

(b) notification of any approval given pursuant to paragraph (a) is sent to the transferee and his name has been entered on the register of members.

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

Power of nomination.

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

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

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

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

PART VI

BUSINESS OF SOCIETY

Marketing of produce through the society.

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

(a) that every such member who produces any such article shall market the whole or any specified amount, portion or description thereof to or through the society;

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

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

Creation of charge in favour of society.

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

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

- (a) the right upon the happening of any event specified in the charge as being an event authorizing the chargee to seize the property subject to the charge and take possession of any such property so subject;
- (b) after an interval of five clear days or such less time as may be specified in the charge from the date of taking possession of any property subject to the charge, to sell such property either by auction or if the charge so provides by private treaty, either for a lump sum or payment by instalments;
- (c) to apply the proceeds of sale in or towards discharge of the debt secured by the charge and the costs of seizure and sale and to pay any surplus of such proceeds to the member whose property was sold.

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

(4) For the avoidance of doubt, it is hereby declared that a charge under this section is not a bill of sale within the meaning of the Bills of Sale Ordinance 1965 Cap 22.

Execution and registration of charge.

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

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

(2) The secretary shall

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

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

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

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

- (a) cause a document to that effect to be prepared in quintuplicate, and signed by the chairman or president and secretary of the society indicating that the charge has been discharged; and
- (b) file one copy of such document, deliver one copy each to the Registrar of Co-operative Societies, the National League or National Council and the Registrar of the High Court who shall forthwith make an entry of satisfaction in the Co-operative Societies Charges Book; and
- (c) deliver one copy to the member.

(6) Any person may, on payment of the fee prescribed in the regulations, inspect the Registered Societies Charges Book and take extracts from it.

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

Claims unaffected by charge.

104. Nothing in section 102 shall affect —

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

Prior claims in favour of society.

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

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

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

Enforcement of charge.

106. — (1) A society may enforce a charge by applying to the Magistrate of the District in which the member resides or carries on business or where the property subject to the charge is situate 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) Notwithstanding anything contained in any other statute, a Magistrate shall have jurisdiction under subsection (1) even though the amount due exceeds the monetary limit of a Magistrate.

Assignment of charge.

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

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

(3) An assignment of a charge when registered shall operate as a first charge in favour of the assignee subject to section 104.

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

Bond as additional security for loan.

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

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

Lien on shares.

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

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

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

Deductions applied to loans and shares.

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

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

Purchase of shares.

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

(a) are available for compulsory purchase pursuant to section 113;

or

(b) are offered for sale.

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

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

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

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

Prohibition on purchase of shares.

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

(a) it is insolvent;

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

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

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

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

(a) by the Registrar; or

(b) by a special resolution of the members.

Compulsory sale of shares.

113. Where —

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

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

PART VII

PROPERTY AND FUNDS OF SOCIETY

Investment of funds.

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

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

(2) Except with the approval of the general membership and of the Registrar, a society shall not invest its funds in real property.

Loan by society.

115. — (1) A society shall set guidelines in its Bye-laws for the granting of loans, guarantees, advances and other forms of financial assistance to its members and may give loans, guarantees, advances and other forms of financial assistance to its members in accordance with guidelines set out in its bye-laws.

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

(3) No loan shall be made to a member of the Board or to an officer of a society for a sum in excess of the value of his shares, deposits and accumulated dividend and interest thereon unless approved in the manner prescribed in Regulations under this Act and bye-laws.

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

(5) A loan made in contravention of subsections (2), (3) or (4) is void and shall be repaid to the society immediately.

Prohibited loans.

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

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

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

Receipt of loans and deposits.

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

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

Receipt of deposits from minors.

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

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

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

- (a) there is subsisting a court order depriving her of the custody of such minor, in which case the guardian shall be the person named in the court order; or
- (b) the minor customarily resides with some person other than the mother in which case that person shall be guardian.

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

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

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

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

Reserve Fund, liquidity and adequacy of capital.

119. — (1) Where a society realizes a net surplus from its transactions that society shall establish and maintain a Reserve Fund which shall be kept in liquid form to the satisfaction of the Registrar.

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

(3) Every society shall ensure

- (a) that not less than 15% of its members' shares and deposits are kept in a liquidity reserve, and
- (b) that its statutory and other reserves are, at no stage, less than 10% of its total liabilities.

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

(5) Subsections (1) and (3) apply to credit unions only.

Development Fund.

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

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

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

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

Pension Fund.

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

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

Charitable contributions.

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

Dividend or bonus.

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

(2) No registered society shall

(a) pay a dividend or bonus or distribute any part of its accumulated funds before the financial statement has been certified by an auditor approved or appointed by the Registrar; or

(b) pay a dividend or make any payment on account out of profits until the Reserve Fund has reached a proportion of not less than 10% of the total liabilities of the society.

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

PART VIII

FINANCIAL DISCLOSURE AND AUDIT

Annual financial statements.

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

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

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

Approval of financial statements.

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

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

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

Furnishing financial statements.

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

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

Auditor's qualifications.

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

(2) An individual qualifies for appointment as auditor, if he is qualified to be appointed an auditor under the Companies Act 1996, No. 19.

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

Disqualifying auditor.

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

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

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

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

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

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

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

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

Appointment of Auditor.

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

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

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

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

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

Cessation of office.

