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SENATE

BILL

AN ACT to provide for the regulation of the financial
business activities of all credit unions and secondary
bodies carrying on the business of a credit union and
for matters related thereto

THE CREDIT UNIONS BILL, 2014

Explanatory Note

(These notes form no part of the Bill but are intended only to indicate its general purport)

The Bill seeks to regulate the financial activities of credit unions and of secondary bodies carrying on the business of a credit union by, *inter alia*, removing credit unions from the portfolio of the Commissioner for Co-operative Development and placing them under the purview of the Central Bank, and to provide for other related matters.

Part I: Preliminary

Clause 1 would set out the short title and provide for the commencement of the Bill.

Clause 2 would provide for the Act to have effect even though it is inconsistent with sections 4 and 5 of the Constitution.

Clause 3 would provide for the definition of certain words and phrases used in the Bill.

Clause 4 would provide for the Bill not to apply to financial institutions as defined in section 2 of the Financial Institutions Act, Chap. 79:09.

Part II: Administration

Clause 5 would prescribe the functions and powers of the Bank under the Bill.

Clause 6 would provide for the Bank to make a written request for certain information from specified persons, in any form and within such period as the Bank may require.

Clause 7 would give the Bank the power to collect statistics in relation to credit union business.

Clause 8 would provide for the Bank to maintain registers inclusive of maintaining separate registers of credit unions to whom the Bank has issued operating certificates to carry on different classes of credit union business in Trinidad and Tobago.

Clause 9 would provide for the Bank to provide a written report to the Minister on an annual basis with respect to the performance of the Central Bank in meeting its objectives under the Act.

Clause 10 would prescribe the duties and powers of the Inspector.

Clause 11 would give the Inspector the power to direct the credit union to advise the Bank on the true financial condition of the credit union or to take all such other measures as he may consider necessary, where an examination of the affairs of a credit union reveals that the credit union is conducting its business in an unlawful, unsafe or unsound manner.

Clause 12 would provide the circumstances under which the Inspector or authorized person may enter the premises of a credit union.

Clause 13 would give the Board, Bank, the Governor and the Inspector the power to delegate any of its powers, functions and duties to any officer, employee or agent of the Bank, or to exercise any of its powers and duties through any officer, employee or agent of the Bank.

Clause 14 would provide for the Governor to keep the Minister informed of all developments and activities which affect the credit union sector of Trinidad and Tobago.

Clause 15 would enable the Minister to make Regulations to give effect *inter alia*, to the purposes and provisions of the Act, subject to negative resolution of Parliament.

Clause 16 would empower the Bank before making Regulations pursuant to clause 15, submit draft Regulations to a credit union and to consult with the credit union on the proposed instrument. The clause would also enable the Minister to promulgate the proposed Regulations or any amendment thereof without submitting them to, or consulting on them with, the relevant persons as required under this provision, where it is urgent to do so, and for the Bank to publish the reasons for this decision.

Clause 17 would empower the Bank to issue Guidelines.

Clause 18 would empower the Bank to issue draft Guidelines or any amendment thereof made pursuant to clause 17 and to consult on the proposed Guidelines with the Commissioner, a

credit union and any other person that may be affected by the proposed Guidelines. The clause would also enable the Bank to issue the proposed Guidelines without issuing them or consulting on them with the relevant persons as required under this provision where it is urgent to do so, but to facilitate such consultations thereafter.

Clause 19 would empower the Minister to amend the Schedules by Order. The clause would also provide for any amendment to the Schedules to be subject to negative resolution of Parliament.

Clause 20 would prohibit any director, officer or employee of the Bank or any person acting under the direction of the Bank from disclosing any information regarding the business or affairs of a credit union or any information regarding a member or other person dealing with a credit union that is obtained in the course of official duties, except as specified in this clause, or as is required under any other written law or order of the High Court.

Clause 21 would provide for supervisory information to be the property of the Bank and for the prohibition from disclosure of such information by a credit union or any other person to whom the information is made available, without the prior written consent of the Bank.

Part III: Operating Certificate of a Credit Union

Clause 22 would provide for the procedures for application for an operating certificate.

Clause 23 would provide for a credit union to display its operating certificate at its registered office.

Clause 24 would prohibit a person or entity from carrying on the business of a credit union unless it holds an operating certificate or, a credit union holding an operating certificate from carrying on business other than the business of a credit union. This clause would also provide for a credit union to conduct non-financial activities subject to the provisions of the Act.

Clause 25 would provide for a credit union to obtain prior written approval from the Central Bank to establish, acquire, relocate, open or close a branch, or to conduct business of a credit union outside of Trinidad and Tobago.

Part IV: Operating Certificate for existing Credit Unions

Clause 26 would provide for the procedure with respect to the issuance of operating certificate to existing credit unions and existing secondary bodies.

Part V: Variation, Restriction and Revocation of an Operating Certificate

Clause 27 would provide for a credit union to apply to the Bank to vary its existing classes of business and for the Bank, on the recommendation of the Inspector, to approve or reject such application.

Clause 28 would detail the circumstances under which the Inspector upon consultation with the Governor may impose or vary restrictions on the operating certificate of a credit union.

Clause 29 would prescribe the procedure to be followed where the Inspector proposes to restrict an operating certificate or, to vary the restrictions on an operating certificate.

Clause 30 would detail the circumstances under which the Central Bank may revoke the operating certificate of a credit union.

Clause 31 would detail the circumstances under which the Inspector may give directions to a credit union.

Clause 32 would provide for the circumstances in which the Bank can cancel the operating certificate of a credit union.

Part VI: Regulation and Supervision of Credit Unions

Clause 33 would provide for a credit union and entity in which a credit union exercises control to submit certain returns to the Bank within such period of time as may be specified by the Bank.

Clause 34 would provide for a credit union to submit audited financial statements to the Central Bank within two months after the coming into force of the Act and, thereafter within three months after the close of its financial year.

Clause 35 would empower the Bank to take such action as it sees fit in accordance with the Act or, to compel a credit union to take a specified course of action or, where upon the examination of a credit union's returns and audited financial statements, the Bank determines that the credit union is financially unstable.

Clause 36 would detail the circumstances in which the Bank or the Inspector can take corrective action against a credit union.

Clause 37 would empower the Bank to engage the services of a suitably qualified accountant to act under the direction of the Bank to determine the financial condition of a credit union, and to act upon such report.

Part VII: Board Members, Officers and Committees

Clause 38 would prescribe the criteria to be satisfied for a person to qualify as a member of the board of a credit union.

Clause 39 would provide the categories of persons debarred from being involved in the management of a credit union.

Clause 40 would detail the duties and responsibilities of the board of a credit union.

Clause 41 would empower the Bank to require a credit union to establish other committees that the Bank considers necessary, taking into account the credit union's risk profile.

Clause 42 would provide for a member of the board, employee or officer of a credit union to declare their interest in a matter before a credit union or the board of a credit union, and to absent himself during the deliberations concerning his declaration of interests.

Clause 43 would prohibit a member of the board, employee or officer of a credit union from engaging in certain activity to prevent situations of the conflict of interests.

Clause 44 would provide for the members of a credit union to appoint an external auditor in accordance with the specified criteria, upon the recommendation of the board.

Clause 45 would provide for a credit union to notify the Bank in writing and to provide reasons, where an external auditor for a credit union is to be replaced.

Clause 46 would detail the procedure to file the audited accounts of a credit union with the Bank.

Clause 47 would prescribe additional audit requirements that must be met by the external auditor of a credit union.

Clause 48 would prescribe the duty of an external auditor of a credit union to report to the board of the credit union and to the Inspector, any transactions or conditions which meet specified criteria, and which he discovers in the ordinary course of an audit.

Clause 49 would provide for communication given to the Bank or the Inspector by a current or former external auditor of a credit union in good faith, not to be considered a contravention of the Act.

Clause 50 would provide the bases for the liability of an auditor of a credit union.

Part VIII: Shares and Deposits

Clause 51 would provide for a credit union to offer an unlimited number of shares to its members but for no member to hold more than one-fifth of the shares of the credit union.

Clause 52 would provide for a credit union to offer permanent shares to its members and would prescribe the status of such permanent shares.

Clause 53 would provide for a credit union to receive a deposit from a member upon terms that it is either for a fixed period of time or withdrawable on demand.

Clause 54 would provide for all shares of a credit union, except permanent shares and withdrawable shares pledged to loans or otherwise encumbered, to be withdrawable on demand or with a period of notice stipulated by the credit union.

Clause 55 would provide for a credit union to issue to each member, at least quarterly, a statement of certain transactions affecting the members' account.

Clause 56 would provide the procedure in relation to dormant accounts.

Clause 57 would provide the circumstances under which a board of a credit union may propose a distribution from equity, and the manner within which that distribution shall be administered.

Part IX: Prudential Requirements

Clause 58 would provide for a credit union to maintain a minimum level of institutional capital as may be prescribed or as may be approved by the Minister upon the recommendation of the Bank.

Clause 59 would provide for a credit union to maintain a minimum level of liquid assets in relation to total liabilities, as may be prescribed.

Clause 60 would empower the Inspector to direct a credit union to increase its capital in excess of the minimum amount and to provide additional liquidity, and would empower the Minister to order a credit union to vary its minimum institutional capital and its liquid asset ratios, notwithstanding clauses 58 and 59.

Clause 61 would provide for the board of a credit union to invest the credit union's funds.

Part X: Loans and Investment of Funds

Clause 62 would prohibit a credit union from making loans to persons who are not members of the credit union and would provide the procedure for the granting of loans by a credit union to its members.

Clause 63 would prohibit a credit union from including interest payable by a borrower on a delinquent loan as income in a credit union's account.

Clause 64 would provide for a credit union to incur credit exposures in excess of the maximum limit of its total institutional capital allowable under the Act.

Clause 65 would prescribe the activities in which a credit union can engage with a related party.

Clause 66 would prohibit a credit union from borrowing except in accordance with the Act.

Clause 67 would provide the grounds upon which a credit union may hold or acquire real estate.

Part XI: Compliance Directions and Injunctive Relief

Clause 68 would empower the Inspector to issue compliance directions to a credit union or any officer, employee or agent of a credit union.

Clause 69 would provide for the Inspector after consultation with the Governor, to seek injunctive relief, or to pursue any other remedy in addition to, or *lieu* of any other form of action authorized under the Act, where the Inspector reasonably believes that a person is in violation of the Act, or is engaged in any activity or course of conduct described under clause 68(1).

Part XII: Judicial Management, Suspension and Liquidation

Clause 70 would detail the procedure to place a credit union or any part of its business under judicial management.

Clause 71 would provide for the High Court to appoint a judicial manager and for an order for the judicial management of a credit union to be subject to the provisions of this section and of sections 68 and 70 to 72.

Clause 72 would provide for the judicial manager of a credit union to file with the High Court and to furnish a copy to the Bank, a report stating the course of action which, in his opinion, is most advantageous to the general interests of the members of a credit union, no later than one year after his appointment.

Clause 73 would empower the High Court on hearing an application made under section 72(3), to make an Order giving effect to the course of action which it considers in the circumstances to be most advantageous to the general interest of the members of the credit union, and for such an Order to be binding on all persons and to have effect notwithstanding anything contained in the bye-laws of the credit union.

Clause 74 would empower the High Court, either if its own motion or on the application of the judicial manager, to cancel or vary, either unconditionally or subject to such conditions as the High Court thinks just, any contract or agreement, other than a contract relating to deposits and shares which the High Court is satisfied is detrimental to the interests of the members of the credit union.

Clause 75 would provide for the judicial manager to be indemnified against any action, claim or demand by, or any liability to, any person in respect of anything done or omitted to be done in good faith, in the exercise of, or in connection with, the exercise of his powers under this Part.

Clause 76 would provide for the judicial manager, the Bank, the credit union or any interested person who, in the opinion of the High Court is entitled to be heard, to apply at any time to the High Court for the cancellation of an order made under clause 71. The clause would also provide for the management of the credit union to lie with the board of the credit union, or with the court-appointed liquidator or receiver, where applicable, upon the cancellation of an order for the judicial management of a credit union.

Clause 77 would empower the Board, upon the advice of the Inspector to order a credit union to suspend business for sixty days, and to direct the Inspector to take charge of the books, records and other documents and assets of the credit union, during the period of suspension, where the Inspector is satisfied that the credit union is unlikely to meet the demands of the depositors of the credit union, or that the credit union's continuation in business is likely to involve a loss to the members or creditors of the credit union.

Clause 78 would provide for involuntary liquidation and would empower the Bank to issue an order to wind-up a credit union, after giving the credit union written notice of this intention to issue such an order and would give the credit union the option to provide a written statement registering its objection to the issue of the winding up notice.

Clause 79 would provide the Bank with the option, notwithstanding clause 78, to petition the High Court for the winding-up of a credit union under the Companies Act.

Clause 80 would provide the procedure for a credit union to voluntarily liquidate and wind-up its affairs, subject to the prior approval of the Bank.

Clause 81 would establish the procedure to address undue delay by a liquidator.

Clause 82 would provide for the reconstruction of a credit union.

Clause 83 would provide for the amalgamation of two or more credit unions, upon the approval of the Bank and by resolution passed by not less than three-fourths of all the members present and voting at a special general meeting.

Clause 84 would provide for a credit union to transfer its assets and liabilities to any other credit union which has agreed to the transfer, subject to the approval of the Bank and by a resolution passed by not less than three-fourths of the members of each credit union present and voting at a special general meeting. The clause would also provide for the cancellation of the registration and the operating certificate of the transferor credit union to be sufficient conveyance to vest the assets and liabilities of the transferor in the transferee.

Clause 85 would provide for a credit union to divide itself into two or more credit unions, subject to the approval of the Bank and by a resolution passed by two-thirds of the members present and voting at a special general meeting.

Clause 86 would prohibit the amalgamation, transfer or division of a credit union unless any person whose interests may be affected by the reconstruction are given three months written notice of the proposed reconstruction, and unless the claims of any creditor against the credit union are first satisfied or where the creditor objects in writing, notwithstanding clauses 83 to 85.

Clause 87 would provide for the registration of new credit unions established pursuant to section 85 to be sufficient to vest the assets and liabilities of the original credit union in the new credit union, in the manner specified in the preliminary resolution.

Clause 88 would provide the procedure for the winding up of a credit union where a petition for winding-up is made by the Inspector to the High Court.

Part XIII: Miscellaneous

Clause 89 would empower the Central Bank to issue a notice to any person who there is reasonable cause to believe, has committed an offence referred to in the first column of Schedule 4, offering that person the opportunity to discharge any liability to conviction in respect of that offence, by the payment of an administrative fine.

Clause 90 would create the offence of financial fraud on members of a credit union and would prescribe a fine of ten million dollars and imprisonment for five years.

Clause 91 would provide additional offences and penalties.

Clause 92 would extend the jurisdiction of the Court to offences committed by an entity in any place at which it has a place of business, and by an individual in any place at which he is for the time being located. The clause would also extend the period within which an offence triable by a Magistrate's Court in Trinidad and Tobago may be tried, to within ten years after the commission of the offence or within eighteen months after the date on which evidence sufficient in the opinion of the Bank to justify the institution of summary proceedings comes to its knowledge.

Clause 93 would provide the procedure for appeals under the Act.

Clause 94 would provide a transitional period within which a credit union that is not in compliance with Schedule 5 on the coming into operation of this Act shall become compliant with that provision in the corresponding period specified in Schedule 5. It also empowers the Central Bank to take action against any credit union that remains non-compliant beyond the transition period.

Clause 95 would provide for consequential amendments to be made to other legislation as prescribed in Schedule 8.

Schedule 1 would prescribe the classes of business activities that a credit union may undertake.

Schedule 2 would prescribe the criteria for an individual or an entity to be considered to be fit and proper to be an officer of a credit union or a member of the board of a credit union.

Schedule 3 would provide the Technical Solvency Test for credit unions.

Schedule 4 would prescribe the offences in respect of which criminal liability on summary conviction may be discharged by payment of an administrative fine.

Schedule 5 would provide the periods within which credit union that has reconstructed is required to transition.

Schedule 6 would prescribe the types of corrective action that the Bank or the Inspector may undertake.

Schedule 7 would prescribe the standards for the prudent operation and conduct of a credit union.

Schedule 8 would set out the consequential amendments to other enactments.

THE CREDIT UNIONS BILL, 2014

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SCHEDULE 8

BILL

AN ACT to provide for the regulation of the financial business activities of all credit unions and secondary bodies carrying on the business of a credit union and for matters related thereto

[, 2015]

Preamble

WHEREAS it is enacted *inter alia*, by subsection (1) of section 13 of the Constitution that an Act of Parliament to which that section applies may expressly declare that it shall have effect even though inconsistent with

sections 4 and 5 of the Constitution and, if any such Act does so declare, it shall have effect accordingly:

And whereas it is provided by subsection (2) of the said section 13 of the Constitution that an Act to which this section applies is one the Bill for which has been passed by both Houses of Parliament and at the final vote thereon in each House has been supported by the votes of not less than three-fifths of all the members of that House:

And whereas it is necessary and expedient that the provisions of this Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution:

Enactment ENACTED by the Parliament of Trinidad and Tobago as follows:

PART I PRELIMINARY

Short title and commencement 1. This Act may be cited as the Credit Unions Act, 2014 and shall come into operation on such day as is fixed by the President by Proclamation.

Act inconsistent with Sections 4 and 5 of the Constitution 2. This Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution.

