

SOUTH AUSTRALIA

CREDIT UNIONS ACT, 1989

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Credit Unions Act, 1989, No. 42 of 1989
[Assented to 4 May 1989]¹

¹ Came into operation 12 April 1990: *Gaz.* 5 April 1990, p. 959.

An Act to provide for the registration, administration and control of credit unions; to repeal the Credit Unions Act, 1976; and for other purposes.

The Parliament of South Australia enacts as follows:

PART I

PRELIMINARY

Short title

1. This Act may be cited as the *Credit Unions Act, 1989*.

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Interpretation

3. (1) In this Act, unless the contrary intention appears—

"accounting records" includes invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes, vouchers and other documents of prime entry, and books and records which record such entries, and also includes such working papers and other documents as are necessary to explain the methods and calculations by which accounts are made up:

"the Accounting Standards Review Board" means the body of that name established by the Ministerial Council for Companies and Securities:

"accounts" means profit and loss accounts and balance-sheets, and includes statements, reports and notes, other than auditors' reports or directors' reports, attached to or intended to be read with any of those accounts or balance-sheets:

"amalgamated credit union" means a credit union or foreign credit union that is registered, or continues to be registered, under this Act as a result of an amalgamation under Part III:

"approved accounting standard" means approved accounting standard as defined in Part VI of the *Companies (South Australia) Code*:

"association" means an association of credit unions registered under Part V:

"authorized trustee investment" means an investment in which a trustee is authorized by law to invest trust money:

"bank" means a body corporate authorized under the *Banking Act 1959* of the Commonwealth to carry on the business of banking, and includes the State Bank of South Australia:

"the Board" means the Credit Union Deposit Insurance Board established under Part VII:

"board", in relation to a credit union or association, means the board of directors of the credit union or association:

"building society" means a building society registered under the *Building Societies Act, 1975*:

3.

"the Commission" means the Corporate Affairs Commission:

"corporation" means corporation as defined in section 5(1) of the *Companies (South Australia) Code*:

"the Court" means the Supreme Court:

"credit union" means a credit union registered under Part III other than a foreign credit union registered under Part III as a result of an amalgamation under that Part:

"date of amalgamation" means the date on which the Commission issues a certificate of amalgamation in respect of an amalgamation under Part III:

"foreign credit union" means a body corporate registered as a foreign credit union under Part IX or under Part III as a result of an amalgamation under that Part:

"the Fund" means the Credit Union Deposit Insurance Fund established under Part VII:

"group accounts", in relation to a holding credit union, means—

- (a) a set of consolidated accounts for the group in relation to which that credit union is the holding credit union;
 - (b) two or more sets of consolidated accounts together covering that group;
 - (c) separate accounts for each corporation in that group;
- or
- (d) a combination of one or more sets of consolidated accounts and one or more separate accounts together covering that group:

"loan" includes the provision of credit by any means and "borrow" has a corresponding meaning:

"member", in relation to a credit union, means any person who holds, whether singly or jointly, a share in the credit union:

"officer" in relation to a credit union, foreign credit union or association means a director, secretary, treasurer or manager of the credit union, foreign credit union or association and any other person empowered under the rules of the credit union, foreign credit union or association to give directions in relation to the management of its business:

"prescribed interest" means prescribed interest as defined in section 5(1) of the *Companies (South Australia) Code*:

"profit or loss" means—

- (a) in relation to a credit union—the profit or loss resulting from the operations of the credit union;

4.

or

- (b) in relation to a holding credit union and its subsidiaries—the profit or loss resulting from the operations of the group constituted of the credit union and its subsidiaries:

"securities" includes shares, debentures, stock, bonds, bills, notes, options, rights or interests under unit trusts, prescribed interests, and documents of any kind evidencing indebtedness:

"share" of a credit union means share in the share capital of the credit union:

(2) For the purposes of this Act—

- (a) a corporation is a subsidiary of a credit union if it would be a subsidiary of the credit union for the purposes of the *Companies (South Australia) Code* if the credit union were a corporation;
- (b) where a corporation is a subsidiary of a credit union, the credit union is a holding credit union in relation to the corporation;

and

- (c) the holding credit union and its subsidiaries constitute a group.

Note: For definition of divisional penalties see Appendix.

Companies and Securities Industry Codes do not apply to credit unions or associations

4. (1) Except as otherwise expressly provided by or under this Act, the provisions of—

- (a) the *Companies (South Australia) Code*;
- (b) the *Companies (Acquisition of Shares) (South Australia) Code*;

and

- (c) the *Securities Industry (South Australia) Code*,

do not apply to or in relation to a credit union or association.

(2) The regulations may apply specified provisions of the Codes referred to in subsection (1) to credit unions or associations, subject to such modifications as may be prescribed.

5.

PART II

ADMINISTRATION

DIVISION I—THE COMMISSION

Administration of Act

5. The Commission is, subject to the control and direction of the Minister, responsible for the administration of this Act.

Registers and inspection

6. (1) For the purposes of this Act, the Commission must keep, in such form as it considers appropriate—

(a) a register of credit unions registered under this Act;

(b) a register of foreign credit unions registered under this Act;

and

(c) such other registers as this Act may require or as the Commission considers appropriate.

(2) Subject to this section, a person may, on payment of the prescribed fee—

(a) inspect a register kept by the Commission under this Act;

(b) inspect any document registered by, or filed or lodged with, the Commission under this Act;

or

(c) obtain from the Commission—

(i) a certified copy of, or extract from, an entry in a register kept under this Act;

(ii) a certified copy of a certificate of incorporation, certificate of registration or certificate of amalgamation issued under this Act;

or

(iii) a certified copy of, or extract from, any document registered by, or filed or lodged with, the Commission under this Act.

(3) If the Commission adopts a system of record keeping that involves the making of reproductions or transparencies of certificates or other documents—

(a) the Commission cannot be required to produce the document from which the reproduction or transparency was produced;

(b) any such reproduction or transparency is equivalent to an original;

6.

and

- (c) a copy produced from the reproduction or transparency is to be regarded as a copy of the original.

(4) A person is not entitled by this section to inspect, or to obtain a copy of or extract from, a document in which information has been furnished pursuant to section 66 or 97(6).

Annual reports

7. (1) The Commission must on or before 30 September in each year submit to the Minister a report on the administration of this Act during the period of 12 months that ended on the preceding 30 June.

(2) The Minister must within 12 sitting days after receipt of the report cause a copy of the report to be laid before each House of Parliament.

DIVISION II—POWERS OF INSPECTION

Extension of Companies Code powers of inspection

8. (1) The provisions of the *Companies (South Australia) Code* relating to inspection (Division I of Part II) extend, with such modifications, exclusions or additions as may be necessary for the purpose or as may be prescribed, to credit unions, foreign credit unions and associations as if a credit union, foreign credit union or association were a corporation.

(2) Without limiting the effect of subsection (1), any such powers of inspection may be exercised—

(a) in relation to—

- (i) a corporation that is a subsidiary of a credit union;
- (ii) a corporation or other body corporate with which a credit union has invested funds;
- or
- (iii) a prescribed body corporate or body corporate of a prescribed class;

and

(b) either—

- (i) for a purpose or in relation to a matter referred to in Division I of Part II of the *Companies (South Australia) Code*;
- or
- (ii) for a purpose or in relation to a matter related to the administration or enforcement of this Act.

PART III

CREDIT UNIONS

DIVISION I—CARRYING ON BUSINESS AS A CREDIT UNION

Credit union must be registered under this Act

9. (1) Subject to this section, a person or body of persons, whether incorporated or unincorporated, other than a body that is registered as a credit union or foreign credit union under this Act, must not—

- (a) carry on business as a credit union;
 - (b) carry on business under any name or title of which any of the expressions "credit union", "credit co-operative", "credit society" or "savings and loans society" forms a part;
- or
- (c) in any manner hold out that its business is that of a credit union.

Penalty: Division 4 fine.

(2) For the purposes of subsection (1)—

- (a) a person or body of persons is to be regarded as carrying on business as a credit union in the State if the person or body—
 - (i) administers a fund in the State into which members of a group of persons contribute money and which is applied solely or principally in loans to those members;
 - (ii) advertises for share capital, deposits or loan funds in the State under any name or title of which an expression referred to in subsection (1)(b) forms a part;
- or
- (iii) being a body carrying on business as a credit union outside the State—
 - (A) advertises for share capital, deposits or loan funds in the State;
 - (B) establishes or uses an office in the State for the receipt of share capital, deposits or loan funds;
- or
- (C) makes loans to members residing in the State;

8.

- (b) a body carrying on business as a credit union outside the State is not to be regarded as carrying on such a business in the State for the reason only that in the State it—
- (i) is or becomes a party to an action or suit or arbitration proceedings or effects settlement of an action, suit or proceedings or of any claim or dispute;
 - (ii) holds meetings of its directors or shareholders or carries on other activities concerning its internal affairs;
 - (iii) maintains any bank account;
 - (iv) effects any sale through an independent contractor;
 - (v) solicits or procures any offer that becomes a binding contract only if such offer is accepted outside the State;
 - (vi) creates evidence of any debt or creates a charge on real or personal property;
 - (vii) secures or collects any of its debts or enforces its rights in regard to any securities relating to such debts;
 - (viii) conducts an isolated transaction that is completed within a period of 31 days, but not being one of a number of similar transactions repeated from time to time;
- or
- (ix) invests any of its funds or holds any property.

(3) This section does not apply to—

- (a) a person or body of persons (whether incorporated or unincorporated) exempted by the Minister from the provisions of this section;
 - (b) a bank;
 - (c) a building society;
- or
- (d) a friendly society incorporated under the *Friendly Societies Act, 1919*.

(4) The Minister may, by instrument in writing, grant a conditional or unconditional exemption for the purposes of subsection (3) and may, on non-compliance with a condition of the exemption, by instrument in writing, revoke the exemption.

DIVISION II—OBJECTS OF CREDIT UNIONS

Objects

10. The objects of a credit union are—

- (a) to operate as a financial co-operative;
- (b) to raise funds by subscription, or otherwise, as authorized by this Act;
- (c) to apply those funds, subject to this Act and the rules of the credit union, in making loans to members of the credit union;

and

- (d) to provide such other services to its members as the credit union believes would be of benefit to the members.

DIVISION III—FORMATION AND REGISTRATION

Formation of credit union

11. (1) Subject to this Part, a credit union may be formed by any 25 or more natural persons of full age and capacity.

(2) No credit union may be formed unless there has been a meeting for the purpose of forming the credit union at which there are present 25 or more natural persons of full age and capacity.

(3) At the meeting referred to in subsection (2), the following documents must be presented to the prospective members of the credit union:

- (a) a written statement showing the objects of the credit union and the reasons for believing that an application for registration of the credit union should be granted and that, if registered, the credit union would be able to carry out its objects successfully;

and

- (b) a copy of the rules that are to be tendered for registration.

(4) If, at the formation meeting, or any subsequent or adjourned meeting, 25 or more persons of full age and capacity, after consideration of the statement and the rules, approve the rules with or without amendment, and sign an application for membership and shares, they may proceed to elect the first directors of the credit union in accordance with the rules as so approved.

(5) No application for shares in a proposed credit union, made prior to the registration of that credit union, may be withdrawn, and every person who makes such an application is, on the registration of the credit union, liable to pay to the credit union—

- (a) the value of the shares for which the person applied;

or

- (b) the value of the minimum number of shares for which a member of the credit union is entitled to subscribe,

whichever is the greater.

(6) The expenses of, and incidental to, the formation of the credit union may be paid out of the capital or income of the credit union.

Registration

12. (1) A credit union formed in accordance with this Part may apply to the Commission in the prescribed manner to be registered under this Act.

(2) An application for registration—

- (a) must be made within two months after the formation meeting at which the first directors of the credit union were elected;

and

(b) must be accompanied by—

- (i) a statutory declaration by the person presiding at the formation meeting and the secretary of that meeting that the requirements of this Part as to formation have been complied with;
- (ii) a copy of the statement presented to the meeting, signed by the person presiding and the secretary;
- (iii) two copies of the proposed rules of the credit union, certified by the person presiding and the secretary to be the rules as approved at the meeting;
- (iv) a list containing the full name, address and occupation of each director;
- (v) a list containing the full name, address and occupation of each of 25 persons of full age and capacity who attended the meeting and applied for membership and shares;
- (vi) written estimates of all income (including deposits and share capital) and expenditure (including loans and allocation of funds to reserves) over each of the first three years of operation of the credit union;

and

- (vii) such other evidence as the Commission may require that the credit union would, on registration, be able to carry out its objects successfully.

(3) A copy of an application for registration and of all accompanying documents must be forwarded by the Commission to the Board.

(4) If, on due application for registration under this section, the Board recommends that the credit union be registered and the Commission is satisfied that the credit union is eligible for registration, the Commission must register the credit union and its rules and issue a certificate of incorporation in the prescribed form.

(5) A credit union is eligible for registration under this section if—

- (a) the proposed rules of the credit union are not contrary to this Act;
- (b) there are reasonable grounds for believing that, before the expiration of the period of three months from the date of its registration, the amount held by the credit union by way of deposits from its members would equal or exceed \$500 000 or, if some other amount is prescribed, that amount;
- (c) there are reasonable grounds for believing that the credit union, if registered, would be able to comply with the requirements of this Act as to liquidity, reserves and future losses and carry out its objects successfully;

and

- (d) there is no good reason why the credit union or the proposed rules should not be registered.

DIVISION IV—INCORPORATION AND GENERAL POWERS

Incorporation

13. On the issue of a certificate of incorporation under this Part (whether under Division III or Division X), a credit union is a body corporate and—

- (a) has, subject to this Act and the rules of the credit union, the legal capacity of a natural person;

and

- (b) may sue and be sued in its corporate name.

General powers

14. (1) Without limiting the effect of section 13, but subject to this Act and the rules of the credit union, a credit union has power—

- (a) to raise money from its members—
 - (i) by issuing shares;
 - (ii) by accepting deposits;
 - (iii) by issuing securities of a prescribed class;
- (b) to borrow money;

12.

- (c) to give security by mortgaging or granting a floating charge over the whole undertaking of the credit union or any rights or property of the credit union or by any other means;
 - (d) to acquire, hold, deal with and dispose of real and personal property;
 - (e) to enter into contracts of employment, partnerships, joint ventures or any other contracts or arrangements;
 - (f) to make loans to its members;
 - (g) to form or acquire subsidiaries for the carrying out of its objects;
 - (h) to acquire securities of, make loans to, or give guarantees on behalf of, a subsidiary of the credit union;
 - (i) to act as a trustee and accept and hold in trust real and personal property;
 - (j) to invest funds not immediately required for its objects or incidental purposes;
 - (k) to carry on all or any of its operations as a credit union in another State or Territory of the Commonwealth (but in no other place) and, for that purpose, to exercise its other powers in such State or Territory;
 - (l) to procure registration or recognition as a credit union in another State or Territory of the Commonwealth;
 - (m) to distribute any property of the credit union among its members, in kind or otherwise;
- and
- (n) to do any other thing authorized by this Act or the rules of the credit union.

(2) The regulations may make provision for or with respect to the powers of credit unions and, in particular, may—

- (a) confer additional powers of a specified kind;
 - (b) withdraw powers of a specified kind conferred by this Act or the rules of a credit union;
 - (c) restrict the scope of powers of a specified kind conferred by this Act or the rules of a credit union;
- and
- (d) make provisions of a savings or transitional nature in relation to any such withdrawal or restriction.

DIVISION V—RULES

Contents of rules

15. The Commission must not register any rules of a proposed credit union unless they contain the prescribed provisions and otherwise conform with the requirements of this Act.

Effect of rules

16. The rules of a credit union bind the credit union, its members and all persons claiming under them.

Copies of rules

17. A credit union, on application and payment of the prescribed fee, must furnish a member or any person who is eligible to become a member under its rules with a copy of its rules.

Alteration of rules

18. (1) A credit union may, by special resolution, alter its rules, but any such alteration does not take effect until it has been registered in accordance with this section.

(2) A credit union must, within one month of the date of the meeting at which the special resolution approving an alteration was passed, apply to the Commission to have the alteration registered.

(3) Where the Commission is satisfied that the proposed alteration conforms with the requirements of this Act, the Commission must register the alteration.

Power of Commission to alter rules

19. (1) Where, in the opinion of the Commission, the rules of a credit union should be altered—

(a) to achieve conformity with any requirement of this Act;

or

(b) in the interests of the members of the credit union,

the Commission may, by instrument in writing served on the credit union, require it, within a period specified in the notice, to alter its rules in a manner specified in the instrument or otherwise in a manner approved by the Commission.

(2) A credit union may appeal to the Minister against a requirement that it alter its rules made for a purpose referred to in subsection (1)(b) and the Minister may, on any such appeal, confirm, vary or revoke the decision of the Commission.

(3) Where a credit union is required to alter its rules pursuant to subsection (1), the credit union is not required to do so by special resolution or to obtain the approval of its members.

(4) Where a credit union fails to comply with a requirement that it alter its rules, the Commission may itself make the required alteration by notation on the registered copy of the rules.

(5) The Commission must give a credit union notice in writing of any alteration of the rules of the credit union effected by the Commission pursuant to this section and of the date on which the alteration comes into operation.

(6) Where the rules of a credit union are altered by the credit union or by the Commission pursuant to this section, the credit union must notify its members of the alteration—

(a) within one month of the alteration by notice published on two separate days in a newspaper circulating generally in the State and, where the credit union is carrying on business as a credit union in another State or Territory of the Commonwealth, on two separate days in a newspaper circulating generally in that State or Territory;

and

(b) by notice given at the next meeting of the credit union.

DIVISION VI—APPEALS

Appeals

20. (1) A credit union, or a person promoting the formation of a credit union, may, subject to the regulations, appeal to the Court against—

(a) the refusal of the Commission to register the credit union;

(b) the refusal of the Commission to register its rules;

or

(c) a requirement by the Commission that it alter its rules or an alteration made by the Commission to its rules.

(2) The Court may determine an appeal under this section in such manner as it considers just and may confirm, vary or revoke the decision of the Commission.

DIVISION VII—MEMBERSHIP

Members

21. (1) The members of a credit union formed under this Act are those persons who sign an application for membership on the formation of the credit union and any other persons who hold shares in the credit union and are admitted to membership in accordance with the rules of the credit union.

(2) A member of a credit union incurs no liability to the credit union by reason only of his or her membership of the credit union.

Minors

22. (1) Subject to any contrary provision in the rules of a credit union, a person under the age of 18 years may be a member of a credit union.

(2) A minor is not entitled to exercise any vote at any meeting of the credit union.

Corporate member of credit union

23. (1) A body corporate may, if the rules of a credit union so provide, become a member of the credit union.

(2) A corporate member may, by instrument in writing (a copy of which must be served on the credit union), appoint a person to represent it at any meeting of members of the credit union.

(3) Any person appointed under subsection (2) is entitled to receive notice of all meetings in the same manner as a member of the credit union and is entitled to exercise the same rights of voting as a member of the credit union.

Voting rights of members

24. (1) A member of a credit union is not entitled to exercise more than one vote on any question arising at a meeting of the credit union.

(2) Subsection (1) does not prevent a member who has been appointed to represent a corporate member of the credit union from voting both as a member and in that other capacity.

Members holding shares jointly

25. (1) Where shares in a credit union are held jointly, the shares are to be treated as being held by the primary joint holder alone for the purpose—

(a) of determining who is qualified to vote on a resolution of a meeting of the credit union;

and

(b) of determining the number or proportion of any members required to give effect to any provision of this Act or the rules of the credit union.

(2) For the purposes of this section, the primary joint holder of shares in a credit union is the member whose name appears first in the register of members of the credit union.

(3) The joint holders of shares in a credit union are entitled to choose the order in which they are named in the register of members, but failing any such choice, the credit union may enter their names in such order as it thinks fit.

(4) Subject to the rules of a credit union, where all shares in a credit union held by a member are held jointly with another, any notice or other document may be given or sent by the credit union to that member by giving or sending it to the primary joint holder of the shares.

DIVISION VIII—SHARE CAPITAL

Share capital

26. (1) The share capital of a credit union must be divided into shares of the same nominal value as provided in the rules of the credit union.

(2) The shares must be of one class ranking equally.

(3) Each member must hold the same number of shares and no shares may be issued except to a person who has paid their full nominal value in cash.

(4) Notwithstanding the provisions of subsection (3), where shares are to be issued to a person less than 18 years of age, the credit union may allow the person time to pay their full nominal value.

(5) Except as provided in subsection (4), a credit union must not be party to any arrangement under which it provides direct or indirect financial assistance to a person to acquire shares in its share capital.

(6) Subject to subsection (7), the rules of a credit union—

(a) must provide that its share capital is withdrawable;

(b) may provide for the cancellation of shares subject to the regulations;

and

(c) must provide for repayment, in the event of winding up, of deposits in priority to share capital.

