

1998 BILL 36

Second Session, 24th Legislature, 47 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 36

CREDIT UNION AMENDMENT ACT, 1998

MR. RENNER

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 36
Mr. Renner

BILL 36

1998

CREDIT UNION AMENDMENT ACT, 1998

(Assented to , 1998)

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 by adding the following after
clause (qq):**

(qq.1) “prudent investment standards” means investment standards
that, in the overall context of an investment portfolio, a
reasonably prudent person would apply to investments
made on behalf of another person with whom there exists
a fiduciary relationship to make such investments, without
undue risk of loss or impairment and with a reasonable
expectation of fair return or appreciation;

**3 Section 9(1) is amended by striking out “required to be
entered in it by this Act and the regulations” and substituting
“prescribed or required by this Act to be entered in it”.**

4 Section 16 is amended

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

Explanatory Notes

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

2 Definition of “prudent investment standards”.

3 Section 9(1) presently reads:

9(1) The Minister shall establish and maintain a register into which he shall enter the information and documents respecting bodies corporate that are required to be entered in it by this Act and the regulations.

4 Section 16 presently reads in part:

16(1) Subject to this section, where the Minister or the Corporation obtains information or documents, other than registered or registrable information or documents, regarding the business or affairs of a body corporate or a person dealing with a body corporate as a result of administering or enforcing this Act, the Minister or the Corporation shall not disclose that

Confidentiality

16(1) Subject to this Act, where, in the course of administering or enforcing this Act, the Minister or the Corporation obtains or produces information, other than information that is registered, relating to the business or affairs of Central, a credit union or a dissolved credit union or relating to an application for incorporation as a credit union, the Minister or the Corporation, as the case may be, shall not disclose the information except in response to a request made

- (a) for access to a record containing the information under the *Freedom of Information and Protection of Privacy Act* to which that Act relates, which request must or may be granted pursuant to that Act, or
 - (b) for the information by Central, that credit union, a person representing that dissolved credit union or an incorporator within the meaning of section 19(1), as the case may be, which request the Minister or the Corporation may, but is not bound to, grant.
- (b) in subsection (2) by striking out “, documents or copies”;**
- (c) in subsection (3)**
- (i) by striking out “, and provide copies of documents,”;**
 - (ii) by striking out “, or allow inspection of or access to any such document,”;**
 - (iii) by repealing clause (b) and substituting the following:**
 - (b) for the purposes of the administration or enforcement of the *Securities Act*, the *Loan and Trust Corporations Act* or the *Insurance Act*, to the person responsible for administering that Act or other persons acting under that person’s direction or authority, or
- (d) in subsection (5) by striking out “or a document or copy”.**

information or provide those documents or a copy of them or disclose any information contained in, or allow access to, those documents, to any person other than that body corporate or person.

(2) The Minister or the Corporation may in any manner communicate or provide information, documents or copies referred to in subsection (1) whose disclosure he or it considers to be required

(a) for the proper administration or enforcement of this Act, to

(i) the Corporation or the Minister, as the case may be, or

(ii) persons acting under his or its direction or authority in the administration or enforcement of this Act,

(b) to enable Central to comply with this Act or the regulations, to Central,

(c) for the purpose of enabling the auditor of a body corporate to fulfil his functions as such, to that auditor, or

(d) for regular law enforcement purposes, to a law enforcement authority.

(3) The Minister may in any manner communicate information, and provide copies of documents, referred to in subsection (1), or allow inspection of or access to any such document,

(a) to the government of any other province or of Canada,

(b) for the purposes of the administration or enforcement of

(i) the Securities Act, to the Executive Director of the Alberta Securities Commission as defined or otherwise provided for under the Securities Act, or

(ii) the Loan and Trust Corporations Act, to the person responsible for administering that Act or employees of the Government under his direction,

or

(c) for any prescribed purpose, to any other prescribed person.

5 Section 48 is repealed and the following is substituted:

Branches and
automated
banking
machines

48 A credit union shall report

- (a) the establishment of a branch of its business,
- (b) the relocation of any of its branches, or
- (c) the establishment of an automated banking machine

in writing to the Corporation forthwith after the decision to that effect has been made by its board.

6 Section 61 is amended

- (a) in subsection (1) by striking out “by subsection (6)” and substituting “by the by-laws”;**
- (b) by repealing subsection (6).**

7 Section 74(1)(c) is amended by striking out “or redemption”.

(4) The Corporation may provide prescribed information to a prescribed person.

(5) Subject to subsection (6), a person to whom information or a document or copy is communicated or provided under subsection (2) or (3)(b) or (c) shall comply with subsection (1) in respect of it.