Interpretation 3. In this Act—

“affiliate” means an entity where the board and more than fifty per cent of the membership of that entity are the same as that of the credit union;

“authorised individual, entity or society” means an individual or an entity authorized in writing by the Bank;

“Bank” means the Central Bank of Trinidad and Tobago established under the Central Bank Act;

“Board” means the Board of the Central Bank;

“board of the credit union” means the board of management or other directing body to whom the management of the affairs of a credit union is entrusted;

- “business of a credit union” means the classes of business activities described in Schedule 1;
- “business day” means any day on which institutions licensed under the Financial Institutions Act are open for the conduct of business in Trinidad and Tobago; Chap. 79:09
- “bye-laws” means the bye-laws of a credit union approved by the Commissioner for Co-operative Development under section 17 of the Co-operative Societies Act; Chap. 81:03
- “capital” means the total of undivided surplus or retained earnings, permanent shares and reserve funds set up by a credit union;
- “compliance directions” means directions issued by the Inspector under section 68;
- “Class I business activities” means the business activities listed as Class I business activities in Schedule 1;
- “Class II business activities” means the business activities listed as Class II business activities in Schedule 1; Schedule 1
- “Commissioner” has the meaning assigned to it under section 2 of the Co-operative Societies Act;
- “control” means the power of an individual, entity or society acting either alone or with a relative, related party or other individual or entity by an agreement, or otherwise, to—
- (a) exercise more than fifty per cent of the voting rights at any meeting of shareholders of a company or unincorporated body excluding a credit union;
 - (b) elect a majority of the directors of a company or unincorporated body excluding a credit union;

- (c) ensure that the business and affairs of a credit union, company or unincorporated body is conducted in accordance with his wishes; or
- (d) exercise dominant influence over the conduct of the business and affairs of a credit union, company or unincorporated body,

and the term “controlling shareholder” shall be construed accordingly;

“credit committee” has the meaning assigned to it under section 2 of the Co-operative Societies Act;

“credit exposure” means—

- (a) the amount at risk arising from the extension of credit by a credit union or arising from investments including without limitation equities, bonds and other debt instruments, guarantees, participations and acceptances made by a credit union;
- (b) other claims on a counterparty including actual and potential claims;
- (c) contingent liabilities arising in the normal course of business, and which would arise from the drawing down in full of undrawn advised facilities, whether revocable or irrevocable, conditional or unconditional, that the credit union has committed itself to provide; or

(d) deposits placed with entities in which the credit union is a significant or controlling shareholder;

“credit union” means a financial co-operative society which—

(a) has as its main objects the promotion of thrift and the creation of a source of credit for its members for provident and productive purposes; and

(b) is registered under section 17 of the Co-operative Societies Act and is the holder of a valid operating certificate;

“deposit” means a sum of money paid to a credit union, by a member, whether or not evidenced by any entry in a record of the credit union receiving the sum of money but evidenced by an official receipt or statement from the credit union, on terms under which the sum of money will be repaid or transferred to another account, with or without interest or a premium, either on demand or at a time or in circumstances agreed to by, or on behalf of the member and that credit union;

“entity” means a company, or any trust, partnership, fund or other unincorporated body, but does not include an individual;

“existing credit union” means a society which, immediately before the coming into operation of this Act, is registered under section 17 of the Co-operative Societies Act;

“financial co-operative” means a credit union or any other co-operative society registered by the Central Bank or the Securities and Exchange Commission;

“financial entity” means an insurer, a person licensed under the Financial Institutions Act, and any other entity that carries on a business that includes the provision of any financial service and includes the holding company of a financial entity;

“financial service” includes the business of banking, business of a financial nature, the business of a credit union, insurance business, the business of securities, and the management and administration of pension fund plans;

“fit and proper criteria” means the criteria listed in Schedule 2;

“Governor” means the Governor of the Central Bank;

“Inspector” means the Inspector of Financial Institutions appointed pursuant to section 7 of the Financial Institutions Act and includes any individual appointed to act temporarily for him;

“institutional capital”, in relation to a credit union, means the institutional capital reserves, retained earnings and where applicable, permanent shares and any other capital account approved by the Bank;

“institutional capital reserve” means any fund set aside by a credit union solely for institutional capital purposes;

“key operational staff” means any individual or entity appointed by the board with responsibility for—

- (a) the general management of a credit union;
- (b) the financial records of a credit union; or
- (c) the investment business activities of a credit union;

“large exposure” means the aggregate of all credit exposures to any single entity, individual, member or related party which amounts to twenty-five per cent or more of the total institutional capital of a credit union;

“liquid assets” means the total amount of funds that are—

(a) in the form of cash; or

(b) any other instrument or investment that can be converted into cash within one year with little or no loss in value;

“member” means an individual or society joining in the application for the registration of a society and an individual or society admitted to membership after registration in accordance with the bye-laws of that society, and holding at least one share in the society;

“Minister” means the Minister to whom responsibility for finance is assigned;

“non-financial co-operative society” has the meaning assigned to it under section 2 of the Co-operative Societies Act;

“non-financial activity” means any activity which does not consist, either wholly or substantially of the business activities as listed in Schedule 1;

“officer” includes—

(a) the President;

(b) the Secretary;

(c) the Treasurer;

(d) any other member of the board of a credit union; and

(e) a member of any committee required to be established in accordance with this Act or the Co-operative Societies Act;

“operating certificate” or “certificate” means the certificate issued to a credit union in accordance with sections 22 and 26 of this Act;

“permanent share” means a share issued by a credit union to its members only, that may not be purchased by the credit union nor redeemed or withdrawn except upon the winding up of the credit union;

“prudential criteria” means the criteria and standards established under this Act for the purpose of setting limits and constraints on credit unions for the protection of members and potential members from undue loss and for ensuring the safety and soundness of the credit union sector, as set out in Schedule 7;

“qualified accountant” means an individual who is a member of the Institute of Chartered Accountants of Trinidad and Tobago or such other professional association as may be approved by the Central Bank;

“receiver” has the meaning assigned to it under the Companies Act;

“receiver-manger” has the meaning assigned to it under the Companies Act;

“Regulations” means the Regulations made under section 15;

“related party” means—

(a) an officer of a credit union;

(b) key operational staff of a credit union;

(c) a relative of an officer or of key operational staff of a credit union;

- (d) an individual or an entity with a significant interest in the shares of the credit union;
- (e) an entity controlled by an individual referred to in paragraph (a), (b), or (c);
- (f) an entity in which an individual referred to in paragraph (a), (b), (c) or an entity referred to in paragraph (d), has a substantial investment; and
- (g) any other individual or entity whose relationship to another individual, or another entity is such that in the opinion of the Bank, that relationship may cause a conflict of interest or may pose a regulatory risk;

“relative”, in relation to an individual, means—

- (a) the spouse, including a cohabitant as defined in the Cohabitation Relationships Act Chap. 45:55;
- (b) a parent;
- (c) a brother;
- (d) a sister; and
- (e) a child (including adopted child, step-child and child born of a cohabitational relationship);

“reserve fund” means any monies set aside in a capital account by a credit union for a special purpose, in accordance with the bye-laws of the credit union;

“secondary body” means a society whose members consist exclusively of societies or a combination of societies and individuals;

“significant shareholder” means an entity, individual or credit union who either alone or with one or more related parties is entitled, whether by agreement or otherwise, to exercise twenty per cent or more of the voting power at any general meeting of the credit union, company, unincorporated body or other society and “significant interest” shall be construed accordingly;

“society” means a financial or non-financial co-operative society registered or deemed to have been registered under section 17 of the Co-operative Societies Act;

“statutory committee” means—

- (a) the credit committee;
- (b) the supervisory committee; or
- (c) any other committee which the Bank requires a credit union to establish in accordance with section 41;

“substantial investment” means an interest or investment held by a credit union in any entity which is, or will be equal to, or greater than twenty per cent of the voting securities of, or equity interests in the entity or such other percentage as may be prescribed by regulations;

“supervisory committee” has the meaning assigned to it under section 2 of the Co-operative Societies Act;

“supervisory information” means a record created or obtained by the Bank in connection with the performance of its responsibilities under this Act, such as a record concerning supervision, authorisation, or examination of a credit union or enforcement actions with respect to a credit union, and includes any communication or correspondence between

the credit union and the Bank arising from its performance of such responsibilities;

“unsafe or unsound practice” means any action or lack of action that is contrary to generally accepted standards of prudent operation and conduct including those standards outlined in Schedule 7; and Schedule 7

“withdrawable share” means any share issued by a credit union other than a permanent share.

4. This Act does not apply to financial institutions as Application defined in section 2 of the Financial Institutions Act.

PART II

ADMINISTRATION

5. (1) The Bank shall be responsible for— Functions and powers of the Bank
- (a) the general administration of this Act;
 - (b) determining the financial soundness of credit unions;
 - (c) supervising credit unions to ensure their compliance with this Act;
 - (d) maintaining an appropriate level of protection for members’ deposits and shares; and
 - (e) promoting compliance of credit unions with any written law for the prevention of money laundering and terrorist financing including the Proceeds of Crime Act, the Anti-Terrorism Act, and the Financial Intelligence Unit of Trinidad and Tobago Act.

(2) Subject to this Act, in the discharge of its responsibilities pursuant to this section, the Bank may—

- (a) issue, vary, restrict or revoke operating certificates;

- (b) establish prudential criteria to be met by credit unions;
- (c) request information from credit unions;
- (d) perform assessments of the risk profile and the safety and soundness of a credit union;
- (e) conduct on-site examinations of credit unions;
- (f) conduct continuous off-site assessments of the financial condition and performance of credit unions and of their compliance with this Act;
- (g) issue guidelines to promote compliance with any of the provisions of this Act;
- (h) approve recommendations from the Inspector; and
- (i) take any other action deemed necessary by the Bank to ensure the safety and soundness of the credit union sector in accordance with this Act.

Power of Bank to
request information

6. (1) The Inspector may require—

- (a) a credit union or any of its employees or agents;
- (b) an entity or society in which a credit union has a proprietary ownership interest;
- (c) an entity or society that is a related party;
- (d) a present or former director, officer, auditor or key operational staff of a credit union; and
- (e) a present or former director, officer, auditor, controlling shareholder or significant shareholder or key operational staff of any entity or society referred to in paragraphs (b) and (c),

to furnish such information in such form and within such period of time as the Bank may require.

(2) The Inspector may—

- (a) require verification from the auditor of a credit union or any company, unincorporated body or society referred to in subsection (1) of the accuracy of information submitted pursuant to that subsection;
- (b) require an officer or key operational staff of a credit union, to supply, within such time as may be specified, any information relating to the credit union or any related party, individual or entity over which the credit union or directors, officers or key operational staff of the credit union have control; and
- (c) verify the accuracy of the information obtained pursuant to paragraphs (a) and (b) by inspecting the credit union, company or unincorporated body or society.

(3) A requirement made under subsection (1) or (2) shall be in writing.

(4) The Inspector may exercise the powers under subsection (1) in relation to any individual who is elected as a member of the board of a credit union or appointed as an officer of a credit union to determine whether the individual is a fit and proper individual in accordance with the criteria set out in Schedule 2 to Schedule 2 hold the particular position that he holds.

7. (1) The Bank shall collect statistics in relation to credit union business. Bank to collect statistics

(2) Every credit union shall, for the purpose of enabling the Bank to collect statistics referred to in subsection (1), furnish the Bank with information in such form and at such times as specified by the Bank.

8. (1) The Bank shall maintain such registers as may be required or authorised to be maintained under this Act and the Regulations, and in particular, shall Bank to maintain registers

maintain separate registers of credit unions to whom the Bank has issued operating certificates to carry on the various classes of credit union business in Trinidad and Tobago pursuant to sections 22 and 26(1).

(2) No later than the thirty-first day of March in each year, the Bank shall publish in the *Gazette* and in at least two daily newspapers in circulation in Trinidad and Tobago and by electronic or any other means the Bank thinks appropriate, a list of credit unions and secondary bodies authorised to carry on credit union business in Trinidad and Tobago.

Annual report

9. The Bank shall provide a written report to the Minister on an annual basis with respect to the performance of the Central Bank in meeting its objectives under this Act.

Duties and powers of
Inspector

10. (1) The Inspector shall—

- (a) examine all applications for approvals to be granted or issued under this Act and make recommendations to the Bank;
- (b) make or cause to be made, such on-site or other examination and inquiry into the affairs or business of each credit union as he considers necessary or expedient, for the purpose of satisfying himself that the provisions of this Act are being observed and that the credit union is in a sound financial condition;
- (c) issue such directions as he thinks fit;
- (d) take corrective or remedial actions to ensure compliance with the Act; and
- (e) make recommendations to the Bank,

and take and maintain such steps or proceedings as may be necessary for the winding up of a credit union subject to the direction of the Bank and this Act.

(2) In the performance of his duties under this Act, the Inspector shall—

- (a) have access to all books, records, accounts, vouchers, minutes of meetings, securities and any other documents, including

documents stored in electronic form, of any credit union; and

(b) have the right to call upon any member of the board of a credit union, or any officer, external auditor or employee of the credit union for any information or explanation he considers necessary for the due performance of his duties.

(3) A credit union or an individual or an entity referred to in subsection (2) shall provide access to the Inspector and shall furnish him with such information as he may require within the time specified by him.

(4) No individual or entity shall obstruct another individual or entity from providing access to the Inspector or from furnishing information required by the Inspector, pursuant to subsection (3).

(5) Where an individual or an entity fails to comply with subsection (3), the Inspector may, in addition to any other action that may be taken under this Act, apply to the High Court for an order requiring the individual or entity to comply, and on such application, the Court may so order or make any other order it thinks fit.

(6) Where the provisions of this Act require anything to be done within a specified period of time and the individual or entity who is required to comply within the time limit prescribed is unable to do so because of the occurrence of *force majeure* or industrial unrest, riot, public disorder or any unnatural disaster or event, the Inspector shall grant such extension of time as may be reasonably sufficient for the doing of the act or thing.

11. (1) Where an on-site examination or off-site monitoring of the affairs of a credit union reveals that the credit union is conducting its business in an unlawful, unsafe or unsound manner or is otherwise in an unsound condition, the Inspector may—

(a) direct the credit union to engage an independent accountant or firm of accountants to perform or conduct a review of

its financial statements and accounting records and advise the Bank and the credit union of the true financial condition of the credit union; and

(b) take all such other measures as he may consider necessary in accordance with section 36.

(2) Where a credit union—

(a) does not meet the ratio of one hundred and eleven per cent in the solvency test set out in Schedule 3; or

(b) meets the ratio of one hundred and eleven per cent in the solvency test but—

(i) is unable to meet its obligations as they become due;

(ii) has ceased paying its current obligations in the ordinary course of business; or

(iii) the aggregate of its property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all its obligations,

the Bank may take corrective action in accordance with section 36.

(3) For the purposes of subsection (2), a reference to the obligations of a credit union includes a reference to its ability to pay deposits or shares without undue delay.

(4) Without prejudice to sections 28 and 30, where the Inspector is satisfied that a credit union has a technical solvency ratio of seventy per cent or less, the Inspector shall direct the credit union in writing to comply with subsection 13(b) within a period of sixty business days.

(5) Where the credit union fails to comply with subsection (4), the Inspector shall advise the Board accordingly.

(6) The Board shall, after receiving the advice of the Inspector under subsection (5), order the credit union to suspend business forthwith and—

- (a) where there are reasonable grounds to believe that the circumstances leading to the order of suspension may be rectified, direct the Inspector to make an application for an order of judicial management in accordance with section 70; or
- (b) where there are no reasonable grounds to believe that the circumstances leading to the order of suspension may be rectified, direct the Inspector to make an application to wind up such credit union in accordance with sections 78 and 79.

(7) Where the Board orders that a credit union's business be suspended under subsection (6), it may also direct the Inspector to take charge of all the books, records, other documents, including electronically stored information, and assets of the credit union and to take all such measures as may be necessary to—

- (a) prevent the continuation in business by that credit union during the period of suspension; and
- (b) preserve the assets of the credit union.

(8) Notwithstanding subsections (6) and (7), the Board may also direct the Inspector to take all such measures as may be necessary to collect—

- (a) loan payments; and
- (b) all receivables due and owing to the credit union during the period of suspension,

and any monies so collected shall be held in escrow during the period of suspension.

(9) All costs incurred by the Inspector under subsections (7) and (8) shall be treated as a loan by the Bank to the credit union and shall be repaid out of the funds of the credit union in the event that the credit union is liquidated.

(10) An order made under subsection (6) shall cease to have effect on the appointment of a judicial manager or liquidator, as the case may be.

(11) Any person who directly or indirectly prevents the Inspector, any person authorized in writing by the Bank or a designated member of staff of the Bank from—

- (a) entering the premises of a credit union;
- (b) having access to its books, records or other documents, including electronically stored information; or
- (c) having the items in paragraph (b) made readily available,

during a period of suspension, commits an offence and is liable on summary conviction to a fine of five million dollars and to imprisonment for five years.

(12) Where the Board suspends the business of a credit union under this section, all claims, actions and the execution of all writs, summonses and other processes against the credit union shall, by virtue of this section, be stayed and shall not be proceeded with, without the prior leave of the High Court or unless the High Court directs otherwise.

(13) A credit union which at the commencement of this Act does not meet the solvency ratio of one hundred and eleven per cent specified in subsection (2), shall attain a solvency ratio of—

- (a) eighty per cent within the first year; and
- (b) one hundred and eleven per cent within two years,

following the commencement of this Act.

(14) Subsections (4) to (11) shall not apply to a credit union during the period specified in subsection (13)(a).

12. (1) The Inspector or an authorised individual or Powers of entry entity may, subject to subsection (3), enter the premises of any credit union—

- (a) to inspect any books, records, accounts, vouchers, minutes of meetings, securities and any other documents, including documents stored in electronic form pursuant to this Act and ask any relevant questions and to make any notes or take any copies of the whole or any part of any such record; and
- (b) to determine whether there is compliance with this Act.

(2) Where the books, records, accounts, vouchers, minutes of meetings, securities and any other documents including documents stored in electronic form referred to in section 10(2) are not in the possession of the credit union or any member of the board of a credit union, officer, external auditor or employee of any such credit union, the Inspector or an authorised individual or entity shall have the access set out in section 10(2) except that where the individual or entity in possession is in such possession by way of a lien, and the Inspector or an authorised individual or entity, without prejudice to the lien, shall have access to the books, records, accounts, vouchers, minutes of meetings, securities and any other documents, including documents stored in electronic form.

(3) Where the Inspector or an authorised individual or entity, in the exercise of the powers conferred on him under subsection (1) is—

- (a) prevented from exercising those powers;

(b) required to exercise the powers outside of normal working hours; or

(c) required to exercise the powers urgently,

he may apply *ex parte* to a Judge of the High Court for a warrant to enter the premises of the credit union stating the grounds for the exercise of the power.

(4) Where it is shown to the satisfaction of a Judge, on sworn information in writing, that it is necessary to enter the premises of a credit union for any purpose stated in subsection (3), the Judge may by warrant under his hand authorise entry on the premises of the credit union.

(5) Where the Inspector or an authorised individual or entity enters any premises by virtue of this section he may take with him any other individual or entity that in his opinion is necessary to effect the purpose of the entry.

(6) A warrant issued under this section shall continue in force for such reasonable time as may be necessary to effect the purpose for which it was issued.

(7) An authorised individual or entity shall upon initial entry and in response to any later requests, produce proof of his identity as an authorised individual or entity to any individual or entity in relation to whom he is about to exercise, is exercising or has exercised the power of entry under this Act.

Scope of powers of the Board, Bank, Governor and Inspector, delegation and appointments

13. (1) In the exercise of its or his functions, powers and duties under this Act, the Bank, the Governor or the Inspector may—

(a) delegate any such function, power or duty to; and

(b) exercise any of its or his powers and duties through,

any officer, employee or agent of the Bank.

