



SAMOA

CREDIT UNION ACT 2015

Arrangement of Provisions

PART 1

PRELIMINARY

1. Short title and commencement
2. Interpretation
17. Voting

PART 2 REGISTRATION OF CREDIT UNION

Division 1 - Procedures

3. Memorandum of association
4. Preliminary meeting
5. Application for registration

Division 2 - Registration

6. Registration
7. Body corporate
8. Certificate of registration

Division 3 - Members

9. Members limited to groups
10. Minors
11. Register of members
12. Expulsion of members
13. Withdrawal of members
14. Payments on death, withdrawal or expulsion of a member
15. Effect of expulsion or withdrawal
16. Officers, etc., not to withdraw or transfer shares

PART 3 OBJECTS, POWERS AND SHARES

18. Objects
19. Powers
20. Land, entrance fee and registered office
21. Capitalisation
22. Shares and dividends

PART 4 ADMINISTRATION

Division 1 - Registrars

23. Registrar of Credit Unions
24. Assistant registrars
25. Register of credit unions

Division 2 - Directors, Committees, Officers and Meetings of Credit Unions

26. Election of directors and committees
27. Duties of directors
28. Appointment of officers
29. Duties of supervisory committees
30. Duties of credit committees

- 31. Meetings
- 32. Liability of officers and directors
- 33. Remuneration
- 34. Returns of Registrar

**PART 5
FINANCIAL MATTERS**

- 35. Purpose of loans
- 36. Security of loans
- 37. Restrictions
- 38. Prohibitions
- 39. Interest rates
- 40. Repayment
- 41. Borrowing powers
- 42. Powers of hypothecation
- 43. Reserve Fund
- 44. Payment of dividend
- 45. Fiscal year
- 46. Security by officers
- 47. Debts due by members
- 48. Annual returns
- 49. Other returns
- 50. Form of return
- 51. Annual examination of affairs

**PART 6
BY LAWS**

- 52. By-laws
- 53. Standard by-laws
- 54. By-laws binding

**PART 7
DE-REGISTRATION**

AND DISSOLUTION

- 55. De-registration
- 56. Dissolution by consent of members
- 57. Liability of members in winding-up
- 58. Provision as to instrument of dissolution

**PART 8
OFFENCES**

- 59. Offences
- 60. Prohibition of use of "Credit Union"
- 61. Offence for unregistered credit union
- 62. Restriction on name
- 63. General penalty

**PART 9
MISCELLANEOUS**

- 64. Federation of credit unions
- 65. Tax exemption
- 66. Appeal
- 67. Regulations
- 68. Fees and charges
- 69. Repeal, transition and amendment

Schedules

CREDIT UNION ACT 2015

2015,

No. 34

AN ACT to provide for the formation of credit unions and to regulate their operations and for related matters.

[Assent and commencement date: 4 September 2015]

BE IT ENACTED by the Legislative Assembly of Samoa in Parliament assembled as follows:

**PART 1
PRELIMINARY**

1. Short title and commencement – This Act may be cited as the Credit Union Act 2015, and commences on the date of assent.

2. Interpretation - In this Act, unless the context otherwise requires:

“account” for a credit union, means an account maintained by the credit union to which is accredited money received by or on behalf of the credit union;

“active member” means a registered member of a credit union;

“board of directors” means the board of directors of a credit union elected under section 26(1)(a);

“by-laws” means by-laws made by a credit union pursuant to this Act;

“credit committee” means the credit committee of a credit union elected under section 26(1)(b);

“credit union” means a credit union registered or deemed to be registered pursuant to this Act;

“court” means the Supreme Court, District Court or any other subordinate court established by an enactment;

“dividend” means a share of the surplus or bonus declared by a credit union divided among its members in proportion to the amounts in their share accounts;

“federation of credit unions” means the credit unions incorporated or registered under this Act that associates as a federation for the furtherance of their common interest and the benefit of their members;

“member” means a member of a credit union;

“membership share” means the minimum amount required to be paid to a credit union by a person to become a member of the credit union;

“Ministry” means the Ministry responsible for the administration of this Act;

“officer” of a credit union means:

(a) a member of the board of directors of the credit union;
or

(b) a member of the supervisory committee or any other committee of the credit union; or

(c) the manager of a credit union (howsoever described) or any other employee of a credit union who exercises senior management functions.

