

**CAYMAN ISLANDS**



# **COOPERATIVE SOCIETIES (AMENDMENT) BILL, 2019**

Supplement No. 7 published with Legislation Gazette No. 22 dated 27<sup>th</sup> June, 2019.

**A BILL FOR A LAW TO AMEND THE COOPERATIVE SOCIETIES LAW (2001 REVISION) TO REQUIRE THE DIRECTORS AND SENIOR OFFICERS OF A CREDIT UNION TO BE FIT AND PROPER PERSONS; TO REQUIRE THE APPROVAL OF THE AUTHORITY FOR CHANGES TO THE DIRECTORS AND SENIOR OFFICERS OF A CREDIT UNION; AND FOR INCIDENTAL AND CONNECTED PURPOSES**

## PUBLISHING DETAILS

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**Sponsoring Ministry/Portfolio:** Ministry of Financial Services and Home Affairs (FSHA)



## Memorandum of OBJECTS AND REASONS

This Bill seeks to amend the Cooperative Societies Law (2001 Revision) (“the principal Law”) to require that the directors and senior officers of a credit union be fit and proper persons and that the credit union notify the Monetary Authority (“the Authority”) of any change of the directors or senior officers of a credit union. The Bill also provides for incidental and connected purposes.

Clause 1 provides for the short title of the legislation.

Clause 2 inserts in the principal Law a new section 4A. The proposed section 4A requires a person who wishes to register a cooperative society to engage in credit union business under this Law to apply in the prescribed form to the Authority for a determination that the proposed director and senior officers of that society are fit and proper persons.

Clause 3 seeks to amend section 5 of the principal Law to prohibit a person from applying for registration of a society to engage in credit union business without the determination by the Authority of the fitness and propriety of the proposed directors and senior officers of the society.

Clause 4 seeks to amend section 7 of the principal Law to insert a new subsection which requires the Registrar not to approve an application for registration if the proposed directors and senior officers of the society have not been determined by the Authority to be fit and proper persons.

Clause 5 seeks to amend section 29 of the principal Law to require a credit union which may issue shares which carry voting rights to seek approval from the Authority to issue such shares to a member who would own shares representing ten per cent or more of total voting rights of the credit union upon such issue of shares.

Clause 6 seeks to amend the principal Law to introduce a new section 38A which requires a credit union registered under the Law to seek prior approval of the Authority in respect any change of the directors and senior officers of that credit union.

Clause 7 seeks to amend the principal Law by inserting a new section 39A. The proposed section provides for duties of an auditor who, in the course of carrying out an audit of the accounts of a credit union, obtains information or suspects that the credit union is carrying on or attempting to carry on business in a manner that is prejudicial to its members to notify the Authority of the information or reasons for the suspicion.

Clause 8 seeks to amend section 40 of the principal Law by inserting a new paragraph under subsection (1) which would empower the Authority to determine the fitness and propriety of specified persons.



Clause 9 seeks to amend section 41 of the principal Law by inserting a new paragraph under subsection (1) of that section which would empower the Authority to take certain actions against a credit union where the Authority is of the opinion that a director or senior officer of the credit union is not a fit and proper person.



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A BILL FOR A LAW TO AMEND THE COOPERATIVE SOCIETIES LAW (2001 REVISION) TO REQUIRE THE DIRECTORS AND SENIOR OFFICERS OF A CREDIT UNION TO BE FIT AND PROPER PERSONS; TO REQUIRE THE APPROVAL OF THE AUTHORITY FOR CHANGES TO THE DIRECTORS AND SENIOR OFFICERS OF A CREDIT UNION; AND FOR INCIDENTAL AND CONNECTED PURPOSES

ENACTED by the Legislature of the Cayman Islands.

## Short title

1. This Law may be cited as the Cooperative Societies (Amendment) Law, 2019.

## Insertion of section 4A in the Cooperative Societies Law (2001 Revision) - conditions for application for registration

2. The *Cooperative Societies Law (2001 Revision)*, in the Law referred to as the “principal Law”, is amended by inserting after section 4, the following section —

### “Conditions for application for registration

- 4A. (1) A person who wishes to register a cooperative society to engage in credit union business under this Law shall apply in the prescribed form to the Authority for a determination that the proposed directors and senior officers of that society are fit and proper persons.



- (2) The applicant referred to in subsection (1) shall provide such information to the Authority, and within such period of time, as the Authority may require for the purpose of assessing whether the proposed directors and senior officers of the proposed credit union are fit and proper persons.
- (3) The Authority shall, upon carrying out its assessment, notify the applicant and Registrar of its determination.
- (4) In determining for the purposes of this Law whether a person is a fit and proper person, regard shall be had to all circumstances, including that person's —
  - (a) honesty, integrity and reputation;
  - (b) competence and capability; and
  - (c) financial soundness.”.

#### **Amendment of section 5 - conditions of registration**

3. The principal Law is amended in section 5 by inserting after subsection (4), the following subsection —

“(5) A society that wishes to engage in credit union business under this Law shall not be registered without the determination of the Authority that the proposed directors and senior officers of that society are fit and proper persons.”.

