to subsections (4) and (5) may enjoy all the rights of membership and be subject to all the liabilities of membership.

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

(5) A member of a co-operative society who has not attained the age of eighteen years does not qualify to obtain credit from a co-operative society of which he or she is a member.

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

(7) Subject to subsection (8), a person may be a member of more than one co-operative society if-

- (a) the person has disclosed in his or her application for membership of a co-operative society the name of any other co-operative society of which the person is a member; and
- (b) the co-operative societies both have as a primary object the granting of loans to their members and the person has fully disclosed to the first co-operative society that he or she has applied for membership of the second co-operative society.

(8) A person who is a member of a credit union shall not apply for membership of another credit union unless his or her application is accompanied by the written consent of the credit union of which he or she is already a member to his or her proposed dual membership.

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

Joint accounts.

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

Membership fees and membership register.

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

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

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

29. (1) Subject to this Act, the liability of a current member of a co-operative society is limited to the unpaid amount of his or her subscription for shares.

Liability of past and present members.

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

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

Withdrawal of membership.

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

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

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

Termination of membership by Board.

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

- (a) the Board shall—
 - (i) within a period of one year, purchase from the member at par value all shares in the co-operative society held by the member; and
 - (ii) pay to the member all amounts held to the member's credit, together with any interest accrued on those amounts and the amount outstanding on loans made to the co-operative society by the member with any interest accrued on those amounts;
- (b) the secretary of the co-operative society shall, within ten days from the date on which the order is made, notify the member of the order in writing;
- (c) the member may appeal from the order to the next general meeting of the co-operative society by giving written notice of his or her intention to appeal to the secretary within thirty days from the date the member received notice of the order under paragraph (b); and
- (d) and if the member appeals under paragraph (c), a majority or any greater percentage that may be specified in the bye-laws, of the members present at the general meeting shall confirm or rescind the order.

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

(4) Where any amounts are transferred under subsection (3), the co-operative society shall pay those amounts to the person entitled to them on proof of the person's claim that is satisfactory to the co-operative society.

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

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

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

Termination of membership by members.

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

33. Subject to the bye-laws, the Board may by notice in writing suspend a member for a period not exceeding three months if they are satisfied that the member is guilty of misconduct.

Suspension of membership.

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

Appeal.

(2) A person whose membership is terminated for failure to pay fees, assessments, rent or occupancy charges or to fulfil

other financial obligations to the co-operative society is not eligible to appeal against the termination of his or her membership to the Registrar under subsection (1).

(3) Where a person appeals against the termination of his or her membership under section 31(2)(c) or this section, notwithstanding the resolution terminating his or her membership, the person continues to be a member until the termination of his or her membership is confirmed by the meeting of members under section 31(2)(d) or by the Registrar under this section.

Re-admittance.

35. A person whose membership is terminated under section 31 or 32 may be re-admitted to membership only by a two-thirds majority vote of members present and voting at a general meeting.

Voting rights of a member who is not an individual.

36. A co-operative society that is a member of another co-operative society shall exercise its voting rights in that other co-operative society through one of its members duly appointed in that behalf as a delegate under section 49.

Representatives of member who is not an individual.

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

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

Voting procedure.

38. (1) Subject to the bye-laws, members shall vote—

(a) by a show of hands; or

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

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

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

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

Place of meetings.

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

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

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

Members not to exercise rights until due payment.

41. (1) This section does not apply to a co-operative society if it is taken to be registered under section 255.

First general meeting

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

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

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

(a) the adoption of the bye-laws;

(b) the adoption of forms of share certificates and records of the co-operative 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 general meeting.

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

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

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

Special general meeting.

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

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

(3) The Board shall call the special general meeting mentioned in subsection (2) within twenty days of their receipt of the request and the special meeting shall dispose of the business specified in the request.

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

-
- (a) for the purpose of reporting to the members the results of any audit, examination or other investigation of the co-operative society's affairs ordered or made by the Registrar, or
 - (b) where the co-operative society fails to hold an annual general meeting in accordance with section 42(1) or (2), for the purpose of enabling members to secure any information regarding the affairs of the co-operative society that they are entitled to receive under this Act and to deal with any matters affecting the co-operative society.

44. (1) Where—

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

Meeting called by Registrar.

the Registrar on its own initiative may, if satisfied that a meeting is warranted in the circumstances, order a general meeting to be called, held and conducted in any manner that the Registrar may direct.

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

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

Resolution in lieu of meeting.

45. (1) Except where a written statement is submitted by an auditor under section 143—

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

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

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

Notice of meeting.

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

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

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

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

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

(4) The proceedings or the business transacted at a general meeting are invalidated by reason only of the non-receipt by a member of notice of the meeting.

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

Fixing of record date.

- (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 precede, by more than 30 days, the particular action to be taken.

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

(4) The record date mentioned in subsection (3) shall not precede, by more than fifty days or by less than eleven days, the date on which the meeting is to be held.

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

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

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

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

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

Quorum.

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

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

(3) Subject to the bye-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 sixty minutes after the time fixed for the commencement of a general meeting of members-

- (a) 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 and shall not transact any other business or;
- (b) the Registrar or the Registrar's representative may direct that the meeting proceeds if the Registrar is satisfied that the meeting was convened in accordance with the Act and that the members present were properly notified and constitute at least seventy five per cent of the amount required for a quorum.

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

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

Delegates.

- (a) the delegates shall exercise the powers of membership at any annual or special meeting; and
 - (b) any reference in this Act with respect to the exercise of any power mentioned in paragraph (a) shall be construed as a reference to delegates.
- (2) The members who elect delegates may, at a special meeting called for the purpose or at any annual meeting—
- (a) remove the delegates in the manner provided for in the bye-laws; and

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

Notice of motion.

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

(a) submit to the co-operative society a notice of motion with respect to any matter that he or she proposes to raise at the meeting; and

(b) discuss at the meeting any matter with respect to which he or she would have been entitled to submit a notice of motion.

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

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

(a) a statement by the member of not more than two hundred words in support of the motion; and

(b) the name and address of the member,

the co-operative society shall comply.

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

(a) the notice of motion is not submitted to the co-operative 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 notice of motion is submitted by the member primarily for the purpose of-
- (i) enforcing a personal claim or redressing a personal grievance; or
 - (ii) promoting general economic, political, racial, religious, social or similar causes;
- (c) the co-operative society, at the member's request, included a notice of motion in a notice of a meeting of members held within two years preceding the receipt of the notice of motion submitted under subsection (1), and the member failed to present the notice of motion at the meeting;
- (d) substantially the same notice of motion was submitted to members in the notice of a meeting of members held within two years preceding the receipt of the members request, and the notice of motion was defeated; or
- (e) in the opinion of the Board, the rights conferred by this section are being abused to secure publicity.
- (5) A member who requests that a notice of motion and any statement be sent with the notice of the meeting at which the motion is to be presented shall pay the cost of sending the notice of motion and statement, unless the members present at the meeting provide otherwise by a majority vote.
- (6) A co-operative society or a person acting on behalf of a co-operative society does not incur any liability by reason only of circulating a notice of motion or statement in compliance with this section.
- (7) Where a co-operative society refuses to include a notice of motion in a notice of a meeting, the co-operative society

shall, within thirty days after receiving the proposal—

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

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

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

(10) In this section “notice of motion” means a notice of motion submitted to a co-operative society under subsection (1)(a).

Power to make bye-laws.

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

- (a) is forwarded to each member of the co-operative society with the notice of the meeting at which the making, amendment, repeal, replacement or confirmation is to be considered, by a majority of members present and voting at that meeting; or
- (b) is not forwarded to each member of the co-

operative society with the notice described in paragraph (a), by a three-fourths majority of members present and voting at the meeting.

(2) A member may make a proposal, in the manner provided in section 50, to make, amend, repeal, replace or confirm any bye-law.

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

Effective date of the bye-laws.

(2) Subject to subsection (3), where proposed bye-laws are certified under subsection (1) and receive the members' approval required in section 51(1), the bye-laws shall have immediate force and effect.

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

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

PART IV

MANAGEMENT

53. (1) A co-operative society shall be managed by a Board of directors which shall be constituted in accordance with this Act and the bye-laws of the co-operative society.

Board of directors.

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

(3) The members of a co-operative society may amend the bye-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 fraud or dishonesty and has not received a free pardon for that offence;

(b) has been convicted of an offence under the Money Laundering (Prevention) Act or the Suppression of the Financing of Terrorism Act;

(c) is not in good financial standing with a co-operative society;

(d) has made an arrangement with his or her creditors;

(e) was a director of a failed co-operative society of the same type;

(f) has been convicted on indictment of an offence in connection with the promotion, formation or management of a body corporate;

(g) has been convicted of an offence under this Act;

(h) is of unsound mind and has been so found by a court in Dominica;

(i) is or becomes bankrupt;

(j) is under the age of eighteen years or, in the case of a junior co-operative, under the age of ten years;

(k) has not been a member of the co-operative society or a duly appointed representative of a member co-operative society for the past twelve months;

Act No. 20 of 2000.

Act No. 31 of 2003.

-
- (l) is a member who has not transacted any business with the co-operative society for twelve consecutive months, or who represents a member co-operative society who has not transacted any business with the co-operative society for twelve consecutive months;
 - (m) is an employee of the co-operative society or of the Registrar, or is a partner or employee of the co-operative society's auditor, or of the apex body;
 - (n) holds less than the minimum level of equity shares in accordance with section 13(1)(a)(v);
 - (o) is already part of the management of another co-operative society of the same type;
 - (p) has been suspended, removed or prohibited from serving as an officer or director of a financial institution, including a credit union by a supervisory authority

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

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

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

(6) A person who knowingly holds membership of the Board or of a committee of a co-operative society, or who knowingly seeks employment with, or is employed or continues to be employed by a co-operative society whilst disqualified under

this section commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding one year or to both.

Officers.

54. (1) A co-operative society—

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

(2) Subject to the bye-laws—

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

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

Provisional directors and elected directors.

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

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

(2) At the first general meeting and at every annual general meeting the directors shall be elected in accordance with this Act, the Regulations made under this Act and the bye-laws.

56. Subject to this Act, the Regulations and the bye-laws, the Board shall— Powers of Board.

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

57. (1) The Board may establish committees for the more efficient management of various aspects of the business or affairs of the co-operative society. Committees generally.

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

- (3) No committee may—
- (a) fill vacancy among the directors;
 - (b) declare a bonus or a dividend;
 - (c) approve any financial statement of the co-operative society;
 - (d) submit to the members any question or matter requiring the approval of members; or
 - (e) make decisions where this Act or the bye-laws require a two-thirds majority or a unanimous vote of the Board.

58. (1) Committees appointed under section 57(1) hold office for a period not exceeding one year. Tenure of committees generally.

(2) A committee member appointed under section 57(1) may be removed by resolution of the co-operative society or of the Board.

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

(4) A committee shall—

(a) fix its quorum at not less than a majority of its members;

(b) keep minutes of its proceedings; and

(c) submit to the Board at each meeting of the Board and to the annual general meeting of the co-operative society the minutes of the committee's proceedings since the most recent meeting of the Board or of the co-operative society.

Credit committee.

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

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

(3) Subject to section 73(3), the members of the credit committee shall hold office for such term as the bye-laws provide and until their successors are elected.

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

(5) A person does not qualify to be a member of the credit committee if that person is a member of the Board or of the

supervisory and compliance committee or is an employee of the credit union, central credit union or central cooperative society; or has a delinquent loan with the credit union, central credit union or central co-operative society.

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

(7) The election of members of the credit committee shall proceed in keeping with sub-sections (a) to (d) of section 72 (1).

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

(9) The bye-laws of the a credit union, central credit union or central co-operative society may provide for the election and retirement of members of the credit committee in rotation so that no member of the credit committee shall be elected for a term of more than three years but no person may serve as a member of the credit committee of a co-operative society for more than two consecutive terms or an aggregate of six successive years.

60. The credit committee shall—

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

Duties of credit committee.

Approval of loans.

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

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

(3) A person authorised by the Board to approve loans under subsection (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, the security, if any, obtained for such loans and any risks associated with those loans.

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

Credit committee reports.

62. (1) The credit committee shall—

(a) meet at least once every month;

(b) keep minutes of its meetings;

(c) submit a monthly report to the Board stating—

(i) the number and category of loan applications;

(ii) the number and category of loans granted;

(iii) the security taken and risks for loans granted;
and

(iv) applications denied, delinquent loans, classified loans, loans written off, watch listed accounts, large credit exposures and related party loans;
and

(d) submit an annual report on the matters referred to in paragraph (c), and on the loan portfolio quality and trends, to the annual meeting of the credit union.

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

63. (1) The members of a credit union may, by resolution passed by two-thirds of the votes cast at a general meeting called for the purpose, remove a member of a credit committee before the expiration of his or her term of office, and shall at that meeting elect another member in place of the first mentioned member for the unexpired portion of his or her term.

Removal of members of credit committee by members.

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

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

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

Removal of credit committee by Board.

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

Supervisory and compliance committee.