“Registrar” means the Chief Executive Officer of the Ministry;

“share account” means an account becomes a share account if the money in the account is payable on notice;

“standard by-laws” means by-laws made under section 53;

“supervisory committee” means a supervisory committee of a credit union elected under section 26(1)(c).

PART 2 REGISTRATION OF CREDIT UNION

Division 1 - Procedures

3. Memorandum of association – (1) Any 12 or more persons resident in Samoa who want to associate themselves together as a credit union must each sign a memorandum of association stating the following:

- (a) the name of the proposed credit union;
- (b) the group of persons to whom membership is to be restricted;
- (c) the address in Samoa at which the registered office of the proposed credit union is to be situated;
- (d) the value of a membership share of the proposed credit union;
- (e) the name, address and qualification of each person who signed the memorandum.

(2) The memorandum must:

- (a) be in the Form No.1 of Schedule 2; and
- (b) be prepared in 2 copies; and
- (c) for each or all the signatures, be witnessed by any person or persons listed in section 14 of the Oaths, Affidavits and Declaration Act 1963 (other than subscribers to the memorandum); and
- (d) be supported by an affidavit verifying the signatures in it; and
- (e) be filed in the office of the Registrar.

(3) After the memorandum of association is signed, those who signed it must appoint a provisional secretary until a secretary is appointed under section 28(c).

4. Preliminary meeting - Those who signed the memorandum must hold a meeting for the following purposes:

- (a) to make any supplementary by-laws of the proposed credit union;
- (b) to complete the application for registration as a credit union;
- (c) to elect the first directors of the proposed credit union in accordance with -
 - (i) the supplementary by-laws; or
 - (ii) the standard by-laws if supplementary by-laws are not made;
- (d) any other purposes relating to the formation of the proposed credit union.

5. Application for registration – (1) An application to be registered as a credit union must:

- (a) be made in writing to the Registrar by a credit union on behalf of the proposed credit union; and
 - (b) be in such form as is specified by the Registrar.
- (2) The application must be accompanied by the following:
- (a) one copy of the memorandum of association signed under section 3;
 - (b) a copy of a report of the preliminary meeting held under section 4;
 - (c) a copy of the supplementary by-laws (if any);
 - (d) a statement from the credit union supporting the application;
 - (e) the fee prescribed by regulations.

Division 2 - Registration

6. Registration – When the memorandum of association is filed, the Registrar must:

- (a) register the credit union if the Registrar is satisfied that registration is proper and in particular that the group to which membership is limited is such as to ensure reasonable personal contact amongst the members; and
- (b) issue to the provisional secretary a certificate of registration in the Form No. 2 of Schedule 2.

7. Body corporate – (1) A credit union upon registration, becomes a body corporate (with limited liability) under its registered name with perpetual succession and a common seal.

- (2) As a body corporate, the credit union may:
- (a) sue and be sued;
 - (b) enter into contracts;
 - (c) acquire, hold and dispose of property both real and personal;
 - (d) subject to this Act, carry out any other matter that a body corporate may do in law.

8. Certificate of registration – (1) Upon registration, the Registrar must send to the credit union the following documents:

- (a) the certificate of registration in Form No. 2 of Schedule 2;
 - (b) a copy of any registered supplementary by-laws;
 - (c) a copy of the standard by-laws;
 - (d) a copy of this Act and the regulations.
- (2) The Registrar:
- (a) may charge the credit union the reasonable costs incurred in supplying the documents;
 - (b) must provide a notice of registration to be published in the Savali.

Division 3 - Members

9. Members limited to groups – (1) The membership of a credit union is limited to a group of persons:

- (a) having a common bond of occupation or association; or
- (b) residing within a well-defined neighbourhood, community, rural or urban district.

(2) A person admitted to membership must not exercise any of the rights of a member until the person:

- (a) has subscribed to 1 share; and
- (b) has paid an amount on it not less than the initial instalment provided by the by-laws.