(2) The Bank may, on such terms and conditions as it thinks fit, appoint or engage the services of suitably qualified individuals or entities for the proper administration of the Act.

(3) The Bank shall, whenever it considers it necessary, cause arrangements for the services of the external auditor of the credit union or any other competent individual or entity to be made available, at the expense of the credit union, for the purpose of advising the Inspector on matters arising under this Act.

(4) The Bank may, on the advice of the Inspector, pay the costs that may be incurred in arranging for the services of the external auditor but such costs shall be recoverable from the credit union.

(5) The Board may delegate in writing any of its functions under this Act to a committee appointed by the Board comprising a minimum of three members of the Board.

14. The Governor shall keep the Minister informed of all developments and business activities which affect the credit union sector of Trinidad and Tobago. ^{Governor to keep Minister informed}

15.(1) The Minister may, on the recommendation of the Bank, make regulations for the purpose of giving effect to the provisions of this Act and in particular but without prejudice to the generality of the foregoing, such regulations may contain provisions relating to— ^{Regulations}

- (a) prudential criteria;
- (b) operating certificates; and
- (c) any matter required to be prescribed under this Act.

(2) Regulations made under subsection (1) shall be subject to negative resolution of Parliament.

16.(1) Subject to subsection (2), before the making of any regulations pursuant to section 15, the Bank shall submit the proposed regulations in draft form to credit unions and other affected individuals and entities. ^{Draft regulations}

(2) Where, in the opinion of the Governor after consultation with the Inspector, any matter proposed to be dealt with in regulations or by amendment thereof has become urgent, the Minister may proceed to make regulations under section 15 or amendment thereof, without following the process referred to in subsection (1), and the Bank may subsequently consult with the credit unions for a period of twenty days.

(3) Regulations made under subsection (2) shall continue to have effect unless replaced by regulations proposed pursuant to subsection (1).

Guidelines

17.(1) The Bank may issue guidelines to—

- (a) facilitate compliance with this Act;
- (b) enable the Bank to meet its objectives; or
- (c) aid compliance with the Proceeds of Crime Act, the Anti-Terrorism Act, or any other written law in relation to the prevention of money laundering and combating the financing of terrorism, which may be in force from time to time.

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Chap. 12:08

(2) Contravention of a guideline referred to in subsection (1) shall not constitute an offence, but this shall not prevent the Bank or the Inspector from taking action under section 68.

Consultations on
guidelines

18.(1) Before making or amending guidelines referred to in section 17, the Bank shall issue draft guidelines or draft amendments thereof and shall consult with the credit unions.

(2) Where, in the opinion of the Governor after consultation with the Inspector, any matter proposed to be dealt with in guidelines or by an amendment thereof has become urgent, the Bank shall proceed to issue the guidelines or amendment thereof without following the process referred to in subsection (1), and may subsequently consult with the credit unions.

(3) Guidelines made under subsection (2) shall continue to have effect unless replaced by guidelines issued pursuant to subsection (1).

19. (1) Subject to subsection (2), the Minister may, by Order, on recommendation of the Bank, amend the Schedules to this Act. Amendment of Schedules

(2) Any amendment to Schedule 4 shall be subject to negative resolution of Parliament.

20. (1) Except as is provided under subsections (2) to (5), or as is required under any written law or order of the High Court, a director, officer or employee of the Bank or individual or entity acting under the direction of the Bank shall not disclose— Prohibition against disclosure

- (a) any information regarding the business or affairs of a credit union; or
- (b) any information regarding a member or other individual or entity dealing with a credit union,

that is obtained in the course of official duties.

(2) The Bank or an individual or an entity authorised in writing by the Bank may disclose the information referred to in subsection (1), in writing, to—

- (a) the Commissioner and any local or foreign regulatory agency or body that regulates credit unions and financial entities, for purposes related to such regulation;
- (b) any entity providing insurance for deposits and shares for members of credit unions and consumers of financial services in Trinidad and Tobago for purposes related to its operations; or
- (c) the Financial Intelligence Unit established under the Financial Intelligence Unit of Trinidad and Tobago Act,

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if the Bank is satisfied that the information will be treated as confidential by the individual, agency or body to whom it is disclosed and used strictly for the purpose for which it is disclosed.

(3) The Bank may enter into a Memorandum of Understanding with any individual or entity mentioned in subsection (2) with respect to sharing information, but the absence of such Memorandum of Understanding shall not prevent the disclosure of appropriate information by the Bank pursuant to subsection (2).

(4) Subject to subsection (5), an officer or employee of the Bank, in response to a written request, may disclose, at such times and in such manner as it deems appropriate, information obtained by it under this Act.

(5) The information which may be disclosed under subsection (4) shall be restricted to information which—

- (a) is contained in any return, statement or other document required to be filed with the Bank pursuant to this Act and the Regulations and Guidelines made under this Act; or
- (b) has been obtained as a result of any industry-wide or sectoral survey conducted by the Bank in relation to an issue or circumstance that could have an impact on the financial condition of credit unions or the financial system of Trinidad and Tobago.

(6) Where the Bank determines that the disclosure of information, in addition to that referred to in subsections (4) and (5), concerning a credit union, would be to protect the interests of—

- (a) the financial system of Trinidad and Tobago; or
- (b) the members or creditors of such credit union,

the Bank or any individual or entity acting under the direction of the Bank, may disclose such information by publication in the *Gazette*, and in at least two daily newspapers in circulation in Trinidad and Tobago and by electronic or any other means that the Bank considers appropriate.

(7) The Bank may publish information relating to the credit union sector including statistics collected under section 7, so long as the publication does not disclose details regarding any particular credit union or credit union member.

(8) This section does not apply to information which at the time of the disclosure is, or has already been made available to the public from other sources or to information in the form of a summary or collection of information so framed as not to enable information relating to any particular individual to be ascertained from it.

(9) No action shall lie against the Bank or any individual or entity acting under the direction of the Bank for the disclosure of information authorised under this section.

21. Supervisory information is the property of the Bank and shall not be disclosed by a credit union or any other individual or entity to whom the information is made available without the prior written consent of the Bank.

PART III

OPERATING CERTIFICATE OF A CREDIT UNION

22. (1) Subject to section 26, an individual or an entity that wishes to carry on the business of a credit union, on or after the coming into operation of this Act, shall apply to the Commissioner to be registered as a financial co-operative society with the words “credit union” in its name and to the Bank for an operating certificate.

(2) An individual or an entity that is desirous of becoming a secondary body with the intention of carrying on any of the business activities listed in Schedule 1, shall apply to the Commissioner to be registered as a financial co-operative society with the words “credit union” in its name and to the Bank for an operating certificate.

(3) The application for an operating certificate shall be in the prescribed form.

(4) The Bank may approve or reject an application made under this section, on the recommendation of the Inspector.

(5) A credit union which has been issued an operating certificate under subsection (8) shall engage in Class I business activities.

(6) A credit union shall not carry out Class II business activities without the approval of the Bank.

(7) The Bank shall take into account the risk, characteristics and complexity of the business activities described in Class II business activities of Schedule 1 when making a determination on an application.

(8) The Bank shall upon its approval of an application, issue to the applicant an operating certificate signed by the Governor.

(9) An operating certificate may contain such terms and conditions as the Bank considers appropriate taking into account the particular circumstances of the credit union.

(10) Where the Bank and the Commissioner approve the application referred to in subsections (1) and (2), the registration and operating certificate will bear the same date of issue.

(11) Notice of the issuance of an operating certificate by the Bank shall be published in the *Gazette*, and in at least two daily newspapers in circulation in Trinidad and Tobago and by electronic or any other means that the Bank considers appropriate.

(12) Where the Bank refuses to grant an operating certificate, the Bank shall give reasons for the refusal to the applicant in writing within fourteen days of the date of refusal.

(13) Where a credit union is closed or relocated, the credit union shall return the original operating certificate to the Bank within thirty days of closing or relocating.

23. A credit union shall display its operating certificate at its registered office. Display of operating certificate

24. (1) No individual or entity shall—

(a) carry on the business of a credit union without a valid operating certificate; or Offence of carrying on the business of a credit union without an operating certificate, etc.

(b) having obtained an operating certificate, carry on any business other than the business of a credit union that it is approved to do pursuant to section 22.

(2) Notwithstanding subsection (1), where the Bank has reasonable grounds to believe that an individual or an entity is carrying on any aspect of the business of a credit union without a valid operating certificate, it may require information from, inquire into and examine the affairs of the individual or entity to determine whether the individual or entity is conducting the business activities and may issue a compliance direction under section 68, to cease the activity.

(3) An individual or an entity shall comply with any request made by the Bank pursuant to subsection (2).

(4) Notwithstanding subsection (1), the Bank may allow a credit union to conduct non-financial business activities subject to any requirements under the Act.

(5) Where a credit union is conducting non-financial business activities that exceed the limits set out in this Act, it shall transfer those business activities to—

(a) a non-financial co-operative society that is set up by the membership of the credit

union which may be an affiliate of the credit union; or

(b) any other form of business enterprise that is set up by the membership of the credit union.

(6) A credit union may allocate to an affiliate or another non-financial co-operative society, funds for—

(a) start-up costs from its net surplus; and

(b) ongoing operating expenses from its surplus,

provided that all conditions for distribution of surplus set out in section 57(1) and all prudential criteria of this Act are met prior to the allocation of these funds.

(7) The operating expenses of any non-financial co-operative or other business entity established by the credit union, shall not be reflected as expenses of the credit union but as expenses of the non-financial co-operative society or other entity.

Branches

25. (1) A credit union shall not, without at least seven days prior notice in writing to the Bank, establish, acquire, relocate or open or close a branch.

(2) A credit union wishing to conduct business of a credit union outside of Trinidad and Tobago shall first obtain the written approval of the Bank.

PART IV

OPERATING CERTIFICATE FOR EXISTING CREDIT UNIONS

Issuance of operating certificate to existing credit unions

26. (1) Subject to subsection (3), the Central Bank shall issue an operating certificate to an existing credit union.

(2) An existing credit union that is issued an operating certificate pursuant to subsection (1), is deemed to operate under this Act.

(3) The Central Bank shall not issue an operating certificate to the following existing credit unions:

- (a) existing credit unions that are in the process of being liquidated by the Commissioner;
- (b) existing credit unions in receivership; or
- (c) credit unions that are in the process of being deregistered by the Commissioner.

(4) Every existing credit union to whom an operating certificate has—

- (a) been issued, shall submit a copy of the following documents:
 - (i) proof of registration as a credit union under the Co-operative Societies Act;
 - (ii) the current bye-laws of the credit union approved by the Commissioner;
 - (iii) a current list of officers of the credit union;
 - (iv) the annual budget for the current year; and
 - (v) the audited financial statements or annual reports for each of the three years prior to the coming into operation of this Act,

to the Bank; or

- (b) not been issued, shall notify the Inspector in writing that the credit union has not been issued an operating certificate,

within two months of the coming into operation of this Act.

(5) An existing credit union that fails to notify the Inspector pursuant to subsection (4)(b) is deemed to be carrying on business without a valid operating certificate and the provisions of section 24 shall apply.

(6) Where an existing credit union shows good cause for not submitting statements pursuant to subsection 4(a)(v), the Bank shall accept the credit union's three most recently audited financial statements or annual reports.

(7) Notwithstanding subsection (6), the board of an existing credit union referred to in that subsection shall cause to be prepared and filed with the Central Bank the information referred to in section 4(a)(v) within twelve months of the coming into operation of this Act.

(8) Within four months of the coming into operation of this Act, the Bank shall publish a list of the credit unions that have complied with subsections (4) and (6) in the *Gazette* and in at least two daily newspapers in circulation in Trinidad and Tobago and by electronic or any other means.

(9) Where an existing credit union fails to comply with subsections (4) and (6), the Bank shall revoke the operating certificate unless the existing credit union shows good cause within thirty days of publication of the list why the certificate should not be revoked.

(10) Where an existing credit union does not show good cause pursuant to subsection (9), the Bank shall publish the revocation of the operating certificate in a notice in the *Gazette* and in at least two daily newspapers in circulation in Trinidad and Tobago and by electronic or any other means and revocation shall be effected by this notice.

(11) Where an existing credit union can show good cause pursuant to subsection (9), it will retain the operating certificate, be placed on a revised list of existing credit unions which have complied with subsections (4) and (6), and the list shall be published in the *Gazette* and in at least two daily newspapers in circulation in Trinidad and Tobago and by electronic or any other means within nine months of the coming into operation of the Act.

(12) A secondary body listed on the Register of Societies under section 3 of the Co-operative Societies Act, prior to the commencement of this Act, and determined by the Bank to be carrying on the business of a credit union, shall be deemed to operate under the Act and be issued an operating certificate.

(13) A secondary body that is issued an operating certificate shall be subject to this Act in the same manner as a credit union and to any special requirements as the Bank may determine.

(14) Subject to subsection (15), the Minister may by Order on the recommendation of the Bank, exempt from the provisions of this Act, any society that engages in the following business activities:

- (a) the issuance of shares;
- (b) the granting of loans; or
- (c) the making of investments.

(15) A society engaged in the taking of deposits shall not be exempted from the provisions of this Act.

PART V

VARIATION, RESTRICTION AND REVOCATION OF AN OPERATING CERTIFICATE

27. (1) A credit union which has been issued an operating certificate by the Bank shall not be permitted to vary its existing business activities unless it is, in the opinion of the Bank, in compliance with the provisions of this Act. Request to vary existing classes of business activities in an operating certificate

(2) Subject to subsection (1), where a credit union wishes to—

- (a) conduct Class II business activities where it was not previously approved to do so; or
- (b) vary its existing Class II business activities,

it shall apply to the Bank for a variation of its operating certificate as prescribed in the Regulations.

(3) On an application made under this section, the Bank may, on the recommendation of the Inspector, approve or reject the application.

(4) Where the Bank approves an application made under subsection (2) it shall, upon its approval of an application for variation of the classes of business activities, issue to the applicant a new operating certificate signed by the Governor.

(5) The Bank may, as a condition of granting approval for variation of a credit union's classes of business activities, vary its institutional capital and other prudential requirements and establish additional criteria.

(6) Where a credit union has been granted a variation of the Class II business activities on any condition imposed by the Bank, and the credit union fails to comply with that condition, the Bank may issue directions as it thinks necessary in accordance with section 29.

(7) A credit union shall comply with a direction issued by the Bank under this section.

(8) Where the Bank refuses to vary the Class II business activities of a credit union, the Bank shall give reasons for the refusal to the applicant in writing within fourteen days of the date of its refusal.

Restriction of an
operating certificate
by the Inspector

28. (1) The Bank may impose or vary restrictions on the operating certificate of a credit union where—

- (a) the credit union has failed to comply with any obligation imposed under this Act;
- (b) the credit union has failed to comply with any requirement, prohibition, compliance direction or any other direction issued by the Inspector;

- (c) the credit union has provided the Bank with false, misleading, inaccurate or incomplete information;
- (d) the credit union has failed to comply with any obligation imposed on it by any written law for the prevention of money laundering or terrorist financing including the Proceeds of Crime Act, the Anti-Terrorism Act, and the Financial Intelligence Unit of Trinidad and Tobago Act;
- (e) in the opinion of the Inspector, the interests of members of the credit union are in any way threatened, whether by the manner in which the credit union is conducting or proposes to conduct its affairs or for any other reason;
- (f) the capital or liquidity of the credit union is inadequate or insufficient to meet its liabilities;
- (g) any of the standards of prudent operation and conduct as outlined in Schedule 7, has not been fulfilled or is unlikely to be or may not be fulfilled in respect of the credit union;
- (h) a receiver or receiver-manager of the credit union has been appointed;
- (i) the holder of any debenture secured by a charge has taken possession of any part of the property of the credit union comprised in or subject to the charge; or
- (j) in the opinion of the Inspector, the credit union is unable to pay deposits or shares to its members without undue delay.

(2) The Inspector may impose or vary restrictions on an operating certificate by issuing such directions as he thinks necessary in accordance with section 29.

(3) Where the grounds for imposing a restriction or varying a restriction on an operating certificate no longer apply, the Inspector may withdraw the restriction or variation imposed by written notice to the credit union.

(4) The restriction of an operating certificate shall not relieve a credit union of any obligation incurred or assumed by it prior to the imposition of the restriction.

(5) A credit union may appeal the decision of the Inspector to restrict or vary a restriction on an operating certificate in the High Court.

(6) A credit union or an officer shall comply with a direction issued by the Inspector under this section.

(7) Notwithstanding subsection (6) and section 89(1), where the Inspector is satisfied that a credit union has failed to comply with a direction, the Inspector may take any other action he deems fit in accordance with section 36 to ensure the safety and soundness of the credit union.

(8) The provisions of section 68(9) shall apply to this section *mutatis mutandis*.

Procedure for
imposing restrictions
or variations of
restrictions on an
operating certificate

29. (1) Where the Inspector proposes to—

- (a) restrict an operating certificate; or
- (b) vary the restrictions imposed on an operating certificate,

he shall serve a written notice of intention to do so on the credit union, except that in any case in which the Inspector considers that the restriction or variation of restriction should be imposed as a matter of urgency, he may serve a written notice of restriction or variation without first serving a notice of intention.

(2) A notice of intention to restrict or to vary a restriction on an operating certificate shall—

- (a) specify the proposed restriction or the proposed variation;

- (b) specify the grounds on which the Inspector proposes to restrict or vary an existing restriction;
- (c) state the date on which such proposed restriction or variation is to take effect;
- (d) state that representation may be made in accordance with subsection (4); and
- (e) state that after taking into account the representation made under subsection (4) the Inspector may make a determination under subsection (3) or (6).

(3) Where—

- (a) the ground for a proposed restriction or variation of a restriction of an operating certificate is that the criteria with respect to a fit and proper individual or entity, as required under item 1(1) of Schedule 2, is not being fulfilled or has not been fulfilled or is unlikely to be, or may not be fulfilled; or
- (b) a proposed restriction or variation of a restriction consists of, or includes a condition requiring the removal of any individual as director or officer,

the Inspector shall serve on the individual or entity referred to in paragraph (a) or (b), a copy of the notice of intention to impose a restriction or vary a restriction, as the case may be, together with a statement of his rights under subsection (4), except that in any case in which the Inspector considers that the restriction or variation of restriction should be imposed as a matter of urgency, he may serve a written notice of restriction or variation without first serving a notice of intention.

(4) Where a credit union or an individual is served with a notice of—

- (a) intention;

- (b) variation; or
- (c) restriction,

under subsection (1) or (3), the credit union or the individual, as the case may be, may within a period of fourteen days commencing from the day after which the notice was served, make representation to the Inspector.