5 Section 48 presently reads:

48 A credit union shall not, without the prior approval of the Corporation,

- (a) establish an additional branch of its business,*
- (b) relocate a branch, or*
- (c) establish an automated banking machine.*

6 Section 61 presently reads in part:

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).

(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.*

7 Section 74(1) presently reads:

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

- (a) the provision of any remuneration in contravention of section 71 or the by-laws made under that section,*

8 Section 74.1 is amended

- (a) in subsection (1) by striking out “or redemption” and “or redeems”;**
- (b) in subsection (4)(a) by striking out “and redemptions”;**
- (c) in subsection (5) by striking out “or redemption”.**

- (b) *the payment of an indemnity described in section 78 in contravention of that section,*
- (c) *an acquisition or redemption of common shares in contravention of section 110,*
- (d) *a payment of a dividend or patronage rebate contrary to section 111(3),*
- (e) *any illegal act with respect to the payment of compensation to a member, director or officer the effect of which is to reduce the aggregate or any part of its members' equity, or*
- (f) *any related party transaction that contravenes this Act and involves any payment or the provision or distribution of property by the credit union,*

the directors who voted for or consented to the resolution are jointly and severally liable to restore to the credit union any amount so paid and the value of any property so provided or distributed and not otherwise recovered by the credit union, with interest at the rate prescribed by the Minister.

8 Section 74.1 presently reads:

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).*

9 Section 79(2) is amended by striking out “small credit union” and substituting “credit union that does not have an auditor”.

10 Section 80(c) is amended

(a) by striking out “loan mixture” and substituting “prudent lending standards”;

(b) by striking out “131” and substituting “130”.

11 Section 81(4) is repealed.

12 Section 82 is amended

(a) in subsection (1)(a) and (b) by striking out “small”;

(b) by repealing subsection (4) and substituting the following:

(4) At least at every 5th annual general meeting, the board of a credit union shall place before its members a resolution in the prescribed form respecting the disclosure of the remuneration of the credit union’s executive managers.

(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.

9 Section 79(2) presently reads:

(2) The board of a small credit union need not appoint an audit committee, a finance committee or an audit and finance committee but, if it does not do so, the board itself, without delegation, shall perform the functions and duties, and has the powers, that that committee would have had if appointed.

10 Section 80 presently reads in part:

80 The finance committee of a credit union shall perform the following functions:

(c) make recommendations to the board on the investment procedures referred to in section 100(3) and the loan mixture referred to in section 131;

11 Section 81(4) presently reads:

(4) The requirements of subsection (1) for a written report are met, in the case of reporting to the board, if the minutes of the relevant committee meetings are provided.

12 Section 82 presently reads in part:

82(1) At each annual general meeting, the board of a credit union shall place before the members, in addition to any other information required by this Act or prescribed to be required,

(a) except in the case of a small credit union that does not have an auditor, the annual financial statements for the previous fiscal year of the credit union with the auditor's report thereon, and

(b) in the case of a small credit union that does not have an auditor, the unaudited annual financial statements for the previous fiscal year of the credit union.

(4) The Lieutenant Governor in Council may make regulations requiring the board of a credit union with assets not exceeding \$500 000 000 to place before its members at least at every 5th

13 Section 83(1)(b) is amended by striking out “small”.

14 Section 84 is amended

- (a) in subsection (2)(c) by striking out “management letter” and substituting “internal operations report”;**
- (b) in subsection (4) by striking out “other than that” and substituting “, unless it is”;**
- (c) in subsection (5) by striking out “131 or”.**

15 Section 85 is repealed and the following is substituted:

Application

85 Except where otherwise specifically stated, this Division applies in relation to credit unions that have an auditor.

annual general meeting a resolution in the prescribed form respecting the disclosure of the remuneration of the credit union's executive managers.

13 Section 83(1) presently reads:

83(1) Subject to sections 82 and 84(2), a credit union shall not issue, publish or circulate copies of the annual financial statements referred to in section 82 unless those financial statements

- (a) have previously been approved specifically by the board and the board's approval is evidenced by the signatures of 2 or more directors on the statements, and*
- (b) except in the case of a small credit union that does not have an auditor, are accompanied by the auditor's report on them.*

14 Section 84 presently reads in part:

(2) A credit union shall, within 3 months after the end of each fiscal year, provide to the Minister and to the Corporation, with respect to that year,

- (a) a copy of all annual financial statements, with auditors' reports, required by section 82,*
- (b) copies of the separate annual financial statements for each of the credit union's subsidiaries, with the auditors' reports, if any, on them, and*
- (c) in the case of a large credit union, the management letter referred to in section 92(1)(b).*

(4) Where an auditor at any time prepares a management letter other than that required by section 92(1), he shall forthwith provide a copy of it to the Minister and to the Corporation.