10. Minors – (1) A person under the age of 21 years (“minor”) is entitled to be a member.

- (2) A minor who becomes a member:

- (a) is not entitled to vote until the minor has reached 18 years; and
 - (b) must not be elected as a director or as a member of the credit committee or supervisory committee until the minor has reached 21 years.
- (3) A minor who becomes a member of a credit union has the right to enter into any contract or agreement required under this Act.
- (4) A contract between the minor (whether as principal or as surety) and the credit union:
- (a) is not invalidated or avoided by the fact of being a minor; and
 - (b) is legally binding and enforceable by or against the minor despite being a minor.
- (5) This section does not limit or affect the Infants Ordinance 1961.

11. Register of members – (1) A register or list of shareholders must be kept by a credit union.

(2) The register:

(a) must show -

- (i) the names, addresses and occupations of the shareholders, the number of shares held by them respectively, the number of such shares and the amount paid or considered as paid thereon; and
- (ii) the date on which each shareholder was registered; and
- (iii) the date at which any shareholder ceased to be such; and

(b) is *prima facie* evidence of the matters in paragraph (a).

12. Expulsion of members – (1) A board of directors may by a two-thirds vote, at a meeting duly called, expel a member from the credit union.

(2) The secretary must, within 5 working days of the date of expulsion, notify the member of the expulsion.

(3) The expelled member may, by notice of intention to appeal, appeal the decision at the next general meeting of the credit union.

(4) The notice of intention to appeal must be given to the secretary within 20 working days from the date of receiving the Registrar's notice under subsection (2).

(5) A majority of the members present at the general meeting may confirm or rescind the action of the board of directors.

(6) The expulsion is effective:

- (a) on expiry of the appeal period if the notice of intention to appeal is not given; or
- (b) on the date the decision of the board of directors is confirmed under subsection (4) if an appeal has been made.

13. Withdrawal of members - A member may withdraw from the credit union by giving notice of withdrawal pursuant to the by-laws.

14. Payments on death, withdrawal or expulsion of a member

– (1) If a member:

- (a) withdraws; or
- (b) is expelled; or
- (c) dies,

any amounts paid in on shares or as deposits by the member and any relative dividends or interest is to be paid to:

- (aa) the member; or
- (bb) for death, to the personal representative of the member as funds become available and after deducting all amount due from the member to the credit union.

(2) Shares paid under this section are, for the purpose of section 57(ee), taken to have been withdrawn by a notice given on the date of the expulsion, withdrawal, or death.

15. Effect of expulsion or withdrawal - A member who is expelled or withdraws has no further rights in the credit union but is not, by the expulsion or withdrawal, released from any remaining liability to the credit union.

16. Officers, etc., not to withdraw or transfer shares-(1) A member entrusted with or participating in the direct management of the affairs of the credit union must not withdraw or transfer or otherwise dispose of his or her shares, during the exercise of his or her functions.

(2) If the credit union becomes insolvent, the withdrawal or transfer made by the member within 4 months before the insolvency is void.

(3) The member remains liable to creditors of the credit union to the extent of the shares disposed of or transferred.

17. Voting - A member has only 1 vote at any meeting and cannot vote by proxy.

PART 3 OBJECTS, POWERS AND SHARES

18. Objects - The objects of a credit union are:

- (a) to promote thrift among its members;
- (b) to receive the savings of its members either as payment on shares or as deposits;
- (c) to make loans to members exclusively for provident or productive purposes.

19. Powers - For the purpose of carrying out its objects, a credit union may, subject to this Act:

- (a) deposit money in any bank in Samoa; and
- (b) invest in any securities issued or guaranteed by a Government or in any security or local loan of the Government; and
- (c) invest under Unit Trusts Act 2008;
- (d) borrow money; and
- (e) insure its loans, funds, and property, against loss; and
- (f) draw, make, accept, endorse, execute, and issue promissory notes, bills of exchange, bills of lading, warrants and other negotiable or transferable instruments; and
- (g) do all such other acts and things as are incidental or conducive to or consequential upon the attainment of its objects.

20. Land, entrance fee and registered office - A credit union may:

- (a) in its own name hold, purchase or take on lease any land, and may sell, exchange, mortgage or lease the same; and
- (b) charge an entrance fee not exceeding that authorised by the by-laws; and

(c) change its registered office on written notice to the Registrar.

21. Capitalisation - The capital of every credit union:

- (a) may be unlimited in amount; and
- (b) must be divided into shares of a par value of not less than \$2 each.

22. Shares and dividends-(1) The shares may be purchased outright or by instalments in such manner as may be determined by by-laws.

