

BAHAMAS CO-OPERATIVE SOCIETIES BILL, 2014

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BAHAMAS CO-OPERATIVE SOCIETIES BILL, 2014

A BILL FOR AN ACT RESPECTING THE CONTINUANCE, REGISTRATION, SUPERVISION AND MANAGEMENT OF CO- OPERATIVE SOCIETIES AND FOR CONNECTED PURPOSES

Enacted by the Parliament of The Bahamas

PART I – PRELIMINARY

1. Short title and commencement.

- (1) This Act may be cited as The Bahamas Co-operative Societies Act, 2014.
- (2) This Act shall come into force on such date as the Minister may appoint by Notice, published in the *Gazette*.

2. Interpretation.

- (1) In this Act —
 - “**Apex Body**” means the National League or other like body for co-operative societies established under section 128;
 - “**associate**” means —
 - (a) immediate relatives of persons including a spouse or children and their spouses, a parent, brother or sister;
 - (b) a co-operative society which holds twenty per cent or more of a co-operative society’s shares;
 - (c) a company or co-operative society in which the co-operative society holds twenty per cent or more of shares to which voting rights are attached;
 - (d) a member of the Board or committee, an employee of a co-operative society, or a business partner;

- (e) a company or co-operative society over which a co-operative society has control; or
- (f) a company or co-operative society of which any of the persons referred to in paragraph (c) is a director, manager or has control, notwithstanding that at the relevant time any of the persons in question, not being individuals, have not yet come into existence or have ceased to exist;

“Board” means the Board of Directors of a co-operative society referred to under section 47;

“bonus” means the equitable return to a member of a co-operative society from net surplus after the allocation to the statutory reserves, to the stabilisation fund and to dividends in proportion to the production of goods and services by the co-operative society during the preceding financial year;

“bye-laws” mean the registered bye-laws made by a co-operative society pursuant to this Act and includes any registered amendment to the bye-laws;

“capital” means —

- (a) qualifying shares;
- (b) institutional capital, less any amount by which that total has become impaired by operating or other losses; and
- (c) the value of a co-operative society's contribution to the stabilisation fund;

“cess fund” means a fund, designed to grow the working capital and liquidity of a co-operative society, which may be levied as a percentage of the value of all produce, products and services purchased or sold collectively by the co-operative society;

“co-operative society” means a body corporate registered under this Act which has as its object the operation of any enterprise or service on a co-operative basis or on a basis which, in the opinion of the Director of Societies is substantially similar to a co-operative basis;

“deposit” in the case of a youth co-operative society, means a sum of money paid on terms under which the sum will be repaid, with or without interest or a premium, and either on demand or at a time or in circumstances agreed by or on behalf of the person making the payment and the person receiving it;

“Director of Societies” means the person appointed under section 5;

“dividend” means a payment made to members from the net surplus subsequent to retained earnings becoming positive and statutory reserves and the stabilization fund having been deducted;

- “dormant account”** means an account established in a co-operative society on which no transaction has been originated by the member and in which property he has not indicated an interest in writing or otherwise for a period of twelve consecutive months or more;
- “equity shares”** mean those shares held by a member that are in excess of the qualifying shares, the value of which are prescribed by bye-laws;
- “financial year”** of a co-operative society means the calendar year, that is, the period commencing 1 January and ending 31 December;
- “institutional capital”** means the aggregate of a co-operative society’s —
- (a) statutory or other non-distributable general reserves;
 - (b) earnings retained after distribution of surplus; and
 - (c) such other funds which may be received by way of non-refundable donations for no specified purpose which are not available for distribution;
- “management”** means persons who are employed by the Board or such committee so designated by the Board to manage the operations of the co-operative society;
- “Minister”** means the Minister responsible for Co-operative Societies;
- “patronage refund”** means the returns to members from net profits, allocated in proportion to the volume of business each individual has transacted with the co-operative society during the financial year;
- “provisional directors”** mean members of the Steering Committees who will hold office after registration and until the Board is elected at the first annual general meeting;
- “qualifying shares”** mean the mandatory, non-withdrawable minimum shares to be purchased initially by an approved applicant to become a member of a co-operative society, the value of which is prescribed in the bye-laws;
- “register”** means the register of a co-operative societies referred to under section 9;
- “service co-operative society”** means a co-operative society that is owned by a group of providers who generate and sell value-added business services including investment, marketing, transportation, renewable energy, information technology, cosmetology and property maintenance to customers;
- “share redemption fund”** means a fund established for the purpose of redeeming qualifying shares;

“stabilization fund” means a facility to provide technical assistance, advice and limited financial assistance to co-operative societies that are insolvent or likely to become insolvent;

“statutory reserves” mean the reserves established under section 84;

“Tribunal” means the Co-operative Societies Appeals Tribunal established under section 98;

“worker co-operative society” means a co-operative society whose primary purpose is to provide employment to its members and in which a specified percentage of employees can be members.

- (2) In this Act, a reference to the Registrar-General shall be construed as a reference to any public officer who has the responsibility for the receipt and registration of documents relating to co-operative societies.

3. Application of Act and use of the words “co-operative societies”.

- (1) This Act applies to co-operative societies registered under this Act or deemed, by virtue of section 176, to be registered under this Act.
- (2) No person other than a registered co-operative society or a co-operative credit union registered under The Bahamas Co-operative Credit Unions Act, 2014, shall trade or carry on business under any name or title of which the word “co-operative” or “co-operation” or any abbreviation thereof, is a part.
- (3) The name of the co-operative society shall not imply that it is connected with the Government of The Bahamas or any local government authority or any particular political party.
- (4) Save as expressly provided in this Act or in The Bahamas Co-operative Credit Unions Act, 2014, this Act shall not apply to co-operative credit unions registered under The Bahamas Co-operative Credit Unions Act, 2014.

4. Co-operative Principles.

- (1) A co-operative society shall conform to the co-operative principles as set out in subsection (2).
- (2) For the purposes of this Act, a co-operative society complies with the co-operative principles if—
 - (a) no member or delegate has more than one vote;
 - (b) no member or delegate is entitled to vote by proxy;
 - (c) its business is carried on primarily for the benefit of its members;
 - (d) its membership is open, voluntary and available without any artificial restriction or any unlawful basis of discrimination to any

- person who can use its services and is willing to accept the responsibilities of membership;
- (e) its primary concerns are its institutional capacity and financial strength, including adequate reserves, retained earnings and internal systems designed to ensure continuous growth and service to members;
 - (f) the limit on the interest or dividends on share capital that it pays does not exceed the rate prescribed in the bye-laws;
 - (g) it pursues co-operation with other co-operative societies;
 - (h) it contributes to the social and economic development of its community; and
 - (i) it uses any surplus or savings out of operations for one or more of the following purposes —
 - (i) to develop its business;
 - (ii) to provide or improve common services to members;
 - (iii) to be distributed among members in proportion to their patronage with the co-operative society;
 - (iv) to educate its members, officers or employees or the general public in the principles and techniques of economic and democratic co-operation;
 - (v) to be contributed to non-profit charitable benevolent organizations; and
 - (vi) to be contributed to reserves and retained earnings until institutional capital equals ten percent of total assets.

PART II -DIRECTOR OF SOCIETIES AND STAFF

5. Director of Societies and staff.

- (1) There shall be a Director of Societies who shall be responsible for the administration of this Act and the management of the Department of Co-operative Development.
- (2) The Director of Societies shall have such professional and administrative staff as are determined by the Minister.

6. Functions of Director of Societies.

- (1) The Director of Societies shall —
 - (a) register co-operative societies under this Act;
 - (b) regulate and supervise co-operative societies;

- (c) initiate and encourage organised activities for the development and strengthening of co-operative societies and co-operative credit unions;
 - (d) ensure that records are kept up-to-date; and
 - (f) arrange the hearing of disputes pursuant to section 97.
- (2) The Director of Societies may, in writing, delegate a function specified in subsection (1), to an individual or organization and a function so delegated shall be performed in such manner as the Director of Societies may determine.
- (3) In the discharge of its responsibilities under this Act, the Director of Societies may —
- (a) process applications and issue certificates of registration to new co-operative societies;
 - (b) vary, restrict or revoke certificates of registration;
 - (c) establish prudential criteria to be met by co-operative societies;
 - (d) obtain information in such form as the Director of Societies may require, in writing, from time to time;
 - (e) perform assessments of the risk profile and the safety and soundness of co-operative societies;
 - (f) conduct on-site examinations of co-operative societies and submit to the relevant co-operative societies, any report produced from the examinations conducted;
 - (g) conduct continuous off-site assessment of the financial condition and performance of co-operative societies;
 - (h) prepare and issue guidelines concerning prudential standards and for the prevention of money laundering and financing of terrorism;
 - (i) take any other action deemed necessary to ensure the soundness of the co-operative societies industry in accordance with this Act.

PART III – REGISTRATION OF CO-OPERATIVE SOCIETIES

7. Application for registration.

- (1) No co-operative society may commence or continue business unless it is registered under this Act.
- (2) Subject to subsection (3), an application for registration under this Act shall be submitted to the Director of Societies in the prescribed form.
- (3) An application for registration under this Act shall be signed —

- (a) in the case of persons where the co-operative society is not registered under this Act, by at least ten members of the co-operative society;
 - (b) in the case of the Apex Body where all of its members are co-operatives including credit unions, by a representative of each of the affiliated co-operatives.
- (4) An application made pursuant to subsection (2) shall —
- (a) be accompanied by —
 - (i) two copies of the proposed bye-laws;
 - (ii) the prescribed application fee;
 - (iii) a business plan covering three years and providing a detailed explanation of actions intended to accomplish the primary functions of the co-operative society; and
 - (iv) such other information with respect to the co-operative society as the Director of Societies may require;
 - (b) be submitted in duplicate;
 - (c) include —
 - (i) the proposed name of the co-operative society;
 - (ii) the street address of the co-operative societies' principal place of business;
 - (iii) a declaration that the co-operative societies' term of existence is perpetual;
 - (iv) the aggregate value of all initial shares;
 - (v) the name and address of, and the number of non-withdrawable qualifying shares subscribed by each organizer;
 - (vi) the number of directors constituting the initial board and the name and address of each person who will serve as director until the first annual meeting; and
 - (vii) the defining bond of association shared by the members of the co-operative society at the time of registration.
- (5) Where the directors of a co-operative society intends to change the address of the registered office, the directors shall inform the Director of Societies of such intention at least one month prior to the change being made.

8. Conditions for registration.

- (1) Subject to subsections (2) and (4), no group may be registered or no co-operative society having been registered may continue to be so registered under this Act —

- (a) unless its membership consists of individuals who are fifteen years and older;
 - (b) unless it is considered to be economically viable by the Director of Societies, having assessed the demand for its proposed products and services, the potential size of the co-operative society, its membership and its capital base;
 - (c) unless there is conformity with the co-operative principles as set out in section 4;
 - (d) the words “co-operative society” form a part of the legal name of the co-operative society;
 - (e) unless the word “limited” is the last word of the legal name of a co-operative society to be registered with limited liability;
 - (f) if the name of the co-operative society is identical with that of another co-operative society or which so nearly resembles that name as to be likely to mislead the members of the public as to its identity;
 - (g) unless it has and maintains an address to which all notices and communications may be sent;
 - (h) unless its bye-laws are in conformity with this Act; and
 - (i) unless, within sixty days after the issue of the certificate of registration, the co-operative society paints or affixes its registered name in letters easily legible in a conspicuous position on the outside of every office or place in which the business of the co-operative society is carried on;
 - (j) its managers are deemed to be fit and proper persons.
- (2) Notwithstanding subsection (1), the Director of Societies may register as a youth co-operative society, a group, the majority of whose members are under the age of fifteen years.
- (3) The following co-operative societies are eligible for registration under this Act —
- (a) consumers’ co-operative society;
 - (b) housing co-operative society;
 - (c) youth co-operative society;
 - (d) producer co-operative society;
 - (e) service co-operative society;
 - (f) worker co-operative society;
 - (g) such other co-operative society as the Director of Societies may determine.
- (4) The membership of co-operative societies eligible to be registered under this Act shall consist of at least ten active members.

9. Register.

A co-operative society shall keep a register of members and shares in which shall be recorded —

- (a) the names and addresses of members and the number of shares held by each member;
- (b) the date on which each member became a member, and the date if any, on which he ceased to be a member; and
- (c) the nominees appointed by the members.

10. Registration of co-operative societies.

- (1) Where the Director of Societies is satisfied that the application is made in accordance with this Act, the Director of Societies shall register a co-operative society and its bye-laws and issue that co-operative society with a certificate of registration in the prescribed form.
- (2) The Director of Societies shall cause the name under which a co-operative society is registered —
 - (a) to be published in the *Gazette*; and
 - (b) to be noted in the register kept at the office of the Director of Societies.
- (3) Where the Director of Societies refuses to register a co-operative society the Director of Societies shall give the applicant reasons in writing for the refusal.

11. Effect of certificate of registration.

- (1) A co-operative society comes into being on the date inscribed on the certificate of registration.
- (2) A certificate of registration issued by the Director of Societies to a co-operative society is admissible in evidence as conclusive proof that the co-operative society named in the certificate is registered pursuant to this Act and has complied with all the requirements for registration.
- (3) A co-operative society has the capacity to carry on its business in accordance with its bye-laws.
- (4) No co-operative society may engage in any business other than that which is connected with its objectives or which is reasonably incidental thereto.

12. A co-operative society to be a body corporate.

The registration of a co-operative society shall render it a body corporate by the name under which it is registered with perpetual succession and a common seal with power to hold property, to enter into contracts, to institute and defend suits

and other legal proceedings and to do all things necessary for the purposes of its bye-laws.

13. Display of certificate, etc.

- (1) A co-operative society shall have its certificate of registration prominently displayed at its registered address.
- (2) Without prejudice to subsection (1), there shall be made available at all reasonable times at the registered address of the co-operative society —
 - (a) a copy of this Act and the regulations;
 - (b) a copy of the bye-laws;
 - (c) the register of members;
 - (e) copies of all notices of directors and notices of change of directors;
 - (f) the register of directors;
 - (g) a copy of the certificate of registration;
 - (h) such other records as may be prescribed in the bye-laws.

14. Suspension and cancellation of registration.

- (1) Subject to this Act, the Director of Societies may by order in writing suspend the registration of a co-operative society, if the Director of Societies is satisfied that the co-operative society —
 - (a) is in breach of any condition of registration;
 - (b) is in breach of any requirement of section 13 or 14;
 - (c) or any officer, Board or committee member thereof has failed or refused to comply with any obligation imposed by this Act, the regulations or the bye-laws; or
 - (d) or any officer, Board or committee member thereof has failed or refused to comply with any order or request made by the Director of Societies under this Act.
- (2) The Director of Societies may by order in writing cancel the registration of a co-operative society if —
 - (a) at any time it is proven that the number of members has been reduced to less than ten members who are above the age of fifteen years, except in the case of an Apex Body which includes among its members one or more registered co-operative society;
 - (b) it is proven that the registration has been obtained by fraud or mistake.
- (3) An order under subsection (1) or (2) shall take effect from the date of the order.

- (4) No suspension or cancellation may be made by the Director of Societies until he has given the co-operative society an opportunity to be heard, and any suspension may not exceed fifteen months.
- (5) Where after a period of suspension a co-operative society has not rectified the circumstances leading to its suspension, the Director of Societies may cancel the registration of that co-operative society.
- (6) Where the registration of a co-operative society is cancelled by order under this section, the co-operative society shall, except for the purpose of winding up, cease to exist as a body corporate from the date on which the order takes effect.
- (7) Where the Director of Societies suspends or cancels the registration of a co-operative society, the Director of Societies may cause notice of such suspension or cancellation to be published in the Gazette.

PART IV -MEETINGS OF SOCIETIES

15. First annual general meeting.

- (1) A co-operative society shall, within one month of the date of its registration, hold its first annual general meeting at which time all members are entitled to be present and to vote.
- (2) Notwithstanding subsection (1), where the directors apply to the Director of Societies, the Director of Societies may extend the time for holding the first annual general meeting.
- (3) The business at the first annual general meeting referred to under subsection (1) shall include —
 - (a) the adoption of the bye-laws;
 - (b) the election of directors and the supervisory committee; and
 - (c) the appointment of an auditor.

16. Annual general meetings.

- (1) A co-operative society shall hold an annual general meeting in each year within thirty days after acceptance by the Board of the auditor's report on the co-operative society's annual financial position, but in any case not later than four months after the end of the financial year of the co-operative society.
- (2) The annual financial report shall be made available to members at least ten days prior to the annual general meeting.
- (3) The bye-laws may provide for holding a semi-annual general meeting or other periodic meetings.

17. Special general meetings.

- (1) The directors may, at any time, call a special general meeting of members.
- (2) Subject to subsection (3), the Board shall call a special general meeting on receiving a written request, specifying the purpose of the meeting, from such number of members as may be specified in the bye-laws.
- (3) The directors shall call the special meeting mentioned in subsection (2) within twenty days of receiving the written request.
- (4) The special meeting referred under subsection (3), may be called only to address the subject matter specified in the request.
- (5) The Director of Societies may call a special meeting of the co-operative society —
 - (a) for the purpose of reporting to the members the results of any audit, examination or other investigation of the co-operative society's affairs ordered by the Director of Societies; or
 - (b) where the co-operative society fails to hold an annual general meeting in accordance with subsection (1) or (2) of section 16.

