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# Modernizing the Credit Unions and Caisses Populaires Act

*A Consultation Draft of  
Amendments to Legislation and  
Capital and Lending Regulation*

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PROPOSED BY THE  
MINISTRY OF FINANCE  
AUGUST, 2006



# Modernizing the Credit Unions and Caisses Populaires Act

## *A Consultation Draft of Amendments to Legislation and Capital and Lending Regulation*

PROPOSED BY THE  
MINISTRY OF FINANCE

*This Consultation Draft is intended to  
facilitate constructive dialogue concerning its contents.*

*Note that the legislation will only become law if the  
Legislative Assembly passes the legislation.*

*Note that the regulation will only become law  
if the Lieutenant Governor in Council promulgates the regulation.*

AUGUST, 2006



Dear Stakeholder:

The Ministry of Finance is pleased to enclose for your review and comment a Consultation Draft of proposed amendments to the *Credit Unions and Caisses Populaires Act, 1994* and a Consultation Draft of proposed amendments to O. Reg. 76/95 concerning capital and lending.

The government, in collaboration with the Financial Services Commission of Ontario and the Deposit Insurance Corporation of Ontario, has been working with representatives of credit unions and caisses populaires to identify improvements to the *Credit Unions and Caisses Populaires Act, 1994*. This exercise is part of the government's commitment to modernize financial sector regulation and support a new generation of economic growth.

The proposals described in this document are intended to enable credit unions and caisses populaires to serve their customers better and enhance the sector's stability, which is an essential component of its competitiveness.

The ministry is interested in receiving input from individual credit unions and caisses populaires, their members and others. Your views will assist the ministry in finalizing proposals to update the Act and regulations.

The enclosure contains information on how you can submit comments on these proposals. Submissions will be accepted until September 11, 2006.

Thank you for contributing to this important review.

Sincerely,



Wayne Arthurs  
Parliamentary Assistant to the  
Minister of Finance



## INVITATION FOR COMMENTS

The Ministry of Finance invites your comments on the issue outlined in this consultation draft. Interested parties are asked to provide their written submissions by September 11, 2006.

If you have any comments or questions about this consultation or how any element of your submission may be used or disclosed, please contact:

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A copy of this consultation document can be reviewed online at [www.fin.gov.on.ca](http://www.fin.gov.on.ca)

The content, structure, and form of the draft legislation and regulations are subject to change as a result of the consultation process and as a result of review by the government. These proposals will only become law if they are passed by the Legislative Assembly (in the case of draft legislation) or approved by Cabinet (in the case of draft regulations).

Please note that this is a public consultation. All comments received will be considered public and may be used by the ministry to help evaluate and revise the legislative proposals. This may involve disclosing some or all comments or materials, or summaries of them, to other interested parties during and after the consultation. Personal information will not be disclosed without prior consent.

If for any reason you feel your comments should not be shared with other parties, please indicate this in your covering letter. Please note that all submissions received are subject to the Freedom of Information and Protection of Privacy Act.





# CONSULTATION DRAFT

## DRAFT CREDIT UNIONS AND CAISSES POPULAIRES ACT FOR CONSULTATION PURPOSES

### Credit Unions and Caisses Populaires Act, 1994

#### S.O. 1994, CHAPTER 11

Amended by: 1997, c. 19, s. 5; 1997, c. 28, ss. 52-63; 1999, c. 6, s. 19; 1999, c. 12, Sched. I, s. 2; 2001, c. 8, s. 30; 2002, c. 18, Sched. H, s. 3; 2002, c. 24, Sched. B, ss. 25, 32; 2004, c. 8, ss. 46, 47 (1); 2004, c. 17, s. 32; 2005, c. 5, s. 18; 2006, c. 8, s. 142; 2006, c. 19, Sched. C, s. 1 (1).

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### **PART I INTERPRETATION**

#### **Definitions**

**1.** In this Act,

“affiliate” means an affiliated body corporate within the meaning of section 5; (“membre du même groupe”)

“articles of incorporation” or “articles” means the original or restated articles of incorporation, articles of amalgamation, articles of amendment, memorandum of association, a special Act or other instrument by which a credit union is incorporated and includes any amendment thereto; (“statuts constitutifs” ou “statuts”)

“association of credit unions” *Repeal*

“auditor” means a person who is a public accountant licensed under the *Public Accounting Act, 2004* and includes a partnership of auditors or a firm of accountants; (“vérificateur”)

“board” means, with respect to a credit union, its board of directors; (“conseil”)

“body corporate” means any body corporate with or without share capital and whether or not it is a corporation to which this Act applies; (“personne morale”)

“borrow” does not include the taking of deposits; (“emprunter”)

“by-law” *Repeal*

“Commission” *Repeal*

“Corporation” means the Deposit Insurance Corporation of Ontario; (“Société”)

“court”, except where the context indicates otherwise, means the Superior Court of Justice; (“tribunal”)

“credit union” means a corporation incorporated *or continued* as a credit union or caisse populaire under this Act or a predecessor of this Act; (“caisse”, “caisse populaire”)

“debt obligation” means a bond, debenture, note or other evidence of indebtedness of an entity, whether secured or unsecured; (“titre de créance”)

“deposit” includes money deposited ~~in~~ *with* a credit union under a federal or provincial registered savings plan or fund; (“dépôt”)

“deposit insurer” *Repeal*

“depositor” means a person with funds on deposit with a credit union; (“déposant”)

“entity” means a body corporate, trust, partnership, fund, an unincorporated organization, Her Majesty in right of Canada or of a province, an agency of Her Majesty in either of such rights and the government of a foreign country or any political subdivision thereof and any agency thereof; (“entité”)

“financial institution” means,

- (a) *a bank or authorized foreign bank within the meaning of section 2 of the Bank Act (Canada),*
- (b) *an insurer licensed under the Insurance Act,*
- (c) a corporation registered under the *Loan and Trust Corporations Act,*
- (d) an entity that is,
  - (i) incorporated or formed by or under an Act of the Parliament of Canada or of the legislature of a province, and
  - (ii) primarily engaged in dealing in securities, including portfolio management and investment counselling,
- (e) a credit union, ~~and~~
- (f) a league, ~~and (“institution financière”)~~
- (g) *such other entities or classes of entities as may be prescribed; (“institution financière”)*

“financial statement” means a financial statement referred to in subsection 212 (4); (“état financier”)

“firm of accountants” means,

- (a) a partnership, the members of which are accountants engaged in the practice of accounting, or
- (b) a body corporate that is incorporated by or under an Act of the legislature of a province and engaged in the practice of accounting; (“cabinet de comptables”)

“incorporator” means an individual who signs articles of incorporation; (“fondateur”)

“league” means a corporation incorporated as a credit union league or federation under this Act or a predecessor of this Act; (“fédération”)

“member” means a person who is a member or enrolled as a member of a credit union under this Act, the articles and the by-laws of the credit union governing membership; (“sociétaire”)

“membership share” means an interest in the equity of a credit union that confers the rights referred to in subsection 52 (1); (“part sociale”)

“Minister” means the Minister of Finance; (“ministre”)

“officer”, *in respect of a credit union, means,*

- (a) *the chair of the board required under section 94.1,*
- (b) *the corporate secretary required under subsection 140 (1),*
- (c) *the chief executive officer required under subsection 140 (1), and*
- (d) *any other officer provided for in the by-laws referred to in subsection 140 (1);*

“patronage share” *means a share of a class provided for by the articles of a credit union in accordance with section 52.1;*

“personal representative” means a person who stands in place of and represents another person and includes, as the circumstances require, a trustee, an executor, an administrator, a committee, a guardian, ~~a tutor,~~ a curator, an assignee, a receiver, an agent or an attorney of any person, but does not include a delegate; (“représentant personnel”)

“prescribed” means prescribed by the regulations; (“prescrit”)

“real estate” *Repeal*

“regulations” means the regulations made under this Act; (“règlement”)

“regulatory capital” in respect of a credit union, has the meaning given to that expression by the regulations; (“capital réglementaire”)

“related person”, when used to indicate a relationship with any person, means,

- (a) a spouse of the person,
- (b) any son or daughter of the person, or
- (c) any relative of the person or of any person mentioned in clause (a) or (b); (“personne liée”)

“relative” means a relative by blood, marriage or adoption; (“parent”)

“security” means a security as defined under the *Securities Act* but does not include a deposit with a financial institution or any instrument evidencing the deposit; (“valeur mobilière”)

“share” includes a membership share unless specifically excluded by this Act; (“action”)

“shareholder” means a shareholder as defined in subsection 8 (1); (“actionnaire”)

“special resolution” means a resolution passed by two-thirds or more of the votes cast by or on behalf of the persons who voted in respect of that resolution; (“résolution extraordinaire”)

“spouse” means a spouse as defined under Part III of the *Family Law Act*; (“conjoint”)

“stabilization authority” *Repeal*

“subordinated indebtedness” means an instrument evidencing an indebtedness of a credit union that, by its terms, provides that the indebtedness will, in the event of the insolvency or winding up of the credit union, be subordinate in right of payment to all deposit liabilities of the credit union and all other liabilities of the credit union except those that, by their terms, rank equally with or are subordinate to the indebtedness; (“titre secondaire”)

“Superintendent” means the Superintendent of Financial Services appointed under the *Financial Services Commission of Ontario Act, 1997*; (“surintendant”)

“Tribunal” means the Financial Services Tribunal established under the *Financial Services Commission of Ontario Act, 1997*. (“Tribunal”) 1994, c. 11, s. 1; 1997, c. 28, s. 52; 1999, c. 6, s. 19 (1, 2); 2002, c. 18, Sched. H, s. 3 (1); 2004, c. 8, ss. 46, 47 (1); 2005, c. 5, s. 18 (1, 2); 2006, c. 19, Sched. C, s. 1 (1).

#### **Joint shareholders**

**2.** (1) For the purposes of this Act, two or more persons holding the same share or shares jointly are considered as one member or shareholder.

#### **Exception**

(2) Despite subsection (1), two or more persons jointly holding enough membership shares to entitle each of them to be a member in ~~his or her~~ *their* own right are all considered as separate members. 1994, c. 11, s. 2.

#### **Subsidiary**

- 3.** For the purposes of this Act, a body corporate is a subsidiary of another body corporate if,
- (a) it is controlled by,
    - (i) that other,
    - (ii) that other and one or more bodies corporate each of which is controlled by that other, or
    - (iii) two or more bodies corporate that are that other’s subsidiary; or
  - (b) it is a subsidiary of a body corporate that is that other’s subsidiary. 1994, c. 11, s. 3.

#### **Holding body corporate**

**4.** For the purposes of this Act, a body corporate is another’s holding body corporate if that other is its subsidiary. 1994, c. 11, s. 4.

#### **Affiliation**

**5.** (1) For the purposes of this Act, one body corporate is affiliated with another body corporate if one of them is the subsidiary of the other or both are subsidiaries of the same body corporate or each of them is controlled by the same person. 1994, c. 11, s. 5 (1).

**Affiliate by order**

(2) On application in writing by a credit union, the ~~Superintendent~~ Corporation may, by order and on the terms specified in the order, deem a corporate body named in the order to be an affiliate for the purposes of this Act or for the purpose of specific provisions of this Act. 1994, c. 11, s. 5 (2); 1997, c. 28, s. 53.

**Revocation of order**

(3) *The Corporation may, by order, revoke an order under subsection (2) if the Corporation believes that the credit union has failed to comply with a term set out in the order under subsection (2) or that it is no longer appropriate to deem the corporate body in respect of which the order under subsection (2) was made to be an affiliate.*

**Procedural rules**

(4) *Section 240.1 applies with respect to an order under this section.*

**Controlling body corporate**

6. For the purposes of this Act, a body corporate is controlled by another person or by two or more bodies corporate if,

- (a) voting securities of the first mentioned body corporate carrying more than 50 per cent of the votes for the election of directors are held, other than by way of security only, by or for the benefit of the other person or by or for the benefit of the other bodies corporate; and
- (b) the votes carried by the securities are sufficient, if exercised, to elect a majority of the board of directors of the first-mentioned body corporate. 1994, c. 11, s. 6.

**Member**

7. (1) For the purposes of this Act, a person is a holder of a membership share of a credit union when, according to the ~~membership register of the credit union~~ register under section 230, the person is the owner of the membership share or is entitled to be entered in the ~~members register of the credit union~~ register as the owner of the share.

**Holder of membership share**

(2) A reference in this Act to the holding of a membership share by or in the name of a person is a reference to the fact that the person is registered or is entitled to be registered in the ~~members register or a similar record of members of the credit union~~ register under section 230 as the holder of the share. 1994, c. 11, s. 7.

**Shareholder**

8. (1) For the purposes of this Act, a person is a shareholder of a body corporate when, according to the securities register of the body corporate, the person is the owner of a share of the body corporate or is entitled to be entered in the securities register or like record of the body corporate as the owner of a share.

**Holder of a share**

(2) A reference in this Act to the holding of a share by or in the name of any person is a reference to the fact that the person is registered or is entitled to be registered in the securities register or a similar register of the body corporate as the holder of that share. 1994, c. 11, s. 8.

**PART II**  
**ADMINISTRATION**

**Application of Corporations Act**

9. (1) REPEALED: 1997, c. 28, s. 54.

**Application of Corporations Act**

(2) *Repeal*

**Delegation of powers by Minister**

10. *Repeal.*

11. REPEALED: 1997, c. 28, s. 55.

**PART III  
ESTABLISHING A CREDIT UNION  
INCORPORATION**

**Corporate charter**

**12.** (1) The certificate of incorporation, articles of incorporation and the by-laws of a credit union, together with this Act, constitute the charter of the credit union.

**Date of incorporation**

(2) A credit union comes into existence on the date set out in the certificate of incorporation. 1994, c. 11, s. 12.

**Articles of incorporation**

**13.** (1) Twenty or more individuals may incorporate a credit union by signing articles of incorporation and complying with section 15.

**Restriction**

- (2) An individual is disqualified from being an incorporator if he or she,
- (a) is less than eighteen years of age;
  - (b) is of unsound mind and has been so found by a court in Canada or elsewhere; or
  - (c) *is an undischarged bankrupt or has been discharged as a bankrupt in the five years preceding the date the application to incorporate the credit union is made under subsection 15 (1).*

*Contents of articles*

*14. (1) The articles of incorporation must set out the prescribed information.*

**Same**

(2) The articles may include any provision that is permitted under this Act to be set out in the articles or that could be the subject of a by-law of the credit union.

**Same**

(3) The articles must set out any restrictions on the business that the credit union may carry on or on the powers that the credit union may exercise.

**First directors**

(4) The articles must name at least five individuals who hold office as first directors of the credit union.

**Affidavit**

- (5) An affidavit verifying the following matters must accompany the articles:
1. The signature of each incorporator and each first director.
  2. The fact that each incorporator and first director meet the criteria for eligibility under subsection 13 (2) and section 91, as applicable, and that each first director is not disqualified to be a director under section 92.

**Where consent required**

(6) If a person who is not an incorporator is named in the articles as a first director, his or her consent to act as a first director must accompany the articles. 1994, c. 11, s. 14 (2-6).

**Form of consent**

(7) *Repeal*

**Application for incorporation**

**15.** (1) An application to incorporate a credit union may be made by sending to ~~the Minister~~ *the Superintendent* two copies of the proposed articles of incorporation and the proposed by-laws of the credit union and paying the ~~applicable~~ application fee *established by the Minister*. 1994, c. 11, s. 15 (1).

*Inquiry before incorporation*

*(2) The Superintendent shall inquire into the circumstances, sufficiency and regularity of the articles and by-laws and may do any of the following before issuing a certificate of incorporation:*

1. Require the incorporators to provide such additional information as the Superintendent considers relevant to the application.
2. Require any matter set out in the articles or by-laws or in the additional information provided to the Superintendent to be verified under oath.
3. Require the articles or by-laws to be amended if the Superintendent considers that they are inconsistent with this Act or the regulations. 1994, c. 11, s. 15 (2); 1997, c. 28, s. 53.

#### Certificate of incorporation

16. (1) Subject to subsection (2), ~~the Minister~~ *the Superintendent* shall issue a certificate of incorporation to the incorporators.

#### Grounds for refusing certificate

(2) ~~The Minister~~ *The Superintendent* shall not issue a certificate of incorporation if the articles do not meet the requirements of section 14 or 15 or if the incorporators do not satisfy ~~the Minister~~ *the Superintendent* of the following matters:

1. The plans for the conduct and development of the business of the credit union are feasible and sound.
2. The credit union will be operated in accordance with co-operative principles.
3. The credit union will be operated in such a way that deposits will be safeguarded without the likelihood of a claim against ~~the deposit insurer~~ *the Corporation*.
4. The credit union will be operated responsibly by individuals who, by virtue of their character, competence and experience, are suited to operating a financial institution.
5. The incorporation of the credit union will serve the best interests of the co-operative financial system in Ontario. 1994, c. 11, s. 16.

#### Effect of certificate

17. (1) A certificate of incorporation is conclusive proof that the incorporators have complied with all conditions precedent to incorporating a credit union and that the credit union was incorporated under this Act on the date set out in the certificate.

#### Exception

(2) Subsection (1) does not apply in a proceeding under section 301. 1994, c. 11, s. 17.

#### Appeal re refusal of certificate

18. If ~~the Minister~~ *the Superintendent* decides, after giving the applicants for incorporation an opportunity to ~~be heard~~ *make written submissions*, not to issue a certificate of incorporation, he or she shall notify the incorporators, in writing, and set out the reasons for the decision. 1994, c. 11, s. 18.

#### Language and form of *name corporate name*

19. (1) The *name corporate name* of a credit union must be in the language and form authorized in the articles and approved by the Superintendent. 1994, c. 11, s. 19 (1); 1997, c. 28, s. 53; 1999, c. 12, Sched. I, s. 2 (1).

#### Use of “credit union”

(2) Subject to subsections (3) and (5), the *name corporate name* of a credit union must include the words “credit union” or “caisse populaire”.

#### Use of “caisse populaire”

(3) Only a corporation incorporated under this Act or a predecessor of this Act that provides financial services to its members and promotes the interests of the French-speaking community in Ontario by providing management and democratic control in French may include “caisse populaire” in its *name corporate name* and all other corporations incorporated under this Act or a predecessor of this Act shall include “credit union” in their *names corporate names*.

#### Use of “Limited”, etc.

(4) The *name corporate name* of a credit union must have at the end of it one of the following: “Limited”, “Ltd”, “Limitée”, “Ltée”, “incorporated”, “incorporée” or “Inc”.

#### Exception

(5) Subject to subsection (3), a credit union incorporated under a predecessor of this Act may continue to use the name under which it was incorporated *as its corporate name*. 1994, c. 11, s. 19 (2-5).

*Use of other name*

**19.1** (1) A credit union shall not carry on business under or identify itself by a name other than its corporate name unless the Superintendent has approved that name.

*Restriction on approval*

(2) The Superintendent shall not approve a name under subsection (1) if the name includes “credit union” or “caisse populaire” or if the name would be precluded as a corporate name under section 21.

**Corporate name to be used in all documents**

(3) A credit union shall set out its corporate name in legible characters in all documents that evidence rights or obligations with respect to other parties (including contracts, invoices and negotiable instruments) and that are issued or made by or on behalf of the credit union. 1999, c. 12, Sched. I, s. 2 (2).

*Prohibition, use of “credit union”, “caisse populaire”*

**20.** (1) No person, other than a credit union or prescribed person or entity, shall carry on business using a name in which “credit union” or “caisse populaire” is used.

**Exception**

(2) Subsection (1) does not apply to the prescribed persons or entities. 1994, c. 11, s. 20 (2).

**Restrictions re ~~names~~ corporate names**

- 21.** (1) A credit union may not be incorporated under this Act with a ~~name~~ corporate name that,
- (a) is prohibited under an Act of the Parliament of Canada or a province or territory of Canada;
  - (b) does not meet the prescribed requirements;
  - (c) is reserved under section 22 for another credit union;
  - (d) is the same as or confusingly similar to any existing trade-mark or trade name or corporate name of a body corporate;
  - (e) is the same as or confusingly similar to the known name under or by which another entity carries on business or is identified;
  - (f) contains a word or phrase that indicates or suggests that it is incorporated for any object other than one set out in its articles; or
  - (g) is deceptively misdescriptive. 1994, c. 11, s. 21 (1).

**Exception re trade-marks, etc.**

- (2) Clause (1) (d) does not apply if the Superintendent is satisfied that,
- (a) the trade-mark or trade name is being changed or the body corporate is being dissolved or is changing its corporate name; and
  - (b) in the case of a corporate name, there is consent to the use of the corporate name. 1994, c. 11, s. 21 (2); 1997, c. 28, s. 53.

**Exception for affiliates**

(3) Clauses (1) (d) and (e) do not apply with respect to a credit union that is affiliated with another entity if the Superintendent is satisfied that the entity consents to it having a ~~name~~ corporate name substantially similar to the entity’s name. 1994, c. 11, s. 21 (3); 1997, c. 28, s. 53.

**Change of ~~name~~ corporate name**

(4) If a credit union has acquired a ~~name~~ corporate name contrary to subsection (1), the Superintendent may, *by order*, issue a certificate of amendment to the articles changing the name of the credit union. 1994, c. 11, s. 21 (4); 1997, c. 28, s. 53.

*Procedural rules*

(5) Section 240.1 applies with respect to an order under subsection (4).

*Reserving a corporate name*

*22. (1) A person may reserve a corporate name for a period of up to 90 days by making an application to the Superintendent and paying the fee established by the Minister.*

**Effect of reservation**

(2) During the period that the ~~name~~ *corporate name* is reserved, a body corporate is not entitled to acquire the name or a similar name without the ~~prior~~ written consent of the person for whose use and benefit the name is reserved. 1994, c. 11, s. 22 (2).

*Renewal of reservation of corporate name*

*(3) Within 30 days before the expiry of the reservation of a corporate name under subsection (1), the person who reserved the name may apply for a renewal of the reservation for a further period of not more than 90 days by submitting an application for the renewal to the Superintendent and paying the fee established by the Minister.*

*Corporate seal*

*22.1 A credit union may, but need not, have a corporate seal.*

**Location of head office**

**23.** (1) A credit union shall have its head office in Ontario at the place indicated in its articles.

**Change**

(2) A credit union may by articles of amendment change the location of its head office to another place in Ontario. 1994, c. 11, s. 23.

## OBJECTS AND POWERS

**Objects**

**24.** (1) The object of a credit union is to provide on a co-operative basis financial services primarily for its members.

**Co-operative basis**

- (2) A credit union shall operate on a co-operative basis such that,
- (a) membership is voluntary and is open to those that fall within its bond of association;
  - (b) its business is carried on primarily for the benefit of its members;
  - (c) the net income that accrues from its business is,
    - (i) used to provide services for its members,
    - (ii) used to develop its business,
    - (iii) used to increase its reserves or retained earnings,
    - (iv) distributed to its members and shareholders, or
    - (v) used for another purpose approved by the members; and
  - (d) each member has only one vote at its general meetings or in respect of elections of its directors ~~and officers~~.

*Exception*

*(3) Clause (2) (d) does not prevent a member from voting as a proxy holder as allowed under section 217.3.*

**Powers**

**25.** (1) A credit union has the capacity of a natural person and, subject to this Act, the rights, powers and privileges of a natural person.

**Powers outside Ontario**

(2) A credit union may exercise its powers outside of Ontario to the extent permitted under the laws of the applicable jurisdiction.

**Extra-provincial powers**



(3) A credit union may accept extra-provincial powers and rights. 1994, c. 11, s. 25.

**Acting outside powers**

**26.** (1) No act of a credit union and no transfer of real or personal property to or by a credit union before or after this section comes into force, that is otherwise lawful, is invalid because the credit union was without capacity or power to do the act or make or receive the transfer, but a lack of capacity or power may be asserted,

- (a) in a proceeding against the credit union by a member under subsection (2);
- (b) in a proceeding by the credit union, whether acting directly or through a receiver, liquidator, trustee or their legal representative or through members in a representative capacity, against a director or officer or former director or officer of the credit union; or
- (c) as a cause for the cancellation of the certificate of incorporation of the credit union.

**Restraining order**

(2) A member of a credit union may apply to court for an order restraining the credit union from doing any act on the ground that the credit union lacks capacity to do so.

**Granting order**

(3) Subject to subsection (4), the court may, if it considers it to be just and equitable, grant the order.

**Where contract**

(4) If the act or transfer that the member seeks to restrain is to be done under a contract to which the credit union is a party,

- (a) all the parties to the contract are parties to the proceedings;
- (b) the court may,
  - (i) grant the order and set aside the contract, and
  - (ii) award compensation to the credit union or other parties to the contract for any damages or loss, other than anticipated profits from the contract, sustained by them because the order is granted and the contract is set aside. 1994, c. 11, s. 26.

## MISCELLANEOUS

**Indoor management rule**

**27.** (1) A credit union or a guarantor of an obligation of one shall not assert against a person dealing with the credit union or with a person who has acquired rights from the credit union any of the following matters:

1. The articles or by-laws have not been complied with.
2. The individuals named in the most recent notice filed under the *Corporations Information Act* or named in the articles, whichever is more current, are not the directors of the credit union.
3. The location of its head office indicated in a notice filed under the *Corporations Information Act*, as named in the by-laws, or named in the articles, whichever is more current, is not the head office of the credit union.
4. A person held out by the credit union as a director, officer or agent has not been duly appointed or does not have authority to exercise the powers and perform the duties that are customary in the business of the credit union or usual for the director, officer or agent.
5. A document issued by a director, officer or agent of the credit union with actual or usual authority to issue the document is not valid or not genuine.
6. Financial assistance was not authorized.
7. The sale, lease, exchange or disposition of property of the credit union was not authorized under section 204.

**Exception**

(2) Subsection (1) does not apply if the person has or ought to have knowledge of the matter by virtue of his, her or its position with or relationship to the credit union. 1994, c. 11, s. 27 (1, 2).

**No deemed notice**

(3) No person is affected by or is deemed to have knowledge of the contents of a document concerning a credit union by reason only that the document has been filed with the Superintendent or is available for inspection at an office of the credit union. 1994, c. 11, s. 27 (3); 1997, c. 28, s. 53.

**Financial years**

**27.1** (1) *The financial year of a credit union must end on December 31.*

**Existing financial years with different year ends**

(2) *The following apply if, on the day this section comes into force, a credit union's financial year ends on a date other than December 31:*

1. *The credit union's financial year need not be changed.*
2. *If the credit union's financial year is changed, it must be changed so that it ends on December 31.*

**Special rule not to apply to amalgamated credit unions**

(3) *Subsection (2) does not apply to a credit union formed by the amalgamation of two or more credit unions after the day this section comes into force; in such a case the financial year of the amalgamated credit union must end on December 31.*

**Corporations Act not to apply**

**27.2** *The Corporations Act does not apply to credit unions.*

## PART IV MEMBERSHIP WHO MAY BE MEMBER

**Membership**

**28.** (1) *Membership in a credit union is governed by the credit union's by-laws, subject to the provisions of this Act and the credit union's articles.*

**Minimum membership shares required**

(2) *To be a member, a person or entity must hold the minimum number of membership shares required under the by-laws of the credit union.*

**Member who ceases to hold the minimum**

(3) *A member who ceases to hold enough shares to be a member shall, nonetheless, continue to be a member of the credit union for the purposes of this Act, subject to any limitations in the by-laws of the credit union, including limitations on the rights that member may exercise.*

**Ground for expulsion**

(4) *For greater certainty, subsection (3) does not prevent holding fewer than the minimum number of shares from being set out in the by-laws of the credit union as a ground for expulsion under subsection 47 (1).*

**Becoming a member**

**29.** (1) Each incorporator of a credit union who has subscribed for a membership share in the credit union becomes a member upon the effective date of incorporation.

**Subscription deemed application**

(2) A subscription for the number of membership shares in a credit union required by the by-laws of the credit union constitutes an application for membership and the issue of a membership share to the applicant constitutes admission to membership.

**Applicants for membership**

(3) Subject to subsection (1), no person shall become a member of a credit union until the person's application for membership has been approved by the board or an employee authorized by the board and the applicant has complied fully with the by-laws governing admission of members. 1994, c. 11, s. 29.

*Limitation on membership*

*30. (1) The by-laws of every credit union shall provide that the membership of the credit union is limited to persons, related persons and entities who come within a bond of association and shall specify the nature of the bond of association.*

**Interpretation**

(2) *Repeal*

**Same**

(3) Despite subsection (1), the by-laws may provide that an employee of a credit union may become a member. 1994, c. 11, s. 30 (3).

**Same**

(4) *Repeal*

**Same**

(5) *Repeal*

**Approval needed**

(6) *Repeal*

**Same**

(7) *Repeal*

**Admissions outside bond of association**

**31.** (1) If the credit union's by-laws permit it to do so, the board may admit, as a member of the credit union, any person or entity who does not come within the bond of association in the following circumstances:

1. The number of members who do not come within the bond of association does not exceed 3 per cent of the number of members in the credit union.
2. The admission of specific members who do not come within the bond of association is approved by the board.
3. Members who do not come within the bond of association must be identified as such in the ~~membership register~~ *register under section 230*.

**Same**

(2) A person or entity admitted as a member who does not come within the bond of association has all the rights and obligations of membership. 1994, c. 11, s. 31.

**Retaining membership**

**32.** (1) If authorized by the by-laws, a member who no longer falls within the bond of association may retain membership in the credit union.

**Exception**

(2) Section 31 does not apply to members who retain their membership under subsection (1). 1994, c. 11, s. 32.

*Record, information relating to membership*

**33.** (1) Every person or entity whose name is registered in the ~~register of members~~ *register under section 230* is entitled to,

- (a) a record specifying the amount paid upon membership shares, deposits and loans by the person or entity; and
- (b) such other information as may be prescribed by the by-laws of the credit union.

**Same**

(2) The record referred to in clause (1) (a) is admissible in evidence as proof, in the absence of evidence to the contrary, of membership and of the information entered therein. 1994, c. 11, s. 33.

**Corporate and partnership members**

34. Her Majesty the Queen in right of Ontario or in right of Canada or a corporation including a municipality as defined in the *Municipal Affairs Act*, an unincorporated association or a partnership registered under the *Business Names Act* or a predecessor thereof may become a member of a credit union on such conditions as are prescribed. 1994, c. 11, s. 34.

## ~~VOTING~~

**One vote**

35. *Repeal - moved to Part X*

**Mail balloting**

36. *Repeal - moved to Part X*

## RIGHTS AND LIABILITIES

**Liability of members**

37. The members of a credit union are not, by reason only of holding membership shares of a credit union, liable for any liability, act or default of the credit union except as otherwise provided by this Act. 1994, c. 11, s. 37.

*Not bound by trust*

38. (1) *A credit union is not bound to see to the execution of any trust to which any membership share is subject.*

*Application*

(2) *Subsection (1) applies whether the trust is express, implied or constructive.*

*Trusts for named beneficiaries*

39. (1) *A credit union may accept deposits from a member in trust for a named beneficiary only if,*
- (a) *the member holds, in trust for the beneficiary, the minimum number of membership shares required under subsection 28 (2); or*
  - (b) *the member and the beneficiary are related persons.*

*Deposit is separate for deposit insurance purposes*

(2) *A deposit of a member in trust for a named beneficiary shall be deemed, for the purpose of paragraph 2 of subsection 270 (2), to be a deposit separate from any other deposit of the member.*

*Exercise of rights of membership shares held in trust*

- (3) *The following apply with respect to membership shares held by a member in trust for a beneficiary:*
- 1. *The member shall exercise the rights attached to the shares, subject to paragraph 2.*
  - 2. *At a meeting of members, the member does not have an additional vote as a result of holding the membership shares in trust.*

*Disclosure of beneficiary*

(4) *The member shall disclose to the credit union such personal information concerning the beneficiary as the credit union requires to comply with all applicable laws.*

*Failure to disclose*

(5) *A credit union may refuse to accept or maintain a deposit made by a member in trust for a named beneficiary if the member refuses or fails to provide the information referred to in subsection (4).*

**Joint accounts**

40. Two or more members may hold their membership shares and deposits in a joint account and, in the absence of written notice to the contrary, payment by the credit union to any of the members or to the survivor or any of the survivors of the members of any money standing to the credit of the joint share or deposit account discharges the credit union from any further liability for such payment. 1994, c. 11, s. 40.

*Members under the age of 18 years*

41. *If permitted by the by-laws of a credit union, a person under the age of 18 years may be a member of the credit union, subject to such conditions and restrictions as may be set out in the by-laws.*

## DEATH, ETC.

**Transmission of shares**

**42 Repeal**

*Limited payment re deceased member*

43. (1) *If a member of a credit union dies and the credit union makes a payment of an amount described in subsection (2) to such person as the credit union is satisfied is entitled to receive the amount, the payment discharges any obligation of the credit union and its board in respect of and to the extent of the amount paid even if the payment is made without letters probate or letters of administration being taken out.*

*Type of payments*

(2) *The payment referred to in subsection (1) is a payment of the following:*

1. *An amount not exceeding the prescribed amount payable from the amount on deposit in the name of the deceased or in consideration for the membership shares of the deceased.*
2. *An amount not exceeding the prescribed amount payable from any money that is received by the credit union under any policy of insurance on the life of the deceased.*

*Restrictions*

(3) *Subsection (1) applies only if the credit union pays the amount in good faith and without negligence and the credit union receives, before the payment,*

- (a) *a statutory declaration attesting to the person's entitlement to receive the amount; or*
- (b) *such other evidence of the person's entitlement to the amount as the credit union considers to be appropriate in the circumstances.*

*Credit union can require more*

(4) *Nothing in this section prevents the credit union from requiring additional documentation or evidence as the credit union considers appropriate.*

*Recovery from recipient*

(5) *Subsection (1) does not affect any right of a person claiming to be entitled to recover the amount from the person to whom it was paid.*

*No limit on other powers, requirements*

(6) *For greater certainty, this section does not prevent a credit union from making a payment or transfer as otherwise allowed or required by law.*

*If deceased member was trustee*

(7) *If a member of a credit union dies holding membership shares or money on deposit in trust for a named beneficiary, the credit union may pay the amount of, or transfer, the membership shares or deposit and any interest or dividends on them,*

- (a) *to the executor or administrator of the estate of the deceased member; or*
- (b) *to the beneficiary if there is no executor or administrator of the estate of the deceased member or, if the beneficiary is a minor, to the beneficiary's parent or guardian.*

## **LIENS AND CREDITS**

### **Lien for liability**

**44.** (1) A credit union has a lien on the deposits and membership shares of a member for any liability to it by the member, and may set off any sum standing to the credit of the member on the books of the credit union towards the payment of the liability. 1994, c. 11, s. 44.

### ***Limitation, member's share account***

(2) *Despite subsection (1), a credit union shall not apply any service charges or other deductions against a member's share account except upon the termination of the membership.*

### **Unclaimed credits**

45. *Repeal*

## **WITHDRAWALS AND EXPULSIONS**

### **Withdrawal of members**

**46.** (1) A member of a credit union may withdraw from the credit union at any time by giving notice in accordance with the by-laws.

### **Same**

(2) A deceased member shall be deemed to have given notice to the credit union of intention to withdraw on the day of his or her death. 1994, c. 11, s. 46.

