

Sikkim Co-Operative Societies Act, 1955

SIKKIM

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Rule SIKKIM-CO-OPERATIVE-SOCIETIES-ACT-1955 of 1955

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Sikkim Co-Operative Societies Act, 1955Last Updated 9th June, 2020An Act to facilitate the formation and working of Co-operative Societies and to consolidate and amend the law relating to Co-operative Societies in Sikkim.Preamble. - Whereas it is expedient to facilitate the formation and working of Co-operative Societies for the purpose of thrift, self help, mutual aid and creating the quality of credit worthiness among agriculturists, artisans and other persons with common economic needs so as to bring about a higher standard of living, better business, better methods of production, equitable distribution and exchange and for that purpose to make laws relating to Co-operative Societies in Sikkim, His Highness the Maharaja of Sikkim is pleased to enact as follows:

Chapter I

. Preliminary

1. Short title, extent, and commencement.

(1)This Act may be called the Sikkim Co-operative Societies Act, 1955(2)It extends to the whole of Sikkim.(3)It shall come into force immediately.

2. Definitions.

- In this Act, unless, there is anything repugnant in the subject or context:(a)"Arbitrator" means a person appointed under the provisions of this Act to decide any dispute referred to him;(b)"Auditor" means a person appointed under the provisions of this Act to audit the accounts of a registered society;(c)"Bye-law" refers to the registered bye-laws for the time being in force and includes a registered amendment of bye-laws;(d)"Co-operative Demand Certificate" means a certificate as defined, in section 83;(e)"Co-operative Society" means a society registered or deemed to be registered under this Act;(f)"Co-operative Year" means the period beginning from the 1st April or

the date of commencement of the business or the date of registration and ending on the 31st March for the purpose of drawing up the balance sheets of registered societies;(g)"Dispute" means any matter capable of being the subject of civil litigation and includes claim in respect of amount payable to or by a cooperative society whether such claim be admitted or not;(h)"Employee" means a person not being an office-bearer employed by a registered society on a salary or similar form of remuneration;(i)"General Assembly" means the supreme body of a registered society as defined in section 31.(j)"Managing Committee" means the body to which the, management of the affairs or a registered society is directly entrusted and does not include the Administrative council.(k)"Member" means a person admitted to the membership after registration in accordance with the, bye-laws and rules of the Society includes a promoter;(l)"Office Bearer" means a member duly elected by the appropriate body of a registered society, accordance to its bye-laws, to any office such as Chairman, Vice Chairman, Secretary, Director and Treasurer; provided that any officer appointed by the Sikkim Durbar to hold charge of any office of a registered society shall be deemed to be an office bearer unless specifically stated to the contrary.(m)"Prescribed" means prescribed by rules.(n)"Promoter" means any eligible persons or registered society signing the application for registration of society.(o)"Registered Society" means a Co-operative Society registered under this Act, and includes a society formed after amalgamation of such two or more societies or by division of such an existing society;(p)"Registrar" means a person appointed to perform the duties of a Registrar of Co-operative Societies under this Act;(q)"Rules" means rules made under this Act;(r)"Signature" includes the thumb impression of an illiterate person"

Chapter II

Registration of Societies

3. The Registrar.

(1)The Durbar may appoint a person to be Registrar of Co-operative Societies for the State registration, supervision, assistance, counsel and control of registered societies and for the development of the Co-operative movement and control over all Co-operative education and with such other powers and responsibilities as- may be provided under this Act Or rules or bye-laws framed thereunder.(2)The Durbar may also appoint to assist the Registrar and may by general or special order, in writing delegate to any such persons or to any other State Officer, all or any of the powers of the Registrar under this Act.(3)The Durbar may also appoint non-official helpers with such designations and functions as prescribed to aid in the organization of Co-operative Societies.

4. Societies which may be registered.

- Subject to the provisions hereinafter contained, a society which has as its chief object the promotion of the economic interest and general welfare of its members in accordance with, Co-operative principles or a society established with the object of facilitating the operations of such a society, including a society formed by the division of an existing registered society or amalgamation of existing two or more societies, may be registered under this Act with or without limited liability:Provided that, unless the Durbar by general or special order otherwise direct:(1)The

liability of a society of which a member is a registered society shall be limited.(2)The liability of a society of which the primary object is the creation of funds to be lent to its members and of, which the majority of the members are agriculturists or artisans, and of which no member is a registered society, shall be unlimited and the members of such a society shall, on its liquidation, be jointly and severally liable for and in respect of, an obligations of such a society:Provided further that no society shall be registered if, in the opinion of the Registrar, its declared objects are unlikely to be achieved or if it is economically unsound or if it may have adverse effect upon any registered society or the Co-operative movement as a whole.