(5) A restriction imposed under subsection (1) continues to have effect after the expiration of fourteen days commencing from the day after which the notice was served, where—

- (a) the credit union or the individual has made no representation to the Inspector; or
- (b) the Inspector has notified the credit union or the individual in writing that, in his opinion, there are insufficient grounds to revoke the restriction.

(6) The Inspector shall take into account the representation made under subsection (4) and make a determination to—

- (a) restrict an operating certificate;
- (b) vary any restriction on an operating certificate;
- (c) take no further action; or
- (d) take any other regulatory action permitted under this Act,

in such a manner as he thinks fit and issue directions accordingly in writing.

(7) The directions issued under subsection (6) shall state—

- (a) the determination;

- (b) the grounds for the decision;
- (c) the date on which the restriction or variation is to take effect; and
- (d) the right of the individual or credit union, so served, to make an appeal to the High Court under section 90.

(8) The directions under subsection (6) shall be served within a period of twenty-one days commencing on the day after the notice of intention referred to in subsection (1), was served.

(9) The directions imposing a restriction or varying the restriction of an operating certificate shall have the effect of restricting the operating certificate or varying the restriction in the manner specified in the directions, as the case may be.

(10) The Bank shall publish notification of the restriction or variation of a restriction on the credit union's operating certificate in the *Gazette* and in at least two daily newspapers in circulation in Trinidad and Tobago and by electronic or any other means that the Bank considers appropriate.

30. (1) Where the Board is satisfied that—

- (a) the operations of the credit union threaten the credit union sector in Trinidad and Tobago;
- (b) the capital or liquidity of the credit union is inadequate or insufficient to meet its liabilities;
- (c) in the opinion of the Inspector, the interests of members of the credit union are in any way threatened, whether by the manner in which the credit union is conducting or proposes to conduct its affairs;

Revocation of an
operating certificate
by the Bank

- (d) the credit union has not accepted a deposit or issued shares in Trinidad and Tobago for any continuous period of more than six months or has otherwise ceased to carry on Class I business activities of business of a credit union for a continuous period of twelve months, after its first year of operation;
- (e) a receiver or receiver-manager of the credit union has been appointed;
- (f) the holder of any debenture secured by a charge has taken possession of most or a significant part of the property of the credit union comprised in, or subject to the charge;
- (g) the credit union is carrying on any aspect of Class II business activities of a credit union without having received approval from the Board;
- (h) the credit union has failed to comply with a direction issued under section 29(5);
- (i) the credit union has failed to pay its premium to the mandatory fund for the purpose of protecting the shares and deposits of members; or
- (j) the credit union has failed to comply with any obligation imposed under this Act or any law relating to the regulation of a financial entity,

the Board may, after considering all the relevant facts and circumstances, revoke the operating certificate of the credit union.

(2) The Board may revoke an operating certificate of a credit union after it has been restricted for a period of time, after considering all the relevant facts and circumstances.

(3) The Inspector shall, before the Board decides to revoke an operating certificate, serve the credit union written notice of the Board's intention to revoke the operating certificate—

- (a) specifying the grounds upon which the Board proposes to revoke the operating certificate;
- (b) specifying the date on which such proposed revocation is to take effect; and
- (c) requiring the credit union to submit to the Board within a specified period, a written statement of any objections to the revocation of the operating certificate.

(4) Where the Inspector has served a notice of the Board's intention to revoke an operating certificate, and the Board has taken into account any objection made under subsection (3)(c), the Board shall make a determination to—

- (a) proceed to revoke the operating certificate;
- (b) take no further action; or
- (c) take other regulatory action as may be permitted under section 36,

and the Board shall inform the credit union, by notice in writing, of its final decision.

(5) Where the Board decides to revoke the operating certificate under subsection (4)(a), the Board shall serve the credit union notice of revocation that shall include—

- (a) the date on which the credit union shall cease to carry on business;
- (b) a statement of the grounds for the decision; and
- (c) a statement on the rights of the credit union under subsection (9) and section 90.

(6) Where the Board serves a notice of revocation of an operating certificate under subsection (5), the Inspector may—

- (a) take charge of all books, records and assets of the credit union or any portion thereof;
- (b) apply to the High Court to appoint a Judicial Manager; and
- (c) do all such things as may be necessary to safeguard the interests of members and creditors of the credit union until any appeal filed pursuant to subsection (9) has been determined.

(7) Where a decision is made to revoke an operating certificate under subsection (4), the credit union shall cease carrying on business from the date specified in the notice of revocation.

(8) Where a notice of intention to revoke an operating certificate under section 30(3) is followed by a notice revoking an operating certificate under this section, the latter notice shall have the effect of terminating any right to make representations to the Board in respect of the revocation.

(9) Where a credit union is aggrieved by a decision of the Board to revoke its operating certificate under subsection (4), the credit union may appeal to the High Court within fourteen days of the date of its receipt of the notice of revocation setting forth the grounds of appeal.

(10) Where a decision is made to revoke an operating certificate and—

- (a) there is no appeal by the credit union within sixty days from the notice of revocation; or
- (b) the decision is not set aside by the High Court,

the Inspector shall wind-up the credit union in accordance with section 78 or 79.

(11) Within five days of a credit union ceasing to hold an operating certificate, the Board shall publish notification of the revocation of the operating certificate of a credit union in the *Gazette* and in at least two daily newspapers in circulation in Trinidad and Tobago and by electronic or any other means that the Board considers appropriate.

(12) The revocation of an operating certificate shall not relieve a credit union of any obligation incurred or assumed by it during the period of validity of the operating certificate.

(13) The credit union shall bear the expenses incurred by the Inspector to give effect to subsection (6), including costs in connection with—

- (a) utilities;
- (b) rent; and
- (c) necessary expenses of maintaining the business of the credit union.

(14) Where the credit union does not have adequate liquidity to meet the costs referred to in subsection (13), the Board may provide funding to cover such costs, which funding shall be treated as a loan by the Board to the credit union and shall be repaid out of the funds of the credit union or, in the event that the credit union is liquidated, shall be a first charge on the assets of the credit union.

31. (1) The Inspector may give a credit union Inspector to give directions directions—

- (a) when imposing or varying restrictions on an operating certificate under section 28(2);
- (b) when a credit union has been granted a variation of Class II business activities fails to comply with any condition imposed by the Bank under section 27(6);

- (c) when issuing a notice of determination under section 29(5);
- (d) when serving a notice of revocation under section 30(5);
- (e) at any time after a notice of intention to revoke its operating certificate has been given to the credit union, including the revocation of an operating certificate;
- (f) when issuing a notice of cancellation under section 32(2); or
- (g) when the credit union remains liable to depositors.

(2) Where the Bank gives a credit union notice that it does not propose to take any further action pursuant to a notice under section 30(4), the Inspector shall not give any further directions with respect to the notice under section 30(4).

(3) The Inspector shall not give further directions to a credit union or a former credit union that has ceased to have any liability in respect of deposits.

(4) Any direction which is in force with respect to a credit union or former credit union when it ceases to have any liability pertaining to deposits shall cease to have effect.

(5) Where the Inspector or the Bank issues directions to a credit union, its board or any officer of the credit union under Part V, directions may, in particular—

- (a) require a credit union to—
 - (i) take certain steps;
 - (ii) refrain from adopting or pursuing a particular course of action; or
 - (iii) restrict the scope of its business in a particular way;

- (b) stipulate limitations on the acceptance of deposits and issuance of shares, the incurring of credit exposure or the distribution of surplus;
- (c) prohibit the credit union from accepting and soliciting deposits from members or prospective members;
- (d) prohibit the credit union from entering into any other classes of business activities as set out in Schedule 1;
- (e) subject to section 40(6) and after any representations made by the officer or the board of the credit union, require the removal of any officer or the board of the credit union; or
- (f) specify such other requirements as the Inspector may think fit.

(6) A credit union or any member of the board of a credit union or officer shall comply with any requirement or prohibition imposed by a direction under this section.

(7) Section 68(9) shall apply, *mutatis mutandis* to a direction under this section.

(8) For the purposes of this section, a “former credit union” means a credit union which no longer holds a valid operating certificate.

32. (1) The Bank shall cancel the operating certificate of a credit union where— Cancellation of operating certificate

- (a) a winding up order has been made against it;
- (b) pursuant to sections 82 and 83, all its assets have passed into the ownership of another credit union;
- (c) a resolution for its voluntary winding up has been passed in accordance with section 80; or

(d) the credit union is divided into two or more credit unions.

(2) No notice of intention is required to be served in respect of the cancellation of an operating certificate, and the Inspector may proceed to issue a notice of cancellation stating the grounds referred to in subsection (1), for which the Bank has acted.

PART VI

REGULATION AND SUPERVISION OF CREDIT UNIONS

Submission of certain returns

33. Every credit union or entity in which a credit union exercises control shall submit to the Bank within such period of time as may be specified by the Bank, and in such form as the Bank may from time to time require, returns containing statements of its—

- (a) assets and liabilities;
- (b) loans and advances including delinquency;
- (c) earnings and expenses;
- (d) assets and revenues related to non-financial business activities; and
- (e) any other financial data or information as the Bank may require,

for examination by the Bank.

Submission of audited financial statements

34. (1) The board of a credit union shall cause the accounts of the credit union to be audited annually by the external auditor, and the credit union shall, within four months of the close of its financial year, submit such audited statements to the Bank.

(2) Subject to subsection (3), every audited statement submitted pursuant to subsection (1) shall be signed by the President, Treasurer and Chairman of the Supervisory Committee of the credit union.

(3) Where the President or the Treasurer, or both, are unable to sign the audited financial statement

referred to in subsection (1), the board of the credit union may designate any board member or members, as the case may be, to sign on behalf of the Treasurer or President, or both.

(4) A separate audited statement of—

- (a) income and expenditure; and
- (b) assets and liabilities,

in relation to any non-financial activity shall be submitted in accordance with subsection (1).

(5) Where the Chairman of the Supervisory Committee is unable to sign the audited financial statement referred to in subsection (1) the Supervisory Committee may designate any other member to sign on behalf of the Chairman.

35. (1) Upon examination of the returns and audited ^{Examination of} financial statements referred to in sections 33 and 34, ^{returns and} the Bank may— ^{statements}

- (a) where it determines that the credit union's financial condition has deteriorated to cause risk to its safety and soundness, consult with the credit union and propose measures to prevent any further financial deterioration;
- (b) where it determines that the credit union is insolvent based on the Technical Solvency Test set out in Schedule 3, take such action ^{Schedule 3} as it sees fit in accordance with section 36; or
- (c) where it determines that the credit union is operating in a manner that may result in insolvency or the winding up of the credit union, take such action as it sees fit in accordance with section 3.

(2) A credit union shall comply with any measure imposed by the Bank pursuant to the Bank's intervention under subsection (1), and the Bank may take such action as it sees fit in accordance with section 36.

Corrective action by
Bank or Inspector

36. The Bank or the Inspector may take corrective action, as contained in Schedule 6, in order to—

- (a) ensure the financial safety and soundness of a credit union;
- (b) protect the depositors of a credit union;
- (c) protect the creditors of a credit union;
- (d) protect the financial system of Trinidad and Tobago; or
- (e) bring about compliance with the Act.

Engagement of an
accountant

37. (1) The Bank may engage the services of a suitably qualified accountant or firm of accountants to act under the direction of the Bank to determine the financial condition of a credit union.

(2) The Bank may adopt and act upon the report of the individual or entity referred to in subsection (1).

PART VII

BOARD MEMBERS, OFFICERS AND COMMITTEES

Criteria for
membership of a
board of a credit
union

38. (1) The board of a credit union shall comprise individuals who—

- (a) are not less than eighteen years of age;
- (b) are of sound mind;
- (c) are members of the credit union; and
- (d) meet the criteria set out in Schedule 2.

(2) The President and at least two of the members of the board of a credit union that has been granted an operating certificate shall have suitable qualifications or at least two years experience in matters relating to accounting, the business of credit unions, human resource management, financial management, administration, business or law.

(3) A member of the board of a credit union not in possession of any of the qualifications or the experience referred to in subsection (2), shall provide to the Bank proof of having attained training in basic finance and

accounting, including the ability to read and understand a balance sheet and income statement, and governance or credit administration or credit risk, within eighteen months of being elected or appointed to the board of a credit union.

(4) A credit union shall be responsible for determining whether an individual meets the criteria under subsection (1)(d).

(5) An individual nominated for membership to the board of a credit union shall declare his membership on the board of any other credit union to the nomination committee where applicable, and at the Annual General Meeting of the credit union.

(6) Subject to subsection (7), a board member of a credit union may serve a maximum of two consecutive terms, with each term not exceeding three years, and may be eligible for re-election—

(a) immediately after the expiration of the first term; or

(b) one year after the expiration of the second term.

(7) The President of a board of a credit union may serve a maximum of five consecutive years as President and may be eligible for re-appointment as President three years after the expiration of the five-year period.

(8) The board of the credit union shall, within fourteen days of any change in the membership of the board or officers of the credit union, notify the Inspector in writing of such change.

(9) An individual or the Board shall comply with the provisions set out in subsections (1) to (8) and where an individual is not in compliance, the Bank may take such action as it sees fit in accordance with section 36.

39. (1) An individual who has been—

(a) a director, member of the board or officer of a company or society in the ten-year period immediately preceding a winding up order

Individual debarred
from management

being made by a court or the date that the company or society had been placed in receivership;

- (b) adjudged bankrupt under any written law in relation to bankruptcy and insolvency; or
- (c) a member of the board or an officer of a former credit union that has had its operating certificate revoked, unless such revocation was due to—
 - (i) the credit union being reconstructed; or
 - (ii) its voluntary winding up,

shall not, without the express approval of the Bank, act or continue to act as a member of the board or officer of a credit union or, be concerned in any way in the management of a credit union.

(2) An individual who—

- (a) has been convicted by a court for an offence involving fraud, dishonesty, a contravention of the Proceeds of Crime Act or the Anti-Terrorism Act, or any other written law in relation to the prevention of money laundering and combating the financing of terrorism which may be in force from time to time;
- (b) has been convicted of an offence under this Act; or
- (c) is not a fit and proper individual in accordance with the criteria specified in Schedule 2,

shall not act or continue to act as a member of the board or officer of, or be concerned in any way in the management of, a credit union.

(3) Notwithstanding section 38(5), where for the purpose of subsection (2)(c) an individual is not regarded, or is no longer regarded as fit and proper by the Bank, the Bank shall serve a notice on the credit

union and where appropriate, on the individual concerned to the effect that the Bank proposes to disqualify the individual from being a member of the board or officer of a credit union, stating the reasons for its decision and particulars of the rights conferred by subsection (4).

(4) The credit union and the individual concerned may, within the period of five days, commencing from the day after which the notice under subsection (3) is served, make written representations to the Bank and the Bank shall take such representations into account in deciding whether or not to disqualify the individual from acting as a member of the board or officer of the credit union.

(5) The Bank shall inform the credit union and the individual concerned, by notice in writing, of its final decision.

(6) Where the decision of the Bank referred to in subsection (5) is to disqualify the individual and entity, that individual shall forthwith cease to be a member of the board or an officer of the credit union.

40. (1) The board of a credit union shall be responsible to the members of the credit union for the management of the business affairs of the credit union and in pursuance thereof the board shall conduct the affairs of the credit union with transparency and accountability. Duties and responsibilities of a board of a credit union

(2) The board of a credit union shall prepare an annual declaration to the Inspector within two months after the close of the financial year—

(a) stating—

- (i) whether the credit union is in compliance with this Act and any guidelines issued by the Bank; and
- (ii) where the credit union is not in compliance, the areas of noncompliance with this Act and any guidelines issued by the Bank;

- (iii) that the elected officers are fit and proper; and
 - (iv) where any elected officer is not fit and proper, the name of such an officer;
- (b) providing a current listing of the composition of the board and statutory committees; and
- (c) indicating which of its members of the board, if any, currently serve on other credit union boards and the names of those credit unions.

(3) The President shall submit the declaration referred to in subsection (2) to the Inspector within three months after the close of its financial year.

(4) In addition to the duties prescribed in the credit union's bye-laws, the board of a credit union shall—

- (a) approve such policies as are required for all major business activities of the credit union, in particular, the lending, investment, liquidity and asset-liability management, accounting, and audit and internal control systems;
- (b) have charge of the investment of funds, except that the board of the credit union may designate an investment committee or any qualified professional to invest the credit union's funds in accordance with any investment policies established by the board of the credit union;
- (c) approve an annual operating budget for the credit union, which shall include provisions for the compensation of employees;

(d) perform any other duty that is necessary and proper to carry out the purposes and exercise the powers of the credit union in accordance with this Act; and

(e) give the Bank full access to all books, papers, records and other sources of information under its control, as requested by the Bank and in a timely manner.

(5) In addition to any liability for failure of a board of a credit union to comply with subsection (2), the Inspector may require the board of a credit union to take such action as he thinks fit as specified in Schedule 6 within a specified period to effect compliance therewith.

(6) The Inspector or the Bank may give directions to the board of the credit union to serve a notice on an officer for his removal or may dissolve the board of a credit union where, in the opinion of the Inspector or the Bank—

(a) the board of a credit union or officer fails to adhere to its statutory duties and responsibilities outlined in the Act; or

(b) the board of the credit union or officer has improperly performed its or his duties.

(7) Where the Inspector or the Bank determines that the board of a credit union shall be dissolved, the Inspector or the Bank shall—

(a) notify the board of that credit union in writing, stating that the board is dissolved and shall appoint an interim board; and

(b) publish a notice in the *Gazette* and in two daily newspapers circulating in Trinidad and Tobago stating that the board has been dissolved and that an interim board has been appointed.

(8) Where the board of a credit union has been dissolved under any other circumstance or for any other reason, the Inspector or the Bank shall appoint an interim board.

(9) An individual who is appointed to a board of a credit union under subsection (7) shall—

- (a) exercise the powers and perform all the functions as a duly constituted board;
- (b) make arrangements prior to the end of their term of management for the election of a new board in accordance with the bye-laws of the credit union;
- (c) have access to all books, accounts, securities, documents, vouchers, cash, articles or things held by the credit union; and
- (d) submit a monthly report to the Bank or Inspector in such form as the Bank or Inspector may require and upon the completion of the period of management, submit a final report to the Bank or Inspector.

(10) The Bank or Inspector may determine the remuneration and expenses to be paid to an individual appointed under this section and any moneys required for this purpose shall be payable from the funds of the credit union.

Other Committees

41. (1) The Bank may require a credit union to establish other committees such as an investment committee, a risk management committee or any other committee that it considers necessary, taking into account the credit union's risk profile.