(2) A person shall not be elected to a supervisory and compliance committee if that person is not present at the meeting

at which the election is held, unless he or she tenders an excuse for his or her absence which is accepted by the majority of the members present.

(3) Subject to section 73(3), the members of a supervisory and compliance committee hold office for such term as the bye-laws provide until such time that their successors are elected whichever is later.

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

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

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

(7) The election of members of the supervisory and compliance committee shall proceed in keeping with subsections (a) to (d) of section 72 (1).

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

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

(a) be elected for a term exceeding three years; or

(b) serve more than six successive years but shall become eligible for re-election after the expiration of one year.

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

Duties, functions, and powers of supervisory and compliance committee.

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

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

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

Compliance officer.

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

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

Misappropriation and other contraventions of the Act.

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

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

(3) In the event of a misappropriation or misdirection or contravention, or a suspected misappropriation or misdirection or contravention, pending the outcome of the investigation or review

referred to in subsection (2), the supervisory and compliance committee may suspend any member of the Board or member of the credit committee after having given the member an opportunity to be heard by the supervisory and compliance committee.

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

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

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

- (a) for the purpose of reviewing the suspension; and
- (b) to consider whether to remove the officer in the light of the action or decision taken by the officer.

(6) Without prejudice to the requirements of section 46, not less than ten days before the date of a meeting of the

supervisory and compliance committee called as mentioned in subsection (4) or the date of a special general meeting of the co-operative society convened as mentioned in subsection (4) or (5), the supervisory and compliance committee shall give written notice of the meeting to the Registrar and to the officer concerned.

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

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

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

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

Meetings of the supervisory and compliance committee.

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

Removal of member of supervisory and compliance committee by the committee.

70. When a member of the supervisory and compliance committee fails to attend three consecutive meetings of the supervisory and compliance committee without, in the opinion of the supervisory and compliance committee, reasonable cause, or fails to perform any of the duties allotted to the supervisory committee and compliance as a member of the supervisory and compliance committee, the member's position on the supervisory and compliance committee may be declared vacant by the remaining members of the supervisory and compliance committee

who may appoint a qualified person to fill the vacancy until the next annual general meeting of the co-operative society.

71. (1) The members of a co-operative society may, by resolution passed by two-thirds of the votes cast at a general meeting duly called for that purpose, remove a member of a supervisory and compliance committee before the expiration of his or her term of office, and shall by vote cast at the meeting elect another member in his or her stead for the unexpired portion of his or her term.

Removal of members of supervisory and compliance committee by members.

(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 and compliance committee who is named in the notice.

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

72. (1) Subject to section 73 and to the Regulations—

Election of directors.

- (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 may be by secret ballot;
- (d) every member has the right to vote for the number of directors to be elected and any voting sheet that contains the names of more than the number to be elected is void;

(e) where there are vacancies on the Board but the remaining directors constitute a quorum, they shall call a special meeting of the Board for the purpose of appointing members to fill any such vacancy until the next annual general meeting; and

(f) where there is a vacancy on the Board and there is not a quorum of directors, the remaining directors shall call a special meeting of the co-operative society for the purpose of electing members to fill any vacancy.

(2) Where an election of directors required by this Act, the Regulations or the bye-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 sections 217(1) and 221, not more than one-third of the directors may be employees of a co-operative society.

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

(5) Subject to section 53(2), the Board shall consist of such numbers as may be fixed by the bye-laws.

Tenure of directors and committee members.

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

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

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

- (a) at least one-third shall be elected to serve for one year;
- (b) at least one-third shall be elected to serve for two years; and
- (c) the remainder shall be elected to serve for three years,

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

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

Additional powers of the Board.

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

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

(3) The Board shall send in the manner provided in section 46, 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) shall be accompanied by a copy or summary of the agreement of sale, lease, or exchange mentioned in subsection (2).

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

(a) authorise the sale, lease or exchange mentioned in subsection (2); and

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

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

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

Validity of acts of directors and officers.

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

Indemnification of directors and officers.

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

(a) a director or officer of the co-operative society;

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

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

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

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

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

- (a) the co-operative society has the approval of the court; and

(b) the person fulfils the conditions described in subsection (2).

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

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

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

Duty of care of directors and officers

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

(a) act honestly and in good faith with a view to the best interests of the co-operative society; and

(b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances,

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

Ambit of duty.

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

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

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

Liability of directors.

- (a) the purchase of shares of another co-operative society contrary to section 100;
- (b) the payment of a dividend on shares contrary to section 129;
- (c) the payment of a bonus contrary to section 129;
- (d) a loan or guarantee or the giving of financial assistance contrary to section 121;
- (e) a payment of an indemnity described in section 76 to a director or a former director, without the approval of the court required by section 76(3); or
- (f) an act not consistent with the purpose of the co-operative society as set out in its bye-laws and with respect to which the co-operative society has paid compensation to a person,

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

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

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

of money would make the co-operative society insolvent.

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

(4) Subject to subsection (5), for the purpose of this section, a director who is present at a meeting of directors or of a committee is deemed to have cast a vote in favour of a resolution or of granting the approval mentioned in subsection (1), unless—

(a) the director's dissent is entered in the minutes of the meeting; or

(b) the director's written dissent is—

(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 co-operative society immediately after the adjournment of the meeting.

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

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

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

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

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

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

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

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

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

the co-operative society who is competent to give advice in respect to the matter.

(11) A director who is found liable under subsection (1) is entitled to apply to a court for an order compelling a member or other recipient to pay or deliver to the director any money or property that was paid or distributed to the member, or other recipient contrary to section 100, 121 or 129.

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

- (a) order a member or other recipient to pay or deliver to a director any money or property that was paid or distributed to the member or other recipient contrary to section 100, 121 or 129; or
- (b) make an order, other than that described in paragraph (a), that it considers appropriate.

Misuse of confidential information.

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

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

by him or her or his or her associate as a result of the transaction.

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

- (a) as a director, committee member, officer, employee or auditor of the co-operative society;
- (b) as a liquidator, receiver or manager, of the co-operative society; or
- (c) as a Registrar, an officer or staff referred to in section 5

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

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

- (a) where the information is given in the course of that person's duty;
- (b) where the information is a general credit rating of a person that is supplied by a director or employee of the co-operative society following a bona fide business request;
- (c) where the information relates to a member of a co-operative society and is given with the written authorisation of that member or his or her legal representative;
- (d) where the information relates to a co-operative society and is given with the written authorisation of the co-operative society or its legal representative; or

(e) where the information is required to be disclosed by law or by an order of the Court.

(4) A person who contravenes subsection (2) commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding one year or to both.

Declaration of interests.

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

(a) is a party to a material contract or proposed material contract with the co-operative society;
or

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

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

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

(a) immediately after the director, committee member or employee becomes aware that the contract or proposed contract is to be considered or has been considered at a meeting of the Board;

(b) if the director, committee member or employee becomes interested after a contract is made, immediately after he or she becomes so interested;
or

(c) where the director, committee member or employee has an interest in a contract before assuming office, immediately after he or she

becomes a director, committee member or employee.

(3) For the purposes of this section, a general notice to the directors by a director, committee member or employee of a co-operative society declaring that he or she is to be regarded as interested in any contract made with that person is a sufficient declaration of interest in relation to any contract made with that person.

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

Disclosure of interests at meetings.

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

- (a) on summary conviction to a fine not exceeding twenty thousand dollars or to imprisonment for a term not exceeding 2 years, or to both; or
- (b) on conviction on indictment to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding 2 years, or to both,

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

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

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

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

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

Pecuniary interests for the purposes of section 82.

83. (1) For the purposes of section 82, a director, committee member or employee shall be treated, subject to the following provisions of this section and to section 84, as having indirectly a pecuniary interest in a contract, proposed contract or other matter if—

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

proposed to be made, or who has a direct pecuniary interest in the licence or other matter under consideration; or

(c) he or she or his or her partner is a professional adviser to a person who has a direct or indirect pecuniary interest in a contract, proposed contract or other matter.

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

(3) In the case of married persons the interest of one spouse is deemed for the purpose of section 82 to be also the interest of the other.

84. (1) Section 82 does not apply to an interest in a contract, proposed contract or other matter which a director, committee member or employee of a co-operative society has as a member of the public or to an interest in any matter relating to the terms on which the right to participate in any service is offered to the public.

Removal of exclusion of disability.

(2) Where a director committee member or employee of a co-operative society has an indirect pecuniary interest in a contract, proposed contract or other matter by reason only of a beneficial interest in securities of a company or other body, and the nominal value of those securities does not exceed five thousand dollars or one-thousandth of the total nominal value of the issued share capital of the company or other body, whichever is the less, and if the share capital is of more than one class, the total nominal value of shares of any one class in which he or she has a beneficial interest does not exceed one-thousandth of the total issued share capital of that class, section 82 does not prohibit him or her from taking part in the consideration or discussion of the contract, proposed contract or other matter or from voting on any question with respect to it, without prejudice, however, to his or her duty to disclose his or her interest.

Meetings of directors
generally.

85. (1) Subject to the bye-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 two directors, shall call a meeting within fourteen days of the receipt of the request.

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

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

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

(6) Where the time and place of an adjourned meeting is announced at the original meeting, notice of an adjourned meeting of directors is not required to be given to the directors present at that meeting, but shall be given to any directors not so present.

Meetings by telephone.

86. (1) Subject to the bye-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 bye-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.

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

Attendance at meetings.

(2) Where a director—

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

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

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

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

Organisational meeting
of directors.

88. (1) The directors shall hold a meeting within ten days after the issue of the co-operative society's certificate of registration.

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

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

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

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

Director ceasing to hold
office.

89. (1) A director ceases to hold office when he or she—

- (a) resigns;
- (b) dies;
- (c) fails to attend three consecutive meetings without an accepted excuse;

-
- (d) fails to perform any duties allotted to him or her as a member of the Board;
 - (e) is removed in accordance with section 90; or
 - (f) is no longer qualified in accordance with this Act.

(2) A resignation of a director becomes effective—

- (a) with immediate effect where that person indicates to the members present at an annual general meeting that he or she is resigning;
- (b) at the time specified in a written resignation; or
- (c) where no time is specified in a written resignation, at the time the resignation is received by the co-operative society.

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

Removal of Directors.

(2) A vacancy created by the removal of a director may be filled at the meeting of the members at which the director is removed or where not so filled, may be filled under section 72(1)(e).

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

Notice of change of directors.

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

Declaration by directors and officers.

- (a) faithful performance of duties;

(b) secrecy of transactions with members; and

(c) faithful and loyal support of the co-operative society.

Bonding.

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

Remuneration of directors.

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

(2) Nothing in subsection (1) shall be regarded as prohibiting the reimbursement of expenses—

(a) which are necessarily incurred by a director or committee member in the course of performing any service on behalf, or for the benefit, of the co-operative society; and

(b) which are approved by a majority of the directors voting at a meeting of the Board.

(3) Nothing in subsection (1) shall be regarded as prohibiting any director or committee member of a co-operative society, acting not as a director or committee member but in his or her professional capacity, from tendering for the supply of, and if successful being paid for supplying, goods or services to the co-operative society.

(4) The directors may be granted such honorarium as—

(a) may from time to time be approved prior to its payment, or the payment of any part thereof, by the members in general meeting; and

(b) does not exceed an amount recommended by the Board and approved by a general meeting of the members.

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

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

Remuneration of officers and employees

PART V

FINANCING

96. (1) A co-operative society may sell equity shares to its members only, but these shares shall be non-withdrawable but redeemable in accordance with the Regulations and the shares shall have a par value fixed by the bye-laws.

Shares.

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

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

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

Share capital.

(a) an amount of money divided into a specified number of shares set out in the bye-laws; or

(b) an amount comprising an unlimited number of shares with a specified par value.

(2) A co-operative society shall issue qualifying shares as well as equity shares, provided that the value of the qualifying shares and equity shares owned by the members shall not fall below the equivalent of ten per cent of the asset worth of the co-operative society as a result of any redemption of shares.

(3) The Registrar shall grant such period of time, not exceeding three years from the commencement of this Act, as the Registrar considers reasonable to enable an existing society to make good any deficiency in the adequacy of its capital base.

Issue of shares.

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

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

(3) A member shall not be liable to the co-operative society or its creditors beyond the sum remaining unpaid on the member's subscription for shares.

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

(a) in money; or

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

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

payment for property reasonably expected to benefit the co-operative society.

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

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

Alteration of authorised capital.

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

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

- (a) the resolution will not contravene this Act;

- (b) the holders of all shares of the co-operative society affected by the proposed resolution have approved the special resolution passed by the members at a general meeting called for the purpose; and
- (c) in the case of a special resolution providing for a reduction in the share capital of the co-operative society—
 - (i) all creditors who are liable to be affected have been notified of the resolution and have signified their approval; or
 - (ii) appropriate steps have been taken by the co-operative society adequately to safeguard the interests of its creditors.

Limitation on purchase of shares.

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

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

Transfer of shares generally.

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

- (2) If the bye-laws require a member to hold more than

one share, a transferee shall acquire by the transfer, or by the transfer and allotment, the number so required to be held before the transfer can be registered.