5. Age, qualification of a member.

- No person may be an individual member of a registered society unless he is above eighteen years of age; provided that the bye-laws of a society may prescribe a higher minimum age.

6. Conditions of-Registration.

(1)No society, other than a society or which a member is a registered society, shall be registered under this Act which does not consist of at least ten eligible persons and, in cases where the primary object of the society is the creation of funds to be lent to its members, unless such persons reside in the same town, village or in the same area.(2)The word "limited" shall be the last word in the name of every society with limited liability registered under this Act.

7. Registrations on Acquisition of Shares in a Society.

(1)No member of a registered society shall hold more than such/portion of the share capital of the society as may be prescribed by the rules or the bye-laws of the society.(2)No member shall be allowed to acquire an additional share until he has paid in full the value of the whole or that portion or his share-holding which he is required to pay in accordance with the bye-laws of his society.

8. Power of Registrar to decide certain Questions.

- All disputes regarding membership for the purpose of the formation, registration or continuance of a society under this Act shall be decided by the Registrar.

9. Change of liability.

(1)Subject to the proviso, to section 4 and to any rules made in this behalf, a registered society may, with the previous sanction of the Registrar, change its liability from limited to unlimited or from unlimited to limitedProvided that -(i)The society shall give notice in writing of its intention to change its liability to all its members and creditors.(ii)Any member or creditor shall, notwithstanding an bye-law or contract to the contrary; have the option of withdrawing his shares, deposits or loans; as the case may be, within three :months of the service of such notice on him and the change shall not take effect until all such claims have been satisfied; and(iii)Any member or

creditor, who does not exercise his option within the period aforesaid shall be deemed to have assented to the change.(2)Notwithstanding anything contained in the proviso to sub-section (1) the change shall take effect at once if all the members and creditors assent thereto.(3)The Registrar shall register the amendment of the bye-laws consequent on the change of liability provided that no person who ceases to be a member of the society before such amendment is registered shall be adversely affected by the change of liability

10. Application for registration.

(1)An application for registration shall be made to the Registrar in the prescribed form(2)The application shall be signed(a)in case of society which no promoters is a registered, society by at least ten eligible persons.(b)in the case of a society of which least, one promoter is a registered society a duly authorised person on behalf of such registered society and, at least one other individual promoter or one other duly authorized person on behalf of another registered society.(3)The application shall be accompanied by four copies of the proposed bye-laws of the society signed, on behalf of the promoters by the president of the inaugural general meeting Promoter by whom or on whose behalf such application is made shall furnish such information in regard to the society as the Registrar may require and they shall liable to the, full extent of the share money which they have undertaken to subscriber with effect from the date of registration of the society

11. Registration.

(1)The Registrar shall decide all questions as to whether the application complies with the provisions of this Act and rules there under and whether the objects of the society are in accordance with section 4.(2)When he is satisfied that the application is in order under sub-section (1) and the proposed, bye-laws are not contrary thereto, he may register the society and its bye-laws;provided that the Registrar shall have powers register the bye-laws with such modifications he thinks are necessary to bring about uniformity in the main with the provisions of the bye-laws of societies which have similar objects or functions.(3)The Registrar shall endorse the bye-laws in token of registration Each society shall have a copy of its bye-laws so endorsed.(4)If the Registrar refuses to register a society or an amendment of the bye-laws of a registered society he shall record his reasons in writing and communicate these reasons and his decision to the promoters or the Secretary of a registered society by a letter to their office. The Registrar may at any time review his orders in this respect.

12. Evidence of Registration.

- A certificate of registration signed by the Registrar shall be issued to the society and shall be conclusive evidence that the Cooperative Society therein mentioned is a Co-operative Society duly registered under this Act and that its bye-laws are as attached to the certificate, unless it is proved, that the registration of the society has been cancelled or that amended bye-laws have been registered or that the society's copy of the certificate or bye-laws has been tampered with.

