

A Guide to Incorporating a New Credit Union in Alberta

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Introduction

From time to time, an individual, group or association considers applying for the incorporation of a new credit union in Alberta. The reasons for wanting to open a new credit union can vary from a community wanting a grassroots, democratic financial institution within their community that is responsive to the needs of that community, to an employee group wanting a savings and loan operation for their company.

This guide is provided to assist you with the process for incorporation. It includes:

- legislative requirements, referencing sections within the *Credit Union Act* (Alberta) (the “Act”) and regulations that deal specifically with incorporation and commencement of business (which cannot occur until the proper approvals have been obtained)
- financial, operating and membership requirements
- types of credit unions (with or without a bond of association)

The information contained in this guide is for informational purposes only and is not legal advice. It is very important that prior to applying for incorporation of a new credit union, the incorporators read and thoroughly understand the legislative requirements as outlined in the Act, Principal and Ministerial Regulations, and be aware of all other legal requirements, all as may change from time to time. Maintaining close contact with Credit Union Deposit Guarantee Corporation and the Department of Finance and Treasury Board are essential to this process.

Once you have read the information, should you decide to proceed with the application for incorporation, the Engagement team of Credit Union Central Alberta Ltd. (“Alberta Central”) will be available to answer your questions and provide assistance.

For more information contact: Alberta Central Engagement
Email: engagement@albertacentral.com

Process for Incorporation of a New Credit Union

The incorporation of a new credit union in Alberta can be exciting. It also takes considerable effort on the part of the incorporators, as well as a large deposit base and member commitment.

Before you proceed, have you considered other options that may be available? The services you want may already be available in or near your community.

- Is there another credit union already located in or near your community that can provide the products and/or services you need? Not sure? Contact Alberta Central to obtain this information.
- If there is a credit union in or near your community, contact Alberta Central. After discussing your needs with you, Alberta Central will contact the credit union on your behalf. If there is interest and they can meet your needs, they will contact you directly to discuss your options. Following that, if you decide that your best option is to apply for incorporation of a new credit union, contact Alberta Central to begin the process.

Process for Incorporating a New Credit Union in Alberta

Sections 19 through 23 of the Act deal with the process for incorporating a new credit union in Alberta. The following terms will be used throughout the document to describe the following:

Incorporator:	refers to the individual or group seeking incorporation
Minister:	refers to the Minister of Treasury Board & Finance (“TBF”), Alberta Government, and/or designates
Corporation:	refers to the Credit Union Deposit Guarantee Corporation (“CUDGC”)
Central:	refers to Credit Union Central Alberta Ltd. (“Alberta Central”)
Credit union:	refers to the <i>proposed</i> credit union

Sections 19-23 of the Credit Union Act

- 1) Application for incorporation, proposed by and subscribed to by 20 or more adult individuals, each a Canadian citizen or lawfully admitted for permanent residence, and ordinarily resident in Alberta, may be made by providing the Minister with Articles of Incorporation of the proposed credit union setting out:
 - its name
 - the full name and mailing address of each incorporator
 - a statement of its bond of association¹ if there is one
 - a statement that there is no bond of association if there is none

¹ A bond of association is defined as the “community of interests, if any, between members or proposed members of a credit union deriving from (i) a common occupation, employer, association, religious affiliation or membership of an organization, that exists generally in Alberta or in a particular area of Alberta, (ii) residence in a particular area of Alberta, other than wholly or predominantly in a city, town, village, summer village or municipal district with a population of more than 5000, or (iii) any other similar relationship, other than one arising generally from residence in Alberta.”

