

House of Representatives

Supplementary Order Paper

Wednesday, 13 June 2018

Friendly Societies and Credit Unions (Regulatory Improvements) Amendment Bill

Proposed amendments

David Seymour, in Committee, to move the following amendments:

Clause 4

In *clause 4(3)*, replace the definition of *credit union* (page 6, lines 2 to 7) with:

credit union—

- (a) means a credit union incorporated under Part 3 in accordance with **section 100B**; and
- (b) subject to **section 146(8)** and with any necessary modifications, includes an association of credit unions incorporated under Part 3 in accordance with **section 146**; and
- (c) means an unincorporated credit union registered under **Part 3A**

New clause 7

After *clause 6D* (page 8, after line 4), insert:

7 Section 28 amended (Appointment of trustees)

Replace section 28(1) with:

- (1) Every registered society and branch is to have 1 or more trustees to be appointed from time to time by a resolution of a majority of the members of the society or branch entitled to vote and voting on the matter.

New clause 42A

After *clause 42* (page 38, after line 2), insert:

42A New Part 3A inserted

After section 146A, insert:

**Part 3A
Unincorporated credit unions**

Registration

146A Unincorporated credit unions to be registered

- (1) No person, other than an unincorporated credit union registered under this Part may trade or carry on business as an unincorporated credit union unless registered as such under this Part.
- (2) For the purposes of **subsection (1)**, to trade or carry on business as an unincorporated credit union means—
 - (a) administering a fund into which members of a group contribute money which is to be applied either wholly or principally in loans to those members;
 - (b) representing the person, society, or body of persons as being an unincorporated credit union;
 - (c) using, in reference to the person, society, or body of persons, any name, title, or descriptive expression containing the words “credit union”, “money club”, “savings society”, or “loan society”, or any cognate term or any derivative of those words, when trading, carrying on business, or advertising for share capital, deposits, or loan funds.
- (3) Nothing in **subsection (2)(c)** shall apply to—
 - (a) the use by an officer or employee of an unincorporated credit union of a title or descriptive expression indicating his or her office or post with the unincorporated credit union; or
 - (b) the use with reference to an association of credit unions of a name which has been approved in writing by the Registrar.

146B Exemptions from registration

- (1) **Section 146A** shall not apply to—
 - (a) any person, society, or body of persons (whether corporate or unincorporate) specified in Schedule 5; or
 - (b) any person, society, or body of persons (whether corporate or unincorporate) lawfully carrying on the business of banking; or
 - (c) any building society registered under the Building Societies Act 1965; or

- (d) the members of any fund in existence as at the commencement of this Act, being a fund which may otherwise be trading or carrying on business as an unincorporated credit union but which is an integral part of an associated commercial or trading activity involving those members.
- (2) Schedule 5 may, from time to time by the Governor-General by Order in Council, be amended by adding, omitting, or amending the name of any person, society, or body of persons (whether corporate or unincorporate).
- (3) No person, society, or body of persons to which, by virtue of **subsection (1), section 146A** does not apply shall use, in reference to itself, any name, title, or descriptive expression containing the words “credit union”, “money club”, “savings society”, or “loan society”, or any cognate term or any derivative of those words:
provided that the prohibition effected by this subsection shall not apply to any person, society, or body of persons using the words “savings society” or “loan society” or any cognate term or derivative of those words in reference to itself as at the commencement of this Act.

146C Society may register as unincorporated credit union

Subject to this Act, a society may apply for registration as an unincorporated credit union under this Part if—

- (a) the society has no fewer than 21 members who are—
 - (i) adults; or
 - (ii) charitable entities as defined by the Charities Act 2005; or
 - (iii) incorporated societies registered under the Incorporated Societies Act 1908; and
- (b) the rules of the society comply with **section 146G**; and
- (c) the Registrar is satisfied that the only objects of the society are those of an unincorporated credit union specified in **section 146D**; and
- (d) the rules of the society specify a common bond (as defined in **section 146E**).

146D Objects of unincorporated credit union

- (1) The objects of an unincorporated credit union shall be—
 - (a) the promotion of thrift among its members by the accumulation of their savings; and

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- (b) the use and control of the members' savings for their mutual benefit; and
 - (c) the training and education of the members in the wise use of money and in the management of their financial affairs; and
 - (d) at the discretion of the unincorporated credit union and as a minor adjunct to the other objects set out in this subsection, the welfare of its members and the making of donations for charitable, cultural, benevolent, or philanthropic purposes.
- (2) An unincorporated credit union shall have no power to take any action or do anything unless that action or thing is directly in pursuance of its objects or incidental to them and is authorised by its rules or this Act.

146E Qualifications for admission to membership of unincorporated credit union

- (1) For the purposes of this Act, an unincorporated credit union has a **common bond** if the qualification for membership is—
- (a) following a particular occupation or particular occupations:
 - (b) residing in a particular locality or particular localities:
 - (c) being employed in a particular locality or particular localities:
 - (d) being employed by a particular employer or particular employers:
 - (e) being a member of a bona fide organisation or bona fide organisations or being otherwise associated with members of the organisation or organisations for a purpose other than that of forming a society to be registered as an unincorporated credit union:
 - (f) any other qualification that can be objectively determined:
 - (g) a mixture of any qualifications in **paragraphs (a) to (f)**.
- (2) For the purposes of **subsection (1)**, a qualification can be objectively determined if it—
- (a) includes every person who fulfills the qualification; and
 - (b) is able to be determined by a person who is not a member of the unincorporated credit union; and
 - (c) does not depend on any person's subjective judgement.
- (3) For the purposes of this Act, if the rules of an unincorporated credit union so provide, a person shall be treated as fulfilling a qualification for admission to membership stated in those rules if he or she is a member of the same household as, and is a relative of, another person who is a member of the unincorporated credit union and fulfils that qualification directly.

