

Friendly Societies and Credit Unions (Regulatory Improvements) Amendment Bill

Member's Bill

As reported from the Finance and Expenditure Committee

Commentary

Recommendation

The Finance and Expenditure Committee has examined the Friendly Societies and Credit Unions (Regulatory Improvements) Amendment Bill, and recommends that it be passed with the amendments shown.

Introduction

The aim of the Friendly Societies and Credit Unions (Regulatory Improvements) Amendment Bill is to modernise the Friendly Societies and Credit Unions Act 1982. It is a Member's bill in the name of Stuart Smith MP. The bill's main aims are to:

- remove unnecessary operating and compliance costs
- promote greater efficiency, innovation, and accountability
- bring credit unions into alignment with other financial service providers in New Zealand
- maintain the element of mutuality and the requirement of a common bond between members.

To achieve these aims, the bill includes measures to:

- simplify the statutory objects of an association of credit unions to cover generally the conduct of activities for the benefit of its members and as authorised by its rules
- provide for the incorporation of credit unions
- enable credit unions and associations of credit unions in the pursuance of their objects to have all the powers of a natural person

- permit credit unions to provide financing to small and medium-sized enterprises (SMEs) that are owned by or otherwise closely associated with a member of the credit union
- reduce the minimum number of credit union members needed for an association of credit unions to be validly constituted from 7 to 2.

This commentary discusses the main amendments we recommend to the bill. It does not cover minor or technical amendments.

Allowing friendly societies to offer securities

We recommend adding clause 9B, inserting new sections 58A to 58E in the principal Act. These provisions would allow friendly societies to offer securities to their members. This would allow them to raise additional funds and continue to meet their minimum capital requirements under the Insurance (Prudential Supervision) Act 2010. The mechanisms for issuing friendly society securities would be similar to those already available to credit unions under section 107A of the Friendly Societies and Credit Unions Act.

New section 58C would require all distributions relating to friendly society securities to be authorised by the committee or committee of management. New sections 58D and 58E would put requirements in place to ensure the solvency of the friendly society before the distribution could be approved.

Provisions for incorporation of credit unions

One of the bill's main changes would be to provide for the incorporation of credit unions. In order to qualify for incorporation, a credit union would have to satisfy the Registrar of Friendly Societies and Credit Unions (the Registrar) that its application meets the requirements listed in clause 14, new section 100B(1). We recommend replacing paragraph (f) with new paragraph (aa) to require the Registrar to be satisfied that the credit union's proposed rules contain provisions that are consistent with all of the matters in Schedule 4 of the Act.

Requirement for credit unions to retain mutuality

Several submitters expressed concern that the incorporation of a credit union could compromise or undermine mutuality at the expense of its members' interests.

We note that the bill would not change the requirement for credit unions to use and control members' savings for their mutual benefit, which is outlined in section 101(1)(b) of the Act. However, for clarity, we recommend amending clause 15 to insert new subsection (1AA) into section 101. This would specify that "A credit union is to operate, on the basis of this Act, for the mutual benefit and assistance of its members."

On a related matter, clause 15(2) would repeal section 101(2) of the Act, which states that credit unions may not take any action unless that action is in pursuance of, or in-

cidental to, its objects. Clause 24 would insert new section 107B, which describes the capacity and powers of credit unions.

As we have noted, the bill would not change the requirement for mutuality in section 101(1)(b). However, some submitters believed that the repeal of section 101(2) would weaken the mutuality of credit unions because new section 107B as introduced does not explicitly require mutuality or the need to act according to the objects of the credit union. For clarity, we recommend amending new section 107B(1) to explicitly state that a credit union must act only in pursuance of its objects or in ways that are incidental to its objects, and only as authorised by the Act or the credit union's rules.

High Court powers to make a restraining order

We recommend adding new section 107F, through clause 24, to give the High Court the power to make an order restraining a credit union from acting contrary to the Act or its own rules. The restraining order could be made upon an application by a member of the credit union or the Registrar. The Reserve Bank of New Zealand could also apply for a restraining order if the credit union was a non-bank deposit taker, as defined in section 5 of the Non-bank Deposit Takers Act 2013.

Credit unions may make loans to enterprises related to members

Clause 12(3) and (6), which would amend section 98 of the principal Act, would introduce a mechanism to allow credit unions to make loans to small and medium-sized enterprises that are related, as defined by the bill, to a member of the credit union. We recommend deleting these provisions and incorporating them in a new clause 25A, inserting new section 110. This would include some further restrictions on when loans could be made to enterprises.

Under the bill as introduced, a member would be considered related to a body corporate when he or she had the power to exercise (or control the exercise of) 25% or more of the voting products of the body corporate. The bill as introduced does not contain a 25% rule for partnerships and trusts. Our recommended new section 110(3)(b) would provide that a firm under the Partnership Act 1908 would only be eligible to receive a loan if the member of the credit union was a partner of the firm, and their share of the firm's profits is 25% or more. In addition, new section 110(3)(c) would require that loans may be made to a trust if a member or their immediate family had a beneficial entitlement to 25% or more of the trust's assets.

We also recommend excluding limited partnerships registered under the Limited Partnerships Act 2008 from the scope of the enterprise loan provisions.

Transfers of engagements and amalgamations

The bill as introduced would repeal the power for a credit union to transfer its engagements to any other credit union.

We note that a number of credit unions have used the transfer of engagements process to avoid the need for liquidation or receivership. Under the transfer of engagements process, the position of members, deposits, loans, and other property can be transfer-

red with minimal complexity or disruption. We recommend amending clause 31, which replaces section 135 of the Act, to retain the transfers of engagements regime.

We also recommend amending clause 31 to amend new section 135(1) and add new subsection (2A). In effect, this would retain the current requirement in the Act for credit unions that are voting to amalgamate or transfer their engagements to attain support from a super-majority of 75% of members eligible to vote and voting (within each credit union) in order to proceed.

Prohibition on credit unions belonging to bodies that are not credit union associations

In the bill as introduced, clause 39(2) would retain, in substance, section 143(1) of the principal Act. This section prohibits a credit union from being a member of a formal body whose objects include any of the objects of an association of credit unions, unless that body is registered as an association under the Act.

This could mean that it prohibits a credit union from being a member of a financial sector industry association that has an object of promoting the interests of its members, or provides services to members. We consider this prohibition too broad and recommend repealing section 143(1).

Allowing credit union associations to provide services to non-members

Clause 39 of the bill, as introduced, would have allowed associations of credit unions to provide services to its members and other types of co-operative or mutual entities. We recommend amending section 143(4), inserted by clause 39(3), to clarify that associations of credit unions may provide services or assistance to any non-member entity, where their rules authorise it. This change would be consistent with the law as clarified in *Re New Zealand Association of Credit Unions* [2017] NZHC 2806, but we recommend stating it explicitly to avoid any risks of further litigation.

Changes to the powers and requirements of the Registrar

We recommend a number of amendments to the Registrar's powers and responsibilities under the bill. The majority of our proposed amendments deal with compliance and administrative issues. These include:

- permitting the Registrar to keep the register of friendly societies and credit unions, in electronic form or any other form the Registrar thinks fit (clause 6)
- allowing the Registrar to amend the register if he or she is informed by a society, branch, or credit union that information is incorrect, or to correct errors the Registrar is satisfied exist in the register (clause 6)
- requiring a full set of a society's or credit union's rules to be submitted to the Registrar each time one of them is amended (clause 6B).

Registrar's power to suspend business of a credit union

As introduced, clause 36 would repeal the Registrar's power (conferred by section 139) to suspend the business of a credit union. However, we acknowledge that the Registrar's power to suspend the business of a credit union, although used infrequently, is a useful means for protecting the interests of members. We therefore propose retaining section 139. Our proposed amendment to clause 36 would make a relatively minor change to the drafting.

Appendix

Committee process

The Friendly Societies and Credit Unions (Regulatory Improvements) Amendment Bill was referred to the Finance and Expenditure Committee of the 51st Parliament on 7 June 2017. The closing date for submissions was 21 July 2017. The committee received and considered 20 submissions from interested groups and individuals.

The bill was reinstated with this committee in the current Parliament. We met between 29 November 2017 and 1 May 2018 and heard oral evidence from 13 submitters.

Both committees received advice from the Ministry of Business, Employment and Innovation.

Committee membership

Michael Wood (Chairperson)

Hon Amy Adams (from 21 March 2018)

Kiritapu Allan

Andrew Bayly

Rt Hon David Carter

Tamati Coffey

Hon Steven Joyce (until 21 March 2018)

Barbara Kuriger (until 21 March 2018)

Ian McKelvie (from 21 March 2018)

Willow-Jean Prime

Dr Deborah Russell

David Seymour

Fletcher Tabuteau

Dr Duncan Webb

Lawrence Yule

Stuart Smith was on the committee for our consideration of this bill.

Advice and evidence received

The documents that we received as advice and evidence are available on the Parliament website, www.parliament.nz.

**Friendly Societies and Credit Unions (Regulatory
Improvements) Amendment Bill**

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Stuart Smith

Friendly Societies and Credit Unions (Regulatory Improvements) Amendment Bill

Member's Bill

Contents

	Page
1 Title	5
2 Commencement	5
3 Principal Act	5
Part 1	
Amendments to principal Act	
4 Section 2 amended (Interpretation)	5
5 New section 2A inserted (Transitional, savings, and related provisions)	6
2A Transitional, savings, and related provisions	6
6 Section 5 amended (Registry Office and registers)	6
<u>6A</u> <u>Section 16 repealed (Revising Barrister may examine rules)</u>	<u>7</u>
<u>6B</u> <u>Section 23 amended (Amendment of rules)</u>	<u>7</u>
<u>6C</u> <u>Section 24 amended (Revising Barrister or actuary may examine amendments)</u>	<u>7</u>
<u>6D</u> <u>Section 25 replaced (Acknowledgment of registration of amendment of rules)</u>	<u>7</u>
<u>25</u> <u>Registration of amendment of rules</u>	<u>8</u>
7 Section 28 amended (Appointment of trustees)	8
8 Section 49 amended (Duties of trustees in relation to investments)	8
9 Section 50 amended (Trustees of society may make investments for branch, etc)	8
<u>9A</u> <u>Section 51 amended (Borrowing powers, overdrafts)</u>	<u>8</u>
<u>9B</u> <u>New sections 58A to 58E and cross-heading inserted</u>	<u>8</u>

**Friendly Societies and Credit Unions (Regulatory
Improvements) Amendment Bill**

<i>Friendly society securities</i>		
58A	<u>Registered friendly society that is licensed insurer may offer friendly society securities</u>	<u>8</u>
58B	<u>Meaning of distribution</u>	<u>9</u>
58C	<u>Distribution must be authorised</u>	<u>9</u>
58D	<u>Distribution must not be authorised unless registered friendly society solvent</u>	<u>9</u>
58E	<u>Solvency test</u>	<u>10</u>
10	Section 82 amended (Special resolutions)	10
11	Cross-heading above section 98 replaced	10
<i>Incorporation</i>		
12	Section 98 amended (Credit unions to be registered)	10
13	Section 99 amended (Exemptions from registration)	11
14	Section 100 replaced (Society may register as credit union)	12
	100 Persons eligible to incorporate credit union	12
	100A Application for incorporation of credit union	12
	100B Incorporation of credit union	12
15	Section 101 amended (Objects of credit union)	13
16	Section 102 amended (Qualifications for admission to membership of credit union)	14
17	Section 103 amended (Name to contain words “credit union”)	14
18	Section 104 repealed (Registration and rules of credit union)	14
19	Section 105 amended (Effect of rules on members of credit union)	15
20	Section 106 amended (Membership of credit union, voting rights)	15
21	New sections 106A to 106C inserted	15
	106A Members not liable for obligations of credit union	15
	106B Amendment of credit union’s rules	15
	106C Credit union to supply copy of rules	16
22	Cross-heading above section 107 replaced	16
<i>Shares and securities</i>		
23	Section 107A amended (Credit union may offer credit union securities)	16
24	New sections 107B to 107EF and cross-heading inserted	16
<i>Capacity, powers, and validity of actions</i>		
	107B Capacity and powers of credit union	16
	107C Validity of actions	17
	107D Dealings between credit union and other persons	17
	107E No constructive notice	18
	<u>107F High Court may restrain credit union from acting contrary to Act or credit union’s rules</u>	<u>19</u>
25	Sections 109 to 110 and 109A repealed	19
<u>25A</u>	<u>Section 110 replaced (Credit union may make loans to members)</u>	<u>19</u>