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

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

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

(a) a right shall not be acquired against the co-operative society by the transferee; and

(b) a claim of the co-operative society upon the transferor shall not be affected by the transfer.

102. (1) Where a member or person claiming through a co-operative society has become of unsound mind or incapable of managing his or her affairs and no committee, receiver or guardian has been appointed, the co-operative society may subject to this section and section 101 transfer the share or interest of the member to any person nominated by the member for the purposes of section 106 or may pay to the person nominated a sum representing the value of the share or interest of the member ascertained in accordance with subsection (5).

Transfer of shares of
member of unsound mind.

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

(3) If the value of the share or interest does not exceed one hundred dollars 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 the member or the management of the member's affairs.

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

(5) For the purposes of this section and section 100, 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 bye-laws of the co-operative society otherwise provide.

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

Transfer of share or interest on death of member.

103. (1) On the death of a member of a co-operative society, where a person has been nominated by the member in accordance with section 106 and the nominee is admitted to membership of the co-operative society, the co-operative 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.

(2) On the death of a member of a co-operative society, where a person has been nominated by the member in accordance with section 106 has not been admitted to membership of the co-operative society or where the deceased member made no such nomination, the co-operative society shall within one year of the death of the member pay either to the nominee or to the legal personal representative of the deceased member, such sum as represents the value or part thereof of the deceased member's share or interest in the co-operative 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.

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

(5) The shares or interest transferred under subsection (4) shall remain in the development fund for a period not less than seven years during which period it shall remain available to bona fide claimants, after which it shall constitute a part of the reserves of the co-operative society.

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

Restrictions on transfer of shares.

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

Conditions for the validity of transfer of shares.

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

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

Power of nomination.

106. (1) A member of a co-operative society may nominate a person or persons to or among whom there shall be transferred at his or her death such property in the co-operative society of which he or she is the owner at the time of his or her death, or as may subsequently 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 nomination under subsection (1) shall be made by instrument in writing signed by the member in the presence of two attesting witnesses and either delivered at or sent to the registered office of the co-operative society during the lifetime of such member or made in any book kept at the co-operative society's registered office.

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

(4) A nomination made under subsection (1) may be revoked or varied by a subsequent nomination, or by a similar document in the nature of a revocation or variation, signed, attested and delivered, and sent or made in accordance with subsection (1), but any such nomination may not be revoked or varied by the will of the nominator or by a codicil thereto.

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

PART VI
BUSINESS OF CO-OPERATIVE SOCIETY

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

Marketing of produce through the co-operative society.

(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 co-operative society; and

(b) that any member who is proved or adjudged to have contravened the bye-laws or to have acted in breach of the contract shall pay to the co-operative society liquidated damages in a sum ascertained or assessed in such a manner as may be prescribed in the bye-laws.

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

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

Creation of charge in favour of a co-operative society.

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

(a) the right upon the happening of any event specified in the charge as being an event authorising the

chargee to seize the property subject to the charge, to take possession of any such property so subject;

(b) after an interval of five clear days, or such less time as may be specified in the charge, from the date of taking possession of any property subject to the charge, to sell such property either by auction or, if the charge so provides, by private treaty, either for a lump sum or for payment by instalments; and

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

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

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

Chap. 78:22

Execution and
registration of charge.

109. (1) A charge created under section 108 shall be duly executed if signed by the person in quintuplicate in the presence of—

(a) the president of the co-operative society; and

(b) the secretary of the co-operative society.

(2) The secretary shall—

(a) file one copy of the charge at the registered office of the co-operative society and deliver one copy each to the Registrar of the High Court and the Registrar; and

(b) deliver one copy to the member.

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

(4) The registration of a charge under subsection (3) is deemed to affect with notice any person dealing with the property comprised in the charge.

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

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

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

(c) deliver one copy to the member.

(6) A person may, on payment of the fee prescribed in regulations made under this Act, inspect the Co-operative Societies Charge Book and take extracts from it.

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

Claims unaffected by charge.

110. Nothing in section 108 affects—

- (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 co-operative society.

111. (1) Subject to any claim in respect of debt due to the Crown or to a landlord in respect of rent or any money recoverable as rent, any debt or outstanding demand owing to a co-operative society by a member or past member shall, notwithstanding anything contained in section 109, 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 co-operative society by such member or past member; and
- (b) upon any livestock, fodder for livestock, 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 to the member by the co-operative society.

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

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

Enforcement of charge.

(2) A magistrate has jurisdiction under subsection (1) even though the amount due exceeds the limits of jurisdiction of a magistrate specified in the Magistrates Code of Procedure Act.

Chap. 4:20

113. (1) A co-operative society may borrow from any other co-operative society or from any bank approved by the Registrar on the security of a charge executed and registered in accordance with section 109 and may for this purpose assign the charge to the other co-operative society or bank.

Assignment of charge.

(2) An assignment of a charge under this section shall be registered in the same manner as a charge and section 109 shall apply, subject to any necessary modifications, to an assignment so registered.

(3) An assignment of a charge when registered operates as a first charge in favour of the assignee subject to section 110.

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

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

Bond as security for charge.

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

(3) Section 113 relating to the assignment of charges applies subject to any necessary modifications to the assignment of bonds.

Lien on shares.

115. (1) A co-operative society shall have a lien on a share or any amount outstanding to the credit of a member or his or her legal representative for a debt due by that member to the co-operative society.

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

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

Deductions applied to loans and shares.

116. The bye-laws of a co-operative society may provide that the co-operative society—

(a) may 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) may apply the amount prescribed in paragraph (a) towards a loan or the purchase of shares on such terms as the Board may determine.

117. (1) Subject to section 115, a co-operative society may purchase or otherwise acquire any of its shares that— Purchase of shares.

(a) are available for compulsory purchase under section 119; or

(b) are offered for sale.

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

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

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

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

118. (1) Notwithstanding section 117, a co-operative society shall not purchase or otherwise acquire its shares where— Prohibition on purchase of shares.

(a) it is insolvent;

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

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

(2) Where a purchase or other acquisition of shares under section 117 or 119, would in the opinion of the Board, impair the financial stability of the co-operative society or would be contrary to the interest of the remaining members the Board may suspend the purchasing or acquisition of shares.

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

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

Compulsory sale of shares.

119. Where—

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

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

PART VII

PROPERTY AND FUNDS OF CO-OPERATIVE SOCIETY

Investment of funds.

120. (1) The Board shall establish written policies for investing for income the accumulated funds of the co-operative society not used in the primary business of the co-operative society, and shall ensure they are in compliance with legislative requirements.

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

- (a) any central credit union, central finance facility, deposit guarantee or stabilisation fund for credit unions or co-operative societies, or other co-operative society registered under this Act;
- (b) shares or deposits in, loans to, or on the security of, any co-operative society with limited liability;
- (c) any financial institution licensed under the Banking Act, 2005 or any company registered under the Insurance Act; Act No. 16 of 2005.
Chap. 78:49
- (d) any stock, debentures, funds or securities issued by the government;
- (e) securities, the payment of interest on which is guaranteed by the government;
- (f) securities issued in a CARICOM Member State by a company incorporated in that member state and listed by the stock exchange of a CARICOM Member State if the company has paid dividends on its shares for the preceding five consecutive years;
- (g) securities issued in a CARICOM Member State by a credit union that is registered in a CARICOM Member State in accordance with the laws of that CARICOM Member State;
- (h) real property but subject to the provision of section 199(5) where the co-operative society is a credit union; and
- (i) any other manner permitted by the Registrar.

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

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

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

Loan by credit union.

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

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

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

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

(5) A credit union shall not make a loan to a director, committee member or employee referred to in subsection (3), if when combined with all other outstanding loans to persons

referred to in subsection (3), the persons' business interest or the persons' immediate family it exceeds twenty per cent of the credit union's share capital plus institutional capital.

(6) A credit union shall not make a loan to a member or a group of related members if the loan would cause the aggregate amount of loans to the member or the group of related members to exceed ten per cent of the share capital plus institutional capital.

(7) In accordance with section 82, a director, committee member or employee of a credit union shall declare his or her interest in a loan at a meeting in which the loan is to be discussed and shall not be present or be present at or participate in a meeting when his or her application for a loan is being considered.

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

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

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

Prohibited loan.

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

Receipt of loans and deposits.

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

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

(3) Deposits shall be accepted in the manner and form and subject to any conditions that may be prescribed.

Receipt of deposits from minors.

124. (1) A co-operative 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 on the deposit, be paid to the parent of the minor or, where the minor is under the care of a guardian, to a guardian for the use of the minor.

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

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

(5) The Registrar of the High Court may retain out of any money so paid to him or her a sum not exceeding one per cent

thereof for fees of office and shall pay or apply the remainder to or for the care, maintenance, education or benefit or the person under disability.

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

Allocation of surplus.

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

(2) The statutory reserves required by subsection (1)(b) is part of the institutional capital of the co-operative society and may, subject to the approval of the Registrar, be used in the business of the co-operative society, including unforeseen losses, unexpected shortfalls in liquid cash, capital retention, improved earnings, financing of non-earning assets, repair and maintenance and the avoidance of external borrowing.

(3) A co-operative society shall ensure that its statutory reserves and other institutional capital reserves are, at no stage, less than ten per cent of its total assets.

(4) If at the end of any financial year the amount standing to statutory reserves before any transfer under this section is less than ten per cent of total assets, the co-operative society shall transfer to statutory reserves for that year not less than twenty per cent of its surplus or such lesser sum as may be required to increase the statutory reserves to ten per cent of total assets.

(5) Where at the end of any financial year the amount standing to statutory reserves before any transfer under this section is more than ten per cent of total assets, the co-operative society shall not make any transfer to statutory reserves.

(6) The Registrar shall grant a period of time that the Registrar considers reasonable to enable management to make good any deficiency in the adequacy of its capital base.

Development fund.

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

(2) A co-operative society that realises a surplus from its operations as ascertained by the annual audit shall make an annual contribution to its development fund approved by its members at its annual general meeting not exceeding ten per cent of that surplus, and the co-operative society shall use the fund for strengthening the capacity and growth of co-operative societies and for human resource development.

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

(4) Where an apex body 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 Registrar may determine, with the approval of the active co-operative societies.

Pension fund.

127. (1) A co-operative 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 co-operative society but may be invested in such manner as may be prescribed by the bye-laws.

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

Charitable contributions.

129. (1) Subject to this section and sections 125 and 126, any surplus may be distributed by way of dividend or bonus amongst its members in proportion to their business with the co-operative society at such rate as may be prescribed by its bye-laws.

Dividend or bonus.

(2) A co-operative society shall not—

- (a) declare or pay a dividend or bonus or distribute any part of its accumulated funds before the financial statements have been certified by a qualified auditor;
- (b) pay a dividend or make any payment on account out of profits until its institutional capital has reached a proportion of not less than five per cent of the total assets of the co-operative society; or
- (c) declare or pay a dividend from unrealised gains including stock grants or share grants or gains arising from asset revaluation.

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

PART VIII

FINANCIAL DISCLOSURE AND AUDIT

130. (1) The directors of a co-operative society shall place

Annual financial statement.

before the members at every annual general meeting of members of the co-operative society—

- (a) comparative audited financial statements relating separately to—
 - (i) the period that began on the date the co-operative society came into existence and ended not more than twelve months after that date, or, if the co-operative society has completed a financial year, the period that began immediately after the end of the last period for which financial statements were prepared and ended not more than 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 co-operative society and the results of its operations required by the bye-laws.

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

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

Approval of financial statements.

131. (1) The directors of a co-operative society shall approve the financial statements referred to in section 130, and the

approval shall be acknowledged by the signature of two or more directors.

(2) A co-operative society shall not issue, publish or circulate copies of the financial statements referred to in section 130 unless the financial statements are—

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

(3) A co-operative society shall not less than ten days prior to its annual general meeting, submit to the Registrar a copy of its audited annual financial statements, external auditor's report and management letter referred to in section 130.

132. (1) A co-operative society shall, not less than ten days before each annual general meeting of members, make available to each member a copy of its audited financial statements and report of the auditor referred to in section 130.

Providing financial statements.

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

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

Appointment of auditor.

- (a) at the first general meeting, appoint an external auditor to hold office until the close of the first annual general meeting; and
- (b) at each annual meeting, appoint an external 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 shall continue in office until his or her successor is appointed at a subsequent meeting.

(3) The Board shall specify the remuneration of an auditor.

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

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

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

Qualifications of Auditor.

134. Subject to section 135, a co-operative society's auditor must be a member of a recognised professional body satisfactory to the Registrar and qualified to conduct audits.

Disqualifications for auditor.

135. (1) An individual is not qualified to be an auditor of a co-operative society if he or she is not independent of the co-operative society and its member co-operative societies, and of the directors and officers of the co-operative society and its member co-operative societies.

