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**CONSULTATION DRAFT
CREDIT UNIONS ACT 2009**

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PART 1
PRELIMINARY

Short title

1 This Act may be cited as the Credit Unions Act 2009.

Interpretation

2 In this Act, unless the context otherwise requires, —

"approved auditor" means an auditor who is a member of one of the professional bodies for the time being declared to be approved for the purposes of section 46(6) of the Banks and Deposit Companies Act 1999;

"Authority" means the Bermuda Monetary Authority established under the Bermuda Monetary Authority Act 1969;

"Board" means the Board of Directors of a credit union, established pursuant to its bylaws;

"credit union" means an incorporated non-profit financial cooperative, owned and controlled by its members, that may accept savings deposits and provide credit and other financial services to them;

"member", in relation to a credit union, means an individual who is a shareholder and meets the criteria for membership established by the credit union;

"minimum criteria" means the criteria for licensing specified in Schedule 2.

"Minister" means the Minister of Finance;

"prescribed" means prescribed by regulations made under section 39;

"senior executive officer" means a person other than a chief executive officer who, under the immediate authority of the chief executive officer of the credit union—

(a) exercises managerial functions; or

(b) is responsible for maintaining accounts or other records of the credit union.

PART 2
FORMATION AND ORGANIZATION OF CREDIT UNIONS

Prohibition on operating unlicensed credit union

3 (1) No person shall carry on business as a credit union in or from Bermuda unless the person is for the time being licensed by the Authority under this Act.

(2) A person who contravenes this section is guilty of an offence and liable—

(a) on summary conviction to a fine of \$100,000 or to imprisonment for a period of two years, or to both;

(b) on conviction on indictment to a fine of \$250,000 or to a period of five years, or to both.

Requirements for Licence

4 In order to be licensed by the Authority a credit union must—

(a) adopt bylaws governing the organization and operation of the credit union; and

(b) pay the application fee and any other fees that may be prescribed under the Bermuda Monetary Authority Act 1969.

Bylaws

5 (1) The bylaws shall make provision for all the matters set out in Schedule 1.

(2) A provision of a credit union's bylaws is of no effect to the extent that it is inconsistent with Schedule 1.

Name of credit union

6 (1) Every credit union licensed under the Act must include the words "credit union" in its official name.

(2) Only a credit union licensed under this Act may use a name containing the words "credit union," represent itself as a credit union, or conduct business as a credit union.

(3) Any person who contravenes this section commits an offence and is liable on summary conviction to a fine of \$50,000.

PART 3

REGULATION AND SUPERVISION OF CREDIT UNIONS

Bermuda Monetary Authority

Powers and duties of the Authority

7 The Authority shall have the powers conferred on it by this Act and the duty generally to supervise all credit unions licensed in Bermuda.

Authority's statement of principles

8 (1) The Authority shall as soon as practicable after the coming into force of this Act publish in such manner as it thinks fit a statement of principles in accordance with which it is acting or proposing to act—

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- (a) in interpreting the minimum criteria, the prudential requirements in sections 11 to 13, and the grounds for revocation in section 17;
 - (b) in exercising its power to grant, amend, revoke or restrict a licence; and
 - (c) in exercising its power to obtain information and reports and to require production of documents.

(2) If the Authority makes a material change to the principles, it shall publish a statement of the change or the revised statement of principles in the same manner as it published the statement under subsection (1).

Licensing

Applications for licences

9 (1) A credit union shall make application to the Authority for a licence in such manner as the Authority may direct, and shall provide the Authority with —

- (a) a copy of a notice of the application that has been published in the Gazette; and
- (b) such other information, documents and reports as the Authority may reasonably require for the purpose of determining the application.

(2) An application may be withdrawn by notice in writing to the Authority at any time before it is granted or refused, but in any such case the application fee shall not be refunded to the applicant.

Grant and refusal of licences

10 (1) The Authority may grant a licence to a credit union if it is satisfied that the applicant meets the prudential requirements in sections 11 to 13 and the minimum criteria.

(2) The Minister, acting on the advice of the Authority, may by order amend Schedule 2 by adding new criteria or by amending or deleting the criteria for the time being specified in it.

(3) An order made under subsection (2) is subject to the negative resolution procedure.

Reserve Funding Requirements

11 (1) A credit union shall maintain a reserve fund of 10% of its total assets.

(2) At the close of each financial year, 10% of the credit union's net profits shall be placed into a reserve fund until such time as the fund is equal to 10% of the credit union's total assets.

(3) A reserve fund shall not be distributed to members unless the credit union is dissolved.

(4) In this section, reserve fund means a fund that belongs to a credit union that is used for repayment of shares to members and to recoup losses.

Liquidity Requirements

12 A credit union shall maintain a minimum liquidity ratio of 15% of withdrawable savings in cash or highly liquid assets.

Lending Requirements

13 (1) The maximum period for which a credit union can lend is three years for unsecured loans and seven years for secured loans.

(2) A credit union shall not lend more than 2% of its total assets to any individual member and its total loan portfolio shall not exceed 80% of the credit union's total assets.

Form, display and register of licences

14 (1) A licence shall be in such form as may be prescribed and shall set out the credit union's permitted business activities.

(2) A licence remains in force until it is revoked by the Authority.

(3) The Authority shall cause a notice to be published in the Gazette of every grant of a licence.

(4) The Authority shall compile, maintain and publish in such manner as it thinks fit a register containing, in respect of each licence, such particulars as may be prescribed.

(5) A licensed credit union shall, at all times, keep its licence on display at its principal place of business in Bermuda.

Supervision fee

15 (1) A credit union shall pay such fee ("supervision fee") as may be prescribed under the Bermuda Monetary Authority Act 1969 on the grant of its licence, and thereafter shall pay the supervision fee in each calendar year on or before 30 April after the year in which the licence was granted.