(7) Any rules made by a credit union before the commencement of this Act that do not allow the withdrawal of share capital (except in the event of the winding up of the credit union) may continue to operate in relation to the shares issued pursuant to those rules before that commencement.

(8) No share may be sold or transferred—

(a) at more than its nominal value;

or

(b) without the approval of the board of the credit union.

(9) Any document that constitutes a receipt for the payment of a share, or subscription for a share, must contain a clear acknowledgement that it constitutes such a receipt.

Charge and set off

27. (1) A credit union has, in respect of any debt due from a member or past member of the credit union, a charge on the shares of that member of the credit union, and on the credit balance of that member or past member and on any dividend, interest, bonus or rebate payable to that member or past member.

(2) The charge created by this section may be enforced by the appropriation by the credit union of the share capital or other money subject to the charge.

(3) Any share in respect of which the whole of the capital has been so appropriated must be cancelled by the credit union.

DIVISION IX—NAME AND OFFICE

Name

28. (1) The registered name of a credit union is its name as specified in the rules of the credit union for the time being registered under this Act.

(2) The Commission may not register proposed rules or an alteration of the rules of a credit union affecting the name of the credit union unless satisfied that the proposed name—

- (a) is not such as to be misleading as to the nature, objects or purposes of the credit union;
- (b) is not such as is likely to be confused with the name of any other body corporate or any registered business name;
- (c) is not undesirable as a name for a credit union;

and

- (d) conforms with any directions of the Minister as to the names of credit unions.

(3) Where the Commission registers an alteration of the rules of a credit union changing the name of the credit union, the Commission, may, on the application of the credit union, amend its certificate of incorporation or issue a fresh certificate.

(4) Where the registered name of a credit union is changed pursuant to this Act, the credit union must publish the change of name in such manner as the Commission directs.

(5) The Commission may, on the application of a credit union, approve the use by a credit union of a name other than its registered name subject to such conditions limiting the area and circumstances in which the other name may be used as the Commission may determine.

(6) The Commission may, by notice in writing to a credit union, withdraw an approval given to the credit union under subsection (5).

(7) A credit union must not use a name other than—

- (a) its registered name;

or

- (b) subject to the conditions of the approval, a name approved under subsection (5).

Office and service

29. (1) Every credit union must have a registered office.

(2) The first registered office of a credit union is that appearing in the rules of the credit union at the time of registration.

(3) If a credit union desires to change its registered office, it must give notice in writing of the address of the new office to the Commission and, on registration by the Commission of the new address or on such later date as the credit union may specify, the office becomes the registered office of the credit union.

(4) A document may be served on a credit union or an officer of the credit union by leaving it at the registered office of the credit union with some person who appears to be responsible to the credit union or by post enclosed in a prepaid registered letter addressed to the credit union at its registered office.

Publication of name

30. (1) A credit union must cause its registered name or a name approved by the Commission under this Division to appear in legible characters on its seal and in legible characters on all business letters, notices, advertisements and other official publications of the credit union and on all bills of exchange, cheques, promissory notes, endorsements, orders for money or goods, invoices, receipts and other documents required in the business of the credit union.

(2) A credit union must paint or affix and keep painted or affixed on the outside of every office or place in which its business is carried on in a conspicuous position in letters easily legible its registered name or a name approved by the Commission under this Division and also, in the case of the registered office, the words "Registered Office".

DIVISION X—AMALGAMATION

Interpretation

31. In this Division—

"credit union" means a local credit union or a foreign credit union:

"foreign credit union" means a credit union incorporated in another State or Territory of the Commonwealth whether or not registered as a foreign credit union under this Act:

"local credit union" means a credit union registered and incorporated under this Act:

"property" includes all estates and interests in property, whether real or personal, vested or contingent.

Application for amalgamation

32. (1) Application may be made to the Commission for an amalgamation of credit unions under which—

(a) each of the credit unions concerned is dissolved and a new local credit union or foreign credit union is registered under this Act;

or

(b) a local credit union or foreign credit union continues to be registered, or a foreign credit union is newly registered, under this Act and the other credit union or each of the other credit unions concerned is dissolved.

(2) The application must be made in the prescribed form by each credit union concerned in the amalgamation and must be accompanied by—

- (a) two copies of the proposed rules or constitution of any credit union that is to be registered as a result of the amalgamation;
- (b) in the case of an application involving registration of a foreign credit union—the statements and documents required to accompany an application for registration of a foreign credit union under Part IX;

and

- (c) such other documents or information as the Commission may require.

(3) Application may not be made under this section unless the terms of the proposed amalgamation have been approved by a special resolution of each local credit union that is a party to the application.

(4) Subsection (3) does not apply in relation to an application made by a local credit union pursuant to a direction of the Board given under Part VII.

(5) Each local credit union concerned in a proposed amalgamation must before making an application under this section send to each of its members a statement, the contents of which have been approved by the Commission, relating to—

- (a) its own financial position and the financial position of any other credit union concerned in the amalgamation;
- (b) any interest that its officers or the officers of any other credit union concerned may have in the amalgamation;
- (c) any compensation or other consideration proposed to be paid to its officers or the officers of any other credit union concerned arising out of the amalgamation;
- (d) the payments to be made to its members or the members of any other credit union concerned arising out of the amalgamation;

and

- (e) such other matters as the Commission may direct.

(6) The part of a statement under subsection (5) relating to the financial position of a credit union must include—

- (a) the profit and loss account of the credit union for the period up until a day not more than three months before the proposed date of amalgamation, being an account that gives a true and fair view of the profit or loss of the credit union for that period;
- (b) a balance-sheet as at the end of the last day of the period to which the profit and loss account relates, being a balance-sheet that gives a true and fair view of the state of affairs of the credit union as at that date;

and

- (c) a report prepared by the auditor of the credit union containing prescribed statements and information relating to the accounts of the credit union for the financial year up to that date.

(7) A statement under subsection (5) must be sent so that it will in due course of post reach each member not later than the time the member would receive notice of the meeting called to pass the special resolution approving the amalgamation.

(8) Where an application is made for an amalgamation under which a new local credit union is to be registered, a copy of the application and all accompanying documents must be forwarded by the Commission to the Board.

Determination of application for amalgamation

33. (1) If, on due application for an amalgamation under which a new local credit union is to be registered under this Act, the Board recommends that the credit union be registered and the Commission is satisfied—

- (a) that the credit union is eligible to be registered according to the provisions governing eligibility for registration under Division III;
- (b) that the amalgamation as it affects any foreign credit union party to the application will proceed as proposed according to the law applying to the foreign credit union in its place of incorporation;

and

- (c) that there is no good reason why it should refuse to grant the application,

the Commission must—

- (d) register the credit union and its rules and issue a certificate of incorporation in the prescribed form together with a certificate of amalgamation in the prescribed form to that credit union;

and

- (e) remove from the register the names of the other credit unions party to the application.

(2) If, on due application for an amalgamation under which a new foreign credit union is to be registered, or a foreign credit union is to be newly registered, under this Act, the Commission is satisfied—

- (a) that the credit union is eligible to be registered according to the provisions governing eligibility for registration under Part IX;
- (b) that the amalgamation as it affects the credit union and any other foreign credit union party to the application will proceed as proposed according to the law applying to the foreign credit union in its place of incorporation;

and

- (c) that there is no good reason why it should refuse to grant the application,

the Commission must—

- (d) register the credit union as a foreign credit union and issue a certificate of registration in the prescribed form together with a certificate of amalgamation in the prescribed form to that credit union;

and

- (e) remove from the register the names of the other credit unions party to the application.

(3) If, on due application for an amalgamation under which a local credit union is to continue to be registered under this Act, the Commission is satisfied—

- (a) that there are reasonable grounds for believing that the credit union would be able to comply with the requirements of Part IV as to liquidity, reserves and future losses and carry out its objects successfully;

- (b) that the amalgamation as it affects any foreign credit union party to the application will proceed as proposed according to the law applying to the foreign credit union in its place of incorporation;

and

- (c) that there is no good reason why it should refuse to grant the application,

the Commission must—

- (d) issue a certificate of amalgamation in the prescribed form to that credit union;

and

- (e) remove from the register the names of the other credit unions party to the application.

(4) If, on due application for an amalgamation under which a foreign credit union is to continue to be registered under this Act, the Commission is satisfied—

- (a) that there are reasonable grounds for believing that the credit union would be able to comply with the same requirements as to liquidity, reserves and future losses as apply in relation to credit unions registered and incorporated under this Act;

- (b) that the amalgamation as it affects the credit union and any other foreign credit union party to the application will proceed as proposed according to the law applying to the foreign credit union in its place of incorporation;

and

(c) that there is no good reason why the application should not be granted,

the Commission must—

(d) issue a certificate of amalgamation in the prescribed form to that credit union;

and

(e) remove from the register the names of the other credit unions party to the application.

(5) A local credit union is dissolved on removal of its name from the register pursuant to this section.

Transfer of property, etc., on amalgamation

34. (1) Where a certificate of amalgamation is issued under this Division, then, by virtue of this section—

(a) the property of any local credit union that is dissolved as part of the amalgamation vests in the amalgamated credit union on the issue of the certificate without any conveyance, transfer or assignment;

and

(b) the property in this State of any foreign credit union dissolved as part of the amalgamation vests in the amalgamated credit union on the dissolution of the foreign credit union without any conveyance, transfer or assignment.

(2) The Registrar-General must—

(a) on application by an amalgamated credit union;

and

(b) on the production of the certificate of amalgamation and such duplicate certificates of title and other documents as the Registrar-General may require,

register the vesting of any estate or interest in land in the amalgamated credit union pursuant to this section.

(3) Any property vested in an amalgamated credit union pursuant to this section remains subject to any debt, liability or obligation affecting the property.

(4) All debts and liabilities of the credit unions dissolved as part of the amalgamation are debts and liabilities of the amalgamated credit union.

(5) The vesting of property in an amalgamated credit union pursuant to this section, and any instrument evidencing or giving effect to that vesting, are exempt from stamp duty.

Transfer of members

35. The members of a local credit union or foreign credit union that is dissolved as part of an amalgamation under this Division become, on that amalgamation, members of the amalgamated credit union.

Power to exempt

36. (1) The Commission may, by instrument in writing, exempt, conditionally or unconditionally, a credit union from any provision of this Division.

(2) The Commission may, on non-compliance with a condition of an exemption under this section, by instrument in writing, revoke the exemption.

PART IV

PROVISIONS GOVERNING FINANCIAL ACTIVITIES OF CREDIT UNIONS

DIVISION I—RAISING FUNDS

Deposits only from members

37. (1) A credit union must not accept money on deposit from any person who is not a member of the credit union.

(2) The Commission may, by instrument in writing, exempt a credit union from the provisions of subsection (1) for a period specified by the Commission.

Other borrowings

38. (1) Subject to this section, a credit union must ensure that the total amount borrowed by the credit union and not repaid (disregarding the amount held by it on deposit) does not at any time exceed 25 per cent of the sum of—

(a) the amount for the time being comprising reserves of the credit union pursuant to Division III;

and

(b) the amounts of the share capital and the deposits held by the credit union not included in the amount referred to in paragraph (a).

(2) The Commission may, on the recommendation of the Board, give approval to a credit union to borrow money beyond the limit specified in subsection (1).

(3) A credit union must not borrow money otherwise than in Australian currency or undertake to repay moneys borrowed otherwise than in Australian currency.

(4) A credit union must, in accordance with the regulations, furnish the Commission with returns containing prescribed information relating to its borrowings.

(5) The Commission must maintain a register recording such information as is prescribed in relation to the borrowings of each credit union.

Disclosure statement to be furnished prior to issue of securities

39. (1) A credit union must not—

(a) offer to its members for subscription or purchase;

(b) invite its members to subscribe for or purchase;

or

(c) issue to its members,

any securities, whether or not being securities of the credit union, unless the credit union, prior to or at the time of making any such offer or issuing any such invitation in respect of the securities, issues to its members a disclosure statement in the prescribed form containing the prescribed information relating to the securities and the body by which or on whose behalf the securities are to be issued, together with such other information and reports as the Commission requires.

(2) Subsection (1) does not apply—

(a) in relation to shares of the credit union or, subject to the regulations, money accepted on deposit by the credit union;

(b) in relation to any offer or invitation if a prospectus or statement is required to be registered by the Commission for the purposes of Division 1 or 6 of Part IV of the *Companies (South Australia) Code* in relation to the offer or invitation;

or

(c) in any case or circumstances of a prescribed kind.

(3) For the purposes of this section, a reference to an invitation to subscribe for or purchase securities includes a reference to an invitation to make an offer to subscribe for or purchase securities.

(4) A credit union must not issue a disclosure statement that includes a statement purporting to be made by an expert or to be based on a statement made by an expert unless—

(a) the expert has consented in writing to the issue of the disclosure statement with that statement included in the form and context in which it is included and has not withdrawn that consent before the disclosure statement is issued by the credit union;

and

(b) there appears in the disclosure statement a statement that the expert has given, and has not withdrawn, that consent.

(5) Where a disclosure statement—

(a) includes any statement—

(i) that is false;

or

(ii) that is misleading in the form or context in which it is included;

or

(b) omits any matter or thing that is required to be included,

any person who authorized or caused the disclosure statement to be issued is guilty of an offence.

Penalty: Division 4 fine or division 4 imprisonment.

(6) It is a defence to a charge of an offence against subsection (5) if the defendant proves—

(a) that the statement or omission was immaterial;

(b) that he or she had reasonable grounds to believe, and did at the time of the issue of the disclosure statement believe, that the statement was not false or misleading or that the omission was immaterial;

or

(c) in the case of an omission—that the omission was inadvertent.

(7) For the purposes of subsection (5)—

(a) a statement is to be regarded as part of a disclosure statement if it is contained in any report or memorandum that appears on the face of, or is issued with, the disclosure statement, or is incorporated by reference in the disclosure statement, whether the reference occurs in the disclosure statement or in any other document;

and

(b) a person is not to be taken to have authorized or caused the issue of a disclosure statement by reason only of the fact that the person consented to its issue as required under subsection (4).

Civil liability with respect to disclosure statements

40. (1) Subject to this section, where a disclosure statement is issued by a credit union, a person who—

(a) is an officer of the credit union at the time of the issue of the disclosure statement;

or

(b) authorized or caused the issue of the disclosure statement,

is liable to pay compensation to any person who subscribes for or purchases securities on the faith of the disclosure statement for any loss or damage sustained by reason of—

(c) any statement in the disclosure statement—

(i) that is false;

or

(ii) that is misleading in the form or context in which it is included;

or

(d) any omission from the disclosure statement of any matter or thing that was required to be included and of which he or she had knowledge and knew to be material.

(2) Notwithstanding anything in subsection (1), an expert whose consent to the issue of a disclosure statement is required and who has given that consent is not, by reason only of having given that consent, liable under subsection (1) as a person who has authorized or caused the issue of the disclosure statement except in respect of—

(a) a false or misleading statement in the disclosure statement purporting to be made by him or her as an expert;

or

(b) an omission from the disclosure statement of any material matter or thing for which he or she is responsible in his or her capacity or purported capacity as an expert.

(3) For the purposes of subsection (1), a statement is to be regarded as part of a disclosure statement if it is contained in any report or memorandum that appears on the face of, or is issued with, the disclosure statement, or is incorporated by reference in the disclosure statement, whether the reference occurs in the disclosure statement or in any other document.

(4) Subject to subsection (5), a person other than a person to whom subsection (6) applies, is not liable under subsection (1) if he or she proves—

(a) that the disclosure statement was issued without his or her knowledge or consent and—

(i) when first aware of the issue of the disclosure statement, he or she forthwith gave reasonable public notice that it was issued without his or her knowledge;

or

(ii) he or she gave reasonable public notice that the disclosure statement was issued without his or her consent forthwith after it was issued,

as the case may be;

(b) that, after the issue of the disclosure statement, and before any securities to which the disclosure statement related were issued, he or she on becoming aware of any false or misleading statement in the disclosure statement, withdrew his or her consent to the issue of the disclosure statement and gave reasonable public notice of the withdrawal and of the reason for the withdrawal;

or

(c) that—

(i) as regards every false or misleading statement not purporting to be made on the authority of an expert or of a public official document or statement, he or she had reasonable grounds to believe, and did until the time of the issue of securities believe, that the statement was true and not misleading;

(ii) as regards every false or misleading statement purporting to be a statement made by an expert or to be based on a statement made by an expert or contained in what purports to be a copy of, or extract from, a report or valuation of an expert—

(A) it fairly represented the statement, or was a correct and fair copy of, or extract from, the report or valuation;

and

(B) he or she had reasonable grounds to believe, and did until the time of the issue of the disclosure statement believe, that the person making the statement was competent to make it and that the person had given the consent required by section 39 to the issue of the disclosure statement and had not withdrawn that consent before the issue of the disclosure statement, or, to his or her knowledge, before any, securities to which the disclosure statement related were issued;

and

(iii) as regards every false or misleading statement purporting to be a statement made by an official person or contained in what purports to be a copy of, or extract from, a public official document, it was a correct and fair representation of the statement or a correct and fair copy of, or extract from, the document.

(5) Subsection (4) does not apply in the case of a person who is liable, as a person who authorized or caused the issue of a disclosure statement by giving a consent required under section 39, in respect of a false or misleading statement purporting to have been made by him or her as an expert.

(6) A person who, apart from this subsection, would under subsection (1) be liable, as a person who authorized or caused the issue of a disclosure statement by giving a consent required under section 39, in respect of a false or misleading statement purporting to be made by him or her as an expert is not so liable if he or she proves—

(a) that, having given his or her consent under section 39 to the issue of the disclosure statement, he withdrew it in writing before the disclosure statement was issued;

(b) that, after the disclosure statement was issued and before any securities to which the disclosure statement related were issued, he or she, on becoming aware of the false or misleading statement, withdrew his or her consent in writing and gave reasonable public notice of the withdrawal and of the reasons for the withdrawal;

or

- (c) that he or she was competent to make the statement and had reasonable grounds to believe, and did until the time of the issue of securities to which the disclosure statement related believe, that the statement was true and not misleading.

(7) Where—

- (a) a disclosure statement contains the name of a person as an officer of the credit union and the person has not authorized or consented to the issue of the disclosure statement;

or

- (b) the consent of a person is required under section 39 to the issue of a disclosure statement and the person has not given that consent or has withdrawn it before the issue of the disclosure statement,

the officers of the credit union, except any without whose knowledge or consent the disclosure statement was issued, and any other person who authorized or caused the issue of the disclosure statement are jointly and severally liable to indemnify the person so named or whose consent was so required against all damages, costs and expenses to which he or she may be made liable—

- (c) by reason of his or her name having been so inserted in the disclosure statement;
- (d) by reason of the inclusion in the disclosure statement of a statement purporting to be made by him or her as an expert;

or

- (e) in defending any action or other legal proceeding brought against him or her by reason of his or her name having been so inserted in the disclosure statement or the inclusion in the disclosure statement of such a statement.

DIVISION II—LOANS

Loans

41. Subject to this Act, a credit union must not make a loan to a person who is not a member of the credit union.

Interest

42. (1) The Minister may, by notice published in the *Gazette*, fix from time to time a maximum rate of interest in relation to any loans or loans of a particular class.

(2) A credit union must not charge interest on a loan to a member at a rate exceeding a maximum rate fixed pursuant to subsection (1) that applies to that loan.

Maximum amount of loan

43. (1) The Minister may, by notice published in the *Gazette*, fix from time to time in relation to credit unions generally, or in relation to a particular credit union, or credit unions of a particular class, the maximum amount—

(a) that may be lent by a credit union to any member;

or

(b) that may be lent by a credit union to a member under a loan of a particular class.

(2) A credit union must not lend money to a member in contravention of the terms of a notice under subsection (1).

(3) This section does not affect a transaction that was lawful at the time it was entered into.

Loans to officers and employees

44. (1) Subject to this Act and its rules, a credit union may lend money to any of its officers and employees who are members of the credit union.

(2) Notwithstanding any Act or law to the contrary, but subject to subsection (3), where a loan is made pursuant to this section to a director of a credit union—

(a) the director is not obliged to report the loan to any general meeting of the members of the credit union;

and

(b) failure so to report the loan does not affect the validity of the loan contract or render the director liable to account for any profits arising from the loan contract.

(3) The rules of a credit union may provide that an officer or employee of the credit union must report any loan obtained pursuant to this section to the annual general meeting of the credit union next following the making of the loan.

(4) This section does not derogate from the provisions of section 68.

Commercial loans and returns by credit unions

45. (1) A credit union must ensure that the total amount of the principal for the time being outstanding under commercial loans made by the credit union does not exceed—

(a) 10 per cent, or, if some other percentage is prescribed, that percentage, of the total assets of the credit union;

or

(b) the sum of—

(i) five per cent, or, if some other percentage is prescribed, that percentage, of the total assets of the credit union;

and

- (ii) the amount for the time being comprising reserves of the credit union pursuant to Division III,

whichever is the lesser.

