

Friendly Societies and Credit Unions (Regulatory Improvements) Amendment Bill

Member's Bill

As reported from the Finance and Expenditure Committee

Commentary

Recommendation

The Finance and Expenditure Committee has examined the Friendly Societies and Credit Unions (Regulatory Improvements) Amendment Bill, and recommends that it be passed with the amendments shown.

Introduction

The aim of the Friendly Societies and Credit Unions (Regulatory Improvements) Amendment Bill is to modernise the Friendly Societies and Credit Unions Act 1982. It is a Member's bill in the name of Stuart Smith MP. The bill's main aims are to:

- remove unnecessary operating and compliance costs
- promote greater efficiency, innovation, and accountability
- bring credit unions into alignment with other financial service providers in New Zealand
- maintain the element of mutuality and the requirement of a common bond between members.

To achieve these aims, the bill includes measures to:

- simplify the statutory objects of an association of credit unions to cover generally the conduct of activities for the benefit of its members and as authorised by its rules
- provide for the incorporation of credit unions
- enable credit unions and associations of credit unions in the pursuance of their objects to have all the powers of a natural person

- permit credit unions to provide financing to small and medium-sized enterprises (SMEs) that are owned by or otherwise closely associated with a member of the credit union
- reduce the minimum number of credit union members needed for an association of credit unions to be validly constituted from 7 to 2.

This commentary discusses the main amendments we recommend to the bill. It does not cover minor or technical amendments.

Allowing friendly societies to offer securities

We recommend adding clause 9B, inserting new sections 58A to 58E in the principal Act. These provisions would allow friendly societies to offer securities to their members. This would allow them to raise additional funds and continue to meet their minimum capital requirements under the Insurance (Prudential Supervision) Act 2010. The mechanisms for issuing friendly society securities would be similar to those already available to credit unions under section 107A of the Friendly Societies and Credit Unions Act.

New section 58C would require all distributions relating to friendly society securities to be authorised by the committee or committee of management. New sections 58D and 58E would put requirements in place to ensure the solvency of the friendly society before the distribution could be approved.

Provisions for incorporation of credit unions

One of the bill's main changes would be to provide for the incorporation of credit unions. In order to qualify for incorporation, a credit union would have to satisfy the Registrar of Friendly Societies and Credit Unions (the Registrar) that its application meets the requirements listed in clause 14, new section 100B(1). We recommend replacing paragraph (f) with new paragraph (aa) to require the Registrar to be satisfied that the credit union's proposed rules contain provisions that are consistent with all of the matters in Schedule 4 of the Act.

Requirement for credit unions to retain mutuality

Several submitters expressed concern that the incorporation of a credit union could compromise or undermine mutuality at the expense of its members' interests.

We note that the bill would not change the requirement for credit unions to use and control members' savings for their mutual benefit, which is outlined in section 101(1)(b) of the Act. However, for clarity, we recommend amending clause 15 to insert new subsection (1AA) into section 101. This would specify that "A credit union is to operate, on the basis of this Act, for the mutual benefit and assistance of its members."

On a related matter, clause 15(2) would repeal section 101(2) of the Act, which states that credit unions may not take any action unless that action is in pursuance of, or in-

cidental to, its objects. Clause 24 would insert new section 107B, which describes the capacity and powers of credit unions.

As we have noted, the bill would not change the requirement for mutuality in section 101(1)(b). However, some submitters believed that the repeal of section 101(2) would weaken the mutuality of credit unions because new section 107B as introduced does not explicitly require mutuality or the need to act according to the objects of the credit union. For clarity, we recommend amending new section 107B(1) to explicitly state that a credit union must act only in pursuance of its objects or in ways that are incidental to its objects, and only as authorised by the Act or the credit union's rules.

High Court powers to make a restraining order

We recommend adding new section 107F, through clause 24, to give the High Court the power to make an order restraining a credit union from acting contrary to the Act or its own rules. The restraining order could be made upon an application by a member of the credit union or the Registrar. The Reserve Bank of New Zealand could also apply for a restraining order if the credit union was a non-bank deposit taker, as defined in section 5 of the Non-bank Deposit Takers Act 2013.

Credit unions may make loans to enterprises related to members

Clause 12(3) and (6), which would amend section 98 of the principal Act, would introduce a mechanism to allow credit unions to make loans to small and medium-sized enterprises that are related, as defined by the bill, to a member of the credit union. We recommend deleting these provisions and incorporating them in a new clause 25A, inserting new section 110. This would include some further restrictions on when loans could be made to enterprises.