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

- (a) he dies or resigns, or
- (b) he is removed pursuant to section 131.

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

Removal of Auditor.

131. The members of a society may, by ordinary resolution at a special meeting remove an auditor other than an auditor appointed by the Registrar under section 133.

Filling vacancy of auditor.

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

(2) If there is not a quorum of directors, the directors then in office must, within twenty-one days after the 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 pursuant to subsection (2) or where there are no directors, a meeting for the purpose of filling a vacancy in the office of auditor may be called by any member.

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

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

Registrar appointed auditor.

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

Auditor's right to notice.

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

Required notice.

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

Auditor's right to comment.

136. — (1) An auditor who —

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

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

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

(3) No individual may accept appointment, consent to be appointed or be appointed as auditor of a society if he is replacing an auditor who has resigned, been removed or whose term of office has expired or is about to expire, until the individual has requested or received from the former auditor a written statement of the circumstances and reasons why, in the auditor's opinion, he is to be replaced.

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

Examination by auditor.

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

(2) The auditor of a Society shall make a report to the members, on the accounts examined by him or her, and on every balance sheet and every revenue and appropriation account laid before the Society at the Annual General Meeting during the tenure of office of the auditor.

(3) The auditor's report shall state whether the balance sheet and revenue and appropriation accounts are properly drawn up in accordance with the requirements of this Act and the Regulations made under this Act, and whether, in the opinion of the auditor they give a true and fair view —

- (a) in the case of the balance sheet, of the state of the Society's affairs at the end of its financial year; and
- (b) in the case of the revenue and appropriation accounts, of the income and expenditure of the Society for its financial year.

(4) It shall be the duty of the auditor of a Society, in preparing his or her report under this section to carry-out such investigations as will enable him or her to form an opinion as to —

- (a) whether the Society has kept proper books of accounts and proper records of the matters referred to in subsection (1) of section 124;
- (b) whether the Society has maintained a satisfactory system of control over its transactions and records;
- (c) whether the balance sheet and revenue and appropriation accounts are in agreement with the books of accounts and records of the Society;
- (d) whether the Society has kept proper books of accounts and records and maintained a satisfactory system of control over its transactions and records; and
- (e) whether the balance sheet and revenue and appropriation accounts are in agreement with the books and records of the Society.

(5) The auditor's report shall be read before the Society at the Annual General Meeting and shall be open for inspection to any member.

Auditor's right to inspect.

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

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

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

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

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

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

(3) Where a former director, officer, employee or agent of a member fails to comply with subsection (2), he commits an offence and is liable on summary conviction to a fine of one thousand or to imprisonment for six months or both and to a further fine of fifty dollars for every day he fails to comply with that subsection after a conviction is first obtained.

Error or mis-statement.

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

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

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

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

Privilege of auditor.

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

Annual and special returns.

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

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

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

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

PART IX

RECONSTRUCTION OF SOCIETIES

Methods of reconstruction.

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

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

(2) Sections 145 to 148 shall have effect with respect to the procedure that must be followed in relation to paragraphs (a) to (c) of subsection (1).

Conversion.

143. — (1) A company registered under the Companies Act 1996 or a registered industrial, provident or friendly society may, by special resolution, determine to convert itself into a registered society.

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

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

Effect of certificate of registration.

144. — (1) On the date shown in the certificate of registration issued pursuant to section 243,

- (a) the incorporation or registration under any other enactment of the company, industrial, provident or friendly society, as the case may be, ceases and shall be cancelled by the proper officer,

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

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

Amalgamation of societies.

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

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

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

Transfer of assets of societies.

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

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

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

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

(5) Where the vesting of the assets of a society involves real property, a copy of the resolution referred to in subsection (1), certified as such by the Registrar, shall be recorded at the Registration Office, the Land Registry or such other government department in which dealings in real property are recorded or registered, as the case may be.

Claims of objecting creditors.

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

Division of society.

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

(2) A preliminary resolution

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

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

(4) At least ten days notice of the preliminary resolution shall be given to any person whose interests will be affected by the division of the society, and the notice shall be published at least once in the *Gazette* and in a newspaper circulating in Saint Lucia.

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

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

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

(8) After the expiration of three months from the receipt of the preliminary resolution by all the members and creditors of the society and of the notice to other persons given under subsection (4), another special general meeting of the society, of which at least fifteen days notice shall be given to its members, shall be convened for the consideration of the preliminary resolution.

(9) If at the special general meeting referred to in subsection (8) the preliminary resolution is confirmed by a special resolution either without changes or with such changes as in the opinion of the Registrar are not material, the Registrar may, subject to subsection (11) and section 13, register the new societies; and upon registration, the original society shall be deemed to be dissolved and its registration cancelled.

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

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

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

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

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

- (a) the share capital of the members referred to in subsection (11)
 - (a) is not repaid,

- (b) the claims of the creditors referred to in subsection (11) (b) are not satisfied, or
- (c) the claims of the other persons mentioned in subsection (11) (c) are not satisfied or secured,

the Registrar may refuse to register the new societies.

Effect of registration of new societies.

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

PART X

RECEIVERS AND RECEIVER-MANAGERS

Receiver appointed by Registrar.

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

Functions of receiver.

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

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

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

Functions of receiver-manager.

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

Cessation of Board's manager.