(2) At least one member of the board of a credit union shall be a member of a committee established under subsection (1).

(3) At least one member of the risk management committee and the investment committee shall have knowledge or experience in any one of the following disciplines:

- (a) auditing;

- (b) financial management; or
- (c) accounting practices.

(4) Notwithstanding subsection (3), the Inspector may, after taking into account the risk profile of the credit union, require that at least two individuals on each of the committees referred to in subsection (3), possess the experience referred to in that subsection.

(5) The function of the risk management committee shall be to manage the various forms of risk to which the credit union may be exposed, including credit, market, liquidity, operational and legal risks, and the risk management committee shall keep the board of the credit union informed of the credit union's risk exposure by submitting regular reports to the board at the intervals agreed to between the board and the committee.

(6) The function of the investment committee shall be to recommend to the board of the credit union the investment policies and to coordinate and oversee the investment portfolio of the credit union.

(7) In addition to the requirements referred to in subsection (3), each member of the investment committee shall have knowledge or experience in investment risks and liquidity management.

(8) The investment committee shall monitor and report to the board of the credit union on the performance of the credit union's investment portfolio and its adherence to approved policies.

42. (1) An individual who serves as—

- (a) an officer;
- (b) an employee; or
- (c) a member of the board,

Declaration of
interest

of a credit union attending a meeting of the credit union or of the board of a credit union who is any way, whether directly or indirectly, interested in a matter before the

credit union or the board of the credit union, shall declare his interest to the board of the credit union and absent himself during the deliberations concerning his declaration of interests.

(2) The board of a credit union, excluding the member of the board of a credit union referred to in subsection (1)(c), shall determine whether this interest is sufficiently material so as to constitute a conflict of interest.

(3) In the event that the board of a credit union finds that the interest is such as to constitute a conflict of interest, an individual referred to in subsection (1) attending a meeting of the credit union or of the board of the credit union shall not take part in any deliberations or vote on that matter, and shall absent himself during such deliberations.

(4) For the purposes of this section, an individual referred to in subsection (1) attending a meeting of the credit union or of the board of the credit union shall be deemed to have an interest in a matter if he or a related party has a pecuniary interest in a matter before the credit union or before the board of the credit union.

Conflict of interest

43. An individual who serves as a member of the board of a credit union shall not be employed by a business, engage in professional activity, or own an interest in a business that may—

- (a) require him to disclose information acquired during his service on the board of another credit union or in his employment in another credit union; or
- (b) impair his independence or judgment in the performance of his duties or his responsibilities, to the credit union.

Appointment of external auditor

44. (1) The external auditor shall be appointed by the members of the credit union at each annual general meeting, upon recommendation of the board of a credit union pursuant to section 40(1).

(2) An accountant or a firm of accountants is eligible to conduct an audit of a credit union if the accountant or at least one member of the firm of accountants—

- (a) is a practising member in good standing of the Institute of Chartered Accountants of Trinidad and Tobago;
- (b) has knowledge and experience in the audit of financial institutions or credit unions; and
- (c) is independent of the credit union and the elected officers of the credit union.

(3) Notwithstanding subsection (2)(a), the holder of a valid practising certificate from a professional association of accountants other than that referred to in subsection (2)(a) or a professional accountant may conduct the audit of a credit union subject to the prior written approval of the Central Bank.

(4) For the purpose of subsection (2)(c), an individual or an entity is not independent and is disqualified from being an external auditor of a credit union—

- (a) if that individual, any partner of that entity or any member of a firm of accountants of which that individual and entity—
 - (i) is a member, officer or employee of the credit union;
 - (ii) is a business partner of any officer or employee of the credit union; or
 - (iii) has been a liquidator, trustee in Bankruptcy, receiver or receiver-manager of the credit union within the two years immediately preceding the appointment of the individual or entity as the auditor of the credit union; or

(b) if the firm of accountants of which that individual is an employee has been a liquidator, trustee in Bankruptcy, receiver or receiver-manager of the credit union within the two years immediately preceding the appointment of the individual or entity as an auditor of the credit union.

Replacement of
external auditor

45. (1) A credit union shall advise the Bank in writing and provide reasons where it proposes to replace an external auditor or where an individual or an entity for any reason ceases to be the external auditor of the credit union.

(2) An individual or an entity who resigns as an external auditor of a credit union or decides not to seek reappointment as external auditor shall inform the Bank in writing of his reasons and provide any further information in respect thereof that the Bank may require.

Auditor's
management letter

46. The board of the credit union shall submit a copy of the external auditor's final management letter to the Bank within ten days of receipt from the external auditor.

Further audit
requirements

47. (1) The external auditor of a credit union shall report annually and at such other times as requested, in writing to the Bank, on the adequacy of the accounting procedures, records and such internal control systems of the credit union as may be discovered during the normal course of the credit union's annual audit.

(2) The Bank may, by notice in writing to a credit union, require the credit union's external auditor to comply with such other reporting requirements as the Bank may stipulate in addition to generally accepted auditing standards employed in relation to the report referred to in subsection (1).

(3) The Bank—

- (a) shall, in relation to the audit of a credit union, have access to the external auditor's working papers representing a period not exceeding four years preceding the date of submission of the audit report; and
- (b) may require the external auditor of a credit union to provide the Bank with any further information that the Bank considers relevant.

(4) Every credit union shall pay the expenses incurred by its external auditor in the performance of his duties and obligations set out in this Part.

48. Where the external auditor of a credit union discovers, in the ordinary course of an audit, any transactions or conditions which, in the opinion of the external auditor meets one or more of the following criteria:

- (a) any change in accounting policy or any presentation of, or any failure to present facts or figures which, in the opinion of the auditor, has the effect of misrepresenting the financial position of the credit union;
- (b) transactions that have a significant or material impact on the credit union;
- (c) transactions or conditions giving rise to significant risks or large exposures that have the potential to jeopardize the financial viability of the credit union;
- (d) transactions or conditions indicating that the credit union has significant weaknesses in internal controls which render it vulnerable to significant risks or exposures that have the potential to jeopardize its financial viability; and

- (e) any other transactions or conditions which, in the opinion of the external auditor, should be included in a report under this section,

the external auditor shall report such findings in writing to the board of the credit union and to the Inspector as soon as they are discovered.

Protection of external auditor

49. (1) No duty to which a current or former external auditor of a credit union may be subject, shall be regarded as contravened by reason of his communication in good faith to the Bank or to the Inspector, whether or not in response to a request made by either of them, for any information or opinion on a matter to which this section applies, and which is relevant to any function of the Bank and the Inspector under this Act or the Central Bank Act.

(2) In relation to an external auditor of a credit union, this section applies to any matter of which he becomes aware in his capacity as external auditor and that relates to the business or affairs of the credit union or any member of the board or officer of a credit union or relative of such individuals or entities in relation to which the information is given, inclusive of information supplied under section 47.

Liability of the auditor

50. (1) Notwithstanding section 49, where the Inspector has reasonable grounds to believe that the auditor of a credit union—

- (a) has failed to perform his duties or to comply with the provisions of this Act;
- (b) has been a party to the preparation of or has rendered an unqualified opinion on a financial statement that does not fairly present the financial position of the credit union; or
- (c) is incompetent or has engaged in professional misconduct,

the Inspector or the Central Bank shall deliver a written report to the credit union and as appropriate,

the Institute of Chartered Accountants of Trinidad and Tobago or such other professional association that may, in the opinion of the Inspector, be relevant.

(2) Where the Inspector has made a report under subsection (1) in good faith, the Inspector shall not be subject to any action, claim or demand by, or any liability to, any individual or entity in respect of which the report was made.

(3) An auditor of a credit union who—

(a) knowing that a financial statement does not fairly present the financial position of a credit union; or

(b) being reckless as to whether a financial statement fairly presents the financial position of a credit union,

renders an unqualified opinion on the financial statement, commits an offence and is liable on summary conviction to a fine of five million dollars and to imprisonment for three years.

PART VIII

SHARES AND DEPOSITS

51. (1) A credit union may offer an unlimited number Members' shares of shares to its members.

(2) Notwithstanding subsection (1), no member may hold more than one-fifth of the shares of a credit union.

52. (1) A credit union may issue permanent shares to Permanent shares its members.

(2) Permanent shares shall form part of the credit union's institutional capital and are not withdrawable.

(3) Permanent shares shall not be used as collateral for a loan.

(4) The holder of a permanent share may receive dividends on his shares.

(5) Permanent shares shall not be resold to, or redeemed by, the credit union.

(6) Permanent shares may be transferred from one member to another member on terms and conditions established by the credit union.

(7) The holder of a permanent share shall remain a member of the credit union whether or not he ceases to hold any other class of shares in the credit union.

(8) A credit union shall identify on its balance sheet withdrawable shares and shall differentiate between its withdrawable and permanent shares for reporting purposes under this Act.

Deposits

53. A credit union may receive a deposit from a member only upon terms that it is either for a fixed period of time or withdrawable on demand.

Withdrawals

54. Except for permanent shares and withdrawable shares pledged to loans or otherwise encumbered, all shares of a credit union shall be withdrawable on demand or with a required period of notice as stipulated by the credit union.

Members' statement

55. A credit union shall provide each member, at least quarterly, with a statement indicating—

(a) the balance of funds standing to the member's share, deposit and loan accounts; and

(b) all transactions affecting the account since the date of the previous statement.

Dormant accounts

56. (1) A member's deposit account shall be declared dormant where no transaction has been initiated by the member on the account and no statement of the account has been requested or acknowledged by the member or someone authorised by the member in writing, for a period of more than seven years.

(2) Every credit union shall annually identify all members' deposit accounts which are to be declared dormant pursuant to subsection (1).

(3) Where a deposit account is declared dormant pursuant to subsection (1), the board of the credit union shall take steps to transfer all accounts, interest and other sums due or standing to the member's account to the credit union's dormant members' account as a liability.

(4) Notwithstanding subsection (2), every credit union shall, within sixty days after the end of its financial year, publish in at least two daily newspapers circulated in Trinidad and Tobago, and by electronic or any other means, a statement—

- (a) that no transaction has taken place on the deposit account for a period of seven years;
- (b) that no statement of account has been requested or acknowledged by the account holder; and
- (c) requiring the account holder or his legal representative to submit a claim to the credit union within three months of the publication.

(5) Nothing contained in this section shall be deemed to affect the rights of any member to recover a debt due to him by the credit union.

57. (1) The directors of a credit union may recommend a dividend only if— Distributions from equity

- (a) payment will be made from realised surplus which excludes any extraneous gain;
- (b) any impairment of institutional capital of the credit union has been corrected;
- (c) all allowances for impaired assets and loan losses have been fully funded;
- (d) all prior-year losses have been written off; and
- (e) the accounts have been audited.

(2) Subject to the restrictions set out in subsection (1)(b) to (e), the board of a credit union may recommend a distribution from undivided surplus or retained earnings.

(3) An existing credit union that has not met the requirements of subsection (1)(a) to (d) may be allowed, for a period of three years after the coming into operation of this Act, to make a distribution from equity including a dividend if—

- (a) it prepares and files with the Bank audited accounts pursuant to section 34 of this Act;
- (b) the Bank has approved a plan prepared by the credit union to achieve compliance and has determined that the credit union is meeting its targets as outlined in the plan;
- (c) the credit union's level of institutional capital is below the minimum statutory level and the credit union does not suffer further decline during the transition period;
or
- (d) the credit union's level of institutional capital is maintained at least at the minimum statutory level during the transition period.

PART IX

PRUDENTIAL REQUIREMENTS

Minimum level of
institutional capital

58. A credit union shall maintain a minimum level of institutional capital as may be prescribed or at such other level as the Minister on the recommendation of the Bank may approve.

Liquidity

59. A credit union shall maintain a minimum level of liquid assets in relation to current liabilities inclusive of all members' deposits and withdrawable shares and other short-term liabilities, as may be prescribed.

60. (1) Notwithstanding sections 58 and 59, the Inspector may direct a credit union to— Variation of level of institutional capital

- (a) increase its capital in excess of the minimum amount required under the Regulations; or
- (b) increase its level of liquidity in such forms and amounts,

where he determines that the level of unmitigated risk faced by the credit union warrants additional capital and liquidity.

(2) The Minister may by Order on the recommendation of the Bank, vary the minimum institutional capital and liquid asset ratios.

61. (1) No credit union shall invest the credit union's funds except in accordance with this Act. Investments

(2) The board of a credit union shall approve written policies for the investment of the credit union's funds.

(3) All investments and deposits of a credit union shall be made in the name of the credit union.

(4) A credit union's investments shall not exceed the limits prescribed in this Act where the class of business is listed as investments in Schedule 1.

(5) Where a credit union, in the course of satisfying debts due to the credit union, acquires shares or an ownership interest in an entity that would cause it to exceed any relevant limit set out in this Act—

- (a) the credit union shall immediately notify the Bank in writing of the development; and
- (b) dispose of the shares or ownership interest within two years of the date of acquisition or within such additional time as the Bank may approve.

PART X

LOANS AND INVESTMENT OF FUNDS

62. (1) No credit union shall make loans to its members except in accordance with the Act. Loans

(2) Notwithstanding subsection (1), a credit union may make loans to individuals or entities who are not members of the credit union where the loan is—

- (a) approved by more than fifty per cent of the members of the board of the credit union;
- (b) fully secured; and
- (c) made on terms no more favourable than are available to members of the credit union.

(3) A loan granted under subsection (2) shall not exceed twenty-five per cent of the institutional capital of the credit union, in aggregate.

(4) Subject to subsection (11), the credit committee or any officer so empowered by the credit committee may approve loans to members.

(5) The board of a credit union shall approve a policy for the granting of secured and unsecured loans.

(6) The policy referred to in subsection (5) shall include the terms and conditions of repayment, the maximum amounts of such loans and the acceptable forms of security.

(7) The assignment of an interest in real or personal property or the assignment of deposits or shares other than permanent shares shall be considered acceptable forms of security.

(8) A credit union shall, at the time of providing a credit facility to a member, in a written statement, disclose to the member the cost of borrowing, including the rate of interest and related fees.

(9) A credit union may make loans to its officers and employees in accordance with policies and procedures established by the credit union in accordance with this Act.

(10) With the exception of a loan made to an employee as a benefit of employment, loans made to the individuals referred to in subsection (9) shall be made on terms no more favourable than are available to other members of the credit union.

(11) Subject to subsection (12), no loan shall be made to an officer of a credit union of a sum in excess of the value of his—

- (a) shares;
- (b) accumulated dividends thereon; and
- (c) dividends and interest thereon.

(12) Subsection (11) does not apply to a loan that is—

- (a) approved at a meeting of the members of the board of a credit union and the credit committee at which a quorum of each of the board of the credit union and the credit committee is present, except the officer to whom the proposed loan is to be made; or
- (b) made with the consent in writing of all the members of the board of the credit union and the credit committee, except the officer to whom the proposed loan is to be made.

(13) Where a loan facility extended to an officer becomes delinquent, the board of the credit union shall immediately notify him to this effect.

(14) Where a member of the board of a credit union fails to remedy the delinquency within thirty days of notification, he is deemed to have resigned from his post with effect from the thirty-first day after the date of notification.

(15) Notwithstanding subsection (14), the Inspector may defer the effective date of resignation of the member of the board of a credit union by an additional sixty days where the member gives the Inspector an undertaking, in writing, that funds have been identified which would be used to remedy the delinquent loan.

(16) Where a member of the board of a credit union fails to remedy the delinquency after the period referred to in subsection (14), he is deemed to have resigned from his post with effect from the first day after the expiration of the period referred to in subsection (15).

- Treatment of interest **63.** No credit union shall include as income in a credit union's account interest payable by the borrowers on delinquent loans.
- Credit exposure **64.** A credit union shall not incur credit exposures in excess of the maximum limit of its total institutional capital allowable under this Act.
- Related party **65.** (1) No credit union shall engage in business activities with a related party except in accordance with this Act.
- (2) Any credit exposure incurred by a credit union to a related party under this section shall be—
- (a) on terms and conditions no less favourable to the credit union than the terms and conditions on which such credit exposure is generally offered by the credit union; and
- (b) subject to the approval of the board of the credit union where such exposure accounts for twenty per cent or more of the institutional capital of the credit union.
- (3) This section shall not apply to any credit exposure incurred by a credit union to a related party prior to the coming into operation of this Act.
- (4) After the coming into operation of this Act, any modification of, addition to, or extension of such credit exposure shall be subject to this section.
- (5) Where, in the opinion of the Central Bank, a credit exposure incurred by a credit union to a related party exposes the credit union to excessive risk, or does not accord with the terms and conditions referred to in subsection (2)(a), the Bank may require the credit union to set aside or direct that changes be made to the credit exposure, or require the credit union to limit or reduce the credit exposure.
- Borrowing by a credit union **66.** No credit union may borrow except in accordance with this Act.

67. (1) A credit union may hold or acquire real estate^{Real estate} directly or indirectly without limits where such real estate is held or acquired solely for the purpose of conducting the business of a credit union.

(2) Where a credit union acquires land in the course of satisfying debts due to it, and where the holding of such land or interest in it would cause the credit union to exceed the non-financial business activities limits set out in this Act, it shall not beneficially hold such land or any interest in it for—

- (a) a period longer than five years from the date of acquisition; or
- (b) a period additional to the period referred to in paragraph (a), as may be approved by the Inspector.

(3) Notwithstanding subsection (1), a credit union may—

- (a) conduct business activities other than business of credit union on its premises; or
- (b) hold other real estate,

subject to limits set out in this Act.

(4) The provisions of subsection (3)(b) do not apply to other real estate held for purposes other than conducting the business of a credit union prior to the coming into operation of this Act.

PART XI

COMPLIANCE DIRECTIONS AND INJUNCTION RELIEF

68. (1) Notwithstanding any other action or remedy^{Compliance directions} available under this Act, where in the opinion of the Inspector, a credit union or any officer, employee or agent of the credit union or an individual or an entity under this Act—

- (a) has committed, commits, or is about to commit an act, or is pursuing or is about to pursue any course of conduct, that is an unsafe or unsound practice in conducting the business of the credit union;

- (b) has committed, commits, or is about to commit an act, or is pursuing or is about to pursue a course of conduct that may directly or indirectly be prejudicial to the interest of depositors;
- (c) has violated or is about to violate any provision of this Act or the Proceeds of Crime Act, the Anti-Terrorism Act, or any other written law in relation to the prevention of money laundering and combating the financing of terrorism which may be in force from time to time; or
- (d) has breached any requirement or failed to comply with any measure imposed by the Bank or the Inspector in accordance with this Act,

the Inspector may issue a compliance direction directing the credit union, officer, employee or agent of the credit union, individual or entity under section 24 to—

- (e) cease or refrain from committing the act, pursuing the course of conduct or committing the violation;
- (f) undertake such corrective action as in the opinion of the Inspector is necessary to remedy the situation or minimize the prejudice to the credit union including increasing the capital and providing additional liquidity; or
- (g) limit its business activities or place constraints or conditions on the conduct or promotion of its business.