(5) A credit union shall provide to the Corporation such documents and information as the Corporation requires to enable it to perform its functions under section 131 or 133 and as it so directs, and shall provide them at the times specified in the direction.

15 Section 85 presently reads:

85 Except where otherwise specifically stated, this Division applies in relation to large credit unions and also to small credit unions that have or are to have an auditor.

16 Section 88 is amended by repealing subsections (1) and (2) and substituting the following:

Appointment
and
termination of
office of
auditor

88(1) A credit union that, at the end of the fiscal year preceding the fiscal year in question, had assets of a value amounting to

- (a) \$5 000 000 or more must have an auditor, or
- (b) less than \$5 000 000 must have an auditor unless there is in force an ordinary resolution of the credit union specifying that it is not to have an auditor.

17 Section 90(2) is amended by striking out “small”.

18 Section 92 is amended

(a) in subsection (1)

- (i) **by striking out** “from its auditor”;
- (ii) **in clause (a) by striking out “his” and substituting “the auditor’s”;**
- (iii) **in clause (b)**
 - (A) by striking out “a management letter” and substituting “an internal operations report from the auditor or the other person referred to in subsection (1.1)”;**
 - (B) in subclause (iii) by adding “or preparation of the internal operations report” after “audit”;**

(b) by adding the following after subsection (1):

(1.1) An internal operations report under subsection (1) must be prepared by the credit union’s auditor, if it has an

16 Section 88 presently reads in part:

88(1) A large credit union shall have an auditor.

(2) A small credit union shall have an auditor unless there is in force an ordinary resolution of the credit union specifying that it is not to have an auditor.

17 Section 90(2) presently reads:

(2) Where, in the opinion of the Minister or the Corporation, an audit of a small credit union that does not have an auditor is needed in order to safeguard the interests of its members, customers or creditors, the Minister or the Corporation, as the case may be, may direct the credit union to appoint an auditor to conduct an audit and to report in respect of the fiscal year specified in the direction.

18 Section 92 presently reads in part:

92(1) A credit union shall obtain from its auditor

(a) his report on the financial statements for the preceding fiscal year, and

(b) in the case of a large credit union only, a management letter with respect to that year that includes his observations on

(i) the adequacy of measures for internal control adopted by the credit union,

(ii) any corrective measures undertaken by the credit union in response to comments made or deficiencies reported by him with respect to the manner in which the credit union carried on its business, and

(iii) whether, during the course of his audit, he noted any instances where the credit union contravened this Act or the regulations.

auditor, and if it does not, by another person approved by the Corporation to prepare the internal operations report required by this section.

(c) by adding the following after subsection (2):

(3) A person who prepares an internal operations report and who in good faith makes a statement in the report is not liable in any civil action arising from the statement.

(4) A person who prepares an internal operations report has the same powers and duties as the auditor has under section 91, in respect of an examination under section 90, and under section 93(1) and (2), and those provisions apply in respect of the internal operations report preparer and other persons referred to in them with all references to an auditor being taken as references to an internal operations report preparer.

19 Section 99(2) is repealed.

20 Section 100 is amended

(a) in subsection (1) by striking out “Notwithstanding anything in this Division, a” and substituting “A”;

(b) by repealing subsection (2);

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

19 Section 99 presently reads in part:

(2) Unless specifically authorized by another provision of this Act or by the regulations, a credit union or its subsidiary shall not

(a) acquire any securities issued by another person other than securities that it is permitted by this Division to acquire, or

(b) hold any securities issued by another person other than securities that it would be permitted by this Division to acquire at the time in question if they were not then held by it, unless the Corporation has approved the retention of the securities.

20 Section 100 presently reads:

100(1) Notwithstanding anything in this Division, a credit union shall adhere to prudent investment standards in making investment decisions and in managing its total investments.

(2) For the purposes of subsection (1), prudent investment standards are those which, in the overall context of an investment portfolio, a reasonably prudent person would apply to investments made on behalf of another person with whom there exists a fiduciary relationship to make such investments, without undue

(4) The procedures referred to in subsection (3), including any amendments to those procedures, must be approved by the Corporation before they are implemented.

21 Section 101 is repealed and the following is substituted:

Prohibited
investments

101(1) A credit union (in this subsection referred to as “the investor”) shall not acquire any securities issued by another credit union if, as a result of that acquisition, the value of the securities held by the investor that have been issued by other credit unions, together with the amounts of loans made to and deposits made with other credit unions by the investor, would exceed the prescribed amount.