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

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

- (a) is a member, a director, an officer or an employee of the co-operative society or any of its member co-operative societies or a business partner or employee of any director, officer, member or employee of any such co-operative society, or its member co-operative societies;
- (b) is a member of a credit committee or any other committee of the co-operative society or any of its member co-operative societies;
- (c) transacts a substantial amount of business with the co-operative society or any of its member co-operative societies;
- (d) employed an individual serving as chief executive officer, chief accounting officer, chief financial officer, chief accounting officer or an equivalent position for the co-operative society during the one year period preceding the date of the initiation of the audit and that individual participated in any capacity in the audit of the co-operative society during that preceding year; or
- (e) provides to the co-operative society contemporaneously with the audit, any non-audit service including—
 - (i) bookkeeping or other services relating to the accounting records or financial statements of the co-operative society;
 - (ii) financial information systems design and implementation;
 - (iii) appraisal or valuation services, fairness opinions, or contributions-in-kind reports;
 - (iv) actuarial services;

- (v) internal audit outsourcing services;
- (vi) management functions or human resources;
- (vii) broker, dealer or investment adviser services;
- (viii) legal services and expert services unrelated to the audit; or
- (ix) any other service that the Registrar determines is not permissible.

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

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

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

Cessation of office of auditor.

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

- (a) resigns by giving written notice to the co-operative society;
- (b) is removed under section 137; or
- (c) has held the office for three consecutive years.

(2) The resignation of an auditor is effective at the time his or her written resignation is sent to the co-operative society, or at the time specified in the resignation, whichever is the later date.

(3) The cooperative society shall notify the Registrar in writing of the resignation of an auditor under subsection (1) within seven days of receipt of the resignation.

137. The members of a co-operative society may, by ordinary resolution at a special meeting remove an auditor other than an auditor appointed by the Registrar under section 140.

Removal of auditor.

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

Filling vacancy of auditor.

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

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

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

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

139. Within thirty days after a change is made of its auditor, a co-operative society shall notify the Registrar in writing of the change and the Registrar shall file the notice.

Notice of change of auditor

140. If a co-operative society does not have an auditor, the Registrar may, upon the Registrar's own motion and shall, upon the application of a member, appoint and specify the remuneration of an auditor, and the auditor shall, subject to section 133, hold office until an auditor is appointed in accordance with section 135.

Auditor appointed by Registrar.

Auditor's right to notice.

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

Required notice.

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

Auditor's right to make representation.

143. (1) An auditor who—

(a) resigns;

(b) receives a notice or otherwise learns of a meeting of members called for the purpose of removing the auditor from office; or

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

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

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

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

Examination by auditor.

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

(3) The auditor shall, in the case of a credit union, submit a report on the financial and accounting systems and risk management controls of credit union.

(4) The Registrar may request copies of reports submitted to the co-operative society by both its internal and external auditors.

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

Auditor's right to inspect.

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

as are in the opinion of the auditor, necessary to enable the auditor to make the examination and report required under section 144 and that the directors, officers, employees or agents are reasonably able to provide.

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

(a) obtain from the present or former directors, officers, employees or agents of any member of the co-operative society, the information and explanations that the directors, officers, employees and agents are reasonably able to provide and that are, in the opinion of the auditor, necessary to enable the auditor to make the examination and report required under section 144; and

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

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

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

(a) in the case of a first offence to a fine not exceeding twenty five thousand dollars or to imprisonment for a term not exceeding three months or to both;

(b) in the case of a subsequent offence to a fine not exceeding forty thousand dollars or to imprisonment for a term not exceeding one year or to both.

Error or misstatement.

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

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

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

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

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

Privilege of auditor.

148. (1) Not less than ten days, or a shorter period that the Registrar may allow, before the date of its annual meeting a co-operative society shall—

Annual, monthly and special returns.

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

(2) Within thirty days of the end of each month, a co-operative society shall file a monthly return with the Registrar in accordance with the Regulations.

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

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

PART IX

EXAMINATIONS AND INVESTIGATIONS

Examinations.

149. (1) In addition to the powers of routine inspection under sections 5(4) and 22(1) the Registrar may appoint a person as examiner who shall make an examination of the records and the affairs of the co-operative society.

(2) In its request for an examination under this section, the Registrar may set such limits and conditions on the scope and conduct of the examination as the Registrar considers appropriate; and, in carrying out the examination, the powers of the examiner under of this section shall be limited accordingly.

(3) An examiner requested by the Registrar to carry out an examination under this section may, on production of the examiner's authorisation to any person concerned, at all reasonable times inspect and take copies of, or extracts from, any books or documents relating to a co-operative society, and for any of those purposes may enter any premises at which any such books or documents are kept.

(4) For the purposes of exercising his or her powers

under subsection (3) to take copies or extracts, an examiner may remove from the premises concerned, for a period and on conditions, if any, as to facilitate access by officers of the co-operative society, as may be reasonably necessary, to any books or documents referred to in that subsection.

(5) An examiner who is carrying out an examination under this section in relation to a co-operative society may, with the approval of the Registrar, and subject to any limits imposed by that approval, carry out a similar examination in relation to any other body, whether a co-operative society or not, which is or has been at any relevant time been associated with the first-mentioned co-operative society, and for that purpose the examiner may exercise, in relation to any such body, any power conferred by subsections (3) and (4).

(6) Where an examination is carried out under this section, the examiner shall make a report of the examination to the Registrar.

(7) Where required to do so by notice in writing served by the Registrar at any time or by an examiner in the course of an examination

- (a) a co-operative society;
- (b) any person who is or has been a director, member, agent or liquidator of a co-operative society; and
- (c) any other person who has in his or her possession or power any books or documents relating to a co-operative society,

shall provide the Registrar or the examiner such books, documents or information as may be specified in the notice which relate to the co-operative society and are in his or her possession.

(8) If required to do so by notice in writing served on it by

the Registrar or by an examiner, a co-operative society shall provide to the Registrar or the examiner a financial statement or periodic financial statements in a form and containing such information as may be specified in the notice.

(9) If a notice under subsection (7) or (8) requires that-

(a) an item or information is to be furnished within a period, or a time or place specified in the notice;
or

(b) information is to be verified by a statutory declaration,

the co-operative society or person on whom the notice is served does not comply with the notice unless he also complies with that requirement.

(10) The Registrar or examiner may take copies of or extracts from any item produced in compliance with a notice under subsection (7) or (8) and if so required by the Registrar or examiner, the person on whom a notice under subsection (7) was served or, in the case of a statement produced in compliance with a notice under subsection (8), a person who is or has been a director, committee member, member, agent or liquidator of the co-operative society shall provide any explanation which may reasonably be required of an item so produced.

(11) Where a person on whom a notice is served under subsection (7) does not have in his or her possession or under his or her control an item specified in the notice but knows where it is, the person does not comply with the notice unless he or she states to the best of his or her knowledge and belief where the item is and, if so required, verifies that information by a statutory declaration.

(12) The production by a person of an item forming part of the books and documents of a co-operative society shall not prejudice any lien which that person claims over that item; but

nothing in this section shall compel-

- (a) the production by an attorney-at-law of any document containing a privileged communication made by or to him or her in that capacity; or
- (b) the provision of information contained in a privileged communication so made.

(13) A person who contravenes subsection (7) or (8) commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding six months, or to both.

(14) If the Registrar considers it just and so requires by notice in writing, all or any of the expenses incurred by the Registrar in exercising his or her powers under subsection (7) shall be met, either wholly or to such extent as the Registrar may so require-

- (a) out of the funds of the co-operative society; or
- (b) by the directors or former directors of the co-operative society or any of them,

and any sum which a co-operative society or other person is required to pay by a notice under this subsection is recoverable summarily by the Registrar as a civil debt.

(15) For the purpose of this section “agent” in relation to a co-operative society, includes its bankers, accountants, attorneys-at-law, auditors and its financial and other advisers.

(16) Subject to subsection 228(3), a director, committee member, employee or agent of a co-operative society shall not obstruct-

- (a) any person who is carrying out an examination under this Act; or

(b) the examination of a co-operative society undertaken under this Act.

(17) A director, committee member, officer, employee or agent of a co-operative society who contravenes subsection (16) commits an offence and is liable on summary conviction to a fine not exceeding twenty thousand dollars or to imprisonment for a term not exceeding one year, or to both.

Investigations.

150. (1) Where-

- (a) an application is made to the Registrar by the lesser of twenty-five members or ten per cent of the membership of a co-operative society, each of whom has been a member of the co-operative society throughout the period of twelve months ending on the date of the application; and
- (b) the Registrar is of the opinion that it is necessary to do so in the interests of the orderly and proper regulation of the business of a co-operative society,

the Registrar may appoint one or more investigators to investigate the affairs of the co-operative society.

(2) An application under subsection (1)(a) shall be supported by such evidence as the Registrar may require for the purpose of showing that the applicants-

- (a) have good reason for requiring the investigation to be made; and
- (b) have not been actuated by malicious motives in their application,

and if so required by the Registrar the applicants shall deposit with it, prior to, and as security for the costs of, the investigation such sum as it may reasonably require.

(3) If an investigator appointed under this section to investigate the affairs of a co-operative society thinks it necessary for the purpose of the investigation to investigate also the affairs or any other body, whether a co-operative society or not, which is or has at any relevant time been associated with the principal co-operative society, the investigator may do so with the approval of the Registrar.

(4) A notice of an application under subsection (1)(a) as the Registrar may require shall be given to the co-operative society concerned and, where applicable, to any other body whose affairs are to be investigated by virtue of subsection (3).

(5) Before appointing an investigator under this section, the Registrar shall, if the Registrar is of the opinion that it would not be prejudicial to the interests of the members or creditors of the co-operative society, notify the co-operative society in writing of the action which the Registrar proposes to take and of the grounds on which the Registrar proposes to take it and, in such case, the Registrar shall have regard to any explanatory statement in writing which may be given by the co-operative society within fourteen days from the receipt of the notification.

(6) In the case of an investigation, the expenses may be defrayed in the first instance by the office of the Registrar, but it is entitled to be repaid these expenses—

- (a) where the investigation results from an application under subsection (1)(a), by the applicants, to such extent, if any, as the Registrar may direct;
- (b) in any case, by the co-operative society or the other body, to such extent, if any, as the Registrar may direct; and
- (c) in any case, by a person convicted of an offence in proceedings instituted as a result of the investigation, to such extent, if any, as the court by which the person was convicted may order,

and a person liable under any of paragraphs (a) to (c) is entitled to contributions from any other person liable under the same paragraph according to the amount of their respective liabilities.

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

Investigations by Court.

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

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

- (a) the co-operative society is not fulfilling the purpose stated in its bye-laws;
- (b) the co-operative society is not carrying on business in accordance with this Act, the Regulations or the bye-laws;
- (c) the co-operative society is not organised or being operated on co-operative principles;
- (d) the business of the co-operative society or any of its member co-operative societies is or has been carried out with intent to defraud any person;
- (e) the business or affairs of the co-operative society or any of its member co-operative societies are or have been carried on or conducted, or the powers of the directors are or have been exercised, in a manner that is oppressive or unfairly prejudicial to or that has unfairly disregarded the interests of a member or of a security holder;

(f) the co-operative society or any of its member co-operative 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 co-operative society or any of its member co-operative societies have acted fraudulently or dishonestly, in connection with the co-operative society.

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

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

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

152. In connection with an investigation under section 151(1), the Court may make any order it considers appropriate, including an order—

Court Order.

- (a) to investigate;
- (b) appointing an investigator, who may be an employee of the Registrar, fixing the remuneration of an investigator and replacing an investigator;
- (c) determining the notice to be given to any interested person or dispensing with notice to that person;
- (d) authorising an investigator to enter any premises in which the Court is satisfied there might be relevant information, and to examine anything and make copies of any document or record found on the premises;

-
- (e) requiring any person to produce documents or records to the investigator;
 - (f) authorising an investigator to conduct a hearing, administer oaths and examine any person on oath, and prescribing rules for the conduct of the hearing;
 - (g) requiring any person to attend a hearing conducted by an investigator and to give evidence on oath;
 - (h) giving directives to an investigator or any interested person on any matter arising in the investigation;
 - (i) requiring an investigator to make an interim or final report to the Court and to the Registrar;
 - (j) determining whether a report of an investigator made under paragraph (i) should be published and, where published, ordering the Registrar to publish the report in whole or in part or to send copies to any person the court designates;
 - (k) requiring an investigator or an examiner appointed under section 149 to discontinue an investigation; and
 - (l) requiring the co-operative society or a person who made an application under section 151(1) for an order to pay the costs of the investigation.

Powers of investigator.

153. (1) An investigator appointed under section 152(b) has the powers set out in the order appointing him or her.

(2) In addition to the powers set out in the order appointing an investigator, the investigator may provide to, or exchange information and otherwise co-operate with, any public official in Dominica or elsewhere who is—

- (a) authorised to exercise investigatory powers; and

(b) investigating, with respect to the co-operative society, an allegation of improper conduct that is the same as or similar to the conduct described in section 151(2).

154. (1) An interested person may apply to the Court for an order that a hearing conducted by an investigator appointed under section 152 be heard in camera and for directions on any matter arising in the investigation.

Hearing in camera.

(2) A person whose conduct is being investigated or who is being examined at a hearing conducted by an investigator appointed under section 152(b) has a right to be represented by an attorney -at-law.