18. Notice of meeting.

- (1) A co-operative society shall give at least ten days' notice of an annual general meeting or a special general meeting to its members —
 - (a) by electronic communication;
 - (b) by sending the notice by mail to the members at the address given in the register of members; or
 - (c) in such other manner as may be prescribed in the regulations or the bye-laws.
- (2) A notice of an annual general meeting or a special general meeting shall specify the purpose for which the meeting is being called.
- (3) An annual general meeting or a special general meeting shall be held in The Bahamas at a place selected by the directors.
- (4) The proceedings or the business transacted at a general meeting are deemed not to be invalidated by reason only of the non-receipt by a member of a notice of the meeting.
- (4) The proceedings or the business transacted at a general annual meeting are deemed not to be invalidated by reason only of the non-receipt by a member of notice of the meeting.

19. Record date.

- (1) Subject to subsection (2), for the purpose of determining the date on which members —

- (a) are entitled to receive payment of a bonus or dividend;
 - (b) are entitled to participate in a distribution on liquidation;
- the directors may fix in advance a date as the record date for the determination of members.
- (2) The record date mentioned in subsection (1) is not to precede by more than fifty days the particular action to be taken.
 - (3) Subject to subsection (4), for the purpose of determining members entitled to receive notice of and to vote at a general meeting, the directors may fix in advance a date as the record date for the determination of members.
 - (4) The record date mentioned in subsection (3) shall not precede by more than fifty days nor less than eleven days the date on which the meeting is to be held.
 - (5) Where the directors do not fix a record date —
 - (a) the record date for the determination of members entitled to receive notice of and to vote at a general meeting shall be —
 - (i) the close of business on the day immediately preceding the day on which the notice is given; or
 - (ii) if no notice is given, the day on which the meeting is held; and
 - (b) the record date for the determination of members for any purpose other than that described in paragraph (a) is deemed to be at the close of business on the day on which the directors plan a resolution relating to that purpose.

20. Quorum.

- (1) Subject to subsection (2), the quorum at any annual general meeting or special general meeting of members shall be as prescribed in regulations.
- (2) Where a quorum is not present one hour after the time fixed for the commencement of the meeting of members, the meeting shall proceed and the members present shall constitute a quorum.
- (3) Where a quorum is not present thirty minutes after the time fixed for the commencement of an annual general meeting or special general meeting —
 - (a) the members present may postpone the meeting to a time and place to be determined by the Board but not later than thirty days after the date of the postponed meeting and may not transact any other business;
 - (b) the Director of Societies or his designate may direct that the meeting proceeds, if the Director of Societies or his designate is satisfied that the —

- (i) meeting was convened in accordance with the Act;
 - (ii) members were properly notified; and
 - (iii) members constitute at least seventy five per cent of the amount required for a quorum.
- (4) At any meeting summoned by the Director of Societies, any number of members present at such meeting shall constitute a quorum.

21. Delegates.

- (1) Where the bye-laws provide for the nomination and appointment of delegates to an annual general meeting —
- (a) the delegates shall exercise the powers of membership at any annual general meeting or special general meeting; and
 - (b) any reference in this Act with respect to the exercise of any power mentioned in paragraph (a) shall be construed as a reference to delegates.
- (2) The members who elect delegates may, at a special general meeting called for that purpose or at an annual general meeting remove the delegates in any manner provided for in the bye-laws.

PART V - RIGHTS AND LIABILITIES OF MEMBERS

22. Qualifications for membership.

- (1) A person, other than a co-operative society, qualifies for membership of a co-operative society if that person —
- (a) is either a citizen or a resident of The Bahamas;
 - (b) has attained the age of fifteen;
 - (c) is of sound mind;
 - (d) has with the other members of the co-operative society some common bonds of philosophy, occupation or association or of residence in a defined neighbourhood or district; and
 - (e) in the case of a youth co-operative, is a member of a school, target community, youth club or any other like organization.
- (2) Subject to the approval of the Director of Societies —
- (a) a co-operative society may be a member of a co-operative society;
 - (b) a person may be a member of more than one co-operative society with similar objectives.

- (3) A person, including a minor, who is duly admitted to membership shall enjoy all the rights of that co-operative society and shall be subject to all the liabilities of membership and any other liabilities existing in law.
- (4) Without prejudice to anything contained in this section, provision may be made in the bye-laws respecting qualifications for membership.

23. Application for membership.

An application for membership of a co-operative society shall be submitted to the Board in the form prescribed in regulations.

24. Membership fees.

- (1) No person may exercise the rights of membership of a co-operative society unless and until he has paid the prescribed membership fee and has satisfied any other requirement which may be prescribed in the bye-laws.

25. Voting rights.

- (1) There shall be no voting by proxy.
- (2) A member of a co-operative society shall have one vote except where such member is the chairman of any meeting of the co-operative society in which case if there is an equality of votes he shall have a casting vote in addition to his original vote.
- (2) A co-operative society that is a member of another co-operative society shall exercise its voting rights in that other co-operative society through one of its members duly appointed as a delegate under section 22.

26. Withdrawal and termination of membership.

- (1) A member of a co-operative society may at any time withdraw from membership on such condition as may be prescribed by the bye-laws or regulations.
- (2) The withdrawal from a co-operative society shall be by written notice addressed to the secretary of the Board.
- (3) The withdrawal from a co-operative society shall not affect any existing liability of the member of the co-operative society.

27. Liability of current members.

Subject to this Act, the liability of a current member of a co-operative society is limited to the paid up amount of his qualifying and equity shares.

PART VI- BUSINESS OF SOCIETIES

28. Shares.

- (1) A co-operative society with a share capital may sell shares to its members, but such shares shall have their par value set out in the bye-laws of the co-operative society.
- (2) Unless a co-operative society is required by law to have limited shareholding, a co-operative society shall have an unlimited number of equity shares.
- (3) A co-operative society shall sell its shares at their par value.
- (4) A co-operative society shall issue qualifying and equity shares.
- (5) The shares referred to under this section shall be redeemable only on withdrawal or termination of membership from the co-operative society upon approval by the Board, or on the death of the member.
- (6) A share in a co-operative society is personal property and a shareholder is entitled to an annual statement on demand showing the number of shares that he owns.
- (7) A co-operative society shall ensure that the total value of its combined qualifying and equity shares is at no time less than five percent of its total assets.

29. Limitations on shareholding.

Where the liability of the members of a co-operative society is limited by shares, no member, except where a co-operative society is a member of that co-operative society, may hold more than one-fifth of the outstanding paid up shares of that co-operative society.

30. Dormant accounts.

Where a member of a co-operative society fails to transact business with that co-operative society for a period of one year, that member's qualifying shares may be transferred to a dormant account that may be reactivated in a manner prescribed by the regulations.

31. Transfer of shares generally.

- (1) A share may be transferred to any other member at the option of the transferor, but where the transferee is not a member, the Board or the general meeting, according to the bye-laws relating to the admission of members, shall approve that transfer before the transfer can be registered.

- (2) A transfer of shares shall be effected in such form as the Director of Societies determines.
- (3) No transfer of a share shall be valid and effective unless and until such transfer has been registered by the secretary on the direction of the Board.
- (4) No transfer of a share shall be registered without the written permission of the Board where that transfer is made by a member indebted to the co-operative society, and where that transfer of a share is registered by the transferee, any claim by the co-operative society upon the transferor is not affected by the transfer.

32. Transfer of shares of a member who is of unsound mind.

- (1) Where a member or person claiming through a co-operative society is of unsound mind or is incapable of managing his affairs and no committee, receiver or guardian has been appointed, the co-operative society may, subject to this section and section 31, transfer the share or interest of such member to any person nominated by such member for the purposes of section 35 or may pay to the person nominated a sum representing the value of the share or interest of such member ascertained in accordance with subsection (5).
- (2) Subject to subsection (3), if no nominee has been appointed, the co-operative society may pay a sum representing the value of the member's share or interest to the reserves of the Apex Body or co-operative society.
- (3) If the value of the share or interest does not exceed five hundred dollars, the Board may, subject to any conditions it thinks fit, pay the whole or any portion of such sum to the person who appears to have the care of such member or the management of his affairs.
- (4) A transfer and payment made by a co-operative society in accordance with this section shall be valid and effective against any demand made upon the co-operative society by any person.
- (5) For the purposes of this section, the value of any share or interest (including group insurance, where applicable) shall be represented by the sum actually paid for that share or interest by the member holding it unless the bye-laws otherwise provide.

33. First charge and lien on shares.

- (1) A co-operative society has a lien on the shares or amount outstanding to the credit of a member or his legal representative for any debt due by that member or shareholder to that co-operative society.
- (2) A co-operative society may enforce a first charge and a lien mentioned in subsection (1) in the manner set out in its bye-laws.

- (3) The Board may, in default of payment within ninety (90) days by any member indebted to a co-operative society, apply the sum paid up for the time being on any equity shares held by the member in or toward the discharge of the debt so due and in any expense in or about the same, and the defaulting member shall cease to have any further claim in respect of such shares.

34. Restriction on transfer of shares or interest in capital

- (1) Subject to subsection (2), the transfer of a share or interest of a member or deceased member in the capital of a co-operative society shall be subject to such conditions under this Act.
- (2) No share or interest or any part thereof in the capital of a co-operative society may be transferred unless the transfer is made to a member thereof or to a person whose application for membership has been accepted.

35. Power of nomination.

- (1) A member of a co-operative society may, by instrument in writing signed by such member in the presence of two attesting witnesses and delivered at or sent to the registered office of the co-operative society during the lifetime of such member or made in any book kept at the registered office, nominate any person to or among whom there shall be transferred at his death such property in the co-operative society of which he is the owner at the time of his death, or as may have accrued thereon, whether in shares, or so much thereof as is specified in such nomination if the nomination does not comprise the whole.
- (2) A nomination made pursuant to subsection (1) may be revoked or varied by a subsequent nomination, signed, attested and delivered or sent or made as aforesaid, or by any similar document in the nature of a revocation or variation signed by the nominator in the presence of two attesting witnesses and delivered, sent or made as aforesaid but any such nomination may not be revoked or varied by the will of the nominator or by any codicil thereto.
- (3) All nominations and all revocations or variations thereof delivered or sent to a co-operative society shall be recorded in a book kept at the registered office of the co-operative society.

36. Transfer of share or interest on death of member.

- (1) Where a person has been nominated as beneficiary by a member in accordance with the bye-laws and such nominee is admitted to membership in that co-operative society, the co-operative society shall within one year of the death of the member by whom the nomination was

made, transfer the share or interest of the deceased member to the limit specified in subsection (4) to the nominee.

- (2) Where no nominee is admitted to membership in the co-operative society or where the deceased member made no such nomination, the co-operative society shall within one year of the death of such deceased member pay to the nominee or legal personal representative of the deceased member as the case may be, such sum, not exceeding the said limit, representing the value or part thereof of the deceased member's shares or interest in the co-operative society.
- (3) Nothing in this section shall be construed as prohibiting a nominee who has been admitted to membership from electing to receive payment representing the value of the deceased member's shares or interest instead of accepting a transfer.
- (4) Subject to section 31, and unless prevented by order of a court of competent jurisdiction, a co-operative society shall pay such nominee or legal personal representative as the case may be, the sum due to the deceased member from the co-operative society.

37. Liquidation of Shares.

Further to section 29(1-3), shares may only be liquidated by the buy-back of those shares by the co-operative, using the Share Redemption Fund. All requests for withdrawal of membership (liquidation of shares) shall be made in writing to the secretary of the co-operative and approved by the Board.

38. Disposal of produce through co-operative society

- (1) A co-operative society which has as one of its objects the disposal of any article or produce obtained by the work or industry of its members, may by its bye-laws or otherwise, contract with its members —
 - (a) that every such member who produces any such article shall dispose of the whole or any specified amount, portion or description thereof to, or through the co-operative society;
 - (b) that any member who is proved or adjudged to be guilty of a breach of the bye-laws or contract shall pay to the co-operative society liquidated damages in a sum ascertained or assessed in such manner as may be prescribed in the bye-laws.
- (2) In the event of any breach or the intended breach by a member of any co-operative society of any provision of a contract made in accordance with this section, such co-operative society shall be entitled to an injunction to restrain such member, his agent and servants from selling or delivering the agricultural or manufactured products otherwise than in accordance with

the contract and to a decree of specific performance of the said contract by such member.

- (3) Pending the adjudication of any action brought by any co-operative society under this section and upon *ex parte* application to the Supreme Court and upon evidence by affidavit of the breach or threatened breach and upon giving of suit or under-taking of security as may be approved by the Supreme Court, the co-operative society shall be entitled to an interim injunction restraining such breach or threatened breach.
- (4) A contract entered into under this section shall not be questioned in any court on the ground only that it is a contract in restraint of trade.

39. Creation of charge in favour of co-operative society.

- (1) A person who is indebted to the co-operative society may be required to create a charge in favour of the co-operative society in such form as may be prescribed.
- (2) A charge shall, so long as it continues in force, confer on the co-operative society the following obligations —
 - (a) the right upon the happening of any event specified in the charge as being an event authorising the chargee to seize the property subject to the charge to take possession of any property so subject;
 - (b) after an interval of five clear days or such less time as maybe specified in the charge from the date of taking possession of any property subject to the charge, to sell such property either by auction or, if the charge so provides, by private treaty and either for a lump sum or payment by instalments;
 - (c) to apply the proceeds of sale in or towards discharge of the debt secured by the charge and the costs of seizure and sale and to pay any surplus of such proceeds to the member whose property was sold.
- (3) A charge shall, so long as it continues in force, impose on the member the obligation to pay to the co-operative society towards the discharge of his indebtedness the proceeds of sale of any property comprised in the charge or any money received under a policy of insurance or by way of compensation in respect of any such property, except insofar as the charge otherwise allows.
- (4) For the avoidance of doubt, it is hereby declared that a charge under this section is not a bill of sale within the meaning of the Sale of Goods Act (*Ch. 337*).

40. Execution and registration of charge.

- (1) A charge created under section 39 shall be duly executed if the person to whom credit is extended signs documents evidencing the charge in the presence of —
 - (a) the secretary of the co-operative society; or;
 - (b) the manager or loan officer of the co-operative society.
- (2) The secretary shall file one copy of the charge, transmit one copy to the Registrar General, and deliver one copy to the member.
- (3) The Registrar General shall keep a book to be known as the "Registered Societies Charges Book" in which he shall register every charge transmitted to him by the co-operative society, and issue to the co-operative society a certified copy of the registration.
- (4) The registration of a charge under subsection (3) shall constitute a first charge and security in favour of the co-operative society and shall be deemed to affect with notice any person dealing with property comprised in the charge.
- (5) Where an indebtedness in respect of which a charge was created is discharged, the secretary, manager or loan officer of the co-operative society shall —
 - (a) cause a document to that effect to be prepared indicating that the charge has been discharged;
 - (b) file one copy of such document and transmit one copy to the Registrar General who shall immediately make an entry of satisfaction in the Registered Societies Charges Book; and
 - (c) deliver one copy to the member.
- (6) Any person may, on payment of the prescribed fee, inspect the Registered Societies Charges Book and take extracts.
- (7) Notwithstanding anything contained in this section, every charge subsisting at the commencement of this Act in favour of a co-operative society shall be deemed to be registered in the Registered Societies Charges Book and any such charge shall, without prejudice to anything contained therein, have the same force and effect as a charge created under this Act.

41. Claims and rights.

Nothing in section 39 shall affect —

- (a) any claim of the Government in respect of taxes or money recoverable as such or of a landlord in respect of rent or money recoverable as rent;

- (b) the rights of any *bona fide* purchaser for value without notice of the charge; or
- (c) the rights of any prior charge.

42. Prior claim in favour of co-operative society.

- (1) Subject to any claim in respect of debts due to the Government or to a landlord in respect of rent or any money recoverable as rent, any debt or outstanding demand owing to a co-operative society by a member or past member shall notwithstanding anything contained in section 39 be a first charge —
 - (a) upon any real estate owned by the indebted member;
 - (b) upon the crops or other agricultural produce whether standing or severed, raised in whole or in part with the loan from the co-operative society by such member or past member; and
 - (c) upon any cattle or other livestock, fodder for the same, agricultural or industrial machinery or implements, or raw materials for use in manufacture or handicraft used for the purposes of agriculture, industry, services, fishing or fish processing equipment supplied to or purchased by such member or past member in whole or in part from any loan whether in goods or money granted him by the co-operative society.
- (2) Any person dealing with any of the property specified in subsection (1) shall be deemed to have notice of such first charge and all such dealing shall be subject to the charge created by this Act.

43. Enforcement of a charge.

A co-operative society may enforce a charge by applying to a Magistrate of the district in which the member resides or carries on business or where the property subject to the charge is situated for a warrant of distress by certifying under seal to the Magistrate the amount due and particulars of the property so charged and the Magistrate shall issue a warrant of distress and may order the sale of the property by public auction or private treaty.

44. Assignment of a charge.

- (1) A co-operative society may borrow from any other co-operative society or from any bank approved by the Director of Societies on the security of any charge executed and registered in accordance with section 39 and may for this purpose assign any such charge to the other co-operative society or bank.