(2) A shareholder must receive dividends only on fully paid up shares.

(3) Subject to other provisions of this section and to the by-laws, shares may be assigned, transferred, or withdrawn, by the holder.

(4) Shares may only be assigned or transferred to a member of the credit union.

(5) Any assignment, transfer, or withdrawal:

- (a) is not valid if it is not approved by the directors elected under section 26 (the directors approval must not be unreasonably withheld); and
- (b) must not be approved by the directors if the total number of shareholders is thereby reduced below 12.

PART 4 ADMINISTRATION

Division 1 - Registrars

23. Registrar of Credit Unions-(1) The Chief Executive Officer is the Registrar of Credit Unions.

(2) The duties of the Registrar are:

- (a) to administer this Act;
- (b) to carry out any function, duty or power of the Registrar under this Act or any other enactment, and in accordance with any written general policy directions of the Minister responsible for this Act.

24. Assistant registrars-(1) The Registrar may appoint one (1) or more deputy registrars of Credit Unions, as may be necessary for the purpose of this Act.

(2) Subject to the control of the Registrar, an assistant registrar has and may exercise the powers, duties and functions of the Registrar under this Act.

(3) The fact that an assistant registrar exercises those powers, duties, or functions is evidence of his or her authority to do so.

25. Register of credit unions-(1) The Registrar must establish a register of credit unions registered under this Act and keep the register up to date.

(2) The register must contain particulars of the registration of each credit union and a copy of its supplementary by-laws.

(3) The register must be kept in the form determined by the Registrar.

(4) The Registrar must allow only the active members of a credit union to access the information authorized by this Act to be disclosed.

(5) Members of another credit union should not be allowed access to information pertaining to another credit union.

(6) Members of any credit union should not be allowed access to any information that is considered by this Act to be confidential, such as:

- (a) members contributions; or
- (b) the loan balance of any member.

*Division 2 - Directors, Committees,
Officers and Meetings of Credit Unions*

26. Election of directors and committees-(1) At the first annual general meeting, the credit union must elect:

- (a) a board of directors of not less than 5 members;
- (b) a credit committee of not less than 3 members; and
- (c) a supervisory committee of 3 members.

(2) One-half of the members of the board and of each of the committees under subsection (1) must go out of office in each year and their successors must be elected at the annual general meeting.

(3) If the number of members of the board or of either of the committees under subsection (1) is not evenly divisible by 2, the number of members of the board or of the committee to go out of office is to be half the number next below the number of members of the board or committee.

(4) The members of the board or a committee to go out of office are those members who have been longest in office without re-election and in the case of equality must be determined by ballot.

(5) A retiring member is eligible for re-election.

(6) A director or member of a credit committee must not be a member of a supervisory committee.

27. Duties of directors - Subject to this Act, the directors have the general management of the affairs of a credit union and in particular must:

- (a) act on applications for membership and on the expulsion of members;
- (b) determine the maximum individual share holdings and the maximum individual loan which may be made with or without security;
- (c) determine interest rates on loans and on deposits;
- (d) declare dividends;
- (e) fix the form and amount of the security required from officers and employees handling money;
- (f) fill casual vacancies in the board of directors and in the credit committee until the election of successors at the next annual general meeting;
- (g) perform such other duties as are required by this Act or the by-laws.

28. Appointment of officers - At the director's first meeting, which must be held within 10 days after their election or at any subsequent meeting if there is a vacancy among the officers, the directors must appoint from among the directors:

- (a) a president; and
- (b) a vice-president; and
- (c) appoint a secretary and a treasurer or a secretary-treasurer, who may or may not be a director.

29. Duties of supervisory committees - The duties of a supervisory committee are:

- (a) to make an examination of the affairs of the credit union at least quarterly and audit its books and if deemed necessary by them, call a special general meeting of the credit union for consideration of the report of the supervisory committee; and

- (b) to make or provide for an annual audit and submit a report thereon to the annual meeting; and
- (c) to fill casual vacancies in its own membership until the next annual meeting and successors are chosen;
- (d) if deemed necessary and by unanimous vote, to suspend any officer, and to call a meeting of the credit union to consider their report on such suspension;
- (e) to call a special general meeting to consider any matter or matters which, in their opinion, should be placed before the credit union.

