

1994 BILL 37

Second Session, 23rd Legislature, 43 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 37

CREDIT UNION AMENDMENT ACT, 1994

MR. RENNER

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

*Bill 37
Mr. Renner*

BILL 37

1994

CREDIT UNION AMENDMENT ACT, 1994

(Assented to , 1994)

HER MAJESTY, by and with the advice and consent of the
Legislative Assembly of Alberta, enacts as follows:

Amends SA
1989 cC-31.1

1 The Credit Union Act is amended by this Act.

2 Section 1(1) is amended

(a) in clause (p) by adding "Division 1 of" before "Part 15";

*(b) in clause (ii) by adding "who becomes a member as a
result of an amalgamation or arrangement under Part 15
and any person" after "includes any person".*

3 Section 59 is amended

*(a) in subsection (1) by striking out "The" and substituting
"Subject to subsection (4), the";*

*(b) in subsection (3) by striking out "Where" and substituting
"Subject to subsection (4), where";*

(c) by adding the following after subsection (3):

(4) If the credit union has received the prior written
approval of the Minister (whether before or after the
adjourned meeting) to hold a reassembled meeting held

Explanatory Notes

1 Amends chapter C-31.1 of the Statutes of Alberta, 1989.

2 Section 1(1) presently reads in part:

1(1) In this Act,

(p) "credit union" means an existing credit union or a body of persons incorporated under Division 2 of Part 3 or continued as an incorporated credit union or incorporated under Part 15;

(ii) "member", where used in relation to a credit union, means a person, including a minor, who, whether alone or jointly with others, complies with section 61 and otherwise qualifies for membership in it under its by-laws, and includes any person having any rights or obligations relative to the credit union that derive through a member;

3 Section 59 presently reads:

59(1) The quorum at a general meeting is the lesser of

(a) 50 members, and

(b) 10% of the number of members entitled to vote at that meeting, with a minimum of 10,

or such higher number or percentage or combination of number and percentage as is specified in the credit union's by-laws.

(2) Unless the by-laws otherwise provide, where a quorum is present at the opening of a general meeting, the members present may

pursuant to an adjournment under subsection (3) with the reduced quorum specified by the Minister, the members present may proceed at that meeting with that reduced quorum, for which purpose subsection (2) applies.

4 Section 61 is amended

(a) by repealing subsection (1) and substituting the following:

Qualifications
and
restrictions

61(1) A person is not qualified to be or to remain a member unless he holds at least the minimum number of common shares issued by the credit union that is required by subsection (6).

(b) by adding the following after subsection (5):

(6) The minimum number of common shares referred to in subsection (1) is

(a) 25, or such higher number as is provided in the by-laws,

(b) in the case of a minor or a person who has attained the age of 65 years, such lower number, being not less than 1, as is provided in the by-laws, or

(c) in the case of a person who became a member as a result of an amalgamation or arrangement under Part 15 with an initial common shareholding that is less than that required by clause (a) or (b), the number initially allocated to that person.

5 Section 65 is amended

(a) in subsection (2) by repealing clauses (d) and (e) and substituting the following:

(d) if he is a professional adviser to the credit union;

(e) subject to subsection (5), if he is a director or officer of another credit union or of the Corporation;

(b) in subsection (5) by striking out "(d)" and substituting "(e)".

6 Section 74(1)(d) is amended by striking out "any use of retained earnings that contravenes section 111 or".

proceed with the business of the meeting notwithstanding that a quorum is not present throughout the meeting.

(3) Where a quorum is not present at the opening of a general meeting, the members present may adjourn the meeting but may not transact any other business.

4 Minimum common share holding. Section 61(1) presently reads:

61(1) A person is not qualified to be or to remain a member unless he holds at least 25 common shares issued by the credit union or, in the case of a minor or a person who has attained the age of 65 years, such lower number of common shares, being not less than 1, as is provided in the by-laws.

5 Section 65 presently reads in part:

(2) A person is not qualified to be a director of a credit union

(d) subject to subsection (5), if he is a director or officer of the Corporation or of another credit union;

(e) if he is a professional adviser to a credit union;

(5) The Minister may approve an exemption from the application of subsection (2)(c) and (d) in respect of a person's employment with, or his service as a director or officer of, the Corporation.

6 Section 74(1) presently reads in part:

Liability of
directors for
delegated
share
acquisitions
and
redemptions

7 *The following is added after section 74:*

74.1(1) Where the board is authorized to and does delegate the power pursuant to section 67 to authorize the acquisition or redemption of common shares under section 110 and the delegate acquires or redeems common shares on the credit union's behalf in contravention of that section, all the directors have the joint and several liability specified in section 74(1).

(2) Section 74(2) applies with respect to this section.

(3) Section 74(3) applies with respect to this section except that the reference to clauses (a) to (f) of section 74(1) is deemed deleted.

(4) A director is not liable under this section if

(a) the delegation referred to in subsection (1) is established by a resolution of the board which also establishes policies and procedures designed to ensure that section 110 is complied with, that the delegate is provided with all the information needed to make lawful decisions on the acquisitions and redemptions and that the delegate provides adequate reporting to the board on such transactions, or

(b) the delegate relied in good faith on financial statements or an opinion or report referred to in section 74(4).