- (2) An assignment of a charge under this section shall be registered in the same manner as a charge under section 40 and that section shall apply *mutatis mutandis* to an assignment of a charge so registered.
- (3) An assignment or charge when registered shall operate as a first charge in favour of the assignee subject to section 33.
- (4) Where any charge is assigned to a co-operative society established with the object of facilitating the operations of other co-operative societies, that co-operative society may borrow from any bank approved by the Director of Societies and for this purpose may re-assign any such charge to such bank and subsections (2) and (3) shall apply *mutatis mutandis* to such re-assignment.

45. Bond as additional security for debt.

- (1) A co-operative society may require a member or officer to give a bond with or without surety as additional security for repayment of any debt and any condition thereby imposed on the member or officer relating to the payment of capital and interest shall be strictly observed and performed and on breach of any such condition the bond shall be immediately forfeited.
- (2) Section 44 relating to the assignment of charges shall apply *mutatis mutandis* to the assignment of bonds.

PART VII- BOARD OF DIRECTORS

46. Provisional directors.

- (1) This section does not apply to a co-operative society that is continued pursuant to this Act.
- (2) On registration of the co-operative society, the individuals whose names appear in the application for registration as having been appointed and having consented to act as provisional directors —
 - (a) are deemed to have all the powers and duties of directors; and
 - (b) shall hold office until the first general meeting.
- (3) The provisional directors shall hold a meeting as soon as possible after the issue of the co-operative society's certificate of registration.
- (4) The provisional directors may, at the meeting referred to under subsection (2) —
 - (a) pass resolutions establishing policies of the co-operative society;
 - (b) adopt forms of corporate records;
 - (c) authorise the issue of securities;

- (d) appoint officers;
 - (e) appoint an auditor to hold office until the first general meeting of the members;
 - (f) make banking or other financial arrangements;
 - (g) appoint authorised signing officers;
 - (h) adopt operating policies; and
 - (i) transact any business in addition to that described in paragraphs (a) to (h).
- (5) A provisional director may call the meeting of directors mentioned in subsection (2) by giving not less than five days' notice of the meeting to each provisional director, stating the time and place of the meeting.
- (6) The notice mentioned in subsection (5) may be waived where all provisional directors are in attendance at the meeting of provisional directors.

47. Board of Directors.

- (1) Every co-operative society shall be directed by a Board which shall be constituted in accordance with the bye-laws.
- (2) All directors shall be citizens or residents of The Bahamas.

48. Qualifications of directors.

- (1) A person is not eligible to be a director if he —
 - (a) has been convicted by a court in The Bahamas or any country for an indictable offence or any other offence involving dishonesty;
 - (b) is in default of debts by over 90 days owed to a co-operative society or compounds with his creditors;
 - (c) is or becomes bankrupt;
 - (d) is of unsound mind and has been so found by a court in The Bahamas;
 - (e) is less than eighteen years or, in the case of a youth co-operative, under the age of ten years;
 - (f) is an employee of the Department of Co-operative or of the Apex Body, or is a partner or employee of the co-operative society's auditor;
 - (g) holds less than the minimum level of equity shares as prescribed;
 - (h) is already an elected member of the supervisory committee of the co-operative society; or
 - (i) is part of the management of another co-operative society of the same type.

49. Election of directors, etc.

- (1) Subject to the regulations and bye-laws —
 - (a) the election of directors shall take place annually at the annual general meeting, and the directors are eligible for re-election;
 - (b) the directors shall hold office until the conclusion of the meeting at which their successors are elected;
 - (c) where the number of nominees exceeds the number of directors to be elected, the election of directors is required to be by secret ballot;
 - (d) every member has the right to vote for the number of directors to be elected, and any ballot that contains the names of more than the number to be elected is void;
- (2) The directors shall hold office —
 - (a) subject to paragraph (c) the directors shall be elected for a term of three years;
 - (b) after the commencement of this Act, on the formation of each new co-operative society, or on the re-constitution of a previously co-operative society, at the next annual general meeting of members the election of the Board shall be on a rotational basis as follows —
 - (i) at least one-third shall be elected to serve for one year;
 - (ii) at least one-third shall be elected to serve for two years; and
 - (iii) the remainder shall be elected to serve for three years, and thereafter each elected member of the Board shall serve for a term of three years
 - (c) a person shall not serve as a director of a co-operative society for more than two terms but thereafter the person will become eligible for re-election to the Board after the expiration of one year out of office;
- (3) Where there is a vacancy on the Board, and where —
 - (i) there is a quorum of elected officials, the remaining officials may exercise all the powers of the directors, or fill the vacancy until the next annual general meeting;
 - (ii) there is not a quorum of directors, the remaining officials shall call a general meeting for the purpose of electing members to fill any vacancies; and
 - (iii) there are no directors remaining, such number of members as may be specified in the bye-laws, may in writing appoint directors solely for the purpose of calling a general meeting to elect members to fill the vacant directorships or the Director of Societies may call such meeting.

- (4) Where an election of directors required by this Act, the regulations or the bye-laws does not take place at the proper time, the directors then in office shall continue in office until their successors are elected.

50. Duties and powers of Board.

- (1) The Board , however designated, shall be responsible for the management of the business affairs of the co-operative and in pursuance thereof the Board shall conduct the affairs of the co-operative with transparency and accountability.
- (2) In addition to the duties prescribed in the bye-laws, the Board shall —
- (a) approve such policies as are required for all major activities of the co-operative, in particular, the marketing, investment, liquidity and asset liability management, accounting policies and audit and internal control systems; and
 - (b) subject to section 83, have charge of the investment of funds;
 - (c) approve an annual operating budget for each calendar year;
 - (d) cause accurate accounts to be kept of —
 - (i) the assets and liabilities of the co-operative;
 - (ii) all the sums of money received and expensed; and
 - (iii) every other transaction affecting the financial position of the co-operative.
 - (e) perform any other duty that is necessary and proper to carry out the purposes and exercise the powers of the co-operative in accordance with this Act; and
 - (f) ensure that the Director of Societies and his assigns has access to all books, papers, records and other sources of information under its control within such time as may be specified by the Director of Societies.
- (3) Subject to this Act, the regulations and the bye-laws, the Board shall exercise the powers of the co-operative society directly or indirectly through the employees and agents of the co-operative society.

51. Appointment of committees.

- (1) Pursuant to subsection 50(1), the Board may establish committees for the more efficient management of various aspects of the business or affairs of the co-operative society.
- (2) The Board may, from time to time —
- (a) appoint from among its number any committee it considers necessary; and

- (b) by resolution delegate to any committee any powers that it considers necessary for the efficient conduct of the affairs and business of the co-operative society.
- (3) A committee of directors that has powers delegated to it pursuant to subsection (1) shall consist of at least three directors.
- (4) A member of a committee appointed by the Board holds office until —
 - (a) his removal by resolution of the Board;
 - (b) he ceases to be a member of the Board; or
 - (c) the dissolution of the committee.
- (5) A committee may exercise any powers of the Board that are delegated to it by resolution of the Board, subject to any restrictions contained in the resolution.
- (6) Notwithstanding subsection (5), no committee of directors may —
 - (a) fill a vacancy among the directors;
 - (b) declare a bonus, dividend or patronage rebate;
 - (c) approve any financial statements of the co-operative society;
 - (d) submit to the members any question or matter requiring the approval of members; or
 - (e) make decisions where this Act or the bye-laws require a two-thirds majority or unanimous vote of the Board.
- (7) A committee shall —
 - (a) fix its quorum at a majority of its members;
 - (b) keep minutes of its proceedings; and
 - (c) submit to the Board of directors, at each meeting of the Board, the minutes of the committee's proceedings during the period since the most recent meeting of the Board.

52. Borrowing power.

- (1) Subject to the bye-laws, directors of a co-operative society may without authorisation of the members —
 - (a) borrow money on the credit of the co-operative society;
 - (b) issue, re-issue, sell or pledge debt obligations of the co-operative society;
 - (c) give a guarantee on behalf of the co-operative society to secure performance of an obligation by any person; and
 - (d) mortgage, charge, pledge or otherwise create a security interest in all or any property of the co-operative society owned or subsequently acquired, to secure any debt obligation of the co-operative society.

- (2) The Board may buy or sell or lease property to carry out the business of the co-operative after consultation with the members in a general meeting.
- (3) A sale or exchange may be abandoned by the directors where they are so authorised in a special resolution by the members.

53. Meeting of directors.

- (1) Subject to the bye-laws, the directors may meet at any place, and on any notice that they consider appropriate.
- (2) The chairman —
 - (a) may call a meeting of directors at any time; and
 - (b) on the written request of at least two directors, shall call a meeting within fourteen days of the receipt of the request.
- (3) A majority of the directors constitute a quorum at any meeting of directors.
- (4) Subject to the bye-laws, a notice of a meeting of directors need not specify the purpose of or the business to be transacted at the meeting.
- (5) A director may in any manner waive a notice of a meeting of directors.
- (6) For the purpose of subsection (5), attendance of a director at a meeting of directors is not deemed to be a waiver of notice of the meeting, unless the director attends the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called.
- (7) Where the time and place of an adjourned meeting is announced at the original meeting, notice of an adjourned meeting of directors is not required to be given.

54. Meeting by telephone etc.

- (1) Subject to the bye-laws, where all the directors consent, a meeting of directors or a committee of directors may be held by means of —
 - (a) a telephone system; or
 - (b) a communication facility other than telephone, that permits all persons participating in the meeting to hear and speak to each other, and a person so participating is deemed to be present at that meeting.
- (2) Unless this Act, the regulations or the bye-laws require a meeting, a resolution of the directors may be passed without a meeting where —
 - (a) all directors are notified in writing, and two-thirds of them consent to the resolution in writing; and

- (b) the consent is filed with the minutes of the proceedings of the directors.

55. Attendance at meeting.

- (1) A director of a co-operative society is entitled to receive notice of and to attend and be heard at every meeting of members.
- (2) Where a director —
 - (a) resigns;
 - (b) receives a notice or otherwise learns of a meeting of members called for the purpose of removing him from office; or
 - (c) receives a notice or otherwise learns of a meeting of directors or members at which another person is to be appointed or elected to fill his office, whether because of his resignation or removal or because his term of office has expired or is about to expire, he is entitled to submit to the co-operative society a written statement giving the reasons for his resignation or the reasons he opposes any proposed action or resolution.
- (3) A co-operative society shall immediately send a copy of the statement mentioned in subsection (2) to the Director of Societies and shall make available a copy of the statement to every member.
- (4) No co-operative society or person acting on its behalf incurs any liability by reason only of circulating a director's statement sent in compliance with subsection (3).

56. Minutes of meetings of Board and committees.

- (1) The directors shall cause minutes to be kept of —
 - (a) all appointments of officers and committee members made by them;
 - (b) all the names of the directors present at each meeting of the directors; and
 - (c) all resolutions and proceedings at meetings of the co-operative society of the directors.
- (2) Every committee of the co-operative society shall cause minutes to be kept of —
 - (a) the names of the committee members present at meetings
 - (b) the committee; and
 - (c) all proceedings and resolutions of the committee.
- (3) The directors shall cause true accounts to be kept of —
 - (a) all sums of money received and expended and matters with respect to which the receipts and expenditures take place;

- (b) the assets and liabilities of the co-operative society; and
- (c) every other transaction affecting the position of the co-operative society.

57. Ceasing to hold office.

- (1) A director of a co-operative society ceases to hold office when he —
 - (a) dies or resigns;
 - (b) is removed in accordance with section 58;
 - (c) is no longer qualified pursuant to section 48; or
 - (d) acts contrary to section 66.
- (2) A resignation of a director becomes effective at the latter of —
 - (a) the time a written resignation is sent to the co-operative society; and
 - (b) the time specified in the resignation.

58. Removal of directors.

- (1) Subject to the regulations and the bye-laws, the members of a co-operative society may, by special resolution remove any director from office.
- (2) A vacancy created by the removal of a director may be filled at the meeting of the members at which the director is removed or, where not so filled, may be filled pursuant to subsections 49(3) and (4).

59. Notice of change in directors.

- (1) Within thirty days after a change in directors is made, a co-operative society shall send to the Director of Societies a notice in the prescribed form setting out the change and the Director of Societies shall file the notice.
- (2) Notwithstanding subsection (1), where a co-operative society sends the annual return required from an election at an annual general meeting within thirty days after a change is made in its directors, it is not required to send the notice required in this section.

60. Number of directors.

The members of a co-operative society may amend the bye-laws to vary the number of directors, but no amendment to decrease the number of directors affects an incumbent director.

61. Validity of acts of directors and officers.

An act of a director or officer is valid notwithstanding an irregularity in his election or a defect in his qualification.

62. Remuneration of directors and committee members.

- (1) The directors and members of the supervisory committee are elected as volunteers and shall not be paid for their services as such.
- (2) No director and no member of a committee is entitled to be paid any remuneration in connection with his duties as a director or committee member on behalf of a co-operative society or with his attendance at meetings, except where honoraria are approved by the annual general meeting for outstanding individual cases.
- (3) The directors and members of committees may be reimbursed for expenses incurred by reason of the performance of their duties and functions as directors or members of committees.
- (4) A co-operative society may purchase and maintain insurance for the benefit of a director, member of a committee, officer or employee against a liability, loss or damage incurred by that person while serving the co-operative society in the capacity of director, member of committee, officer or employee.
- (5) The annual limit that a co-operative society shall incur for Board and committee expenses may be prescribed in regulations.

63. Remuneration of employees.

Subject to section 68, the directors shall fix the salary of any employees appointed by them.

64. Duty of care of directors and officers.

Every director and officer of a co-operative society in exercising his powers and discharging his duties shall —

- (a) act honestly and in good faith with a view to the best interests of the co-operative society; and
- (b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

65. Misuse of confidential information.

A director or officer, or an associate of a director or officer, who, in connection with a transaction relating to shares of a co-operative society or a debt obligation of a co-operative society, makes use of confidential information for the benefit or advantage to himself or an associate that, if generally known, might reasonably be exercised to affect materially the value of the share or the debt obligation —

- (a) is liable to compensate any person for direct loss suffered by the person as a result of the transaction, unless the information was

known or reasonably should have been known to the person at the time of the transaction; and

- (b) is accountable to the co-operative society for any direct or advantage received or receivable by him or his associate, as the case may be, as a result of the transaction.

66. Liability of directors.

- (1) Where directors vote for or consent to a resolution authorizing or approving by any other means —
 - (a) the purchase of shares contrary to section 81;
 - (b) the payment of a dividend on shares contrary to section 87;
 - (c) the payment of a bonus contrary to section 87;
 - (d) a loan or guarantee or the giving of financial assistance contrary to section 82;
 - (e) a payment of an indemnity described in section 67 to a director or a former director, without the approval of the court required by subsection (3) of that section; or
 - (f) an act not consistent with the purpose of the co-operative society as set out in its bye-laws and with respect to which the co-operative society has paid compensation to a person, the directors are jointly and severally liable to make good any loss or damage suffered by the co-operative society.
- (2) On the application of a director, the court may declare whether or not, having regard to any of the circumstances the court considers appropriate —
 - (a) the co-operative society is insolvent; or
 - (b) the payment of a bonus or dividend or the lending of money would make a co-operative society insolvent.
- (3) The liability imposed in subsection (1) is in addition to and not in derogation from a liability imposed on a director by another enactment or law.
- (4) For the purposes of this section, a director who is present at a meeting of directors or of a committee of directors is deemed to have cast an affirmative vote, given consent to a resolution or given the approval referred to under subsection (1), unless —
 - (a) the director's dissent is entered in the minutes of the meeting; or
 - (b) the director's written dissent shall be —
 - (i) delivered to the secretary of the meeting before its adjournment; or

- (ii) delivered or sent by registered mail or via electronic media to the secretary of the meeting one day after the adjournment of the meeting.
- (5) A director who votes for a resolution referred to under subsection (1) is not entitled to dissent under subsection (4).
- (6) Where a director is not present at a meeting of directors or of a committee of directors at which a vote, resolution or approval referred to under subsection (1) is cast or given, he is deemed to have cast an affirmative vote, consented to the resolution or given approval, unless, within fourteen days after becoming aware of the proceedings, the director delivers or sends by electronic or registered mail his written dissent to the registered office of the co-operative society.
- (7) On receipt of a written dissent, the secretary of the co-operative society shall —
 - (a) certify on the written dissent the date, time and place it is received; and
 - (b) keep the written dissent with the minutes of the meeting at which the resolution was passed.
- (8) No action to enforce a liability imposed by subsection (1) is to be commenced after five years from the date of the meeting at which the vote, resolution, or the approval was taken or given.
- (9) In an action to enforce a liability imposed in subsection (1), the court may, on the application of the co-operative society —
 - (a) join as a defendant a person who received a benefit as a result of the resolution complained of; and
 - (b) make the person mentioned in paragraph (a) liable to the co-operative society jointly and severally with the directors to the extent of the amount paid to him.
- (10) A director is not liable under subsection (1) where he —
 - (a) proves that he did not know or could not reasonably have known that the act authorized by the resolution was contrary to this Act, or
 - (b) relies and acts in good faith —
 - (i) on statements of fact represented to him by an officer of the co-operative society to be correct; or
 - (ii) on statements contained in a written report or opinion of the auditor of the co-operative society or a professional person engaged by the co-operative society who is competent to give advice in respect of the matter.
- (11) A director who is found liable pursuant to subsection (1) is entitled to apply to a court for an order compelling a member or other recipient to

pay or deliver to the director any money or property that was paid, distributed to the member, or other recipients contrary to section 84, 89 or 90.