153. Where a receiver or receiver-manager is appointed by a Court or the Registrar or pursuant to an instrument, no directors of the society shall exercise the directors' powers that the receiver or receiver-manager is authorized to exercise until the receiver or receiver-manager is discharged.

Receiver's duty.

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

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

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

(4) A receiver or receiver-manager shall —

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

Directions by court.

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

- (a) appointing, replacing or discharging a receiver or receiver-manager and approving his accounts;
- (b) determining the notice to be given to any person or dispensing with notice to any person;
- (c) fixing the remuneration of the receiver or receiver-manager;
- (d) requiring the receiver or receiver-manager, or a person by or on behalf of whom he is appointed,
 - (i) to make good any default in connection with the receiver's or receiver-manager's custody or management of the property and business of the society, and
 - (ii) to relieve a receiver or a receiver-manager, or a person by or on behalf of whom a receiver or receiver-manager is appointed from any default on any terms that the court considers appropriate;
- (e) confirming any act of the receiver or receiver-manager; and
- (f) giving directions on any other matter relating to the duties of the receiver or receiver manager.

Directions by Registrar.

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

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

Required action of receiver.

157. A receiver or receiver-manager shall —

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

PART XI

DISSOLUTION

Dissolution by members.

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

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

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

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

(5) Where the Registrar

(a) receives notice, in a form satisfactory to him, of an authorization to dissolve a society; and

(b) is satisfied that it is in the best interest of the society and its members;

he shall approve the dissolution.

(6) The authorization approved pursuant to subsection (4) must set out

(a) the assets and liabilities of the society;

(b) the claims of any creditors;

(c) the number of members; and

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

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

(a) named in the special resolution; or

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

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

(a) deposit the money in a special trust account

(i) in a registered society, or

(ii) a bank registered under the Banking Act, 1991, No. 7;

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

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

(10) In this section,

- (a) "interest" means the interest of a member in a society and includes member loans and obligations of any kind that
 - (i) arise by virtue of the by-laws of the society, and
 - (ii) are owed by the society to the members;
- (b) "unallocated surplus" includes any net proceeds from the sale of assets on dissolution of the society after the liabilities of the society and the claims of creditors and members have been satisfied.

Notice of dissolution by members.

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

- (a) in the *Gazette*, and
- (b) in a newspaper circulating in Saint Lucia.

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

- (a) exempt the society from subsection (1); and
- (b) cause, at the expense of the Registrar, a notice of the special resolution passed pursuant to section 158 (1) to be published in the *Gazette*.

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

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

Dissolution by Registrar.

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

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

he shall send to the secretary of the society a letter inquiring whether the 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 he sent a letter pursuant to subsection (1), receive an answer to the letter, he shall, within fourteen days after the expiry of the month, send to the secretary of the society a letter referring to the letter sent pursuant to subsection (1) and stating that —

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

(3) Where the Registrar

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

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

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

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

Dissolution for failure to account for business.

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

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

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

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

(3) Where

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

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

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

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

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

Dissolution by Court.

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

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

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

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

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

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

Revival of dissolved society.

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

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

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

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

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

(a) has all the rights and privileges, and

(b) is liable for the obligations,

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

Appointment of liquidator.

164. — (1) Where —

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

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

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

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

Commencement of liquidation.

165. The liquidation of a society commences where —

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

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

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

Cessation of business.

166. — (1) From the date of the commencement of its liquidation —

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

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

General provisions respecting liquidators.

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

(2) On the appointment of a liquidator pursuant to this Part, all the powers of the directors cease and such powers of the directors as are required for an orderly liquidation shall vest in the liquidator.

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

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

(5) Where

(a) the members appoint a liquidator and do not issue directions pursuant to subsection (4); or

(b) a liquidator is not appointed by the members,

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

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

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

Duties of liquidators.

168. On his appointment, a liquidator shall —

(a) immediately give notice of his appointment,

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

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

(b) immediately publish notice of his appointment in the *Gazette* and once a week for two consecutive weeks in a newspaper printed and published in Saint Lucia;

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

(i) indebted to the society, to render an account and pay to the liquidator at the time and place specified,

(ii) possessing property of the society, to deliver it to the liquidator at the time and place specified, and

(iii) having a claim against the society, whether liquidated, unliquidated, future or contingent, to present particulars of the claim in writing to the liquidator not later than two months after the first publication of the notice.

- (d) take into his custody and control the property of the society;
- (e) open and maintain a trust account for the moneys of the society;
- (f) maintain separate lists of the members, creditors and other persons having claims against the society;
- (g) where at any time he determines that the society is unable to pay or adequately provide for the discharge of its obligations, apply to the Registrar for directions; and
- (h) deliver to the Registrar and the society, at least once in every twelve-month period after his appointment or as often as the Registrar may require, financial statements of the society in the form required in section 124 or in any form that the liquidator considers proper or that the Registrar may require.

Power of liquidator.

169. — (1) The liquidator may —

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

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

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

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

Limitation on liability of liquidator.

170. A liquidator is not liable where he relies in good faith on

- (a) financial statements of the society represented to him
 - (i) by an officer of the society, or
 - (ii) by the auditor of the society in a written report that states that the financial statements reflect fairly the financial condition of the society; or
- (b) an opinion, a report or a statement of an attorney-at-law, an accountant, an engineer, an appraiser or other professional advisor retained by the liquidator.