(2) A credit union must not make to a member, or to members that are associates of each other, a commercial loan or commercial loans of an amount, or amounts in aggregate, exceeding one per cent, or, if some other percentage is prescribed, that percentage, of the total assets of the credit union.

(3) A credit union must not make a commercial loan to an officer of the credit union.

(4) A credit union must ensure that no commercial loan is made by it except with the prior approval of a member of its staff who has successfully undertaken a course of instruction of a prescribed kind.

(5) A credit union must, by writing in the prescribed form, report to the Board during each month every prescribed loan made to a member during the preceding month of an amount that, by itself, or when aggregated with other prescribed loans made by it (whether during the same month or earlier) to the same member or to an associate of the member, exceeds—

- (a) \$100 000, or, if some other amount is prescribed, that amount;

or

- (b) 0.5 per cent, or, if some other percentage is prescribed, that percentage, of the total assets of the credit union,

whichever is the lesser.

(6) In this section—

"commercial loan" means a loan made by a credit union to a member of the credit union for a purpose connected with a business conducted or to be conducted by the member or an associate of the member where the amount lent exceeds \$30 000, or, if some other amount is prescribed, that amount, but does not include—

- (a) a loan where the credit union has obtained in respect of repayment of the total amount repayable under the loan an indemnity or guarantee granted by an insurance company carrying on business pursuant to the *Insurance Acts 1973* of the Commonwealth;

- (b) a loan of an amount not exceeding \$100 000, or, if some other amount is prescribed, that amount, where—

- (i) repayment of the total amount repayable under the loan is secured—

- (A) by a registered first mortgage over land on which a dwelling house is erected;

or

(B) by a charge over authorized trustee investments;

and

(ii) the amount borrowed does not exceed 85 per cent of the market value of the land or investments subject to the mortgage or charge:

or

(c) a loan to a subsidiary of the credit union:

"prescribed loan" means—

(a) a commercial loan;

or

(b) a loan made pursuant to section 44,

but does not include a loan where repayment of the total amount repayable under the loan is secured by a registered first mortgage over land on which there is a dwelling house occupied by the borrower:

"total assets" means the amount of the total assets of the credit union as recorded in its accounts.

(7) For the purposes of this section, a person is an associate of another if—

(a) they are partners;

(b) one is a spouse, parent or child of the other;

(c) they are both trustees or beneficiaries of the same trust, or one is a trustee and the other is a beneficiary of the same trust;

(d) one is a corporation and the other is a director of the corporation;

(e) one is a corporation and the other is a person who has a legal or equitable interest in five per cent or more of the share capital of the corporation;

(f) they are related corporations for the purposes of the *Companies (South Australia) Code*;

or

(g) a chain of relationships can be traced between them under any one or more of the above paragraphs.

Loans to minors

46. A member of a credit union under the age of 18 years is not entitled to obtain a loan from the credit union unless—

(a) the loan is made jointly to the minor and his or her parent or guardian;

and

(b) the minor and his or her parent or guardian are jointly and severally liable on the contract.

DIVISION III—LIQUIDITY AND RESERVES

Liquidity

47. (1) A credit union must not make, or offer to make, any loan at any time when the average amount of liquid funds held by the credit union computed over the period of the month in the prescribed manner is less than seven per cent (or, if some other percentage is prescribed, that percentage) of the sum of—

(a) the paid up share capital of the credit union;

(b) the deposits held by the credit union;

and

(c) the total amount borrowed by the credit union and not repaid (disregarding amounts raised by overdraft).

(2) In this section—

"liquid funds" means—

(a) cash in hand;

(b) deposits with—

(i) a bank;

(ii) a building society;

or

(iii) a prescribed association;

(c) investments with a dealer in the short term money market, approved by the Reserve Bank of Australia as an authorized dealer and having established lines of credit with that bank as a lender of last resort;

(d) investments in withdrawable shares of a building society;

or

- (e) investments of a prescribed class,

but does include investments of a class declared by regulation not to be liquid funds.

(3) In determining the amount of liquid funds held at any time by a credit union—

- (a) deposits and investments must be taken into account at their current market value;
- (b) deposits and investments that cannot be withdrawn or converted into cash within 90 days of application must be disregarded;

and

- (c) the total amount raised by overdraft must be deducted from the amount that would otherwise constitute the total amount of the liquid funds held by the credit union.

Reserves

48. (1) A credit union must maintain reserves comprising—

- (a) share capital of the credit union that is not withdrawable and is repayable, in the event of the winding up of the credit union, after any withdrawable share capital has been repaid and the claims of creditors have been met;
- (b) capital gains realized by the credit union;
- (c) increases in the value of real property of the credit union as disclosed by revaluation carried out or confirmed by an independent valuer within the preceding three years;

and

- (d) revenue profits realized by the credit union.

(2) Revenue profits of a credit union do not constitute reserves for the purposes of this section unless transferred or appropriated to a single separate account described in the accounts of the credit union as a statutory reserve account.

(3) Subject to this Act, a credit union must ensure that—

- (a) as at the end of the third complete financial year after the relevant date or any subsequent financial year, the total amount of its reserves is not less than five per cent, or, if some other percentage is prescribed, that percentage of the total assets of the credit union as at the end of that financial year;

and

(b) as at the end of each financial year after the relevant date but before the third complete financial year after the relevant date, the total amount of its reserves (as compared with that amount as at the end of the preceding financial year) has increased by—

(i) not less than 0.5 per cent of the average of the total assets of the credit union as at the end of that financial year and as at the end of the preceding financial year;

or

(ii) such amount as is required to bring the total amount of its reserves to the level referred to in paragraph (a),

whichever is the lesser.

(4) In determining the total amount of the reserves at any time, if the amount of the reserves representing increases in the value of real property exceeds three-sevenths of the balance of the amount of the reserves, that excess must be disregarded.

(5) The Commission may, on the recommendation of the Board, in the case of a credit union registered as a result of an amalgamation under this Act, by instrument in writing, exempt the credit union, conditionally or unconditionally, from a requirement of subsection (3).

(6) The Commission may, on non-compliance with a condition of an exemption under subsection (5), by instrument in writing, revoke the exemption.

(7) A credit union must not, except on the winding up of the credit union, distribute to its members any amount comprising reserves pursuant to this section.

(8) In this section—

"independent valuer" means a person licensed or duly authorized to act as a land valuer under the *Land Agents, Brokers and Valuers Act, 1973*, or under a law of another State or Territory of the Commonwealth, not being a person who is an employee of the credit union:

"relevant date" means—

(a) in the case of a credit union incorporated after the commencement of this Act otherwise than as a result of an amalgamation under this Act—the date on which the credit union is so incorporated;

or

(b) in any other case—the date of commencement of this Act:

"total assets" in relation to a financial year, means the amount of the total assets of the credit union as recorded in its audited balance-sheet for that financial year.

Future losses account

49. (1) A credit union must establish and maintain an account comprising the following amounts set aside as provision for doubtful debts:

- (a) not less than—
 - (i) 0.20 per cent (or, if some other percentage is prescribed, that percentage) of the total amount of principal for the time being outstanding under loans made by the credit union on the security of registered first mortgages over real property;

or

 - (ii) the amount determined in accordance with the prescribed formula,
- whichever is the greater;

and

- (b) not less than—
 - (i) 0.5 per cent (or, if some other percentage is prescribed, that percentage) of the total amount of the principal for the time being outstanding under loans made by the credit union that are not secured as referred to in in paragraph (a);

or

 - (ii) the amount determined in accordance with the prescribed formula,
- whichever is the greater.

(2) Subsection (1) imposes a minimum requirement only and does not derogate from the duty of the directors of a credit union to cause adequate provision to be made for doubtful debts as required according to the particular circumstances of the credit union from time to time.

DIVISION IV—PROPERTY AND INVESTMENT

Provisions governing acquisition of property

50. (1) A credit union may not exercise its powers to—

- (a) acquire real property;
 - (b) carry out improvements to real property;
- or
- (c) acquire vehicles, equipment and other goods,

except as reasonably necessary for the establishment of premises from which it will conduct its business or for the proper and efficient management of that business.

(2) A credit union must not, without the prior approval of the Board, enter into any transaction (other than a lease) of a kind to which subsection (1) applies where the cost of the transaction would exceed five per cent of the sum of—

(a) the amount for the time being comprising reserves of the credit union pursuant to Division III;

and

(b) the amounts of the share capital and the deposits held by the credit union not included in the amount referred to in paragraph (a).

Provisions governing investment

51. (1) A credit union must not invest funds not immediately required for its objects or incidental purposes except—

(a) in authorized trustee investments;

(b) on deposit with an association of which it is a member;

(c) in withdrawable shares in a building society;

or

(d) in investments of a prescribed class.

(2) Subsection (1) does not prevent a credit union from applying its funds as it considers appropriate for carrying out its objects—

(a) in forming or acquiring a subsidiary;

or

(b) in acquiring securities of, making loans to, or guaranteeing liabilities of, a subsidiary of the credit union.

(3) A credit union must not, without the prior approval of the Board—

(a) allow the sum of—

(i) any amounts applied as referred to in subsection (2);

and

(ii) any amounts invested as prescribed for the purposes of this subsection,

to exceed five per cent of the sum of—

(iii) the amount for the time being comprising reserves of the credit union pursuant to Division III;

and

- (iv) the amounts of the share capital and the deposits held by the credit union not included in the amount referred to in subparagraph (iii);

or

- (b) advance money to, or deposit money with, another credit union.

(4) In determining amounts referred to in subsection (3)(a)(i) and (ii)—

- (a) the amounts initially applied or invested by the credit union are to be taken into account (rather than the value of such investments from time to time);

and

- (b) where a credit union has provided a guarantee, the credit union is to be regarded as having applied an amount for that purpose equal to the full amount of the liability guaranteed.

(5) A credit union must notify the Board in writing at least seven days before—

- (a) applying any funds as referred to in subsection (2);

or

- (b) investing any amounts as prescribed for the purposes of subsection (3).

(6) A credit union must not invest funds in any security that matures on a certain date unless that date is less than 15 years from the date of the investment.

(7) This section does not affect or render unlawful any investment made by a credit union prior to the commencement of this Act.

Disposal of certain property

52. Any property to which a credit union may become absolutely entitled by foreclosure, surrender, or extinguishment of a right of redemption must, as soon as practicable, be sold and converted into money.

Dormant accounts

53. (1) Subject to this Act, a credit union may classify an account in which there have been no transactions for a period of one year as a dormant account.

(2) Before classifying an account as dormant, the credit union must notify the member of its intention to do so and of the subsequent action proposed by the credit union—

- (a) by registered letter to the member's last known address;

or

- (b) by advertisement in a newspaper circulating generally throughout the State.

(3) Unless within one month of the posting of the letter or publication of the advertisement, whichever is the later, the member gives notice in writing to the credit union expressing a desire to remain a member, the credit union may, subject to this section—

(a) cancel the membership of the member;

and

(b) transfer the share capital and funds of the member to a special account (entitled "the suspense account") established by the credit union for the purposes of this section.

(4) A person whose membership has been cancelled pursuant to this section may within a period of six years after the date of cancellation require the credit union to refund the money held in the suspense account representing the value of shares formerly held by that person and the amount formerly held on deposit on his or her behalf.

(5) Where a member fails to claim a refund under subsection (4), the credit union must pay the money to the Board for payment into the Fund.

(6) The Board must, on the application of a person entitled to money paid to the Board pursuant to subsection (5), refund that money to that person.

PART V

ASSOCIATIONS

Associations must be registered under this Part

54. Subject to the regulations, no credit union may be a member of a body whose objects include any of the objects of an association under this Act unless that body is registered as an association under this Act.

Formation

55. (1) An association of credit unions may be formed by four or more credit unions, in accordance with the provisions of this Part.

(2) The objects of an association are such of the following as are authorized by the rules of the association:

- (a) to promote the interests of and strengthen co-operation among credit unions and associations;
 - (b) to render services to and act on behalf of its members in such ways as may be specified in, or authorized by, the rules of the association;
 - (c) to advocate and promote such practices and reforms as may be conducive to any of the objects of the association;
 - (d) to co-operate with other bodies with similar objects;
 - (e) to promote the formation of credit unions;
 - (f) to encourage the formulation, adoption and observance by credit unions of standards and conditions governing the carrying on of their business;
 - (g) to supervise the affairs of its members in accordance with the rules of the association;
- and
- (h) to perform such other functions as may be prescribed.

Registration and incorporation

56. (1) An application for the registration of an association—

- (a) must be made in the prescribed form and must be under the common seals of all the credit unions that are to be members of the association on its formation;

and

- (b) must be accompanied by the rules of the proposed association.

(2) If the Commission is satisfied—

- (a) that the rules as submitted are not contrary to the provisions of this Act;

41.

- (b) that there are reasonable grounds for believing that the association if registered would be able to carry out its objects successfully;

and

- (c) that there is no good reason why the association and its rules should not be registered,

the Commission must register the association and its rules and issue a certificate of incorporation in the prescribed form.

(3) On the issue of a certificate of incorporation, the association is a body corporate and—

- (a) has, subject to this Act and the rules of the association, the legal capacity of a natural person;

- (b) may sue and be sued in its corporate name;

and

- (c) has the powers, duties or functions conferred or imposed by this Act and the rules of the association.

Membership

57. (1) The members of an association are the credit unions by which the association is formed, and any other credit unions that are admitted to membership of the association in accordance with the rules of the association.

(2) A body formed and registered as a credit union in the Northern Territory and carrying on its business principally in that Territory may be admitted to membership of an association, in accordance with the rules of the association, as if it were a credit union registered under this Act.

Share capital

58. (1) The share capital of an association must be divided into shares in accordance with the rules of the association.

(2) No member of an association may, unless exempted by the Commission from the provisions of this subsection, hold shares representing more than one-quarter of the total share capital of the association.

Monetary provisions

59. (1) An association may, subject to this Act and the rules of the association—

- (a) raise money by accepting deposits from its members;

- (b) borrow money and give such security in respect of the borrowing as it thinks fit;

- (c) lend money to its members, or its officers and employees, upon such terms as it thinks fit;

- (d) lend money to the members, officers or employees of its members, upon such terms as it thinks fit;

and

(e) otherwise apply its funds in the furtherance of its objects.

(2) Notwithstanding any Act or law to the contrary, but subject to subsection (3), where a loan is made pursuant to this section to a director of the association—

(a) the director is not obliged to report the loan to any general meeting of the members of the association;

and

(b) failure so to report the loan does not affect the validity of the loan contract or render the director liable to account for any profits arising from the loan contract.

(3) The rules of an association may require an officer or employee of the association to report any loan obtained pursuant to this section to the annual general meeting of the association next following the making of the loan.

(4) This section does not derogate from the provisions of section 68.

(5) An association must provide for the maintenance of liquid funds in accordance with its rules.

(6) An association has power to acquire property and invest its funds in accordance with its rules.

(7) The Board may direct an association to report details of its monetary policies from time to time to the Board and the Board may make recommendations and give advice to the association on those policies.

(8) An association must not donate money for any purposes other than charitable purposes.

Meetings

60. (1) Meetings of the members of an association must be convened and conducted in accordance with the rules of the association.

(2) A member of an association is, at any such meeting, entitled—

(a) to be represented in such manner;

and

(b) to exercise such voting rights,

as may be prescribed by the rules of the association.

(3) An association must cause full and accurate minutes to be kept of every meeting of the board, and of every meeting of the members, of the association.

Application of this Act to associations

61. The following provisions of this Act apply with necessary adaptations and prescribed modifications, additions or exclusions to and in relation to associations:

- (a) Divisions V, VI, IX and X of Part III;
 - (b) Divisions I, III, IV, V, VI and VII of Part VI;
 - (c) Division III of Part VII;
- and
- (d) Parts VIII and X.

PART VI

MANAGEMENT

DIVISION I—DIRECTORS AND OFFICERS

Board of Directors

62. (1) The business of a credit union must be managed and controlled by a board of directors, and for that purpose the board has, subject to this section, the powers of the credit union.

(2) The powers of the board are subject to any restrictions imposed upon it by this Act, by rules of the credit union or by a resolution of a general meeting of the credit union.

(3) A majority of the directors of a credit union must reside permanently in the State.

(4) A credit union must not have less than five directors.

Validity of acts of directors

63. The acts of a director are valid notwithstanding any defect that may afterwards be discovered in his or her appointment or qualification.

Appointment of directors

64. (1) The directors of a credit union must be appointed in accordance with the rules of the credit union by a general meeting of the credit union.

(2) The board of a credit union, if so authorized by the rules of the credit union, may appoint a person to be a deputy of a director and such a person may act as a director of the credit union in the absence of the person of whom he or she is deputy.

Qualification of a director and vacation of office

65. (1) An employee of a credit union other than the manager is not eligible to be a director of the credit union unless approved by the Commission.

(2) A person is not eligible to be a director of a credit union if that person—

(a) has not attained the age of 18 years;

(b) has attained the age of 70 years;

(c) is not a member of the credit union;

(d) is a bankrupt or insolvent debtor or is bound by a composition in favour of creditors;

(e) is prohibited from being a director of a corporation pursuant to the *Companies (South Australia) Code*;

or

- (f) has been convicted within the preceding period of 10 years—
 - (i) of an indictable offence in connection with the promotion, formation or management of a body corporate;
 - (ii) of an offence involving fraud or dishonesty;or
 - (iii) of any prescribed offence.

(3) The office of a director becomes vacant if the director—

- (a) dies;
- (b) completes a term of office and is not reappointed;
- (c) is absent from three consecutive ordinary meetings of the board without its leave;
- (d) ceases to be a member of the credit union;
- (e) resigns by instrument in writing addressed to the board;
- (f) is four months in arrears in respect of money due to the credit union and has failed to make arrangements for payment satisfactory to the credit union;
- (g) becomes a bankrupt or insolvent debtor, is bound by a composition in favour of creditors or applies to take the benefit of any law for the relief of bankrupt or insolvent debtors;
- (h) is prohibited from being a director of a corporation pursuant to the *Companies (South Australia) Code*;
- (i) is convicted—
 - (i) of an indictable offence in connection with the promotion, formation or management of a body corporate;
 - (ii) of an offence involving fraud or dishonesty;or
 - (iii) of any prescribed offence;
- (j) is removed from office by resolution of a general meeting of the credit union.

(4) The office of a director becomes vacant at the annual general meeting next following the day on which the director attains the age of 70 years.

(5) A director may not be removed from office, and the office of a director will not become vacant, except as provided by this Act.

Disclosure of interest

66. (1) Subject to this section, a director of a credit union who is or becomes in any way (whether directly or indirectly) interested in a contract, or proposed contract with the credit union, must declare the nature and extent of the interest to the board of directors in accordance with this section.

(2) In the case of a proposed contract, the declaration must be made at the meeting of directors at which the question of entering into the contract is first considered, or if the director was not at the date of that meeting interested in the proposed contract, at the next meeting of the directors held after he or she becomes interested in the proposed contract.

(3) Where a director becomes interested in a contract with the credit union after it is made, the declaration must be made at the first meeting of the directors held after he or she becomes interested in the contract.

(4) For the purposes of this section, a general notice in writing given to the board by a director to the effect that he or she is a member of a specified company or firm, and is to be regarded as interested in any contract which may, after the date of the notice, be made with that company or firm, is a sufficient declaration.

(5) Any declaration made pursuant to this section must be reported by the board—

(a) forthwith to the Commission;

and

(b) to the members at the annual general meeting next following the making of the declaration.

(6) Nothing in this section prejudices any rule of law affecting the validity of contracts between a body corporate and a director of the body corporate or affecting the obligations of a director to account for any profits arising from any such contract.

Certain dealings are prohibited

67. (1) An officer of a credit union must not, without the approval of a majority of the directors—

(a) sell any real or personal property to, or act as agent in respect of the sale of any real or personal property to, a member of the credit union who proposes to pay for the real or personal property (in whole or in part) out of a loan made by the credit union;

(b) undertake the erection of any building for a member of the credit union who proposes to pay for the building (in whole or in part) out of a loan made by the credit union;

(c) accept as payment (in whole or in part) of any money due to him or her from a member of the credit union the whole or part of any loan made by the credit union to that member;

or

(d) borrow money from the credit union.

(2) For the purposes of this section, anything done by a proprietary company in which an officer of the credit union is a shareholder or director is to be regarded as having been done by the officer.

Director's remuneration

68. A director of any credit union must not be paid any remuneration for his or her services as a director other than such fees, concessions and other benefits as may be approved at a general meeting of the credit union.

Meetings of the board

69. (1) Meetings of the board of directors of a credit union must be held as often as may be necessary for properly conducting the business of the credit union.

(2) A meeting of the board of directors of a credit union must be held on or before the expiration of two months from the date of the last meeting of the board.