13. Amendment of the Bye-laws of a Registered Society.

(1) No amendment of the bye-laws of a registered society, whether by way of addition, alternation, omission, rescission or change of name shall be valid until such amendment has been registered under this Act. (2) Every proposal for such amendment shall have to be approved by a resolution at a meeting of the General Assembly in accordance with the bye-laws of the society and be forwarded within a month from the date 'of the resolution' to the Registrar and if the Registrar is satisfied that the proposed amendment is not contrary to the provisions of this Act or rules, he shall, unless for reasons to be recorded in writing, he considers fit to refuse, register, the amendment. (3) When the Registrar registers an amendment of the bye-laws of a registered society, he shall issue to the Society a copy of the amendment certified by him, which shall be conclusive evidence that the same has been duly registered, unless it is proved that the registration of the society, has been cancelled or that further amendments have been registered or that, the society's copy of the amendments have been tampered with. The amendment shall be binding upon the society with effect from the date of registration.

14. Power of Registrar for Affiliating Society to Direct Amendment of Bye-laws or Adoption of Rules of Procedure.

- 1. (i) When it 'appears' to the Registrar that an amendment of the bye-laws of a registered society is necessary in the interests of such society or of the Co-operative movement as a whole or for the purpose of bringing about uniformity in the main with the provisions of the bye-laws of societies which have similar objects or functions, he may by an order in writing direct the society to amend its, bye-laws in accordance with the amendment drafted and forwarded to the society by him within such time as he may specify in the order. (ii) If the society fails to take such amendment within the time specified the Registrar shall, after 'giving the society an opportunity of representing its case make such amendment himself and, register the same. The Registrar shall then forward a copy thereof to the society together' with a certificate signed by him which shall be effective as prescribed in section 13 (3). (iii) The Registrar shall not register any amendment of the bye-laws of a society, whether under this section, or section 13 of this Act, without the consent of the Darbar if the effect of such amendment is to lessen the degree of control of the Durbar or of the Registrar as already provided for in the bye-laws. (iv) The Registrar may require, any registered society to frame rules of procedure under its bye-laws to govern, any part of its business and to send such rules to him for prior approval.

2. (i) When it appears; to an affiliating society that an, amendment of the bye-laws of a registered society which is a member, and debtor of such society is necessary in the interests of such society, it may suggest to the affiliated society that it makes the amendment within such time as it may specify The affiliating society shall forward to the affiliated society a draft of the suggested amendments of the bye-laws.

(ii) If the society fails to implement the suggestion within the time, specified, the affiliating society may forward to the Registrar the amendment which it considers necessary and the Registrar if satisfied that the amendment is necessary, and not contrary to the provisions of this Act or the rules may thereupon register the amendment and forward to the society, a copy thereof together with a certificate signed by him. The certificate shall be conclusive evidence that the amendment has been registered and such Amendment shall thereupon be binding upon the society and its members.

15. Division and Amalgamation of Societies.

(1)(i) Any registered Society may, at a meeting of its General Assembly specially called for the purpose, resolve to divide into two or more societies. At least fifteen clear days' notice of such meeting with the agenda shall be given to its members, together with a copy of the proposed solution. (ii) Such a resolution shall contain the proposal as to how to divide the assets and liabilities of the society among the newly proposed societies, their areas of operation and the members who will constitute each of the newly proposed societies- with draft new bye-laws. (iii) A copy of the resolution shall be sent to the Registrar with In thirty days of its adoption and subject to the Registrar's non-interference within thirty days of the dispatch to him of the resolution, the resolution shall be circulated among the members and creditors of the society. (iv) Notwithstanding any bye-laws to the contrary, any member of the society, and notwithstanding any agreement to the contrary, any creditor of the society may by notice given to the society within thirty days of the receipt of the resolution intimate in case of a member his intention not to become a member of any of the societies, and in case of a creditor his intention to demand a return of the amount due to him. (v) After the expiry of ninety days from the passing of the aforesaid resolution, a meeting of the General Assembly shall be convened for finally deciding the resolution. At least fifteen days' clear notice with agenda of the meeting shall be given to all members of the society. (vi) If the General Assembly decides by a three fourth majority finally to divide the society and if the Registrar approves of the decision, the members, who will constitute each of the newly proposed societies subscribing to the new draft bye-laws, shall apply to the Registrar under section 10 for registration of the new societies and the registrar shall register the societies under section 11. (vii) The Registrar shall not register the new societies if the application for registration is not accompanied by a: certificate of repayment of share capital to members and certificate of satisfaction of claims to creditors referred to in clause (iv). (viii) From the date on which the new societies are registered under clause (vi), the registration of the old society shall be deemed to have been cancelled. (ix) The registration of the new societies shall be a sufficient conveyance to vest the assets and liabilities of the original society according to the aforesaid resolutions in the new societies. (2)(i) Two or, more registered societies may, at a meeting of their respective General Assemblies specially convened for the purpose, by giving at least fifteen clear days notice to the respective members of the societies, resolve to amalgamate into one society by adopting common bye-laws. (ii) A copy of such resolution of each society shall be circulated forth with among members and creditors thereof. (iii) Notwithstanding any bye-laws to the contrary, any member of any such societies, and notwithstanding any agreement to the contrary, any creditor of any such societies, may within, a period of thirty days from the receipt of the aforesaid resolution, intimate his intention not to become a member of the new society, in the case of member and to demand a return of the amount due to him, in the case of a, creditor. (iv) After' the expiry of ninety days from the date of the