### ***Rights of withdrawing member***

(3) *The by-laws of a credit union shall set out the rights of a withdrawing member which shall include the right to receive payment for the member's membership shares, subject to subsection 62 (3), and the return of any money on deposit and property held by the credit union.*

### ***Expulsion of members***

**47.** (1) *A member of a credit union may be expelled from membership, in accordance with the by-laws, by a resolution of the board on the grounds set out in the by-laws.*

### ***Member rights relating to expulsion***

(2) *The by-laws of a credit union shall provide for the following rights:*

1. *The right of a member to receive advance notice of any meeting of the board at which the board will consider a resolution to expel the member.*
2. *The right of the member not to be expelled without being given an opportunity to appear at the meeting of the board, to make submissions and to be represented by legal counsel or an agent at the meeting.*
3. *The right of an expelled member to appeal the decision of the board at the next general meeting of the members.*
4. *The right of the expelled member to be reinstated as a member of the credit union if, at the next general meeting, the members, by a majority of the votes cast at the meeting, set aside the resolution of the board.*
5. *The right of the expelled member to receive payment for the member's membership shares, subject to subsection 62 (3), and the return of any money on deposit and property held by the credit union.*

### ***Procedures to be set out in by-laws***

(3) *The by-laws of a credit union shall set out the following:*

1. *The procedures to be followed by the board to provide the advance notice referred to in paragraph 1 of subsection (2).*
2. *The procedures to be followed relating to the appeal referred to in paragraph 3 of subsection (2).*

### ***Notice of decision***

*(4) If the board passes a resolution expelling a member, the credit union shall, within five days after the resolution is passed, notify the member of the decision of the board by registered letter addressed to the member at the member's last known address.*

**Payment to withdrawing and expelled member**

**48. *Repeal***

**Appeal from expulsion**

**49. *Repeal***

## ***REPRESENTATIVE ACTIONS BY MEMBERS***

***Members may maintain representative actions***

**50.** (1) Subject to subsection (2), a member of a credit union may maintain an action in a court of competent jurisdiction in a representative capacity for the member and all other members of the credit union suing for and on behalf of the credit union to enforce any right, duty or obligation owed to the credit union under this Act or under any other statute or rule of law or equity that could be enforced by the credit union itself, or to obtain damages for any breach of any such right, duty or obligation.

**Court order required**

(2) An action under subsection (1) shall not be started until the member has obtained an order of the court permitting the start of the action.

**Application to court**

(3) A member may, upon at least seven days notice to the credit union, apply to the court for an order referred to in subsection (2).

**Court order**

(4) The court may make the order upon such conditions as the court thinks fit if the court is satisfied that,

- (a) the member was a member of the credit union at the time of the transaction or other event giving rise to the cause of action;
- (b) the member has made reasonable efforts to cause the credit union to start or prosecute diligently the action on its own behalf; and
- (c) the member is acting in good faith and it is apparently in the interests of the credit union or its members that the action be started.

**Costs**

(5) At any time while an action started under this section is pending, the plaintiff may apply to the court for an order for the payment to the plaintiff by the credit union of reasonable interim costs, including solicitor's and counsel fees and disbursements.

**Accountability for costs**

(6) The plaintiff is accountable to the credit union for the interim costs if the action is dismissed on final disposition at the trial or on appeal.

**Action, court approval**

(7) An action started under this section shall not be discontinued, settled or dismissed for want of prosecution without the approval of the court.

**Same**

(8) If the court determines that the interests of the members or any class of members may be substantially affected by a discontinuance, settlement or dismissal, the court, may direct that notice in manner, form and content satisfactory to the court shall be given, at the expense of the credit union or any other party to the action as the court directs, to the members or class of members whose interests the court determines may be affected. 1994, c. 11, s. 50.

**PART V  
CAPITAL STRUCTURE  
SHARES**

*Classes of shares*

**51.** (1) *The articles of a credit union must provide for a class of shares known as membership shares and may provide for additional classes of shares, including patronage shares referred to in section 52.1.*

*Nature of shares*

(2) *The shares of a credit union are personal property.*

*Form*

(3) *The shares of a credit union are without nominal or par value and, if they are not membership shares or patronage shares, must be in registered form.*

*Membership shares*

**52.** (1) *Membership shares confer on the holder the right to receive dividends declared on the shares and to receive the remaining property of the credit union on dissolution.*

*Number of shares that member can hold*

(2) *Subject to any prescribed limit or limit set out in the by-laws of the credit union, a member may hold more than the minimum number of membership shares required, under subsection 28 (2), to be a member.*

**Same**

(3) *Repeal.*

*Transfer prohibited*

(4) *The holder of a membership share may not transfer an interest in the share to a person other than the credit union or another credit union and any transaction that purports to make such a transfer is void.*

**Certificates not mandatory**

(5) *The by-laws of a credit union may provide that membership share certificates need not be issued but, if this is the case, the credit union shall give each member who requests one a statement of the number of membership shares held by the member.*

**Certificates**

(6) *Membership share certificates issued after this subsection comes into force must include such information as may be prescribed. 1994, c. 11, s. 52.*

**Patronage shares**

**52.1** (1) *The articles of a credit union may provide for a class of shares known as patronage shares to be payable to members as a dividend under section 65 or as a patronage return under section 66.*

*Nature of share*

(2) *A patronage share does not confer on the holder the right to vote at meetings of the members of the credit union, the right to notice of any meeting of members of the credit union, the right to receive dividends or the right to receive the remaining property of the credit union on dissolution.*

*Transfer prohibited*

(3) *The holder of a patronage share may not transfer an interest in the share to a person other than the credit union or another credit union and any transaction that purports to make such a transfer is void.*

*Rights of classes*

**53.** (1) *For each class of shares, the articles must set out,*

- (a) *the rights, privileges, restrictions and conditions attaching to the shares of ~~each such~~ the class; and*
- (b) *the maximum number, if any, of shares of ~~any such~~ the class that the credit union is authorized to issue.*

**Restrictions**



(2) Shares, other than membership shares, do not confer on their holder the right to vote at meetings of *the members of* the credit union except as permitted under this Act or the right to receive any of the remaining property of the credit union on dissolution. 1994, c. 11, s. 53.

**Shares in series**

**54.** (1) The articles of a credit union may authorize the issue of any class of shares, other than membership shares, in one or more series and may fix the number of shares in, and *determine set out* the designation, rights, privileges, restrictions and conditions attaching to the shares of each series.

**Same**

(2) The articles may authorize the board to fix the maximum number, if any, of shares in each series and to determine the designation, rights, privileges, restrictions and conditions attaching to the shares of each series, subject to the limitations set out in the articles *and the limitations under this Act*.

**Series participation**

(3) If any cumulative dividend or amounts payable on return of capital in respect of a series of shares are not paid in full, the shares of all series of the same class participate rateably in respect of accumulated dividends and return of capital.

**Voting rights**

(4) If voting rights are attached to any series of a class of shares, the shares of every other series of that class have the same voting rights.

**Restriction on series**

(5) No rights, privileges, restrictions or conditions attached to a series of shares confer on the series a priority in respect of dividends or return of capital over any other series of shares of the same class that are then outstanding. 1994, c. 11, s. 54 (1-5).

**Information to Superintendent**

*(6) Before issuing shares in series, the credit union must file with the Superintendent articles of amendment designating the series and setting out the rights, privileges, restrictions and conditions attaching to the shares.*

**Authorization**

(7) *Repeal*

**Proxies**

**55.** *Repeal (moved to s. 217.4)*

**Pre-emptive right**

**56.** (1) If the articles so provide, a credit union shall not issue shares of a class, other than membership shares *or patronage shares*, unless the shares have first been offered to shareholders holding shares of that class.

**Same**

(2) Those shareholders have a pre-emptive right to acquire the offered shares in proportion to their holdings of the shares of that class, at the same price and on the same conditions as the shares are to be offered to others.

**Exception**

- (3) A shareholder has no pre-emptive right in respect of shares that are to be issued,
- (a) as a share dividend; or
  - (b) pursuant to the exercise of conversion privileges, options or rights previously granted by the credit union.

**Same**

- (4) A shareholder has no pre-emptive right in respect of shares that are to be issued,
- (a) if the issuance of shares to the shareholder is prohibited under this Act; or
  - (b) if, to the knowledge of the board, the offer of shares to a shareholder whose recorded address is outside Ontario ought not to be made unless the appropriate authority in that jurisdiction is provided

with information in addition to that submitted to the shareholders at the most recent annual meeting. 1994, c. 11, s. 56.

#### Conversion privileges

**57.** (1) A credit union may issue conversion privileges, options or rights to acquire its securities, other than membership shares *or patronage shares*, and shall set out the applicable conditions,

- (a) in the documents that evidence the conversion privileges, options or rights; or
- (b) in the securities to which the conversion privileges, options or rights are attached.

#### Transferable rights

(2) Conversion privileges, options and rights to acquire securities of a credit union may be made transferable or non-transferable, and options and rights to acquire such securities may be made separable or inseparable from the securities to which they are attached.

#### Reserved shares

(3) If a credit union has granted privileges to convert its securities into shares or into shares of another class or series, or has issued or granted options or rights to acquire shares, and if the articles limit the number of authorized shares, the credit union shall reserve and continue to reserve sufficient authorized shares to meet the exercise of the conversion privileges, options and rights. 1994, c. 11, s. 57.

## ISSUING SHARES

#### Power to issue shares

**58.** (1) A credit union may issue shares at such times, to such persons and for such consideration as the board may determine.

#### Restrictions re shares

(2) A credit union may issue shares only in accordance with this Act and the articles and by-laws of the credit union. 1994, c. 11, s. 58.

#### Consideration

**59.** (1) A credit union shall not issue any share, *other than a patronage share*, until the credit union has received full payment for it in cash or, with the approval of the Superintendent, in property. 1994, c. 11, s. 59 (1); 1997, c. 28, s. 53.

#### *Exception for certain asset purchases*

*(1.1) Subsection (1) does not apply to the issue of shares by a credit union if the issue is part of a transaction in which the credit union (the “purchaser credit union”) acquires the assets of another credit union (the “vendor credit union”) and, as part of that transaction, shareholders of the vendor credit union are to be issued with shares of the purchaser credit union.*

#### Prohibition re commission

(2) No person shall charge or accept payment of a commission on the purchase or sale of a membership share of a credit union.

#### Same

- (3) *Repeal (Moved to s. 83.1)*

#### Shares non-assessable

**60.** Shares issued by a credit union are non-assessable and no person is liable to the credit union or to its creditors in respect of ~~his or her~~ *the person’s* shares. 1994, c. 11, s. 60.

## REDEMPTION AND CANCELLATION OF SHARES

#### Holding own shares

- 61.** (1) Except as permitted under this Act or prescribed by regulation, a credit union shall not,

- (a) hold shares of the credit union;
- (b) permit a subsidiary to hold a greater number of membership shares than the minimum number required for membership in the credit union; or
- (c) permit a subsidiary to hold any other shares of the credit union.

**Holding as personal representative**

(2) A credit union may hold its shares in the capacity of a personal representative and may permit a subsidiary to do so, but only if neither the credit union nor any subsidiary has a beneficial interest in the shares. 1994, c. 11, s. 61 (1, 2).

**Security interest**

(3) A credit union may hold its shares by way of a security interest and may permit a subsidiary to do so if the security interest is nominal or immaterial when measured by criteria established by the credit union that have been approved in writing by the Superintendent. 1994, c. 11, s. 61 (3); 1997, c. 28, s. 53.

**Transitional provision**

(4) Nothing in this section precludes a credit union or any of its subsidiaries from holding a security interest held immediately before this Part comes into force.

**Exception**

(5) Section 28 of the *Business Corporations Act* does not apply to prevent a subsidiary of a credit union from holding membership shares in a credit union that is its holding body corporate. 1994, c. 11, s. 61 (4, 5).

**Purchase and redemption of shares**

**62.** (1) A credit union may purchase or redeem its shares only in accordance with this section and ~~with its articles~~ *the articles and by-laws of the credit union.*

**Same**

(2) A credit union may purchase, for the purpose of cancellation, any of its shares or redeem any of its redeemable shares at a price not exceeding the redemption price of the share calculated according to a formula stated in its articles or, in the case of shares other than membership shares, according to the conditions attaching to the shares.

**Restrictions**

(3) A credit union shall not make any payment to purchase or redeem its shares if there are reasonable grounds for believing that the credit union is, or the payment would cause it to be, in contravention of section 84.

**Donations**

(4) A credit union may accept a share surrendered to it as a gift but may not extinguish or reduce a liability in respect of an amount unpaid on the share except in accordance with section 72. 1994, c. 11, s. 62.

**Cancellation of shares**

**63.** A credit union shall cancel its shares or fractions of its shares that it has purchased, redeemed or otherwise acquired, *other than through the realization of security.* 1994, c. 11, s. 63.

*Shares acquired through realization of security*

**64.** (1) *If a credit union acquires any of its shares through the realization of security, the credit union shall sell, cancel or otherwise dispose of them within six months after the day of the realization.*

**Same**

(2) If a subsidiary of a credit union acquires shares of the credit union through the realization of security, the credit union ~~may~~ *shall* cause the subsidiary to sell or otherwise dispose of them within six months after the day of the realization. 1994, c. 11, s. 64.

## DIVIDENDS *AND PATRONAGE RETURNS*

### Declaration of dividend

**65.** (1) The board may declare, subject to the by-laws, and the credit union may pay a dividend ~~in~~ *money or property*.

#### *Form of dividend*

- (2) *A dividend may be paid,*
- (a) *in cash;*
  - (b) *by issuing patronage shares;*
  - (c) *by issuing fully paid shares, other than membership shares, or options or rights to acquire fully paid shares, other than membership shares, in any class or series of shares; or*
  - (d) *in a combination of two or more forms of dividends described in clauses (a), (b) and (c).*

### Declaration of patronage return

**66.** (1) The board may declare, subject to the by-laws, and the credit union may pay, a patronage return to its members in proportion to the business done by each member with or through the credit union.

#### *Form of patronage return*

- (2) *A patronage return may be paid,*
- (a) *in cash;*
  - (b) *by issuing patronage shares;*
  - (c) *by issuing fully paid shares, other than membership shares, or options or rights to acquire fully paid shares, other than membership shares, in any class or series of shares; or*
  - (d) *in a combination of two or more forms of patronage returns described in clauses (a), (b) and (c).*

#### *Rebate of interest*

(3) *A patronage return may include a rebate of interest paid by members during a financial year in respect of loans from the credit union.*

### Restriction on dividends, etc.

**67.** The board shall not declare, and the credit union shall not pay, a dividend or patronage return if there are reasonable grounds for believing that the credit union is, or the payment would cause it to be, in contravention of section 84. 1994, c. 11, s. 67.

## STATED CAPITAL

### Stated capital account

**68.** (1) A credit union shall maintain a separate stated capital account for each class and series of shares it issues.

#### Addition to account

(2) A credit union shall record in the appropriate stated capital account the full amount of any consideration it receives for any shares it issues.

#### Transition

- (3) *Repeal*

#### Same

- (4) *Repeal*

#### Adjustment due to conversion

**69.** (1) On a conversion of outstanding shares, other than membership shares *or patronage shares*, of a credit union into shares of another class or series, the credit union shall,

- (a) deduct from the stated capital account maintained for the class or series of shares converted an amount equal to the result obtained by multiplying the stated capital of the shares of that class or series by the number of shares of that class or series converted, and dividing by the number of outstanding shares of that class or series immediately before the conversion; and
- (b) record the result obtained under clause (a) and any additional consideration received on the conversion in the stated capital account maintained for the class or series of shares into which the shares have been converted.

**Stated capital of convertible shares**

(2) For the purposes of subsection (1) and subject to the articles, if a credit union issues two classes of shares and there is attached to each class a right to convert a share of one class into a share of the other class and a share is so converted, the amount of stated capital attributable to a share in either class is the aggregate of the stated capital of both classes divided by the number of outstanding shares of both classes immediately before the conversion.

**Conversion or change of shares**

(3) Shares issued by a credit union and converted into shares of another class or series become issued shares of the class or series into which the shares have been converted.

**Definition**

(4) In this section,

“conversion” of a share includes a change made under subsection 311 (1) into another class or series. 1994, c. 11, s. 69.

**Addition due to debt conversion**

**70.** On conversion of a debt obligation of a credit union into shares, the credit union shall,

- (a) deduct from the liabilities of the credit union the nominal value of the debt obligation; and
- (b) record the result obtained under clause (a) and any additional consideration received for the conversion in the stated capital account maintained for the class or series of shares into which the debt obligation has been converted. 1994, c. 11, s. 70.

**Reduction due to purchase, etc.**

**71.** (1) On a purchase, redemption or other acquisition of shares or fractions of shares by a credit union, the credit union shall deduct from the stated capital account maintained for the applicable class or series of shares an amount equal to the result obtained by multiplying the stated capital in respect of the shares of that class or series by the number of shares purchased, redeemed or acquired and dividing by the number of shares of that class or series outstanding immediately before the purchase, redemption or acquisition.

**Exception**

(2) This section does not apply with respect to shares acquired as described in subsection 61 (2) or acquired through the realization of security and sold in accordance with subsection 64 (1). 1994, c. 11, s. 71.

**Reduction by special resolution**

**72.** (1) The stated capital of a credit union may be reduced by special resolution *of the members of the credit union*.

**Contents of special resolution**

(2) The special resolution must specify each stated capital account to be affected by the reduction. 1994, c. 11, s. 72 (1, 2).

**Approval**

(3) The special resolution has no effect until it is approved in writing by the Superintendent. 1994, c. 11, s. 72 (3); 1997, c. 28, s. 53.

**Conditions for approval**

(4) The Superintendent may not approve the special resolution unless an application for his or her approval is made within three months after the resolution is passed and a copy of the resolution, together

with a notice of intention to apply for approval, has been published in *The Ontario Gazette*. 1994, c. 11, s. 72 (4); 1997, c. 28, s. 53.

**Information**

(5) An application for approval must include such information and documents as the Superintendent may require. 1994, c. 11, s. 72 (5); 1997, c. 28, s. 53.

**Restriction**

(6) A credit union shall not reduce its stated capital by special resolution if there are reasonable grounds for believing that the credit union is, or the reduction would cause it to be, in contravention of section 84.

**Reducing capital account**

(7) A credit union shall adjust its stated capital account or accounts in accordance with any special resolution referred to in subsection (1). 1994, c. 11, s. 72 (6, 7).

**Recovery by action**

**73.** (1) If money has been paid or property distributed as a consequence of a reduction of capital made contrary to section 72, a creditor of the credit union may apply to a court for an order compelling the member, shareholder or other person to pay the money or deliver the property to the credit union. 1994, c. 11, s. 73 (1).

**Shares held by personal representative**

(2) A person holding shares as a personal representative who is registered ~~on the records of the credit union~~ *in the register under section 230* as a member or shareholder and described as the personal representative for a named person is not personally liable under subsection (1) but the named person is liable. 1994, c. 11, s. 73 (2).

(3) REPEALED: 2002, c. 24, Sched. B, s. 25.

**Remedy preserved**

(4) This section does not affect any liability that arises under section 153. 1994, c. 11, s. 73 (4).

## TRANSFER OF SECURITIES

**Application of *Business Corporations Act***

**74.** Part VI of the *Business Corporations Act* applies, with necessary modifications, with respect to the transfer of securities, other than membership shares *or patronage shares*, as if the credit union were incorporated under that Act. 1994, c. 11, s. 74.

**Note:** On a day to be named by proclamation of the Lieutenant Governor, section 74 is repealed by the Statutes of Ontario, 2006, chapter 8, section 142 and the following substituted:

**Application of *Securities Transfer Act, 2006***

**74.** The *Securities Transfer Act, 2006* applies, with necessary modifications, with respect to the transfer of securities, other than membership shares *or patronage shares*. 2006, c. 8, s. 142.

See: 2006, c. 8, ss. 142, 145 (2).

***Restrictions on transfer of securities***

**74.1** (1) *A security issued under circumstances described in clause 75 (1) (a) shall not be transferred except to another member of the credit union or to a prescribed person.*

***Same***

(2) *The transfer of a security that is permitted under subsection (1) shall be made in the prescribed manner and subject to the prescribed conditions.*

***Same***

(3) *The transfer of a security that is permitted under subsection (1) is effective when the transfer is recorded in the register under section 230.*

## OFFERING STATEMENT

### Selling securities

**75.** (1) A credit union may sell its securities to a member or accept from a member, directly or indirectly, consideration for its securities if,

- (a) the credit union has obtained a receipt under section 78 for an offering statement respecting the securities and the receipt has not been revoked or expired; or
- (b) the credit union has provided the Superintendent with a copy of receipts from the Ontario Securities Commission under the *Securities Act* for a preliminary prospectus and a prospectus respecting the offering of the securities. 1994, c. 11, s. 75 (1); 1997, c. 28, s. 53.

### When *Securities Act* does not apply

(2) The *Securities Act* does not apply to securities sold or disposed of by a credit union pursuant to a receipt, under section 78, for an offering statement.

### Exception

- (3) Subsection (1) and the *Securities Act* do not apply with respect to the issuance of,
- (a) *membership shares*;
  - (b) *patronage shares*; or
  - (c) *shares under section 65 or 66*.

### Interpretation

(4) When, in subsection (1), credit union is read to mean league, a member of a league includes a member of a credit union that is a member of the league. 1994, c. 11, s. 75 (2-4).

### Permitted sellers

- 76.** Securities sold under the circumstances described in clause 75 (1) (a) may be sold by,
- (a) the directors, officers and employees of the issuing credit union;
  - (b) in the case of an issuing league, the directors, officers and employees of the league or of a credit union that is a member of the league; or
  - (c) a person registered under the *Securities Act* as a securities dealer, investment dealer or broker. 1994, c. 11, s. 76.

### Offering statement

**77.** (1) Application for a receipt for an offering statement is made by filing with the Superintendent a copy of the offering statement and paying the ~~applicable~~ fee *established by the Minister*. 1994, c. 11, s. 77 (1); 1997, c. 28, s. 53.

### Contents

(2) The offering statement must contain such information as may be prescribed ~~and must be in a form approved by the Superintendent~~. 1994, c. 11, s. 77 (2); 1997, c. 28, s. 53.

### Standard of disclosure

(3) The offering statement must provide full, true and plain disclosure of all material facts relating to the securities that the credit union proposes to issue. 1994, c. 11, s. 77 (3).

### *Certificate*

(4) *The offering statement must be accompanied by a disclosure certificate signed by the chair of the board and the chief executive officer, certifying that the offering statement satisfies the requirements of subsections (2) and (3).*

### Additional material

- (5) The Superintendent may require,
  - (a) the credit union to provide additional documents, reports and other material; and

- (b) that the information contained in the material referred to in clause (a) form part of the offering statement. 1994, c. 11, s. 77 (5); 1997, c. 28, s. 53.

**Examination**

(6) Before issuing a receipt, the Superintendent may require the credit union to permit an examination of its affairs, at its own expense, by a person authorized in writing by the Superintendent. 1994, c. 11, s. 77 (6); 1997, c. 28, s. 53.

**Receipt for offering statement**

**78.** (1) The Superintendent shall issue a receipt for an offering statement unless it appears to him or her that,

- (a) the statement or any document accompanying it,
  - (i) fails to comply in any substantial respect with this Act or the regulations,
  - (ii) contains any statement, promise, estimate or forecast that is misleading, false or deceptive,
  - (iii) contains an extract from an opinion or statement of an expert that does not fairly represent the opinion or statement, or
  - (iv) conceals or omits to state any material facts necessary in order to make any statement contained in the offering statement not misleading in light of the circumstances in which it was made;
- (b) the proceeds from the sale of the securities are insufficient, together with the other resources of the credit union, to accomplish the purpose of the issue that is stated in the offering statement; or
- (c) it would not be in the public interest to issue a receipt for the offering statement. 1994, c. 11, s. 78 (1); 1997, c. 28, s. 53.

*Refusal to issue, revocation*

(2) The Superintendent may refuse to issue or may revoke a receipt for an offering statement in any of the following circumstances:

1. The credit union is not complying with section 84.
2. *The credit union is subject to the supervision of the Corporation or under the administration of the Corporation.*
3. *Repeal.*

**Same**

(3) Before refusing to issue a receipt *or revoking a receipt*, the Superintendent shall give the applicant an opportunity to ~~be heard~~ *make written submissions*. 1994, c. 11, s. 78 (3); 1997, c. 28, s. 53.

**Same**

(4) A decision to refuse to issue a receipt *or a decision to revoke a receipt* must be given in writing and must include the reasons for the refusal *or revocation*.

*Expiry of receipt*

- (5) *A receipt for an offering statement expires on the earlier of,*
- (a) *the date that is six months after the day it is issued; and*
  - (b) *the date on which the offering of securities contemplated by the offering statement for which the receipt is granted is closed in accordance with the offering statement.*

*Renewal of receipt*

**79.** (1) *Application for renewal of the receipt for an offering statement may be made by filing an application with the Superintendent with a copy of the statement and paying the fee established by the Minister.*

**Time for application**

- (2) Application for renewal must be made before the receipt for the offering statement expires.

**Receipt**

(3) Section 78 applies, with necessary modifications, with respect to the renewal of a receipt. 1994, c. 11, s. 79 (2, 3).



**Material change**

**80.** (1) If there is a material change in the facts set out in an offering statement, the credit union shall file with the Superintendent,

- (a) an amendment to the offering statement, if no receipt has been issued for the statement; or
- (b) a statement of material change, if a receipt has been issued for the offering statement and the receipt has not been revoked or expired. 1994, c. 11, s. 80 (1); 1997, c. 28, s. 53.

**Time**

(2) The credit union shall give the Superintendent the amendment or statement of material change promptly and, in any event, within ten days after the date on which the material change occurred. 1994, c. 11, s. 80 (2); 1997, c. 28, s. 53.

**Notice to persons**

(3) The credit union shall give a copy of the amendment or statement of material change to every person to whom it gave a copy of the offering statement. 1994, c. 11, s. 80 (3).

**Replacement statement**

(4) A credit union may, and if requested to do so by the Superintendent, shall file with the Superintendent a new offering statement instead of one or more statements of material change. 1994, c. 11, s. 80 (4); 1997, c. 28, s. 53.

**Contents**

(5) Sections 77 and 78 apply with respect to a statement of material change as if it were an offering statement.

**Exclusion**

(6) In this section,

“material change” does not include such types of change as may be prescribed. 1994, c. 11, s. 80 (5, 6).

**Distribution of statements**

**81.** (1) A credit union shall give a copy of an offering statement or statement of material change to each member that requests a copy of one.

**Same**

(2) A person who offers a security in a credit union for sale shall give a copy of the offering statement and statement of material change, if any, to a prospective purchaser upon request and to a purchaser.

***Withdrawal from purchase***

*(3) An agreement of purchase and sale in respect of securities is not binding on the purchaser if the person from whom the purchaser has agreed to purchase the security receives written notice of the purchaser’s intention not to be bound by the agreement not later than midnight on the second business day after receipt by the purchaser of the latest offering statement and any statement of material change.*

***Same***

*(4) Subsection (3) applies with necessary modifications in respect of a person who is subscribing for securities to be issued by a credit union.*

***Written notice***

*(5) A written notice is considered to be received by a recipient for the purposes of subsection (3) if the recipient receives the notice by facsimile or electronic means.*

***“business day”***

*(6) In subsection (3),*

*“business day” means a day that is not,*

- (a) Saturday, or*
- (b) Sunday or any other holiday, other than Easter Monday and Remembrance Day.*

**Effect of misrepresentation**

**82.** (1) If an offering statement or a statement of material change contains a misrepresentation, a purchaser of a security shall be deemed to have relied upon the misrepresentation if it was a misrepresentation when the purchase was made.

**Exception**

(2) Subsection (1) does not apply if the purchaser knew about the misrepresentation when purchasing the security. 1994, c. 11, s. 82 (1, 2).

**Right of action**

- (3) The purchaser has a right of action for damages against,
- (a) the credit union;
  - (b) every person, other than an employee of a credit union, who sells the security on behalf of the credit union;
  - (c) every director of the credit union at the time the offering statement or statement of material change was filed with the Superintendent;
  - (d) every person whose consent has been filed pursuant to a requirement of the regulations but only with respect to reports, opinions or statements that have been made by them; and
  - (e) every person who signed the offering statement or statement of material change other than the persons included in clauses (a) to (d). 1994, c. 11, s. 82 (3); 1997, c. 28, s. 53.

**Same**

(4) If the purchaser purchased the security from a credit union, the purchaser may elect to exercise a right of rescission against the credit union, in which case the purchaser has no right of action for damages against the credit union. 1994, c. 11, s. 82 (4).

**Defence**

(5) A person who signed the disclosure certificate in a form approved by the Superintendent or a director is not liable under this section if ~~he or she~~ the person proves one of the following:

1. The offering statement or statement of material change was filed with the Superintendent without the person's knowledge or consent. As soon as the person became aware that it had been filed with the Superintendent, the person advised the Superintendent that it was filed with the Superintendent without the person's knowledge or consent.
2. The person was not aware of the misrepresentation when the offering statement or material change statement was filed with the Superintendent. After the receipt for the statement was issued but before the purchaser bought the security, the person immediately after ~~he or she~~ the person became aware of the misrepresentation advised the Superintendent that ~~he or she~~ the person withdrew consent to *the* filing of the statement with the Superintendent.
3. The person had no reasonable grounds to believe, and did not believe, that there had been a misrepresentation. 1994, c. 11, s. 82 (5); 1997, c. 19, s. 5 (3); 1997, c. 28, s. 53; 1999, c. 12, Sched. I, s. 2 (4).

**Interpretation**

- (6) In this section,
- “misrepresentation” means,
- (a) an untrue statement of material fact, or
  - (b) an omission to state a material fact that is required to be stated or that is necessary to make a statement not misleading in light of the circumstances in which it was made. 1994, c. 11, s. 82 (6).

**Restrictions on transfer of securities**

**83.** *Repeal (moved to s. 74.1)*

## ***RESTRICTION ON COMMISSION FOR PURCHASE OR SALE***

*No Commission by directors, officers, employees*

*83.1 None of the following persons shall charge or accept payment of a commission on the purchase or sale of a security of a credit union:*

- 1. The directors, officers and employees of the credit union.*
- 2. The related persons of a director, officer or employee of the credit union.*
- 3. If the credit union is a member of a league, the directors, officers and employees of the league.*

## PART VI CAPITAL AND LIQUIDITY

### Adequacy of capital and liquidity

**84.** (1) A credit union shall maintain, in relation to its operations, adequate and appropriate forms of capital and liquidity.

### Same

(2) A credit union shall comply with the regulations governing adequate capital and liquidity. 1994, c. 11, s. 84.

### Additional requirements

- 85.** (1) The *Superintendent Corporation* may order a credit union,
- (a) to increase its capital; or
  - (b) to provide additional liquidity in such forms and amounts as the *Superintendent Corporation* may require. 1994, c. 11, s. 85 (1); 1997, c. 28, s. 53.

### Circumstances

(2) Despite a credit union's compliance with the regulations governing adequate capital and liquidity, the *Superintendent Corporation* may impose the requirements set out in subsection (1),

- (a) if there are reasonable grounds to believe that the credit union is not complying with the requirements of this Act and the regulations concerning the management of risk in making loans and investments and in the general management of credit union business;
- (b) if the *Superintendent Corporation* considers that imposing the requirement is necessary to protect the interests of members, shareholders or depositors; or
- (c) if the *Superintendent Corporation* considers that imposing the requirement is necessary to ensure the financial security and integrity of the credit union. 1994, c. 11, s. 85 (2); 1997, c. 28, s. 53.

### Compliance

(3) The credit union shall comply with the *requirement order* within such time as the *Superintendent Corporation* specifies in the order. 1994, c. 11, s. 85 (3); 1997, c. 28, s. 53.

### Procedural rules

*(4) Section 240.1 applies with respect to an order under this section.*

### Appeal to Tribunal

*(5) The credit union that is subject to an order under this section may appeal the order to the Tribunal in accordance with section 240.4.*

### Variation of requirements

**86.** (1) A credit union may apply to the *Superintendent Corporation* for a variation of the requirements under section 84. 1994, c. 11, s. 86 (1); 1997, c. 28, s. 53.

### Application

(2) An application must be in a form approved by the *Superintendent Corporation* and must describe how and when the credit union will meet the requirements under section 84. 1994, c. 11, s. 86 (2); 1997, c. 28, s. 53.

### Variation

(3) The *Superintendent Corporation* may grant the variation subject to any terms *he or she* it considers appropriate if *he or she* it considers that granting the variation is in the interest of the members of the credit

union and that the credit union will meet the requirements under section 84 within a reasonable time. 1994, c. 11, s. 86 (3); 1997, c. 28, s. 53.

**Appeal of decision**

**87. Repeal**

**Valuation of asset**

**88.** If the *Superintendent Corporation* has appraised the value of an asset held by a credit union or a subsidiary and the value determined by the *Superintendent Corporation* varies materially from the value placed by the credit union or the subsidiary on the asset, the *Superintendent Corporation* shall send to the credit union, its auditor, and its audit committee ~~and the stabilization authority for the credit union~~ a written notice of the value of the asset as determined by the *Superintendent Corporation*. 1994, c. 11, s. 88; 1997, c. 28, s. 53.

**Report re adequacy**

**89.** A credit union shall provide a report in a form approved by the *Superintendent Corporation* concerning its compliance with section 84 to such persons and at such times as required by the *Superintendent Corporation*. 1994, c. 11, s. 89; 1997, c. 28, s. 53.

*Notification if credit union insolvent*

**89.1** *If the Corporation believes that a credit union is unable to provide for the payment of its liabilities as they become due, the Corporation shall immediately notify the Superintendent in writing.*

**Provision for losses and accrued interest**

**90.** A credit union shall make monthly provision for doubtful loans and establish reserves as prescribed. 1994, c. 11, s. 90; 1999, c. 12, Sched. I, s. 2 (5).

## PART VII GOVERNING THE CREDIT UNION DIRECTORS

**Qualifications of directors**

- 91.** Only a natural person who meets the following criteria is eligible to be a director of a credit union:
1. He or she is a member of the credit union.
  2. He or she is at least eighteen years of age.
  3. He or she is a Canadian citizen or a person lawfully admitted to Canada for permanent residency who is ordinarily resident in Canada. 1994, c. 11, s. 91.

**Disqualified individuals**

- 92.** (1) The following individuals are disqualified from being directors of a credit union:
1. One whose membership in any credit union has been terminated, other than voluntarily.
  2. One who a court has decided is of unsound mind.
  3. One who is an undischarged bankrupt or who has been discharged as a bankrupt in the five years preceding the date on which he or she may be elected as director.
  - 3.1** *One who is unable to obtain a bond of an insurer licensed under the Insurance Act to write surety and fidelity insurance.*
  4. One who is more than ninety days in arrears in the payment of a debt owed to the credit union unless the credit union has agreed to extend the time for repayment.
  - 4.1** *One who is a listed person within the meaning of the United Nations Suppression of Terrorism Regulations under the United Nations Act (Canada).*
  5. One who has been convicted, in the five years preceding the date on which he or she may be elected as a director, of an offence described in subsection (4) and who has not received a pardon for the offence.

6. One whose membership in a professional association has been terminated, in the five years preceding the date on which he or she may be elected as director, for professional misconduct.
7. *An employee of the credit union or a league in which the credit union is a member or his or her spouse, parent or child.*
8. *A professional advisor who has provided services to the credit union in his or her professional capacity.*
9. *An employee of the Corporation.*
10. A public servant employed in regulating credit unions.
11. *One who has not met the training requirements or qualifications for directors set out in the by-laws of the credit union.*
12. *One who has not met any reasonable condition or qualification set out in the by-laws of the credit union.*

**Exception**

(2) *An individual is not an employee for the purposes of paragraph 7 of subsection (1) solely because he or she provides, without remuneration, services to the credit union or league that are ordinarily provided by an employee.*

- (3) *Repeal (already spent)*

**Type of offence**

- (4) *An offence referred to in paragraph 5 of subsection (1) is an offence that,*
  - (a) is related to the qualifications, functions or duties of a director of a body corporate;
  - (b) involves theft or fraud ~~*punishable by a term of imprisonment for five years or more;*~~
  - (c) involves a contravention or failure to comply with this Act, a predecessor of this Act or an Act governing a subsidiary of the credit union; or
  - (d) involves a contravention or failure to comply with the *Securities Act*. 1994, c. 11, s. 92 (4).