(2) The supervision fee payable on the grant of the licence shall be a proportion of the fee for the period from the date of such grant to 31 December next following, counting part of a month as one month for the purpose of calculating the fee.

(3) A credit union that fails to pay a supervision fee required to be paid under subsection (1) is liable to a civil penalty in the amount of \$500 for each week or part of a week that the payment is outstanding.

(4) The Authority may recover a fee or civil penalty payable under this section as a debt owing to it in any court of competent jurisdiction.

Restriction of licence

16 (1) The Authority may restrict a licence if—

- (a) it is satisfied that a ground of revocation specified in section 17 is met but that the circumstances are not such as to justify revocation;
- (b) it has given a credit union notice that it proposes to revoke its licence or at any time after such notice has been given to the credit union; or
- (c) the credit union has served a notice surrendering its licence with effect from a later date.

(2) The Authority may restrict the licence by imposing such conditions as it thinks desirable for the protection of the credit union's members or potential members, and for safeguarding its assets or otherwise, and may in particular—

- (a) require the credit union to take certain steps or to refrain from adopting or pursuing a particular course of action or to restrict the scope of its business in a particular way;
- (b) impose limitations on the acceptance of deposits, the granting of credit or the making of investments;
- (c) prohibit the credit union from soliciting deposits, either generally or from persons who are not already members;
- (d) prohibit the credit union from entering into any other transactions or class of transactions;
- (e) require the removal of any director, the chief executive officer or a senior executive officer; or
- (f) specify requirements to be fulfilled otherwise than by action taken by the credit union.

(3) Any condition imposed under this section may be varied or withdrawn by the Authority.

(4) The Authority may on the application of a credit union vary any condition imposed on its licence.

(5) A credit union that fails to comply with any requirement or contravenes any prohibition imposed on it by a condition under this section is guilty of an offence and is liable on summary conviction to a fine of \$50,000.

(6) The fact that a condition imposed under this section has not been complied with (whether or not constituting an offence under subsection (5)) shall, where the restriction has been imposed pursuant to

subsection (1)(a), be a ground for the revocation of the licence in question but shall not invalidate any transaction.

Revocation of licence

17 The Authority may revoke the licence of a credit union if the Authority is satisfied that—

- (a) the prudential requirements in sections 11 to 13 and paragraphs 5 to 12 of Schedule 2 are not or have not been fulfilled, or may not be or may not have been met in respect of the credit union;
- (b) the credit union has failed to comply with any obligation imposed on it by or under this Act;
- (c) the Authority has been provided with false, misleading or inaccurate information by or on behalf of the credit union or, in connection with an application for a licence, by or on behalf of a person who is or is to be a director, chief executive officer or senior executive officer of the credit union; or
- (d) the interests of the members or potential members of the credit union are in any way threatened by the manner in which the credit union is conducting or proposes to conduct its affairs or for any other reason.

Winding up on petition from the Authority

18 (1) On a petition presented by the Authority by virtue of this section, the Supreme Court may wind up a credit union in respect of which a licence is revoked, if the court is of the opinion that it is just and equitable that the credit union be wound up.

(2) Part XIII (Winding Up) of the Companies Act 1981 shall apply to the winding up of a credit union under this section.

Notice of restriction or revocation of licence

19 (1) Where the Authority proposes to —

- (a) restrict a licence under section 16(1);
- (b) vary a restriction imposed on a licence otherwise than with the agreement of the credit union concerned; or
- (c) revoke a licence under section 17,

the Authority shall give to the credit union concerned written notice of its intention to do so.

(2) If the proposed action is within subsection 1(a) or 1(b), the notice under that subsection shall specify the proposed restriction or, as the case may be, the proposed variation.

(3) A notice under subsection (1) shall state the ground or grounds on which the Authority intends to act and give particulars of the credit union's rights under subsection (5).

(4) Where—

- (a) the ground for a proposal to impose or vary a restriction or for a proposed revocation is that it appears to the Authority that the criterion in paragraph 1 of Schedule 2 is not or has not been fulfilled, or may not be or may not have been fulfilled, in the case of any person; or
- (b) a proposed restriction consists of or includes a condition requiring the removal of any person as a director, chief executive officer or senior executive officer,

the Authority shall give that person a copy of the notice mentioned in subsection (1), together with a statement of his rights under subsection (5).

(5) A credit union which is given notice under subsection (1) and a person who is given a copy of it under subsection (4) may make representations in writing to the Authority within the period of 14 days beginning with the day on which the notice was given (or such other longer period as the Authority may allow).

(6) After taking into account any representations made under subsection (5), the Authority shall decide whether—

- (a) to proceed with the action proposed in the notice;
- (b) to take no further action;
- (c) if the proposed action was to revoke the credit union's licence, to restrict its licence instead; or
- (d) if the proposed action was to restrict the credit union's licence or to vary the restrictions on a licence, to restrict it or to vary the restrictions in a different manner.

(7) The Authority shall give the credit union and any person mentioned in subsection (4), written notice of its decision and, except where the decision is to take no further action, the notice shall state the reasons for the decision and give particulars of the rights conferred by subsection (9) and section 24.

(8) A notice under subsection (7) of a decision to restrict a licence, to vary the restrictions on a licence or to revoke a licence shall, subject to sections 23(4) and (5), have the effect of restricting the licence or varying the restriction in the manner specified in the notice or of revoking the licence.

(9) Where the decision notified under subsection (7) is to restrict the licence or to vary the restrictions on a licence otherwise than as stated in the notice given under subsection (1), the credit union may within the period of seven days beginning with the day on which the

notice was given under subsection (7) make written representations to the Authority with respect to the restrictions and the Authority may, after taking those representations into account, alter the restrictions.

(10) A notice under subsection (7) shall be given within the period of 28 days beginning with the day on which the notice under subsection (1) was given; and if no notice under subsection (7) is given within that period, the Authority shall be treated as having at the end of that period given a notice under that subsection to the effect that no further action is to be taken.