(5) An action to enforce any liability imposed by this section may not be commenced after 2 years from the acquisition or redemption.

(6) A resolution referred to in subsection (4)(a) expires on the anniversary of its becoming effective unless the board has previously passed a resolution re-validating it, and any re-validating resolution similarly expires after one year unless so re-validated.

8 *Sections 103(3) and 104(1) are amended*

(a) *in clauses (a) by striking out "10% of the credit union's members' equity" and substituting "the percentage of the credit union's total capital prescribed for the purposes of this clause";*

74(1) Where the board of a credit union passes a resolution authorizing

(d) any use of retained earnings that contravenes section 111 or a payment of a dividend or patronage rebate contrary to section 111(3),

7 Extension of section 74 to delegated share transactions.

8 Sections 103 and 104 presently read in part:

103(3) A credit union shall not, without the prior approval of the Corporation,

(b) in clauses (b) by striking out "20% of its members' equity" and substituting "the percentage of its total capital prescribed for the purposes of this clause".

9 Section 103(5) is re-enacted without amendment.

10 The following is added after section 106(10):

(11) Where the prescribed circumstances apply, a credit union shall, before accepting any payment for an issue to a person of any common shares, disclose the prescribed information in writing to that person.

- (a) *make an acquisition of shares in any 1 subsidiary in an amount exceeding 10% of the credit union's members' equity as at the end of the fiscal year preceding that in which the acquisition would take place,*
- (b) *make aggregate share acquisitions in all its subsidiaries in an amount exceeding 20% of its members' equity as at the end of that fiscal year, or*
- (c) *add to existing share investments if either of the limits set out in clauses (a) and (b) would be exceeded by the aggregate share investments.*

104(1) A credit union or its subsidiary shall not, without the prior approval of the Corporation, acquire any shares if the acquisition would result in the credit union's owning beneficially, directly or indirectly, voting shares

- (a) *issued by any 1 corporation,*
 - (i) *in excess of 10% of that corporation's total voting shares, or*
 - (ii) *having an aggregate value in excess of 10% of the credit union's members' equity as at the end of the fiscal year preceding that in which the acquisition would take place,*

or

- (b) *issued by all corporations that following the acquisition are affiliates of the credit union, having an aggregate value in excess of 20% of its members' equity as at the end of that fiscal year.*

9 Section 103(5) presently reads:

(5) Subsection (1) does not apply if the credit union is not and never has been in compliance with section 108.

Although the wording remains unchanged, the meaning has altered substantially because of the altered requirements of the referenced section 108. Under section 243(5) the original section 103(5) (referencing the original section 108) had the potential of applying at any time after October 31, 1989. Section 243(5) is repealed and replaced (later in the Bill) to reflect the commencement of the new section 108 (and consequentially the new meaning, albeit that the wording is the same, of section 103(5)). A single provision cannot come into force more than once. Hence the need for re-enactment.

10 Disclosure prior to payment for common share issue, and equality of rights attaching to common shares.

(12) Subject to section 111(5), the rights attaching to all common shares are equal.

11 Section 108 is repealed and the following is substituted:

Adequacy of
capital

108 A credit union shall maintain adequate capital, as prescribed.

12 Section 110 is amended

(a) in subsection (1) by striking out “, by resolution of the board,”;

(b) in subsection (2) by repealing clause (c) and substituting the following:

(c) if the capital requirements established under section 108 are not being met or if the redemption would result in their not being met.

(c) by adding the following after subsection (7):

(8) This section does not apply with respect to a cancellation of common shares under section 188.2.

13 Section 111 is amended

(a) by repealing subsections (1) and (2);

(b) by adding the following after subsection (4):

(5) A credit union may, if a by-law made by special resolution so provides, pay a different dividend on surplus common shareholdings than on minimum common shareholdings.

(6) In subsection (5),

(a) “minimum common shareholdings” means, with respect to a specific member, the minimum number of common shares that that member is required by section 61(1) and (6) to have in order to obtain or retain membership;

11 Section 108 presently reads:

108 A credit union shall maintain an aggregate of members' equity in an amount that is not less than 5% of its assets.

12 Section 110 presently reads in part:

110(1) Subject to this section and any further restrictions prescribed or set out in its by-laws, a credit union, by resolution of the board, may at any time acquire common shares issued by it for redemption.

(2) A credit union shall not acquire any common shares issued by it for redemption or redeem or cancel them

(a) if there are reasonable grounds for believing that the credit union is or would thereby become insolvent,

(b) if the redemption would cause the aggregate number of common shares issued and outstanding to be less than 90% of the aggregate number of common shares issued and outstanding at the end of the previous fiscal year, or

(c) if the redemption would result in its members' equity being reduced to less than 5% of its assets or if that equity is already less than that amount.

13 Section 111(1) and (2) presently read:

111(1) A credit union shall not use its retained earnings except

(a) to pay dividends on its shares, or

(b) to make appropriations into any reserve fund that it considers fit.

(2) A credit union shall ensure that payments or appropriations referred to in subsection (1) are treated in its financial statements as reductions of its retained earnings.

Also, differential dividends on minimum and surplus share holdings.

- (b) "surplus common shareholdings" means the number of common shares held by a member that exceeds his minimum common shareholding.

