

TRANSFERS OF ENGAGEMENTS AND AMALGAMATIONS

Contents

| | |
|----------------------|---|
| 1. Legislation | 2 |
| 2. Guidance | 9 |

Version History

| Version | Date | Amendments |
|---------|----------------|--|
| 0.1 | July 2013 | Initial Version. |
| 1.0 | September 2013 | No Amendments. |
| 1.1 | October 2015 | Amended footnote 1 to reflect to reflect the Credit Union and Co-operation with Overseas Regulators Act 2012 (Commencement of Certain Provisions) (No.2) Order 2013. |
| 2.0 | May 2016 | Updated Explanatory Note and Related Forms. |

1. Legislation

Section 128 – Amalgamations of credit unions

- (1) Subject to compliance with *section 130*, any two or more credit unions may amalgamate by forming a credit union as their successor.
- (2) In order to form a credit union as their successor the amalgamating credit unions shall—
 - (a) agree on the rules for the regulation of their successor which comply with the requirements of the *First Schedule*;
 - (b) each approve the terms of the amalgamation by a special resolution, which also approves the rules of their successor; and
 - (c) jointly make an application under *section 131* to the Bank for the confirmation of the amalgamation and send to the Bank three copies of the rules of their successor, each copy signed by the secretary of each of the credit unions.
- (3) If the Bank—
 - (a) confirms the amalgamation under *section 131*, and
 - (b) is satisfied as respects the matters as to which it must be satisfied before it registers the rules of a credit union, the Bank shall register the rules of the successor credit union and issue to it a certificate of confirmation of its approval of the amalgamation and specify a date ("the specified date") as from which the registration takes effect.
- (4) On the specified date, all the property, rights and liabilities of each of the credit unions whose amalgamation was confirmed by the Bank shall by virtue of this subsection stand transferred to and vested in the credit union so registered as their successor.
- (5) On the specified date, each of the credit unions to which the successor succeeds shall be dissolved by virtue of this subsection; but the transfer effected by *subsection (4)* shall be deemed to have been effected immediately before the dissolution.

Section 129 – Transfer of engagements between credit unions

(1) Subject to compliance with *section 130*, a credit union may transfer its engagements to another credit union which, in accordance with this section, undertakes to fulfil the engagements.

(2) A credit union, in order—

(a) to transfer its engagements, or

(b) to undertake to fulfil the engagements of another credit union,

shall resolve to do so by a special resolution or, if the Bank consents in either case in circumstances where it considers it expedient to do so, by a resolution of the board of directors.

(3) The transfer shall be recorded in an instrument of transfer of engagements.

(4) A transfer of engagements between credit unions shall be of no effect unless—

(a) the transfer is confirmed by the Bank under *section 131*; and

(b) a certificate of confirmation of the transfer is issued in respect of the transfer under *subsection (5)(b)*.

(5) Where the Bank confirms a transfer of engagements between credit unions, it shall—

(a) register a copy of the instrument of transfer of engagements; and

(b) issue to the credit union taking the transfer a certificate of confirmation of the transfer;

and, on such date as is specified in the certificate, all the property, rights and liabilities of the credit union transferring its engagements shall, by virtue of this subsection, stand transferred to and vested in the credit union taking the transfer.

(6) Where its engagements have been transferred, a credit union shall, by virtue of this subsection, be dissolved on the date specified in the certificate issued under

subsection (5)(b); but the transfer effected by *subsection (5)* shall be deemed to have been effected immediately before the dissolution.

(7) (a) Where the engagements of a credit union (in this subsection referred to as the 'transferor credit union') are transferred to another credit union (in this subsection referred to as the 'transferee credit union'), the common bond of the transferee credit union is taken to include the common bond of the transferor credit union and the rules of the transferee credit union are amended accordingly, on and from the date on which the transfer takes effect in accordance with this section.

(b) Section 14 shall not apply to the amendment of the rules of the transferee credit union effected by paragraph (a).