Cost of liquidation.

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

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

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

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

Closure of liquidation.

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

- (a) firstly to the costs of liquidation;
- (b) secondly to the discharge of the liabilities of the society;
- (c) thirdly to the payment of share capital;
- (d) fourthly, if the by-laws of the society permit, to the payment of a dividend at a rate not exceeding ten per cent per annum for any period during which no distribution of profits has been made.

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

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

- (a) issue directions with respect to the custody or disposal of the documents and records of the society; and
- (b) discharge the liquidator.

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

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

Custody of records.

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

Remuneration of liquidator.

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

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

- (a) 5% on the first \$1,000 realized;
- (b) 2.5% on the next \$4,000 realized; and
- (c) 1.25% on any sum greater than \$5,000 realized.

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

(4) No liquidator is entitled to any fee or charge for his services in addition to the commission allowed pursuant to this section.

Continuation of actions.

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

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

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

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

Unknown claimants or members.

176. — (1) On the dissolution of a society, the claimants shall convert into money the portion of the property distributable to a creditor or member who cannot be found after a reasonable investigation and shall deposit the money in a registered society or with trustees appointed by the Registrar.

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

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

(4) Where moneys deposited pursuant to this section are not distributed within three years after the dissolution of a society then, subject to the approval of the Registrar, the society or the trustees appointed by the Registrar shall distribute those moneys in accordance with section 169 or the by-laws.

Power of Registrar to surcharge.

177. — (1) Where, in the course of the dissolution of a society it appears that any person who has taken part in the organization or management of such society or any past or present officer of the society has misapplied or retained or become liable or accountable for any money or property of such society or has been guilty of misfeasance or breach of trust in relation to such society, the Registrar may, on the application of the liquidator or of any creditor or contributory, carry out an examination into the conduct of such person and make an order requiring him to repay or restore the money or property or any part thereof with interest at such rate as the Registrar thinks just or to contribute such sum to the assets of such society by way of compensation in regard to the misapplication, retainer, dishonesty or breach of trust as the Registrar thinks just.

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

Appeal against surcharge.

178. Any person aggrieved by any order of the Registrar made under section 177 may appeal to the Cooperative Societies Appeal Tribunal within twenty-one days from the date of such order and the decision of the Tribunal shall be final on any question of fact.

Application of Part XI.

179. — (1) This part does not apply to a society that is bankrupt within the meaning of the Companies Act 1996.

(2) Where a society is at any time found in proceedings pursuant to the Companies Act 1996 to be bankrupt within the meaning of that Act, any proceedings taken pursuant to this Part to dissolve or to liquidate and dissolve the society are stayed.

PART XII

INVESTIGATIONS

Examination.

180. — (1) The Registrar may —
(a) on his own motion, or

(b) on the application of the lesser of twenty-five members and 10% of the members, appoint a person as examiner who shall make an examination of the books of the society and examine the affairs of the society and shall make available his report to the Registrar.

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

- (a) by the members applying for the examination;
- (b) by the society or its officers; or
- (c) by any combination of the members, the society or its officers.

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

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

Investigations.

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

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

- (a) the society is not fulfilling the purpose stated in its by-laws;
- (b) the society is not carrying on business in accordance with this Act or the regulations or the by-laws;
- (c) the society is not organized or being operated on co-operative principles;
- (d) the business of the society or any of its member societies is or has been carried out with intent to defraud any person;

- (e) the business or affairs of the society or any of its member societies are or have been carried on or conducted, or the powers of the directors are or have been exercised, in a manner that is oppressive or unfairly prejudicial to or has unfairly disregarded the interest of a member or security holder;
- (f) the society or any of its member societies was formed for a fraudulent or unlawful purpose or is to be dissolved for a fraudulent or unlawful purpose; or
- (g) persons concerned with the formation, business or affairs of the society or any of its member societies have acted fraudulently or dishonestly, in connection with the society.

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

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

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

Court order.

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

- (a) to investigate;
- (b) appointing an inspector, who may be the Registrar, fixing the remuneration of an inspector and replacing an inspector;
- (c) determining the notice to be given to any interested person or dispensing with notice to that person;
- (d) authorizing an inspector to enter any premises in which the Court is satisfied there might be relevant information, and to examine anything and make copies of any document or record found on the premises;
- (e) requiring any person to produce documents or records to the inspector;
- (f) authorizing an inspector to conduct a hearing, administer oaths and examine any person on oath, and prescribing rules for the conduct of the hearing;

- (g) requiring any person to attend a hearing conducted by an inspector and to give evidence on oath;
- (h) giving directives to an inspector or any interested person on any matter arising in the investigation;
- (i) requiring an inspector to make an interim or final report to the Court and to the Registrar;
- (j) determine whether a report of an inspector made pursuant to paragraph (i) should be published and, where published, ordering the Registrar to publish the report in whole or in part or to send copies to any person the Court designates;
- (k) requiring an inspector to discontinue an investigation;
- (l) requiring the society or a person who applied pursuant to section 162 for an order to pay the costs of the investigation.

Powers of inspector.

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

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

- (a) is authorized to exercise investigatory powers; and
- (b) is investigating, with respect to the society, an allegation of improper conduct

that is the same as or similar to the conduct described in section 181 (2).

Hearing in camera.

