



The Central Bank of The Bahamas

PUBLIC CONSULTATION

Bahamas Co-operative Credit Unions Bill, 2013
Bahamas Co-operative Credit Unions Regulations, 2013
Co-operative Societies (Amendment) Bill, 2013
Central Bank of The Bahamas (Amendment) Bill, 2013

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I. Introduction

1. Credit unions are very important providers of financial services in The Bahamas. At end-October 2013, there were seven (7) credit unions, which come under the supervisory purview of the Department of Co-operative Development in the Ministry of Agriculture, Marine Resources and Local Government, and are governed under the Co-operative Societies Act, 2005, along with other co-operatives. The credit union sector has registered significant growth over the past five (5) years, with assets of \$301,074,449 million at end-December 2012, representing an average growth of 39% since 2007, and membership at some 39,238 persons.
2. The Government of The Bahamas has requested the Central Bank of The Bahamas (“the Central Bank”) to assume regulatory and supervisory responsibility for the co-operative credit unions sector—a move which reflects a combination of mutually inclusive factors, namely:
 - a. the recognition of the growing size and complexity of the sector, and important implications for financial stability, should there be an adverse event;
 - b. the view held by the international agencies, including the World Council of Credit Unions, that the sector be supervised and regulated by the entity responsible for financial stability, which is the Central Bank; and
 - c. the desirability for greater consolidation in the domestic financial regulatory space, that would leverage existing expertise in financial supervision—as would be the case with the Central Bank in its ongoing role as supervisor of banks, and the similarity of the prudential objectives of both sectors.

II. Background and Context

3. To facilitate the smooth transition of co-operative credit unions (hereafter referred to as “credit unions”) to the supervisory remit of the Central Bank, the Government secured a two (2) year technical assistance

program from the Commonwealth Secretariat, which included the engagement of a credit union Technical Adviser, to pursue an agreed Institutional Strengthening Project (the Project) for the sector. A Steering Committee (comprising the Technical Advisor, the Governor of the Central Bank, the Director of Co-operative Societies, the Manager of Bank Supervision and the Legal Counsel, Central Bank) was established to lead the Project.

4. Phase I of the Project, which commenced in September 2011, covered a comprehensive assessment of the (then) ten (10) credit unions and the League, focusing on areas such as capital adequacy, loan initiation and oversight processes, corporate governance structures and internal control processes. This exercise identified strengths and weaknesses in these arrangements and, where necessary, recommendations were made for enhancing the credit unions' operations.
5. In Phase II, the Steering Committee drafted the Bahamas Co-operative Credit Unions Bill, 2013 (BCCUB) and the Bahamas Co-operative Credit Unions Regulations, 2013 (BCCUR)—benefitting from consultations with credit union experts from the region and the World Council of Credit Unions. Subsequently, these drafts were discussed, at length, with the Credit Unions' Legal Framework Committee, directors and senior management of the credit unions, and with the Advisory Committee on Co-operative Development, to ensure that the new legislation would, not only codify appropriate regulatory standards, but also take cognizance of the domestic environment. Many of the recommendations made by the sector were incorporated into the current version of the BCCUB and the BCCUR. In addition to the BCCUB and the BCCUR, the Steering Committee also drafted the Co-operative Societies (Amendment) Bill, 2013 and the Central Bank of The Bahamas (Amendment) Bill, 2013 for the purpose of making consequential amendments to the Central Bank of The Bahamas Act, *Ch 321 of the Statute Laws of The Bahamas, 2009 edition* and the Cooperative Societies Act, *Ch 314, of the Statute Laws of The Bahamas, 2009 edition*, respectively.
6. This Consultation Paper highlights key changes which the proposed BCCUB and BCCUR will make to the regulatory framework for credit unions. It also summarizes the key consequential amendments proposed by the

Central Bank of The Bahamas (Amendment) Bill, 2013 (CBBAB) and the Co-operative Societies (Amendment) Bill, 2013 (CSAB).

III. Key Provisions of The Bahamas Cooperative Credit Unions Bill, 2013

7. The draft Bahamas Co-operative Credit Unions Bill, 2013 provides for the Central Bank to replace the Director of Societies as the new regulator and supervisor of credit unions—having responsibility for the registration and supervision of all credit unions. The BCCUB is set out at **Annex 1**. The key provisions of the BCCUB relate to the following matters:
 - a. **Clause 2** of the BCCUB includes new definitions for “stabilization fund”, “statutory reserve” and “liquidity deposit”. The terms “stabilization fund” and “statutory reserve” are both currently used in the Co-operative Societies Act but are not defined.
 - b. **Clause 3** of the BCCUB, provides that the BCCUB will apply only to credit unions. Other co-operatives (non-financial co-operatives) will remain under the supervision of the Department of Co-operatives Development.
 - c. **Clause 5** of the BCCUB provides that the Central Bank will be responsible for the on-site and off-site supervision of credit unions.
 - d. **Clause 6** of the BCCUB sets out the duties of the Inspector of Banks and Trust Companies (the Inspector) who will be the Central Bank officer responsible for overseeing the supervision of credit unions. The Inspector will have power to carry out on-site examinations and off-site supervision and to call for information from any director or officer of a credit union, to assist him in carrying out his duties.
 - e. **Clause 8** of the BCCUB authorises the Central Bank to collect statistics in relation to credit union business and will require credit unions to furnish information in such form and at such time as specified by the Central Bank.