(2) The Inspector shall notify the Governor of the compliance direction given pursuant to subsection (1).

(3) Subject to subsection (6), before a compliance direction is issued, the credit union to which the direction is to be issued shall be served with a notice specifying—

- (a) the facts of the matter;

- (b) the directions that are intended to be issued; and
- (c) the time and place at which the individual or entity served with the notice may make representations to the Inspector.

(4) Where, after considering the representations made in response to the notice referred to in subsection (3), the Inspector determines that the facts or any part thereof specified in the notice are established, the Inspector may proceed to issue compliance directions to the individual or entity served with the notice.

(5) Notwithstanding subsection (3), where in the opinion of the Inspector, the length of time required for representations to be made might be prejudicial to the interests of members of the credit union, the Inspector may make an interim compliance direction with respect to the matters referred to in subsection (1) which shall have effect for a period of not more than twenty days.

(6) A compliance direction made under subsection (5) continues to have effect after the expiration of the twenty-day period referred to in that subsection if no representations are made to the Inspector within that period or, if representations have been made, the Inspector notifies the individual or entity to whom the compliance direction is issued that he is not satisfied that there are sufficient grounds for revoking the direction.

(7) Where the individual or entity served with the notice referred to in subsection (3) fails to attend at the time and place stipulated by the said notice, the Inspector may proceed to issue compliance directions in the absence of such representations.

(8) The Inspector may, where he deems such action necessary and appropriate, direct the board of a credit union to inform its members that a compliance direction by the Inspector has been issued.

(9) Where an individual or entity to whom a compliance direction is issued fails to comply with the direction, the Inspector may, in addition to any other action that may be taken under this Act, apply to the High Court for an order requiring the individual or entity to—

- (a) comply with the compliance direction;
- (b) cease the contravention; or
- (c) do any thing that is required to be done,

and on such application, the High Court may so order and make any other order it thinks fit.

(10) An individual or an entity who fails to comply with compliance directions under this section commits an offence and is liable on summary conviction—

- (a) in the case of a credit union, to a fine of two hundred and fifty thousand dollars and, in the case of a continuing offence, to a fine of twenty-five thousand dollars for each day that the offence continues; or
- (b) in the case of a member of the board or officer of a credit union, to a fine of two hundred and fifty thousand dollars and to imprisonment for five years.

(11) Where the Inspector considers that a compliance direction is no longer necessary, he may cancel the notice to issue a compliance direction or revoke the compliance direction or confirm to the credit union that the requirements of the direction have been met.

Injunctive relief

69. Where the Inspector reasonably believes that an individual or an entity is in violation of the Act, or is engaged in any activity or course of conduct described

under section 68(1) he may, after consultation with the Governor, in addition to, or in lieu of other actions authorised under this Act—

- (a) seek a restraining order or other injunctive or equitable relief, to prohibit the continued violation or prevent the activity or course of conduct in question; or
- (b) pursue any other remedy which may be provided by law.

PART XII

JUDICIAL MANAGEMENT, SUSPENSION AND LIQUIDATION

70. (1) Where the Inspector is satisfied that—

Judicial management

- (a) a ground for revocation under section 30(1) exists; or
- (b) the credit union has failed to submit financial statements and returns in accordance with sections 33 and 34 so that the true financial position of the credit union is uncertain,

he shall advise the Bank accordingly, and where the Bank is of the opinion that it is necessary or proper for the credit union or any part of its business to be placed under judicial management, it may apply to the High Court for an order of judicial management.

(2) The provisions of subsection (1)(a) shall not apply to section 30(1)(d) or (e).

(3) Subject to subsection (4), where the board of a credit union is of the opinion that it is necessary or proper for the credit union or any part of its business to be placed under judicial management, it may, by resolution of not less than three-quarters of all the members present and voting at a special general meeting called for that purpose, agree to apply to the High Court for an order that it or any part of its business be placed under judicial management.

(4) Pursuant to subsection (3), the board of a credit union shall give the Bank one month's notice in writing of its intention to apply to the High Court for an order that it or any part of its business be placed under judicial management.

(5) Where an application is made to the High Court under this section the credit union and the Bank shall be entitled to be heard on the application.

(6) Where an application is made under this section for an order in respect of any credit union, all actions and the execution of all writs, summonses and other processes against the credit union and the Bank, by virtue of this section, shall be stayed and shall not be proceeded with, without the prior leave of the High Court or unless the High Court directs otherwise.

71. (1) An order for the judicial management of a Judicial manager credit union shall be subject to the provisions of this section and of sections 68 and 70 to 72.

(2) The High Court shall appoint a judicial manager who shall receive such remuneration from the credit union as the High Court may direct and it may at any time cancel the appointment and appoint some other individual or entity as the judicial manager.

(3) The High Court may, if it thinks fit, charge the remuneration costs and the expenses of the judicial manager on the property of the credit union in such order of priority, in relation to any existing charges on that property, as it thinks fit.

(4) Where an order for judicial management is made under this section, the management of the credit union shall, on and after the date specified in the order, vest exclusively in the judicial manager.

(5) The judicial manager may suspend or retain the services of any or all the officers and employees of the credit union and the officers so retained shall conduct the affairs of the credit union subject, however, to any directions of the judicial manager or the Court.

(6) The directors, officers and agents of the credit union, other than its auditors, shall give every assistance to the judicial manager for the purpose of facilitating the performance of his functions as judicial manager, including the supply of information or explanation in such form as may be required, the production of books, documents, minutes, cash, securities and vouchers, and generally the provision of all necessary facilities required for the performance of any function, save that in the case of its auditors they shall only be required to supply any information which is in their possession or knowledge.

(7) An entity or individual who is appointed judicial manager shall not, except with the leave of the High Court, accept any new deposits, issue new shares, or grant any new loans or pay any dividends or distribution from equity to members.

(8) The High Court may from time to time issue to the judicial manager such directions regarding his powers and duties as it considers necessary.

(9) The judicial manager shall act under the control of the High Court and may at any time apply to the Court for instructions on the manner in which he shall conduct the judicial management or in relation to any matter arising in the course of the judicial management.

(10) The judicial manager shall—

- (a) give a report on the status of the judicial management to the Bank on a monthly basis;
- (b) provide the Bank with such information as it may from time to time require;
- (c) report to the Bank whenever he intends to apply to the High Court for instructions; and

(d) in the application under paragraph (c), furnish the Bank with particulars of the application.

(11) Where an application is made by a credit union for the appointment of a judicial manager pursuant to section 70(3), the judicial manager shall, in addition to the reporting requirements under subsection (10) –

- (a) give a report on the status of the judicial management to the board of the credit union on a monthly basis;
- (b) provide the board of the credit union with such information as it may from time to time require;
- (c) report to the board of the credit union whenever he intends to apply to the High Court for instructions; and
- (d) in an application under paragraph (c), furnish the board of the credit union with particulars of the application.

(12) The Bank and the board of a credit union shall be entitled to be heard on any application made pursuant to subsection (9) and either the Bank or the credit union may make an application to the High Court to be heard on any matter relating to the conduct of the judicial management.

Judicial manager to
file report

72. (1) The judicial manager shall conduct the management with the greatest economy compatible with efficiency, and shall as soon as possible but no later than one year after his appointment, file with the High Court a report stating which of the following courses in the circumstances, in his opinion, is the most advantageous to the general interests of the members of the credit union:

- (a) the transfer of the business of the credit union to some other credit union;

- (b) the carrying on of its business by the credit union;
- (c) the winding up of the credit union or of any part of its business; or
- (d) the dealing with part of the business of the credit union in one manner and with another part in another manner.

(2) Where the judicial manager is unable to file the report pursuant to subsection (1) within the time set out in that subsection, he shall apply to the High Court for an extension of time for filing the report, stating the grounds for such application.

(3) The judicial manager shall, as soon as he has filed the report pursuant to subsection (2), furnish a copy thereof to—

- (a) the Bank, where the application was made by the Bank under section 70(1); or
- (b) the board of the credit union and the Bank, where the application was made by the credit union under section 70(3),

and make a written application to the High Court for an order to give effect to the course stated in the report.

(4) The report or a copy thereof shall be open for inspection by any individual or entity during official hours at the registry of the High Court in which the report is filed or at such other place as the Bank determines.

(5) Where the judicial manager recommends the transfer of the business of the credit union in accordance with subsection (1)(a)—

- (a) he may consider the views of the membership of the credit union to be transferred by means of a special general meeting or any other means he deems appropriate; and

(b) the Bank shall assess whether the proposed transfer meets the criteria of section 83(2)(b) and advise the High Court of its assessment during the hearing under section 73.

Decision of High Court on report of judicial manager

73. (1) The High Court shall, on the hearing of an application made under section 72(3)—

(a) after hearing the Central Bank, the judicial manager and any other individual or entity who, in the opinion of the High Court ought properly to be heard; and

(b) after considering the report of the judicial manager,

make an order giving effect to the course which it considers in the circumstances to be most advantageous to the general interest of the members of the credit union.

(2) An order of the High Court under subsection (1) shall be binding on all individuals or entities, and shall have effect notwithstanding anything contained in the bye-laws of the credit union.

Court may cancel contracts

74. The High Court may, either of its own motion or on the application of the judicial manager, at any time while an order made under section 71 is in force with respect to a credit union and after hearing all individuals or entities who, in the opinion of the High Court are entitled to be heard, cancel or vary, either unconditionally or subject to such conditions as the High Court thinks just, any contract or agreement, other than a contract relating to deposits and shares which the High Court is satisfied is detrimental to the interests of the members of the credit union.

Indemnity

75. The judicial manager shall not be subject to any action, claim or demand by, or liability to, any individual or entity in respect of anything done or omitted to be done in the exercise of, or in connection with, the exercise of the powers conferred on him under this Part, unless it is shown that the act or omission was in bad faith.

76. (1) The judicial manager, the Central Bank, the credit union or any interested individual or entity who, in the opinion of the High Court is entitled to be heard, may at any time, apply to the High Court for the cancellation of an order made by the High Court under section 71.

(2) Upon an application being made under subsection (1), the High Court may cancel the order if it appears to the Court that—

- (a) the purpose of the order has been fulfilled; or
- (b) it is undesirable for the order to remain in force.

(3) Upon the cancellation of an order, the judicial manager shall be divested of the management which shall thereupon vest in the members of the board of the credit union, the liquidator or receiver or receiver-manager appointed by the High Court, where applicable.

77. (1) Where the Inspector is satisfied that—

- (a) a credit union is unlikely to meet the demands of the depositors of the credit union; or
- (b) a credit union's continuation in business is likely to involve a loss to the members of the credit union or to the creditors of the credit union,

he shall advise the Board accordingly.

(2) The Board may, after receiving the advice of the Inspector and after considering all the relevant facts and circumstances, order the credit union to suspend business forthwith for a period of sixty days and may direct the Inspector to take charge of all the books, records, other documents including electronically stored information, and assets of the credit union and to take all such measures as may be necessary to prevent the continuation in business by that credit union during the period of suspension and to preserve the assets of the credit union and all costs incurred shall be a first charge on the assets of the credit union.

(3) Notwithstanding any other written law, no action or proceedings may be instituted in any court for the purpose of securing the enjoining, review or revocation of any order made or direction given under subsection (2) or in respect of any loss or damage incurred or likely to be, or alleged to be incurred by reason of such order or direction.

(4) All claims, actions and the execution of all writs, summonses and other processes against the credit union shall, by virtue of this section, be stayed and shall not be proceeded with, without the prior leave of the High Court or unless the High Court directs otherwise.

(5) An order made under subsection (2) shall cease to have effect—

(a) where the Board makes a further order permitting the credit union to resume business either unconditionally or subject to such conditions as it may consider necessary in the public interest or in the interests of the members and potential members of the credit union and other creditors of the credit union; or

(b) upon the expiration of the period of sixty days from the day on which it is made, unless—

(i) the Board extends the order for a period not exceeding a further sixty days; and

(ii) a petition is made to the High Court by the Inspector, on authorization of the Board, for the winding up of the credit union on behalf of its members.

(6) For the purposes of subsection (5)(b), the High Court may order the winding up of a credit union in accordance with the Companies Act subject to the modification that the credit union may be ordered to be wound up on the petition of the Inspector on behalf of its members.

(7) Where the Board has suspended the business of a credit union and a petition for winding up is made by the Central Bank, a credit union shall remain in suspension and shall not carry on business while the petition is pending unless it is authorised by the High Court and on such conditions, as the Court may specify.

(8) Any individual or entity who directly or indirectly prevents the Bank from having access to a credit union, its books, records or other documents, including electronically stored information, or fails to make them available, commits an offence and is liable on summary conviction to a fine of two hundred and fifty thousand dollars and to imprisonment for five years.

78. (1) Where the Bank—

- (a) in its discretion, determines that all regulatory actions taken to strengthen or correct any area of the operations have failed;
- (b) finds that the credit union is insolvent based on the Technical Solvency Test set out in Schedule 3; or
- (c) in its discretion, determines to revoke the credit union's operating certificate,

Involuntary
liquidation

the Bank may issue a notice to wind up the credit union.

(2) The Bank shall, before exercising the power conferred on it by subsection (1), signify its intention to issue a winding up order—

- (a) by giving written notice to the board of the credit union of its intention to do so specifying the grounds upon which the Bank proposes to wind up the credit union; and
- (b) require the credit union to submit to the Bank within a specified period, a written statement of any objections to the issue of the winding up notice.

(3) Where the Bank has served a notice of its intention to issue a winding up order and has taken into account any objections made under subsection (2)(b), the Bank shall decide whether to—

- (a) issue a winding up order; or
- (b) take such other regulatory action as may be permitted under this Act.

(4) Where the Bank decides to issue a winding up order, the Bank shall serve the credit union a winding up order that shall include—

- (a) the date on which the winding up takes effect;
- (b) the statement of the grounds for the decision; and
- (c) the rights of the credit union under section 90,

and may appoint a liquidator.

(5) Where the Bank serves an order of winding up under subsection (4), it shall proceed to cancel the operating certificate.

(6) On the issuance of a winding up order under subsection (4), the assets and liabilities of the credit union shall vest in the Inspector or the liquidator, as the case may be, who shall take charge of all books, records and assets of the credit union or any portion thereof and do all such things as may be necessary to safeguard the interests of members and creditors of the credit union until any appeal filed pursuant to subsection (9) has been determined.

(7) Where the Bank issues an order for winding up under subsection (4) the business of the credit union shall cease.

(8) Notwithstanding subsection (7), under the direction of the liquidator appointed by the Bank, the credit union shall continue to discharge its debts, pay

operating expenses, collect money owed to it, distribute its assets and perform all acts required to wind up its affairs.

(9) A credit union who is aggrieved by a decision of the Bank to issue a winding up order under subsection (4), may appeal to the High Court within fourteen days of the date of its receipt of the notice of winding up setting forth the grounds of appeal.

79. (1) Notwithstanding section 78 of this Act, the Bank may petition the High Court for the winding up of a credit union in accordance with the Companies Act. ^{Winding up by petition}

(2) No petition shall be presented except by leave of the Court, and such leave shall not be granted unless—

(a) a *prima facie* case has been established to the satisfaction of the Court; and

(b) security for costs for such amount as the Court may think reasonable has been given.

(3) The procedure governing petitions made to the High Court in this section and for the enforcement of orders made hereunder and for all matters incidental thereto shall be that provided for by the Companies Act and any other written law.

(4) Notwithstanding subsection (3), a petition by the Bank may be heard *ex parte*.

80. (1) A credit union may voluntarily liquidate and wind up its affairs subject to the prior approval of the Central Bank. ^{Voluntary liquidation}

(2) The Bank shall not approve a voluntary winding up unless it is satisfied that the winding up will be effected in a manner that would not pose undue risk to the members of the credit union.

(3) A credit union that wishes to commence a voluntary winding up, shall submit to the Bank—

- (a) a copy of the resolution of its membership to voluntarily wind up the credit union, passed by not less than three-fourths of all the members present and voting at a special general meeting called for the purpose;
- (b) audited financial statements of the credit union for the periods specified by the Bank;
- (c) the external auditor's report in relation to the financial statements referred to in paragraph (b); and
- (d) such other information as the Bank may require.

(4) The Bank shall, within thirty days of receipt of the documents referred to in subsection (3), communicate to the credit union its approval or non-approval of the voluntary winding up of the credit union.

(5) Where the Bank approves the application of a credit union for voluntary winding up, the credit union shall—

- (a) within fourteen days of such approval, give notice of the resolution—
 - (i) to its members in such form and containing such information as the Bank may require; and
 - (ii) by advertisement in the *Gazette* and in at least two daily newspapers in circulation in Trinidad and Tobago and by electronic or any other means the Bank considers appropriate; and
- (b) apply to the Court for winding up.

(6) Upon receipt of an order of the Court approving an application for voluntary liquidation of a credit union, a copy of such order shall be filed with the Bank by the credit union, and the Bank shall cancel the credit union's operating certificate.

(7) The Bank shall inform the Commissioner in writing that the credit union's operating certificate has been cancelled and direct that the credit union be deregistered.

81. (1) The liquidator appointed pursuant to section 79 or 80, shall conduct the liquidation of a credit union with due diligence. ^{Undue delay by a liquidator}

(2) Where the Court, on application of the Central Bank, a contributory, a creditor or policyholder, is satisfied that the liquidator is acting with unreasonable delay or is failing or has failed to carry out any duty imposed in this Part or under any other written law, the Court may—

- (a) direct the liquidator to carry out that duty;
- (b) restrain the liquidator from dealing with the property of the insurer or financial holding company until that duty has been carried out;
- (c) remove the liquidator and appoint another liquidator; or
- (d) make such other order as it thinks fit.

(3) Where an application has been made under subsection (2), the Court may consider all relevant factors in deciding whether the delay was unreasonable, including the following:

- (a) the length of the delay;
- (b) the complexity of the liquidation;
- (c) the reasons for the delay; and
- (d) the conduct of the liquidator, the insurer or financial holding company, the Central Bank and the applicant.

Reconstruction of
credit unions

82. (1) Reconstruction of a credit union may be effected by—

- (a) amalgamation with another credit union to form a single credit union;
- (b) the transfer of a credit union's assets and liabilities to another credit union; or
- (c) the credit union dividing itself into two or more credit unions.