(3) A quorum at a meeting of the board of directors of a credit union consists of the number of directors prescribed by the rules of the credit union but that number may not in any case be less than half of the total number of the directors.

Unlawfully acting as director

70. (1) A person, other than a director of the credit union, must not purport to act as a director of a credit union.

(2) A director of a credit union must not permit a person other than a director of the credit union to purport to act as such.

Duty and liability of officers

71. (1) An officer of a credit union must at all times act honestly in the exercise of the powers and the discharge of the duties of his or her office.

Penalty: Division 4 fine or division 4 imprisonment.

(2) An officer of a credit union must at all times exercise a reasonable degree of care and diligence in the exercise of the powers and the discharge of the duties of his or her office.

Penalty: Division 6 fine.

(3) An officer or employee of a credit union, or a former officer or employee of a credit union, must not make improper use of information acquired by virtue of his or her position as such an officer or employee to gain, directly or indirectly, an advantage for himself or herself or for any other person or to cause detriment to the credit union.

Penalty: Division 4 fine or division 4 imprisonment.

(4) An officer or employee of a credit union must not make improper use of his or her position as such an officer or employee, to gain, directly or indirectly, an advantage for himself or herself or for any other person or to cause detriment to the credit union.

Penalty: Division 4 fine or division 4 imprisonment.

(5) Where—

(a) a person is convicted of an offence against this section;

and

(b) the court by which the person is convicted is satisfied that the credit union has suffered loss or damage as a result of the act or omission that constituted the offence,

the court may, in addition to imposing a penalty, order the convicted person to pay compensation to the credit union of such amount as the court specifies, and any such order may be enforced as if it were a judgment of that court.

(6) Where a person contravenes or fails to comply with a provision of this section in relation to a credit union, the credit union may, whether or not the person has been convicted of an offence against this section in relation to that contravention or failure, recover from the person as a debt due to the credit union by action in a court of competent jurisdiction—

(a) if that person or any other person made a profit as a result of the contravention or failure—an amount equal to that profit;

and

(b) if the credit union has suffered loss or damage as a result of the contravention or failure—an amount equal to that loss or damage.

(7) This section does not derogate from any other rule of law relating to the duties of directors and officers of bodies corporate.

DIVISION II—MEETINGS OF MEMBERS OF A CREDIT UNION AND VOTING

Meetings of credit unions

72. (1) The annual general meeting of a credit union must be held within five months after the close of the credit union's financial year, or within such further time as may be allowed by the Commission.

(2) An application for an extension of time for the purposes of subsection (1) must be made to the Commission before the expiration of the period sought to be extended.

(3) Any other meetings of a credit union must be held, or may be called, as prescribed by the rules of the credit union.

(4) At a meeting of a credit union no business may be transacted unless a quorum of members, as prescribed by the rules of the credit union, is present at the time the meeting is considering that business.

(5) Subject to subsection (6), a notice setting out the general nature of the business to be transacted at a meeting—

(a) must be—

(i) given personally or by post to members;

or

(ii) advertised on two separate days in a newspaper circulating generally throughout the State,

not more than five weeks and not less than three weeks before the date of the meeting;

and

(b) must be exhibited in a conspicuous place at the head office and each branch office of the credit union over a period of at least three weeks immediately preceding the date of the meeting.

(6) Where a credit union seeks to call an extraordinary general meeting of its members, the notice is sufficient if given not less than seven days before the date of the meeting.

(7) The auditors of a credit union are entitled to attend every meeting of the credit union.

Voting

73. (1) Subject to this Act and the rules of a credit union, every question arising for decision at a meeting of a credit union must be determined by a majority of those members who are present at the meeting and, unless a poll is demanded by at least five of those members, the question may be determined by a show of hands.

(2) The rules of a credit union may provide for postal voting by members on any question other than one to be determined by special resolution.

(3) The Commission may, on application in writing by a credit union, permit the credit union to conduct postal voting on a question or class of questions to be determined by special resolution.

(4) A permission under subsection (3) may be granted conditionally or unconditionally and may be varied or revoked by the Commission at any time by notice in writing to the credit union.

(5) At any meeting of the members of the credit union the person presiding at the meeting may, in the event of an equality of votes, exercise a second or casting vote.

(6) Subject to subsection (7), the voting rights of a member cannot be restricted by the rules of the credit union.

(7) The voting rights of a member who has borrowed money from the credit union and is in default in repayment may be restricted by the rules of the credit union.

(8) The Commission may not register any rule under which the right of a member who has borrowed money from the credit union is limited or excluded unless it approves of the limitation or exclusion.

(9) A member of a credit union may not vote by proxy.

(10) A vote purportedly cast by a person as the proxy for a member of a credit union is of no effect.

Special resolutions

74. (1) For the purposes of this Act, a special resolution is a resolution passed by a majority of not less than two-thirds of those persons who, being present and entitled to vote, register their vote in favour or the resolution.

(2) Unless a poll is demanded, a declaration by the person presiding at the meeting that a resolution has been carried by a specified majority is conclusive evidence of the fact.

(3) Notice of a proposed special resolution, setting out its terms, must be—

(a) given personally or by post to members;

or

(b) advertised on two separate days in a newspaper circulating generally in the State and, where the credit union is carrying on business as a credit union in another State or Territory of the Commonwealth, on two separate days in a newspaper circulating generally in that State or Territory,

not less than 14 days before the date of the meeting at which a motion for the passing or adoption of the resolution is to be moved.

(4) A purported special resolution in relation to which notice has not been given in accordance with subsection (3) is of no effect.

(5) A credit union must, within one month of a meeting at which a special resolution has been passed, submit the resolution to the Commission for registration.

(6) A special resolution is of no effect until registered.

(7) This section applies in relation only to those matters that are required by this Act or the rules of a credit union to be passed or approved by a special resolution.

Minutes

75. A credit union must cause full and accurate minutes to be kept of every meeting of the board, and of every meeting of the members of the credit union.

DIVISION III—REGISTERS AND INSPECTION

Registers

76. (1) A credit union must keep—

- (a) registers of its directors and its members and the shares held by each member;
 - (b) a register of all loans raised, securities given, and deposits received, by the credit union;
 - (c) a register of all loans made, or guaranteed, by the credit union and of all securities taken by the credit union in respect of such loans or guarantees;
 - (d) a register of investments made by the credit union;
- and
- (e) such other registers as may be prescribed.

(2) Subject to this section, the registers must be kept at the registered office of the credit union and be kept in such manner, and contain such particulars, as may be prescribed.

(3) With the consent in writing of the Commission, the registers referred to in this section may be kept in any office of the credit union other than its registered office.

(4) Subject to subsection (5), no notice of any trust, express, implied or constructive, may be entered in any register or account kept by a credit union or be received by the credit union or the Commission.

(5) Where the rules of a credit union so provide, an entry in a register or account kept by the credit union in respect of any share in the credit union or money deposited with the credit union may, in the circumstances and in the manner authorized by the rules, be made so as to indicate that the share or money is held in trust.

(6) Whether or not an entry is made pursuant to subsection (5), a credit union is to be regarded as being unaffected by notice of any trust.

Inspection

77. (1) A credit union must keep at its registered office and at each branch office open for inspection without fee by members of the credit union, persons eligible for membership of the credit union and its creditors—

- (a) a copy of this Act and the regulations;
 - (b) a copy of the rules of the credit union;
 - (c) a copy of the last accounts of the credit union, together with a copy of the report of the auditor;
- and
- (d) the register of directors or a copy of that register.

(2) A credit union must, on request by a member of the credit union—

(a) furnish the member with particulars of his or her financial position with the credit union as member, shareholder, depositor or borrower;

and

(b) allow the member to inspect registers and records kept by the credit union containing information relating to the names, addresses or voting rights of other members or relating to any prescribed matter as reasonably necessary in connection with the calling and conduct of meetings of the credit union.

DIVISION IV—ACCOUNTS

Financial year

78. (1) The period from 1 July to the following 30 June is the financial year for a credit union.

(2) If a credit union is registered (otherwise than as a result of an amalgamation) on a day falling between 1 January and 30 June in any year, its first financial year may, if the credit union so elects, extend to 30 June in the following year.

Financial years of groups

79. (1) Subject to this section, the directors of a holding credit union must take such action (if any) as is necessary to ensure that the financial year of each subsidiary of the holding credit union coincides with the financial year of the holding credit union.

(2) The action referred to in subsection (1) must be taken in relation to a particular subsidiary not later than 12 months after the date on which the subsidiary became a subsidiary of the holding credit union.

(3) Subject to any order by the Commission under this section, where the financial year of a holding credit union and the financial year of each of its subsidiaries coincide, the directors of the holding credit union must at all times take such action as is necessary to ensure that the financial year of any of its subsidiaries is not altered in such a way that all of those financial years no longer coincide.

(4) Where the directors of a holding credit union are of the opinion that there is good reason why the financial year of any of its subsidiaries should not coincide with the financial year of the holding credit union, they may apply in writing to the Commission for an order authorizing the subsidiary to continue to have or to adopt (as the case requires) a financial year that does not coincide with that of the holding credit union.

(5) The application must be supported by a statement in writing made in accordance with a resolution of the directors of the holding credit union, signed by not less than two directors and stating the reasons for seeking the order.

(6) The Commission may require the directors making the application to supply such information relating to the operations of the holding credit union and its subsidiaries as the Commission thinks necessary for the purpose of determining the application.

(7) The Commission may engage a registered company auditor to investigate and report to it on the application.

(8) The costs of an investigation and report under subsection (7) are payable by the holding credit union of which the applicants are directors.

(9) The Commission may make an order granting or refusing the application or granting the application subject to such limitations, terms or conditions as it thinks fit, and must serve a copy of the order on the holding credit union.

(10) Where the applicants are aggrieved by an order made by the Commission, the applicants may, within two months after the service of the order on the holding credit union, appeal against the order to the Court.

(11) The Court, in determining the appeal, may make any order that the Commission had power to make on the original application and may exercise any of the powers that the Commission might have exercised in relation to the original application.

(12) Where the directors of a holding credit union have applied to the Commission for an order under this section, subsection (1) does not apply to or in relation to the subsidiary to which the application relates until the determination of the application and of any appeal arising out of the application.

(13) Where an order is made authorizing a subsidiary to have or to adopt a financial year that does not coincide with that of its holding credit union, compliance with the terms of the order of the Commission (including any limitations or conditions set out in the order), or, where there has been an appeal, compliance with the terms of any order made on the determination of the appeal, constitutes compliance with subsection (1) in relation to the subsidiary.

(14) Where an application for an order by the Commission under this section has been refused and there is no appeal, or where there has been an appeal and the appeal has been withdrawn or dismissed, the time within which the directors of the holding credit union are required to comply with subsection (1) in relation to the subsidiary is the period of 12 months after the date on which notice of refusal by the Commission is served on the holding credit union or, where there has been an appeal that has been dismissed, the period of 12 months after the determination of the appeal.

(15) Where the directors of a holding credit union have applied to the Commission for an order under this section, and the application has been refused and the appeal (if any) arising out of the refusal has been dismissed, the directors of the holding credit union are not entitled to make an application under this section with respect to the subsidiary within three years after the refusal of the first mentioned application or, where there was an appeal, after the dismissal of the appeal, unless the Commission is satisfied that there has been a substantial change in the relevant facts or circumstances since the refusal of the former application or the determination of the appeal, as the case may be.

Accounting records to be kept

80. (1) A credit union must—

(a) keep such accounting records as correctly record and explain the transactions of the credit union (including any transactions as trustee) and the financial position of the credit union;

and

(b) keep its accounting records in such a manner as will enable—

(i) the preparation from time to time of true and fair accounts of the credit union;

and

(ii) the accounts of the credit union to be conveniently and properly audited in accordance with this Act.

(2) A credit union must retain the accounting records kept under this section for a period of seven years after the completion of the transactions to which they relate.

(3) A credit union must keep the accounting records at such a place or places as its directors think fit.

(4) Where any of the accounting records of a credit union are kept at a place outside the State, the credit union must keep at a place within the State determined by the directors such information as would enable true and fair accounts and any documents or reports required by this Act to be attached to the accounts to be prepared.

(5) The accounting records of a credit union must be kept in writing in the English language or so as to enable the accounting records to be readily accessible and readily convertible into writing in the English language.

(6) A credit union must make its accounting records available in writing in the English language at all reasonable times for inspection without charge by any director of the credit union and by any other person authorized or permitted by or under this Act to inspect the accounting records of the credit union.

(7) The Court may, on application by a director of a credit union, make an order authorizing a registered company auditor acting for the director to inspect the accounting records of the credit union.

(8) A registered company auditor who inspects accounting records pursuant to an order of the Court under subsection (7) must not disclose to a person other than the director on whose application the order was made any information acquired in the course of the inspection.

Profit and loss account, balance-sheet, group accounts and directors' statements

81. (1) The directors of a credit union must, not less than 14 days before an annual general meeting of the credit union or, if no annual general meeting is held within the period within which it is required under Division II to be held, not less than 14 days before the end of that period, cause to be prepared—

(a) a profit and loss account for the last financial year of the credit union, being a profit and loss account that gives a true and fair view of the profit or loss of the credit union for that financial year;

and

(b) a balance-sheet as at the end of the last financial year of the credit union, being a balance-sheet that gives a true and fair view of the state of affairs of the credit union as at the end of that financial year.

(2) Where, at the end of a financial year of a credit union, the credit union is a holding credit union, the directors of the credit union must, not less than 14 days before the next annual general meeting of the credit union or, if no annual general meeting is held within the period after the end of that financial year within which it is required under Division II to be held, not less than 14 days before the end of that period, cause to be prepared group accounts dealing with—

(a) the profit or loss of the credit union and its subsidiaries for their respective last financial years;

and

(b) the state of affairs of the credit union and its subsidiaries as at the end of their respective last financial years,

and giving a true and fair view of the profit or loss and the state of affairs so far as those matters concern members of the holding credit union.

(3) The directors of a credit union must take reasonable steps to ensure that the accounts of the credit union and, if it is a holding credit union for which group accounts are required, the group accounts, are audited as required by this Part not less than 14 days before the annual general meeting of the credit union or, if no annual general meeting is held within the period within which it is required under Division II to be held, not less than 14 days before the end of that period.

(4) The directors of a credit union must cause to be attached to, or endorsed on, the accounts or group accounts in relation to the credit union the auditor's report relating to those accounts or group accounts, as the case may be, that is furnished to the directors in accordance with Division V.

(5) The directors must, before the accounts referred to in subsection (1) are prepared, take reasonable steps—

(a) to ascertain what action has been taken in relation to the writing off of bad debts and the making of provisions for doubtful debts and to cause all known bad debts to be written off and adequate provision to be made for doubtful debts;

(b) to ascertain whether any current assets, other than current assets to which paragraph (a) applies, are unlikely to realize in the ordinary course of business their value as shown in the accounting records of the credit union and, if so, to cause—

(i) those assets to be written down to an amount that they might be expected so to realize;

or

(ii) adequate provision to be made for the difference between the amount of the value as so shown and the amount that they might be expected so to realize;

and

- (c) to ascertain whether any non-current asset is shown in the books of the credit union at an amount that, having regard to its value to the credit union as a going concern, exceeds the amount that it would have been reasonable for the credit union to expend to acquire that asset as at the end of the financial year and, unless adequate provision for writing down that asset is made, to cause to be included in the accounts such information and explanations as will prevent the accounts from being misleading by reason of the overstatement of the amount of that asset.

(6) Without limiting the effect of the preceding provisions of this section, the directors of a credit union must ensure that the accounts of the credit union and, if it is a holding credit union for which group accounts are required, the group accounts comply with such of the prescribed requirements as are relevant to those accounts or group accounts, as the case may be, but where accounts or group accounts prepared in accordance with those requirements would not otherwise give a true and fair view of the matters required by this section to be dealt with in the accounts or group accounts, the directors of the credit union must add such information and explanations as will give a true and fair view of those matters.

(7) Without limiting the effect of the preceding provisions of this section, but subject to subsection (9), the directors of a credit union must ensure that the accounts of the credit union and, if it is a holding credit union for which group accounts are required, the group accounts, comply with such approved accounting standards as are applicable.

(8) For the purposes of this Act, an approved accounting standard is applicable to accounts of a credit union or group accounts of a holding credit union if, at the time when the accounts or group accounts are prepared, the approved accounting standard—

- (a) would apply in relation to the financial year of the credit union or holding credit union to which the accounts or group accounts relate;

and

- (b) would be relevant to those accounts or group accounts,

if the credit union or holding credit union were a company or holding company within the meaning of the *Companies (South Australia) Code*.

(9) Where the accounts of a credit union or the group accounts of a holding credit union would not, if prepared in accordance with an applicable approved accounting standard, give a true and fair view of the matters required by this Division to be dealt with in those accounts or group accounts, the directors of the credit union or holding credit union are not required to comply with subsection (7).

(10) The directors of a credit union must cause to be attached to any accounts required to be laid before an annual general meeting, before the auditor reports on the accounts under this Part, a statement made in accordance with a resolution of the directors and signed by not less than two directors—

- (a) stating whether in the opinion of the directors—
 - (i) the profit and loss account is drawn up so as to give a true and fair view of the profit or loss of the credit union for the financial year;
 - (ii) the balance-sheet is drawn up so as to give a true and fair view of the state of affairs of the credit union as at the end of the financial year;

and

 - (iii) as at the date of the statement, there are reasonable grounds to believe that the credit union will be able to pay its debts as and when they fall due;
- (b) stating whether the accounts comply with applicable approved accounting standards;

and

- (c) if the accounts do not comply with a particular applicable approved accounting standard—
 - (i) stating why the accounts would not, if they had been prepared in accordance with that standard, have given a true and fair view of the matters required by this Division to be dealt with in the accounts;

and

 - (ii) giving particulars of the quantified financial effect on the accounts of the failure to comply with that standard.

(11) The directors of a credit union that is a holding credit union must cause to be attached to group accounts required to be laid before an annual general meeting, before the auditor reports on the group accounts under this Part, a statement made in accordance with a resolution of the directors of the credit union and signed by not less than two directors—

- (a) stating whether, in the opinion of the directors, the group accounts are so drawn up as to give a true and fair view of—
 - (i) the profit or loss of the credit union and its subsidiaries for their respective last financial years;

and

 - (ii) the state of affairs of the credit union and its subsidiaries as at the end of their respective last financial years,

so far as they concern members of the credit union;

(b) stating whether the group accounts comply with applicable approved accounting standards;

and

(c) if the group accounts do not comply with a particular applicable approved accounting standard—

(i) stating why the group accounts would not, if they had been prepared in accordance with that standard, have given a true and fair view of the matters required by this Division to be dealt with in those accounts;

and

(ii) giving particulars of the quantified financial effect on those accounts of the failure to comply with that standard.

(12) The directors of a credit union—

(a) must, in forming an opinion as to the matters referred to in subsection (10)(a)(i) and (ii) for the purposes of a statement under that subsection, have regard to—

(i) circumstances that have arisen;

and

(ii) information that has become available,

since the end of the financial year to which the accounts relate, being circumstances or information that would, if the accounts were being prepared at the time the statement is made, have affected the determination of an amount or a particular in those accounts;

and

(b) must, if adjustments have not been made in those accounts to reflect circumstances or information of a kind referred to in paragraph (a), being circumstances or information relevant to an understanding of those accounts, or of an amount or particular in those accounts, include in the statement such information and explanations as will prevent those accounts, or that amount or particular, from being misleading as a result of such adjustments not having been made.

(13) The directors of a credit union that is a holding credit union—

(a) must, in forming an opinion as to the matters referred to in subsection (11)(a) for the purposes of a statement under that subsection, have regard to circumstances that have arisen, or information that has become available, since—

(i) in the case of circumstances or information relating to the credit union—the end of the financial year of the credit union to which those accounts relate;

or

- (ii) in the case of circumstances or information relating to a subsidiary—the end of the financial year of the subsidiary to which those accounts relate,

being circumstances or information that would, if those accounts were being prepared at the time the statement is made, have affected the determination of an amount or a particular in those accounts;

and

- (b) must, if adjustments have not been made in those accounts to reflect circumstances or information of a kind referred to in paragraph (a), being circumstances or information relevant to an understanding of those accounts, or of an amount or particular in those accounts, include in the statement such information and explanations as will prevent those accounts, or that amount or particular, from being misleading as a result of those adjustments not having been made.