30. Duties of credit committees - The duties of a credit committee are:

- (a) to have general supervision of all loans to members; and
- (b) subject to any general order of the Board and this Act, to fix the amount of, and rate of interest on, each loan; and
- (c) to only consider any loan when a majority of the committee is present; and
- (d) to only approve loan by the unanimous decision of the members present.

31. Meetings-(1) There is to be an annual general meeting at any time as the by-laws may provide.

(2) Special general meetings may be called in the way and manner provided by the by-laws.

(3) Within 10 days after the provisional secretary receives the certificate of registration, the secretary must:

- (a) notify each of the applicants for registration that the certificate has been received; and
- (b) call a meeting of the credit union for the organisation (to be taken as the annual general meeting for that year).

32. Liability of officers and directors – (1) If a credit union commits an offence, an officer of the credit union who is bound by its by-laws to fulfil its duties also commits the same offence.

(2) However, if there is no officer, a director or a member of a credit committee or of a supervisory committee commits the same offence.

(3) It is a defence for an officer, director or member of a credit committee or supervisory committee to prove to have been ignorant of or to have attempted to prevent the commission of the offence.

33. Remuneration – (1) The members of the board of directors, credit committee, and supervisory committee are not entitled, as such, to receive remuneration.

(2) However, the secretary and the treasurer or the secretary-treasurer are entitled to salaries as the members may determine at any annual or special meeting.

34. Returns of Registrar - A record of the names and addresses of the directors, the members of the committees, and of the officers, must be filed with the Registrar within 10 days after election or appointment.

PART 5 FINANCIAL MATTERS

35. Purpose of loans - A loan must be for a provident or productive purpose.

36. Security of loans - A credit committee must:

- (a) require security to be given on all loans in excess of an amount to be fixed by the Registrar; and
- (b) determine the security and guarantors required for each loan and the conditions of repayment.

37. Restrictions - A director, an officer or the member of a credit committee or supervisory committee is not allowed to borrow in excess of the value of his or her shares and deposits except upon the unanimous vote of a majority of the other members of the board of directors, a majority of the credit committee and a majority of the supervisory committee, sitting together, (the director, officer or member, not being present when the vote is taken).

38. Prohibitions - Without limiting section 19(a) and (b), a credit union must not lend money to or accept deposits from a person who is not a member of the credit union.

39. Interest rates - The interest rate on any loan made by a credit union must not exceed 1% a month, on the unpaid balance of the loan.

40. Repayment - A borrower may repay the loan in whole or in part on any day on which the office of the credit union is open for business.

41. Borrowing powers-(1) Subject to other provisions of this section, a credit union may, by resolution of the directors, borrow money for the carrying out of its objects and functions.

(2) A credit union must not borrow any money so that the total indebtedness of the credit union in respect of borrowings exceed 50% of the sum of the deposits and the paid up value of the issued capital.

(3) If any borrowing would make the total indebtedness of the credit union in respect of borrowings exceed 25% of the sum of the deposits and the paid up value of the issued capital, the resolution of the directors to borrow the money must require confirmation:

- (a) by a vote of not less than three-quarters of the members present at a general meeting duly called for considering the resolution; or
- (b) by the unanimous sanction in writing of the members of the credit union.

42. Powers of hypothecation - A credit union may charge, hypothecate, mortgage or pledge its real or personal property to secure any liability for the repayment of money borrowed under section 41.

43. Reserve Fund-(1) A credit union must have a reserve fund into which is to be paid all entrance fees and all fines.

(2) The directors must at the end of each financial year, before declaring any dividend, set aside for payment into the reserve fund not less than 20% of the net earnings for that year.

(3) However, the directors are not required to set aside for or to pay into the reserve fund any sum which would make the amount of the reserve fund exceed 10% of the sum of the deposits and the issued capital of the credit union for the time being.

(4) The money in the reserve fund may be invested in the same manner as other money of the credit union but any interest or dividend on the investments are to be paid to the general revenue of the credit union.

(5) The reserve fund:

- (a) must be held as a reserve against bad loans or losses other than operating deficits; and
- (b) must not be used for any other purpose except on liquidation.

44. Payment of dividend-(1) After making provision for the reserve fund, as required by section 43, the board of directors:

- (a) may declare a dividend from the remainder of the net earnings; and
- (b) in such case, must present its resolution to the annual meeting of the credit union for confirmation.