**Number of directors**

93. (1) A credit union may, by by-law, change the number of its directors.

**Minimum**

- (2) A credit union must have a minimum of five directors. 1994, c. 11, s. 93.

**Election of board**

94. (1) Directors must be elected in the manner provided in the by-laws.

**Election in rotation**

- (2) The by-laws may provide for the election and retirement of directors in rotation.

**Voting**

(3) A member who votes at an election of directors shall cast a number of votes equal to the number of directors to be elected but the member may not cast more than one vote for one candidate. 1994, c. 11, s. 94.

**Chair of board**

- 94.1. *The directors shall elect or appoint a chair of the board from among themselves.*

**Term of office, directors**

95. (1) Directors hold office for such term as the by-laws provide.

**If election delayed**

(2) If an election is not held within the period set out in a credit union's by-laws, the directors continue in office until their successors are elected.

**First directors**

(3) Each of the persons named as first directors in the articles is a director until replaced by a person duly elected or appointed in his or her stead.

**Maximum number**

(4) The by-laws *may shall* provide for a maximum number of consecutive terms for directors. 1994, c. 11, s. 95.

**Term of office, chair**

*95.1 (1) The chair of the board shall hold office for such term as the by-laws provide.*

**Maximum number**

*(2) The by-laws shall provide for a maximum number of consecutive terms for the chair of the board.*

**Quorum**

**96.** A majority of the board constitutes a quorum. 1994, c. 11, s. 96.

**Vacancies**

**97.** (1) If a vacancy occurs in the board and a quorum of directors remains, the directors remaining in office may appoint a qualified individual to fill the vacancy until the next annual meeting of *the members of* the credit union.

**Same, no quorum**

(2) If there is not a quorum of directors in office, the remaining directors shall promptly call a general meeting of the members to fill the vacancies; in default of this or if there are no remaining directors, any member may call the meeting. 1994, c. 11, s. 97.

**Members may change number of directors**

*(3) The members may, by a special resolution passed at the next annual meeting referred to in subsection (1) or at the general meeting called under subsection (2), change the number of directors of the credit union, subject to subsection 93 (2).*

**Ceasing to hold office**

**98.** (1) A director ceases to hold office,

- (a) at the end of the annual meeting at which his or her term of office expires or upon the election of a successor;
- (b) when he or she dies or resigns;
- (c) when he or she becomes ineligible to hold office under section 91 or 92;
- (d) when he or she is removed from office under section 99, 100 or 101;
- (e) when the ~~deposit insurer~~ *Corporation* replaces the board and appoints a person to assume the powers of the board under subsection 295 (1).

**Date of resignation**

(2) A director's resignation becomes effective when the credit union receives the director's written resignation or at the time specified in the resignation, whichever is later. 1994, c. 11, s. 98.

**Notice if no quorum of directors**

*(3) The credit union shall notify the Superintendent if, after a director ceases to hold office, there is not a quorum of directors in office.*

**Removal by board**

**99.** If a director fails to attend three consecutive board meetings without, in the opinion of the board, reasonable cause or fails to perform any of the duties allotted to him or her as a director, the board may, by resolution, declare the director's position vacant. 1994, c. 11, s. 99.

**Removal by members**

**100.** (1) The members of a credit union may remove a director before his or her term of office expires. 1994, c. 11, s. 100 (1).

**Vote**

(2) A director is removed from office by a special resolution passed at a general meeting of the members duly called for that purpose. 2002, c. 18, Sched. H, s. 3 (4).

**Notice**

(3) The notice calling the meeting must state that the purpose of the meeting is to remove the director named in the notice. 1994, c. 11, s. 100 (3).

*Right to make representations*

(4) *At the meeting, the director is entitled to speak to the resolution calling for his or her removal and may do so personally or through legal counsel or an agent on his or her behalf.*

**Right to counsel**

(5) *Repeal*

**Replacement**

(6) If the members remove the director from office, they shall elect another director at the same meeting to hold office in his or her stead for the remainder of his or her term of office. 1994, c. 11, s. 100 (6).

*Removal by Superintendent*

**101.** (1) *The Superintendent may, by order, remove a director of a credit union if the Superintendent is of the opinion that the director is not suitable to hold office as a director on the basis of the character or competence of the director.*

*Risk of prejudice*

(2) *In forming an opinion under subsection (1), the Superintendent must consider whether the interests of the members, depositors and creditors of the credit union have been or are likely to be prejudiced by the director's holding office.*

*Procedural rules*

(3) *Section 240.1 applies with respect to an order under this section.*

*Appeal to Tribunal*

(4) *The director who is subject to an order under this section may appeal the order to the Tribunal in accordance with section 240.4.*

*Statement re opposition*

**102.** (1) *A director who opposes any proposed action or resolution by the directors or members is entitled to give the credit union a written statement setting out why he or she opposes the proposed action or resolution.*

**Circulation of statement**

(2) The credit union shall, within thirty days after receipt of the statement, send a copy of the statement to the Superintendent ~~and a notice to every member stating that a copy of the statement is available on request.~~ 1994, c. 11, s. 102 (2); 1997, c. 28, s. 53.

**Same**

(3) *Repeal.*

**Immunity**

(4) A credit union and a person acting on its behalf does not incur any liability by reason only of sending the statement as required by subsection (2). 1994, c. 11, s. 102 (3, 4).

**Statement on resignation**

**103.** (1) A director who resigns is entitled to give the credit union a written statement setting out his or her reasons for resigning. 1994, c. 11, s. 103 (1).

*Information to Superintendent and Corporation*

(2) *The Superintendent or the Corporation may require the director to provide such information relating to the resignation as the Superintendent or the Corporation, as the case may be, specifies and the director shall promptly do so.*

*Statement re disagreement*

(3) *If a director resigns as a result of a disagreement with the other directors or the officers of a credit union, the director shall give the credit union, the Superintendent and the Corporation a written statement setting out the nature of the disagreement.*

*Advising members that statement available*

*(4) The credit union shall, within thirty days after receipt of the statement under subsection (3), advise every member that a copy of the statement is available on request.*

***Method of advising members***

*(5) The advising of the members under subsection (4) may be by deliveries permitted under section 335 or by such other method as is provided for in the credit union's by-laws.*

***Duty to give copy of statement***

*(6) The credit union shall give a copy of the statement to every member who requests it.*

***Immunity***

*(7) A credit union and a person acting on its behalf does not incur any liability by reason only of advising the members under subsection (4) or giving a copy of the statement to a member.*

## POWERS AND DUTIES OF THE BOARD

**Duties of the board**

**104.** (1) The board shall manage or supervise the management of the business and affairs of the credit union and shall perform such additional duties as may be imposed under this Act, the regulations, *the by-laws of the Corporation or the by-laws of the credit union* ~~or the by-laws~~.

***Board, etc. not to manage day to day activities***

*(2) The board, a committee of the board, or a director shall not directly manage, or be involved in, the day to day activities of the credit union.*

**First directors**

(3) The first directors of a credit union named in the articles have all the powers and duties and are subject to all the liabilities of directors. 1994, c. 11, s. 104.

**By-law powers**

**105.** (1) The board may pass by-laws governing the conduct of the affairs of the credit union.

***Required matters***

*(1.1) The by-laws of a credit union shall provide for the following matters:*

- 1. The appointment of officers of the credit union and the establishment of their duties.*
- 2. The calling of meetings of the board, including the minimum number of times the board must meet each financial year if the minimum number of times exceeds the prescribed minimum number of times, the place or places where meetings of the board may be held and the manner in which notice of the meetings must be given.*
- 3. Training requirements and qualifications required for persons to be eligible to be directors or members of the audit committee.*

**Same**

(2) The board shall pass by-laws, subject to this Act and the regulations, governing prescribed matters if they are not provided for by this Act or the regulations or set out in the articles.

**Limitation**

(3) By-laws that are contrary to this Act, the regulations or the articles of the credit union are void.

**Same**

(4) By-laws that relieve a person of obligations or requirements under this Act or the regulations are void.

**Restrictive by-laws**

(5) A by-law may impose greater restrictions in respect of a matter than are imposed under this Act or the regulations. 1994, c. 11, s. 105.

**Remuneration of directors**



**106.** The procedure for setting the remuneration of directors and members of committees shall be established by by-law. 1994, c. 11, s. 106.

**When by-law effective**

**107.** (1) A by-law is not effective until it is passed by the board and confirmed, with or without variation, by a special resolution passed at a general meeting of the members duly called for that purpose or by such greater proportion of the votes cast as the articles may provide. 2002, c. 18, Sched. H, s. 3 (5).

*Filing*

*(2) Within 30 days after a by-law is confirmed, the credit union shall file two copies of it with the Superintendent.*

*Salary and benefits reported in financial statements*

*108. A credit union's annual audited financial statements must disclose the total expenses of the board and the total remuneration paid to the directors during the year.*

## ~~EXECUTIVE COMMITTEE~~

**Executive committee**

**109.** *Repeal*

## ~~CREDIT COMMITTEE~~

**Credit committee**

**110.** *Repeal*

**Eligibility for membership**

**111.** *Repeal*

**Election of members**

**112.** *Repeal*

**Training program**

**113.** *Repeal*

**Quorum**

**114.** *Repeal*

**Vacancies**

**115.** *Repeal*

**Ceasing to hold office**

**116.** *Repeal*

**Removal by committee**

**117.** *Repeal*

**Removal by members**

**118.** *Repeal*

**Committee meetings**

**119.** *Repeal*

**Reports by committee**

**120.** *Repeal*

## ***DUTIES OF CREDIT COMMITTEE***

### **Duties of committee**

121. *Repeal*

### **Loan officers**

122. *Repeal*

### **Delegation of loan approvals**

123. *Repeal*

### **Prohibition re loans**

124. *Repeal*

## **AUDIT COMMITTEE**

### *Audit committee*

125. (1) *The board of every credit union shall establish an audit committee composed of members appointed by the board from among the directors.*

### *Minimum number of members*

(2) *The audit committee must have at least three members.*

### *When member ceases to be member*

(3) *A person ceases to be a member of the audit committee of a credit union when he or she ceases to be a director or when he or she resigns from the committee or is replaced by the board.*

### *Training*

(4) *Every member of an audit committee shall satisfy the training requirements or qualifications for audit committee members that are set out in the by-laws of the credit union.*

### *Meetings*

(5) *The audit committee shall hold a meeting no less frequently than once every quarter during each year and meetings may be called by the credit union's auditor, a member of the audit committee or any director.*

### *Quorum*

(6) *A majority of the members of the audit committee constitutes a quorum.*

### *Minutes*

(7) *The audit committee shall keep minutes of its meetings.*

### *Report to the board*

(8) *The audit committee shall report to the board within 60 days after each committee meeting or at the next board meeting, whichever is earlier, setting out the results of the meeting.*

### *Report to the members*

(9) *The audit committee shall report to the members of the credit union at the annual meeting by a report containing such information as may be prescribed.*

### *Powers and duties of audit committee*

126. *The audit committee has such powers and duties as are set out in this Act, prescribed by the regulations or set out in the by-laws.*

### *Notification about certain matters*

127. (1) *The audit committee shall promptly notify the board, the credit union's auditor, the Corporation and the Superintendent if any of the following matters come to the attention of the committee:*

1. *Funds, securities or other property of the credit union have been or may have been misappropriated or misdirected.*

2. *The board, a director, an officer or an employee of the credit union has contravened or failed to comply with this Act, the regulations or the by-laws and the contravention or failure to comply adversely affects the credit union.*

*Assistance*

*(2) Subject to the board's approval, which shall not be unreasonably withheld, the committee may retain one or more persons to assist it in determining whether a misappropriation or misdirection has occurred.*

*Remuneration*

*(3) The committee shall fix the remuneration payable to the persons retained under subsection (2) and the credit union shall pay it.*

*Power to call board meeting*

*128. The audit committee may call a meeting of the board to consider a matter of concern to the committee.*

**Quorum**

*129. Repeal*

**Vacancies on elected committees**

*130. Repeal*

**Vacancies on appointed committees**

*131. Repeal*

**Ceasing to hold office**

*132. Repeal*

**Committee meetings**

*133. Repeal*

**Reports by committee**

*134. Repeal*

**Removal by committee**

*135. Repeal*

**Removal by members**

*136. Repeal*

## ~~**POWERS AND DUTIES OF AUDIT COMMITTEE**~~

**General**

*137. Repeal*

**Duties re misappropriation**

*138. Repeal*

**Power to call meeting**

*139. Repeal*

## **OFFICERS**

*Officers*

*140. (1) In addition to the chair of the board required under section 94.1, a credit union must have a corporate secretary and a chief executive officer and may have such other officers as are provided for in the by-laws.*

**Same**

(2) Subject to this Act, the regulations and the by-laws, the board may establish the duties of the credit union's officers.

**Corporate secretary**

(3) The board may elect or appoint the corporate secretary from among the directors or may appoint an employee of the credit union as corporate secretary.

*Chief executive officer*

*(3.1) The chief executive officer shall be an employee of the credit union appointed by the board.*

**Remuneration**

(4) Officers are entitled to receive such remuneration and other payments as the board approves.

*Remuneration reported in financial statements*

*(5) A credit union's annual audited financial statements must disclose the total remuneration paid during the year to each of the three officers or employees of the credit union who had the highest remuneration for the year.*

**Duties of corporate secretary**

**141.** The corporate secretary shall ensure that the records of the by-laws of the credit union and the minutes of board meetings are kept up to date. 1994, c. 11, s. 141.

## DUTIES OF DIRECTORS, OFFICERS AND COMMITTEE MEMBERS

*Duty of confidentiality*

**142.** *(1) Every director, officer, member of a committee or employee of a credit union shall keep confidential all information received by the credit union or by a subsidiary or other affiliate of the credit union that the director, officer, committee member or employee knows or should know is confidential to the credit union or subsidiary or other affiliate.*

*Use of information*

*(2) No director, officer, member of a committee or employee of a credit union shall make use of information referred to in subsection (1) in any transaction in order to obtain, directly or indirectly, a benefit or advantage for any person other than the credit union or a subsidiary or other affiliate of the credit union.*

*Confidentiality re members*

**143.** *(1) Every director, officer, member of a committee or employee of a credit union shall keep confidential all information respecting members' transactions with the credit union.*

*Exception*

*(2) Despite subsection (1), a director, officer or member of a committee or an employee authorized by the board may disclose information,*

- (a) to a person acting in a confidential or professional relationship to the credit union including an employee of a league in which the credit union is a member;*
- (b) to a financial institution with which the credit union has transactions that may involve confidential matters;*
- (b.1) to another credit union with which the credit union of the director, officer, committee member or employee proposes to amalgamate, for the purposes of the amalgamation, if the credit unions have signed letters of intent to enter into an agreement for the amalgamation;*
- (b.2) to a person to whom the credit union proposes to sell assets, for the purposes of the sale, if the credit union and the person have signed letters of intent to enter into an agreement of purchase and sale for the sale;*

(c) to a credit grantor or to a reporting agency, if the disclosure is for the purpose of determining the creditworthiness of the member;

*(d) to the Superintendent and the Corporation; and*

(e) to any other person entitled to the information by law. 1994, c. 11, s. 143 (2); 1997, c. 28, s. 53.

#### **Duty of care**

**144.** (1) Every director, officer and member of a committee ~~established under this Act~~ shall exercise the powers and discharge the duties of his or her office honestly, in good faith and in the best interests of the credit union.

#### **Standard of care**

(2) The director, officer or committee member shall exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. 1994, c. 11, s. 144.

#### **Duty to comply**

**145.** (1) Every director, officer, member of a committee ~~established under this Act~~ and employee of a credit union shall comply with this Act, the regulations made under it and the articles and by-laws of the credit union. 1994, c. 11, s. 145 (1).

#### **Same**

(2) A director, officer, committee member or employee shall comply with any requirements imposed by the Superintendent under this Act. 1994, c. 11, s. 145 (2); 1997, c. 28, s. 53.

#### **No exculpation**

(3) No provision in any contract, in any resolution or in the by-laws of a credit union relieves a director, officer, committee member or employee from a duty under this section or relieves him or her from liability for a breach of a duty. 1994, c. 11, s. 145 (3).

## **CONFLICTS OF INTEREST**

#### *Disclosure of interest*

**146.** (1) *This section applies to every director, officer, member of a committee or employee of a credit union who,*

- (a) is a party to a material contract or proposed material contract with the credit union;
- (b) is a director or an officer of an entity that is a party to a material contract or proposed material contract with the credit union;
- (c) has a material interest in a person who is a party to a material contract or proposed material contract with the credit union; or
- (d) is a spouse, parent or child of an individual who is a party to a material contract or proposed material contract with the credit union. 1994, c. 11, s. 146 (1); 1999, c. 6, s. 19 (4); 2005, c. 5, s. 18 (4).

#### **Same**

(2) The ~~director, officer or committee member~~, *committee member or employee* shall disclose, in writing, to the credit union or ask to have the nature and extent of his or her interest entered in the minutes of board meetings. 1994, c. 11, s. 146 (2).

#### **Time of disclosure, director**

- (3) ~~The A~~ director shall make the disclosure,
  - (a) at the board meeting at which a proposed contract is first considered;
  - (b) if the director was not then interested in a proposed contract, at the first meeting after the director becomes so interested;
  - (c) if the director becomes interested after a contract is made, at the first meeting after the director becomes so interested; or

- (d) if a person who is interested in a contract later becomes a director, at the first meeting after he or she becomes a director. 1994, c. 11, s. 146 (3).

**Same, officer or committee member**

- (4) ~~The An~~ officer ~~or committee member~~, *committee member or employee* shall make the disclosure,
- (a) promptly after he or she becomes aware that a proposed contract is to be considered or a contract has been considered at a board meeting;
- (b) if he or she becomes interested after a contract is made, promptly after becoming so interested;
- (c) if a person who is interested in a contract later becomes an officer ~~or committee member~~, *committee member or employee*, promptly after becoming an officer ~~or committee member~~, *committee member or employee*. 1994, c. 11, s. 146 (4).

**Same, no board approval**

- (5) If a material contract or proposed material contract is one that, in the ordinary course of business of the credit union, would not require approval by the board or the members, the director, officer ~~or committee member~~, *committee member or employee* shall make the disclosure promptly after becoming aware of the contract or proposed contract. 1994, c. 11, s. 146 (5).

**Continuing disclosure**

- (6) A general notice to the board by a director, *officer, committee member or employee* declaring that he or she is a director or officer of an entity, or has a material interest in a person, and is to be regarded as interested in any contract made with that entity or person, is sufficient disclosure of an interest in relation to any contract so made. 1994, c. 11, s. 146 (6).

**Voting**

**147.** (1) A director to whom section 146 applies shall not be present or vote on any resolution to approve the contract unless the contract is,

- (a) an arrangement by way of security for money lent to or obligations undertaken by the director for the benefit of the credit union or a subsidiary of it;
- (b) a contract relating primarily to the director's remuneration as a director or as a member of a committee ~~established under this Act~~ or an officer, employee or agent of the credit union or a subsidiary of it or an entity controlled by it;
- (c) a contract for indemnity under section 157 or for insurance under section 156; or
- (d) a contract with a subsidiary of the credit union.

**Same**

(2) A director to whom section 146 applies shall not take part in the discussion on any resolution to approve an investment or a transaction in relation to which disclosure is required under section 146 and the director shall not be present at any meeting of the board while it is dealing with the matter.

**Director not to use influence**

(3) A director referred to in subsection (2) shall not attempt in any way to influence the voting on any resolution to approve an investment or a transaction in relation to which disclosure is required under section 146.

**Ineligibility**

(4) A director who knowingly contravenes subsection (1) ceases to hold office as a director and is not eligible, for a period of five years after the date on which the contravention occurred, for election or appointment as a director of any financial institution that is incorporated or formed by or under an Act of the Province of Ontario. 1994, c. 11, s. 147.

**Avoidance standards**

*148. (1) If a director, officer, committee member or employee made a required disclosure in respect of a contract referred to in subsection 146 (1), the contract was approved by the board or by the members of the credit union and the contract was reasonable and fair to the credit union at the time it was approved, the contract is neither void nor voidable by reason only,*

- (a) of the relationship between the person or entity and the director, officer, committee member or employee; or*

*(b) that an interested director is present at or is counted to determine the presence of a quorum at the board meeting that authorized the contract.*

**Application to court**

(2) If a director, officer, *committee member or employee* of a credit union fails to disclose an interest in a material contract in accordance with section 146, a court may, on the application of the credit union or a member of the credit union, set aside the contract on such conditions as the court thinks fit. 1994, c. 11, s. 148.

**Prohibition re acting for credit union**

**149.** (1) This section applies with respect to a person who is a director of a credit union or a member of a committee *established under this Act*.

**Same**

(2) The person or a partnership or corporation from which the person receives compensation shall not act, for compensation, in a professional capacity in respect of business matters related to the credit union. 1994, c. 11, s. 149.

*Prohibition re acting as trustee*

**149.1** *An officer or employee of a credit union shall not act as a trustee with respect to a deposit with the credit union or any other business or transaction with the credit union unless the beneficiary is a related person of the officer or employee.*

## MISCELLANEOUS

**Validity of actions**

**150.** An act by a director, officer or member of a committee *established under this Act* is not invalid by reason only of a defect discovered afterward in his or her appointment, election or qualification. 1994, c. 11, s. 150.

*Requirement for bond*

**151.** (1) *The following persons shall, on assuming his or her duties, furnish to the credit union a bond of an insurer licensed under the Insurance Act to write surety and fidelity insurance:*

1. *Every director of the credit union.*
2. *Every officer of the credit union.*
3. *Every employee who receives or has charge of money.*

**Bond**

(2) *The bond must be for an amount equal to or greater than the amount that is prescribed or determined in the prescribed manner, and must satisfy such conditions as may be prescribed.*

**Liability of directors, etc.**

**152.** A liability imposed under this Act upon a director, officer, *or* member of a committee *established under this Act or a person authorized under section 123 to approve loans* is in addition to any other liability that is by law imposed upon him or her. 1994, c. 11, s. 152.

**Specific liability of directors**

**153.** (1) The directors of a credit union who vote for or consent to a resolution of the directors authorizing the issue of shares contrary to subsection 59 (1), or the issue of subordinated indebtedness contrary to section 186 for a consideration other than money are jointly and severally liable to the credit union to make good any amount by which the consideration is less than the fair market value that the credit union would have received if the share or subordinated indebtedness had been issued for money on the date of the resolution.

**Further liabilities**

- (2) The directors of a credit union who vote for or consent to a resolution of the directors authorizing,
  - (a) a redemption or purchase of shares;

- (b) a reduction of capital;
- (c) a payment of a dividend;
- (d) the payment of an indemnity; or
- (e) any transaction with a restricted party,

contrary to this Act, are jointly and severally liable to restore to the credit union any amounts so distributed or paid and not otherwise recovered by the credit union and any amounts in relation to any loss suffered by the credit union. 1994, c. 11, s. 153.

#### **Contribution**

**154.** (1) A director who has satisfied a judgment in relation to the director's liability under section 153 is entitled to contribution from the other directors who voted for or consented to the unlawful act on which the judgment was founded.

#### **Recovery**

(2) A director who is liable under section 153 is entitled to apply to a court for an order compelling a member, shareholder or other person to pay or deliver to the director,

- (a) any money or property that was paid or distributed to the member, shareholder or other person contrary to this Act; or
- (b) an amount equal to the value of the loss suffered by the credit union as a result of any transaction contrary to Part IX or the regulations made under that Part.

#### **Court order**

(3) Where an application is made to a court under subsection (2), the court may, where it is satisfied that it is equitable to do so,

- (a) order a member, shareholder, or other person to pay or deliver to a director any money or property that was paid or distributed to the member, shareholder or other person contrary to this Act or any amount referred to in clause (2) (b);
- (b) order a credit union to return or issue membership shares or shares to a member or shareholder from whom the credit union has purchased, redeemed or otherwise acquired membership shares or shares; or
- (c) make any further order it thinks fit. 1994, c. 11, s. 154.

#### **Reliance on statement**

**155.** A director, officer, member of a committee or an employee of a credit union is not liable under sections 144, 145 and 153 if the individual relies, in good faith, on,

- (a) financial statements of the credit union represented to them by an officer of the credit union or in a written report of the auditor of the credit union fairly to reflect the financial condition of the credit union; or
- (b) a report of an accountant, lawyer or other professional person whose profession lends credibility to a statement made by the person. 1994, c. 11, s. 155.

#### **Insurance for directors and officers**

**156.** (1) A credit union may purchase and maintain insurance for the benefit of an eligible person as defined in section 157 against any liability incurred by the person in his or her capacity as,

- (a) a director, officer or member of a committee; or
- (b) a director or officer of another entity if the person acts or acted in that capacity at the credit union's request.

#### **Exception**

(2) Subsection (1) does not apply if the liability relates to the person's failure to act honestly, in good faith and in the best interests of the credit union. 1994, c. 11, s. 156.

#### **Indemnity for directors, etc.**

**157.** (1) In this section,  
"eligible person" means, with respect to a credit union,



- (a) a director, officer or member of a committee *established under this Act*,
- (b) a former director, officer or member of such a committee, or
- (c) a person who acts or acted at the request of the credit union as a director or an officer of an entity of which the credit union is or was a member, shareholder or creditor.

#### **Indemnification**

(2) A credit union may indemnify an eligible person in respect of any proceeding to which the person is made a party by reason of serving or having served in a qualifying capacity.

#### **Exception**

(3) Despite subsection (2), the credit union may not indemnify the person in respect of a proceeding by or on behalf of the credit union to procure a judgment in its favour.

#### **Same, derivative action**

(4) With the approval of a court, a credit union may indemnify an eligible person in respect of a proceeding by or on behalf of the credit union or entity to procure a judgment in its favour to which the person is made a party by reason of serving or having served in a qualifying capacity.

#### **Restriction**

- (5) The credit union may indemnify an eligible person under this section only if,
  - (a) the person acted honestly and in good faith with a view to the best interests of the credit union; and
  - (b) in the case of a proceeding enforced by a monetary penalty, the person had reasonable grounds for believing that the impugned conduct was lawful.

#### **Right to indemnity**

(6) An eligible person is entitled to indemnity from the credit union in connection with the defence of a proceeding to which the person is made a party by reason of serving or having served in a qualifying capacity if the eligible person,

- (a) was substantially successful on the merits in the defence of the proceeding; and
- (b) fulfils the conditions set out in clauses (5) (a) and (b).

#### **Extent of indemnity**

(7) An indemnity under this section is against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment reasonably incurred by the person in connection with the specified proceeding.

#### **Heirs**

(8) A credit union may indemnify the heirs or personal representatives of any eligible person that the credit union is authorized to indemnify under this section.

#### **Interpretation**

- (9) In this section, to serve in a qualifying capacity means,
  - (a) acting or having acted as a director, officer or member of a committee *established under this Act*; or
  - (b) acting or having acted at the request of the credit union as a director or an officer of an entity of which the credit union is or was a member, shareholder or creditor. 1994, c. 11, s. 157.

#### **Application for indemnification**

**158.** (1) A credit union or an eligible person under section 157 may apply to a court for an order approving an indemnity under that section and the court may so order and make any further order it thinks fit. 1994, c. 11, s. 158 (1).

#### **Notice**

(2) The applicant shall give the Superintendent written notice of the application. 1994, c. 11, s. 158 (2); 1997, c. 28, s. 53.

#### **Other notice**

- (3) The court may order notice to be given to any interested person. 1994, c. 11, s. 158 (3).

#### **Right to participate**

(4) The Superintendent and each interested person is entitled to appear and to be heard at the hearing of the application in person or by counsel. 1994, c. 11, s. 158 (4); 1997, c. 28, s. 53.

## AUDITOR

### Appointment of auditor

**159.** (1) At their first general meeting, the members of a credit union shall appoint an auditor to hold office until the close of the first annual meeting but, if the members fail to do so, the board shall promptly make the appointment.

### Same

(2) At each annual meeting, the members of a credit union shall appoint an auditor to hold office until the close of the next annual meeting but, if the members fail to do so, the auditor in office continues in office until a successor is appointed.

### *Vacancy*

*(3) In the event the office of auditor becomes vacant before the end of the incumbent auditor's term of office, the board may appoint an auditor to hold office until the close of the next annual meeting.*

### Appointment by the Superintendent

(4) If no auditor is appointed under subsection (1) or (2), the Superintendent may require the board to appoint an auditor to hold office until the close of the next annual meeting. 1994, c. 11, s. 159 (4); 1997, c. 28, s. 53.

### Notice of appointment

(5) The credit union shall promptly notify the auditor in writing of the appointment. 1994, c. 11, s. 159 (5).

### Qualification as auditor

- 160.** (1) An individual or firm of accountants is qualified to be an auditor of a credit union if,
- (a) in the case of an individual, the person is an accountant who,
    - (i) is licensed under the *Public Accounting Act, 2004*,
    - (ii) is ordinarily resident in Canada, and
    - (iii) is independent of the credit union; and
  - (b) in the case of a firm of accountants, the member or employee of the firm jointly designated by the firm and the credit union to conduct the audit of the credit union on behalf of the firm is qualified in accordance with clause (a). 1994, c. 11, s. 160 (1); 2004, c. 8, s. 46.

### Independence

- (2) For purposes of subsection (1),
  - (a) independence is a question of fact; and
  - (b) a person is not independent of a credit union,
    - (i) if that person, any partner of that person or any member of a firm of accountants of which that person is an employee ~~is~~,
      - (A) *is a director, officer, committee member or employee of the credit union, a subsidiary of the credit union or the Corporation,*
      - (B) *is a business partner of any director, officer, committee member or employee of the credit union or a subsidiary of the credit union,*
      - (C) *beneficially owns or controls, directly or indirectly, a material interest in the shares of a credit union or of any subsidiary of the credit union, or*
      - (D) *has been a liquidator, trustee in bankruptcy, receiver or receiver and manager of the credit union or of any subsidiary of the credit union within the two years immediately preceding*

the person's proposed appointment as an auditor of the credit union, other than a subsidiary of the credit union acquired pursuant to section 197, or

- (ii) if the firm of accountants of which that person is an employee,
  - (A) beneficially owns or controls, directly or indirectly, a material interest in the shares of a credit union or of any subsidiary of the credit union, or
  - (B) has been a liquidator, trustee in bankruptcy, receiver or receiver and manager of the credit union or of any subsidiary of the credit union within the two years immediately preceding the person's proposed appointment as an auditor of the credit union, other than a subsidiary of the credit union acquired pursuant to section 197. 1994, c. 11, s. 160 (2).

#### **Ineligibility as receiver**

**161.** The following persons are not eligible to be appointed as a receiver, a receiver and manager or a liquidator of a credit union:

1. A person who is or has been an auditor of the credit union within the two years preceding the proposed appointment.
2. A partner or employer of the person described in paragraph 1.
3. A person who is a spouse, child or parent of the person described in paragraph 1. 1994, c. 11, s. 161; 1999, c. 6, s. 19 (5); 2005, c. 5, s. 18 (5).

#### **Remuneration**

**162.** The board shall fix the remuneration of the auditor. 1994, c. 11, s. 162.

#### **Replacement of auditor**

**163.** (1) A person, other than the incumbent auditor, is not eligible to be appointed as auditor unless, at least fifteen days before the meeting at which the auditor is to be appointed, a member has given notice to the credit union of an intention to nominate the person for auditor.

#### **Notice re nomination**

(2) The credit union shall send a copy of the member's notice to the incumbent auditor and to the proposed nominee and shall notify the members of the credit union of the proposed nomination.

#### **Right to make representations**

(3) The incumbent auditor is entitled to give the credit union written representations concerning the proposal not to reappoint the auditor.

#### **Circulation of representations**

(4) If the incumbent auditor gives the representations to the credit union at least three days before notice of the meeting is to be mailed, the credit union shall, at its own expense, forward a copy of the representations together with the notice of the meeting to each member entitled to receive the notice. 1994, c. 11, s. 163.

#### **Removal of auditor**

**164.** (1) The members of a credit union may remove an auditor before the auditor's term of office expires.

#### **Vote**

(2) An auditor is removed from office by a resolution passed by a majority of the votes cast at a general meeting of members duly called for that purpose.

#### **Notice to auditor**

(3) The credit union shall, at least fifteen days before mailing the notice of the meeting, give the following material to the auditor before calling the general meeting:

1. Written notice of the intention to call the meeting and of the date on which the notice of the meeting is to be mailed.
2. A copy of all material proposed to be sent to members in connection with the meeting.

#### **Right to make representations**

(4) The auditor is entitled to give the credit union written representations concerning the proposal to remove the auditor.

**Circulation of representations**

(5) If the auditor gives the representations to the credit union at least three days before notice of the meeting is to be mailed, the credit union shall, at its own expense, forward a copy of the representations together with the notice of the meeting to each member entitled to receive the notice.

**Replacement**

(6) If the members remove the auditor from office, they shall elect another auditor at the same meeting to hold office for the remainder of the auditor's term.

**Vote**

(7) The auditor elected under subsection (6) must be elected by a resolution passed by a majority of the votes cast at the meeting.

**Report**

(8) For purposes of paragraph 2 of subsection (3), the material must include a report setting out the circumstances and the reasons for the removal of the auditor. 1994, c. 11, s. 164.

**Notice re resignation, etc.**

**165.** A credit union shall promptly notify the Superintendent, ~~deposit insurer and stabilization authority for the credit union and the Corporation~~ when an auditor resigns, is replaced or is removed from office and shall inform the Superintendent of the reasons. 1994, c. 11, s. 165; 1997, c. 28, s. 53.

**Auditor for subsidiaries**

**166.** (1) A credit union shall take all necessary steps to ensure that its auditor is duly appointed as the auditor of each of its subsidiaries unless the Superintendent authorizes another person to act as auditor of a subsidiary. 1994, c. 11, s. 166 (1); 1997, c. 28, s. 53.

**Exception**

(2) If a person is appointed as auditor by a body corporate before it becomes a subsidiary of a credit union, the person may complete the term of the appointment. 1994, c. 11, s. 166 (2).

## RIGHTS AND DUTIES OF AUDITORS

**Right of access**

**167.** (1) The auditor of a credit union has a right of access at all times to all ~~records, documents, accounts and vouchers~~ records and documents of the credit union.

**Same**

(2) The auditor is entitled to require from the board, directors, officers, employees, agents of the credit union and members of the audit committee ~~or the credit committee, if any~~, such information and explanations as the auditor considers necessary to enable the auditor to make such reports as are required under this Act.

**Same**

(3) On the request of the auditor, the former directors, officers, employees or agents of the credit union shall, to the extent that they are reasonably able to do so, provide such information and explanations as are, in the opinion of the auditor, necessary to enable the auditor to perform the auditor's duties. 1994, c. 11, s. 167.

**Right to attend meetings**

**168.** (1) The auditor is entitled,

- (a) to attend any meeting of members or shareholders of the credit union;
- (b) to receive all notices and other communications relating to a meeting that a member or shareholder is entitled to receive; and

- (c) to be heard at a meeting on any part of the business of the meeting that concerns him or her as auditor.

**Required attendance**

- (2) A member of a credit union who is entitled to vote at a meeting of members may require the auditor to attend such a meeting and the auditor shall do so at the credit union's expense.

**Notice**

- (3) The member must give written notice to the credit union at least five days before the meeting that the member wishes the auditor to attend. 1994, c. 11, s. 168.

**Auditor's report**

- 169.** (1) The auditor shall make such examinations as will enable the auditor to report to the members of the credit union in accordance with this section.

**Same**

- (2) The auditor shall report to the members on the financial statements to be placed before them at the annual meeting.

**Qualified report**

- (3) If the auditor's *opinion report* is not an unqualified *opinion report*, the auditor shall state in the report the reasons for the qualified *opinion report*.