**Friendly Societies and Credit Unions (Regulatory
Improvements) Amendment Bill**

	<u>110</u>	<u>Credit union may make loans to members and enterprises related to members, etc</u>	<u>19</u>
26		Sections 112 to 117 repealed	20
27		Section 127 amended (Annual return)	20
<u>27A</u>		<u>Section 128 amended (Annual return by credit union under dissolution)</u>	<u>21</u>
28		Section 133 amended (Credit union to be insured against fraud or other dishonesty)	21
29		New sections 133A and 133B inserted	21
	133A	Method of contracting	21
	133B	Attorneys	22
30		Section 134 repealed (Guarantee funds)	22
31		Section 135 replaced (Amalgamation of credit unions and transfer of engagements)	22
		<i>Amalgamations and transfers of engagements</i>	
	135	Amalgamation of credit unions <u>and transfer of engagements of 1 credit union to another credit union</u>	22
	135A	Amalgamation proposal	23
	<u>135A</u>	<u>Members of credit union to be given information about proposed amalgamation or transfer of engagements</u>	<u>23</u>
	135B	Information relating to amalgamation proposal for members, creditors, and public	23
	<u>135B</u>	<u>Secured creditors and public notice</u>	<u>24</u>
	135C	Approval of amalgamation proposal	24
	135D	Documents to be sent to Registrar	25
	135E	Registration of <u>special resolutions for amalgamation or transfer of engagements</u>	25
	135F	Other registers	27
	135G	Powers of court in relation to proposed amalgamation <u>or transfer of engagements</u>	29
<u>32</u>		<u>Section 136 repealed (Registrar may approve amalgamations or transfers of engagements of credit unions)</u>	<u>29</u>
<u>32</u>		<u>Section 136 amended (Registrar may approve amalgamations or transfers of engagements of credit unions)</u>	<u>29</u>
33		Cross-heading above section 137 amended	29
34		New section 137A inserted (Members may resolve to put credit union into liquidation)	30
	137A	Members may resolve to put credit union into liquidation	30
35		Section 138 amended (Registrar may apply to put credit union into liquidation)	30
36		Section 139 repealed (Registrar may suspend business of credit union)	31
<u>36</u>		<u>Section 139 amended (Registrar may suspend business of credit union)</u>	<u>31</u>

**Friendly Societies and Credit Unions (Regulatory
Improvements) Amendment Bill**

37	Section 140 replaced (Cancellation or suspension of registration, and dissolution of credit union)	31
	140 Removal from register	31
	140A Notice of intention to remove from register	32
	140B Objection to removal from register	32
	140C Objections under section 140B(1)(a), (b), or (c)	33
	140D Objections under section 140B(1)(d) or (e)	33
	140E Registrar must send information to person who requests removal	33
	140F High Court may order that credit union not be removed	33
	140G Liability of officers, members, and others to continue	34
	140H Restoration of credit union to register	34
	140I Registrar may restore credit union to register	34
	140J Notice of proposed restoration	34
	140K High Court may order restoration of credit union	34
	140L Registrar or High Court may require requirements <u>provisions of this Act</u> to be complied with	35
	140M Other High Court orders	35
38	Section 141 amended (Liability of members on winding up)	35
39	Section 143 amended (Associations of credit unions to be registered)	35
40	Section 144 amended (Membership of association)	36
41	Section 145 amended (Application for registration of association)	36
42	Section 146 replaced (Registration of association)	36
	146 Incorporation of association	37
43	New sections 147A and 147B inserted	38
	147A Meetings may be held using audio, audio and visual, or electronic communication	38
	147B Postal, electronic, and proxy voting	38
44	Section 151 amended (Appeals)	38
45	Section 152 amended (Regulations)	38
46	Section 154 amended (Recovery of fines, etc, imposed on society, branch, or credit union)	39
47	Section 155 amended (Status of trustees and officers for purposes of Crimes Act 1961)	39
48	Section 156 amended (Liability of officers and of members of committee on commission of offence)	39
49	Section 157 amended (Institution of legal proceedings by or against society or branch or credit union)	39
50	New Schedule 1AA inserted	39
51	Schedule 4 amended	39
<u>51A</u>	<u>Schedule 5 amended</u>	<u>40</u>

Part 2
Consequential amendments

<u>51B</u>	<u>Amendment to Administration Act 1969</u>	<u>40</u>
52	Amendment to Insurance (Prudential Supervision) Act 2010	40
	11 Application of Act to friendly societies	40
53	Amendment to Financial Reporting Act 2013	40
<u>54</u>	<u>Amendment to Income Tax Act 2007</u>	<u>40</u>
<u>55</u>	<u>Amendments to New Zealand Business Number Act 2016</u>	<u>41</u>
<u>56</u>	<u>Amendment to Property Law Act 2007</u>	<u>41</u>
<u>57</u>	<u>Amendment to Receiverships Act 1993</u>	<u>41</u>
<u>58</u>	<u>Amendment to Social Security Act 1964</u>	<u>41</u>

	Schedule	42
	New Schedule 1AA inserted	

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Friendly Societies and Credit Unions (Regulatory Improvements) Amendment Act **2017**.

2 Commencement

5

(1) ~~Sections 3, 7 to 10, and 43~~ come into force on the day after the date on which this Act receives the Royal assent.

(2) ~~The rest of this~~ This Act comes into force on the earlier of the following days dates:

- (a) a date appointed by the Governor-General by Order in Council: 10
- (b) the date immediately after the expiry of the period of 18 months that commences on the date on which this Act receives the Royal assent.

3 Principal Act

This Act amends the Friendly Societies and Credit Unions Act 1982 (the **principal Act**).

15

Part 1
Amendments to principal Act

4 Section 2 amended (Interpretation)

- (1) In section 2, definition of **association**, replace “registered as such under Part 3” with “incorporated under Part 3 in accordance with **section 146**”. 20
- (2) In section 2, definition of **committee** and **committee of management**, after “branch”, insert “or a credit union”.

- (3) In section 2, replace the definition of **credit union** with:
- credit union**—
- (a) means a credit union incorporated under Part 3 in accordance with **section 100B**; and
- (b) subject to **section 146(8)** and with any necessary modifications, includes an association of credit unions incorporated under Part 3 in accordance with **section 146** 5
- (4) In section 2, insert in its appropriate alphabetical order:
- financial product** has the meaning given in section 7(1) of the Financial Markets Conduct Act 2013 10
- (5) In section 2, replace the definition of **officer** with:
- officer**,—
- (a) in relation to a registered society or branch, includes any trustee, treasurer, secretary, or member of the committee of management of the society or branch, and any person appointed by the society or branch to sue and be sued on its behalf; and 15
- (b) in relation to a credit union, means a person who—
- (i) is a member of the credit union’s committee of management; or
- (ii) holds any other office provided for in the credit union’s rules
- (6) In section 2, replace the definition of **registered** with: 20
- registered** means registered in a register maintained by the Registrar for the purposes of this Act
- (7) In section 2, repeal the definition of **Revising Barrister**.
- 5 New section 2A inserted (Transitional, savings, and related provisions)**
- After section 2, insert: 25
- 2A Transitional, savings, and related provisions**
- The transitional, savings, and related provisions set out in **Schedule 1AA** have effect according to their terms.
- 6 Section 5 amended (Registry Office and registers)**
- (1) After section 5(2), insert: 30
- (2A) Any register may—
- (a) be an electronic register; or
- (b) be kept in any other manner that the Registrar thinks fit.
- (2B) The Registrar may amend any register if—
- (a) a society, branch, or credit union informs the Registrar of information that is different from the information entered on the register; or 35

- (b) the Registrar is satisfied at any time that the register contains a typographical error or a mistake, or omits information supplied to the Registrar.
- (2) Replace section 5(3)(b) with:
- (b) in respect of any credit union,—
- (i) the rules and any amendments, notices of change of registered office and of the appointment of officers, annual returns, and notices of change of name and of special resolutions:
- (ia) details of any action taken by the Registrar under section 139 in relation to the credit union:
- (ii) if the credit union is removed from the register under **section 140**, the notice of the removal issued by the Registrar:
- (iii) if the credit union is restored to the register under **section 140H**, the notice of the restoration issued by the Registrar.
- 6A Section 16 repealed (Revising Barrister may examine rules)** 15
- Repeal section 16.
- 6B Section 23 amended (Amendment of rules)**
- (1) Replace section 23(1) with:
- (1) An amendment of the rules of a registered society or branch has no effect until the amendment is registered. 20
- (1A) For the purposes of **subsection (1)**, the following, signed by 3 members and the secretary of the registered society or branch, must be sent to the Registrar:
- (a) a copy of the amendment:
- (b) a copy of the rules as amended.
- (2) In section 23(2)(a), after “or branch”, insert “, and a copy of the rules as amended.”. 25
- 6C Section 24 amended (Revising Barrister or actuary may examine amendments)**
- (1) In the heading to section 24, replace “**Revising Barrister or actuary**” with “**Actuary**”. 30
- (2) Repeal section 24(1).
- 6D Section 25 replaced (Acknowledgment of registration of amendment of rules)**
- Replace section 25 with:

25	<u>Registration of amendment of rules</u>	
	<u>On being satisfied that any amendment of the rules of a registered society or branch complies with and is not contrary to the provisions of this Part, the Registrar must register the amendment.</u>	
7	<u>Section 28 amended (Appointment of trustees)</u>	5
	Replace section 28(1) with:	
(1)	<u>Every registered society and branch is to have 1 or more trustees to be appointed from time to time by a resolution of a majority of the members of the society or branch entitled to vote and voting on the matter.</u>	
8	<u>Section 49 amended (Duties of trustees in relation to investments)</u>	10
	<u>In section 49(1), replace “majority of the members of the society or branch present and entitled to vote in general meeting” with “resolution of a majority of the members of the society or branch entitled to vote and voting on the matter”.</u>	
9	<u>Section 50 amended (Trustees of society may make investments for branch, etc)</u>	15
(1)	<u>In section 50(2), replace “majority” with “resolution of a majority”.</u>	
(2)	<u>In section 50(2), replace “present and entitled to vote in general meeting” with “entitled to vote and voting on the matter”.</u>	
9A	<u>Section 51 amended (Borrowing powers, overdrafts)</u>	20
	After section 51(2), insert:	
(3)	<u>This section does not limit what may be done under section 58A.</u>	
9B	<u>New sections 58A to 58E and cross-heading inserted</u>	
	After section 58, insert:	
	<i>Friendly society securities</i>	25
58A	<u>Registered friendly society that is licensed insurer may offer friendly society securities</u>	
(1)	<u>If authorised by, and in accordance with its rules, a registered friendly society that is a licensed insurer may offer friendly society securities to members for subscription.</u>	30
(2)	<u>Friendly society securities—</u>	
(a)	<u>are transferable only between members; and</u>	
(b)	<u>confer no voting rights upon holders.</u>	
(3)	<u>In the event of a registered friendly society being wound up, claims for friendly society securities must not be paid until all creditors’ claims have been paid.</u>	35

- (4) In the event of a registered friendly society incurring losses that exceed its retained earnings and reserves, the value of friendly society securities issued by it must be written down accordingly.
- (5) The following provisions of the Financial Markets Conduct Act 2013 apply for the purposes of that Act in relation to a registered friendly society and any friendly society securities that it issues as they apply in relation to a credit union and any financial products that it issues: 5
- (a) paragraph (a) of the definition of special resolution in section 6(1):
- (b) section 120(1)(c).
- (6) A registered friendly society may, in relation to friendly society securities issued or to be issued by it, appoint a supervisor and sign or amend a trust deed for the purposes of subpart 1 of Part 4 of the Financial Markets Conduct Act 2013. 10
- (7) **Subsection (6)** applies regardless of anything to the contrary in the rules of the registered friendly society. 15
- 58B Meaning of distribution**
- (1) In **sections 58C to 58E**, unless the context otherwise requires, **distribution**, in relation to a distribution by a registered friendly society to a member, means—
- (a) the direct or indirect transfer of money or property to or for the benefit of the member; or 20
- (b) the incurring of a debt to or for the benefit of the member.
- (2) For the purposes of **subsection (1)**,—
- (a) the distribution must relate to friendly society securities held by the member to whom the distribution is being made; and 25
- (b) a transfer may be made, or a debt incurred, by means of a purchase of property, the redemption or other acquisition of friendly society securities, a distribution of indebtedness, or by some other means.
- 58C Distribution must be authorised**
- A distribution must be authorised in writing by the committee, or committee of management, as the case may be, of the registered friendly society. 30
- 58D Distribution must not be authorised unless registered friendly society solvent**
- The committee, or committee of management, as the case may be, of the registered friendly society must not authorise a distribution unless the committee is satisfied on reasonable grounds that, immediately after the distribution is made, the registered friendly society will be solvent. 35