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

(2) A person whose conduct is being investigated or who is being examined at a hearing conducted by an inspector appointed pursuant to section 182 has a right to be represented by an attorney-at-law.

Incriminating statements.

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

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

Absolute privilege respecting statements.

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

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

PART XIII DISPUTES

Settlement of disputes.

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

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

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

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

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

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

- (a) may administer oaths, and
- (b) may require

- (i) the attendance of all parties concerned and witnesses, and

(ii) the production of all books, documents and things relating to the dispute.

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

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

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

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

Cooperative Societies Appeals Tribunal.

188. — (1) There shall be a Cooperative Societies Appeals Tribunal which shall consist of three persons, one of whom shall be an attorney-at-law of at least five years standing.

(2) The members of the Tribunal shall be appointed by the Minister after consultation with the National League or National Council, for a period of not more than three years, and are eligible for reappointment.

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

(4) The members of the Tribunal shall receive such remuneration as the Minister determines.

Case stated on question of law.

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

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

Enforcement of award and recovery of loan.

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

(2) Where a dispute relates to the recovery of a loan made by a society to a member of that society, such a dispute may, notwithstanding section 187, be brought before the magistrate for the district in which the society conducts business.

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

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

PART XIV

SPECIALIZED SOCIETIES

Interpretation and application.

191. — (1) In this part —

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

“credit union” means a registered society providing cooperative savings and lending business for its members;

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

“housing society” means a society whose primary purpose is to provide housing units for occupancy by its members as nearly as possible to cost;

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

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

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

*Division A : Credit Unions**Restrictions.*

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

(2) No credit union shall

- (a) engage in any business not appertaining to a credit union;
- (b) underwrite insurance or the issue of securities by another person;
- (c) act as agent for any insurance company or for any person in the placing of insurance; or
- (d) subject to subsection (3), require, directly or indirectly, that a borrower place insurance for the society of the credit union in any particular insurance agency.

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

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

(5) Notwithstanding subsection (2) (a), a credit union may, with the permission of the Registrar, do all other acts and things as are incidental or conducive to or consequential upon the attainment of its objects.

Liquid assets.

193. — (1) Every credit union shall maintain liquid assets in the amount specified in section 119 and in the form prescribed.

(2) Any credit union which fails to maintain the liquid assets required by this section may be placed under a receiver pursuant to Part X by the Registrar.

Allowance.

194. Every credit union shall make an allowance for doubtful loans in accordance with the requirements set out in the regulations.

Loan Approval.

195. — (1) Subject to this Act and the regulations, every loan must be approved in accordance with the policies established by the directors before any funds are advanced.

(2) A loan to a director, a credit committee member, a supervisory committee member or an employee of a credit union or any person connected with one of them must be approved in the manner prescribed in the regulations.

(3) Any persons who approve or grant a loan in contravention of this Act or the regulations commit an offence and on conviction shall be held jointly and severally liable for any losses resulting to the credit union in connection with that loan.

Security for loans.

196. Subject to any restrictions that may be prescribed in the regulations, a credit union may take any security for loans that it considers advisable and in keeping with sound business practices.

Loan limits.

197. — (1) Loans shall be made only to members and to other registered societies.

(2) The by-laws shall provide for limits on the amounts of loans to any one member or on any type of loans.

Reporting loans.

198. — (1) Where a credit union is reporting loans on the balance sheet in its annual financial statements, it shall report the loans at their net estimate value after deducting the allowance for doubtful loans pursuant to section 193 (1).

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

Interest on loans.

199. — (1) The maximum intervals at which interest on a loan must be paid may be prescribed in the regulations.

(2) Where a borrower has not paid the interest on his loan for a period determined in the regulations, the credit union shall not include that interest in income.

Deposits.

200. — (1) Subject to section 16, a credit union may, without the authority, aid, assistance or intervention of any other person or official,

(a) receive deposits from any person, whatever his age, status or condition in life whether or not that person is qualified by the law to enter into ordinary contracts; and

(b) pay any or all of the deposit and any or all of the interest on the deposit to or to the order of that person unless, before payment, the money so deposited is claimed by some other person

(i) in any action or proceeding to which the credit union is a party and in respect of which service of a writ or other process originating such action or proceeding has been made on the credit union, or

(ii) in any other action or proceeding pursuant to which an injunction or order made by the Court requiring the credit union not to make payment of the money or to make payment of it to a person other than the depositor has been served on the credit union;

and in that case the money so deposited may be paid to the depositor with the consent of the claimant or to the claimant with the consent of the depositor.

(2) Deposits may be accepted in the manner and form and on any condition that may be prescribed in the regulations.

Credit union and trusts.

201. — (1) A credit union is not bound to see to the execution of any trust, whether express, implied or constructive, pursuant to which any deposit or share is subject.

(2) Where any deposit or share is subject to a trust of which the credit union has notice, the receipt or order

(a) of the trustee in whose name the deposit or share stands, or

(b) if the deposit or share stands in the names of two or more trustees, all those trustees or any of them who, pursuant to the document creating the trust, may be entitled to receive the deposit or share,

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

(3) Notwithstanding any neglect or omission on the part of a credit union to enter a proper description in its books, no executor, administrator, guardian, committee or trustee who is entered on the books of the credit union as a member, or who is described as representing a named estate, trust or trust beneficiary in such capacity is personally liable to the credit union with respect to the share that he represents.

