

SAINT LUCIA

No. 28 of 1999

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I ASSENT

[L.S.]

PEARLETTE LOUISY,
Governor-General.

7th September, 1999.

SAINT LUCIA

No. 28 of 1999

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

[11th September, 1999]

BE IT ENACTED by the Queen'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 :

PART I

PRELIMINARY

Short Title.

1. This Act may be cited as the Co-operative Societies Act, 1999.

Interpretation.

2.— (1) In this Act

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

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

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

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

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

“Court” means the High Court of Justice;

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

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

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

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

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

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

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

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

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

Co-operative principles.

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

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

Conformity to co-operative principles.

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

PART II

ADMINISTRATION

Registrar of co-operative societies.

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

(2) The Registrar shall be responsible for the :

- (a) registration of all societies;
- (b) supervision of all societies;
- (c) stimulation of community awareness;
- (d) initiation and encouragement of organised activities for the development of societies;
- (e) maintenance of adequate and reliable records;
- (f) management of the Department of Co-operatives.

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

(4) Nothing in subsection (3) shall authorise the Registrar to delegate the power of delegation that is conferred on him by that subsection.

Certificate of Registrar.

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

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

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

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

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

Power to refuse documents.

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

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

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

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

Verification of documents.

8. Where this Act or Regulations under this Act requires that a document or information contained in a document is to be submitted to the Registrar, the Registrar may require verification of the document or information contained in the document by affidavit or otherwise.

Application for registration.

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

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

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

- (a) fifty persons in the case of a Credit Union;
- (b) five persons in the case of a Workers Society;
- (c) twenty-five persons in the case of a Consumer Society;
- (d) ten persons in the case of a Housing Society;

- (e) ten persons in the case of an Agricultural Society; and
 - (f) ten persons in the case of other societies not specified in paragraphs (a) to (e).
- (4) An application must be accompanied by —
- (a) three copies of the proposed by-laws of the society;
 - (b) the prescribed application fee; and
 - (c) such other information in respect of the society as the Registrar requires.

Content of by-laws.

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

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

(g) any matters, in addition to those set out in paragraphs (a) to (f) that the members consider necessary or desirable.

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

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

Effect of by-laws.

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

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

Conditions for registration.

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

- (a) unless its membership consists —
 - (i) in the case of financial co-operatives, of not less than fifty members, and
 - (ii) in the case of any other co-operative of not less than five members;
- (b) unless it is considered to be economically viable by the Registrar and has provision for equity capital expansion and continuous business growth;
- (c) unless subject to subsection (2), its membership consists solely of members of a school, club, or cultural organisation who are all under the age of sixteen years;
- (d) unless there is conformity among its membership, none of whom is another society, with all the co-operative principles as set out in section 3;
- (e) unless the word “co-operative” or “Credit Union” forms part of the name of each such society, and a society whose membership falls within the description contained in paragraph (c) the words “junior co-operative” forms part of the name of such society;

- (f) unless the word "limited" is the last word of the name of a society to be registered with limited liability;
- (g) if the name of the society is identical with that of another registered society or which so nearly resembles that name as to be likely to mislead the members of the public as to its identity;
- (h) unless it has and maintains an address to which all notices and communications may be sent;
- (i) unless its by-laws are in conformity with this Act;
- (j) unless, within a reasonable time after the issue of the certificate of registration, the society paints or affixes its registered name in letters that are easily legible in a conspicuous position on the exterior of the place where the business of the society is carried on, and in the case of a society registered under section 15, its registered name bears the words "Probationary Society".

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

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

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

Registration of societies.

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

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

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

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

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

Effect of certificate on registration.

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

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

Probationary societies.

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

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

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

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

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

Capacity and powers.

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

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

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

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

Registered office.

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

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

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

Maintenance of mandatory records.

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

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

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

Access to records.

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

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

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

Suspension and cancellation of registration.

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

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

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

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

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

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

(4) No suspension or cancellation may be made by the Registrar until he has given the society a chance to be heard; and a suspension shall not exceed twelve months.

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

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

Seal.

21. — (1) The Board may by resolution —

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

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

Pre-registration contracts.

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

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

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

- (a) the society is bound by the contract and is entitled to the benefits thereof as if the society had been in existence at the date of the contract and had been a party to it; and
- (b) a person who purported to act in the name of the society or on its behalf ceases except as provided in subsection (4) to be bound by or entitled to the benefits of the contract.

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

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

PART III

MEMBERSHIP AND MEETINGS

Application and qualification for membership.