155. (1) A person shall not be excused from attending and giving evidence and producing documents and records to an investigator appointed under section 190(b) by reason only that the evidence tends to incriminate the person or subject the person to any proceedings or penalty.

Incriminating statements.

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

156. (1) An oral or written statement or report made during the course of, or as the result of, an investigation or examination authorised by this Part by an investigator or an examiner, or by any other person acting in accordance with powers conferred by this Part in respect of an investigation or examination, has absolute privilege.

Absolute privilege respecting statements.

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

PART X

RECEIVERS AND RECEIVER-MANAGERS

Appointment of receiver
or receiver-manager

157. (1) Where, in the opinion of the Registrar or the High Court, based on the results of an examination undertaken under section 149, it is necessary to appoint a receiver or a receiver-manager to protect the equity of the members, the Registrar or the Court may appoint a receiver or a receiver-manager.

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

Functions of receiver.

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

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

(2) Notwithstanding subsection (1) and subject to any order that the Court may make under section 162, a receiver who is not appointed as manager of a co-operative society shall not carry on the business of the co-operative society.

Revival of dissolved co-
operative society.

159. (1) Where a receiver of a co-operative society is also appointed manager of the co-operative society, the receiver may carry on any business of the co-operative society to protect the equity of the members.

(2) A receiver or receiver-manager appointed by a Court or the Registrar shall be discharged by the Court or Registrar if in the opinion of the Court or Registrar the equity of the members has been sufficiently protected as to enable the society to be returned to its members.

160. Where a receiver or receiver-manager is appointed by a Court or the Registrar, no directors of the co-operative society shall exercise the directors' powers that the receiver or receiver-manager is authorised to exercise until the receiver or receiver-manager is discharged.

Cessation of Board's powers.

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

Duty of receiver or receiver-manager.

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

(3) A receiver or receiver-manager shall—

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

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

Directions by Court.

- (a) appointing, replacing or discharging a receiver or receiver-manager and approving his or her accounts;
- (b) determining the notice to be given to any person or dispensing with notice to any person;
- (c) fixing the remuneration of the receiver or receiver-manager;
- (d) requiring the receiver or receiver-manager—
 - (i) to make good any default in connection with his custody or management of the property and business of the co-operative society; and

(ii) to relieve the receiver or receiver-manager from any default on any terms that the court considers appropriate;

(e) confirming any act of the receiver or receiver-manager; and

(f) giving directions on any other matter relating to the duties of the receiver or receiver manager.

Directions by Registrar.

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

(2) Where the Registrar receives an application under subsection (1), it may make any order it considers appropriate, including any other similar to an order described in section 162(c) to (f).

Required actions by receiver.

164. A receiver or receiver-manager shall—

(a) in the case of a receiver or receiver-manager appointed by the Court, immediately notify the Registrar of his or her appointment or discharge;

(b) take into his or her custody and control the property of the co-operative society in accordance with the Court order or the order of the Registrar under which he or she is appointed;

(c) open and maintain a bank account in his or her name as receiver or receiver-manager of the co-operative society for the moneys of the co-operative society coming under his or her control;

(d) keep detailed accounts of all transactions carried out by him or her as receiver or receiver-manager;

(e) keep accounts of his or her administration that he

or she shall cause to be available during usual business hours for inspection by the directors of the co-operative society, the Registrar or any person authorised by the Registrar;

- (f) prepare at least once in every six-month period after the date of his or her appointment financial statements of his or her administration, as far as is practicable in the form required in section 130;
- (g) on completion of his or her duties, render a final account of his or her administration in the form he or she has adopted for preparation of interim accounts under paragraph (f); and
- (h) file with the Registrar a copy of any financial statement mentioned in paragraph (f) and any final account mentioned in paragraph (g) within fifteen days of the preparation of the financial statement or rendering of the final account.

PART XI

DISSOLUTION

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

Dissolution by members.

(2) The Board shall cause a notice of a special meeting of members to be sent in the manner specified in section 46 to each member for the purpose of authorising dissolution.

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

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

(5) Where the Registrar—

(a) receives notice, in a form satisfactory to it, of an authorisation to dissolve a co-operative society; and

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

the Registrar shall approve the dissolution.

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

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

(b) the claims of any creditors;

(c) the number of members; and

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

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

(a) named in the special resolution; or

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

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

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

(i) in a co-operative society; or

(ii) in any financial institution licensed under the Banking Act, 2005 or any company registered under the Insurance Act; or

Act No. 16 of 2005.

Chap. 78:49

(b) invest the money in—

(i) securities issued by the Government;

(ii) securities the payment of interest on which is guaranteed by the government; or

(iii) any other manner authorised by the Registrar.

(9) Where a trust is created under subsection (7), the income and principal of the trust shall be expended within a period of twenty years from the date that the trust was established for any cooperative purpose the Registrar considers fit.

(10) In this section—

(a) “interest” includes the interest of a member in a co-operative society and includes member loans and obligations of any kind that—

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

(ii) are owed by the co-operative society to the members;

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

166. (1) When the Registrar approves a special resolution passed under section 165, the Registrar shall, at the expense of the co-operative society, cause a notice of the special resolution to be published—

Notice of dissolution by members.

(a) in the *Gazette*; and

(b) once a week for two weeks in a newspaper published and circulated in Dominica.

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

(a) exempt the co-operative society from subsection (1); and

(b) cause, at the Registrar's expense, a notice of the special resolution passed under section 165(1) to be published in the *Gazette*.

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

(a) the progress of 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 it may require.

Dissolution by Registrar.

167. (1) Where the Registrar has reasonable cause to believe that a co-operative society-

(a) has not commenced business within twelve months after the date shown on its certificate of registration; or

(b) has not carried on business for twelve consecutive months,

the Registrar shall send to the secretary of the co-operative society a letter inquiring whether the co-operative society is

carrying on business, is in operation or is submitting an annual return.

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

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

(3) Where the Registrar—

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

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

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

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

Dissolution for failure to account for business.

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

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

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

- (a) to review the financial position of the co-operative society and the members' interests in the co-operative society; and
- (b) to ascertain whether the members wish to continue the business of the co-operative society and to comply with sections 130 and 132.

(3) Where-

- (a) a quorum of members is not present at a special meeting called under subsection (2); or

- (b) the members fail to pass a resolution to the effect that the co-operative society is to carry on business and to comply with section 130 and 132,

the Registrar shall notify the directors that, unless sections 130 and 132 are complied with within one month from the date of the notice, the co-operative society will be struck off the register and dissolved.

(4) Notwithstanding subsection (3), the Registrar may extend the period for compliance with sections 130 and 132.

(5) Where a co-operative society does not comply with sections 130 and 132 within the period mentioned in subsection (3) or set by the Registrar under subsection (4) the Registrar shall-

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

169. (1) The Registrar or an interested person may, after giving the co-operative society three months notice of the proposed application, apply to the Court for an order dissolving a co-operative society, if the co-operative society-

Dissolution by Court.

- (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, the Regulations or its bye-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 co-operative society.

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

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

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

(a) to dissolve the co-operative society, issue a certificate of dissolution in the prescribed form; or

(b) to liquidate and dissolve the co-operative society under the supervision of the Registrar, publish a notice in the *Gazette*.

Revival of dissolved co-operative society.

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

(a) an application for revival in such form as the Registrar may approve; and

(b) such other information as the Registrar may require.

(2) Where the Registrar receives an application for revival under subsection (1) and the Registrar is satisfied that the co-operative society is in compliance with this Act, the Registrar 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 co-operative society that it considers reasonable with respect to the co-operative society.

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

(4) Where a co-operative society is revived under this section, it-

- (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.

171. (1) Where-

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

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

Appointment of liquidator.

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

172. The liquidation of a co-operative society commences where-

Commencement of liquidation.

- (a) a special resolution for dissolution of the co-operative society is approved by the Registrar under section 165;
- (b) the Registrar appoints a liquidator under section 167 or 168;
- (c) the Court makes an order to dissolve under section 169; or
- (d) the registration of a co-operative society is cancelled by the Registrar under sections 18 or 23 of this Act.

Cessation of business.

173. (1) From the date of the commencement of its liquidation-

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

General provisions
respecting liquidators.

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

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

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

(4) Where the members of a co-operative society appoint a liquidator, they may, at that time or at a subsequent general

meeting, pass a resolution giving direction to the liquidator with respect to the disposal of the property of the co-operative society.

(5) Where-

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

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

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

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

175. On his or her appointment, a liquidator shall-

Duties of liquidators.

- (a) immediately give notice of his or her appointment-
 - (i) in the case of a liquidator not appointed by the Registrar, to the Registrar; and
 - (ii) to each claimant and creditor known to the liquidator;
- (b) immediately publish notice of his appointment in the Gazette and once a week for two consecutive weeks in a newspaper published and circulated in Dominica;
- (c) set out in the notice mentioned in paragraphs (a) and (b) a provision requiring any person—
 - (i) indebted to the co-operative society, to render an account and pay to the liquidator at the

- time and place specified;
- (ii) possessing property of the co-operative society, to deliver it to the liquidator at the time and place specified; and
 - (iii) having a claim against the co-operative society, whether liquidated, unliquidated, future or contingent, to present particulars of the claim in writing to the liquidator not later than two months after the first publication of the notice;
- (d) take into his or her custody and control the property of the co-operative society;
- (e) open and maintain a trust account for the monies of the co-operative society;
- (f) maintain separate lists of the members, creditors and other persons having claims against the co-operative society;
- (g) where at any time the liquidator determines that the co-operative society is unable to pay or adequately provide for the discharge of its obligations, apply to the Registrar for directions; and
- (h) deliver to the Registrar and the co-operative society, at least once in every twelve-month period after his or her appointment or more often as the Registrar may require, financial statements of the co-operative society in the form required in section 130 or in any form that the liquidator considers proper or that the Registrar may require.

Powers of liquidator.

176. (1) The liquidator may-

- (a) retain attorneys-at-law, accountants, engineers, appraisers and other professional advisors;

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

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

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

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

Limitation on liability of liquidator.

177. (1) A liquidator is not liable where he or she relies in good faith on-

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

Cost of liquidation.

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

(2) After the date specified by the liquidator for distribution under section 175(c)(iii), the liquidator may distribute all or any part of the assets of the co-operative society among the parties entitled to the assets having regard to the claims of which the liquidator has notice.

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

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

179. (1) In the liquidation of a co-operative society the funds, including the statutory reserves, shall be applied - Closure of liquidation.

- (a) firstly to the cost of liquidation;
- (b) secondly to the discharge of the liabilities of the co-operative society;
- (c) thirdly to the payment of share capital; and
- (d) fourthly, if the bye-laws of the co-operative society permit, to the payment of a dividend at a rate not exceeding 10% per annum for any period during which no distribution of 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 the Registrar considers fit.

(3) Where the liquidation is closed in accordance with subsection (1), the Registrar shall-

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

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

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

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

Remuneration of liquidator

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

(2) The amount of the commission mentioned in subsection (1) shall be equal to-

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

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

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

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

(4) A liquidator is entitled to any fee or charge for his or her services in addition to the commission allowed under this section.

Continuation of actions.

182. (1) Notwithstanding the dissolution of a co-operative society under this Act-

(a) a civil, criminal or administrative action or proceeding commenced by or against, the co-operative society before its dissolution may be continued as if the co-operative society had not been dissolved;

(b) a civil, criminal or administrative action or proceeding may be brought against the co-operative society within two years after its dissolution as if the co-operative society had not been dissolved; and

(c) any property that would have been available to satisfy any judgment or order if the co-operative

society had not been dissolved shall remain available for that purpose.

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

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

183. (1) On the dissolution of a co-operative society, the liquidator shall convert into money the portion of the property distributable to a creditor or member who cannot be found after a reasonable investigation and shall deposit the money in a co-operative society or with trustees appointed by the Registrar.

Unknown claimant or members.

(2) A payment under subsection (1) shall be in satisfaction of a debt or claim of the creditor or member.

(3) Where a creditor establishes within three years after the dissolution of a co-operative society that he or she is entitled to any money paid under subsection (1) to a co-operative society or to trustees appointed by the Registrar, the co-operative society or the trustees shall pay the amount of the claim out of the monies deposited.

(4) Where moneys deposited under this section are not distributed within three years after the dissolution of a co-operative society then, subject to the approval of the Registrar, the co-operative society or the trustees appointed by the Registrar shall distribute those monies in accordance with section 179(2) or the bye-laws.

Power of Registrar to surcharge.

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

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

Appeal against surcharge.

185. Any person aggrieved by an order of the Registrar made under section 184 may appeal to the Tribunal within twenty-one days from the date of the order and the decision of the Tribunal shall be final on any question of fact.

Application of Part VIII.
Chap. 9:90.

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

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

PART XII**RECONSTRUCTION OF CO-OPERATIVE SOCIETIES**

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

Method of reconstruction.

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

(2) Sections 190 to 193 apply with respect to the procedure to be followed in relation to subsection (1).

188. (1) A company registered under the Companies Act, 1994 or a registered industrial, provident or friendly co-operative society may, by special resolution, determine to convert itself into a co-operative society.

Conversion.
Act No. 21 of 1994.

