

# ONTARIO'S NEW CREDIT UNION LEGISLATION ALIGNS WITH MODERNIZATION EFFORTS OF OTHER FINANCIAL INSTITUTION LEGISLATION

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On March 1, 2022, the *Credit Unions and Caisses Populaires Act, 2020* ("**CUCPA 2020**") came into force, replacing the *Credit Unions and Caisses Populaires Act, 1994* ("**CUCPA 1994**").<sup>[1]</sup> This update was a welcome overhaul for the sector, which has 62 credit unions and more than 1.7 million members in Ontario.<sup>[2]</sup>

## **CUCPA 2020 Reduces Red Tape, Increases Investment Opportunities for Credit Unions, and Improves Consumer Experience**

In 2019 the Ontario government began public consultations concerning CUCPA 1994 with the aim of "moderniz[ing] the framework, find[ing] efficiencies and cut[ting] red tape so that credit unions can compete, grow and more effectively meet the needs of their members".<sup>[3]</sup> The consultations sought to address three key pillars: (1) reducing red tape, (2) increasing investment and driving competitiveness, and (3) improving consumer experience. CUCPA 2020 is the result of these public consultations and a subsequent legislative review that concluded in 2020.<sup>[4]</sup>

### *Reducing the Red Tape*

One of the pillars of the public consultations was to reduce the regulatory burden for credit unions. CUCPA 1994 contained many prescriptive requirements which, in CUCPA 2020, will be subject to or set out in the rules promulgated by Ontario's Financial Services Regulatory Authority ("**FSRA**").<sup>[5]</sup> Although oversight by FSRA may end up fundamentally similar to the regime under the CUCPA 1994, the shift provides a chance to review and streamline these requirements and, given that FSRA is known as a principles-based regulator, may result in a greater degree of flexibility. CUCPA 2020 also more clearly embraces technological changes with the following new provisions and clarifications:

- CUCPA 2020 explicitly provides that documents can be provided in electronic format (s. 276(1));
- Certain notices can be published on FSRA's website rather than in the Ontario Gazette (e.g. s. 257(10), 258(8) and 259(8));

- Most records can now be kept outside of Ontario if certain conditions are met (s. 203(2)) and can be provided in any form, provided they are capable of being reproduced within a reasonable time (s. 204); and
- Members' and directors' meetings can be conducted remotely (s. 185 and s. 186).

### *Increased Opportunities for Competition in the Credit Union Sector*

The changes to CUCPA 2020 also increase business and capital raising opportunities for credit unions. The legislation no longer requires that credit unions only engage in businesses that are “reasonably ancillary” to the provision of financial services. Instead, credit unions may deal in goods or engage in a business with the Chief Executive Officer’s written approval (s. 139). Credit unions can also now loan money to non-members, which was previously prohibited (s. 154). Ontario credit unions will have more access to capital as they can now sell securities under National Instrument 45-106 *Prospectus Exemptions* and National Instrument 45-108 *Crowdfunding* (s. 68(c)) without the requirement of filing a prospectus. Credit unions will also now be able to work with licensed insurance agents, brokers and companies to provide additional types of insurance both in branches and online.<sup>[6]</sup> Collectively, these changes significantly expand the scope of business opportunities for credit unions and position credit unions to be more competitive in the financial services sector.

### *Improving Consumer Experience*

The third pillar of the public consultation was to improve consumer experience. Consumers will find that credit union services are more widely available since, as noted above, non-member consumers can now obtain a loan from a credit union. More services are also available to consumers, since credit unions can now sell property and casualty insurance. Consumers will also benefit from the electronic availability of documents, as discussed above.

However, the key change from a consumer protection standpoint is the new requirement for credit unions to adopt and implement a market code of conduct (s. 102), which is subject to oversight from FSRA.

Finally, unlike the CUCPA 1994, the CUCPA 2020 includes a sunset provision, which states that “credit unions and central shall not carry on business .... after the fifth anniversary of [March 1, 2022]”.<sup>[7]</sup> This ensures that the Act will be continuously reviewed and updated to keep pace with the evolution of the credit union sector and the financial sector more broadly.

### *Next Steps*

As noted above, CUCPA 2020 came into force on March 1, 2022 (with the exception of certain provisions regarding unclaimed deposits). Given that prescribed requirements were largely removed from the Act, implementation of CUCPA 2020 will, in large part, occur through regulations and FSRA rules. The Ontario

government has already held public consultations on new regulations to support CUCPA 2020, specifically the *Cost of Borrowing and Disclosure to Borrowers* regulation, *General Regulation*, and *Sale of Insurance* regulation.<sup>[8]</sup> The consultation closed on January 10, 2022.