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

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

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

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

(4) No society shall without permission of the Registrar register as a member a person who is a member of another society whose primary object is to grant loans to its members, neither shall a registered society become a member of another registered society of the same type.

Joint accounts.

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

Membership fees and membership register.

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

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

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

Liability of past and present members.

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

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

Withdrawal of membership.

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

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

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

Termination of membership by Board.

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

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

(a) the Board shall

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

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

(c) the member may appeal the order made under subsection (1) to the next general meeting of the society by giving written notice of his intention to appeal to the secretary within thirty days from the date he received notice of the order pursuant to paragraph (b).

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

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

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

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

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

Termination of membership by members.

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

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

Suspension of membership.

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

Appeal.

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

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

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

Re-admittance.

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

Voting rights.

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

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

Representative of member who is not an individual.

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

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

Voting procedure.

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

(a) by a show of hands, or

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

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

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

Place of meeting.

36. General meetings of members must be held in Saint Lucia,

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

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

Members not to exercise rights until due payment.

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

First general meeting.

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

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

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

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

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

Annual general meeting.

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

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

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

Special meetings.

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

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

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

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

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

Meeting called by Registrar.

41. — (1) Where

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

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

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

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

Resolution in lieu of meeting.

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

- (a) a resolution in writing signed by such number of members as are entitled to vote on that resolution at a general meeting of members as may be specified in the by-laws is as valid as if it had been passed at a general meeting of the members; and

(b) a resolution in writing dealing with any matter required by this Act to be dealt with at a general meeting of members and signed by all the members entitled to vote at that meeting,

(i) satisfies all the requirements of this Act relating to meetings of members, and

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

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

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

Notice of meetings.

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

(a) by sending the notice by mail to the members, at the addresses given in the register of members, or

(b) by inserting the notice in not less than two issues of a newspaper circulating in Saint Lucia and posting the notice in a place that, in the opinion of the directors, is prominent and accessible to members.

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

(a) in the notice, inform the member of the document, giving a description of the document that, in the opinion of the director, is adequate to describe its nature, and

(b) make a copy of the document available to any member or delegate who requests it.

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

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

Fixing record date.

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

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

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

(2) The record date mentioned in subsection (1) is not to 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 mentioned in subsection (3) is not to precede by more than fifty days nor by less than eleven days the date on which the meeting is to be held.

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

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

Quorum.

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

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

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

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

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

Delegates.

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

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

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

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

Proposals.

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

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

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

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

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

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

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

- (b) in the opinion of the directors, the proposal is submitted by the member primarily for the purpose of
 - (i) enforcing a personal claim or redressing a personal grievance,
 - (ii) promoting general economic, political, racial, religious, social or similar causes;
- (c) the society, at the member's request, included a proposal in a notice of a meeting of members held within two years preceding the receipt of the proposal submitted pursuant to subsection (1), and the member failed to present the proposal at the meeting;
- (d) substantially the same proposal was submitted to members in the notice of a meeting of members held within two years preceding the receipt of the members request, and the proposal was defeated;
- (e) in the opinion of the directors, the rights conferred by this section are being abused to secure publicity.

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

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

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

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

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

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

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

Power to make by-laws:

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

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

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

Effective date of law.

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

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

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

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

PART IV MANAGEMENT

Board of directors.

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

(2) The Board shall be constituted by not less than five nor more than thirteen directors, as specified in the by-laws.

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

(4) A person who

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

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

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

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

Officers.

51. — (1) Every society

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

(2) Subject to the by-laws,

- (a) the Board may designate the offices of the society, appoint persons as officers, specify the officers duties and delegate powers to manage the business and affairs of the society for them; and

(b) a director may be appointed to any office of the society.

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

Provisional directors and elected directors.

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

(a) shall have all the powers and perform the duties of directors; and

(b) shall hold office until the first general meeting.

(2) At the first general meeting and at every annual general meeting the directors must be elected in accordance with this Act, the regulations and the by-laws.

Powers of Board.

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

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

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

Committees generally.

54. — (1) Notwithstanding sections 50 and 51, the members of the society shall elect a Supervisory Committee which shall perform such duties as are prescribed by the by-laws.

(2) Notwithstanding subsection (1), the Board may establish committees for the more efficient management of various aspects of the business or affairs of the Society.

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

(4) No committee of the Board may —

(a) fill a vacancy among the directors;

(b) declare a bonus or dividend;

(c) approve any financial statement of the society;

(d) submit to the members any question or matter requiring the approval of members; or

(e) make decisions where the Act or the by-laws require a two-thirds majority or unanimous vote of the Board.

Tenure of committees generally.