(2) Where a credit union is reconstructed in accordance with sections 72(5) and 83 to 85 during the transition periods set out in Schedule 5, only the remainder of the applicable transition period shall apply to such reconstructed credit union.

Amalgamation of
credit unions

83. (1) Any two or more credit unions may, with the approval of the Central Bank, by resolution passed by not less than three-fourths of all the members present and voting at a special general meeting called for such purpose, amalgamate as one credit union.

(2) On the passing of the resolution referred to in subsection (1), each such credit union shall first apply to the Bank for the cancellation of its operating certificate and thereafter apply to the Commissioner for cancellation of its registration.

(3) Upon completion of the procedure set out in subsection (2), applications shall be made to—

- (a) the Commissioner, to be registered as a financial co-operative society with the words "credit union" in its name; and
- (b) the Bank, for an operating certificate in the name of the amalgamated credit union.

(4) Registration of the amalgamated credit union shall be sufficient conveyance to vest the assets and liabilities of the amalgamating credit unions in the amalgamated credit union.

(5) With regard to the applicable transition periods stipulated in Schedule 5, credit unions that amalgamate within the first five years of the coming into operation of this Act shall have only the remainder of the transition periods stipulated therein, commencing from the official date of the amalgamation, to come into compliance with the requirements set out in the Schedule.

84. (1) A credit union may, subject to the approval of ^{Transfers} the Central Bank, transfer its assets and liabilities to any other credit union which has agreed to the transfer.

(2) A credit union that wishes to transfer its assets and liabilities to another credit union shall submit to the Bank—

- (a) a copy of a resolution of its membership, agreeing to transfer the assets and liabilities of the credit union to a transferee credit union, passed by not less than three-fourths of all the members present and voting at a special general meeting called for such purpose;
- (b) a copy of a resolution of the membership of the transferee credit union agreeing to the transfer of assets and liabilities of a transferor credit union, passed by not less than three-fourths of the members of that transferee credit union present and voting at a special general meeting called for such purpose; and
- (b) an application for the cancellation of its operating certificate.

(3) Upon the approval of the transfer and the cancellation by the Bank of its operating certificate, the credit union shall apply to the Commissioner for the cancellation of its registration certificate.

(4) Cancellation of the registration and the operating certificates of the transferor credit union shall be sufficient conveyance to vest the assets and liabilities of the transferor in the transferee.

Divisions

85. (1) A credit union may, subject to the approval of the Central Bank, by a resolution passed by two-thirds of the members present and voting at a special general meeting called for the purpose, resolve to divide itself into two or more credit unions.

(2) The credit union shall submit a copy of the resolution referred to in subsection (1) to the Bank and provide the Bank with the following information:

- (a) how the assets and liabilities of the credit union will be divided among the new credit unions; and
- (b) proof of the satisfaction of the claims of all the creditors and such other individuals or entities who have given notice of intention to demand payment of moneys due to them.

(3) On the passing of the resolution referred to in subsection (1), the credit union shall apply to the Bank for cancellation of its operating certificate and thereafter apply to the Commissioner for cancellation of its registration.

(4) Upon completion of the procedures set out in subsections (2) and (3), applications shall be made to—

- (a) the Commissioner to be registered as a financial co-operative society with the words “credit union” in its name; and
- (b) the Bank for an operating certificate in the names of the proposed divided credit unions.

(5) Registration of the divided credit unions shall be sufficient conveyance to vest the assets and liabilities of the dividing credit union into the divided credit unions.

(6) With regard to the applicable transition periods stipulated in Schedule 5, credit unions that divide into two or more credit unions within the first five years of the coming into operation of this Act, shall have only the remainder of the transition periods stipulated therein, commencing from the official date of the division, to come into compliance with the requirements set out in the Schedule.

86. Notwithstanding sections 83 to 85, no ^{Notice of amalgamation required} amalgamation, transfer or division of a credit union shall be effected—

- (a) unless any individual or entity whose interests may be affected by the reconstruction of the credit unions concerned and the Bank are given three months written notice of the proposed reconstruction; and
- (b) where a creditor objects in writing to the proposal, his claims against the credit union are first satisfied.

87. The registration of new credit unions established ^{Vesting of assets} pursuant to section 85 shall be sufficient to vest the assets and liabilities of the original credit union in the new credit unions in the manner specified in the resolution as confirmed under subsection (1) of that section.

88. Where a petition is made by the Inspector to the ^{Winding up} Court for the winding up of a credit union—

- (a) the credit union shall not carry on business during the pendency of the petition unless it is authorised to do so by the Court and except in accordance with any conditions that may be specified by the Court; and

- (b) the Court, if it is of the opinion after conducting an inquiry as it may consider necessary, that the credit union—
- (i) is not insolvent;
 - (ii) is able to meet the minimum capital adequacy requirement; and
 - (iii) is able to meet the demands of its members and its continuation in business is not likely to involve a loss to its members and creditors,

may permit the credit union to resume business either unconditionally or subject to such conditions as the Court may consider necessary in the public interest or the interests of the members and other creditors of the credit union but shall otherwise order that the credit union be wound up.

PART XIII

MISCELLANEOUS

Discharge of liability **89.** (1) The Bank may issue to any individual or entity who there is reasonable cause to believe has committed an offence referred to in the First Column of Schedule 4, a Notice offering the individual or entity the opportunity to discharge any liability to conviction in respect of that offence by payment of the administrative fine specified for the offence in the Fifth Column of Schedule 4.

Schedule 4

(2) Where an individual or an entity is given notice under this section, criminal proceedings shall not be taken against him for the offence specified in the notice until the expiration of twenty-one days commencing from the day after which the notice was served.

(3) Administrative fines under this section shall be calculated with reference to the credit union's asset size where a credit union's assets—

- (a) are ten million dollars or lower, it shall pay twenty-five per cent of the administrative fine prescribed in Schedule 4 and the daily rate, where applicable, will be two hundred dollars;

- (b) exceed ten million dollars but are equal to, or lower than fifty million dollars, it shall pay fifty per cent of the administrative fine prescribed in Schedule 4 and the daily rate, where applicable, will be five hundred dollars;
- (c) exceed fifty million dollars but are equal to, or lower than one hundred million dollars, it shall pay seventy-five per cent of the administrative fine prescribed in Schedule 4; and
- (d) exceed one hundred million dollars, it shall pay one hundred per cent of the administrative fine prescribed in Schedule 4.

(4) Where an individual or an entity fails to pay the administrative fine referred to in subsection (1) or where he pays the administrative fine but continues to commit the offence after the expiration of twenty-one days following the date of receipt of the notice, the credit union shall be liable on summary conviction for the original offence committed.

(5) Payment of an administrative fine under this section shall be made to the Comptroller of Accounts and in any criminal proceedings against an offender referred to in this section, a certificate that payment of the administrative fine was, or was not made to the Comptroller by the specified date shall, if the certificate purports to be signed by the Comptroller, be admissible as evidence of the facts stated therein.

(6) A notice under subsection (1) shall—

- (a) specify the offence alleged;
- (b) give such particulars of the offence as are necessary for giving reasonable information of the allegation; and

(c) state—

- (i) that criminal proceedings shall not be laid until the expiration of twenty-one days from the date of receipt of the notice where payment of the administrative fine is made and the commission of the offence is discontinued;
- (ii) the amount of the administrative fine and the fact that it is to be paid to the Comptroller of Accounts; and
- (iii) the places where payment of the fine is to be made.

(7) In any proceedings for an offence to which this section applies, no reference shall be made to the giving of any notice under this section or to the payment or non-payment of administrative fine hereunder, unless in the course of the proceedings or in a document which is before the High Court in connection with the proceedings, reference has been made by, or on behalf of the accused to the giving of such a notice, or, as the case may be, to such payment.

(8) The Minister may, by Order, provide for any matter incidental to the operation of this section, and in particular, any such Order may prescribe—

- (a) the form of notice under this section;
- (b) the nature of the information to be furnished to the Comptroller of Accounts along with any payment; and
- (c) the arrangements for the Comptroller to furnish to the Central Bank information with regard to any payment or non-payment pursuant to a notice under this section.

90. (1) A person who perpetrates a financial fraud on Financial fraud on members members commits an offence.

(2) A director or officer of a credit union that—

- (a) falsifies the accounts of the credit union which leads to a loss of members' funds;
- (b) uses members' funds for his own benefit or for the benefit of his relatives and persons connected with him which leads to a loss of members' funds;
- (c) provides to the Bank false or misleading financial data or other relevant information with the intent to conceal true financial position of a credit union; and
- (d) does anything which is in contravention of this Act, regulations or bye-laws made thereunder and which leads to a loss to members,

commits a financial fraud on members.

(3) A person found guilty of an offence under this section is liable on summary conviction to a fine of five million dollars and to imprisonment for five years.

(4) It shall be a defence for any person charged with an offence under subsection (2)(d) to prove that—

- (a) he dissented to the decision that is material to the charge;
- (b) his dissent was recorded in the minutes of the relevant meeting; and
- (c) he submitted a report of his dissent to the Bank.

91. (1) An individual, credit union or entity who Offences and penalties contravenes a provision listed in the First Column of Schedule 4 commits an offence and is liable on summary conviction to the penalty specified in the Second Column in the case of an individual or the Third Column in the case of a credit union or entity.

(2) An individual, credit union or entity who contravenes any provision of this Act for which no penalty is expressly provided commits an offence and is liable on summary conviction—

(a) in the case of an individual, to a fine not exceeding thirty thousand dollars and to imprisonment for two years and in the case of continuous offence, to a fine of three thousand dollars for each day the offence continues; or

(b) in the case of a credit union or entity, to a fine not exceeding thirty thousand dollars, and, in the case of continuous offence, to fine of three thousand dollars for each day the offence continues.

(3) Where an individual or an entity is liable under subsection (2), the offence shall be deemed to be continued so long as the default continues.

(4) An individual or an entity who, in purported compliance with any requirement under this Act, furnishes any information, provides any explanation or makes any statement which he knows or has reasonable cause to believe to be false or misleading, commits an offence.

(5) A person who without reasonable excuse alters, suppresses, conceals, destroys or refuses to produce any document which he has been required to produce in accordance with this Act or any Regulations thereunder, or which he is liable to be so required to produce, commits an offence and is liable on summary conviction to a fine of five million dollars and to imprisonment for five years.

(6) An individual or an entity who fails to comply with the provisions of section 10 or who obstructs an individual in the performance of his duties under this section commits an offence and is liable on summary

conviction, in the case of a credit union, to a fine of thirty thousand dollars and in the case of a member of the board, officer or employee of the credit union, to a fine of thirty thousand dollars and to imprisonment for two years.

(7) Notwithstanding subsection (6), the Bank may in addition, apply to the High Court for an order requiring the individual or entity to comply with the restriction or measure imposed, and on such application, the Court may so order and make any other order it thinks fit.

(8) In any proceedings for an offence under this Act it shall be a defence for the individual or entity charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by himself or by any individual or entity under his control.

(9) In any proceedings for an offence under this Act or Regulation made thereunder where it is proved that the individual or entity charged intended to deceive, defraud or profit significantly from the offence, the penalty shall be a fine ten times the amount stipulated in subsection (2) or imprisonment for twenty years and this penalty shall be in addition to any other penalty under this Act.

(10) The High Court may, in addition to any other punishment it may otherwise impose under subsection (9)—

- (a) order the individual or entity to comply with the requirement in respect of which the individual or entity was convicted; or
- (b) where it is satisfied that, as a result of the commission of the offence the convicted individual or entity acquired any monetary benefits or that monetary benefits accrued to a related party of the convicted individual

or entity order the convicted individual or entity to pay restitution to the party deceived or defrauded, in an amount equal to the Court's estimation of those monetary benefits.

(11) Where an offence committed by a credit union is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of any officer of the credit union or an individual or an entity who was purporting to act in any such capacity, he, as well as the credit union, commits an offence and is liable to be proceeded against and punished accordingly.

(12) Where an individual or an entity is convicted of an offence under this Act, the High Court may, in addition to any punishment it may impose, order that individual or entity to comply with any provision of this Act, the contravention of which he has been convicted.

(13) Notwithstanding anything in any other law to the contrary any complaint relating to an offence under this Act which is triable by a Magistrate's Court in Trinidad and Tobago may be so tried if it is laid at any time within three years after the commission of the offence or within eighteen months after the relevant date.

(14) In this section, "relevant date" means the date on which evidence sufficient in the opinion of the Bank to justify the institution of summary proceedings comes to its knowledge.

Jurisdiction and
limitation

92. (1) Summary proceedings for an offence under this Act may, without prejudice to any jurisdiction exercisable apart from this subsection, be taken against an entity in any place at which it has a place of business, and against an individual in any place at which he is for the time being located.

(2) Notwithstanding anything in any other law to the contrary, any complaint relating to an offence under this Act which is triable by a Magistrate's Court in Trinidad and Tobago may be so tried if it is laid at any time within ten years after the commission of the offence or within eighteen months after the relevant date.

(3) In this section, the "relevant date" means the date on which evidence sufficient in the opinion of the Bank to justify the institution of summary proceedings comes to its knowledge.

(4) For the purposes of subsection (3), a certificate as to the date on which evidence referred to in subsection (3) came to the knowledge of the Bank shall be conclusive evidence of that fact.

93. (1) Any individual or entity who is aggrieved by a ^{Appeals} decision of the Bank or the Inspector—

- (a) to refuse an application for an operating certificate;
- (b) to cancel an operating certificate otherwise than in a case in which cancellation is mandatory under section 32(1);
- (c) to restrict an operating certificate in any particular manner or to vary any restrictions of an operating certificate;
- (d) to issue compliance directions under section 68;
- (e) to give a direction under section 31;
- (f) to disqualify any individual under section 39, from being a director or officer on the ground that he is not a fit and proper individual;

- (g) to refuse a plan for approval for a merger or transfer under sections 82 and 83;
- (h) to wind up a credit union pursuant to section 78; and
- (i) which, in the opinion of a credit union, might be contrary to any provision of this Act,

may appeal against the decision to the High Court within fifteen days of receipt of the decision.

(2) During the pendency of an appeal, any order, decision or direction made or given by the Bank shall continue in force and be binding unless, on an *inter partes* application, the Court is satisfied that exceptional circumstances exist that warrant the grant of a stay of any further action by the Bank in respect of any such order, decision or direction, for such period as the Court considers appropriate.

Transitional

94. (1) A credit union that is not, on the coming into operation of this Act, in compliance with any provision specified in Schedule 5 shall become compliant with that provision within the corresponding period specified in the said Schedule 5.

Schedule 5

(2) Where a credit union remains non-compliant beyond the transition period, the Bank may take action against the credit union in accordance with this Act.

Consequential amendments

95. The enactments specified in Schedule 8 are amended in the manner indicated in that Schedule.

SCHEDULE 1

[Section 27(1)]

CLASSES OF BUSINESS ACTIVITIES OF A CREDIT UNION

Class I Business Activities	Description
Deposit Taking	Accepting deposits from members on such terms and conditions as may be prescribed and standards approved by the board of directors of the credit union.
Loans	Granting of loans and other credit to members on such terms and conditions as may be prescribed and standards approved by the board of directors of the credit union.
Investment	Investment of funds by means of loans and investments.
Class II Business Activities	Description
Mortgage Business	Mortgage lending.
Confirming and Acceptance	Confirming, accepting import and export bills for financing.
Trust Business	Management of trust funds, acting as trustee or contractual trust, executor or administrator, administration of pension funds and retirement plans.
Transaction Services	Directly or indirectly offering credit cards and debit cards.
Brokerage	Acting as a broker or as a commission agent for any other financial institution, except for a financial institution within the securities industry.
Other Financing Services	Loan syndication, acceptance credit, project financing, foreign exchange financing and inter-credit union financing.

SCHEDULE 2

[Section 6(4)]

FIT AND PROPER INDIVIDUAL AND ENTITY

1. Every individual who is, or is to be a member of the board of the credit union, director, or officer of the credit union must be a fit and proper individual to hold the particular position which he holds or is to hold.

2. In determining whether an individual is a fit and proper individual to hold any particular position, regard shall be had to his probity, to his competence and soundness of judgment for fulfilling the responsibilities of that position, to the diligence with which he is fulfilling or likely to fulfill those responsibilities and to whether the interests of members of the credit union are likely to be, in any way, threatened by his holding that position.

3. Without prejudice to the generality of the foregoing provisions, regard may be had to the previous conduct and business activities in business or financial matters of the individual in question and, in particular, to any evidence that he has—

- (a) been convicted of an offence involving fraud or other dishonesty or violence;
- (b) contravened any provision under any enactment appearing designed for protecting members of the public against financial loss due to dishonesty, incompetence or malpractice by individuals and entities concerned in the provision of banking, insurance, investment or other financial services or the management of companies or against financial loss due to the conduct of discharged or undischarged bankrupts;
- (c) been delinquent in meeting payment obligations;
- (d) engaged in any business practices appearing to be deceitful or oppressive or otherwise improper (whether unlawful or not) or which otherwise discredit his method of conducting business;

- (e) an employment record which leads the Bank to believe that the individual carried out an act of impropriety in the handling of his employer's business; and
- (f) engaged in, or been associated with any other business practices or otherwise conducted himself in such a way as to cast doubt on his competence and soundness of judgment.