14 Section 112 is amended by striking out "or" at the end of clause (b), by adding ", or" at the end of clause (c) and by adding the following after clause (c):

- (d) a member of another credit union where
 - (i) the deposit is of a particular type or classification that the credit union does and the other credit union does not accept,
 - (ii) the credit union has passed a special resolution authorizing the acceptance by it of such deposits from members of the other credit union, and
 - (iii) the other credit union has passed a special resolution authorizing its members to place such deposits with the credit union.

15 Section 134 is amended by striking out "or" at the end of clause (a), by adding ", or" at the end of clause (b) and by adding the following after clause (b):

- (c) in the case of a loan, the loan is to a member of another credit union where
 - (i) the loan is of a particular type or classification that the credit union does and the other credit union does not make,
 - (ii) the credit union has passed a special resolution authorizing the making by it of such loans to members of the other credit union, and
 - (iii) the other credit union has passed a special resolution authorizing its members to accept such loans from the credit union.

16 Section 135 is amended

- (a) in subsection (8)(b) by striking out "prescribed amount" and substituting "amount approved by the Corporation for that credit union for the purposes of this subsection";

14 Section 112 presently reads:

112 A credit union shall not accept a deposit from an individual who is not a member, except from

- (a) a trustee,*
- (b) a legal representative, guardian or other representative of an individual who is or was a member, or*
- (c) an individual who is contemporaneously making an application for membership.*

15 Section 134 presently reads:

134 A credit union shall not make a loan to, or guarantee the obligations of, an individual who is not a member except where

- (a) that individual is a person referred to in section 112(a), (b) or (c), or*
- (b) in the case of a loan, the loan falls within section 138.*

16 Section 135 presently reads in part:

(8) A credit union shall not make a loan to, or guarantee the obligations of, any of its employees unless the loan or guarantee

- (a) has the prior authorization of its board, or*

(b) in subsection (10) by adding “or approved” after “limit prescribed”.

17 Section 154(1) is amended by striking out “and any regulations made under section 226(b)”.

18 Section 165(2) is amended by striking out “and (3)” and substituting “, (3) and (4)”.

19 Section 170(1) is amended by adding the following after clause (a):

(a.1) the references in sections 103(3) and 104(1)

(i) in clauses (a) to the percentage of the credit union’s total capital prescribed are to be construed as references to 10% of Central’s members’ equity, and

(ii) in clauses (b) to the percentage of the credit union’s total capital prescribed are to be construed as references to 20% of Central’s members’ equity,

20 Section 174(7) is amended by adding “and the reference in subsection (8)(b) to the amount approved by the Corporation for the credit union shall be construed as a reference to the amount prescribed for the purposes of this subsection” after “to this section”.

21 Section 178(e) is repealed and the following is substituted:

(e) the credit union is not meeting the capital requirements established under section 108,

22 The heading to Part 15 is repealed and the following is substituted:

(b) does not exceed the prescribed amount.

(10) The limit prescribed by reference to subsection (2)(b), (8)(b) or (9) must not exceed that prescribed for the purposes of section 132(2)(a).

17 Section 154(1) presently reads:

154(1) Notwithstanding any law except this section and any regulations made under section 226(b), the Corporation guarantees the repayment of all deposits made with credit unions, in accordance with this section.

18 Sections 165(2) and 65(4) presently read respectively:

165(2) Section 65(1) and (3) apply in relation to Central.

65(4) Three-quarters of the directors must at all times be ordinarily resident in Alberta.

19 Section 170(1) presently reads:

170(1) Sections 98, 99, 100, 101(1) to (3), 102, 103(1) to (4) and 104 apply in relation to Central except that

(a) references therein to Division 2 of Part 8 are to be construed as including references to this section and section 171,

(b) the reference in section 103(4) to section 46 is to be construed as also including a reference to section 167(2), and

(c) the reference in section 101(1)(g) to 2% is to be construed as 7%.

20 Section 174(7) presently reads:

(7) Section 135 applies in relation to Central, except that the reference in subsection (2)(c) thereof to Part 11 shall be construed as a reference to this section.

21 Section 178 presently reads in part:

178 For the purposes of this Part, a credit union is in need of assistance where

(e) the credit union is not maintaining the aggregate members' equity at the percentage of its assets required by section 108,

22 The heading to Part 15 presently reads:

AMALGAMATIONS

AMALGAMATIONS AND ARRANGEMENTS

Division 1 Amalgamations

23 *Section 184 is amended by striking out “Part” and substituting “Division”.*

24 *Section 185 is amended*

(a) *in subsection (2) by striking out “The” and substituting “Subject to subsection (6.1), the”;*

(b) *in subsection (6)(b) by striking out “Part” and substituting “Division”;*

(c) *by adding the following after subsection (6):*

(6.1) The Corporation may exempt a credit union from the requirements of subsection (2) if the assets of that credit union exceed 10 times the value of the assets

(a) of the other amalgamating credit union, or

(b) if there are 2 or more other amalgamating credit unions, of all of those others combined,

based on the latest reports provided to the Corporation under section 84(1).