FSRA has similarly already published guidance on how it will interpret and enforce the market code of conduct requirement discussed above.<sup>[9]</sup> Credit unions have until March 31, 2022 to adopt and implement a market conduct framework and until March 31, 2023 to complete their first self-assessment under the framework. Additionally, three Authority rules (Sound Business and Financial Practices Rule, Capital Adequacy Requirements Rule, and Liquidity Adequacy Requirements Rules) came into force on March 1, 2022.<sup>[10]</sup>

Finally, the addition of the sunset provision means that, come March 2027, the CUCPA 2020 will undergo another review.

### **Parallels to Modernization Efforts of Other Financial Institution Legislation**

Ontario's amendments to the CUCPA 2020 have a number of parallels with recent and proposed changes to legislation that governs federally-regulated financial institutions ("**FRFIs**"), namely the *Bank Act*,<sup>[11]</sup> the *Insurance Companies Act*,<sup>[12]</sup> and the *Trust and Loan Companies Act*.<sup>[13]</sup>

For instance, the scope of business activities FRFIs may participate in is expanded under the proposed changes found in Bill C-74, *Budget Implementation Act, 2018, No. 1*,<sup>[14]</sup> particularly activities related to financial technology. First, the amendments remove the requirements for FRFIs to obtain approval before engaging in technology-related activities like collecting, manipulating, and transmitting information.<sup>[15]</sup> The amendments also permit FRFIs to design, develop, manufacture, sell and otherwise deal with technology if such activities relate to activities permitted to be carried on by the FRFI.<sup>[16]</sup> Finally, the amendments allow FRFIs to provide identification, authentication or verification services.<sup>[17]</sup>

Additional regulations set to come into force on June 30, 2022 implement the new financial consumer protection framework under the *Bank Act*, mirroring the CUCPA 2020's market code of conduct requirement.<sup>[18]</sup> The new consumer protection provisions under the *Bank Act*, initially introduced in 2018 pursuant to Bill C-86, *Budget Implementation Act, 2018, No.2*<sup>[19]</sup> require stronger internal oversight of compliance with consumer protection (a slight contrast to the CUCPA 2020 provisions which require oversight by FSRA), expand consumer protection to business accounts, and increase certain disclosure requirements.

The changes to CUCPA 2020 constitute a significant update for an important financial sector in Ontario. Further, it is promising to see the advancement of modernization efforts concurrently across the financial services sector, as these efforts improve consumer experience and the competitiveness of Canada's financial institutions overall.

[1] SO 2020, c. 36, Sched 7; SO 1994, c. 11.

[2] Financial Services Regulatory Authority of Ontario, [Ontario Credit Unions and Caisses Populaires](#) (last visited March 18, 2022).

[3] Ontario Ministry of Finance, [A Modern Framework for Credit Unions in Ontario: Reducing Red Tape and Increasing Investment](#), June 2019.

[4] Fall 2020 Budget: [Ontario's Action Plan - Protect, Support, Recover](#) (2020), p. 115-116.

[5] For example, certain provisions governing directors (s. 83-86), officers (s. 105-106) and auditors (s. 125-127).

[6] Previously, under General Regulation, [O. Reg. 237/09](#), s. 39(1), a credit union could not act as an agent for a person in the placing of insurance and could not lease or provide space in its office to a person placing insurance. This prohibition has since been lifted in CUCPA 2020 (s. 141(1)). See also: Ontario's Regulatory Registry, [Public consultation on new regulations to support the new Credit Unions and Caisses Populaires Act, 2020 \(CUCPA 2020\)](#), Sale of Insurance.

[7] CUCPA 2020, s. 275(1).

[8] Ontario's Regulatory Registry, [Public consultation on new regulations to support the new Credit Unions and Caisses Populaires Act, 2020 \(CUCPA 2020\)](#).

[9] FSRA, [Guidance: Credit Union Market Conduct Framework](#), No. CU0070INT (effective date, November 29, 2021).

[10] FSRA, [New credit union rules strengthen the sector and further protect depositors](#), Announcement (March 2, 2022).

[11] SC 1991, c. 46.

[12] SC 1991, c. 47.

[13] SC 1991, c. 45.

[14] (2018, c. 12), Royal Assent June 21, 2018.

[15] Bill C-74, s. 316(1).

[16] Bill C-74, s. 316(1).

[17] Bill C-74, s. 316(2).

[18] *Financial Consumer Protection Framework Regulations* ([SOR/2021-181](#)), s. 123.

[19] (2018, c. 27), Royal Assent December 13, 2018, s. 315.

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## A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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