#### **Amendment of section 7 - registration**

4. The principal Law is amended in section 7 by inserting after subsection (1), the following subsection —

“(1A) The Registrar shall not approve an application for registration of a society referred to in section 4A(1) if the proposed directors and senior officers of the society have not been determined by the Authority to be fit and proper persons.”.

#### **Amendment of section 29 - restriction on transfer of share or interest**

5. The principal law is amended in section 29 by inserting after subsection (3), the following subsections —

“(4) In the case of a credit union which may issue shares which carry voting rights, shares representing ten per cent or more of total voting rights of the credit union shall not be issued to a member, and issued shares representing ten per cent or more of the total voting rights of the credit union shall not be transferred or disposed of in any manner by a member, without the prior approval of the Authority.





- (5) The Authority shall not grant the approval specified in subsection (4) where persons acquiring control or ownership of shares representing ten per cent or more of the total voting rights of the credit union are not fit and proper persons by the Authority's assessment.
- (6) For the purposes of subsection (4), the credit union shall provide such information to the Authority, and within such time as the Authority may specify, for the purpose of assessing whether persons acquiring control or ownership of such shares representing ten per cent or more of the total voting rights of the credit union are fit and proper persons to have such control or ownership.
- (7) For the avoidance of doubt, the references to shares representing ten per cent or more of the total voting rights of the credit union include the cumulative acquisition of shares or voting rights which amount to ten per cent or more of the total voting rights of a credit union.”.

### **Insertion of section 38A - Authority to approve change of directors and senior officers**

6. The principal Law is amended by inserting after section 38, the following section —

#### **“Authority to approve change of directors and senior officers**

38A. A credit union shall obtain the approval of the Authority prior to appointing a director or senior officer and shall require that the director or senior officer is a fit and proper person.”.

### **Insertion of 39A - obligations of auditors**

7. The principal Law is amended by inserting after section 39, the following section —

#### **“Obligations of auditors**

- 39A. (1) If an auditor, in the course of carrying out an audit of the accounts of a credit union under this Law, obtains information or suspects that the credit union is —
- (a) unable or likely to become unable to meet its obligations as they fall due;
  - (b) carrying on or attempting to carry on business or winding up its business voluntarily in a manner that is prejudicial to its members;
  - (c) carrying on or attempting to carry on business without keeping any or sufficient accounting records to allow its accounts to be properly audited;
  - (d) carrying on or attempting to carry on business in a fraudulent or criminal manner; or

- (e) carrying on or attempting to carry on business otherwise than in compliance with —
  - (i) this Law or the Regulations;
  - (ii) the *Monetary Authority Law (2018 Revision)*; or
  - (iii) the *Anti-Money Laundering Regulations (2018 Revision)*,

the auditor shall immediately give the Authority written notice of the information or suspicion and, in the case of suspicion, the auditor's reason for that suspicion.

- (2) Without prejudice to subsection (8), if it appears to the Authority that an auditor has failed to comply with subsection (1), the Authority may disqualify the auditor from being an auditor of a credit union, but the Authority may remove any disqualification imposed under this subsection if it is satisfied that the auditor in question will in future comply with subsection (1).
- (3) A credit union shall not appoint as an auditor a person disqualified under subsection (2).
- (4) Where the Authority has granted approval of an auditor under this Law, the approval may be revoked by the Authority if the Authority is of the opinion that the auditor is not sufficiently competent to carry out an audit of the accounts of a credit union or that, in all the circumstances, the auditor is incapable of carrying out the audit objectively.
- (5) When a credit union changes its auditor, the Authority may require the former auditor to explain the reasons for the change.
- (6) A person carrying out or charged with the carrying out of any duty, obligation or function under this section shall not incur civil liability for anything done or omitted to be done in respect of the discharge or purported discharge of that duty or function unless it is shown that the act or omission concerned was in bad faith.
- (7) A reference in this section to an auditor carrying out an audit of the accounts of a credit union includes a reference to an auditor who was engaged to carry out such an audit or who was in the course of carrying out such an audit but resigned before carrying out or completing the audit or whose contract to carry out or complete the audit was otherwise terminated.
- (8) Nothing in subsection (1) shall impose on an auditor carrying out an audit of the accounts of a credit union an obligation to do anything that the auditor would not otherwise be required to do in accordance with generally accepted auditing standards, other than the obligation to provide notice and reasons to the Authority.



- (9) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of twenty thousand dollars.”.

**Amendment of section 40 - powers and duties of the Authority**

8. The principal Law is amended in section 40(1) by inserting after paragraph (a), the following paragraph —

“(aa) to assess the fitness and propriety of persons required to be so assessed under this Law and notify the Registrar of the determination of the assessment in respect of such persons;”.

**Amendment of section 41 - powers of Authority in respect of credit unions**

9. The principal Law is amended in section 41(1) by inserting after paragraph (a), the following paragraph —

“(aa) has a director or senior officer who is not a fit and proper person;”.

**Passed by the Legislative Assembly the                      day of                      , 2019.**

*Speaker*

*Clerk of the Legislative Assembly*