25 *The following is added after section 188:*

Division 2 Arrangements

Arrangements
for credit
union's assets,
etc. to be
acquired by
another

188.1(1) Subject to this Division, a credit union that is going to continue to operate (in this Division called the “acquiring credit union”) may enter into an arrangement (in this Division called an “arrangement”) with another credit union that it is proposed ultimately to liquidate and dissolve (in this Division called the “dissolving credit union”) whereby the results set out in section 188.2 will ultimately be accomplished.

23 Section 184 presently reads:

184 Subject to and in accordance with this Part, 2 or more credit unions may enter into a voluntary amalgamation and continue as 1 credit union.

24 Section 185 presently reads in part:

(2) The board of each amalgamating credit union must submit the amalgamation agreement to a general meeting of the credit union for approval by special resolution, and the notice of the general meeting must include or be accompanied by a summary or copy of the amalgamation agreement.

(6) The Corporation shall approve the amalgamation unless it is satisfied that

(b) this Part has not been complied with, or

25 Arrangements for acquisition of dissolving credit union's assets, liabilities, etc. by another credit union.

(2) Credit unions that wish to enter into an arrangement must apply to the Corporation for a recommendation of the proposed arrangement to the Minister.

(3) The Corporation may recommend the proposed arrangement to the Minister if

- (a) the credit unions have entered into, and provided the Corporation with a certified copy of, a written agreement (in this Division called "the agreement") whereby the acquiring credit union will acquire all or substantially all of the assets and will assume all or substantially all of the liabilities and obligations of the dissolving credit union (including liability for deposits, with interest, at their face value), with those items that are being so acquired or in respect of which liability is being assumed being specifically itemized in the agreement,
 - (b) the arrangement, including the agreement, has been approved by special resolution of the dissolving credit union and by resolution of the board of the acquiring credit union,
 - (c) in the opinion of the Corporation, the arrangement will not be contrary to the interests of the members or creditors of the dissolving credit union or the acquiring credit union, and
 - (d) the Corporation provides the Minister with copies of the agreement, certified copies of the resolutions referred to in clause (b) and any other information that is material to the proposed arrangement or that requires changes to existing registered information.
- (4) The agreement may authorize the boards of the acquiring and dissolving credit unions to make any amendments to the arrangement, including the agreement, that do not affect the substance of the arrangement, in which case any such amendments from that point become part of the arrangement.

Certificate of
approval

188.2(1) The Minister may

- (a) approve the arrangement, as recommended by the Corporation, by issuing a certificate approving the arrangement (in this Division called the "certificate of approval"), or
- (b) refuse to approve the arrangement.

(2) On the coming into effect of the certificate of approval,

- (a) the arrangement becomes effective and is binding on the acquiring and dissolving credit unions, their members and all other persons;**
- (b) the assets, liabilities and obligations that the acquiring credit union has agreed to acquire or assume under the agreement become the assets, liabilities and obligations of the acquiring credit union and the dissolving credit union ceases to hold those assets and to be liable for those liabilities and obligations;**
- (c) the persons who are members of the dissolving credit union cease to be members of that credit union and become members of the acquiring credit union;**
- (d) the customers of the dissolving credit union become customers of the acquiring credit union on the same terms and conditions;**
- (e) no rights of a creditor or customer of the dissolving credit union are to be treated as prejudiced by the arrangement.**

(3) On the coming into effect of the certificate of approval, the following must be done within the time periods specified in the certificate of approval:

- (a) the dissolving credit union shall cancel all of its issued shares, other than shares continued by section 107(2), and the acquiring credit union shall issue, to each person whose shares were cancelled, shares**
 - (i) of the same description as those cancelled shares,**
 - (ii) having the same priority relative to acquiring credit union shares of other descriptions as those cancelled shares had, and**
 - (iii) subject to subclauses (i) and (ii), according to the conversion formula specified in the agreement;**
- (b) if applicable, shares continued by section 107(2) must be dealt with in the manner prescribed by the Minister;**

- (c) the dissolving credit union shall take all necessary steps to have itself liquidated and dissolved under Part 16;
- (d) the acquiring credit union shall give each person who becomes a member of it under the arrangement and each other person whose deposit with the dissolving credit union is being assumed by the acquiring credit union notice under section 62(2) in the form prescribed by the Minister.

Register

188.3 When the Minister issues a certificate of approval, the Minister shall

- (a) enter into the register
 - (i) the certificate of approval,
 - (ii) the agreement,
 - (iii) the resolutions referred to in section 188.1(3)(b), and
 - (iv) any other material documents provided under section 188.1(3)(d),
- and
- (b) amend any other registered information that is necessary to reflect the arrangement.