(11) Where the Authority varies a restriction on a credit union's licence with its agreement or withdraws a restriction consisting of a condition, the variation or withdrawal shall be effected by written notice to the credit union.

(12) The Authority may omit from the copy given to a person under subsection (4) and from a notice given to him under subsection (7) any matter which does not relate to him.

(13) The Authority shall publish in the Gazette, in such form as it thinks fit, notice of every revocation of a licence under this Act.

Restriction in cases of urgency

20 (1) No notice need be given under section 19 in respect of the imposition or variation of a restriction on a credit union's licence in any case in which the Authority considers that the restriction should be imposed or varied as a matter of urgency.

(2) In any such case the Authority may by written notice to the credit union impose or vary the restriction.

(3) Any such notice shall state the reason for which the Authority has acted and particulars of the rights conferred by subsection (5) and section 24.

(4) Section 19(4) shall apply to a notice under subsection (2) imposing or varying a restriction as it applies to a notice under section 25(1) in respect of a proposal to impose or vary a restriction; but the Authority may omit from a copy given to a person by virtue of this subsection any matter which does not relate to him.

(5) A credit union to which a notice is given under this section of the imposition or variation of a restriction and a person who is given a copy of it by virtue of subsection (4) may within the period of fourteen days beginning with the day on which the notice was given make representations to the Authority.

(6) After giving a notice under subsection (2) imposing or varying a restriction and taking into account any representations made in accordance with subsection (5) the Authority shall decide whether —

(a) to confirm or rescind its original decision; or

(b) to impose a different restriction or to vary the restriction in a different manner.

(7) The Authority shall within the period of 28 days beginning with the day on which the notice was given under subsection (2) give the credit union concerned written notice of its decision under subsection (6) and, except where the decision is to rescind the original decision, the notice shall state the reason for the decision.

(8) Where the notice under subsection (7) is of a decision to take the action specified in subsection (6)(b), the notice under subsection (7) shall have the effect of imposing the restriction or making the variation specified in the notice and with effect from the date on which it is given.

Surrender of licence

21 (1) A credit union may surrender its licence by written notice to the Authority.

(2) A surrender shall take effect on the giving of the notice or, if a later date is specified in it, on that date; and where a later date is specified in the notice the credit union may by further written notice to the Authority substitute an earlier date, not being earlier than that on which the first notice was given.

(3) The surrender of a licence is irrevocable unless it is expressed to take effect at a later date and before that date the Authority by notice in writing allows it to be withdrawn.

Directions to protect interests of members

22 (1) The Authority may give a credit union directions under this section at any time after its licence is revoked or surrendered.

(2) Directions under this section shall be such as appear to the Authority to be desirable for safeguarding the interests of the credit union's members.

(3) No direction shall be given to a credit union under this section after it has ceased to have any liability in respect of deposits for which it had a liability at a time when it was licensed; and any such direction which is in force with respect to a credit union shall cease to have effect when the credit union ceases to have any such liability.

(4) A credit union which fails to comply with any requirement or contravenes any prohibition imposed on it by a direction under this section is guilty of an offence and liable —

(a) on summary conviction to a fine of \$25,000;

(b) on conviction on indictment to a fine of \$75,000.

Notification and confirmation of directions

23 (1) A direction under section 22 shall be given by notice in writing and may be varied by a further direction; and a direction may be

revoked by the Authority by a notice in writing to the credit union concerned.

(2) A direction under section 22, except one varying a previous direction with the agreement of the credit union concerned—

(a) shall state the reasons for which it is given and give particulars of the credit union's rights under subsection (3) and section 24; and

(b) without prejudice to section 22(3) shall cease to have effect at the end of the period of 28 days beginning with the day on which it is given unless before the end of that period it is confirmed by a further written notice given by the Authority to the credit union concerned.

(3) A credit union to which a direction is given which requires confirmation under subsection (2) may, within the period of 14 days beginning with the day on which the direction is given, make written representations to the Authority; and the Authority shall take any such representations into account in deciding whether to confirm the direction.

Rights of appeal

24 (1) A credit union which is aggrieved by a decision of the Authority —

(a) to restrict its licence, to restrict it in a particular manner or to vary any restrictions of its licence; or

(b) to revoke its licence,

may appeal against the decision to a tribunal constituted in accordance with section 30 of the Banks and Deposit Companies Act 1999.

(2) Where —

(a) the ground or a ground for a decision within subsection (1)(a) or (b) is that mentioned in section 19(4)(a); or

(b) the effect of a decision within subsection (1)(a) is to require the removal of a person as the chief executive officer or a senior executive officer of a credit union,

the person to whom the ground relates or whose removal is required may appeal to a tribunal constituted as aforesaid against the finding that there is such a ground for the decision or, as the case may be, against the decision to require his removal.

(3) The tribunal may suspend the operation of a restriction or a variation of a restriction pending the determination of an appeal in respect of the decision imposing or varying the restriction.

(4) Sections 32, 33 and 34 of the Banks and Deposit Companies Act 1999 apply in respect of an appeal brought under this section in the

same manner as they apply in respect of appeals brought under section 30 of the Banks and Deposit Companies Act 1999.

(5) The revocation of a credit union's licence pursuant to a decision against which there is a right of appeal under this section shall not have effect—

(a) until the end of the period within which the appeal can be brought; and

(b) if such an appeal is brought, until it is determined or withdrawn.

Appointment of administrator by court

25 (1) The Authority may apply to the court to make an order under subsection (2) if it is satisfied of the matters specified in section 16 but it considers that in the interests of the members it is not appropriate to revoke the licence.

(2) The court may, on the application of the Authority under subsection (1) make an order appointing a person with appropriate experience to manage and administer the business of a credit union.

(3) An administrator appointed under subsection (2) in managing and administering the business of the credit union, shall take such action as will protect the interests of the members of the credit union, but shall not take on any new business.

