

**SAINT LUCIA**

No. 16 of 2024

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I Assent

[L.S.]

ERROL CHARLES,  
*Acting Governor-General.**September 30, 2024.*

## SAINT LUCIA

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### No. 16 of 2024

**AN ACT** to make new provision with respect to the registration, supervision, regulation, governance, operation and management of a co-operative society and for related matters.

[ 8th October, 2024 ]

**BE IT ENACTED** by the King's Most Excellent Majesty, by and with the advice and consent of the House of Assembly and the Senate of Saint Lucia, and by the authority of the same, as follows:

**PRELIMINARY****Short title and commencement**

1.—(1) This Act may be cited as the Co-operative Societies Act, 2024.

(2) Subject to subsection (3), this Act comes into force on a date to be fixed by the Minister by Order published in the *Gazette*.

(3) The Minister may fix different dates for the coming into force of different Parts or sections of this Act.

**Interpretation****2. In this Act —**

“agent”, in relation to a co-operative society, includes its banker, accountant, attorney-at-law, auditor and its financial and other advisers;

“annual general meeting” means an annual general meeting under section 151;

“annual licence” means an annual licence issued under section 20;

“Appeals Tribunal” means the Co-operative Societies Appeals Tribunal established under section 297;

“associate” includes —

- (a) an immediate relative of a person, including a spouse or child, a step-child and his or her spouse, a parent, a brother or sister;
- (b) a co-operative society which holds a half per cent or more of another co-operative society’s shares;
- (c) a 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 a board or elected committee, an employee of a co-operative society, or a business partner;

- (e) a company or co-operative society over which a co-operative society has control; or
- (f) a company or co-operative society of which the persons referred to in paragraph (c) is a director, manager or has control,

notwithstanding that at the relevant time the person in question, is not the legal person, has not yet come into existence or has ceased to exist;

“bank” means a licensed financial institution under the Banking Act, Cap. 12.01;

“board” means a board of directors or other directing body, to whom the management of the affairs of a co-operative society is entrusted;

“bye-laws” —

- (a) means the bye-laws of a co-operative society registered under this Act;
- (b) includes a registered amendment of the bye-laws;

“capital base” means —

- (a) permanent shares, paid up by the members;
- (b) institutional capital, less an amount by which that total has become impaired by operating or other losses; and
- (c) the value of a co-operative society’s contribution to the Stabilization Fund;

“CARICOM Member State” means a member state of the Caribbean Community established by the Revised Treaty of Chaguaramas signed in Nassau, The Bahamas on July 5, 2001 the text of which is set out in the Caribbean Community Act, Cap. 19.21;

“central co-operative society” means a co-operative society registered under this Act and whose membership comprises of co-operative societies to which it provides technical and other services;

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

“committee” means —

- (a) a committee appointed under section 84;
- (b) a Supervisory Committee; or
- (c) a Credit Committee;

“committee member” —

- (a) in relation to a committee appointed under section 84, means a person appointed under section 72;
- (b) in relation to a Supervisory Committee, means a person elected under section 111;
- (c) in relation to a Credit Committee, means a person elected under section 111;

“connected member” means —

- (a) in relation to an individual, the member is —
  - (i) the relative of that member,
  - (ii) the trustee of a settlement under which that member has a life interest in possession,
  - (iii) a company of which that member is a director or controlling or significant shareholder,
  - (iv) an employee or partner of that member;
- (b) in relation to a company, the member is —
  - (i) a director, controlling or significant shareholder of that company,
  - (ii) a subsidiary or affiliate of that company,
  - (iii) a director or employee of a subsidiary or affiliate of that company;
- (c) in relation to a member who has with any other person an agreement or arrangement with respect to the acquisition,

holding or disposal of shares or other interests in a company or under which they undertake to act together in exercising their voting power in relation to the company, that other person;

“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 a retail price to its members who are to be the users or consumers of the goods and services;

“co-operative society” means a financial co-operative society or a non-financial co-operative society;

“Court” means a District Court or a High Court of the Eastern Caribbean Supreme Court;

“credit union” means a financial co-operative society organized by a group of people with a shared field of membership for provident and productive purposes that provides co-operatively pooled financial services to its members;

“delegate”, in relation to a co-operative society that is a member of another co-operative society, means the representative of the former, elected or appointed to attend and vote at meetings of the latter co-operative society;

“delinquent loan” means a loan on which the borrower has defaulted on a contractual term of repayment as set out in a loan arrangement and for which no satisfactory repayment arrangement has been made between the lender and borrower;

“deposit” means —

(a) a sum of money paid on terms under which the sum will be repaid, with or without interest or a premium, and 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; or

(b) the unpaid balance of money or its equivalent received or held by a credit union or other financial co-operative society from or on behalf of a person in the usual course

of business and for which the institution has given or is obliged to give credit to that person's chequing, savings, demand or time account or for which the institution has issued a certificate, receipt, cheque, money order, draft or other instrument in respect of which it is primarily liable; and

- (c) a sum of money paid on terms 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 service is 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 or return of property, whether in a particular state of repair or otherwise;

“deposit guarantee” means an insurance policy or insurance fund that guarantees the return of funds in a credit union or other financial co-operative society against loss in the event that the credit union or other financial co-operative society fails;

“director” means a member of a board of a co-operative society who is elected under section 111;

“dividend” means a payment made to members of a co-operative society from the net surplus, in proportion to the share capital held by the members, subsequent to the retained earnings becoming positive and the deduction of

the allocation to a statutory reserve, the deposit guarantee facility and the Stabilization Fund;

“dormant account” means an account established in a co-operative society on which a transaction has not been initiated by a member for a period of twenty-four consecutive months or more;

“doubtful loan” means a loan that is twelve months or more in default of payment;

“employee” means a person appointed or designated under section 81;

“examiner” means a person appointed under section 264;

“financial co-operative society” means a co-operative society that conducts a financial service;

“financial service” includes the acceptance and withdrawal of deposits, the provision of loans and other financial services, pursuant to this Act;

“Financial Services Regulatory Authority” means the Financial Services Regulatory Authority established under section 3 of the Financial Services Regulatory Authority Act, Cap. 12.23;

“financial year”, in relation to a co-operative society, means a calendar year, with the period commencing on the 1<sup>st</sup> day of January and ending on the 31<sup>st</sup> day of December;

“former Act” means the Co-operative Societies Act, Cap. 12.06;

“general meeting” means a general meeting under section 150;

“guidelines” means the guidelines made 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” means a non-financial co-operative society that owns and manages real estate and

where each shareholder in that co-operative 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 non-financial 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 reserves or other non-distributable general reserves;

(b) earnings retained after distribution of surplus funds; and

(c) funds received by way of a non-refundable donation and is not available for distribution;

“International Financial Reporting Standards” means an accounting standard approved by the International Accounting Standards Board;

“International System” means the International Prudential and Operating Standards and Monitoring System as produced and approved by the World Council of Credit Unions in respect of financial performance;

“investigator” means a person appointed under section 280;

“junior co-operative society” means a financial co-operative society consisting solely of members of a school, club or cultural organization who are minors;

“legal person” means a body corporate incorporated under law;

“legal representative”, in relation to a co-operative society, member or other person —

(a) means a person who acts on behalf of and represents the co-operative society, member or other person;

- (b) includes a trustee, executor, administrator, assignee, or receiver of the co-operative society, member or other person;

“line of credit” means a credit source extended to a co-operative society by a bank, credit union or other financial institution at a given time, so that the co-operative society retains access to the funds it needs to finance its ongoing expenses, purchases or loans;

“liquid asset” —

- (a) means currency, deposits and other resources maintained by a credit union with another credit union or a bank or other financial deposit-taking institution licensed to accept deposits, and which can be easily and quickly converted into cash within twelve months and with minimal impact on the price received and which can be withdrawn such resources on demand as readily marketable securities to meet its commitments with respect to loans and withdrawal of deposits;

- (b) includes a prescribed liquid asset;

“management” means persons who are employed or designated by a board to execute the day-to-day operations of a co-operative society;

“meeting” means —

- (a) a general meeting;
- (b) an annual general meeting; or
- (c) a special meeting;

“member” —

- (a) means a person who is admitted to membership of a co-operative society;
- (b) includes a registered co-operative society joining in the application for the registration of a co-operative society, and admitted to membership after registration under this Act and under the bye-laws;

“member co-operative society” means a co-operative society that is a member of another co-operative society;

“members equity” means the membership capital raised from the members through qualifying shares;

“Minister” means —

- (a) in relation to a financial co-operative society, the Minister responsible for finance;
- (b) in relation to a non-financial co-operative society, the Minister responsible for co-operative societies;

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

“net worth” means the difference between the total value of the assets of a co-operative society and the total value of its liabilities;

“non-financial co-operative society” means a co-operative society that does not provide a financial service;

“officer” includes —

- (a) a president;
- (b) a vice president;
- (c) a secretary;
- (d) a treasurer;
- (e) a director; or
- (f) a person empowered under this Act or the bye-laws registered under this Act to give directions with regard to the business of a co-operative society;

“patronage refund” means the equitable return to a member of a co-operative society, paid by the co-operative society, from net surplus in proportion to the volume of business that a member transacted with the co-operative society during the preceding financial year, after the allocations to —

- (a) a statutory reserve;
- (b) the Stabilization Fund;
- (c) the deposit guarantee facility; and
- (d) dividends;

“permanent shares” means units of ownership interest in a co-operative society which entitles a member to a share of the surplus funds in proportion to the percentage of ownership in the co-operative society and are redeemable only on withdrawal or termination of membership from the co-operative society as approved by a board or on the death of the member;

“person” means an individual or legal person;

“prescribed” means prescribed in the Regulations;

“president” means the president under section 69;

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

“producer co-operative society” means a non-financial co-operative society whose primary purpose is to operate an enterprise in which its members are the producers, whether employed or self-employed, necessary for the operation;

“provisional director” means a member of the board who holds office after registration of a co-operative society and until a board is elected at the first general meeting;

“qualifying shares” means the mandatory minimum units of ownership interest allowed to be purchased by a person to qualify for admission and to enjoy the full rights and privileges of membership of a co-operative society, including the entitlement to vote on matters put before members at meetings and to a share of the profits in proportion to his or her percentage ownership and are not withdrawable and are redeemable only on withdrawal or termination of membership from the co-operative society once approved by a board or on the death of the member;

“Register” —

- (a) in relation to a non-financial co-operative society, means the Register of Co-operative Societies to be kept under section 42(a);

- (b) in relation to a credit union or other financial co-operative society, means the Register of Credit Unions and other financial co-operative societies to be kept under section 42(b);

“Registrar” —

- (a) in relation to a financial co-operative society, means the Financial Services Regulatory Authority;
- (b) in relation to a non-financial co-operative society, means the Registrar of Co-operative Societies;

“Registrar of Co-operative Societies” means the Registrar of Co-operative Societies referred to under section 5(1) of the former Act;

“Regulations” means the Regulations made under section 320;

“secondary co-operative society” —

- (a) means a co-operative society that is owned by an association of primary co-operative societies;
- (b) includes a central credit union or a central co-operative society;

“secretary” means the secretary under section 69;

“security”, in relation to a security issued by a co-operative society —

- (a) means a share or a debt obligation of a co-operative society;
- (b) includes a certificate confirming the share or debt obligation of a co-operative society;

“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;

“senior executive officer” means a person other than the manager of a co-operative society who, under the immediate authority of the manager, exercises managerial

functions or is responsible for maintaining accounts or other records of the co-operative society;

“service co-operative society” means a non-financial co-operative society whose primary purpose is to operate an enterprise in which its members are service providers, whether employed or self-employed, necessary for the operation;

“special meeting” means a special meeting under section 152;

“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 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) consented to in writing at a meeting on that resolution;

“Stabilization Fund” means a facility that provides technical assistance, advice and limited financial assistance to affiliated co-operative societies that are experiencing solvency problems or are insolvent or are otherwise troubled;

“statutory reserves” means the reserves established under section 179;

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

**Co-operative principles**

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

- (a) each member or delegate, other than in a secondary co-operative society or tertiary co-operative society, has no more than one vote;
- (b) a member or delegate is not entitled to vote by proxy;
- (c) its membership is open, voluntary and available without artificial restriction or unlawful basis of discrimination, to a 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 utilizes 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 limited 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 co-operation, 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 membership education and training; and
- (i) it contributes to the social and economic development of its community.

**Conflict of laws**

4. In the case of a financial co-operative society, where a conflict exists between this Act and the Financial Services Regulatory Authority Act, Cap. 12.23, the Court shall determine if this Act or the Financial Services Regulatory Authority Act, Cap. 12.23 prevails.

**PART I  
ADMINISTRATION****Registrar**

5.—(1) The Registrar of Co-operative Societies shall regulate and supervise a non-financial co-operative society.

(2) The Financial Services Regulatory Authority shall regulate and supervise a financial co-operative society.

**Functions of the Registrar**

6.—(1) The Registrar shall administer the system of regulation and supervision of co-operative societies provided for under this Act for —

- (a) the protection by each co-operative society of the funds of its members; and
- (b) the maintenance of financial stability and well-being in co-operative societies generally.

(2) Without limiting the generality of subsection (1), the functions of the Registrar are to —

- (a) lead and manage the regulatory process;
- (b) supervise and regulate a co-operative society;
- (c) inspect and monitor a co-operative society;
- (d) initiate, promote and encourage organized activities for the establishment and development of co-operative societies;

- (e) ensure that records are kept up-to-date;
- (f) ensure that reports from a co-operative society are current;
- (g) register a viable co-operative society;
- (h) arrange the hearing of disputes under section 294; and
- (i) perform other functions specified under this Act or other enactment.

**Powers of the Registrar generally**

7.—(1) The Registrar has powers to —

- (a) by notice in writing, direct a board within the period the Registrar specifies; and
- (b) place a co-operative society under administrative supervision.

(2) The Registrar may exercise the powers under subsection (1) if —

- (a) after an examination of a co-operative society or on the receipt of information, the Registrar has a reasonable ground to believe 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 action that would affect the financial soundness of the co-operative society.

(3) A notice under subsection (1)(a) must specify the action to be ceased or practice to be desisted from or the measures the Registrar considers necessary to protect the funds of the co-operative society or the interests of the co-operative society's members.

(4) Where the Registrar places a co-operative society under administrative supervision under subsection (1)(b), the Registrar shall 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

(5) A person appointed under subsection (4) holds office for a period not exceeding twelve months on the terms the Registrar specifies and may be paid remuneration as the Registrar determines, and the remuneration, and other expenses of and incidental to the

appointment, must be defrayed out of the funds of the co-operative society.

(6) Where it appears to the Registrar that a requirement in this Act or the bye-laws is contravened, and the circumstances do not justify the suspension of registration under section 41, the Registrar may give directives to the co-operative society, as seems appropriate.

(7) A director, committee member, employee or agent of a co-operative society shall at all times give the information required by a person appointed under subsection (4), for the full and satisfactory performance of his or her duties and for this purpose section 293 applies as if a reference made to the Registrar includes a reference to a person appointed under subsection (4).

(8) A person appointed under subsection (4) shall report to the Registrar, in the manner and with the frequency that the Registrar directs, on the affairs of the co-operative society.

(9) A co-operative society or a person that is required to take 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 of the reason the action required should not be taken.

(10) Where the co-operative society fails to comply with the notice under subsection (1)(a) and (3), after giving a board the opportunity to be heard in a meeting called by the Registrar for the purpose, the Registrar may —

- (a) suspend from office for the period the Registrar considers appropriate; or
- (b) remove from office,

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

(11) Where a director is suspended under this section, the remaining directors are regarded as constituting a board.

(12) 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 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 section 112.

**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 a co-operative society to ensure the safety and soundness of the funds of the co-operative society;
- (b) the management and investment of the funds of a co-operative society;
- (c) the underwriting and collection of loans;
- (d) the calculation, management and recovery of doubtful and delinquent loans;
- (e) self-insurance arrangements; and
- (f) combating money laundering and the financing of terrorism.

(2) Without prejudice to subsection (1), in the case of a financial co-operative society, the guidelines issued must be consistent with the International Financial Reporting Standards, the International System and any other relevant international accounting and prudential standards.

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

(4) The Registrar shall —

- (a) implement and publicize adequate guidelines for the receipt of verifiable complaints and concerns from creditors, members, employees and the public in respect of the governance, management and operations of a co-operative society;
- (b) make the guidelines and all amendments to the guidelines available for inspection by the public; and
- (c) on payment of a prescribed fee, provide copies of the guidelines and all amendments to the guidelines to the public.

(5) The Registrar shall, at the intervals the Registrar determines, review the guidelines.

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

### **Certificate of Registrar**

**9.—**(1) The Registrar —

- (a) may issue a person with a certificate stating that —
  - (i) a document required to be sent to the Registrar has or has not been received by the Registrar,
  - (ii) a name, whether that of a co-operative society or not, is or is not on the Register, and
  - (iii) a name, whether that of a co-operative society or not, was or was not on the Register on a stated date;
- (b) shall issue a certificate of amendment in the prescribed form to a co-operative society that files an amendment of its bye-laws under this Act.

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

(3) The signature required on the certificate under subsections (1) and (2) must be the original signature of the Registrar or an officer authorized under subsection (2) with the seal of the office of the Registrar affixed.

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

### **Power to refuse documents**

**10.—**(1) The Registrar shall, no later than ninety days after receipt, refuse to receive, file or register a document that in the Registrar's opinion —

- (a) contains matter contrary to law;

- (b) has not, by reason of an omission or error in description, been properly completed;
- (c) does not comply with this Act;
- (d) contains an error, alteration or erasure;
- (e) is not legible; or
- (f) is not durable.

(2) The Registrar shall give reasons for his or her refusal in respect of a document referred to under subsection (1).

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

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

#### **Verification of document or information**

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

(2) Without limiting the generality of subsection (1), the Registrar may require a provisional director, elected director, elected committee member, senior management personnel and other officers of a co-operative society to each complete and submit the prescribed personal declaration form verifying that the provisional director, elected director, elected committee member, senior management personnel or other officer satisfies the criteria under section 107.

#### **Inspection of and access to records**

**12.—**(1) The Registrar may, during the normal business hours of a co-operative society, observe practices, monitor operations and inspect or authorize the inspection of a co-operative society, including a record listed under section 59.

(2) A director, committee member or employee of a co-operative society shall not obstruct, resist or otherwise frustrate the requests by the Registrar or staff of the Registrar for access to information required for examinations, investigations or routine monitoring.

**Documents**

**13.—**(1) Where a notice or document is required to be sent to the Registrar under this Act, the Registrar may accept an electronically scanned or photographic copy of the notice or document.

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

**Alteration of notice or document**

**14.** Where the Registrar is authorized 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 the Registrar may not alter an affidavit or statutory declaration.

**Rectification and correction**

**15.—**(1) Where there is an error in the bye-laws, a notice, a certificate or other document, the board or members of the co-operative society shall, on the request of the Registrar —

- (a) pass a resolution;
- (b) send to the Registrar the document required to comply with this Act; and
- (c) take other steps that the Registrar reasonably requires,

in order that the Registrar may correct the bye-laws, notice, certificate or other document.

(2) Before making a correction under subsection (1), the Registrar shall be satisfied that the correction would not prejudice the members or any other interested parties, including 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 the bye-laws, a notice, a certificate or other document if —

- (a) the correction is approved by the board of the co-operative society; and

(b) the Registrar is satisfied that the correction would not prejudice a member or creditor of the co-operative society.

(4) Where in the view of —

- (a) the Registrar;
- (b) the co-operative society; or
- (c) an interested person,

a correction to the bye-laws, a notice, a certificate or other document referred to under subsection (1) would prejudice a member or a creditor of the co-operative society, the Registrar, the co-operative society or the interested 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 is 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 must contain the date of the document it replaces.

(7) Where a corrected certificate materially amends the terms of the original certificate, the Registrar shall immediately give notice of the correction in the *Gazette* and in a newspaper of general circulation in Saint Lucia.

(8) The Registrar may correct —

- (a) a linguistic error;
- (b) an error of transcription;
- (c) a clerical error; or
- (d) a mistake,

where the error or mistake is made by the Registrar or where the error or mistake is not substantive in nature.

#### **Proof of entry in books and other documents**

**16.—**(1) A copy of an entry in a book or other document that is required to be kept under this Act must, if certified by the Registrar be received in legal proceedings, civil or criminal, as *prima facie* evidence

of the existence of the entry and must be admitted as evidence of the matters, transactions and accounts 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 legal proceedings to which the co-operative society is not a party, be compelled to produce the co-operative society's books, the content of which can be proved under subsection (1), or to appear as a witness to prove a matter, transaction or account recorded, unless the Court for special reasons so directs.

### **Execution and filing**

17.—(1) Where this Act requires that bye-laws or a statement relating to a co-operative society 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 this Act, where the Registrar receives duplicate originals of any bye-laws or statement under subsection (1) and the bye-laws or statement 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) enter the certificate in the Register in chronological sequence;
- (e) send to the co-operative society the original certificate and attached bye-laws or statement; and
- (f) publish in the *Gazette* notice of the issue of the certificate.