26 *The heading to Part 17 is amended by adding "REPRESENTATIONS," before "REVIEWS".*

27 *Section 207 is amended*

- (a) *by renumbering it as section 207(1);*
- (b) *in clause (a)*
 - (i) *by adding "207.2(6) or" before "208(1)";*
 - (ii) *by adding "or any determination to be made by the Minister or the Corporation that falls within the scope of section 207.1(1)" after "on a review";*
- (c) *in clause (b)*

26 The heading to Part 17 presently reads:

REVIEWS AND APPEALS

27 Section 207 presently reads:

207 In this Part,

- (a) "decision" means an action of the Minister or the Corporation referred to in section 208(1) or a decision made by a review board under section 209 on a review;*
- (b) "party" means the credit union or Central or, where the decision is one referred to in
 - (i) section 208(1)(a), the person designated,*
 - (ii) section 208(1)(b), the incorporators, or**

- (i) *by renumbering subclause (i) as subclause (i.1) and by adding the following before subclause (i.1):*
 - (i) section 207.1(1)(b), so far as it relates to the application of section 101(2) to a subsidiary of a credit union, that subsidiary,
 - (ii) *in subclause (i.1) by adding “or to be designated” after “designated”;*
 - (iii) *by striking out “or” at the end of subclause (ii) and adding the following after subclause (ii):*
 - (ii.1) section 208(1)(d.1), so far as it relates to the application of section 98(1) or (2) or 104(1) to a subsidiary of a credit union, that subsidiary, or
 - (iv) *by adding “or are liable to be” after “whose rights are”;*
 - (v) *by adding “, and includes a credit union described in subsection (2)” after “may be”;*
- (d) *by adding the following after subsection (1):*
 - (2) Where the Corporation grants or is to consider granting an approval under section 48, any credit union that, in the opinion of the Corporation, is or may be adversely affected by the approval is a party for the purposes of subsection (1)(b).

28 *The following is added after section 207:*

Opportunity to
make repre-
sentations in
advance

207.1(1) Subject to this section, before the Minister or the Corporation, as the case may be, makes any determination

- (a) under any enactment referred to in section 208(1)(a) to (l) respecting the subject-matter of that enactment (whatever the outcome might ultimately transpire to be),
- (b) under section 101(2), 121(1), 127(2) or (3), 131(2), 133(1), 182(1), 187(1) or (3) or 190(1) or (3), respecting an approval under it,
- (c) under section 126(1) respecting the placing of a credit union under supervision,
- (d) under section 131(2) respecting the issuing of a direction,

(iii) section 208(1)(j) involving a subsidiary, that subsidiary and its holding body corporate, or either of them,

whose rights are directly and adversely affected by a decision and, where a review board has reviewed a decision of the Minister or the Corporation, includes the Minister or the Corporation, as the case may be.

28 Affordance of opportunity to make representations in advance of decision generally and following action by supervisor.

- (e) under section 133(1) respecting the establishing of a limit,
- (f) under section 182(1) respecting the placing of a credit union under administration,
- (g) under section 187 respecting the making of an order to amalgamate,
- (h) under section 188.1(3) or 188.2(1) respecting the recommendation or approval of an arrangement, or
- (i) under Part 13, as it incorporates or duplicates the effect in relation to Central of any enactment referred to directly or indirectly in clauses (a) to (h),

the Minister or the Corporation shall advise the party of the intention to make the decision and allow the party a reasonable opportunity to make representations to the Minister or the Corporation, as the case may be, in respect of the matter to which the decision relates.

(2) Where, in the opinion of the Minister or the Corporation, as the case may be, the interests of the party or of the members who constitute the party may be adversely affected by the delay that could be caused by the making of representations, the Minister or the Corporation may make the decision without allowing the party the opportunity to make representations.

(3) Where a particular matter referred to in subsection (1) requires decisions both by the Minister and the Corporation, this section applies only to the decision of the Corporation, but the Corporation shall inform the Minister in writing prior to making its decision of the contents of any representations made to it.

Representations in respect of supervisor's action

207.2(1) This section applies only to parties that are under supervision, without limiting the applicability of other sections of this Part to such parties.

(2) In this section,

- (a) "action" means the making of an order, the issuing of a directive, the imposition of a requirement or the making of any other determination by a supervisor in respect of a party that has the same or substantially the same effect as a decision which, if the decision-maker were about to make it, would be one that would give rise to the right to make representations under section 207.1;

(b) “decision-maker” means the Minister or the Corporation, depending on which of them would be receiving representations under section 207.1 if the action were a prospective decision;

(c) “party” means a party under supervision in respect of which an action has been taken.

(3) Where a supervisor takes an action, the party and the supervisor have the right to make representations with regard to it subject to and in accordance with this section.

(4) The party must notify the supervisor and the decision-maker in writing, within 4 days of being notified of the action, that it intends to make representations under this section.

(5) If the party has complied with subsection (4), the decision-maker shall afford a reasonable opportunity

(a) to the party to make representations as to why the action should be rescinded or varied, and

(b) to the supervisor to make representations as to why it should be confirmed.

(6) The decision-maker may confirm, rescind or vary the action.

(7) The decision-maker shall, forthwith after making its decision under subsection (6), serve the parties and the supervisor with a copy of that decision, including the reasons for it.

(8) The action is stayed until

(a) the decision on it is made under subsection (6),

(b) the time limit established by subsection (4) expires without the party’s having given notice under that subsection, or

(c) the party otherwise fails to exercise its rights under this section,

whichever event occurs first.

(9) Where a particular matter that is based on an action requires decisions under an enactment directly or indirectly referred to in section 207.1(1) both by the Minister and the Corporation, the duties and rights under this section relating

to the hearing of representations apply only to the Corporation, but the Corporation shall inform the Minister in writing prior to making its decision under subsection (6) of the contents of any representations made to it.

(10) Nothing in this section

- (a) enlarges the powers of a supervisor under Part 14, or
- (b) affects any power or duty, or any requirement that exists for any approval or consent, on the part of the decision-maker, under any enactment directly or indirectly referred to in section 207.1(1).