(2) Any dividend authorised at that meeting is to be paid on all shares fully paid up and in the possession of the same member throughout the previous fiscal year.

(3) However, shares under subsection (2) which become fully paid up during the previous fiscal year is entitled to a proportionate part of the dividend from the first day of the month following the payment in full.

(4) Dividend declared by a credit union must not exceed 6% a year.

45. Fiscal year - The financial year of a credit union ends on 31 March in each year or on any other date as the by-laws may provide.

46. Security by officers - A person appointed to an office concerning the receipt, management or expenditure of money for the purposes of a credit union must, before entering upon the duties of the office, give a security as is deemed sufficient by the directors, which security may be varied in amount or renewed.

47. Debts due by members-(1) All money payable to a credit union by a member is a debt due from the member to the credit union and are recoverable in court.

(2) A credit union has a lien on the shares and deposits of a member, past member, or deceased member from any sum due from the member to the credit union, and for any loan endorsed by the member.

48. Annual returns - A credit union must:

- (a) not later than 2 months after the end of each financial year, send to the Registrar an audited statement of the receipts and expenditures, assets and liabilities of the credit union, and any other information as may be required by the Registrar; and
- (b) supply gratuitously to every shareholder on application, a copy of the last annual return.

49. Other returns - A credit union must give the Registrar any information required by the Registrar.

50. Form of return - A document and return required for the purposes of this Act and the books of accounts kept by credit unions are to be in a form approved by the Registrar.

51. Annual examination of affairs-(1) The affairs of a credit union are to be examined at least annually by or under the direction of the Registrar.

(2) A credit union must produce any books, documents and other papers required by the person conducting the examination.

PART 6 BY LAWS

52. By-laws-(1) The Registrar may make and approve standard by-laws, and supplementary by-law templates that are not inconsistent with the provisions of the Act.

(2) Standard by laws must apply to any credit union registered under this Act.

(3) The Registrar must give a copy of the standard by-laws to any person *bona fide* applying therefore for any purpose relating to a credit union or the proposed formation of a credit union.

(4) A credit union may by a two-thirds vote of the members at an annual general meeting or at a special general meeting called for the purpose make by-laws for the credit union to be known as supplementary by-laws.

(5) The supplementary by-laws:

- (a) may be in addition to, or in amendment or repeal of, any standard by-laws; and
- (b) are to be approved by the Registrar before they are effective; and

- (c) may provide for fines not exceeding 10 penalty units for failure to make repayments on loans and payments on shares when due.

53. Standard by-laws-(1) The Federation of Credit Unions must:

- (a) make standard by-laws not inconsistent with the provisions of this Act or regulations; and
 - (b) submit them to the Registrar for approval.
- (2) The standard by-laws:
- (a) apply to all credit unions registered under this Act; and
 - (b) may be made for and in relation to the administration, management or operations of credit unions or any other matter relevant to credit unions;
 - (c) may be prescribing penalties not exceeding 10 penalty units for offences against, standard by-laws.
- (3) The Registrar must give a copy of the standard by-laws to a person who requests a copy for any purpose relating to a credit union or the formation of a credit union.

54. By-laws binding - The by-laws of a credit union binds the credit union and its members and their heirs, executors and administrators.

PART 7

DE-REGISTRATION AND DISSOLUTION

55. De-registration-(1) The Registrar may de-register a credit union if the Registrar is satisfied that:

- (a) the registration of the credit union was obtained by fraud or mistake; or
 - (b) the credit union exists for an illegal purpose; or
 - (c) the number of members has been reduced to less than 12; or
 - (d) the credit union is not carrying on business or is not in operation; or
 - (e) the credit union has wilfully, after notice to comply with a requirement of this Act by the Registrar, contravened the requirement of this Act.
- (2) The Registrar must give the credit union not less than 2 months' notice of proposed de-registration, specifying the reason for

the proposed de-registration and stating that, unless cause is shown to the contrary within the time specified (in the notice), the credit union will be de-registered.

(3) When the period in the notice expires, the Registrar:

- (a) may, unless cause to the contrary is previously shown by the credit union, de-register the credit union; and
- (b) upon de-registration, must publish the notice of de-registration in the Savali, whereupon the credit union is dissolved.