58E Solvency test

- (1) A registered friendly society is solvent for the purposes of the payment of a distribution if—
- (a) the registered friendly society is able to pay its debts as they become due in the normal course of business; and 5
- (b) the value of the registered friendly society’s assets is greater than its liabilities, including its contingent liabilities.
- (2) In determining whether the value of the registered friendly society’s assets is greater than its liabilities, the committee, or committee of management, as the case may be, of the registered friendly society— 10
- (a) must have regard to all circumstances that the committee knows or ought to know affect, or may affect, the value of the registered friendly society’s assets and the value of its liabilities, including its contingent liabilities; and
- (b) may rely on valuations of assets or estimates of liabilities that are reasonable in the circumstances. 15
- (3) In determining, for the purposes of this section, the value of a contingent liability, account may be taken of—
- (a) the likelihood of the contingency occurring; and
- (b) any claim that the registered friendly society is entitled to make, and can reasonably expect to be met, to reduce or extinguish a contingent liability. 20

10 Section 82 amended (Special resolutions)

- (1) In section 82(1)(b), replace “either in person or by proxy at the meeting” with “on the matter”. 25
- (2) In section 82(1)(b), replace “vote at the meeting” with “vote on the matter”.
- (3) Repeal section 82(2).

11 Cross-heading above section 98 replaced

Replace the cross-heading above section 98 with:

Incorporation

30

12 Section 98 amended (Credit unions to be registered)

- (1) In the heading to section 98, replace “registered” with “incorporated under this Part”.
- (2) Replace section 98(1) with:
- (1) No person, other than a credit union incorporated under this Part in accordance with **section 100B**, may trade or carry on business as a credit union. 35
- (3) Replace section 98(2)(a) with:

- (a) administering a fund into which members of a group contribute money that is to be applied wholly or principally—
 - (i) in loans to those members; or
 - (ii) in both of the following:
 - (A) loans to those members: 5
 - (B) loans to SMEs in cases where the SME is related to a member and the loan is to be used for the purposes of a business being carried on by the SME of the kind referred to in **section 110(1)(b)**: 5
- (4) In section 98(2)(b), delete “, society, or body of persons”. 10
- (5) In section 98(2)(c), delete “delete-society, or body of persons,”. 10
- (6) After section 98(2), insert: 10
- (2A) In this section, **SME** means any of the following that has no more than 19 full-time equivalent employees:
 - (a) a body corporate: 15
 - (b) a firm under the Partnership Act 1908: 15
 - (c) a limited partnership under the Limited Partnerships Act 2008: 15
 - (d) the trustee or trustees of a trust. 15
- (2B) For the purposes of this section, an SME is **related** to a member (**member M**) if— 20
 - (a) the SME is a body corporate and member M has the power, directly or indirectly, to exercise, or to control the exercise of, the rights to vote attaching to 25% or more of the voting products (as defined in section 6(1) of the Financial Markets Conduct Act 2013) of the body corporate; or 20
 - (b) the SME is a firm under the Partnership Act 1908 in which member M is a partner; or 25
 - (c) the SME is a limited partnership under the Limited Partnerships Act 2008 in which member M is a partner; or 25
 - (d) the SME is the trustee or trustees of a trust and member M is— 30
 - (i) the trustee or one of the trustees; or 30
 - (ii) a beneficiary under the trust. 30

13 Section 99 amended (Exemptions from registration)

- (1) In the heading to section 99, replace “**registration**” with “**incorporation under this Part**”. 35
- (2) In section 99(1)(a) and (b) and (2), delete “, society, or body of persons (whether corporate or unincorporate)”. 35
- (3) In section 99(3), delete “, society, or body of persons” in each place. 35

14 Section 100 replaced (Society may register as credit union)

Replace section 100 with:

100 Persons eligible to incorporate credit union

- (1) Any 21 or more persons falling within **subsection (2)** may apply to the Registrar in accordance with **section 100A** for the incorporation of a credit union under this Part. 5
- (2) The persons referred to in **subsection (1)** are as follows:
- (a) an adult;
 - (b) a charitable entity as defined by the Charities Act 2005;
 - (c) an incorporated society registered under the Incorporated Societies Act 1908. 10

100A Application for incorporation of credit union

- (1) An application under **section 100** for the incorporation of a credit union must—
- (a) be signed by each of the applicants; and 15
 - (b) include a copy of the credit union's proposed rules; and
 - (c) include a list of the names, addresses, and designations of the officers proposed for the credit union; and
 - (d) include such information or evidence as the Registrar may reasonably require in relation to any of the matters referred to in **section 100B(1)(a) to (f) (e)**. 20
- (2) The credit union's proposed rules must either—
- (a) contain provisions in respect of the matters mentioned in Schedule 4; or
 - (b) accord with any model rules applicable to credit unions produced by the Registrar under section 9. 25
- ~~(3) Section 16 applies (with any necessary modifications) to a credit union's proposed rules received by the Registrar under this section as it applies to a society's rules received by the Registrar under section 12.~~

100B Incorporation of credit union

- (1) **Subsection (2)** applies if an application is made under **section 100** for the incorporation of a credit union and the Registrar is satisfied— 30
- (a) that the credit union will have at least 21 members who fall within **section 100(2)**; and
 - (aa) that the credit union's proposed rules comply with **section 100A(2)**; and 35
 - (b) that the only objects of the credit union will be those of a credit union specified in section 101; and

- (c) that the credit union will have a common bond as defined in section 102; and
 - (d) that the credit union's name will comply with section 103; and
 - (e) that there is no reason to expect that the credit union will not be operated in accordance with its rules and this Part; 5
 - (f) ~~that the requirements of this Part as to incorporation have otherwise been satisfied.~~
- (2) The Registrar must—
- (a) register the credit union's name; and
 - (b) issue a certificate of incorporation; and 10
 - (c) register the credit union's rules (together with any other documents or information relating to the credit union that the Registrar thinks appropriate).
- (3) The credit union is, on and after the date of incorporation set out in the certificate of incorporation, a body corporate that has— 15
- (a) perpetual succession; and
 - (b) the capacity, rights, powers, and privileges provided for in **section 107B**.
- (4) The credit union continues in existence until it is removed from the register under **section 140**. 20
- (5) The certificate of incorporation is conclusive evidence that—
- (a) all the requirements of this Part as to incorporation have been complied with; and
 - (b) on and after the date of incorporation set out in the certificate, the credit union is registered and incorporated under this Part. 25
- (6) If the Registrar refuses to act under **subsection (2)** in relation to an application, the applicants may, within 3 months after the date on which they are notified of the refusal, appeal against the refusal to the High Court.
- (7) If the refusal is overruled on appeal, then, subject to such terms and conditions as the court may impose or otherwise in pursuance of the court order, the Registrar must act under **subsection (2)** as soon as practicable. 30

15 Section 101 amended (Objects of credit union)

(1) Before section 101(1), insert:

(1AA) A credit union is to operate, on the basis of this Act, for the mutual benefit and assistance of its members. 35

(1A) Replace section 101(1)(b) with:

(b) the use and control of the members' savings for their mutual benefit, including—

- (i) for making loans to members; and
- (ii) if authorised by the credit union’s rules, for making loans under **section 110(1)(b)**; and
- (ba) if authorised by, and in accordance with, the credit union’s rules, the provision of products or services under **section 110(1A)**; and 5
- (2) Repeal section 101(2).
- 16 Section 102 amended (Qualifications for admission to membership of credit union)**
- In section 102(1)(e), replace “forming a society to be registered as” with “incorporating”. 10
- 17 Section 103 amended (Name to contain words “credit union”)**
- (1) In the heading to section 103, replace “to contain words “credit union”” with “of credit union”.
- (2) In section 103, delete “society registered as a”.
- (3) In section 103, insert as subsections (2) and (3): 15
- (2) A credit union’s name must not—
- (a) be identical, or almost identical, to that of—
- (i) any other credit union; or
- (ii) any other body corporate established or registered in New Zealand or carrying on activities in New Zealand; or 20
- (b) be, in the Registrar’s opinion, likely to mislead the credit union’s members or the public as to the credit union’s nature or identity; or
- (c) be, in the Registrar’s opinion, offensive; or
- (d) be a name the use of which by the credit union contravenes any other enactment. 25
- (3) If, at any time, a credit union’s name contravenes (through inadvertence or otherwise) this section,—
- (a) the Registrar may by notice to the credit union require the credit union to change its name so that the name does not contravene this section; and
- (b) if the Registrar does so, the credit union must change its name accordingly within the period of 4 weeks from the date on which it receives the Registrar’s notice or within such longer period as the Registrar may allow. 30
- 18 Section 104 repealed (Registration and rules of credit union)**
- Repeal section 104. 35

19 Section 105 amended (Effect of rules on members of credit union)

Replace section 105(1) with:

- (1) The rules of a credit union are binding, in accordance with their terms, as between—
- (a) the credit union and each member; and
 - (b) each member.
- (1A) **Subsection (1)** is subject to the rest of this Act.

5

20 Section 106 amended (Membership of credit union, voting rights)

- (1) In section 106(1)(a), replace “39” with “39(1) and (2)”.
- (2) After section 106(1)(a), insert:
- (aa) no person under the age of 18 years can be an officer of a credit union; and
- (3) Repeal section 106(7).
- (4) After section 106(8), insert:
- (9) Section 82 (special resolutions) applies in relation to a credit union with any necessary modifications.

10

15

21 New sections 106A to 106C inserted

After section 106, insert:

106A Members not liable for obligations of credit union

- (1) A member of a credit union is not liable for an obligation of the credit union by reason only of being a member.
- (2) **Subsection (1)** does not affect—
- (a) section 141; or
 - (b) any liability that a member of a credit union has to the credit union—
 - (i) under its rules or a contract; or
 - (ii) for any tort, breach of a fiduciary duty, or other actionable wrong committed by the member.

20

25

106B Amendment of credit union’s rules

- (1) A credit union’s rules may be amended by a resolution of a majority of its members entitled to vote and voting on the matter.
- (2) Section 26 (which permits the Registrar to amend rules) applies (with any necessary modifications) to a credit union’s rules as it applies to a registered society’s rules.
- (3) An amendment of a credit union’s rules has no effect until the amendment is registered.