(4) The estate or trust beneficiary represented by a person described in subsection (3) continues to be liable to the credit union in the same manner and to the same extent as if the testator, minor, ward, person of unsound mind, beneficial trust or their trust beneficiary were entered on the records of the credit union as the holder of the shares.

Division B : Consumers Societies and Housing Societies

Restrictions on directorship.

202. — (1) Subject to subsection (2), no employee of a consumers society or housing society may be a director of the society.

(2) A society may provide in its by-laws that no more than one-third of its directors may be employees.

Relationship with members.

203. The relationship between a housing society and its members is not a relationship between a landlord and his tenants.

By-laws.

204. The by-laws of a housing society must, in addition to the matters required to be set out in it by section 10, include the following :

- (a) the manner in which each member may be required to furnish capital for the purposes of the society;
- (b) the manner in which a member may be required to pay for housing charges or other reserves;
- (c) the basis for fixing the amount of housing charges;
- (d) subject to section 27, the manner of withdrawal by a member and the repayment of a member's interests in the society; and
- (e) the rules governing any leases of housing units by members to non-members.

Amendment of by-laws.

205. Where the by-laws of a society provide that it is a housing society or that this Part applies to the society, the society shall not repeal or amend that provision of the by-laws without the consent of the Registrar.

No interest on share capital.

206. Where a housing society has a capital the society shall not pay any dividend on the share capital to its members.

Right to possession terminated.

207. — (1) Where a person's membership in a housing society is terminated, any right of that person to possess or to occupy residential premises acquired by virtue of membership in the society is terminated.

(2) Where a person's membership in a housing society is terminated and the member does not give up possession of the housing unit he occupies, the housing society may apply to the Court to recover possession or to recover any arrears of housing charges.

Abandoned goods.

208. — (1) Where a member —

- (a) has his membership terminated or has vacated or abandoned the housing unit formerly occupied by him, and

(b) has left property in the housing unit,

the housing society may apply to the District Court for the District where the housing unit is situate for an order authorizing the member to remove the property from the housing unit and sell or otherwise dispose of it.

(2) The Magistrate may make an order pursuant to subsection (1) where he is satisfied that the housing society has made a reasonable effort to locate the former member.

(3) Where a housing society sells or otherwise disposes of property pursuant to an order made under subsection (2), it shall pay into the District Court, to the credit of the former member, any remaining proceeds of the disposition after deducting

(a) any amount with respect to costs incurred by it relating to the disposition that it would be authorized to retain if the property were goods sold pursuant to distress for housing charges, and

(b) any arrears of housing charges and damages that the Magistrate allows.

(4) Where a former member does not claim the remaining proceeds described in subsection (3) within three months after the date the money was paid into the District Court, the money shall be paid into the Consolidated Fund.

(5) Where a housing society removes, sells or otherwise disposes of property pursuant to an order made under subsection (2), the housing society is not liable in any action taken by the former member with respect to the removal, sale or disposition.

Division C : Industrial Societies

Membership.

209. — (1) In a workers' society, at least 75% of all employees must be members of the society.

(2) Subject to subsection (3), no workers' society shall sub-contract out more than 50% of its work.

(3) Where a workers' society applies to the Registrar, he may allow the workers' society to sub-contract out more than 50% of its work.

By-laws.

210. In addition to the matters required to be set out in the by-laws pursuant to section 10, the by-laws of a society must include

- (a) conditions of admission, expulsion or suspension of its members;
- (b) a procedure for laying off members 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 society; and
- (d) allocation of bonus among members.

Restriction on registration.

211. No industrial society may be registered where the acquisition of goods for sale to the public is one of its principal objects stated in its by-laws.

Bonus based on labour.

212. When allocating among creditors or paying a bonus to the members of an industrial society the directors may take into account the labour contribution of each member.

Employees may be directors.

213. Notwithstanding any other provision of this Act, the majority of directors of an industrial society may be employees of the society.

PART XV APEX BODY

Establishment and constitution of apex body.

214. Registered societies may establish an apex body which may be called the National League or National Council and which shall be composed of a member representative of all societies which may exist in Saint Lucia.

Functions.

215. — (1) The National League or National Council shall co-ordinate, assist and promote all registered societies and shall perform such functions as may be determined by its constituent members.

(2) Without prejudice to subsection (1), the National League or National Council shall have responsibility for the administration and management of the Development Fund as established by section 120.

Officers.

216. — (1) The officers of the National League or National Council shall be elected at the first meeting of that body and shall hold office for a period of one year and thereafter the election of such officers shall be in accordance with the by-laws of the National League or National Council.

(2) The National League or National Council shall regulate its own procedure.

Consultation by Registrar.

217. The Registrar shall, from time to time, consult the National League or National Council with respect to matters relating to the development of registered societies.

PART XVI

OFFENCES

Corrupt practices and bribery.

218. — (1) Any member, agent or employee of a society who corruptly accepts, agrees to accept, obtain whether for himself or another, any gift or consideration as an inducement or reward for :

- (a) doing or forbearing to do any act relating to the business of the society, or
- (b) for showing favour or disfavour to any person in relation to the business of the society;

commits an offence.

(2) Any person who corruptly gives, agrees to give, or offers such gift or consideration to any member, agent or employee of a society as inducement or reward for any purpose mentioned in subsection (1) commits an offence.