- (4) In **subsection (3), relative**, in relation to any person, means—
- (a) any current or former spouse, civil union partner or de facto partner of the person; and
 - (b) any lineal ancestor, lineal descendant, brother, sister, uncle, aunt, nephew, niece, or first cousin of the person or of any current or former spouse, civil union partner, or de facto partner of the person; and
 - (c) any current or former spouse, civil union partner, or de facto partner of any person referred to in **paragraph (b)**.

146F Name to contain words “credit union”

Except where otherwise authorised in writing by the Registrar in the circumstances of any case, the name of every society registered as an unincorporated credit union shall contain the words “credit union”.

146G Registration and rules of unincorporated credit union

- (1) The provisions of sections 12, 16, 17, 18, 22, 23, 24(1), 25, 26, 27, and 28 shall, as far as they are applicable and with any necessary modification, apply in respect of unincorporated credit unions as if—
- (a) the references to societies and Schedule 2 or Schedule 3 were references to credit unions and Schedule 4 respectively; and
 - (b) the reference in section 12(1) to 7 adult members were a reference to 21 members and each of the 21 members is—
 - (i) an adult; or
 - (ii) a charitable entity as defined by the Charities Act 2005; or
 - (iii) an incorporated society registered under the Incorporated Societies Act 1908; and
 - (c) the designation referred to in section 17(1)(a) were that of an unincorporated credit union.
- (2) On any application for registration of an unincorporated credit union or its rules or an amendment to its rules, the Registrar may require from the applicant such information or evidence as may be reasonable to show that the applicant will be or is bona fide carrying on the business of an unincorporated credit union in accordance with this Part.
- (3) Except where there is a change in the situation of the registered office of an unincorporated credit union or a change to the rules effected by the Registrar pursuant to section 26 or a change of name,

the rules of an unincorporated credit union shall be amended only by special resolution.

146H Effect of rules on members of unincorporated credit union

- (1) The rules of an unincorporated credit union shall bind the unincorporated credit union and its members and all persons claiming through them respectively to the same extent as if each member had subscribed his or her name, and there were in such rules a covenant on the part of himself or herself, his or her executors, and administrators to conform to such rules subject to the provisions of this Act.
- (2) Subject to **subsection (3)**, all money payable by a member to an unincorporated credit union shall be deemed to be a debt due from the member to the unincorporated credit union, and shall be recoverable as such.
- (3) A member of an unincorporated credit union shall not, without his or her consent in writing having been first obtained, be bound by any amendment of the unincorporated credit union's rules registered after he or she became a member, if and so far as that amendment requires him or her to take or subscribe for more shares than the number held by him or her at the date of registration of the amendment, or to pay upon the shares so held any sum exceeding the amount unpaid upon them at that date, or in any other way increases the liability of that member to contribute to the share capital of the unincorporated credit union.
- (4) Fees for admission to membership, or levies, or charges for management or other services are payable by a member to an unincorporated credit union only if the rules of the unincorporated credit union set out—
 - (a) the amount of the fees, levies, or charges; or
 - (b) the mechanism for charging the fees, levies, or charges.

146I Membership of unincorporated credit union, voting rights

- (1) An individual, a charitable entity as defined by the Charities Act 2005, or an incorporated society registered under the Incorporated Societies Act 1908 can be a member of an unincorporated credit union, except that—
 - (a) section 39 (which relates to the membership of minors) applies to any unincorporated credit union as if it were a society registered under Part 2; and
 - (b) no charitable entity as defined by the Charities Act 2005 or incorporated society registered under the Incorporated Societies Act 1908 can be an officer of an unincorporated credit union.

- (2) Members need have no more than \$10 in fully paid-up shares, although an unincorporated credit union's rules may allow for a deposit of more or less than \$10 in fully paid-up shares.
- (3) A member of an unincorporated credit union who ceases to fulfil the qualifications for admission to membership shall be entitled, subject to **subsection (4)**, to retain his or her membership unless the rules of the unincorporated credit union provide otherwise; and in this Act, the term **non-qualifying member**, in relation to an unincorporated credit union, means a person who remains a member of the unincorporated credit union by virtue of this subsection:
provided that, where the rules of the unincorporated credit union so provide, a member shall not cease to fulfil the qualifications for membership by reason merely of retirement from following a particular occupation or employment with a particular employer.
- (4) The number of non-qualifying members of an unincorporated credit union shall not at any time exceed 10% of the total membership of the unincorporated credit union.
- (5) Non-qualifying members of an unincorporated credit union shall be left out of account in determining for any purpose whether a common bond exists between the members of the unincorporated credit union.
- (6) A non-qualifying member of an unincorporated credit union shall be entitled, except so far as the rules of the unincorporated credit union may otherwise provide, to purchase shares and to receive loans.
- (7) Subject to any provision in the rules of an unincorporated credit union as to voting by a chairman who has a casting vote or to voting by delegates at any conference or meeting relating to unincorporated credit unions, on every matter which is determined by a vote of members of an unincorporated credit union every member shall be entitled to vote and shall have 1 vote only.