(3) The Registrar may date a certificate under subsection (2) as of the day the Registrar receives the bye-laws or statement issued

under which the certificate is issued or as of a later day specified by the person who signed the bye-laws or statement.

(4) A signature required on a certificate under subsection (1) may be printed or otherwise mechanically produced, as approved by the Registrar.

(5) In this section —

“duplicate originals” means the two copies of the bye-laws or statements;

“statement” means a special resolution stating an intent to dissolve under section 243.

### **Staff**

**18.** The Registrar shall be assisted by professional, administrative and other staff as are necessary to enable the Registrar to perform the regulatory duties and to exercise the powers conferred on the Registrar under this Act.

### **Consultation with other bodies**

**19.** The Registrar shall do anything that is necessary to facilitate the exercise of his or her functions or is incidental to or consequential on their exercise, and, in the exercise of any such power the Registrar may consult such other bodies as appear to him or her to be expert or knowledgeable in matters relating to co-operative societies.

### **Annual licence**

**20.—(1)** The Registrar shall issue an annual licence to a co-operative society in the prescribed form and on payment of the prescribed annual licence fee.

(2) An annual licence is valid from the date of first issue to the 31<sup>st</sup> day of December of the year of issue and is renewable each year on payment of the annual licence fee under subsection (1) on or before the 15<sup>th</sup> day of January.

(3) A late fee is payable at the rate of one-twelfth of the fee for each month or part of the month the annual licence fee is not paid.

(4) An annual licence authorizes a co-operative society to operate for the period specified in the licence in accordance with subsection (2).

**Immunity of Registrar and staff**

**21.—**(1) The Registrar and staff of the Registrar are not liable in damages for anything done or omitted in the discharge or purported discharge of a function under this Act unless it is shown that the act or omission was exercised in bad faith.

(2) The registration of a co-operative society or the imposition of prudential, supervisory or reporting requirements or conditions by the Registrar does not constitute a warranty as to the solvency of the co-operative society to which registration is given and the Registrar is not liable in respect of losses incurred through the insolvency or default of a co-operative society.

**PART II**  
**REGISTRATION AND CERTIFICATION**

*Division 1*  
*Registration*

**Requirement for registration**

**22.—**(1) Unless a person or his or her business is registered under this Act, the person shall not —

- (a) carry on the business of a co-operative society;
- (b) in doing business in Saint Lucia use the words “credit union” or “co-operative society” or an abbreviation or derivation 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
- (c) hold himself or herself or his or her business to be a registered co-operative society.

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

(3) A person who contravenes subsection (1)(b) and (c) 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 one

year or to both and to a further fine of one hundred dollars for each day for which the contravention continues after a conviction is obtained.

#### **Search and reservation of name**

**23.**—(1) Prior to registration of a co-operative society, a person or business shall request a name search and pay the prescribed fee, and after which a name reservation shall be submitted to the Registrar for approval in the prescribed form.

(2) The Registrar may, on request and on payment of the prescribed fee and if the name is available for use, reserve a name for ninety days for an intended co-operative society or for a co-operative society that is about to change its name.

#### **Application for registration**

**24.**—(1) Subject to subsection (2), an application for registration of a co-operative society under this Part shall be submitted to the Registrar in the prescribed form and in the manner the Registrar determines.

(2) An application under subsection (1) for registration under this Act 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 co-operative societies.

(3) An application for registration under this Part must be accompanied by —

- (a) three copies of the proposed bye-laws of the co-operative society that contains the particulars specified under sections 25, 26, 27 and 28;

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

**Content of bye-laws generally**

**25.**—(1) The proposed bye-laws of a co-operative society under section 24(3)(a) must include provisions with respect to —

- (a) the name of the co-operative society;
- (b) the co-operative society's area of operations and common bond of membership;
- (c) the objects, core business and conditions of membership of a co-operative society, such as —
  - (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 qualifying and permanent shares that may be held by each member;
- (d) the 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;
- (e) the quorum for meetings, mode of holding meetings and the method of notice for meetings;
- (f) in the case of directors, officers and members of a committee —
  - (i) the qualifications, terms of office and removal,

- (ii) the filling of vacancies, and
- (iii) the powers and duties;
- (g) the address of the co-operative society;
- (h) the distribution of the property of the co-operative society on dissolution;
- (i) the borrowing powers of the co-operative society and the procedure for exercising the borrowing powers;
- (j) the manner of raising funds to meet the objectives of the co-operative society;
- (k) the specification of criteria for exclusion of candidates to be elected or appointed to serve as officials;
- (l) the composition, election and removal of the board or committee;
- (m) the determination of the maximum amount of interest in the shares of the co-operative society that may be held by a member;
- (n) the redemption of shares and payment of balances due on withdrawing from the co-operative society;
- (o) the claims of the representatives of deceased members and the payment of nominees;
- (p) the custody and use of the co-operative society's seal;
- (q) the audit of accounts by auditors appointed by the co-operative society;
- (r) the nature and extent of the liability of members;
- (s) where the objects of a co-operative society include the creation of funds to be lent to the members, provisions in respect of the —
  - (i) occupation or residence of the members,
  - (ii) conditions on which loans may be made to the members, and
  - (iii) consequences, if any, of default in the payment of any sum due to the co-operative society; and

- (t) matters, in addition to those set out in paragraphs (a) to (s) 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 an action, the bye-laws prevail.

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

#### **Content of bye-laws of a housing co-operative society**

**26.** Without prejudice to section 25, the bye-laws of a housing co-operative society must include —

- (a) the manner in which a 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 132, the manner of withdrawal by a member and the repayment of a member's interests in the co-operative society;
- (e) the rules governing a lease of a housing unit by members to non-members;
- (f) a provision that —
  - (i) the co-operative society will give a copy of the bye-laws and the occupancy agreement to each member,
  - (ii) each member is entitled to have quiet enjoyment of his or her housing unit,
  - (iii) the co-operative society or the member is responsible for —
    - (A) the maintenance of the housing unit in a safe, habitable and reasonable state of repairs;
    - (B) the repair or replacement of fixtures; and

- (C) any damage to the housing unit,
- (iv) the housing co-operative society and its agents, except in the case of an emergency are required to give reasonable notice to the member prior to entry of the member's housing unit,
- (v) the housing co-operative society will give three months notice of an increase of housing charges except where —
  - (A) the Registrar gives approval for a shorter notice; or
  - (B) the members have unanimously approved the increase at a general meeting,
- (vi) that the housing co-operative society will give a minimum of thirty days notice to a member of the termination of the membership except where a member contravenes a bye-law governing —
  - (A) ordinary cleanliness of the housing unit after having received written notice of the contravention;
  - (B) the use of the premises for prohibited purposes; or
  - (C) payment of housing charges, and
- (vii) there will be no acceleration of housing charges;
- (g) where the object of the housing co-operative society includes the creation of funds for the purposes of joint investments by the members, a provision to the effect that —
  - (i) current records must be kept of the investment agreements held with each member,
  - (ii) the investment portfolio must be maintained in balance with the level of risk associated with each investment, and
  - (iii) the housing co-operative society must hire the services of a financial adviser to discuss proposed investments.

**Content of bye-laws of an industrial or producer co-operative society**

**27.** Without prejudice to section 25, the bye-laws of an industrial or producer co-operative society must include —

- (a) conditions of admission, expulsion or suspension of its members;
- (b) a procedure for laying off members when there is a lack of work and a procedure of recall to work;
- (c) remuneration of workers involved in the day-to-day work of the co-operative society; and
- (d) allocation of the patronage refund among members.

**Content of bye-laws of a consumer or housing co-operative society**

**28.** Without prejudice to section 25, a consumers' co-operative society or housing co-operative society shall reflect in its bye-laws that none of its elected directors or committee members shall be employees.

**Conditions for registration**

**29.—(1)** A co-operative society shall not be registered, or having been registered, shall not continue to be registered under this Part —

- (a) unless its membership consists —
  - (i) in the case of a credit union or other financial co-operative society, of not less than one hundred members,
  - (ii) in the case of a central credit union or other financial co-operative society or a central co-operative society, of not less than three active credit unions or other financial co-operative societies,
  - (iii) in the case of any other co-operative society, of not less than twenty-five members;
- (b) unless it is economically viable and has provision for the expansion of equity capital and for continuous business growth;

- (c) unless there is conformity among its membership with all the co-operative principles;
- (d) unless the word Co-operative or Credit union or other financial co-operative society, forms part of the name of the co-operative society, and, in the case of a junior co-operative society, the words “Junior Co-operative” 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) unless each member of the 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 Saint Lucia to which all notices and communications may be sent;
- (h) unless its bye-laws conform with this Act and the Regulations;
- (i) unless it complies with the guidelines issued under section 8;
- (j) unless its policies in respect of shares, loans, deposits and investments are documented and comply with this Act;
- (k) unless it complies with the law in force in Saint Lucia relating to anti-money laundering, proceeds of crime and combating terrorism; and
- (l) in the case of an industrial or producer co-operative society, the acquisition of goods for sale to the public is one of its principal objects stated in its bye-laws.

(2) The Registrar may register as a junior co-operative society a co-operative society whose membership consists solely of members of a school, club or cultural organization who are minors.

(3) In the determination of the viability of a new co-operative society or continuing 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, technology and audit costs.

(4) The Registrar shall, before registering a co-operative society cause the premises of the co-operative society to be inspected and consider a report or representations made by the co-operative society with respect to the inspection.

#### **Refusal to register co-operative society**

**30.** Where the Registrar refuses to register a co-operative society, the Registrar shall, within ninety days of the receipt of the application, give the applicant reasons in writing for the refusal.

#### **Registration of co-operative society**

**31.—(1)** Where the Registrar is satisfied that an application has been made and that the conditions of registration are satisfied under section 29, the Registrar shall, within ninety days of the receipt of the application —

- (a) register the co-operative society with or without conditions, as —
  - (i) a primary co-operative society,
  - (ii) a secondary co-operative society, or
  - (iii) a tertiary co-operative society;
- (b) register the bye-laws of the co-operative society; and

(c) on payment of the prescribed fee, issue the co-operative society with a certificate of registration in the prescribed form.

(2) Where the Registrar registers the bye-laws of a co-operative society under subsection (1)(b), the Registrar shall return to the co-operative society one copy of the bye-laws with the registration of the Registrar stamped on the bye-laws.

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

#### **Effect of certificate of registration**

**32.—**(1) A co-operative society comes into existence on the date shown in its certificate of registration.

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

#### *Division 2*

#### *Continuance of Co-operative Society*

#### **Restriction on continuation of a co-operative society**

**33.—**(1) After the commencement of this Act, a co-operative society shall not continue unless the co-operative society holds a valid certificate of continuance under this Act.

(2) A co-operative society that contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding three years or to both.

#### **Application for continuance**

**34.—**(1) Within four months of the coming into force of this Act, a co-operative society shall apply to the Registrar for a certificate of continuance under this Act.

(2) The Registrar may, on the application of a co-operative society, extend the time under subsection (1).

**Certificate of continuance**

**35.—**(1) On receipt of an application under section 34, the Registrar may, issue a certificate of continuance to a co-operation society.

(2) A certificate of continuance under subsection (1) must be in the prescribed form.

(3) On the date shown in the certificate of continuance —

- (a) the co-operative society becomes a co-operative society to which this Act applies as if it had been registered under this Act;
- (b) the certificate of continuance is the certificate of registration of the continued co-operative society.

**Preservation of co-operative society**

**36.** When a co-operative society is continued as a co-operative society under this Act —

- (a) the property of the co-operative society continues to be the property of the co-operative society;
- (b) the co-operative society continues to be liable for the obligations of the co-operative society;
- (c) an existing cause of action, claim or liability to prosecute is unaffected;
- (d) a civil, criminal or administrative action or proceedings pending by or against the co-operative society may be continued by or against the co-operative society; and
- (e) a conviction against, or ruling, order or judgment in favour of or against, the co-operative society may be enforced by or against the co-operative society.

**Previous share or prescription of a co-operative society**

**37.—**(1) A share or prescription of a co-operative society issued before the co-operative society was continued under this Act is presumed to have been issued in compliance with this Act and with the provisions of the bye-laws, irrespective of —

- (a) whether the share is fully paid; and

- (b) a designation, right, privilege, restriction or condition attached to the share, or set out on, or referred to in, the certificate representing the share.

(2) Continuance under this Act does not deprive a shareholder of a right or privilege that he or she claims under an issued share of the co-operative society, nor does it relieve him or her of liability in respect of an issued share of the co-operative society.

#### **Display of certificate of continuance**

**38.—**(1) A co-operative society shall exhibit the certificate of continuance in a prominent position at the credit union and place where the business of the co-operative society is conducted.

(2) A co-operative society that contravenes subsection (1) commits an offence and is liable to a fine not exceeding one thousand dollars.

#### *Division 3 General*

#### **Suspension of registration or continuation**

**39.—**(1) The Registrar may subject to section 41, by written notice, suspend the registration or continuation of a co-operative society for a period of not exceeding twelve months if the Registrar is satisfied that —

- (a) the co-operative society is in breach of a condition of registration;
- (b) the co-operative society does not conform to the co-operative society principles under section 3 or is in breach of a requirement under section 29;
- (c) the co-operative society or an officer has failed or refused to comply with an 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 a return, notice or other document or fee required under this Act; or
- (e) the co-operative society has failed to comply with a directive given by the Registrar under section 6 or 7.

(2) Where the registration or continuation of a co-operative society is suspended, the co-operative society shall, while the suspension lasts, cease to enjoy the rights and privileges of a co-operative society without prejudice to liability incurred by the co-operative society, and liability may be enforced against the co-operative society as if the suspension had not taken place.

(3) The Registrar may for reasons considered sufficient, revoke the suspension under this section.

(4) Where a co-operative has rectified the situation under subsection (1), the co-operative society may apply to the Registrar for reinstatement of registration or continuation and the Registrar may reinstate the registration or continuation of the co-operative society.

#### **Cancellation of registration or continuation**

**40.—**(1) The Registrar may, subject to section 41 by written notice, cancel the registration or continuation 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 or continuation has been obtained by fraud, dishonesty or mistake;
- (d) the co-operative society has not within a period of suspension under subsection (1) rectified the reason for its suspension;
- (e) the co-operative society gives notice to the Registrar that it has ceased to carry on business;
- (f) the co-operative society is dissolved;
- (g) the co-operative society is amalgamated with one or more co-operative societies or legal persons; or
- (h) the co-operative society is declared bankrupt by the Court, and

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

(2) Immediately after the Registrar has cancelled the registration or continuation of a co-operative society, the Registrar shall publish a notice of the cancellation —

- (a) in the *Gazette*;
- (b) in not less than two issues of a local newspaper of general circulation in Saint Lucia; and
- (c) by an appropriate medium of communication that, in the opinion of the Registrar, is prominent and accessible to the public.

(3) Where the registration or continuation of a co-operative society is cancelled by notice 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 notice takes effect.

#### **Notice of suspension or cancellation**

**41.—**(1) A notice under section 39 or 40 takes effect from the date of the notice.

(2) The Registrar shall not make a notice under section 39 or 40 until the Registrar has given the co-operative society an opportunity to be heard.

#### **Register**

**42.—**(1) The Registrar shall —

- (a) in the case of a non-financial co-operative society, keep a register to be known as the Register of Co-operative Societies in which must be recorded the prescribed details and documents of non-financial co-operative societies registered under this Part; or
- (b) in the case of a credit union or other financial co-operative society, keep a register to be known as the Register of Credit Unions or Other Financial Co-operative Societies in which must be recorded the

prescribed details and documents of credit unions and other financial co-operative societies registered or continued under this Part.

(2) Where the registration or continuation of a co-operative society is cancelled under section 41, the Registrar may, on receipt of an application in the prescribed form and on payment of the prescribed fee, restore the co-operative society to the register and issue a certificate under section 31 or 35.

#### **Inspection of register**

**43.** A person who has paid the prescribed fee may, during normal business hours, inspect and make copies of or extracts from, a document kept on the register.

#### **Certified copies**

**44.—(1)** The Registrar shall on request and payment of the prescribed fee, furnish a person with a copy or certified copy of an entry in the register, document or other record received by the Registrar under this Act.

(2) An entry, document or other record may be certified under subsection (1) by a certificate written at the foot of the copy declaring that is a true copy of the entry, document or record.

(3) A certificate under subsection (2) must be dated and signed by the Registrar.

### **PART III INCORPORATION DUTIES AND PRIVILEGES**

#### **Capacity as body corporate**

**45.** The registration or continuation of a co-operative society makes it a body corporate and, subject to this Act and its bye-laws, it shall have the capacity, rights, powers and privileges of a body corporate under a law in force in Saint Lucia.

#### **Name of co-operative society**

**46.** The name of a co-operative must not imply, where it is not, that it is connected with —

(a) the Government;

- (b) a local government authority;
- (c) a particular political party; or
- (d) a legal person.

**Change of name**

**47.—**(1) The secretary of a co-operative society shall, within thirty days of the decision to change its name, file with the Registrar a change of name.

(2) On receipt of the prescribed fee, the Registrar shall enter the change of name in the Register.

(3) On the registration under this section of a change of name, the Registrar shall issue the co-operative society with a certificate of change of name in the prescribed form.

(4) A certificate issued under subsection (3) is admissible in evidence as conclusive proof of the change of name.

**Registered office**

**48.—**(1) Within sixty days after the issue of the certificate of registration, the co-operative society shall paint or affix its registered name in letters that are legible in a conspicuous position on the outside of the place where the business of the co-operative society is carried on.

(2) A co-operative society shall at all times establish and maintain a registered office and the address of the office must be specified in the bye-laws.

(3) Subject to subsection (4), the directors of a co-operative society may change the address of the registered office.

(4) 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.

**Branch**

**49.—**(1) Subject to the approval of the Registrar, a co-operative society may open one or more branches for servicing its members.

(2) In this section, “branch” means an office of a co-operative society where it proposes to carry on business including sales, accepting deposits and granting loans, separate and apart from its registered office.

#### **Commencement of business**

**50.** A co-operative society shall commence business within ninety days after the issue of the certificate of registration.

#### **Pre-registration contracts**

**51.—(1)** Except as provided under 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 an act or conduct signifying its intention to be bound, adopt a written contract made in its name or on its behalf, before it came into existence.

(3) Subject to subsections (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 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 under 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) Where 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 shall not be bound by the contract or entitled to the benefits of the contract.

**Seal**

**52.**—(1) An absolute majority of a board may by resolution in writing —

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

(2) An instrument or 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 a corporate seal is not affixed to it.

**Certificate of registration and annual licence**

**53.**—(1) A co-operative society shall display its certificate of registration and its valid annual licence at its registered office at all times.

(2) A co-operative society shall keep a copy of each certificate of registration and annual licence issued to it by the Registrar.

(3) A co-operative society that fails to comply with subsections (1) and (2) commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars.

**Copy of this Act and other documents required by this Act**

**54.**—(1) A co-operative society shall keep at its registered office —

- (a) a copy of this Act and the Regulations made under this Act;
- (b) a copy of all notices of directors and notices of change of directors.

(2) A co-operative society that fails to comply with subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars.

**Money laundering and financing of terrorism**

**55.—**(1) A co-operative society shall implement suitable policies, procedures and measures to counter money laundering and to combat the financing of terrorism.

(2) Notwithstanding the generality of subsection (1), a co-operative society shall, in addition to complying with this Act and the Regulations, comply with —

- (a) the Proceeds of Crime Act, Cap. 3.04;
- (b) the Money Laundering (Prevention) Act, Cap. 12.20;
- (c) the Anti-Terrorism Act, Cap. 3.16;
- (d) the United Nations Sanctions (Counter-Proliferation Financing) Act, Cap. 12.30; and
- (e) other financial services legislation promoting good governance and financial prudence, and intended to safeguard against money laundering and the financing of terrorist activity.

**Records relating to money laundering**

**56.—**(1) A co-operative society shall keep records of business transactions under the Money Laundering (Prevention) Act, Cap. 12.20.

(2) A co-operative society that fails to comply with subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding twenty-five thousand dollars.

**Availability of registers**

**57.—**(1) A co-operative society shall keep at its registered office —

- (a) the register of members including information on shares, transfers and investment reports;
- (b) a register of its directors setting out —
  - (i) the names, addresses and occupations of all persons who are or have been directors of the co-operative society, and

(ii) the dates on which each person became or ceased to be a director;

(c) a fixed asset register.

(2) A register under subsection (1) may be kept in electronic form and be updated on a quarterly basis.

(3) A co-operative society that fails to comply with subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding twenty-five thousand dollars.

#### **Minutes and resolutions**

**58.**—(1) A co-operative society shall keep at its registered office —

(a) the minutes of all meetings and resolutions of its directors and committees;

(b) the minutes of all meetings and resolutions of its members.

(2) A co-operative society that fails to comply with subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding twenty-five thousand dollars.