- (12) In connection with an application pursuant to subsection (11) and where the court is satisfied that it is equitable to do so, it may —
- (a) order a member or other recipient to pay or deliver to a director any money or property that was paid or distributed to a member or other recipients contrary to section 67, 81 or 87;
 - (b) make any order, other than that described in paragraph (a), that it considers appropriate.

67. Indemnification of directors.

- (1) Subject to subsections (2) and (3), a co-operative society may indemnify —
- (a) a director or officer of the co-operative society; or
 - (b) a former director or officer of the co-operative society; or
 - (c) a person who acts or has acted at the request of the co-operative society as a director or officer of a body corporate of which the co-operative society is or was a member or a creditor, against costs, charges, and expenses including an amount paid to settle an action or satisfy a judgement, reasonably incurred by that person with respect to a civil, criminal or administrative action or proceeding to which that person is made a part by reason of his being or having been a director or officer of the co-operative society or body corporate.
- (2) A co-operative society may indemnify a director, officer, or other person only where that person —
- (a) acted honestly and in good faith with a view to the best interest of the co-operative society; and
 - (b) in the case of criminal, civil or administrative action or proceeding that is enforced by a monetary penalty, had reasonable grounds for believing that the conduct was lawful.
- (3) No co-operative society shall indemnify a director, officer or other person referred to under subsection (1) with respect to an action by or on behalf of the co-operative society to obtain a judgment in its favour to which that person is made party by reason of his being or having been a director or an officer of the co-operative society, against costs, charges and expenses reasonably incurred by that person in connection with the action unless —
- (a) the co-operative society has the approval of the court; and
 - (b) that person fulfils the conditions described in subsection (2).

- (4) Notwithstanding subsections (1) to (3), a co-operative society shall indemnify a director, officer or other person referred to under subsection (1) who has been substantially successful in the defence of a civil, criminal, or administrative action or proceeding to which that person is made a party by reason of his being or having been a director or officer of the co-operative society or body corporate against costs, charges and expenses reasonably incurred by that person with respect to the action or proceedings.
- (5) A co-operative society or a director, officer or other person referred to under subsection (1) may apply to the court for an order approving the indemnity and the court may make the order.
- (6) On an application pursuant to subsection (5) the court may order notice to be given to an interested person, and that interested person is entitled to appear and be heard in person or by a counsel and attorney.

68. Duty of a director not to be limited.

The provisions of a contract, the bye-laws or the circumstances of his appointment do not relieve a director from —

- (a) the duty to act in accordance with this Act and the regulations; and
- (b) liability that by virtue of a rule of law would otherwise attach to him with respect to negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the co-operative society.

69. Material contract.

- (1) This section does not require the disclosure of an interest in a contract or transaction that is of a type available to and customarily entered into between the co-operative society and its members.
- (2) A director or officer of a co-operative society who —
 - (a) is a party to a material contract or proposed material contract with the co-operative society; or
 - (b) is a director or an officer of, or has a material interest in, a person who is party to a material contract or proposed material contract with the co-operative society, shall disclose in writing to the co-operative society, or request to have entered in the minutes of meetings of directors, the nature and extent of his interest.
- (3) The disclosure required by subsection (2) shall be made in case of a director —
 - (a) at the 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 he becomes so interested;

- (c) if the director becomes interested after a contract is made, at the first meeting after he become so interested; or
 - (d) if a person who is so interested in a contract becomes a director, at the first meeting after he becomes a director.
- (4) The disclosure required by subsection (2) shall be made in the case of an officer who is not a director —
 - (a) immediately after he becomes aware that the contract or proposed contract is to be considered or has been considered at a meeting of directors;
 - (b) if the officer becomes interested after a contract is made, immediately after he becomes so interested; or
 - (c) where he has an interest in a contract before becoming an officer, immediately after he becomes an officer.
- (5) If a material contract or proposed material contract is one that in the ordinary course of the co-operative society's business would not require approval by the directors or members, a director or officer shall disclose in writing to the co-operative society or request to have entered in the minutes of meetings of directors the nature and extent of his interest after he becomes aware of the contract or proposed contract.
- (6) A director referred to under subsection (2) may take part in discussions to consider, or vote on a resolution to approve a contract that he has an interest in, if the contract —
 - (a) is an arrangement by way of security for obligations undertaken by him for the benefit of the co-operative society or a member of the co-operative society;
 - (b) is a contract for indemnity or insurance pursuant to section 67; or
 - (c) is a contract with an affiliate.
- (7) Where a director is not entitled to vote at a meeting pursuant to subsection (2) and his presence is requested to constitute a quorum at a meeting of directors, a decision of the directors is deemed not to be invalid only by reason of the absence of the director.
- (8) For the purpose of this section, a general notice to the directors by a director or officer declaring that he is to be regarded as interested in any contract made with that person is sufficient declaration of interest in relation to any contract made with that person.
- (9) Where —
 - (a) a director or officer discloses his interest in accordance with this section; and
 - (b) the contract in which the director or officer has a material interest
 - (i) is approved by the directors or members; and

- (ii) is reasonable and fair to the co-operative society at the time it was approved, the material contract is neither void nor voidable by reason only of that relationship or by reason only that a director with an interest in the contract is present at or is counted to determine the presence of a quorum at a meeting of directors or committee of directors that authorised the contract.
- (10) Where a director or officer of a co-operative society fails to disclose his interest in a material contract in accordance with this section, a court may, on the application of a co-operative society or a member of the co-operative society, set aside the contract on any terms that the court considers appropriate.

70. Officers.

- (1) A co-operative society —
 - (a) is required to have a chairman, a vice-chairman, a treasurer, a secretary as its officers; and
 - (b) may have any officers in addition to those mentioned in paragraph (a) that are provided for in the bye-laws.
- (2) Subject to section 144 and to the bye-laws —
 - (a) the directors may designate the officers of the co-operative society, appoint persons as officers, specify the officers' duties and delegate persons to manage the business and affairs of the co-operative society to them; and
 - (b) a director may be appointed to any office of the co-operative society.
- (3) Subject to the bye-laws, no person shall be chairman or vice-chairman of a co-operative society unless he is a director of the co-operative society.

71. Bond.

The directors —

- (a) shall, in the case of a co-operative society that is organised and operated as a consumers' co-operative society as defined in section 133; and
- (b) may, in the case of any other co-operative society, require that every person appointed to an office who receives, manages or handles goods, wares or merchandise or manages or handles the expenditure of money on behalf of the co-operative society, shall give to the directors, before commencing his duties as an officer, security or a bond in the prescribed amount.

72. Declaration by directors and officers.

A co-operative society may by resolution passed by a majority of the members at an annual or special meeting, require all directors and officers to sign annually or at any other time that may be specified in the resolution a declaration relating to —

- (a) the performance of duties;
- (b) secrecy of transactions with members; and
- (c) faithful and loyal support of the co-operative society.

73. Obligation to file declaration.

A declaration made pursuant to section 72 shall be filed within five days of the making thereof with the Director of Societies.

PART VIII - SUPERVISORY COMMITTEE

74. Supervisory committee.

- (1) Every co-operative society shall have a supervisory committee which shall be elected by its members at the annual general meeting.
- (2) The members of a supervisory committee shall hold office for such terms as the bye-laws provide and until their successors are elected.
- (3) The supervisory committee shall consist of the number fixed by the bye-laws, which shall be no fewer than three and no more than five.
- (4) No person who is a member of the Board or an employee of the co-operative society shall be a member of the supervisory committee.
- (5) No member shall be a member of the supervisory committee unless he has attained the age of eighteen years.
- (6) A majority of the supervisory committee constitutes a quorum.
- (7) A member entitled to vote at an election of members of the supervisory committee, if he votes, shall cast thereat a number of votes equal to or less than the number of members of the supervisory committee to be elected, and the member shall distribute the votes among the candidates in such manner as he sees fit, but no candidates shall receive more than one vote from each member.
- (8) Where a vacancy occurs in the supervisory committee, the supervisory committee may fill all vacancies until the next annual meeting of the co-operative society.

75. Duties of supervisory committee.

- (1) The supervisory committee shall —
 - (a) examine the books of the co-operative society,
 - (b) confirm the cash instruments, property and securities of the co-operative society,
 - (c) confirm the shares of the members and, in the case of youth co-operative society that are junior co-operative credit unions confirm the shares and deposits of the members, and
 - (d) perform such other duties as are prescribed by this Act, the regulations and the bye-laws of the co-operative society.
- (2) The supervisory committee shall —
 - (a) meet at least every two months, and where no auditor has been appointed pursuant to section 89, shall meet monthly and shall at each such meeting examine the affairs of the co-operative credit union;
 - (b) meet with the Board quarterly.

76. Removal by membership of supervisory committee.

When a member of the supervisory committee fails to attend three consecutive meetings of the committee without in the opinion of the supervisory committee, having a reasonable cause therefore, or fails to perform any of the duties allotted to him as a member of the committee, his position on the committee may be declared vacant by the remaining members of the committee who may appoint a qualified person to fill the vacancy until the next annual meeting of the co-operative society.

77. Compliance Officer.

The Board may appoint such persons as the Board considers necessary to assist the supervisory committee in its duties, and may pay those persons such remuneration as it thinks fit.

78. Misappropriation, etc.

- (1) When the supervisory committee has reasonable cause to believe that the funds, securities or other property of the co-operative society have been misappropriated or misdirected, or in the event that the bye-laws of the co-operative society, this Act or the regulations have been contravened by the Board of directors or a member thereof or an officer or employee engaged by the Board of directors, the supervisory committee shall immediately inform the Director of Societies in writing.

- (2) The supervisory committee shall appoint an auditor or some other body to assist it in determining whether any of the funds, securities or other property of the co-operative society have been misappropriated or misdirected and the remuneration of any auditor or other body so appointed shall be determined by the supervisory committee and paid by the co-operative society.
- (3) In the event of a misappropriation or misdirection or a suspected misappropriation or suspected misdirection as referred to in subsection (1), the supervisory committee may suspend any member of the Board of directors on approval of the Director of Societies in writing.
- (4) The supervisory committee shall immediately request the Board to summon a special general meeting of the members to be held within fourteen days after the suspension referred to under subsection (3); and where the Board fails to summon such a meeting the supervisory committee shall summon the meeting within seven days after the expiry of the period of fourteen days.
- (5) The supervisory committee shall report to the general meeting all the circumstances of any misappropriation or misdirection of funds, securities or other property and the reasons for any suspension.
- (6) The members of the co-operative society may, by resolution, dismiss from office any person suspended under subsection (3), and, when the members of the co-operative society do not dismiss from office any person so suspended, that person shall be immediately reinstated.

79. Meetings.

- (1) The supervisory committee shall meet at least every two months, and where no auditor has been appointed pursuant to section 89, shall meet every month, and shall at each such meeting examine the affairs of the co-operative society.
- (2) The supervisory committee shall keep minutes of its meetings and shall —
 - (a) within seven days of each meeting report the results thereof in writing to the Board; and
 - (b) submit a written report to the annual meeting of the members of the co-operative society.

80. Removal by members

- (1) The members may, by resolution passed by two-thirds of the votes cast at a special general meeting duly called for the purpose, remove a member of the supervisory committee before the expiration of his term of office, and shall by vote cast at the meeting elect another member in his stead for the unexpired portion of his term.

- (2) The notice calling the meeting of members referred to in subsection (1) shall state that the purpose of the meeting is to remove the member of the supervisory committee who is named in the notice.
- (3) The member of the supervisory committee removed under this section has the right to make such representations to the members regarding the resolution for his removal as he thinks fit, and may be represented by a counsel and attorney.

PART IX - PROPERTY AND FUNDS OF CO-OPERATIVE SOCIETIES

81. Investment of funds.

- (1) The Board shall establish written policies for investing for income the accumulated funds of the co-operative society not used in the primary business of the co-operative society, and shall ensure they are in compliance with legislative requirements.
- (2) Subject to subsections (3) and (4), the funds of a co-operative society including the reserve may be invested or deposited in —
 - (a) any central credit union, central finance facility or stabilisation fund for co-operative societies, or other co-operative society registered in The Bahamas;
 - (b) shares or deposits in, or on the security of, any co-operative society with limited liability;
 - (c) any financial institution approved by the Central Bank;
 - (d) any stock, debentures, funds or securities issued by the Government;
 - (e) securities, the payment of interest on which is guaranteed by the Government;
 - (f) real property but subject to the approval of the Director of Societies and a general meeting of members called for the purpose;
 - (g) any other manner permitted by the Director of Societies.
- (3) The investments referred to in subsection (2) (d), (e), (f) and (g) shall not exceed in aggregate fifteen per cent of the unimpaired capital of a co-operative society.
- (4) The equity investment of a co-operative society in any entity shall be limited to twenty percent of the equity investment of that entity.
- (5) A co-operative society shall not invest all the funds referred to in subsection (2) in a single institution or instrument.

82. Prohibited services by co-operative society.

- (1) Except in the case of a youth co-operative society, no co-operative society shall accept deposits from members or non-members.
- (2) No co-operative society shall make advances by way of loans to its members or to non-members.

83. Borrowing by co-operative society.

- (1) Subject to the provision of any bye-laws, a co-operative society may borrow from persons who are not members of the co-operative society for the purpose of meeting any of its obligation or discharging any of its functions under this Act.
- (2) A co-operative society may by mortgage or in any other manner it deems appropriate guarantee the repayment of any sums received by it pursuant to subsection (1).

84. Statutory reserve, stabilization fund and disposal thereof.

- (1) Where a co-operative society realizes an annual profit from its transactions, that co-operative society shall establish and maintain a statutory reserve.
- (2) Every co-operative society shall be required to set aside the greater of one half of one percent of assets or twenty-five percent of surplus into a statutory reserve until its institutional capital equals ten percent of the total assets of the co-operative society as shown in the audited financial statements for the financial year.
- (3) Where a co-operative society cannot meet its statutory reserves allocation requirements under subsections (1) and (2), its Board shall notify the Director of Societies and shall propose a plan to improve its performance for his consideration.
- (4) The statutory reserve shall be treated as part of the institutional capital of the co-operative society.
- (5) Every co-operative society that is a member of the Apex Body shall contribute to the pooled stabilization fund designed to assist troubled societies and its contribution to the stabilization fund shall be sourced from —
 - (i) an appropriation from the co-operative society's retained earnings, or
 - (ii) an expense from operations.
- (6) Every co-operative society shall contribute annually to a stabilisation fund, in an amount and at such interval to be determined by the Apex

Body and the value of that contribution shall be treated as part of the institutional capital of the co-operative society.

- (7) Every co-operative society shall ensure that its statutory reserves, retained earnings, stabilization fund equity, capital grants and donations are, at no stage, less than ten percent of its total assets, except during the phase-in period as permitted by the regulations or the Director of Societies.
- (8) The proceeds of the statutory reserves and stabilization fund of each co-operative society shall be deposited with and administered by the Apex Body in such a manner as may be prescribed by the regulations and stipulated in the Apex Body's bye-laws.
- (9) Where a Apex Body has not been established or is not functioning as such, the statutory reserve and stabilisation fund shall be administered by a body corporate as determined by the Director of Societies, after consultation with the respective societies.

85. Pension Fund.

- (1) A co-operative society may establish a contributory pension fund for its employees and may contribute to such pension fund.
- (2) A pension fund established under subsection (1) shall not be considered part of the assets of the co-operative society but may be invested in such manner as may be prescribed by the bye-laws.

86. Contributions to co-operative purpose.

After making provision for doubtful receivables and the prescribed allocation or payments to its statutory reserve and stabilization funds, a co-operative society may make an annual contribution from its remaining surplus, but not exceeding five per cent to a development fund for co-operatives, any public cause or charitable purpose.

87. Dividend.

- (1) Subject to this section and section 84, any surplus may be distributed by way of dividend or patronage refund amongst its members in proportion to their shares and their patronage with the co-operative society at such rate as may be prescribed.
- (2) A co-operative society shall not —
 - (a) pay a dividend on shares or distribute any part of its accumulated funds before the financial statements have been certified by an auditor approved or appointed by the Director of Societies;
 - (b) pay a dividend or make any payment on account or out of audited annual profits unless the retained earnings are positive and unless the institutional capital is equal to ten percent of total assets.

88. Patronage refund or productivity bonus.

Subject to the regulations, a patronage refund calculated in proportion to the amount of the business transacted by each member with the co-operative society, or a productivity bonus based on the value of the products sold for a member or on the wages received by employees of the co-operative may be distributed periodically to the members from surplus funds after the deduction of all expenditure and after making provision for bad and doubtful debts and after making the required allocations for the statutory reserve, cess fund, stabilization fund and dividends.