Section 130 – Statement for members relating to proposed amalgamation or transfer of engagements

(1) † A credit union which proposes—

(a) to amalgamate with one or more other credit unions,

(b) to transfer its engagements to another credit union, or

(c) to undertake to fulfil the engagements of another credit union,

shall, subject to subsection (2), cause to be sent to every member entitled to notice of a general meeting of the credit union and to the auditor of the credit union a statement, in such form as the Bank may specify in writing, showing the matters specified in subsection (3), together with a copy of the annual accounts for each credit union concerned for the most recent financial year.

(2) † If, in the case of a credit union proposing to transfer its engagements or to fulfil the engagements of another credit union, the Bank has consented under *section 129* to the credit union proceeding by a resolution of its board of directors, *subsection (1)* shall not apply but, within the seven days following the meeting of the board at which that resolution is passed, the secretary of the credit union shall send to every member and to the auditor of the credit union—

(a) a notice of the resolution passed by the board of directors,

(b) a statement, in such form as the Bank may prescribe, showing the matters specified in subsection (3), and

- (c) a copy of the annual accounts for each credit union concerned for the most recent financial year.
- (3) The matters referred to in *subsection (1)* are—
- (a) the financial position of each credit union concerned (as appearing from the most recent unaudited monthly statements);
- (b) details of any payments proposed to be made to members of each credit union concerned in consideration of the proposed amalgamation or transfer;
- (c) any changes to be made, in connection with the amalgamation or transfer, in the terms governing outstanding loans;
- (d) the details of the arrangements proposed in relation to employees of each credit union; and
- (e) any other matter which the Bank may require in the case of a particular amalgamation or transfer.
- (4) † No statement shall be sent to the members of a credit union under subsection (1) or (2) unless its contents have been approved by the Bank but, subject to that, such a statement shall be so sent that every member referred to in that subsection receives it not later than the date on which it receives notice of any resolution which—
- (a) is in favour of the proposal concerned; and
- (b) is to be moved at a general meeting of the credit union.

Section 131 – Confirmation of amalgamation or transfer

- (1) An application for confirmation by the Bank of an amalgamation of credit unions or a transfer of engagements shall be made in such manner as the Bank may specify.
- (2) A credit union which makes, or joins in making, an application for confirmation of an amalgamation or a transfer shall, within seven days after the date of the application, cause to be published, in at least two daily newspapers published in the State and circulating in the areas in which the registered offices of the credit unions

concerned in the proposal are situated, a notice giving particulars of the application and indicating that representations relating to it (whether for or against) may be made in writing to the Bank within such period (being not less than 21 days after the date of publication of the notice) as may be specified in the notice.

- (3) A notice under *subsection (2)* shall be in such form as the Bank may specify and shall indicate that a copy of the statement prepared under *section 130* may be obtained on demand at the registered office of the credit union during the ordinary office hours of the credit union.
- (4) Representations relating to an application under *subsection (1)* may be made to the Bank within the period specified in the relevant notice published under *subsection (2)*.
- (5) The Bank shall allow the credit union or credit unions seeking confirmation of an amalgamation or transfer an opportunity to comment on any representations made before the expiry of such period as the Bank may specify in a notice to the credit union or credit unions.
- (6) The Bank, having considered any application, representation and comment under this section, shall either—
 - (a) confirm the amalgamation or transfer, subject to such conditions (if any) as it considers appropriate; or
 - (b) subject to *subsection (7)*, refuse to confirm the amalgamation or transfer if it is satisfied that—
 - (i) confirmation would be contrary to the public interest or the Bank's functions as respects credit unions; or
 - (ii) in the case of an amalgamation or in the case of a transfer which was the subject of a special resolution, some information material to the members' decision about the amalgamation or transfer was not made available to all the members eligible to vote; or
 - (iii) some relevant requirement of this Act (including, in particular, *section 6*) or the rules of any of the credit unions participating in the amalgamation or transfer was not fulfilled or not fulfilled as regards that credit union.
- (7) The Bank shall not be precluded from confirming an amalgamation or transfer by virtue only of the non-fulfilment of some relevant requirement of this Act or the rules

of a credit union if it appears to the Bank that it could not have been material to the members' decision about the amalgamation or transfer and the Bank is satisfied that the failure may be disregarded for the purposes of this section.

