Disclaimer: This copy of the Credit Union Act, 2009 has been updated for informational purposes to include amendments made under Act 29 of 2010 and Act 10 of 2015. The Central Bank accepts no liability for any loss arising of its use. The updated version of the Act is intended for guidance only and the original Act and amending instruments should be consulted for legal purposes.

CREDIT UNION ACT, 2009

(as amended in 2010 and 2015)

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PART I – PRELIMINARY

1. This Act may be cited as the Credit Union Act, 2009. Short Title

2. In this Act, Interpretation

''Board'' means the Board of Directors of a credit union elected under section 14(1)(a);

''bye-laws'' means the bye-laws of a credit union adopted under section 6;

''capital'' means ownership shares, reserves and surplus;

''Chairperson'' means the chairperson of the Board of Directors of a credit union;

''Chief Executive Officer'' means the Chief Executive Officer of a credit union appointed under section 23;

''credit union'' means a financial co-operative -

(a) established under this Act;

(b) owned and operated by and for its members according to democratic principles;

(c) for the purpose of encouraging savings;

(d) which uses pooled funds to make loans to its members; and

(e) which provides related financial services to enable its members to improve their economic and social conditions;

''deposit account'' means a balance held by a credit union and owned by a member of the credit union which constitutes a liability owed by the credit union to the member;

''guidelines'' means the procedures of a credit union established by its Board;

''Minister'' means the Minister responsible for Finance;

''ownership share'' means an amount held by a member of a credit union and established by the credit union as the member's ownership interests in the assets of the credit union and ''ownership share account'' is construed accordingly;

''policy'' means the written policies of a credit union established by its Board;

''Regulatory Authority'' means the Regulatory Authority designated under section 52; and

''Supervisory Committee'' means the Supervisory Committee of a credit union elected under section 14(1)(b).

PART II – ESTABLISHMENT, POWERS AND OPERATION OF CREDIT UNIONS

Establishment of credit unions

3. (1) The Minister may, by Order published in the Gazette, establish a credit union.

(2) An Order made under subsection (1) shall set out the name, registered address and objects of the credit union.

Credit union to be a body corporate

4. A credit union established under section 3(1) is a body corporate with perpetual succession and may -

(a) accept deposits and provide loans to its members;

(b) acquire, lease, hold, assign, pledge, mortgage, discount or dispose of property or assets;

(c) enter into contracts;

(d) institute and defend lawsuits and other legal proceedings;

(e) mobilize deposits and borrow money in accordance with its bye-laws and policies;

(f) exercise incidental powers necessary to effectively carry out its objects and perform its functions;

(g) insofar as it is possible for a body corporate, exercise all powers, rights, and privileges of a natural person.

(h) charge such fees for services provided by it as may be prescribed by rules by the Regulatory Authority. Amended by Act 10 of 2015

5. Other activities of a credit union

Notwithstanding anything otherwise provided in any written law and subject to the approval of the Regulatory Authority, a credit union may, in furtherance of its objectives -

(a) issue cheques drawn on itself payable on demand; Amended by Act 29 of 2010

(b) buy and sell negotiable instruments for the account of its members;

(c) join and be a member of the bankers clearing house in pursuance of its activities and

(d) provide such other business activities as may be prescribed by regulations, consistent with the activities of a financial institution. Amended by Act 10 of 2015

6. Bye-laws of a credit union

(1) A credit union shall adopt bye-laws consistent with this Act to govern the credit union.

(2) The bye-laws referred to in subsection (1) shall -

(a) subject to the supervisory powers of the Regulatory Authority, be prepared by the Board of the credit union;

(b) be approved by a majority of members of the credit union present and voting in a general meeting; and

(c) contain the operating rules and regulations of the credit union.

7. Membership of a credit union

(1) The Board of a credit union shall establish criteria for membership of the credit union in its bye-laws and policies.

(2) Any person who satisfies the criteria referred to in subsection (1) is eligible to be a member of the credit union.

(3) An association of persons or a body corporate which has a majority of members or shareholders who are eligible to be members of a credit union in accordance with subsection (2), may be admitted to membership of the credit union and shall have the same rights and obligations as any other member.

Application for membership

8. (1) An application for membership of a credit union shall be made -

(a) to the Chief Executive Officer; and

(b) in writing and in a manner and form to be determined by the Board of the credit union.

(2) The Chief Executive Officer -

(a) may, after considering an application made under subsection (1) in accordance with the policies of the credit union -

(i). grant the application; or

(ii). refuse the application; and

(b) shall inform the applicant of a decision made under paragraph (a) in writing, within fifteen days of receipt of the application.

(3) An applicant may appeal to the Board against the decision of the Chief Executive Officer within 15 days of the date that the applicant is notified of the decision.

(4) Subject to subsection (5), the Board shall -

(a) determine an appeal made under subsection (3) within 30 days of the date that the appeal is lodged; and

(b) inform the appellant of its decision in writing.

(5) The Chief Executive Officer shall have no right to vote on an appeal made under subsection (3).

(6) A determination of the Board made under subsection (4)(a) shall be final.

General meetings of a credit union

9. (1) A credit union shall hold an annual general meeting of its members within 30 days of its establishment and thereafter once every year.

(2) The date, time, place, procedures for and order of business of an annual or extraordinary general meeting shall be in accordance with the bye-laws of the credit union.

