



Information Sessions on the Credit Union Bill, 2011



Presented by
Wendy Ho Sing
Deputy Inspector of Financial Institutions
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Overview

- **The Purpose of the Sessions**
- **The Drafting and Structure of the Bill**
- **Key elements of the Bill**
- **The Next Steps**



Purpose of the Session

- **To provide explanations and clarification on key sections of the Bill**
- **To provide an opportunity for dialogue on the Bill before the formal comments are made**



The Drafting of the Bill

- **Based on the Policy Document that was approved by Cabinet in late 2009**
- **Drafting under the Office of the Chief Parliamentary Council**
- **Instructed by Cabinet to draft Bill and present the Bill and Policy Document for approval**
- **Simultaneous drafting of amendments to the CSA related to the CUA and also for some urgent amendments for all co-operatives**
- **Cross Reference List between the PPD and the Bill for easy review of the Bill (included in package)**



Structure of the Bill: Schedules and Regulations

- **Regulations include:**
 - **Minimum Prudential Criteria**
 - **Certification for an Operating Certificate**
 - **Regulatory reporting**
- **Schedules include:**
 - **First - Business of a credit union**
 - **Second - Fit and Proper/Safe and Sound Practices**
 - **Third - Technical Solvency Test**
 - **Fourth - Offences for Admin Fines**
 - **Fifth - Transition Periods**



Harmonization between the CSA and the CUA

- **Same definitions for “credit union”, “society” and “non-financial co-operative”**
- **Some definitions will remain under the CSA e.g. the Supervisory and Credit Committees.**
- **Complementary wording where the Bank and the Commissioner interact: e.g. consultation, MOU, transition for existing credit unions, reconstruction and winding up and de-registration.**



CUA and CSA to reflect the different roles:

Central Bank (CUA)

Supervision and Prudential Regulation such as:

- **Authorization – Operating Certificate**
- **Prudential Criteria, Regulations and Guidelines**
- **Governance**
- **Winding up**

Commissioner for Co-operatives (CSA)

Non-Prudential Regulation and Development such as:

- **Registration and De-registration; Approve by-laws**
- **Membership**
- **Meetings (AGM, Special & Elections)**
- **Disputes**
- **Compliance with the CSA**



Key Changes in the Bill Control Matters

Definitions Section 3

- **“Significant interest” has been changed to represent $1/5^{\text{th}}$ shareholding rather than $1/10^{\text{th}}$:**
 - This limit is consistent with the current CSA shareholding limit of $1/5^{\text{th}}$
 - This limit is the same for banks in the FIA 2008 under “significant shareholder” definition
 - This limit is less stringent than the original $1/10^{\text{th}}$

Key Changes in the Bill

Control Matters

- **“Affiliate of a credit union”**
 - **Definition originally thought to be unnecessary and it was removed from the revised PPD 2009**
 - **The term has been re-defined as there is need to describe the entity (such as a non-financial cooperative) established by the credit union to provide non-financial services or conduct non-financial activities**

Key Changes in the Bill

Control Matters

- **“Control” used to expand the definition of “related party”**
 - For example, a company “controlled” by an officer of a credit union or in which he has a controlling interest would also be classified as a “related party” to the credit union

Key Changes in the Bill - Operating Certificate



Operating Certificate for existing credit unions – Section 26

- Inactive will have 2 definitions in the Act
 - For the purposes of Section 26 “inactive credit unions” will be those credit unions *“determined by the Commissioner to have been inactive at the time of the coming into operation of the (Credit Union) Act”*
 - Elsewhere in the Act, “inactive” will be defined to mean where no member related activity has taken place over a 12 month period

Key Changes in the Bill -

Operating Certificate



- **No Operating Certificate will be given to a credit union that is in the process of being wound up at the time the legislation is passed.**

Key Changes in the Bill Governance



- **Additional requirements of the External Auditor: Sections 42, 45, 46 & 47**
 - Annual appointment – wording to be amended to state appointment of the auditor at the AGM
 - Access to the auditor's working papers by the Central Bank
 - The Inspector may request the auditor to do further work or provide additional information, for example, if it is necessary to obtain an independent report. The credit union to bear the cost of such work
 - The legislation indemnifies the auditor for disclosure of information provided to the Central Bank