Directors' reports

82. (1) The directors of a credit union, other than a credit union to which subsection (2) applies, must, not less than 14 days and not more than 56 days before the annual general meeting of the credit union or, if no annual general meeting is held within the period within which it is required under Division II to be held, not less than 14 days and not more than 56 days before the end of that period, cause a report to be prepared, in accordance with a resolution of the directors and signed by at least two directors—

- (a) stating the names of the directors in office at the date of the report and giving, in respect of each of the directors, particulars of any interest of the director in a contract or proposed contract with the credit union, being an interest declared by the director under Division I since the commencement of this Act or the date on which particulars were last given under this paragraph;

- (b) stating—

- (i) the principal activities of the credit union in the course of its last financial year and any significant change in the nature of those activities that occurred during that financial year;
- (ii) the net amount of the profit or loss of the credit union for that financial year after provision for income tax;

and

- (iii) the amount (if any) that the directors recommend should be paid by way of dividend, and any amounts that have been paid or declared by way of dividend since the commencement of that financial year, indicating which of those amounts (if any) have been shown in a previous report under this subsection or subsection (2);

- (c) containing a review of the operations of the credit union during that financial year and of the results of those operations;

- (d) giving particulars of any significant change in the state of affairs of the credit union that occurred during that financial year;
 - (e) giving particulars of any matter or circumstance that has arisen since the end of that financial year and that has significantly affected or may significantly affect—
 - (i) the operations of the credit union;
 - (ii) the results of those operations;or
 - (iii) the state of affairs of the credit union,in financial years subsequent to that financial year;
- and
- (f) referring to—
 - (i) likely developments in the operations of the credit union;and
 - (ii) the expected results of those operations,in financial years subsequent to that financial year.

(2) The directors of a credit union that, at the end of its last financial year, was a holding credit union must, not less than 14 days and not more than 56 days before the annual general meeting of the credit union or, if no annual general meeting is held within the period within which it is required under Division II to be held, not less than 14 days, and not more than 56 days before the end of that period, cause to be made out a report, made in accordance with a resolution of the directors and signed by at least two directors—

- (a) stating the names of the directors in office at the date of the report and giving, in respect of each of the directors, particulars of—
 - (i) the shares in any subsidiary of the credit union held by the director;
 - (ii) any interest of the director in a contract or proposed contract with the credit union, being an interest declared by the director under Division I since the commencement of this Act or the date on which particulars were last given under this paragraph;
- (b) stating—
 - (i) the principal activities of the corporations in the group in the course of that financial year and any significant change in the nature of those activities that occurred during that period;

(ii) the net amount of the consolidated profit or loss of the corporations in the group for that financial year after provision for income tax and after deducting from that consolidated profit or loss any amounts that should properly be attributed to any person other than a corporation in the group;

and

(iii) the amount (if any) that the directors of the credit union recommend should be paid by way of dividend, and any amounts that have been paid or declared by way of dividend since the commencement of that financial year, indicating which of those amounts (if any) have been shown in a previous report under this subsection or subsection (1);

(c) containing a review of the operations of the group during that financial year and of the results of those operations;

(d) giving particulars of any significant change in the state of affairs of the group that occurred during that financial year;

(e) giving particulars of any matter or circumstance that has arisen since the end of that financial year and that has significantly affected or may significantly affect—

(i) the operations of the group;

(ii) the results of those operations;

or

(iii) the state of affairs of the group,

in financial years subsequent to that financial year;

and

(f) referring to—

(i) likely developments in the operations of the group;

and

(ii) the expected results of those operations,

in financial years subsequent to that financial year.

(3) If, in the opinion of the directors of a credit union, it would prejudice the interests of the credit union if any particular information required under subsection (1)(f) or (2)(f) were to be included in a report—

(a) the information need not be so included;

and

- (b) the report must contain a statement that some, or all (as the case may require) of the information required under subsection (1)(f) or (2)(f) has not been included in the report.

(4) Where a subsidiary of a holding credit union has at any time granted to a person an option to have issued to him or her shares in the subsidiary, the directors of the credit union must state in the report made under this section the name of the corporation and—

- (a) in the case of an option granted during the financial year or since the end of the financial year—
- (i) the name of the person to whom the option was granted or, where it was granted generally to all the holders of shares or debentures or of a class of shares or debentures of that corporation, that the option was so granted;
 - (ii) the number and classes of shares in respect of which the option was granted;
 - (iii) the date of expiration of the option;
 - (iv) the basis upon which the option is or was to be exercised;
- and
- (v) whether any person entitled to exercise the option had or has any right, by virtue of the option, to participate in any share issue of any other corporation;
- (b) particulars of shares issued, during the financial year or since the end of the financial year, by virtue of the exercise of an option;
- and
- (c) the number and classes of unissued shares under option as at the date of the report, the prices, or the method of fixing the prices, of issue of those shares, the dates of expiration of the options and particulars of the rights (if any) of the holders of the options to participate by virtue of the options in any share issue of any other corporation.

(5) Where any of the particulars required by subsection (4) have been stated in a previous report, they may be stated by reference to that report.

(6) The directors of a credit union must state in the report whether, since the end of the previous financial year, a director of the credit union has received or become entitled to receive a benefit, other than—

- (a) a benefit included in the aggregate amount of emoluments received or due and receivable by directors shown in the accounts or, if the credit union is a holding credit union, the group accounts;

or

- (b) the fixed salary of a full-time employee of the credit union or of a subsidiary of the credit union,

by reason of a contract made by the credit union or subsidiary with the director or with a firm of which he or she is a member, or with a company in which he or she has a substantial financial interest and, if so, the general nature of the benefit.

(7) Where there is attached to or included with a report of the directors laid before a credit union at its annual general meeting a statement, report or other document relating to affairs of the credit union or any of its subsidiaries, not being a statement, report or document required by this Act to be laid before the credit union in general meeting, the statement, report or other document shall, for the purposes of section 142, be deemed to be part of that first mentioned report.

Rounding off of amounts in accounts and reports

83. (1) The regulations may make provision permitting every credit union, or every credit union included in a class of credit unions specified in the regulations, subject to such conditions, exceptions or qualifications (if any) as are specified in the regulations, to insert in any accounts or report under this Act, in substitution for an amount that the credit union would, but for this section, be required or permitted to set out in the accounts or report, an amount ascertained in accordance with the regulations but not being an amount that is more than \$500 greater or less than the first mentioned amount.

(2) For the purposes of subsection (1), the insertion of zero is to be taken to be the insertion of an amount.

Directors of holding credit union must obtain information from subsidiaries

84. (1) Subject to subsection (3), the directors of a holding credit union must not cause the group accounts or the statement or report relating to them to be prepared unless the directors have available to them sufficient information, in relation to each subsidiary, to enable them to ensure—

- (a) that the group accounts will give a true and fair view of—
- (i) the profit or loss of the holding credit union and its subsidiaries for their respective last financial years;
- and
- (ii) the state of affairs of the holding credit union and its subsidiaries as at the end of their respective last financial years,
- so far as they concern members of the holding credit union;
- and
- (b) that neither the statement nor the report will be false or misleading in a material particular.

(2) The directors of a subsidiary must, at the request of the directors of the holding credit union, supply to the holding credit union all the information that is required by the directors of the holding credit union for the preparation of the group accounts, the statement and the report referred to in subsection (1).

(3) Where the directors of a holding credit union, having taken all such steps as are reasonably available to them, are unable to obtain from the directors of a subsidiary the information required by the directors of the holding credit union for the preparation of the group accounts, the statement and the report referred to in subsection (1), within the period within which they are respectively required by this Act to be prepared—

(a) the directors of the holding credit union must cause the group accounts, statement and report to be prepared without incorporating or including the information relating to that subsidiary, but—

(i) they must include in the group accounts, statement or report, as the case requires, a description of the nature of the information that has not been obtained, and must include such qualifications and explanations as are necessary to prevent the group accounts, statement or report from being misleading;

and

(ii) they may qualify accordingly that part of the statement that is made in pursuance of section 81(11)(a);

and

(b) where the directors of the holding credit union have caused the group accounts, statement and report to be prepared in accordance with paragraph (a), they must, within one month after receiving any of that information from the directors of the subsidiary—

(i) lodge with the Commission a statement setting out or summarizing the information and containing such qualifications and explanations, by the directors of the holding credit union, of the group accounts, statement or report as are necessary having regard to the information received from the directors of the subsidiary;

and

(ii) send a copy of that statement to each member of the credit union.

Accounts and reports to be laid before annual general meeting

85. (1) The directors of a credit union must cause to be laid before each annual general meeting of the credit union—

(a) a copy of the accounts made out in accordance with section 81 for the last financial year of the credit union;

(b) in the case of a credit union that, at the end of its last financial year before the relevant annual general meeting, was not a holding credit union—a copy of the directors' report made out in accordance with section 82 in respect of that financial year;

- (c) in the case of a credit union that, at the end of its last financial year before the relevant annual general meeting, was a holding credit union—a copy of the group accounts made out in accordance with section 81 in relation to that financial year and a copy of the directors' report made out in accordance with section 82 in respect of that financial year;
- (d) a copy of any auditor's report required by section 81 to be attached to or endorsed upon the accounts or group accounts of the credit union;

and

- (e) a copy of the statement by the directors required by section 81 to be attached to the accounts or group accounts of the credit union.

(2) Copies of the accounts, statements and reports required to be laid before an annual general meeting by subsection (1) must be made available to members of the credit union at each of the credit union's offices during the period between notice of the meeting being given and the holding of the meeting.

Failure to comply with this Division

86. (1) A director of a credit union who fails to take all reasonable steps to comply with or secure compliance with any provision of this Division is guilty of an offence.

Penalty:

- (a) if the offence is committed with intent to deceive or defraud creditors of the credit union or creditors of any other person or for a fraudulent purpose—a division 4 fine or division 4 imprisonment;

or

- (b) in any other case—a division 6 fine.

(2) In any proceedings against a person for an offence against subsection (1) arising out of the accounts of a credit union or the group accounts of a holding credit union not complying with an applicable approved accounting standard, the onus of proving that the accounts would not, if prepared in accordance with that standard, have given a true and fair view of the matters required by this Division to be dealt with in those accounts lies on that person.

(3) In any proceedings for an offence against subsection (1) arising out of an omission from the accounts of a credit union or the group accounts of a holding credit union, it is a defence to prove that the information omitted was immaterial and did not affect the giving of a true and fair view of the matters required by this Division to be dealt with in those accounts.

(4) If, after the expiration of the period within which any accounts of a credit union or any report of the directors of a credit union is or are required by section 81 to be prepared, the Commission, by notice in writing to each of the directors, requires the directors to produce the accounts or report to a person specified in the notice on a date and at a place so specified, and the directors fail to produce the accounts or report as required by the notice, then, in any proceeding for a failure to comply with section 81, proof of the failure to produce the accounts or report as required by the notice is, in the absence of proof to the contrary, proof that the accounts or report were not prepared within that period.

DIVISION V—AUDIT

Qualifications of auditors

87. (1) Subject to this section, a person must not—

(a) consent to be appointed as auditor of a credit union;

(b) act as auditor of a credit union;

or

(c) prepare a report required by this Act to be prepared by a registered company auditor or by an auditor of a credit union,

if—

(d) the person is not a registered company auditor;

(e) the person is not ordinarily resident in the State;

(f) the person is indebted in an amount exceeding \$5 000 to the credit union or to a subsidiary of the credit union;

or

(g) the person—

(i) is an officer of the credit union;

(ii) is a partner, employer or employee of an officer of the credit union;

or

(iii) is a partner or employee of an employee of an officer of the credit union.

(2) Subject to this section, a firm must not—

(a) consent to be appointed as auditor of a credit union;

(b) act as auditor of a credit union;

or

- (c) prepare a report required by this Act to be prepared by a registered company auditor or by an auditor of a credit union,

unless—

- (d) at least one member of the firm is a registered company auditor who is ordinarily resident in the State;
- (e) where the business name under which the firm is carrying on business is not registered under the *Business Names Act, 1963*—there has been lodged with the Commission a return in the prescribed form showing, in relation to each member of the firm, his or her full name and his or her address as at the time when the firm so consents, acts or prepares a report;
- (f) no member of the firm is indebted in an amount exceeding \$5 000 to the credit union or to a subsidiary of the credit union;
- (g) no member of the firm is—
 - (i) an officer of the credit union;
 - (ii) a partner, employer or employee of an officer of the credit union;or
 - (iii) a partner or employee of an employee of an officer of the credit union;

and

- (h) no officer of the credit union receives any remuneration from the firm for acting as a consultant to it on accounting or auditing matters.

(3) For the purposes of subsections (1) and (2), a person is to be regarded as being an officer of a credit union if—

- (a) he or she is an officer of a subsidiary of the credit union;

or

- (b) except where the Commission, if it thinks fit in the circumstances of the case directs that this paragraph not apply in relation to the person—he or she has, at any time within the immediately preceding period of 12 months, been an officer or promoter of the credit union or of a subsidiary of the credit union.

(4) For the purposes of this section, a person is not to be regarded as being an officer of a credit union by reason only of being or having been the liquidator of the credit union or of a subsidiary of the credit union.

(5) For the purposes of this section, a person is not to be regarded as being an officer of a credit union by reason only of having been appointed as auditor of that credit union or of a subsidiary of the credit union or, for any purpose relating to taxation, a public officer of a corporation or by reason only of being or having been authorized to accept on behalf of the credit union or a subsidiary of the credit union service of process or any notices required to be served on the credit union or subsidiary.

(6) The appointment of a firm as auditor of a credit union is to be regarded as being an appointment of all persons who are members of the firm and are registered company auditors, whether resident in Australia or not, as at the date of the appointment.

(7) Where a firm that has been appointed as auditor of a credit union is reconstituted by reason of the death, retirement or withdrawal of a member or members or by reason of the admission of a new member or new members, or both—

- (a) a person who was an auditor of the credit union by virtue of subsection (6) and who has so retired or withdrawn from the firm as previously constituted is to be regarded as having resigned as auditor of the credit union as from the day of that retirement or withdrawal, but, unless that person was the only member of the firm who was a registered company auditor and, after the retirement or withdrawal of that person, there is no member of the firm who is a registered company auditor, section 90 does not apply to that resignation;
- (b) a person who is a registered company auditor and who is so admitted to the firm is to be regarded as having been appointed as an auditor of the credit union as from the date of admission to the firm;

and

- (c) the reconstitution of the firm does not affect the appointment of the continuing members of the firm who are registered company auditors as auditors of the credit union,

but nothing in this subsection affects the operation of subsection (2).

(8) Except as provided by subsection (7), the appointment of the members of a firm as auditors of a credit union by virtue of the appointment of the firm as auditor of the credit union is not affected by the dissolution of the firm.

(9) A report or notice that purports to be made or given by a firm appointed as auditor of a credit union is not to be regarded as having been duly made or given unless it is signed in the firm name and in his or her own name by a member of the firm who is a registered company auditor.

(10) If, in contravention of this section, a firm consents to be appointed, or acts as, auditor of a credit union, or prepares a report required by this Act to be prepared by an auditor of a credit union, each member of the firm is guilty of an offence.

(11) A person must not—

- (a) if appointed auditor of a credit union—knowingly disqualify himself or herself while the appointment continues from acting as auditor of the credit union;

or

- (b) if a member of a firm that has been appointed auditor of a credit union—knowingly disqualify the firm while the appointment continues from acting as auditor of the credit union.

(12) For the purposes of this section—

"officer of a credit union" includes—

- (a) an employee of the credit union;
- (b) a receiver, or receiver manager, of the property or part of the property of the credit union;

and

- (c) an official manager or deputy official manager of the credit union.

Appointment of auditors

88. (1) Within one month after the date on which a credit union is incorporated, the directors of the credit union must appoint, unless the credit union at a general meeting has appointed, a person or persons, a firm or firms, or a person or persons and a firm or firms, as auditor or auditors of the credit union.

(2) A person or firm appointed as auditor of a credit union under subsection (1) holds office, subject to this Division, until the first annual general meeting of the credit union.

(3) A credit union must—

- (a) at its first annual general meeting appoint a person or persons, a firm or firms, or a person or persons and a firm or firms, as auditor or auditors of the credit union;

and

- (b) at each subsequent annual general meeting, if there is a vacancy in the office of auditor of the credit union, appoint a person or persons, a firm or firms, or a person or persons and a firm or firms, to fill the vacancy.

(4) A person or firm appointed as auditor under subsection (3) holds office until death or removal or resignation from office in accordance with section 90 or until ceasing to be capable of acting as auditor by reason of section 87(1) or (2).

(5) Within one month after a vacancy, other than a vacancy caused by the removal of an auditor from office, occurs in the office of auditor of the credit union, if there is no surviving or continuing auditor of the credit union, the directors must, unless the credit union at a general meeting has appointed a person or persons, a firm or firms, or a person or persons and a firm or firms, to fill the vacancy, appoint a person or persons, a firm or firms, or a person or persons and a firm or firms, to fill the vacancy.

(6) While a vacancy in the office of auditor continues, the surviving or continuing auditor or auditors (if any) may act.

(7) A credit union must not, and the directors of a credit union must not, appoint a person or firm as auditor of the credit union unless that person or firm has, before the appointment, consented by notice in writing given to the credit union or to the directors to act as auditor and has not withdrawn consent by notice in writing given to the credit union or to the directors.

(8) A notice under subsection (7) given by a firm must be signed in the firm name and in his or her own name by a member of the firm who is a registered company auditor.

(9) If a credit union appoints a person or firm as auditor of the credit union in contravention of subsection (7), the purported appointment does not have any effect and the credit union and any officer of the credit union who is in default are each guilty of an offence.

(10) Where an auditor of a credit union is removed from office at a general meeting in accordance with section 90—

(a) the credit union may at that meeting (without adjournment), by a resolution passed by a majority of members of the credit union as, being entitled so to do, vote in person, forthwith appoint as auditor or auditors a person or persons, a firm or firms, or a person or persons and a firm or firms, to whom or which has been sent a copy of the notice of nomination in accordance with section 89(3);

or

(b) if such a resolution is not passed or, by reason only that such a copy of the notice of nomination has not been sent to a person, could not be passed, the meeting may be adjourned to a date not earlier than 20 days and not later than 30 days after the day of the meeting and the credit union may, at the adjourned meeting, by ordinary resolution appoint as auditor or auditors a person or persons, a firm or firms, or a person or persons and a firm or firms, notice of whose nomination for appointment as auditor has been received by the credit union from a member of the credit union at least 14 clear days before the date to which the meeting is adjourned.

(11) If after the removal from office of an auditor of a credit union the credit union fails to appoint another auditor under subsection (10), the credit union must, within seven days after the failure, notify the Commission accordingly, whereupon the Commission must, unless there is another auditor of the credit union whom the Commission believes to be able to carry out the responsibilities of auditor alone and who agrees to continue as auditor, appoint as auditor or auditors of the credit union a person or persons, a firm or firms, or a person or persons and a firm or firms, who or which consents or consent to be so appointed.

(12) Subject to subsection (11), if a credit union does not appoint an auditor when required by this Act to do so, the Commission may, on the application in writing of a member of the credit union, appoint as auditor or auditors of the credit union a person or persons, a firm or firms, or a person or persons and a firm or firms, who or which consents or consent to be so appointed.

(13) A person or firm appointed as auditor of a credit union under subsection (5), (10), (11) or (12) holds office, subject to this Division, until the next annual general meeting of the credit union.

(14) A director of a credit union who fails to take all reasonable steps to comply with, or to secure compliance with, subsection (1) or (5) is guilty of an offence.

Nomination of auditors

89. (1) Subject to this section, a credit union is not entitled to appoint a person or firm as auditor of the credit union at its annual general meeting, not being a meeting at which an auditor is removed from office, unless notice in writing of nomination of the person or firm as auditor was given to the credit union by a member of the credit union—

(a) before the meeting was convened;

or

(b) not less than 21 days before the meeting.

(2) If a credit union purports to appoint a person or firm as auditor of the credit union in contravention of subsection (1), the purported appointment is of no effect and the credit union and any officer of the credit union who is in default are each guilty of an offence.

(3) Where notice of nomination of a person or firm for appointment as auditor of a credit union is received by the credit union, whether for appointment at a meeting or an adjourned meeting referred to in section 88(10) or at an annual general meeting, the credit union must—

(a) not less than seven days before the meeting;

or

(b) at the time notice of the meeting is given,

send a copy of the notice of nomination to each person or firm nominated, to each auditor of the credit union and to each person entitled to receive notice of general meetings of the credit union.

Removal and resignation of auditors

90. (1) An auditor of a credit union may be removed from office by special resolution at a general meeting of the credit union, but not otherwise.

(2) If notice of a special resolution to remove an auditor is given, the credit union must forthwith send a copy of the notice to the auditor and to the Commission.

(3) Within seven days after receiving a copy of the notice, the auditor may make representations in writing, not exceeding a reasonable length, to the credit union and request that, before the meeting at which the resolution is to be considered, a copy of the representations be sent by the credit union, at its expense, to every member of the credit union.

(4) Unless the Commission on the application of the credit union orders otherwise, the credit union must be sent a copy of the representations in accordance with the auditor's request, and the auditor may, without prejudice to the right to be heard orally or, where a firm is the auditor, to have a member of the firm heard orally on its behalf, require that the representations be read out at the meeting.