Under the bill as introduced, a member would be considered related to a body corporate when he or she had the power to exercise (or control the exercise of) 25% or more of the voting products of the body corporate. The bill as introduced does not contain a 25% rule for partnerships and trusts. Our recommended new section 110(3)(b) would provide that a firm under the Partnership Act 1908 would only be eligible to receive a loan if the member of the credit union was a partner of the firm, and their share of the firm's profits is 25% or more. In addition, new section 110(3)(c) would require that loans may be made to a trust if a member or their immediate family had a beneficial entitlement to 25% or more of the trust's assets.

We also recommend excluding limited partnerships registered under the Limited Partnerships Act 2008 from the scope of the enterprise loan provisions.

Transfers of engagements and amalgamations

The bill as introduced would repeal the power for a credit union to transfer its engagements to any other credit union.

We note that a number of credit unions have used the transfer of engagements process to avoid the need for liquidation or receivership. Under the transfer of engagements process, the position of members, deposits, loans, and other property can be transfer-

red with minimal complexity or disruption. We recommend amending clause 31, which replaces section 135 of the Act, to retain the transfers of engagements regime.

We also recommend amending clause 31 to amend new section 135(1) and add new subsection (2A). In effect, this would retain the current requirement in the Act for credit unions that are voting to amalgamate or transfer their engagements to attain support from a super-majority of 75% of members eligible to vote and voting (within each credit union) in order to proceed.

Prohibition on credit unions belonging to bodies that are not credit union associations

In the bill as introduced, clause 39(2) would retain, in substance, section 143(1) of the principal Act. This section prohibits a credit union from being a member of a formal body whose objects include any of the objects of an association of credit unions, unless that body is registered as an association under the Act.

This could mean that it prohibits a credit union from being a member of a financial sector industry association that has an object of promoting the interests of its members, or provides services to members. We consider this prohibition too broad and recommend repealing section 143(1).

Allowing credit union associations to provide services to non-members

Clause 39 of the bill, as introduced, would have allowed associations of credit unions to provide services to its members and other types of co-operative or mutual entities. We recommend amending section 143(4), inserted by clause 39(3), to clarify that associations of credit unions may provide services or assistance to any non-member entity, where their rules authorise it. This change would be consistent with the law as clarified in *Re New Zealand Association of Credit Unions* [2017] NZHC 2806, but we recommend stating it explicitly to avoid any risks of further litigation.

Changes to the powers and requirements of the Registrar

We recommend a number of amendments to the Registrar's powers and responsibilities under the bill. The majority of our proposed amendments deal with compliance and administrative issues. These include:

- permitting the Registrar to keep the register of friendly societies and credit unions, in electronic form or any other form the Registrar thinks fit (clause 6)
- allowing the Registrar to amend the register if he or she is informed by a society, branch, or credit union that information is incorrect, or to correct errors the Registrar is satisfied exist in the register (clause 6)
- requiring a full set of a society's or credit union's rules to be submitted to the Registrar each time one of them is amended (clause 6B).

Registrar's power to suspend business of a credit union

As introduced, clause 36 would repeal the Registrar's power (conferred by section 139) to suspend the business of a credit union. However, we acknowledge that the Registrar's power to suspend the business of a credit union, although used infrequently, is a useful means for protecting the interests of members. We therefore propose retaining section 139. Our proposed amendment to clause 36 would make a relatively minor change to the drafting.

Appendix

Committee process

The Friendly Societies and Credit Unions (Regulatory Improvements) Amendment Bill was referred to the Finance and Expenditure Committee of the 51st Parliament on 7 June 2017. The closing date for submissions was 21 July 2017. The committee received and considered 20 submissions from interested groups and individuals.

The bill was reinstated with this committee in the current Parliament. We met between 29 November 2017 and 1 May 2018 and heard oral evidence from 13 submitters.

Both committees received advice from the Ministry of Business, Employment and Innovation.

Committee membership

Michael Wood (Chairperson)

Hon Amy Adams (from 21 March 2018)

Kiritapu Allan

Andrew Bayly

Rt Hon David Carter

Tamati Coffey

Hon Steven Joyce (until 21 March 2018)

Barbara Kuriger (until 21 March 2018)

Ian McKelvie (from 21 March 2018)

Willow-Jean Prime

Dr Deborah Russell

David Seymour

Fletcher Tabuteau

Dr Duncan Webb

Lawrence Yule

Stuart Smith was on the committee for our consideration of this bill.

Advice and evidence received

The documents that we received as advice and evidence are available on the Parliament website, www.parliament.nz.