#### **Accounting records**

**59.**—(1) A co-operative society shall keep reliable accounting records and all supporting documents for a period of at least seven years and shall —

(a) ensure that its accounting records —

(i) correctly explain all transactions,

(ii) enable the financial position of the co-operative society to be determined with reasonable accuracy at any time, and

(iii) allow for the preparation of financial statements;

(b) include underlying documentation on which must be kept to reflect details of —

(i) all sums of money received and expended and the matters in respect of which such receipts and expenditures take place,

- (ii) all sales and purchases and other transactions, and
- (iii) the assets and liabilities of the co-operative society.

(2) A co-operative society that fails to comply with subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding twenty-five thousand dollars.

**Amendment of bye-laws of a co-operative society**

**60.**—(1) 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 called for the purpose, amend the bye-laws of the co-operative society if notice of the proposed amendment together with notice of the meeting —

- (a) is sent by mail to the members, at the addresses given in the register of members;
- (b) is published in not less than two issues of a local newspaper in general circulation in Saint Lucia; or
- (c) is posted 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) Where written notice of the proposed amendment —

- (a) is forwarded to each member of the co-operative society with the notice of the meeting at which the amendment is to be considered, the bye-laws may be amended 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 under paragraph (a), the bye-laws may be amended by a three-fourths majority of members present and voting at the meeting.

(3) Where the bye-laws are amended at the meeting in accordance with subsection (2), three copies of the bye-laws, shall be certified to be true copies by the president and secretary of the co-operative society.

(4) Subject to subsection (5), where proposed bye-laws are certified under subsection (3) and receives the members' approval

required under subsection (2), the bye-laws have immediate force and effect.

(5) Bye-laws under subsection (4) cease to have force or effect on the expiration of sixty days after the date of the general meeting or special meeting in which it is approved by the members, unless, within a sixty day-period, the bye-laws are registered with the Registrar under section 31.

#### **Amendment of bye-laws of a housing co-operative society**

**61.** A housing co-operative society may not amend its bye-laws without the consent of the Registrar.

#### **Registration of bye-laws**

**62.—(1)** The amendment of the bye-laws shall be submitted by the co-operative society to the Registrar for registration and the amendment is not valid until it has been registered.

(2) An application to register the amendment of the bye-laws must 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.

(3) On being satisfied that an amendment of the bye-laws is not contrary to this Act, Regulations made under this Act or the guidelines, the Registrar shall register the amendment within ninety days of receipt of an application.

(4) 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 is conclusive evidence of the fact that the amendment has been registered.

(5) Where the Registrar refuses to register an amendment —

- (a) the Registrar shall, within ninety days of receipt of the application, 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 thirty days of the notice of refusal, appeal to the Appeals Tribunal.

**Effect of bye-laws**

**63.** The bye-laws of a co-operative society when registered bind the co-operative society and its members to the same extent as if the bye-laws —

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

**Prohibition on carrying on business contrary to bye-laws**

**64.** A co-operative society shall not carry on a business or exercise a power that is restricted or prohibited by its bye-laws.

**Copy of bye-laws**

**65.—(1)** A co-operative society shall keep a copy of its bye-laws at its registered office.

(2) A co-operative society shall make the bye-laws available at all reasonable times for inspection.

(3) A co-operative society that contravenes subsection (1) or (2) commits an offence and is liable on summary conviction to a fine not exceeding twenty-five thousand dollars.

**Examination**

**66.** A member, agent and legal representative of a co-operative society may, during the normal business hours of the co-operative society, examine the records kept under sections 54, 56, 57 except the address of a director, 59, 65 and the returns specified under section 233 on payment of the prescribed fee.

**Preservation of records**

**67.** A co-operative society shall preserve the records of the co-operative society in the prescribed manner.

**PART IV**  
**GOVERNANCE AND MANAGEMENT**

*Division 1*  
*Board of Co-operative Society*

**Provisional directors**

**68.** 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 the powers and perform the duties of directors; and
- (b) hold office until the first general meeting.

**Composition of a board**

**69.**—(1) A co-operative society must be governed by a board which must be constituted in accordance with this Act and the bye-laws of the co-operative society.

(2) A board must be constituted by not less than five or more than thirteen directors, as specified in the Regulations and the bye-laws.

(3) The members of a co-operative society may amend the bye-laws to vary the number of directors, and an amendment to decrease the number of directors does not affect an incumbent director.

(4) A board of a co-operative society shall from among themselves, elect —

- (a) a president;
- (b) a vice-president;
- (c) a treasurer; and
- (d) a secretary.

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

(6) A president, vice-president, treasurer or secretary of a co-operative society shall perform the prescribed duties.

**Organizational meeting of directors**

**70.**—(1) The directors shall hold an organizational meeting within ten days after the issue of the certificate of registration.

(2) The directors may, at the organizational meeting under subsection (1) —

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

(3) A director may call the organizational meeting of directors under 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 under subsection (3) may be waived where all directors are in attendance at that meeting of directors.

**Functions of a board**

**71.** Subject to this Act and the bye-laws, the functions of a board are to —

- (a) ensure that internationally accepted principles and standards of good governance are observed;
- (b) direct the management of the business and affairs of the co-operative society, with transparency and accountability;
- (c) formulate and direct the implementation of effective plans, policies, procedures and other measures with respect to membership awareness and development, personnel,

financial controls, asset-liability management, procurement and control of fixed assets, investment, dormant accounts, abandoned property and business continuity;

- (d) in the case of a credit union or other financial co-operative society, formulate and implement comprehensive policies, procedures and other measures with respect to loans, collections, earnings, liquidity and any other area of risk reduction considered appropriate by the Registrar;
- (e) subject to section 197, have charge of the investment of funds;
- (f) approve an annual operating budget for each financial year;
- (g) cause accurate accounts to be kept of —
  - (i) the assets and liabilities of the co-operative society,
  - (ii) all the sums of money received and expensed, and
  - (iii) other transactions affecting the financial position of the co-operative;
- (h) comply and ensure that a directive or guideline issued by the Registrar is adopted and implemented;
- (i) perform a duty that is necessary and proper to carry out the purposes and exercise the powers of the co-operative society under this Act; and
- (j) perform a duty imposed under this Act.

#### **Powers of a board**

**72.—**(1) Subject to the bye-laws and the Regulations, a board may without authorization of the members of a co-operative society —

- (a) borrow money on the credit of the co-operative society, as prescribed;
- (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 a person;

- (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 a debt obligation of the co-operative society;
- (e) exercise the powers of the co-operative society directly, or indirectly through the employees of the co-operative society; and
- (f) give the Registrar and staff full access to all books, papers, records and other sources of information under the board's control within the time specified by the Registrar.

(2) A board may buy, sell or lease property to carry out the business of the co-operative, after consultation with and approval by the members in an annual general meeting or special meeting.

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

#### **Director ceasing to hold office**

**73.** A director ceases to hold office when he or she —

- (a) resigns under section 74;
- (b) dies;
- (c) fails to attend three consecutive meetings without an excuse accepted by the board;
- (d) fails to perform, without reasonable excuse, any duties allotted to him or her as a member of the board;
- (e) is removed under section 75;
- (f) has a delinquent loan or debt obligations for more than sixty days;
- (g) behaves in a manner that is detrimental to the interest of the co-operative society; or
- (h) is no longer qualified under this Act.

**Resignation**

**74.—**(1) A director may resign at an annual general meeting or by submitting to the board a written resignation.

(2) A resignation of a director becomes effective —

- (a) immediately, if the director 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.

**Removal of director**

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

(2) A vacancy created by the removal of a director may be filled at the meeting of the members at which the director is removed or where not so filled, may be filled under section 77.

(3) A director of a co-operative society is entitled to receive notice of and to attend and be heard at the meeting of members referred to under subsection (2).

**Statement by director**

**76.—**(1) Where a director —

- (a) resigns under section 74;
- (b) receives a notice or otherwise learns of a meeting of members called for the purpose of removing him or her from office under section 75; 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 may submit to the co-operative society a written statement giving the reason for his or her resignation or the reasons he or she opposes a proposed action or resolution.

(2) A co-operative society or person acting on its behalf does not incur liability by reason only of circulating a director's statement sent in compliance with subsection (2).

### **Vacancy on a board**

**77.**—(1) Where there is a vacancy on a board and the remaining directors constitute a quorum, the directors shall call a special meeting of the board for the purpose of electing members to fill the vacancy.

(2) Where there is a vacancy on a 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 the vacancy.

### **Meetings of a board**

**78.**—(1) Subject to the bye-laws, a board may meet at a place and on a notice that the board considers appropriate.

(2) Notwithstanding subsection (1), a board shall meet —

(a) once every month;

(b) within ten days of each annual general meeting to appoint the officers of the co-operative society.

(3) The president —

(a) may call a meeting of directors; and

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

(4) A majority of the directors constitutes a quorum at a meeting of a board.

(5) A notice of a meeting of a board must specify the purpose of the meeting or other business to be transacted at the meeting.

(6) For the purpose of subsection (5), attendance of a director at a meeting of a board 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 business on the ground that the meeting is not lawfully called.

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

#### **Ambit of duty**

**79.** A contract, the bye-laws or the circumstances of appointment of a director does not relieve a director from —

- (a) the duty to act under 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.

#### **Liability of directors**

**80.—**(1) Where directors vote for, or consent to, a resolution authorizing, or approving by any other means —

- (a) the purchase of shares of another co-operative society, contrary to section 211;
- (b) the payment of a dividend on shares, contrary to section 180;
- (c) the payment of a patronage refund, contrary to section 180;
- (d) a loan or guarantee or the giving of financial assistance, contrary to section 167;
- (e) a payment of an indemnity under section 118 to a director or a former director, without the approval of the Court required under section 118(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,

the directors are jointly and severally liable to make good, loss or damage suffered by the co-operative society.

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

- (a) the co-operative society is insolvent; or
- (b) the payment of a patronage refund or dividend or the lending of money makes the co-operative society insolvent.

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

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

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

(6) Where a director is not present at a meeting of directors at which a vote, resolution or approval under 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 sends by electronic mail or 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 a board shall —

- (a) record 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 under subsection (1) shall not be commenced after two years has expired 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 under 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 under 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 authorized 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 with respect to the matter.

(11) A director who is found liable under subsection (1) may apply to a Court for an order compelling a member or other recipient to pay or deliver to the director money or property that was paid or distributed to the member, or other recipient contrary to section 167, 168 or 191.

(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 money or property that was paid or distributed to the member or other recipient contrary to section 167, 180 or 211; or
- (b) make an order, other than an order under paragraph (a), that it considers appropriate.

*Division 2*

*Officers and Employees of a Co-operative Society*

**Officers and employees**

**81.—**(1) Subject to the bye-laws, a board —

- (a) may designate the officers and employees of the co-operative society, appoint persons as officers and employees, specify the officers and employees duties and delegate powers to manage the business and affairs of the co-operative society to an officer or employee; and
- (b) may appoint a director to an office of the co-operative society.

(2) Without limiting the generality of subsection (1), the board may appoint management, such as —

- (a) a senior executive manager;
- (b) a manager;
- (c) a chief executive officer;
- (d) a chief financial officer;
- (e) a chief accounting officer; or
- (f) in the case of a credit union or other financial co-operative society, a loans manager.

**Restrictions on employee of consumer or housing co-operative society**

**82.** An employee of a consumers co-operative society or housing co-operative society shall not be a director of the co-operative society.

**Remuneration of employees**

**83.** Subject to section 127 and the bye-laws, the board shall fix the salary of employees appointed by the board and shall approve a scale of remuneration for all employees of the co-operative society.

*Division 3**Committees of a Co-operative Society**Committees Generally***Appointment of committee**

**84.** A board may appoint a committee for the more efficient management of various aspects of the business or affairs of the co-operative society.

**Constitution of committee**

**85.** A committee appointed under section 84 may consist of members of the board and other members of the co-operative society appointed by the board.

**Functions of committee**

**86.—(1)** A committee must —

- (a) fix its quorum at not less than a majority of its members;
- (b) keep minutes of its proceedings; and
- (c) submit reports to the board, as required.

**(2)** A committee shall not —

- (a) fill a vacancy among the directors;
- (b) declare a patronage refund or a dividend;
- (c) approve a financial statement of the co-operative society;

- (d) submit to the members a 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 a board.

**Tenure of committee member**

**87.** A committee member appointed under section 85 holds office for a period not exceeding one year.

**Removal of committee member**

**88.—(1)** A committee member may be removed by resolution of the board or of the co-operative society.

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

*Supervisory Committee***Supervisory Committee**

**89.—(1)** A co-operative society must have a Supervisory Committee which shall be elected by its members at the annual general meeting.

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

(3) Pursuant to section 111, the bye-laws of a co-operative society may provide for the election and retirement of members of a Supervisory Committee in rotation, and a member of a Supervisory Committee shall not be elected for a term of more than three years or for more than two consecutive terms.

**Constitution of Supervisory Committee**

**90.—(1)** A Supervisory Committee consists of such number of members as may be fixed by the bye-laws, which shall be not less than three.

(2) A person shall not be a member of a Supervisory Committee if that person —

- (a) is a member of a board or of the Credit Committee or is an employee of the co-operative society; or
- (b) has a delinquent loan with the credit union or other financial co-operative society.

### **Functions of Supervisory Committee**

**91.—**(1) A Supervisory Committee shall —

- (a) keep minutes of its meetings;
- (b) make or cause to be made not less than twice in the period before the next annual general meeting of the co-operative society, an examination of the books and documents of the co-operative society which shall include an inspection of the securities, cash accounts and all records relating to loans, purchases and sales;
- (c) make or cause to be made, once in the period before the next annual general meeting, a comparison between —
  - (i) in the case of a credit union or other financial co-operative society the higher of one hundred passbooks or statement of account of a random sample of the higher of one hundred or one per cent of all the members of the co-operative society and the appropriate records of the co-operative society,
  - (ii) in the case of a non-financial co-operative society the lower of one hundred or twenty per cent of its members;
- (d) ascertain that all actions and decisions of the board, committees, management and staff relating to the affairs of the co-operative society are under this Act, 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 Committee;

- (f) submit a written report on the result of its examinations and enquiries under this section to the next annual general meeting and, if it thinks fit, to a special meeting of the co-operative society; and
- (g) carry out other prescribed functions.

(2) A Supervisory Committee shall have access, at all times, to the books and documents of the co-operative society.

(3) A member of a Supervisory Committee may attend meetings of the board and all other committees of the co-operative society, as observers.

**Removal of member of Supervisory Committee by the committee**

**92.** When a member of a Supervisory Committee —

- (a) fails to attend three consecutive meetings of the Supervisory Committee without, in the opinion of the Supervisory Committee, reasonable cause; or
- (b) fails to perform a duty assigned to the Supervisory Committee as a member of the Supervisory Committee,

the member's position on the Supervisory Committee may be declared vacant by the remaining members of the Supervisory Committee who may appoint a qualified person to fill the vacancy until the next annual general meeting of the co-operative society.

**Removal of member of Supervisory Committee by members**

**93.—**(1) The members of a co-operative society may, by resolution passed by two-thirds of the votes cast at an annual general meeting or special meeting called for that purpose, remove a member of a Supervisory Committee before the expiration of his or her term of office and shall by a vote cast at the meeting, elect another member for the unexpired portion of his or her term.

(2) A notice of the meeting of members under subsection (1) must state that the purpose of the meeting is to remove the member of the Supervisory Committee who is named in the notice.

(3) A member of a Supervisory Committee removed under this section has the right to make such representations to the members at an annual general meeting or special meeting regarding the resolution for

his or her removal as he or she may think fit, and may be represented at the annual general meeting or special meeting by an attorney-at-law or an agent.

#### **Vacancy**

**94.**—(1) Where a vacancy occurs in a Supervisory Committee, the remaining members of the committee shall, subject to section 107 fill the vacancy until the next annual general meeting of the credit union or other financial co-operative society.

(2) A member of a Supervisory Committee shall hold office until such time that a successor is elected.

#### **Meetings of the Supervisory Committee**

**95.**—(1) A Supervisory Committee shall meet at least once each month and shall meet the board at least four times in each year to review the performance of the co-operative society.

(2) A majority of members of a Supervisory Committee constitutes a quorum.

#### **Misappropriation and other contraventions of this Act**

**96.**—(1) Where a Supervisory 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 or this Act has been contravened, by the board or a director, a Credit Committee or a member of a Credit Committee or by an employee, a Supervisory Committee shall immediately inform the board and the Registrar in writing.

(2) A Supervisory 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 an auditor or other body to be appointed shall be determined by the Supervisory 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

under subsection (2), a Supervisory Committee may suspend a director or member of a Credit Committee after having given the director or member an opportunity to be heard by the Supervisory Committee.

(4) On the completion of the investigation or review under subsection (2), where a Supervisory Committee considers that an officer who is not an employee has taken an action or decision which is not in accordance with this Act or the bye-laws, the Supervisory Committee, after consultation with the Registrar, may —

- (a) suspend the officer by a majority vote of all the members of the Supervisory Committee taken at a meeting of the Supervisory Committee called for the purpose of considering the officer's suspension; and
- (b) convene a special 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 director, a Credit Committee or a member of that committee or an officer has been suspended by a Supervisory Committee under subsection (4), the Supervisory Committee shall convene, on a date not exceeding twenty-one days after the suspension, a special meeting of the co-operative society —

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

(6) Without prejudice to the requirements of section 94, not less than ten days before the date of a meeting of a Supervisory Committee called under subsection (4) or the date of a special meeting of the co-operative society convened under subsection (4) or (5), the Supervisory Committee shall give written notice of the meeting to the Registrar and to the board, director, Credit Committee, member of a Credit Committee or officer.

(7) Subject to subsection (8), at a special meeting of a co-operative society held under this section, the members of the co-operative society, according to the purpose for which the meeting was convened, may, by secret ballot —

- (a) ratify the suspension of the board, director, Credit Committee, member of a Credit Committee, officer or employee and remove the board, director, Credit Committee, member of the Credit Committee or officer from office; or
- (b) rescind the suspension of the board, director, Credit Committee, member of the Credit Committee or officer.

(8) A board, director, Credit Committee, member of a Credit Committee or officer shall not be removed from office without being given an opportunity to be heard by the members present at the meeting.

(9) Where an elected officer of a co-operative society is removed from office at a special meeting under subsection (7), the vacancy caused by the removal must be filled in the manner determined by the meeting.

#### **Internal Auditor**

**97.—**(1) A board of a credit union or other financial co-operative society may appoint a senior qualified professional as an Internal Auditor to monitor and periodically report to the Supervisory Committee and the board on the levels of awareness, adherence and compliance in the internal operations of the credit union or other financial co-operative society with this Act, the bye-laws, other applicable legislation, and internationally acceptable standards and best practices.

(2) An Internal Auditor appointed under subsection (1) shall monitor gaps and improvements in compliance with this Act, other applicable legislation, standards and best practices.

#### *Credit Committee*

#### **Credit Committee**

**98.—**(1) A credit union or other financial co-operative society, 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 a Credit Committee if the person is not present at the meeting at which the election is held,

unless the person submits an excuse for his or her absence which is accepted by the majority of the members present.

(3) Pursuant to section 111, the bye-laws of a credit union or other financial co-operative society may provide for the election and retirement of members of a Credit Committee in rotation, and a member of a Credit Committee shall not be elected for a term of more than three years or for more than two consecutive terms.

(4) The election of members of a Credit Committee must proceed under section 111.

#### **Constitution of Credit Committee**

**99.**—(1) A Credit Committee consists of the number of members as may be fixed by the bye-laws, which must be not less than three.

(2) A person shall not be a member of a Credit Committee if that person —

- (a) is a director or a member of the Supervisory Committee;
- (b) is an employee of a credit union or other financial co-operative society; or
- (c) has a delinquent loan with a credit union or other financial co-operative society.

#### **Functions of Credit Committee**

**100.** A 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 or other financial co-operative society;
- (d) perform prescribed functions and functions as specified in the bye-laws of the credit union or other financial co-operative society.

**Vacancy on Credit Committee**

**101.**—(1) Where a vacancy occurs in a Credit Committee, the board may fill the vacancy until the next annual general meeting of the credit union or other financial co-operative society.

(2) A member of the Credit Committee who is appointed to fill a vacancy under subsection (1) shall hold office until such time that a successor is elected.

**Removal of member of Credit Committee by the members**

**102.**—(1) The members of a credit union or other financial co-operative society 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.

(2) The notice calling the meeting of members under 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 may make representations at the general meeting to the members of the credit union or other financial co-operative society 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.

**Removal of member of Credit Committee by the board**

**103.** Where a member of a Credit Committee fails to attend three consecutive meetings without, in the opinion of a board, reasonable cause or fails to perform any of the duties assigned to the member as a member of the Credit Committee, the member's position on the Credit Committee may be declared vacant by a board who may appoint a qualified person to fill the vacancy until the next annual general meeting of the credit union or other financial co-operative society.

**Meetings of Credit Committee**

- 104.**—(1) A Credit Committee shall meet at least once each month.
- (2) A majority of the committee members constitutes a quorum.
- (3) A Credit Committee shall keep minutes of its meetings.