PART X - AUDIT, INQUIRY AND INSPECTION**89. Audit.**

- (1) The Board of every co-operative society shall, at its own expense, cause the accounts of the co-operative society to be audited at the end of each financial year by an auditor approved by the Director of Societies or appointed by him under subsection (2) for that purpose.
- (3) Upon the expiration of the period of three months after the end of the financial year, if the Board has failed to effect an audit, the Director of Societies shall cause an audit to be carried out by an auditor appointed by him under subsection (3).
- (3) Without prejudice to anything referred to under subsections (1) and (2), the Director of Societies —
 - (a) shall appoint a panel of auditors from which auditors may be selected by the co-operative for the purposes of an audit under subsection (1); and
 - (b) may direct that the cost of the audit be defrayed by the co-operative society.
- (4) An auditor appointed under subsection (3)(a) shall be, a member of the Bahamas Institute of Chartered Accountants, in good standing and shall be in possession of a valid practising certificate.
- (5) No co-operative society shall cause its accounts to be audited by the same auditor for a period exceeding five consecutive financial years.
- (6) The audit shall include an examination of overdue debts, if any, the verification of cash balances and securities, and a valuation of the assets and liabilities of the co-operative society, an assessment of all pertinent risks and any other examination consistent with international financial reporting standards.

- (7) The auditors appointed to carry out an audit shall have free access to the books, accounts, and vouchers of the co-operative society.
- (8) The members of the Board and the officers of the co-operative society shall furnish the auditors with all such information regarding the transactions and operations of the co-operative society as may be required.
- (9) The Director of Societies and the auditors conducting an audit for the purposes of subsection (1) shall have power at the time of the audit —
 - (a) to summon any officer, agent, servant or member of a co-operative society or any other person, whom they have reason to believe can give valuable information regarding any transactions of the co-operative society of the management of its affairs; or
 - (b) to require any officer, agent, or member of the co-operative society or any other person to produce any book or document relating to any cash or securities belonging to the co-operative society.
- (10) An audit —
 - (a) commissioned by the Board of a co-operative society shall be completed within four months after the end of the financial year, and the audit report shall be submitted to the Director of Societies immediately by the Board;
 - (b) commissioned by the Director of Societies shall be completed within three months after the receipt of the written commission from the Director of Societies, and the audit report and written comments and suggestions thereon, if any, shall be submitted to the Director of Societies who shall immediately transmit the same to the Board of the relevant co-operative society.
- (11) Upon receipt of an audit report and comments and suggestions thereon the Board shall cause the same to be brought to the attention of the members of the co-operative society in an appropriate manner.

90. Annual, monthly and special returns.

- (1) At least ten days prior to its annual general meeting, a co-operative society shall submit to the Director of Societies a copy of the audited financial statements it intends to present to the members.
- (2) No later than one month after the end of each financial year, a co-operative society shall submit to the Director of Societies a copy of its annual unaudited returns for the previous year.
- (3) A co-operative society shall prepare its monthly accounts on the prescribed form and shall make them available for review by the Board, the Supervisory Committee and interested members no later than twenty days after the previous month.

- (4) No later than one month after the reporting period, a co-operative society shall submit to the Director of Societies a monthly return on the prescribed form.
- (5) The Director of Societies may, by notice in writing, require a co-operative society, director or officer of a co-operative society to make a special return on any subject connected with the business and affairs of the co-operative society and, when he requires a special return, he shall specify in the notice a time within which the special return is to be made.
- (6) Any co-operative society that contravenes this section is liable to pay to the Director of Societies a late filing fee of ten dollars for each day the return remains outstanding and up to a maximum of one thousand dollars for each contravention.

91. Inquiry and related costs.

- (1) The Director of Societies may, in the exercise of his function of supervision of societies —
 - (a) on his motion;
 - (b) on the application of a creditor of a co-operative society;
 - (c) in accordance with regulations made in that behalf, on the requisition of a co-operative society in respect of one of its members being itself a co-operative society;
 - (d) on the application of a majority of members of the Board or one third of the members of a co-operative society present and voting; or
 - (e) on the recommendation of the apex organization,hold an inquiry or cause an inquiry to be made, into the constitution, operations and financial position of any co-operative society and in the course of such inquiry may inspect the books, accounts and other records of the co-operative society and all officers and members of the co-operative society whether past or present shall furnish such information in regard to the affairs of the co-operative society and produce all cash in hand and such books, accounts, papers and securities of the co-operative society as the Director of Societies or other person conducting the inquiry may require.
- (2) At the conclusion of an inquiry, if the Director of Societies is satisfied that the Board has mismanaged the affairs of the co-operative society or otherwise performed its duties improperly, the Director of Societies may, by notice to the co-operative society, direct it to remedy the situation within six months from the date of such notice or shall place the co-operative society under Administrative Supervision pursuant to section 8.

- (3) The Director of Societies may apportion the cost of an inquiry, or any part thereof, between the co-operative society and the person requesting the inquiry, but no such apportionment may be made unless the parties liable to pay the cost of such inquiry are given an opportunity to be heard.
- (4) Costs that are required to be paid by virtue of subsection (1) may be recovered from the persons liable to make such payment on the application of the Director of Societies to a Magistrate of the district in which the person resides or carries on business.
- (5) Upon receipt of an application under subsection (2), the Magistrate may, if he is satisfied as to the matters stated in the application, issue a warrant of distress and order the sale of any personal property belonging to such party, but no such sale may be ordered until the expiration of five days from the date of the issue of the warrant.

92. Inspection by the Director of Societies.

- (1) The Director of Societies —
 - (a) may on his own motion; and
 - (b) shall on the application of a creditor of a co-operative society, inspect or direct a person authorised by him and working in his behalf to inspect the books of the co-operative society if in the case of an application under paragraph (b) the applicant —
 - (i) proves that an ascertained sum of money which is then due to him has been demanded from the co-operative society, and he has not received satisfaction within a reasonable time; and
 - (ii) deposits with the Director of Societies such sum as security for the cost of the proposed inspection as the Director of Societies may require.
- (2) The Director of Societies shall communicate the results of any such inspection to the creditor and to the co-operative society into whose affairs the inquiry has been made.

93. Investigations by Director of Societies.

- (1) The Director of Societies may —
 - (a) on his own motion; or
 - (b) on the application of the lesser of twenty-five members or ten percent of the members, appoint a person as examiner who shall make an examination of the books of the co-operative society and examine the affairs of the co-operative society and shall make available his report to the Director of Societies.

- (2) Subject to subsection (3), the Director of Societies may direct that the expenses incidental to an examination undertaken pursuant to this section are to be defrayed —
 - (a) by the members applying for the examination;
 - (b) by the co-operative society or its officers; or
 - (c) by any combination of the members, the co-operative society or its officers.
- (3) When an examination undertaken pursuant to this section reveals substantial irregularities in the business of the co-operative society, the Director of Societies shall not direct any members on whose motion the examination was commenced to defray the expenses.
- (4) Where the Director of Societies appoints an examiner pursuant to subsection (1), the co-operative society and its officers, members, agents or employees shall furnish the examiner with any books, accounts, securities or other documents the examiner requires to perform the examination.

94. Request for special investigations.

- (1) A member, or any interested person may apply *ex parte*, or on any notice that the Director of Societies may require, for an order directing any investigation to be made of the co-operative society and any of its member societies or corporations.
- (2) On application pursuant to subsection (1), the Director of Societies may order an investigation of a co-operative society or of any of its affiliates where it appears to the Director of Societies that —
 - (a) the co-operative society is not fulfilling the purpose stated in its bye-laws;
 - (b) the co-operative society is not carrying on business in accordance with this Act, the Regulations or the bye-laws;
 - (c) the co-operative society is not organized or being operated on co-operative principles;
 - (d) the business of the co-operative society or any of its member societies is or has been carried on with intent to defraud any person;
 - (e) the business or affairs of the co-operative society or any of its members societies have been carried on or conducted, or the powers of the directors have been exercised, in a manner that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of a member or security holder;
 - (f) the co-operative society or any of its member societies was formed for a fraudulent or unlawful purpose or is to be dissolved for a fraudulent or unlawful purpose;

- (g) persons concerned with the formation, business or affairs of the co-operative society or any of its member societies have acted fraudulently or dishonestly with the co-operative society; or
 - (h) the co-operative society is operating in a fashion that, in the Director of Societies judgment threatens its solvency.
- (3) An applicant for an order pursuant to this section is not required to give security for costs.
 - (4) An *ex parte* application pursuant to this section shall be heard in camera.
 - (5) No person shall publish anything relating to *ex parte* proceedings conducted pursuant to this section other than with the authorisation of the Director of Societies or the written consent of the co-operative society being investigated.

95. Powers of the Director of Societies.

- (1) Where —
 - (a) after an examination of a co-operative society or on the receipt of any information, the Director of Societies is of the opinion that the funds or interests of a co-operative society are not being properly managed or protected; or
 - (b) the Director of Societies is of the opinion that a co-operative society is likely to take any action that would affect the financial soundness of the co-operative society,the Director of Societies may —
 - (i) by notice in writing, direct the Board within such period as the Director of Societies may specify, to cease such action or such practice as the Director of Societies may specify or to take such measures as the Director of Societies considers necessary to protect the funds of the co-operative society or the interests of the co-operative society's members; and
 - (ii) place a co-operative society under administrative supervision and appoint a person who in the Director of Societies's opinion, has the necessary experience and training to supervise or advise the co-operative society on the action to be taken to remedy the situation.
- (2) A person appointed under subsection (1)(b)(ii) —
 - (a) shall hold office for a period not exceeding twelve months and on such terms as the Director of Societies shall specify.
 - (b) may be paid such remuneration as the Director of Societies may determine, and such remuneration and any other expenses of and incidental to the appointment, shall be defrayed out of the funds of the co-operative society.

- (3) A director, committee member, employee or agent of a co-operative society shall at all times give all information required by a person appointed under subsection (1)(b)(ii), for the full and satisfactory performance of his duties;
- (4) A person appointed under subsection (1)(b)(ii) shall report to the Director of Societies, in such manner and at such times as the Director of Societies may direct, on the affairs of the co-operative society.
- (5) Notwithstanding subsection (1) and sections 155 and 158, where it appears to the Director of Societies that a requirement under this Act, the regulations or the bye-laws is being contravened, but the circumstances are not such as to justify the taking of action under sections 16, 107 or 108, the Director of Societies may give such directives to the co-operative society or person, as the Director of Societies determines.
- (6) A co-operative society or a person that is required to take any action under this section, may, within twenty-one days of the service of the notice by the Director of Societies, make representation in writing to the Director of Societies as to why the action required should not be taken.
- (7) Where the co-operative society fails to comply with the notice referred to in subsection (1)(b)(i) or any directive given under subsection 6, after giving the Board the opportunity to be heard in a general meeting called by the Director of Societies for the purpose, the Director of Societies may —
 - (a) remove from office; or
 - (b) suspend from office for such period as the Director of Societies considers appropriate,all or any of the directors of the co-operative society and direct that the co-operative society be managed by such person or persons as he may appoint for a period not exceeding twelve months.
- (8) Where a director is suspended under this section and a quorum of directors remain, the remaining directors shall be regarded as constituting the Board.
- (9) Where all the directors are removed under this section, persons appointed under this section shall exercise all the powers and perform all the functions of a duly constituted Board and shall make arrangements prior to the end of their term of management for the election of a new Board in accordance with the bye-laws of the co-operative society.
- (10) The Director of Societies has the authority to remove from office the management personnel or any committee members.
- (11) The Director of Societies has the authority to liquidate or dissolve a co-operative society or to suspend or cancel its registration.

- (12) The Director of Societies may, after consultation with co-operative societies, issue guidelines in respect of —
- (a) prudential standards to be observed by co-operative societies to ensure the safety and soundness of the funds of co-operative societies;
 - (b) the management and investment of the funds of co-operative societies;
 - (c) the calculation and management of receivables;
 - (d) self insurance arrangements;
 - (e) combating money laundering and the financing of terrorism;
 - (f) annual audits and annual general meetings; and
 - (g) reporting to the members and the Director of Societies.
- (13) The Director of Societies shall —
- (a) make the guidelines and all amendments to the guidelines available for inspection by the public;
 - (b) on payment of any prescribed fee, provide copies of the guidelines and all amendments thereto the public;
 - (c) implement adequate ‘whistleblowing’ guidelines for the receipt of verifiable complaints and concerns from creditors, members, employees and the public in respect of the governance, management and operations of registered co-operative societies;
 - (d) at such intervals as the Director of Societies determines, review any guidelines for the time being in force;
 - (e) publish the guidelines issued under this section and any amendment thereto in the Gazette.

96. Dissolution of Board.

- (1) Where the Director of Societies is of the opinion after an inquiry or inspection under sections 94 or 95, respectively, that the Board is not performing its duties properly, he may, after objections, if any and after considering such objections at a general meeting of the co-operative society summoned by him, by order in writing —
- (a) cause a new Board to be elected;
 - (b) direct that the affairs of the co-operative society shall be managed and administered by a suitable individual or organization; or
 - (c) dissolve the Board.
- (2) Subject to subsection (3), every direction under paragraph (b) of subsection (1) shall have effect for such period not exceeding one year as may be specified in the order containing such direction.

- (3) The Director of Societies may in his discretion from time to time amend the order for the purpose of extending the period during which the direction shall have effect, but not beyond one year.
- (4) Where any order is made under subsection (1), the Director of Societies shall by the same or subsequent order appoint a fit and proper person or two or more such individuals or organization to manage and administer the affairs of the co-operative society, and may from time to time remove or replace any such appointee.
- (5) Subject to the general direction and control of the Director of Societies, any appointee under this section to manage the affairs of a co-operative society —
 - (a) shall have the power to recover the assets and discharge the liabilities of the co-operative society and take such other steps as may be necessary in its interest; and
 - (b) may exercise all the powers, rights and privileges of a duly constituted committee of the co-operative society.
- (6) Appointees under this section to manage the affairs of a co-operative society shall be jointly and severally responsible for any loss sustained through any such acts committed by them as are contrary to any enactment or the bye-laws.
- (7) The Director of Societies may fix the remuneration payable to any appointee by him under this section to manage the affairs of a co-operative society, and the amount of such remuneration and other expenses, if any, incurred in the management of the co-operative society shall be payable from the funds of the co-operative society.
- (8) The appointee under this section shall arrange for the election of a new Board in accordance with the bye-laws prior to the date upon which his appointment shall expire.
- (9) No order under subsection (1) shall be made by the Director of Societies in respect of any co-operative society, if the co-operative society is indebted to any bank, financial institution, or creditor except after prior consultation with these institutions in regard to the dissolution of the Board and to the persons by whom and the manner in which the affairs of the co-operative society are to be managed and administered.
- (10) Nothing in this section shall be deemed to affect the power of the Director of Societies to cancel or suspend the registration of the co-operative society under section 16.

PART XI - DISPUTES

97. Settlement of disputes.

- (1) Where any dispute that relates to the business of a co-operative society arises —
 - (a) among members, past members and persons claiming through members, past members and deceased members;
 - (b) between a member, past member, or claiming through a member, and the co-operative society, its Board or any officer of the co-operative society;
 - (c) between a member and the co-operative society arising out of or under any bye-law relating to the disposal of the produce of agricultural or animal husbandry, or under any contract made under section 40;
 - (d) between the co-operative society and any other co-operative society;
 - (e) between the co-operative society or its Board and any officer or employee of the co-operative society, the dispute shall be referred to the Director of Societies for a decision.
- (2) The Director of Societies may before proceeding to hear or determine a dispute, make or cause to be made a preliminary investigation with the object of ascertaining the causes, defining the issues and endeavouring to bring about a voluntary settlement between the parties to the dispute.
- (3) Where a dispute is referred to the Director of Societies under subsection (1), the Director of Societies may —
 - (a) decide the dispute himself; or
 - (b) refer the dispute to an arbitrator or arbitrators appointed by him.
- (4) For the purpose of hearing any dispute, the Director of Societies or arbitrator, as the case may be, may administer oaths and may require the attendance of all parties concerned and witnesses, and the production of all books, documents and things relating to the dispute.
- (5) The Director of Societies or the arbitrator, as the case may be, shall also have the power to order the expenses of determining any dispute including fees to legal practitioners to be paid either out of the funds of the co-operative society or by such parties as he determines.
- (6) A party aggrieved by a decision of the Director of Societies or an arbitrator may appeal to the Tribunal referred to in section 99, within such time and in such manner as may be prescribed.

- (7) Where there is no appeal under subsection (6), the decision of the Director of Societies and an award of an arbitrator may be filed in the Supreme Court or in the Magistrate's Court for the district and shall be registered in the court in which it is filed after the expiration of fourteen days after it is filed and registered, it shall be deemed to have the same force and effect as a judgement of the court in which it is registered and shall be enforced accordingly by the person who filed the decision or award.
- (8) For the purposes of this section, the Chairman or other officer of the Apex Body may serve as an arbitrator.
- (9) Notwithstanding anything in this section, a co-operative society may exercise any rights arising under any charges, mortgages, bills of sale or other securities duly executed in accordance with this Act or any other law without recourse to the Director of Societies or to arbitration.
- (10) For the purposes of subsection (1), a claim by a co-operative society for a debt or demand due to it from a member, former member or a legal personal representative of a deceased member is a dispute that relates to the business of a co-operative society within the meaning of subsection (1).