*Report to Superintendent, Corporation for certain purposes*

*(3.1) Within 10 days after the annual meeting, the auditor shall provide a copy of the audited financial statements and the auditor's report to the Superintendent and the Corporation for the purpose of assisting them in carrying out their duties and powers under this Act, including, without limiting the generality of the foregoing, for the purposes of the following:*

- 1. Determining whether conditions on the deposit insurance of the credit union should be imposed or amended under section 270.*
- 2. Determining whether the deposit insurance of the credit union should be cancelled under section 274.*
- 3. Determining the annual premium for the credit union under section 276.1.*

*Facts discovered subsequently*

*(4) If facts come to the attention of an officer, the board or the audit committee which, if they had been known before the most recent annual meeting, would have required a material adjustment to the financial statement presented at the meeting, the officer, board or audit committee shall notify the auditor who reported to the members at the meeting and the board shall promptly amend the financial statement and send it to the auditor.*

**Amendment of report**

- (5) Upon receipt of the facts furnished under subsection (4) or from any other source, the auditor shall amend the report in respect of the financial statement furnished under that subsection if the auditor considers the amendment necessary.

**Notice of amendment**

- (6) The board shall mail the amended report to the members but, if the board does not do so within a reasonable time, the auditor shall mail it to them. 1994, c. 11, s. 169 (1-6).

*Amended report to Superintendent, Corporation*

*(6.1) Within ten days after providing the amended report to the credit union, the auditor shall provide a copy of the amended report to the Superintendent and the Corporation.*

**Auditing standards**

- (7) The auditor's examination referred to in subsection (1) shall, except as otherwise specified by ~~the Superintendent~~ *the Corporation*, be conducted in accordance with generally accepted auditing standards, the primary source of which is the Handbook of the Canadian Institute of Chartered Accountants. 1994, c. 11, s. 169 (7); 1997, c. 28, s. 53.

*Report to address fair value, adequacy of capital, etc.*

*(8) The auditor's report shall address the fair value of the assets and liabilities of the credit union and the credit union's compliance with section 84.*

**Duty at meetings**

**170.** If the auditor is present at a meeting of members or shareholders, the auditor shall answer inquiries directed to ~~him or her the auditor~~ concerning the basis *for the auditor's report upon which he or she the auditor formed the opinion given* under section 169. 1994, c. 11, s. 170.

**Extended examination required by Superintendent**

- 171.** (1) The Superintendent may, in writing, require that the auditor of a credit union,
- (a) report to the Superintendent on the extent of the auditor's procedures in the examination of the credit union's financial statements;
  - (b) enlarge or extend the scope of that examination; or
  - (c) perform any other specific procedure. 1994, c. 11, s. 171 (1); 1997, c. 28, s. 53.

**Same**

(2) The auditor shall comply with any direction by the Superintendent under subsection (1) and report to the Superintendent and to such other persons as the Superintendent may direct the results of the extended examination or a specified procedure. 1994, c. 11, s. 171 (2); 1997, c. 28, s. 53.

**Special examination**

(3) The Superintendent may, in writing, require that the auditor make an examination relating to the adequacy of the procedures adopted by the credit union for the safety of its creditors, members and shareholders, or any other examination that the public interest may require. 1994, c. 11, s. 171 (3); 1997, c. 28, s. 53.

**Same**

(4) The auditor shall report the results of an examination to the Superintendent or to such persons as the Superintendent may direct. 1994, c. 11, s. 171 (4); 1997, c. 28, s. 53.

**Special examination by auditor appointed by Superintendent**

(5) The Superintendent may direct that a special audit of a credit union be made if, in the opinion of the Superintendent, it is necessary and may appoint, for that purpose, an auditor qualified pursuant to subsection 160 (1). 1994, c. 11, s. 171 (5); 1997, c. 28, s. 53.

**Expenses payable by credit union**

(6) The credit union shall pay the expenses of an examination or audit referred to in this section after the expenses have been approved, in writing, by the Superintendent. 1994, c. 11, s. 171 (6); 1997, c. 28, s. 53.

**Extended examination required by Corporation**

*171.1 The Corporation may exercise the powers of the Superintendent under section 171 and, for that purpose, the references to the Superintendent in section 171 shall be deemed to be references to the Corporation.*

**Duty to report contravention, etc.**

**172.** (1) The auditor of a credit union shall report in writing to the chair of the board, ~~the chief executive officer, chief financial officer and~~ and to the audit committee of the credit union any transaction or conditions that have come to the auditor's attention ~~affecting the well-being of~~ *adversely affecting* the credit union that, in the auditor's opinion, are not satisfactory and require rectification.

**Same**

- (2) Without restricting the generality of subsection (1), the auditor shall report ~~to the persons described in subsection (1)~~ on,
- (a) transactions of the credit union that, in the auditor's opinion, have not been within the powers of the credit union;
  - (b) loans made by the credit union to any person the aggregate amount of which exceeds one half of one per cent of the total assets of the credit union and in respect of which, in the auditor's opinion, loss to the credit union is likely to occur; or

- (c) any circumstances that indicate that there may have been a contravention of this Act or the regulations.

**Same**

(3) If a report is made with respect to loans described in clause (2) (b), it is not necessary to report those loans again unless, in the opinion of the auditor, the amount of the loss likely to occur has increased. 1994, c. 11, s. 172 (1-3).

**Transmission of report**

- (4) If an auditor reports under this section,
- (a) the auditor shall transmit the report, in writing, to the ~~persons described in subsection (1) chair of the board and to the audit committee~~;
  - (b) the report shall be presented at the first meeting of directors following its receipt;
  - (c) the report shall be incorporated in the minutes of that meeting; and
  - (d) the auditor shall, at the time of transmitting the report pursuant to clause (a), provide the Superintendent, ~~deposit insurer and stabilization authority for that credit union and the Corporation~~ with a copy of the report. 1994, c. 11, s. 172 (4); 1997, c. 28, s. 53.

## PART VIII BUSINESS POWERS PERMITTED BUSINESS ACTIVITIES

**Permitted activities**

**173.** Subject to this Act, a credit union shall not engage in or carry on a business or business activity other than the following businesses, business activities and such others as may be authorized by this Act or prescribed:

1. Provide financial services primarily to its members, depositors, subsidiaries and affiliates.
2. Hold and deal with real property.
3. Act as a custodian of property on behalf of its members, depositors, subsidiaries and affiliates.
4. Provide administrative, educational, promotional, technical, research and consultative services to its members, depositors, subsidiaries and affiliates.
5. Make loans to officers and employees of the credit union.
6. *Repeal.*
7. *Repeal.*

## RESTRICTIONS ON POWERS

**Ancillary businesses**

**174.** (1) A credit union shall not deal in goods or engage in any trade or business except as authorized by this Act or ~~the regulations as prescribed~~. 1994, c. 11, s. 174 (1).

**Same**

(2) Despite subsection (1), a credit union may, with the Superintendent's written approval, deal in goods or engage in any trade or business that is reasonably ancillary to the provision of financial services. 1994, c. 11, s. 174 (2); 1997, c. 28, s. 53.

**Prohibition re financial services**

(3) A credit union shall not provide financial services ~~that are prohibited by the regulations prescribed as prohibited~~.

**Networking**

(4) Subject to this Act, a credit union may act as an agent for a subsidiary or other prescribed persons or entities in respect of the provision of services to the credit union's members, depositors, affiliates and other subsidiaries and refer members, depositors, affiliates or subsidiaries to one of its subsidiaries or other prescribed persons or entities. 1994, c. 11, s. 174 (3, 4).

**Restriction re partnerships**

**175.** (1) A credit union shall not be a general partner in a limited partnership or a partner in any other partnership. 1994, c. 11, s. 175 (1).

**Exception**

(2) Despite subsection (1), the Superintendent may authorize a credit union to become a general partner in a limited partnership or a partner in another partnership. 1994, c. 11, s. 175 (2); 1997, c. 28, s. 53.

**Restrictions on insurance**

**176.** (1) A credit union may undertake the business of insurance or act as an agent for any person in placing insurance only to the extent permitted by the regulations.

**Savings**

- (2) Nothing in this section precludes a credit union from,
- (a) requiring insurance to be placed by a member for the security of the credit union; or
  - (b) obtaining group insurance for its employees, its members or the employees of a subsidiary.

**Same**

(3) Nothing in this section precludes a league from obtaining group insurance for its employees, its members or the employees of its members or of a subsidiary.

**No pressure**

(4) A credit union shall not exercise pressure on a member to place insurance for the security of the credit union with any particular insurance company.

**Insurance requirement**

- (5) A credit union may require that any insurance chosen by a member meet with its approval.

**Same**

- (6) The approval required under subsection (5) shall not be unreasonably withheld.

**Interpretation**

(7) For the purpose of this section, the business of insurance includes the issuing of an annuity where the liability thereon is contingent on the death of a person. 1994, c. 11, s. 176.

**Restrictions on fiduciary activities**

**177.** A credit union may undertake fiduciary activities only to the extent permitted by the regulations. 1994, c. 11, s. 177.

**Guarantees**

- 178.** (1) A credit union may not guarantee the payment of money on behalf of another person unless,
- (a) it is a fixed sum of money, with or without interest thereon; and
  - (b) the person has an unqualified obligation to reimburse the credit union for the full amount being guaranteed. 1994, c. 11, s. 178 (1).

**Authorization by the Corporation**

*(2) Despite subsection (1), the Corporation may authorize a credit union to guarantee a payment in circumstances other than those described in that subsection.*

**Conditions**

- (3) A guarantee is subject to such conditions and restrictions as may be prescribed.

**Limit on amount**

(4) The aggregate value of a credit union's guarantees together with those of its subsidiaries must not exceed a prescribed per cent of the regulatory capital and deposits of the credit union. 1994, c. 11, s. 178 (3, 4).



**Exemption**

(5) ~~The Superintendent may exempt~~ *The Corporation may exempt* a credit union from the limit under subsection (4) on the aggregate value of guarantees. 1994, c. 11, s. 178 (5); 1997, c. 28, s. 53.

**Non-application**

(6) Subsection (1) does not apply in the case of an indemnity under section 157.

*Non-application of cl. (1) (a)*

(7) *Clause (1) (a) does not apply with respect to a guarantee given by a credit union on behalf of a league or a financial institution that is a member of the Canadian Payments Association if the payment guaranteed represents the obligation of the league or financial institution to settle for payment items in accordance with the by-laws and rules of the Canadian Payments Association or such other guarantees as may be prescribed.*

*Appointment of receiver, etc.*

**179.** *A credit union shall not give a person the right to appoint a receiver or a receiver and manager of the property or business of the credit union.*

## DEPOSITS

**Deposits accepted from members, etc.**

**180. (1)** A credit union may accept deposits only from,

- (a) its members;
- (b) *the Corporation;*
- (c) Her Majesty in right of Canada or of a province;
- (d) an agency of Her Majesty in right of either Canada or of a province;
- (e) the government of a foreign country;
- (f) a political subdivision or an agency of a government of a foreign country;
- (g) municipalities;
- (h) crown agencies;
- (i) entities directly funded by the federal government, a provincial government or a municipality;
- (j) *leagues;*
- (j.1) *subject to any restrictions in the by-laws of the credit union, persons who have not become members of the credit union but whose deposit accounts were acquired by the credit union as a result of the purchase of all or part of the business of another financial institution that is not a credit union;*
- (k) other persons or entities approved by the Superintendent. 1994, c. 11, s. 180; 1997, c. 28, s. 53.

*Authority to accept deposits*

- (2) *A credit union may, without the intervention of another person,*
- (a) *accept a deposit from a person referred to in subsection (1) whether or not the person is qualified by law to enter into contracts; and*
  - (b) *pay all or part of the principal of the deposit and all or part of the interest earned on the deposit to or to the order of that person.*

*Exception*

- (3) *Clause (2) (b) does not apply if, before the payment is made, the money deposited with the credit union is claimed by another person,*
- (a) *in an action or proceeding to which the credit union is a party and in respect of which service of a claim or other process originating that action or proceeding has been made on the credit union; or*

- (b) *in an action or proceeding pursuant to which an injunction or order made by the court requiring the credit union not to make payment of that money or to make payment of it to some person other than the depositor has been served on the credit union.*

**Same**

- (4) *In the case of a claim referred to in subsection (3), the money may be paid to the depositor only with the consent of the claimant or to the claimant only with the consent of the depositor.*

**RRSPs for employees of a member**

- (5) *Despite subsection (1), a credit union may accept deposits for RRSPs for employees of a member if the member was involved in the establishment of the RRSPs at the credit union and the member makes payments into the RRSPs on behalf of the employees.*

**Application of other provisions**

- (6) *Subsections (2), (3) and (4) apply, with necessary modifications, with respect to employees referred to in subsection (5).*

**Definition**

- (7) *In subsection (5), “RRSPs” means registered retirement savings plans within the meaning of subsection 146 (1) of the Income Tax Act (Canada).*

**Not bound by trust**

- 181.** (1) *A credit union is not bound to see to the execution of any trust to which any deposit is subject.*

**Application, payment when credit union has notice of trust**

- (2) *Subsection (1) applies whether the trust is express, implied or constructive and applies even when the credit union has notice of the trust if the credit union acts on the order of or under the authority of the holder or holders of the account into which the deposit is made.*

**Unclaimed deposits**

- 182.** (1) *If ten years have elapsed since the day on which the last transaction by a depositor took place on the depositor’s account or a statement of account was last requested or acknowledged by the depositor, whichever is latest, the credit union shall pay the amount on deposit to the Minister.*

**Obligation discharged**

- (2) *Payment to the Minister discharges the credit union from all liability in respect of the amounts held.*

**Payment by Minister**

- (3) *The Minister shall pay the amount received under subsection (1) to a person claiming to be entitled to it upon being furnished with satisfactory evidence of the person’s entitlement.*

**Two-year notice**

- (4) *If two years have elapsed since the day on which the last transaction by a depositor took place on the depositor’s account or a statement of account was last requested or acknowledged by the depositor, whichever is latest, the credit union shall mail a notice to the depositor, at the depositor’s last known address, notifying the depositor that the deposit remains unpaid.*

**Five-year notice**

- (5) *If five years have elapsed since the day on which the last transaction by a depositor took place on the depositor’s account or a statement of account was last requested or acknowledged by the depositor, whichever is latest, the credit union shall mail a notice to the depositor, at the depositor’s last known address, notifying the depositor that the deposit remains unpaid.*

**Application despite other Act**

- (6) *This section applies despite the provisions of any other Act that would apply with respect to the disposition of an unclaimed and unpaid amount on deposit and the provisions of any such other Act shall not apply with respect to such an amount.*

## DEBT OBLIGATIONS

### *Borrowing*

*183. (1) A credit union may borrow only if authorized to do so by its by-laws.*

### *Scope of authority*

*(2) The by-laws may authorize the credit union to borrow money at such rates of interest and on such conditions as the board may determine.*

### *Limit on amount*

*(3) A credit union shall not borrow an aggregate amount exceeding 50 per cent of its regulatory capital and deposits or such lesser amount as may be established by its by-laws.*

### **Approval of by-law**

*(4) Repeal*

### **Limit on amount**

*(5) Repeal*

### **Same**

*(6) Repeal*

### *Security interests in credit union property*

*184. (1) A credit union may create a security interest in property of the credit union only as allowed under subsection (3), (4), (6), (7) or (8).*

### *No security interests to restricted parties*

*(2) Despite subsections (3), (4), (6), (7) and (8), a credit union shall not grant a security interest to a restricted party of the credit union.*

### *General authority, approval by the Corporation*

*(3) A credit union may grant a security interest in property of the credit union to secure an obligation of the credit union if the obligation and the security interest are authorized by the credit union's by-laws and approved, in writing, by the Corporation.*

### *Grant for short term needs*

*(4) Subject to subsection (5), a credit union may grant a security interest in property of the credit union in a prescribed class of property if,*

- (a) the security interest is security for money borrowed, or a debt obligation issued, to enable the credit union to meet a short term need for liquid funds arising from its operations; and*
- (b) the money is owed to, or the debt obligation is to, a financial institution, the Corporation or a prescribed person or entity.*

### *Aggregate limit on certain grants*

*(5) The aggregate value of the property in which security interests are granted under subsection (4) shall not exceed the prescribed amount.*

### *Grant if credit union under administration*

*(6) A credit union under administration may grant a security interest in property of the credit union as security for money owed to, or a debt obligation to, the Corporation.*

### *Grant relating to government savings bonds*

*(7) A credit union may grant a security interest in the property of the credit union to the Government of Canada with respect to the sale of Canada Savings Bonds or the Government of Ontario with respect to the sale of Ontario Savings Bonds.*

### *Grant – other prescribed cases*

*(8) A credit union may grant a security interest in the property of the credit union in such circumstances, or in relation to such transactions, as may be prescribed.*

**Definition of terms**

*(9) In this section, “restricted party” and “short term” have the meanings given to those expressions in the regulations.*

**Notice re acquisitions subject to security interests**

*185. A credit union shall notify the Corporation in writing if it acquires, other than by way of realization on the security for a loan, a beneficial interest in property that is subject to a security interest.*

**Restrictions on subordinated indebtedness**

**186.** (1) A credit union shall not issue subordinated indebtedness unless it is fully paid for in money or, with the approval of the Superintendent, in property. 1994, c. 11, s. 186 (1); 1997, c. 28, s. 53.

**References to subordinated indebtedness**

(2) No person shall, in any prospectus, offering statement, advertisement, correspondence or literature relating to any subordinated indebtedness issued or to be issued by a credit union, refer to the subordinated indebtedness other than as subordinated indebtedness.

**Not a deposit**

(3) Subordinated indebtedness issued by a credit union is not considered to be a deposit.

**Other currencies**

(4) When issuing subordinated indebtedness, a credit union shall provide that any aspect of the subordinated indebtedness relating to money or involving the payment of or the liability to pay money in relation to the subordinated indebtedness be in Canadian currency. 1994, c. 11, s. 186 (2-4).

**Limit on borrowing**

*187. (1) The Corporation may inquire into the borrowing of a credit union and may, by order, limit the credit union’s authority to borrow money.*

**Reasons to be given**

*(2) The Corporation shall set out the reasons for its decision in the order.*

**Effect**

*(3) The credit union shall not exercise its borrowing power in excess of any limit set out in the order of the Corporation.*

**Procedural rules**

*(4) Section 240.1 applies with respect to an order under this section.*

**Appeal to Tribunal**

*(5) The credit union that is subject to an order under this section may appeal the order to the Tribunal in accordance with section 240.4.*

**Restriction on borrowing from another credit union**

*188. No credit union shall borrow money from another credit union without the written approval of the Corporation.*

**Monitoring by board**

**189. Repeal.**

## **INVESTMENT AND LENDING POLICIES ~~AND PROCEDURES~~**

**Investment and lending policies**

*190. (1) A credit union shall establish investment and lending policies for the credit union and the credit union shall adhere to those policies.*

**Policies to be prudent**

(2) *The investment and lending policies of a credit union shall consist of policies, standards and procedures that a reasonable and prudent person would apply in respect of a portfolio of investments and loans in order to avoid undue risk of loss and obtain a reasonable return.*

**Approval and review by board**

(2.1) *The investment and lending policies of a credit union are subject to the approval of the board and the board shall review the policies at least once each year.*

**Order if policies inadequate, etc.**

(3) *If the Corporation considers the investment and lending policies of the credit union to be inadequate or imprudent, the Corporation may order the credit union to cease investing or lending as specified in the order until the policies are amended in accordance with the order.*

**Procedural rules**

(4) *Section 240.1 applies with respect to an order under this section.*

**Appeal to Tribunal**

(5) *The credit union that is subject to an order under this section may appeal the order to the Tribunal in accordance with section 240.4.*

**Investment and lending policy**

**191. Repeal**

**Changes required by Superintendent**

**192. Repeal**

## LOANS

**Restrictions re loans**

**193. Repeal.**

**Loans to members only**

**194. (1)** *A credit union shall loan money only,*

(a) *to its members, or*

(b) *by participating in a loan syndication in which the borrower is a member of a credit union that is one of the lenders in the loan syndicate.*

**Exception – loans acquired by purchase**

(2) *If a credit union acquires a loan as a result of a purchase of all or part of the business of another financial institution, the credit union may continue that loan, despite subsection (1), for one year after the loan is acquired or, if the loan is for a specified term, until the end of that term.*

**Prescribed lending limits**

**195. (1)** *A credit union shall not make loans in excess of such lending limits as may be prescribed or as may be ordered under subsection (2) or (5). 1994, c. 11, s. 195 (1).*

**Lowering lending limits**

(2) *The Corporation may, by order, lower a credit union's lending limits if the Corporation believes on reasonable grounds that the credit union's current lending limits may adversely affect the interests of the credit union's members, depositors or shareholders.*

**Procedural rules**

(3) *Section 240.1 applies with respect to an order under subsection (2).*

**Appeal to Tribunal**

(4) *The credit union that is subject to an order under subsection (2) may appeal the order to the Tribunal in accordance with section 240.4.*

**Raising lending limits**

*(5) On application by a credit union, the Corporation may, by order on terms specified in the order, raise the credit union's lending limits if the Corporation is satisfied there are reasonable grounds for doing so.*

#### **Lending licence**

##### **196. Repeal**

#### **Loan workouts**

**197.** (1) Despite anything in this Part, if a credit union has made a loan and a default has occurred, the credit union may, subject to the agreement between the credit union and entity governing the loan, acquire,

- (a) if the entity is a body corporate, all or any of the shares of the body corporate;
- (b) if the entity is an unincorporated entity, all or any of the ownership interests in the entity;
- (c) all or any of the shares or all or any of the ownership interests in any entity that is an affiliate of the entity; or
- (d) all or any of the shares of a body corporate that is primarily engaged in holding shares of, ownership interests in, or assets acquired from, the entity or any of its affiliates. 1994, c. 11, s. 197 (1).

#### *Divestment if not in compliance with investment and lending policies*

*(2) If the securities acquired by a credit union because of a default on a loan are not an investment permitted by the credit union's investment and lending policies, the credit union shall divest itself of the securities within two years after their acquisition or within such further time as the Corporation may authorize.*

#### *Order for call of unauthorized loans*

*197.0.1 (1) The Corporation may order a credit union to call any loan it has made that is not authorized by this Act, the regulations or its by-laws.*

#### *Time to comply*

*(2) Despite section 240.3, an order under this section shall allow the credit union at least 60 days to comply with the order.*

#### *Procedural rules*

*(3) Section 240.1 applies with respect to an order under this section.*

#### *Appeal to Tribunal*

*(4) The credit union that is subject to an order under this section may appeal the order to the Tribunal in accordance with section 240.4.*

**Note: On a day to be named by proclamation of the Lieutenant Governor, the Act is amended by the Statutes of Ontario, 1999, chapter 12, Schedule I, subsection 2 (6) by adding the following section:**

#### COST OF BORROWING

#### **Definition of "cost of borrowing"**

**197.1** In sections 197.2 to 197.10, "cost of borrowing", for a loan made by a credit union, means,

- (a) the interest or discount applicable to the loan,
- (b) any amount charged in connection with the loan that is payable by the borrower to the credit union,
- (c) any amount charged in connection with the loan that is payable by the borrower to a person other than the credit union, where the amount is chargeable, directly or indirectly, by the person to the credit union, and
- (d) any charge prescribed by the regulations as included in the cost of borrowing,

but does not include any charge prescribed by the regulations as excluded from the cost of borrowing.

See: 1999, c. 12, Sched. I, ss. 2 (6), 8 (2).

**Note: On a day to be named by proclamation of the Lieutenant Governor, the Act is amended by the Statutes of Ontario, 1999, chapter 12, Schedule I, subsection 2 (6) by adding the following section:**

#### **Rebate of borrowing costs**

**197.2** (1) This section applies where,

- (a) a credit union makes a loan to a natural person;
- (b) the loan is not secured by a mortgage on real property;
- (c) the loan is required to be repaid either on a fixed future date or by instalments; and
- (d) the loan is prepaid in full.

Same

(2) In the circumstances described in subsection (1), the credit union shall, in accordance with the regulations, rebate to the borrower a portion of the cost of borrowing for the loan.

**Limitation**

(3) For the purposes of subsection (2) and the regulations made under clause 197.10 (1) (b), the cost of borrowing for a loan does not include the interest or discount applicable to the loan.

See: 1999, c. 12, Sched. I, ss. 2 (6), 8 (2).

**Note: On a day to be named by proclamation of the Lieutenant Governor, the Act is amended by the Statutes of Ontario, 1999, chapter 12, Schedule I, subsection 2 (6) by adding the following section:**

**Disclosure of cost of borrowing**

**197.3** (1) A credit union shall not make a loan to a natural person unless the cost of borrowing and any other information prescribed for the purposes of this section by the regulations have been disclosed by the credit union to the person.

Same

(2) For the purposes of disclosure required by subsection (1), the cost of borrowing,

- (a) shall be calculated on the basis that all obligations of the borrower are duly fulfilled;
- (b) shall be calculated in accordance with the regulations;
- (c) shall be expressed as a rate per annum; and
- (d) where required by the regulations, shall be expressed as an amount in dollars and cents.

See: 1999, c. 12, Sched. I, ss. 2 (6), 8 (2).

**Note: On a day to be named by proclamation of the Lieutenant Governor, the Act is amended by the Statutes of Ontario, 1999, chapter 12, Schedule I, subsection 2 (6) by adding the following section:**

**Additional disclosure – term loans**

**197.4** Where a credit union makes a loan to a natural person and the loan is required to be repaid either on a fixed future date or by instalments, the credit union shall disclose the following to the borrower:

1. Whether the borrower has the right to repay the amount borrowed before the maturity of the loan.
2. Any terms and conditions relating to a right described in paragraph 1, including particulars of the circumstances in which the borrower may exercise the right.
3. Whether any portion of the cost of borrowing for the loan is to be rebated to the borrower or any charge or penalty is to be imposed on the borrower, if the borrower exercises a right described in paragraph 1.
4. The manner in which any rebate, charge or penalty referred to in paragraph 3 is to be calculated.
5. Particulars of any charges or penalties to be imposed on the borrower if the borrower fails to repay the amount of the loan at maturity or fails to pay an instalment on the day the instalment is due to be paid.
6. Particulars of any prescribed change relating to the loan agreement or the cost of borrowing for the loan.
7. Particulars of any rights or obligations of the borrower prescribed by the regulations for the purposes of this section.
8. Any other information prescribed by the regulations for the purposes of this section.

See: 1999, c. 12, Sched. I, ss. 2 (6), 8 (2).

**Note: On a day to be named by proclamation of the Lieutenant Governor, the Act is amended by the Statutes of Ontario, 1999, chapter 12, Schedule I, subsection 2 (6) by adding the following section:**

**Disclosure in applications for credit cards, etc.**

**197.5** A form or other document used by a credit union for the purposes of an application for a credit card, payment card or charge card shall contain the information prescribed by the regulations for the purposes of this section or be accompanied by a document that contains that information.

See: 1999, c. 12, Sched. I, ss. 2 (6), 8 (2).

**Note: On a day to be named by proclamation of the Lieutenant Governor, the Act is amended by the Statutes of Ontario, 1999, chapter 12, Schedule I, subsection 2 (6) by adding the following section:**

**Disclosure where credit cards, etc., issued**

**197.6** Where a credit union issues a credit card, payment card or charge card to a natural person, the credit union shall disclose the following to the person:

1. Particulars of any charges or penalties to be imposed on the person if he or she fails to pay an amount in accordance with the agreement governing the card.
2. Particulars of any charges for which the person becomes responsible by accepting or using the card.
3. Particulars of any prescribed change relating to the loan agreement or the cost of borrowing for any loan obtained through the use of the card.
4. Particulars of any rights or obligations of the person prescribed by the regulations for the purposes of this section.
5. Any other information prescribed by the regulations for the purposes of this section.

See: 1999, c. 12, Sched. I, ss. 2 (6), 8 (2).

**Note: On a day to be named by proclamation of the Lieutenant Governor, the Act is amended by the Statutes of Ontario, 1999, chapter 12, Schedule I, subsection 2 (6) by adding the following section:**

**Additional disclosure: loans to which ss. 197.4 and 197.6 do not apply**

**197.7** (1) Where a credit union enters into an arrangement for the making of a loan to a natural person and neither section 197.4 nor section 197.6 apply in respect of the arrangement, the credit union shall disclose the following to the person:

1. Particulars of any charges or penalties to be imposed on the person if he or she fails to pay an amount in accordance with the arrangement.
2. Particulars of any charges for which the person becomes responsible by entering the arrangement.
3. Particulars of any prescribed change relating to the arrangement or the cost of borrowing under the arrangement.
4. Particulars of any rights or obligations of the person prescribed by the regulations for the purposes of this section.
5. Any other information prescribed by the regulations for the purposes of this section.

**Interpretation**

(2) For the purposes of subsection (1), an arrangement for the making of a loan includes an arrangement for a line of credit.

See: 1999, c. 12, Sched. I, ss. 2 (6), 8 (2).

**Note: On a day to be named by proclamation of the Lieutenant Governor, the Act is amended by the Statutes of Ontario, 1999, chapter 12, Schedule I, subsection 2 (6) by adding the following section:**

**Statement re mortgage renewal**

**197.8** Where a credit union makes a loan to a natural person and the loan is secured by a mortgage on real property, the credit union shall disclose to the person such information respecting renewal of the loan as is prescribed by the regulations.

See: 1999, c. 12, Sched. I, ss. 2 (6), 8 (2).

**Note: On a day to be named by proclamation of the Lieutenant Governor, the Act is amended by the Statutes of Ontario, 1999, chapter 12, Schedule I, subsection 2 (6) by adding the following section:**

**Disclosure in advertising**



**197.9** (1) This section applies to an advertisement that,

- (a) relates to loans, credit cards, payment cards or charge cards that are offered by a credit union to a natural person or to arrangements to which section 197.7 applies that are offered by a credit union to a natural person; and
- (b) purports to contain information relating to the cost of borrowing or any other prescribed matter.

Same

(2) No person shall authorize any advertisement described in subsection (1) unless the advertisement contains the information that may be required by the regulations and is in the form and manner that may be prescribed.

See: 1999, c. 12, Sched. I, ss. 2 (6), 8 (2).

**Note:** On a day to be named by proclamation of the Lieutenant Governor, the Act is amended by the Statutes of Ontario, 1999, chapter 12, Schedule I, subsection 2 (6) by adding the following section:

**Regulations re disclosure**

**197.10** (1) The Lieutenant Governor in Council may make regulations,

- (a) prescribing, for the purposes of section 197.1, charges that are included in the cost of borrowing and charges that are excluded from the cost of borrowing;
- (b) governing rebates to be made under section 197.2;
- (c) prescribing information other than the cost of borrowing that must be disclosed under section 197.3;
- (d) prescribing the manner of calculating the cost of borrowing for the purposes of section 197.3;
- (e) prescribing the circumstances in which the cost of borrowing must be expressed as an amount in dollars and cents for the purposes of section 197.3;
- (f) prescribing the manner of calculating any rebate referred to in paragraph 4 of section 197.4;
- (g) prescribing changes for the purposes of paragraph 6 of section 197.4, paragraph 3 of section 197.6 and paragraph 3 of subsection 197.7 (1);
- (h) prescribing rights and obligations of borrowers for the purposes of paragraph 7 of section 197.4, paragraph 4 of section 197.6 and paragraph 4 of subsection 197.7 (1);
- (i) prescribing information that must be disclosed under paragraph 8 of section 197.4, paragraph 5 of section 197.6 and paragraph 5 of subsection 197.7 (1);
- (j) prescribing information for the purposes of section 197.5;
- (k) prescribing information for the purposes of section 197.8;
- (l) prescribing matters for the purposes of clause 197.9 (1) (b) and respecting the form, manner and content of advertisements for the purposes of subsection 197.9 (2);
- (m) prescribing the time, manner and form of any disclosure required under sections 197.3 to 197.9;
- (n) prescribing classes of loans in respect of which some or all of the requirements of sections 197.2 to 197.9 do not apply;
- (o) prohibiting the imposition of any charge or penalty referred to in section 197.4, 197.6 or 197.7;
- (p) governing the nature and amount of any charge or penalty referred to in section 197.4, 197.6 or 197.7 that may be imposed by a credit union, including but not limited to,
  - (i) regulations providing that such a charge or penalty shall not exceed an amount prescribed in the regulation, and
  - (ii) regulations respecting the costs of the credit union that may be included or must be excluded in the determination of the charge or penalty;
- (q) respecting any other matter or thing that is necessary to carry out the purposes of sections 197.2 to 197.9.

Same

(2) A regulation made under clause (1) (a) may exclude charges described in clause (a), (b) or (c) of the definition of “cost of borrowing” in section 197.1.

Same

(3) A regulation made under subsection (1) may be general or particular in its application and may be restricted in its application to the class or classes of loans set out in the regulation.

See: 1999, c. 12, Sched. I, ss. 2 (6), 8 (2).

## INVESTMENTS

### *Eligible investments*

**198.** *A credit union shall invest only in such types of securities or property and on such conditions as are prescribed for its class.*

### *Exception to restriction re single investment*

**199.** *(1) A credit union may directly or indirectly invest, by way of purchase from or loans to a single person or to two or more connected persons, more than the amount prescribed for its class only if,*

- (a) the investment is in the form of deposits with or loans to,*
  - (i) a financial institution that is not a credit union or a securities dealer,*
  - (ii) the Corporation, or*
  - (iii) a prescribed person or entity; or*
- (b) the investment is in securities issued or guaranteed by the Government of Canada, including mortgages insured under the National Housing Act (Canada), by the government of any province of Canada or by any municipality in Canada.*

### *Connected persons*

*(2) For the purposes of this section, two or more persons are connected persons if they satisfy the prescribed conditions.*

### *Establishing or acquiring subsidiary*

**200.** *(1) A credit union may establish or acquire a subsidiary only if the subsidiary is prescribed and only with the approval of the Corporation and the establishment or acquisition of a subsidiary is subject to such restrictions as may be prescribed and to such additional conditions as the Corporation may, by order, impose.*

### *Deemed prescribed subsidiary*

*(2) On written application by a credit union, the Corporation may, by order and on such conditions as are specified in the order, deem a body corporate named in the order to be, for all purposes of this Act, a prescribed subsidiary if its activities are substantially similar to those of a body corporate identified as a prescribed subsidiary.*

### *Refusal of approval to be by order*

*(3) If the Corporation refuses to approve the establishment or acquisition of a subsidiary, the Corporation shall do so by order.*

### *Anti-avoidance*

*(4) The Corporation shall issue an order refusing to approve the establishment or acquisition of a subsidiary if it considers that the establishment or acquisition is primarily for the purpose of allowing the credit union to avoid the limits under this Act or the regulations on its investments.*

### *Revocation of approval*

- (5) The Corporation may, by order, revoke its approval if,*
  - (a) the credit union has failed to comply with the conditions and restrictions applicable to the investment; or*
  - (b) the body corporate is no longer a prescribed subsidiary.*

### *Effect of revocation*

(6) Upon a revocation of an approval, the credit union shall divest itself of the investment in accordance with the order effecting the revocation.

**Restriction on investments in subsidiaries**

(7) A credit union shall ensure that the total book value of investments held by the credit union in subsidiaries of the credit union and of guarantees by the credit union of the obligations of such subsidiaries does not exceed the prescribed percentage of the regulatory capital and deposits of the credit union.

**Procedural rules**

(8) Section 240.1 applies with respect to an order under this section.

**Appeal to Tribunal**

(9) The credit union that is subject to an order under this section may appeal the order to the Tribunal in accordance with section 240.4.

**Investment in another credit union**

**201.** (1) A credit union shall not invest in another credit union without the approval of the ~~Superintendent~~ Corporation.

**Refusal of approval to be by order**

(2) If the Corporation refuses to approve an investment in another credit union, the Corporation shall do so by order.

**Procedural rules**

(3) Section 240.1 applies with respect to an order under this section.

**Appeal to Tribunal**

(4) The credit union that is subject to an order under this section may appeal the order to the Tribunal in accordance with section 240.4.