30

35

- (4) For the purposes of **subsection (3)**, ~~a copy of the amendment the following~~, signed by 3 members, must be sent to the Registrar for registration (unless the amendment is made by the Registrar under section 26):
- (a) ~~a copy of the amendment~~.
 - (b) ~~a copy of the rules as amended~~. 5
- (5) **Subsections (3) and (4)** do not apply to a change in the situation of a credit union's registered office, but notice of the change, and a copy of the rules as amended, must be sent promptly to the Registrar for registration.
- (6) An amendment of a credit union's rules may be registered only if the rules as amended either— 10
- (a) contain provisions in respect of the matters mentioned in Schedule 4; or
 - (b) accord with any model rules applicable to credit unions produced by the Registrar under section 9.
- (7) ~~Section 24(1) applies (with any necessary modifications) to an amendment of a credit union's rules as it applies to an amendment of a registered society's rules.~~ 15
- (8) Before registering an amendment of a credit union's rules, the Registrar may require from the credit union such information or evidence as may be reasonable to show that, after the amendment takes effect, the credit union will be operated in accordance with its rules and this Part. 20
- 106C Credit union to supply copy of rules**
- A credit union must deliver to any person on request, on payment of any reasonable charge imposed by the credit union, a copy of the rules of the credit union.
- 22 Cross-heading above section 107 replaced** 25
- Replace the cross-heading above section 107 with:
- Shares and securities*
- 23 Section 107A amended (Credit union may offer credit union securities)**
- In section 107A(1), delete “and trust deed”.
- 24 New sections 107B to 107EF and cross-heading inserted** 30
- After section 107A, insert:
- Capacity, powers, and validity of actions*
- 107B Capacity and powers of credit union**
- (1) A credit union has, both within and outside New Zealand,—

- (a) full capacity to carry on or undertake any business or activity, to do any act, or to enter into any transaction; and, if the carrying on or undertaking of the business or activity, the doing of the act, or the entering into the transaction—
- (i) is directly in pursuance of the credit union’s objects or is incidental to the credit union’s objects; and 5
- (ii) is authorised by this Act or the credit union’s rules; and
- (b) for the purposes of **paragraph (a)**, full rights, powers, and privileges.
- (2) **Subsection (1)** is subject to this Act, any other enactment, and the general law. 10
- (3) ~~The credit union’s rules may contain a provision relating to the capacity, rights, powers, or privileges of the credit union only if the provision restricts the capacity of the credit union, or its rights, powers, and privileges.~~
- (3) The credit union’s rules may contain the following provisions:
- (a) provisions giving authority for the purposes of **subsection (1)(a)(ii)**: 15
- (b) provisions restricting the capacity, rights, powers, or privileges that the credit union would otherwise have.
- 107C Validity of actions**
- (1) An act of a credit union or the transfer of property to or by a credit union is not invalid merely because the credit union did not have the capacity, right, or power to do the act or to transfer or take a transfer of the property. 20
- (2) **Subsection (1)** does not limit—
- (a) section **107F** or 118; or
- (b) any proceedings that may otherwise be taken—
- (i) by a member of a credit union against the credit union or an officer of the credit union to prevent an act of, or a transfer of property to or by, the credit union that would be invalid apart from **subsection (1)**; or 25
- (ii) by a credit union or a member or former member of a credit union against an officer or a former officer of the credit union in relation to an act of, or a transfer of property to or by, the credit union that would have been invalid apart from **subsection (1)**. 30
- (3) The fact that an act is not, or would not be, in the best interests of a credit union does not affect the capacity of the credit union to do the act.
- 107D Dealings between credit union and other persons** 35
- (1) A credit union may not assert against a person dealing with the credit union that—

- (a) this Act has not, or the credit union's rules have not, been complied with; or
- (b) a person named as an officer of the credit union in any register—
- (i) is not an officer of the credit union; or
 - (ii) has not been duly appointed; or
 - (iii) does not have authority to exercise a power that, given the nature of the credit union, an officer customarily has authority to exercise; or
- (c) a person held out by the credit union as an officer, employee, or agent of the credit union—
- (i) has not been duly appointed; or
 - (ii) does not have authority to exercise a power that, given the nature of the credit union, a person appointed to that capacity customarily has authority to exercise; or
- (d) a person held out by the credit union as an officer, employee, or agent of the credit union does not have the authority to exercise a power that the credit union holds the person out as having; or
- (e) a document issued on behalf of the credit union by an officer, employee, or agent of the credit union with actual or usual authority to issue the document is not valid or not genuine.
- (2) However, a credit union may assert any of the matters referred to in **subsection (1)(a) to (e)** against a person dealing with the credit union if that person had, or ought to have had, by virtue of the person's position with or relationship to the credit union, knowledge of those matters.
- (3) **Subsection (1)** applies even though a person of a kind referred to in **subsection (1)(b) to (e)** acts fraudulently or forges a document that appears to have been signed on behalf of the credit union, unless the person dealing with the credit union has actual knowledge of the fraud or forgery.
- (4) In this section, **person dealing**—
- (a) means, in the case of a transaction with a credit union, the other party to the transaction; and
 - (b) includes a person who has acquired property, rights, or interests from a credit union.
- 107E No constructive notice**
- A person is not affected by, or deemed to have notice or knowledge of the contents of, the rules of, or any other document relating to, a credit union merely because—
- (a) the rules are, or the document is,—
 - (i) registered; or

- (ii) available to the public under section 5(3) or (4); or
- (iii) available for inspection at an office of the credit union; or
- (b) in the case of the rules, a copy of them can be requested under **section 106C**.

107F High Court may restrain credit union from acting contrary to Act or credit union's rules 5

- (1) The High Court may, on an application by a person listed in **subsection (2)**, make an order restraining a credit union from acting contrary to this Act or the credit union's rules.
- (2) The application may be made by— 10
 - (a) a member of the credit union; or
 - (b) the Registrar; or
 - (c) the Reserve Bank of New Zealand, but only if the credit union is an NBDT as defined in section 5 of the Non-bank Deposit Takers Act 2013.

25 Sections 109 to 110 and 109A repealed 15
Repeal sections 109 to 110 and 109A.

25A Section 110 replaced (Credit union may make loans to members)
Replace section 110 with:

110 Credit union may make loans to members and enterprises related to members, etc 20

- (1) A credit union may make loans (with or without security) as follows:
 - (a) to members:
 - (b) to enterprises in cases where—
 - (i) the enterprise (when the loan is made)—
 - (A) is related to a member; and 25
 - (B) has no more than 19 full-time equivalent employees; and
 - (ii) the loan is to be used for the purposes of a business being, or to be, carried on by the enterprise.
- (1A) A credit union may provide products or services as follows:
 - (a) to members: 30
 - (b) to enterprises which have loans with the credit union under **subsection (1)(b)**:
 - (c) to enterprises in cases where—
 - (i) the enterprise (when the product or service is provided)—
 - (A) is related to a member; and 35

- (B) has no more than 19 full-time equivalent employees; and
- (ii) the product or service is for the purposes of a business being, or to be, carried on by the enterprise.
- (2) In this section, **enterprise** means any of the following:
- (a) a body corporate: 5
- (b) a firm under the Partnership Act 1908:
- (c) the trustee or trustees of a trust.
- (3) For the purposes of this section, an enterprise is **related** to a member (**M**) if—
- (a) the enterprise is a body corporate and M has the power, directly or indirectly, to exercise, or to control the exercise of, the rights to vote attaching to 25% or more of the voting products (as defined in section 6(1) of the Financial Markets Conduct Act 2013) of the body corporate; or 10
- (b) the enterprise is a firm under the Partnership Act 1908 in which M is a partner and—
- (i) M’s share of the firm’s profits in accordance with the terms of the partnership is 25% or more; or 15
- (ii) if M’s share of the firm’s profits cannot be determined in accordance with the terms of the partnership, M’s share of the most recent distribution of the firm’s profits was 25% or more; or
- (c) the enterprise is the trustee or trustees of a trust and M has, or the members of M’s family (taken together) have, a beneficial entitlement to 25% or more of the trust’s assets. 20
- (4) For the purposes of **subsection (3)(c)**, the members of M’s family are—
- (a) M; and
- (b) any current or former spouse, civil union partner, or de facto partner of M; and 25
- (c) any brother, sister, lineal ancestor, or lineal descendant of M; and
- (d) any current or former spouse, civil union partner, or de facto partner of a person covered by **paragraph (c)**.
- 26 Sections 112 to 117 repealed** 30
Repeal sections ~~110~~ 112 to 117.
- 27 Section 127 amended (Annual return)**
- (1) In section 127(1), replace “3” with “4”.
- (2) Replace section 127(3)(d) with:
- (d) must have attached a list containing the names, addresses, and designations of the officers of the credit union; and 35

27A Section 128 amended (Annual return by credit union under dissolution)

Repeal section 128(1).

28 Section 133 amended (Credit union to be insured against fraud or other dishonesty)

(1) Replace section 133(1) with: 5

(1) A credit union must have a policy of insurance that complies with the requirements of this section.

(2) Repeal section 133(4).

29 New sections 133A and 133B inserted

After section 133, insert: 10

133A Method of contracting

(1) A contract or other enforceable obligation may be entered into by a credit union as follows:

(a) an obligation that, if entered into by a natural person, would, by law, be required to be by deed may be entered into on behalf of the credit union in writing signed under the name of the credit union by— 15

(i) 2 or more officers of the credit union; or

(ii) if the credit union's rules so provide, an officer, or other person or class of persons, whose signature or signatures must be witnessed; or 20

(iii) 1 or more attorneys appointed by the credit union in accordance with **section 133B**:

(b) an obligation that, if entered into by a natural person, is, by law, required to be in writing may be entered into on behalf of the credit union in writing by a person acting under the credit union's express or implied authority: 25

(c) an obligation that, if entered into by a natural person, is not, by law, required to be in writing may be entered into on behalf of the credit union in writing or orally by a person acting under the credit union's express or implied authority. 30

(2) A credit union may, in addition to complying with **subsection (1)**, affix its common seal, if it has one, to the contract or document containing the enforceable obligation.

(3) **Subsection (1)** applies to a contract or other obligation—

(a) whether or not that contract or obligation was entered into in New Zealand; and 35

(b) whether or not the law governing the contract or obligation is the law of New Zealand.

133B Attorneys

- (1) A credit union may, by an instrument in writing executed in accordance with **section 133A(1)(a)**, appoint a person as its attorney either generally or in relation to a specified matter.
- (2) **Subsection (1)** is subject to the credit union's rules. 5
- (3) An act of the attorney in accordance with the instrument binds the credit union.
- (4) Sections 19 to 21 of the Property Law Act 2007 apply, with all necessary modifications, in relation to a power of attorney executed by a credit union—
- (a) to the same extent as if the credit union were a natural person; and
- (b) as if the commencement of the liquidation of the credit union or, if there is no liquidation, the removal of the credit union from the register under **section 140** were an event revoking the power of attorney within the meaning of those sections. 10

30 Section 134 repealed (Guarantee funds)

Repeal section 134. 15

31 Section 135 replaced (Amalgamation of credit unions and transfer of engagements)

Replace section 135 with:

Amalgamations and transfers of engagements

- 135 Amalgamation of credit unions and transfer of engagements of 1 credit union to another credit union** 20
- (1) Two or more credit unions may, by special resolution of each of them, amalgamate as 1 credit union ~~under **sections 135A to 135E**~~.
- (2) The amalgamated credit union may continue as—
- (a) one of the amalgamating credit unions; or 25
- (b) a new credit union.
- (2A) A credit union may, by special resolution, transfer its engagements to any other credit union that, by special resolution or in any other manner that may be authorised by its rules, has undertaken to fulfil the engagements of that credit union. 30
- (3) ~~A credit union must not amalgamate with another body, except as permitted by this section.~~
- (3) A credit union, other than an association, must not—
- (a) amalgamate with—
- (i) an association; or 35
- (ii) a body that is not a credit union; or

(b)	<u>transfer its engagements to, or accept a transfer of engagements from,—</u>	
	(i) <u>an association; or</u>	
	(ii) <u>a body that is not a credit union.</u>	
(4)	<u>An association must not—</u>	
	(a) <u>amalgamate with a body that is not an association; or</u>	5
	(b) <u>transfer its engagements to, or accept a transfer of engagements from, a body that is not an association.</u>	
135A	<u>Amalgamation proposal</u>	
	<u>An amalgamation proposal must set out the terms of the amalgamation and all other prescribed information (if any).</u>	10
135A	<u>Members of credit union to be given information about proposed amalgamation or transfer of engagements</u>	
(1)	<u>Before a credit union amalgamates, or transfers its engagements, information relating to the terms of the proposed amalgamation or transfer must be given to the credit union’s members by sending to each member, not less than 14 days before the date of the general meeting at which the resolution for the amalgamation or transfer is to be proposed, a notice the contents of which have been approved for the purpose by the Registrar.</u>	15
(2)	<u>For the purposes of subsection (1), the information to be given must relate, at the least, to the following:</u>	20
	(a) <u>the financial position of the credit union and that of the other credit union concerned;</u>	
	(b) <u>the interest of the officers of the credit union, and of the officers of the other credit union concerned, in the amalgamation or transfer;</u>	
	(c) <u>the compensation or other consideration (if any) proposed to be paid to any officers referred to in paragraph (b);</u>	25
	(d) <u>the payments (if any) to be made to the members of the credit union, and to the members of the other credit union concerned, in consideration of the amalgamation or transfer.</u>	
135B	<u>Information relating to amalgamation proposal for members, creditors, and public</u>	30
	<u>The committee of management of each amalgamating credit union must, not less than 20 working days before the amalgamation is to become effective,—</u>	
	(a) <u>send to each member of that credit union a copy of the amalgamation proposal and all other prescribed information (if any); and</u>	35
	(b) <u>send a copy of the amalgamation proposal to every secured creditor of the credit union; and</u>	