**Approval of loans**

**105.**—(1) A board shall determine the terms and conditions under which a Credit Committee shall approve loans to members.

(2) A Credit Committee may, on terms and conditions as the board specifies, authorize the manager, loans manager or other employees of the credit union or other financial co-operative society to approve loans to members.

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

(4) The responsibilities and duties of a person authorized to approve loans under subsection (2) are concurrent with the responsibilities and duties of the Credit Committee as decided by the board.

**Reports from Credit Committee**

- 106.**—(1) A Credit Committee shall —
- (a) 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 losses provided for, watch listed accounts, large credit exposures and related party loans; and
- (b) submit an annual report on the matters referred to under paragraph (a), and on the loan portfolio quality

and trends, to the annual general meeting of the credit union or other financial co-operative society.

(2) The members of a credit union or other financial co-operative society may, by special resolution in a special meeting called for the purpose, remove a Credit Committee which fails to comply with subsection (1)(b).

*Division 4*  
*General*

**Criteria for election and continuance**

**107.**—(1) A person is disqualified and is not eligible to act as a director, officer or committee member of a co-operative society, or having been appointed, is not eligible to continue as such if that person —

- (a) is under the age of eighteen years or, in the case of a junior co-operative, is under the age of ten years;
- (b) has not been a member of the co-operative society or an appointed representative of a member co-operative society for the past twelve months;
- (c) 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;
- (d) does not hold the prescribed amount of fully paid shares;
- (e) is already part of the management of another co-operative society of the same type;
- (f) is an associate of the person who has a pecuniary or other material interest in the co-operative society;
- (g) is a director, officer, employee, agent or a person providing a service or supplying goods to the co-operative society;
- (h) has filed for bankruptcy in a Court or is declared by a Court to be bankrupt;
- (i) is not in good financial standing with a co-operative society;

- (j) has defaulted on his or her credit arrangement with his or her creditors;
- (k) was a sitting director or manager of a failed co-operative society of the same type or of a failed financial institution;
- (l) is declared by a Court to be physically incapacitated or mentally incapacitated by reason of unsoundness of mind;
- (m) has been convicted of a criminal offence except where the offence —
  - (i) is a minor traffic offence,
  - (ii) has been spent under the Criminal Records (Rehabilitation of Offenders) Act, Cap. 3.13;
- (n) is a member of Parliament.

(2) Notwithstanding subsection (1)(f), a person shall not be held to have a pecuniary or other material interest in a co-operative society by reason only of the fact that he or she is a member of a co-operative society.

(3) In determining whether a person is eligible for election or appointment as a director or committee member of a co-operative society regard must be given to —

- (a) that person's probity, competence and soundness of judgement for fulfilling the responsibilities of director, or committee member;
- (b) the diligence with which that person is likely to fulfill the responsibilities of director, or committee member; and
- (c) whether the interests of members are, or are likely to be, in any way threatened by that person holding that position.

(4) Notwithstanding subsection (3), regard must be given to the previous conduct and activities in business or financial matters of the person and, in particular to evidence that the person has —

- (a) committed an offence involving fraud or other dishonesty;
- (b) contravened a provision made by or under an enactment designed for protecting members of the public against

financial loss due to dishonesty, incompetence or malpractice by persons concerned in financial services or the management of companies or against financial loss due to the conduct of a discharged or undischarged bankrupt;

- (c) engaged in business practices appearing to a board to be deceitful, oppressive or otherwise improper or which otherwise reflect discredit on that person's method of conducting business;
- (d) an employment record which leads a board to believe that the person carried out an act of impropriety in the handling of his or her employer's business;
- (e) engaged in or been associated with any other business practice or otherwise conducted himself or herself in such a way as to cast doubt on his or her competence or soundness of judgement; or
- (f) engaged in prescribed activities.

(5) An employee is not eligible and shall not be nominated, elected or appointed to a board or committee of a credit union or other financial co-operative society, unless at least two consecutive years have elapsed since he or she was employed with the credit union or other financial co-operative society.

(6) A person who knowingly holds membership of a 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 while being ineligible 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 two years, or to both.

### **Nomination**

**108.**—(1) Subject to the bye-laws of a co-operative society, a co-operative society may provide for the nomination of a director or committee member to be elected to the board or committee of a co-operative society.

(2) A person nominated to be elected as a director or committee member of a co-operative society shall satisfy the criteria set out under section 107.

(3) A meeting for the nomination of a director or committee member must be conducted in the prescribed manner.

#### **Submission of list of nominees to Registrar**

**109.**—(1) Within seven days after the close of the nomination for an election and at least thirty days before the general meeting scheduled for elections, the secretary of the board shall submit to the Registrar for approval, the list of nominees of the proposed directors or the proposed committee members.

- (2) The list of nominees submitted under subsection (1) must —
- (a) contain the name, position, term of office and address of the nominees; and
  - (b) be accompanied by —
    - (i) a police certificate of character in relation to the proposed director or committee member, and
    - (ii) a statutory declaration from each nominee verifying that the criteria under section 107 is met.

#### **Investigation on nominees**

**110.**—(1) Within fifteen days of the receipt of the list of nominees of the proposed directors and committee members under section 109, the Registrar shall conduct an investigation on the proposed nominees to determine whether each nominee qualifies in accordance with the criteria set out under section 107 to be elected to the office of a director or a committee member.

(2) At the completion of the investigation, the Registrar shall, thirty days prior to the general meeting scheduled for elections, notify the co-operative society of the nominees who are qualified and those who are disqualified, and in the case of a disqualified nominee, give reasons for the disqualification.

#### **Election of directors or committee members**

- 111.**—(1) Subject to the Regulations —
- (a) the election of the board or committee member must take place annually at the annual general meeting;

- (b) a director or committee member holds office until the conclusion of the meeting at which their successor is elected, and is eligible for re-election;
- (c) where the number of nominees exceeds the number of directors or committee members to be elected, the election of directors or committee members must be by secret ballot or by show of hands;
- (d) after presenting the nominees, additional nominations may be called for from the floor;
- (e) a member has the right to vote for the number of directors or committee members to be elected and a voting sheet that contains the names of more than the number to be elected is void.

(2) An elected director of a co-operative society shall not be an employee of the same co-operative society.

#### **Tenure of directors or committee members**

**112.**—(1) Subject to subsection (2), a director or committee member is elected for a term of three years.

(2) After the commencement of this Act, on the formation of each new co-operative society, or on the reconstitution of a previously registered co-operative society, including by reconstruction or revival, or under dissolution of a board of a co-operative society for any reason, at the next annual general meeting of members the election of the board, the Supervisory Committee and the Credit Committee must 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 a board, the Supervisory Committee and the Credit Committee shall be elected to serve for a term of three years.

(3) A person shall not serve as a director or committee member of a co-operative society for more than two consecutive terms.

(4) A person under subsection (3), is eligible for re-election to the same board or committee after the expiration of one year out of elected office.

**Change of director or committee member**

**113.**—(1) Thirty days prior to the proposed appointment of a director or committee member, the co-operative society shall submit to the Registrar —

- (a) the prescribed notice of the change that includes the name, position, term of office and address of the person;
- (b) in the case of a person elected after being nominated from the floor —
  - (i) a police certificate of character in relation to the director or committee member, and
  - (ii) a statutory declaration that verifies that the director or committee member meets the criteria specified under section 107.

(2) On receipt of the notice of change under subsection (1), the Registrar shall conduct an assessment to determine whether the proposed appointee satisfies the criteria under section 107.

(3) Within fifteen days of his or her receipt of the notice of change, the Registrar shall conduct a due diligence investigation and at the end of his or her investigation the Registrar shall —

- (a) issue a “no objection” response to the proposed appointment and notify the co-operative society; or
- (b) where the person proposed for appointment is not agreed to, inform the co-operative society that the proposed appointment is not approved and give reasons for not approving.

(4) Notwithstanding subsection (1), where a co-operative society files the annual return under section 233, within thirty days after a change is made in its directors, it is not required to file the notice required under this section.

**Vacancy after election**

**114.** Where, after the election of directors and committee members at an annual general meeting, a vacancy occurs in the membership of a board or committee, the co-operative society shall within fourteen days of the occurrence of the vacancy submit to the Registrar a list of persons to be appointed to fill the vacancy.

**Declaration by director or committee member**

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

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

**Certificate of co-operative society**

**116.—(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.

(2) A certificate or certified copy under 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.

**Duty of care**

**117.—(1)** A director, an officer, a committee member and an employee of a co-operative society shall —

- (a) act honestly and in good faith in exercising his or her powers and discharging his or her duties to the co-operative society; and

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

(2) A director, an officer, a committee member and an employee of a co-operative society is liable to make good loss or damage suffered by the co-operative society as a direct or indirect result of a contravention of this section.

#### **Indemnification of director and officer**

**118.**—(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 legal person 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 proceedings 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 under subsection (1) 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 proceedings 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 under 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 under subsection (2).

(4) Notwithstanding subsections (1) to (3), a co-operative society shall indemnify a director, officer or other person under subsection (1) who has been substantially successful in the defence of a civil, criminal or administrative action or proceedings to which the person is made a party by reason of the person being or having been a director or officer of the co-operative society or legal person 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 under 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 that notice be given to an interested person, and that interested person may appear and be heard in person or by an attorney-at-law.

#### **Validity of act of director or officer**

**119.** An 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.

#### **Misuse of confidential information**

**120.—**(1) A director, officer, committee member or employee or an associate of a director, officer, committee member or employee, who, in connection with the business transactions or plans of a co-operative society or a debt obligation of a co-operative society, makes use of confidential information for the benefit or advantage for 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 a 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 a direct benefit or an advantage received or receivable by him or her or his or her associate as a result of the transaction.

(2) A person who has acquired confidential information concerning a co-operative society or a member of a co-operative society —

- (a) as a director, officer, committee member or employee of the co-operative society;
- (b) as a liquidator, receiver or manager, of the co-operative society; or
- (c) as an officer of the co-operative society,

shall not disclose that information except as permitted under subsection (3), or use that information for 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 authorization 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 authorization 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 two years or to both.

#### **Declaration of interests**

**121.**—(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 under subsection (1) must 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 or a co-operative society;
- (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 board by a director, committee member or employee of a co-operative society declaring that he or she is to be regarded as interested in a contract made with that person is a sufficient declaration of interest in relation to a contract made with that person.

#### **Disclosure of interests at meetings**

**122.**—(1) Where a director, committee member or employee of a co-operative society has a pecuniary interest, direct or indirect, in a

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 —

- (a) at the meeting and as soon as practicable after its commencement disclose the fact;
- (b) not take part in the consideration or discussion of the contract, proposed contract or other matter or vote on a question with respect to it; and
- (c) be excluded from the meeting for the duration of the consideration, discussion and voting procedure.

(2) A director, committee member or employee 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 imprisonment for a term not exceeding three years, or to both; or
- (b) on conviction on indictment to a fine not exceeding fifty thousand dollars or imprisonment for a term not exceeding five 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 proceedings 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 under 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 terms that the Court considers appropriate.

### **Pecuniary interests for the purposes of section 122**

**123.**—(1) Subject to this section and section 124, for the purposes of section 122, a director, committee member or employee of a co-operative society is treated as having indirectly a pecuniary interest in a contract, proposed contract or other matter if —

- (a) he or she or his or her beneficiary, is a shareholder or director 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;
- (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;
- (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, a public body.

(3) In the case of married persons, the interest of one spouse is deemed for the purpose of section 122 to be the interest of the other.

### **Removal or exclusion of disability**

**124.**—(1) Section 122 does not apply to an interest in a contract, proposed contract or other matter which a director, committee member or employee of a co-operative society has as a member of the public or to an interest in any matter relating to the terms on which the right to participate in any service is offered to the public.

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

- (a) the nominal value of the 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;
- (b) 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 122 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 a question with respect to it, without prejudice to his or her duty to disclose his or her interest.

#### **Meetings by electronic communications**

**125.**—(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 electronic communications that permits all persons participating in the meeting to hear and speak to each other, and a person participating is deemed to be present at that meeting.

(2) Unless this Act 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.

#### **Surety bonding**

**126.**—(1) A co-operative society may purchase and maintain insurance for the benefit of a director, committee member, 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.

(2) A co-operative society shall require that a director, committee member, officer or employee that receives, manages or handles goods, merchandise or money on behalf of the co-operative society give to the directors, before commencing his or her duties as a director, committee member, officer or employee, security or a bond in the prescribed amount.

**Expenses and honorarium for director or committee member**

**127.**—(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 under subsection (1) prohibits the reimbursement of prescribed expenses —

- (a) which are necessarily incurred by a director or committee member in the course of performing a 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) On approval by the board and the Registrar, a director or committee member of a co-operative society shall not in his or her professional capacity tender for the supply of goods or services to the co-operative society.

(4) A director or committee member may be granted a honorarium that —

- (a) is approved by a general meeting of the members prior to its payment, or the payment of any part it; and
- (b) does not exceed an amount recommended by the board and approved by a general meeting of the members.

**Corrupt practices and bribery**

**128.**—(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, herself or another, a gift or consideration as an inducement reward for —

- (a) doing or forbearing to do an act relating to the business of the co-operative society; or
- (b) for showing favour or a person in relation to the business of the co-operative society.

(2) A person shall not give, agree to give, or offer such gift or consideration to a member, agent or employee of a co-operative society as inducement or reward for a purpose mentioned under subsection (1).

(3) A person who contravenes subsection (1) or (2) commits an offence and is liable —

- (a) on summary conviction to a fine not exceeding seven thousand dollars or to imprisonment for a term not exceeding one year, or to both; or
- (b) on indictment to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding two years, or to both.

(4) In this section “consideration” includes valuable consideration.

## **PART V MEMBERSHIP AND MEETINGS**

### *Division 1 Membership*

#### **Qualification for membership**

**129.**—(1) In order to qualify for the membership of a co-operative society, a person, other than a registered co-operative society or other legal person —

- (a) shall be a citizen or resident of Saint Lucia;
- (b) shall be a citizen of another CARICOM Member State;
- (c) shall not be an undischarged bankrupt;
- (d) shall not be of unsound mind; and
- (e) except in the case of a junior co-operative society, must be eighteen years of age or over.

(2) Subject to the bye-laws, a company registered under the Companies Act, Cap. 13.01 is eligible to become a member of a non-financial co-operative society where the principal shareholders are individual members of that co-operative society.

(3) Where the co-operative society is a credit union or other financial co-operative society, an individual who is over sixteen years of age and who has not yet attained the age of eighteen years may be admitted as a member.

**Membership for industrial or producer co-operative society**

**130.** In an industrial or producer co-operative society, at least seventy-five per cent of all employees shall be members of the co-operative society.

**Application for membership of co-operative society**

**131.**—(1) An application for membership of a co-operative society by a person shall be submitted to a board in such form as the board approves.

(2) A board shall cause each applicant for membership to be notified in writing in respect of his or her application.

(3) 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 person has fully disclosed to the first and any subsequent co-operative society that he or she has applied for membership of the other co-operative society, where the co-operative societies each have as a primary object the granting of loans to their members.

**Withdrawal of membership**

**132.**—(1) A member of a co-operative society may withdraw from membership of the co-operative society in the manner specified under the bye-laws or under this Act.

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

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

**Suspension of membership**

**133.** Subject to the bye-laws, a board may by notice in writing suspend a member for a period not exceeding ninety days.

**Termination of membership by a board**

**134.**—(1) Subject to the bye-laws, a board may terminate the membership of a member where —

- (a) the member has received at least ten days notice of the meeting at which his or her membership is to be considered including a statement of the grounds on which the member's membership is proposed to be terminated;
- (b) the member appears and makes submissions to the board, personally, by an agent or an attorney-at-law before a resolution is considered; and
- (c) the termination is approved by at least two-thirds of the directors present at the meeting called for the purpose.

(2) Where a 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 interest accrued on the amounts including the amount outstanding on loans made to the co-operative society by the member with interest accrued on the amounts;
- (b) the secretary of the co-operative society shall, within ten days from the date on which the termination is made, notify the member of the termination in writing; and
- (c) the member may appeal from the termination 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 notification under paragraph (b).

(3) Where the member appeals under subsection (2)(c), a majority or greater percentage of the members present at the general meeting as specified in the bye-laws, shall confirm or rescind the termination.

(4) Subject to the Regulations, where the address of the member who is terminated 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 the member of all amounts held to his or her credit, the co-operative society shall transfer the amounts to its statutory reserves.

(5) Where an amount is transferred under subsection (4), 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.

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

- (a) the member's name;
- (b) the member's National Insurance number;
- (c) the member's last known address;
- (d) the amounts transferred; and
- (e) other information required by the Registrar.

(7) In this section, "National Insurance number" means the national insurance number assigned to an insured person under regulation 3(3) of the National Insurance Regulations, Cap. 16.01.

#### **Termination of membership by members**

**135.** Members may terminate the membership of a member where —

- (a) the member has received at least ten days notice of the general meeting at which his or her membership is to be considered including a statement of the grounds on which the member's membership is proposed to be terminated;
- (b) the member appears and makes submissions to the general meeting, personally, by an agent or an attorney-at-law before a resolution is considered; and
- (c) 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.

**Termination from housing co-operative society**

**136.** Where a person's membership in a housing co-operative society is terminated, the right of that person to possess or to occupy residential premises acquired by virtue of membership in the co-operative society is terminated.

**Re-admittance**

**137.** A person whose membership is terminated under section 134, 135 or 136 may be re-admitted to membership by a two-thirds majority vote of members present and voting at a general meeting of a co-operative society.

**Appeal**

**138.—(1)** Subject to subsection (2), where a person's membership is suspended under section 133 or terminated under section 134, 135 or 136, the person may appeal against the suspension or termination to the Registrar in the prescribed manner and the Registrar shall confirm or set aside the order suspending or terminating the membership.

(2) A person whose membership is terminated for failure to pay fees, loan-related debts, 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 134(2)(c) or this section, notwithstanding the order terminating his or her membership, the person continues to be a member until the termination of his or her membership is confirmed.

(4) An appeal under subsection (1) is not valid if submitted more than ninety days after the member had received notice of suspension or termination of his or her membership.

**Register of members**

**139.** A register of members kept under section 57 must record —

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

**Rights of a member**

**140.** A member of a co-operative society has the right to —

- (a) own shares, make deposits, access loans and access pooled purchases and sales at affordable prices;
- (b) hold joint accounts;
- (c) appoint a nominee;
- (d) enjoy the surpluses of the co-operative society;
- (e) attend and vote at an annual general meeting or special meeting and to issue a notice of motion;
- (f) elect a board, Credit Committee or Supervisory Committee;
- (g) appoint an auditor;
- (h) uphold the values and policies of the co-operative society;
- (i) monitor and comment on the annual priorities and performance results of the co-operative society.

**Members not to exercise rights until payment of membership fee**

**141.** 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.

**Relationship with members: housing co-operative society**

**142.** The relationship between a housing co-operative society and its members is not a relationship between a landlord and his or her tenants.

**Joint accounts**

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

**Membership of young person**

**144.**—(1) A member of a co-operative society who is over sixteen years of age and who has not yet attained the age of eighteen years is required to execute an instrument or give a receipt, he or she may do so by his or her parent or guardian.

(2) A member of a co-operative society who has not attained the age of eighteen years may not —

- (a) obtain credit from a co-operative society of which he or she is a member; or
- (b) be eligible for elected office at a meeting of a co-operative society of which he or she is a member except in the case of a junior co-operative society.

**Power of nomination**

**145.**—(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, whether in shares, loans or deposits, or so much as is specified in such nomination if the nomination does not comprise the whole.

(2) A nomination under subsection (1) must be made by instrument in writing signed by the member in the presence of two attesting witnesses and 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 varied or revoked by a subsequent nomination, or by a similar document in the nature of a variation or revocation, signed, attested and delivered,

and sent or made under subsection (1), and any such nomination may not be varied or revoked by the will of the nominator or by a codicil.

(5) A nomination and a variation or revocation received by a co-operative society must be maintained in a separate record kept at the registered office of the co-operative society.

#### **Liability of past and present members**

**146.**—(1) Subject to this Act, the liability of a current member of a co-operative society is limited to his or her paid-up shares and any other financial obligations.

(2) The liability of a past member or the estate of a deceased member for debts of a co-operative society is as they existed on the date on which the member ceased to be a member or died.

#### **Liability for debt**

**147.**—(1) Where the membership of a co-operative society falls below the minimum number required by this Act and the co-operative society continues to operate for more than ninety days, the remaining members of the co-operative society may be held liable for any debts incurred by the co-operative society while operating below the minimum number.

(2) A member may, in writing, object to his or her liability under subsection (1) to the board or the Registrar.