(11) Notwithstanding subsection (10)(b), a decision-maker's decision under subsection (6) is also to be considered to be that particular decision-maker's decision for the purpose of any enactment referred to in that clause.

29 Section 208 is amended

(a) in subsection (1)

(i) by adding the following after clause (d):

- (d.1) a refusal of approval by the Corporation under section 47(2) or (3), 48, 98(1) or (2), 103(3), 104(1), 120(1) or 138(4) or by the Minister under section 170, as it incorporates, in relation to Central, section 98(1) or (2), 103(3) or 104(1),

(ii) by adding the following after clause (i):

- (i.1) a decision by the Minister or the Corporation, as the case may be, made under section 207.2(6) that corresponds to a decision referred to in any other clause of this subsection,

(b) in subsection (2) by adding "referred to in subsection (1)" after "a decision".

29 Section 208 presently reads:

208(1) A party who feels aggrieved by

- (a) a designation under section 2(8),*
- (b) the refusal of an application for incorporation on the ground that the Minister is not satisfied as to any matter referred to in section 22(a),*
- (c) the refusal of an application to allow commencement of business under section 24, or the revocation of a certificate of incorporation under section 25, on the ground that section 24(2)(a) or (c) has not been met,*
- (d) a refusal under section 29(2) to register or issue a certificate of amendment of articles on any ground relating to a credit union's bond of association,*
- (e) a direction under section 103(4) or 104(4) to dispose of share investments,*
- (f) the placing of a credit union or Central under supervision under section 175 or 179,*
- (g) the refusal under section 179(5) to lift a supervision order,*
- (h) the refusal of an application for approval of an amalgamation under section 185(6)(a) or (b),*

30 *Section 209(1) is amended by adding “referred to in section 208(1)” after “a decision”.*

31 *Section 210(1) is amended by adding “referred to in section 209(1)” after “objection”.*

32 *The following is added after section 211:*

Exceptions to
right to appeal
to Court

211.1 Notwithstanding anything in section 210 or 211, those sections do not apply with respect to any decision referred to in section 208(1)(d.1) or, so far as it corresponds to a decision referred to in section 208(1)(d.1), section 208(1)(i.1).

33 *Section 212(2) is amended by striking out “or (j)” and substituting “, (j) or, if the decision corresponds to a decision referred to in any of those clauses, (i.1)”.*

34 *Section 226(b) is repealed.*

- (i) *a notice under section 192 that the Minister is appointing a liquidator or proposes to dissolve a credit union,*
- (j) *the making of a cease and desist order under section 214,*
- (k) *a direction under section 225(2), or*
- (l) *any other prescribed action,*

is entitled to have the decision reviewed by a review board under section 209.

(2) The Minister or the Corporation, forthwith after making a decision, shall serve on each party to the decision a written statement of the decision, setting out

- (a) the findings of fact on which the decision is based, and*
- (b) the reasons for the decision.*

30 Section 209(1) presently reads:

209(1) A party affected by a decision may object to the decision by serving on the Minister a notice of objection, specifying the decision objected to and the grounds for the objection, within 90 days after being served with the statement pursuant to section 208(2).

31 Section 210(1) presently reads:

210(1) A party may, in a notice of objection, apply to the Minister for permission to appeal directly to the Court without having a review made under section 209 and, if the Minister considers the matter ought to go directly to the Court, he may, by notice in writing to that party, consent to a direct appeal to the Court.

32 Exceptions to right to appeal to Court.

33 Section 212(2) presently reads:

(2) The review board or the Court, as the case may be, may grant a stay in respect of a decision referred to in section 208(1)(a), (e), (i) or (j) or any other prescribed decision.

34 Section 226(b) presently reads:

226 The Lieutenant Governor in Council may make regulations

- (b) notwithstanding section 154, limiting the amount of the Corporation's guarantee under that section;*

35 Sections 230, 231 and 232 are repealed.

35 Sections 230 to 232 presently read:

230 The Registrar of Corporations shall transfer to the Minister all documents in his possession that were provided under the former Act and that relate directly to credit unions and, on receiving them, the Minister shall register all those that, had they been provided under this Act, would have been registered.

231(1) An existing credit union shall, before November 1, 1991, provide to the Minister articles of continuance and new by-laws, executed by the credit union, and a notice containing the address of its registered office and the adoption of articles of continuance shall be deemed to be an amendment of the credit union's articles for the purposes of sections 27 to 29.

(2) The memorandum of association and supplemental by-laws of an existing credit union, as they were immediately before November 1, 1989 and as subsequently amended under this Act, shall be deemed to be its articles of continuance and by-laws until the articles of continuance and by-laws provided under subsection (1) are registered.

(3) Notwithstanding subsection (2), any provision of the existing memorandum of association or supplemental by-laws of an existing credit union that is inconsistent with this Act or the regulations is invalid to the extent of the inconsistency.

(4) The articles of continuance must set out, in respect of the existing credit union, the matters described in section 21(2)(a), (c), (d) and (e).

(5) On the provision of the articles of continuance and the by-laws under subsection (1), the Minister shall, if he considers that they are in accordance with this Act and the regulations, register them, whereupon they become the articles of continuance and by-laws of the credit union and replace its memorandum of association and the supplemental by-laws referred to in subsection (2), and the Minister shall also register the notice of registered office.