(2) A credit union shall not make an investment in derivative securities unless the sole purpose of the investment is to hedge an asset or liability.

risk of loss or impairment and with a reasonable expectation of fair return or appreciation.

(3) The board, on the recommendations of the finance committee, shall establish written procedures to ensure that prudent investment standards are applied by it in making investment decisions and in managing its total investments.

21 Section 101 presently reads:

101(1) Subject to this Act and any prescribed restrictions, a credit union or its subsidiary may acquire

- (a) fully paid shares issued by Central,*
- (b) securities issued or guaranteed by the government of Canada or of a province,*
- (c) securities issued by a municipality or a school or hospital district or a health region under the Regional Health Authorities Act,*
- (d) securities evidencing deposits made with Central or an eligible financial institution,*
- (e) securities issued by another person, by reason of the credit union's or the subsidiary's taking security or realizing its security,*
- (f) any other prescribed securities, and*
- (g) securities of a kind not permitted by clauses (a) to (f), to the extent that the aggregate book value of all securities that are held by the credit union and its subsidiaries after the acquisition, other than*
 - (i) securities of a kind permitted by clauses (a) to (f),*
 - (ii) shares referred to in section 103(1),*
 - (iii) shares issued to the credit union by an affiliate, or by a corporation which as a result of the issue becomes an affiliate, of the credit union, and*
 - (iv) securities issued by a related party, other than a subsidiary or affiliate of the credit union, except where their acquisition was approved by the Corporation pursuant to subsection (2)*

will not exceed 2% of the credit union's assets, calculated on a consolidated basis, as at the end of the fiscal year preceding the acquisition.

22 Section 102(1) is amended by adding “and” at the end of clause (a) and by repealing clause (b).

23 Section 105 is amended

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

Borrowing in
case of
liquidity
shortfall

105(1) Where a credit union fails over any calendar month to maintain at least the greater of

- (a) the liquidity amount in assets, being in such form and amount as are determined by Central as being prudent and as are established in its by-laws, and
- (b) 6% of the prescribed amount in any combination of prescribed liquid assets,

the amount of the shortfall is an automatic borrowing by the credit union from Central and is deemed for the purposes of

(2) Securities issued by a party related to the credit union may not be acquired under subsection (1)(g) except with the prior approval of the Corporation, but this subsection does not apply to shares issued by a subsidiary or an affiliate.

(3) Nothing in this Part prohibits a credit union's acquiring and holding securities by way of security only, but where a credit union has realized security consisting of securities issued by another person, the credit union shall be deemed to have acquired those securities for all the purposes of subsection (1) two years after the realization of the security or after such longer period as the Corporation approves.

(4) Where a credit union to which section 172(3) applies does not maintain the full amount of common shares issued by Central that is prescribed with reference to section 172(3), then, without limiting any other liability that the credit union may have, Central shall invest the amount of the shortfall in such shares on the credit union's behalf, whereupon the credit union's loan balance with Central is increased correspondingly by that amount.

22 Section 102(1) presently reads:

102(1) Subject to this Part, a credit union or its subsidiary may acquire marketable securities from or dispose of marketable securities to a party related to that credit union if

- (a) the board of the credit union has previously authorized the transaction,*
- (b) those securities meet the prescribed conditions, and*
- (c) the transaction is at fair market rate.*

23 Section 105 presently reads:

105(1) Where a credit union fails over any calendar month to maintain at least the average amount prescribed for that month of

- (a) term deposits with Central or, in respect of a prescribed small credit union, with eligible financial institutions or credit unions,*
- (b) common shares issued by Central, and*
- (c) cash, if any, in the credit union's hands,*

the amount of the shortfall is deemed for the purposes of sections 126 and 128 to have been borrowed by the credit union from Central for the whole of that month.

section 126 to have been so borrowed for the whole of that month.

- (b) by repealing subsections (2) and (3);**
- (c) in subsection (4) by striking out** “Central shall pay interest on term deposits held with it pursuant to subsection (1)” **and substituting** “If term deposits are held with Central pursuant to subsection (1), Central shall pay interest on them”;
- (d) in subsection (5) by striking out** “sections 126 and 128” **and substituting** “section 126”;
- (e) by repealing subsection (6).**

24 Section 110 is amended

- (a) in subsection (1) by striking out** “for redemption”;
- (b) by adding the following after subsection (1):**
 - (1.1)** On the acquisition of any common shares issued by it, a credit union shall forthwith redeem and cancel them.
- (c) in subsection (2)**
 - (i) by striking out** “for redemption or redeem or cancel them”;
 - (ii) in clause (a) by striking out** “thereby become insolvent” **and substituting** “become insolvent as a result of the redemption referred to in subsection (1.1)”;
 - (iii) in clause (c) by adding** “and the proposed acquisition would exceed any limit established by the Corporation for acquisitions of the credit union’s own common shares” **after** “met”;

(2) The make-up of the term deposits, shares and cash to be taken into account for the purposes of subsection (1) is that prescribed.