Operation of unincorporated credit union

146J Unincorporated credit union to have shares

- (1) Every unincorporated credit union shall have shares, which shall all rank equally and be of a fixed amount of \$1 denomination and may, subject to the rules of the unincorporated credit union, be subscribed for either in full or by periodical or other subscriptions; but no share shall be allotted to a member until it has been fully paid in cash.

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- (2) Shares in an unincorporated credit union shall not be transferable and an unincorporated credit union shall not issue to a member a certificate denoting ownership of a share.
- (3) The rules of an unincorporated credit union may provide for a share to be held by 2 or more members jointly; but, for the purposes of this Act, one of those joint holders (to be ascertained in the manner provided in the rules) shall be deemed to be the member to whom the share was allotted and to whom the provisions of this Act apply accordingly.
- (4) Subject to **subsection (5)**, shares in an unincorporated credit union shall be withdrawable; but an unincorporated credit union shall not issue shares except on terms enabling it to require not less than 60 days' notice of withdrawal.
- (5) If a withdrawal of shares would reduce a member's paid-up shareholding in the unincorporated credit union to less than his or her total liability (including any contingent liability) to the unincorporated credit union whether as borrower, guarantor, or otherwise, then—
 - (a) in the case of a non-qualifying member, the withdrawal shall not be permitted; and
 - (b) in any other case, the withdrawal shall be permitted only at the discretion of the committee of management of the unincorporated credit union.

146K Unincorporated credit union may offer credit union securities

- (1) An unincorporated credit union may, if authorised by and in accordance with its rules and trust deed, offer credit union securities to members for subscription.
- (2) Credit union securities—
 - (a) are transferable only between members; and
 - (b) confer no voting rights upon holders.
- (3) In the event of an unincorporated credit union being wound up, claims for credit union securities must not be paid until all creditors' claims and claims relating to the shares referred to in **section 146J** have been paid.
- (4) In the event of an unincorporated credit union incurring losses that exceed its retained earnings and reserves, the value of the credit union securities must be written down accordingly.
- (5) To avoid doubt, credit union securities do not include shares under **section 146J**.

146L Power of unincorporated credit union to borrow money

An unincorporated credit union may borrow money if the borrowing is authorised by, and in accordance with, its rules and trust deed.

146M Power of unincorporated credit union to appoint supervisor for debt securities

- (1) An unincorporated credit union may appoint a supervisor and sign or amend a trust deed for the purposes of subpart 1 of Part 4 of the Financial Markets Conduct Act 2013.
- (2) This section applies regardless of anything to the contrary in the rules of an unincorporated credit union.

146N Unincorporated credit union may make loans to members

An unincorporated credit union may make loans to members for such purposes and upon such security (or without security) and conditions as the rules of the unincorporated credit union may provide either generally or specifically.

146O Unincorporated credit union property to vest in trustees

- (1) All property belonging to an unincorporated credit union shall vest in the trustees for the time being of the unincorporated credit union for the use and benefit of its members, and of all persons claiming through the members according to the rules of the unincorporated credit union.
- (2) However, regardless of the rules of an unincorporated credit union, if a supervisor has been appointed in respect of a debt security for the purposes of subpart 1 of Part 4 of the Financial Markets Conduct Act 2013, then that supervisor may exercise any rights it has under that Act in respect of the property of the unincorporated credit union.
- (3) Upon the death, resignation, or removal of a trustee of an unincorporated credit union the property vested in that trustee shall, without conveyance, transfer, or assignment, vest (subject to the same trusts) in the succeeding trustees of that unincorporated credit union, either solely or together with any surviving or continuing trustees, and until the appointment of succeeding trustees pursuant to section 28(2) (as applied by **section 146G**), in the surviving or continuing trustees only, or in the executors or administrators of the last surviving or continuing trustee.
- (4) For the purposes of this Part, the following provisions of this Act shall, as far as they are applicable and with any necessary modification, apply in respect of unincorporated credit unions as if they were societies registered under Part 2:

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- (a) section 29(4) (which relates to the denoting of trustees by their official titles); and
- (b) section 30 (which relates to trustees under a disability); and
- (c) section 31 (which relates to the delegation of duties by a trustee); and
- (d) section 32 (which requires a District Land Registrar to be advised of the names of trustees); and
- (e) section 33 (which relates to dealing with land under the Land Transfer Act 1952).