(5) Upon the removal from office of an auditor of a credit union, the credit union must forthwith give to the Commission notice in writing of the removal.

(6) An auditor of a credit union may, by notice in writing given to the credit union, resign as auditor of the credit union if—

(a) the auditor has, by notice in writing given to the Commission, applied for consent to the resignation and stated the reasons for the application and has, at or about the same time as the auditor gave the notice to the Commission, notified the credit union in writing of the application to the Commission;

and

(b) the auditor has received the consent of the Commission.

(7) The Commission must, as soon as practicable after receiving a notice from an auditor under subsection (6), notify the auditor and the credit union whether it consents to the resignation.

(8) A statement made by an auditor in an application to the Commission under subsection (6) or in answer to an inquiry by the Commission relating to the reasons for the application—

(a) is not admissible in evidence in any civil or criminal proceedings against the auditor;

and

(b) may not be made the ground of a prosecution, action or suit against the auditor,

and a certificate by the Commission that the statement was made in the application or in the answer to the inquiry by the Commission is conclusive evidence that the statement was so made.

(9) A person aggrieved by a refusal of the Commission to consent to the resignation of an auditor of a credit union may, within one month after the date of the refusal, appeal to the Court against the refusal, and the Court, after giving the auditor and the credit union an opportunity to be heard, may confirm or reverse the refusal and may make such further order as it thinks just.

(10) Subject to any order of the Court under subsection (9) and to subsection (11), the resignation of an auditor takes effect—

(a) on the date (if any) specified for the purpose in the notice of resignation;

(b) on the date on which the Commission gives its consent to the resignation;

or

(c) on the date (if any) fixed by the Commission for the purpose,

whichever last occurs.

(11) Where on the retirement or withdrawal from a firm of a member the firm will no longer be capable, by reason of the provisions of section 87(2)(d) of acting as auditor of a credit union, the member so retiring or withdrawing must (if not disqualified from acting as auditor of the credit union) give reasonable notice to the credit union of his or her retirement or withdrawal and upon receipt of the notice by the credit union the office of auditor of the credit union becomes vacant.

(12) Within 14 days after the receipt of a notice of resignation, retirement or withdrawal from an auditor of a credit union or, where an auditor of a credit union is removed from office, within 14 days after the removal, the credit union must lodge a notice of the resignation, retirement or withdrawal, or removal, in the prescribed form with the Commission.

Effect of winding up on office of auditor

91. An auditor of a credit union ceases to hold office if—

- (a) a special resolution is passed for the voluntary winding up of the credit union;
 - (b) an order is made by the Court for the winding up of the credit union;
- or
- (c) the credit union is wound up on the certificate of the Commission.

Fees and expenses of auditors

92. The reasonable fees and expenses of an auditor of a credit union are payable by the credit union.

Powers and duties of auditors as to reports on accounts

93. (1) An auditor of a credit union must report to the members on the accounts required to be laid before the credit union at the annual general meeting and on the credit union's accounting records and other records relating to those accounts and, if it is a holding credit union for which group accounts are required, must also report to the members on the group accounts.

(2) A report by an auditor of a credit union under subsection (1) must be furnished by the auditor to the directors of the credit union in sufficient time to enable the credit union to comply with the requirements of section 81 in relation to that report.

(3) An auditor must, in a report under this section, state—

- (a) whether the accounts and, if the credit union is a holding credit union for which group accounts are required, the group accounts are in the opinion of the auditor properly prepared—
 - (i) so as to give a true and fair view of the matters required by section 81 to be dealt with in the accounts and, if there are group accounts, in the group accounts;
 - (ii) in accordance with the provisions of this Act;
- and
- (iii) in accordance with applicable approved accounting standards;

- (b) if, in the opinion of the auditor, the accounts or, if the credit union is a holding credit union for which group accounts are required, the group accounts have not been prepared in accordance with a particular applicable approved accounting standard—
- (i) whether, in the auditor’s opinion, the accounts or group accounts, as the case may be, would, if prepared in accordance with that standard, have given a true and fair view of the matters required by section 81 to be dealt with in those accounts;
 - (ii) if, in the auditor’s opinion, the accounts or group accounts, as the case may be, would not, if so prepared, have given a true and fair view of those matters—the reasons for that opinion;
 - (iii) if the directors have caused a statement to be attached to the accounts or group accounts, as the case may be, giving particulars of the quantified financial effect on those accounts of the failure to so prepare the accounts—the auditor’s opinion of those particulars;
- and
- (iv) in a case to which neither subparagraph (ii) nor (iii) applies—particulars of the quantified financial effect on the accounts or group accounts, as the case may be, of the failure to so prepare those accounts;
- (c) in the case of group accounts—
- (i) the names of the subsidiaries (of which he or she has not acted as auditor);
 - (ii) where there are included in the group accounts (whether separately or consolidated with other accounts) the accounts of a subsidiary of which he or she has not acted as auditor, and he or she has not examined the auditor’s report (if any) on those accounts—the name of that subsidiary;
- and
- (iii) where the auditor’s report on the accounts of a subsidiary was made subject to any qualifications or included any comment made under subsection (4)—the name of that subsidiary and particulars of the qualification or comment;
- (d) any defect or irregularity in the accounts or group accounts and any matter not set out in the accounts or group accounts without regard to which a true and fair view of the matters dealt with by the accounts or group accounts would not be obtained;
- and
- (e) if he or she is not satisfied as to any matter referred to in paragraph (a) or (b), the reasons for not being so satisfied.

(4) It is the duty of an auditor of a credit union to form an opinion as to each of the following matters:

- (a) whether he or she has obtained all the information and explanations that he or she required;
- (b) whether proper accounting records and other records, including registers, have been kept by the credit union as required by this Act;
- (c) whether the returns received from branch offices of the credit union are adequate;
- (d) where the credit union is a holding credit union—
 - (i) whether the accounts of the subsidiaries that are to be consolidated with other accounts are in form and content appropriate and proper for the purposes of the preparation of the consolidated accounts, and whether he or she has received satisfactory information and explanations as required by him or her for that purpose;

and

- (ii) whether the procedures and methods used by the credit union and by each of its subsidiaries in arriving at the amounts taken into any consolidated accounts were appropriate to the circumstances of the consolidation;

and

- (e) where group accounts are prepared otherwise than as one set of consolidated accounts for the group—whether he or she agrees with the reasons for preparing them in the form in which they are prepared as given by the directors in the accounts,

and the auditor must state in the report particulars of any deficiency, failure or shortcoming in respect of any matter referred to in this subsection.

(5) An auditor of a credit union has a right of access at all reasonable times to the accounting records and other records, including registers, of the credit union, and is entitled to require from any officer of the credit union such information and explanations as the auditor desires for the purposes of audit.

(6) An auditor of a holding credit union for which group accounts are required has a right of access at all reasonable times to the accounting records and other records, including registers, of any subsidiary and is entitled to require from any officer or auditor of any subsidiary, at the expense of the holding credit union, such information and explanations in relation to the affairs of the subsidiary as the auditor requires for the purpose of report on the group accounts.

(7) The auditor's report must be attached to or endorsed on the accounts or group accounts and must, if a member so requires, be read before the credit union at the annual general meeting, and must be open to inspection by a member at any reasonable time.

(8) An auditor of a credit union or an agent authorized by the auditor in writing for the purpose is entitled to attend any general meeting of the credit union and to receive all notices of, and other communications relating to, any general meeting that a member is entitled to receive, and to be heard at any general meeting that he or she attends on any part of the business of the meeting that concerns the auditor in the capacity of auditor, and is entitled so to be heard notwithstanding that he or she retires at that meeting or a resolution to remove the auditor from office is passed at that meeting.

(9) If an auditor of a credit union becomes aware that the credit union or the directors has or have made default in complying with section 72 or the provisions of section 85 relating to the laying of accounts or group accounts before the annual general meeting of the credit union, the auditor must immediately inform the Commission by notice in writing and, if accounts or group accounts have been prepared and audited, send to the Commission a copy of the accounts or group accounts and of the auditor's report on the accounts or group accounts.

(10) Except in a case to which subsection (9) applies, if an auditor, in the course of the performance of duties as auditor of a credit union, is satisfied that—

(a) there has been a contravention of, or failure to comply with, any of the provisions of this Act;

and

(b) the circumstances are such that in the auditor's opinion the matter has not been or will not be adequately dealt with by comment in his or her report on the accounts or group accounts or by bringing the matter to the notice of the directors of the credit union,

the auditor must immediately report the matter to the Commission by notice in writing.

(11) If an auditor of a credit union or holding credit union—

(a) is not satisfied that accounts of the credit union, or group accounts of the holding credit union comply with a particular applicable approved accounting standard;

or

(b) is of the opinion that accounts of the credit union, or group accounts of the holding credit union, do not comply with a particular applicable approved accounting standard,

the auditor must report the matter to the Commission in writing within seven days after furnishing to the directors of the credit union or holding credit union his or her report under this section.

Final audit on amalgamation

94. (1) Where a credit union is dissolved as part of an amalgamation under Part III, the auditor of the credit union must prepare a report containing prescribed statements and information relating to the accounts and accounting records of the credit union for the financial year up to the date of dissolution of the credit union.

(2) The provisions of section 93 relating to the rights of access of an auditor to the records of a credit union and any subsidiary of a credit union apply in relation to a report under this section as if it were a report required under section 93.

(3) A report prepared by an auditor under this section must be furnished by the auditor to the directors of the amalgamated credit union within two months after the date of the amalgamation.

(4) The directors of an amalgamated credit union must, within three months after the date of the amalgamation, forward to the Commission the accounts of each credit union dissolved as part of the amalgamation together with the auditor's report relating to those accounts prepared pursuant to this section.

Auditors and subsidiaries

95. (1) Notwithstanding that a subsidiary of a credit union may be exempt from appointing an auditor under the *Companies (South Australia) Code*, the accounts and accounting records of any subsidiary of a credit union must be audited in accordance with the provisions of this Part.

(2) Where a subsidiary of a credit union has not appointed an auditor to audit its accounts and accounting records under this Part, the auditor of the holding credit union is also auditor of the subsidiary.

Obstruction of auditor

96. (1) An officer of a credit union who refuses or fails without lawful excuse to allow an auditor of the credit union access, in accordance with the provisions of this Act, to any accounting records and other records, including registers, of the credit union that are in the custody or control of that officer, or to give any information or explanation as and when required under those provisions or otherwise hinders, obstructs or delays an auditor in the performance of his or her duties or the exercise of his or her powers, is guilty of an offence.

Penalty: Division 4 fine or division 4 imprisonment.

(2) An officer or auditor of a corporation who refuses or fails without lawful excuse to allow an auditor of a holding credit union of the corporation access, in accordance with the provisions of this Act, to any accounting records and other records of the corporation in the custody or control of that officer or auditor, or to give any information or explanation as and when required under those provisions, or otherwise hinders, obstructs or delays an auditor in the performance of his or her duties or the exercise of his or her powers, is guilty of an offence.

Penalty: Division 4 fine or division 4 imprisonment.

DIVISION VI—RETURNS

Returns

97. (1) A credit union must, within one month after any change in the membership of the board of directors, inform the Commission in writing of the change.

(2) A credit union must, within six months after the close of each financial year, or within such further time as the Commission may allow, transmit to the Commission a return in the prescribed form containing—

- (a) a list of directors as at the date of signing of the return;

- (b) a copy of the audited accounts of the credit union for the last financial year and, if the credit union is a holding credit union for which group accounts are required, a copy of those group accounts as audited, and a copy of all directors' statements and reports that are required by this Act to be laid before the annual general meeting of the credit union in support of those accounts and group accounts;
 - (c) a copy of the report by the auditor in respect of the accounts;
- and
- (d) such other particulars as may be prescribed.

(3) An application for an extension of time for the purposes of subsection (2) must be made to the Commission before the expiration of the period sought to be extended.

(4) The Commission may, by instrument in writing, require a credit union to furnish such further returns relevant to its financial position, or to the directors or members of the credit union as the Commission may require.

(5) The returns required pursuant to subsection (4) must contain the information stipulated in the instrument and be furnished as frequently as is required by the instrument.

(6) A credit union must, when transmitting to the Commission the return referred to in subsection (2), also transmit a separate return showing the amount and terms of any loans made by the credit union during the financial year—

- (a) to any officer of the credit union;
 - (b) to any person, who after the making of the loan, became an officer of the credit union;
 - (c) to a company or other body corporate in which an officer of the credit union is interested;
- or
- (d) to a company or other body corporate in which an officer of the credit union held any interest at the time when the loan was made.

(7) For the purposes of subsection (6), the amount of a loan made by way of a revolving credit arrangement is the amount of the credit limit fixed by the credit union.

DIVISION VII—MISCELLANEOUS

Form in which accounts and accounting records are to be kept

98. (1) An account or accounting record that is required by this Act to be kept or prepared may be kept or prepared—

- (a) by making entries in a bound or looseleaf book;
- (b) by recording or storing the matters concerned by means of a mechanical, electronic or other device;

or

(c) in any other manner approved by the Commission.

(2) Subsection (1) does not authorize a book to be kept or prepared by a mechanical, electronic or other device unless—

(a) the matters recorded or stored will be capable, at any time, of being reproduced in a written form;

or

(b) a reproduction of those matters is kept in a written form approved by the Commission.

(3) A credit union must take all reasonable precautions, including such precautions (if any) as are prescribed, for guarding against damage to, destruction of or falsification of or in, and for discovery of falsification of or in, any account or accounting record or part of an account or accounting record required by this Act to be kept or prepared by the credit union.

(4) Where a credit union records or stores any matters by means of a mechanical, electronic or other device, any duty imposed by this Act to make an account or accounting record containing those matters available for inspection or to provide copies of the whole or part of an account or accounting record containing those matters is to be construed as a duty to make the matters available for inspection in written form or to provide a document containing a clear reproduction in writing of the whole or part of them, as the case may be.

(5) A writing that purports to reproduce matters recorded or stored by means of a mechanical, electronic or other device is, unless the contrary is established, to be taken to be a reproduction of those matters.

Relief from requirements as to accounts or audit

99. (1) The directors of a credit union may apply to the Commission in writing for an order relieving the directors, the credit union or the auditor of the credit union from compliance with any specified requirements of Division IV or V (other than section 80) and the Commission may make such an order unconditionally or subject to such conditions as it thinks fit.

(2) An application under subsection (1) must be accompanied by a statement in writing made in accordance with a resolution of the directors of the credit union, signed by not less than two directors and stating the reasons for seeking the order.

(3) The Commission may require the directors making the application to supply such information relating to the operations of the credit union, and of any subsidiary of the credit union, as the Commission thinks necessary for the purpose of determining the application.

(4) Notice of an order under subsection (1) must be given to the credit union to which it relates.

(5) The Commission may, where it considers it appropriate, make an order in respect of a specified class of credit unions relieving the directors of a credit union included in that class, a credit union included in that class or the auditor of a credit union included in that class, from compliance with any specified requirements of Division IV or V (other than section 80) and the order may be made unconditionally or subject to such conditions as the Commission thinks fit.

(6) Notice of an order under subsection (5) must be published in the *Gazette*.

(7) The Commission may not make an order in relation to a credit union, or a class of credit unions, under this section unless the Commission is of the opinion, in respect of each requirement of this Act specified in the order, that compliance with the requirement—

(a) would render accounts or group accounts, or a report required in relation to those accounts, misleading;

(b) would be inappropriate to the circumstances of the credit union, or of the credit unions included in that class, as the case may be;

or

(c) would impose unreasonable burdens on—

(i) the credit union, an officer of the credit union or the auditor of the credit union;

or

(ii) the credit unions, or officers or auditors of the credit unions, included in that class,

as the case may be.

(8) An order under this section may be limited in its effect to a period specified in the order.

(9) The Commission may, on application by the directors of a credit union or on its own initiative, revoke or suspend an order under this section.

(10) A revocation or suspension under subsection (9) does not take effect—

(a) in the case of an order under subsection (1)—until written notice of the revocation or suspension is given to the credit union;

or

(b) in the case of an order under subsection (5)—until notice of the revocation or suspension is published in the *Gazette*.

(11) A person aggrieved by—

(a) an order under this section;

(b) the revocation or suspension of an order under this section;

or

- (c) the refusal of an application for an order under this section or for the revocation or suspension of an order,

may, within two months after notice of the order, revocation, suspension or refusal having been given, appeal to the Court.

(12) The Court may, on an appeal under subsection (11), confirm, vary, revoke or substitute the order or decision appealed against and may make such further order as it thinks fit.

PART VII

CREDIT UNION DEPOSIT INSURANCE BOARD

DIVISION I—ESTABLISHMENT AND CONSTITUTION OF THE BOARD

Establishment and incorporation of the Credit Union Deposit Insurance Board

100. (1) The *Credit Union Deposit Insurance Board* is established.

(2) The Board—

- (a) is a body corporate with perpetual succession and a common seal;
- (b) is capable of suing and of being sued;
- (c) is capable of holding, dealing with, and disposing of real and personal property;
- (d) is capable of acquiring or incurring any other rights or liabilities;

and

- (e) has the powers, duties, functions and authorities conferred, imposed or prescribed by or under this Act.

(3) In any legal proceedings, a document apparently bearing the common seal of the Board is, in the absence of proof to the contrary, to be presumed to have been duly executed by the Board.

Constitution of the Board

101. (1) The Board is to consist of five members appointed by the Governor on the nomination of the Minister.

(2) One member of the Board must be appointed by the Governor to be its presiding member.

(3) Not less than two of the members must be persons selected by the Minister from a panel of six persons (or such lesser number of persons as the Minister may direct) nominated by the Credit Union Association of South Australia, or such other association as may be prescribed.

(4) If an association fails to nominate a panel of persons for the purposes of subsection (3) within one month of receiving a written request from the Minister to do so, the Governor may appoint the required number of persons to the Board on the nomination of the Minister, and any person so appointed is, for all purposes, to be regarded as having been duly nominated and appointed to the Board.

Terms and conditions on which members hold office

102. (1) The presiding member of the Board may be appointed for a term of office, and on conditions, determined by the Governor, and, on the expiration of a term of office, is eligible for re-appointment.

(2) A member of the Board, other than the presiding member, may be appointed for a term of office, not exceeding three years, and on conditions determined by the Governor and, on the expiration of a term of office, is eligible for re-appointment.

(3) The Governor may appoint a suitable person to be a deputy of a member of the Board.

(4) The deputy of a member has, while acting in the absence of the member, all the powers, rights and duties of the member.

(5) The Governor may remove a member of the Board from office for—

(a) any breach of, or non-compliance with, a condition of appointment;

(b) mental or physical incapacity;

(c) neglect of duty;

or

(d) dishonourable conduct.

(6) The office of a member of the Board becomes vacant if the member—

(a) dies;

(b) completes a term of office and is not re-appointed;

(c) resigns by written notice addressed to the Minister;

or

(d) is removed from office by the Governor pursuant to subsection (5).

(7) On the office of a member of the Board becoming vacant, a person may be appointed, in accordance with this Act, to the vacant office, but where the office of a member of the Board becomes vacant before the expiration of the member's term of office, the person appointed in place of the member must be appointed only for the balance of the term of office.

Allowances and expenses

103. (1) A member of the Board is entitled to receive such allowances and expenses as may be determined by the Governor.

(2) An amount to which a member of the Board is entitled under this section may be paid out of the Fund.

Quorum, etc.

104. (1) Three members of the Board constitute a quorum of the Board, and no business may be transacted at a meeting unless a quorum is present.

(2) A decision in which any three members of the Board concur is a decision of the Board.

(3) The presiding member of the Board must preside at any meeting of the Board at which he or she is present, and in the absence of the presiding member from a meeting of the Board, the members present must decide who is to preside at that meeting.

(4) The Board must meet for the transaction of business at least eight times in each year.

(5) Subject to this Act, the business of the Board may be conducted in such manner as the Board determines.

Validity of acts of the Board and immunity of its members

105. (1) An act or proceeding of the Board is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

(2) No liability attaches to a member of the Board for an act or omission by the member or the Board, in good faith and in the exercise or purported exercise of powers or functions, or in the discharge, or purported discharge, of duties under this Act.

Functions of the Board

106. The functions of the Board are—

- (a) to establish and administer a fund to assist in maintaining the financial stability of credit unions;
 - (b) to encourage and promote the financial stability of credit unions—
 - (i) by providing advice to credit unions generally on matters pertaining to the business of credit unions;
 - (ii) by appropriate supervision of credit unions;
 - (iii) by assisting officers of credit unions to administer the affairs of the credit unions in a proper and businesslike manner;
 - (c) otherwise to advance the interests of credit unions;
- and
- (d) such other functions as may be prescribed.

General power to require reports, etc.

107. The Board may, by notice in writing to a credit union, require the credit union to furnish in the form and at the times specified by the Board any returns or reports reasonably required by the Board for the performance of its functions.