(3) A notice convening a general meeting and the agenda for the meeting shall be published in at least one local newspaper not less than 14 days before the meeting.

(4) The quorum for a general meeting shall be the number of members specified in the bye-laws of the credit union.

(5) The business at an annual general meeting shall include -

(a) the acceptance of proxies, if any;

(b) ascertaining that a quorum is present;

(c) the reading, approval and correction of minutes of the last annual general meeting;

(d) the presentation of the report of the Board;

(e) the presentation of annual accounts and auditor's report on such accounts;

(f) the approval of payment of dividends and distribution of net surplus to members as recommended by the Board;

(g) the presentation of the report of the Supervisory Committee;

(h) the approval and amendment of bye-laws;

(i) nominations and balloting; and

(j) any other business.

(6) For the purposes of this section an extraordinary general meeting means a general meeting which is not an annual general meeting.

Assets of a credit union

10. The assets of a credit union consist of -

(a) the immoveable property of the credit union; and

(b) the moveable property of the credit union including -

(i). money paid as contributions by its members;

(ii). money invested in companies' stocks, shares and debentures;

(iii). money invested in any financial or other institution;

(iv). money advanced as loans to its members;

(v). money lawfully borrowed by the credit union;

(vi). money received and receivable by the credit union in carrying out its objects; and

(vii). any moveable property and investment which lawfully comes into the ownership of the credit union.

Distribution of money among members of a credit union

11. (1) Any money received by a credit union in carrying out its objects may, after deductions therefrom -

(a) for any reasonable expense incurred by the credit union in carrying out its objects; or

(b) for any purpose required by this Act or authorised by the Board of the credit union, be distributed among the members of the credit union in accordance with a scheme of distribution recommended by the Board and approved by the members in an annual general meeting.

(2) The members shall not approve a sum in excess of the sum recommended by the Board for distribution under subsection (1).

(3) A member shall have no right or interests in the assets of the credit union except the right to receive -

(a) any money distributed under subsection (1);

(b) any money subscribed by the member in respect of ownership shares; and

(c) any money due and payable in respect of the member's deposit account.

Accounts of a credit union

12. The Board of a credit union shall -

(a) keep proper accounts of the credit union and records in relation to the accounts; and

(b) prepare a statement of accounts for each financial year.

(2) The accounts kept and statement of accounts prepared under subsection (1) shall be audited by an independent licensed auditor whose appointment shall be recommended by the Board, approved by the Regulatory Authority and finally ratified by the members of the credit union in a general meeting.

(3) The Chief Executive Officer of the credit union shall submit a copy of the audited statement of accounts prepared under subsection (2) to the Regulatory Authority within 6 months after the end of each financial year.

(4) The Regulatory Authority may direct that the accounts and the records of a credit union be examined by a person or persons appointed by the Regulatory Authority and the Board shall grant such person or persons access to the accounts and records of the credit union.

Credit union funds

13. (1) The funds of a credit union shall consist of money -

(a) paid by each member of the credit union into ownership share and deposit accounts;

(b) received from the Government or any other person or organisation, either in or outside Seychelles, as financial support, grants or donations;

(c) set aside from net income as reserves and undistributed surplus; and

(d) comprising unclaimed abandoned funds transferred to the general reserve in accordance with section 37(6).

(2) The management of the funds shall be under the direct supervision of the Board of the credit union.

(3) Money from the funds may be applied -

(a) for the grant of loans to members of the credit union.

(b) for such other purpose as may be directed by the Board subject to the policies of the credit union.

PART III – MANAGEMENT AND ADMINISTRATION

Election of Board of Directors and Supervisory Committee

14. (1) Subject to this section, the members of a credit union shall elect from among themselves -

Amended by Act 29 of 2010

(a) a Board of Directors; and

(b) a Supervisory Committee,

at a general meeting of the members convened for that purpose.

(2) The first Board and Supervisory Committee of the credit union shall be elected at the first annual general meeting of the credit union held in accordance with section 9(1).

(3) Each subsequent Board and Supervisory Committee of the credit union shall be elected at an annual general meeting held not less than fifteen days before the expiry of the term of office of the previous Board and Committee.

(3A) A member of the credit union shall, before being elected to the Board or Supervisory Committee at an annual general meeting referred to in subsection (3), be approved by the Regulatory Authority in the manner as may be prescribed by rules by the Regulatory Authority. Amended by Act 10 of 2015

(4) Unless otherwise provided in the bye-laws of the credit union, each Board and Supervisory Committee elected under subsection (2) or (3) shall hold office for a period of three years from the date of its election.

(5) A member of a credit union who, at the time of the election, is employed by the credit union shall not be eligible to be elected to the Supervisory Committee. Amended by Act 29 of 2010

(6) No member of the credit union shall be eligible to be appointed to the Board or Supervisory Committee, if he - Amended by Act 10 of 2015

(a) is mentally or physically incapable of carrying out the functions as a member of Board or Supervisory Committee;

(b) has been convicted for an offence involving felony, fraud or dishonesty;

(c) is undischarged insolvent or bankrupt.

(7) A member of the credit union elected to the Board shall be eligible for re-election but no such member shall be elected for more than two terms. Amended by Act 10 of 2015

(8) A credit union shall upon the change of any member of the Board or Supervisory Committee notify the Regulatory Authority within 21 days of such change. Amended by Act 10 of 2015

15. (1) The Board of a credit union shall consist of - Composition of Board

(a) a Chairperson;

(b) a vice-Chairperson; and Amended by Act 10 of 2015

(c) three other members.