98. Registered Co-operative Societies Appeal Tribunal.

- (1) There shall be a Registered Co-operative Societies Appeal Tribunal ("Tribunal") which shall consist of three persons appointed by the Minister of whom —
 - (a) one shall be a counsel and attorney of at least ten years standing;
 - (b) one shall be a person recommended by the Director of Societies; and
 - (c) one shall be a person recommended by the Apex Body.
- (2) A party aggrieved or adversely affected by an order or decision of the Director of Societies or an arbitrator under this Act may appeal from the decision or order to the Tribunal, within sixty days of such order or decision.
- (3) The decision of the Tribunal on a question of fact shall be final and may not be called into question in any court and shall be enforced in the same manner as if the decision had been a judgment of a civil court; but a decision of the Tribunal on a question of law may be appealed to the Supreme Court.
- (4) The Minister may by Order prescribe the procedure of the Tribunal.
- (5) The members of the Tribunal shall receive such remuneration as the Minister determines, being not less than five hundred dollars per case.

99. Case stated on question of law.

- (1) Notwithstanding anything contained in sections 99 and 100, the Director of Societies or an arbitrator may in the course of or making a determination in a dispute refer a question of law arising there from to the Supreme Court, by way of case stated for the opinion of that court.
- (2) A Judge of the Supreme Court may consider and determine any question of law so referred.

PART XII - RECONSTRUCTION OF SOCIETIES**100. Methods of reconstruction.**

- (1) The reconstruction of a co-operative society may be effected by any of the following methods —
 - (a) by the amalgamated with another co-operative society to form a co-operative society;
 - (b) by the transfer of the assets and liabilities of a co-operative society to another co-operative society; or
 - (c) by the division of a co-operative society into two or more societies.
- (2) Sections 103 and 104 shall have effect with respect to the procedure that shall be followed in relation to paragraph (a) and (b) of subsection (1).

101. Conversion.

- (1) A company registered under the Companies Act or registered under the Friendly Societies Act may by special resolution determine to convert itself into a registered co-operative society.
- (2) Any such resolution for conversion into a co-operative society shall appoint ten persons, members of a company or friendly co-operative society as the case may be, who together with the Secretary, shall sign the rules and who may, by the resolution, be given powers to act on behalf of the company or friendly co-operative society as may be specified in such resolution.

102. Conversion effective upon issue of certificate of registration by director.

A conversion under section 101 shall be deemed to be effective when the Director of Societies has issued a certificate of registration under this Act, and thereupon the registration of the company, industrial or provident co-operative society as such shall become void, and shall be cancelled by the proper officer, but the registration of any such body as a co-operative society shall not affect

any right or claim for the time being subsisting against such body or any penalty incurred, and any such right or claim or penalty may be enforced against such body by proceedings taken in the same manner as if it had not become a co-operative society, and every such right or claim, and the liability for every such penalty shall have priority as against the property of such co-operative society over all other rights or claims against, or liabilities of, the co-operative society.

103. Amalgamation of Societies.

- (1) Any two or more societies may, with the approval of the Director of Societies, by a resolution passed by not less than three-fourths of all the members of each co-operative society present and voting at a special meeting called for the purpose, amalgamate as one co-operative society.
- (2) Where the resolution referred to in subsection (1) is passed, each co-operative society shall apply to the Director of Societies for cancellation of its registration and the societies shall jointly make application for the registration of the amalgamated co-operative society.
- (3) The registration of a amalgamated co-operative society shall be deemed to be sufficient to vest the assets and liabilities of the amalgamating societies in the amalgamated co-operative society.

104. Transfer of assets of Societies.

- (1) A co-operative society may, with the approval of the Director of Societies, by resolution passed by not less than three-fourths of all the members present and voting at a special general meeting called for that purpose, agree to transfer its assets and liabilities to any other co-operative society which has agreed to accept them.
- (2) An acceptance by another co-operative society under subsection (1) shall be evidenced by a resolution of not less than three-fourths of the members of that other co-operative society present and voting at a special general meeting called for that purpose.
- (3) On the passing of a resolution referred to in subsections (1) and (2), the transferring co-operative society shall apply to the Director of Societies for cancellation of its registration and the transferee co-operative society shall submit to the Director of Societies a copy of its resolution agreeing to the transfer.
- (4) A cancellation of registration and a submission of a resolution agreeing to accept a transfer shall be deemed to be sufficient to vest the assets and liabilities of the transferor in the transferee.

105. Claims of objecting creditors.

Notwithstanding sections 103 and 104, no amalgamation or transfer shall be effected —

- (a) unless the creditors of the societies concerned are given three months written notice of the proposals; and
- (b) where any creditor objects in writing to the proposal, any claims against the co-operative society are first satisfied.

106. Division of co-operative society into two or more societies.

- (1) Any co-operative society may, with the approval of the Director of Societies, by resolution passed by three-fourths of the members present and voting at a special general meeting called for the purpose, resolve to divide itself into two or more societies; but any such resolution ("preliminary resolution") shall contain proposals for the division of the co-operative society among new societies into which it is proposed to divide the co-operative society and may specify the area of operation of, and the members who will constitute each of the new societies.
- (2) A copy of the preliminary resolution shall be sent to all members and creditors of the co-operative society and a notice of the resolution shall also be given to all persons whose interests may be affected by the division of the co-operative society.
- (3) Any member of a co-operative society may, notwithstanding any agreement to the contrary, by notice given to the co-operative society within a period of three months from his receipt of the preliminary resolution, indicate his intention not to demand the payment of monies due to him.
- (4) Any creditor of the co-operative society may, notwithstanding any agreement to the contrary, by notice given to the co-operative society within a period of three months from his receipt of the preliminary resolution, indicate his intention not to demand the payment of monies due to him.
- (5) Any other person whose interest may be affected by the division of a co-operative society may by notice given to the co-operative society object to the division unless his claim is satisfied.
- (6) After the expiration of three months from the receipt of the preliminary resolution by all the members and creditors of the co-operative society and of the notice to other persons given under subsection (2), another special general meeting of the co-operative society of which at least fourteen clear days notice shall be given to its members, shall be convened for the consideration of the preliminary resolution.

- (7) If at the special general meeting referred to in subsection (6), the preliminary resolution is confirmed by a resolution passed by not less than two thirds of the members present and voting either without changes or with such changes as in the opinion of the Director of Societies are not material, the Director of Societies may subject to subsection (9) and section 10, register the new societies; and upon such registration, the original co-operative society shall be deemed to be dissolved and its registration cancelled.
- (8) The decision as to whether or not any changes made in the preliminary resolution are material shall rest with the Director of Societies.
- (9) At the special general meeting referred to in subsections (6) and (7), provision shall be made by another resolution for —
 - (a) repayment of the share capital of all the members who have given notice under subsection (3);
 - (b) satisfaction of the claims of all the creditors who have given notice under subsection (4);
 - (c) satisfaction of the claims of such of the other persons who have given notice under subsection (5) as the Director of Societies decides, or securing their claims in such manner as the Director of Societies directs, but no member or creditor or other person shall be entitled to such repayment or satisfaction until the preliminary resolution is confirmed as provided in subsection (7).

107. Effect of registration of new societies.

The registration of new societies established pursuant to section 105 shall be deemed to be sufficient to vest the assets and liabilities of the original co-operative society in the manner specified in the preliminary resolution as confirmed pursuant to subsections (6) and (7) of section 102.

PART XIII - RECEIVERS AND RECEIVER-MANAGERS OR ADMINISTRATORS

108. Appointment of receiver or receiver-manager.

- (1) Where, in the opinion of the Director or the Supreme Court, based on the results of an examination undertaken under section 95, it is necessary to appoint a receiver or a receiver-manager to protect the equity of the members, the Director or the Court may appoint a receiver or a receiver-manager.

- (2) An appeal shall lie to the Court of Appeal against the appointment of a liquidator by the Director or the Supreme Court within ten days of the appointment.

109. Functions of receiver.

- (1) Subject to the rights of secured creditors, a receiver of any property of a co-operative society may —
 - (a) receive the income from the property and pay the liabilities connected with the property; and
 - (b) realise the security interest of those on whose behalf the receiver is appointed.
- (2) Notwithstanding subsection (1) and subject to any order that the court may make under section 113, a receiver who is not appointed as manager of a co-operative society shall not carry on the business of the co-operative society.
- (3) A receiver appointed by the court or the Director shall be discharged by the court or Director if in the opinion of the court or Director the equity of the members has been sufficiently protected as to enable the co-operative society to be returned to its members.

110. Functions of receiver-manager.

- (1) Where a receiver of a co-operative society is appointed manager of the co-operative society, the receiver may carry on any business of the co-operative society to protect the equity of the members.
- (2) A receiver or receiver-manager appointed by a court or the Director of Societies shall be discharged by the court or Director if in the opinion of the court or Director the equity of the members has been sufficiently protected as to enable the co-operative society to be returned to its members.

111. Cessation of Board's powers.

Where a receiver or receiver-manager is appointed by a court or the Director of Societies, no directors of the co-operative society shall exercise the directors' powers that the receiver or receiver-manager is authorised to exercise until the receiver or receiver-manager is discharged.

112. Duty of receiver or receiver-manager.

- (1) A receiver or receiver-manager appointed by a court shall act in accordance with any directions of the court.
- (2) A receiver-manager appointed by the Director shall act in accordance with any directions of the Director.

- (3) A receiver or receiver-manager shall—
- (a) act honestly and in good faith, and
 - (b) deal with any property of the co-operative society in his possession or control in a commercially reasonable manner.

113. Directions by court.

Upon an application by a receiver or a receiver-manager of a co-operative society, whether appointed by the court or the Director of Societies, the court may make any order it thinks fit, on any matter including —

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

114. Directions by Director.

- (1) Where a receiver or a receiver-manager is appointed by the Director of Societies, the receiver or receiver-manager may apply to the Director of Societies for directions on any matter relating to his duties.
- (2) Where the Director of Societies receives an application under subsection (1), it may make any order it considers appropriate, including any other similar to an order referred to under sections 112(c) to (f).

115. Required actions of receiver and receiver-manager.

A receiver or receiver-manager shall —

- (a) in the case of a receiver or receiver-manager appointed by the Court, immediately notify the Director of Societies of his appointment or discharge;
- (b) take into his custody and control the property of the co-operative society in accordance with the Court order or the order of the Director under which he is appointed;

- (c) open and maintain a bank account in his name as receiver or receiver-manager of the co-operative society for the moneys of the co-operative society under his control;
- (d) keep detailed accounts of all transactions carried out by him or her as receiver or receiver-manager;
- (e) keep accounts of his administration that he shall cause to be available during usual business hours for inspection by the directors of the co-operative society, the Director or any person authorised by the Director;
- (f) prepare at least once in every two-month period after the date of his appointment financial statements of his administration, as far as is practicable in the form required in section 92;
- (g) on completion of his duties, render a final account of his administration in the form he has adopted for preparation of interim accounts under subsection (f); and
- (h) file with the Director a copy of any financial statement mentioned in subsection (f) and any final account mentioned in subsection (g) within fifteen days of the preparation of the financial statement or rendering of the final account.

PART XIV - WINDING UP AND ANCILLARY MATTERS

116. Winding up.

- (1) Where the Director of Societies, after an inquiry has been held under Part X, is of the opinion that the co-operative society ought to be wound up, he may make an order directing it to be wound up and may appoint a liquidator for that purpose and fix his remuneration, which shall be paid out of the funds of the co-operative society.
- (2) Where no liquidator is appointed under subsection (1), the assets and liabilities of the co-operative society shall vest in the Director of Societies.

117. Winding up by virtue of reduced membership.

Where it is a condition of the registration of a co-operative society that it shall consist of at least twenty-five persons who are above the age of fifteen years, the Director of Societies may by order in writing direct the co-operative society to be wound up, if at any time it is proved to his satisfaction that the membership has been reduced to less than that number.

118. Voluntary winding up.

- (1) Subject to the approval of the Director of Societies, the members of a co-operative society may, by resolution supported by at least two-thirds of the members attending a special meeting called for that purpose, authorise the winding up of that co-operative society.
- (2) The Board shall cause a notice of a general meeting of the members to be sent to each member for the purpose of authorising the winding-up.
- (3) The members of a co-operative society may, at the meeting to be held for the purpose of authorising the winding-up, appoint a liquidator.
- (4) Where the Director of Societies —
 - (a) receives notice, in a form satisfactory to him, or an authorisation to wind-up a co-operative society;
 - (b) is satisfied that it is in the best interest of the co-operative society and its members, he may approve the winding-up.
- (5) An authorization approved pursuant to subsection (4) shall specify —
 - (a) the assets and liabilities of the co-operative society;
 - (b) the claim of any creditors;
 - (c) the number of members of the co-operative society; and
 - (d) the nature and extent of the members interests in the co-operative society.
- (6) Where a co-operative society is wound-up under this section, any surplus assets remaining after all claimants have been paid shall be utilised in the manner specified in section 123.

119. Power of Director pursuant to a winding up order.

- (1) When pursuant to section 14, the Director of Societies cancels the registration of a co-operative society, the assets and liabilities of the co-operative society shall immediately vest in him and he shall have in respect of those assets and liabilities the powers of a liquidator under section 120.
- (2) The Director of Societies may by notice published in the Gazette delegate his power as a liquidator to a suitably qualified person; but any such delegation shall be revocable at will and shall not preclude the Director of Societies from exercising his power.

120. Powers of liquidator.

A liquidator appointed under section 107 shall have power to do any one or all the following things —

- (a) to take immediate possession of all assets belonging to the co-operative society and of all books, records and other documents relating to the business of the co-operative society so far as may be necessary for its winding-up and to raise on the security of the assets of the co-operative society the money requisite for this purpose;
- (b) to have disputes referred to the Director of Societies with recommendation that the dispute be settled by arbitration under section 92 and to institute and defend actions and other legal proceedings on behalf of the co-operative society in the name of his office;
- (c) to investigate all claims against the co-operative society and, subject to the provisions of this Act, to decide questions of priority arising out of such claims, and to pay rate ably according to the amount of such debts, the surplus if any being applied in payment of interest from the date of liquidation at a rate to be fixed by the Director of Societies and not exceeding five per cent;
- (d) to fix the time within which creditors shall have to prove their debts and claims or be included for the benefit of any distribution made before those debts or claims are proved;
- (e) to make any compromise or arrangement with creditors having and alleging to have any claims, present or future, for which the co-operative society may be rendered liable;
- (f) compromise all claims or liabilities to calls and debts and liabilities capable of resulting in debts and all claims, present and future certain or contingent, subsisting or supposed to subsist between the co-operative society and a contributory or alleged contributory or other debtor or person apprehending liability to the co-operative society and all questions in any way relating to or affecting the assets or winding up of the co-operative society on such terms as may be agreed and take any security for the discharge of any such call, liability, debt or claim and give complete discharge in respect thereof;
- (g) from time to time to determine the contribution to be made or remaining to be made by the members or past members or by the estates or nominees or legal personal representatives of deceased members or by any officer to the assets of the co-operative society, such contribution shall include debts due from members or persons;
- (h) to determine by what persons and in what proportions the cost of liquidation shall be borne;

- (i) to arrange for the distribution of the assets of the co-operative society in a convenient manner when a scheme of distribution has been approved by the Director of Societies;
- (j) to call such general meetings of the co-operative society as may be necessary;
- (k) to administer oaths, require the attendance of witnesses and other persons concerned with the management of the co-operative society and to require such persons to produce books, documents and other like matters relevant to the co-operative society.

121. Power of Director to control liquidator.

A liquidator shall exercise his powers subject to the powers of the Director of Societies and the Director of Societies may —

- (a) rescind or vary an order made by a liquidator and make whatever new order he deems appropriate;
- (b) remove the liquidator from office;
- (c) call for all books, documents and assets of the co-operative society;
- (d) by order in writing limit the powers of the liquidator under section 111;
- (e) require accounts to be rendered to him by the liquidator;
- (f) procure the auditing of the accounts of the liquidator and authorise the distribution of the assets of the co-operative society;
- (g) make an order for the remuneration of the liquidator; and
- (h) refer any subject to dispute between a liquidator and any third party to arbitration if that party consents in writing to be bound by the decision of the arbitrator.

122. Cancellation of registration consequent upon winding up.

When the affairs of a co-operative society have been wound up, or after the Director of Societies makes an order cancelling the registration of the co-operative society, the co-operative society shall be deemed to be dissolved from the date of such order.

123. Disposal of surplus assets.

After all the liabilities including the paid-up share capital of a cancelled co-operative society have been met, any surplus assets shall not be divided amongst its members but shall be devoted to any object contained in the bye-laws of the co-operative society and when no object is so contained, to any object of public utility determined by the general meeting of the co-operative society and approved by the Director of Societies, or such surplus assets, as the members, so

agree, may be assigned by the Director of Societies in whole or in part to any of the following —

- (a) the active members of the co-operative society;
- (b) the reserve fund another co-operative society approved by the Director of Societies;
- (c) the reserve fund of the Apex Body;
- (d) an object of public utility of local interest; or
- (e) a charitable purpose.