(3) Where the average amount prescribed for the purposes of subsection (1) is based on liabilities that include deposits with a credit union, that amount may vary according to the types and terms of those deposits.

(4) Central shall pay interest on term deposits held with it pursuant to subsection (1) at the rate and otherwise in accordance with the criteria prescribed by the Minister, if any such rate or criteria are so prescribed.

(5) Notwithstanding any related party provision, where, in the opinion of the Minister, the elimination or reduction of a credit union's shortfall referred to in subsection (1) was achieved through a deposit made with it by a subsidiary or affiliate or through any transaction or series of transactions involving any subsidiary or affiliate of any credit union artificially designed in his opinion to achieve that result, the Minister may direct that the amount by which the shortfall has been reduced be deemed for the purposes of sections 126 and 128 to have been borrowed by the credit union from Central for the whole of that month.

(6) Subsection (1)(b) shall not be construed as requiring any credit union that is not required by section 172(3) to hold common shares issued by Central to hold any such shares.

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

(4) A credit union shall not acquire common shares issued by it except for redemption and, on the acquisition of any common shares, it shall forthwith redeem and cancel them.

- (d) by repealing subsection (4);**
- (e) in subsection (5) by striking out “Subsections (2) and (4) do” and substituting “Subsection (2) does”;**
- (f) in subsection (6) by striking out “for redemption” and substituting “issued by it”;**
- (g) in subsection (7) by striking out “under this section” and substituting “issued by it”.**

25 Section 111(6)(a) is amended by striking out “and (6)”.

26 Section 116 is amended

- (a) by repealing subsection (7) and substituting the following:**

(7) Subject to subsection (6), the credit union may only impose those charges in respect of balances held in the unclaimed balances account that would be chargeable to the customer if the balances were being held in an active account of the customer.

- (b) by repealing subsection (13)(b)(ii) and substituting the following:**

(ii) retained in a plan registered under the *Income Tax Act* (Canada).

27 Section 117(3) is amended by striking out “, (7)”.

(5) Subsections (2) and (4) do not apply to acquisitions of shares pursuant to a lien or the taking or realization of security.

(6) Except where prescribed, a credit union acquiring shares for redemption shall acquire them at their par value.

(7) A credit union may acquire common shares under this section from related parties.

25 Section 111(6) presently reads:

(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;

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

26 Section 116 presently reads in part:

(7) Subject to subsection (6), the credit union may not impose any charge for its activities under this section.

(13) This section does not apply to

(a) any share account or balance, or

(b) any money that is

(i) lawfully retained by the credit union under any lien, right of set-off or specific charge, or

(ii) retained in a registered retirement savings plan or a registered retirement income fund.

27 Section 117(3) presently reads:

28 Section 119 is amended

(a) by repealing subsection (3) and substituting the following:

(3) Within 3 months after receiving a balance referred to in subsection (2), the Corporation shall publish, in a newspaper circulated in the district where the last known address of the person entitled to the balance is situated, such information as is necessary to enable the person entitled to the balance to locate it, and may disclose in any other manner that the Corporation considers appropriate any further information that might assist that person in that regard.

(b) in subsection (4) by adding “or other disclosure” after “publication”.

29 Section 121 is repealed.

(3) Section 116(3), (4), (7) and (13) apply to balances transferred to income under subsection (2).

28 Section 119 presently reads in part:

(3) Within 3 months after receiving a balance referred to in subsection (2), the Corporation shall publish, in a newspaper circulated in the district where the last known address of the person entitled to the balance is situated, the name of that person, where applicable, the type of account, the balance transferred in respect of him and the name and branch location of the credit union.

(4) The Corporation may not impose any specific charge for its services under this section except that it may charge the cost of the publication under subsection (3) against the balance.

29 Section 121 presently reads:

121(1) An officer or employee of a credit union shall not permit or direct another person to permit the withdrawal of any money from any account of a customer if the balance in the account is less than the amount sought to be withdrawn, unless

(a) the resulting deficiency would not exceed the amount approved by the Corporation for that credit union, or

(b) the customer has executed an agreement with the credit union whereby an amount will be loaned, advanced or made available to him that is sufficient to cover the deficiency.

(2) The amount approved for the purposes of subsection (1)(a) must not exceed the amount prescribed.