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

(3) A copy of the special resolution referred to in subsection (1) with three copies of the bye-laws shall be sent to the Registrar who may, on receipt of the copies, register the co-operative society and issue a certificate in accordance with section 16.

Effect of certificate of registration.

189. (1) On the date of the certificate of registration issued under section 188—

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

(2) An obligation or penalty arising under any of the matters mentioned in subsection (1) for which the former company,

or industrial, provident or friendly co-operative society is liable or potentially liable at the date of the certificate of registration issued under section 188 shall have priority as against the property of the registered co-operative society over all other rights or claims against, or liabilities of the registered co-operative society.

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

Amalgamation of co-operative societies.

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

(3) On the registration of an amalgamated co-operative society the assets and liabilities of the amalgamating societies vest in the amalgamated society.

(4) Where the assets held by amalgamating co-operative societies involves real estate, a copy of the resolution referred to in subsection (1), and a copy of the certificate of registration of the amalgamated society, shall be recorded at the Land Registry.

191. (1) Any co-operative 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 co-operative society which has agreed to accept them.

Transfer of assets of co-operative societies.

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

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

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

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

Claims of objecting creditors.

192. Notwithstanding sections 190 and 191 an amalgamation or transfer shall not be effected unless the creditors of the co-operative societies concerned are given three months' written notice of the proposal and have signified that they have no objections.

Division of co-operative society.

193. (1) A co-operative 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 two or more co-operative societies.

(2) A preliminary resolution—

(a) shall contain proposals for the division of the assets and liabilities of the co-operative society among the new co-operative societies into which it is proposed to divide the co-operative society; and

(b) may specify the area of operation of, and the members who will constitute, each of the new co-operative societies.

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

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

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

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

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

(8) After the expiry of three months from the receipt of the preliminary resolution by all the members and creditors of the co-operative society and of the notice to other persons given under subsection (4), another special general meeting of the co-operative society, of which at least fifteen 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 16, register the new co-operative societies; and on registration, the original co-operative society shall be taken to be dissolved and its registration cancelled.

(10) The decision of the Registrar as to whether any changes made in the preliminary resolution are material is final and is 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); and
- (c) satisfaction of the claims of the other persons, who have given notice under subsection (7),

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

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

- (a) the share capital of the members referred to in subsection (11)(a) is not repaid;
- (b) the claims of the creditors referred to in subsection (11)(b) are not satisfied; or
- (c) the claims of the other persons mentioned in subsection (11)(c) are not satisfied or secured, the Registrar may refuse to register the new co-operative societies.

194. The registration of new co-operative societies established under section 193 is sufficient to vest the assets and liabilities of the original co-operative society in the manner specified in the preliminary resolution as confirmed in accordance with section 193(8) and (9).

Effect of registration of new co-operative societies.

PART XIII

DISPUTES

195. (1) Where any dispute that relates to the business of a co-operative society arises-

Settlement of disputes.

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

any party to the dispute may refer 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 to-

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

(3) The Registrar may either hear the dispute or delegate authority to hear the dispute to an employee or an office holder, and make and issue a decision, or it may appoint an arbitrator, who shall be an attorney-at-law of at least five years standing, to do so.

(4) For the purposes of hearing any dispute the Registrar or the arbitrator appointed by the Registrar—

- (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.

(5) The Registrar or the arbitrator may order the expenses of determining any dispute, including fees to a barrister and solicitor, to be paid by the co-operative society or by any of the parties to the dispute.

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

(7) Notwithstanding anything in this section, a co-operative 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.

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

196. (1) There shall be a Co-operative Societies Appeals Tribunal which shall consist of three persons, one of whom shall be an attorney-at-law of at least five years standing, who shall be appointed by the Minister for Finance after consultation with the Minister for Co-operatives.

Co-operative Societies
Appeals Tribunal.

(2) A member of the Tribunal holds office for a term not exceeding three years and is eligible for reappointment.

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

(4) The Schedule shall have effect with respect to the constitution and procedure of the Tribunal.

(5) The Minister may by regulations made under this Act amend Part 2 of the Schedule, and such regulations shall be subject to affirmative resolution of the House of Assembly.

197. (1) In accordance with the Arbitration Act and notwithstanding anything contained in sections 195 and 196, the Registrar or an arbitrator may, in the course of or on making a decision in a dispute, refer a question of law arising therefrom to the Court, by way of case stated for the opinion of that Court.

Case stated on question
of law.

(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.

198. (1) An award by the Registrar or an arbitrator may, by leave of the Court, be enforced in like manner as a judgment or

Enforcement of award
and recovery of loans.

order of the court, 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 co-operative society to a member of that co-operative society, such a dispute may, notwithstanding section 195, be brought before the magistrate for the district in which the co-operative society conducts business.

(3) A magistrate has jurisdiction under subsection (2), even though the amount due exceeds the limits of jurisdiction of a magistrate specified in the Magistrates Code of Procedure Act.

PART XIV

SPECIALISED CO-OPERATIVE SOCIETIES

Credit Unions

Functions of Registrar, immunity, sanctions and corrective action.

199. (1) The Registrar shall administer the system of regulation and supervision of credit unions provided for under this Act with a view to-

- (a) the protection by each credit union of the funds of its members; and
- (b) the maintenance of financial stability and well-being in credit unions generally.

(2) The Registrar has power to do anything which, in his or her opinion, is necessary to facilitate the exercise of its functions or is incidental to or consequential on their exercise, and, in the exercise of any such power the Registrar may consult other bodies as appear to him or her to be expert or knowledgeable in matters relating to credit unions.

(3) The registration of a credit union or the imposition of any prudential, supervisory or reporting requirements or conditions

by the Registrar does not constitute a warranty as to the solvency of the credit union to which registration is given and the Registrar is not liable in respect of any losses incurred through the insolvency or default of a co-operative society which is registered as a credit union.

(4) Where after an examination under section 149 or after an investigation under section 150, or on the receipt of any other information the Registrar is of the opinion, that it is necessary to act in the interest of the orderly and proper regulation of the business of a credit union, in addition to the powers conferred by section 5, the Registrar may-

- (a) place the credit union under administrative supervision; and
- (b) take any other necessary action to correct the non-compliance or unsafe or unsound practice, including-
 - (i) prohibiting the disposal, conveying or encumbering of any of the credit union's assets;
 - (ii) prohibiting the incurring by the credit union of any debt, obligation or liability;
 - (iii) prohibiting the investing of any of the credit union's funds;
 - (iv) prohibiting the withdrawal of any of the credit union's accounts at other financial institutions;
 - (v) suspending the credit union's acquisition of fixed assets;
 - (vi) suspending or restricting the credit union's lending operations; and
 - (vii) increasing the credit union's allocation to reserves.

(5) The credit union shall comply with the requirements of the Registrar under subsection (4) and where the credit union fails to do so, the Registrar may appoint an administrator for the credit union, for a period not exceeding twelve months.

(6) If at any time the Registrar determines that the credit union is not in condition to continue business under the administrator, in the interest of the members, depositors or creditors and in accordance with section 157, the Registrar may appoint a receiver or a receiver-manager for the credit union.

(7) All costs incidental to the period of administrative supervision constitute an allowable charge against the assets of the credit union and shall be paid as the Registrar may determine.

Restrictions.

200. (1) A credit union shall not underwrite insurance or the issue of securities by another person.

(2) Nothing in subsection (1) prevents a credit union from requiring insurance for the security of the credit union.

(3) A credit union shall not demand from a potential borrower that—

(a) any additional services, including appraisal valuations or security, be obtained from a specific provider; or

(b) the borrower should utilise any other services of the credit union, as a condition of, or in consideration of, obtaining a loan.

(4) Subject to subsection (5), a credit union may only hold real property the aggregate market value of which does not exceed ten per cent of its total assets.

(5) Notwithstanding subsection (4), the Registrar may, if the Registrar is satisfied that the circumstances require it, grant

approval to a credit union to hold real property in excess of the percentage specified in subsection (4).

(6) Subsection (5) does not apply where the credit union exercises its legal right in respect of any property which is the security for any debt, and in such a case, the property shall not be retained for a period in excess of five years without the permission of the Registrar unless in the meantime the aggregate value of the real property held by the credit union is reduced to below the percentage specified in subsection (4).

(7) Nothing in subsection (4) shall be interpreted as requiring a credit union to-

- (a) dispose of any real property that was acquired before the coming into force of this Act; or
- (b) terminate any agreement to acquire or hold any real property where the agreement was entered into before the coming into force of this Act.

(8) Without prejudice to the generality of subsection (1), 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.

201. (1) A credit union shall at all times keep a proportion of its total assets in liquid form as prescribed in the Regulations that will enable the credit union to meet its liabilities as they arise.

Liquid assets.

(2) For the purpose of complying with subsection (1) a credit union shall ensure that no less than fifteen per cent or such greater percentage as may be specified by the Registrar from time to time, of its members unencumbered deposits and other short term liabilities, are maintained in a liquidity reserve; but nothing in this Act shall be taken to prevent a credit union keeping liquid assets in addition to those required for complying with subsection (1).

(3) Subject to section 125(1)(b), a credit union shall not capitalise its statutory reserves by way of bonus shares or distribute it by way of dividends.

(4) Despite section 125(1)(b), whenever the Board of a credit union recommends to the members and a majority of the members present and voting at a general meeting by resolution approve -

(a) the allocation to its statutory reserves may be increased; or

(b) if its statutory reserves at the end of the financial year in question equals or exceeds ten per cent of assets, the allocation may be reduced.

Loan loss provision

202. (1) A credit union shall at least annually evaluate the quality and collectability of the loan portfolio and establish adequate loan loss allowance.

(2) The Registrar may, after consultation with credit unions, and in accordance with international credit union safety and soundness principles or any principles or standards prescribed, issue guidelines to implement the requirement for an adequate loan loss allowance.

Loan approval.

203. (1) A loan made by a credit union shall be approved in accordance with the policies established by the directors before any funds are advanced.

(2) A loan to a director, officer, committee member or an employee of a credit union or an associate of any of them, shall be approved in the manner prescribed.

(3) A person who knowingly approves or grants a loan by a credit union in contravention of this Act or the Regulations is liable for any losses resulting to the credit union in connection with that loan.

204. (1) Subject to any restrictions that may be prescribed in the Regulations, a credit union may take any security for loans and other risk assets that it considers advisable and in keeping with sound business and risk management practices.

Security on loans.

(2) For the purposes of this section, “risk assets” means loans, investments and other property of the co-operative society with possible loss results, which form the basis of determining the amount of the co-operative society’s income to be set aside as provision for loss.

205. The limits on the amount of loans made by a credit union shall be in accordance with section 121.

Loan limits.

206. (1) Where a credit union is reporting loans, it shall report the loans at their fair value deducting provision for loan impairment on the balance sheet in its annual financial statements under section 202.

Reporting loans.

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

207. (1) The maximum intervals at which interest on loans made by a credit union are to be paid may be prescribed.

Interest on loans.

(2) The rate of interest to be charged on loans shall be fixed from time to time by the Board.

(3) Where a borrower has not paid the interest on a loan for a period prescribed, the credit union shall not include that interest in income.

208. (1) Subject to section 123, a credit union may accept deposits from-

Acceptance of deposits.

(a) members;

(b) other co-operative societies;

- (c) government and non-government agencies; and
- (d) bodies corporate.

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

Credit union trusts.

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

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

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

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

(3) Notwithstanding any neglect or omission on the part of a credit union to enter a proper description in its books, an executor, an administrator, a guardian, a committee or a trustee who is entered on the books of the credit union as a member, or who is described as representing a named estate, trust or trust beneficiary in such capacity is not personally liable to the credit union with respect to the share that he or she represents.

(4) The estate or trust beneficiary represented by a person described in subsection (3) continues to be liable to the

credit union in the same manner and to the same extent as if the testator, minor, ward, person of unsound mind, beneficial trust or their trust beneficiary were entered on the records of the credit union as the holder of the shares.

Consumers Co-operative societies and Housing Co-operative societies

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

Restrictions on directorship.

(2) A society shall provide in its bye-laws that none of its elected directors shall be employees.

211. The relationship between a housing co-operative society and its members is not a relationship between a landlord and his or her tenants.

Relationship with members.

212. The bye-laws of a housing co-operative society shall include, in addition to the matters required by section 13—

Bye-laws.

- (a) the manner in which each member may be required to provide capital for the purposes of the co-operative society;
- (b) the manner in which a member may be required to pay for housing charges or other reserves;
- (c) the basis for fixing the amount of housing charges;
- (d) subject to section 30, the manner of withdrawal by a member and the repayment of a member's interests in the co-operative society; and
- (e) the rules governing any leases of housing units by members to non-members.

213. Where the bye-laws of a co-operative society provide that

Amendment of bye-laws.

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

No dividend on share capital.

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

Right to possession on termination.

215. (1) Where a person's membership in a housing co-operative society is terminated, any right of that person to possess or to occupy residential premises acquired by virtue of membership in the co-operative society is terminated.