(4) A credit union that is de-registered must, from the date of publication in the Savali of the notice of de-registration, absolutely cease to enjoy as such the privileges of a credit union.

(5) The de-registration does not affect any liability incurred by the credit union which may be enforced against it as if the de-registration had not taken place.

56. Dissolution by consent of members - A credit union may be dissolved:

- (a) by an order to wind-up the credit union or a resolution for its winding-up made as directed in regard to companies by the Companies Act 2001 (the provisions of that Act apply to the order or resolution except that the term “Registrar” for the purposes of the winding-up has the meaning given to it by this Act); or
- (b) by the written consent signed by at least three-fourths of the members to dissolve the credit union.

57. Liability of members in winding-up - If a credit union is wound-up under an order or resolution:

- (a) the liability of a present or past member of the credit union to contribute for payment of the debts and liabilities of the society;
- (b) the expenses of winding up; and
- (c) the adjustment of the rights of contributories amongst themselves,

are qualified as follows:

- (aa) a person who has ceased to be a member for one (1) year or more prior to the commencement of the winding up, is not liable to contribute;

- (bb) a person is not liable to contribute in respect of any debt or liability contracted after the person ceased to be a member;
- (cc) a person, not a member, is not 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 credit union;
- (dd) a contribution required from any person must not exceed any amount unpaid on the shares in respect of which the person is liable as a past or present member;
- (ee) a person is taken to have ceased to be a member, in respect of any withdrawable share withdrawn, from the date of the notice or application for withdrawal.

58. Provision as to instrument of dissolution-(1) If a credit union is terminated by an instrument of dissolution:

- (a) the instrument of dissolution must set out -
 - (i) the liabilities and assets of the credit union in detail; and
 - (ii) the number of members and the nature of their interests in the credit union; and
 - (iii) the claims of any creditors and the provisions to be made for their payment; and
 - (iv) the intended appropriation or division of the funds and property of the credit union,unless it is to be stated in the instrument of dissolution to be left to the award of the Registrar;
- (b) alterations in the instrument of dissolution is signed by at least three-quarters of the members;
- (c) a statutory declaration must—
 - (i) be made by the president and the secretary of a credit union that this Act has been complied with; and
 - (ii) be sent to the Registrar with the instrument of dissolution;
- (d) the instrument of dissolution and all its alterations are binding on all the members of the credit union;
- (e) the Registrar must cause a notice of the dissolution to be advertised at the expense of the credit union in the Savali;

- (f) notice must be sent to the Registrar—
 - (i) of any proceeding to set aside the dissolution of a credit union, not less than 7 working days before it is commenced, by the person by whom it is taken; or
 - (ii) of any order setting it aside, within 7 working days after it is made, by the credit union.

(2) For the purpose of subsection (1)(e), unless, within 3 months from the date of the Savali in which the advertisement is published:

- (a) a member or other person interested in or having any claim on the funds of the credit union commences proceedings to set aside the dissolution of the credit union; and

(b) the dissolution is set aside accordingly, the credit union is legally dissolved from the date of the advertisement, and the requisite consents to the instrument of dissolution is considered to have been duly obtained without proof of the signatures on it.

(3) A person who knowingly makes a false or fraudulent declaration in the matter commits an offence and is liable on conviction to a fine not exceeding 50 penalty units or to imprisonment for a term not exceeding 2 years, or both.

PART 8 OFFENCES

59. Offences - A credit union commits an offence if the credit union:

- (a) fails to give any notice, send any return or document, or do or allow to be done any act or thing which the credit union is by this Act required to give, send, do or allow to be done; or
- (b) wilfully neglects or refuses to do any act or to provide any information required for the purposes of this Act by the Registrar or any other official or person whose duties require him or her to obtain the information; or
- (c) does any act or thing forbidden by this Act; or

(d) makes a return or wilfully provides information in any respect false or insufficient.

60. Prohibition of use of “Credit Union”- (1) A person, other than a credit union, must not trade or carry on business under any name or title of which the words “Credit Union” is included.

(2) Nothing in this section applies to the use by any person or his or her successors in interest of any name or title under which he or she traded or carried on business at the commencement of this Act.