(2) The Chairperson, and vice-Chairperson shall be persons of good standing in the financial, banking, accounting, legal or such other profession as the policies of the credit union may allow. Amended by Act 10 of 2015

16. The Board of a credit union shall, subject to the supervisory powers of the Regulatory Authority - Functions of Board

(a) formulate policies and establish guidelines for the proper and efficient management of the credit union;

(b) manage the affairs of the credit union in accordance with the policies and guidelines referred to in paragraph (a); and

(c) prepare bye-laws of the credit union in accordance with section 6.

17. (1) Where not more than two vacancies occur in the membership of the Board of a credit union, the remaining members of the Board shall within one month of the occurrence of the vacancies, appoint a person from among the members of the credit union to fill each vacancy. Vacancies in membership of Board

(2) A person appointed under subsection (1) shall hold office until the next annual general meeting where that person shall be eligible for election for a period equal to the unexpired term of office of the member of the Board whom the person is replacing.

(3) Where more than two vacancies occur in the membership of the Board, the members of the credit union shall, within one month of the occurrence of the vacancies, elect persons from among themselves to fill the vacancies, at an extraordinary general meeting convened for that purpose.

(4) A person elected under subsection (3) shall hold office for a period equal to the unexpired term of office of the member of the Board whom the person is replacing.

Meetings of Board

18. (1) Subject to subsections (2) and (3), the Board of a credit union shall meet whenever necessary or expedient for the transaction of the Board's business.

(2) The Board shall meet at least once a month unless the exigencies of business require otherwise.

(3) The Chairperson may at any time call an extraordinary meeting of the Board at the request of a member of the Board.

(4) The Board shall hold its first meeting within thirty days from the date it has been elected in office.

(5) The Chairperson shall preside over the meetings of the Board.

(6) A quorum for a meeting of the Board shall be three members.

(7) A decision of the Board shall be taken by a simple majority of votes of the members present and voting and, each member has one vote but in the event of an equality of votes, the Chairperson shall have in addition to an original vote, a casting vote.

(8) The Board shall determine the procedures to be followed at its meetings.

(9) Where the Chairperson is absent or unable to perform the functions of his office, the vice-Chairperson shall act as Chairperson and, in the absence of both the Chairperson and the vice-Chairperson, the members of the Board may

appoint another member of the Board to perform the functions of the Chairperson.

19. Composition of Supervisory Committee

(1) The Supervisory Committee of a credit union shall consist of 3 members.

(2) Unless otherwise provided in the bye-laws of the credit union, each member of the Supervisory Committee shall hold office for a period of 3 years from the date of his or her election.

20. Functions and responsibilities of Supervisory Committee

The functions and responsibilities of the Supervisory Committee are -

(a) to verify and validate the business and management transactions of the credit union and to report thereon directly to the members of the credit union in general meeting; and

(b) such other functions and responsibilities as laid down in the bye-laws of the credit union.

21. Vacancies in membership of Supervisory Committee

(1) Where not more than one vacancy occurs in the membership of the Supervisory Committee, the remaining members of the Supervisory Committee shall within one month of the occurrence of the vacancy, appoint a person from among the members of the credit union to fill that vacancy.

(2) A person appointed under subsection (1) shall hold office until the next annual general meeting where that person shall be eligible for election for a period equal to the unexpired term of office of the member of the Supervisory Committee whom the person is replacing.

(3) Where more than one vacancy occurs in the membership of the Supervisory Committee, the members of the credit union shall, within one month of the occurrence of the vacancies, elect persons from among themselves to fill the vacancies, at an extraordinary general meeting convened for that purpose.

(4) A person elected under subsection (3) shall hold office for a period equal to the unexpired term of office of the member of the Supervisory Committee whom the person is replacing.

Removal of members of Board and Supervisory Committee

22. (1) A member of the Board or of the Supervisory Committee of a credit union who -

(a) fails to discharge his duties;

Amended by Act 10 of 2015

(aa) incurs, at any time after election, any disqualification specified in section 14(6);

(b) is involved in financial indiscipline or mismanagement; or

(c) acts in a manner prejudicial to the interests of the credit union,

may be removed from office by a resolution of a majority of members of the credit union present and voting at an extraordinary general meeting convened for that purpose.

(2) The member shall be informed in writing of the proposal to remove him or her from office at the meeting referred to in subsection (1), at least 14 days before the meeting in order for the member to be afforded a reasonable opportunity to be heard.

(3) The Supervisory Committee shall notify the Regulatory Authority of the convening of a meeting under subsection (1) and the reason for the meeting within three working days of issuing the written notice under subsection (2).

(4) Where a member of the Board or of the Supervisory Committee is removed from office at an extraordinary general meeting, the other members of the credit union shall elect another member in his place at the same meeting and the term of office of the newly elected member shall be a period equal to the unexpired term of office of the member so removed.

(5) The Supervisory Committee shall notify the Regulatory Authority in writing of the removal of a member of the Board or of the Supervisory Committee within thirty days of the removal of the member.