55. — (1) Committees appointed pursuant to section 54 (2) shall hold office for a period not exceeding one year.

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

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

(4) A committee shall

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

Credit committee.

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

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

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

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

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

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

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

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

Duties of credit committee.

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

Approval of loans.

58. — (1) The Board may, upon such terms and conditions as it specifies, authorize the credit committee to approve loans to members.

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

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

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

Credit committee reports.

59. — (1) The credit committee shall

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

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

Removal of member of credit committee.

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

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

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

Removal of member of credit committee by Board.

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

Supervisory committee.

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

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

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

(4) No person who is a member of the board or credit committee or who is an employee of the credit union or other society shall be a member of the supervisory committee.

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

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

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

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

Duties of supervisory committee.

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

Removal of member of supervisory committee.

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

Clerks.

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

Misappropriation etc.

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

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

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

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

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

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

Meetings.

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

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

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

Removal of members of supervisory committee.

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

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

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

Election of directors.

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

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

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

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

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

Tenure of directors.

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

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

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

- (a) at least one-third of the directors to serve for 1 year,
- (b) at least one-third of the directors to serve for 2 years,
- (c) the remainder of the directors to serve for 3 years,

thereafter, each elected director shall serve for a term of three years.

Borrowing powers of Board.

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

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

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

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

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

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

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

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

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

Validity of acts of directors, and officers.

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

Indemnification of directors.

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

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

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

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

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

(3) No society shall indemnify a director, officer or other person mentioned in subsection (1) with respect to an action by or on behalf of the society to obtain a judgment in its favour to which that person is made a party by reason of his being or having been a director or an officer of the society, against costs, charges and expenses reasonably incurred by that person in connection with the action unless

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

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

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

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

Duty of care of directors and officers.

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

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

Ambit of director's duty.

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

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

Liability of directors.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) order a member or other recipient to pay or deliver to a director any money or property that was paid or distributed to the member or other recipient contrary to section 94, 115 or 123; or

- (b) make an order, other than that described in paragraph (a), that it considers appropriate.

Misuse of confidential information.

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

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

Material contracts.

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

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

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

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

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

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

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

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

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

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

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

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

(8) Where

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

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

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

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

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

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

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

Meetings of directors generally.

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

(2) The president

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

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

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

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

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

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

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

Meetings by telephone etc.

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

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

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

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

Attendance at meetings.

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

(2) Where a director

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

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

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

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

Inaugural meeting of directors.

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

- (2) The directors may, at the meeting mentioned in subsection (1)
- (a) pass resolutions establishing policies of the society;
 - (b) adopt forms of corporate records;
 - (c) appoint officers;
 - (d) 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 meeting of directors mentioned in subsection (1) by giving not less than five days' notice of the meeting to each director, stating the time and place of the meeting.

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

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

Director ceasing to hold office.

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

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

(2) A resignation of a director becomes effective on

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

Removal of directors.

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

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

Notice of change in directors.

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

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

Declaration by Directors and officers.

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

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

Bonding.

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

Remuneration of Directors.

88. — (1) No director and no member of a committee is entitled to be paid any remuneration in connection with his duties as a director or committee member on behalf of a society or his attendance at meetings.

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

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

Remuneration of officers and employees.

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

PART V FINANCING

Shares.

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

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

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

Share capital.

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

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

Issue of Shares.

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

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

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

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

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

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

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

Alteration of authorized capital.

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

- (a) subdivide any shares;
- (b) consolidate shares into shares of a larger par value, but the par value of consolidated shares must not be greater than one hundred dollars;

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

(2) The Registrar may approve a by-law mentioned in subsection

(1) where he is satisfied that

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

Limitation on purchase of shares.

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

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

Transfer of shares generally.

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

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

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

(4) No transfer of a share shall be registered nor shall any claim of the society upon the transferor be affected if made by a member indebted to the registered society without the written permission of the Board, and until the transfer of a share is registered by the transferee.

Transfer of shares of member of unsound mind.

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

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

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

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

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

Transfer of shares or interest on death of member.

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

(2) Where no such nominee is admitted to membership in the society or where the deceased member made no such nomination the society shall within one year of the death of such deceased member pay to the nominee or legal personal representative of the deceased member as the case may be, such sum, not exceeding the said limit, representing the value or part thereof of the deceased member's share or interest in the society.

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

Restriction on transfer of shares.

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

(2) No shares or interest or any part thereof in the capital of a society may be transferred unless the transfer is made to a member of the society or to a person whose application for membership has been accepted.

Conditions for transfer of shares.

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

- (a) a written application for membership by the transferee is approved and the transfer is 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