aforesaid resolution a meeting of the members' of such societies shall be convened to decide finally the resolution.(v)At least fifteen clear days' notice shall be given to all the members of the Societies. If at such meeting the aforesaid resolution is confirmed by a majority of three-fourths of the members of each society present and the common -bye-laws are accepted with or without any alterations, the Registrar shall be moved by an application under section 10 for registration and he shall register the new society under section 11 if he approves.(vi)The Registrar shall not-register the new society if the a application for registration is not accompanied by a certificate of repayment of share capital to members and a certificate of satisfaction of claims of creditors referred to in clause (iii).(vii)From the date on which the new society is registered the registration of the old societies shall be deemed to have been cancelled.(viii)The registration of the new society shall be a sufficient conveyance to vest in it all the assets and the liabilities of the original societies.

Chapter III

Rights and Liabilities of Members of Registered Societies

16. Member not to Exercise Rights till Payment made and Conditions Fulfilled.

- No member of a registered society shall exercise the rights of a member unless or until he has made such payment to the society in respect of membership or acquired such interest in the society, as may be prescribed by the rules or bye-laws.

17. Vote of Members.

(1)Irrespective of the shares he holds in the society and subject to any temporary disqualifications from voting which may be prescribed in the bye-laws to the provisions of section 31 (2) relating to voting by representatives a member of a registered society shall have one vote only in the affairs of the society:Provided that in the case of an equality of votes the chairman at, any meeting shall have a second or casting vote:Provided further that the bye-laws of society may provide for more than -one vote in the case of an affiliated society.(2)A registered society which is a member of another registered society may appoint one of its members qualified under any rule or bye-laws to vote in the affairs of such other society as its representative.(3)Voting by proxy shall not be allowed except as prescribed in a registered society's bye-laws;Provided that in registering the bye-laws of a society, the Registrar shall not permit voting by proxy except in cases, such as those involving a wide area of operation, where it would be difficult for members to exercise their right to vote if voting by proxy were not permitted.

18. Member of Unlimited Society to Furnish Information as to his Financial Position.

(1)A full, true and accurate statement of his assets, including his immovable property and liabilities shall be furnished:(a)by an applicant for membership of a registered society with unlimited liability,

together with his application.(b)by a member of registered society with unlimited liability when' required to do so by the Registrar or any person authorised by 'him in his behalf or by the affiliating society(2)No member of a registered society with unlimited liability, shall be member of more than one such society.(3)A member of a registered society with unlimited' liability shall furnish to the society full, true and accurate information regarding his intention to transfer his Immovable property, In whole or In part by way of sale, mortgage or gift at least fifteen days before completion of each such transaction.

19. Loan to Be Utilized for Purpose for which Advanced.

- The loan advanced by a registered society to a member thereof shall be utilized by him for the purpose for which it was advanced and for any other purpose. The society shall have power to recover the advance as prescribed if the member does not so utilize it

20. Restrictions on Transfer of Share or Interest.

(1)The transfer or charge of the share or interest' of a member in the capital of a registered society, shall be subject to such conditions as to maximum holding as may be prescribed by this Act or by the rules.(2)Except or otherwise provided in this Act, no transfer or change of his share or interest by a member of society with unlimited liability shall be valid unless:(a)he has held such share or interest for less than one year; and(b)the transferee or mortgagee is either a member of such society or a person whose application for membership has been accepted.