#### **Housing unit in housing co-operative society**

**148.**—(1) Where a member of a housing co-operative society —

- (a) has his or her membership terminated; or
- (b) has vacated or abandoned the housing unit formerly occupied by him or her; and
- (c) has left property in the housing unit,

the co-operative society may apply to the District Court in the district where the housing unit is situated for an order authorizing 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 District Court, to the credit of the former member, any remaining proceeds of the disposition after deducting —

- (a) an amount with respect to costs incurred by it relating to the disposition that it would be authorized 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 under subsection (3) within three months after the date the money was paid into the District Court, the money shall be paid into the Stabilization 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 an action taken by the former member with respect to the removal, sale or disposition.

*Division 2*  
*Meetings*

**First general meeting**

**149.**—(1) This section does not apply to a co-operative society if it is deemed to be registered under the former Act.

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

(3) Notwithstanding subsection (2), where a board applies to the Registrar for an extension of time, the Registrar may extend the time for holding the first general meeting and the extension must not exceed thirty days from the last day the meeting was to be held in accordance with this Act.

(4) The business at the first general meeting under subsection (2) must include —

- (a) the adoption of the bye-laws registered under section 31;
- (b) the adoption of forms of share certificates and records of the co-operative society;
- (c) the authorization 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;
- (f) the election of the directors of the co-operative society; and
- (g) the transaction of any other business.

### **General meeting**

**150.**—(1) On registration of a co-operative society, the co-operative society shall hold a general meeting.

(2) Notwithstanding subsection (1), the bye-laws may provide for the holding of a general meeting periodically or as specified under this Act.

(3) Subject to the bye-laws, a general meeting must be held in the prescribed manner.

### **Annual general meeting**

**151.**—(1) A co-operative society shall, for the prescribed purpose, 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 application from a board of a co-operative society not less than thirty days prior to the expiration of the period of four months referred to under subsection (1), the Registrar may authorize the co-operative society to hold the annual general meeting at —

- (a) any date that he or she considers appropriate, but not later than six months after the end of the financial year; or
- (b) where a state of emergency exists, for such other time.

(3) A co-operative society that does not comply with subsection (1) or (2) shall pay to the Registrar a fee for late annual general meetings and for late applications as prescribed.

(4) Subject to the bye-laws, an annual general meeting must be held in the prescribed manner.

### **Special meeting**

**152.**—(1) A board may call a special meeting of the members of a co-operative society at any time.

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

(3) A board shall call a special meeting under subsection (2) within twenty days of receipt of the request and the special meeting must dispose of the business specified in the request.

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

- (a) for the purpose of reporting to the members the results of an audit, examination or other investigation of the affairs of the co-operative society caused or made by the Registrar; or
- (b) where the co-operative society fails to hold an annual general meeting under section 151(1) or (2), for the purpose of enabling members to secure 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.

(5) Subject to the bye-laws, a special meeting must be held in the prescribed manner.

### **Meeting called by the Registrar**

**153.**—(1) Where —

- (a) in the opinion of a board it is impracticable —

- (i) to call a meeting of members in the manner in which meetings of members may be called, or
  - (ii) to conduct a meeting of members under this Act or in the bye-laws; or
- (b) for a reason, in addition to a reason under paragraph (a), the Registrar considers appropriate,

the Registrar, if satisfied that such a meeting is warranted in the circumstances, may cause a meeting to be called, held and conducted in the prescribed manner.

(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 an annual general meeting or special meeting called under this section.

(3) An annual general meeting or special meeting called under this section is a valid annual general meeting or special meeting.

#### **Use of electronic communications for meetings**

**154.** Subject to this Act and the bye-laws, a meeting may be held by means of electronic communications that permits all members participating in the meeting to hear and speak to each other, and a member participating is deemed to be present at that meeting.

#### **Notice of meeting**

**155.—**(1) A co-operative society shall give at least ten days notice of a meeting to its members —

- (a) by sending the notice by mail to the members, at the addresses given in the register of members;
- (b) by publishing the notice in not less than two issues of a medium of general circulation in Saint Lucia; or
- (c) by posting the notice in a place or through a medium of communication that, in the opinion of the board, is prominent and accessible to members.

(2) Notwithstanding 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 inserts the notice of

the meeting in a newspaper under subsection (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) A notice of a special meeting must specify the purpose for which the meeting is being called.

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

#### **Fixing the record date**

**156.** —(1) Subject to subsection (2), for the purpose of determining —

- (a) members entitled to receive payment of a patronage refund or dividend;
- (b) members entitled to participate in a distribution on liquidation; or
- (c) a purpose in addition to that described under paragraph (a) or (b),

except the right to receive notice of or to vote at a general meeting, a board may fix in advance a date as the record date for the determination of members.

(2) The record date under subsection (1) must not precede, by more than fifty 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 under subsection (3) must 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 a 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 under paragraph (a) is at close of business on the day on which the board passes a resolution relating to that purpose.

### **Quorum**

**157.**—(1) Subject to subsection (2), the quorum at a meeting of members is as specified in the bye-laws.

(2) Except where all the members are directors, the number of members present at a 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 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 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 may not transact any other business; or
- (b) on the request of the members, the Registrar or his or her staff may direct that the meeting proceed if the Registrar or his or her staff is satisfied that the meeting was convened under this 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) Where at the meeting after the adjourned meeting there is no quorum, the members present constitute a quorum and may proceed with the meeting.

**Delegates**

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

- (a) the delegates shall exercise the powers of membership at the meeting; and
- (b) a reference in this Act with respect to the exercise of a power under paragraph (a) is a reference to delegates.

(2) The members who elect delegates may, at a meeting —

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

**Notice of proposal**

**159.**—(1) A member who is entitled to vote at a meeting of members may —

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

(2) A member may submit a proposal to request the co-operative society —

- (a) to send the proposal with the notice of the meeting; or
- (b) to make the proposal available,

to all members entitled to attend and vote at that meeting.

(3) Where a member submits a proposal under subsection (2) he or she may request the co-operative society to include in or attach to the notice —

- (a) a statement by the member of not more than two hundred words in support of the proposal; and
- (b) the name and address of the member.

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

- (a) the notice of proposal is not submitted to the co-operative society at least forty-five days before the anniversary date of the previous meeting of members;
- (b) in the opinion of the board, the notice of proposal is submitted by the member primarily for the purpose of —
  - (i) enforcing a personal claim or redressing a personal grievance, or
  - (ii) promoting general economic, political, racial, religious, social or similar causes;
- (c) the co-operative society, at the member's request, included a notice of proposal in a notice of a meeting of members held within two years preceding the receipt of the notice of proposal submitted under subsection (1), and the member failed to present the notice of proposal at the meeting;
- (d) substantially the same notice of proposal 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 proposal 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 proposal and any statement be sent with the notice of the meeting at which the notice of proposal is to be presented shall pay the cost of sending the notice of proposal and statement, unless the members present at the meeting provide otherwise by a majority vote.

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

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

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

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

(9) A co-operative society or a person claiming to be aggrieved by a proposal 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 proposal” means a notice of proposal submitted to a co-operative society under subsection (1)(a).

#### **Voting rights of a member who is a legal person**

**160.**—(1) A co-operative society or other legal person 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 appointed in that behalf as a delegate under section 158.

(2) A delegate elected in accordance with the bye-laws of a co-operative society may, unless otherwise provided in the bye-laws, exercise at meetings of the co-operative society all the powers of members, and in such cases all references in this Act to the exercise of powers by members is deemed to include the exercise of powers by delegates.

#### **Representatives of a member who is a legal person**

**161.**—(1) Where a co-operative society or other legal person is a member of another co-operative society, the latter co-operative society shall recognize an individual authorized by a resolution of the board of the former co-operative society or other legal person to represent the former co-operative society or other legal person at meetings of the latter co-operative society.

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

**Voting procedure**

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

**Resolution in lieu of meeting**

**163.**—(1) Except where a written statement is submitted by an auditor under section 225 —

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

(2) The effective date of a resolution under subsection (1)(b) is not earlier than the date on which the first member signed the resolution.

(3) A copy of a resolution under subsection (1) must be kept with the minutes of the meetings of members.

**Contravention of this Division**

**164.**—(1) A co-operative society shall not fail to comply with this Division.

(2) A co-operative society that contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars.

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

*Division 1*  
*Industrial or Producer Co-operative Society*

**Marketing of goods and services**

**165.**—(1) A co-operative society which has as one of its objects the marketing of goods or services obtained by the work or industry of its members may by its bye-laws or otherwise contract with its members —

- (a) that the member who produces or provides the goods or service shall market the whole or a specified amount, portion or description to or through the co-operative society; and
- (b) that a 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 specified in the bye-laws.

(2) An industrial or producer co-operative society shall not subcontract more than fifty per cent of its work, without the consent of the Registrar.

(3) A contract entered into under this section must not be questioned in a Court on the ground only that it is a contract in restraint of trade.

*Division 2*  
*Credit Union or Other Financial Co-operative Society*

**Restrictions on credit union or other financial co-operative society**

**166.**—(1) A credit union or other financial co-operative society shall not underwrite insurance or issue securities by another person.

(2) Nothing under subsection (1) prevents a credit union or other financial co-operative society from requiring insurance for the security of the credit union or other financial co-operative society.

(3) A credit union or other financial co-operative society shall not demand from a potential borrower that —

- (a) additional services, including appraisal valuations or security, be obtained from a specific provider; or
- (b) the borrower should utilize other services of the credit union or other financial co-operative society, as a condition of, or in consideration of, obtaining a loan.

(4) Subject to subsection (5), a credit union or other financial co-operative society may only hold immovable property the aggregate market value of which does not exceed ten per cent of its stated assets.

(5) Notwithstanding subsection (4), the Registrar may, if the Registrar is satisfied that the circumstances require it, grant approval to a credit union or other financial co-operative society to hold real property in excess of the percentage specified under subsection (4).

(6) Subsection (5) does not apply where the credit union or other financial co-operative society exercises its legal right in respect of property which is the security for a 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 or other financial co-operative society is reduced to below the percentage specified under subsection (4).

(7) Nothing under subsection (6) is interpreted as requiring a credit union or other financial co-operative society —

- (a) to dispose of real property that was acquired before the coming into force of this Act; or
- (b) to terminate an agreement to acquire or hold real property where the agreement was entered into before the coming into force of this Act.

(8) Without prejudice to the generality of subsections (1) and (2), a credit union or other financial co-operative society may, with the permission of the Registrar, do all other acts and things as are incidental or conducive to or consequential on the attainment of its objects.

**Loan by credit union, other financial co-operative society or central credit union**

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

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

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

(4) A loan shall not be made to a director, committee member or senior management under subsection (3) —

- (a) on terms relating to interest rates, discounts or waivers or on other terms more favourable than those offered to the general membership;
- (b) if it exceeds twenty per cent of the credit union or other financial co-operative society's loans outstanding when combined with all other outstanding loans to persons referred to under subsection (3) and the persons' business interests.

(5) Unless with the prior approval of the Registrar a loan shall not be made by a credit union or other financial co-operative society to a single member or a group of connected members if the loan would cause the aggregate amount of loans to the member or the group of connected members to exceed twelve and one half per cent of the capital base of the credit union or other financial co-operative society.

(6) Pursuant to section 122, a director, committee member or senior management of a credit union or other financial co-operative

society shall declare his or her interest in a loan at a meeting in which the loan is to be discussed and shall not be present at or participate in a meeting when his or her application for a loan is being considered.

(7) A board may delegate its authority to grant an approval in respect of applications for loans made by the officials named under subsection (3) to a committee of a board, on such terms and with such restrictions as may be specified by a board.

(8) A committee under subsection (7) shall report details of all loans approved by the committee to a board at the first meeting of a board after the approvals are given.

(9) A loan made in contravention of this section is void and must be immediately repaid to the co-operative society.

(10) Subject to this section, the bye-laws of a credit union or other financial co-operative society must provide for limits on the number and value of loans to one member or on any type of loans.

#### **Loan loss provisions**

**168.**—(1) A credit union or other financial co-operative society shall at least annually evaluate the quality and collectability of the loan portfolio and establish adequate loan loss allowance in the prescribed manner.

(2) The Registrar may, in accordance with the standards specified by the International System and any other internationally accepted prudential standards, issue guidelines to implement the requirement for an adequate loan loss allowance.

#### **Loan approval and limits**

**169.**—(1) A loan made by a credit union or other financial co-operative society shall be approved under section 167 or the policies established by the directors, before funds are advanced.

(2) A loan to a director, officer, committee member or an employee of a credit union or other financial co-operative society or an associate of any of them, shall be approved in the prescribed manner.

(3) A person who knowingly approves or grants a loan by a credit union or other financial co-operative society in contravention of this Act must be held liable for losses resulting to the credit union or other financial co-operative society in connection with that loan.

(4) The limits on the amount of loans made by a credit union or other financial co-operative society must be under section 167.

### **Security for loans**

**170.**—(1) Subject to prescribed restrictions, a credit union or other financial co-operative society may take security for loans and other risk assets that it considers advisable and in keeping with sound business and risk management practices.

(2) Notwithstanding subsection (1), a credit union or other financial co-operative society shall not place a lien on a member's qualifying shares as security for a loan.

(3) For the purposes of this section, “risk assets” means loans, investments and other property of the credit union or other financial co-operative society with possible loss results, which form the basis of determining the amount of the credit union's or other financial co-operative society's income to be set aside as provision for loss.

(4) Nothing in this section prevents a credit union or other financial co-operative society from establishing a policy with respect to the —

- (a) collateral security required for an approved loan; and
- (b) manner in which the fair market value of real property obtained as a security for a loan is to be calculated.

### **Disclosure to member in relation to loan conditions**

**171.** Where a credit union or other financial co-operative society enters into an arrangement for the making of a loan to a natural person, the credit union or other financial co-operative society shall disclose the following to the member —

- (a) particulars of charges or penalties to be imposed on the member if he or she fails to pay an amount in accordance with the arrangement;
- (b) particulars of any charges for which the member becomes responsible by entering the arrangement;
- (c) particulars of any prescribed change relating to the arrangement or the cost of borrowing under the arrangement;

- (d) particulars of any rights or obligations of the borrower prescribed for the purposes of this section; and
- (e) other prescribed information for the purposes of this section.

**Reporting loans**

**172.**—(1) Where a credit union or other financial co-operative society is reporting loans on the balance sheet in its annual financial statements, it shall report the loans at their net estimate value after deducting the allowance for delinquent loans.

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

**Interest on loans**

**173.**—(1) Interest on loans made by a credit union or other financial co-operative society must be paid at the prescribed maximum intervals and in the prescribed manner.

(2) The rate of interest to be charged on loans shall be fixed by a board.

(3) Where a borrower has not paid the interest on a loan for a prescribed period, the credit union or other financial co-operative society shall not include that interest in income.

**Acceptance of deposits**

**174.**—(1) Subject to section 176, only a credit union, other financial co-operative society or a central credit union may accept deposits from —

- (a) members;
- (b) other co-operative societies;
- (c) companies licensed under the Banking Act, Cap. 12.01;
- (d) Government and non-state agencies;
- (e) non-bank financial intermediaries; and
- (f) other bodies corporate.

(2) Deposits may be accepted in the prescribed manner and form and on the prescribed conditions.

**Prohibited loans**

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

- (a) to a member, director, officer, committee member or employee of the co-operative society or an associate of any such person for any purpose; or
- (b) to a 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**

**176.—**(1) Subject to the 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 its obligations or discharging 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 sums received by it under subsection (1).

(3) Loans, grants and donated capital must be accepted in the prescribed manner and form and subject to prescribed conditions.

**Receipt of deposits from a minor and a person under a legal disability**

**177.—**(1) A co-operative society may receive deposits from a minor and pay to such minor such deposit together with any interest accrued.

(2) A deposit made on behalf of a minor may, together with interest accrued, be paid to the parent of the minor or, where the minor is under the care of a guardian, to such guardian for 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 being a minor, is entitled to receive money from a co-operative society, such money may be paid by the co-operative society to the Registrar of the High Court to the credit of such person under such disability, and the receipt of the Registrar of the High Court or of the person under disability is good and sufficient discharge of the liability of the co-operative society.

(5) The Registrar of the High Court may retain out of money paid to him or her a sum not exceeding one per cent, for office fees and shall pay or apply the remainder to the care, maintenance, education or benefit of the person under disability.

#### **Disclosure in relation to credit, payment or charge cards**

**178.**—(1) A form or other document used by a credit union or other financial co-operative society for the purposes of an application from a member for a credit card, payment card or charge card must contain the information prescribed for the purposes of this section or be accompanied by a document that contains that information.

(2) Where a credit union or other financial co-operative society issues a credit card, payment card or charge card to an individual, the credit union or other financial co-operative society shall disclose the following to the individual —

- (a) particulars of charges or penalties to be imposed on the individual if he or she fails to pay an amount in accordance with the agreement governing the card;
- (b) particulars of any charges for which the person becomes responsible by accepting or using the card;
- (c) particulars of any prescribed change relating to the loan agreement or the cost of borrowing for any loan obtained through the use of the card;
- (d) particulars of prescribed rights or obligations of the person for the purposes of this section; and
- (e) other prescribed information.

**Allocation of surplus and institutional capital**

**179.**—(1) Where a co-operative society realizes a net surplus from its transactions that co-operative society shall establish and maintain a reserve fund which shall be kept in liquid form to the satisfaction of the Registrar.

(2) The statutory reserve fund required under subsection (1) 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) Subject to subsection (1), a credit union or other financial co-operative society shall not capitalize its statutory reserves by way of patronage refund shares or distribute the statutory reserves by way of dividends.

(4) A co-operative society shall ensure that the institutional capital is, at no stage, less than ten per cent of total assets.

(5) Where at the end of a financial year the amount standing to institutional capital before a transfer under this section —

- (a) 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-five per cent of its surplus to increase the institutional capital to ten per cent of total assets;
- (b) is more than ten per cent of total assets, the co-operative society may not make a transfer to statutory reserves or retained earnings.

(6) The Registrar shall grant such period of time as the Registrar considers reasonable, but not more than four years from the commencement of this Act, to enable the management of a co-operative society to make good any deficiency in the adequacy of its institutional capital.

**Dividend or patronage refund**

**180.**—(1) Subject to this section and sections 179 and 181, surplus of a co-operative society may be distributed by way of dividend or

patronage refund among its members in proportion to their business with the co-operative society at the rate proposed by a board and ratified at an annual general meeting.

(2) A co-operative society shall not —

- (a) declare or pay a dividend or patronage refund 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 surplus until its institutional capital has reached a proportion of not less than ten per cent of the total assets of the co-operative society and its shares have reached a proportion of not less than five per cent of the total assets of the co-operative society;
- (c) declare or pay a dividend from unrealized gains including stock grants or share grants or gains arising from asset revaluation; or
- (d) declare or pay a dividend if a directive prohibiting the declaration or payment is received from the Registrar before the annual general meeting.

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

(4) A dividend must only be paid on fully paid-up shares.

#### **No dividend on share capital**

**181.** 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.

#### **Patronage refund based on labour**

**182.** When allocating among creditors or paying a patronage refund to the members, the directors of an industrial or producer co-operative society may take into account the labour contribution of each member.

**Credit union or other financial co-operative society and trusts**

**183.**—(1) A credit union or other financial co-operative society is not bound to administer the execution of any trust, whether express, implied or constructive, to which a deposit or share is subject.

(2) Where a deposit or share is subject to a trust of which the credit union or other financial co-operative society 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, all those trustees or any of them who, under the document creating the trust, may receive the deposit or share,

is, notwithstanding a trust to which the depositor share is subject, a sufficient discharge to the credit union or other financial co-operative society for the payment of money payable in respect of the deposit or share, and the credit union or other financial co-operative society is not bound to see to the application of money paid on the receipt or order.

(3) Notwithstanding a neglect or omission on the part of a credit union or other financial co-operative society 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 or other financial co-operative society 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 or other financial co-operative society with respect to the share that he or she represents.

(4) The estate or trust beneficiary represented by a person described under subsection (3) continues to be liable to the credit union or other financial co-operative society 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 or other financial co-operative society as the holder of the shares.

**Dormant account**

**184.**—(1) Where a member of a credit union or other financial co-operative society fails to transact business with that credit union or other financial co-operative society for a period of twenty-four months, that member's qualifying shares and deposits accounts may be transferred to a dormant account that may be reactivated in the prescribed manner.

(2) Before a credit union or other financial co-operative society transfers to a dormant account under subsection (1), the credit union or other financial co-operative society shall give written notice to the member at the last known address and the member may within ninety calendar days of receipt of the notice make representations to the credit union or other financial co-operative society.

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

*Division 1*  
*Property*

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

**185.**—(1) A person who is indebted to the co-operative society may be required to create a charge in favour of the co-operative society in the prescribed form.

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

- (a) the right on the occurrence of an event specified in the charge as being an event authorizing the chargee to seize the property subject to the charge, to take possession of the property;
- (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 the property subject to the charge, the right to sell the property by auction or, if the charge so provides, by private treaty, for a lump sum or for payment by instalments; and

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

(3) A charge must, as 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 the property comprised in the charge or money received under a policy of insurance or by way of compensation in respect of the property, except in so far as the charge otherwise allows.