23. Chief Executive Officer

(1) The Board shall, subject to the approval of a general meeting of the members of the credit union, appoint a person as the Chief Executive Officer of the credit union, who has expertise and experience in the fields of finance, banking, accounting, management, cooperation or any other field related to operation of a credit union. Amended by Act 10 of 2015

(2) The Chief Executive Officer shall have supervision over and direction of the day to day management of the affairs of the credit union and be responsible to the Board. Amended by Act 10 of 2015

(3) The Chief Executive Officer shall submit to the Regulatory Authority -

(a) within fifteen days of the end of each month, a monthly report of the activities of the credit union for that month; and

(b) not later than three months after the end of each financial year, an annual report of the activities of the credit union for that year.

(4) The Chief Executive Officer shall attend the meetings of the Board and participate in the deliberations of transaction of any business therein but shall have no right to vote. Amended by Act 10 of 2015

23A. Appointments of other officers and employees

(1) The Board may appoint such number of other officers and employees as may be necessary to carry out the functions of the credit union. Amended by Act 10 of 2015

(2) The salary, allowances and other terms and conditions of service of the officers and employees shall be as prescribed in the bye-laws.

24. Credit Committee and other committees

The Board of a credit union -

(a) shall appoint a Credit Committee from among the members of a credit union for the purpose of considering loans to its members in accordance with a loan policy established by the Board; and

(b) may appoint other committees in accordance with the policies of the credit union.

Removal from office of officers, employees or members of a

24A. The Board may remove from office an officer or employee of the credit union or any member of the Credit Committee or other committee if such officer, employee or member fails to perform his or her duties.

Amended by Act 10 of 2015

PART IV – SHARES AND DEPOSITS

Ownership shares

25. (1) A credit union may offer an unlimited number of ownership shares at a par value.

(2) The value of the shares shall be established in the bye-laws of the credit union.

(3) The shares form part of the ownership capital of the credit union.

Minimum and maximum number of ownership shares

26. The bye-laws of a credit union shall fix -

(a) the minimum number of ownership shares to which a member of the credit union shall subscribe; and

(b) the maximum number of ownership shares to which a member of the credit union may subscribe.

Redemption conditions of shares

27. The redemption conditions of ownership shares shall be as laid down in the bye-laws and policies of the credit union.

Shares as security

28. Ownership shares may be used as security for loans.

Dividends

29. (1) At the close of each year, the Board of a credit union may, subject to the approval of the members of the credit union in a general meeting, declare dividends to be paid on ownership shares from available earnings of the credit union.

(2) The amount of the dividends approved by the members under subsection (1) shall not be in excess of that recommended by the Board.

Deposits

30. (1) A credit union may receive deposits from its members.

(2) The terms, rates and conditions of the deposits shall be established by the Board of the credit union in accordance with the policies of the credit union.

Interest on deposits

31. At periodical intervals to be established by the Board of a credit union, interest at rates to be determined by the Board, may be paid on deposit accounts.

Withdrawal of deposits

32. (1) Deposits may be withdrawn by members of a credit union in accordance with the policies of the credit union.

(2) Withdrawals of deposits are subject to any advance notice requirements contained in the terms of the agreement of the relevant deposit account.

(3) A credit union may refuse to allow withdrawals from an ownership share or deposit account when the account holder is in arrears on a debt due to the credit union.

Joints accounts

33. (1) A member of a credit union may designate one or more persons to own -

(a) an ownership share account; or

(b) a deposit account,

jointly with the member.

(2) On the death of one of the joint owners of a joint account, the surviving owner or owners shall, subject to any written law, become the remaining owner or owners of the joint account.

Liability of credit union to owners of joint account

34. Payment of part or all of a joint account to any one of the joint owners shall discharge the credit union of any liability to all of the owners up to the amount of the payment, unless the account agreement contains a prohibition or limit on such payment.

Credit union to have lien against shares and deposits and on dividend and interest

35. A credit union has a lien -

(a) against ownership shares;

(b) against deposits; and

(c) upon any dividend or interest payable to a member of the credit union,

for any debt due to the credit union from the member who owns the ownership share or deposit or is entitled to the dividend or interest.

Offsetting of sums due to member against debt to credit union

36. A credit union may offset any sum credited or payable to one of its members who is in arrears on a debt to the credit union, against that debt and shall immediately inform the member of any such offsetting.

Abandoned funds

37. (1) If there has been no activity on the ownership share or deposit account of a member of a credit union for at least 5 years, the credit union shall notify the member or other known interested party that the ownership share or deposit account and any dividend, interest or other sum due to the member on the ownership share or deposit account and held by the credit union, shall be deemed to have been abandoned unless the member or other interested party indicates an interest in such ownership share, deposit account, dividend, interest or other sum, within 3 months of such notice.

(2) If the member or other interested party does not indicate an interest in the ownership share, deposit account, dividend, interest or other sum, to the credit union, in person, in writing or in any other manner, within the time specified in subsection (1), the funds shall be deemed to have been abandoned.

(3) Where funds are deemed abandoned under subsection (2) the credit union shall publish in one local newspaper, the name of the owner and the value of the abandoned funds, and allow 30 days for a response.

(4) Not less than 30 days after the publication of the particulars specified in subsection (3), the Board of the

credit union shall make a report to the Regulatory Authority of the amount, nature, and particulars of the abandoned funds in a form and manner to be determined by the Regulatory Authority.