146P Unincorporated credit union may hold land

- (1) An unincorporated credit union may, in the name of its trustees, if authorised by and in accordance with its rules and trust deed, purchase, hold, take on lease, or otherwise provide—
 - (a) any land, and may sell, exchange, mortgage, or lease any such land, and erect, equip, furnish, alter, and maintain, or pull down buildings on it;
 - (b) any building or part of a building, and equip, furnish, alter, and maintain, or pull down any such building.
- (2) An unincorporated credit union shall have power to hold any interest in land so far as is necessary for the purpose of making loans to its members on the security of an interest in land and of enforcing any such security.
- (3) No purchaser, assignee, mortgagee, or tenant shall be bound to inquire as to the authority for any sale, exchange, mortgage, or lease by the trustees, and the receipt of the trustees shall be a discharge for all money arising from or in connection with the sale, exchange, mortgage, or lease.
- (4) Subject, in the case of an instrument affecting land under the Land Transfer Act 1952, to the provisions of section 33 (as applied by **section 146O(4)(e)**), every document to be executed by an unincorporated credit union in the exercise of any powers conferred on it by this section may (if its rules so provide) be executed by a majority of the trustees in whom the property of the unincorporated credit union is vested.

146Q Officers of unincorporated credit union to give security

- (1) Before taking upon himself or herself the execution of his or her office, every officer of an unincorporated credit union having the receipt or charge of money shall, notwithstanding any rule of the unincorporated credit union to the contrary, give security in accordance with **subsection (2)** for his or her rendering a just and true

account of all sums of money received and paid by him or her on account of the unincorporated credit union at such times as its rules appoint, or as the unincorporated credit union or its trustees or committee require him or her to do, and for the payment by him or her of all sums due from him or her to the unincorporated credit union.

- (2) If an officer of an unincorporated credit union is required to give security in accordance with **subsection (1)**, the officer must do so by—
- (a) becoming bound by 1 or more sureties in such sum as the unincorporated credit union directs; or
 - (b) giving the security of a guarantee society in such sum as the unincorporated credit union directs; or
 - (c) including a sum, agreed to by the unincorporated credit union, within the risks insured by the insurance policy required under **section 146ZK**.
- (3) In this section, the term **guarantee society** means—
- (a) any incorporated company carrying on the business of insurance in New Zealand; or
 - (b) any society registered under Part 2 as a specially authorised society and duly authorised to guarantee the fidelity of officers of societies or branches registered under the said Part 2 or credit unions; or
 - (c) an association of credit unions authorised under section 143(4)(e) to offer fidelity insurance.
- (4) Where any registered friendly society makes provision by its rules in accordance with clause 8 of Schedule 1 for guaranteeing the performance of their duties by officers of the society or its branches and membership of that friendly society is the common bond for the membership of an unincorporated credit union, then the society may resolve to extend the effect of the guarantee to cover officers of the unincorporated credit union to the same extent as if they were officers of the society, and it shall be a sufficient compliance with this section if any officer of the society or of any branch thereof gives the security of the society in accordance with those rules as extended.

146R Duty of officers of unincorporated credit union to account

- (1) Every officer of an unincorporated credit union having the receipt or charge of money shall—
- (a) at such times as he or she is required to do so by the rules of the unincorporated credit union; or
 - (b) on demand; or

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(c) on notice in writing requiring him or her to do so given or left at his or her last or usual place of residence,—

render such account as may be required by the unincorporated credit union, or by the trustees or committee of management of the unincorporated credit union; and shall, on demand or on notice as in **paragraph (c)**, pay over all money and deliver all property in his or her hands or custody to such person as the credit union, or the trustees or the committee, may appoint.

(2) In case of any neglect or refusal to deliver the account or to pay over the money or to deliver the property in accordance with **subsection (1)**, the trustees or authorised officers of the unincorporated credit union—

(a) may sue upon any bond or security given under **section 146Q**; or

(b) may apply to the District Court for an order requiring the officer to remedy that neglect or to comply with the provisions of **subsection (1)**.

146S Priority on death, bankruptcy, etc, of officer

The provisions of section 36 (which relates to the priority of claims on the death or bankruptcy of an officer of a society or branch registered under Part 2) shall, as far as they are applicable and with any necessary modification, apply in respect of officers of an unincorporated credit union as if they were officers of a society registered under the said Part 2.

146T Investment of surplus funds

(1) In this section, **surplus funds**, in relation to an unincorporated credit union, means funds not immediately required for its purposes.

(2) The trustees of an unincorporated credit union may invest its surplus funds if the investment is authorised by, and in accordance with, its rules and trust deed.

(3) The trustees of an unincorporated credit union may also invest its surplus funds by depositing them with any association of credit unions of which it is a component member pursuant to section 143.

(4) Any surplus funds of an unincorporated credit union which are not either—

(a) invested in accordance with **subsection (2)** or **subsection (3)**; or

(b) kept in cash in the custody of officers of the unincorporated credit union,—

shall be kept by the unincorporated credit union on current account with, or otherwise on loan to, any bank carrying on business in New Zealand.

- (5) Nothing in this section shall prevent an unincorporated credit union from making a temporary loan to another credit union pursuant to **section 146L**:

provided that no association of credit unions shall lend money to another association unless authorised by the rules of the unincorporated credit union.

- (6) The provisions of section 49 (which relate to the duties of trustees in relation to investments) shall, as far as they are applicable and with any necessary modification, apply in respect of the trustees of an unincorporated credit union as if they were the trustees of a society registered under Part 2.
- (7) Where the common bond of an unincorporated credit union is membership of a society registered under Part 2 and the trustees and other officers of the unincorporated credit union are the same persons as the trustees and other officers of the society, it shall be sufficient compliance with this section if the surplus funds of the unincorporated credit union were treated together with and as part of the surplus funds of the society and were invested accordingly, but accounted for separately to the unincorporated credit union.
- (8) Any unincorporated credit union which contravenes or fails to comply with the provisions of this section commits an offence against this Act.