- (e) ~~give public notice of the proposed amalgamation in the prescribed manner.~~

135B Secured creditors and public notice

Before a credit union amalgamates, transfers its engagements, or accepts a transfer of engagements from another credit union, the credit union must, at or before the prescribed time,— 5

- (a) send to every secured creditor of the credit union the prescribed information relating to the proposed amalgamation or transfer; and
- (b) give public notice of the proposed amalgamation or transfer in the prescribed manner and containing the prescribed information relating to the proposed amalgamation or transfer. 10

135C Approval of amalgamation proposal

- (1) ~~The committee of management of each amalgamating credit union must resolve that,—~~
- (a) ~~in its opinion, the amalgamation is in the best interests of the amalgamating credit union; and~~ 15
- (b) ~~the committee is satisfied, on reasonable grounds, that the amalgamated credit union will, on amalgamation, satisfy the solvency test under **subsection (4)**.~~
- (2) ~~Every committee member of an amalgamating credit union who votes in favour of a resolution under **subsection (1)** must sign a certificate stating—~~ 20
- (a) ~~that, in the member's opinion, the conditions set out in that subsection are satisfied; and~~
- (b) ~~the grounds for that opinion.~~
- (3) ~~The amalgamation proposal must be approved by each amalgamating credit union by a resolution of a majority of its members entitled to vote and voting on the matter.~~ 25
- (4) ~~For the purposes of **subsection (1)(b)**,—~~
- (a) ~~a credit union satisfies the solvency test if—~~
- (i) ~~the credit union is able to pay its debts as they become due in the normal course of its operations; and~~ 30
- (ii) ~~the value of the credit union's assets is greater than the value of its liabilities, including contingent liabilities;~~
- (b) ~~section 4(3) and (4) of the Companies Act 1993 applies with all necessary modifications as if references to a company were references to a credit union and references to directors were references to officers.~~ 35
- (5) ~~A committee member who fails to comply with **subsection (2)** commits an offence and is liable on conviction to a fine not exceeding \$5,000.~~

135D Documents to be sent to Registrar

The following must be sent to the Registrar to give effect to the amalgamation:

- (a) the approved amalgamation proposal;
- (b) all certificates required under **section 135C**;
- (c) all other prescribed information (if any).

5

135E Registration of special resolutions for amalgamation or transfer of engagements

(1) ~~Subsection (2)~~ applies if the Registrar, after receiving the information required under **section 135D**, is satisfied—

- (a) that the requirements of **section 100B(1)(a) to (f)** are met in relation to the amalgamated credit union; and
- (b) that each amalgamating credit union has approved the amalgamation in accordance with **section 135C**.

10

(2) The Registrar must—

- (a) issue a certificate of amalgamation; and
- (b) if the amalgamated credit union is one of the amalgamating credit unions, make any necessary changes to that credit union's registration (for example, registering its new rules); and
- (c) if the amalgamated credit union is a new credit union, act under **section 100B(2)** (and **section 100B(3) to (5)** applies accordingly); and
- (d) remove from the register under **section 140** any amalgamating credit union that is not the amalgamated credit union.

15

(1) Section 85 applies, with any necessary modifications, if a special resolution is passed for the amalgamation, or transfer of engagements, of a credit union.

(2) Further, the Registrar must not register the special resolution unless satisfied that the requirements of **section 100B(1)(a) to (e)** or **146(1)(a) to (d)** are met in relation to, as the case requires,—

25

- (a) the amalgamated credit union; or
- (b) the credit union to which the transfer of engagements is being made.

(2A) Once each special resolution relating to an amalgamation, or to a transfer of engagements, has been registered, the Registrar must,—

30

- (a) in the case of an amalgamation,—
 - (i) issue a certificate of amalgamation; and
 - (ii) if the amalgamated credit union is one of the amalgamating credit unions, make any necessary changes to that credit union's registration (for example, registering its new rules); and
 - (iii) if the amalgamated credit union is a new credit union, act under **section 100B(2) or 146(2)** in relation to that credit union (and

35

- section 100B(3) to (5) or 146(3) to (5) applies accordingly);
and
- (iv) remove from the register under **section 140** any amalgamating credit union that is not the amalgamated credit union; or
- (b) in the case of a transfer of engagements,— 5
- (i) issue a certificate of transfer of engagements; and
- (ii) make any necessary changes to the registration of the credit union to which the transfer is being made (for example, registering its new rules); and
- (iii) remove the other credit union from the register under **section 140.** 10
- (3) On and after the date set out in the certificate of amalgamation or transfer of engagements,—
- (a) the amalgamation is effective in accordance with the amalgamation proposal; and 15
- (b) the amalgamated credit union succeeds to all the property, rights, powers, and privileges of each of the amalgamating credit unions; and
- (c) the amalgamated credit union succeeds to all the liabilities and obligations of each of the amalgamating credit unions; and
- (d) proceedings pending by, or against, an amalgamating credit union may be continued by, or against, the amalgamated credit union; and 20
- (e) a conviction, ruling, order, or judgment in favour of, or against, an amalgamating credit union may be enforced by, or against, the amalgamated credit union.
- (a) in the case of an amalgamation,— 25
- (i) the amalgamation is effective in accordance with its terms; and
- (ii) the amalgamated credit union succeeds to all the property, rights, powers, and privileges of each of the amalgamating credit unions; and
- (iii) the amalgamated credit union succeeds to all the liabilities and obligations of each of the amalgamating credit unions; and 30
- (iv) proceedings pending by, or against, an amalgamating credit union may be continued by, or against, the amalgamated credit union; and
- (v) a conviction, ruling, order, or judgment in favour of, or against, an amalgamating credit union may be enforced by, or against, the amalgamated credit union; or 35
- (b) in the case of a transfer of engagements,—
- (i) the transfer is effective in accordance with its terms; and

- (ii) the credit union to which the transfer is made succeeds to all the property, rights, powers, and privileges of the other credit union; and
- (iii) the credit union to which the transfer is made succeeds to all the liabilities and obligations of the other credit union; and 5
- (iv) proceedings pending by, or against, the other credit union may be continued by, or against, the credit union to which the transfer is made; and
- (v) a conviction, ruling, order, or judgment in favour of, or against, the other credit union may be enforced by, or against, the credit union to which the transfer is made. 10
- (4) The date set out in the certificate of amalgamation or transfer of engagements must be—
- (a) the date immediately after the date on which it is issued; or
- (b) if later, the date set out in the amalgamation proposal as the date on which the amalgamation or transfer of engagements is to become effective in accordance with its terms. 15
- (5) In this Part, the term **non-qualifying member**, in relation to an amalgamated credit union, includes a person who does not fulfil the qualifications for admission to membership of that credit union but became a member of it by virtue of the amalgamation, having been, immediately before the amalgamation became effective, a member of one of the amalgamating credit unions. 20
- (5) In this Part, **non-qualifying member**,—
- (a) in relation to an amalgamated credit union, includes a person who does not fulfil the qualifications for admission to membership of the credit union but became a member of it by virtue of the amalgamation, having been, immediately before the amalgamation became effective, a non-qualifying member of one of the amalgamating credit unions; and 25
- (b) in relation to a credit union to which there is a transfer of engagements, includes a person who does not fulfil the qualifications for admission to membership of the credit union but became a member of it by virtue of the transfer, having been, immediately before the transfer became effective, a non-qualifying member of the credit union whose engagements are transferred. 30
- 135F Other registers** 35
- (1) No ~~The Registrar-General of Land, nor the Registrar of Deeds, or any other person charged with keeping any books or registers; is not~~ obliged to change the name of ~~an amalgamating a transferor~~ credit union to that of ~~an amalgamated a transferee~~ credit union in those books or registers or in any documents solely because an amalgamation or a transfer of engagements has been effected under **sections 135A to 135E.** 40

- (2) The presentation to a Registrar or any other person of a specified instrument is, in the absence of evidence to the contrary, sufficient evidence that the property to which the instrument relates has become the property of the ~~amalgamated transferee~~ credit union.
- (3) In **subsection (2)**, a **specified instrument** is an instrument that— 5
- (a) is executed or purports to be executed by the ~~amalgamated transferee~~ credit union; and
- (b) relates to any property held immediately before the amalgamation or transfer of engagements by ~~an amalgamating~~ a transferor credit union; and 10
- (c) states that the property has become the property of the ~~amalgamated transferee~~ credit union by virtue of ~~sections 135A to 135E~~ **section 135E(3)**.
- (4) **Subsection (5)** applies if— 15
- (a) any financial products issued by a person (A) or any rights or interests in property of a person (A) become, by virtue of ~~sections 135A to 135E~~ **section 135E(3)**, the property of ~~an amalgamated a transferee~~ credit union; and
- (b) a certificate signed on behalf of the committee of management of the ~~amalgamated transferee~~ credit union is presented to A, stating that those products, rights, or interests have by virtue of ~~sections 135A to 135E~~ **section 135E(3)** become the property of the ~~amalgamated transferee~~ credit union. 20
- (5) Despite **subsections (1) and (2)** and any other enactment or rule of law, A, on presentation of the certificate, must register the ~~amalgamated transferee~~ credit union as the holder of the financial products or as the person entitled to the rights or interests. 25
- (6) Except as provided in this section, nothing in ~~sections 135A 135 to 135E~~ **sections 135A to 135E** derogates from the provisions of the Land Transfer Act 1952 or the Land Transfer Act 2017. 30
- (7) In this section,—
- transferee credit union,—**
- (a) in relation to an amalgamation, means the amalgamated credit union:
- (b) in relation to a transfer of engagements, means the credit union to which the transfer is made 35
- transferor credit union,—**
- (a) in relation to an amalgamation, means an amalgamating credit union:
- (b) in relation to a transfer of engagements, means the credit union from which the transfer is made.

135G Powers of court in relation to proposed amalgamation or transfer of engagements	
(1) A creditor of an amalgamating credit union, or a person to whom an amalgamating credit union is under an obligation, who believes that he, she, or it would be unfairly prejudiced by a proposed amalgamation under sections 135A to 135E may, before the date on which the amalgamation becomes effective, apply to a District Court for an order under subsection (2) .	5
(1) <u>This section applies if a creditor of a relevant credit union, or any other person to whom a relevant credit union is under an obligation, believes that the creditor or other person would be unfairly prejudiced by a proposed amalgamation or transfer of engagements.</u>	10
(1A) <u>The creditor or other person may apply to the District Court for an order under subsection (2).</u>	
(2) The court may, if it is satisfied that the creditor or <u>other person who is owed the obligation</u> would be unfairly prejudiced by the proposed amalgamation or transfer of engagements, make any order the court thinks fit in relation to the proposal, including—	15
(a) directing that effect must not be given to the proposal:	
(b) modifying the proposal in any manner specified in the order:	
(c) directing the amalgamating <u>relevant</u> credit union or its committee of management to reconsider the proposal or any part of it.	20
(3) An order may be made under subsection (2) on the conditions that the court thinks fit.	
(4) <u>In this section, relevant credit union means,—</u>	
(a) <u>in relation to a proposed amalgamation, an amalgamating credit union:</u>	25
(b) <u>in relation to a proposed transfer of engagements, the credit union making the transfer or the credit union to which the transfer would be made.</u>	
32 Section 136 repealed (Registrar may approve amalgamations or transfers of engagements of credit unions)	
Repeal section 136.	30
32 Section 136 amended (Registrar may approve amalgamations or transfers of engagements of credit unions)	
In section 136(1), delete “or trustees”.	
33 Cross-heading above section 137 amended	
In the cross-heading above section 137, replace “ <i>and suspension of business</i> ” with “ <i>suspension of business, removal from register, and restoration to register</i> ”.	35