(3) If, at the end of a fiscal year, there is and, for a period of 90 days or more, has been, a deficiency referred to in subsection (1), the credit union shall write off the amount of the deficiency against its income for that fiscal year.

(4) An officer or employee does not contravene subsection (1) if he is only acting on a direction to permit the withdrawal given by an officer who is authorized by the credit union generally to give the officer or employee directions of that nature.

30 Section 126(1) is amended by striking out “deemed by section 105(1) to be borrowed” **and substituting** “borrowed under section 105(1)”.

31 Sections 127 and 128 are repealed and the following is substituted:

Terms of
borrowing

127(1) A credit union shall not borrow money for any term exceeding 2 years except

(a) pursuant to a resolution of its board, or

(b) from the Corporation.

(2) A credit union may borrow money from an eligible financial institution that is a related party, but the borrowing must be at fair market rate.

30 Section 126(1) presently reads:

126(1) Where the aggregate of the net amounts of money borrowed by a credit union, including money deemed by section 105(1) to be borrowed, is in excess of 20% of its assets, then the Corporation shall forthwith examine the financial position of the credit union and, unless the Corporation considers that the excess borrowings result from temporary or seasonal factors that pose no threat to the financial stability of the credit union, shall place the credit union under supervision.

31 Sections 127 and 128 presently read:

127(1) Subject to this section, except as prescribed, a credit union shall not borrow money from any person other than from Central.

(2) With the prior approval of the Corporation, a small credit union may borrow money from an eligible financial institution or from another credit union.

(3) A credit union shall not borrow money for any term exceeding 2 years except

(a) for the acquisition of land or equipment required to carry on its business or conduct its affairs lawfully,

(b) with the prior approval of the Corporation, to enable it to make loans, or

(c) for any other prescribed purpose.

(4) A borrowing under subsection (2) may be from a related party eligible financial institution, but it must be at fair market rate.

(5) This section does not apply to the borrowing of money from the Corporation.

128(1) Central shall notify the Minister and the Corporation immediately after the aggregate of a credit union's net borrowings referred to in section 126(1) has reached 15% of the credit union's assets.

(2) After the net borrowings have reached the 15% level referred to in subsection (1), Central shall provide the Corporation with details of the net borrowings on such basis as the Corporation directs until the net borrowings again fall below the 15% level.

32 Sections 130 and 131 are repealed and the following is substituted:

Prudent
lending
standards

130(1) Notwithstanding anything in this Division, a credit union shall adhere to prudent lending standards in making loans.

(2) For the purposes of subsection (1), prudent lending standards are standards that, in the overall context of a loan portfolio, a reasonably prudent person would apply to loans made to another person such that the loans will yield a reasonable expectation of fair return without undue risk of loss or impairment.

(3) The board shall establish written procedures to ensure that prudent lending standards are applied in the making of loan decisions and in the management of the credit union's loan portfolio.

(4) A credit union shall review its prudent lending standards at least annually.

(5) The credit committee shall ensure that applicable procedures established under subsection (3) are followed before granting any approval for a loan.

32 Sections 130 and 131 presently read:

130(1) The board of a credit union shall establish policies respecting

- (a) the security required for loans and the terms on which loans are to be repaid,*
- (b) the inquiries that are to be made into the character and financial condition of applicants for and guarantors of loans to ascertain their ability to fulfil the obligations assumed by them, and*
- (c) the approvals that are required and the procedures that are to be followed within the credit union before loans or specific types of loan are made and money advanced under loans,*

and shall establish policies designed to ensure that money loaned is repaid on becoming due or as shortly thereafter as is practicable.

(2) The board may delegate its duties under subsection (1) to the finance committee, but not otherwise.

(3) The credit committee shall ensure that applicable policies established under subsection (1) are followed before granting any approval for a loan.

(4) The credit union shall ensure that its employees responsible for making loans report the making of each loan to the next regular meeting of the credit committee.

(5) In the event of any inconsistency, the procedures established under section 54 prevail over those established under this section.

131(1) The Corporation shall monitor all credit unions' mixtures of different classes of loan on a regular basis.

(2) The Corporation may direct a credit union to alter its loan portfolio, within the period specified in the direction, so that the mixture of different classes of loan in its portfolio will comply with the mixture approved by the Corporation for that credit union.

(3) The Corporation may direct a credit union not to make any further loans in a class of loan specified in the direction.

(4) A direction under subsection (2) or (3) operates subject to contracts executed before the direction comes into force.

33 Section 132 is amended by adding the following after subsection (2):

(3) A credit union (in this subsection referred to as “the lender”) shall not make a loan to or place a deposit with another credit union if, as a result of the making of that loan or deposit, the amounts of loans made to and deposits made with other credit unions by the lender, together with the value of the securities held by the lender that have been issued by other credit unions, would exceed the prescribed amount.