21. Liability of Past Member and his Estate.

(1)The liability of a: past member and of the estate of a deceased member for the debts 'of a registered society as they existed at the date of his ceasing to be a, member or of his death, as the case may be, shall continue for a period of four years from' the said date.(2)No past member of a registered society with unlimited liability shall be eligible for membership of another such society with unlimited liability except with the special permission of the Registrar.

22. Share or Interest not Liable to Attachment.

- Notwithstanding anything contained in any laws for the, time being in force but subject to the provision of section 44 of this Act, the share or interest of a member in the capital of a registered society or in any fund under section 53 shall not be liable to attachment or sale under any decree or order of a court in respect of any debt or liability incurred by such member.

23. Nomination of Transferee.

- If the bye-laws of a registered society so permit, any member of the society may, in- accordance therewith nominate a person or persons in whose favour the society shall dispose of the shares or interests of such member on his death.

24. Transfer of Interest on Death of Members.

- When a member of a registered society dies his shares and interest in the society shall, subject to the provisions of his Act, be transferred, (a) the person, if any nominated in accordance with the provisions of section 23; or (b) if there be no such nominee or if the nominee is not available or is difficult to be ascertained by the managing body, or if for any other cause such transfer cannot be made without unreasonable delay difficulty, to the person as may appear to the managing body to be the heir or legal representative of the deceased member; provided that ninety days have elapsed from the date of the member's death No new claim shall be entertained after the said period of ninety days.

25. Disposal of Shares Or Interest of Ceased Members.

- When a member of a registered society is expelled or withdraws or otherwise ceases to be a member under this Act, rules or bye-Laws, his share or interest shall be transferred to another eligible person, and the value thereon, determined in accordance with the rules shall be paid to such ceased member if his share or interest is not forfeited under the provisions of this Act, rules or bye-laws or if he is insane to any person appointed by the competent authority to manage his properties, provided that if there is no eligible transferee and if the bye-laws of the society so provide the value of his share or interest determined in accordance with the bye-laws shall be paid to him or, if he is insane, to a person appointed to manage his properties.

26. Liability of Members on Winding up of Society.

- The members of a registered society shall, in the winding up of the society, be jointly and severally liable to contribute towards any deficiency in the assets of the society. (a) in the case of a society, with unlimited liability without limit; and (b) in the case of a society with limited liability, subject to such limitation of amount as may be provided in the bye-laws.

27. Restriction on Transfer of Possession of Land held Under a Society.

- Notwithstanding anything in any law for the time being in force (1) a member of a registered society, the object of which is to develop cooperative or Collective farming, shall not be entitled to transfer his possession or interest in any land held by him under the society, except to the society or with the previous approval of the managing body and in accordance with its bye-laws, to a member thereof or to a person who will be admitted as a member of the society; (2) on the death of such member, his possession of and interest in, any such land held by him under the society shall come to his nominee in accordance with the provisions of section 23 or in the 'first eligible heir according to seniority in age willing to become a member-of the society'; (3) if no nominee or heir becomes a member the possession of and interest in, such land of the deceased, shall vest in the society, which shall pay to the nominee or the heir, a sum equivalent to the value of the share and interest of the deceased member' and any other sum due from the 'society as determined in accordance with this Act or rules framed thereunder after deducting all dues which the deceased member owned to the

society.(4)if there is no person qualified to succeed 'to the share or: interest of the deceased member, the society shall pay to his heir, executor or the legal representative as the case may be, a sum equivalent to the value of the share and interest of the deceased member determined in accordance with the rules after deducting the dues of the deceased to the society.(5)when in any other case a member ceases to be a member of such society under this Act, rules or 'bye'- laws', his possession of and interest in, any such land held by him under the society shall come to the society. If the bye-laws allow and if the share and interest of the member is not forfeited under this Act or rules framed thereunder, the society shall pay to the ceased member a sum equivalent to the value of the share and interest of such member and any other sum due to him from the society after deducting his debts to the society, if any;(6)no land held under a registered society specified in sub-section (1) by a member thereof, or vested under sub-section (2) in the heir or nominee of such member shall be attachable to any suit or proceeding for the recovery of any debt other than a debt due to society or to a member thereof;(7)no land shall vest' in such a society by reason of the provisions of the section unless it is owned by the society or has been Leased' to the society and, if the society holds the land by lease or contract the land shall vest in the society only during pendency of the lease or contract.