Distribution to members

146U Meaning of distribution

- (1) In **sections 146V to 146X**, unless the context otherwise requires, **distribution**, in relation to a distribution by an unincorporated credit union to a member, means—
- (a) the direct or indirect transfer of money or property to or for the benefit of the member; or
 - (b) the incurring of a debt to or for the benefit of the member.
- (2) For the purposes of **subsection (1)**,—
- (a) the distribution must relate to credit union securities held by the member to whom the distribution is being made; and
 - (b) a transfer may be made, or a debt incurred, by means of a purchase of property, the redemption or other acquisition of credit union securities or shares, a distribution of indebtedness, or by some other means.

146V Distribution must be authorised

A distribution must be authorised in writing by the committee, or committee of management, as the case may be, of the unincorporated credit union.

146W Distribution must not be authorised unless unincorporated credit union solvent

The committee, or committee of management, as the case may be, of the unincorporated credit union must not authorise a distribution unless the committee is satisfied on reasonable grounds that, immediately after the distribution is made, the unincorporated credit union will be solvent.

146X Solvency test

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

Disputes

146Y Disputes in relation to unincorporated credit unions

For the purposes of this Part, the following provisions shall, as far as they are applicable and with any necessary modification, apply in

respect of unincorporated credit unions as if they were societies registered under Part 2:

- (a) section 78 (which relates to the settlement of disputes generally); and
- (b) section 79 (which provides for a reference of a dispute to the Registrar); and
- (c) section 80 (which authorises the statement of a case on a matter of law for the opinion of the High Court); and
- (d) section 81 (which relates to the reference of disputes to court).

Accounting records and financial reporting

146Z Financial year of unincorporated credit union

- (1) The first financial year of an unincorporated credit union may extend from the date of its registration to such date not later than 18 months from the date of its registration as may be specified in its rules.
- (2) Where the rules of an unincorporated credit union are amended to alter its financial year, the amendment may provide that the financial year current at the date of amendment shall be extended for such period not exceeding 6 months as may be specified in its rules or that the financial year next following the financial year that is so current shall be for such period exceeding 12 months but not exceeding 18 months as may be specified in its rules.

146ZA Accounting records must be kept

Every unincorporated credit union must comply with subpart 2 of Part 7 of the Financial Markets Conduct Act 2013 (which relates to accounting records).

146ZB Financial reporting

Every unincorporated credit union must comply with subpart 3 of Part 7 of the Financial Markets Conduct Act 2013 (which relates to the preparation, audit, and lodgement of financial statements).

146ZC Obligation to appoint auditors

- (1) Every unincorporated credit union must, in each financial year, appoint a qualified auditor to audit its financial statements for that year.
- (2) *See* sections 37 to 39 of the Financial Reporting Act 2013 (which provide for the appointment of a partnership and access to information in relation to an unincorporated credit union).

146ZD General matters relating to auditors

For the purposes of this Part, the following provisions of this Act, as far as they are applicable and with the necessary modifications, apply in respect of unincorporated credit unions as if they were societies registered under Part 2:

- (a) section 64B (which relates to the Registrar appointing an auditor):
- (b) sections 64D and 64E (which relate to compliance with auditing and assurance standards):
- (c) section 65 (which relates to the reappointment and removal of auditors):
- (d) section 66 (which relates to notices of resolution affecting the appointment or removal of auditors):
- (e) section 67 (which relates to proceedings subsequent to a notice of intention to move a resolution):
- (f) section 69 (which relates to auditors' rights to attend and be heard at meetings).

146ZE Registrar may advise unincorporated credit union on financial position

Where it appears to the Registrar to be necessary or desirable that the financial structure of the business or activities or any part of them of an unincorporated credit union should be amended or improved, he or she may advise the unincorporated credit union of his or her opinion and require it to submit to him or her such proposals (whether by way of levy on members or the writing down of share capital or otherwise) as will effect that financial amendment or improvement.

Annual returns

146ZF Annual return

- (1) Every unincorporated credit union shall once in every year, within 3 months after the close of the financial year of the unincorporated credit union or such extended period as the Registrar in any particular case may allow, send to the Registrar an annual return.
- (2) Every annual return shall relate to the affairs of the unincorporated credit union for the financial year preceding that in which the return is required to be sent, and, subject to **subsection (3)**, shall be made in such form and contain such particulars as the Registrar may from time to time require.
- (3) Every annual return—

- (a) shall be made up for the financial year to which the return relates; and
 - (b) must contain a copy of the financial statements that are prepared in relation to the unincorporated credit union for the financial year; and
 - (c) shall have attached a list containing the names, addresses, and designations of the committee of management, the secretary, treasurer, and other principal officers, the trustees, and those persons who are authorised to sue and be sued on behalf of the unincorporated credit union; and
 - (d) shall be accompanied by a statement giving details of the total number of members in each category of member as recorded in the register kept pursuant to **section 146ZI**.
- (4) The annual return sent to the Registrar must be accompanied by the auditor's report on the financial statements referred to in **subsection (3)(b)**.