- a statement of any restrictions or prohibition on the business the credit union may carry on
- 2) Articles of Incorporation sent to the Minister must be accompanied by:
 - the proposed bylaws of the credit union subscribed by all the incorporators
 - a notice containing the full name and mailing address of each of the proposed first directors
 - a name search report
 - a notice containing the address of the proposed registered office
 - a business plan, including a statement of the proposed expenses relating to the incorporation and initial organization of the credit union
 - 3) Credit union will send to the Corporation a copy of the business plan.
 - 4) Credit union must send to the Minister as part of the Articles of Incorporation an Affidavit verifying the signatures of all persons subscribing the Articles of Incorporation and the bylaws.
 - 5) The Minister shall approve the application for incorporation if:
 - all the provisions of 1 through 4 above have been complied with in the manner and form required by Section 12 of the Act
 - the proposed bylaws comply with the Act and regulations
 - the proposed first directors are qualified to become directors under Section 65 of the Act
 - the name of the proposed credit union complies with Section 31 of the Act
 - the Corporation has notified the Minister in writing that it is satisfied the business plan is viable
 - the application is not contrary to the public interest
 - 6) The Minister, if they have approved the application, shall issue a Certificate of Incorporation and shall assign the credit union a registration number.
 - 7) The Minister shall enter into the register:
 - the Certificate of Incorporation
 - the Articles of Incorporation
 - the bylaws
 - registration number of the credit union
 - the notice of directors
 - the notice of registered office

Summary

- 1) Proposed credit union submits application for incorporation in the form of Articles of Incorporation to the Minister.
- 2) Credit union sends proposed bylaws, list of directors, name search, notice of address, business plan, affidavit, etc. with Articles of Incorporation to Minister.
- 3) Credit union sends business plan to the Corporation.
- 4) The Corporation notifies Minister they are satisfied with business plan.

- 5) Minister approves application for incorporation.
- 6) Minister issues Certificate of Incorporation and registration number.
- 7) Minister enters Certificate, Articles, bylaws, etc. into register.

Process for Commencement of Business

Section 24 of the Act deals with the commencement of business. Commencement of business can only occur after approval to incorporate has been received from the Minister and the Minister has approved the commencement of business by it. This section is summarized as follows:

Section 24 of Credit Union Act

- 1) Credit union shall send to the Minister any change in the business plan.
- 2) The Corporation shall notify Minister that any change in business plan does not affect credit union's viability.
- 3) Minister must by enquiry satisfy themselves that:
 - a credit union with a bond of association
 - has at least 50 members
 - who have collectively subscribed and paid in full for at least 10,000 common shares
 - who have collectively deposited at least \$30,000
 - a credit union with no bond of association
 - has at least 250 members
 - who have collectively subscribed and paid in full for at least 250,000 common shares
 - who have collectively deposited at least \$750,000
 - the credit union has effective management
 - the Certificate of Incorporation was not obtained by fraud
 - the credit union will not be used for illegal purposes
 - the credit union will fulfil the purposes and mode of operation of a credit union described in Section 26 of the Act
- 4) The credit union shall deposit all share subscriptions and deposits in Alberta Central.
- 5) The Minister shall approve the commencement of business.

Summary

- 1) Credit union must send any change of business plan to the Minister and the Corporation.
- 2) The Corporation notifies the Minister that changes to the business plan do not affect viability.
- 3) If the Minister is satisfied that the credit union meets all criteria set out in the Act and regulations, he/she will approve commencement of business.

Project Plan

Incorporation Procedures

To begin incorporation procedures, individuals requesting the incorporation must refer to the Act, Sections 19 to 23, which deal with incorporation and complete all of the requirements for submission to Alberta Central, the Corporation and TBF, which include:

- Developing a business plan (5 year), including:
 - a statement of the proposed expenses relating to the incorporation and initial organization of the credit union
 - rationale for proposed credit union
 - management of proposed credit union (backgrounds, qualifications of management and board members)
 - location and description of premises (must be a street address)
 - marketing plans and strategy (target group; market size, demographics)
 - projected number of members and financial commitment
 - financial projections (5 years)
 - subsidies available to the credit union (i.e. free office space and from whom, management training, support from other credit unions in relation to training, etc.)
 - future plans (i.e. other branches, locations)
- Drafting bylaws (see Guidelines for Drafting Credit Union Bylaws below)
- Completing a name search
- Completing the required official forms:
 - Articles of Incorporation, including an Affidavit verifying signatures
 - Notice of Address
 - Notice of Directors
- Applying to the Minister in writing for a Certificate of Incorporation and Commencement of Business

Fee Considerations for New Credit Unions

The following fees should be taken into consideration within the business plan for incorporation of a new credit union. This information is being provided as a guide only – fees may be subject to change, or new fees may be added, without notice.