34 Section 134 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) the loan or guarantee falls within a prescribed class of transactions.

35 Section 148 is repealed and the following is substituted:

Prudent
investment
standards for
Corporation

148(1) The Corporation and its subsidiaries shall adhere to prudent investment standards in making investment decisions and in managing their total investments.

(2) The board of the Corporation and of each subsidiary shall establish written procedures to ensure that prudent

33 Limits on inter-credit-union loan and deposit making.

34 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),

(b) in the case of a loan, the loan falls within section 138, or

(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.

35 Section 148 presently reads:

148(1) The Corporation or its subsidiary shall not acquire or hold any securities issued by another person other than those whose acquisition or holding is permitted by this section or section 146(3) or 149.

(2) The Corporation or a subsidiary may acquire and hold securities

investment standards are applied in the making of investment decisions and in the management of its total investments.

(3) Notwithstanding subsection (1), the Corporation or its subsidiary may not acquire securities of a prescribed class.

36 Section 166 is amended

(a) in subsection (1) by striking out “to (4)” and substituting “and (3)”;

(b) by repealing subsection (4).

37 Section 168(1) is amended by adding “with an auditor” after “union”.

38 Section 170 is amended

(a) in subsection (1)

(i) by striking out “101(1) to (3)” and substituting “101(2)”;

(ii) by repealing clause (c);

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

(5) Central’s powers to make investments are subject to any restrictions that are prescribed.

- (a) referred to in section 101(1)(a) to (e),*
 - (b) issued by Central or the Canadian Cooperative Credit Society,*
 - (c) evidencing deposits made with credit unions or the Consolidated Cash Investment Trust Fund, or*
 - (d) of a prescribed class.*
- (3) Nothing in this section requires the Corporation or a subsidiary to divest itself of any securities lawfully held by it immediately before May 13, 1987.*

36 Section 166 presently reads in part:

166(1) Sections 71(1) to (3), 72 and 73, section 74 in respect of a transaction referred to in section 74(1)(a), (b), (e) or (f), and sections 75, 76, 77, 78, 79(5) and (7), 80 and 81(2) to (4) apply in relation to Central and, where applicable, its committees.

(4) For the purposes of subsection (1), the reference in section 81(4) to section 81(1) is deemed to be a reference to subsection (3) of this section.

37 Section 168(1) presently reads:

168(1) Sections 82(1) to (3), 83, 84(1) to (4), 86, 87, 88(1), (3) and (4), 89, 90(1), 91, 92 and 93, as they apply to a large credit union, apply in relation to Central.

38 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,

(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,

39 Section 172(3) is repealed.

40 Section 173 is amended by repealing subsections (2) and (3) and substituting the following:

(2) Central shall not borrow money for any term exceeding 5 years except pursuant to a resolution of its board.

(3) Central may borrow money from an eligible financial institution that is a related party, but the borrowing must be at fair market rate.

41 Section 174 is amended by adding the following after subsection (1):

(1.1) Section 130 applies in relation to Central.

42 Section 178 is amended by adding “or” at the end of clause (e) and by repealing clause (f).

(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%.

39 Section 172 presently reads in part:

(3) Each credit union that is a member of Central, other than a prescribed small credit union, shall at all times hold not less than the prescribed amount of common shares issued by Central.

40 Section 173 presently reads in part:

(2) Central shall not borrow money except

(a) by the issue of notes or other debt instruments with a term to maturity not exceeding 5 years, or

(b) from

(i) the Canadian Cooperative Credit Society,

(ii) the Canadian Payments Association,

(iii) a cooperative credit society,

(iv) an eligible financial institution,

(v) the Government of Alberta, or

(vi) the Corporation.

(3) An eligible financial institution referred to in subsection (2)(b)(iv) may be a related party, but in that case the borrowing must be at fair market rate and have the prior authorization of the board.

41 General loan procedures.

42 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 meeting the capital requirements established under section 108,

43 Section 207 is amended by repealing subsections (1)(b)(i) and (2).

44 Section 207.1(1) is amended

(a) in clause (b) by striking out “101(2), 121(1), 127(2) or (3), 131(2)” and substituting “100(4)”;

(b) by repealing clause (d).

45 Section 208(1)(d.1) is amended by striking out “48,”.

(f) the credit union contravenes a direction by the Corporation under section 131, or

(g) the credit union has materially contravened or been in repeated contravention of a related party provision.