(2) Where a person's membership in a housing co-operative society is terminated and the member does not give up possession of the housing unit he or she occupies, the housing co-operative society may apply to the Court to recover possession or to recover any arrears of housing charges.

Abandoned goods.

216. (1) Where a member of a housing co-operative society—

(a) has his or her membership terminated or has vacated or abandoned the housing unit formerly occupied by him or her; and

(b) has left property in the housing unit,

the co-operative society may apply to the Magistrates Court or for the District where the housing unit is situate 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 under subsection (1) where the Magistrate is satisfied that the housing co-operative society has made a reasonable effort to locate the former member.

(3) Where a housing co-operative society sells or otherwise disposes of property under an order made under subsection (2), it shall pay into the Magistrate's Court, to the credit of the former member, any remaining proceeds of the disposition after deducting any—

- (a) amount with respect to costs incurred by it relating to the disposition that it would be authorised to retain if the property were goods sold under distress for housing charges; and
- (b) 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 three months after the date the money was paid into the Magistrates Court, the money shall be paid into the Consolidated Fund.

(5) Where a housing co-operative society removes, sells or otherwise disposes of property under an order made under subsection (2), the housing co-operative society is not liable in any action taken by the former member with respect to the removal, sale or disposition.

Industrial Co-operative Societies

217. (1) In an industrial co-operative society, seventy-five per cent of all employees shall be members of the co-operative society.

Membership.

(2) An industrial co-operative society shall not subcontract out more than fifty per cent of its work without the consent of the Registrar.

218. In addition to the matters required to be set out in the bye-laws under section 13, the bye-laws of an industrial co-operative society shall include-

Bye-laws.

- (a) conditions of admission, expulsion or suspension of its members;
- (b) a procedure for laying off members when there is a lack of work and a procedure of recall to work;
- (c) remuneration of workers involved in the day to day work of the co-operative society; and
- (d) allocation of bonus among members.

Restriction on registration.

219. An industrial co-operative society shall not be registered where the acquisition of goods for sale to the public is one of its principal objects stated in its bye-laws.

Bonus based on labour.

220. When allocating among creditors or paying a bonus to the members, the directors of an industrial co-operative society may take into account the labour contribution of each member.

Employees may be directors.

221. Directors of an industrial society shall not be employees of the society.

PART XV

APEX BODY

Establishment and constitution of apex body.

222. Co-operative societies may establish an apex body which shall be composed of such member representatives of the majority of co-operative societies which may exist in Dominica.

Functions.

223. The apex body shall be a co-operative society under this Act and shall co-ordinate, assist and promote activities for the development, growth and expansion of all co-operative societies and shall perform representational and other functions as may be determined by its members.

224. (1) The officers of the apex body shall be elected at the first meeting of that body and shall hold office for a period of one year and thereafter the election of such officers shall be in accordance with the bye-laws of the apex body.

Officer.

(2) The apex body shall regulate its own procedure and may establish its own central credit union or central co-operative society in conjunction with other apex bodies and co-operative societies to provide specialised services and facilities to members.

225. The Registrar shall, from time to time, consult the apex body or a central credit union or central co-operative society with respect to matters relating to the development of co-operative societies.

Consultation by Registrar.

PART XVI

OFFENCES

226. (1) A member, agent or employee of a co-operative society shall not accept, agree to accept, obtain or attempt to obtain whether for himself or another, any gift or consideration as an inducement reward for-

Corrupt practices and bribery.

- (i) doing or forbearing to do any act relating to the business of the co-operative society; or
- (ii) for showing favour or disfavour to any person in relation to the business of the co-operative society.

(2) A person shall not give, agree to give, or offer a gift or consideration to any member, agent or employee of a co-operative society as inducement or reward for any purpose mentioned in subsection (1).

(3) A person who contravenes subsection (1) or (2) commits an offence and is liable-

- (i) on summary conviction to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding two years, or to both; or
- (ii) on conviction on indictment to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding three years, or to both.

(4) In this section “consideration” includes valuable consideration of any kind.

Falsefully obtaining
property of co-operative
society.

227. (1) A person shall not-

- (a) obtain possession of any property or the grant of a loan from a co-operative society by false representation or other corrupt means;
- (b) wrongfully withhold or misapply any property belonging to or loan from a co-operate society; or
- (c) wilfully apply any part of property belonging to or loan from a co-operate society for purposes other than those directed or expressed in the bye-laws of the co-operative society or authorised in this Act or the Regulations.

(2) A person who contravenes subsection (1) commits an offence and is liable-

- (a) on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding six months, or to both; or
- (b) on conviction on indictment to a fine not exceeding twenty thousand dollars or to imprisonment for a term not exceeding two years or to both.

(3) In any proceedings under this section the person accused may, in addition to any penalty imposed, be ordered-

-
- (a) to deliver up any property or repay any sum of money to which the proceedings relate; and
 - (b) pay the cost of the proceedings.

228. (1) A person shall not-

Failure to comply with the Act.

- (a) fail without reasonable cause or wilfully neglect or refuse to comply with a requirement of this Act or the Regulations or to provide any information in circumstances for which a penalty is not provided elsewhere in this Act; or
- (b) purporting to comply with a requirement for information under this Act, provide information which the person knows to be false.

(2) A person shall not wilfully or without reasonable cause disobey any summons, order or direction lawfully issued under this Act or the Regulations.

(3) A person shall not knowingly alter, destroy, mutilate, conceal, cover or falsify or make a false entry in any record or document of or belonging to a co-operative society with intent to impede, disrupt or influence an investigation or the proper administration of any matter.

(4) An officer or member of a co-operative society shall not wilfully contravene the bye-laws of the co-operative society in relation to his or her duties or functions as an officer or member.

(5) A person who contravenes subsection (1), (2) (3) or (4) commits an offence and is liable on summary conviction to a fine not exceeding twenty thousand dollars or to imprisonment for a term not exceeding two years or to both.

229. (1) A person shall not-

Dealing in property subject to charge.

- (a) fraudulently remove any property comprised in a

charge created in favour of a co-operative society from the place where the property was situated at the time of the execution of the charge; or

- (b) knowingly dispose of, or deal with or attempt to dispose of or deal with the property without first obtaining in writing leave of the co-operative society.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding six months or to both.

(3) The Court may in addition to any penalty imposed on a person under subsection (1), require that person to repay the 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.

230. (1) A person shall not make or assist in making a report, return, notice or other document, required by 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 contravenes subsection (1) commits an offence and is liable on summary conviction in the case of an individual, to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding six months, or to both; or in the case of a person other than an individual, to a fine not exceeding ten thousand dollars.

(3) A person does not commit an offence under subsection (2) where the untrue statement or omission was unknown to him or her, and in the exercise of reasonable diligence, could not have been known to him or her.

231. (1) A person shall not fail to-

- (a) give any notice or fail to send any return or document that is required for the purpose of this Act; or
- (b) hold an annual or special general meeting within the stipulated or extended time in conformity with sections 42, 43 and 44 of the Act.

Contravention of the Act.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction-

- (a) in the case of a first offence to a fine not exceeding five thousand dollars;
- (b) in the case of a subsequent offence to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding six months.

(3) Where a body corporate commits an offence under this Act or the Regulations and the offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—

- (a) any director, manager, secretary or other similar officer of the body corporate; or
- (b) any person who was purporting to act in such capacity,

he or she, as well as the body corporate, shall commit the offence and be liable to be proceeded against and punished accordingly.

(4) For the purposes of subsection (2), “director”, in

relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

(5) The Minister may in Regulations create an offence punishable on summary conviction by a fine not exceeding twenty thousand dollars or imprisonment for a term not exceeding two years or by both.

Use of words "credit union" and "co-operative".

232. (1) A person shall not in doing business in Dominica-

(a) use the words "credit union" or "co-operative" or any abbreviation or derivation thereof as part of the name of the business or with respect to goods, wares, merchandise or services or the person's method of conducting business; or

(b) hold himself or herself or his or her business to be a registered co-operative society,

unless the person or his or her business is registered under this Act.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding five thousands dollars or to imprisonment for a term not exceeding six months or to both.

Court order to comply.

233. Where a person is convicted of an offence under this Act or the Regulations, the court may, in addition to any punishment imposed, order the person to comply with the provision of this Act or the Regulations for the contravention of which he or she has been convicted.

Limitation.

234. The effluxion of time is no bar to prosecution for an offence under this Act.

Preservation of civil remedy.

235. A civil remedy for an act or omission under this Act is not suspended or affected by reason that the act or omission is an offence under this Act.

PART XVII
**ABANDONED PROPERTY HELD BY CREDIT
UNIONS**

236. (1) Subject to subsection (2), where there has been no activity relating to the property specified in paragraphs (a) and (b) for a period of 15 years except for the posting of interest and dividends the property specified in paragraphs (a) and (b) is presumed to be abandoned-

Abandoned property in credit union.

- (a) any general deposit, demand, savings or matured time deposit made in Dominica with a credit union, together with any interest or dividend, but excluding any lawful charges;
- (b) any funds paid in Dominica toward the purchase of shares or other interests in a credit union, together with any interest or dividend, but excluding any lawful charges where there has been no activity for one year;

(2) The property specified in paragraphs (a) or (b) of subsection (1) shall not be presumed abandoned unless correspondence by the credit union has been issued to the last known address of the owner of the property at least once every three years reminding the owner that if no activity is evidenced for a period of 15 years the property is presumed to be abandoned.

(3) The property specified in paragraphs (a) or (b) of subsection (1) shall not be presumed abandoned if the owner has, within 15 years of the establishment of the account –

- (a) increased or decreased the amount of the deposit or funds;
- (b) presented the passbook for the crediting of interest or dividends;
- (c) corresponded in writing with the credit union concerning the property; or

(d) otherwise indicated an interest in the property.

(4) Where any contents of a safety deposit box on which the lease or rental has expired and concerning which notice of the intention of the credit union to deliver the contents thereof into the custody of the Minister responsible for Finance has been sent by Registered letter to the last known address of the lessee and to which the lessee has failed to respond within one year the contents shall be deemed to be abandoned.

Report, publication and disposal of abandoned property.

237. (1) A credit union which holds any of the property specified in section 236 shall within ninety days after the end of its financial year report such holdings to the Registrar, and subsequently pay or deliver to the Registrar all property presumed to be abandoned listed in the report in accordance with Regulations made by the Minister.

(2) On paying or delivering the property identified in subsection (1) into the custody of the Registrar a credit union is relieved of all liability to the extent of the value of the property for any claim in that respect.

(3) Within thirty days after the end of its financial year but before the filing of the report to the Registry required by subsection (1), a credit union shall publish in the *Gazette* and a newspaper circulating in Dominica the name of the owner and particulars concerning the property and shall mail a notice to the owner at his last known address containing particulars concerning the property.

Sale and handling of proceeds of sale of abandoned property.

238. (1) A credit union may sell at a public sale all property, other than money presumed to be abandoned after the expiration of sixty days from the later date of publication or mailing required by section 237(3) following the advertisement of the sale as the Minister may authorise.

(2) A purchaser shall receive title to the property free from all claims of the owner or prior holder and from all persons claiming through or under him.

(3) A credit union shall deposit with the Registrar the proceeds of the sale of property in accordance with subsection (1) less all reasonable costs incurred by it in connection with the sale, mailing of notices, and services as it considers appropriate to assure the prompt payment of claims which may subsequently be made and approved by the Minister.

(4) Any property remaining unsold shall be delivered to the Registrar and shall be disposed of by the Registrar in such manner as the Minister may direct.

239. (1) Any person claiming an interest in any property which has been paid to, or delivered into the custody of the Registrar or in the proceeds from the sale of the property may file a claim, with the Registrar and, after the person is given a hearing the decision of which shall be communicated to the claimant and made a public record, the Registrar may deliver up the property or make payment.

Claims on abandoned property.

(2) Any person aggrieved by a decision of the Registrar may commence an action in the Court to establish his claim within thirty days following the decision of the Registrar.

240. (1) A credit union shall not willfully fail to file the report or to pay or deliver property presumed to be abandoned into the custody of the Registrar in accordance with section 237(1) or 238(4).

Penalties for failure to file abandoned property.

(2) A credit union who contravenes subsection (1) commits an offence, and it and each of its directors are liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding three months or to both such fine and imprisonment.

PART XVIII**MISCELLANEOUS**

Interpretation.

241. In this Part -

“duplicate originals” means the two copies of the bye-laws or statements required in section 242;

“statement” means a special resolution stating an intent to dissolve mentioned in section 165.

Execution and filing.

242. (1) Where this Act requires that bye-laws or a statement relating to a co-operative society shall be sent to the Registrar, unless otherwise specifically provided, the co-operative society shall send three copies of the bye-laws or statement signed by a director or an officer of the co-operative society.

(2) Subject to the other provisions of this Act, where the Registrar receives duplicate originals of any bye-laws or statement under subsection (1) and they are accompanied by any other required documents and the prescribed fees, the Registrar shall-

- (a) endorse on each of the duplicate originals the word “Registered” and the date of the registration;
- (b) issue in duplicate the appropriate certificate and attach to each certificate one of the duplicate originals of the bye-laws or statements;
- (c) file a copy of the certificate and attached bye-laws or statement;
- (d) send to the co-operative society the original certificate and attached bye-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 it receives the bye-laws or statement issued under which the certificate is issued or as of any later day specified by the person who signed the bye-laws or statement.