146ZG Annual return by unincorporated credit union under dissolution

- (1) Any unincorporated credit union which is being terminated by an instrument of dissolution under section 94 or the award of the Registrar under section 95 (each section being as applied by **section 146ZR**) shall make up its annual return to the date of that instrument of dissolution or that award.
- (2) In the case of an unincorporated credit union amalgamating or transferring its engagements pursuant to **section 146ZM**, the Registrar may require an annual return made up to the date of such amalgamation or transfer of engagements, or to such other date as he or she may specify.

146ZH Annual return to be supplied to members

- (1) An unincorporated credit union must, on the application of a member or person interested in its funds, supply to the member or person without charge a copy of the last annual return of the unincorporated credit union.
- (2) An unincorporated credit union must provide, together with every copy of an annual return supplied under **subsection (1)**, a copy of the auditor's report on the financial statements contained in the return.

Miscellaneous provisions

146ZI Register of members of unincorporated credit union

- (1) Every unincorporated credit union shall set up and maintain an indexed register of members showing separately—
 - (a) ordinary members:
 - (b) non-qualifying members within the meaning of **section 146I(4)**.
- (2) The register shall show—
 - (a) the name and address of each member:
 - (b) the date on which the member joined the unincorporated credit union or changed category as a member:
 - (c) the date on which any person ceased to be a member.
- (3) The register of members shall also show such other particulars as may from time to time be prescribed by the Registrar.
- (4) The register shall be kept at the registered office of the unincorporated credit union, and shall be open to inspection during ordinary office hours by any member of the unincorporated credit union.

146ZJ Financial statements must be available

Every unincorporated credit union must keep available for inspection (without charge), by a member or person interested in its funds, at its office during ordinary office hours a copy of the last financial statements completed and signed in accordance with the Financial Markets Conduct Act 2013 or any other Act, together with the auditor's report.

146ZK Unincorporated credit union to be insured against fraud or other dishonesty

- (1) No society shall be registered as an unincorporated credit union unless the Registrar is satisfied that, on registration, there will be in force in relation to that society a policy of insurance complying with the requirements of this section.
- (2) In order to comply with this section, a policy of insurance,—
 - (a) subject to such exceptions as may be prescribed, shall insure the unincorporated credit union in respect of every description of loss suffered or liability incurred by reason of the fraud or other dishonesty of any of its officers or employees; and
 - (b) shall so insure the unincorporated credit union up to a limit of not less than such amount as may be prescribed in respect of any one claim, except that the liability of the insurer may be

- restricted to a prescribed amount in respect of the total of the claims made in any 1 year; and
- (c) shall not, except with the consent in writing of the Registrar, provide in relation to any claim for any amount greater than 1% of the limit referred to in **paragraph (b)** to be met by the unincorporated credit union; and
 - (d) shall comply with such other conditions as may be prescribed.
- (3) In this section, **prescribed** means prescribed from time to time by the Governor-General by Order in Council; and different exceptions, amounts, limits, and conditions may be prescribed in respect of different credit unions or classes of credit union.
- (4) Notwithstanding any amount prescribed for the purpose of **subsection (2)(b)**, a policy of insurance will still comply with this section if that prescribed amount is reduced by the amount the unincorporated credit union has obtained as security in respect of the fidelity of its officers pursuant to **section 146Q(2)** or **section 146Q(4)**.
- (5) Every unincorporated credit union which, at any time, fails to maintain in force a policy of insurance complying with the requirements of this section, and every member of the committee of management of such an unincorporated credit union, commits an offence and shall be liable on conviction to a fine not exceeding \$1,000.

146ZL Guarantee funds

- (1) Subject to this section, an unincorporated credit union, or any 2 or more unincorporated credit unions, or any association of credit unions on behalf of its constituent members may enter into arrangements with a person carrying on the business of insurance, for the purpose of making funds available—
- (a) to assist any unincorporated credit union that is a party to the arrangements and which is in financial difficulties;
 - (b) to meet losses incurred by members of an unincorporated credit union which is a party to the arrangements.
- (2) Any 2 or more unincorporated credit unions together or any association of credit unions on behalf of its constituent members may enter into any other kind of arrangements for the purposes specified in **subsection (1)**.
- (3) Subject to this section and notwithstanding anything to the contrary in this Act or an unincorporated credit union's or association's rules, an unincorporated credit union or association shall have power to make contributions, whether by instalments or not, under arrangements made in accordance with this section.

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- (4) Arrangements under this section may provide for the vesting of a fund in trustees appointed under the arrangements.
- (5) Arrangements under this section may provide for the incorporation of a company under the Companies Act 1993; and an unincorporated credit union or association shall have power to subscribe for or purchase shares in, or deposit money with, any company so incorporated whether by instalments or not.