(3) Any person who commits an offence under subsection (1) is liable on summary conviction to a fine of \$5,000 or to imprisonment for two years or both, and on indictment, to imprisonment for three years.

(4) Any person who commits an offence under subsection (2) is liable to imprisonment for a term of five years.

(5) In this section "consideration" includes valuable consideration of any kind.

Falsely obtaining property of society.

219. — (1) Any person who —

- (a) obtains possession of any property or is granted any loan by a society by false representation or other corrupt means;
 - (b) wrongfully withholds or misapplies any such property or loan;
- or

(c) wilfully applies any part of the property or loan for purposes other than those directed or expressed in the by-laws of the society or authorized in this Act or the regulations;

commits an offence and is liable on summary conviction to a fine of \$5,000 or to imprisonment for one year and on conviction on indictment to a fine of \$30,000 or to imprisonment for five years.

(2) In any proceedings under this section the person accused may, in addition to any penalty imposed, be ordered

(a) to deliver up any property or repay any sum of money to which the proceedings relate, and

(b) pay the cost of the proceedings.

Failure to comply with Act.

220. — (1) A society or any officer or member of a society or any other person

(a) who fails without reasonable cause or neglects or refuses to comply with any requirement of this Act or the regulations or to furnish any information, or

(b) who purporting to comply with any such requirement, furnishes false information,

commits an offence.

(2) Any person who without reasonable cause disobeys any summons, order or direction lawfully issued under this Act or the regulations commits an offence.

(3) Any officer or member of a society who without reasonable cause contravenes the by-laws of the society in relation to his duties or functions as such officer or member commits an offence.

(4) A person found guilty of an offence under this section is liable on summary conviction to a fine of \$2,500 or imprisonment for six months or both and to a further fine of \$50 for each day for which the contravention continues after a conviction is obtained.

Dealing in property subject to charge.

221. — (1) Any person who —

(a) fraudulently or clandestinely removes any property comprised in a charge created in favor of a society from the place where such property was situate at the time of the execution of the charge, or

(b) knowingly disposes of, or deals with or attempts to dispose of or deal with such property without first obtaining in writing leave of the society,

commits an offence and is liable on summary conviction to a fine of \$2,500 or to imprisonment for six months or both.

(2) The Court may in addition to any penalty imposed on a person pursuant to subsection (1) require that person to repay such amount of the loan with interest as has not been repaid at the date of the conviction; and the payment of that amount shall discharge the liability of the borrower to repay the loan.

Offences with respect to reports.

222. — (1) Any person who makes or assists in making a report, return, notice or other document, required in this Act or the regulations to be sent to the Registrar or any other person, which

- (a) contains an untrue statement of a material fact; or
- (b) does not 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

commits an offence.

(2) A person guilty of an offence under subsection (1) is liable on summary conviction

- (a) in the case of an individual, to a fine of \$5,000 or to imprisonment for a term of one year or both;
- (b) in the case of a person other than an individual, to a fine of \$30,000.

(3) Where the person guilty of an offence under subsection (1) is a body corporate and whether or not the body corporate has been prosecuted or convicted, any director or officer for the body corporate who authorizes, permits or acquiesces in the offence is also guilty of an offence and liable on summary conviction to a fine of \$5,000 or to imprisonment for a term of six months or both.

(4) No person is guilty of an offence under subsection (1) or (3) where the untrue statement or omission

- (a) was unknown to him, and
- (b) in the exercise of reasonable diligence, could not have been known to him.

Contravention of Act.

223. Every person who —

- (a) without reasonable cause, contravenes a provision of this Act or the regulations for which no penalty is otherwise provided,
- or

(b) fails to give any notice, send any return or document that is required for the purpose of this Act, commits an offence and is liable on summary conviction to a fine of \$1000 and to a further fine of \$100 for each day for which the contravention continues after a conviction is obtained.

Use of words "credit union" or "co-operative".

224.— (1) No person doing business in Saint Lucia shall use the words "credit union" or any abbreviation or derivation thereof as part of its name, or with respect to its goods, wares, merchandise or services or its method of conducting its business, or hold itself out to be a registered society unless it is registered under this Act.

(2) A person who contravenes this section commits an offence and is liable on summary conviction to a fine of \$5,000 and to a further fine of \$100 for each day for which the contravention continues after a conviction is obtained.

Order to comply.

225. Where a person is convicted of an offence under this Act or the regulations, the court may, in addition to any punishment imposed, order the person to comply with the provision of this Act or the regulations for the contravention of which he has been convicted.

Limitation.

226. The effluxion of time is no bar to prosecution for an offence under this Act.

Preservation of civil remedy.

227. No civil remedy for an act or omission under this Act is suspended or affected by reason that the act or omission is an offence under this Act.

PART XVII

MISCELLANEOUS

Interpretation.

228. In this Part,

- (a) "duplicate originals" means the two copies of the by-laws or statements required in paragraph (b);
- (b) "statement" means a special resolution stating an intent to dissolve mentioned in section 158.

Execution and filing.

229. — (1) Where this Act requires that by-laws or a statement relating to a society shall be sent to the Registrar, unless otherwise specifically provided, the society shall send three copies of the by-laws or statement signed by a director or an officer of the society.