(6) On registering the articles of continuance, the Minister shall issue to the credit union a certificate of continuance.

(7) If an existing credit union fails to comply with subsection (1),

(a) the Minister may dissolve or liquidate and dissolve the credit union and the Minister may issue a certificate of dissolution in respect of the credit union without complying with any provisions of Part 16, and

(b) the credit union becomes in need of assistance for the purposes of section 178.

36 *Section 233 is amended*

(a) in subsection (4)

(i) by striking out "Subject to subsections (7) and (9)" and substituting "Subject to subsection (7)";

(ii) by striking out " , and" at the end of clause (a) and repealing clause (b);

(b) by repealing subsections (5) and (6);

(c) by repealing subsection (8) and substituting the following:

(8) An existing credit union shall not form a subsidiary or make any investment referred to in section 103(1) without the prior approval of the Corporation, prior to the date when section 108 commences to apply to it, but this subsection does not apply to an existing credit union to which section 108 (as it existed before the commencement of section 11 of the Credit Union Amendment Act, 1994) applied at any time before that commencement.

(d) by repealing subsection (9).

(8) This section applies notwithstanding the requirement of articles and a certificate of continuance in section 18.

(9) Central shall, before May 1, 1991, provide to the Minister new by-laws, executed by it, and a notice containing the address of its registered office.

(10) Subsections (2), (3) and (5), as they apply to a credit union's supplemental by-laws and notice of registered office, apply in relation to Central's by-laws and notice of registered office.

(11) The Corporation shall, before November 15, 1989, provide to the Minister a notice containing the address of its registered office, and the Minister shall register it.

232(1) An existing credit union may continue to treat any person who was a member immediately before November 1, 1989 as a member until October 31, 1991, but shall not thereafter treat a person as a member unless he then holds the number of common shares that is required of him by section 61(1) and otherwise qualifies as a member.

(2) Notwithstanding section 159, all co-operative associations that were members of Central immediately before November 1, 1989 continue to be members of Central subject to and in accordance with the by-laws.

36 Section 233 presently reads in part:

(4) Subject to subsections (7) and (9), where a body corporate held securities immediately before May 13, 1987 and has continued to hold them and their continued holding does not comply with section 99(2)(b) or section 148, or section 170(1) as section 170(1) relates to section 99(2)(b), as the case may be, then

(a) if the securities have a specified term or maturity date, the body corporate may hold them for the duration of that term or until that date, but may not then renew them, and

(b) if the securities have no specified term or maturity date, the body corporate shall dispose of them before November 1, 1991.

(5) Subject to subsections (6) and (9), where a body corporate acquired securities on or after May 13, 1987 and before November 1, 1989 and has continued to hold them and their continued holding does not comply with section 99(2)(b) or section 148, or section 170(1) as section 170(1) relates to section 99(2)(b), as the case may be, it shall dispose of those securities before November 1, 1991, unless it has the Minister's approval to retain them.

(6) A credit union or Central shall, before November 1, 1991, divest itself of any subsidiary formed or acquired by it on or after May 13, 1987 and before November 1, 1989, unless it has the approval of the Minister to retain the corporation as a subsidiary.

Program for
adequate
capital

37 Section 234 is amended

(a) by repealing subsection (1) and substituting the following:

234(1) *An existing credit union that does not meet the requirements of section 108 shall have a program, approved by the Corporation within 6 months after the commencement of this subsection, for ensuring that section 108 will be complied with at November 1, 1999 at the latest, and shall comply with the program.*

(b) by adding the following after subsection (3):

(4) *A decision of the Corporation concerning the approval of changes pursuant to subsection (2) is deemed to be a decision to which section 207.1 applies.*

(5) *The Lieutenant Governor in Council may make any regulations considered appropriate for dealing with the transition between the requirements of section 108 before the commencement of section 12 of the Credit Union Amendment Act, 1994 and those of and under section 108 after that date.*

38 Sections 235, 236, 237 and 238 are repealed.

(8) An existing credit union shall not form a subsidiary or make any investment referred to in section 103(1) without the prior approval of the Corporation, prior to the date when section 108 commences to apply to it.

(9) A credit union or Central shall, before November 1, 1991, dispose of any proportion of the shares acquired by it before November 1, 1989 and issued by any corporation that exceeds any of the percentage limits set by section 103(3)(a) or (b) or section 104(1)(a) or (b), or by section 170(1) as it relates to any of those provisions, as the case may be, as at November 1, 1989, unless it has the Minister's approval to retain the shares.

37 Section 234(1) presently reads:

234(1) An existing credit union shall have a program, approved by the Corporation, for ensuring that section 108 will be complied with at November 1, 1999 at the latest, and shall comply with the program.

Transitional provision respecting representations and transitional regulations.

38 Sections 235 to 238 presently read:

235(1) If, immediately before October 31, 1989, an existing credit union had a guarantee reserve fund under the former Act, it shall convert that fund or such of the fund as is needed, to provide for the credit union's doubtful loans.

(2) The credit union shall, before November 1, 1991, convert any part of the fund that has not been used under subsection (1) into retained earnings.