(4) A charge under this section is not a bill of sale under the Commercial Code, Cap. 244 of the Revised Laws of Saint Lucia 1957.

#### **Execution and registration of charge**

**186.**—(1) A charge created under section 185 must be executed by an instrument of charge in the prescribed form if signed by the person in the presence of —

- (a) the president or secretary of the co-operative society; and
- (b) the manager of the co-operative society.

(2) A charge under subsection (1) must be signed in triplicate.

(3) The secretary or, on his or her behalf, the manager shall —

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

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

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

(6) Where a loan or other indebtedness in respect of which a charge was created is discharged, the secretary of the co-operative society shall cause a document to that effect to be signed by the president and secretary of the co-operative society indicating that the charge has been discharged.

(7) A charge signed under subsection (6) must be signed in triplicate.

(8) The secretary shall —

- (a) file one copy of the document signed under subsection (7) at the registered office of the co-operative society;
- (b) deliver one copy of the document to the co-operative society;
- (c) deliver one copy of the document to the Registrar of the High Court who shall immediately make an entry of satisfaction in the Co-operative Societies Charges Book; and
- (d) deliver one copy of the document to the member.

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

(10) 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 the charge must, without prejudice to anything contained in the Co-operative Societies Charges Book, have the same force and effect as a charge created under this Act.

#### **Claims unaffected by charge**

**187.** Nothing under section 185 affects —

- (a) a 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 prior charges or encumbrance.

**Prior claims in favour of co-operative society**

**188.**—(1) Subject to a claim in respect of a debt due to the Crown or to a landlord in respect of rent or money recoverable as rent, a debt or outstanding demand owing to a co-operative society by a member or past member is, notwithstanding anything contained in section 185, a first charge —

- (a) on 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 the member or past member; or
- (b) on livestock, fodder for livestock, agricultural or industrial machinery or implements, or raw materials for use in manufacture or handicraft, or a building used for the purpose of agriculture or industry, fishing or fish processing equipment to or purchased by the 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 the first charge and all such dealing is subject to the charge and priority created under this Act.

**Enforcement of charge**

**189.**—(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.

(2) A magistrate shall have jurisdiction under subsection (1) even though the amount due exceeds the limits of jurisdiction of a magistrate specified in the District Courts Act, Cap. 2.02.

**Assignment of charge**

**190.**—(1) A co-operative society may borrow from a credit union, other financial co-operative society or central co-operative society approved by the Registrar or from any other financial institution on

the security of a charge executed and registered under section 186 and may for this purpose assign the charge to the other co-operative society or financial institution.

(2) An assignment of a charge under this section must be registered in the same manner as a charge and section 186 applies, subject to any necessary modifications, to an assignment so registered.

(3) Subject to section 188, an assignment of a charge when registered operates as a first charge in favour of the assignee.

(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 a financial institution approved by the Registrar and for this purpose may re-assign a charge to the bank and subsections (2) and (3) apply, subject to any necessary modifications, to the reassignment.

#### **Bond as additional security for charge or loan**

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

(2) A condition 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 a condition the bond must be immediately forfeited.

(3) Section 190 applies subject to any necessary modifications to the assignment of bonds.

#### **Lien on shares**

**192.**—(1) A co-operative society shall have a lien on a share or an 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 under subsection (1) in the manner set out in its bye-laws.

(3) A board may, in default of payment by a member indebted to a co-operative society, apply the sum paid up for the time being on

shares held by that member in or towards the discharge of the debt so due and of expenses relating to the debt or its discharge, and the defaulting member ceases to have any further claim in respect of the shares.

#### **Deductions applied to loans and shares**

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

- (a) may deduct an amount from the money 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 under paragraph (a) towards a loan or the purchase of shares on such terms as the board determines.

#### **Purchase of shares**

**194.—(1)** Subject to section 195, a co-operative society may purchase or otherwise acquire any of its shares that —

- (a) are available for compulsory sale under section 196;  
or
- (b) are offered for sale.

(2) A co-operative society shall pay in cash, within one year of the date of purchase, the 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, the issued shares are 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.

**Prohibition on purchase of shares**

**195.**—(1) Notwithstanding section 194, a co-operative society shall not purchase or otherwise acquire its shares where —

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

(2) Where a purchase or other acquisition of shares under section 194 or 196, would in the opinion of a board, impair the financial stability of the co-operative society or would be contrary to the interest of the remaining members, a board may suspend the purchase or acquisition of shares.

(3) A 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**

**196.** Where winding-up proceedings have commenced with respect to a legal person that is a member of a co-operative society the co-operative society shall, by written notice to the member, require the member to sell the relevant issued shares to the co-operative society.

**Investment of funds**

**197.**—(1) A 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 the policies are in compliance with the law.

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

- (a) a central credit union, deposit guarantee facility or Stabilization Fund for credit unions or other financial co-operative societies registered under this Act;
- (b) shares or deposits in, loans to, or on the security of, any co-operative society with limited liability;
- (c) a financial institution licensed under the Banking Act, Cap. 12.01;
- (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 that Member State, if the company has paid dividends on its shares for the preceding five consecutive years;
- (g) securities issued in a Member State of the Caribbean Community by a credit union or other financial co-operative society that is registered in a CARICOM Member State in accordance with the laws of that CARICOM Member State;
- (h) subject to section 166 (4), real property where the co-operative society is a credit union or other financial co-operative society; and
- (i) any other manner permitted by the Registrar.

(3) The investments under subsection (2)(f), (g) and (i) must not exceed in aggregate twenty-five per cent of the unimpaired capital base of a credit union or other financial co-operative society.

(4) The equity investment of a co-operative society in any entity must be limited to twenty per cent of the equity investment of that entity, except that in the case of an investment in another registered society, a co-operative society may hold up to fifty per cent equity as approved by the Registrar.

**Liquid assets**

**198.**—(1) A credit union or other financial co-operative society shall at all times ensure that the greater of ten per cent of its total assets or fifteen per cent of its members' unencumbered deposits and other short term liabilities are maintained in liquid form, subject to such higher proportion as may be specified by the Registrar.

(2) For the purpose of complying with subsection (1) a credit union or other financial co-operative society shall keep these funds in a liquidity fund, as prescribed that will enable the credit union or other financial co-operative society to meet its liabilities as they arise.

(3) Nothing in this Act prevents a credit union or other financial co-operative society from keeping liquid assets in addition to those required under subsection (1).

(4) Subject to the approval of the Registrar, the liquidity fund shall be deposited with a bank or administered by central credit union, and where the central credit union has not been established or is not functioning as such, the liquid deposits shall be administered by a central credit union designed for the purpose and approved by the affiliated credit unions, after approval by the Registrar.

(5) The liquidity fund is treated as part of the credit union's or other financial co-operative society's assets.

**Abandoned property in credit union or other financial co-operative society**

**199.**—(1) Subject to subsection (2), where there has been no activity relating to —

- (a) a general deposit, demand, saving or matured time deposit made in Saint Lucia with a credit union or other financial co-operative society, together with any interest or dividend, but excluding lawful charges; and
- (b) a fund paid in Saint Lucia toward the purchase of shares or other interests in a credit union or other financial co-operative society, together with any interest or dividend, but excluding lawful charges where there has been no activity for one year,

for a period of fifteen years except for the posting of interest and dividends the property specified under paragraphs (a) and (b) which

are held or owing by a credit union or other financial co-operative society is presumed to be abandoned.

(2) The property specified under subsection (1)(a) and (b) is not to be presumed abandoned unless correspondence by the credit union or other financial co-operative society has been issued to the owner's last known address at least once every three years reminding the owner that if no activity is evidenced for a period of fifteen years the property is deemed to be abandoned.

(3) The property specified under subsection (1)(a) and (b) is not presumed abandoned if the owner has, within fifteen 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 or other financial co-operative society 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 or other financial co-operative society to deliver the contents into the custody of the Stabilization Fund 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 are deemed to be abandoned.

(5) Before a credit union or other financial co-operative society presumes property as abandoned under this section, the credit union or other financial co-operative society shall give written notice to the owner's last known address of its intention to presume the property abandoned and the member may within ninety calendar days make representation to the co-operative society.

#### **Falsely obtaining property of co-operative society**

**200.**—(1) A person shall not —

- (a) obtain possession of property or the grant of a loan from a co-operative society by false representation or other corrupt means;

- (b) wrongfully withhold or misapply property belonging to or loan from a co-operative society; or
- (c) willfully apply a part of property belonging to or loan from a co-operative society for purposes other than those directed or expressed in the bye-laws of the co-operative society or authorized under this Act.

(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 of three years, or to both.

(3) In proceedings under this section the person accused may, in addition to any penalty imposed, be ordered —

- (a) to deliver up property or repay a sum of money to which the proceedings relate; and
- (b) to pay the cost of the proceedings.

#### **Dealing in property subject to charge**

**201.**—(1) A person shall not —

- (a) fraudulently or clandestinely 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 such 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 a penalty imposed on a person under subsection (1), require that person to repay such amount of the loan with interest as has not been repaid at the date of the conviction and the payment of that amount shall discharge the liability of the borrower to repay the loan.

*Division 2*  
*Funds*

**Development Fund**

**202.**—(1) A co-operative society shall establish and maintain a Development Fund for —

- (a) continuous education of members;
- (b) training of directors, committee members and employees;
- (c) strengthening institutional capacity and business growth of the co-operative society.

(2) A co-operative society that realizes a surplus from its operations as ascertained by the annual audit may make such annual contribution not exceeding ten per cent of that surplus of such fund to be used for the development of co-operative societies.

**Stabilization Fund**

**203.**—(1) This section does not apply to a non-financial co-operative society unless a secondary co-operative society is established.

(2) A co-operative society shall establish and maintain a Stabilization Fund after the commencement of this Act.

(3) A co-operative society that realizes a surplus from its operations as ascertained by the annual audit shall make an annual contribution to its Stabilization Fund in an amount determined by a secondary co-operative society and approved by the Registrar, but must be five per cent or more of the surplus remaining after the allocation required under section 179(3).

(4) The Stabilization Fund of each co-operative society that is a member of the secondary co-operative society must be pooled and administered by the secondary co-operative society in accordance with its bye-laws and any related law.

(5) The Stabilization Fund must —

- (a) be used for strengthening the solvency and capacity of each co-operative society;
- (b) be used to improve competitiveness and growth among registered co-operative societies; and
- (c) strengthen the soundness of co-operative societies and the security of their members.

(6) Where the secondary co-operative society has not been established or is not functioning, the Stabilization Fund shall be administered by the primary co-operative society.

(7) The contribution made by each co-operative society to the Stabilization Fund must be treated as an appropriation from its surplus.

#### **Pension fund**

**204.**—(1) A co-operative society may establish a contributory pension fund for its members, employees, committee officials and directors and may contribute to such fund, in keeping with pension legislation in force.

(2) A pension fund established under subsection (1) must not be considered part of the assets of the co-operative society but may be invested in such manner as may be specified under the bye-laws.

#### **Charitable contributions**

**205.** Where a co-operative society has made the prescribed payments to its statutory reserve and Stabilization Fund, the co-operative society may contribute to a non-profit, charitable, benevolent, community, co-operative or cultural improvement purpose which shall be approved by —

- (a) in the case of a financial co-operative society, the vote of two-thirds of the members of the board;
- (b) in the case of a non-financial co-operative society, the special resolution of the board.

#### **Deposit guarantee facility**

**206.**—(1) A credit union or other financial co-operative society shall participate in a deposit guarantee facility to provide automatic

protection and compensation to its members in the event of the co-operative society's failure.

(2) The objects of the deposit guarantee facility includes —

- (a) to provide insurance against the loss of part or all of depositors' deposits with credit unions or other financial co-operative societies;
- (b) to promote and otherwise contribute to the stability of credit unions or other financial co-operative societies in Saint Lucia with due regard to the need to allow credit unions or other financial co-operative societies to compete effectively while taking reasonable risks;
- (c) to pursue the objects set out under paragraphs (a) and (b) for the benefit of persons having deposits with the co-operative society and in such manner as will minimize the exposure of the facility to loss;
- (d) to collect, accumulate and publish statistics and other information related to the co-operative society as may be appropriate;
- (e) to perform the duties provided under this Act or the Regulations or do anything the facility is required or authorized to do under this Act or the Regulations; and
- (f) to carry out such other objects as the contributing co-operative society and the apex body may specify in writing or as may be prescribed.

(3) A registered credit union or other financial co-operative society and the central credit union shall establish and own a deposit guarantee facility, whether as a central co-operative society or as a registered corporation subject to the Regulations and bye laws.

(4) A deposit guarantee facility, once established, must be funded by annual or quarterly premiums from participating co-operative societies, as a ratio of each co-operative society's insurable deposits or its risk weighted assets or a combination of both.

**PART VIII  
FINANCING**

**Shares**

**207.**— (1) A co-operative society may issue shares to its members.

(2) A share issued under subsection (1) must —

- (a) have a par value fixed by the bye-laws;
- (b) be permanent and non-withdrawable; and
- (c) be redeemable only where the owner ceases to be a member through —
  - (i) death, or
  - (ii) withdrawal or termination of membership once approved by the board.

(3) 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.

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

**Share capital**

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

- (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) The bye-laws must set out the procedure to be followed in the redemption of shares in a co-operative society on —

- (a) the death of a member;
- (b) the withdrawal from membership of a member; or
- (c) the removal from membership of a member.

(3) A co-operative society shall not redeem permanent shares, to the extent that the value of the total shares owned by the members shall not fall below the equivalent of five per cent of the total assets of the co-operative society.

(4) The Registrar shall grant such period of time, not exceeding four years from the commencement of this Act, as the Registrar considers reasonable to enable an existing co-operative society to make good a deficiency in the adequacy of its share capital.

#### **Issue of shares**

**209.**—(1) Subject to subsection (2), a co-operative society may issue shares at any time and for any consideration that the board considers appropriate.

(2) Subject to section 211 and the bye-laws, a co-operative society shall sell its shares at their par value.

(3) 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 board, is the fair equivalent of the money that the co-operative society would have received if the share had been issued for money.

(4) For the purposes of subsection (3)(b), when determining whether property is the fair equivalent of a money consideration, the board may take into account reasonable charges and expenses of organization and reorganization and payment for property reasonably expected to benefit the co-operative society.

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

#### **Alteration of share capital**

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

(a) sub-divide 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; or
- (f) with or without extinguishing or reducing liability on any of its shares and with or without reducing the number of such shares, pay off 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 does 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 affected have been notified of the resolution and have signified their approval, or
  - (ii) appropriate steps have been taken by the co-operative society to adequately safeguard the interests of its creditors.

#### **Limitation on purchase of shares**

**211.** 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 make the purchasing co-operative society insolvent; and
- (c) the proposed purchase or acquisition would not, in the opinion of a board, be detrimental to the financial stability of the purchasing co-operative society.

### **Transfer of shares generally**

**212.**—(1) A share may be transferred with the approval of the board to another member if the transferor shares does not fall below the minimum number of shares required in the bye-laws.

(2) Without prejudice to subsection (1), if —

- (a) the transferee is eligible for membership but 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 is registered;
- (b) the bye-laws require a member to hold more than the minimum number of shares, the transferee must have purchased shares in the amount required, before the transfer is registered.

(3) Where 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 is registered.

(4) A transfer of shares must be effected in the prescribed form.

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

(6) 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 a board and until the transfer is registered —

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

**Transfer of shares of member of unsound mind**

**213.**—(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 committee, receiver or guardian has not been appointed, the co-operative society may, subject to this section and section 212 —

- (a) transfer the share or interest of such member to any person nominated by such member for the purposes of section 145; or
- (b) pay to the person nominated a sum representing the value of the share or interest of such member ascertained under subsection (5).

(2) Subject to subsection (3), if a nominee has not been appointed, the co-operative society may pay a sum representing the value of the member's share or interest to the Registrar of the High Court.

(3) Where the value of the share or interest does not exceed one hundred dollars the board may, subject to conditions it thinks fit, pay the whole or a portion of the 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 under this section is valid and effective against a demand made on the co-operative society by a person.

(5) For the purposes of this section and section 212, the value of a share or interest is 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 of group insurance has accrued on a share or interest, the value of the benefits is the amount actually received by the co-operative society on the account of the deceased member.

**Transfer of shares or interest on death of member**

**214.**—(1) On the death of a member of a co-operative society, where a person has been nominated by the member under section 145 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 under section 145 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 to the nominee or to the legal personal representative of the deceased member, such sum as represents the value or part of the deceased member's share or interest in the co-operative society.

(3) Nothing in this section prohibits 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) For the purpose of a transfer to a nominee, the value of a share or interest must be represented by the sum actually paid for the share or interest by the member holding it, unless the bye-laws otherwise provide.

(5) Where a share or interest is paid to a nominee who is a minor, a receipt given by the parent or guardian of the nominee is sufficient discharge to the co-operative society.

(6) 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 of the deceased member's share or interest may be paid, the share or interest shall be transferred to the Stabilization Fund of the co-operative society.

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

#### **Restrictions on transfer of shares**

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

**Conditions for the validity of transfer of shares**

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

- (a) a written application for membership by the transferee is approved and the transfer is authorized by —
  - (i) a resolution of the directors, or
  - (ii) a person authorized by a resolution of the directors to approve applications and transfers of that kind; and
- (b) notification of 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.

**PART IX**  
**AUDIT AND FINANCIAL DISCLOSURE**

**Appointment of auditor**

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

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

(2) Notwithstanding subsection (1)(b), if an auditor is not appointed at an annual general meeting, the incumbent auditor shall continue in office until his or her successor is appointed at the next annual general meeting.

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

(4) An individual shall not accept appointment, consent to be appointed or be appointed as auditor of a co-operative society if he 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 the request referred to in that subsection, the individual does not receive a reply.

(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.

(7) 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.

#### **Auditor's qualifications**

**218.** Subject to section 219, an auditor of a co-operative society must be an external auditor who is a chartered accountant or a certified public accountant, and a member of the Institute of Chartered Accountants of the Eastern Caribbean or a certified professional body recognized by the Registrar.

#### **Disqualifying auditor**

**219.—(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, the board and officers of the co-operative society.

(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 not presumed to be independent of a co-operative society if he or she or his or her business partner —

- (a) is a member, a director, an officer or an employee of the co-operative society or a business partner or employee of a

director, officer, member or employee of the co-operative society;

- (b) is a member of a Credit Committee or other committee of the co-operative society;
- (c) transacts a substantial amount of business with the co-operative society;
- (d) including the chief executive officer, chief financial officer, chief accounting officer, or a person serving in an equivalent position for the co-operative society, was employed by that individual and participated in any capacity in the audit of that co-operative society during the two years preceding the date of the initiation of the audit; or
- (e) provides to the co-operative society contemporaneously with the audit, 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 shall resign after he or she becomes aware of his or her disqualification.

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

### **Cessation of office**

**220.**—(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 221; or
- (c) has held the office for five consecutive years.

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

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

### **Removal of auditor**

**221.** The members of a co-operative society may, by special resolution at a special meeting remove an auditor, other than an auditor appointed by the Registrar under section 223.

### **Filling vacancy of auditor**

**222.**—(1) Subject to subsection (4), the board shall immediately fill a vacancy in the office of auditor.

(2) Where there is not a quorum of directors, the directors serving 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 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.

#### **Auditor appointed by the Registrar**

**223.**—(1) Where a co-operative society does not have an auditor, the Registrar —

(a) may, on the Registrar's own motion; and

(b) shall, on the application of a member,

appoint and specify the remuneration of the auditor.

(2) An auditor appointed under subsection (1)(b), subject to section 218, holds office until an auditor is appointed under section 217.

#### **Auditor's right to notice**

**224.**—(1) An auditor of a co-operative society must receive a notice of an annual general meeting of the members of the co-operative society, and to be heard in presenting his or her report to the meeting.

(2) An auditor of a co-operative society must receive notice of each meeting of the members of the co-operative society on matters relating to his or her duties as auditor.

#### **Required notice**

**225.**—(1) Subject to section 159, where 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 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 shall attend the meeting at the expense of the co-operative society to answer questions relating to his or her duties as an auditor.

(2) Where the board does not agree to expense to be paid under subsection (1) the Registrar shall determine if the expense to be paid by the board or a member.

**Auditor's right to comment**

**226.**—(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 reason for opposing the proposed action.

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

**Examination by auditor**

**227.**—(1) An auditor of a co-operative society shall examine its books and records and shall make a report on the annual financial statements and financial position and shall state whether in the auditor's opinion the statements of financial position and of comprehensive income give a true and fair view of the state of affairs of the co-operative society and of its results for the period under review.

(2) An auditor of a co-operative society shall certify whether the appropriate measures to counter money laundering and other suspicious transactions are in place.

(3) An auditor of a co-operative society shall submit a report on the financial and accounting systems and risk management controls of the co-operative society.

(4) The report of the auditor made under subsections (1), (2) and (3) must be presented with the report of a board and the financial statements of the co-operative society at the annual general meeting of members.

**Auditor's right to inspect**

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

- (a) 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 227 and that the directors, officers, employees or agents are reasonably able to provide.