124. Power of Director to surcharge officers etc. of co-operative society.

- (1) Where in the course of audits, inquiries or inspections as in Part IX or an audit under section 91, or a liquidation of a co-operative society, it appears that any sum of money is due to the co-operative society from any person who or which has taken part in the organization or management of the co-operative society, the Director of Societies may, of his own motion or upon the application of the Board or liquidator or any creditor or contributor to the co-operative society, as the case may be, examine the conduct of such person or group of persons and make an order requiring him or such group to —
 - (i) repay with such interest as the Director of Societies thinks fit such money or part thereof;
 - (ii) restore such property or part thereof; or
 - (iii) contribute such sum as the Director of Societies thinks fit to the assets of the co-operative society by way of compensation.
- (2) Before making an order under subsection (1) against any person or group of persons, the Director of Societies shall give that person or group of persons an opportunity to be heard and to show cause why such order should not be made.
- (3) Where an order under subsection (1) has not been complied with, such sum may be recovered by the co-operative society on application to the Magistrate having jurisdiction in the registered place of business of the co-operative society, as though it were a fine imposed by sentence of a Magistrate, and in default of payment, the Magistrate, may impose a sentence of imprisonment of such persons or group of persons, for a term not exceeding six months or until due payment is made or whichever is earlier.
- (4) Neither the preceding provisions of this section nor the making of any order there under may be deemed or construed to preclude or otherwise affect the institution or maintenance of a prosecution against any person

or group of persons referred to in subsection (1) in respect of any offences under any other written law.

125. Attachment of property.

Where the Director of Societies is satisfied that any person with the intent to defraud or delay the execution of any order that may be made under Part VI or any decision that may be given in a dispute referred to the Director of Societies or to any arbitrator is about to dispose of the whole or any part of his property, the Director of Societies may, unless adequate security is furnished, apply to the Magistrate of the district in which the property is situated for an order for the conditional attachment of such property and the Magistrate may, if he considers it to be in the interest of justice, make such an order.

126. Enforcement.

An order made by a liquidator or the Director of Societies under this Part shall be enforced in all respects as an order made by a Magistrate in his civil jurisdiction.

127. Limitation of jurisdiction of civil court.

Except to the extent provided in this Part, no civil court shall have any jurisdiction, in respect of any matter concerned with the winding-up of a co-operative society under this Act.

PART XV – APEX BODY

128. Establishment and constitution of Apex Body.

- (1) There shall be an Apex Body which shall be called the Apex Body and which shall be composed of such member representatives of co-operative societies.
- (2) The Apex Body may establish Boards and Councils for the natural groupings of the various types of affiliated co-operative societies.

129. Functions of Apex Body.

- (1) For the purpose of this Act, the Apex Body shall be a co-operative societies and shall co-ordinate, assist and promote all co-operative societies and shall perform such functions as may be determined by its constituent members.
- (2) Without prejudice to subsection (1), the Apex Body shall be responsible for the administration and management of its member's stabilization fund,

liquidity deposit fund and statutory reserve fund, as established under section 65.

- (3) The Apex Body shall —
 - (a) pay market rates of return on money under its administration;
 - (b) invest in cash, government securities, government guaranteed investments or other investments as approved by the Director of Societies; and
 - (c) establish an investment committee.
- (4) An investment committee established under subsection (3)(c) shall —
 - (a) consist of three persons, one of whom shall be a member of the board of the Apex Body, who shall be appointed by the Apex Body, after consultation with the Director of Societies for a period of three years and shall be eligible for re-appointment, but no member of the investment committee shall serve more than two consecutive terms;
 - (b) consist of persons who have a sound understanding of investment risks and liquidity management.
- (5) The duties of the investment committee are to —
 - (a) set investment strategies and policies;
 - (b) review and revise investment strategies on a regular basis in light of the changes in the market environment; and
 - (c) coordinate and oversee the investment portfolio of the Apex Body.

PART XVI - YOUTH CO-OPERATIVE SOCIETIES

130. Interpretation and Application of this Part.

- (1) In this Part —
 - (a) "Parent" or "Sponsor" credit union or co-operative means a credit union or co-operative which has adopted a youth co-operative.
 - (b) "Teacher guide" means an employee from a school who oversees and administers the affairs of a school-based youth co-operative; and
 - (c) "Youth officer" means an employee from the parent or sponsor credit union or other co-operative who oversees and administers the affairs of a school-based or community-based youth co-operative.
- (2) This Part applies to every co-operative society that is organised or operated as a youth co-operative society.

131. Role, functions and administration of Youth Co-operative.

- (1) In addition to the registration fee and the initial deposit to be paid pursuant to the bye-laws, each member of a youth co-operative involved in the acceptance of deposits will be encouraged to save money on a regular basis per the sum agreed and prescribed in the bye-laws.
- (2) The savings raised from members of the youth savings co-operative shall contribute a weekly aggregated figure to be recognized as ordinary deposits and for which monthly financial statements in the form stipulated by the Director of Societies shall be issued.
- (3) A member, in addition of his ordinary deposits, may contribute a weekly or monthly sum to be known as his special savings.
- (4) The special savings referred to under subsection (2) shall be withdrawn by the member of the youth co-operative in emergency situations or as determined by the Director of Societies.(4) Subject to other intervals stipulated in the Bye-laws, the ordinary deposits and special deposits held by each member in the youth co-operative shall be withdrawn and paid to the youth member at the end of the member's tenure at the school, less any sums owing to the youth co-operative.
- (5) The member's account shall be updated with every payment and withdrawal made by the member, and his passbook or statement will reflect such transactions on demand.
- (6) Where passbooks are used, the member's permanent official record for all transactions shall be the entries in the passbook, and such entries shall be initialed by the person receiving and paying out the money represented thereby.
- (7) When a statement of account is used, the member's permanent official record for transactions shall be the statement of account which will itemize all transactions and which shall be issued to each member at least quarterly.
- (8) Deposits received by the treasurer shall be combined and deposited within two days at the parent credit union into the account of the youth co-operative.
- (9) A youth co-operative will also stimulate the interest of its members in enterprise development and business management, as another avenue for personal development and capital accumulation, and as a means of increasing the benefits from participating in a youth co-operative.
- (10) A youth co-operative is required to provide progress reports on a quarterly basis that update the Department of Co-operative Development on the activities, savings, assets, membership and future plans of the youth co-operative.

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- (11) In order to support the safe, sound and healthy growth of youth co-operatives, the Director shall —
- (a) assign technical staff to work with youth co-operatives;
 - (b) provide scheduled training courses on a regular basis for all teacher guides, youth officers, treasurers and other directors in the purpose, operations and performance of youth co-operatives;
 - (c) ensure that assigned staff support the general meetings of youth co-operatives, including adequate preparation for meetings and adherence to modern meeting procedures, awareness of and adherence to the bye-laws and policies, and generally assisting the teacher guides, youth officers and treasurers with the maintenance of standard processes and member confidence in the co-operative system.
- (12) The Department of Co-operative Development is also responsible for conducting scheduled visits, inspecting the operations of each youth co-operative and meeting with its members at least once every quarter, in addition to ongoing off-site monitoring, until the Director of Societies decides that the inspections of a specified youth co-operative can be conducted semi-annually.
- (13) All youth co-operatives, where feasible, will be sponsored by an established credit union or other organisation. The parent or sponsor organisation will assist the youth co-operative directly or indirectly with technical assistance, training, funding, mentorship, general advice and financial services.
- (14) The role of the youth officer assigned by the parent or sponsor credit union or other organisation shall include —
- (a) providing a dedicated employee to liaise with the youth co-operative and the parent credit union or other organisation at least on a monthly basis;
 - (b) assisting with the training and education of the members of the youth co-operative;
 - (c) mentoring and coaching the leaders and other members of the youth co-operative;
 - (d) generating and providing monthly financial statements for the youth co-operative in the form stipulated by the Director;
 - (e) offering a special savings plan and other incentives for members of youth co-operatives;
 - (f) providing other means of technical assistance to affiliated youth co-operatives ; and
 - (g) promoting the development of youth co-operatives throughout The Bahamas.
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132. Bye-laws of youth co-operative society.

Subject to the bye-laws and pursuant to sections 10 and 121, the bye-laws of a youth co-operative society shall include —

- (a) conditions of admission, discipline, expulsion or suspension of its members;
- (b) incentives for volunteers involved in the operations the co-operative society; and
- (c) provisions for the maintenance of accounts and for reporting to members, parents and guardians.

PART XVII - CONSUMERS' SOCIETIES

133. Interpretation.

In this Part, "consumers' co-operative society" means a co-operative society whose primary purpose is to purchase, procure, process, manufacture, exchange, hire or deal in goods or services for sale at retail to its members who are to be the primary users or consumers of those goods and services.

134. Application of this Part.

This Part applies to every co-operative society that is organised or operated as a consumers' co-operative society.

135. Restrictions of directorship and employment.

A co-operative society shall provide in its bye-laws that none of its directors shall be an employee and that none of its employees shall be a director.

136. Statutory Reserves.

- (1) The directors of a consumers' co-operative society shall set aside not less than twenty five percent of any surplus in a reserve before paying a dividend.
- (2) A consumer co-operative society shall —
 - (a) deposit its reserve in the Apex Body;
 - (b) invest its reserve in any other manner as authorised by the Director of Societies.
- (3) When the amount of the reserves as required by subsection (1) equals or is more than twenty-five percent of the total assets of the co-operative society as shown in its audited financial statement for the financial year, the directors need not set aside any part of the surplus in a reserve.

- (4) The Director of Societies may exempt a consumers' co-operative society from subsections (1) and (2) where he considers it appropriate to do so.
- (5) A consumers' co-operative society may charge against its reserve required by subsections (1) and (2) —
 - (a) net losses resulting from its business operations; and
 - (b) any losses resulting from revaluation or sale of its assets.

PART XVIII - HOUSING SOCIETIES

137. Interpretation.

In this Part —

- (a) "housing co-operative society" means a co-operative society whose primary purpose is to provide housing units for occupancy by its members as nearly as possible at cost;
- (b) "housing charges" means the fee charged by a housing co-operative society to its members to cover its costs of providing housing accommodation; and
- (c) "housing unit" means housing accommodation intended for individual or family use.

138. Application of this Part.

This Part applies to every housing co-operative society.

139. Relationship with members.

The relationship between a housing co-operative society and its members is not a relationship between a landlord and his tenants.

140. Bye-laws not to be amended without consent of Director of Societies.

Where the bye-laws of a co-operative society provide that it is a housing co-operative society or that this Part applies to the co-operative society, the co-operative society may not repeal or amend that provision of the bye-laws without consent of the Director of Societies.

141. Bye-laws.

The bye-laws of a housing co-operative society shall, in addition to the matters required to be set out therein by section 10, include the following —

- (a) the manner in which each member may be required to furnish capital for the purposes of the co-operative society;

- (b) the manner in which a member may be required to pay for housing charges or other reserves;
- (c) the basis for fixing the amount of housing charges;
- (d) subject to section 29, the manner of withdrawal by a member and the repayment of the member's interests in the co-operative society; and
- (e) the rules governing any leases of housing units by members to non members.

142. No dividend on share capital.

Where a housing co-operative society has a share capital, that co-operative society shall not pay any dividend on the share capital to its members.

143. Statutory Reserves.

- (1) The directors of a housing co-operative society shall set aside not less than twenty-five percent of any surplus in a reserve.
- (2) When the amount required to be set aside pursuant to subsection (1) is equal to or is more than twenty-five percent of the total assets of the co-operative society as shown in the audited financial statement for the financial year, the directors need not set aside any part of the surplus in a reserve.
- (3) A housing co-operative society may —
 - (a) deposit its reserve in the Apex Body;
 - (b) invest its reserve in any other manner as authorised by the Director of Societies.
- (4) A housing co-operative society shall use its reserve as required pursuant to subsection (1) to cover —
 - (a) operating losses; or
 - (b) any contingencies that the directors consider are necessary to the operation of the co-operative society.
- (5) Any gains resulting from the sale of real property —
 - (a) shall be set aside as a reserve fund for unforeseen operating losses or other contingencies, or for the maintenance or further development of the services provided by the co-operative society; or
 - (b) shall, where the members authorise at an annual meeting, be donated by the directors to one or more organizations, associations or groups with objectives of a benevolent or charitable nature or housing co-operative society with similar objectives.

144. Non-application of Ch. 151.

The Landlord and Tenant Act does not apply to the relationship between —

- (a) the housing co-operative society; and
- (b) its members and any person whose membership in the housing co-operative society has been terminated.

145. Right to possession terminated.

- (1) Where a person's membership in a housing co-operative society is terminated, any right of that person to possess or to occupy residential premises acquired by virtue of membership in the co-operative society is terminated.
- (2) Where a person's membership in a housing co-operative society is terminated and the member does not give up possession of the housing unit he occupies, the housing co-operative society may apply to the court to recover possession or to recover any arrears of housing charges.

146. Abandoned property.

- (1) Where a member —
 - (a) has his membership terminated or has vacated or abandoned the housing unit formerly occupied by him; and
 - (b) has left property in the housing unit, the housing co-operative society may apply to the Magistrate's court for the district where the housing unit is situated for an order authorising it to remove the property from the housing unit and sell or otherwise dispose of it.
- (2) The Magistrate may make an order pursuant to subsection (1) where he is satisfied that the housing co-operative society has made a reasonable effort to locate the former member.
- (3) Where a housing co-operative society sells or otherwise disposes of property pursuant to any order made under subsection (2), it shall pay into the Magistrate's Court, to the credit of the former member, any remaining proceeds of the disposition after deducting —
 - (a) any amount with respect to costs incurred by it relating to the disposition that it would be authorised to retain if the property were goods sold pursuant to distress for housing charges; and
 - (b) any arrears of housing charges and damages that the Magistrate allows.
- (4) Where a former member does not claim the remaining proceeds described in subsection (3) within three months after the date the money was paid into the Magistrate's Court, the money shall be paid into the Stabilization Fund.

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

PART XIX - PRODUCER SOCIETIES

147. Interpretation.

In this Part, “**producer co-operative society**” means a co-operative society that sells to members and non-members goods grown, harvested, manufactured or otherwise produced by its members, purchases production inputs in bulk for its members and directly charges its members a fee to cover the operating expenses of the co-operative;

148. Application.

This Part applies to every co-operative society that is organised or operated as a producer co-operative society.

149. Member employee.

- (1) In a producer co-operative society, at least seventy five percent of all employees shall be members of the co-operative society and at least seventy five percent of the employees of a member co-operative society shall be members of the member co-operative society.
- (2) Subject to subsection (3), no producer co-operative society shall sub-contract out more than fifty percent of its work.
- (3) Where a producer co-operative society applies to the Director of Societies, he may allow the producer co-operative society to sub-contract out more than fifty percent of its work.

150. Bye-laws of producer co-operative society.

In addition to the matters required to be set out in the bye-laws pursuant to section 10, the bye-laws of a producer co-operative society shall include —

- (a) conditions of admission, expulsion or suspension of its members;
- (b) a procedure for laying off members when there is a lack of work and a procedure of recall to work;
- (c) remuneration of workers involved in the day to day work of the co-operative society; and
- (d) allocation of bonus among members.

151. Restriction on registration.

No producer co-operative society may be registered where the acquisition of goods for resale to the public is one of its principal objects stated in its bye-laws.

152. Bonus based on performance.

Notwithstanding section 91, when allocating among creditors or paying a bonus to the members of a producer or worker or multi-purpose co-operative society, the directors may take into account the contribution of each member through productivity and overall performance.

153. Restrictions on directorship and employment.

A co-operative society shall provide in its bye-laws that none of its directors shall be an employee and that none of its employees shall be a director.

PART XX - FORMER-ACT SOCIETIES

154. Former-Act co-operative society.

- (1) Upon the commencement of this Act, all corporate instruments a former Act co-operative society and all cancellations, suspension, proceedings, acts, registrations and things, lawfully done under any provision of the former Act are presumed to have been lawfully done under this Act, and continue in effect under this Act as though they had been lawfully done under this Act.
- (2) For purposes of this section "**lawfully done**" means to have been lawfully granted, issued, imposed, taken, done, commenced, filed or passed, as the circumstance require.
- (3) For the purposes of this Part —
 - (a) "**former Act**" means the Co-operative Societies Act in force immediately before the commencement of, and repealed by this Act;
 - (b) "**former-Act co-operative society**" means a co-operative society registered pursuant to the former Act.

155. Effect of corporate instrument.

- (1) Notwithstanding any other provisions of this Act, but subject to subsection (2), if any provision of a corporate instrument of a former-Act co-operative society lawfully in force immediately before the commencement of this Act is inconsistent with, repugnant to, or not in compliance with this Act, that provision is not illegal or invalid only by reason of that inconsistency or non-compliance.
- (2) Any act, matter or proceeding or thing done or taken by the former-Act co-operative society or any director, member or officer of the co-operative society under a provision mentioned in subsection (1) is not illegal or invalid by reason only of the inconsistency, repugnancy or non-compliance mentioned in that subsection, or by reason of being prohibited, or not authorised by the law as it is after commencement of this Act.

156. Continuation as co-operative society.

- (1) Every former-Act co-operative society shall, within three months after the commencement of this Act, apply to the Director of Societies for a certificate of continuance under this Act.
- (2) A fee to defray administration costs may be prescribed in respect of an application and certificate of continuance under this Part.

157. Amending instrument.

Within the period referred to in section 147 (1) any amendments to, or replacement of, the bye-laws of a former Act co-operative society shall be made in accordance with this Act.

158. Bye-laws continuance.

Any amendment to the bye-laws of a former-Act co-operative society may, without so stating in the bye-laws, continue have effect, where the amendment is an amendment that a co-operative society is authorized to make in its bye-laws.

