

Regulatory Statement

Credit Union Constitution and Rules Amendments

Regulatory Statement Number	23-019
Legislation:	<i>Credit Union Incorporation Act</i>
Date:	December 19, 2023
Distribution:	B.C. Credit Unions

PURPOSE

This Regulatory Statement provides the requirements for an application to the Superintendent of Financial Institutions (the “Superintendent”) for formal consent under section 39.71 of the *Credit Union Incorporation Act* (“CUIA”) to file with the British Columbia (“B.C.”) Registrar of Companies (the “B.C. Registrar”), a special resolution to alter the constitution or rules of a credit union.

In addition, this Statement contains a requirement to obtain the Superintendent’s preliminary consent before a credit union may put to its members a special resolution altering the credit union’s constitution and/or rules.

This Regulatory Statement replaces Information Bulletin CU-18-003 “Credit Union Constitution and Rules Amendments.”

BACKGROUND

A credit union may alter its constitution or rules by special resolution under sections 39.72 and 39.74 of the CUIA, respectively. A special resolution is defined in the CUIA, and in respect of a credit union other than a central credit union¹, requires that the resolution be passed by not less than two thirds of the votes cast by members who are entitled to vote.

A special resolution may be proposed by either a credit union’s Board of Directors (“Board”) or by members of the credit union. Members may requisition a special general meeting to consider a special resolution or propose a special resolution for consideration at a general meeting as set out in sections 76 and 77 of the CUIA. A minimum number of members are required to endorse the requisition for consideration of the special resolution. A single member may not requisition the consideration of a special resolution by the credit union.

If a special resolution to alter the constitution or the rules of a credit union is successfully passed, the credit union must file a certified copy of the special resolution with the B.C. Registrar using the form provided by the B.C. Registrar, Form 19. Pursuant to section 39.71 of the CUIA, the B.C. Registrar must not accept the filing without first receiving the consent of the Superintendent. Section 39.71 of the CUIA does not distinguish between special resolutions that alter the credit union’s constitution or rules that are proposed by members or by the Board.

There are unique factors to consider when members propose a special resolution to alter the constitution or the rules of a credit union. Members of a credit union may not have business, legal, or drafting subject matter expertise when proposing a special resolution. The CUIA also contains time limits, including for the

¹ See definition of “special resolution” in the CUIA for requirements that apply to a central credit union.

Classification: **Public**

600-750 West Pender Street
Vancouver, B.C. V6C 2T8

T 866 206 3030
F 866 660 3365

You're Protected
bcfsa.ca

directors of the credit union to decide to allow or refuse to allow consideration of a special resolution from members, among other requirements. Finally, the Superintendent's powers to suggest amendments to the special resolution may be limited and/or not engaged on all facts. Accordingly, the Superintendent encourages members (and/or their representative) to work with the credit union as much as possible and in advance of proposing a special resolution and/or seeking the endorsement of the minimum number of required members.

A credit union may allow its members to vote and approve a special resolution to which the Superintendent subsequently declines to provide consent, or consent is conditional. To reduce this likelihood and to improve processing times for formal consent, the Superintendent requires a credit union to apply for preliminary consent before any special resolution is put to the credit union's members for a vote.

The preliminary consent applies to special resolutions proposed by the Board and by members alike. An application for preliminary consent may, in general, include the same content as an application for the Superintendent's formal consent, together with additional information as set out below.

When providing formal consent under section 39.71 of the CUIA, the Superintendent may provide consent subject to conditions. Any conditions are part of the consent on which they are imposed.

REQUIREMENTS

An application for preliminary or formal consent must include the following:

- cover letter with a summary of and supporting rationale of the proposed alterations;
- copy of (or draft of) the special resolution(s);
- copy of the (draft) notice of the meeting and date of the meeting at which the special resolution is to be (or was) considered, together with the record dates for the notice and vote, as well as the timeline for the voting period;
- for rules amendments, a Summary of Proposed Rules Amendments (template attached);
- red-lined version of the amended constitution or rules highlighting the change(s);
- clean version of the amended constitution or rules;
- confirmation that the proposed amendments have been approved by the Board;
- confirmation that the proposed amendments have been reviewed by the credit union's legal counsel for compliance with the CUIA, and all other applicable legislation; and
- in the case of an application for formal consent, the non-refundable application fee.

If a consent is sought to file with the B.C. Registrar a special resolution proposed by members of the credit union under sections 76 or 77 of the CUIA, the application for preliminary consent must also include:

- copy of the supporting statement provided by the representative of the requisitioning members, as set out in sections 76(7) or 77(7)(b), and a summary of and reasons for the proposed special resolution making amendments to the constitution or rules;
- statement from the Board on whether it supports the members' special resolution with reasons;
- for formal consent, information on whether the special resolution was passed by the required number of members eligible to vote; and
- any time sensitivity that applies to hearing from the Superintendent or BC Financial Services Authority ("BCFSA") staff.

An application for formal and final consent must also include a certified copy of the special resolution, using a blank Form 19 from the B.C. Registrar.

INSTRUCTIONS

For questions, please contact the Approvals Branch at statapprovals@bcfsa.ca or at (604) 398-5034. All notices, information or documentation referenced in this Statement are to be submitted via the Integrated Regulatory Information System (“IRIS”), a secure portal through which regulated entities may provide information to BCFSA. IRIS, as well as instructions on how to set up an account and submit an application through IRIS, may be accessed on BCFSA’s website.

Application fees may be paid in IRIS by credit card (Visa or Mastercard). Payment by credit card through IRIS is integrated into the application process. Please contact statapprovals@bcfsa.ca to pay by electronic fund transfer, wire, or cheque.

LEGISLATION

CUIA, s. 1, 9.1, 39.71, 39.72, 39.74, 76, 77, 93(4)-(5), 94(2), 95
Financial Institutions Fees Regulation, Schedule 1

Copies of the legislation are available from www.bclaws.gov.bc.ca

RELATED FORMS

Form 19: Special Resolution

Regulatory Statements establish the form and content of a regulatory submission; prescribe the manner of meeting or enforcing a requirement existing in an enactment; and/or provide the regulator’s view of the laws that BC Financial Services Authority administers. Regulatory Statements are made pursuant to a requirement or power contained in provincial legislation. Compliance with a Regulatory Statement is therefore mandatory. Regulatory Statements may refer to law, practice, or background existing at the time of publication. If relying on the legal information contained in a Regulatory Statement, confirm that any references to the law, including enabling legislation, are up to date and obtain independent legal advice, when needed. Regulatory statements are effective on the date of their publication, unless stated otherwise.

SUMMARY OF PROPOSED RULES AMENDMENTS

The following table summarizes the proposed amendments to the Rules of [Credit Union Name]:

	Current Rule	Proposed Rule	Summary/Rationale
1			
2			
4			
5			
6			
7			
8			
9			
10			