(2) On the request 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 a 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 227; and
- (b) provide the information and explanations so obtained to the auditor.

(3) Where a former director, officer, employee or agent of a member fails to comply with subsection (2), he or she commits an offence and is liable on summary conviction to a fine not exceeding twenty-five thousand dollars and to imprisonment for a term not exceeding three months or both.

(4) A former or present director, committee member, employee or agent of a member of a co-operative society, shall not take 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 making the financial statements materially misleading.

(5) A former or present director, committee member, employee or agent of a member of a co-operative society who contravenes subsection (4) 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; and
- (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**

**229.**—(1) A director or an officer of a co-operative society shall notify the co-operative society's auditor of an 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) Where 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.

(3) Where 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 under subsection (2), the directors shall —

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

**Privilege of auditor**

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

**Annual financial statement**

**231.**—(1) The board of a co-operative society shall place before the members at each 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) further information with respect to the financial position of the co-operative society and the results of its operations required by the bye-laws.

(2) The financial statements under 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.

(3) The financial statements under subsection (1)(a) must include —

- (a) changes in members' equity;
- (b) a cash flow statement;
- (c) the balance sheet;
- (d) detailed profit and loss accounts; and
- (e) notes to the financial statement,

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 shall include 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 and reporting to members**

**232.**—(1) The board of a co-operative society shall approve the financial statements under section 231, 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 under section 231 unless the financial statements are —

- (a) approved and signed under subsection (1); and
- (b) accompanied by an auditor's report.

(3) A co-operative society shall send to the Registrar a copy of the financial statements under section 231(3), auditor's report on payment of the prescribed fee and management letter under section 231 within ninety days of the end of the financial year of the co-operative society or within an extended period not exceeding two months as the Registrar may allow, but no later than ten days prior to the annual general meeting of the co-operative society.

(4) Not less than ten days before an annual general meeting of members, a co-operative society shall make available to each member a copy of the financial statements and report of the auditor under section 231.

(5) 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 (4).

#### **Annual, quarterly, monthly and special returns**

**233.**—(1) Not less than thirty days, or such shorter period as the Registrar may allow, before the date of its annual general meeting a co-operative society shall —

- (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 any other requested prescribed financial information that is pertinent to that required under section 232(3).

(2) A financial co-operative society shall prepare monthly returns within twenty days of each month, for the consideration of a board, the Supervisory Committee and other members.

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

(4) The Registrar may waive the requirements under subsections (2) and (3) in relation to be a co-operative society.

(5) 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.

(6) Where the Registrar requests a special return under subsection (5), the Registrar shall specify in the notice a time within which the special return is to be made.

(7) A co-operative society which fails to submit an annual return or a special return up to five days past the stipulated timeline shall pay to the Registrar a prescribed fee for each subsequent day that the return is not submitted.

(8) The Registrar shall examine the returns submitted under this section in the prescribed manner.

## **PART X RECONSTRUCTION OF CO-OPERATIVE SOCIETIES**

### **Methods of reconstruction**

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

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

(2) Sections 235 to 240 have effect with respect to the procedure that must be followed for the reconstruction of a co-operative society under subsection (1).

**Conversion**

**235.**—(1) A company registered under the Companies Act, Cap. 13.01 or a registered industrial, provident or friendly society may, by special resolution, determine to convert itself into a co-operative society.

(2) A resolution for conversion into a co-operative society must appoint ten members of the company or the industrial, provident or friendly society who together with the secretary, shall sign the proposed bye-laws and 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 such resolution.

(3) A copy of the special resolution under subsection (1) with three copies of the bye-laws shall be sent to the Registrar who may, register the co-operative society and issue a certificate under section 31.

**Effect of certificate of registration**

**236.**—(1) On the date of the certificate of registration issued under section 235 —

- (a) the incorporation or registration under any other enactment of the company or the industrial, provident or friendly society ceases and shall be cancelled by the competent authority;
- (b) the conversion of the company or the industrial, provident or friendly society is effective;
- (c) the property of the company or the industrial, provident or friendly 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 society;
- (e) an existing cause of action, claim or liability or prosecution against the company or the industrial, provident or friendly society is not affected;
- (f) a civil, criminal or administrative action pending against a converted company or an industrial, provident or

friendly society may be continued against the registered co-operative society; and

- (g) a conviction against or a ruling, order or judgment in favour of or against a company or an industrial, provident or friendly society may be enforced by or against the registered co-operative society.

(2) An obligation or penalty arising under any of the matters under subsection (1) for which the former company, or industrial, provident or friendly society is liable or potentially liable at the date of the certificate of registration issued under section 235 have priority as against the property of the registered co-operative society over all other rights or claims against, or liabilities of the registered co-operative society.

#### **Amalgamation of co-operative societies**

**237.**—(1) 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 meeting called for the purpose, amalgamate as one co-operative society.

(2) The co-operative societies that amalgamate under subsection (1), shall enter into an amalgamation agreement that sets out the —

- (a) reasons for the amalgamation;
- (b) location of the principal office of the co-operative society and any branch office location after the amalgamation;
- (c) agreements that have been reached for notifying and paying creditors of the amalgamating co-operative society;
- (d) assignment or transfer to the continuing co-operative society of all of the amalgamated co-operative society's assets, rights, property, liabilities and equity and additional agreements, documents and other instruments of conveyance which may be necessary;
- (e) continuing co-operative society's assumptions and agreement to pay all the liabilities of each amalgamating co-operative society and agreement that the continuing co-operative society will issue the same monetary amounts in shares and deposits to the members as was invested or deposited in the amalgamating co-operative society as of

the effective date of the amalgamation, notwithstanding any adjustments made to the value of the permanent shares for losses of the amalgamated co-operative society;

- (f) information on any organizational changes, such as change in number of officials, new management positions or employees;
- (g) procedures for the conversion of qualifying shares if the par values are different for each co-operative society;
- (h) procedures for the transfer of savings and loans to the continuing co-operative society if the products offered by each amalgamating co-operative society are different;
- (i) procedures for merging the management information systems of the co-operative societies if the systems are different;
- (j) other procedures or terms of the amalgamation;
- (k) such other prescribed requirements.

(3) Where a resolution under subsection (1) is passed and an amalgamation agreement is entered under subsection (2) —

- (a) each co-operative society shall apply to the Registrar for cancellation of its registration; and
- (b) the co-operative societies shall jointly make an application for the registration of the amalgamated co-operative society and the application must be accompanied by —
  - (i) minutes of the general meeting or special meeting of the co-operative society approving the amalgamation, including the results of the vote,
  - (ii) pre-amalgamation financial statements for the co-operative society proposing to amalgamate and a consolidated statement of financial position, statement of comprehensive income and delinquency list for the co-operative societies as of the amalgamation,
  - (iii) documentation of the assignment of the amalgamating co-operative society's assets, liabilities and equity to the continuing co-operative society,

- (iv) proposed changes to the continuing co-operative society's bye-laws,
- (v) a combined list of the members of the affiliating and continuing co-operative society,
- (vi) three copies of its bye-laws signed by the secretary of each of the amalgamating co-operative societies.

(4) The Registrar shall approve or deny an application for amalgamation within thirty calendar days of receiving all required information.

(5) Where the Registrar is satisfied that all the requirements and submissions have been met under this section, the Registrar shall register the bye-laws of the amalgamated co-operative society and issue a certificate of registration with the specified date from which the registration takes effect.

(6) The co-operative societies shall, not later than thirty calendar days, notify the creditors of the changes in writing, post the information in all the co-operative society's offices and place the relevant information in widely used public media.

(7) The co-operative societies shall complete the amalgamation within twelve months from the date of registration and extension by the Registrar.

(8) The amalgamation is complete when the continuing co-operative society receives the certificate of registration and the registration of each amalgamated co-operative society is cancelled.

(9) The registration of the amalgamated co-operative society shall be sufficient to vest the assets, rights, property and liabilities of the amalgamating co-operative societies into the amalgamated co-operative society.

(10) After the transfer of the assets, rights, property and liabilities is effected, each of the amalgamating co-operative societies shall be dissolved.

(11) Where the transfer of assets involves real property, the Land Registration Act, Cap. 5.01 applies.

**Transfer of assets of co-operative societies**

**238.**—(1) A co-operative society may, by resolution passed by not less than three-fourths of all the members present and voting at a special meeting called for the purpose, agree to transfer its assets and liabilities to any other co-operative society which has agreed to accept them, as prescribed.

(2) The acceptance of the co-operative society under subsection (1) must be by a resolution passed by not less than three-fourths of its members present and voting at a special meeting called for the purpose.

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

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

(5) Where the vesting of the assets of a co-operative society involves real estate, a copy of the resolution referred to under subsection (1), certified as such by the Registrar, shall be recorded at the Land Registry or other Government department as the case warrants.

(6) The co-operative society shall notify the members and the auditor of the co-operative society in the prescribed manner.

**Claims of objecting creditors**

**239.** Notwithstanding sections 237 and 238, an amalgamation or transfer is not 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**

**240.**—(1) A co-operative society that intends to divide itself into two or more co-operative societies shall submit a statement of intent to do so to the Registrar.

(2) A co-operative society may, by preliminary resolution at a special meeting called for the purpose, resolve to divide itself into two or more co-operative societies.

(3) A preliminary resolution —

(a) must 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.

(4) A copy of the preliminary resolution must be sent within five days to the Registrar and to all members and creditors of the co-operative society that is being divided.

(5) 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 in general circulation in Saint Lucia.

(6) 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.

(7) 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 monies due him or her.

(8) A 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.

(9) 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 any other person given under subsection (5), another special 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.

(10) Where at the special meeting referred to under subsection (9) the preliminary resolution is confirmed by a special resolution, 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 31, register the new co-operative societies and on registration, the original co-operative society shall be taken to be dissolved and its registration cancelled.

(11) The decision of the Registrar regarding any changes made in the preliminary resolution under subsection (10) is final.

(12) At the special meeting under 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 (6);
- (b) satisfaction of the claims of all the creditors who have given notice under subsection (7); and
- (c) satisfaction of the claims of such of the other persons, who have given notice under subsection (8), but no member or creditor or other person shall be entitled to such repayment or satisfaction until the preliminary resolution is confirmed under subsection (9).

(13) The Registrar may refuse to register a new co-operative society where within such time as the Registrar considers reasonable —

- (a) the share capital of the members referred to under subsection (12)(a) is not repaid;
- (b) the claims of the creditors subsection (12)(b) are not satisfied; or
- (c) the claims of the other persons under subsection (12)(c) are not satisfied or secured.

(14) In this section, “preliminary resolution” means a resolution passed by three-fourths of the members present and voting.

**Effect of registration of new co-operative society**

**241.** The registration of a new co-operative society established under section 240 is sufficient to vest the assets and liabilities of the original co-operative society in the manner specified in the preliminary resolution as confirmed under section 240(8) and (9).

**PART XI  
DISSOLUTION****Application of Part XI**

**242.**—(1) This Part does not apply to a co-operative society that is bankrupt within the meaning of the Commercial Code, Cap. 244 of the Revised Laws of Saint Lucia 1957.

(2) Where a co-operative society is at any time found, in proceedings under the Commercial Code, Cap. 244 of the Revised Laws of Saint Lucia 1957 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 must be stayed.

*Division 1  
Dissolution by members*

**Dissolution by members**

**243.**—(1) Subject to the approval of the Registrar, the members of a co-operative society may authorize the dissolution of the co-operative society.

(2) A board shall cause a notice of a special meeting of members to be sent in the manner set out under section 152 to each member for the purpose of authorizing 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) the dissolution is authorized when the members approve the dissolution by a special resolution of the membership.

(5) A special meeting under this section must be conducted including the preparation of a liquidation plan and appointment of a liquidator in the prescribed manner.

(6) A board shall submit a notice of dissolution to the Registrar within thirty calendar days of the membership approving the dissolution.

(7) A request under subsection (6) must be accompanied by the minutes of the special meeting, the financial statements of the co-operative society and the authorization to dissolve the co-operative society.

(8) The authorization under subsection (7) must set out —

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

(9) The Registrar may approve or disapprove a dissolution within thirty calendar days of receiving a notice under subsection (6).

(10) The Registrar shall approve a dissolution, where the Registrar —

- (a) receives notice, in a form satisfactory to the Registrar, of an authorization 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.

(11) The Registrar shall notify a co-operative society of disapproval of dissolution and shall give reasons for the disapproval.

(12) Subject to subsection (14), where a co-operative society has an unallocated surplus and the authorization approved under subsection (10) 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) the active members of the co-operative society;
- (b) the persons named in the special resolution; or
- (c) persons, where not named in the special resolution, appointed by the Registrar.

(13) The trustees named or appointed under subsection (12) shall —

- (a) deposit the money in a special trust account —
  - (i) in a co-operative society, or
  - (ii) in a financial institution licensed under the Banking Act, Cap. 12.01 or a company registered under the Insurance Act, Cap. 12.08; or
- (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 authorized by the Registrar.

(14) Where a trust is created under subsection (12), 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 co-operative society purpose that the after consultation with, the trustee apex body Registrar considers fit.

(15) In this section —

“interest” includes the interest of a member in a co-operative society and member loans and obligations that —

- (a) arise by virtue of the bye-laws of the co-operative society; and
- (b) are owed by the co-operative society to the members;

“unallocated surplus” includes net proceeds from the sale of assets on dissolution of the co-operative society after the liabilities of the co-operative society and the claims of creditors and members have been satisfied.

#### **Notice of dissolution by members**

**244.**—(1) When the Registrar approves a special resolution passed under section 243, the Registrar shall, at the expense of the co-operative society, cause a notice of the special resolution to be published —

- (a) in the *Gazette*; and
- (b) once a week for two weeks in a newspaper published and in general circulation in Saint Lucia.

(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 243(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 undistributed surplus or statutory reserve;
- (c) the progress of the administration of a trust established under this section; and
- (d) other information that her or she requires.

*Division 2*  
*Dissolution by the Registrar*

**Dissolution by the Registrar**

**245.**—(1) Where the Registrar has reasonable cause to believe that a co-operative society —

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

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 of the letter under subsection (1), receive a response, the Registrar shall, within fourteen days after the expiry of the month, send to the secretary of the co-operative society a response under subsection (1) and stating that —

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

(3) Where the Registrar —

- (a) receives a confirmation 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 transacted**

**246.**—(1) Where a co-operative society fails to provide a copy of the annual financial statements to its members at an annual general meeting 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 board 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 under 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 243 and 244.

(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 243 and 244,

the Registrar shall notify the directors that, unless sections 243 and 244 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 243 and 244 to a period not exceeding three months.

(5) Where a co-operative society does not comply with sections 243 and 244 within the period mentioned under 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) apply to the Court for an order to appoint a liquidator to dissolve the co-operative society.

*Division 3*

*Dissolution by the Court*

**Dissolution by the Court**

**247.**—(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 has willfully, after notice by the Registrar, violated this Act or its bye-laws.

(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 shall be 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, it 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 —

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

*Division 4*

*Liquidation*

**Appointment of liquidator**

**248.**—(1) The Registrar may make an application to the Court for an order to appoint a liquidator to wind up the affairs of the co-operative society if —

- (a) a co-operative society is to be dissolved under this Part;  
or

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

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

### **Commencement of liquidation**

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

- (a) a special resolution for dissolution of the co-operative society is approved by the Registrar under section 243;
- (b) the Registrar appoints a liquidator under section 248;
- (c) the Court makes an order to dissolve under section 247.

### **Cessation of business**

**250.** From the date of the commencement of liquidation —

- (a) a co-operative society continues in existence, but ceases to carry on its business except to the extent required, in the opinion of the liquidator, for an orderly liquidation; and
- (b) a 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 with respect to a liquidator**

**251.**—(1) Where two or more liquidators are appointed, this section with respect to a liquidator applies 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) A 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 if —

- (a) the members appoint a liquidator and do not issue direction under subsection (4); or
- (b) a liquidator is not appointed by the members.

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

(7) In 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.

#### **Duties of liquidator**

**252.** On his or her appointment, a liquidator shall —

- (a) immediately give notice of his or her appointment —
  - (i) in the case of a liquidator not appointed by the Registrar, to the Registrar, and
  - (ii) to each claimant and creditor known to the liquidator;
- (b) immediately publish notice of his or her appointment in the *Gazette* and once a week for two consecutive weeks in the print media published and circulated in Saint Lucia;
- (c) set out in the notice mentioned under paragraphs (a) and (b) a provision requiring a person —
  - (i) indebted to the co-operative society, to make 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 person having claims against the co-operative society;
- (g) where at any time the liquidator determines that the co-operative society is unable to pay or adequately provide for the discharge of its obligations, apply to the Registrar or the Court 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 under section 231 or in any form that the liquidator considers proper or that the Registrar requires.

### **Powers of liquidator**

**253.**—(1) A liquidator may —

- (a) retain an attorney-at-law, accountant, engineer, appraiser and other professional advisor;
- (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) subject to the Registrar's approval, sell by public auction or private sale any property of the co-operative society;
- (e) do all acts and execute a document in the name and on behalf of the co-operative society;

- (f) subject to the Registrar's approval, 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 or she 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 or she may apply to the Court for an order requiring that person to appear before the Court at the time and place designated in the order and to be examined.

(3) Where the examination mentioned under subsection (2) discloses that a person has concealed, withheld or misappropriate 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) Subject to the Registrar's approval, a liquidator shall not purchase, directly or indirectly, any part of the stock-in-trade, debts or assets of the co-operative society.

#### **Remuneration of liquidator**

**254.**—(1) The liquidator may be paid a commission based on the net proceeds realized from the estate of the co-operative society, after deducting his or her expenses and disbursements.

(2) Unless otherwise agreed, the amount of the commission under subsection (1) is equal to —

- (a) five per cent on the first one thousand dollars realized;
- (b) two and one half per cent on the next four thousand dollars realized; and
- (c) one and one quarter per cent on any sum realized that is greater than five thousand dollars.

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

(4) A liquidator must not receive a fee or charge for his or her services in addition to the commission allowed under this section.

#### **Limitation on liability of liquidator**

**255.** A liquidator shall not be liable where he or she relies in good faith on —

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

#### **Cost of liquidation**

**256.—**(1) A liquidator shall pay all 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 252(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) A 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.

### **Closure of liquidation**

**257.**—(1) In the liquidation of a co-operative society, the funds, including the statutory reserves, shall be applied —

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

(2) Surplus remaining after the application of the funds to the purposes specified under subsection (1) may be used for any other purpose the Registrar considers fit.

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

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

### **Custody of records**

**258.** 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 sets.

### **Continuation of actions**

**259.**—(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) property that would have been available to satisfy a judgment or order if the co-operative society had not been dissolved remains 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 a claim 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 the 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.

### **Unknown claimants or members**

**260.**—(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.

(2) A payment under subsection (1) is in satisfaction of a debt or claim of a 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 monies 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 under section 257(2) or the bye-laws.

#### **Power of Registrar to surcharge**

**261.**—(1) Where, in the course of the dissolution of a co-operative society it appears that a person who has taken part in the organization 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 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 —

- (a) carry out an examination into the conduct of such person; and
- (b) make an order requiring the person —
  - (i) to repay or restore the money with interest at such rate as the Registrar thinks just, or
  - (ii) 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**

**262.** A person aggrieved by an order of the Registrar made under section 261 may appeal to the Appeals Tribunal within twenty-one days from the date of such order and the decision of the Appeals Tribunal is final on any question of fact.

*Division 5*  
*Revival*

**Revival of dissolved co-operative society**

**263.**—(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) other information the Registrar requires.

(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) on payment of the prescribed fee, issue a certificate of revival in the prescribed form and publish a notice of the revival in the *Gazette*; and
- (b) impose conditions on the co-operative society that he or she 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 a person after its dissolution.

**PART XII**  
**EXAMINATION AND INVESTIGATION**

*Division 1*  
*Examination by the Registrar*

**Appointment of examiner**

**264.** The Registrar shall appoint a person as examiner.

**Request for examination**

**265.**—(1) The Registrar may request an examiner to make an examination of the records and affairs of the co-operative society.

(2) In a request for an examination under subsection (1), the Registrar may set limits and conditions on the scope and conduct of the examination as the Registrar considers appropriate.

**Powers of examiner**

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

(2) For the purposes of exercising his or her powers under subsection (1) to take copies or extracts, an examiner may remove from the premises concerned, for such period and on such conditions, if any, as to facilitate access by officers of the co-operative society, as may be reasonably necessary, to books or documents referred to under subsection (1).

**Examination of other bodies**

**267.**—(1) An examiner who is carrying out an examination under section 266 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 associated with the principal co-operative society.

(2) An examiner may exercise, in relation to the body, a power conferred under section 266.

**Notice for provision of books, documents or information**

**268.**—(1) Where required to do so by notice in writing served by the Registrar or by an examiner in the course of an examination —

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

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

(2) Where 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 such form and containing such information as may be specified in the notice.