159. Certificate of continuance.

- (1) Upon receipt of an application under this Part, the Director of Societies may, and, if the applicant complies with all reasonable requirements of the Director of Societies to have the continued co-operative society accord with the requirements of this Act, the Director of Societies shall, issue a certificate of continuance to the former-Act co-operative society, in accordance with section 146.
- (2) On the date shown in the certificate of continuance —

- (a) the former-Act co-operative society becomes a co-operative society to which this Act applies as if it had been registered under this Act;
- (b) the bye-laws of continuance are the bye-laws of registration of the continued co-operative society; and
- (c) except for the purposes of subsection (1) of section 144, the certificate of continuance is the certificate of registration of the continued co-operative society.

160. Preservation of co-operative society.

Where a former-Act co-operative society is continued as a co-operative society under this Act —

- (a) the property of the former-Act co-operative society continues to be the property of the co-operative society;
- (b) the co-operative society continues to be liable for the obligations of the former-Act co-operative society;
- (c) an existing cause of action, claim or liability to prosecute is unaffected;
- (d) a civil, criminal or administrative action or proceeding pending by or against the former-Act co-operative society may be continued by or against the co-operative society; and
- (e) a conviction against, or ruling, order or judgment in favour of or against, the former-Act co-operative society may be enforced by or against the co-operative society.

161. Non-continuance.

When a former-Act co-operative society fails to apply to the Director of Societies for a certificate of continuance within the time limit set under section 146, then, after the expiration of that period —

- (a) the former-Act co-operative society may not, without leave, sue in any court, but may be made a defendant to a suit;
- (b) no bonus or dividend shall be paid to any member of the former-Act co-operative society; and
- (c) every director of the former-Act co-operative society is liable to a penalty of one hundred dollars a day for each day during which the former-Act co-operative society carries on its undertaking thereafter.

162. Effect of earlier references.

- (1) A reference in any bye-law to the former Act or any procedure under the former Act is, in relation to any former-Act co-operative society continued under this Act to be construed as a reference to the provision or procedure

of this Act or procedure there under that is the equivalent provision or procedure under this Act.

- (2) Without affecting the operation of the Interpretation and General Clauses Act, when there is no equivalent provision in this Act to the provision or procedure in or under the former Act referred to in the bye-laws, the provision or procedure of the former Act is to be applied, and stands repealed to the extent necessary to give effect to that reference in the bye-laws.

PART XXI - OFFENCES

163. Corrupt practices and bribery.

- (1) Any member, director, committee member, agent or employee of a co-operative society who corruptly accepts, agrees to accept, obtains or attempts to obtain whether for himself or another, any gift or consideration as an inducement or reward for doing or forbearing to do any act relating to the business of the co-operative society or for showing favour or disfavour to any person in relation to the business of the co-operative society and any person who corruptly gives, agrees to give or offers such gift or consideration to any member, director, committee member, agent or employee of a co-operative society as such inducement or reward, commits an offence and is liable on summary conviction to a fine of two thousand dollars or to a term of imprisonment for five years.
- (2) In this section, "consideration" includes valuable consideration of any kind.

164. Falsely obtaining property of co-operative society.

- (1) Any person who obtains possession of any property of a co-operative society by false representation or other corrupt means or wrongfully withholds or misapplies any such property or wilfully applies any part thereof to purposes other than those directed or expressed in the bye-laws or authorised under this Act or the regulations, commits an offence is liable on summary conviction to a fine of one thousand dollars.
- (2) In any proceedings under this section the person accused may in addition to any penalty imposed be ordered to deliver up any property to which the proceedings relate and pay the cost of the proceedings.

165. Failure to comply with the Act, etc.

- (1) A co-operative society or any officer or member thereof or any other person who fails without reasonable cause or wilfully, neglects or refuses

to comply with any requirements of this Act or the regulations, any order given for the purposes of and in accordance with the Act or to furnish any information or who purporting to comply with any such requirement knowingly furnishes false information, commits an offence.

- (2) Any person who wilfully or without reasonable cause disobeys any summons, order or direction lawfully issued under this Act or the regulations, commits an offence.
- (3) Any officer or member of a co-operative society who wilfully contravenes the bye-laws relating to his duties or functions as such officer or member, commits an offence.
- (4) A person who commits an offence under this section is liable to a fine of two thousand dollars.

166. Dealing in property subject to charge .

Any person who fraudulently or clandestinely removes any property comprised in a charge created in favour of a co-operative society under section 41 from the place where such property was situated at the time of the execution of the charge or who knowingly dispose of or deals with or attempts to dispose of or deal with such property without first obtaining in writing leave of the co-operative society, commits an offence and is liable on summary conviction to a fine of one thousand dollars and to a term of imprisonment for one year.

167. Offences with respect to reports .

- (1) A person commits an offence, who makes or assists in making a report, return, notice or other document, required in this Act or the regulations to be sent to the Director of Societies or to any other person, that —
 - (a) contains an untrue statement of a material fact;
 - (b) omits to state a material fact required in the report or necessary to make a statement contained in the report not misleading in the light or the circumstances in which it was made.
- (2) A person who commits an offence under subsection (1) is liable on summary conviction —
 - (a) in the case of an individual, to a fine of five thousand dollars or to term of imprisonment of one year or to both;
 - (b) in the case of a person other than an individual, to a fine of twenty thousand dollars.
- (3) Where the person referred to under subsection (1) is a body corporate and whether or not the body corporate has been prosecuted or convicted, any director or officer of the body corporate who knowingly authorises, permits or acquiesces in the offence also commits an offence and is liable

on summary conviction to a fine of five thousand dollars or to a term of imprisonment of one year or to both.

- (4) No person commits an offence under subsection (1) or (3) where the untrue statement or omission —
- (a) was unknown to him; and
 - (b) in the exercise of reasonable diligence, could not have been known to him.

168. Penalty for offences not otherwise provided for.

Every co-operative society and every officer or member thereof or other person who commits an offence under this Act for which no penalty is expressly provided is liable on summary conviction to a fine of two thousand dollars and in the case of a continuing offence to a further fine of one hundred dollars for each day that the offence continues after conviction thereof.

PART XXII - MISCELLANEOUS

169. Appeals.

Unless otherwise provided, a party aggrieved or adversely affected by an order or decision of the Director of Societies under this Act may appeal from the decision or order to the Appeals Tribunal within sixty days of such order or decision and a further appeal shall lie to a judge in Chambers within one month of such order or decision of the Tribunal.

170. Evidence of documents and of entries in books.

- (1) A copy of any entry in a book of a co-operative society regularly kept in the course of business shall, if certified in such manner as may be prescribed by the regulations, be received in any legal proceedings, civil or criminal, as *prima facie* evidence of the existence of such entry and shall be admitted as evidence of the matters, transactions and accounts therein recorded in every case where, to the same extent as, the original entry itself is admissible.
- (2) No officer of any such co-operative society, in any legal proceedings to which the co-operative society is not a party can be compelled to produce any of the books of the co-operative society, the contents of which can be proved under subsection (1) or to appear as a witness to prove any matters, transaction or accounts therein recorded, unless the court for special reasons so directs.
- (3) Every copy of rules or other instruments or documents, and every extract of an instrument or document, bearing the seal or signature of the Director

of Societies, shall be received in evidence without further proof; and every document purporting to be signed by the Director of Societies under this Act shall, in the absence of any evidence to the contrary, be received in evidence without further proof of the signature.

171. Exemptions and other fiscal incentives.

Every co-operative society registered under this Act is exempt from any property tax, corporation tax, value-added tax or stamp duty with which, under any law for the time being in force, instruments executed by or on behalf of such co-operative society or by an officer or member relating to the business of such co-operative society, any class of such instruments, are respectively chargeable.

172. Non-application of certain Acts.

The Companies Act, The Friendly Societies Act, the Minors Act, The Bahamas Credit Unions Act, 2014 and the Banks and Trust Companies Regulation Act, do not apply to societies registered under this Act.

173. Regulations.

- (1) The Minister shall make regulations generally giving effect to objectives and provision of this Act and its efficient operation.
- (2) Without limiting the generality of subsection (1) regulations shall be made requiring the payment of and prescribing the amount of any fee with respect to —
 - (a) the filing, examination or copying of any document;
 - (b) any action that the Director of Societies is required or authorised to take pursuant to this Act;
 - (c) prescribing the procedures for appeals to the Director of Societies pursuant to section 98;
 - (d) exempting any co-operative society from any provision of this Act;
 - (e) prescribing any other matter or thing required or authorised to be prescribed by this Act.

174. Repeal of Ch. 284.

The Co-operative Societies Act, 2005 is hereby repealed.

175. Power to amend bye-laws.

- (1) Any co-operative society may, subject to this Act and any regulations made there under, amend its bye-laws including the bye-law which declares the name of the co-operative society.

- (2) No amendment of the bye-laws shall be valid until that amendment has been registered under this Act, for which purpose three copies of the amendment shall be forwarded to the Director of Societies.
- (3) Where the Director of Societies is satisfied that any amendment of the bye-law, is not contrary to this Act, he may register the amendment.
- (4) Where the Director of Societies refuses to register an amendment of a bye-law, an appeal shall lie to the Tribunal whose decision shall be final.
- (5) An amendment which changes the name of the co-operative society shall not affect any right or obligation of the co-operative society or of any of its members or past members and any legal proceedings pending may be continued by or against the co-operative society under its new name.
- (6) Where the Director of Societies registers an amendment of the bye-laws , he shall issue to the co-operative society a copy of the amendment certified by him which shall be conclusive evidence of the fact that the amendment has been duly registered.

176. Societies deemed to be registered

All societies which prior to the commencement of this Act were duly registered as producer, service, housing or junior savings co-operative societies under any enactment shall be deemed to be registered under this Act.

OBJECTS AND REASONS

In 1974, The Co-operative Societies Act was legislated by Parliament. This Act was replaced by a modern Act in 2005 which provided greater scope for development and called for more stringent regulations. In 2011, the Government of The Bahamas decided to transfer the regulation and supervision of financial co-operatives, commonly referred to as credit unions to the remit of the Central Bank of The Bahamas.

Consequently, the Director of Societies will continue to be responsible for the initiation, encouragement, development and supervision of producer, service and youth co-operative society. It was subsequently decided that the Director would also continue to provide advisory services to persons wishing to establish a co-operative credit union. Provided that the Department deemed those fledgling credit unions were viable, fit and proper as deposit-taking institutions and capable of self-sustained operation, they would be transferred to the direct oversight of the Central Bank.

The Bahamas Co-operative Societies Bill 2014 seeks to repeal the existing Co-operative Societies Act 2005 and replace it with a more modernize Act which will strengthen non-financial co-operatives in The Bahamas. The Bahamas Co-operative Societies Bill 2014 adopted many provisions of the Co-operative Societies Act 2005, except the credit-related provisions which have been removed. Clause 3(3) provides that this Act shall not apply to co-operative credit unions except as expressly provided for in this Act or under The Bahamas Co-operative Credit Unions Act. A few new features were inserted recognizing international and regional norms and best practices.

Under **Clause 2 – the Interpretation section**, a more exhaustive list of definitions is provided. For example definitions such as “financial year”, “cess funds”, “associate”, “dormant account”, “institutional capital”, “f capital” are introduced. The calendar year is, therefore, synonymous with the financial year for all registered co-operative societies. Under this new Bill qualifying shares are distinguished from equity shares, both as part of regulatory capital and the source and conditions under which a dividend may be paid are clearly defined in contrast to those applicable to a bonus.

Under Clause 4 – two additional requirements for compliance with co-operative principles were added. At (e) a co-operative society’s primary concern must be its institutional capital and functional strength; and (h) a co-operative society must contribute to the social and economic development of its community. Clause 8 lists the types of co-operative societies eligible for registration under this Act, these include consumers’ co-operative society; housing, co-operative society; youth co-operative society; producer co-operative society etc.

The Bahamas Co-operative Societies Bill 2014 elucidates the developmental as well as regulatory functions of the regulator, so that the public’s investment in co-operative

societies is safe, sound and experiencing growth. **Clause 6** provides for the functions of the Director. The Director:

- must ensure that records are kept up-to-date;
- may conduct continuous off-site assessment of financial condition and performance of co-operative societies;
- may perform assessments of the risk profile and the safety and soundness of co-operatives;
- must initiate and encourage organized activities for the development and strengthening of co-operative societies and co-operative credit unions;
- may prepare and issue guidelines concerning prudential standards and for the financing of terrorism.

Clause 8 Conditions for Registration: subsection (1) reinforces the conditions precedent and continuing for a society to be deemed “registered”. Clause 8(4) stipulates that all co-operative societies are required to have at least ten active members to be registered under the Act.

Clause 13 (2) inserts additional documents which must be available at the registered office of every co-operative society, including the register of directors, a copy of the certificate of registration, etc.

Clauses 17 Annual General Meetings - reduce the time to hold the annual AGM to four months after the end of the financial year of the society, instead of the current five months; and remove any discretion by the Director to extend such time. Timely accountability and returns on the members’ investment for the prior year’s performance is no longer an option.

Clause 21(3) - Quorum: another progressive subsection, empowers the Director or his designate to enable an annual general meeting to proceed once satisfied that the meeting was convened in accordance with the Act, that the members were properly notified and that those present constitute at least seventy five per cent of the quorum. However, at any meeting summoned by the Director of Societies, the members present shall constitute a quorum.

Clause 29 - Shares: clarifies that a member’s qualifying and equity shares are not withdrawable and are not redeemable, except through death or, once approved by the Board of directors, through withdrawal or termination of membership. These shares are transferable to one’s beneficiary or nominee on death, however; the register of members must therefore be explicit regarding the names and addresses of each nominee(s). The total value of the members’ combined ownership (qualifying and equity) shares must not fall below five percent of its total assets, as another prudent capital adequacy control.

Clause 47 - Board of Directors: provides that all directors must be a citizen or

resident of The Bahamas. **Clause 50** increases the powers of the Board. The powers and duties of the Board are inter alia to:

- to approve all needed policies (marketing, investment, and asset-liability management included) and internal controls,
- to prudently invest the members' funds, and
- to ensure accurate accounts are kept of the assets and liabilities of the co-operative society; and
- to give the Director and his assigns unrestricted access to all books, papers, records and other sources of information under its control "within such time as may be specified by the Director".

Clause 49 – Election of directors: improves this provision by seeking to bring the governance of Bahamian co-operative societies in line with international best practices. It ends the "*revolving door of perpetual directors and Committee members*" by introducing strict criteria for their tenure.

Clause 62 - Remuneration of Directors and Committee Members: emphasizes that elected directors or committee members are volunteers and cannot be paid for their services, as part of the co-operative difference. Subject to approval by the annual general meeting and within the limit set by the regulations, honoraria may be paid to specified volunteers. The Bill also sets an annual limit that any co-operative society can incur for Board and committee expenses, mindful of past and current expenses.

Clause 81 – Investment of funds: places the onus on the Board of Directors to establish written policies for investing the co-operative society's funds and restricts where the funds and reserves of a co-operative society can be deposited.

Clause 82 Prohibited services: establishes the non-financial services of co-operative societies to be registered under this Act. No society shall engage in lending business and, except for youth co-operative societies; no society shall accept deposits from members or non-members.

Clause 90 - Annual, monthly and special returns: sets out the schedule of mandatory reports due to be submitted to the Director of Societies and requires each co-operative society to prepare its monthly return on the prescribed form and submit same to the Board, Supervisory Committee and interested members no later than twenty days after the previous month [instead of the one month under the Co-operative Societies Act 2005]

Clause 95 Regulatory Powers of the Director of Societies is a new section which emphasizes the State's obligation to prevent losses to the citizenry from poorly managed co-operative societies. Where the financial or operational soundness of a co-operative society is in doubt, the Director of Societies may place it under

administrative supervision (i.e. conservancy) and appoint a suitable person to reorganize and rescue it within 12 months. Where a society fails to comply with a directive issued by the Director of Societies, the Director may, after a formal meeting with the Board on the matter, remove from office or suspend from office for a set time period one or more directors, committee members or management personnel.

Clause 98 – Registered Co-operative Societies Appeal Tribunal: retains 3 members of the Tribunal but improves equity:

- an counsel and attorney;
- a person recommended by the Director of Societies; and
- a person recommended by the Apex Body.

Clause 98 (2) sets 60 days as the timeframe to appeal after an order or decision of the Director of Societies or an arbitrator.

Clauses 108-115: detail the circumstances and procedures whereby a co-operative society may be placed in receivership, under a receiver-manager or an administrator.

Clauses 129-131 - Youth co-operative societies - provide for:

- the establishment and maintenance of youth co-operative societies, whether schools or community-based;
- the role, functions, and administration of youth co-operative societies;
- the technical assistance and coaching to be provided to each youth co-operative societies by a parent or a sponsor organization, a teacher-guide and a youth officer;
- encouraging members to save money on a regular basis and to become involved in enterprise development and business management;
- the scope of the bye-laws, accountability to members, parents and guardians and incentives for volunteers involved in operations.

Clause 152 gives the details peculiar to this genre and restricts directors from being employees of the society.

Clause 170 - Exemptions and other fiscal incentives: states that every co-operative society under this Act is exempt from any property tax, corporation tax or stamp duty tax, value added tax etc.