(4) The court may from time to time give such directions to the administrator as it considers appropriate to the performance of his functions under this section.

(5) With effect from the date of appointment of the administrator, every person —

(a) who is a chief executive officer, senior executive officer, or director of the credit union shall cease to hold office; and

(b) the administrator so appointed shall take over and be solely responsible for the management and administration of the credit union's business.

(6) An administrator appointed under subsection (2) shall receive such remuneration as the court may determine, which shall be charged to, and payable by, the credit union.

Financial Statements and Audit

Appointment of auditors

26 (1) At each annual meeting, a credit union shall appoint an approved auditor for the credit union.

(2) If the credit union fails to appoint an approved auditor under subsection (1) or, at any time, fails to fill a vacancy for such auditor, the Authority may appoint an approved auditor and shall fix the remuneration to be paid by the credit union to such auditor.

(3) A credit union shall forthwith give written notice to the Authority if the credit union—

- (a) proposes to remove an auditor before the expiration of his term of office; or
- (b) proposes to replace an auditor at the expiration of the term of his office with a different auditor.

(4) An auditor of a credit union shall forthwith give written notice to the Authority if the auditor—

- (a) resigns before the expiration of his term of office;
- (b) does not seek to be re-appointed;
- (c) decides to include a modification of his report on the credit union's financial statements and in particular, a qualification or denial of his opinion, or the statement of an adverse opinion; or
- (d) becomes aware of any fact or matter which is likely to be of material significance for the discharge, in relation to the credit union, of the Authority's functions under this Act.

(5) An credit union or auditor that fails to comply with subsections (1), (3) or (4)(a), (b) or (c) commits an offence and is liable on summary conviction to a fine of \$50,000.

(6) No person having an interest in a credit union and no member, officer, servant or agent of a credit union shall be eligible for appointment as an approved auditor for that credit union and any person appointed as an auditor who subsequently acquires an interest in the credit union or becomes an officer, servant or agent of that credit union shall cease to be an approved auditor.

Duty to prepare annual statements and accounts and to audit

27 (1) A credit union shall cause unaudited financial statements to be prepared and shall provide copies of them to the Authority no later than 30 days after the end of each quarter.

(2) A credit union shall cause annual audited financial statements or accounts to be prepared in respect of all transactions and balances relating to the credit union's business.

(3) The credit union shall provide the Authority with a copy of the audited financial statements no later than four months after the close of the credit union's financial year.

(4) Both the audited and unaudited financial statements must include a balance sheet, income statement, and statement of cash flows and are to be prepared in accordance with one of the following standards or principles—

(a) International Financial Reporting Standards (“IFRS”);

(b) generally accepted accounting principles (“GAAP”) that apply in Bermuda, Canada, the United Kingdom or the United States of America; or

(c) such other GAAP as the Authority may recognise.

(5) The credit union shall, at each of its offices in Bermuda —

(a) keep a copy of its most recent audited financial statements together with the auditor's report on the financial statements;

(b) post the copy of the financial statements and report in its offices and make them available for inspection by any person, on request, during normal business hours.

(6) A credit union that fails to ensure preparation of annual financial statements or which fails to cause the financial statements to be audited annually as required by this section is guilty of an offence and is liable on summary conviction to a fine of \$25,000.

Auditor to communicate certain matters to Authority

28 (1) The auditor of a credit union shall give written notice to the Authority of the following matters as soon as they arise —

(a) the auditor's resignation, if he resigns before the expiration of his term of office;

(b) the auditor's intention not to seek to be re-appointed;

(c) a decision to include a modification of the auditor's report on the credit union's financial statements and in particular, a qualification or denial of his opinion, or the statement of an adverse opinion.

(2) An auditor of a credit union shall forthwith give written notice to the Authority of any fact or matter of which he becomes aware which is likely to be of material significance for the discharge, in relation to the credit union which he is an auditor, of the Authority's functions under this Act.

(3) An Auditor who fails to comply with subsection (1) is guilty of an offence and is liable on summary conviction to a fine of \$25,000.

(4) No duty to which an auditor of a credit union may be subject shall be regarded as contravened by reason only of his communicating in good faith to the Authority, whether or not in response to a request made by the Authority, any information or opinion on a matter to which this section applies and which is relevant to any function of the Authority under this Act.

Information and Reports

Annual returns

29 (1) Every credit union shall deliver to the Authority a return, signed by the chief executive officer or secretary of the credit union, made up to 31 December of each year.

(2) Each return shall contain the name and address of every person who—

(a) is a director, chief executive officer or senior executive officer of the credit union on the date to which the return was made up; or

(b) has ceased to be a director, chief executive officer or senior executive officer of the credit union since the date to which the last return was made up (or, in the case of a first return, since the registration of the credit union).

(2) If a credit union fails to deliver an annual return in accordance with this section before the end of the period of 28 days after the return date, the credit union is guilty of an offence and liable on summary conviction to a fine of \$10,000 and in the case of a continued offence to a daily default fine of \$1000.

Matters required to be notified to the Authority

30 (1) A credit union shall notify the Authority of the following—

(a) failure of the credit union to meet a prudential requirement in sections 10 to 12 or a minimum licensing criterion;

(b) actual or suspected fraud in relation to the business of the credit union;

(c) new business initiatives or any other material change to its business;

(d) the fact that any person has become or ceased to be a director, chief executive officer or senior executive officer of the credit union;

(e) any matter that may have a significant impact on their operations.

(2) A notice required to be given under subsection (1) shall be given before the end of the period of 14 days beginning with the day on which the credit union becomes aware of the relevant facts.

(3) A credit union which fails to give a notice required by this section is guilty of an offence and liable on summary conviction to a fine of \$50,000.