146ZM Amalgamation of unincorporated credit unions and transfer of engagements

- (1) Any 2 or more unincorporated credit unions may, by special resolution of each of them, become amalgamated together as 1 unincorporated credit union, with or without any dissolution or division of the funds of those unincorporated credit unions or any of them.
- (2) An unincorporated credit union may by special resolution transfer its engagements to any other unincorporated credit union which may (by special resolution or in such other manner as may be authorised by its rules) undertake to fulfil the engagements of that unincorporated credit union.
- (3) An unincorporated credit union shall not amalgamate with or transfer its engagements to or accept a transfer of engagements from—
 - (a) any society which is not a credit union:
 - (b) any association of credit unions,—and an association shall only amalgamate with or transfer its engagements to another association of credit unions.
- (4) For the purposes of this section, section 83, as far as it is applicable and with any necessary modification, applies in respect of an unincorporated credit union as if it were a society registered under Part 2.
- (5) The Registrar must not register a special resolution under section 82 if the proposed amalgamation or transfer of engagements would result in a breach of any provision of this Act.
- (6) In this Part, the term **non-qualifying member**, in relation to an amalgamated unincorporated credit union or an unincorporated credit union which has accepted a transfer of engagements, includes a person who does not fulfil the qualifications for admission to membership of that unincorporated credit union but became a member of it by virtue of the amalgamation or transfer of engagements, having been immediately before the amalgamation or transfer a non-qualifying member of one of the amalgamating unincorporated credit unions or, as the case may be, the unincorporated credit union from which the transfer of engagements was made.

146ZN Registrar may approve amalgamations or transfers of engagements of unincorporated credit unions

- (1) If, after notice has been given of a general meeting at which it is proposed to put a special resolution amalgamating or transferring the engagements of the unincorporated credit union pursuant to **section 146ZM**, the meeting lapses for want of the quorum specified in the rules of the unincorporated credit union, the committee or trustees of the unincorporated credit union may apply to the Registrar to confirm the amalgamation or transfer as if the special resolution had been properly passed.
- (2) Notice of every such application shall be published by the unincorporated credit union in the *Gazette*, and in such newspaper or newspapers as the Registrar may require.
- (3) Objections in writing may be made to the Registrar, and for this purpose the objection provisions of section 85 with any necessary modifications shall apply to the application as if it were a special resolution passed in respect of a friendly society and the date of publication of the application were the date the special resolution was received by the Registrar under subsection (3) of that section.

Inspection, liquidation, and suspension of business

146ZO Registrar may appoint inspectors or call special meeting

Section 89 (which relates to the appointment of inspectors or the calling of special meetings) shall, as far as it is applicable and with any necessary modification, apply in respect of an unincorporated credit union as if it were a society registered under Part 2.

146ZP Registrar may apply to put unincorporated credit union into liquidation

On the application of the Registrar, the High Court may appoint a liquidator of an unincorporated credit union for the liquidation of the unincorporated credit union in accordance with the Companies Act 1993 if—

- (a) the unincorporated credit union is unable to pay sums due and payable to its members, or is able to pay such sums only by obtaining further subscriptions for shares or by defaulting in its obligations to creditors; or
- (b) there has been, in relation to that unincorporated credit union, failure to comply with any provision of, or any direction given under, this Act; or
- (c) there is no longer a common bond between the members of the unincorporated credit union; or

- (d) the liquidation of the unincorporated credit union is in the public interest or is just and equitable having regard to the interests of all members of the unincorporated credit union.

146ZQ Registrar may suspend business of unincorporated credit union

- (1) Subject to this section, where the Registrar is satisfied that, having regard to the interests of all the members of the unincorporated credit union or in the interests of potential members of the unincorporated credit union it is expedient to do so, he or she may give a direction prohibiting the unincorporated credit union to such extent and subject to such conditions as may be specified in the direction from carrying on all or any of the following activities:
- (a) borrowing money:
 - (b) accepting a payment representing the whole or any part of an amount due by way of subscription for a share in the unincorporated credit union other than a payment which fell due before the making of the order:
 - (c) lending money:
 - (d) repaying share capital:
 - (e) accepting new members.
- (2) Not less than 1 month before giving a direction under **subsection (1)**, the Registrar shall give the unincorporated credit union notice in writing that he or she proposes to give such a direction, and shall set out in the notice his or her reasons for doing so.
- (3) The Registrar shall consider any representations with respect to a notice under **subsection (2)** which may be made to him or her by the unincorporated credit union within such period (being not less than 1 month) as he or she may allow from the date on which the unincorporated credit union is given the notice or such further period as he or she may allow; and, if the unincorporated credit union so requests, shall afford it an opportunity of being heard by him or her within that period or further period.
- (4) Where the Registrar gives a direction under **subsection (1)**, he or she shall give the unincorporated credit union notice in writing of it setting out his or her reasons for doing so; but he or she shall not give such a direction under the said **subsection (1)** unless all the reasons set out were those, or were among those, which were set out in the notice given to the unincorporated credit union under **subsection (2)**.
- (5) Notice of the giving of a direction under **subsection (1)** shall be published by the Registrar in the *Gazette* and in some newspaper in

general circulation in the neighbourhood of the registered office of the unincorporated credit union.

- (6) Nothing in any direction given under this section shall make it unlawful for a unincorporated credit union to borrow from a bank under **section 146L(2)** if the unincorporated credit union has first obtained the consent in writing of the Registrar.
- (7) For the purposes of this section and of any direction given under it, if any indebtedness of a member to a unincorporated credit union is set off to any extent against the share capital credited to him or her, then, to that extent, the setting off shall be treated as a repayment of that share capital.
- (8) A direction given under this section may be revoked by the Registrar, and notice of the revocation shall be published in the same manner as notice of the giving of the direction.
- (9) Where a direction under this section is revoked, any obligation of any person to make a payment to the unincorporated credit union which fell due at a time when the unincorporated credit union was prohibited by the direction from accepting it shall be suspended for a period equal to the period for which the prohibition was in force.
- (10) Subject to **subsection (9)**, any obligation to make to a unincorporated credit union a payment which the unincorporated credit union is prohibited from accepting by a direction under this section shall be wholly rescinded.
- (11) An unincorporated credit union may, within 1 month after the date of publication of a direction in the *Gazette* under **subsection (5)**, appeal to the High Court against the whole or any part of the direction; but, until the appeal is determined, the direction shall have effect according to its tenor.