28. Right of a Registered Society to Pay Prior Debts, of a Mortgagor.

(1)Where a mortgage is executed in favour of a registered society for payment -of prior debts or part thereof, of the mortgagor secured on the mortgaged property, the registered society may, by notice in writing and served by registered post with acknowledgment due, require 'any person to whom any such debt is due to receive payment of such debt or part thereof from the society at its registered office within such period as may be specified in the notice.(2)The person on whom such notice is served shall be bound to receive payment of the amount offered by the society, but where there is disagreement or dispute between the mortgagor and such person as regards the amount of the debt, or where the society tenders less than the agreed amount of debt, the receipt of the sum offered by the society shall not debar such person from enforcing his right to recover the balance claimed by him.(3)If any such person refuses to receive such notice or such payment, such debt or part thereof as the case may be, shall cease to carry interest from the expiration of the period specified in the notice and the property mortgaged under sub-section (1) shall be deemed to have been freed from the encumbrance of such prior mortgage.(4)No society shall advance a loan on a mortgage without taking a declaration from the respective mortgagor as to the names of prior mortgagees of the property in question, if any.

29. Restrictions on Mortgaged Property.

- When land is mortgaged to a registered society- (1) the mortgagor shall not be entitled without the approval of the society to transfer' or mortgage his equity of redemption or to create a charge 'upon or lease out such property for a period exceeding three years.(2)If the mortgaged property at any time is wholly or partially destroyed or the security is rendered insufficient due to fall in value or for any other reason and the mortgagor having been given a reasonable opportunity by the society of providing for furthest security sufficient to cover the loan or of repaying the loan with interest or such portion of the loan as may be determined by the supervisory, managing or controlling body and

the mortgagor having failed to provide such security or repay such portion of the loan or such uncovered portion shall be deemed to fall due at once and recoverable through a Co-operative demand certificate.(3)The mortgaged property in case of default of payment of mortgaged money or any part thereof may be sold by the society as prescribed by rules in addition to any other remedy available to is expressively conferred by the it without the intervention of the court is expressly conferred by the mortgage deed, provided the society serves a notice in writing by registered post demanding payment of the mortgage money with interest or part thereof on the mortgagor or any person having an interest in or charge upon the mortgaged property or the equity of redemption who has previously notified the society of such interest or charge in writing or any surety and if default has been made in payment of the loan or part thereof for three months after such service of notice.Provided that any party aggrieved by an action taken by a registered society under this section may prefer an appeal to the registrar within thirty days from the date of the sale His decision shall be final.

30. Bar to Certain Claim.

- All payments, and transfer made by, a registered society under this, Chapter shall be valid, and effectual against any demand made upon the society by any other, person.

Chapter IV Management

31. General Assembly.

(1)The General Assembly of a registered society Shall consist of all those who are eligible, to vote at general meetings of the society.(2)(a)Every member of a registered society and every ex-officio member of the Administrative Council or managing body of such society, unless under some temporary disqualification, shall have the right to attend any general meeting of the society and to exercise his vote at such meeting,Provided that these bye-laws of a registered society may 'prescribe,(i)that a registered society affiliated to such society may have more than one representative but only the authorized member shall be entitled to' vote at general meetings of the society; and(ii)that only one-third, of the members of the General Assembly, excluding ex-officio members may be, individual members, the other two thirds being representatives of affiliated registered societies.(b)When the bye-laws of a, registered society contain the provision of sub-section (2)(a) (ii),if the number of individual members exceed one third of the total membership of the' society, the individual, members shall elect at a, special meeting, to be called by the Secretary of-the society not, more than one, month before the annual general meeting in the manner prescribed in the bye-laws for annual general meetings those individual members who, as the representatives of the body of individual members shall form the one-third membership of the General, Assembly for the purpose of voting at the annual and other meetings' of the General Assembly dining the ensuing year only such elected representatives having the right to, attend, and vote at such general meetings.(3)The supreme authority of a registered society shall be vested in the General Assembly: Provided that during the pendency of any loan or service from the Durbar, or any

other creditor secured at the instance of the Durbar supreme authority in respect of any matter adversely affecting the interest of the Durbar or the said, creditor touching such loan or service shall be vested in the Durbar or the Registrar as may be provided in the bye-laws, or any 'person authorised by them in writing, and may extend to, the appointment of orders to hold any of the offices of the society or any persons to be ex,officio members of the Administrative Council, managing body or any committee of the society even if not members of the society. This supreme authority of the Durbar or Registrar may also be exercised in the absence of any loan or service when the Durbar or Registrar, as the case may be, deem their intervention to be necessary in the interests of the: members of the society' or of the Co-operative movement in general. The Durbar or the Registrar as the case may be, may fix the salary of any such appointed officer and declare it to be a charge on the society. They may cancel any such appointments made by them.(4)An annual or special meeting of the General Assembly shall be summoned and shall exercise its authority and perform its functions in such, manner as may be prescribed in the bye-laws of the society.