Powers of delegation

108. (1) The Board may delegate to any member, officer or employee of the Board any of its powers or functions under this Act.

(2) Any such delegation is revocable at will and does not derogate from the power of the Board to act itself in any matter.

Staff

109. (1) The Board may, with the approval of the Minister, appoint such officers and employees as it considers necessary or expedient for the proper performance of its functions under this Act.

(2) The Board's officers and employees are not Public Service employees and may be appointed on such terms and conditions as the Governor determines.

(3) The Board may, with the approval of the appropriate Minister, make use of the services of Public Service employees.

DIVISION II—THE CREDIT UNION DEPOSIT INSURANCE FUND

Credit Union Deposit Insurance Fund

110. (1) The *Credit Union Deposit Insurance Fund* is established.

(2) Subject to subsection (3), a credit union must keep on deposit with the Fund the prescribed percentage of the aggregate of the withdrawable share capital of the credit union and the amount held on deposit by the credit union as at the preceding 30 June.

(3) If at the end of any financial year the Board is satisfied that the amount held in the Fund is sufficient to meet all likely claims or demands on the Fund during the next financial year, the Board may, by notice in writing to the credit unions, reduce the deposits that would otherwise be payable by credit unions under this section.

(4) Where on 1 July in any year the amount kept by a credit union on deposit with the Fund is less than the amount required to be kept on deposit under this section, the credit union must pay to the Fund the amount of the deficiency not later than 30 September next following.

(5) A credit union that is registered or continues to be registered as a result of an amalgamation under this Act must, if the amount kept by it on deposit with the Fund at the date of the amalgamation is less than the amount required to be kept on deposit under this section, pay to the Fund the amount of the deficiency not later than one month after the date of the amalgamation.

(6) Where on 1 July in any year the amount kept by a credit union on deposit with the Fund exceeds the amount required to be kept on deposit under this section, the Board must, on application in writing by the credit union, pay to the credit union the amount of the excess not later than one month after receipt of the application.

(7) A credit union must furnish the Board with such returns and information as it requires to assess the amount that should be deposited in the Fund by the credit union in pursuance of this section.

(8) The Board may, by instrument in writing, exempt, either absolutely or subject to conditions or limitations, a credit union from compliance with this section and may, on non-compliance with a condition of the exemption, by instrument in writing, revoke the exemption.

(9) The Board may recover any amount payable to the Fund in pursuance of this section, as a debt, in a court of competent jurisdiction.

(10) Where a credit union is in default in the payment of money as required by this section, the credit union is liable to pay to the Board for the credit of the Fund interest at the prescribed rate on the amount outstanding.

(11) The percentage prescribed for the purposes of this section may vary according to the size of a credit union or any other factor.

Additional deposits

111. (1) If in the opinion of the Board the balance of the Fund has diminished to such an extent that additional deposits are required, the Board may, by notice in writing, require each credit union to pay to the Fund a specified percentage (not exceeding one per cent) of the aggregate of its withdrawable share capital and the amount held by it by way of deposits as at the preceding 30 June.

(2) A notice under subsection (1) must specify the period (being not less than two months) within which the additional deposits must be paid by credit unions.

(3) A requirement for payment of additional deposits may not be made under this section more than once in a financial year.

(4) A credit union must furnish the Board with such information as it requires to assess the amount that should be paid by the credit union under this section.

(5) The Board may, by instrument in writing, exempt, either absolutely or subject to conditions or limitations, a credit union from compliance with this section and may, on non-compliance with a condition of the exemption, by instrument in writing, revoke the exemption.

(6) The Board may recover any amount payable to the Fund in pursuance of this section, as a debt, in a court of competent jurisdiction.

(7) Where a credit union is in default in the payment of money as required by this section, the credit union is liable to pay to the Board for the credit of the Fund interest at the prescribed rate on the amount outstanding.

Use of Fund

112. (1) The Board may, in its discretion, grant financial assistance to a credit union by making payments from the Fund (by way of a grant or a loan), or by charging the assets of the Fund as security for liabilities of the credit union.

(2) The Board may grant financial assistance to a credit union—

(a) on such security, if any, as it thinks fit;

and

(b) on such terms and conditions as it thinks fit.

Claim by member against Fund

113. (1) A member of a credit union is entitled to claim against the Fund where the credit union fails, on demand of the member, to satisfy any liability to that member in relation to withdrawable share capital or money lodged on deposit with the credit union.

(2) A claim under this section must be made within six months after the date of the demand that the credit union has failed to satisfy.

(3) Where a member dies before a claim on the Fund arises or before a claim is paid, the claim may be made or pursued by the member's personal representative.

(4) Where the Board satisfies a claim made under subsection (1), the Board, the Fund and the credit union are discharged from any further liability to the member in respect of the claim.

(5) Where the Board makes a payment out of the Fund under this section, the Board is subrogated to the rights of the member against the credit union in respect of the claim.

Power of the Board to borrow

114. (1) The Board may borrow money from the Treasurer, or, with the consent of the Treasurer, from any other person for the purpose of carrying out any of its functions under this Act.

(2) Any liability incurred with the consent of the Treasurer under subsection (1) is guaranteed by the Treasurer.

(3) Any liability incurred by the Treasurer under a guarantee arising by virtue of subsection (2) may be satisfied out of the Consolidated Account which is appropriated to the necessary extent.

Investment

115. The Board may, with the approval of the Minister, invest any of the money standing to the credit of the Fund that is not immediately required for the purposes of this Act in such manner as may be approved by the Minister.

Accounts

116. (1) The Board must cause proper accounts to be kept of the income and expenditure of the Fund.

(2) The Auditor-General may at any time, and must at least once in every year, audit the accounts of the Board.

Report

117. (1) The Board must, on or before 30 September in each year, submit to the Minister a report on the conduct of the business of the Board during the financial year ending on the preceding 30 June, together with the audited accounts of the Board for that financial year.

(2) The Minister must within 12 sitting days after receipt of the report and audited accounts cause a copy of the report and accounts to be laid before each House of Parliament.

DIVISION III—SUPERVISION OF A CREDIT UNION BY THE BOARD

Supervision of credit union

118. (1) Where—

(a) a credit union is unable to pay its debts as and when they fall due;

(b) the Board is satisfied—

(i) that a credit union is financially unsound;

(ii) that the affairs of a credit union are being conducted in an improper or financially unsound manner;

- (iii) that a credit union is recording revenue deficiencies at any time;
- (iv) that a credit union has failed to maintain adequate reserves in accordance with this Act;

or

- (v) that a credit union or an officer of a credit union has committed any other serious irregularity that indicates the desirability of supervision;
- (c) a credit union has failed to lodge any document with the Commission or the Board as required under this Act;

or

- (d) a credit union has requested the Board to declare it to be subject to supervision by the Board,

the Board may, by resolution and by giving notice in writing to the credit union, declare the credit union to be subject to supervision by the Board.

(2) An officer of the Board, authorized by the Board for the purpose, may, for the purposes of the Board satisfying itself as to any of the matters referred to in subsection (1)—

- (a) require a credit union or an officer of a credit union to produce any documents or records relating to the affairs of the credit union;
- (b) inspect and make copies of any documents or records relating to the affairs of a credit union that are in the custody or control of the credit union, a liquidator, a bank or other institution;

and

- (c) require any bank or other institution in which funds have been deposited by a credit union to furnish the officer with particulars of those funds and of any dealing with or disposition of those funds by the credit union.

(3) A credit union or other body or person must comply with a requirement made of the body or person under subsection (2).

Duration of supervision

119. Where the Board declares a credit union to be subject to supervision, the credit union remains subject to supervision by the Board until—

- (a) the credit union applies, in writing, to the Board to be released from supervision, stating reasons in support of its application, and the Board approves the application;
- (b) the credit union is wound up;

or

- (c) the Board, by resolution, releases the credit union from its supervision.

Appeal

120. (1) A credit union may—

- (a) within 15 days after it is given notice of the declaration of the Board that it is subject to supervision;

or

- (b) within 15 days after the Board has given notice to the credit union of refusal of an application by the credit union to be released from supervision,

appeal to the Court against the declaration or refusal.

- (2) A declaration of the Board is not to be stayed by an appeal under this section.

(3) The Court may determine an appeal under this section in such manner as it considers just and may confirm, vary or revoke the decision of the Board.

Supervision powers

121. Where a credit union is subject to the supervision of the Board, the Board may—

- (a) exercise the powers conferred on the Commission under this Act (other than section 8 or 149) with respect to the credit union;
- (b) supervise the affairs of the credit union and make inquiries from its officers, members and employees;
- (c) order an audit of the affairs of the credit union by an auditor approved by the Board at the expense of the credit union;
- (d) require the credit union to correct any practices that in the opinion of the Board are undesirable or unsound;
- (e) prohibit or restrict the raising or lending of funds by the credit union or the exercise of any other powers of the credit union;
- (f) appoint an administrator of the credit union (whose salary and expenses must unless the Board otherwise determines be paid out of the funds of the credit union);
- (g) direct the credit union to take all necessary action to amalgamate with another credit union in accordance with Part III, or to sell to another credit union all or part of its assets and liabilities or direct that the credit union be wound up;
- (h) remove a director of the credit union from office;
- (i) exempt the credit union, by notice in writing addressed to the credit union, from all, or any of the provisions of sections 38, 47, 48, 49 and 50 for such period as may be specified in the notice;

or

- (j) stipulate principles in accordance with which the affairs of the credit union are to be conducted.

Appointment of administrator

122. (1) Where the Board appoints an administrator to conduct the affairs of a credit union, the administrator—

- (a) has all the powers of the board of directors of the credit union;
- (b) may order any officer or employee of the credit union to leave, and remain away from, the offices of the credit union;
- (c) must report regularly to the Board upon the administration;

and

- (d) must report to the Commission evidence of any offence or misconduct discovered in the course of the administration and provide the Commission with such access, information and assistance as it may require for any resulting investigation.

(2) An administrator of a credit union may, by notice in writing, require an officer or employee or former officer or employee of the credit union to furnish a written report on such matters relating to the affairs of the credit union as the administrator may specify in the notice.

(3) A person required to furnish a report pursuant to subsection (2) may be reimbursed out of the funds of the credit union for such costs and expenses as the administrator considers have been reasonably incurred in making the report.

(4) A person who fails to comply with a requirement made under subsection (2) is guilty of an offence.

(5) On the appointment of an administrator of a credit union, unless otherwise determined by the Board, the directors of the credit union cease to hold office.

(6) Before terminating the appointment of an administrator of a credit union, the Board must—

- (a) ensure that directors of the credit union have been elected in accordance with the rules of the credit union at a meeting convened by the administrator in accordance with those rules;

or

- (b) appoint directors of the credit union.

(7) Directors elected or appointed under subsection (6)—

- (a) take office on revocation of the appointment of the administrator;

and

(b) in the case of appointed directors, hold office until the annual general meeting of the credit union that next follows revocation of the appointment.

(8) An administrator appointed by the Board must, on the termination of his or her appointment fully account to the Commission for the administration of the credit union.

(9) On the Commission notifying the Board that it is satisfied that the administrator has fully accounted for the administration of the credit union, the administrator is released from all claims by—

(a) the credit union or a member;

or

(b) a person claiming under the credit union or a member,

other than claims arising out of fraud, dishonesty, negligence or wilful failure to comply with the provisions of this Act.

PART VIII

WINDING UP

Winding up

123. (1) A credit union may be wound up voluntarily or by the Court or on a certificate of the Commission.

(2) Part XII of the *Companies (South Australia) Code* applies, with necessary adaptations and prescribed modifications, additions or exclusions, to and in relation to a credit union.

(3) In the case of a winding up on a certificate of the Commission, the credit union may be wound up if the Commission certifies—

- (a) that the number of members of the credit union has fallen below 25;
- (b) that the credit union has not commenced business within a year of registration or has suspended business for a period of more than six months;
- (c) that the registration of the credit union has been obtained by mistake or fraud;
- (d) that the credit union has, after notice by the Commission of any breach of or non-compliance with this Act or the rules of the credit union, failed, within the time referred to in the notice, to remedy the breach;
- (e) that there are, and have been for a period of one month immediately before the date of the Commission's certificate, insufficient directors of the credit union to constitute a quorum as provided by the rules of the credit union;

or

- (f) that an inquiry pursuant to this Act into the affairs of a credit union or the working and financial condition of a credit union discloses that in the interests of members or creditors of the credit union, the credit union should be wound up.

(4) The Commission may not issue a certificate under subsection (3)(c), (d), (e) or (f) unless the Minister consents to the issue of the certificate.

(5) Where the Commission issues a certificate under this section, it may appoint a person to be the liquidator of the credit union, and the liquidator must give such security as may be prescribed and is entitled to receive fees fixed by the Commission on the advice of the Auditor-General.

(6) The Commission must, within 10 days after appointing a liquidator of a credit union, give notice of that appointment by notice published in the *Gazette* and advertised on two separate days in a newspaper circulating generally in the State and, where the credit union is carrying on business as a credit union in another State or Territory of the Commonwealth, on two separate days in a newspaper circulating generally in that State or Territory.

(7) A winding up on the certificate of the Commission—

- (a) commences on the day that the certificate is issued;

and

(b) must be carried out in the prescribed manner.

Vacancy in office of liquidator

124. Where a credit union is being wound up voluntarily and a vacancy occurs in the office of liquidator that, in the opinion of the Commission, is unlikely to be filled in the manner provided by the *Companies (South Australia) Code*, the Commission may appoint a person to be liquidator.

Remuneration of liquidator

125. The remuneration paid to the liquidator of a credit union wound up voluntarily must not exceed the amount fixed by the Commission on the advice of the Auditor-General.

Cancellation

126. As soon as practicable after a credit union is wound up, the Commission must cancel the registration of the credit union, and the credit union is then dissolved.

PART IX

FOREIGN CREDIT UNIONS

Registration

127. (1) A body corporate that is lawfully carrying on business as a credit union in another State or Territory of the Commonwealth and that proposes to carry on business as a credit union in this State may apply to the Commission in the prescribed manner to be registered as a foreign credit union.

(2) An application for registration as a foreign credit union must be accompanied by—

- (a) a copy of the certificate of incorporation or registration issued in respect of the credit union by the appropriate authority in the State or Territory of the credit union's origin, certified by that authority;
- (b) a copy of the rules or constitution of the credit union and a copy of the last audited balance-sheet of the credit union, in each case certified by at least two of the directors of the credit union;

and

(c) the following, verified in the prescribed manner:

(i) a statement setting out—

- (A) the full name, address and occupation of each director of the credit union;
- (B) the full name and address of each person who will act as an agent of the credit union in this State;

and

(C) the address of the proposed registered office of the credit union in this State;

(ii) a copy of an instrument appointing a person resident in this State (not being a body corporate incorporated outside this State) as a person on whom all notices or legal process may be served on behalf of the credit union;

and

(iii) such other documents or information as the Commission may require.

(3) If, on due application for registration under this section, the Commission is satisfied that the credit union is eligible for registration, the Commission must register the credit union as a foreign credit union and issue a certificate of registration in the prescribed form.

(4) A credit union is eligible for registration under this section if—

- (a) the name under which the credit union proposes to carry on business in this State—
 - (i) is not such as to be misleading as to the nature, objects or purposes of the credit union;
 - (ii) is not such as is likely to be confused with the name of any other body corporate or any registered business name;
 - (iii) is not undesirable as a name for a credit union;and
 - (iv) conforms with any direction of the Minister relating to names of credit unions;
 - (b) there are reasonable grounds for believing that the credit union would be able to comply with the same requirements as to liquidity, reserves and future losses as apply in relation to credit unions registered and incorporated under this Act;
- and
- (c) there is no good reason why the credit union should not be registered under this section.

Registered office

128. A foreign credit union must have a registered office in this State.

Name

129. (1) A foreign credit union must not use any name other than—

- (a) the name registered by the Commission for use by the credit union in this State;
- or
- (b) subject to the conditions of the approval, a name approved under this section.

(2) The Commission must, on the application of a foreign credit union, register another name for use by the credit union in this State in place of the name for the time being registered in respect of the credit union if the Commission is satisfied that the new name—

- (a) is not such as to be misleading as to the nature, objects or purposes of the credit union;
- (b) is not such as is likely to be confused with the name of any other body corporate or any registered business name;
- (c) is not undesirable as a name for a credit union;

and

(d) conforms with any directions of the Minister relating to the names of credit unions.

(3) The Commission may, on the application of a foreign credit union, approve the use by the credit union of a name other than its registered name subject to such conditions limiting the area and circumstances in which the other name may be used as the Commission may determine.

(4) The Commission may, by notice in writing to a foreign credit union, withdraw an approval given to the credit union under subsection (3).

(5) A foreign credit union must ensure that—

(a) its registered name or a name approved under this section is conspicuously exhibited outside its registered office and each other place of business established by it in this State;

and

(b) its registered name or a name approved under this section and the place of origin of the credit union appear in legible characters on all business letters, notices, advertisements and other official publications of the credit union.

Commission to be notified of certain changes

130. Within one month of any alteration or change being made to—

(a) the rules or constitution of a foreign credit union;

(b) the directors of a foreign credit union;

(c) the agents (or their addresses) of a foreign credit union;

(d) the person appointed as the person on whom notices and legal process may be served on behalf of the foreign credit union;

(e) the address of the registered office in this State of a foreign credit union;

(f) the address of the registered office of a foreign credit union in its place of origin;

or

(g) the name under which a foreign credit union carries on business in the place of its origin,

the foreign credit union must lodge with the Commission particulars of the change or alteration accompanied by such documents as may be prescribed.

Balance-sheets

131. (1) A foreign credit union must, within six months (or such longer period as the Commission may allow) of the end of each of its financial years, lodge with the Commission a copy of the balance-sheet relating to the financial affairs of the foreign credit union as at the end of that financial year, in the form and with any accompanying documents required by the law of the foreign credit union's place of origin.

(2) If the Commission is of the opinion that a balance-sheet lodged with the Commission pursuant to this section does not sufficiently disclose the financial affairs of the foreign credit union, the Commission may, by notice in writing, require the foreign credit union to furnish the Commission with further information or documents, but not so as to require the production of anything that could not be required of a credit union under the other provisions of this Act.

(3) A foreign credit union must comply with a notice given to it under subsection (2) within the period specified in the notice.

Cessation of business

132. (1) A foreign credit union must, within seven days of ceasing to carry on business as a credit union in this State, notify the Commission in writing of that fact.

(2) On notifying the Commission that it has ceased to carry on business as a credit union in this State, a foreign credit union is no longer obliged to comply with this Part.

(3) The Commission must, 12 months after receiving a notification under subsection (1), remove the name of the foreign credit union from the register of foreign credit unions, unless the Commission has been notified in writing that the foreign credit union has resumed carrying on business as a credit union in this State.

PART X

MISCELLANEOUS

Evidentiary provision

133. (1) In any legal proceedings, a document that appears to be a certificate of registration, certificate of incorporation or other certificate issued by the Commission pursuant to this Act, or a certified copy of such a certificate, is, in the absence of proof to the contrary, to be accepted as proof of the matters stated in the certificate or certified copy.

(2) In any legal proceedings, a document—

(a) that appears to be—

(i) a copy of the rules of a credit union or foreign credit union;

or

(ii) a copy of, or extract from, any of the books or other records of a credit union or foreign credit union;

and

(b) is apparently endorsed with a certificate of its authenticity by the Commission or the secretary of the credit union or foreign credit union,

is, in the absence of proof to the contrary, to be accepted as such a copy or extract.

(3) In any legal proceedings, a document apparently bearing the common seal of a credit union or foreign credit union is, in the absence of proof to the contrary, to be presumed to have been duly executed by the credit union or foreign credit union.

Limitation of doctrine of *ultra vires*

134. (1) A contract made with a credit union or a foreign credit union is not invalid by reason of any deficiency in the capacity of the credit union or foreign credit union to enter into, or carry out, the contract unless the person contracting with the credit union or foreign credit union has actual notice of the deficiency.

(2) A credit union or foreign credit union that enters into a contract that would, but for subsection (1), be invalid is empowered to carry out the contract.

(3) This section does not prejudice an action by a member of a credit union or foreign credit union to restrain the credit union or foreign credit union from entering into or carrying out a transaction that lies beyond the powers conferred on the credit union or foreign credit union by this Act, any other Act or law or its rules.

Abolition of doctrine of constructive notice

135. A person dealing with a credit union or foreign credit union, or with an agent of a credit union or foreign credit union, is not to be presumed to have notice of the rules of the credit union or foreign credit union, or of any other document registered by or lodged with the Commission in relation to the credit union or foreign credit union.

Allotment of shares

136. If before a credit union or foreign credit union is registered any person takes any money in consideration of the allotment of any shares or interest in, or the grant of a loan by, the credit union or foreign credit union, the person is guilty of an offence.

Too few members

137. A credit union that has continued for one month or more to carry on business after the number of its members has fallen below 25 is guilty of an offence.