(3) Where a notice under subsection (1) or (2) —

- (a) requires that an item or information is to be furnished within a period, or a time or place specified in the notice; or
- (b) requires that information is to be verified by a statutory declaration,

the co-operative society or person on whom the notice is served shall not be regarded as complying with the notice unless that requirement is also complied with.

(4) The Registrar or examiner may take copies of or extracts from any item produced in compliance with a notice under subsection (1) or (2) and if so required by the Registrar or examiner, the person on whom a notice under subsection (1) was served or, in the case of a statement produced in compliance with a notice under subsection

(2), 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.

(5) Where a person on whom a notice is served under subsection (1) 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 shall not be regarded as complying 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.

(6) 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 made.

(7) A person who contravenes 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 three months, or to both.

#### **Expenses of examination**

**269.** Where the Registrar considers it just and 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, wholly or to such extent as the Registrar requires —

- (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.

**Report of examination**

**270.** Where an examination is carried out under section 265, the examiner shall make a report of the examination to the Registrar.

**Obstruction**

**271.** Subject to this Act, a director, committee member, employee or agent of a co-operative society who —

- (a) obstructs a person who is carrying out an examination under this Act; or
- (b) obstructs an examination of a co-operative society undertaken under this Act,

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 three years, or to both.

*Division 2**Receiver and Receiver-Manager***Appointment of receiver or receiver-manager**

**272.—(1)** The Registrar or the High Court may appoint a receiver or a receiver-manager if —

- (a) in the opinion of the Registrar or the High Court, based on the results of an examination undertaken under Division 1, it is necessary to appoint a receiver or a receiver-manager to protect the equity interests of the members;
- (b) the co-operative society —
  - (i) is involved in illegal, unsafe or unsound business practices,
  - (ii) willfully and continuously fails to comply with directives and instructions issued by the Registrar,
  - (iii) is totally incapable of coping with severe financial problems that must immediately be brought under control,

(iv) does not operate in the members' best interests of,  
or

(v) conceals or refuses to make available the books  
and records for inspection by an examiner or the  
auditor.

(2) Notwithstanding subsection (1), the Registrar or the High Court may when deciding to appoint a receiver or receiver-manager, take into consideration the —

- (a) probability of improvement of the financial condition of the co-operative society to a level that is sustainable without external sources of technical assistance or funding; and
- (b) possibility of retaining a large part of the membership, assets, liabilities and equity of the co-operative society.

(3) A co-operative society does not operate in the members' best interest under subsection (1)(b)(iv), if —

- (a) the institutional capital amounts to less than five per cent of total assets and is on a declining trend;
- (b) the co-operative society is insolvent;
- (c) the co-operative society has experienced a loss or a potential loss amounting to —
  - (i) more than ten per cent of its institutional capital in each of three consecutive financial years; or
  - (ii) more than fifty per cent of its institutional capital regardless of the period.

(4) A person may make an appeal 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.

#### **Effect of appointment of receiver or receiver-manager**

**273.** The appointment of a receiver or receiver-manager means that the co-operative society is being placed under administration where on behalf of the Registrar or the High Court, the receiver or receiver-manager takes immediate possession and control of a co-

operative society's business and assets and directs the operation of the co-operative society until the —

- (a) Registrar or the High Court permits the co-operative society to resume business on its own, subject to any terms and conditions the Registrar or the High Court may impose; or
- (b) Registrar merges or liquidates the co-operative society.

#### **Cessation of board's powers**

**274.** Where a receiver or receiver-manager is appointed by a Court or the Registrar, the board of the co-operative society shall not exercise the directors' powers that the receiver or receiver-manager is authorized to exercise until the receiver or receiver-manager is discharged.

#### **Functions of receiver**

**275.**—(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) realize the security interest of those on whose behalf the receiver is appointed;
- (c) act in accordance with the direction of the High Court or the Registrar.

(2) Notwithstanding subsection (1) and subject to an order that the Court may make under section 272, a receiver who is not appointed as manager of a co-operative society shall not carry on the business of the co-operative society.

(3) A receiver appointed by the 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 co-operative society to be returned to its members.

#### **Functions of receiver-manager**

**276.**—(1) Where a receiver of a co-operative society is also appointed manager of the co-operative society, the receiver —

- (a) may carry on any business of the co-operative society to protect the equity of the members; and
- (b) shall act in accordance with the direction of the High Court or the Registrar.

(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 co-operative society to be returned to its members.

**Required actions of receiver and receiver-manager**

**277.**—(1) 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 monies 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 a person authorized 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 under section 231;
- (g) on completion of his or her duties, make 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 a financial statement under paragraph (f) and a final account under paragraph (g) within fifteen days of the preparation of the financial statement or making of the final account.

(2) A receiver or receiver-manager shall —

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

#### **Orders by the Court**

**278.** 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 —

- (a) appointing, replacing or discharging a receiver or receiver-manager and approving his or her accounts;
- (b) determining the notice to be given to a person or dispensing with notice to a 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 or her 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 terms that the Court considers appropriate;
- (e) confirming an 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 the Registrar**

**279.**—(1) Where a receiver or a receiver-manager is appointed by the Registrar, the receiver or receiver-manager may make an application to the Registrar for directions on any matter relating to his or her functions.

(2) Where the Registrar receives an application under subsection (1), he or she may make any order that he or she considers appropriate, including an order similar to an order under section 278(c) to (f).

*Division 3*  
*Investigation by the Registrar*

**Appointment of investigators**

**280.** The Registrar may appoint one or more investigators to investigate the affairs of the co-operative society if —

- (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 shall have 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.

**Powers of investigator**

**281.** Where an investigator 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, he or she may do so with the approval of the Registrar.

**Application for investigation**

**282.** An application under section 280(a) must be supported by the evidence the Registrar requires 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 the Registrar reasonably requires.

#### **Notice of application**

**283.**—(1) 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, by notice in writing inform the co-operative society of —

- (a) the action which the Registrar proposes to take; and
- (b) the grounds on which the Registrar proposes to take the action under paragraph (a).

(2) Before a notice is issued under subsection (1), 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 notice.

(3) A notice of an application under section 280(a) must be given to the co-operative society and where applicable, to any other body whose affairs are to be investigated under section 281.

#### **Expenses of investigation**

**284.**—(1) Subject to subsection (2), the Registrar may direct that the expenses incidental to an investigation undertaken under this section are to be defrayed by —

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

(2) Where an investigation undertaken under this section reveals substantial irregularities in the business of the co-operative society,

the Registrar shall not direct any members on whose motion the investigation was commenced to defray the expenses.

*Division 4*  
*Investigation by the Court*

**Application for investigation by the Court**

**285.**—(1) An *ex parte* application or an application on notice that the Court requires may be made 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 by —

- (a) a member of a co-operative society;
- (b) the Registrar; or
- (c) an interested person.

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

**Proceedings of the Court**

**286.**—(1) An *ex parte* application under this section must be heard in camera.

(2) A person shall not publish anything relating to *ex parte* proceedings conducted under this section except with the authorization of the Court or the written consent of the co-operative society being investigated.

**Order for investigation**

**287.** On an application under section 285, the Court may order an investigation of a co-operative society or of any of its member co-operative societies 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 under this Act, the Regulations or the bye-laws;
- (c) the co-operative society is not organized 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.

**Other orders**

**288.** In connection with an investigation under section 286, the Court may make an order it considers appropriate, including an order —

- (a) to appoint an investigator, who may be staff of the Registrar, fix the remuneration of an investigator and replace an investigator;
- (b) to determine the notice to be given to an interested person or dispensing with notice to that person;
- (c) to authorize an investigator to enter any premises in which the Court is satisfied there might be information, and to examine anything and make copies of a document or record found on the premises;
- (d) to require a person to produce documents or records to the investigator;
- (e) to authorize an investigator to conduct a hearing, administer oaths and examine a person on oath, and prescribing rules for the conduct of the hearing;

- (f) to require a person to attend a hearing conducted by an investigator and to give evidence on oath;
- (g) to give directives to an investigator or an interested person on any matter arising in the investigation;
- (h) to require an investigator to make an interim or final report to the Court and to the Registrar;
- (i) to determine whether a report of an investigator made under paragraph (h) should be published and, where published, ordering the Registrar to publish the report in whole or in part or to send copies to a person the Court designates;
- (j) to require an investigator or an examiner to discontinue an investigation; and
- (k) to require the co-operative society or a person who made an application under section 285 for an order to pay the costs of the investigation.

#### **Powers of investigator**

**289.**—(1) An investigator has the powers set out in the order appointing him or her.

(2) Without prejudice to the order appointing an investigator, the investigator may provide to, or exchange information and otherwise co-operate with, a public office in Saint Lucia or elsewhere that —

- (a) is authorized to exercise investigatory powers; and
- (b) is investigating, with respect to the co-operative society, an allegation of improper conduct that is the same as or similar to the conduct under section 287.

#### **Hearing in camera**

**290.**—(1) An interested person may apply to the Court for an order that a hearing conducted by an investigator must be heard in camera and for directions on any matter arising in the investigation.

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

**Incriminating evidence**

**291.**—(1) A person shall not be excused from attending and giving evidence and producing documents and records to an investigator by reason only that the evidence tends to incriminate the person or subject the person to any proceedings or penalty.

(2) Evidence given under subsection (1) may be used or received against a person in proceedings instituted against him or her, other than a prosecution for perjury in giving evidence.

*Division 5*  
*General*

**Absolute privilege with respect to statements**

**292.**—(1) An oral or written statement or report made during the course of, or as the result of, an investigation or examination authorized by this Part by an investigator or an examiner, or by any other person acting in accordance with powers conferred by this Part in respect of an investigation or examination, shall have absolute privilege.

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

**Administrative supervision**

**293.**—(1) Where after an examination under section 265 or after an investigation under section 282, or on the receipt of 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 or other financial co-operative society, in addition to the powers conferred under section 7, the Registrar may —

- (a) place the credit union or other financial co-operative society 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 or other financial co-operative society's assets,

- (ii) prohibiting the incurring by the co-operative of any debt, obligation or liability,
- (iii) prohibiting the investing of any of the co-operative funds,
- (iv) prohibiting the withdrawal of the co-operative accounts at other financial institutions,
- (v) suspending the co-operative society acquisition of fixed assets,
- (vi) suspending or restricting the financial co-operative society's lending operations, and
- (vii) increasing the co-operative allocation to the statutory reserves.

(2) A credit union or other financial co-operative society shall comply with the requirements of the Registrar under subsection (1) and where the credit union or other financial co-operative society fails to do so, the Registrar may appoint an administrator for the credit union or other financial co-operative society, for a period not exceeding twelve months.

(3) Where the Registrar determines that the credit union or other financial co-operative society is not able to continue business under the administrator, in the interest of the members, depositors or creditors, the Registrar may appoint a receiver or a receiver-manager for the credit union or other financial co-operative society.

(4) All costs incidental to the period of administrative supervision constitutes an allowable charge against the assets of the credit union or other financial co-operative society and shall be paid as the Registrar determines.

**PART XIII  
DISPUTES***Division 1  
Settlement by the Registrar***Settlement of disputes**

**294.**—(1) A party to a dispute may, by a statement in writing, refer the dispute to the Registrar for decision where the dispute that relates to the business of a co-operative society arises —

- (a) among members, former members and persons claiming through members or deceased members;
- (b) between a member, former member or person claiming through a member or a deceased member, and the co-operative society, the board, or an 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.

(2) A statement under subsection (1) must —

- (a) be dated;
- (b) specify the nature of the dispute;
- (c) set out the full particulars of the dispute; and
- (d) be signed by the aggrieved party.

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

- (a) to ascertain the cause;

(b) to define the issues; and

(c) to bring about a voluntary settlement between the parties to the dispute.

(4) The Registrar may —

(a) hear the dispute by an employee or an office holder, and make and issue a decision; or

(b) in the prescribed manner appoint an arbitrator, who shall be an attorney-at-law of at least five years' standing, to hear the dispute.

(5) For the purposes of hearing any dispute the Registrar or the arbitrator appointed by the Registrar shall administer oaths and require the attendance of all parties concerned and witnesses and request the production of all books, documents and things relating to the dispute.

(6) The Registrar or the arbitrator may order the expenses of determining a dispute, in full or equally including fees to an attorney-at-law, to be paid by the co-operative society or by a party to the dispute.

(7) A party aggrieved by a decision of the Registrar or an arbitrator may appeal to the Appeals Tribunal within the prescribed time and in the prescribed manner.

(8) Notwithstanding this section, a co-operative society may exercise any rights arising by law under any charges, mortgages, bills of sale or other securities executed under this Act or any other law, without recourse to arbitration.

(9) For the purposes of subsection (1), a claim by a co-operative society for a 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 under subsection (1).

(10) Subject to this Act, the Registrar or an arbitrator shall conduct the proceedings for the purposes of this section in the prescribed manner.

#### **Case stated on question of law**

**295.**—(1) Notwithstanding anything contained in sections 293 and 294, the Registrar or an arbitrator may, in the course of or on making

a decision in a dispute, refer a question of law to the Court, by way of case stated for the opinion of that Court.

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

#### **Enforcement of award and recovery of loans**

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

(2) Where a dispute relates to the recovery of a loan made by a co-operative society to a member of that co-operative society, such a dispute may, notwithstanding section 294, be brought before the magistrate for the district in which the co-operative society conducts business.

(3) A magistrate shall have jurisdiction under subsection (2), even though the amount due exceeds the limits of jurisdiction of a magistrate specified in the District Court Act, Cap 2.02.

(4) A person may appeal to the Court of Appeal with respect to the decision of a magistrate under this section.

#### *Division 2* *Appeals Tribunal*

#### **Establishment of Appeals Tribunal**

**297.** There is established an Appeals Tribunal to be known as the Co-operative Societies Appeals Tribunal.

#### **Composition of Appeals Tribunal**

**298.**—(1) The Appeals Tribunal comprises three persons appointed by the Minister one of whom shall be an attorney-at-law of at least seven years standing.

(2) The attorney-at-law is the Chairperson of the Appeals Tribunal and the other two persons shall have co-operative principles and governance experience.

**Jurisdiction of Appeals Tribunal**

**299.** The Appeals Tribunal shall have jurisdiction to hear prescribed appeals against a decision of the Registrar or an arbitrator.

**Duration of appointment**

**300.**—(1) A member of the Appeals Tribunal holds office for a period not exceeding three years and is eligible for reappointment.

(2) Notwithstanding subsection (1), a member of the Appeals Tribunal shall not be reappointed for more than two consecutive terms.

**Resignation**

**301.** A member may resign his or her membership by notice in writing to the Minister.

**Inability**

**302.**—(1) Where the Minister is satisfied that a member —

- (a) has been incapacitated by physical or mental illness;  
or
- (b) is otherwise unable or unfit to discharge the functions of a member,

the Minister may by notice published in the *Gazette*, declare the office of the member to be vacant and the office becomes vacant.

(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.

**Publication**

**303.** The Minister shall publish in the *Gazette* notice of the appointment and cessation of appointment of a member of the Appeals Tribunal.

**Remuneration**

**304.** The members of the Appeals Tribunal shall receive such remuneration as the Minister may prescribe.

**Procedure of the Appeals Tribunal**

**305.** The Appeals Tribunal shall follow the prescribed procedures.

**Validity of proceedings**

**306.** The validity of proceedings of the Appeals Tribunal is not affected by a vacancy among the members or defect in the appointment of a member.

**PART XIV  
APEX BODY****Establishment and constitution of an apex body**

**307.** Co-operative societies may establish an apex body which is composed of such member representatives of the majority of co-operative societies which may exist in Saint Lucia.

**Functions of an apex body**

**308.** An 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.

**Officers of an apex body**

**309.—(1)** The officers of an apex body shall be elected at the first meeting of that body and shall hold office for a period of one year and subsequently the election of such officers shall be in accordance with the applicable bye-laws.

(2) An apex body shall regulate its own procedure and may establish its own central credit union or other financial co-operative society or central co-operative society in conjunction with other apex bodies and co-operative societies in the CARICOM Region to provide increased security, specialized services and modern facilities to members.

**Consultation by the Registrar**

**310.** The Registrar shall, consult an apex body with respect to matters relating to the performance and development of co-operative societies.

**PART XV  
MISCELLANEOUS**

**Failure to comply with this Act**

**311.**—(1) A person shall not —

- (a) without reasonable cause or willfully neglect or refuse to comply with a requirement of this Act, or fail to provide 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 who, willfully or without reasonable cause, disobeys a summons, order or direction lawfully issued under this Act 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) A person shall not knowingly alter, destroy, mutilate, conceal, cover or falsify or make a false entry in a record or document of or belonging to a co-operative society with intent to impede, disrupt or influence an investigation or the proper administration of a matter.

(4) An officer or member of a co-operative society shall not willfully contravene the bye-laws of the co-operative society in relation to his or her duties or functions.

(5) A person who contravenes subsection (1), (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 of two years, or to both.

**Offences with respect to report, return, notice or other document**

**312.**—(1) A person shall not —

- (a) fail to give a report, return, notice or provide other documents;
- (b) fail to send a report, return, notice or other documents;
- (c) make or assist in making a report, return, notice or other document, required by this Act to be sent to the Registrar to any other person, that —
  - (i) contains an untrue statement of a material fact, or
  - (ii) 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 —

- (a) 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
- (b) 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.

#### **Offences by legal person**

**313.**—(1) Where a legal person commits an offence under this Act and the offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of —

- (a) a director, manager, secretary or other similar officer of the body corporate; or
- (b) a person who was purporting to act in such capacity, he or she, and the legal person, commits the offence and is liable to be proceeded against.

(2) For the purposes of subsection (1), “director”, in relation to a legal person whose affairs are managed by its members, means a member of the legal person.

#### **Court order to comply**

**314.** Where a person is convicted of an offence under this Act the Court may, in addition to any penalty imposed, order the person to comply with this Act for the contravention of which he or she has been convicted.

#### **Limitation**

**315.** The effluxion of time is no bar to prosecution for an offence under this Act.

#### **Preservation of civil remedy**

**316.** 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.

#### **Waiver of notice or document**

**317.** Where a notice or document is required under this Act 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.

#### **Exemptions**

**318.—(1)** A co-operative society registered under this Act is exempt from any property taxes on property owned by a co-operative society and used as its offices or as part of its operations.

(2) A co-operative society registered under this Act is exempt from the payment of income tax, corporation tax and any other tax on the incomes of such co-operative societies.

(3) A co-operative society registered under this Act is exempt from stamp duty, customs duty and excise tax on the importation of equipment, material and other inputs used for productive purposes by

the co-operative society with which, under a law for the time being in force, instruments executed by or on behalf of the co-operative society or by an officer or member relating to the business of such co-operative society, any class of such instruments, are respectively chargeable.

(4) Instruments or transactions relating to a loan granted under this Act are exempt from the payment of stamp duty under the Stamp Duty Act, Cap.15.11.

(5) Where a request is made under subsection (3), the co-operative society shall, within seven days of the request inform the Registrar in writing.

#### **Limitation of jurisdiction**

**319.** 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.

#### **Regulations**

**320.**—(1) The Minister may make Regulations for the purpose of carrying out this Act.

(2) Without limiting the generality of subsection (1), the Minister may make Regulations —

- (a) defining, enlarging or restricting the meaning of a word used but not defined in this Act;
- (b) requiring the payment of and specifying the amount of any fee with respect to —
  - (i) the filing, examination or copying of a document, or
  - (ii) an action that the Registrar is required or authorized 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 this Act;

- (f) prescribing any other matter or thing required or authorized to be prescribed under this Act; and
  - (g) generally for giving effect to and for the efficient operation of this Act.
- (3) Regulations under this section may —
- (a) make different provisions 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; and
  - (c) contain transitional, consequential, incidental or supplementary provisions as appear to the Minister to be necessary or expedient for the purposes of the Regulations;
  - (d) 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 to both.

### **Repeal and savings**

**321.**—(1) Subject to subsection (2), the Co-operative Societies Act, Cap.12.06 is repealed.

(2) Rules, Regulations and bye-laws made under the former Act continue in force with any necessary amendments and are taken as having been made under this Act until new Rules, 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.

### **Transitional**

**322.**—(1) The directors and officers of co-operative societies in existence on the coming into force of this Act shall continue to hold office under the former Act.

(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 under this Act.

(3) On the coming into force of this Act —

- (a) all co-operative societies which prior to the coming into force of this Act were registered or deemed to be registered under the former Act are taken to be registered under this Act until a Certificate of Continuance is obtained;
- (b) a register kept in accordance with the requirements of the former Act is taken to be part of the register to be kept under this Act;
- (c) a document referring to a provision of the former Act is 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 are taken to have been made or done under the corresponding provisions of this Act and continue to have effect.

(4) The bye-laws of a co-operative society, including an amendment of the bye-laws, as registered under the former Act, is taken as if registered under this Act.

Passed in the House of Assembly this 10<sup>th</sup> day of September, 2024.

CLAUDIUS J. FRANCIS,  
*Speaker of the House of Assembly.*

Passed in the Senate this 11<sup>th</sup> day of September, 2024.

ALVINA REYNOLDS,  
*President of the Senate.*