(5) If the credit union does not receive any reply from the owner of the abandoned funds within the period of 30 days specified in subsection (3), the credit union shall transfer the abandoned funds to a special fund of the credit union;

(6) The owner of abandoned funds transferred to the special fund under subsection (5) may claim the funds from the credit union, in writing, within 5 years after the credit union credited the funds to the special fund and any abandoned funds remaining unclaimed after the period of 5 years shall be transferred to the general reserve of the credit union.

(7) The owner of abandoned funds transferred to the general reserve under subsection (6) who, to the satisfaction of the credit union, furnishes proof of ownership of abandoned funds dealt with in accordance with subsections (3), (4), (5) and (6) is, subject to any terms, conditions or restrictions imposed in respect of such abandoned funds by any written law, entitled to the repayment of the funds by the credit union.

(8) No interest or dividend shall accrue to abandoned funds transferred to the special fund under subsection (5) or to the general reserve under subsection (6).

PART V – LOANS

Loans to members of a credit union

38. (1) A credit union may grant loans to its members on terms and conditions established in the policies and guidelines of the credit union.

(2) The policies and guidelines referred to in subsection (1) shall state -

(a) the terms on which loans may be granted;

(b) the conditions of repayment;

(c) maximum amounts that may be borrowed; and

(d) acceptable forms of security.

Loan limits

39. The maximum amount that a member may borrow shall not exceed ten percent of the capital of credit union in aggregate or such other amount as the Regulatory Authority may by rules prescribe.

Amended by Act 10 of 2015

Loan security

40. (1) All loans granted to members of a credit union shall be secured.

(2) The type of security for loans granted to members shall be prescribed by the policies and guidelines of the credit union.

Interest rates and other charges

41. (1) The interest rates on loans shall be determined by the policies and guidelines of the credit union.

(2) In addition to interest charged on loans, a credit union may charge members reasonable expenses in connection with the making, closing, disbursing, extending, collecting, and renewing of loans as determined by the policies and guidelines of the credit union.

(3) A credit union may also charge members in accordance with its policies, for failure to repay loans and the amount of the charge shall be prescribed by the policies of the credit union.

Loans to credit union officials

42. (1) A credit union may grant loans to its officers and employees and members of its Board.

(2) Loans granted under subsection (1) shall be on the same terms and conditions as loans granted to other members of the credit union.

(3) A loan granted to an officer, employee or member of the Board of a credit union must meet the requirements of the loan policy of the credit union.

(4) The Board of a credit union may, with the approval of the credit union at its general meeting, make schemes for grant of special loans for the welfare of its employees. Amended by Act 10 of 2015

Loan application procedure

43. (1) An application for a loan from a credit union shall be made in writing using an application form approved by the Board of the credit union.

(2) All loans granted by a credit union shall be evidenced by an appropriate legal document.

Delinquent loan write-offs

44. (1) A credit union shall, in its policies, provide for procedures to write-off delinquent loans.

(2) A delinquent loan shall only be written off after stringent efforts to collect the outstanding dues have been exhausted and any pledge or security enforced.

PART VI – INVESTMENT OF FUNDS

Policies for investment of surplus funds

45. The Board of a credit union shall -

(a) establish policies for investment of surplus funds of the credit union which are not used for loans to members; and

(b) ensure that the policies referred to in paragraph (a) are fully complied with.

Board to designate depository institution

46. The Board of a credit union shall designate one or more institutions to serve as depository institution for credit union funds in accordance with the policies of the credit union.

Authorised investments

47. The funds of a credit union which are not used for loans to members may be invested in -

(a) securities, obligations, or other debt instruments issued or guaranteed by the Government;

(b) deposits, obligations or other accounts of financial or other institutions;

(c) shares, stocks, deposits in, loans to or other securities or obligations in respect of companies or organizations affiliated or non affiliated to the credit union; and

(d) any other investment schemes approved by the Board of the credit union.

PART VII – RESERVES AND ALLOWANCES

Liquid reserves

48. A credit union shall maintain liquid reserves the amount and nature of which shall be determined by the Regulatory Authority.

Minimum required capital

Amended by Act 10 of 2015

48A. (1) A credit union shall at all times maintain in Seychelles unimpaired capital or assigned capital, as may be prescribed by rules by the Regulatory Authority.

(2) A credit union shall not reduce its paid-up capital or its assigned capital, as the case may be, without prior approval of the Regulatory Authority.

(3) Total regulatory capital of the credit union shall be at the minimum level or such higher percentage, as prescribed by rules by the Regulatory Authority, of the total value of its assets determined on a risk-adjusted basis.

Foreign currency exposure

Amended by Act 10 of 2015

48B. A credit union shall hold such maximum net open position in any foreign currency or currencies as the Regulatory Authority may by rules prescribe.

Minimum general reserve

49. (1) A credit union shall maintain a minimum general reserve -

(a) at a level required by the Regulatory Authority;

(b) which shall be kept in accordance with the directives of the Regulatory Authority.

(2) The credit union shall transfer to its general reserve, before paying any dividend, all or part of its surplus fund, to maintain the reserve at the level required by the Regulatory Authority.

Use of general reserve

50. (1) The general reserve of a credit union belongs to the credit union and may only be used to -

(a) meet operating losses resulting from loans, investments or extraordinary losses;

(b) finance non earning assets; and

(c) improve earnings of the credit union.