Credit Union Deposit Guarantee Corporation (CUDGC)

An annual assessment of 0.05 basis points of deposits and borrowings is payable to CUDGC by all credit unions. This fee is required for deposit guarantee purposes.

For more information on how to calculate the assessment and/or the annual return filing fee, contact CUDGC at 780-428-6680.

Credit Union Bonding Program

A fee is required for insurance purposes. Contact CUDGC at 780-428-6680 for more information, the amount of coverage, and what the coverage encompasses, etc. There are certain security requirements for a credit union premise. For information on security, contact CUDGC prior to commencement of business.

Incorporation Fees

To confirm the fee and date payable for credit union incorporation, contact the Superintendent of Financial Institutions at Alberta Treasury Board & Finance at 780-427-5064.

Alberta Central - Annual Dues

A credit union that is a member of Alberta Central (unless otherwise prescribed not to be a member as per the Act) is assessed dues on an annual basis, calculated on the basis of total membership for the credit union and the budget for dues-funded programs offered by Alberta Central during the year. The assessment rate is provided after the date of commencement of business has been determined and an approximation of membership has been agreed upon by the new credit union and Alberta Central. The regular cycle for assessing dues is January of each year. For more information, contact engagement@albertacentral.com.

Guidelines for Drafting Credit Union Bylaws

Every credit union in Alberta is required to have a set of bylaws. The draft bylaws must be submitted to the Minister and Corporation at the same time as all other required documents for incorporation. Section 45 of the Act sets out certain required elements which must be included in the bylaws.

The following guidelines will assist you in drafting the bylaws for the proposed credit union.

General

Procedure for the giving of notice to a member or members other than notice of meetings, consistent with the requirements set out in section 62 of the Act.

Membership

- 1) Where no bond of association is to be stipulated, i.e., membership open to all persons, businesses, associations, etc. in the Province of Alberta you would be silent.
- 2) Where a bond of association is to be stipulated, three options are provided which define your membership bond of association, for example:
 - Where membership is restricted by occupation or profession, etc.
 - Where membership is limited to an association, club, church or similar group.
 - Where membership is limited to a geographic region of less than 5,000 persons.
- 3) The credit union's bylaws may provide for joint membership and must set out the rights and obligations of holders of joint membership.
- 4) The form of application is to be specified in the credit union's bylaws.
- 5) The Act requires a credit union to define in bylaws the rules for the approval, continuation, termination and suspension of, and expulsion from membership.
- 6) A credit union must specify whether members or their agents are to have the right to examine the membership list (names and addresses) of the credit union and may wish to consider a bylaw which specifically restricts or prohibits the examination of the membership register.

Shareholding

- 1) The number of common shares to be issued by a credit union is unlimited and, unless a bylaw restricts the number of common shares a member may hold, the credit union shall issue common shares to any member who subscribes and pays for them. Should the credit union wish to place a limit on individual shareholdings, a bylaw would be required.
- 2) Redemption of credit union shares must comply with Section 111 of the Act and applicable regulations. Credit unions are required to establish redemption guidelines within their bylaws.

- 3) Transfer of credit union shares must comply with Section 110 of the Act and applicable regulations. Credit unions are required to establish transfer guidelines within their bylaws.
- 4) A credit union may, on the basis set out in the bylaws, by resolution of the board pay a share dividend or patronage rebate by issuing shares or by paying money or both. Bylaws must define the methods to be used for distribution of dividends or rebates.

Membership Meetings

- 1) The Act sets out specific means of communication with members to provide notice of general meetings. Notice by email is permitted in certain circumstances.
- 2) If specified in the bylaws, a credit union can treat holders of a joint membership as one and need only provide notice of meetings to any one of them.
- 3) The Act sets out what constitutes a minimum for a quorum at a general meeting. If a higher number is desired, a bylaw is required.
- 4) Where a quorum is present at the opening of a general meeting, the meeting may proceed to adjournment even though a quorum is not present throughout the entire meeting. If your credit union chooses otherwise, you will require a bylaw to that effect.
- 5) A bylaw regarding the manner and form of voting is required.
- 6) Bylaws must specify what constitutes a spoiled ballot.
- 7) A bylaw to address who is entitled to attend membership meetings should be considered.