(4) A signature required on a certificate mentioned in subsection (2) may be printed or otherwise mechanically produced.

243. 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.

Waiver of notice.

244. (1) A director or officer of a co-operative society may-

(a) sign a certificate stating any fact set out in; or

(b) certify a copy of the whole or any part of,

the bye-laws, or any other contract to which the co-operative society is party or the minutes of a meeting of the directors, a committee of directors or the members.

Certificate of co-operative society.

(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.

245. (1) Where a notice or document is required to be sent to the Registrar under this Act, the Registrar may accept a photostatic or photographic copy of the notice or document.

Document.

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

Alteration.

246. Where the Registrar is authorised to do so by the person who sent a notice or document or his or her representative, the Registrar may alter the notice or document, but it may not alter an affidavit or statutory declaration.

Rectification and correction.

247. (1) Where there is an error in the bye-laws, a notice, a certificate or any other document, the directors or members shall on the request of the Registrar-

- (a) pass any necessary resolutions;
- (b) send to the Registrar the relevant documents required to comply with this Act; and
- (c) take any other steps that the Registrar may reasonably require,

in order that the Registrar may correct the bye-laws, notice, certificate or document.

(2) Before making a correction under subsection (1), the Registrar shall be satisfied that the correction would not prejudice any of the members or creditors of the co-operative society.

(3) The Registrar may, at the request of a co-operative society or of any other interested person, accept a corrected version of any of the documents referred to in subsection (1) if-

- (a) the correction is approved by the directors of the co-operative society; and
- (b) the Registrar is satisfied that the correction would not prejudice any of the members or creditors of the co-operative society.

(4) If in the view of-

- (a) the Registrar;
- (b) the co-operative society; or
- (c) any interested person,

a correction to any of the documents referred to in subsection (1) above would prejudice a member or a creditor of the co-operative society, the Registrar, the co-operative society or the person may apply to the Court for an order that the document be corrected and for an order determining the rights of the members or creditors.

(5) An applicant under subsection (4) shall give the Registrar notice of the application, and the Registrar shall be entitled to appear and to be heard and represented by a member of the staff of the Registrar or by an attorney-at-law.

(6) A corrected document shall bear the date of document it replaces.

(7) If a corrected certificate materially amends the terms of the original certificate, the Registrar shall without delay give notice of the correction in the Gazette and in a newspaper published and circulated in Dominica.

(8) The Registrar may on its own initiative correct any—

- (a) linguistic error;
- (b) error of transcription;
- (c) clerical error; or
- (d) mistake where the error is made by the Registrar or where the error is not substantive in nature.

248. (1) A co-operative society registered under this Act is exempt from any stamp duty, taxes and fees, with which, under any law for the time being in force, instruments executed by or on behalf of such co-operative society or by an officer or member and relating to the business of such co-operative society, or any class of such instruments, are respectively chargeable.

Exemption from stamp duty and other taxes.

(2) Notwithstanding the provisions of any other law in force in Dominica, a co-operative society shall be exempt from

the payment of income tax, corporation tax and any other tax on the incomes of such co-operative society.

(3) Notwithstanding the provisions of any other law in force in Dominica providing for the payment of customs duties, consumption taxes, excise taxes, environmental levy or customs service charge, the Minister in Cabinet may by Order published in the *Gazette*, exempt a society registered pursuant to this Act from liability to customs duties, consumption taxes, excise taxes, environmental levy or customs service charge on goods imported by the society.

Limitation of jurisdiction.

249. Except as is expressly provided in this Act, a civil court shall not have any jurisdiction in respect of any matter concerned with the dissolution of a co-operative society under this Act.

Proof of entries in books and other documents.

250. (1) A copy of any entry in a book or other document that is required to be kept by this Act shall, if certified by the Registrar be received in any legal proceedings, civil or criminal, as prima facie evidence of the existence of such entry and shall be admitted as evidence of the matters, transactions and accounts therein recorded in every case where, and to the same extent as, the original entry itself is admissible.

(2) An officer of a co-operative society shall not, in any legal proceedings to which the co-operative society is not a party, be compelled to produce any of the co-operative society's books, the content of which can be 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.

Immunity of Registrar and staff.

251. The Registrar or any other person exercising a function under this Act, shall not be liable in damages for anything done or omitted in the discharge or purported discharge of their respective functions under this Act or under the Regulations unless it is shown that the act or omission was in bad faith.

252. (1) For the purpose of carrying out this Act, the Minister may make Regulations-

- (a) defining, enlarging or restricting the meaning of any word used but not defined in this Act;
 - (b) requiring the payment of and prescribing the amount of any fee with respect to-
 - (i) the filing, examination or copying of any document; or
 - (ii) any action that the Registrar is required or authorised to take under this Act;
 - (c) prescribing the procedure for appeals to the Registrar;
 - (d) prescribing business in which co-operative societies or any class of co-operative societies may not engage without the prior approval of the Registrar;
 - (e) exempting any co-operative society or class of co-operative societies from any provision of this Act;
 - (f) prescribing any other matter or thing required or authorised to be prescribed by this Act; and
 - (g) generally for giving effect to and for the efficient operation of the Act.
- (2) Regulations under this Act may-
- (a) make different provision in relation to different cases or circumstances;
 - (b) apply in respect of particular persons or particular cases or particular classes of persons or particular classes of cases, and define a class by reference to any circumstances whatsoever; and

- (c) contain such transitional, consequential, incidental or supplementary provisions as appear to the Minister to be necessary or expedient for the purposes of the regulations.

PART XVIII

TRANSITIONAL

Interpretation.

Act No. 15 of 1996.

253. In this Part “the former Act” means the Co-operative Societies Act, 1996.

Existing directors and officers.

254. (1) The directors and officers of co-operative societies in existence on the coming into force of this Act shall continue to hold office in accordance with the former Act and the bye-laws of the co-operative society.

(2) Where new directors of a co-operative society are to be elected after the coming into force of this Act, such directors shall be elected in accordance with this Act.

Co-operative societies, etc. registered under the former Act.

255. All co-operative societies which prior to the coming into force of this Act were duly registered or deemed to be registered under the former Act shall be taken to be registered under this Act, and-

- (a) the bye-laws of a co-operative society, including any amendments of those bye-laws, as registered under the former Act, shall be taken as if registered under this Act;
- (b) a register kept in accordance with the requirements of the former Act shall be taken to be part of the corresponding register to be kept under this Act;
- (c) a document referring to a provision of the former Act shall be construed as referring to the corresponding provision of this Act; and

(d) all orders, directions, appointments and other acts lawfully made or done under a provision of the former Act and in force immediately before the coming into force of this Act shall be taken to have been made or done under the corresponding provisions of this Act and shall continue to have effect accordingly.

256. (1) Subject to subsection (2), the former Act is repealed. Repeal.

(2) All rules, regulations and bye-laws made under the former Act shall continue in force with any necessary amendments and shall be taken as having been made under this Act until such time as new rules and regulations and bye-laws are made.

(3) Notwithstanding subsection (1), where a co-operative society is being dissolved or liquidated under the former Act, that Act shall continue to apply to that co-operative society and its dissolution or liquidation.

SCHEDULE

Section 197.

CONSTITUTION AND PROCEDURE OF THE CO-OPERATIVE SOCIETIES APPEALS TRIBUNAL

PART 1

Constitution

1. The Co-operative Societies Appeals Tribunal shall consist of three persons, one of whom shall be an attorney-at-law of at least five years standing who shall be the Chairperson of the Tribunal. Membership.

2. The members of the Tribunal shall be appointed by the Minister, after consultation with the apex body, for a period of not more than three years and shall be eligible for re-appointment. Appointment.

Resignation.	3. A member may at any time resign his membership by notice in writing to the Minister.
Inability.	<p>4. (1) If the Minister is satisfied that a member—</p> <p style="padding-left: 40px;">(a) has been incapacitated by physical or mental illness; or</p> <p style="padding-left: 40px;">(b) is otherwise unable or unfit to discharge the functions of a member;</p> <p>the Minister may by notice published in the Gazette, declare the office of the member to be vacant and thereupon, the office shall become vacant.</p> <p style="padding-left: 40px;">(2) In case of the temporary absence or inability of a member to act, the Minister may appoint a suitable person to act in that member's place.</p>
Publication.	5. The Minister shall publish in the Gazette notice of the appointment and cessation of appointment of a member.
Remuneration	6. The members of the Tribunal shall receive such remuneration as the Minister may prescribe.
Validity of proceedings.	7. The validity of any proceedings of the Tribunal shall not be affected by any vacancy among the members or any defect in the appointment of a member.
Rules.	8. Subject to this Schedule, the Tribunal shall regulate its own procedure and may make rules for that purpose.

PART 2

Procedure

Initial Procedure.	1. (1) An appeal to the Tribunal shall be by notice in writing, and sent or delivered to the chairperson of the Tribunal.
--------------------	--

(2) On receipt of a notice of appeal, the chairperson shall send a copy thereof to the other members of the Tribunal.

(3) The chairperson of the Tribunal may appoint a secretary and such other officers as he thinks fit for the purposes of the appeal.

2. (1) The appellant shall, within 14 days of the lodging of the notice of appeal, provide to the chairperson of the Tribunal a written statement setting out the facts and grounds on which the appeal is based and a copy of such statement shall be forwarded by the chairperson of the Tribunal to the Registrar and, if the appeal is against a decision of an arbitrator, to the arbitrator, and, if the appellant is not a co-operative society, to the co-operative society of which the appellant is a member, and if the appeal is against the decision of the Registrar or an arbitrator in a dispute, to any other party to the dispute.

Statements to be provided.

(2) A person or co-operative society to whom a copy of the appellant's statement has been provided shall, within 14 days of the receipt by him of the statement, submit to the chairperson of the Tribunal a written response to the statement, and a copy of such response shall be sent by the chairperson of the Tribunal to the appellant and to any other person interested in the appeal of whom he or she has notice.

(3) The chairperson shall send copies of all statements and responses to the other members of the Tribunal as soon as he or receives them.

3. On application by any person interested in the appeal to whom a copy of the written statement of the appellant or of the response has been sent, or in any case where the chairperson of the Tribunal considers it necessary to do so for the proper resolution of the appeal, the chairperson may require the appellant or any other person to provide him or her with further particulars in writing within such time as the chairperson may direct and the

Further particulars.

chairperson, on receipt of such particulars shall provide copies of such particulars to the other interested parties and to the other members of the Tribunal.

Notice of hearing.

4. The chairperson of the Tribunal shall, in consultation with the other members of the Tribunal, fix a date and place for the hearing of the appeal and shall give not less than 7 days' notice thereof to the appellant, the Registrar and any other interested party.

Procedure at hearing.

5. (1) At a hearing before the Tribunal, the appellant, the Registrar and any other interested party shall be entitled to appear and to be heard and represented by an attorney-at-law or, in the case of the Registrar, by a member of the Registrar's staff.

(2) The Tribunal may admit any duly authenticated written statement or other material as prima facie evidence of any fact or facts in any case in which it thinks it just and proper so to do.

(3) The Tribunal may, if it thinks fit, call for such documents and examine such witnesses as appear to it likely to afford evidence relevant and material to the enquiry.

(4) The Tribunal may require any party to the enquiry or any witness in the proceedings to give evidence on oath and, for that purpose, the chairperson of the Tribunal shall have power to administer an oath.

(5) If, after notice of a hearing has been duly given, the appellant, the Registrar or any other interested party fails to appear at the hearing, the Tribunal may proceed with its enquiry into the appeal notwithstanding the absence of all or any of them, or may give such directions with a view to the determination of the appeal as the Tribunal thinks just and proper.

(6) Proceedings of the Tribunal shall be held in public.

6. (1) The decision on any matter of the majority of the Tribunal shall be the decision of the Tribunal, and the decision of the Tribunal shall be recorded in writing and signed by the chairperson of the Tribunal, who may correct in any decision any clerical mistake or error arising from an accidental slip or omission.

Decision of Tribunal.

(2) A copy of the decision, signed as aforesaid, shall be sent by the chairperson of the Tribunal, as soon as may be practicable, to the appellant, the Registrar and any other interested party.

(3) The Tribunal may, on the application of any person, award costs to any party to an appeal in such amount as the Tribunal shall assess at the hearing.

7. Save as otherwise expressly provided by this Act, the procedure at any hearing before the Tribunal shall be such as the Tribunal may determine.

General provision as to procedure.

8. The production in any proceedings in any court of a document purporting to be certified by the secretary as a copy of a decision of the Tribunal shall, unless the contrary is proved, be sufficient evidence of the document and the facts stated therein.

Proof of decisions of the Tribunal.

Passed in the House of Assembly this 17th day of March, 2011

DOREEN FABIEN (Mrs.)

Clerk of the House of Assembly (Ag.)

DOMINICA

Printed by the Government Printer at the Government Printery, Roseau

(Price \$39.00)