(3) On the conversion of all of the fund under this section, the guarantee reserve fund is extinguished.

236(1) In this section, "equity accounts" means members' equity accounts operated under the former Act by an existing credit union and existing immediately before October 31, 1989.

39 *Section 239(2) is repealed.*

(2) *An existing credit union with equity accounts shall, before November 1, 1991, convert all the money standing to the credit of the equity accounts to the purchase of common shares for the respective members.*

(3) *On the conversion of all the money from the equity accounts, the equity accounts are extinguished.*

237(1) In this section, "former membership shares" means shares issued under the former Act by an existing credit union and outstanding and held by a member immediately before October 31, 1989, but does not include a class of shares created under section 88 or 99.1 of that Act.

(2) *If, after applying section 236 and taking into account any share purchases otherwise made, a member will not have the number of common shares required by section 61(1) for membership, an existing credit union may, before November 1, 1991, convert into common shares such number of his former membership shares as are needed to produce that common share requirement.*

(3) *If a member has former membership shares that are not required for the purposes of subsection (2), the credit union shall, before November 1, 1991,*

(a) re-designate the former membership share account as a participatory savings account,

(b) transfer an amount equal to the value of those former membership shares to a participatory savings account in the member's name,

(c) convert them into a deposit in the member's name for a term not exceeding 1 year, or

(d) pay that amount to, or to the order of, the member,

but the credit union may, with the prior consent of the member, convert his former membership shares into common shares.

(4) *The credit union may adopt any combination of alternatives provided for in subsection (3).*

(5) *On the credit union's complying with subsection (3), the former membership shares in question are extinguished.*

238 The credit union shall add to stated capital accounts referred to in section 107(5) the value of conversions to common shares under sections 236 and 237.

39 Section 239(2) presently reads:

(2) *Notwithstanding section 242(1), where, immediately before November 1, 1989, an existing credit union was being dissolved or was under liquidation under the former Act, that Act continues to apply to the dissolution or the liquidation and dissolution of that credit union.*

40 Section 241 is amended

- (a) by repealing subsections (1), (2), (3) and (4);*
- (b) in subsection (5) by striking out “, the borrower shall repay the loan before November 1, 1990,” and substituting “and”;*
- (c) in subsection (6)*
 - (i) by striking out “230” and substituting “233”;*
 - (ii) by adding “representations,” before “review” wherever it occurs.*

41 Section 243 is amended

- (a) by repealing subsection (5) and substituting the following:*
 - (5) To the extent that section 108 relates to existing credit unions, that section and sections 103(5), 110(2)(c) and 178(e) come into force on November 1, 1999 except that they continue to apply to an existing credit union which has at any time after the commencement of section 11 of the Credit Union Amendment Act, 1994 and before November 1, 1999 been in compliance with section 108.*
- (b) by repealing subsection (8);*
- (c) by repealing subsection (11).*

40 Section 241 presently reads:

241(1) All the assets and liabilities of the Credit Union Stabilization Fund are transferred to the Corporation and that Fund is dissolved.

(2) Notwithstanding sections 65 and 165, a person who was a director of a credit union or of Central immediately before May 13, 1987 and who continued to serve as a director, without re-election or re-appointment, continuously until October 31, 1989 is entitled to continue to serve as a director until the expiration of the term of his directorship for which he was elected or appointed, unless he is disqualified by section 65(2)(b), (g), (h), (i), (j) or (k) or the equivalent provisions of section 165, as the case may be.

(3) The 12-month period referred to in section 49(3) shall not be regarded as running during any period before November 1, 1989.

(4) The 12-month and 2-year periods respectively referred to in sections 116(1)(a) and 117(1)(a) shall be regarded as running during those respective periods prior to November 1, 1989.

(5) Where a loan referred to in section 135(6) was made pursuant to a contract with an existing credit union entered into before May 13, 1987, the borrower shall repay the loan before November 1, 1990, except that where under the terms of the contract the loan has a specified term for repayment or is repayable on a specific date, the provisions of the contract continue to apply during that term or until that date unless the contract making that provision is terminated before then by the parties.

(6) A decision referred to in any of sections 230 to 241 that corresponds to a decision that is made subject to review and appeal by Part 17 is also subject to review and appeal under that Part.

41 Section 243 presently reads in part:

(5) To the extent that section 108 relates to existing credit unions, that section and sections 103(5) and 110(2)(c) come into force on November 1, 1999 except that they continue to apply to an existing credit union which has at any time after October 31, 1989 and before November 1, 1999 been in compliance with section 108.

(8) Section 226(b) comes into force on November 1, 1994, but regulations made under that clause and the words in section 154(1) "and any regulations made under section 226(b)" come into force on such date, not being less than 1 year after those regulations are made and not in any case before November 1, 1995, as is prescribed and those regulations may not apply in respect of deposits made or renewed before the commencement of those regulations.

(11) Sections 235, 236 and 237 come into force on October 31, 1989.

42 Sections 6, 7, 8, and 9, section 10 so far as it adds a new section 106(11) to the Act, sections 11, 12(a) and (b), 19, 21 and 36(c), section 37 so far as it substitutes a new section 234(1) and adds a new section 234(5) to the Act and section 41(a) come into force on Proclamation.

42 Coming into force.