(2) The general reserve shall not be distributed to members except upon liquidation of the credit union.

Loan loss allowance

Amended by Act 10 of 2015

51. (1) In addition to the general reserve, a credit union shall maintain a loan loss allowance in accordance with the guidelines prescribed by rules by the Regulatory Authority to cover potential bad loans that are delinquent.

(2) The loan loss allowance is not part of the general reserve.

PART VIII – REGULATION AND SUPERVISION

Designation of Regulatory Authority

52. The Minister shall designate a Regulatory Authority to regulate and supervise the affairs of credit unions established under this Act.

General powers of Regulatory Authority

Amended by Act 10 of 2015

53. The Regulatory Authority may –

(a) issue operating and administrative guidelines to all credit unions including the procedure for dealing with complaints relating to services provided;

(b) issue an interim supervisory order to a credit union which shall be effective for a period of up to 90 calendar days from the date of issue of the order;

(c) require a credit union to report to the Regulatory Authority on any matter it considers necessary and the credit union shall make available to the Regulatory Authority all such reports in a timely manner;

(d) restrict the withdrawal of money from a credit union deposit account where such action is necessary to protect the interests of the members of the credit union;

(e) exempt a credit union from compliance with a specific requirement of this Act or regulations made under this Act; Amended by Act 10 of 2015

(f) require a credit union to do any act which the Regulatory Authority considers necessary in the interests of the credit union or its members.

(g) prescribe by rules the requirement of classification and evaluation of assets; provisions to be made on the basis of such classification and evaluation against doubtful and non-performing loans; and the time when the earnings on non-performing loans may no longer be accounted for as income except as received in cash. Amended by Act 10 of 2015

54. (1) The Regulatory Authority may inspect any credit union. Power of Regulatory Authority to inspect credit unions

(2) The credit union, its officers, employees and agents shall give to the Regulatory Authority's officers full access to all funds, securities, books, papers, records, and other sources of information under their control for an inspection under subsection (1).

(3) The Regulatory Authority shall present a report of its findings to the Board of the credit union in a timely manner following the completion of an inspection under subsection (1).

54A. Every credit union shall submit to the Regulatory Authority such statements and other information, in such form and within such period, as the Regulatory Authority may, by rules, prescribe. Amended by Act 10 of 2015

Furnishing of statements and other information

55. Where the Regulatory Authority determines from substantial evidence that a credit union - Enforcement powers of Regulatory Authority

(a) is engaged in or is about to engage in an unsafe or unsound financial practice;

(b) has violated or is violating a provision of this Act or any other written law, written direction of the Regulatory Authority or bye-law or written policy of the credit union; Amended by Act 10 of 2015

(c) has failed to implement remedial measures ordered by the Regulatory Authority including the resignation of any member of the Board or a committee of the credit union for financial indiscipline,

(d) no longer possesses or is not maintaining or not in a position to maintain adequate capital resources, or no longer provides security for the funds entrusted to it, Amended by Act 10 of 2015

the Regulatory Authority may -

(i). issue a written warning to the Chairperson of the Board of the credit union;

(ii). call a meeting of the Board of the credit union in order to discuss and to agree on remedial measures to be taken;

(iii). issue written orders to the credit union to cease and desist from such infractions and to undertake remedial action;

(iv). impose on the credit union, special prudential requirements that differ from those normally applicable;

(v). issue written orders to the credit union to suspend the payment of dividend or any other form of net income or accumulated surplus distribution;

(vi). appoint an external auditor at the expense of the credit union to perform a financial or operational audit of the credit union under terms of reference to be determined by the Regulatory Authority;

(vii). temporarily or permanently remove any member of the Board or a committee, officer or employee of the credit union from office, or prohibit or restrict such member, officer or employee from exercising or performing any of his or her respective powers or functions, if it is shown from substantial evidence that the member, officer or employee has contributed or would contribute, in the exercise of those powers or performance of those functions, to the unsafe or unsound conduct of the affairs of the credit union or has caused or would cause the credit union financial difficulties;

(viii). issue an order placing the credit union under administration and appoint a person or group of persons from among the members of the credit union to be administrator of the credit union.

Review of decision of Regulatory Authority and appeal

56. (1) The Board or members in a general meeting of a credit union may apply in writing to the Regulatory Authority for a review of any decision or order made or action taken by the Regulatory Authority in respect of a credit union in pursuance of this Act, before the expiry of 60 days after the decision or order is made or action taken.

(2) The Regulatory Authority shall determine a review application made under subsection (1) within 21 days after the making of the application.

(3) An aggrieved person may appeal to the Minister against a decision of the Regulatory Authority given under subsection (2) within 15 days after the said decision is made.

(4) The Minister shall determine an appeal made under subsection (3) within ninety days after the lodging of the appeal and the aggrieved person shall be informed of the decision forthwith.

(5) There shall be no stay of an order of the Regulatory Authority in respect of a credit union pending the determination of a review application made under subsection (1) or an appeal made under subsection (3) but where the appeal or the review is decided in favour of the applicant or the appellant as the case may be, the order and anything done in terms of the order shall be void.

Disciplinary proceedings

57. The Regulatory Authority or a credit union may institute disciplinary proceedings against any member of the Board or a committee, officer, employee or agent of a credit union where there is substantial evidence that such member, officer, employee or agent has contravened any written law or order of the Regulatory Authority or has committed an offence specified in section 68.