43 Section 207 presently reads in part:

207(1) In this Part,

(b) “party” means the credit union or Central or, where the decision is one referred to in

(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,

whose rights are or are liable to be 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, and includes a credit union described in subsection (2).

(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).

44 Section 207.1(1) presently reads in part:

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

(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,

(d) under section 131(2) respecting the issuing of a direction,

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.

45 Section 208(1) presently reads in part:

208(1) A party who feels aggrieved by

46 Section 233 is amended by repealing subsections (1) (2), (3), (4), (7), (10) and (11).

- (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),*

46 Section 233 presently reads in part:

233(1) Unless the Corporation otherwise approves, a credit union and its subsidiaries shall, before December 31, 1991, dispose of land having a value that is not less than the amount, if any, by which the book value of all the land held by the credit union and its subsidiaries as at November 1, 1989 exceeded the lesser of

- (a) an amount equal to 5% of the credit union's assets as at November 1, 1989 calculated on a consolidated basis, or*
- (b) the value of the land that the credit union and its subsidiaries needed at that date in order to carry on their businesses and conduct their affairs lawfully,*

but this subsection does not apply in respect of leasehold estates in land.

(2) Subsection (1) applies in relation to Central and its subsidiaries.

(3) Notwithstanding section 99 and section 170(1) as it relates to section 99, a body corporate may hold securities investments referred to in this section until it disposes of them pursuant to this section or until the time limit set by this section for their disposal expires without their having been disposed of.

(4) Subject to subsection (7), 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.*

(7) Section 99(2)(b), as it relates to section 103(2), and the corresponding provisions of section 170(1) shall not in themselves be taken to require the disposal of any shares held by an existing credit union immediately before May 13, 1987.

(10) Notwithstanding anything in section 105, where a credit union immediately before May 13, 1987 held as part of its reserve funds under section 45 of the former Act any deposit, debenture,

47 Section 240 is amended

(a) by repealing subsection (1);

(b) in subsection (2)

(i) by striking out “1986,” and substituting “1986 and”;

(ii) by striking out “and the Liquidity Support for the Alberta Credit Union System Agreement between the Corporation and Central dated April 2, 1985, as amended up to October 31, 1989,”.

48 Section 241(5) is repealed.

49 Section 243 is amended by repealing subsections (7) and (9).

50 The *Freedom of Information and Protection of Privacy Act* is amended in section 4

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

loan stock or other investment for a specified term or with a fixed maturity date that has not matured, that investment shall be deemed to be a deposit with Central for the purposes of section 105(1) until its initial maturity date, if it is continuously held by the credit union until that date.

(11) An investment referred to in subsection (10) shall be valued, for the purposes of determining the extent to which it meets the average amount prescribed for the purposes of section 105(1), at the lower of its purchase price and the market value placed on it in the latest annual financial statements of the credit union.

47 Section 240 presently reads in part:

240(1) An agreement entered into under section 99(c) of the former Act remains valid according to its terms until rescinded in so far as it is not subsequently varied.

(2) The Credit Union Deficit Financing Agreement between the Government, the Corporation, Central and SC Financial Limited dated October 31, 1986, the Credit Union Stabilization Agreement entered into between the Government and the Corporation dated October 22, 1985 and the Liquidity Support for the Alberta Credit Union System Agreement between the Corporation and Central dated April 2, 1985, as amended up to October 31, 1989, remain valid according to their terms.

48 Section 241(5) presently reads:

(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 and 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.

49 Section 243 presently reads in part:

(7) Section 130(1) and (3) come into force on November 1, 1990.

(9) Section 229(10) comes into force on October 31, 1989.

50 Section 4 of the Freedom of Information and Protection of Privacy Act presently reads in part:

4(1) This Act applies to all records in the custody or under the control of a public body, including court administration records, but does not apply to the following:

- (n) a record relating to the business or affairs of Credit Union Central Alberta Limited, a credit union or a dissolved credit union or relating to an application for incorporation as a credit union that is obtained or produced in the course of administering or enforcing the *Credit Union Act* or the regulations under it, other than a record that relates to a non-arm's length transaction between the Government and another party;
- (o) a record of the information referred to in section 119(3) of the *Credit Union Act* or respecting loans made by a credit union that are subsequently assumed by the Credit Union Deposit Guarantee Corporation.

(b) by repealing subsection (4).

51 This Act comes into force on Proclamation.

(n) a record of a credit union in the custody or control of the Credit Union Deposit Guarantee Corporation other than a record that relates to a non-arm's length transaction between the Government of Alberta and another party.

(4) For the purposes of subsection (1)(n), "record of a credit union" means a record that originates from a credit union that is submitted to, or received by, the Credit Union Deposit Guarantee Corporation.

51 Coming into force.