Power to obtain information and reports

31 (1) The Authority may by notice in writing served on a credit union—

(a) require the credit union to provide the Authority (or such person acting on behalf of the Authority as may be specified in the notice), at such time or times or at such intervals or in respect of such period or periods as may be so specified, with such information as the Authority may reasonably require for the performance of its functions under this Act;

(b) require the credit union to provide the Authority with a report, in such form as may be specified in the notice, by the credit union's auditor or by an accountant or other person with relevant professional skill on, or on any aspect of, any matter about which the Authority has required or could require the credit union to provide information under paragraph (a).

(2) The person appointed by a credit union to make the report required under subsection (1)(b) shall forthwith give written notice to the Authority of any fact or matter of which he becomes aware which is likely to be of material significance for the discharge, in relation to the credit union, of the Authority's functions under this Act.

Power to require production of documents

32 (1) The Authority may—

(a) by notice in writing served on a credit union require it to produce, within such time and at such place as may be specified in the notice, such information or documents of such description as may be so specified;

(b) authorise an officer, servant or agent of the Authority, on producing evidence of his authority, to require any such credit union to provide him forthwith with such information, or to produce to him forthwith such documents, as he may specify,

being such information or documents as the Authority may reasonably require for the performance of its functions under this Act.

(2) Where, by virtue of subsection (1), the Authority or any officer, servant or agent of the Authority has power to require the production of any documents from a credit union, the Authority or that

officer, servant or agent shall have the like power to require the production of those documents from any person who appears to be in possession of them; but where any person from whom such production is required claims a lien on documents produced by him, the production shall be without prejudice to the lien.

(3) The power under this section to require a credit union or other person to produce any documents includes power—

(a) if the documents are produced, to take copies of them or extracts from them and to require that credit union or person, or any other person who is a present or past director, controller or senior executive of, or is or was at any time employed by or acting as an employee of, the credit union in question, to provide an explanation of any of them; and

(b) if the documents are not produced, to require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.

(4) The Authority may by notice in writing served on any person who is or is to be a director, chief executive officer or senior executive officer of a credit union require him to provide the Authority, within such time as may be specified in the notice, with such information or documents as the Authority may reasonably require for determining whether he is a fit and proper person to hold the particular position which he holds or is to hold.

(5) Any person who without reasonable excuse fails to comply with a requirement imposed on him under this section is guilty of an offence and liable on summary conviction to a fine of \$10,000 or to imprisonment for a term of six months or to both.

(6) Nothing in this section shall compel the production by a barrister and attorney of a document containing a privileged communication made by him or to him in that capacity.

Right of entry to obtain information and documents

33 (1) Any officer, servant or agent of the Authority may, on producing if required evidence of his authority, enter any premises occupied by a person on whom a notice has been served under sections 31(1) and 32(1) for the purpose of obtaining there the information or documents required by that notice and of exercising the powers conferred by section 32(3).

(2) Any officer, servant or agent of the Authority may, on producing if required evidence of his authority, enter any premises occupied by any person on whom a notice could be served under sections 31(1) and 32(1) for the purpose of obtaining there such information or documents as are specified in the authority, but the Authority shall not authorise any person to act under this subsection unless it has

reasonable cause to believe that if such a notice were served it would not be complied with or that any documents to which it would relate would be removed, tampered with or destroyed.

(3) Any person who intentionally obstructs a person exercising rights conferred by this section shall be guilty of an offence and liable on summary conviction to a fine of \$10,000 or to imprisonment for six months or to both.

Civil Liability of Members

Liability of members for debts of credit union

34 A member is not personally or individually liable for the payment of the credit union's debts in excess of the amount of his individual ownership shares.

Investigations

Investigations on behalf of the Authority

35 (1) If it appears to the Authority desirable to do so in the interests of the members or potential members of a credit union the Authority may appoint one or more competent persons to investigate and report to the Authority on—

- (a) the nature, conduct or state of the credit union's business or any particular aspect of it; or
- (b) the ownership or control of the credit union;

and the Authority shall give written notice of any such appointment to the credit union concerned.

(2) It is the duty of every person who is or was a director, chief executive officer, senior executive officer, employee, agent, banker, auditor or barrister and attorney of a credit union which is under investigation, and any person appointed to make a report in respect of that credit union under section 31(1)(b)—

- (a) to produce to the persons appointed under subsection (1), within such time and at such place as they may require, all documents relating to the credit union concerned which are in his custody or power;
- (b) to attend before the persons so appointed at such time and place as they may require; and
- (c) to give those persons any other assistance in connection with the investigation which he is reasonably able to give,

and those persons may take copies of or extracts from any documents produced to them under paragraph (a).

(3) For the purpose of exercising his powers under this section a person appointed under subsection (1) may enter any premises occupied by a credit union which is being investigated by him under this

section; but he shall not do so without prior notice in writing unless he has reasonable cause to believe that if such a notice were given any documents whose production could be required under this section would be removed, tampered with or destroyed.

(4) A person exercising powers by virtue of an appointment under this section shall, if so required, produce evidence of his authority.

(5) Any person who—

(a) without reasonable excuse fails to produce any documents which it is his duty to produce under subsection (4) ;

(b) without reasonable excuse fails to attend before the persons appointed under subsection (1) when required to do so;

(c) without reasonable excuse fails to answer any question which is put to him by persons so appointed with respect to an credit union which is under investigation or a company which is being investigated by virtue of subsection (2); or

(d) intentionally obstructs a person in the exercise of the rights conferred by subsection (5),

is guilty of an offence and liable on summary conviction to a fine of \$10,000 or to imprisonment for a term of six months or to both.

(6) A statement made by a person in compliance with a requirement imposed by virtue of this section shall not be used in evidence against him.

(7) Nothing in this section shall compel the production by a barrister and attorney of a document containing a privileged communication made by him or to him in that capacity.