PART IX – LIQUIDATION

Involuntary Liquidation

58. (1) Where the Regulatory Authority is satisfied, on the advice of the administrators of an administered credit union, that -

(a) the credit union is not viable in the long term; and

(b) there is no suitable solution to make the credit union viable,

the Regulatory Authority shall inform the Minister accordingly and upon the receipt of such information, the Minister may issue an order to liquidate the credit union.

(2) Where an order to liquidate a credit union is made under subsection (1), the Regulatory Authority shall appoint a liquidator to manage the involuntary liquidation of the credit union.

Permitted transactions of credit union in involuntary liquidation

59. Upon an order to liquidate a credit union being made under subsection (1), the credit union shall –

(a) cease all deposit transactions and the granting of loans; and

(b) under the direction of the liquidator appointed under section 58(2), only continue in existence in order to -

(i). discharge its debts;

(ii). pay its operating expenses;

(iii). collect money owed to it;

(iv). distribute its assets amongst the members constituting the credit union at the time of its dissolution; and

(v). perform all acts required to wind up its affairs.

Voluntary Liquidation

60. (1) Where the Board of a credit union considers that -

(a) the credit union is not viable in the long term; and

(b) there is no suitable solution to make the credit union viable,

the Board may adopt a resolution recommending to the members of the credit union to voluntarily liquidate the credit union.

(2) Where a resolution recommending the voluntary liquidation of a credit union is adopted under subsection (1), the Board of the credit union shall immediately -

(a) notify the Regulatory Authority of the resolution;

(b) suspend the normal business of the credit union relating to -

(i). payments on, withdrawals from and transfers of shares and deposits; and

(ii). granting of loans; and

(c) convene an extraordinary general meeting of the members of the credit union for the purpose of deciding upon the recommendation.

(3) A recommendation for voluntary liquidation made under subsection (1) shall be approved by two thirds of the members of the credit union present at the extraordinary general meeting convened pursuant to subsection (2)(c).

(4) The Board shall notify the Regulatory Authority whether the members of the credit union have approved the recommendation for voluntary liquidation of the credit union or not.

(5) Where the members of the credit union approve the recommendation for voluntary liquidation of the credit union, the members shall appoint a liquidator for the purpose of -

(a) discharging any liability of the credit union; and

(b) distributing the assets remaining thereafter among the members constituting the credit union at the time of its dissolution.

(6) Where the members of the credit union do not approve the recommendation for voluntary liquidation, the Regulatory Authority may -

(a) initiate an involuntary liquidation in accordance with this Part;

(b) take such other action as it considers appropriate.

Permitted transactions of credit union in voluntary liquidation

61. Upon the approval of the members of a credit union of a recommendation for voluntary liquidation of the credit union, the credit union shall cease all business operations and under the direction of the liquidator appointed under section 60(5), only continue in existence in order to -

(a) discharge its debts;

(b) pay its operational expenses;

(c) collect money owed to it;

(d) distribute its assets; and

(e) perform all acts required to wind up its affairs.

Order of priority of discharge of liability and distribution of assets

62. The discharge of any liability and distribution of the assets of a credit union in involuntary or voluntary liquidation or the proceeds of any disposition of the assets shall be done in the following order of priority -

(a) secured creditors up to the value of their collateral;

(b) costs and expenses incidental to liquidating or winding up the credit union;

(c) taxes and statutory debts due and payable to the Government;

(d) wages and salaries due to the employees of the credit union including money due as compensation to its employees as a result of personal injuries suffered during the course of their employment;

(e) any liability due to owners of deposit accounts, general creditors and secured creditors to the extent that their claims exceed the value of their collateral; and

(f) proportional distribution of the remainder of the assets or proceeds thereof to the owners of ownership shares of the credit union on the basis of the value of shares held by such owners as at the time of dissolution of the credit union.

Certificate of liquidation and dissolution of credit union

63. (1) Where a liquidator appointed -

(a) under section 58(2), in the case of an involuntary liquidation; or

(b) under section 60(5), in the case of a voluntary liquidation,

determines that all assets of a credit union in liquidation of which there are reasonable expectations of realization have been liquidated and distributed, the liquidator shall execute a certificate of liquidation and file the certificate along with all books and records of the credit union with the Regulatory Authority.

(2) Upon receipt of the certificate of liquidation and the books and records of the credit union filed under subsection (1) the Regulatory Authority shall, by notice published in the Gazette, declare the credit union dissolved.

PART IX-A- OFFENCES AND PENALTIES

Amended by Act 10 of 2015

63A. (1) A person who - Amended by Act 10 of 2015

(a) with intent to deceive, falsifies or destroys any book of account, report, statement, record or other document of the credit union;

(b) signs, issues, publishes or transmits to Regulatory Authority official any book of account, report, statement, record or other document of a credit union which that person knows to be false;

(c) fails, refuses or unreasonably delays to comply with any requirement of the Regulatory Authority or its officers under section 54(2);

(d) fails to produce any document or record when required to do so by the Regulatory Authority;

(e) knowingly or recklessly uses funds for any purpose other than for those provided in sections 13(3) and 51,

commits an offence and is liable on conviction to a fine not exceeding SCR40,000 or to imprisonment for a term not exceeding 6 months.