- (8) A failure to comply with a requirement of this Part or any rules of a credit union shall not invalidate an amalgamation or transfer, but a credit union which and any person who fails to comply with a requirement of this Part shall be guilty of an offence.

Section 132 – Distribution to members

(1) Where the terms, of an amalgamation of, or transfer of engagements between, credit unions include provision for the distribution among any of the members of the participating credit unions of part of the funds of one or more of those credit unions in consideration of the amalgamation or transfer, then in the case of each of the credit unions concerned in the amalgamation or transfer—

(a) that provision must be approved by the special resolution referred to in *section 128(2)(b)* or, as the case may be, *section 129(2)*; or

(b) the Bank must give consent as mentioned in *subsection (2)*.

(2) Where, in the case of a credit union proposing to transfer its engagements or to fulfil the engagements of another credit union—

(a) the terms of the proposed transfer of engagements include provision for a distribution of funds as in *subsection (1)*, and

(b) the Bank is considering under *section 129(2)* whether to give consent to the credit union proceeding by way of a resolution of its board of directors, rather than by special resolution,

the Bank shall not give that consent unless it is satisfied that the distribution proposed to be made by each credit union concerned is, in all the circumstances, justified and reasonable.

(3) Any reference in this section to a distribution of funds, with reference to members, includes a reference to a distribution by means of a special rate of interest available to members for a limited period.

Section 97 – Cancellation of registration

(This Chapter has not reproduced the entirety of section 97 – please consult the Credit Union Act, 1997 for the full provision.)

...

- (2) The Bank shall cancel the registration of a credit union that has been—
- (a) dissolved by virtue of *section 128* or *129*; or
 - (b) wound up under *section 133* or *section 134*, or dissolved under *section 135*.
- (3) The Bank shall not cancel the registration of a credit union otherwise than—
- (a) at its own request, or
 - (b) under subsection (2),

unless it has given the credit union at least 2 months' notice in writing specifying the ground on which it is proposed to cancel that registration.

- (4) Notice of every cancellation under this section of a credit union's registration shall, as soon as practicable after it takes place, be published in *Iris Oifigiúil* and in any other manner which the Bank considers necessary for bringing the cancellation to the notice of the persons affected by it.
- (5) From the date of publication in *Iris Oifigiúil* under *subsection (4)* of a notice of the cancellation of a credit union's registration, the credit union shall cease to be entitled to any of the privileges of this Act as a credit union.
- (6) *Subsection (5)* is without prejudice to any liability incurred by a credit union before the cancellation of its registration; and any such liability may be enforced against it as if the cancellation had not taken place.

Section 136 – Restriction on dissolution or cancellation of registration

- (1) Until a certificate under this section has been lodged with the Bank—
- (a) a credit union shall not be dissolved in accordance with *section 135(6)*; and
 - (b) the Bank shall not cancel the registration of a credit union under *section 97(2)(a)*.

(2) A certificate under this section is one which—

(a) † is signed by the secretary or other officer (other than a person who is an officer solely by virtue of being a voluntary assistant) of the dissolving or transferor credit union approved by the Bank; and

(b) certifies that all property vested in the credit union has been duly conveyed or transferred to the persons entitled.

2. Guidance

The following explanatory note has been prepared by the Central Bank in relation to a transfer of engagements between credit unions:

- [Transfer of Engagements: Explanatory Note and Related Forms \(May 2016\)](#)¹

¹ The definition of “special resolution” provided in this Explanatory Note was amended by the 2012 Act on 1 October 2013.