**Status of investments upon amalgamation, etc.**

**202.** (1) The ~~Superintendent~~ Corporation may authorize the acceptance by a credit union of securities or other assets not fulfilling the requirements of this Act,

- (a) obtained under an arrangement made in good faith for the reorganization of a body corporate whose securities were previously owned by the credit union;
- (b) obtained under an amalgamation with another body corporate of the body corporate whose securities were previously owned by the credit union;
- (c) obtained in good faith for the purpose of protecting investments of the credit union;
- (d) obtained by virtue of the purchase by the credit union of the assets of another credit union;
- (e) obtained by virtue of realizing on the security for a loan where the security is shares in a body corporate; or
- (f) obtained in payment or part payment for securities sold by the credit union. 1994, c. 11, s. 202 (1); 1997, c. 28, s. 53.

**Divestment**

(2) The credit union shall divest itself of the securities or other assets within two years after their acquisition or within such further time as the ~~Superintendent~~ Corporation may authorize. 1994, c. 11, s. 202 (2); 1997, c. 28, s. 53.

**Exception**

(3) The ~~Superintendent~~ Corporation may relieve the credit union of the obligation to divest itself of the securities or other assets if the ~~Superintendent~~ Corporation is satisfied that they are not inferior in status or value to the securities for which they have been substituted. 1994, c. 11, s. 202 (3); 1997, c. 28, s. 53.

**Order for disposal of unauthorized investments**

**202.1** (1) The Corporation may order a credit union to dispose of any investment that was not made or is not held in accordance with this Act, the regulations, the Corporation's by-laws or the credit union's investment and lending policies.

**Time to comply**

(2) *Despite section 240.3, an order under this section shall allow the credit union at least 60 days to comply with the order.*

***Procedural rules***

(3) *Section 240.1 applies with respect to an order under this section.*

***Appeal to Tribunal***

(4) *The credit union that is subject to an order under this section may appeal the order to the Tribunal in accordance with section 240.4.*

***Directors' liability***

(5) *Subject to subsection (8), if the amount realized from the disposal of the investment is less than the amount paid by the credit union for it, the directors of the credit union are jointly and severally liable for the payment to the credit union of the amount of the difference.*

***Objection to investment***

(6) *A director who is present at a directors' meeting at which an investment to which the director objects is authorized may,*

- (a) *immediately deliver or send to the credit union by registered mail a protest against the investment; and*
- (b) *within 30 days after delivering or sending the protest referred to in clause (a), send a copy of the protest by registered mail to the Corporation.*

***Same***

(7) *A director who is absent from a meeting at which an investment to which the director objects is authorized may,*

- (a) *within 14 days after he or she becomes aware of the investment and is able to do so, deliver or send to the credit union by registered mail a protest against the investment; and*
- (b) *within 30 days after delivering or sending the protest referred to in clause (a), send a copy of the protest by registered mail to the Corporation.*

***Exoneration***

(8) *A director who takes the steps set out in subsection (6) or (7) has no liability with respect to an investment to which he or she objected.*

## **~~TRANSFER OF ASSETS~~**

### ***PURCHASE AND SALE OF ASSETS***

***Interpretation***

**203.** *For the purposes of section 204, a sale of property includes a sale, lease, exchange or other disposition of property and a purchase of property includes a lease, exchange of property or other acquisition of property.*

***Purchase or sale of substantial assets***

**204.** (1) *A credit union shall not do any of the following unless authorized to do so by special resolution of the members of the credit union:*

1. *Sell assets if the market value of the assets is 15 per cent or more of the value of the credit union's total assets.*
2. *Purchase assets of a financial institution if the market value of the assets is 15 per cent or more of the value of the credit union's total assets.*

***Determination of value of total assets***

(2) *For the purposes of subsection (1), the value of the credit union's total assets shall be as set out in the audited financial statements placed before the members at the most recent annual meeting.*

***If more than one class of shares***

(3) *If the credit union has more than one class of issued shares, the special resolution referred to in subsection (1) shall be in the form of a special resolution passed by the holders of each class of shares.*

***Agreement and Corporation approval required***

(4) *A credit union shall not proceed with a sale or purchase described in subsection (1) unless there is an agreement for the sale or purchase and that agreement has been approved by the Corporation.*

***Corporation approval required before authorization of members, etc.***

(5) *A credit union shall not seek the authorization of the members and shareholders required under subsection (1) until the Corporation has approved the agreement under subsection (4).*

***Refusal of approval to be by order***

(6) *If the Corporation refuses to approve an agreement under subsection (4), the Corporation shall do so by order.*

***Procedural rules***

(7) *Section 240.1 applies with respect to an order under subsection (6).*

***Appeal to Tribunal***

(8) *The credit union that is subject to an order under subsection (6) may appeal the order to the Tribunal in accordance with section 240.4.*

***Purchase price if transaction is between credit unions***

(9) *In a purchase or sale described in subsection (1) in which both the purchaser and the seller are credit unions, the purchaser may pay the purchase price only in one or more of the following ways:*

1. *By assuming liabilities of the seller.*
2. *By paying cash.*
3. *By issuing shares that are not membership shares or patronage shares.*
4. *By issuing promissory notes.*

***Directed transfer***

**205. *Repeal***

***Interpretation***

**206. *Repeal***

## **PART IX RESTRICTED PARTY TRANSACTIONS**

***General prohibition***

**207.** Except to the extent permitted under this Act or the regulations, a credit union or a subsidiary shall not directly or indirectly enter into any transaction with a restricted party of the credit union. 1994, c. 11, s. 207.

***Loans to officers, directors, etc.***

**208. (1)** *A credit union may lend to an officer, a member of the audit committee or a director an amount in excess of the aggregate of deposits of the officer, member or director pledged as collateral for the loan only if the board approves the loan before it is made.*

***Delegation of authority to approve loan to committee***

(2) *The board may delegate its authority to grant an approval under subsection (1) to a committee of the board on such terms and with such restrictions as may be specified by the board.*

***Committee to report***

(3) *A committee referred to in subsection (2) shall report details of the loans approved by the committee to the board at the first meeting of the board after the approval is given.*

***Regulations***

**209.** The Lieutenant Governor in Council may make regulations governing transactions between a credit union or subsidiary and a restricted party. 1994, c. 11, s. 209.

*Setting aside transactions*

**209.1** (1) *If a transaction with a restricted person that is prohibited or restricted by this Act or the regulations takes place, any interested person, including the Superintendent or Corporation, may apply to the court for an order,*

- (a) *setting aside the transaction and directing that the restricted party account to a credit union for any profit or gain realized; and*
- (b) *that each person who participated in or facilitated the transaction pay to the credit union on a joint and several basis the damages suffered, the face value of the transaction or the amount expended by the credit union in the transaction.* 1994, c. 11, s. 328 (1); 1997, c. 28, s. 53.

*Order*

- (2) *The court may make the order applied for or such other order as it thinks appropriate.*

*Same*

(3) *An order under subsection (2) may order compensation for a loss or damage suffered by the credit union and punitive damages from the restricted party.*

*Exemption*

(4) *A person who is not a director is not liable under clause (1) (b) unless the person knew or ought reasonably to have known that the transaction was made in contravention of a restricted party provision.*

**Interpretation**

**210.** In this Part,

“restricted party” and “transaction” have the meaning given to those expressions in the regulation. 1994, c. 11, s. 210.

**PART X  
MEETINGS**

***MEMBERS’ AND SHAREHOLDERS’ MEETINGS***

*Notice of meetings*

**211.** (1) *Notice of the time and place for holding a meeting of the members of a credit union shall be given at the time and in the manner specified in the by-laws of the credit union to each member of the credit union who, on the record date for the notice, appears in the records of the credit union as a member.*

*Same*

(2) *Despite the by-laws of the credit union, notice of the time and place for holding a meeting shall be given at least 10 days before the date of the meeting but not more than 50 days before the date of the meeting.*

*Notice of disclosure*

(3) *Notice of any meeting at which directors are to be elected must contain the following:*

- 1. *All disclosures made by a director under subsection 146 (2) and all entries in the minutes of a board meeting made pursuant to a request of a director under that provision.*
- 2. *All general notices by a director under subsection 146 (6).*

*Notice to include text of special resolutions*

(4) *Notice of a meeting at which a special resolution is to be voted on shall include the text of the special resolution including, for a special resolution to confirm a by-law, the text of the by-law.*

**Interpretation**

(5) For the purposes of ~~subsection (2)~~ *subsection (1)*, the record date means the record date as established by the by-laws of the credit union. 1994, c. 11, s. 211.

*Shareholder meetings*

*(6) This section applies with necessary modifications to meetings of holders of shares of the credit union other than patronage shares.*

**Annual meeting**

**212.** *(1) Subject to the by-laws, an annual meeting of the members of a credit union shall be held at such time and place in Ontario as the board determines.*

**Time of meeting**

*(2) Unless otherwise authorized by the Superintendent, the annual meeting of the members of a credit union must be held no later than 120 days after the end of the credit union's last completed financial year.*

**Extension of time limit for holding annual meeting**

*(3) On application by a credit union, the Superintendent may authorize the credit union to hold its annual meeting of members on a day that is more than 120 days after the end of the last completed financial year if the Superintendent considers the extension of time to be reasonable in the circumstances, and the Superintendent may impose such conditions as the Superintendent considers appropriate.*

**Business to be dealt with**

- (4) At an annual meeting, the board shall place before the members,*
- (a) the audited financial statements of the credit union;*
  - (b) the report of the auditor;*
  - (c) the report of the audit committee; and*
  - (d) such further information respecting the financial position of the credit union and the results of its operations as the by-laws require.*

**Information to be provided**

- (5) The notice of an annual meeting of the members must,*
- (a) specify that copies of the audited financial statements, the auditor's report and the audit committee report will be available for inspection, by any member, at the meeting and at the offices of the credit union at least 10 days before the meeting; and*
  - (b) set out any matters to be dealt with at the annual meeting in addition to the business described in subsection (4) in sufficient detail to permit members to form a reasonable judgment on the matter.*

**Financial statements**

**213.** *(1) The financial statements to be placed before the members must show the prescribed matters relating separately to the prescribed time periods.*

**Report of audit committee**

- (2) Repeal*

**Report of auditor**

- (3) Repeal*

**Approval of financial statements**

*(4) Financial statements that have not been approved by the credit union's board may not be placed before the members.*

**Evidence of approval**

*(5) The signature, at the foot of the balance sheet, of two authorized directors is evidence of the approval of the board.*

**Available to members**

*(6) The credit union shall make copies of the audited financial statements, the auditor's report and the audit committee report available for inspection, by any member, at the meeting at which the statements and reports are to be placed before the members and at the offices of the credit union at least 10 days before the meeting.*

**Filed with the Corporation**

*(7) The credit union shall send to the Corporation the audited financial statements, the auditor's report and the audit committee report at least 10 days before the day of the annual meeting at which the statements and reports are to be placed before the members.*

**Accepted principles**

(8) The financial statements shall, except as otherwise specified by the Superintendent, be prepared in accordance with generally accepted accounting principles, the primary source of which is the Handbook of the Canadian Institute of Chartered Accountants. 1994, c. 11, s. 213 (8); 1997, c. 28, s. 53.

**General meetings**

**214.** The board may at any time call a general meeting of the members or shareholders for the transaction of any business if the general nature of the business is specified in the notice calling the meeting. 1994, c. 11, s. 214.

**Proposals**

**215.** (1) Any member may,

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

**Notice of proposal**

(2) Any proposal of a member submitted for consideration at a meeting must be attached to the notice of the meeting.

**Attached statement**

(3) If the member submitting the proposal so requests, a statement by the member in support of the proposal and the name and address of the member must be attached to the notice of the meeting.

**Length of statement**

(4) The statement must not be longer than two hundred words.

**Conditions for proposal**

- (5) A proposal does not need to be attached to the notice of the meeting if,
  - (a) the proposal is not submitted at least ninety days before the anniversary date of the previous annual meeting;
  - (b) it clearly appears that the proposal is submitted primarily for the purpose of,
    - (i) enforcing a personal claim or redressing a personal grievance against the credit union or its directors, officers, members or security holders, or
    - (ii) promoting general economic, political, racial, religious, social or similar causes;
  - (c) a proposal by the member had been attached to another notice of a meeting within the preceding two years and the member did not present the proposal at the meeting;
  - (d) substantially the same proposal was submitted to the members at a meeting held within the preceding two years and the proposal was defeated; or
  - (e) the right conferred is being abused to get publicity.

**Calculating time**

(6) The two year period referred to in clauses (5) (c) and (d) ends when the proposal is given to the credit union.

**Immunity re circulation proposal**

(7) No credit union or person acting on behalf of a credit union incurs any liability from circulating a proposal or statement in compliance with this section. 1994, c. 11, s. 215.

**Refusing proposal**

**216.** (1) If a credit union does not intend to include a proposal in a notice of a meeting, it shall, within ten days after receiving the proposal, notify the member submitting it of the intention to omit the proposal from the notice and send to the member reasons for the refusal.



**Appeal to court**

(2) Any member who disagrees with a refusal to include a proposal may apply to the court for an order restraining the holding of the meeting at which the proposal is sought to be presented.

**Same**

(3) A credit union or any person who objects to a proposal may apply to the court for an order allowing the credit union to omit the proposal from the notice of meeting, and the court, if it is satisfied that subsection 215 (5) applies, may make the order.

**Court order**

(4) On an application under subsection (2) or (3), the court may grant the order applied for or any other order that it considers appropriate. 1994, c. 11, s. 216.

**Requisition for members' meeting**

**217.** (1) Five per cent of the members of a credit union may requisition the board to call a general meeting of the members for any purpose that is connected with the affairs of the credit union and that is not inconsistent with this Act.

**Requisition for shareholders' meeting**

(2) *Repeal*

**Requisition**

(3) *Repeal*

**Several documents**

(4) *Repeal*

**Duty of directors to call meeting**

(5) *Repeal*

**When meeting may be called: by board**

(6) *Repeal*

**Same: by members or shareholders**

(7) *Repeal*

**Calling of meeting**

(8) *Repeal*

**Sufficient notice**

(9) *Repeal*

***Voting rights at members' meetings***

**217.1** *Each member of a credit union has one vote at a meeting of the members of the credit union.*

***Different ways of member voting***

**217.2** (1) *A member of a credit union may vote in person or, if the by-laws of the credit union allow it, by mail or by telephonic or electronic means.*

***Conditions in by-laws***

(2) *The by-laws may set out conditions that apply to voting in the different ways allowed under subsection (1).*

***Regulations***

(3) *The Lieutenant Governor in Council may make regulations governing voting in the different ways allowed under subsection (1).*

***Proxies, members***

**217.3** (1) *No member of a credit union shall vote by proxy except when the member is Her Majesty the Queen in right of Ontario or in right of Canada, a corporation including a municipality defined in the Municipal Affairs Act, an unincorporated association, or a partnership registered under the Business Names Act or a predecessor of it.*

**Only one proxy vote**

(2) A person may cast only one vote by proxy on a matter.

**Member's vote not affected**

(3) For greater certainty, subsection (2) does not prevent a member who votes as a proxy holder from casting the member's own vote.

**Proxies, other shareholders**

**217.4** (1) Part VIII of the Business Corporations Act applies, with necessary modifications, with respect to proxies for voting by shareholders in respect of shares other than membership shares or patronage shares as if the credit union were incorporated under that Act.

**Same**

(2) For the purposes of subsection (1), any reference in Part VIII of the Business Corporations Act to "offering corporation" shall be deemed to be a reference to the "credit union" and, if the credit union is not an "offering corporation" as defined in section 1 of that Act, any reference in Part VIII of that Act to the "Commission" shall be deemed to be a reference to the "Superintendent".

**Exception, information circular**

(3) Despite Part VIII of the Business Corporations Act, as made applicable by subsection (1), neither a credit union nor a dissident is required to deliver an information circular to holders of membership shares or patronage shares.

**Telephone and electronic meetings**

**217.5** Unless the articles or the by-laws of a credit union provide otherwise, a meeting of the members may be held by telephonic or electronic means and a member who, through those means, votes at the meeting or establishes a communications link to the meeting shall be deemed for the purposes of this Act to be present at the meeting.

## ***DIRECTORS' MEETINGS***

**Telephone and electronic meetings**

**218.** (1) Unless the by-laws otherwise provide, if all the directors present at or participating in a meeting consent, a meeting of directors or of a committee of directors may be held by means of telephone, electronic or other communication facilities as allow all those participating in the meeting to communicate with each other simultaneously and instantaneously.

**Director considered present**

(2) Every director participating in a meeting by any means described in subsection (1) is considered present at the meeting for purposes of this Act. 1994, c. 11, s. 218.

**Dissent of director**

**219.** (1) A director who is present at a meeting of directors or a committee of directors shall be deemed to have consented to any resolution passed or action taken at that meeting unless,

- (a) the director's dissent is entered in the minutes of the meeting;
- (b) the director sends a written dissent to the secretary of the meeting before the meeting is adjourned;  
or
- (c) the director sends his or her dissent by registered mail or delivers it to the head office of the credit union immediately after the meeting is adjourned.

**Loss of right to dissent**

(2) A director who votes for or consents to a resolution is not entitled to dissent under subsection (1).

**Dissent of absent director**

(3) A director who is not present at a meeting at which a resolution is passed or action is taken shall be deemed to have consented to the resolution or action unless, within seven days after the director becomes aware of the resolution or action, he or she,

- (a) has the dissent placed in the minutes of the meeting; or
- (b) sends the dissent by registered mail or delivers it to the head office of the credit union. 1994, c. 11, s. 219.

*Meeting required by Superintendent or the Corporation*

**220.** (1) *The Superintendent or the Corporation may, by written notice to the credit union and each director, require a credit union to hold a meeting of the directors to consider any matter set out in the notice.*

*Attendance by Superintendent or the Corporation*

(2) *The Superintendent or his or her designate and a representative of the Corporation may attend and be heard at the meeting.*

## **MISCELLANEOUS**

**Annual statement to be given to members**

**221.** Every credit union shall, without charge, supply a copy of its last audited financial statement to every member and shareholder applying for it. 1994, c. 11, s. 221.

**Inspection of books**

**222.** (1) Except as provided in this Act, no person has a right to inspect the books of a credit union.

*Inspection by person with interest*

(2) *A person with an interest in the funds of a credit union may inspect, at all reasonable hours, the person's own account and a list, extracted from the register under section 230, of the names of the members.*

**By-laws may authorize inspection**

(3) A credit union may, by by-law, authorize the inspection of any of its books under such conditions as the by-laws may set out.

**Limits on inspection**

(4) The right to inspect books is subject to such conditions as to time and manner of inspection as the by-laws may prescribe.

**Inspection of other's account**

(5) No person, except an officer or employee of the credit union or a person specifically authorized by a resolution of the board, has the right to inspect the loan or deposit account of any other person without that person's written consent.

**Use of information**

(6) A list of members or shareholders obtained under this section shall not be used by any person except in connection with,

- (a) an effort to influence the voting of members or shareholders of the credit union;
- (b) an offer to acquire shares of the credit union; or
- (c) any other matter relating to the affairs of the credit union. 1994, c. 11, s. 222.

**Financial statements of subsidiaries**

**223.** (1) Copies of the latest financial statements of each subsidiary of a credit union shall,

- (a) *be kept by the credit union at such place in Ontario as is specified in the by-laws; and*
- (b) be open to examination by the members and shareholders of the credit union and their agents.

**Extracts**

(2) Everyone entitled to examine the copies of the financial statements may make extracts of the material free of charge during the normal business hours of the credit union.

**Application to court**

(3) A credit union may, within fifteen days after receiving a request to examine copies of financial statements, apply to the court for an order barring the examination, and the court may, if satisfied that the examination would be detrimental to the credit union or a subsidiary, bar the examination and make any further order it thinks fit. 1994, c. 11, s. 223.

*Branches and other member groups*

**224.** (1) A credit union may establish branches and such other member groups as may be specified in the by-laws, subject to such conditions as may be set out in the by-laws.

*Branch and member group meetings*

(2) A credit union may, by by-law, provide for the holding of branch and member group meetings for members of branches and member groups.

*Election of delegates*

(3) If a by-law of a credit union provides for a branch or member group meeting, the members of the branch or member group shall elect delegates, by a resolution passed by a majority of the votes cast at the meeting, to represent the members at general meetings of the members of the credit union.

*Powers of delegates*

(4) Delegates elected from a branch or member group shall exercise the powers of the members of the branch or member group at all general meetings of the members of the credit union.

*When members lose vote*

(5) Members of a branch or member group who are represented by elected delegates at a general meeting of the members of the credit union are entitled to attend the meeting but are not entitled to vote at the meeting.

*Branch meeting procedure*

(6) If a by-law of a credit union provides for branch or member group meetings, the by-laws of the credit union shall specify,

- (a) the number of delegates and votes allowed to each branch and member group at a general meeting of the members of the credit union;
- (b) the time, place and manner of calling branch and member group meetings;
- (c) the number of members of a branch or member group that constitute a quorum; and
- (d) the procedure to be followed in the conduct of branch and member group meetings.

*Determination of number of delegates and votes*

(7) The number of delegates and votes allowed to each branch and member group at a general meeting of the members of the credit union under clause (6) (a) shall be determined on a basis that is reasonable given the number of members in each branch or member group.

*Majority*

(8) The required majority vote for deciding an issue to be voted on at a branch or member group meeting is the same as that required for deciding a similar issue at a general meeting of the members of the credit union.

**PART XI**  
**RETURNS, EXAMINATIONS AND RECORDS**  
***RETURNS AND EXAMINATIONS***

*Information required by Superintendent*

**225.** (1) A credit union shall provide the Superintendent with such information as the Superintendent may require for the purpose of carrying out his or her powers and duties.

*Time and form*

(2) The credit union shall provide the information at such times and in such form as the Superintendent may require.

**Information required by Corporation**

**225.1** (1) A credit union shall provide the Corporation with such information as the Corporation may require for the purpose of carrying out its powers and duties.

**Time and form**

(2) The credit union shall provide the information at such times and in such form as the Corporation may require.

**Annual return**

**226.** (1) A credit union shall file an annual return with the Corporation at such time, in such form and containing such information as the Corporation requires.

**Review**

(2) The Corporation shall review the annual return and, for that purpose, may require the credit union and any league of which it is a member to provide such additional information concerning the affairs of the credit union as the Corporation may require.

**Same**

(3) A credit union and league shall provide any additional information required by the Corporation under subsection (2).

**Examination by Superintendent**

**227.** The Superintendent may, at any reasonable time, visit the offices of any credit union and inspect the premises and examine the credit union's affairs, to determine whether the credit union is complying with this Act, the regulations, orders made by the Superintendent or the Corporation, the by-laws of the Corporation applicable to the credit union, the by-laws of the credit union or policies established by the board of the credit union.

**Examination by Corporation**

**228.** A person authorized by the Corporation for the purposes of this section may, at any reasonable time, visit the offices of any credit union and inspect the premises and examine the credit union's affairs, to determine whether the credit union is complying with this Act, the regulations, orders made by the Superintendent or the Corporation, the by-laws of the Corporation applicable to the credit union, the by-laws of the credit union or policies established by the board of the credit union.

**Examination powers**

**229.** (1) This section applies with respect to examinations under sections 227 and 228.

**Access to records and documents, etc.**

(2) The person conducting the examination is entitled to access to all records and documents of a credit union, wherever located, including information held by a provider of data processing services to the credit union.

**Answering questions**

(3) Every director, officer and employee of a credit union shall answer such questions during the course of the examination as may be necessary for the person conducting the examination to determine if the credit union has complied with this Act, the regulations, orders made by the Superintendent or the Corporation, the by-laws of the Corporation applicable to the credit union, the by-laws of the credit union or policies established by the board of the credit union.

**Material to be furnished on examination**

- (4) For the purposes of an examination,
- (a) a credit union shall prepare and submit to the person conducting the examination such statements with respect to its business, finances or other affairs as the person requires; and
  - (b) the person conducting the examination may require the directors, officers and auditor of a credit union to provide information and explanations, to the extent that they are reasonably able to do so, in respect of the condition and affairs of the credit union and any entity in which the credit union has made an investment.

**Copies**

(5) *If a record or document has been examined or produced under this section, the person conducting the examination may make, or cause to be made, one or more copies of it and, if necessary, may temporarily remove the record or document for the purposes only of making the copy or copies.*

## **RECORDS AND DOCUMENTS**

### **Register of members, shareholders, etc.**

**230.** (1) *Every credit union shall keep a register of members, shareholders and other security holders.*

#### **Contents of register**

(2) *The register shall contain,*

- (a) *the name and address of each member, shareholder or other security holder;*
- (b) *the number of shares of each class held by each member or shareholder and the number and type of the securities held by each of the other security holders;*
- (c) *the date on which the name of any person or entity was entered in the register as a member, shareholder or other security holder; and*
- (d) *the date on which any person or entity ceased to be a member.*

#### **Certificate as evidence**

(3) *A copy of all or part of the register, or a statement as to the contents of all or part of the register, purporting to be certified by the secretary is, without proof of the office or signature of the secretary, receivable in evidence as proof, in the absence of evidence to the contrary, of the facts stated in it for all purposes in any action, proceeding or prosecution.*

#### **Requirement to maintain records and documents, etc.**

**231.** (1) *Every credit union shall keep and maintain at its head office or at such other place in Ontario as may be specified in its by-laws such books, registers and other records and documents in either English or French as may be required by the regulations.*

#### **Superintendent's order re location**

(2) *The Superintendent may order a credit union to keep its books, registers and other records and documents at a place in Ontario, specified in the order, instead of at the credit union's head office or any other place specified in the credit union's by-laws.*

#### **Procedural rules**

(3) *Section 240.1 applies with respect to an order under this section.*

#### **Appeal to Tribunal**

(4) *The credit union that is subject to an order under this section may appeal the order to the Tribunal in accordance with section 240.4.*

#### **Form of records and documents**

**232.** (1) Any ~~document, record or register~~ *record or document* required or authorized by this Act to be prepared and kept by a credit union may be,

- (a) *in a bound or loose-leaf form;*
- (b) *in a photographic film form; or*
- (c) *recorded by any system of mechanical or electronic data processing or any other information storage device that is capable of reproducing required information in intelligible written form within a reasonable time.*

#### **Conversions**

(2) Any ~~document, record or register~~ *record or document* kept in one form may be converted to any other form. 1994, c. 11, s. 232.

#### **Copies of by-laws**

**233.** (1) A copy of the by-laws of a credit union shall be delivered by the credit union to a member on demand on payment of a fee fixed by the by-laws.

**Fee**

(2) The fee shall not exceed a prescribed amount. 1994, c. 11, s. 233.

**PART XII  
ENFORCEMENT  
*CERTAIN ORDERS***

*Superintendent's order – general*

**234.** (1) *The Superintendent may make an order under this section against,*

- (a) *any person if, in the Superintendent's opinion, the person is doing anything that contravenes this Act or the regulations or might reasonably be expected, if continued, to result in a contravention of this Act or the regulations; or*
- (b) *a credit union or a director, officer or employee of a credit union if, in the Superintendent's opinion, the credit union, director, officer or employee is doing anything that constitutes a practice that might prejudice or adversely affect the interest of a member, depositor or shareholder of the credit union.*

*What order may require*

- (2) *An order under this section may require a person,*
  - (a) *to stop doing any act or pursuing any course of conduct; or*
  - (b) *to do any act or pursue any course of conduct.*

*Procedural rules*

(3) *Section 240.1 applies with respect to an order under this section.*

*Appeal to Tribunal*

(4) *The person who is subject to an order under this section may appeal the order to the Tribunal in accordance with section 240.4.*

*Appeal to court*

(5) *A party to the proceedings before the Tribunal may appeal the decision of the Tribunal, within 30 days after the party received notice of the decision, to the court upon a question of law only.*

**When order may be made**

(6) *Repeal*

**Modifying order**

(7) *Repeal*

**Order may be without a hearing**

**235.** *Repeal*

**Appeal**

**236.** *Repeal*

**Disposal of unauthorized assets**

**237.** *Repeal - moved to s. 202.1*

**Call of unauthorized loans**

**238.** *Repeal - moved to s. 197.0.1*

*Order, if assets shown at more than fair value*

**239.** (1) *If it appears to the Corporation from an examination of the condition and affairs of a credit union that assets are shown in the books and records of the credit union at an amount greater than the fair value, the Corporation may, by order, require the credit union to set aside such additional provisions as it considers necessary.*

*Procedural rules*

(2) *Section 240.1 applies with respect to an order under this section.*

*Appeal to Tribunal*

(3) *The credit union that is subject to an order under this section may appeal the order to the Tribunal in accordance with section 240.4.*

**Suspension of business**

**240.** (1) The Superintendent may order a credit union to discontinue doing business for such time as he or she determines if, after an inspection, the Superintendent is satisfied that the continuance in business of the credit union is not in the interest of members, depositors or shareholders. 1994, c. 11, s. 240 (1); 1997, c. 28, s. 53.

*Procedural rules*

(2) *Section 240.1 applies with respect to an order under this section.*

*Reasons*

(3) *The Superintendent shall set out the reasons for his or her decision in the order.*

*Appeal to Tribunal*

(4) *The credit union that is subject to an order under this section may appeal the order to the Tribunal in accordance with section 240.4.*

## ***GENERAL PROVISIONS RELATING TO ORDERS***

*Procedural rules for certain orders*

**240.1** (1) *This section applies with respect to an order by the Superintendent or the Corporation under this Act if the section under which the order is made provides for this section to apply.*

*Notice before order made*

(2) *Before making an order, the Superintendent or Corporation shall give notice of their intention to do so to the person who would be subject to the order and, if the Superintendent or Corporation would be relying on information not provided by the person, the Superintendent or Corporation shall inform the person of that information and give the person an opportunity to explain or refute it.*

*Written submissions*

(3) *The Superintendent or Corporation is not required to hold a hearing but shall, before making an order, allow the person who would be subject to the order, and any other person who would be affected by the order, to make written submissions.*

*Notice not required other than to person subject to order*

(4) *The Superintendent or Corporation is not required to give notice to persons who would be affected by an order other than the person who would be subject to the order as required under subsection (2).*

*Rules for practice and procedure*

(5) *The Superintendent may make rules for the practice and procedure to be observed in relation to orders made by the Superintendent and the Corporation may make rules for the practice and procedure to be observed in relation to orders made by the Corporation.*

*Power to conduct inquiry, consider other information*

(6) *Before making an order, the Superintendent or Corporation may conduct any inquiry or inspection the Superintendent or Corporation considers necessary.*

*Order made without opportunity to make submissions*

(7) *The Superintendent or Corporation may make an order to which a person is subject without giving notice or allowing the person or any other person to make submissions if the Superintendent or Corporation is of the opinion that the interests of the members, depositors or shareholders of any credit union may be prejudiced or adversely affected by a delay in making the order.*

*Special procedures if no opportunity to make submissions*



(8) *The following apply with respect to an order under subsection (7):*

1. *The person who is subject to the order or any other person affected by the order may request an opportunity to make written submissions by giving written notice to the person who made the order, within fifteen days after the person who is subject to the order received it.*
2. *If the person who is subject to the order or any other person affected by the order requests an opportunity to make written submissions, the person who made the order may defer compliance with the order until the submissions have been considered or any appeal is concluded and the order is confirmed, varied or revoked.*
3. *After considering the submissions, the person who made the order may confirm, vary or revoke the order.*

***Variation of orders***

*(9) Subject to subsections (2) and (3), the Superintendent or Corporation may reconsider and vary or revoke an order if the Superintendent or Corporation considers it advisable to do so.*

***Copies of orders to be given***

**240.2** *(1) The Superintendent or Corporation shall give a copy of an order they make under this Act to the person who is subject to the order and, if the person who is subject to the order is a credit union, to each director of the credit union.*

***Copies to Superintendent, Corporation***

*(2) The Superintendent shall give the Corporation a copy of every order the Superintendent makes under this Act and the Corporation shall give the Superintendent a copy of every order the Corporation makes under this Act.*

***When orders take effect***

**240.3** *An order by the Superintendent or Corporation under this Act comes into effect when it is made or at such later time as the order provides.*

***Appeals of orders to Tribunal***

**240.4** *(1) This section applies with respect to an appeal to the Tribunal of an order by the Superintendent or the Corporation under this Act if the section under which the order is made provides for such an appeal in accordance with this section.*

***How appeal is made***

*(2) The appeal shall be made by filing a written notice of appeal with the Tribunal and serving a copy of the notice on the person who made the order.*

***Time for filing and serving notice***

*(3) The notice of appeal must be filed and served, as required under subsection (2), within 15 days after the order was received by the person appealing the order.*

***No stay of decision unless granted***

*(4) An appeal from an order does not stay the order but the Tribunal may grant a stay until it disposes of the appeal.*

***Exception***

*(5) Despite subsection (4), an appeal of an order under section 301, 310, 331.2 or 331.3 stays the order.*

***Hearing***

*(6) The Tribunal shall hold a hearing of the appeal.*

***Parties***

*(7) The parties to the appeal are the person who makes the appeal, the person who made the order being appealed and such other persons as the Tribunal specifies.*

***Power of the Tribunal***

*(8) Upon hearing the appeal, the Tribunal may, by order, confirm, vary or revoke the order being appealed or substitute its order for the order being appealed.*

***Orders not stayed by judicial review***

*240.5 (1) An application for judicial review of an order of the Superintendent or Corporation under this Act and any appeal from an order of the court on the application does not stay the order of the Superintendent or Corporation.*

*Court may grant stay*

*(2) Despite subsection (1), a judge of the court to which the application is made or a subsequent appeal is taken may grant a stay until the disposition of the judicial review or appeal.*

### **PART XIII LEAGUES**

*Incorporating leagues*

*241. (1) Ten or more credit unions may incorporate a league.*

**Objects**

- (2) The objects of a league are to,
- (a) provide services primarily to members;
  - (b) provide and manage a liquidity system for credit unions; ~~and~~
  - (c) manage those investments that are held by the league for its members; ~~and~~
  - (d) carry out such other objects as may be prescribed.

*Businesses, services*

*(3) Leagues may engage in or carry on a business or business activity that a credit union may engage in or carry on under section 173 and may engage in or carry on such other businesses or business activities, or provide such services, as may be prescribed.*

**Same**

(4) A league may provide services and a liquidity system to any credit union whether it is a member of the league or not.

**General business**

(5) Leagues may carry on business, consistent with their objects, through prescribed subsidiaries.

**Subsidiaries**

(6) A league's subsidiaries may, if permitted by the league's by-laws, provide services to the general public. 1994, c. 11, s. 241.

*Stabilization fund*

*(7) Without limiting anything else a league may do, a league may establish and maintain a stabilization fund for the benefit of the credit unions that are members of the league.*

**Passing of by-laws**

**242. Repeal**

**Application of Act**

**243.** (1) This Act, with necessary modification, applies to leagues and their incorporation if consistent with this Part.

**Exclusion**

(2) The Lieutenant Governor in Council may, by regulation, exempt leagues from any provision of this Act. 1994, c. 11, s. 243.

**Application of Federal Act**

**244.** A league may accept and exercise its rights, powers, privileges and immunities under the *Cooperative Credit Associations Act* (Canada) only to the extent that they are not prohibited or restricted by this Act or the regulations. 1994, c. 11, s. 244.

*Corporations Act not to apply*

*244.1 The Corporations Act does not apply to leagues.*

*Members*

245. *The following may be members of a league:*

1. *Credit unions.*
2. *Prescribed entities.*

**Admission to membership**

246. *Repeal.*

**Member withdrawal**

247. *Repeal*

**Directors**

248. *Repeal*

**PART XIV  
DEPOSIT INSURANCE CORPORATION OF ONTARIO**

**Corporation continued**

249. (1) The corporation known in English as the Ontario Share and Deposit Insurance Corporation and in French as Société ontarienne d'assurance des actions et dépôts is continued as a corporation without share capital under the name, in English, of the Deposit Insurance Corporation of Ontario and, in French, Société ontarienne d'assurance-dépôts.