(2) A credit union, which -

(a) conducts any business contrary to section 4 or section 5;

(b) fails to comply with provisions contained in section 12 or section 66;

(c) wilfully fails to notify the owner pursuant to section 37(1) or fails to publish a notice pursuant to section 37(3);

(d) contravenes or fails to comply with requirements of section 39, 48, 48A, 48B, or 51;

(e) fails, refuses or unreasonably delays to comply with any direction of the Regulatory Authority under section 53 or section 55;

(f) fails, refuses or unreasonably delays to comply with any requirement of the Regulatory Authority or its officers under section 54(2),

commits an offence and is liable on conviction to a fine not exceeding SCR400,000; and where the offence is continued after the conviction with an additional fine of SCR20,000 for every day or part thereof for which the offence continues.

(3) Any administrator, officer, employee or agent of a credit union who obstructs or endeavours to obstruct the proper performance of the duties of an auditor in accordance with this Act or an inspection of the credit union by any officer or other person appointed by the Regulatory Authority, commits an offence and is liable on conviction to a fine not exceeding SCR40,000 or to imprisonment for a term not exceeding 6 months.

63B. Compounding of offences

(1) Where a credit union or any other person agrees in writing to the compounding of an offence under this Act which is punishable only by a fine, the Regulatory Authority in consultation with the Attorney General may, if it is satisfied that offence has been committed, compound the offence by accepting such sum of money as may be prescribed by regulations, which shall not be less than one-

Amended by Act 10 of 2015

third of the maximum fine or exceed the maximum fine provided for the offence.

(2) Where an offence is compounded under subsection (1), no proceedings shall be instituted in relation to that offence against the credit union or the person referred to in subsection (1).

PART X – MISCELLLANEOUS

Removal of member of a credit union

64. Where the Board of a credit union is of the opinion that any member of the credit union is acting in a manner -

(a) contrary to the objects of the credit union; or

(b) prejudicial to the interests of the other members of the credit union,

the Board may, after giving the member an opportunity to be heard, remove the member from membership of the credit union.

Member having delinquent loan to cease to be member

65. A member of a credit union who has a loan in delinquency for more than 12 months shall cease to be a member until the loan is brought up-to-date.

Credit union to maintain books, records and accounting systems and procedures

66. A credit union shall maintain all its books, records and accounting systems and procedures -

(a) in the English language;

(b) in accordance with financial procedures approved by the Regulatory Authority; and

(c) in accordance with the laws of the Republic.

Financial year of credit union

67. The financial year of a credit union shall be a period of twelve months ending on the 31st December of any year.

Offences

68. Repealed by Act 10 of 2015.

Amended by Act 10 of 2015

Conflict of interest

69. (1) A member of the Board or a committee, an officer, agent or employee of a credit union shall not participate in any

manner in the deliberation upon or the determination of any question affecting -

(a) that member's, officer's, agent's or employee's pecuniary interest;

(b) the pecuniary interest of any member of the immediate family of that member, officer, agent or employee; or

(c) the pecuniary interest of any company or organization other than the credit union, in which that member, officer, agent or employee is directly or indirectly interested.

(2) A person referred to in subsection (1) shall disclose any conflict of interest to -

(a) the Board of the credit union; and

(b) the Regulatory Authority.

Regulations

70. The Minister may, in consultation with the Regulatory Authority and the Boards of all credit unions established under this Act, make regulations for carrying out the purpose and provisions of this Act.

Power of Regulatory Authority to prescribe certain matters by rules

70A. The Regulatory Authority may, in consultation with the Boards of all credit unions, make rules to provide for - Amended by Act 10 of 2015

(a) the rates of fees to be charged by a credit union under section 4(h);

(b) the manner of approval of members of a credit union for election to the Board and Supervisory Committee under section 14(3A);

(c) the procedure for dealing with complaints relating to services provided by a credit union;

(d) the maximum amount that a member may borrow from a credit union under section 39;

(e) the unimpaired capital or assigned capital which a credit union shall at all times maintain in Seychelles under section 48A(1);

(f) the minimum level of the total regulatory capital or the higher percentage of the total value of its assets, which a credit union is to maintain under section 48A(3);

(g) the maximum net open position in any foreign currency or currencies which a credit union is to hold under section 48B;

(h) guidelines concerning the loan loss account under section 51(1);

(i) the requirement concerning classification and evaluation of assets; provisions to be made on the basis of such classification and evaluation against doubtful and non-performing loans; and the time when the earnings on non-performing loans may no longer be accounted for as income except as received in cash under section 53(g).

Transitional provisions

71. (1) All credit unions established under the Co-operatives Act, 1988, are deemed to be established under this Act and the provisions of this Act shall apply to these credit unions.

(2) Notwithstanding subsection (1) regulations and bye-laws of credit unions made under the Co-operatives Act, 1988, to the extent that they are not inconsistent with the provisions of this Act continue in force until amended or replaced by regulations and bye-laws made under this Act.

(3) The Management Committee of a credit union established under the Co-operatives Act, 1988, continues in existence until it is replaced by a Board elected at the credit union's first annual general meeting held in accordance with section 9(1).

Amendment of Act 12 of 2004

72. The Central Bank of Seychelles Act, 2004 is amended in section 30 by adding after the word ''banks'', the words ''and other institutions''.