34 New section 137A inserted (Members may resolve to put credit union into liquidation)

After section 137, insert:

137A Members may resolve to put credit union into liquidation

- (1) A credit union may be put into liquidation by the appointment of a liquidator ~~by a resolution of a majority of the credit union's members entitled to vote and voting on the matter~~ by the credit union's members. 5
- (1A) The liquidator must be appointed by a special resolution.
- (2) Part 16 of the Companies Act 1993 applies to the liquidation of a credit union under **subsection (1)**, with all necessary modifications, as if the credit union were a company that has been put into liquidation under section 241(2)(a) of that Act. 10

35 Section 138 amended (Registrar may apply to put credit union into liquidation)

- (1) In the heading to section 138, replace “**Registrar may apply to**” with “**High Court may**”. 15
- (2) In section 138, replace “the application of the Registrar” with “an application under this section”.
- (3) In section 138, delete “in accordance with the Companies Act 1993”.
- (4) Replace section 138(a) with: 20
- (a) the credit union is unable to pay its debts; or
- (aa) the credit union has not commenced operations within 1 year of incorporation or has suspended its operations for more than 6 months; or
- (ab) incorporation has been obtained for the credit union by fraud or mistake; or 25
- (ac) the credit union exists for an illegal purpose; or
- (ad) the requirement about membership in **section 100B(1)(a)—or ~~146(1)(a)~~** is not met in relation to the credit union; or
- (5) In section 138, insert as subsections (2) and (3):
- (2) An application under this section may be made by any of the following: 30
- (a) the credit union:
- (b) a member of the credit union:
- (c) a creditor of the credit union:
- (d) the Registrar.
- (3) Part 16 of the Companies Act 1993 applies, with any necessary modifications,— 35

- (a) to an application under this section as if the application were an application under section 241(2)(c) of that Act; and
- (b) to the liquidation as if the liquidator had been appointed under section 241(2)(c) of that Act.

36 Section 139 repealed (Registrar may suspend business of credit union) 5
Repeal section 139.

36 Section 139 amended (Registrar may suspend business of credit union)
In section 139(6), delete “under section 109(2)”.

37 Section 140 replaced (Cancellation or suspension of registration, and dissolution of credit union) 10
Replace section 140 with:

140 Removal from register

- (1) A credit union is removed from the register when the Registrar, acting under **subsection (2)**, registers a notice issued by the Registrar stating that the credit union is removed from the register. 15
- (2) The Registrar may remove a credit union from the register if—
 - (a) ~~the credit union is an amalgamating credit union, other than an amalgamated credit union, on the date set out in the certificate of amalgamation issued by the Registrar under **section 135E**; or~~
 - (a) in accordance with **section 135E(2A)(a)(iv) or (b)(iii)** on the date set out in the certificate of amalgamation or transfer of engagements; or 20
 - (b) if a request that the credit union be removed from the register on a ground specified in **subsection (3)** is given to the Registrar in accordance with the credit union’s rules; or
 - (c) if the credit union has been put into liquidation, and— 25
 - (i) no liquidator is acting; or
 - (ii) the documents referred to in section 257(1)(a) of the Companies Act 1993 (as applied by section **137A** or 138 of this Act) have not been sent or delivered to the Registrar within 6 months after the liquidation is completed; or 30
 - (d) if a liquidator sends or delivers to the Registrar—
 - (i) the documents referred to in section 257(1)(a) of the Companies Act 1993 (as applied by section **137A** or 138 of this Act); and
 - (ii) a copy of the notice referred to in **section 140A(1)(a)**.
- (3) A request may be made on the grounds— 35
 - (a) that the credit union has ceased to operate, has discharged in full its liabilities to all its known creditors, and has distributed its remaining

<p>assets to those persons entitled to them or otherwise in accordance with its rules; or</p> <p>(b) that the credit union has no assets remaining after paying its debts in full or in part, and no creditor has applied to the High Court under section 138 for an order putting the credit union into liquidation.</p> <p>(4) A request must be made in the prescribed manner (if any).</p> <p>140A Notice of intention to remove from register</p> <p>(1) The Registrar may remove a credit union from the register under section 140(2)(b) to (d) only if—</p> <p>(a) the Registrar is satisfied that notice of the intention to remove the credit union from the register has been given in the prescribed manner to the public and all other prescribed persons (if any); and</p> <p>(b) the Registrar—</p> <p>(i) is satisfied that no person has objected to the removal under section 140B; or</p> <p>(ii) if an objection to the removal has been received, has complied with sections 140C and 140D.</p> <p>(2) <u>The notice under subsection (1)(a) must specify the date by which an objection to the removal under section 140B must be delivered to the Registrar, which must be no less than the prescribed number of working days after the date of the notice.</u></p> <p>140B Objection to removal from register</p> <p>(1) If a notice is given under section 140A(1)(a), any person may deliver to the Registrar, not later than the date specified in the notice, an objection to the removal on any of the following grounds:</p> <p>(a) that the credit union is still operating or there is other reason for it to continue in existence:</p> <p>(b) that the credit union is a party to a legal proceeding:</p> <p>(c) that the credit union is in receivership or liquidation, or both:</p> <p>(d) that the person is a creditor, <u>or another person</u>, who has an undischarged claim against the credit union:</p> <p>(e) that, for any other reason, it would not be just and equitable to remove the credit union from the register.</p> <p>(2) Section 321(2)(a) of the Companies Act 1993 applies for the purposes of subsection (1)(d), with all necessary modifications, as if the credit union were a company.</p>	<p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p> <p>35</p>
--	--

140C Objections under section 140B(1)(a), (b), or (c)

If an objection is made under **section 140B(1)(a), (b), or (c)**, the Registrar must not proceed with the removal unless the Registrar is satisfied that—

- (a) the objection has been withdrawn; or
- (b) any facts on which the objection is based are not, or are no longer, correct; or
- (c) the objection is frivolous or vexatious.

140D Objections under section 140B(1)(d) or (e)

(1) If an objection is made under **section 140B(1)(d) or (e)**, the Registrar may give notice to the person objecting that, unless notice of a specified application is given to the Registrar not later than 20 working days after the date of the notice, the Registrar intends to proceed with the removal.

(2) In this section, **specified application** means an application under section 138 or **140F**.

(3) The Registrar may proceed with the removal if—

- (a) notice of a specified application is not served on the Registrar; or
- (b) the specified application is withdrawn; or
- (c) on the hearing of the specified application, the court refuses to grant either an order putting the credit union into liquidation or an order that the credit union not be removed from the register.

(4) Every person who makes a specified application must give the Registrar notice in writing of the decision of the court within 5 working days after the decision is given.

140E Registrar must send information to person who requests removal

The Registrar must send the following to a person who delivered a request under **section 140(2)(b)** or a liquidator referred to in **section 140(2)(d)**:

- (a) a copy of an objection under **section 140B**;
- (b) a copy of a notice given by or to the Registrar under **section 140D**;
- (c) if the credit union is removed from the register, notice of the removal.

140F High Court may order that credit union not be removed

(1) A person who gives a notice objecting to the removal of a credit union from the register on a ground specified in **section 140B(1)(d) or (e)** may apply to the High Court for an order that the credit union is not to be removed from the register.

(2) The court may, if it is satisfied that the credit union should not be removed from the register on any of the grounds in **section 140B(1)**, make an order that the credit union is not to be removed from the register.

140G Liability of officers, members, and others to continue

The removal of a credit union from the register does not affect the liability of any former officer or member of the credit union or any other person in respect of any act or omission that took place before the credit union was removed from the register, and that liability continues and may be enforced as if the credit union had not been removed from the register. 5

140H Restoration of credit union to register

- (1) A credit union is restored to the register when the Registrar, acting under **section 140I** or an order made under **section 140K**, registers a notice issued by the Registrar stating that the credit union is restored to the register. 10
- (2) A credit union that is restored to the register must be treated as having continued in existence as if it had not been removed from the register.

140I Registrar may restore credit union to register

- (1) The Registrar must, on an application made in the prescribed manner, and may, on the Registrar's own motion, restore a credit union to the register if the Registrar is satisfied that, at the time the credit union was removed from the register,— 15
 - (a) the credit union was still operating or another reason existed for the credit union to continue in existence; or
 - (b) the credit union was a party to a legal proceeding; or 20
 - (c) the credit union was in receivership or liquidation, or both.
- (2) This section does not limit **section 140K**.

140J Notice of proposed restoration

- (1) Before the Registrar restores a credit union to the register under **section 140I**, the Registrar must be satisfied that notice of the intention to restore the credit union to the register has been given in the prescribed manner to the public and all other prescribed persons (if any). 25
- (1A) The notice under **subsection (1)** must specify the date by which an objection to the restoration may be delivered to the Registrar, which must be no less than the prescribed number of working days after the date of the notice. 30
- (2) The Registrar must not restore a credit union to the register under **section 140I** if the Registrar receives an objection to the restoration within the period stated in the notice under **subsection (1)**.

140K High Court may order restoration of credit union

- (1) The High Court may, on the application of a person referred to in **subsection (2)**, order that a credit union be restored to the register if it is satisfied that,— 35
 - (a) at the time the credit union was removed from the register,—

- (i) the credit union was still operating or another reason existed for the credit union to continue in existence; or
- (ii) the credit union was a party to a legal proceeding; or
- (iii) the credit union was in receivership or liquidation, or both; or
- (iv) the applicant was a creditor, or another person, who had an undis- 5
charged claim against the credit union; or
- (b) for any other reason it is just and equitable to restore the credit union to the register.
- (2) The following persons may make an application:
- (a) any person who is prescribed for the purposes of this subsection: 10
- (b) the Registrar:
- (c) with the leave of the court, any other person.
- 140L Registrar or High Court may require ~~requirements~~ provisions of this Act to be complied with**
- The Registrar or the High Court may, before restoring a credit union to the 15
register under **section 140I** or ordering its restoration to the register under **section 140K**, require any of the provisions of this Act to be complied with (being provisions with which the credit union had failed to comply before it was removed from the register).
- 140M Other High Court orders** 20
- (1) This section applies if a credit union is restored to the register under **section 140I** or its restoration to the register is ordered under **section 140K**.
- (2) The High Court may, on the application of the Registrar or the applicant for re- 25
stitution or on its own motion, give any directions or make any orders that may be necessary or desirable for the purpose of placing the credit union and any other persons as nearly as possible in the same position as if the credit union had not been removed from the register.
- (3) However, a direction or an order may not require the return to the credit union of any assets that have been properly transferred in accordance with any provi- 30
sion of the credit union’s rules that falls within **clause item 17** of Schedule 4.
- 38 Section 141 amended (Liability of members on winding up)**
- (1) In section 141, replace “section 138” with “section **137A** or 138”.
- (2) In section 141, delete “qualified”.
- 39 Section 143 amended (Associations of credit unions to be registered)**
- (1) In the heading to section 143, replace “**to be registered**” with “**may be incorp-** 35
orated under this Part”.