- f. **Clause 13** of the BCCUB expands the criteria for determining whether a person is or remains a fit and proper person to hold the position of director, committee member, officer or senior manager of a credit union.
- g. **Clause 20** of the BCCUB provides for relaxed reporting requirements for credit unions with assets of less than \$1 million. The purpose of this “lighter touch” regime for smaller credit unions is to give them an opportunity to grow and develop before becoming subject to the more rigorous requirements which would apply to credit unions having assets of \$1 million or more. Set out below is a table contrasting proposed requirements for larger credit unions with the lighter touch requirements for smaller credit unions:

Requirements for credit unions with assets of \$1 million <u>or more</u>	Requirements for small credit unions with assets of <u>less than</u> \$1 million	
Maintain statutory reserves, retained earnings, qualifying shares and equity shares at ten percent or more of their total assets (clause 89(2)(b)).	Maintain statutory reserves, retained earnings, qualifying shares and equity shares as a ratio of total assets (clause 20(2)) as follows:	
	Total Assets	Ratio of Reserves to Total Assets
	Less than \$100,000	1% of total assets
	\$100,000 or more but less than \$300,000	3% of total assets
	\$300,000 or more but less than \$500,000	5% of total assets
	\$500,000 or more but less than \$750,000	7% of total assets
	\$750,000 or more but less than \$1,000,000	9% of total assets
Submit annual audited financial statements (clause 9(1)(a) and 90(6)).	Submit annual unaudited financial statements (clause 20(3)(a)).	

Requirements for credit unions with assets of \$1 million <i>or more</i>	Requirements for small credit unions with assets of <i>less than</i> \$1 million
Submit reports to the Central Bank on a monthly basis (clause 9(1)(c)).	Submit reports to the Central Bank on a quarterly basis (clause 20(3)(b)).

- h. **Clause 22** of the BCCUB introduces new competency requirements for supervisory and credit committee members. Such persons must have experience or have shown capacity in matters relating to accounting, finance, business administration, commerce or law.
- i. **Clause 34** of the BCCUB prohibits credit unions from employing former directors or committee members, unless such persons have first abstained from serving on the board or committee, as the case may be, for a period of one (1) year after they demit office.
- j. **Clause 35** of the BCCUB introduces new provisions prescribing the number of credit union members required to form a quorum at a general or special meeting of the credit union, as follows:

Number of credit union members	Quorum
Less than 1,000	25 members
More than 1,000 but less than 3,000	50 members
3,000 or more	100 members

- k. **Clause 80** of the BCCUB introduces new requirements for credit unions to appoint a compliance officer who is a senior qualified professional. The role of the compliance officer will be to monitor and periodically report to the Supervisory Committee and the board, on the credit union’s compliance with the law and in respect of the internal operations of the credit union.
- l. **Clause 81** of the BCCUB requires credit unions to establish and maintain an internal audit function which is independent of other functions of the credit union. The board may appoint a senior

officer of the credit union or a chartered accountant to perform the internal audit function. The internal auditor will have responsibility for reporting to the Supervisory Committee on the adequacy of internal controls and material weaknesses in the system of internal controls.

- m. **Clause 93** of the BCCUB provides for a Registered Co-operative Credit Unions Appeal Tribunal, comprised of three (3) persons, to hear appeals arising from a decision of the Central Bank or an arbitrator. Decisions of the Tribunal on questions of fact will be final and may be enforced in the same manner as a Supreme Court civil judgment. Appeals from decisions of the Tribunal will rest with the Supreme Court on questions of law.
- n. **Clause 94** provides for disputes between:
 - past or present members of a credit union, or their representatives;
 - past or present members of a credit union and the credit union, its board or any officer of the credit union;
 - two or more credit unions;
 - the credit union and its board or any officer or employee of the credit union,to be referred to the Central Bank for determination.
- o. **Clause 113** of the BCCUB requires the Apex Body (the National League) to establish an investment committee, comprising of three (3) persons, including a member of the Apex Body’s board, to determine the Apex Body’s investment policies and co-ordinate and oversee its investment portfolio. Investment committee members will be required to have a sound understanding of investment risks and liquidity management. Members of the investment committee may be appointed for a maximum of two terms, of two or three years each.
- p. **Clause 123** of the BCCUB provides that the following Acts shall not apply to registered credit unions:
 - Companies Act,

- Friendly Societies Act,
- Minors Act,
- Banks and Trust Companies Regulation Act,
- Insurance Act,
- Bankruptcy Act; and
- Investment Funds Act,

unless there is specific provision in the Bahamas Co-operative Credit Unions Act, 2013 (when enacted) for the application of these Acts.