Investigation of suspected contraventions

36 (1) Where the Authority has reasonable grounds for suspecting that a person has contravened section 3 the Authority or any duly authorised officer, servant or agent of the Authority may by notice in writing require that person or any other person—

(a) to provide, at such place as may be specified in the notice and either forthwith or at such time as may be so specified, such information as the Authority may reasonably require for the purpose of investigating the suspected contravention;

(b) to produce, at such place as may be specified in the notice and either forthwith or at such time as may be so specified, such documents, or documents of such description, as may be specified, being documents the

production of which may be reasonably required by the Authority for that purpose;

(c) to attend at such place and time as may be specified in the notice and answer questions relevant for determining whether such a contravention has occurred.

(2) The Authority or a duly authorised officer, servant or agent of the Authority may take copies of or extracts from any documents produced under this section.

(3) Any officer, servant or agent of the Authority may, on producing if required evidence of his authority, enter any premises occupied by a person on whom a notice has been served under subsection (1) for the purpose of obtaining there the information or documents required by the notice, putting the questions referred to in paragraph (c) of that subsection or exercising the powers conferred by subsection (2).

(4) Any person who without reasonable excuse fails to comply with a requirement imposed on him under this section or intentionally obstructs a person in the exercise of the rights conferred by subsection (3) is guilty of an offence and liable on summary conviction to a fine of \$10,000 or to imprisonment for a term of six months or to both.

(5) A statement made by a person in compliance with a requirement imposed by virtue of this section shall not be used in evidence against him.

(6) Nothing in this section shall compel the production by a barrister and attorney of a document containing a privileged communication made by him or to him in that capacity.

Powers of entry in cases of suspected contraventions

37 (1) A magistrate may issue a warrant under this section if satisfied on information on oath laid by an officer of the Authority or laid under the Authority's authority that there are reasonable grounds for suspecting that a person has contravened section 3 and—

(a) that that person has failed to comply with a notice served on him under that section;

(b) that there are reasonable grounds for suspecting the completeness of any information provided or documents produced by him in response to such a notice; or

(c) that there are reasonable grounds for suspecting that if a notice were served on him under that section it would not be complied with or that any documents to which it would relate would be removed, tampered with or destroyed.

(2) A warrant under this section shall authorise any police officer not below the rank of inspector, together with any other person named in the warrant and any other police officers—

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- (a) to enter any premises occupied by the person mentioned in subsection (1) which are specified in the warrant, using such force as is reasonably necessary for the purpose;
 - (b) to search the premises and take possession of any documents appearing to be such documents as are mentioned in subsection (1)(c) or to take, in relation to any such documents, any other steps which may appear to be necessary for preserving them or preventing interference with them;
 - (c) to take copies of or extracts from any such documents;
 - (d) to require any person named in the warrant to answer questions relevant for determining whether that person has contravened section 3.
- (3) A warrant under this section shall continue in force until the end of the period of one month beginning with the day on which it is issued.
- (4) Any documents of which possession is taken under this section may be retained—
- (a) for a period of three months; or
 - (b) if within that period proceedings to which the documents are relevant are commenced against any person for any such contravention as is mentioned in section 32, until the conclusion of those proceedings.
- (5) Any person who intentionally obstructs the exercise of any right conferred by a warrant issued under this section or fails without reasonable excuse to comply with any requirement imposed in accordance with subsection (2)(d) is guilty of an offence and liable—
- (a) on summary conviction, to a fine of \$10,000 or to imprisonment for a term of six months or to both;
 - (b) on conviction on indictment, to a fine of \$50,000 or to imprisonment for a term of two years or to both.

Obstruction of investigations

- 38 (1) A person who knows or suspects that an investigation is being or is likely to be carried out—
- (a) into a suspected contravention of section 3; or
 - (b) under section 35,

Is guilty of an offence if he falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of, documents which he knows or suspects are or would be relevant to such an investigation unless he proves that he had

no intention of concealing facts disclosed by the documents from persons carrying out such an investigation.

- (2) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to a fine of \$10,000 or to imprisonment for a term of six months or to both;
 - (b) on conviction on indictment, to a fine of \$50,000 to imprisonment for a term of two years or to both.

Regulations

Regulations

39 (1) The Minister may, acting on the advice of the Authority, make regulations generally for the implementation of this Act and prescribing anything which may be prescribed under this Act.

(2) Without prejudice to the generality of subsection (1), regulations may in particular—

- (a) prohibit certain business activities from being carried on by a credit union;
- (b) prescribe the facts or matters which are likely to be of material significance for the discharge of the Authority's functions under this Act;
- (c) prescribe forms, fees and charges;
- (d) regulate advertising and the soliciting of deposits by whatever means (including electronic soliciting); and
- (e) prescribe penalties not exceeding \$10,000 for any breach of the regulations.

(3) Regulations made under this section are subject to the negative resolution procedure.

Offences

Offences by Directors and Officers

40 Every offence by a credit union under this Act is deemed to have been also committed by every director, chief executive officer or senior officer of the credit union who is bound by its bylaws to fulfil the duty whereof such offence is a breach, unless the director or officer is found to have no knowledge of or have attempted to prevent the commission of the offence.

PART 4

FINAL PROVISIONS

Repeals

41 The Credit Union Act 1982 and Credit Union (Delegation of Minister's Functions) Order 1989 are repealed.

Transitional

42 Notwithstanding any provision of this Act, the Credit Union Act 1982 and Credit Union (Delegation of Minister's Functions) Order 1989 shall continue to apply in respect of the B.I.U. Members Credit Union Co-Op Society for a period of 12 months, beginning on the day that this section comes into operation.

Consequential amendments

43 The enactments specified in column 1 of Schedule 3 are amended as specified in column 2 of that Schedule.

Commencement

44 The provisions of this Act come into operation on a day or days to be appointed by the Minister by notice in the Gazette.