**Application**

(2) The *Corporations Act* does not apply to the Corporation.

**Corporation members**

(3) *Repeal*

**Board of directors**

250. (1) The board of directors of the Corporation consisting of not more than ~~eleven~~ *nine* persons shall be appointed by the Lieutenant Governor in Council.

**Qualification**

(2) *A person is qualified to be a member of the board of directors if the person possesses, by virtue of education, training or experience, the expertise to perform the duties of a member of the board.*

**Disqualification**

(2.1) *A person is disqualified to be a member of the board of directors if the person is a director, officer or employee of a credit union.*

**Chair**

(3) The Lieutenant Governor in Council shall appoint a person to be the chair.

**Same**

(4) The board of directors may appoint a director as vice-chair. 1994, c. 11, s. 250.

**Term of office**

251. (1) The members of the board of directors shall hold office for such term as the Lieutenant Governor in Council considers appropriate.

**Removing director**

(2) The Lieutenant Governor in Council may remove any person from the board at any time. 1994, c. 11, s. 251.

**Duties of board**

252. (1) The board of directors of the Corporation shall manage or supervise the management of the affairs of the Corporation and shall perform ~~additional duties as may be imposed under this Act, the regulations or the by-laws~~ *such additional duties as may be imposed under this Act, prescribed by the regulations or imposed by the by-laws.*

**Chair to preside**

(2) The chair shall preside at all meetings of the Corporation but, if at any meeting the chair is absent, the vice-chair shall preside, and if neither the chair or vice-chair is present, one of the directors present at the meeting who is chosen so to act by the directors present shall preside and has and shall exercise the powers of the chair.

**Secretary and treasurer**

(3) The board of directors may appoint a secretary and a treasurer.

**Quorum**

(4) A majority of the members of the board of directors constitutes a quorum.

**Travelling expenses**

(5) A member of the board of directors shall be paid by the Corporation out of its income all reasonable travelling and living expenses incurred by the member while absent from his or her ordinary place of residence in the course of his or her duties as a director.

**Remuneration**

(6) A member of the board of directors may be paid by the Corporation out of its income as remuneration for his or her services and duties such daily or other amount as may be fixed by the board and reported ~~to its members~~ in its annual report.

**Same**

(7) The board shall report its total expenses and total remuneration for the year in the annual report. 1994, c. 11, s. 252.

**No liability for acts in good faith**

**253.** (1) No action or other proceeding for damages shall be instituted against the Corporation, or anyone acting under the authority of the Corporation, for any act done in good faith in the execution or intended execution of a duty of the Corporation or for any neglect or default in the execution, in good faith, of that duty.

**Obligation remains**

(2) Subsection (1) does not apply to relieve the Corporation from the obligation to make payment in respect of a deposit insured under this Act. 1994, c. 11, s. 253.

**Keeping books**

**254.** The Corporation shall,

- (a) keep books of account in a form and manner that facilitates the preparation of its financial statements and other financial reports in accordance with generally accepted accounting principles; and
- (b) prepare its annual financial statements in accordance with generally accepted accounting principles and ~~the regulations~~ any prescribed requirements. 1994, c. 11, s. 254.

**Audits**

**255.** (1) *The board of directors of the Corporation shall appoint one or more auditors licensed under the Public Accounting Act, 2004 to audit the financial statements of the Corporation for each fiscal year.*

**Minister-directed audit**

(2) *The Minister may, at any time, appoint one or more auditors licensed under the Public Accounting Act, 2004 to audit any aspect of the affairs of the Corporation or request the Auditor General to make such an audit.*

**Co-operation with Minister-directed audit**

(3) *The directors, officers and employees of the Corporation shall co-operate with and assist the persons performing an audit under subsection (2).*

**Annual report**

**256.** (1) *The Corporation shall, within four months after the end of each fiscal year, send to every credit union and the Minister an annual report on its activities in that year.*

**What included**

(2) *The annual report shall include the financial statements of the Corporation, the auditor's report on those statements and such other matters as may be prescribed.*

**Annual examination of Superintendent**

*257. Repeal*

**Furnish information**

*258. Repeal*

**Tabling of annual reports**

*259. The Minister shall lay the annual report of the Corporation before the Legislative Assembly if it is in session or, if not, at the next session.*

**Information to Minister**

*260. (1) The Corporation shall provide the Minister with such information relating to its activities, operations and financial affairs as the Minister may request.*

**Same**

*(2) At least once each year the Corporation shall advise the Minister about the credit union sector and the adequacy of the Deposit Insurance Reserve Fund and about any matters that concern or can reasonably be expected to concern the Minister in the exercise of his or her responsibilities.*

**Objects**

*261. The objects of the Corporation are to,*

- (a) provide insurance against the loss of part or all of deposits with credit unions;*
- (b) promote and otherwise contribute to the stability of the credit union sector in Ontario with due regard to the need to allow credit unions to compete effectively while taking reasonable risks;*
- (c) pursue the objects set out in clauses (a) and (b) for the benefit of persons having deposits with credit unions and in such manner as will minimize the exposure of the Corporation to loss;*
- (d) collect, accumulate and publish such statistics and other information related to credit unions as may be appropriate;*
- (e) perform the duties provided under this Act or the regulations or do anything the Corporation is required or authorized to do under this Act or the regulations; and*
- (f) carry out such other objects as the Minister may specify in writing or as may be prescribed.*

**Ancillary powers**

*262. (1) The Corporation may do all things necessary or incidental to its objects and in particular, but without limiting the generality of the foregoing, the Corporation may, in furtherance of its objects,*

- (a) Repeal (moved to s. 276(2))*
- (b) provide, in its discretion, financial assistance for the purpose of,*
  - (i) assisting a credit union under administration in its continued operation, or*
  - (ii) assisting in the orderly winding up of the operations of a credit union;*
- (c) make an advance or grant for the purpose of paying lawful claims against a credit union in respect of any claims of its members for withdrawal of deposits;*
- (d) Repeal*
- (e) Repeal*
- (f) Repeal*
- (g) acquire assets or assume the liabilities of credit unions;*
- (h) Repeal*
- (i) with the approval of the Minister, require the payment of special levies by credit unions ~~for the purpose of establishing and maintaining the assets of the Corporation;~~*
- (j) accept powers conferred on it under the Canada Deposit Insurance Corporation Act;*

- (k) *Repeal*
  - (l) with the approval of the Minister, borrow money,
    - (i) on the credit of the Corporation,
    - (ii) on bills of exchange or promissory notes drawn, made, accepted or endorsed by or on behalf of the Corporation, or
    - (iii) by the issue of debentures;
  - (m) acquire, hold, improve and alienate real and personal property;
  - (n) *declare and pay premium rebates to credit unions;*
  - (o) *act as the supervisor, administrator or liquidator of a credit union;*
  - (p) appoint an agent;
  - (q) insure any liability of the ~~Deposit Insurance Reserve Fund Corporation~~ with one or more insurers;
  - (r) advise the Superintendent of any adverse implications of proposed new charters;
  - (r.1) *collect or disclose information concerning a credit union; and*
    - (s) do all such other things, not contrary to this Act, as may be necessary for the exercising of any of the powers of the Corporation;
    - (t) *Repeal*
    - (u) *Repeal*

**Same**

(2) *The Corporation may attach conditions to financial assistance provided under clause (1) (b) and, without limiting the form in which such financial assistance may be provided, the Corporation may provide such financial assistance by,*

- (a) *purchasing securities of a credit union;*
- (b) *making or guaranteeing loans, with or without security, or advances to or deposits with a credit union;*
- (c) *taking security for loans or advances to a credit union; or*
- (d) *guaranteeing the payment of the fees of, and the costs incurred by, a liquidator of a credit union.*

**Subrogation**

(3) If the Corporation makes an advance under clause (1) (c), it is subrogated as an unsecured creditor for the amount of the advance.

**Membership**

(4) If the Corporation holds membership shares of a credit union, the Corporation is a member of the credit union and has the rights and benefits of a member.

**Payment under guarantee**

- (5) *Repeal*

**Pledging assets**

(6) For the purposes of clause (1) (l), the Corporation may pledge as security all or any part of its assets. 1994, c. 11, s. 262 (2-6).

**Delegation of powers and duties**

(7) *The Corporation may, subject to the conditions that the Corporation considers appropriate, delegate in writing to any officer or employee of the Corporation the exercise of any power or the performance of any duty that this Act confers on or assigns to the Corporation and all acts done and decisions made under the delegation are as valid and effective as if done or made by the Corporation.*

**Subsidiaries**

263. The Corporation may, with the approval of the Minister, establish and acquire subsidiaries. 1994, c. 11, s. 263.

## POWERS AND DUTIES OF CORPORATION

### By-laws

- 264.** Subject to the approval of the Lieutenant Governor in Council, the Corporation may make by-laws,
- (a) for the administration, management and control of the property and affairs of the Corporation;
  - (b) setting out the functions, duties and remuneration of all officers, agents and employees of the Corporation;
  - (c) for the appointment or disposition of any special committees from time to time created by the Corporation;
  - (d) governing the appointment of an auditor;
  - (e) adopting the seal of the Corporation;
  - (f) governing the time and place for the holding of meetings of the board of directors and the procedure in all things at such meetings;
  - (g) prescribing standards of sound business and financial practices for credit unions;
  - (h) *Repeal*
  - (i) defining the expression “deposit” for the purpose of deposit insurance;
  - (j) authorizing, controlling and requiring the use by credit unions of marks, signs, advertisements or other devices indicating that deposits with credit unions are insured by the Corporation;
  - (k) governing the conduct, in all particulars, of the affairs of the Corporation; *and*
  - (l) governing the declaration and payment of premium rebates; *and*

(m) *Repeal*

### Powers of investigation

**265.** *Repeal*

### Prohibition as to holding out insured

**266.** *Repeal*

### Advertising

**267.** *Repeal*

### Fiscal year

**268.** The fiscal year end of the Corporation is the 31st day of December in each year. 1994, c. 11, s. 268.

### Investment of funds

**269.** The Corporation may, in its discretion, invest any funds not required in carrying out its objectives in such investments as are prescribed and subject to such restrictions as are prescribed. 1994, c. 11, s. 269.

## DEPOSIT INSURANCE

### *Insurance of deposits with credit unions*

**270.** (1) *Subject to subsection (2), the deposits with every credit union are insured by the Corporation in accordance with this Act and the by-laws of the Corporation except if the deposit insurance of a credit union is cancelled under section 274.*

### *Exceptions*

(2) *The following are not insured:*

1. *A deposit that is not payable in Canada or not in Canadian currency.*
2. *The amount of any one deposit that exceeds a prescribed amount.*

**Conditions on deposit insurance**

(3) *The deposit insurance of a credit union is subject to the prescribed conditions and any other conditions imposed by the Corporation under subsection (4).*

**Conditions imposed by notice**

(4) *The Corporation may impose conditions on the deposit insurance of a credit union, or amend such conditions, at any time by written notice to the credit union.*

**Certificate**

(5) *The Corporation shall issue a certificate of deposit insurance to every credit union whose deposits the Corporation insures.*

**Insurance continues after member withdraws, etc.**

(6) *For greater certainty, the obligation to insure a deposit of a member of a credit union continues after the member withdraws or is expelled.*

**Shares not insurable**

(7) *The shares of a credit union are not insurable by the Corporation.*

**Payment for insured deposits**

**270.1** (1) *The Corporation has an obligation to make payment in respect of any deposit insured by the Corporation if,*

- (a) *the members of the credit union that holds the deposit pass a resolution for the voluntary liquidation and dissolution of the credit union;*
- (b) *the credit union becomes a bankrupt under the Bankruptcy and Insolvency Act (Canada) or a liquidator is appointed for the credit union under this Act or the Winding-Up and Restructuring Act (Canada)*
- (c) *the Corporation is satisfied that the credit union will be unable to make payment in full, without delay, in respect of any deposits insured by deposit insurance;*
- (d) *the deposit insurance of the credit union that holds the deposit is cancelled; or*
- (e) *the Corporation, as administrator, requires the credit union to be wound up under subparagraph iii of paragraph 6 of subsection 295 (1).*

**Payment to person apparently entitled**

(2) *The Corporation, if it is obliged to make payment in respect of any deposit insured by deposit insurance, shall make payment to the person who appears entitled to the payment by the records of the credit union.*

**Amount of payment**

- (3) *The Corporation may pay,*
  - (a) *the amount of the deposit according to the terms of the deposit, or*
  - (b) *before maturity of the deposit, an amount equal to the principal of the deposit and the accrued and unpaid interest on the deposit on the day it is paid.*

**Withholding to cover lien**

(4) *If the credit union has a lien on a deposit under section 44, the Corporation may withhold payment of an amount equal to the amount of the lien and pay that amount to the liquidator of the credit union.*

**Withholding of amount held as security**

(5) *If the credit union held a deposit as security for a loan, the Corporation may withhold payment of an amount necessary to repay the loan and pay that amount to the liquidator of the credit union.*

**Discharge of liability**

(6) *Payment, under this section, by the Corporation in respect of any deposit insured by deposit insurance discharges the Corporation from all liability in respect of that deposit, and in no case is the Corporation under any obligation to see to the proper application of the payment made.*

**Subrogation**



*(7) If the Corporation makes a payment under this section in respect of any deposit with a credit union, the Corporation is subrogated to the extent of the payment made to all the rights and interest of the depositor as against that credit union.*

**Assignment**

*(8) If the Corporation considers it advisable, it may withhold payment in respect of any deposit with a credit union until the Corporation has received a written assignment of all the rights and interests of the depositor against that credit union.*

**Agreement to administer payments**

*(9) The Corporation may enter into a deposit administration agreement with a financial institution under which that financial institution agrees to make the payments under this section on behalf of the Corporation.*

**Insurance of deposits with amalgamating credit unions**

**271.** (1) This section applies to the deposits of a person who has deposits with two or more credit unions that amalgamate and continue in operation as one credit union.

**Remain separate**

(2) A deposit with an amalgamating credit union on the day on which the amalgamated credit union is formed, less any withdrawals from the deposit, is, for the purpose of deposit insurance with the Corporation, separate from a deposit of the same person on that day with another amalgamating credit union that became part of the amalgamated credit union.

**Deposits with amalgamated credit union**

(3) A deposit made by a person referred to in subsection (2) with an amalgamated credit union after the day on which the amalgamated credit union is formed is insured by the Corporation only to the extent that the aggregate of that person's deposits with the amalgamated credit union, exclusive of the deposit in respect of which the calculation is made, is less than a prescribed amount.

**If undertaking acquired**

(4) For the purpose of deposit insurance with the Corporation, if one credit union acquires the undertaking and assets of another credit union, those credit unions are considered to be amalgamating credit unions. 1994, c. 11, s. 271.

**Preparatory examination**

**272.** (1) The Corporation may examine the ~~books, records and accounts~~ *records and documents* of the credit union if the Corporation believes that a payment *by the Corporation* under this Act in respect of a deposit held by a credit union is imminent and that it is in the best interest of both the depositors with the credit union and the Corporation to make early preparations for the payment.

**Same**

(2) The examination may be made by a person designated by the Corporation.

**Examination powers**

*(3) Section 229 applies, with necessary modifications, with respect to an examination under this section.*

**Application to receivers and liquidators**

*(4) Under clause 229 (4) (b) as it applies under subsection (3), the person conducting the examination may also require a receiver or liquidator to provide information and explanations.*

**Insuring credit unions**

**273 Repeal**

**Cancellation of deposit insurance**

**274.** (1) The deposit insurance of a credit union may be cancelled on not less than thirty days notice to the credit union by the Corporation when,

- (a) the credit union is in breach of the standards of business and financial practices prescribed by the Corporation or any conditions of ~~a policy of deposit insurance issued to it~~ *its deposit insurance*;
- (b) the credit union ceases to accept deposits;

- (c) an order has been made appointing the Corporation or another person as the liquidator of the credit union; ~~or~~
- (d) the credit union fails to pay its deposit insurance premiums; *or*
- (e) *the Corporation determines, on reasonable grounds, that the credit union is unable to meet its obligations as they come due.*

**Effect of cancellation**

(2) If the deposit insurance of a credit union is cancelled by the Corporation, the deposits with the credit union on the day the cancellation takes effect, less any withdrawals from those deposits, continue to be insured for a period of two years or, in the case of a term deposit with a remaining term exceeding two years, to the maturity of that term.

**Notification to depositors**

(3) If the deposit insurance of a credit union has been cancelled, the credit union shall notify its depositors of that fact and shall stop accepting deposits from the date of cancellation.

**Public notice**

(4) The Corporation may, in the manner it considers expedient, give public notice of the cancellation of deposit insurance of a credit union if, in the opinion of the Corporation, the public interest requires that notice be given. 1994, c. 11, s. 274 (1-4).

*Notice to Superintendent, league*

*(5) The Corporation shall give the Superintendent and the league for the credit union written notice of the cancellation of deposit insurance.*

*Prohibition, advertising, holding out as insured*

*274.1 (1) Except as allowed under this section, no person shall, by written or oral representations, advertise or hold out any entity as being insured by the Corporation.*

*Advertisement, etc. by credit union or league*

*(2) A credit union may advertise or hold out that it is insured and a league may advertise or hold out that its members are insured if the advertising or holding out is by marks, signs, advertisements or other devices authorized by the by-laws of the Corporation and used in the manner and on the occasions set out by the by-laws.*

## ~~STABILIZATION FUND AND ANNUAL PREMIUM~~

## *DEPOSIT INSURANCE RESERVE FUND AND PREMIUMS*

**Stabilization fund**

*275. Repeal*

**Deposit Insurance Reserve Fund**

*276. (1) The Corporation shall maintain a fund, called the Deposit Insurance Reserve Fund, ~~and shall credit to it all premiums received by the Corporation.~~ 1994, c. 11, s. 276 (1).*

*Use of the Fund*

*(2) The Deposit Insurance Reserve Fund may be used to pay for the following:*

- 1. Deposit insurance claims.*
- 2. The costs associated with the continuance or orderly winding up of credit unions in financial difficulty.*
- 3. Financial assistance provided under clause 262 (1) (b).*
- 4. The costs of the Corporation.*

*Same*

*(3) The Corporation has the power to manage and invest the money in the Deposit Insurance Reserve Fund and may disburse money from the Fund for anything under subsection (2).*

**Same**

*(4) Repeal (moved to s. 319.1)*

**Limitation**

*(5) Repeal (moved to s. 319.1)*

**Annual premiums**

*276.1 (1) Within 120 days after the start of a credit union's financial year, the Corporation shall do the following:*

- 1. Determine the credit union's annual premium for that financial year in accordance with the regulations.*
- 2. Collect the annual premium determined under paragraph 1.*

**Deposit of premiums**

*(2) The Corporation shall credit the annual premiums to the Deposit Insurance Reserve Fund.*

**Overdue ~~charges~~ premiums**

*277. The Corporation may charge interest at a rate equal to the rate prescribed under subsection 161 (1) of the *Income Tax Act* (Canada) plus 2 per cent on the unpaid amount of any premium instalment that is not paid on or before the due date of that instalment. 1994, c. 11, s. 277.*

**Deferral of premiums**

*278. The Corporation may, upon such conditions as it may direct, ~~remit or~~ defer the collection of, *or cancel*, all or part of an annual premium assessed by the Corporation. 1994, c. 11, s. 278.*

**Annual examination of credit unions**

*279. Repeal*

**Examination of leagues**

*280. Repeal*

**Contents of examiner's report**

*281. Repeal*

## **STABILIZATION AUTHORITIES**

### *SUPERVISION*

**Stabilization authority for credit unions**

*282. Repeal*

**Designation**

*283. Repeal*

**Duration of designation**

*284. Repeal*

**~~Supervision by stabilization authority~~**

*285. (1) Repeal*

***Supervision by Corporation***

*(2) The Corporation may order a credit union subject to the supervision of the Corporation in any of the following circumstances:*

- 1. The credit union asks, in writing, that it be subject to supervision.*
- 2. The credit union is not in compliance with prescribed capital or liquidity requirements.*

3. *The Corporation, on reasonable grounds, believes that the credit union is conducting its affairs in a way that might be expected to harm the interests of members or depositors or that tends to increase the risk of claims by depositors against the Corporation.*
4. *The credit union or an officer or director of it does not file, submit or deliver a report or document required to be filed, submitted or delivered under this Act within the time limited under this Act.*
5. *The credit union has failed to comply with an order of the Superintendent and the Superintendent has requested, in writing, that the credit union be subject to supervision.*
6. *The credit union has failed to comply with an order of the Corporation.*

**Interpretation**

*(3) For the purposes of paragraph 2 of subsection (2), a variation under section 86 does not bring a credit union into compliance with prescribed capital and liquidity requirements.*

**Release**

- (4) The credit union remains subject to supervision until,*
- (a) *the credit union is being wound up or placed under administration; or*
  - (b) *the Corporation rescinds the order that the credit union be subject to supervision.*

**Same**

*(5) The Corporation may rescind an order under clause (4) (b) on the application of the credit union or on the Corporation's own initiative if there are reasonable grounds for believing that the credit union is no longer in need of supervision.*

**Procedural rules**

*(6) Section 240.1 applies with respect to an order under this section.*

**Appeal to Tribunal**

*(7) The credit union that is subject to an order under this section may appeal the order to the Tribunal in accordance with section 240.4.*

**Exception, if order at credit union's request**

*(8) Subsections (6) and (7) do not apply if the order is made after the credit union asks, in writing, that it be subject to supervision as described in paragraph 1 of subsection (2).*

**Appeal**

**286. Repeal**

**Powers of stabilization authority**

**287. Repeal**

**Approval of by-laws**

**288. Repeal**

**Powers when credit union supervised**

- 289. (1) If a credit union is subject to the supervision of the Corporation, the Corporation may,**
- (a) *order the credit union to correct any practices that the ~~authority~~ Corporation feels are contributing to the problem or situation that caused the credit union to be ordered subject to its supervision;*
  - (b) *order the credit union and its directors, committee members, officers and employees to not exercise any powers of the credit union or of its directors, committee members, officers and employees;*
  - (c) *establish guidelines for the operation of the credit union;*
  - (d) *order the credit union not to declare or pay a dividend or to restrict the amount of a dividend to be paid to a rate or amount set by the ~~authority~~ Corporation;*
  - (e) *Repeal*
  - (f) *attend meetings of the credit union's board and its ~~credit and~~ audit committee; and*
  - (g) *propose by-laws for the credit union and amendments to its articles of incorporation.*

**Exception**

(2) *Repeal**Approval of by-laws, etc.*

(3) *No by-law, policy or resolution relating to the business, affairs or management of a credit union passed or made by the board during the time the credit union is subject to supervision is of any effect until approved in writing by the Corporation.*

**Same**(4) *Repeal**Enforcement*

(5) *If a credit union fails to comply with an order of the Corporation under this section, the Corporation may apply to the court for,*

(a) *an order directing compliance with the Corporation's order; or*

(b) *such other order as the court considers appropriate.*

*Expenses of Corporation*

**290.** *The Corporation may require a credit union to pay the expenses of and disbursements by the Corporation in supervising the credit union.*

**No liability for acts in good faith****291.** *Repeal***Revoking designation****292.** *Repeal***When designation revoked****293.** *Repeal*

## ADMINISTRATION

**Administration by Corporation**

**294.** (1) The Corporation may order a credit union subject to administration by the Corporation in any of the following circumstances:

1. *The Corporation, on reasonable grounds, believes that the credit union is conducting its affairs in a way that might be expected to harm the interests of members, depositors or shareholders or that tends to increase the risk of claims by depositors against the Corporation, but that supervision would, in the circumstances, not be appropriate.*
2. *The credit union has failed to comply with an order of the Corporation made while the credit union was subject to the supervision of the Corporation.*
3. *The Corporation is of the opinion that the assets of the credit union are not sufficient to give adequate protection to its depositors.*
4. *The credit union has failed to pay any liability that is due or, in the opinion of the Corporation, will not be able to pay its liabilities as they become due.*
5. *After a general meeting and any adjournment of no more than two weeks, the members of the credit union have failed to elect the minimum number of directors required under subsection 93 (2).*
- 5.1 *If a vacancy occurs in the board of the credit union resulting in there not being a quorum of directors in office and a general meeting is not called promptly as required under subsection 97 (2).*
6. *The Superintendent has made an order under section 240.*

*Procedural rules*

(2) *Section 240.1 applies with respect to an order under this section.*

*Appeal to court*

(3) *The credit union that is subject to an order under this section may appeal the order to the court, within seven days after receiving the order, upon a question of law only.*

**Notice of appeal**(4) *Repeal***Evidence**(5) *Repeal***Hearing**(6) *Repeal***Corporation represented**(7) *Repeal***Decision**(8) *Repeal***Result**(9) *Repeal***Revocation of order**(10) *Repeal***Administrator's powers****295.** (1) As an administrator, the Corporation may exercise the following powers:

1. Carry on, manage and conduct the operations of a credit union.
2. Preserve, maintain, realize, dispose of and add to the property of a credit union.
3. Receive the income and revenues of the credit union.
4. *Exercise the powers of the credit union and of the directors, officers and committees.*
5. Exclude the directors of the credit union and its officers, committee members, employees and agents from the property and business of the credit union.
6. Require the credit union to,
  - i. *amalgamate, by requiring the credit union to enter into an amalgamation agreement under section 310,*
  - ii. dispose of its assets and liabilities, or
  - iii. be wound up.

**Same**

(2) In exercising its powers under paragraph 6 of subsection (1), the administrator does not require the consent of the members or shareholders of a credit union.

**Same**

(3) If the administrator causes a credit union to be wound up, the wind-up shall proceed as a voluntary wind-up under section 298.

**Release from administration**

(4) The Corporation may release a credit union from administration on such conditions as the Corporation may impose. 1994, c. 11, s. 295.

***Expenses of Corporation*****295.1.** *The Corporation may require a credit union to pay the expenses of and disbursements by the Corporation in administering the credit union.***PART XV*****DISSOLUTION, AMALGAMATION, OTHER FUNDAMENTAL CHANGES*****Definition****296.** In this Part,

“contributory” means a person who is liable to contribute to the property of a credit union in the event of the credit union being wound up under this Act. 1994, c. 11, s. 296.

## ***DISSOLUTION***

### **Dissolution where no assets**

**297.** (1) A credit union that has no assets and no liabilities may, if authorized by a special resolution of the members, apply to the Superintendent for an order dissolving the credit union. 1994, c. 11, s. 297 (1); 1997, c. 28, s. 53.

#### **Same**

(2) The Superintendent, if he or she receives an application under subsection (1) and is satisfied that a dissolution of the credit union is appropriate, may issue an order dissolving the credit union. 1994, c. 11, s. 297 (2); 1997, c. 28, s. 53.

#### **Same**

(3) A credit union in respect of which an order is issued under subsection (2) ceases to exist on the day stated in the order. 1994, c. 11, s. 297 (3).

### ***Voluntary winding up***

**298.** (1) *The members of a credit union may, by special resolution passed at a general meeting called for that purpose, require the credit union to be wound up voluntarily.*

#### ***If more than one class of shares***

*(2) If the credit union has more than one class of issued shares, the special resolution referred to in subsection (1) shall be in the form of a special resolution passed by the holders of each class of shares.*

#### ***Appointment of liquidator***

*(3) At the meeting passing the special resolution, the members shall appoint a person as liquidator of the estate and effects of the credit union for the purpose of winding up its affairs and distributing its property.*

#### ***Who can be liquidator***

*(4) Only the following may be appointed as a liquidator under this section:*

- 1. The Corporation.*
- 2. A licensed trustee in bankruptcy.*

#### ***Remuneration and expenses of liquidator***

*(5) The remuneration of the liquidator and the costs, charges and expenses of the winding up shall be determined in accordance with the following:*

- 1. If the liquidator is the Corporation, the remuneration and costs, charges and expenses shall be as set by the Corporation as of the day the resolution is passed.*
- 2. If the liquidator is a licensed trustee in bankruptcy, the remuneration and costs, charges and expenses shall be as set out in the appointment of the liquidator.*

#### ***Publication of notice of winding-up***

*(6) The liquidator shall,*

- (a) file a copy of the resolution under subsection (1) and the appointment under subsection (3) with the Superintendent within ten days after the resolution has been passed;*
- (b) publish a notice of the resolution and the appointment in The Ontario Gazette within twenty days after the resolution has been passed; and*
- (c) publish a notice of the resolution and the appointment in a newspaper having a general circulation in the locality where the head office of the credit union is located.*

#### ***Vacancy in office of liquidator***

*(7) The following apply if a vacancy occurs, by death, resignation or otherwise, in the office of a liquidator appointed under this section:*

- 1. The members of the credit union, by a majority of the votes cast at a general meeting called for that purpose, may appoint a person to fill the vacancy.*
- 2. If the members fail to appoint a person under paragraph 1, the Superintendent shall appoint a person to fill the vacancy.*

**Same**

*(8) Repeal*

**Removal of liquidator**

*(9) Unless the liquidator is the Corporation, the members of the credit union may, by a majority of the votes cast at a general meeting called for that purpose, remove a liquidator appointed under this section and appoint a replacement.*

**Start of winding-up**

*(10) Repeal*

**Credit union to cease business**

*(11) From the time the resolution under subsection (1) is passed, the credit union shall cease to carry on its business, except in so far as is, in the opinion of the liquidator, required for the beneficial winding-up of the credit union, but the corporate state and all the corporate powers of the credit union, despite anything to the contrary in the charter of the credit union, continue until the affairs of the credit union are wound up.*

**Corporate powers continue**

*(12) Repeal*

**No proceeding against credit union without leave**

*(13) After the resolution under subsection (1) is passed, no suit, action or other proceeding shall be proceeded with or commenced against the credit union, except with the leave of the court and subject to such terms as the court imposes.*

**Attachments, etc. void**

*(13.1) Every attachment, sequestration, distress or execution put in force against the estate or effects of the credit union after the passing of the resolution under subsection (1) is void.*

**Liquidator to take custody**

*(14) Upon appointment, the liquidator shall take custody and control of all property, rights and privileges of the credit union or to which the credit union appears to be entitled and shall take all necessary steps to wind up the credit union. 1994, c. 11, s. 298 (9-14).*

**Statement of assets and liabilities**

*(15) Within sixty days after being appointed, the liquidator shall prepare a statement of the assets and liabilities of the credit union as of the start of the winding up and file the statement with the Superintendent.*

**List of contributories and calls**

- (16) Upon a voluntary winding-up, the liquidator,*
  - (a) shall settle the list of contributories; and*
  - (b) may, before having ascertained the sufficiency of the property of the credit union, call on any of the contributories for the time being settled on the list of contributories, to the extent of their liability, to pay any sum that the liquidator considers necessary to satisfy the liabilities of the credit union, and the costs, charges and expenses of winding up and for the adjustment of the rights of the contributories among themselves.*

**Same**

*(17) The list of contributories settled by the liquidator under clause (16) (a) is admissible in evidence as proof, in the absence of evidence to the contrary, of the liability of the persons named in the list as contributories.*

**Meetings of credit union during winding-up**



(18) The liquidator may, during the continuance of the voluntary winding-up, call general meetings of the members of the credit union for the purpose of obtaining their approval by resolution or for any other purpose as the liquidator thinks fit.

#### Arrangements with creditors

(19) The liquidator, ~~with the approval of a resolution of the members of the credit union passed in general meeting,~~ may make such compromise or other arrangement as the liquidator thinks expedient with any creditor or person claiming to be a creditor or having or alleging that the person has a claim, present or future, certain or contingent, liquidated or unliquidated, against the credit union or whereby the credit union may be rendered liable.

#### Power to compromise with debtors and contributors

(20) The liquidator may, ~~with the approval of a resolution of the members of the credit union passed in general meeting,~~ compromise all debts and liabilities capable of resulting in debts and all claims, whether present or future, certain or contingent, liquidated or unliquidated, subsisting or supposed to subsist between the credit union and any contributory, alleged contributory or other debtor or person who may be liable to the credit union and all questions in any way relating to or affecting the property of the credit union, or the winding up of the credit union upon the receipt of the sums payable at such times and generally upon such conditions as are agreed, and the liquidator may take any security for the discharge of the debts or liabilities and give a complete discharge in respect of them. 1994, c. 11, s. 298 (16-20).

#### Account to be made by liquidator

(21) The liquidator shall make up an account, ~~in a form approved by the Superintendent~~ showing the manner in which the winding-up has been conducted and the property disposed of. 1994, c. 11, s. 298 (21); 1997, c. 19, s. 5 (4); 1999, c. 12, Sched. I, s. 2 (7).

#### Same

(22) After the account is made up, the liquidator shall call a general meeting of the members and shareholders of the credit union for the purpose of having the account laid before them and hearing any explanation that may be given by the liquidator.

#### Calling meeting

(23) The liquidator shall call the meeting in the manner set out in the credit union's articles or by-laws. 1994, c. 11, s. 298 (22, 23).

#### Extension of time

(24) The Superintendent may, ~~by order in writing,~~ extend the time for filing any documents required to be filed under this section if the Superintendent is satisfied that an extension is appropriate. 1994, c. 11, s. 298 (24); 1997, c. 28, s. 53.

#### Notice and dissolution

*299. (1) Following the meeting called under subsection 298 (22), the liquidator shall,*

- (a) within ten days after the meeting, file a notice with the Superintendent stating that the meeting was held and its date; and*
- (b) forthwith after filing the notice under clause (a), publish a notice in The Ontario Gazette setting out the date that the meeting was held and the date, proposed by the liquidator, for the dissolution of the credit union.*

#### Restriction on dissolution date

*(2) The date proposed by the liquidator for the dissolution of the credit union must be at least three months after the date that the meeting called under subsection 298 (22) was held.*

#### Deferral of date by court

*(3) At any time before the credit union is dissolved, the court may, on the application of the liquidator or any other interested person, make an order deferring the date on which the dissolution of the credit union is to take effect to a date fixed in the order.*

#### Dissolution

*(3.1) The credit union is dissolved on the date proposed by the liquidator unless the court makes an order under subsection (3), in which case the credit union is dissolved on the date fixed in the order.*

#### Dissolution order

(4) Despite anything in this Act, the court, at any time after the affairs of the credit union have been fully wound up may, on the application of the liquidator or any other interested person, make an order dissolving it, and it is dissolved on the date fixed in the order. 1994, c. 11, s. 299 (2-4).

**Winding up by court order**

**300.** (1) A credit union may be wound up by order of the court if,

- (a) *the members, by a special resolution passed at a general meeting called for that purpose, authorize an application to be made to the court to wind up the credit union;*
- (b) proceedings have been started to wind up the credit union voluntarily and it appears to the court that it is in the interest of contributories and creditors that the proceedings should be continued under the supervision of the court;
- (c) it is proved to the satisfaction of the court that the credit union, though it may be solvent, cannot by reason of its liabilities continue its business and that it is advisable to wind it up; or
- (d) in the opinion of the court it is just and equitable for some reason other than the bankruptcy or insolvency of the credit union that it should be wound up. 1994, c. 11, s. 300 (1).

*If more than one class of shares*

*(1.1) If the credit union has more than one class of issued shares, the special resolution referred to in clause (1) (a) shall be in the form of a special resolution passed by the holders of each class of shares.*

**Who may apply**

(2) A winding-up order may be made upon the application of,

- (a) the credit union;
- (b) a member of a credit union;
- (b.1) a creditor having a claim of \$5,000 or more;*
- (c) if the credit union is being wound up voluntarily, the liquidator or a contributor;*
- (d) the Superintendent; or*
- (e) the Corporation. 1994, c. 11, s. 300 (2); 1997, c. 28, s. 53.

**Notice to credit union**

(3) Except if the application is made by the credit union, four days notice of the application must be given to the credit union. 1994, c. 11, s. 300 (3).