(2) Subject to the other provisions of this Act, where the Registrar receives duplicate originals of any by-laws or statement pursuant to subsection (1) and they are accompanied by any other required documents and the prescribed fees, the Registrar shall —

- (a) endorse on each of the duplicate originals the word “Registered” and the date of the registration;
- (b) issue in duplicate the appropriate certificate and attach to each certificate one of the duplicate originals of the by-laws or statements;
- (c) file a copy of the certificate and attached by-laws or statement;
- (d) send to the society the original certificate and attached by-laws or statement; and
- (e) publish in the *Gazette* notice of the issue of the certificate.

(3) The Registrar may date a certificate mentioned in subsection (2) as of the day he receives the by-laws or statement issued pursuant to which the certificate is issued or as of any later day specified by the person who signed the by-laws or statement.

(4) A signature required on a certificate mentioned in subsection (2) may be printed or otherwise mechanically produced on the certificate.

Waiver of notice.

230. Where a notice or document is required by this Act or the regulations to be sent, the sending of the notice or document may be waived or the time for sending the notice or document may be waived or abridged at any time with the consent in writing of the person entitled to receive the notice or document.

Certificate of society.

231.— (1) A director or officer of a society may —

- (a) sign a certificate stating any fact set out in, or
- (b) certify a copy of the whole or any part of, the by-laws, or any other contract to which the society is party or the minutes of a meeting of the directors, a committee of directors or the members.

(2) A certificate or certified copy described in subsection (1) is admissible in evidence as *prima facie* proof of the facts contained in the certificate or certified copy without proof of the signature or official character of the person appearing to have signed the certificate or the certification.

Copies of documents.

232. Where a notice or document is required to be sent to the Registrar pursuant to this Act, the Registrar may accept a photostatic or photographic copy of the notice or document.

Alteration.

233. Where the Registrar is authorized by the person who sent a notice or document or his representative, the Registrar may alter the notice or document, but he may not alter an affidavit or statutory declaration.

Corrections.

234. — (1) Where a certificate containing an error is issued to a society by the Registrar, the directors or members of the society shall, on the request of the Registrar —

(a) pass the resolutions and send to him the document required to comply with this Act; and

(b) take any other steps that he may require;

and the Registrar may demand the surrender of the certificate and issue a corrected certificate.

(2) A certificate corrected pursuant to subsection (1) must bear the date of the certificate it replaces.

Exemption from stamp duty and taxes.

235. — (1) Every society registered under this Act is exempt from any stamp duty, taxes and fees which, under any law for the time being in force, instruments executed by or on behalf of such society or by an officer or member and relating to the business of such society, or any class of such instruments, are respectively chargeable.

(2) Notwithstanding anything contained in any enactment every registered society shall be exempt from the payment of income tax, corporation tax and any other tax on the incomes of such societies.

Limitation of jurisdiction.

236. Except as is expressly provided in this Act, no civil court shall have any jurisdiction in respect of any matter concerned with the dissolution of a society under this Act.

Proof of entries in books and documents.

237. — (1) A copy of any entry in a book or other document that is required to be kept by this Act shall, if certified by the Registrar be received in any legal proceedings, civil or criminal, as *prima facie* evidence of the existence of such entry and shall be admitted as evidence of the matters, transactions and accounts therein recorded in every case where, and to the same extent as, the original entry itself is admissible.

(2) No officer of any such society shall, in any legal proceedings to which the society is not a party, be compelled to produce any of the society's books, the content of which can be proved under subsection (1), or to appear as a witness to prove any matters, transactions or accounts therein recorded, unless the Court for special reasons so directs.

Regulations.

238. — For the purpose of carrying out this Act according to its intent, the Minister may make regulations —

- (a) defining, enlarging or restricting the meaning of any word used but not defined in this Act;
- (b) requiring the payment of and prescribing the amount of any fee with respect to
 - (i) the filing, examination or copying of any document, or
 - (ii) any action that the Registrar is required or authorised to take pursuant to this Act;
- (c) prescribing the procedure for appeals to the Registrar;
- (d) prescribing business in which societies or any class of societies may not engage in without the prior approval of the Registrar;
- (e) exempting any society or class of societies from any provision of this Act; and
- (f) prescribing any other matter or thing required or authorised to be prescribed by this Act.

PART XVIII

TRANSITIONAL

The former Act.

239. In this Part "the former Act" means the Co-operative Societies Ordinance, Cap 82.

Existing directors and officers.

240. — (1) The existing directors and officers shall continue to hold office in accordance with the former Act and the by-laws of the Society.

(2) Where new directors of a society are to be elected after the commencement of the Act, such directors shall be elected in accordance with this Act.

Existing societies.

241. All societies which prior to the commencement of this Act were duly registered under the former Act shall be deemed to be registered under this Act.

Repeal and savings.

242. — (1) Subject to subsection (2), the Co-operative Societies Ordinance is repealed.

(2) All rules, regulations and by-laws made pursuant to the former Act shall continue in force until such time as new rules and regulations and by-laws are made.

(3) Notwithstanding subsection (1), where a society is being dissolved or liquidated pursuant to the former Act, that Act continues to apply to that society.

Passed the House of Assembly this 27th day of July , 1999.

MATTHEW ROBERTS,
Speaker of the House of Assembly.

Passed the Senate this 20th day of August, 1999.

HILFORD DETERVILLE,
President of the Senate.