146ZR Cancellation or suspension of registration, and dissolution of unincorporated credit union

- (1) The Registrar may suspend an unincorporated credit union's registration for any term not exceeding 3 months, and may from time to time renew the suspension for any term not exceeding 3 months, or may cancel an unincorporated credit union's registration if there is no longer a common bond between the unincorporated credit union's members or the Registrar is satisfied that—
 - (a) registration has been obtained for the unincorporated credit union by fraud or mistake; or
 - (b) the unincorporated credit union exists for an illegal purpose; or

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- (c) the unincorporated credit union has wilfully, and after notice from the Registrar, breached any of the provisions of this Act; or
 - (d) the unincorporated credit union has not commenced business within 1 year of registration or has voluntarily suspended business for more than 6 months; or
 - (e) the unincorporated credit union has fewer than 21 members; or
 - (f) the unincorporated credit union has ceased to exist; or
 - (g) at the request of the unincorporated credit union, there is good reason for the cancellation or suspension; or
 - (h) there has been a failure by the unincorporated credit union to comply with any direction of the Registrar given under this Act.
- (2) **Subsection (1)** is subject to the following provisions (as far as they are applicable and with any modifications necessary so that they apply to a unincorporated credit union as if it were a society registered under Part 2):
- (a) section 92(2) to (9):
 - (b) section 93(1):
 - (c) section 94(1) to (4) and (6):
 - (d) section 95:
 - (e) section 96.
- (3) Where the registration of an unincorporated credit union is cancelled pursuant to this section, whether as a result of an award or by agreement or otherwise, every officer of the unincorporated credit union holding office immediately before such cancellation commits an offence if, at the expiry of a period of 3 months after the date of such cancellation or such extended period as the Registrar may allow, there has not been lodged with the Registrar a certificate signed by the liquidator, secretary, or other officer of the unincorporated credit union approved by the Registrar that all property vested in the unincorporated credit union has been duly conveyed or transferred by the unincorporated credit union to the persons entitled.

146ZS Liability of members on winding up

Where an unincorporated credit union is wound up pursuant to **section 146ZP**, the liability of a present or past member of the unincorporated credit union to contribute for payment of the debts and liabilities of the unincorporated credit union, the expenses of wind-

ing up, and the adjustment of the rights of contributories amongst themselves, shall be qualified as follows:

- (a) no person who ceased to be a member not less than 1 year before the beginning of the winding up shall be liable to contribute:
- (b) no person shall be liable to contribute in respect of any debt or liability contracted after he or she ceased to be a member:
- (c) no person who is not a member shall be liable to contribute unless it appears to the court that the contributions of the existing members are insufficient to satisfy the just demands on the unincorporated credit union:
- (d) no contribution shall be required from any person exceeding the amount, if any, unpaid on the shares and the unincorporated credit union securities referred to in **section 146K** in respect of which he or she is liable as a past or present member, together with any fees or charges or levies payable as such by a member to the unincorporated credit union as specified in the rules and any money owing by the member to the unincorporated credit union:
- (e) in the case of a withdrawable share which has been withdrawn, a person shall be taken to have ceased to be a member in respect of that share as from the date of the notice or application for withdrawal.

Nomination of shares

146ZT Nomination of shares in unincorporated credit union

- (1) Notwithstanding that, pursuant to **section 146J(2)**, shares in an unincorporated credit union are not transferable, a member of an unincorporated credit union may, by writing under his or her hand delivered at or sent to the registered office of the unincorporated credit union, or made in a register kept at that office, nominate a person or persons to receive any shares that the member may have in the unincorporated credit union at his or her decease or any sum of money payable by the unincorporated credit union at that time.
- (2) For the purposes of **subsection (1)**, sections 43, 44, and 45 shall, as far as they are applicable and with any necessary modification, apply in respect of an unincorporated credit union as if—
 - (a) the references to societies were references to unincorporated credit unions; and
 - (b) the references to the maximum amount nominated of \$2,000 were references to the maximum value of shares or sum of money nominated as being \$2,000 in total.

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- (3) If the transfer of any shares comprised in a nomination in the manner directed by the nominator would raise the share capital of any nominee beyond the maximum for the time being permitted in the case of that unincorporated credit union, the committee of the unincorporated credit union shall not transfer to that nominee more of those shares than will raise his or her share capital to that maximum and shall pay him or her the value of any of those shares not transferred.

Explanatory note

This Supplementary Order Paper amends the Friendly Societies and Credit Unions (Regulatory Improvements) Amendment Bill to amend *clause 4* and insert *new clauses 7 and 42A*. The effect of the proposed amendments is to allow credit unions to have the option of continuing to be unincorporated associations and being governed by the existing provisions.