Certain acts prohibited in relation to loans

138. (1) A person must not—

(a) claim or receive any commission, fee or reward (whether pecuniary or otherwise) from any person as a consideration for procuring or attempting to procure a loan from a credit union or foreign credit union;

or

(b) advertise that he or she is willing to procure or attempt to procure such loans on behalf of others.

(2) An officer or employee of a credit union or foreign credit union must not accept any commission, fee or reward (whether pecuniary or otherwise) from any person for or in connection with a transaction between that person and the credit union or foreign credit union.

(3) A person who receives or accepts any commission, fee or reward in contravention of this section is liable to repay to the person by whom the commission, fee or reward was paid its amount or value.

(4) An amount that a person is liable to repay pursuant to subsection (3) may be recovered as a debt by action in a court of competent jurisdiction.

Restrictions on initial advertisements

139. (1) A person must not issue, or cause to be issued, any advertisement that relates to a credit union or foreign credit union proposed to be formed or registered under this Act, unless the Commission has first consented to the advertisement.

(2) A person whose name appears as a proposed officer of a credit union or foreign credit union in an advertisement issued in contravention of subsection (1) is guilty of an offence under that subsection, unless it is proved that the person did not know of the advertisement or exercised all due diligence to prevent the issue of the advertisement.

(3) A credit union or foreign credit union must submit the first advertisement proposed to be issued by the credit union or foreign credit union after registration to the Commission for its approval.

Requirement to insure

140. (1) The Board may require a credit union to insure itself against such risks, and to such extent, as may be stipulated by the Board.

(2) A credit union must comply with a requirement under subsection (1).

(3) A credit union must, at the request of the Board, furnish any information stipulated by the Board relating to insurance.

Power to control advertising of a credit union or association

141. (1) The Commission may, by notice in writing served on a credit union or foreign credit union, give a direction—

- (a) prohibiting the issue by the credit union or foreign credit union of advertisements of all kinds;
- (b) prohibiting the issue by the credit union or foreign credit union of advertisements of any kind specified in the direction;
- (c) prohibiting the issue by the credit union or foreign credit union of any advertisements that are or are substantially in the same form as an advertisement that has been previously issued;
- (d) requiring the credit union or foreign credit union to take all practicable steps to withdraw any advertisement specified in the direction;

or

- (e) requiring that in advertisements of any specified kind or invitations to invest in or lend money to the credit union or foreign credit union, there is included a statement giving any information stipulated by the Commission with respect to the credit union or foreign credit union.

(2) Directions under this section may be varied or revoked at any time by notice in writing served on the credit union or foreign credit union.

(3) A credit union or foreign credit union may appeal to the Minister against a direction of the Commission under this section and, on any such appeal, the Minister may confirm, vary or set aside the direction.

(4) Any credit union or foreign credit union must comply with any direction given to it under this section.

False or misleading statements

142. (1) A person who, in a document required by or for the purposes of this Act or lodged with or submitted to the Commission—

- (a) makes, or authorizes or permits the making of, a statement that to his or her knowledge is false or misleading in a material particular;

or

- (b) omits, or authorizes or permits the omission of, any matter or thing without which the document is to his or her knowledge misleading in a material respect,

is guilty of an offence.

Penalty: Division 4 fine or division 4 imprisonment.

(2) A person who makes, or authorizes or permits the making of, a statement that is based on information that to his or her knowledge—

- (a) is false or misleading in a material particular;

or

- (b) has omitted from it a matter or thing the omission of which renders the information misleading in a material respect,

is, for the purposes of subsection (1), to be regarded as having made, or authorized or permitted the making of, a statement that to his or her knowledge was false or misleading in a material particular.

(3) A person who, in a document required by or for the purposes of this Act or lodged with or submitted to the Commission—

- (a) makes, or authorizes or permits the making of, a statement that is false or misleading in a material particular;

or

- (b) omits, or authorizes or permits the omission of, any matter or thing without which the document is misleading in a material respect,

without having taken reasonable steps to ensure that the statement was not false or misleading or to ensure that the statement did not omit any matter or thing without which the document would be misleading, as the case may be, is guilty of an offence.

Penalty: Division 4 fine or division 4 imprisonment.

(4) A person who makes, or authorizes or permits the making of, a statement without having taken reasonable steps to ensure that the information on which the statement was based—

- (a) was not false or misleading in a material particular;

and

- (b) did not have omitted from it a matter or thing the omission of which would render the information misleading in a material respect,

is, for the purposes of subsection (3), to be regarded as having made, or authorized or permitted the making of, a statement without having taken reasonable steps to ensure that the statement was not false or misleading.

(5) For the purposes of subsections (1) and (3), where—

(a) at a meeting, a person votes in favour of a resolution approving, or otherwise approves, a document required by or for the purposes of this Act or required to be lodged with or submitted to the Commission;

and

(b) the document contains a statement that, to the person's knowledge, is false or misleading in a material particular, or omits any matter or thing without which the document is, to the person's knowledge, misleading in a material respect,

the person is to be regarded as having authorized the making of the statement or the omission of the matter or thing.

False information, etc.

143. (1) An officer of a credit union or foreign credit union who makes available or furnishes information, or authorizes or permits the making available or furnishing of information, to—

(a) a director, auditor or member, of the credit union or foreign credit union;

or

(b) in the case of a subsidiary of a credit union—an auditor of the holding credit union,

being information, whether in documentary or any other form, that relates to the affairs of the credit union or foreign credit union and that, to the knowledge of the officer—

(c) is false or misleading in a material particular;

or

(d) has omitted from it a matter or thing the omission of which renders the information misleading in a material respect,

is guilty of an offence.

Penalty: Division 4 fine or division 4 imprisonment.

(2) An officer of a credit union or foreign credit union who makes available or furnishes information, or authorizes or permits the making available or furnishing of information, to—

(a) a director, auditor or member of the credit union or foreign credit union;

or

(b) in the case of a subsidiary of a credit union—an auditor of the holding credit union, being information, whether in documentary or any other form, relating to the affairs of the credit union or foreign credit union and that—

(c) is false or misleading in a material particular;

or

(d) has omitted from it a matter or thing the omission of which rendered the information misleading in a material respect,

without having taken reasonable steps to ensure that the information—

(e) was not false or misleading in a material particular;

and

(f) did not have omitted from it a matter or thing the omission of which rendered the information misleading in a material respect,

is guilty of an offence.

Penalty: Division 4 fine or division 4 imprisonment.

(3) The references in subsections (1) and (2) to a person making available or furnishing, or authorizing or permitting the making available or furnishing of, information relating to the affairs of a credit union or foreign credit union include references to a person making available or furnishing, or authorizing or permitting the making available or furnishing of, information as to the state of knowledge of that person with respect to the affairs of the credit union or foreign credit union.

(4) Where information is made available or furnished to a person referred to in subsections (1)(a), (b) or (c) or (2)(a), (b) or (c) in response to a question asked by that person, the question and the information are to be considered together in determining whether the information was false or misleading.

Power of court to prohibit payment or transfer of money, securities or other property

144. (1) Where—

(a) an investigation is being carried out for the purposes of this Act in relation to an act or omission by a person that constitutes or may constitute—

(i) an offence against this Act;

or

(ii) an offence relating to a credit union or foreign credit union that involves fraud or dishonesty or concerns the management of affairs of a credit union or foreign credit union;

(b) a prosecution has been instituted against a person for an offence of a kind referred to in paragraph (a);

or

(c) civil proceedings have been instituted against a person whether under this Act or otherwise in relation to an act or omission done or made in the course of or in connection with the affairs of a credit union or foreign credit union,

and the Court considers it necessary or desirable to do so for the purpose of protecting the interests of any persons to whom the person referred to in paragraph (a), (b) or (c), as the case may be (in this section referred to as the "relevant person"), is liable or may be or become liable to pay any money, whether in respect of a debt, by way of damages or compensation or otherwise, or to account for any securities or other property, the Court may, on application by the Commission, make one or more of the following orders:

(d) an order prohibiting, either absolutely or subject to conditions, a person who is indebted to the relevant person or to any person associated with the relevant person from making a payment in total or partial discharge of the debt to, or to another person at the direction or request of, the person to whom the debt is owed;

(e) an order prohibiting, either absolutely or subject to conditions, a person holding money, or securities or other property, on behalf of the relevant person or on behalf of any person associated with the relevant person from paying all or any of the money, or transferring, or otherwise parting with possession of, the securities or other property, to, or to another person at the direction or request of, the person on whose behalf the money, or the securities or other property, is or are held;

(f) an order prohibiting, either absolutely or subject to conditions, the taking or sending by any person out of the State of money of the relevant person or of any person associated with the relevant person;

(g) an order prohibiting, either absolutely or subject to conditions, the taking, sending or transfer by any person of securities or other property of the relevant person or of any person associated with the relevant person from a place in the State to a place outside the State (including the transfer of securities from a register in the State to a register outside the State);

(h) an order appointing—

(i) where the relevant person is a natural person—a receiver or trustee, having such powers as the Court orders, of the property or of part of the property of that person;

or

(ii) where the relevant person is a body corporate—a receiver or receiver and manager, having such powers as the Court orders, of the property or of part of the property of that person;

- (i) where the relevant person is a natural person—an order prohibiting that person from leaving the State without the consent of the Court.

(2) Where an application is made to the Court for an order under subsection (1), the Court may, if in the opinion of the Court it is desirable to do so, before considering the application, grant an interim order, being an order of the kind applied for that is expressed to have effect pending the determination of the application.

(3) Where the Commission makes an application to the Court for the making of an order under subsection (1), the Court may not require the Commission or any other person, as a condition of granting an interim order under subsection (2), to give undertakings as to damages.

(4) Where the Court has made an order under this section, the Court may, on application by the Commission or by any person affected by the order, make a further order rescinding or varying the first mentioned order.

(5) An order made under subsection (1) or (4) may be expressed to operate for a period specified in the order or until the order is rescinded by a further order under subsection (1) or (4).

Injunctions

145. (1) Where a person has engaged, is engaging or is proposing to engage in any conduct that constituted, constitutes or would constitute a contravention of this Act, the Court may, on the application of—

- (a) the Commission;

or

- (b) any person whose interests have been, are or would be affected by the conduct,

grant an injunction restraining the first mentioned person from engaging in the conduct and, if in the opinion of the Court it is desirable to do so, requiring that person to do any act or thing.

(2) Where a person has refused or failed, is refusing or failing, or is proposing to refuse or fail, to do an act or thing that the person is required by this Act to do, the Court may, on the application of—

- (a) the Commission;

or

- (b) any person whose interests have been, are or would be affected by the refusal or failure to do that act or thing,

grant an injunction requiring the first mentioned person to do that act or thing.

(3) Where an application is made to the Court for an injunction under subsection (1), the Court may, if in the opinion of the Court it is desirable to do so, before considering the application, grant an interim injunction restraining a person from engaging in conduct of the kind referred to in subsection (1) pending the determination of the application.

(4) The Court may rescind or vary an injunction granted under subsection (1), (2) or (3).

(5) Where an application is made to the Court for the grant of an injunction restraining a person from engaging in conduct of a particular kind, the power of the Court to grant the injunction may be exercised—

(a) if the Court is satisfied that the person has engaged in conduct of that kind—whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind;

or

(b) if it appears to the Court that, in the event that an injunction is not granted, it is likely the person will engage in conduct of that kind—whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any person if the first mentioned person engages in conduct of that kind.

(6) Where an application is made to the Court for a grant of an injunction requiring a person to do a particular act or thing, the power of the Court to grant the injunction may be exercised—

(a) if the Court is satisfied that the person has refused or failed to do that act or thing—whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing;

or

(b) if it appears to the Court that, in the event that an injunction is not granted, it is likely the person will refuse or fail to do that act or thing—whether or not the person has previously refused or failed to do that act or thing and whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person refuses or fails to do that act or thing.

(7) Where the Commission makes an application to the Court for the granting of an injunction under this section, the Court may not require the Commission or any other person, as a condition of granting an interim injunction, to give any undertakings as to damages.

(8) Where the Court has power under this section to grant an injunction restraining a person from engaging in particular conduct, or requiring a person to do a particular act or thing, the Court may, either in addition to or in substitution for the grant of the injunction, order that person to pay damages to any other person.

General offence and continuing offences

146. (1) If a person contravenes or fails to comply with—

(a) a provision of this Act for which no penalty is specifically provided;

or

- (b) in the case of a credit union or foreign credit union, a rule of the credit union or foreign credit union,

the person is guilty of an offence.

Penalty: Division 6 fine.

(2) If a credit union or foreign credit union refuses or neglects to furnish any return or information lawfully required by the Commission, the Board, or by any other person, it is guilty of an offence.

Penalty: Division 6 fine.

(3) Where a person is convicted of an offence against this Act and after that conviction the act or omission of the person that constituted the offence continues, the person is guilty of a further offence and liable to an additional penalty for each day on which the act or omission continues of an amount not exceeding one-tenth of the maximum penalty for the offence of which the person was convicted.

(4) For the purposes of subsection (3), an obligation to do something is to be regarded as continuing until the act is done notwithstanding that any period within which, or time before which, the act is required to be done has expired or passed.

Default extended to officers

147. Where a credit union or foreign credit union is guilty of an offence against this Act, each officer of the credit union or foreign credit union is guilty of an offence and liable to the same penalty as is prescribed for the principal offence.

General defence

148. In proceedings for an offence against this Act, it is a defence if the defendant proves that in the circumstances of the case there was no failure on the defendant's part to take reasonable care to avoid commission of the offence.

Proceedings for offences

149. (1) An offence against this Act that is not punishable by imprisonment is a summary offence.

(2) An offence against this Act that is punishable by imprisonment is, subject to subsection (3), an indictable offence.

(3) Where—

- (a) proceedings for an offence against this Act that is punishable by imprisonment are brought in a court of summary jurisdiction;

and

- (b) the prosecutor requests the court to hear and determine the proceedings,

the offence is to be taken to be a summary offence and must be heard and determined as such.

(4) A court of summary jurisdiction may not—

(a) impose, in respect of any one offence against this Act, a period of imprisonment exceeding two years;

or

(b) impose, in respect of offences against this Act, cumulative periods of imprisonment that, in aggregate, exceed five years.

(5) Nothing in this section renders a person liable to be punished more than once in respect of the same offence.

(6) A prosecution for an offence against this Act—

(a) may be commenced—

(i) by the Commission;

(ii) by an officer or employee of the Commission;

or

(iii) with the consent of the Minister, by any other person;

and

(b) must be commenced within three years after the date on which the offence is alleged to have been committed or such further period as the Minister may, in a particular case, allow.

(7) A document apparently signed by the Minister and stating—

(a) that the Minister consents to a particular prosecution;

or

(b) that the Minister allows a specified extension of the period for commencing a particular prosecution,

is to be accepted, in the absence of proof to the contrary, as proof of the fact so stated.

(8) In any proceedings for an offence against this Act, an allegation in the complaint that the complainant is an officer or employee of the Commission is, in the absence of proof to the contrary, to be accepted as proved.

Certain insurance policies to be forwarded to members

150. Where, pursuant to an agreement with a member, a credit union or foreign credit union procures the issue of a policy of insurance over any property that provides security for a loan to that member, the credit union or foreign credit union must, within one month after the date of issue of the policy, forward to the member—

- (a) the policy, or a copy of the policy;
- or
- (b) a statement of the risks covered by the policy.

Special meeting and inquiry

151. (1) The Commission must, on the application of not less than one-third of the members of the credit union, or may, of its own motion, or on the recommendation of the Board—

- (a) call a special meeting of a credit union;
- or
- (b) hold an inquiry into the affairs (including the working and financial conditions) of a credit union.

(2) An application under subsection (1) must be supported by such evidence as the Commission directs for the purpose of showing that the applicants have good reason for requiring the meeting or inquiry and that the application is made without malicious motive.

(3) Notice of the application must be given to the credit union as the Commission directs.

(4) The applicants must give such security for the expenses of the meeting or inquiry as the Commission directs.

(5) The Commission may—

- (a) direct at what time and place the meeting or inquiry is to be held;
- (b) direct what matters are to be discussed or determined;

and

- (c) notwithstanding the rules of the credit union, give such notice to members of the holding of the meeting or inquiry as it considers appropriate.

(6) The Commission may direct the directors and such other persons as it requires to attend the meeting or inquiry.

(7) A person to whom a direction is given under subsection (6) must comply with the direction.

(8) A meeting held under this section has all the powers of a meeting called in accordance with the rules of a credit union and has power to appoint a person to preside at the meeting, notwithstanding any rule of the credit union to the contrary.

(9) The Commission or any person nominated by it may attend and address a meeting held under this section.

(10) All expenses of and incidental to the meeting or inquiry may be defrayed by the applicants or out of the funds of the credit union or by any officer or member, or former officer or member, in such proportions as may be agreed between the Commission and those persons, and may be recovered as a debt in a court of competent jurisdiction.

(11) In default of agreement under subsection (10), the expenses must be defrayed by such persons, and in such proportions, as the Court, on the application of the Commission, directs.

Regulations

152. (1) The Governor may make such regulations as are contemplated by this Act, or as are necessary or expedient for the purposes of this Act.

(2) Without limiting the generality of subsection (1), those regulations may—

- (a) prescribe model rules for credit unions;
- (b) prescribe any form for the purposes of this Act;
- (c) provide for advisory committees to assist the Minister, the Board or the Commission;
- (d) prescribe the manner in which a rate of interest is to be calculated for the purposes of this Act;
- (e) prescribe, and provide for the recovery of, fees in respect of an application under this Act;
- (f) limit the charges that may be made by a credit union in respect of the granting of a loan by the credit union, or for any work done by a credit union in relation to the granting of a loan;
- (g) require credit unions, or credit unions of a prescribed class, to keep their offices open to the public throughout prescribed periods;
- (h) make any provision in relation to the administration of a credit union by an administrator appointed under this Act, or the winding up of a credit union;
- (i) regulate the manner in which meetings of the Board are to be convened and held;
- (j) otherwise regulate the transaction of business by the Board;
- (k) regulate the monetary policies of associations;
- (l) provide for the imposition and recovery of fees for the late lodgement of returns or reports required under this Act;

and

112.

- (m) prescribe penalties, not exceeding a division 7 fine, for breach of, or non-compliance with, any regulation.

SCHEDULE

Repeal and Transitional Provisions

1. The *Credit Unions Act, 1976*, is repealed.

2. (1) Subject to this Act, a credit union or association registered under the repealed Act immediately before the commencement of this Act continues in existence as if it were a credit union or association registered under this Act.

(2) Subject to this Act, the Credit Union Deposit Insurance Board established under Part VII is the same body corporate and continues with the same membership as the Credit Union Stabilization Board established under Part VIII of the repealed Act.

(3) Subject to this Act, the Credit Union Deposit Insurance Fund established under Part VII is the same fund and continues to consist of the same money as the Credit Union Stabilization Fund under Part VIII of the repealed Act.

(4) Subject to this Act, a register kept by the Registrar of Credit Unions under the repealed Act, continues as a register kept by the Commission under this Act.

(5) Subject to this Act, a certificate or document issued or registered by, or filed or lodged with, the Registrar of Credit Unions under the repealed Act has effect as if it were a certificate or document issued or registered by, or filed or lodged with, the Commission under this Act.

(6) An exemption granted by the Minister under Division I of Part III of the repealed Act has effect as if it were an exemption granted by the Minister under Division I of Part III of this Act.

(7) A notice issued by the Minister and published in the *Gazette* under Division II of Part V of the repealed Act has effect as if it were a notice so issued and published under Division II of Part IV of this Act.

(8) An exemption granted by the Registrar under Part VI of the repealed Act has effect as if it were an exemption granted by the Commission under Part V of this Act.

(9) A nomination made by a member of an industrial and provident society under section 25 of the *Industrial and Provident Societies Act, 1923*, continues in force in relation to the member's property in the relevant credit union as if that section had not been repealed.

(10) A nomination referred to in subclause (9) may be varied or revoked by the nominator by notice in writing to the credit union.

(11) The *Acts Interpretation Act, 1915*, applies, except to the extent of any inconsistency with the provisions of this schedule, to the repeal effected by clause 1.

(12) In this clause—

"the repealed Act" means the *Credit Unions Act, 1976*, repealed by clause 1.

APPENDIX

Divisional Penalties

At the date of assent to this Act divisional penalties are, as provided by section 28a of the *Acts Interpretation Act, 1915*, as follows:

Division	Maximum imprisonment	Maximum fine
1	15 years	\$60 000
2	10 years	\$40 000
3	7 years	\$30 000
4	4 years	\$15 000
5	2 years	\$8 000
6	1 year	\$4 000
7	6 months	\$2 000
8	3 months	\$1 000
9	-	\$500
10	-	\$200
11	-	\$100
12	-	\$50

Note: This appendix is provided for convenience of reference only.