- (2) In section 143(1), replace “registered as an association under this Part” with “an association of credit unions incorporated under this Part in accordance with **section 146**”.
- (2) Repeal section 143(1).
- (3) Replace section 143(2) to (4) with: 5
- (2) Any 2 or more credit unions may apply to the Registrar in accordance with section 145 for the incorporation of an association of credit unions under this Part.
- (3) The objects of ~~an~~ the association must be, or fall within, the objects set out in **subsection (4)**.
- (4) The objects referred to in **subsection (3)** are as follows: 10
- (a) to promote the interests of the association’s members:
- (b) ~~otherwise, to provide products or services or carry out other activities for the benefit, or in the interests, of relevant bodies.~~
- (b) as authorised by the association’s rules,—
- (i) to provide its members or other persons with products or services: 15
- (ii) otherwise to carry out activities for the benefit or assistance of its members or other persons.
- (5) For the purposes of **subsection (4)**, a **relevant body** is a credit union or another type of co-operative or mutual body.
- 40 Section 144 amended (Membership of association)** 20
- Repeal section 144(2).
- 41 Section 145 amended (Application for registration of association)**
- (1) In the heading to section 145, replace “**registration**” with “**incorporation**”.
- (2) Replace section 145(1) and (2) with:
- (1) An application under **section 143(2)** for the incorporation of an association of credit unions must be signed by each of the applicants. 25
- (2) The application must include—
- (a) a copy of the association’s proposed rules; and
- (b) a list of the names, addresses, and designations of the officers proposed for the association. 30
- (2A) ~~Section 16 applies (with any necessary modifications) to an association’s proposed rules received by the Registrar under this section as it applies to a society’s rules received by the Registrar under section 12.~~
- (3) Repeal section 145(4).
- 42 Section 146 replaced (Registration of association)** 35
- Replace section 146 with:

146 Incorporation of association

- (1) **Subsection (2)** applies if an application is made under **section 143(2)** for the incorporation of an association of credit unions and the Registrar is satisfied—
- (a) that the association will have at least 2 members; and 5
 - (b) that the rules as submitted are not contrary to the provisions of this Act and may be reasonably approved by the Registrar; and
 - (c) that there are reasonable grounds for believing that the association will be able to carry out its objects successfully; and
 - (d) that there is no reasonable cause why the association should not be incorporated. 10
- (2) The Registrar must—
- (a) register the association’s name; and
 - (b) issue a certificate of incorporation; and
 - (c) register the association’s rules (together with any other documents or information relating to the association that the Registrar thinks appropriate). 15
- (3) The association is, on and after the date of incorporation set out in the certificate of incorporation, a body corporate that has—
- (a) perpetual succession; and 20
 - (b) the capacity, rights, powers, and privileges provided for in **section 107B**.
- (4) The association continues in existence until it is removed from the register under **section 140**.
- (5) The certificate of incorporation is conclusive evidence that— 25
- (a) all the requirements of this Part as to incorporation have been complied with; and
 - (b) on and after the date of incorporation set out in the certificate, the association is registered and incorporated under this Part.
- (6) If the Registrar refuses to act under **subsection (2)** in relation to an application, the applicants may, within 3 months after the date on which they are notified of the refusal, appeal against the refusal to the High Court. 30
- (7) If the refusal is overruled on appeal, then, subject to such terms and conditions as the court may impose or otherwise in pursuance of the court order, the Registrar must act under **subsection (2)** as soon as practicable. 35
- (8) Sections 98 to 102, **103(1)**, 106(1) to ~~(7)~~ (6), **106B(6)**, 107, 107A, ~~131~~, **135 to 135G**, **138(1)(c)**, and 142 do not apply ~~to~~ in respect of associations.
- (9) **Section 103(3)** applies ~~to~~ in respect of an association as if section 145(3) were in section 103.

- (10) ~~If an association has only 2 members, **section 106B(4)** applies in respect of the association as if the reference to 3 members were to 2 members.~~

43 **New sections 147A and 147B inserted**

After section 147, insert:

- 147A Meetings may be held using audio, audio and visual, or electronic communication** 5
- The rules of a registered society or branch or of a credit union may (without limitation) provide for meetings to be held using audio, audio and visual, or electronic communication.
- 147B Postal, electronic, and proxy voting** 10
- (1) ~~This section applies to any matter that is to be determined by a vote of members of a registered society or branch or of a credit union~~
- (2) ~~The rules of the registered society or branch or of the credit union—~~
- (a) ~~may (without limitation) permit voting in 1 or more of the following ways:~~ 15
- (i) ~~by post;~~
- (ii) ~~by electronic means (for example, by email or by the use of an Internet site);~~
- (iii) ~~by proxy; and~~
- (b) ~~must set out the procedures to be followed in relation to any voting permitted under **paragraph (a)**.~~ 20
- (3) ~~Rules under this section that permit voting by post or electronic means may permit or require votes cast by post or electronic means to be cast in advance of any meeting at which the matter in question is to be determined.~~
- (4) ~~**Subsection (3)** applies despite any enactment (for example, sections 64(3), 65(1)(a), and 82(1) of this Act) that requires a resolution to be passed, or a matter to be otherwise determined, at a meeting.~~ 25

44 **Section 151 amended (Appeals)**

In section 151(3), after “Registrar”, insert “under Part 2”.

45 **Section 152 amended (Regulations)** 30

After section 152(c), insert:

- (ca) ~~prescribing matters as referred to in **section 135A, 135B(a) or (c), 135D(e), 135B, 140(4), 140A(1)(a) or (2), 140I(1), 140J(1) or (1A), or 140K(2)(a)**:~~

- 46 Section 154 amended (Recovery of fines, etc, imposed on society, branch, or credit union)**
- (1) In the heading to section 154, replace “, branch, or credit union” with “or branch”.
- (2) In section 154, replace “or branch, or credit union” with “or branch”. 5
- (3) In section 154, replace “, branch, or credit union” with “or branch” in each place.
- 47 Section 155 amended (Status of trustees and officers for purposes of Crimes Act 1961)**
- In section 155(1), delete “or credit union”. 10
- 48 Section 156 amended (Liability of officers and of members of committee on commission of offence)**
- In section 156, delete “or credit union” in each place.
- 49 Section 157 amended (Institution of legal proceedings by or against society or branch or credit union)** 15
- (1) In the heading to section 157, delete “or credit union”.
- (2) In section 157, delete “or credit union” in each place.
- (3) In section 157(2), delete “or (credit union)”.
- 50 New Schedule 1AA inserted**
- Insert the **Schedule 1AA** set out in the **Schedule** of this Act as the first schedule to appear after the last section of the principal Act. 20
- 51 Schedule 4 amended**
- (1) In Schedule 4, replace ~~clause item~~ 6 with:
- 6 The appointment and removal of a committee of management (by whatever name known) and of other officers. 25
- (2) ~~In Schedule 4, replace clause 9 with:~~
- 9 ~~The mode and circumstances, expressed either generally or specifically, in which loans by the credit union are to be made and repaid, including any special provision for the insurance of persons to whom loans are made.~~
- (2) In Schedule 4, after item 9, insert: 30
- 9A ~~Whether or not the credit union is to make loans of the kind referred to in **section 110(1)(b)** and, if it is, the mode and circumstances, expressed either generally or specifically, in which the loans are to be made and repaid, including any special provision for the insurance of any person to whom a loan is made.~~
- (3) In Schedule 4, after ~~clause item~~ 16, insert: 35

- 16A Provision about when, and by whom, a request may be made under **section 140(2)(b)**.
- (4) In Schedule 4, replace ~~clause item~~ 17 with:
- 17 Provision requiring, on the credit union’s winding-up under **section 137A** or 138 or on or before its removal from the register under **section 140**, any assets remaining after the payment of debts, repayment of share capital, and discharge of other liabilities—
- (a) to be transferred to another credit union, or an association of credit unions; or
- (b) if not so transferred, to be applied for charitable purposes.

51A Schedule 5 amended

In the Schedule 5 heading, replace “, societies, or bodies of persons exempt from registration” with “exempt from incorporation”.

Part 2**Consequential amendments****51B Amendment to Administration Act 1969**

- (1) This section amends the Administration Act 1969.
- (2) In section 65(1), definition of **society**, replace “union registered or deemed to be registered” with “union registered, deemed to be registered, or incorporated”.

52 Amendment to Insurance (Prudential Supervision) Act 2010

- (1) This section amends the Insurance (Prudential Supervision) Act 2010.
- (2) Replace section 11 with:

11 Application of Act to friendly societies

This Act applies to a friendly society (as that term is defined in section 2 of the Friendly Societies and Credit Unions Act 1982) as if the friendly society were a body corporate.

53 Amendment to Financial Reporting Act 2013

- (1) This section amends the Financial Reporting Act 2013.
- (2) In section 5(1), definition of **entity**, paragraph (f), replace “society, a branch of a society, or a credit union” with “society or a branch of a society”.

54 Amendment to Income Tax Act 2007

- (1) This section amends the Income Tax Act 2007.

- (2) In section YA 1, definition of **friendly society**, replace “or treated as registered” with “, treated as registered, or incorporated”.

55 Amendments to New Zealand Business Number Act 2016

- (1) This section amends the New Zealand Business Number Act 2016.
- (2) In section 5, definition of **entity**, paragraph (g), replace “society, a branch of a society, or a credit union” with “society or a branch of a society”. 5
- (3) In Schedule 2, item relating to friendly societies, branches of friendly societies, and credit unions, replace “or deemed to be registered” with “, deemed to be registered, or incorporated”.

56 Amendment to Property Law Act 2007 10

- (1) This section amends the Property Law Act 2007.
- (2) In section 4, definition of **Registrar**, paragraph (c)(iv), after “registered”, insert “or incorporated”.

57 Amendment to Receiverships Act 1993

- (1) This section amends the Receiverships Act 1993. 15
- (2) In section 2(1), definition of **Registrar**, paragraph (d), after “registered”, insert “or incorporated”.

58 Amendment to Social Security Act 1964

- (1) This section amends the Social Security Act 1964.
- (2) In section 82(7)(c), replace “registered” with “incorporated”. 20

Schedule
New Schedule 1AA inserted

s 50

Schedule 1AA
Transitional, savings, and related provisions

5

s 2A

Part 1
Provisions relating to Friendly Societies and Credit Unions
(Regulatory Improvements) Amendment Act 2017

1	Interpretation	10
(1)	In this Act <u>Part</u> ,—	
	application period means the period of 6 months beginning with the main commencement date	
	existing credit union means a credit union, <u>or an association of credit unions</u> , that is registered under Part 3 immediately before the main commencement date	15
	incorporation provision means the amendments to enactments made by the Friendly Societies and Credit Unions (Regulatory Improvements) Amendment Act 2017, except the amendments made by the following:	
	(a) sections 4(4), (6), and (7), 5, 6(1), 6A, 6B, 6C, 6D, 9A, 9B, and 50 of that Act:	20
	(b) the Schedule of that Act	
	instrument includes (without limitation),—	
	(a) <u>whether in writing or not, contracts, agreements, guarantees, conveyances, deeds, leases, grants, licences, exemptions, approvals, securities, financial products, undertakings, consents, waivers, and notices:</u>	25
	(b) <u>instruments that are made under, or for the purposes of, enactments</u>	
	liabilities means liabilities, debts, charges, duties, and obligations, whether present or future, whether actual or contingent, and whether payable in, or to be observed or performed in, New Zealand or elsewhere	30
	main commencement date means the date on which the <u>main regulatory systems provision</u> Friendly Societies and Credit Unions (Regulatory Improvements) Amendment Act 2017 comes into force	
	main regulatory systems provision means sections 4, 6, 11 to 42, 44 to 49, and 51 to 53 of the Friendly Societies and Credit Unions (Regulatory Improvements) Amendment Act 2017	35

	property means real or personal property in New Zealand or elsewhere, and includes—	
	(a) choses in action and money; and	
	(b) goodwill; and	
	(c) rights, interests, and claims in or to property, whether arising from or accruing under, or created or evidenced by, or the subject of, an instrument or otherwise, and whether liquidated or unliquidated, actual, contingent, or prospective	5
	relevant post-commencement date , in relation to an existing credit union, means the date of incorporation set out in the existing credit union's certificate of incorporation in accordance with clause 3(6)	10
	rights means rights, powers, privileges, and immunities, whether actual, contingent, or prospective, and whether arising or conferred in New Zealand or elsewhere;	
	specified date means the date specified under subclause (2) .	15
(2)	<u>The Governor-General may, by Order in Council, specify a date as the specified date for the purposes of this Part.</u>	
2	Application of main regulatory systems incorporation provision to existing credit unions	
	Except as provided for in clause 3 , the main regulatory systems incorporation provision applies to an existing credit union—	20
	(a) only if a certificate of incorporation is issued for the existing credit union on an application for its incorporation sent to the Registrar in accordance with clause 3 ; and	
	(b) only on and after the relevant post-commencement date.	25
3	Existing credit unions to apply for incorporation	
(1)	An existing credit union must, during the application period, send to the Registrar an application for its incorporation.	
(2)	The application must be made on behalf of the existing credit union by, as the case may be,—	30
	(a) the members of its committee of management acting under section 100 as replaced by the main regulatory systems provision; or	
	(b) at least 2 of its members acting under section 143(2) as replaced by the main regulatory systems provision.	
(3)	For the purposes of subclause (2)(a) , it does not matter if the number of the members of the committee of management is less than the minimum number of applicants that would normally be required.	35