**Notice to Superintendent**

(4) Except if the application is made by the Superintendent, four days notice of the application must be given to the Superintendent. 1994, c. 11, s. 300 (4); 1997, c. 28, s. 53.

*Notice to Corporation*

*(4.1) Except if the application is made by the Corporation, four days notice of the application must be given to the Corporation.*

**Power of court**

- (5) The court may,
  - (a) make the order applied for;
  - (b) dismiss the application with or without costs;
  - (c) adjourn the hearing conditionally or unconditionally;
  - (d) make an interim or such other order as it considers appropriate; or
  - (e) refer the proceedings for the winding-up to an officer of the court for inquiry and report and authorize the officer to exercise such powers of the court as are necessary for the reference.

**Appointment of liquidator**

(6) The court making the winding-up order may appoint one or more persons as liquidator of the estate and effects of the credit union for the purpose of winding up its affairs and distributing its property.

**Remuneration**

(7) The court may at any time fix the remuneration of the liquidator and the costs, charges and expenses of the winding-up.

#### **Vacancy**

(8) If a liquidator who is appointed by the court dies or resigns or the office becomes vacant for any reason, the court may fill the vacancy.

#### **Removal**

(9) The court may, by order for cause, remove a liquidator appointed by it and appoint another liquidator in the stead of the removed liquidator. 1994, c. 11, s. 300 (5-9).

#### **Notice of appointment**

(10) A liquidator appointed by the court must,

(a) *forthwith after the appointment, give notice to the Superintendent and the Corporation of the court order respecting the winding-up; and*

(b) publish notice of the appointment in *The Ontario Gazette*. 1994, c. 11, s. 300 (10); 1997, c. 28, s. 53.

#### **Start of winding-up**

(11) *Repeal*.

#### **Proceedings in winding-up after order**

(12) If a winding-up order has been made by the court, proceedings for the winding up of the credit union must be taken in the same manner and with the like consequences as are provided for a voluntary winding-up, except that,

(a) the list of contributories shall be settled by the court unless it has been settled by the liquidator before the winding-up order; and

(b) all proceedings in the winding-up are subject to the order and direction of the court.

#### **Review by court**

(13) If the list of contributories has been settled by the liquidator before the winding-up order, it is subject to review by the court.

#### **Meeting of members may be ordered**

(14) If a winding-up order has been made by the court, the court may direct meetings of the members of the credit union to be called, held and conducted in such manner as the court thinks fit for the purpose of ascertaining their wishes, and may appoint a person to act as chair of the meeting and to report the results of it to the court.

#### **Order for delivery of property**

(15) If a winding-up order has been made by the court, the court may require any contributory for the time being settled on the list of contributories, or any director, employee, trustee, receiver, banker, agent or officer of the credit union, to pay, deliver, convey, surrender or transfer forthwith, or within such time as the court directs, to the liquidator any money, ~~books, papers, registers and other records~~ *record, document*, estate or effects that are in any such person's hands and to which the credit union is apparently entitled.

#### **Inspection of documents and records**

(16) If a winding-up order is made by the court, the court may make an order for the inspection of the ~~books, papers, registers and other records~~ *records and documents* of the credit union by its creditors and contributories, and any ~~documents and records~~ *records and documents* in the possession of the credit union may be inspected in conformity with the order.

#### ***No proceeding against credit union without leave***

*(17) After a winding-up order is made, no suit, action or other proceeding shall be proceeded with or commenced against the credit union, except with the leave of the court and subject to such terms as the court imposes.*

#### ***Attachments, etc. void***

*(17.1) Every attachment, sequestration, distress or execution put in force against the estate or effects of a credit union after a winding-up order is made is void.*

**Provision for discharge of liquidator and distribution by the court**

(18) If the realization and distribution of the property of a credit union being wound up under an order of the court has proceeded so far that, in the opinion of the court it is expedient that the liquidator should be discharged and that the property of the credit union remaining in the liquidator's hands can be better realized and distributed by the court, the court may make an order discharging the liquidator and for payment, delivery and transfer into court, or to such officer or person as the court directs, of such property, and it shall be realized and distributed by or under the direction of the court among the persons entitled thereto in the same way as nearly as may be as if the distribution were being made by the liquidator and the court may make an order directing how the ~~documents and records~~ *records and documents* of the credit union and of the liquidator are to be disposed of, and may order that they be deposited in court or otherwise dealt with as the court considers appropriate.

**Order for dissolution**

(19) The court at any time after the affairs of the credit union have been fully wound up may, upon the application of the liquidator or any other interested person, make an order dissolving it, and it is dissolved on the date fixed in the order. 1994, c. 11, s. 300 (12-19).

**Notice to Superintendent**

(20) The person on whose application the order was made shall, within ten days after it was made, file with the Superintendent a certified copy of the order and the Superintendent shall cause notice of the dissolution to be given in *The Ontario Gazette*. 1994, c. 11, s. 300 (20); 1997, c. 28, s. 53.

**Dissolution by Superintendent**

**301.** (1) The Superintendent, ~~after the credit union has been given an opportunity to be heard by the Superintendent,~~ may, by order, dissolve a credit union if he or she is satisfied that,

- (a) its incorporation was obtained by fraud or mistake;
- (b) it exists for an illegal purpose;
- (c) the number of its members is reduced to fewer than twenty;
- (d) it is not carrying on business or is not in operation; or
- (e) it has contravened this Act or the regulations. 1994, c. 11, s. 301 (1); 1997, c. 28, s. 53.

**Procedural rules**

*(1.1) Section 240.1 applies with respect to an order under this section.*

**Appeal to Tribunal**

*(1.2) The credit union that is subject to an order under this section may appeal the order to the Tribunal in accordance with section 240.4.*

**~~Order for dissolution~~ Appointment of liquidator**

(2) If necessary, the Superintendent shall appoint a liquidator to carry out the dissolution. 1994, c. 11, s. 301 (2); 1997, c. 28, s. 53.

**Liquidation**

(3) The liquidator, if one is appointed, shall proceed to wind up the credit union and subsections 298 (11) to (24) and 299 (1) apply thereto, except that no approval of the members of the credit union is required. 1994, c. 11, s. 301 (3).

**Publishing order**

(4) The Superintendent shall publish notice of the dissolution in *The Ontario Gazette*. 1994, c. 11, s. 301 (4); 1997, c. 28, s. 53.

**Modification with respect to leagues**

*(5) For the purposes of the application of clause (1) (c) to a league under section 243, the reference to "twenty" in clause (1) (c) shall be deemed to be a reference to "ten".*

**Liability of members and shareholders to creditors**

**302.** (1) Despite the dissolution of a credit union, each of the members or shareholders among whom its property has been distributed other than the refunds of deposits, remains liable to its creditors to the extent of the amount received by the member or shareholder upon the distribution, and an action in a court of

competent jurisdiction to enforce such liability may be brought against the member or shareholder. 1994, c. 11, s. 302 (1); 2002, c. 24, Sched. B, s. 32.

**Action against one member or shareholder as representing a class**

(2) If there are several members or classes of shareholders, the court may permit an action to be brought against one or more members or one or more shareholders of each class of shareholders as representatives of the class of members or shareholders and, if the plaintiff establishes the plaintiff's claim as creditor, may make an order of reference and add as parties in the referee's office all such members or shareholders of each class of shareholders as are found, and the referee shall determine the amount that each should contribute towards the plaintiff's claim and may direct payment of the sums so determined. 1994, c. 11, s. 302 (2).

**Forfeiture of undisposed property**

**303.** Subject to section 302, any real or personal property of a credit union that has not been disposed of at the date of its dissolution is forfeit to the Crown in right of Ontario. 1994, c. 11, s. 303.

**Responsibilities of liquidator**

**304.** Upon a winding-up of a credit union,

- (a) the liquidator shall apply the property of the credit union in satisfaction of all its debts, obligations and liabilities, and, subject thereto, shall distribute any remaining property rateably among the members or shareholders according to their rights and interests in the credit union;
- (b) in distributing the property of the credit union, debts due to the employees of the credit union for services performed due at the commencement of the winding-up or within one month before, not exceeding three months wages and accumulated sickness benefits or vacation pay accrued for not more than twelve months, shall be paid in priority to the claims of the ordinary creditors, and such persons shall rank as ordinary creditors for any additional amount of their claims for wages;
- (c) all the powers of the board of a credit union being wound up cease upon the appointment of a liquidator except to the extent that the liquidator may permit the continuance of these powers for the purpose of assisting the winding-up proceedings. 1994, c. 11, s. 304.

**Distribution of property**

**305.** Section 53 of the *Trustee Act* applies with necessary modifications to liquidators. 1994, c. 11, s. 305.

**Payment of costs and expenses**

**306.** The costs, charges and expenses of the winding-up including the remuneration of the liquidator are payable out of the property of the credit union in priority to all other claims. 1994, c. 11, s. 306.

**Powers of liquidator**

**307.** (1) A liquidator may,

- (a) bring or defend any action, suit or prosecution, or other legal proceedings, civil or criminal, in the name and on behalf of the credit union;
- (b) carry on the business of the credit union so far as may be necessary for the beneficial winding up of the credit union;
- (c) sell the real and personal property of the credit union by public auction or private sale;
- (d) borrow money on behalf of the credit union as may be necessary for the winding up of the credit union;
- (e) draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the credit union;
- (f) raise upon the security of the property of the credit union such money as may be required;
- (g) take out in the liquidator's official name, letters of administration of the estate of any deceased contributory and in that official name, do any other act that may be necessary for obtaining payment of any money due from a contributory or from his or her estate that cannot conveniently be done in the name of the credit union;

- (h) do and perform all acts and other things and execute under the corporate seal or otherwise all documents in the name and on behalf of the credit union as may be necessary for winding up the affairs of the credit union and distributing its property;
- (i) engage the services of a solicitor to assist in the performance of the liquidator's duty;
- (j) employ an agent to do any business that the liquidator is unable to do directly;
- (k) claim and, where necessary, prove any claim against the estate of a contributory for any debt or liability to the credit union;
- (l) receive dividends in the distribution of an estate of a contributory in respect of any debt or liability mentioned in clause (k);
- (m) compromise all calls, and liabilities to call, debts and liabilities capable of or resulting in debts, and all claims, whether present or future, certain or contingent, liquidated or unliquidated, subsisting or alleged as subsisting between the credit union and any other person;
- (n) do and execute all such other things as are necessary for winding up the affairs of the credit union and distributing its property.

**Bills of exchange deemed drawn in the course of business**

(2) The execution, endorsement or making of all agreements, contracts, bills of exchange or other documents by a liquidator on behalf of a credit union has the same effect with respect to the rights and liabilities of the credit union as if the agreements, contracts or bills of exchange or other documents had been executed, endorsed or made by or on behalf of the credit union in the course of carrying on its business. 1994, c. 11, s. 307 (1, 2).

**Where approval required**

- (3) The liquidator shall not exercise power granted under clause (1) (a), (d), (f), (m) or (n),
  - (a) in the case of a voluntary winding-up or a liquidator appointed by the Superintendent under section 301, unless the liquidator has obtained the approval in writing of the Superintendent; or
  - (b) in the case of a winding-up by order of the court, unless the liquidator has obtained the approval of the court. 1994, c. 11, s. 307 (3); 1997, c. 28, s. 53.

**Exception**

- (4) Clause (3) (a) does not apply where the Corporation is the liquidator.

**Notice of liability of contributory**

(5) The liability of a contributory is a debt accruing due from the contributory at the time when the contributory's liability commenced, but payable at the time when calls are made for enforcing the liability.

**Who liable in case of death**

(6) If a contributory dies before or after he or she is placed on the list of contributories, his or her personal representative, in administering the estate of the contributory, is liable to contribute to the property of the credit union in discharge of the liability of the deceased contributory and shall be a contributory accordingly.

**Examination of persons as to estate**

(7) The court may, at any time after the commencement of the winding-up, summon to appear before the court or liquidator, any director, manager, employee or officer of the credit union, or any other person known or suspected to have possession of any of the estate or effects of the credit union, or alleged to be indebted to the credit union, or any person whom the court thinks capable of giving information concerning the dealings, estate or effects of the credit union.

**Damages against delinquent directors, etc.**

(8) If, in the course of the winding-up of a credit union, it appears that a person who has taken part in the formation or promotion of the credit union or any past or present director, manager, officer, employee, liquidator or receiver of the credit union has misapplied or retained in the person's own hands, or become liable or accountable for money of the credit union, or has committed any misfeasance or breach of trust in relation to the credit union, the court may, on the application of a creditor, member, director, liquidator, or contributory, inquire into the conduct of that person and order the person to restore the money so misapplied or retained, or for which the person has become liable or accountable together with interest at such rate as the court considers just or to contribute such sum to the property of the credit union by way of

compensation in respect of the misapplication, retention, misfeasance or breach of trust as the court considers just. 1994, c. 11, s. 307 (4-8).

#### **Disposal of records**

(9) If a credit union has been wound up under this Act and is about to be dissolved, the ~~books, registers and other records and papers~~ *records and documents* of the credit union and of the liquidator may be disposed of in such manner as,

- (a) the Superintendent may ~~order~~ *specify*, in the case of voluntary winding up or a liquidator appointed by the Superintendent under section 301; or
- (b) the court may order in the case of winding up under court order. 1994, c. 11, s. 307 (9); 1997, c. 28, s. 53.

#### ***Retention of records by custodian***

*(9.1) A person who has been granted custody of the records and documents under subsection (9) shall keep them available for production for six years following the date of the dissolution of the credit union or until the expiration of such other period as may be specified by the Superintendent or ordered by the court under subsection (9).*

#### **Regulations**

(10) The Lieutenant Governor in Council may make regulations respecting the procedure to be followed in a winding-up, and, unless otherwise provided by this Act or by those regulations, the practice and procedure in a winding-up under the *Winding-up and Restructuring Act (Canada)* applies. 1994, c. 11, s. 307 (10).

#### **Notice of winding-up proceedings**

**308.** If proceedings are taken under the *Winding-up and Restructuring Act (Canada)* in respect of a credit union, the secretary of the credit union shall send notice of the proceedings to the Superintendent by registered mail. 1994, c. 11, s. 308; 1997, c. 28, s. 53.

#### ***Security interests remaining after dissolution***

**308.1 (1)** *If a credit union is dissolved without discharging a security interest given to the credit union, the Corporation may discharge that security interest or do anything else, in relation to that security interest, that the credit union could have done had it not been dissolved.*

#### ***Clarification with respect to real property***

*(2) For greater certainty, and without limiting what other security interests subsection (1) applies to, subsection (1) applies to liens, charges and mortgages or any other security interest in real property.*

## **AMALGAMATIONS**

#### **Amalgamation of credit unions**

**309.** (1) Any two or more credit unions may amalgamate and continue as one credit union.

#### **Amalgamation agreement**

(2) The credit unions proposing to amalgamate must enter into an agreement for the amalgamation prescribing the conditions of the amalgamation, the mode of carrying the amalgamation into effect, and, in particular, the agreement must set out the following:

1. The ~~name~~ *corporate name* of the amalgamated credit union.
2. The limitation on membership in the amalgamated credit union.
3. The name in full, callings and places of residence of the first directors of the amalgamated credit union.
4. The time and manner of election of subsequent directors of the amalgamated credit union.
5. The manner of converting the share capital of each of the amalgamating credit unions into that of the amalgamated credit union.

6. If any membership shares of one of the credit unions are not to be converted into membership shares of the amalgamated credit union, the amount of money or securities that the members are to receive in addition or instead of membership shares of the amalgamated credit union.
7. If any shares of one of the credit unions are not to be converted into shares or other securities of the amalgamated credit union, the amount of money or securities that the holders of the shares are to receive in addition or instead of shares or other securities of the amalgamated credit union.
8. The manner of payment of money instead of the issue of fractional shares of the amalgamated credit union or of any other body corporate that are to be issued in the amalgamation.
9. Such other details as are necessary to perfect the amalgamation and to provide for the subsequent management and operation of the amalgamated credit union.
10. The proposed effective date of the amalgamation. 1994, c. 11, s. 309 (1, 2).

**Filing of agreement**

(3) Within one month after the agreement is signed, the parties must file with the Superintendent, in triplicate, true copies of the amalgamation agreement *and pay the fee established by the Minister*. 1994, c. 11, s. 309 (3); 1997, c. 28, s. 53.

*Approvals required*

*(4) The agreement is subject to the approval of the Superintendent and to adoption by special resolutions of the members of each of the amalgamating credit unions, passed at meetings called for the purpose of considering the agreement.*

*If more than one class of shares*

*(4.1) If the credit union has more than one class of issued shares, each special resolution referred to in subsection (4) shall be in the form of a special resolution passed by the holders of each class of shares.*

*Refusal of approval to be by order*

*(4.2) If the Superintendent refuses to approve the agreement, the Superintendent shall do so by order.*

*Procedural rules*

*(4.3) Section 240.1 applies with respect to an order under subsection (4.2).*

*Appeal to Tribunal*

*(4.4) The credit union that is subject to an order under subsection (4.2) may appeal the order to the Tribunal in accordance with section 240.4.*

**Meeting**

(5) The meeting to approve the amalgamation must be held within one month after the approval of the Superintendent is given. 1994, c. 11, s. 309 (5); 1997, c. 28, s. 53.

**Certification**

(6) If the amalgamation is approved, that fact must be certified upon the agreement by the secretary of each of the amalgamating credit unions. 1994, c. 11, s. 309 (6).

**Extension of time**

(7) The Superintendent may extend the time within which the meeting to approve the amalgamation must be held if there are reasonable grounds for doing so. 1994, c. 11, s. 309 (7); 1997, c. 28, s. 53.

*Application for certificate*

*(8) If the agreement is adopted, the amalgamating credit unions may apply jointly for a certificate of amalgamation by submitting an application to the Superintendent together with articles of amalgamation.*

*Certificate of amalgamation*

*(8.1) The Superintendent may, in his or her discretion, issue a certificate of amalgamation which shall set out the effective date of the amalgamation.*

*Grounds for refusing certificate*

*(8.2) Subsection 16 (2) applies, with necessary modifications, with respect to the issue of a certificate of amalgamation.*

*Amalgamation and effects*



*(9) On and after the effective date of the amalgamation,*

- (a) the amalgamating credit unions are amalgamated and are continued as one credit union under the ~~name~~ *corporate name* set out in the certificate;
- (b) the amalgamated credit union possesses all the property, rights, privileges and franchises and is subject to all the liabilities, contracts, disabilities and debts of each of the amalgamating credit unions; and
- (c) the articles of amalgamation shall be deemed to be the articles of incorporation of the amalgamated credit union and the certificate of amalgamation shall be deemed to be the certificate of incorporation of the amalgamated credit union. 1999, c. 12, Sched. I, s. 2 (8).

#### Notice

(10) ~~The Minister~~ *The Superintendent* shall publish notice of the issue of the certificate of amalgamation in *The Ontario Gazette*. 1994, c. 11, s. 309 (10).

#### *Statement of assets and liabilities*

*(11) The amalgamated credit union shall file with the Superintendent, within 60 days after the effective date of the amalgamation, a statement of the assets and liabilities of the amalgamated credit union as of the date of the certificate.*

#### *Amalgamation of credit unions under administration*

**310.** *(1) If a credit union is under the administration of the Corporation, the Corporation may require the credit union to enter into an amalgamation agreement or do anything else under section 309.*

#### *Application of s. 309*

*(2) If the Corporation requires a credit union under the administration of the Corporation to enter into an amalgamation agreement under section 309, the following apply with respect to the application of section 309:*

- 1. *The adoption, under subsection 309 (4), of the amalgamation agreement by the members and shareholders of the credit union under administration is not required.*
- 2. *The Superintendent shall not issue a certificate of amalgamation under subsection 309 (8.1) unless the Corporation demonstrates that the amalgamation would,*
  - i. protect the interests of the depositors or members of the credit unions being amalgamated; and*
  - ii. promote the financial security and integrity of the amalgamated credit union.*

## REORGANIZATION

#### Articles of amendment

**311.** (1) A credit union may from time to time amend its articles of incorporation to,

- (a) limit its business or powers or otherwise vary its business or powers;
- (b) change its ~~name~~ *corporate name*; or
- (c) add, change or remove any provision that,
  - (i) is authorized by this Act to be set out in the articles, or
  - (ii) could be subject to a by-law of the credit union.

#### Authorization

(2) An amendment under subsection (1) must be authorized by special resolution of members and such further authorization as the by-laws provide. 1994, c. 11, s. 311.

#### Class vote

**312.** (1) The holders of shares of a class or of a series are entitled to vote separately as a class or series on a proposal to amend the articles to,

- (a) increase or decrease any maximum number of authorized shares of that class, or increase any maximum number of authorized shares of a class having rights or privileges equal or superior to the shares of that class;
- (b) effect an exchange, reclassification or cancellation of all or part of the shares of that class;
- (c) add, change or remove the rights, privileges, restrictions or conditions attached to the shares of that class and, without limiting the generality of the foregoing,
  - (i) prejudicially remove or change rights to accrued dividends or rights to cumulative dividends,
  - (ii) prejudicially add, remove, or change redemption rights,
  - (iii) reduce or remove a dividend preference or a liquidation preference, or
  - (iv) prejudicially add, remove or change conversion privileges, options, voting, transfer or pre-emptive rights, or rights to acquire securities of the credit union;
- (d) increase the rights or privileges of any class of shares having rights or privileges equal or superior to the shares of that class;
- (e) create a new class of shares equal or superior to the shares of that class;
- (f) make any class of shares having rights or privileges inferior to the shares of that class equal or superior to the shares of that class; or
- (g) effect an exchange or create a right of exchange of all or part of the shares of another class into the shares of that class.

**Exception**

(2) *Subsection (1) does not apply to membership shares.*

**Same**

(3) Subsection (1) does not apply in the case of amendments to the articles referred to in clause (1) (a), (b) or (e) if the articles so provide.

**Right limited**

(4) Subject to subsection (3), the holders of a series of shares of a class are entitled to vote separately as a series under subsection (1) if that series is affected by an addition or amendment to the articles in a manner different from other shares of the same class.

**Right to vote**

(5) Subsections (1) and (4) apply whether or not the shares of a class otherwise carry the right to vote. 1994, c. 11, s. 312.

**Required documentation**

**313.** The credit union must deliver to the Superintendent, within ~~six months~~ *sixty days* after the special resolution has been confirmed by its members and affected shareholders, articles of amendment in duplicate, signed by two officers, or by one director and one officer, of the credit union and verified by affidavit of one of the officers or directors signing the articles of amendment, setting out,

- (a) the ~~name~~ *corporate name* of the credit union;
- (b) a certified copy of the special resolution;
- (c) that the amendment has been duly confirmed and authorized; and
- (d) the date of the confirmation of the special resolution by the members and affected shareholders. 1994, c. 11, s. 313; 1997, c. 28, s. 53.

**Certificate of amendment**

**314.** (1) If the articles of amendment conform to law, the Superintendent shall, when all fees established by the Minister have been paid,

- (a) endorse on each duplicate of the articles of amendment the word “Filed/Déposé” and the day, month and year of the filing thereof;
- (b) file one of the duplicates in the Superintendent’s office; and

- (c) issue to the credit union or its agent a certificate of amendment to which the Superintendent shall affix the other duplicate. 1994, c. 11, s. 314 (1); 1997, c. 19, s. 5 (5); 1997, c. 28, s. 53.

**Effect of certificate**

(2) The amendment becomes effective upon the date set out in the certificate of amendment and the articles of incorporation are amended accordingly. 1994, c. 11, s. 314 (2).

**Restatement of articles**

**315.** (1) Subject to subsections (2) and (3), a credit union may at any time restate its amended articles of incorporation. 1994, c. 11, s. 315 (1).

**Filing of restatement**

(2) The credit union shall deliver to the Superintendent the restated articles in duplicate, signed by two officers, or by one director and one officer, of the credit union and verified by affidavit of one of the officers or directors signing the restated articles, setting out,

- (a) all the provisions that are then set out in the original articles of incorporation as amended; and
- (b) a statement that the restated articles correctly set out, without change, the corresponding provisions of the original articles as amended. 1994, c. 11, s. 315 (2); 1997, c. 28, s. 53.

**Certificate of restatement**

(3) If the restated articles of incorporation conform to law, the Superintendent shall, when all fees established by the Minister have been paid,

- (a) endorse on each duplicate of the restated articles the word “Filed/Déposé” and the day, month and year of the filing thereof;
- (b) file one of the duplicates in the Superintendent’s office; and
- (c) issue to the credit union or its agent a restated certificate of incorporation to which the Superintendent shall affix the other duplicate. 1994, c. 11, s. 315 (3); 1997, c. 19, s. 5 (5); 1997, c. 28, s. 53.

**Effect of certificate**

(4) The restated articles of incorporation become effective upon the date set out in the restated certificate and supersede the original articles of incorporation and all amendments to them. 1994, c. 11, s. 315 (4).

## ***CONTINUING AS OR CEASING TO BE AN ONTARIO CREDIT UNION***

***Continuance as an Ontario credit union***

**316.** (1) *A body corporate incorporated under the laws of another jurisdiction in Canada other than Ontario or under another Ontario Act may, if authorized by the laws of that other jurisdiction or under that other Ontario Act, apply to the Superintendent for a certificate of continuance.*

***Authorization***

*(2) If a body corporate has shareholders, the application must be authorized by a special resolution of the shareholders.*

***Articles of continuance, etc.***

*(3) Articles of continuance shall be sent to the Superintendent together with a copy of the special resolution required under subsection (2) and any other prescribed documents.*

***Requirements for articles***

*(4) The articles of continuance shall make any amendments to the original or restated articles of incorporation, articles of amalgamation, letters patent, supplementary letters patent, a special Act and any other instrument by which the body corporate was incorporated and any amendments thereto necessary to make the articles of continuance conform to the laws of Ontario, and may make such other amendments as would be permitted under this Act if the body corporate were incorporated under this Act, provided that at least the same shareholder approval has been obtained for such other amendments as would have been required if the body corporate were incorporated under this Act.*

***Issue of certificate of continuance***

(5) Upon receipt of the articles of continuance and the other required documents, the Superintendent may, subject to any prescribed conditions, issue a certificate of continuance on such terms and subject to such limitations and conditions as the Superintendent considers proper.

**Grounds for refusing certificate**

(6) Subsection 16 (2) applies, with necessary modifications, with respect to the issue of a certificate of continuance.

**Effect of certificate**

(7) The articles of continuance become effective on the date set out in the certificate of continuance and, as of that date,

- (a) the body corporate is continued as a credit union under this Act as though it had been incorporated under this Act;
- (b) the articles of continuance are deemed to be the articles of incorporation of the continued credit union; and
- (c) the certificate of continuance is deemed to be the certificate of incorporation of the credit union.

**Copy of certificate to other jurisdiction, etc.**

(8) The Superintendent shall send a copy of the certificate of continuance,

- (a) to the appropriate official or public body for the jurisdiction in which the body corporate was incorporated; or
- (b) if the body corporate was incorporated under another Ontario Act, to the appropriate official or public body for the other Ontario Act.

**Rights, liabilities, etc., preserved**

(9) If a body corporate is continued as a credit union under this Act,

- (a) the credit union possesses all the property, rights, privileges and franchises and is subject to all the liabilities, including civil, criminal and quasi-criminal, and all contracts, disabilities and debts of the body corporate;
- (b) a conviction against, or ruling, order or judgment in favour of or against, the body corporate may be enforced by or against the credit union; and
- (c) the credit union shall be deemed to be the party plaintiff or the party defendant, as the case may be, in any civil action commenced by or against the body corporate.

**Notice**

(10) The Superintendent shall publish notice of the issue of the certificate of continuance in *The Ontario Gazette*.

**Transition – outstanding debt and assets, etc.**

(11) The Superintendent may, by order, allow a continued credit union to,

- (a) have outstanding debt obligations which are not authorized by this Act if the debt obligations were outstanding at the time the application for the certificate of continuance was made, for such period and under such conditions as the Superintendent may order;
- (b) hold assets, including loans, that a credit union is not otherwise permitted by this Act to hold if the assets were held at the time the application for the certificate of continuance was made, for such period and under such conditions as the Superintendent may order;
- (c) acquire and hold assets, including loans, that a credit union is not otherwise permitted by this Act to acquire or hold if the body corporate continued as the credit union was obliged, at the time the application for the certificate of continuance was made, to acquire those assets, for such period and under such conditions as the Superintendent may order.

**Limits on transition period**

(12) The following apply with respect to a period mentioned in clause (11) (a), (b) or (c):

1. The period may not exceed the prescribed maximum period.

2. The Superintendent may extend the period but only for a further period that does not exceed the prescribed maximum extension period.

**Transfer to another jurisdiction**

**316.1** (1) A credit union may, if it has been issued a certificate of approval of continuance under this section, apply to the appropriate official or public body of another jurisdiction in Canada requesting that the credit union be continued as if it had been incorporated under the laws of that other jurisdiction.

**Application for certificate of approval**

- (2) A credit union may apply to the Superintendent for a certificate of approval of continuance.

**Authorization**

- (3) An application must be authorized by a special resolution of the members of the credit union.

**If more than one class of shares**

(4) If the credit union has more than one class of issued shares, the special resolution referred to in subsection (3) shall be in the form of a special resolution passed by the holders of each class of shares.

**Issue of certificate of approval**

(5) The Superintendent may, subject to any prescribed conditions, issue a certificate of approval of continuance if the Superintendent is satisfied as to the following:

1. If the credit union is to be continued as a deposit-taking institution, the deposits held by the institution will be insured or guaranteed by the deposit insurer or similar entity for the jurisdiction under whose laws the credit union is to be continued.
2. If the credit union is to be continued as a body corporate other than a deposit-taking institution, the body corporate will not hold any deposits when it is continued.

**Copy of certificate to other jurisdiction**

(6) The Superintendent shall send a copy of the certificate of approval of continuance to the appropriate official or public body for the jurisdiction under whose laws the credit union is to be continued.

**Effect of continuation in other jurisdiction**

(7) When a credit union is continued under the laws of another jurisdiction following the issue of a certificate of approval of continuance, the credit union ceases to be a credit union for the purposes of this Act.

**Filing and notice**

(8) A credit union that is continued under the laws of another jurisdiction shall file a copy of the instrument of continuance with the Superintendent and the Superintendent shall publish notice of the continuation in *The Ontario Gazette*.

**Continuation under other Ontario Act**

**316.2** (1) A credit union may, if it has been issued a certificate of approval of continuance under this section, apply under another Ontario Act to be continued as if it had been incorporated under that other Act.

**Application for certificate of approval**

- (2) A credit union may apply to the Superintendent for a certificate of approval of continuance.

**Authorization**

- (3) An application must be authorized by a special resolution of the members of the credit union.

**If more than one class of shares**

(4) If the credit union has more than one class of issued shares, the special resolution referred to in subsection (3) shall be in the form of a special resolution passed by the holders of each class of shares.

**Issue of certificate of approval**

(5) The Superintendent may, subject to any prescribed conditions, issue a certificate of approval of continuance if the Superintendent is satisfied that the credit union, when it is continued under that other Ontario Act, will not hold any deposits.

**Copy of certificate to other official**

*(6) The Superintendent shall send a copy of the certificate of approval of continuance to the appropriate official or public body under the other Ontario Act.*

*Effect of continuance under other Act*

*(7) When a credit union is continued under another Ontario Act following the issue of a certificate of approval of continuance, the credit union ceases to be a credit union for the purposes of this Act.*

*Filing and notice*

*(8) A credit union that is continued under another Ontario Act shall file a copy of the instrument of continuance with the Superintendent and the Superintendent shall publish notice of the continuation in The Ontario Gazette.*

**PART XVI**  
**REGULATIONS, APPROVAL OF FORMS AND ESTABLISHMENT OF FEES**  
***REGULATIONS***

**Regulations: general**

- 317.** (1) The Lieutenant Governor in Council may make regulations,
1. REPEALED: 1997, c. 19, s. 5 (7).
  2. REPEALED: 1997, c. 19, s. 5 (7).
  3. respecting the holding of first meetings, the notice calling the meeting, the quorum, and the business to be transacted;
  4. prescribing matters to be shown in financial statements under subsection 213 (1) *and the periods to which those matters relate*;
  5. governing credit unions and leagues of credit unions;
  6. governing the operations and powers of branches of credit unions;
  7. *Repeal*
  8. respecting the management of risk in making loans and investments and in the general management of a credit union's business;
  9. REPEALED: 1997, c. 19, s. 5 (7).
  10. respecting the ~~records, papers and documents~~ *books, registers and other records and documents* to be ~~retained~~ *kept and maintained* by credit unions and the length of time they are to be retained;
  11. defining, for the purposes of this Act and the regulations, any word or expression used in this Act that is not defined in the Act;
  12. prohibiting or restricting the sale by credit unions of a product or service on condition that another product or service is acquired from any person;
  13. prescribing any matter authorized by this Act to be prescribed by the regulations or referred to as prescribed;
  14. defining the interests of a credit union in real property and determining the method of valuing those interests;
  15. regulating the extent to which credit unions are permitted to undertake the business of insurance or prohibiting them from undertaking the business of insurance;
  16. governing the business of insurance as undertaken by credit unions;
  17. respecting the relations between credit unions and,
    - i. entities that undertake the business of insurance, and
    - ii. insurance agents or insurance brokers;

*17.1 permitting credit unions to undertake fiduciary activities;*

18. respecting networking arrangements between credit unions and other persons providing products or services to credit unions or its members;
19. prohibiting or restricting networking arrangements;
20. governing the conduct of credit unions in networking arrangements;
21. respecting the protection of members of credit unions and of the public in their dealings with credit unions including the regulating of representations that may be made by credit unions;
22. prescribing and regulating,
  - i. classes of loans, *and*
  - ii. *Repeal*
  - iii. aggregate and individual lending limits for credit unions and methods of calculating limits;
23. prescribing the type and value of security that a credit union must have before making a loan and the method for valuing such security;
24. prescribing procedures to be followed by credit unions in dealing with consumer complaints by members or depositors;
25. respecting the retention, in Canada, of assets of a credit union;
26. requiring the disclosure to borrowers of terms and conditions of loans and mortgages and of interest rates in lending transactions and to depositors, the rate of interest on their accounts and the manner of calculating and paying the interest;

**Note: On a day to be named by proclamation of the Lieutenant Governor, paragraph 26 is repealed by the Statutes of Ontario, 1999, chapter 12, Schedule I, subsection 2 (9) and the following substituted:**

26. requiring the disclosure to depositors of the rate of interest on their accounts and the manner of calculating and paying the interest;

**See: 1999, c. 12, Sched. I, ss. 2 (9), 8 (2).**

27. requiring the bonding of and insurance coverage for directors, officers, agents and employees of the credit union and of property of or held by the credit union;
28. governing the use of confidential information by the credit unions, ~~stabilization authorities~~ and the Corporation;
29. prescribing the discretionary authorities that may be conferred in proxies and excluding the application of similar provisions in regulations made under Part VIII of the *Business Corporations Act*;
30. authorizing the Corporation to provide services prescribed by the regulations that are ancillary, complementary or similar to services it performs ~~as deposit insurer or stabilization authority~~ to persons, bodies or classes of persons or bodies prescribed by the regulations, and governing the provision of those services. 1994, c. 11, s. 317 (1); 1997, c. 19, s. 5 (6, 7); 2002, c. 18, Sched. H, s. 3 (11).
31. *governing credit unions registered under subsection 332 (4), including providing for provisions of this Act to apply to such credit unions with such modifications as may be specified in the regulations.*

**Same**

- (2) A regulation made under this Act may,
  - (a) be made applicable generally or to a specific credit union, league or class of credit unions or leagues;
  - (b) define classes of credit unions, leagues or assets for the purpose of the regulations, including classes that may include only one credit union, league or asset; and
  - (c) provide differently for different credit unions, for different classes of credit unions, for different leagues, for different classes of leagues, for different assets or for different classes of assets. 1994, c. 11, s. 317 (2).