(3) A credit union that contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

61. Offence for unregistered credit union-(1) A person carrying on business must not use the words “credit union” in the name, description or title under which the person carries on business, unless the person is a member of the Federation of Credit Unions or a credit union registered under this Act.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction:

(a) for an individual, to a fine not exceeding 50 penalty units or to imprisonment for a term not exceeding 2, years or both; or

(b) in any other case, to a fine not exceeding 100 penalty units.

62. Restriction on name-(1) A credit union must not be registered under a name identical with that by which any other existing credit union has been registered, or so nearly resembling the same as to be likely to deceive.

(2) The words “Credit Union”, are to be the last words of the name of a credit union registered under this Act.

63. General penalty - A person who commits an offence against this Act for which no specified penalty is provided is liable on conviction to a fine not exceeding 20 penalty units.

PART 9 MISCELLANEOUS

64. Federation of credit unions-(1) This section applies to credit unions incorporated or registered under this Act that intend to associate as a federation for the furtherance of their common interests and the benefit of their members.

(2) Credit unions to which this section applies may execute in duplicate, under seal and attested by the hands of their proper officers, a memorandum of association stating the following:

- (a) the name of the federation;
- (b) the par value of the shares;
- (c) the objects of the federation;
- (d) the place at which its registered office will be situated;
- (e) the names and addresses of the subscribers to the memorandum of association; and
- (f) the names of the credit unions which they respectively represent.

(3) The memorandum must be accompanied by a copy of the by-laws by which the federation is to be governed and any other documentary evidence as the Registrar may require.

(4) The Registrar must:

- (a) if the Registrar approves the memorandum of association, cause it to be filed in the office of the Registrar;
- (b) if the Registrar approves the registration, endorse the memorandum of association and the certificate of registration;
- (c) cause a notice of the registration to be published in the Savali.

(5) The endorsement under subsection (4)(b) is evidence of registration under this Act.

(6) From the date of the certificate of registration, the credit unions on whose behalf application has been made for registration in the memorandum of association and any other credit unions as become members are constituted as a body corporate by the name contained in the memorandum and this Act applies with any necessary modifications to the Federation.

65. Tax exemption - The income of a credit union is exempted under the Income Tax Act 2012.

66. Appeal-(1) If the Registrar refuses to approve of any application for registration or of any proposed by-law or amendment of any standard by-laws, the provisional secretary or the credit union

may appeal from the refusal to a Judge of the Supreme Court, within 14 working days from the date of being notified of such refusal.

(2) The decision of the Supreme Court is final.

67. Regulations - The Head of State, acting on the advice of Cabinet, may make regulations to give effect to the provisions or for the purposes of this Act.

68. Fees and charges – (1) The Head of State may, acting on the advice of Cabinet, make Regulations prescribing fees and charges for the purposes of this Act.

(2) The amount of a fee or charge prescribed under subsection (1):

- (a) shall be proposed by the Ministry; and
- (b) is subject to the consideration and approval of the National Revenue Board under the Public Finance Management Act 2001; and
- (c) shall be paid by the Registrar into the Treasury Fund, and such funds must be recorded as revenue for the Ministry.

(3) The Minister may by order published in the Savali amend Schedule 2.

69. Repeal, transition and amendment-(1) The Credit Union Ordinance 1960 (“Ordinance”) is repealed.

(2) A credit union or federation of credit unions registered or incorporated immediately before the commencement of this Act continues as if it were registered or incorporated under this Act.

(3) In Part A(1) of Schedule 2 of the Income Tax Act 2012, after paragraph (za), insert:

“(zb) income of a credit union.”.

SCHEDULES

SCHEDULE 1

repealed

SCHEDULE 2

REVISION NOTES 2015 – 2019

This is the official version of this Act as at 31 December 2019.

This Act has been revised by the Legislative Drafting Division from 2015 to 2019 respectively under the authority of the Attorney General given under the *Revision and Publication of Laws Act 2008*.

The following amendments we made to this Act since its enactment:

By the *Fees and Charges (Miscellaneous Amendments) Act 2017* No. 13:

- Section 5(2)(e)** - replaced “set out in Schedule 1” with “by regulations”;
- Section 68** - substituted;
- Schedule 1** - repealed.



Lemalu Hermann P. Retzlaff
Attorney General of Samoa

*This Act is administered by the
Ministry of Commerce, Industry and Labour.*