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SCHEDULE 1
REQUIREMENTS FOR BYLAWS

(sections 4 and 5)

Matters to be included in bylaws

1 (1) The bylaws shall define the credit union's objects, membership, board, committees, scope of activities and services, and provide for meetings, the duties and responsibilities of credit union officials, operational management, and any other matter specified in this Schedule.

(2) The bylaws shall not be rescinded or altered except at a general meeting of the members, and no rescission or amendment of the bylaws shall take effect until approved by the Authority.

Objects of a Credit Union

2 The objects of the credit union shall include—

- (a) accepting savings deposits from members; and
- (b) providing a source of credit for members at a fair rate of interest.

Membership of a credit union

3 (1) The bylaws shall set out the requirements for membership in the credit union, including the criteria for membership, the number of shares to be subscribed and any membership fee to be paid.

(2) A person must be a member in order to save or borrow from the credit union.

(3) To become a member of a credit union, a person must meet the membership criteria set forth in the bylaws.

(4) The membership criteria shall set out a pre-existent common bond of association or community of interest among the individuals who belong to it, including individuals—

- (a) who have a similar occupation or profession or are employed by a common employer or within the same business district or market area; or
- (b) who have common membership in an association or organization, including, but not limited to, religious, social, cooperative, labour or educational groups.

(5) Societies, associations, partnerships and companies composed primarily of individuals eligible for membership may be admitted to membership in a credit union.

(5) The bylaws shall also provide for the expulsion and withdrawal of members.

Meetings

4 (1) The annual general meeting of the members of a credit union shall be held no later than four months after the close of the credit union's fiscal year.

(2) At the annual general meeting, members shall elect from among themselves the members of the Board, the Supervisory Committee and the Credit Committee.

(3) The bylaws shall provide for the time, place and manner of holding the annual general meeting and special meetings called by the members, the Board, the Supervisory Committee or the Credit Committee and shall specify the minimum number of members that must be present to conduct business at the meetings.

(4) Every member is entitled to vote at the meetings but no individual may vote who is less than 18 years of age.

(5) No member shall be entitled to more than one vote or to vote by proxy; but a member may vote by absentee ballot, mail or other method if the bylaws of the credit union so provide.

Board

5 (1) The Board is responsible to the members for directing and controlling the business, funds and records of the credit union. The Board shall meet regularly and report annually to the members on its governance of the credit union.

(2) The Board shall consist of an odd number of directors, not less than five in number, elected by the members as provided in the bylaws. The directors shall hold office for one or more fixed terms of three years, which shall be staggered so that an approximately equal number of terms expire each year.

(3) Any director who has delinquent loans or who has failed to attend three consecutive Board meetings may, at the discretion of the Board, be expelled from the Board.

(4) The bylaws shall outline the roles and responsibilities of the Board, its committees and officers including —

- (a) the process for the election of members of the Board, the Supervisory Committee and the Credit Committee, and for the establishment of other committees;
- (b) the duties of the executive officers;
- (c) the temporary filling of vacancies occurring on the Board or in any committee until successors are elected at the next annual meeting; and
- (d) the delegation of authority to the executive officers to act collectively on behalf of the Board between Board

meetings, and the conditions or limitations that apply to such delegation.

Committees

6 (1) The following Committees shall be elected from the membership of the credit union to carry out the following functions—

(a) the Supervisory Committee—

(i) to examine the financial affairs of the credit union, including examining, at least once per quarter, financial records and statements and producing an annual report of its audit to be presented to the members at the Annual General Meeting; and

(ii) to oversee the credit union's internal control system and assess the adequacy of internal controls; and

(iii) to monitor compliance with laws, regulations, bylaws and the rules to prevent money laundering and the financing of terrorism; and

(b) the Credit Committee—

(i) to approve and supervise loans to members and compliance with the lending policy; and

(ii) to verify the ability of borrowing members and their guarantors to meet their obligations under the terms of their loans.

(2) No member of the Board may be elected to, or be a member of, the Supervisory Committee.

(3) The Board may, in accordance with the bylaws, establish such additional committees as it considers necessary to conduct the business of the credit union.

(4) The members of all Committees established under these bylaws are deemed to be officers of the credit union.

Officers

7 (1) The Board shall meet within 30 days following the annual meeting to elect from among themselves the executive officers, namely the chairperson, vice chairperson, treasurer and secretary.

(2) The executive officers shall serve for a term of one year or until their successors are chosen, but may be elected for any number of terms.

Chief Executive Officer and Staff

8 (1) The Board shall appoint a chief executive officer and senior executive officers, to whom it may delegate the authority and responsibility for managing the credit union's operations.

(2) The Board may authorize the chief executive officer to employ any additional persons needed to administer the business of the credit union.

(3) The chief executive officer shall ensure that the credit union has an effective control culture which promotes—

- (a) an appropriate and effective control environment that supports the effective and prudent management of the credit union's operations, and of the risks to which it is exposed;
- (b) reporting procedures to ensure the Board is provided with timely, relevant, accurate and complete reports that will enable it to assess whether the credit union is operating effectively; and
- (c) appropriate and effective processes for assisting the Board in assessing whether a credit union is meeting the prudential requirements in sections 10 to 12 and paragraphs 5 to 12 of Schedule 2 .

Remuneration of officers, directors and committee members

9 (1) No elected officer, director or committee member, other than the chief executive officer when serving as a director, may be compensated for services to the credit union by means of a salary.

(2) Notwithstanding subsection (1), a person referred to in that subsection may be reimbursed for necessary expenses incurred that are incidental to the performance of the business of the credit union.

SCHEDULE 2

(section 8)

MINIMUM CRITERIA

Directors and officers to be fit and proper persons

1 (1) Every person who is, or is to be, a director, chief executive officer or senior executive officer of the credit union shall be a fit and proper person to hold the particular position which he holds or is to hold.