Regional Meetings

If the credit union wishes to hold regional meetings, certain additional procedures are required.

Voting Rights

- 1) The Act deals with the basic requirements of general membership and board of directors meetings. The bylaws must, however, provide the details and/or modifications to the Act where the credit union deems this appropriate.
- 2) Joint memberships are an accepted feature of a credit union. Rules to deal with such members, the joint shareholders rights, privileges and obligations should be defined in the bylaws.

Virtual Participation in Meetings

Unless credit union bylaws or articles provide otherwise, a general meeting may be held by telephonic, electronic or other means that permit all persons participating in the meeting to communicate adequately with each other during the meeting, and to participate in the meeting (including voting) to the same but to no greater extent than if personally present.

Voting by Mail

Credit unions may allow for director election by mail-in balloting provided that the bylaws prescribe the procedures that would apply in this instance.

Branch Voting

The credit union may allow for director election by branch balloting provided that the bylaws prescribe the procedures that would apply in this instance.

Board of Directors

- 1) In addition to the director qualifications contained in the Act, a credit union may specify additional requirements and qualifications for directors by bylaw. (The Act's requirements are expressed in the negative, i.e. not qualified if).
- 2) The number of directors must be reflected in credit union bylaws.
- 3) A nominating committee may be established by a credit union if the bylaws permit.
- 4) A credit union must establish the term of office of its elected board of directors, and the procedure for filling vacancies by bylaw.
- 5) The credit union may, by bylaw, specifically restrict the powers that the board would have. Examples might be to restrict the Board's authority to pay remuneration, declare dividends, appoint auditors, etc. If any restrictions are desired by the credit union, they must be stated in the bylaws, together with the alternate process for approval (i.e. by members, etc.).
- 6) The Act now provides that directors may receive some financial recognition for the work they perform. A bylaw providing for such remuneration is required if remuneration is to be paid.

Divisional Directors

Where the credit union wishes to provide representation on the board of directors based on branch or community of membership, the rules of conditions under which divisional directorship can be established should be clearly defined in the bylaws.

Designation and Powers of Officers

- 1) The Act defines an officer to be:
 - its chief executive officer, president, chair, vice-president, vice-chair, treasurer, secretary, general manager or assistant general manager or any combination of those positions,
 - an individual who performs functions for the corporation normally performed by a person mentioned above,
 - any other person designated an officer by the bylaws or by the board of the corporation.
- 2) The responsibilities of board and officers (President, Vice-President, Corporate Secretary) should be specified in the bylaws.

Committees

- 1) The Act provides that the board of directors shall appoint the committees for the credit union. A bylaw that defines the method of selection to the committees is required.
- 2) A committee may delegate its powers, duties and functions to a committee member or officer, and an appropriate bylaw is required.

Board of Directors and Committee Meetings

The manner of calling and the conduct of board of directors and committee meetings are to be set out in the bylaws. A director should attend as many meetings as possible to fulfil his responsibility properly. The minimum number of board meetings that must be held annually is to be specified in the bylaws. Traditionally the responsibilities of the board of directors have necessitated monthly meetings. In some credit unions, meetings are impractical during the summer holiday time or peak work periods. These recesses should be specified in bylaws. Procedures for notice for meetings, quorums and voting are to be established. Bylaws must also specifically allow for telephone or virtual meetings if these are desired.

Subsidiaries

Credit unions will be permitted under the Act to form subsidiaries and the bylaws must specify any limits or conditions governing their formation or acquisition.

Related Party Transactions

Certain related party transactions which may be completed without prior board approval need to be defined. If prior board approval is desired, this must be specified in bylaws. Normally, the board would not take such action and a bylaw would not be required.

Auditors

A credit union must appoint an external auditor unless it (i) has less than \$5 million in assets and (ii) passes a resolution that it is not to have an auditor.