- (2) The application must be made on behalf of the existing credit union by its committee of management.
- (3) The application must—
- (a) be signed on behalf of the committee of management; and
- (b) comply with, as the case may be,—
- (i) **section 100A(1)(b) to (d) and (2)** as inserted by the incorporation provision; or
- (ii) **section 145(2)** as replaced by the incorporation provision.
- (3A) The application (including the contents required by **section 100A(1)(b) to (d) or 145(2)**, as the case may be)—
- (a) must be approved by a resolution of a majority of the existing credit union’s members entitled to vote and voting on the matter; and
- (b) once it is so approved, may be sent to the Registrar despite—
- (i) section 104(3) (as it continues to apply to the existing credit union after the main commencement date); or
- (ii) any provision of the existing credit union’s rules.
- (4) ~~The application is to be dealt with in accordance with this Act as amended by the main regulatory systems provision.~~
- (4) Once the application is sent to the Registrar, it is to be—
- (a) treated as an application under, as the case may be, **section 100 or 143(2)** as replaced by the incorporation provision; and
- (b) then dealt with in accordance with this Act as amended by the incorporation provision.
- (5) For the purposes of **section 100B(1)(d)** (if applicable), it is to be assumed that the existing credit union’s name immediately before the main commencement date complies with section 103.
- (6) If a certificate of incorporation is issued on the application, the date of incorporation set out in the certificate ~~is to~~ must be—
- (a) ~~the first day of the existing credit union’s first financial year to begin after the end of the application period specified date;~~ or
- (b) if later, the date immediately after the date on which the certificate is issued.
- (7) At the beginning of the relevant post-commencement date, the rules registered by the Registrar under **section 100B(2)(c) or 146(2)(c)** become the existing credit union’s rules and its trust is terminated.
- 4 Failure of existing credit union to apply for incorporation, etc**
- (1) **Subclause (2)** applies if an existing credit union fails to send to the Registrar an application for its incorporation in accordance with **clause 3**.

- (2) The existing credit union’s registration is cancelled at the end of the application period.
- (3) **Subclause (4) or (4A)** (as the case requires) applies if—
- (a) an existing credit union sends an application to the Registrar for its incorporation in accordance with **clause 3**; and
 - (b) the Registrar refuses to act under **section 100B(2) or 146(2)**; and
 - (c) ~~the Registrar’s refusal is not appealed against under **section 100B(6) or 146(6)** or, if it is appealed against under **section 100B(6) or 146(6)**, it is not overruled.~~
- (4) ~~The existing credit union’s registration is cancelled at the end of the application period or, if later,—~~
- (a) ~~the end of the period of 3 months referred to in **section 100B(6) or 146(6)**, if there is no appeal; or~~
 - (b) ~~the end of the day on which the appeal is finally determined, if there is an appeal.~~
- (4) If the Registrar’s refusal is not appealed against under **section 100B(6) or 146(6)**, the existing credit union’s registration is cancelled at—
- (a) the end of the application period; or
 - (b) if later, the end of the period of 3 months referred to in **section 100B(6) or 146(6)**.
- (4A) If the Registrar’s refusal is appealed against under **section 100B(6) or 146(6)** but the appeal is discontinued or the refusal is not overruled, the existing credit union’s registration is cancelled at—
- (a) the end of the application period; or
 - (b) if later, the end of the day on which the appeal is discontinued or finally determined.
- (5) The cancellation of an existing credit union’s registration by this clause is to be treated as a cancellation by the Registrar under section 140 (as in force before its replacement by the ~~main regulatory systems~~ incorporation provision) and this Act and all other relevant enactments apply accordingly (disregarding the ~~main regulatory systems~~ incorporation provision), except that sections 92(2) to (6) and 151 of this Act do not apply to the cancellation.
- 5 Vesting of existing credit union’s property, rights, and liabilities in body corporate, etc**
- (1) This clause and **clauses 6 to 12** apply to an existing credit union for which a certificate of incorporation is issued on an application for its incorporation that is sent to the Registrar in accordance with **clause 3**.

- (2) At the beginning of the relevant post-commencement date, the property, rights, and liabilities of the existing credit union, and of its trustees, belong to, and vest in, the body corporate established by **section 100B(3) or 146(3)**.
- (3) **Clauses 6 to 11** do not limit the generality of **subclause (2)** of this clause.
- 6 Status of contracts and other instruments** 5
- (1) ~~Subclause (2)~~ applies to ~~contracts, agreements, guarantees, conveyances, deeds, leases, licences, financial products, and other instruments, undertakings, and notices (whether in writing or not), entered into by, made with, given to or by, or addressed to the existing credit union (whether alone or with another person) before the relevant post-commencement date and subsisting immediately before that date.~~ 10
- (2) ~~The instruments to which this subclause applies are, on and after the relevant post-commencement date, binding on, and enforceable by, against, or in favour of, the existing credit union as the body corporate as if the body corporate had been the person by whom they were entered into, with whom they were made, or to or by whom they were given or addressed.~~ 15
- (1) This clause applies to an instrument that—
- (a) is entered into by the existing credit union or its trustees (whether alone or with another person) before the relevant post-commencement date;
and 20
- (b) is subsisting immediately before the relevant post-commencement date.
- (2) On and after the relevant post-commencement date, the instrument is binding on, enforceable by, against, or in favour of, or otherwise applicable to the existing credit union as the body corporate as if the body corporate had been the person who entered into the instrument before the relevant post-commencement date. 25
- (3) ~~A~~ On and after the relevant post-commencement date, a reference (express or implied) to the existing credit union or its trustees in an the instrument made, given, passed, or executed before the relevant post-commencement date is a reference to the existing credit union as the body corporate on and after that date. 30
- (4) In this clause, references to an instrument being entered into by a person include the instrument—
- (a) being made by or with the person; or
- (b) being issued, or given, to or by the person; or 35
- (c) being addressed to the person; or
- (d) being otherwise applicable to the person.

7	Continuation of legal and other proceedings	
(1)	A proceeding that was pending or that existed by, against, in favour of, or otherwise in relation to, the existing credit union or to which the existing credit union was a party before the relevant post-commencement date must be continued and enforced by, against, in favour of, or otherwise in relation to, the existing credit union as the body corporate or with the body corporate as the party.	5
(1)	<u>This clause applies to a proceeding—</u>	
	<u>(a) that was pending or that existed by, against, in favour of, or otherwise in relation to, the existing credit union before the relevant post-commencement date; or</u>	10
	<u>(b) to which the existing credit union was a party before the relevant post-commencement date.</u>	
(1A)	<u>The proceeding must be continued and enforced by, against, in favour of, or otherwise in relation to, the existing credit union as the body corporate or with the body corporate as the party.</u>	15
(2)	It is not necessary to amend an application, notice, or other document to do so.	
(2A)	<u>In subclause (1), references to the existing credit union include the following:</u>	
	<u>(a) its trustees;</u>	20
	<u>(b) any authorised officer acting under section 157(1);</u>	
	<u>(c) any other person sued, or suing, on behalf of the existing credit union.</u>	
(3)	In subclause (1) this clause , proceeding includes action, arbitration, cause of action, conviction, judgment, liquidation, order, and ruling.	
8	Employees	25
(1)	At the beginning of the relevant post-commencement date, each employee of the existing credit union <u>or its trustees</u> becomes an employee of the existing credit union as the body corporate.	
(2)	For the purposes of an enactment, rule of law, contract, or agreement relating to the employee, the contract of employment of the employee must be treated as unbroken and a period of service with the existing credit union <u>or its trustees</u> before the relevant post-commencement date must be treated as a period of service with the existing credit union as the body corporate.	30
(3)	The terms and conditions of employment of the employee must remain the same as the terms and conditions of his or her employment with the existing credit union <u>or its trustees</u> immediately before the relevant post-commencement date, but they may be varied in the same manner.	35
(4)	The employee is not entitled to receive a payment or benefit by reason only of the change in the employee's employment status under this clause.	

9 Taxes and duties

For the purposes of the Inland Revenue Acts (as that term is defined in section 3 of the Tax Administration Act 1994),—

- (a) the existing credit union as the body corporate is the same person as the existing credit union and its trustees before the relevant post-commencement date; and 5
- (b) a transaction entered into by, or ~~as~~ an act of, the existing credit union or its trustees at a time (the **relevant time**) before the relevant post-commencement date must be treated—
 - (i) as having been entered into by, or as an act of, the existing credit union as the body corporate; and 10
 - (ii) as having been entered into, or as performed by, the existing credit union as the body corporate at the relevant time.

10 Other registers

- (1) ~~No~~ ~~The Registrar-General of Land, nor the Registrar of Deeds, or any other~~ person charged with keeping any books or registers; is not obliged to make any changes to those books or registers or in any other documents solely because any property of the existing credit union or its trustees belongs to, and vests in, the body corporate at the beginning of the relevant post-commencement date. 15
- (2) The presentation to a Registrar or any other person of a specified instrument is, in the absence of evidence to the contrary, sufficient evidence that the property to which the instrument relates belongs to, and is vested in, the existing credit union as the body corporate. 20
- (3) In **subclause (2)**, a **specified instrument** is an instrument that—
 - (a) is executed or purports to be executed by the existing credit union as the body corporate; and 25
 - (b) relates to any property of the existing credit union or its trustees before the relevant post-commencement date; and
 - (c) states that the property belongs to, and is vested in, the existing credit union as the body corporate by virtue of this ~~schedule~~ Part. 30
- (4) **Subclause (5)** applies if—
 - (a) any financial products issued by a person (**A**) or any rights or interests in property of a person (**A**) belong to, and vest in, the body corporate at the beginning of the relevant post-commencement date; and
 - (b) a certificate signed on behalf of the committee of management of the existing credit union as the body corporate is presented to A, stating that those products, rights, or interests have become the property of the existing credit union as the body corporate. 35

- (5) Despite **subclauses (1) and (2)** and any other enactment or rule of law, A, on presentation of the certificate, must register the body corporate as the holder of the financial products or as the person entitled to the rights or interests.
- (6) Except as provided in this clause, nothing in this ~~schedule Part~~ derogates from the provisions of the Land Transfer Act 1952 or the Land Transfer Act 2017. 5
- 11 Effect of clauses 5 to 10 and things done under them**
- ~~Nothing in **clauses 5 to 10** and nothing done under them—~~
- (a) ~~places the existing credit union or any other person in breach of contract or confidence or makes any of them liable for a civil wrong; or~~
- (b) ~~entitles a person to terminate or cancel a contract or arrangement or to accelerate the performance of an obligation; or~~ 10
- (c) ~~places the existing credit union or any other person in breach of an enactment, a rule of law, or a provision of a contract that prohibits, restricts, or regulates the assignment or transfer of property or the disclosure of information; or~~ 15
- (d) ~~releases a surety from an obligation; or~~
- (e) ~~invalidates or discharges a contract or security.~~
- 11 Effect of incorporation, etc**
- ~~Neither the incorporation of the existing credit union nor anything in or effected by, or done under, **clauses 5 to 10**—~~ 20
- (a) ~~places any person in breach of, or otherwise in default under, an enactment, an instrument, a confidence, a trust, or any other rule of law or equity, or makes any person liable for a civil wrong; or~~
- (b) ~~entitles any person—~~
- (i) ~~to require the payment or performance of a liability not otherwise arising for payment or performance; or~~ 25
- (ii) ~~to exercise a right not otherwise becoming exercisable; or~~
- (c) ~~invalidates or discharges an instrument or any provision of an instrument; or~~
- (d) ~~releases a surety from a liability.~~ 30
- 12 Termination of security provided under section 114**
- (1) Despite **clauses 5(2) and 6 to 11**, any security provided under section 114 before the relevant post-commencement date terminates at the beginning of that date.
- (2) **Subclause (1)** does not prevent the body corporate from enforcing the security in relation to any failure or other event that occurs before the relevant post-commencement date. 35

**Friendly Societies and Credit Unions (Regulatory
Improvements) Amendment Bill**

Legislative history

13 April 2017

7 June 2017

Introduction (Bill 253–1)

First reading and referral to Finance and Expenditure Committee

Wellington, New Zealand:

Published under the authority of the House of Representatives—2018