**Same**

- (3) A regulation may adopt by reference, in whole or in part, with such changes as the Lieutenant Governor in Council considers necessary, any code, standard or guideline, as amended from time to time,

whether before or after the regulation is filed, and may require compliance with any code, standard or guideline adopted. 1994, c. 11, s. 317 (3).

**Same**

(4) If an amount or rate is to be prescribed under subsection (1), the regulation may prescribe a method of determining the amount or rate. 1994, c. 11, s. 317 (4).

**Regulations: offering statements**

**318.** The Lieutenant Governor in Council may make regulations,

- (a) REPEALED: 1997, c. 19, s. 5 (7).
- (b) specifying the financial statements, reports and other documents that are to be included with an offering statement;
- (c) respecting the disclosure of material facts in relation to securities to be distributed;
- (d) respecting the distribution of an offering statement;
- (e) exempting any class of distributions from the application of sections 75 to ~~83~~ 82;
- (f) generally, for carrying out the purposes of sections ~~75~~ 74.1 to ~~83~~ 82. 1994, c. 11, s. 318; 1997, c. 19, s. 5 (7).

**Regulations: capital adequacy**

**319.** The Lieutenant Governor in Council may make regulations,

- (a) regulating the maintenance, by credit unions, of adequate capital and adequate and appropriate forms of liquidity;
- (b) respecting regulatory capital and the total assets of a credit union;
- (c) prescribing phase-in periods for capital adequacy requirements based on a graduated scale;
- (d) adopting by reference any code, standard or guideline in respect of capital adequacy requirements;
- (e) requiring compliance with any regulation, administrative directive, or prescribed requirement, code, standard or guideline. 1994, c. 11, s. 319; 1997, c. 19, s. 5 (7).

**Regulations: deposit insurance premiums**

*319.1 (1) The Lieutenant Governor in Council may make regulations prescribing how annual premiums are to be determined under paragraph 1 of subsection 276.1 (1).*

**Same**

*(2) A regulation under subsection (1) may prescribe different annual premiums for different credit unions or classes of credit unions.*

**Limitation**

*(3) For the purposes of subsection (2), prescribed classes of credit unions shall be based in part on measurable criteria which relate to the risk posed by the credit union and may be based in part on other factors so long as they are not based on membership in a league.*

**Regulations: training programs**

**320.** *Repeal*

**Regulations: audit committee**

**321.** The Lieutenant Governor in Council may make regulations prescribing the ~~duties and functions~~ *powers and duties* of audit committees. 1994, c. 11, s. 321.

**Regulations: administrative penalties**

*321.0.1 (1) The Lieutenant Governor in Council may make regulations governing the administrative penalties that may be imposed under section 331.2 or 331.3.*

**Same**

*(2) Without limiting the generality of subsection (1), a regulation governing administrative penalties may,*

- (a) prescribe criteria the Superintendent or Corporation is required or permitted to consider when imposing a penalty under section 331.2 or 331.3;*



- (b) *authorize the Superintendent or Corporation to determine the amount of a penalty, if the amount of the penalty is not prescribed, and prescribe criteria the Superintendent or Corporation is required or permitted to consider when determining the amount of the penalty;*
- (c) *establish different penalties or ranges of penalties for different types of contraventions and for different classes of persons and entities;*
- (d) *authorize a penalty to be levied for each day or part of a day on which a contravention continues;*
- (e) *authorize higher penalties for a second or subsequent contravention by a person or entity;*
- (f) *require that the penalty be paid before a specified deadline or before a deadline specified by the Superintendent or Corporation;*
- (g) *authorize the imposition of late payment fees respecting penalties that are not paid before the deadline, including graduated late payment fees;*
- (h) *establish a maximum cumulative penalty payable in respect of a contravention or in respect of contraventions during a specified period.*

### ***APPROVAL OF FORMS, ETC.***

#### **Forms**

**321.1** The Superintendent may approve the use of forms, specify the procedure for the use of the forms, and require their use for any purpose of this Act, and the forms may provide for such information to be furnished as the Superintendent may require. 1997, c. 19, s. 5 (8); 1999, c. 12, Sched. I, s. 2 (10).

#### **Reports**

**321.2** The Superintendent may approve the form and contents of any report required to be prepared under this Act or the regulations and the manner of reporting. 1997, c. 19, s. 5 (8); 1999, c. 12, Sched. I, s. 2 (10).

#### **Circulars and proxies**

**321.3** The Superintendent may approve the form and content of information circulars and proxies. 1997, c. 19, s. 5 (8); 1999, c. 12, Sched. I, s. 2 (10).

#### **Statements**

**321.4** The Superintendent may approve the form and content of an offering statement or a statement of material changes. 1997, c. 19, s. 5 (8); 1999, c. 12, Sched. I, s. 2 (10).

#### **Report on capital adequacy**

**321.5** *Repeal*

### ***ESTABLISHMENT OF FEES***

#### **Fees**

**321.6** The Minister may establish and charge fees for anything required or permitted to be done by this Act or the regulations. 1997, c. 19, s. 5 (8).

## **PART XVII**

### **~~OFFENCE OFFENCES AND ADMINISTRATIVE PENALTIES~~**

### ***OFFENCES***

#### **Offence, general**

**322.** (1) Every person who contravenes any provision of this Act or the regulations or an order of the Superintendent *or the Corporation* is guilty of an offence. 1994, c. 11, s. 322 (1); 1997, c. 28, s. 53.

#### **Officers, agents, etc.**

(2) If an entity commits an offence under this Act, every director, officer or agent of the entity who authorized, permitted or acquiesced in the offence is a party to and guilty of the offence and is liable, on summary conviction, to the penalty for the offence whether or not the entity has been prosecuted or convicted.

**Penalty**

- (3) A person who is guilty of an offence referred to in this section is liable,
- (a) in the case of an entity, on a first conviction to a fine of not more than \$100,000 and on each subsequent conviction to a fine of not more than \$200,000; and
  - (b) in the case of an individual,
    - (i) on a first conviction, to a fine of not more than \$100,000 or to imprisonment for not more than two years or both, and
    - (ii) on each subsequent conviction, to a fine of not more than \$200,000 or to imprisonment for not more than two years or to both. 1994, c. 11, s. 322 (2, 3).

**Offences, other**

**323. *Repeal***

**Order to comply**

**324.** If a person is convicted of an offence under this Act the court making the conviction, in addition to any penalty it may impose, may order that person to comply with the provisions of this Act or the regulations for the contravention of which the person has been convicted. 1994, c. 11, s. 324.

**Restitution**

**325.** If a person is convicted of an offence under this Act, the court making the conviction, may, in addition to any other penalty, order the person convicted to pay compensation or make restitution in relation to the offence to any person suffering a loss because of the offence. 1994, c. 11, s. 325.

**Repaying benefits**

**326.** (1) If a person has been convicted of an offence under this Act, the court may order the convicted person to pay an amount equal to the court's estimation of the amount of any monetary benefits acquired by the convicted person or accruing to the convicted person or to the spouse or a dependant of the person. 1994, c. 11, s. 326 (1); 1999, c. 6, s. 19 (6); 2005, c. 5, s. 18 (6).

**Same**

(2) Subsection (1) applies even though the maximum fine has been imposed on the convicted person. 1994, c. 11, s. 326 (2).

**Order to comply**

**327.** (1) If a credit union or any director, officer, employee or agent of a credit union does not comply with any provision of this Act, the regulations, *the by-laws of the Corporation or* the articles of incorporation or by-laws of the credit union, the Superintendent, *the Corporation or* a member or ~~any~~ creditor of the credit union may apply to the court for an order directing the credit union, director, officer, employee or agent to comply with, or restraining the credit union, director, officer, employee or agent from acting in breach of the provision. 1994, c. 11, s. 327 (1); 1997, c. 28, s. 53.

**Additional order**

(2) On an application under subsection (1), the court may make the order applied for and such further order it thinks appropriate. 1994, c. 11, s. 327 (2).

**Restricted party transaction**

**328. *Repeal***

**Effect of contravention**

**329.** A contravention of a provision of this Act or the regulations does not invalidate a contract entered into in contravention of the provision unless otherwise expressly provided in this Act. 1994, c. 11, s. 329.

**Effect of penalty**

**330.** The fact that a person is subject to or has paid a penalty for an offence under this Act does not relieve that person from any other liability in a civil proceeding. 1994, c. 11, s. 330.

**Limitation period**

**331.** No proceeding for an offence under this Act shall be started more than two years after the facts on which the proceedings are based first came to the knowledge of the Superintendent. 1994, c. 11, s. 331; 1997, c. 28, s. 53.

**ADMINISTRATIVE PENALTIES****Administrative penalties**

**331.1.** (1) An administrative penalty may be imposed under section 331.2 or 331.3 for either of the following purposes:

1. To promote compliance with the requirements established under this Act.
2. To prevent a person or entity from deriving, directly or indirectly, any economic benefit as a result of contravening a provision of this Act or the regulations.

**Same**

(2) An administrative penalty may be imposed alone or in conjunction with any other regulatory measure provided by this Act, including any other order under this Act or the cancellation of deposit insurance under section 274.

**Superintendent – administrative penalties**

**331.2** (1) If the Superintendent is satisfied that a person or entity is contravening a requirement described in subsection (2), the Superintendent may, by order, impose an administrative penalty on the person or entity in accordance with this section and the regulations.

**Requirements for which penalties can be imposed**

- (2) The requirements referred to in subsection (1) are the following:
1. A requirement under subsection 107 (2) to file copies of a by-law.
  2. A requirement, by the Superintendent under subsection 220 (1), to hold a meeting.
  3. A requirement, by the Superintendent under section 225, to provide information.
  4. Such other requirements, as may be prescribed, under provisions of this Act or the regulations.

**Opportunity to make submissions**

(3) Before imposing a penalty, the Superintendent shall give the person or entity a reasonable opportunity to make written submissions.

**Limitation**

(4) The Superintendent shall not make an order under this section more than two years after the day the Superintendent became aware of the contravention.

**Appeals of administrative orders to Tribunal**

(5) The person or entity that is subject to an order under this section may appeal the order to the Tribunal in accordance with section 240.4.

**Variation on application of s. 240.4**

(6) The powers of the Tribunal under subsection 240.4 (8) to confirm, vary or revoke an order under this section are subject to the limits, if any, established by the regulations.

**Corporation – administrative penalties**

**331.3** (1) If the Corporation is satisfied that a person or entity is contravening a requirement described in subsection (2), the Corporation may, by order, impose an administrative penalty on the person or entity in accordance with this section and the regulations.

**Requirements for which penalties can be imposed**

- (2) The requirements referred to in subsection (1) are the following:
1. A requirement to provide reports to such persons and at such times as required by the Corporation under section 89.

2. A requirement, by the Corporation under subsection 220 (1), to hold a meeting.
3. A requirement, by the Corporation under section 225, to provide information.
4. A requirement under section 226 to file an annual return or provide information.
5. A requirement to pay a special levy under clause 262 (1) (i) or an annual premium determined under section 276.1.
6. Such other requirements, as may be prescribed, under provisions of this Act or the regulations.

**Opportunity to make submissions**

(3) Before imposing a penalty, the Corporation shall give the person or entity a reasonable opportunity to make written submissions.

**Limitation**

(4) The Corporation shall not make an order under this section more than two years after the day the Corporation became aware of the contravention.

**Appeals of administrative orders to Tribunal**

(5) The person or entity that is subject to an order under this section may appeal the order to the Tribunal in accordance with section 240.4.

**Variation on application of s. 240.4**

(6) The powers of the Tribunal under subsection 240.4 (8) to confirm, vary or revoke an order under this section are subject to the limits, if any, established by the regulations.

**Effect of paying penalty**

**331.4** If a person or entity pays the administrative penalty in accordance with the terms of an order under section 331.2 or 331.3 or, if the order is varied on appeal, in accordance with the terms of the varied order, the person or entity cannot be charged with an offence under this Act in respect of the same contravention.

**Maximum administrative penalties**

**331.5** An administrative penalty imposed under section 331.2 or 331.3 shall not exceed \$25,000 or such lesser amount as may be prescribed for the contravention of a requirement specified in the regulations.

**Enforcement of administrative penalties**

**331.6 (1)** If a person or entity fails to pay an administrative penalty imposed under section 331.2 or 331.3 in accordance with the terms of the order imposing the penalty, the person who made the order may file the order with the court and the order may be enforced as if it were an order of the court.

**Same**

(2) For the purposes of section 129 of the Courts of Justice Act, the date on which the order is filed with the court shall be deemed to be the date of the order.

**Same**

(3) An administrative penalty that is not paid in accordance with the terms of the order imposing the penalty is a debt due to the Crown and is also enforceable as such.

## PART XVIII MISCELLANEOUS

**Extra-provincial credit unions**

**332.** (1) If the Government of Ontario has entered into an agreement providing for reciprocal rights for credit unions with the government of a province or territory of Canada, a credit union incorporated under the laws of that province or territory may register under this Act for such purposes as are specified in the agreement. 1994, c. 11, s. 332 (1).

**Register**

(2) The Superintendent shall maintain the Extra-Provincial Credit Unions Register and shall record in it the names of the credit unions registered and the limited purposes to which they are subject in Ontario. 1994, c. 11, s. 332 (2); 1997, c. 28, s. 53.

**Condition precedent to licence**

(3) No credit union that is an extra-provincial corporation within the meaning of the *Extra-Provincial Corporations Act* shall be licensed under that Act as an extra-provincial corporation unless it has been first registered under this Act by the Superintendent. 1994, c. 11, s. 332 (3); 1997, c. 28, s. 53.

**Registration of credit unions to take deposits**

(4) *The Superintendent may, subject to any prescribed conditions, register a credit union in the Extra-Provincial Credit Unions Register for the purpose of allowing the credit union to borrow money from the public by receiving deposits and lending or investing such money.*

**Limitation**

(5) *A credit union shall not be registered under subsection (4) unless the deposits taken in Ontario are insured or guaranteed by the deposit insurer or similar entity for the jurisdiction under whose laws the credit union was incorporated.*

**Special rules for credit unions taking deposits**

(6) *The following apply with respect to a credit union registered under subsection (4):*

1. *The credit union shall be deemed to be a credit union under this Act for the purposes of the Loan and Trust Corporations Act and such other statutes and regulations as may be prescribed.*
2. *This Act shall not apply with respect to a credit union registered under subsection (4), except as provided in the regulations.*

**333.** REPEALED: 1997, c. 28, s. 63.

**Initial review**

**334.** (1) *Within five years after [this section comes into force], the Minister shall appoint one or more persons to review the operation of this Act and the regulations and to make recommendations to the Minister.*

**Subsequent reviews**

(2) *The Minister shall, no later than five years after the appointment under subsection (1), appoint one or more persons to conduct a subsequent review and shall, no later than five years after the most recent appointment under this subsection, appoint one or more persons to conduct subsequent reviews.*

**Public consultation**

(3) *When conducting a review, the appointees shall solicit the views of the public.*

**Public inspection**

(4) *The Minister shall make the recommendations of the appointees available to the public.*

**Delivery of notice**

**335.** Delivery of any written notice or document for any purpose of this Act, if the mode is not otherwise specified, may be delivered by first class ordinary mail or first class registered mail,

- (a) in the case of a credit union, addressed to it ~~or its chief executive officer~~ at its principal place of business;
- (b) in the case of a director, addressed to the director at his or her address as shown on the records of the ~~Ministry~~ Corporation;
- (c) in the case of the Superintendent, addressed to the Superintendent at his or her office; ~~or~~
- (c.1) *in the case of the Corporation, addressed to the Corporation at its office; or*
- (d) in the case of a member, addressed to the member at ~~his or her~~ the member's address as shown in the records of the credit union or by personal delivery to the member at ~~his or her~~ the member's place of employment. 1994, c. 11, s. 335; 1997, c. 28, s. 53.

**Existing stabilization funds**

**335.1** *A stabilization fund established, before this section comes into force, under this Act or a predecessor of this Act shall be maintained as prescribed.*

**336.-395.** OMITTED (AMENDS OR REPEALS OTHER ACTS). 1994, c. 11, ss. 336-395.

**396.** OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THIS ACT). 1994, c. 11, s. 396.

**397.** OMITTED (ENACTS SHORT TITLE OF THIS ACT). 1994, c. 11, s. 397.

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# CONSULTATION DRAFT

## ONTARIO REGULATION

made under the

## CREDIT UNIONS AND CAISSES POPULAIRES ACT, 1994

Amending O. Reg. 76/95  
(Credit Unions)

Note: Ontario Regulation 76/95 has previously been amended. Those amendments are listed in the [Table of Regulations – Legislative History Overview](#) which can be found at [www.e-Laws.gov.on.ca](http://www.e-Laws.gov.on.ca).

**1. Subsection 1 (1) of Ontario Regulation 76/95 is amended by adding the following definitions:**

“*Capital Adequacy Guidelines for Ontario’s Credit Unions and Caisses Populaires*” means the publication with that title that is published in *The Ontario Gazette* by the Superintendent, as the publication may be amended from time to time; (“*Lignes directrices relatives à la suffisance du capital des caisses populaires et credit unions de l’Ontario*”)

“class 1 credit union” means a credit union that is not a class 2 credit union; (“caisse de catégorie 1”)

“class 2 credit union” means a credit union that, according to section 1.1, is a class 2 credit union; (“caisse de catégorie 2”)

“risk weighted assets” means the amount of the risk weighted assets as determined under section 15; (“actif à risques pondérés”)

“total assets” means the total assets as determined under section 13. (“actif total”)

**2. The Regulation is amended by adding the following section:**

**1.1** (1) A credit union is a class 2 credit union if either of the following circumstances exist at any time after October 5, 2006:

1. The total assets of the credit union are greater than or equal to \$50 million.
2. The credit union makes a commercial loan.

(2) A credit union becomes a class 2 credit union under subsection (1) on the first day on which either of the circumstances described in subsection (1) exist.

(3) A credit union becomes a class 2 credit union on October 6, 2007 if, on that date, it has an outstanding commercial loan that was made before October 6, 2006.

(4) Upon application to the Corporation, a credit union becomes a class 2 credit union when the Corporation is satisfied that,

- (a) the credit union has established the policies required by sections 190 and 191 of the Act with respect to investment and lending;
  - (b) those policies are appropriate for the size and complexity of the credit union;
  - (c) the credit union is able to demonstrate that it is complying with the Corporation's by-laws, including the by-law prescribing standards of sound business and financial practices; and
  - (d) the credit union is complying with the minimum capital requirements prescribed by this Regulation for a class 2 credit union.
- (5) Once a credit union becomes a class 2 credit union, it remains a class 2 credit union in perpetuity.

**3. Section 12 of the Regulation is revoked and the following substituted:**

**12.** (1) A class 1 credit union has adequate capital if its regulatory capital is at least 5 per cent of its total assets.

(2) A class 2 credit union has adequate capital for a financial year if the following conditions are satisfied:

1. Its regulatory capital expressed as a percentage of its total assets is equal to or greater than the percentage in the cell of the Table to this section that is,
  - i. in the row that corresponds to the credit union's total assets for the financial year, and
  - ii. in the Column that corresponds to the financial year.
2. The sum of its regulatory capital and its general loan loss allowance is at least 8 per cent of its risk weighted assets.

(3) For the purposes of paragraph 2 of subsection (2), the amount of a credit union's general loan loss allowance must not exceed 1.25 per cent of the credit union's risk weighted assets.

TABLE  
MINIMUM REGULATORY CAPITAL FOR CLASS 2 CREDIT UNIONS

Column 1	Column 2	Column 3	Column 4
Total assets	Percentage for financial year ending after October 5, 2006 and on or before December 31, 2007	Percentage for financial year ending after December 31, 2007 and on or before December 31, 2008	Percentage for financial year ending on or after January 1, 2009
Less than \$50 million	5.00%	4.75%	4.50%
\$50 million or more but less than \$100 million	4.75%	4.50%	4.25%
\$100 million or more but less than \$500 million	4.50%	4.25%	4.00%
\$500 million or more but less than \$1 billion	4.25%	4.00%	3.75%



\$1 billion or more	4.00%	3.75%	3.50%
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**4. (1) Subsection 13 (1) of the Regulation is amended by striking out “The value of the total assets of a credit union” at the beginning and substituting “The total assets of a credit union”.**

**(2) The definition of “B” in subsection 13 (1) of the Regulation is amended by adding “and” at the end of clause (a) and revoking clause (c).**

**5. (1) Paragraph 4 of subsection 14 (2) of the Regulation is amended by striking out “published in *The Ontario Gazette* by the Superintendent, as it may be amended from time to time” at the end.**

**(2) Paragraph 1 of subsection 14 (3) of the Regulation is revoked and the following substituted:**

1. The amount of goodwill and other intangible assets.

**(3) Paragraph 6 of subsection 14 (3) of the Regulation is amended by striking out “published in *The Ontario Gazette* by the Superintendent, as it may be amended from time to time” at the end.**

**6. (1) Subsection 15 (1) of the Regulation is revoked and the following substituted:**

### **RISK WEIGHTED ASSETS OF A CREDIT UNION**

(1) In this section,

“specific provision” means, in respect of a loan made by a credit union, the amount of the prescribed monthly provision for doubtful loans as determined under subsection 22 (1) that is attributable to the loan and the amount of the prescribed reserves as determined under subsection 22 (2) that is attributable to the loan.

(1.1) The amount of a credit union’s risk weighted assets is the amount calculated using the formula,

$$A + B + C$$

in which,

“A” is the sum of all amounts each of which is calculated by multiplying the value of an asset of the credit union by the percentage described in subsection (2), (3), (4), (4.1), (5), (6), (7) or (8), as the case may be, that applies to that asset,

“B” is the amount of the credit union’s applicable operational risk as determined under subsection (10), and

“C” is the amount of the credit union’s applicable interest rate risk as determined under subsection (12).

**(2) Subsections 15 (4), (4.1) and (5) of the Regulation are revoked and the following substituted:**

(4) The percentage is 35 per cent for the following types of assets:

1. Qualifying residential mortgage loans on residential property that is or will be occupied by the borrower, or that is rented, including,
  - a. a loan that is secured by a first mortgage on an individual condominium residence or on a residential dwellings with one to four units and that is made to, or guaranteed by, one or more persons, but only if,
    - i. the loan is not 90 days or more past due, and
    - ii. the loan does not exceed a loan-to-value ratio of 75 per cent, and
  - b. collateral mortgages on an individual condominium residence or on a residential dwelling with one to four units, but only if,
    - i. the loans are made to, or guaranteed by, one or more persons,
    - ii. no other person holds a senior or intervening lien on the property to which the collateral mortgages apply,
    - iii. the loans are not 90 days or more past due, and
    - iv. the loans in the aggregate do not exceed a loan-to-value ratio of 75 per cent.
2. Securities that are secured by mortgages and not guaranteed by the Canada Mortgage and Housing Corporation under the *National Housing Act* (Canada).

(4.1) The percentage is 50 per cent for the following types of assets:

1. The amount, net of specific provisions, of qualifying residential mortgage loans that are more than 90 days past due, but only if the specific provisions constitute more than 20 per cent of the outstanding amount of the loans.

(5) The percentage is 75 per cent for the following types of assets:

1. Personal loans.
2. Agricultural loans.
3. Uninsured collateral mortgages that would otherwise be qualifying residential mortgage loans by virtue of subparagraph 1 b of subsection (4), except that their loan-to-value ratio for a condominium residence or residential dwelling exceeds 75 per cent.

4. Commercial loans made to a person where the sum of all commercial loans made to that person and to any connected persons does not exceed the lesser of 0.035 per cent of the credit union's total assets and \$1.25 million.
5. Residential mortgage loans other than those described in paragraph 5 of subsection (2) or those described in subsection (4).

**(3) Paragraph 1 of subsection 15 (6) of the Regulation is revoked and the following substituted:**

1. Commercial loans, other than commercial loans described in paragraph 4 of subsection (5) or in paragraph 1 of subsection (7).

**(4) Paragraph 3 of subsection 15 (6) of the Regulation is revoked and the following substituted:**

3. The value attributed to any off balance sheet exposure of the credit union as calculated in accordance with the *Capital Adequacy Guidelines for Ontario's Credit Unions and Caisses Populaires*.
4. The amount, net of specific provisions, of loans, other than qualifying residential mortgage loans, that are more than 90 days past due, but only if the specific provisions constitute 20 per cent or more of the outstanding amount of each loan.
5. The amount, net of specific provisions, of qualifying residential mortgage loans that are more than 90 days past due, but only if the specific provisions constitute less than 20 per cent of the outstanding amount of each loan.

**(5) Section 15 of the Regulation is amended by adding the following subsections:**

- (7) The percentage is 150 per cent for the following types of assets:
  1. The amount, net of specific provisions, of loans, other than qualifying residential mortgage loans, that are more than 90 days past due, but only if the specific provisions constitute less than 20 per cent of the outstanding amount of each loan.

(8) If a person to whom a commercial loan described in paragraph 1 of subsection (6) is made has a credit rating described in the *Capital Adequacy Guidelines for Ontario's Credit Unions and Caisses Populaires*, the percentage determined in accordance with those Guidelines applies, instead of the percentage specified in subsection (6), in respect of the commercial loan.

(9) Unless another amount is approved by the Superintendent, a credit union's applicable operational risk is the amount calculated using the formula,

$$D/0.08$$

in which,

"D" is the amount of the credit union's capital charge for operational risk as determined under subsection (11).

(10) A credit union's capital charge for operational risk is the amount calculated using the formula,

$$\frac{E + F + G}{H} \times 0.15$$

in which,

“E” is the greater of,

- (a) the amount of the credit union’s interest income less its interest expenses for its most recently ended financial year plus all of its other non-interest income for its most recently ended financial year, and
- (b) zero,

“F” is the amount that would be determined under the definition of “E” if that definition applied to the credit union’s second most recently ended financial year,

“G” is the amount that would be determined under the definition of “E” if that definition applied to the credit union’s third most recently ended financial year, and

“H” is the greater of,

- (a) the number of years in which the amounts determined under the definitions of “E”, “F” and “G” exceed zero, and
- (b) one.

(11) Unless another amount is approved by the Superintendent, a credit union’s applicable interest rate risk is the amount calculated using the formula,

$$J/0.08$$

in which,

“J” is the amount of the credit union’s capital charge for interest rate risk as determined under subsection (13).

(12) A credit union’s capital charge for interest rate risk is the amount calculated using the formula,

$$K \times 0.15$$

in which,

“K” is the amount of the credit union’s exposure, determined in accordance with the techniques referred to in paragraph 2 of subsection 78 (1), to interest rate risk.

**7. Section 48 of the Regulation is revoked and the following substituted:**

**48.** For the purposes of this Part, a credit union's regulatory capital is determined by using its most recent audited financial statements.

**8. Section 52 of the Regulation is revoked and the following substituted:**

**52.** An agricultural loan is a loan other than a residential mortgage loan that is made for the purposes of financing,

- (a) the production of cultivated or uncultivated field-grown crops;
- (b) the production of horticultural crops;
- (c) the raising of livestock, fish, poultry or fur-bearing animals; or
- (d) the production of eggs, milk, honey, maple syrup, tobacco, wood from woodlots or fibre or fodder crops.

**9. (1) Paragraph 3 of section 53 of the Regulation is revoked and the following substituted:**

- 3. The funds from the sale of another residential property owned by the individual will be used to repay the loan.

**(2) Paragraph 6 of section 53 of the Regulation is revoked and the following substituted:**

- 6. The loan is fully secured by a mortgage on the residential property being sold or, before the loan is made, the borrower's solicitor has given the credit union an irrevocable letter of direction from the borrower stating that the funds from the sale of the residential property being sold will be remitted to the credit union.

**10. (1) Section 54 of the Regulation is amended by striking out the portion before paragraph 1 and substituting the following:**

**54.** A commercial loan is a loan, other than any of the following types of loans, that is made for any purpose:

. . . . .

**(2) Subparagraph 7 i of section 54 of the Regulation is revoked and the following substituted:**

- i. fully guaranteed by a financial institution other than the credit union making the loan,

**11. Section 57 of the Regulation is revoked and the following substituted:**

57. (1) In this section,

“residential mortgage loan” means a loan that is secured by residential property; (“”)

“residential property” means real property consisting of buildings that are used, or are to be used, to the extent of at least one half of the floor area of the buildings, as one or more private dwellings. (“”)

(2) A credit union shall not make a residential mortgage loan to a person for the purpose of purchasing, renovating or improving the residential property or for the purpose of refinancing such a loan if the amount of the residential mortgage loan, together with the amount then outstanding of any mortgage having an equal or prior claim against the residential property, would exceed 75 per cent of the value of the property when the residential mortgage loan is made.

(3) Subsection (2) does not apply in any of the following circumstances:

1. If the loan is made or guaranteed under the *National Housing Act* (Canada).
2. Where the amount of the residential mortgage loan would exceed 75 per cent of the value of the residential property when the loan is made, if repayment of the amount of the loan that exceeds 75 per cent of value of the property is guaranteed by a government agency or insured by an insurer approved by the Superintendent.
3. If the credit union acquires from an entity securities that are issued or guaranteed by the entity and that are secured by residential property, or if the credit union makes a loan to the entity that is secured by such securities.
4. If the loan is secured by a mortgage and,
  - i. the mortgage is taken back by the credit union on a residential property disposed of by the credit union, including property disposed of by way of a realization of a security interest, and
  - ii. the mortgage secures payment of an amount payable to the credit union for the property.
5. The loan is secured by a promissory note and is further secured by a mortgage on residential property.

**12. Sections 61, 62, 63 and 65 of the Regulation are revoked and the following substituted:**

## LENDING LIMITS

### LENDING LIMITS — TOTAL AMOUNT OF LOANS TO PERSON

**61.** (1) A class 1 credit union whose total assets are described in a row in Column 1 of the Table to this section shall not make a loan to a person if, as a result of making the loan, the total amount of all outstanding loans made by the credit union to the person and any connected persons would exceed the amount of the total lending limit set out in the same row of Column 2 of the Table.

(2) A class 2 credit union shall not make a loan to a person if, as a result of making the loan, the total amount of all outstanding loans made to the person and any connected persons would exceed 25 per cent of the credit union's regulatory capital.

(3) For the purposes of this section, the total amount of all outstanding loans made by a credit union to a person and any connected persons excludes the portion, if any, of a loan that,

- (a) is guaranteed by the Government of Canada, the government of a province or territory of Canada, a municipality or an agency of such a government or municipality;
- (b) is insured by an insurer approved by the Superintendent; or
- (c) is secured by deposits of the borrower with the credit union.

TABLE  
TOTAL LENDING LIMITS — CLASS 1 CREDIT UNIONS

Column 1	Column 2
Total assets of credit union	Total lending limit
Less than \$500,000	Greater of 100% of regulatory capital and \$60,000
\$500,000 or more but less than \$1 million	Greater of 100% of regulatory capital and \$100,000
\$1 million or more but less than \$2 million	Greater of 80% of regulatory capital and \$125,000
\$2 million or more but less than \$3 million	Greater of 80% of regulatory capital and \$155,000
\$3 million or more but less than \$5 million	Greater of 70% of regulatory capital and \$185,000
\$5 million or more but less than \$10 million	Greater of 60% of regulatory capital and \$235,000
\$10 million or more but less than \$20 million	Greater of 50% of regulatory capital and \$295,000
\$20 million or more but less than \$50 million	Greater of 30% of regulatory capital and \$400,000

LIMITS ON LOANS OF SAME CLASS TO INDIVIDUALS

**62.** (1) A class 1 credit union shall not make a loan to a person if, as a result of making the loan, the total amount of all outstanding loans of the same class, as set out in Column 1 of the Table to this section, made by the credit union to the same person and any connected persons would exceed the amount calculated by multiplying the percentage set out in the same row of Column 2 of the Table by the credit union's total lending limit as determined under section 61.

(2) A class 2 credit union shall establish prudent lending limits for each class of loans that it is authorized by its lending licence and by-laws to make.

(3) For the purposes of this section and for the purposes of the lending limits established by a class 2 credit union,

- (a) a loan in an amount that exceeds the lending value of any property that is given as security for the loan, as determined in accordance with the credit union's lending policies, is deemed to be an under-secured loan; and
- (b) a loan to a person includes a loan to two or more persons for which they are liable either jointly or on a joint and several basis.

(4) For the purposes of this section, the total amount of outstanding loans to a person and any connected persons does not include the portion, if any, of a loan that,

- (a) is guaranteed by the Government of Canada, the government of a province or territory of Canada, a municipality, an agency of such a government or municipality;
- (b) is insured by an insurer approved by the Superintendent; or
- (c) is secured by the borrower's deposits with the credit union.

TABLE  
CLASS 1 CREDIT UNION LENDING LIMITS

Column 1	Column 2
Class of loan	Percentage of total lending limit
Agricultural loan	0%
Bridge loan	100%
Institutional loan	50%
Loan to unincorporated association or organization	5%
Personal loan, fully secured	20%
Personal loan, not fully secured, including collateral mortgage	6%
Residential mortgage loan	100%
Loan under a syndicated loan agreement	0%

**13. Section 69 of the Regulation is amended by adding the following subsection:**

(1.1) Subsection (1) does not apply to a credit union in respect of an investment in the shares of a body corporate described in paragraphs 1 to 14 of subsection 74 (1),

- (a) if, after the investment is made, all the voting rights attached to the voting shares of the body corporate would be owned by credit unions; or
- (b) if the Superintendent approves the credit union's investment before the investment is made.

**14. Section 77 of the Regulation is amended by striking out "Interest rate risk refers to the potential impact" at the beginning and substituting "A credit union's exposure to interest rate risk refers to the potential impact, expressed in dollars".**

**15. Sections 78 and 79 of the Regulation are revoked and the following substituted:**

**78.** (1) A credit union shall establish policies and procedures to manage its exposure to interest rate risk, and they must address the following matters:

1. The limits on the credit union's exposure to interest rate risk and on the impact of this exposure on its net interest income and surplus. The limits must be clear and prudent.
2. The techniques to be used to calculate the amount of the credit union's exposure to interest rate risk.
3. The internal controls to be implemented to ensure compliance with the policies and procedures.
4. The corrective action to be taken if the limits on the credit union's exposure to interest rate risk are exceeded.



5. The content and frequency of reports to be made to the board of directors by the management of the credit union about the management of the credit union's exposure to interest rate risk.

(2) The limits must take into account fluctuations in interest rates that might reasonably be expected to occur.

(3) The policies and procedures must require the management of the credit union to submit a report to the board of directors and the Superintendent if the credit union's exposure to interest rate risk exceeds the limits established in the policies and procedures, and the report must be submitted within 21 days after the credit union takes steps to bring the amount of its exposure within the limits.

(4) A report required by subsection (3) must,

(a) describe the circumstances that led to the credit union's exposure to interest rate risk exceeding the limits;

(b) describe the effect that this exposure has had, and may have, on net income;

(c) describe the steps taken to bring this exposure within the limits; and

(d) include a schedule indicating when the credit union will comply with its policies and procedures.

(5) The policies and procedures must be approved by the board of directors of the credit union.

**79.** (1) If a credit union's exposure to interest rate risk exceeds the limits established in its policies and procedures, the credit union shall immediately take steps to bring its exposure within those limits.

(2) If a credit union's exposure to interest rate risk exceeds the limits established in its policies and procedures for two consecutive quarters, the credit union shall promptly submit to the Superintendent and to the Corporation a plan approved by the board of directors that describes the steps the credit union intends to take to bring its exposure to interest rate risk within those limits.

**16. Subsection 80 (1) of the Regulation is amended by striking out "its management of interest rate risk" at the end and substituting "its management of the credit union's exposure to interest rate risk".**

**17. This Regulation comes into force on XX.**



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*Note that the legislation will only become law if the Legislative Assembly passes the legislation.*

*Note that the regulation will only become law if the Lieutenant Governor in Council promulgates the regulation.*

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