Key Changes in the Bill

Governance

- **Notification of changes to the Board or other officers - Section 37**
 - While there will be annual reporting on the composition of the Board, it is necessary for the Central Bank to be updated of changes outside of the AGM
 - The notification time limit of 7 days to be reviewed in light of current CSA's 14-day requirements for filling vacancies



Key Changes in the Bill Prudential Criteria

- **Regulations are in draft and will be made available as soon as finalized.**
- **Credit exposure to related parties which pose excessive risk may be subject to more assessment. Section 62 (5)**
 - **An exposure may be determined to be posing excessive risk even if less than the maximum 25% of institutional capital**
 - **In such instances, the Inspector may require the credit union to reduce or set aside the exposure.**

Key Changes in the Bill

Second Schedule

- **“Credit Union to be Fit and Proper”**
 - Section to be reworded to refer to the operations of a credit union
 - Operating in a “safe and sound manner” to be referenced and clarified (Section 5 (2) (f))
 - “Prudent management” to be defined to assist in the understanding of the duties of credit unions



Key Changes in the Bill Confidentiality and Disclosure of Information

Section 20 (4) (5)

- **Data gathered from credit unions will be published in aggregate, for statistical purposes.**
- **Data on an individual credit union may be disclosed if, in the opinion of the Inspector, it is in the best interest of the sector**
- **Approval required from the Central Bank prior to disclosure of supervisory information by a credit union e.g. examination reports - Section 21**



Key Changes in the Bill

Preventive and Corrective Action

- ***Judicial Management – Sections 67-69***
 - A Judicial Manager is a person appointed by the Court to manage either the entire or a part of the business of a credit union.
 - Either a credit union or the Inspector may apply to the Court for appointment of a Judicial Manager to address a particular area(s) of the operations that need corrective action
 - The Judicial Manager receives instructions from and reports to the Court
 - All legal action against a credit union is stayed upon appointment of a Judicial Manager



Key Changes in the Bill Preventive and Corrective Action

- ***Appeal against decision*** – Section 86
A credit union that has appealed a decision made by the Inspector must still abide by the decision during the process, unless there is a stay.

Key Changes in the Bill Other



- In “urgent” cases, consultation for amending or issuing new Regulations and Guidelines may not be conducted – Sections 16 (2) & 18 (2)

Clarification in the Bill



Directions

The Inspector can issue general directions and compliance directions

- **Examples of General directions: independent accountant, increase capital, set aside a credit exposure**
- **Compliance direction must give notice and time for representation. Can be enforced by applying to the High Court - Section 65**

Items to be Revisited in the Bill

#1

- The definition of “credit union”, “society” and “non-financial co-operative”
- The term “manager” under the definition of “officer” should make reference to the person’s authority to affect the operations of the credit union.
- The CB’s and Commissioner’s role in the establishment of a new credit union

Items to be Revisited in the Bill

#2

- **Defining “non-financial activity” and conditions for conducting these**
- **Section 75 dealing with the Central Bank’s power to order the winding up of a credit union instead of applying to the Court for a winding up order**
- **Surcharge of Officers who have been discovered, during winding up, to have committed offences (Section 65 of the CSA)**
- **The quantum for Administrative Fines, including consideration of the size of the credit union.**

Items to be Revisited in the Bill

#3

- **Second Schedule for Fit and Proper criteria for individuals – to be amended to reflect the requirements listed in the PPD**
- **Definition for acceptable external auditor – removal of words “or auditors” in section 42 (3)**
- **Removal of “Administrative Order” in Part X**
- **Sec 30 (1) (f) reference to six months will be changed to twelve months**



Omissions from the Bill

PPD items to be inserted in the Bill

- **Share and Deposit Insurance Fund**
- **5-Year Limit on holding land in the course of satisfying debts**
- **Transition period of 6 months for the submission of all outstanding audited statements**



Errors and Corrections

- **Section 29(1) (g) – “except paragraph A” should read “except paragraph 1”**
- **Section 84 (4) Payment of the Administrative Fine is to be made to the Central Bank and not the Comptroller.**
- **Section 31: revocation of an OC. All references to the “Board” should be replaced with “Inspector”**

The Next Steps



- **Follow up questions are welcome and we encourage you to raise them through your associations or directly to the Central Bank**
- **The deadline for comments has been extended from March 28, 2012 to May 31, 2012**
- **Response to all comments will be in a manner similar to that done for the PPD consultation process**



Questions??

THANK YOU

Questions??

Comments??