SCHEDULE 3

[Section 35(1)(b)]

TECHNICAL SOLVENCY TEST FOR CREDIT UNIONS

Line item

ADJUSTED ASSETS:

Total assets

Add: Provisions for loan losses

Add: Provisions for investment quality -

Total adjusted assets (A)

ADJUSTED LIABILITIES:

Total liabilities including contingent liabilities and withdrawable shares

Add: 50% of total delinquent loans

Less: Members withdrawable shares and deposits

Total adjusted liabilities (B) -**NET VALUE OF ASSETS (A-B) -**

Solvency = (Net Value of Assets/Total Members Deposits + Withdrawable Shares) x 100

SCHEDULE 4

(Section 88)

Offences in respect of which Criminal Liability on Summary Conviction may be discharged by payment of an Administrative Fine

Section of the Act and General description of offence	Criminal Penalty (credit union or entity)	Criminal Penalty (individual)	Administrative Fine (credit union or entity)	Administrative Fine (individual)
6(1), 6(2)(a), (b) Failure by an individual to supply, produce or verify information or documents within the time-frame specified by the Bank.	\$20,000	\$20,000	\$5,000	\$5,000
7(2) Failure of a credit union to provide the Bank with information for statistical purposes	\$25,000 plus \$2,500 per day that the offence continues		\$6,250	
23 Failure to display the operating certificate at its head office and branch(es)	\$25,000 plus \$2,500 per day that the offence continues		\$6,250	
25 Failure of a credit union to give prior notice to the Central Bank when establishing, acquiring, relocating, opening or closing a branch	\$25,000 plus \$2,500 per day that the offence continues		\$6,250	

SCHEDULE 4—CONTINUED

(Section 88)

Offences in respect of which Criminal Liability on Summary Conviction may be discharged by payment of an Administrative Fine

Section of the Act and General description of offence	Criminal Penalty (credit union or entity)	Criminal Penalty (individual)	Administrative Fine (credit union or entity)	Administrative Fine (individual)
25(3) Failure of a credit union to notify the Bank within thirty days of closing or relocating a branch	\$25,000 plus \$2,500 per day that the offence continues		\$6,250	
26(3) Failure to submit documents to the Central Bank within two months of the coming into operation of the Act	\$25,000 plus \$2,500 per day that the offence continues		\$6,250	
33 Failure of a credit union to submit statement of returns to the Central Bank	\$25,000 plus \$2,500 per day that the offence continues		\$1,000 (large and medium) and \$500 (small and micro) per day that the offence continues	
34(2) Failure of a credit union to submit audited financial statements within the time prescribed	\$25,000 plus \$2,500 per day that the offence continues		\$1,000 (large and medium) and \$500 (small and micro) per day that the offence continues	

SCHEDULE 4—CONTINUED

(Section 88)

Offences in respect of which Criminal Liability on Summary Conviction may be discharged by payment of an Administrative Fine

Section of the Act and General description of offence	Criminal Penalty (credit union or entity)	Criminal Penalty (individual)	Administrative Fine (credit union or entity)	Administrative Fine (individual)
34(3) Failure of a credit union to submit audited financial statements signed by the designated individuals	\$25,000 plus \$2,500 per day that the offence continues		\$1,000 (large and medium) and \$500 (small and micro) per day that the offence continues	
38(1) to (5) Failure to comply with the stipulations for board membership	\$20,000 plus \$2,000 per day that the offence continues		\$5,000	
38(6) Failure of an individual nominated for membership on a board to declare membership on the board of any other credit union		\$20,000 plus \$2,000 per day that the offence continues		\$5,000
38(9) Failure of a credit union to notify the Inspector of any change in the membership of the board or officers of a credit union within fourteen days of the change	\$15,000 and \$1,500 per day that the offence continues		\$1,000 (large and medium) and \$500 (small and micro) per day that the offence continues	

SCHEDULE 4—CONTINUED

(Section 88)

Offences in respect of which Criminal Liability on Summary Conviction may be discharged by payment of an Administrative Fine

Section of the Act and General description of offence	Criminal Penalty (credit union or entity)	Criminal Penalty (individual)	Administrative Fine (credit union or entity)	Administrative Fine (individual)
40(2) Failure of the board to prepare an annual declaration to the Inspector	\$15,000 and \$1,500 per day that the offence continues		\$1,000 (large and medium) and \$500 (small and micro) per day that the offence continues	
40(3) Failure of the President of a credit union to submit the annual declaration to the Central Bank within the time prescribed	\$15,000 and \$1,500 per day that the offence continues		\$1,000 (large and medium) and \$500 (small and micro) per day that the offence continues (president).	
40(4)(a) and (b) Failure of the board of a credit union to carry out duties prescribed under the Act	\$25,000		\$6,250	
41 Failure of the board of a credit union to comply with the requirements for the formation and establishment of additional committees	\$25,000 plus \$2,500 per day that the offence continues		6,250	

SCHEDULE 4—CONTINUED

[Section 88]

Offences in respect of which Criminal Liability on Summary Conviction may be discharged by payment of an Administrative Fine

Section of the Act and General description of offence	Criminal Penalty (credit union or entity)	Criminal Penalty (individual)	Administrative Fine (credit union or entity)	Administrative Fine (individual)
42 Failure of a member of the board, officer or employee to declare conflict of interest and/or recuse himself		\$15,000		\$3,750
45(1) Failure of a credit union to advise the Central Bank of reasons for replacing the external auditor	\$25,000		\$6,250	
46 Failure of the board of a credit union to submit a copy of the external auditor's financial management letter within the time specified	\$25,000 plus \$2,500 per day that the offence continues		\$1,000 (large and medium) and \$500 (small and micro) per day that the offence continues (individual)	
47(2) Failure of a credit union to notify its external auditor of Central Bank's request to comply with other reporting requirements	\$15,000 and \$1,500 per day that the offence continues		\$3,750	

SCHEDULE 4—CONTINUED

[Section 88]

Offences in respect of which Criminal Liability on Summary Conviction may be discharged by payment of an Administrative Fine

Section of the Act and General description of offence	Criminal Penalty (credit union or entity)	Criminal Penalty (individual)	Administrative Fine (credit union or entity)	Administrative Fine (individual)
51(2) Failure of a credit union to apply the one-fifth limit to individual member shareholdings	\$25,000 plus \$2,500 per day that the offence continues		\$6,250	
53 Failure of a credit union to adhere to prohibitions against receiving deposits from non-members	\$25,000		\$6,250	
55 Failure of a credit union to provide members with statements at least quarterly	\$15,000 and \$1,500 per day that the offence continues		\$3,750	
56(2) Failure of a credit union to annually identify all member deposits which are to be declared dormant	\$15,000 and \$1,500 per day that the offence continues		\$3,750	

SCHEDULE 4—CONTINUED

(Section 88)

Offences in respect of which Criminal Liability on Summary Conviction may be discharged by payment of an Administrative Fine

Section of the Act and General description of offence	Criminal Penalty (credit union or entity)	Criminal Penalty (individual)	Administrative Fine (credit union or entity)	Administrative Fine (individual)
56(3) Failure of a credit union to transfer sums from accounts declared dormant into a dormant member's liability account	\$15,000 and \$1,500 per day that the offence continues		\$3,750	
56(4) Failure to publish statement of dormant accounts within the time prescribed	\$15,000 plus \$1,500 per day that the offence continues		\$1,000 (large and medium) and \$500 (small and micro) per day that the offence continues (individual)	
57 Failure of the credit union to comply with the restrictions on the payment of dividends as set out in this section	\$25,000		\$6,250	
61(1) Failure of a credit union to invest the funds of the credit union in accordance with the Act	\$15,000		\$3,750	

SCHEDULE 4—CONTINUED

(Section 88)

Offences in respect of which Criminal Liability on Summary Conviction may be discharged by payment of an Administrative Fine

Section of the Act and General description of offence	Criminal Penalty (credit union or entity)	Criminal Penalty (individual)	Administrative Fine (credit union or entity)	Administrative Fine (individual)
61(2) Failure of the board of a credit union to approve written policies for the investment of the credit union's funds	\$25,000		\$6,250	
61(5) Beneficially holding real estate or any interest in real estate acquired by the credit union in the course of satisfaction of debts due for longer than two years or any other time specified by the Inspector	\$25,000 plus \$2,500 per day that the offence continues		\$6,250	
62 Failure of a credit union to make loans in accordance with the conditions outlined in the Act	\$25,000		\$6,250	
62(1) Failure of the credit union to adhere to prohibition against granting loans to non-members	\$25,000		\$6,250	

SCHEDULE 4—CONTINUED

(Section 88)

Offences in respect of which Criminal Liability on Summary Conviction may be discharged by payment of an Administrative Fine

Section of the Act and General description of offence	Criminal Penalty (credit union or entity)	Criminal Penalty (individual)	Administrative Fine (credit union or entity)	Administrative Fine (individual)
<p>63 Failure of a credit union to exclude interest payable on delinquent loans from income</p>	<p>\$25,000 plus \$2,500 per day that the offence continues</p>		<p>\$6,250</p>	
<p>64 Credit union incurring a credit exposure by any member, entity or related party an aggregate amount that exceeds twenty-five per cent of its capital base except as prescribed by this section and Regulations</p>	<p>\$25,000 plus \$2,500 per day that the offence continues</p>		<p>\$6,250</p>	
<p>65(5) Failure of a credit union to take action as required by the Bank regarding credit exposures to related parties which are in excess of the fixed limits, and of the measures that shall be taken to reduce the credit exposures that are in excess of the fixed limits</p>	<p>\$20,000 plus \$2,000 per day that the offence continues</p>		<p>\$5,000</p>	

SCHEDULE 4—CONTINUED

(Section 88)

Offences in respect of which Criminal Liability on Summary Conviction may be discharged by payment of an Administrative Fine

Section of the Act and General description of offence	Criminal Penalty (credit union or entity)	Criminal Penalty (individual)	Administrative Fine (credit union or entity)	Administrative Fine (individual)
<p>66 Failure of a credit union to borrow within the limits prescribed by this Act and Regulations</p>	<p>\$20,000 plus \$2,000 per day that the offence continues</p>		<p>\$5,000</p>	
<p>67(2) Acquisition by a credit union of real estate or any interest in real estate except as prescribed in this section and Regulations</p>	<p>\$25,000</p>		<p>\$6,250</p>	
<p>67(3) Failure of a credit union to hold other real estate or conduct business activities within the limits prescribed by the Act and Regulations</p>	<p>\$25,000</p>		<p>\$6,250</p>	
<p>80(5) Failure of a credit union to publish notice of the passing of a resolution for voluntary winding up and to give notice to its members</p>	<p>\$20,000 plus \$2,000 per day that the offence continues</p>			

SCHEDULE 5

[Sections 81(2), 82(5), 91(1)]

TRANSITION PERIODS

Section of the Act	Provision	Transition Period
11(13)(a)	Solvency ratio of 80%	1 year
11(13)(b)	Solvency ratio of 111%	2 years
24(4)	Credit unions carrying on any activity other than the business of a credit union above the limits set out in this Act, e.g., non-financial business activities	5 years
38	Members of a board of a credit union meeting minimum qualifications and Fit and Proper requirements	2 years for existing board members
44(2)	Eligibility requirements for External Auditor	2 years
57(3)	Distributions from undivided surplus or retained earnings pursuant to a plan approved by the Central Bank	3 years
58	Institutional Capital	5 years
59	Liquidity	2 years
61(4)	Substantial Investments	5 years
64	Credit Exposures	5 years
66	Borrowings	2 years
67(3)	Real Estate	5 years

SCHEDULE 6

(Section 36)

CORRECTIVE ACTION BY BANK OR INSPECTOR

In pursuance of section 36, the Bank or Inspector may take the following forms of corrective action:

- (a) issue directions to a credit union, officer, employee or agent of a credit union;
- (b) issue compliance directions;
- (c) direct a credit union to engage an independent accountant to perform or conduct a review of its financial statements and accounting records;
- (d) disclose information pertaining to a credit union in the *Gazette* and at least two daily newspapers in circulation in Trinidad and Tobago or by electronic or any other appropriate means;
- (e) require the credit union to provide information;
- (f) inquire into and examine the affairs of an entity, credit union or other co-operative society;
- (g) revoke the operating certificate of a credit union;
- (h) restrict the operating certificate of a credit union;
- (i) vary the restriction on the operating certificate of a credit union;
- (j) disqualify an individual from being a member of the board of a credit union;
- (k) require the credit union to remedy any breach of prudential criteria as prescribed in the Regulations;
- (l) require a board of a credit union to take action to comply with a direction;
- (m) apply to the High Court for—
 - (i) an order to require an individual or entity to comply with a direction, restriction or measure imposed;

- (ii) a restraining order or other injunctive or equitable relief or any other remedy which may be provided by law; or
- (iii) an order for judicial management;
- (n) suspend the operations of credit union;
- (o) refuse to grant approval of an operating certificate for reconstruction of a credit union;
- (p) issue an order to wind up a credit union;
- (q) petition the High Court for the winding up of a credit union;
- (r) issue a notice offering an individual or an entity the opportunity to discharge any liability to conviction in respect of an offence by payment of an administrative fine; or
- (s) take any other corrective and remedial action and decision that the Central Bank or Inspector considers appropriate to ensure compliance with the Act.

SCHEDULE 7

[Section 28(1)(g)]

PRUDENT OPERATIONS AND CONDUCT FOR CREDIT UNIONS

1. Good Governance

The board of a credit union and senior management must adopt the following practices for prudent operation and conduct:

- (a) **Strategic Planning:** Considering, approving and monitoring strategic business plans for the credit union;
- (b) **Risk Management:** Identifying and evaluating the risks involved in a credit union's business operations;
- (c) **Accountability:** Establishing the responsibilities and accountabilities of the board and board committees;

- (d) Annual review of policies: Reviewing and approving all policies that govern the operations of the credit union;
- (e) Meetings: Holding regular meetings of the board and documenting the minutes of all meetings in a manner that captures the decision-making process of the board. Minutes should be completed in a timely manner and confirmed;
- (f) Information Technology Systems Integrity: Ensuring the business operations are functioning properly and effectively and under a sound framework of internal controls;
- (g) Avoidance of self-dealing: Establishing controls to ensure that there are no instances of self-dealing;
- (h) Assessment of effectiveness: Reviewing the effectiveness of the board's performance on a regular basis;
- (i) Regulatory Compliance: Establishing a compliance function and system to ensure compliance with all applicable laws and regulations; and
- (j) Verification for accuracy: Establishing controls to verify and ensure the accuracy of all statements, reports, declarations or other returns that are required under the Act.

2. Training and Development programmes

Annual training programmes shall be made available to all new and existing officers and members of the board of a credit union to cover at least three or more of the following disciplines:

- (a) credit risk management;
- (b) investment management;
- (c) standards of corporate governance;
- (d) key provisions of the Act and Regulations which govern the sector;
- (e) financial accounting;

- (f) business of the credit union; and
- (g) interpretation of financial statements.

3. Maintenance of Credit Unions

(1) A credit union shall not be regarded as conducting its business in a prudent manner unless it maintains or, as the case may be, will maintain adequate systems of control of its business and records.

(2) Records and systems shall not be regarded as adequate unless they are such as to enable the credit union to meet the prudential criteria and the credit union comply with the duties imposed on it by, or under this Act.

(3) Financial records of the credit union are to be kept in such a manner that facilitates timely regulatory reporting, fair and accurate reporting of the financial position of the credit union to management and the board of the credit union and facilitates the timely preparation of audit schedules and worksheets required for the audit by the external auditors.

4. Internal Controls

A sound internal control environment which seeks to maintain the reliability and integrity of the financial and operational information and prevent and detect errors and fraud should include the following elements:

- (a) segregation of duties;
- (b) approval authorities; and
- (c) regular valuation of assets.

5. Technology Risk

Credit unions shall—

- (a) adapt the credit union's technology to its business strategy, business plans and operating needs;
- (b) properly authorize, test and document technology changes before implementing them;
- (c) implement effective security systems and processes to protect sensitive and private member information and prevent the unlawful use of this information;

- (d) implement effective back-up processes, recovery processes and standby arrangements to address technology interruption, destruction or failure;
- (e) allocate appropriate resources (money, people and training) to maintain and enhance the technology; and
- (f) implement effective security systems and processes to protect the information that the technology records, processes, reports and stores.

6. Operating Efficiency

Credit unions should limit their operating costs to five per cent of their average assets.

SCHEDULE 8

(Section 94)

CONSEQUENTIAL AMENDMENTS

The enactments set out in Column I are amended in the manner specified in Column II as follows:

Column I Enactment	Column II Extent of Amendment
The Central Bank Act, Chap. 79:02	<p>A. In section 44C(1) in the definition of “institution” delete the words “a society registered under the Co-operative Societies Act” and substitute the words “a credit union registered under the Credit Unions Act, 2014”;</p> <p>B. Repeal section 44C(3) and substitute the following: “ (3) The provisions of this Part shall apply to credit unions registered under the Credit Unions Act, 2014.”;</p>

SCHEDULE 8—CONTINUED

(Section 94)

CONSEQUENTIAL AMENDMENTS

The enactments set out in Column I are amended in the manner specified in Column II as follows:

Column I Enactment	Column II Extent of Amendment
	<p>C. In section 44D(1)(c)(v) delete the words “a society registered under the Co-operative Societies Act” and substitute the words “a credit union registered under the Credit Unions Act, 2014”;</p> <p>D. In section 56—</p> <p style="padding-left: 40px;">(a) in subsection (1), insert after the words “Insurance Act”, the words “, any credit union registered under the Credit Unions Act, 2014”; and</p> <p style="padding-left: 40px;">(b) in subsection (2), insert after the words “Insurance Act”, the words “, any credit union registered under the Credit Unions Act, 2014”;</p> <p>E. In section 60, insert after subsection (6), the following subsection:</p> <p style="padding-left: 40px;">“ (7) Fees and charges prescribed under this section shall not apply to a credit union registered under the Credit Unions Act, 2014 until three years following the commencement of that Act.”.</p>

SCHEDULE 8—CONTINUED

(Section 94)

CONSEQUENTIAL AMENDMENTS

The enactments set out in Column I are amended in the manner specified in Column II as follows:

Column I Enactment	Column II Extent of Amendment
The Proceeds of Crime Act, Chap. 11:27	<p>In section 2(1) in the definition of “financial institution”, delete paragraph (d) and substitute the following paragraph:</p> <p style="padding-left: 40px;">“(d) a credit union registered under the Credit Unions Act, 2014;”.</p>
The Financial Obligations Regulations, Chap. 11:27	<p>A. In regulation 2(a) in the definition of “Supervisory Authority” insert after the words “cash remitting services under the Central Bank Act,” the words “credit unions registered under the Credit Unions Act, 2014;”;</p> <p>B. In regulation 40, delete the word “and” at the end of paragraph (e) and insert the following paragraph:</p> <p style="padding-left: 40px;">“(ea) a credit union registered under the Credit Unions Act, 2014; and”.</p>

Passed in the Senate this day of ,
2015.

Clerk of the Senate

IT IS HEREBY CERTIFIED that this Act is one the Bill for which has been passed by the Senate and at the final vote thereon in the Senate has been supported by the votes of not less than three-fifths of all the members of the Senate, that is to say by the votes of Senators.

Clerk of the Senate

I confirm the above.

President of the Senate

Passed in the House of Representatives this day
of , 2015.

Clerk of the House

IT IS HEREBY CERTIFIED that this Act is one the Bill for which has been passed by the House of Representatives and at the final vote thereon in the House has been supported by the votes of not less than three-fifths of all the members of the House, that is to say by the votes of members of the House.

Clerk of the House

I confirm the above.

Speaker

No. 8 of 2014

FIFTH SESSION
TENTH PARLIAMENT
REPUBLIC OF
TRINIDAD AND TOBAGO

BILL

AN ACT to provide for the regulation of the financial business activities of all credit unions and secondary bodies carrying on the business of a credit union and for matters related thereto

Received and read the

First time

Second time

Third time