(2) In determining whether a person is a fit and proper person to hold any particular position, regard shall be had to—

- (a) the person's qualifications, training and previous conduct and activities in business or financial matters;
- (b) the person's probity, reputation and character;

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- (c) the competence and soundness of judgement of the person for fulfilling the responsibilities of that position; and
 - (d) the diligence with which the person is fulfilling or likely to fulfil those responsibilities.

(3) The Authority shall also consider whether the interests of members or potential members of the credit union are, or are likely to be, in any way threatened by the person's holding that position, and in particular any evidence that the person has—

- (a) committed an offence involving fraud or other dishonesty or violence;
- (b) contravened any provision made by or under any enactment appearing to the Authority to be designed for protecting members of the public against financial loss due to—
 - (i) dishonesty, incompetence or malpractice by persons concerned in the provision of banking, insurance, investment or other financial services or the management of companies; or against
 - (ii) the conduct of discharged or undischarged bankrupts;
- (c) been censured or disqualified by any professional or regulatory body;
- (d) engaged in any business practices appearing to the Authority to be deceitful or oppressive or otherwise improper (whether lawful or not) or which otherwise reflect discredit on his method of conducting business;
- (e) engaged in or has 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 judgement.

(4) In assessing whether a person is fit and proper for a particular position in light of evidence of past misconduct, the Authority shall take into consideration lapse of time since the misconduct and the person's subsequent conduct.

Composition of Board

2 The directors shall include such number (if any) of directors without executive responsibility for the management of its business as the Authority considers appropriate having regard to the circumstances of the credit union and the nature and scale of its operations.

Insurance

3 A credit union shall have appropriate insurance arrangements in place for the commencement of operations.

Integrity and skill

4 The business of a credit union shall be carried on with integrity and the professional skills appropriate to the nature and scale of its activities.

Business to be conducted in a prudent manner

5 A credit union shall not be regarded as conducting its business in a prudent manner unless it has sufficient resources to support its activities and meets the requirements set out below.

Capital Requirements

6 The credit union shall maintain sufficient institutional capital to cover possible losses from loans and investments and other contingencies, to protect members' savings and to be available to creditors on winding up.

Liquidity Requirements

7 (1) A credit union shall maintain sufficient liquidity on hand to meet operating expenses and day-to-day demands for withdrawals, having regard to the relationship between its liquid assets and its actual and contingent liabilities and to the times at which those liabilities may fall due and its assets mature.

(2) In assessing liquidity, the Authority shall focus on the ability of a credit union to cope with unexpected events and may take into account as liquid assets—

(a) assets of the credit union; and

(b) facilities available to the credit union that are capable of providing liquidity within a reasonable period.

Requirements respecting external borrowing

8 Credit unions may only borrow up to a maximum of 10% of their total assets.

Requirements respecting investments

9 (1) A credit union shall adopt a reasonable and prudent approach to investments in order to avoid undue interest rate risk and concentration risk, while obtaining a reasonable return.

(2) The Board is responsible for formulating, reviewing and adjusting an investment policy, which shall address the following—

(a) the purpose and objectives of the investment activities;

(b) the types of investments that can be made;

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- (c) who has authority to make the investments and the extent of the authority;
 - (d) the need for adequate investment diversification across investment type or entity; and
 - (e) the need to review the investment policy annually and from time to time as needed.

Lending Requirements

10 (1) A credit union shall have a lending policy, approved by the Board, which sets out the policies and procedures for the management of arrears and for the proper recording and reporting of past due loans, including—

- (a) the lending policy 's objectives;
- (b) eligibility requirements for receiving a loan;
- (c) classification of loans offered;
- (d) required loan documentation;
- (e) acceptable types of collateral;
- (f) interest rates, terms and repayments conditions;
- (g) maximum loan amounts;
- (h) how to determine the borrower's ability to repay the loan; and
- (i) the identification of the loan approval authority.

(2) A credit union shall not lend more than 2% of its total assets to any individual member and its total loan portfolio shall not exceed 80% of the credit union's total assets.

(3) A credit union shall manage unsecured loans prudently and keep them within levels agreed to by the Authority.

Requirements respecting arrears

11 (1) A credit union shall have in place a documented arrears management policy, setting out the procedures and process for dealing with borrowers who fall into arrears.

(2) A credit union shall review its arrears management policy regularly, identify the types of loans which commonly fall into arrears and make appropriate amendments to the policy.

Provisioning Requirements

12 (1) A credit union shall review loans to customers to ascertain the level of risk of default for loans that are in arrears and shall include a section in its arrears management policy on provisioning.

(2) A credit union shall make every effort to collect delinquent loans and recognize losses on delinquent loans so that its financial statements represent its true financial position.

DRAFT

SCHEDULE 3

(section 43)

Consequential Amendments

Column 1

Banks and Deposit Companies Act
1999

Foreign Currency Purchase Tax Act
1975

Proceeds of Crime (Money
Laundering) Regulations 1998.

Bermuda Monetary Authority Act
1969

Proceeds of Crime Regulations
(Supervision and Enforcement) Act
2008

Column 2

In paragraph 1(d) of the First
Schedule—
delete the words “registered under
the Credit Unions Act 1982” and
substitute the words “licensed
under the Credit Unions Act 2009”.

In paragraph 1(f) of the Second
Schedule —
delete the words “registered under
the Credit Unions Act 1982” and
substitute the words “licensed
under the Credit Unions Act 2009”.

In paragraph (v) of the definition
“regulated institution” in
Regulation 2(2)(a)—
delete the words “registered under
the Credit Unions Act 1982” and
substitute the words “licensed
under the Credit Unions Act 2009”.

In the definition “credit union” in
section 1(1)—
delete the words “Credit Unions
Act 1982” and substitute the
words “Credit Unions Act 2009”.

In paragraph (b) of the definition
“regulatory Acts” in section 2(1)—
delete the words “Credit Unions
Act 1982” and substitute the
words “Credit Unions Act 2009”.

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