- q. **Clause 127** of BCCUB provides for existing credit unions to continue after the Bahamas Co-operative Credit Unions Bill, 2013 is brought into force, without having to re-apply to the Central Bank for registration. The BCCUB provides for the Central Bank to issue a certificate of continuation to existing credit unions.

IV. Key Provisions of the Bahamas Cooperative Credit Unions Regulations, 2013

8. The Steering Committee has prepared the draft Bahamas Co-operative Credit Unions Regulations, 2013 (**see Annex II**) for the credit unions sector to give effect to the objectives and provisions of the BCCUB, when enacted.

- a. **Regulation 3** of the BCCUR requires credit unions, when granting personal, mortgage, agricultural and other business loans, to include provisions for-
- payment of principal and interest;
 - payment at specific intervals (weekly, bi-weekly, monthly or seasonally, etc); and
 - payment over a prescribed period

The proposed regulation prescribes the maximum interval at which interest on a loan may be paid and prohibits granting special

interest rates or other beneficial terms to credit union board or committee members.

- b. **Regulation 5** prescribes the criteria to which credit unions must adhere when granting loans to directors, committee members, employees and their associates. The regulation also requires the board of directors of a credit union to adopt policies on loans to directors, committee members, employees and their associates which are compliant with the provisions of the Bill and regulations.
- c. **Regulations 7 and 8** prescribe the allowance (provisioning) which must be established for doubtful loans, the criteria for assessing impaired loans and the forms which must be used to measure impaired loans and for the valuation of mortgage securities.
- d. **In Part III** of the regulations:
 - the Apex body is required to maintain the money it receives from member credit unions in segregated pools of funds (known as the reserve, liquidity deposit and stabilization funds). The regulations also prescribe the period during which accrued interest on investments must be disbursed to member credit unions.
 - the Central Bank is authorized to exempt credit unions from the statutory reserve requirements, in cases where a credit union is unable to meet its statutory reserve allocation requirements.
 - credit unions are required to obtain the approval of the Central Bank, in order to employ statutory reserves for certain purposes and such approval may be subject to conditions.
 - credit unions are required to maintain operational liquidity in compliance with the requirements under PEARLS.
 - the financial statements of a credit union must present the credit union's members' equity in the form prescribed in the regulations.

- e. **Regulation 20** prescribes the powers of a liquidator appointed to wind up a credit union.

V. Key Provisions of the Proposed Co-operative Societies (Amendment) Bill, 2013

- 9. The Co-operative Societies (Amendment) Bill, 2013 (CSAB) seeks to amend the Co-operative Societies Act (CSA) to limit the application of the CSA to non-financial cooperatives, except where the CSA or the proposed Bahamas Cooperative Credit Unions Act, 2013 expressly provide otherwise. The CSAB will repeal sections 119 to 142 of the CSA. The CSAB is set out in **Annex III**.
- 10. Importantly, section 7(1)(c) of the CSA currently includes among the functions of the Director of Societies, the initiation and encouragement of organised activities for the development of societies (hereafter referred to as “advisory services”). Clause 3 of the CSAB seeks to amend section 4 of the CSA to provide that the Director of Societies will continue to have responsibility for providing advisory services to persons who wish to establish a credit union. This amendment seeks to foster the continued growth of the credit unions sector and to ensure that start up credit unions will receive appropriate advisory support in their initial stages. When they are ready to operate, these credit unions will be registered with the Central Bank.
- 11. The CSAB also provides that members of the National League comprise societies registered under the CSA or under the proposed Bahamas Co-operative Credit Unions Act, 2013 and will expressly subject the National League to certain provisions of the Bahamas Co-operative Credit Unions Act, 2013.

VI. Key Provisions of the Proposed Central Bank of The Bahamas (Amendment) Bill, 2013

12. The draft Central Bank of The Bahamas (Amendment) Bill, 2013 (CBBAB) proposes amendments to the Central Bank of The Bahamas Act (the Central Bank Act) to authorize the Central Bank to regulate and supervise credit unions (**see Annex IV**).
13. The CBBAB inserts a new definition of “financial institution” into the Central Bank Act which includes any person carrying on a business regulated under the laws enforced by the Bank. Specific references to entities currently regulated by the Central Bank have been subsumed in the newly defined term “financial institution”.
14. The CBBAB will repeal section 35 of the principal Act and replace it with a new section 35 which will provide that the Central Bank may, by notice in writing, require information from a financial institution, a connected person or a person reasonably believed to have information relevant to an enquiry by the Bank. The Central Bank may require information which it considers necessary to enable the Central Bank to carry out its functions under the Central Bank Act. The CBBAB defines a “connected person” as a person who:
 - a. is a director, officer, partner, employee, or agent of the financial institution’s group;
 - b. a controller of the financial institution; or
 - c. is required to be consolidated with another person in a statement of the accounts of the other person by the International Financial Reporting Standards.

VII. Consultation Period

15. The Steering Committee invites your comments on the proposed changes which should be submitted no later than 13th December, 2013. Your comments and questions regarding the proposed changes should be directed to:

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