32. Annual Meeting of General Assembly.

(1)A 'general meeting to be termed the annual, general meeting of the General Assembly of a registered society shall be' held at least once in every Co-operative year for the purpose of -
 -(a)electing members to the managing body and other committees of the society, the Chairman, Vice-Chairman, and other office bearers, as may be provided in the bye-laws, and fixing such fees, salaries or other remuneration as prescribed in the bye-Laws;provided that the Durbar may prescribe by rules the qualifications necessary for office bearers and employees;(b)electing an internal, auditor or auditors, 'who shall not be 'member of the governing body, and fixing the remuneration;(c)considering the annual report of the managing body, audit report and audited annual accounts and balance sheets and reviewing the working of the society during the preceding Co-operative year;(d)deciding how profits are to be distributed in accordance with the bye-laws(e)passing the annual' budget and approving the, programme of work for the ensuing year;(f)fixing the maximum amount of liability to be incurred during the ensuing year and the maximum rate of interest payable on deposits; and(g)considering such other 'business as may be placed before the meeting in accordance with the bye-laws.(2)Such meeting shall be held not more than fifteen months after 'the date of the last preceding meeting held under sub-section (1) and unless the Registrar on special grounds extend the period, within three months' of the receipt of statutory annual audit report.

33. Special Meeting of General Assembly.

(1)A Special Meeting of the General Assembly shall be called:(a)at the instance of the Administrative, Council or if there be no Administrative Council, of the managing body(b)at the request of the Chairman of the society(c)on a requisition signed by one, tenth of the members of the General Assembly or twenty, members, whichever is less or(d)at the instance of the Registrar(2)The Registrar himself or any person authorised by him in 'this behalf, in writing, may, by special order shall call a; special meeting of the General Assembly at any time and shall call such a meeting upon the 'failure of the society to call a meeting on the requisition by the members or at the' instance, of the Registrar under sub-section (i),(3)Notwithstanding any rule or be-laws Prescribing the, method

of summoning or period of notice for a General Assembly, the Registrar or any person authorised by him in this behalf, may specify the time, place, business for the meeting and manner of convening it.

34. Administrative Council.

- The management of every registered society shall vest in the managing body of the society, except in the case of a society, which for administrative convenience necessitated by reasons such as wide area of operations, that responsibility shall vest in an Administrative Council. The Administrative Council the managing body and committees of a society shall be constituted in accordance with the bye-laws of the society which shall specify the composition of such bodies, their powers, functions, duties, method of summoning meetings and procedure,

35. Power to Depute State Servant to manage the affairs of a Society.

- The Durbar may, on the application of a registered society and on such' conditions as may be determined, depute State officials to the service of the society for the purpose of managing its affairs and the official shall exercise such powers and perform such duties, as may be determined

36. Dissolution or Reconstruction of the Administrative Council, Managing Body or any Committee of a Society.

(1), When the Registrar is satisfied after an inspection or enquiry under section 60 or 61 for reasons to be, recorded in writing that the Administrative Council, managing body or any committee of a registered society is not functioning properly according to, this Act, rules or bye-laws, he may, after giving the offending body an opportunity to state its case, direct under clause (d) of sub-section (1) of section 33, that a special general meeting of the General Assembly be called within a time to be' specified to dissolve the Administrative Council, managing body,' or committee concerned and to elect a new one. Provided that, if in the opinion of the Registrar it is necessary as an emergent measure to suspend the offending body forthwith, he may do, so and shall appoint a person or persons, on such conditions as prescribed by him to be in full control of the suspended 'body until a new body has been elected or action has been taken in accordance with section 37.(2)The Registrar may, for reasons to be recorded, specify in the direction made. under sub-section (1) that all or any of the outgoing members of the dissolved body shall be disqualified for such period not exceeding three years as he may determine, for election or appointment as an officer of the society or for service on any of its, bodies.(3)An appeal shall lie to the Durbar against an' order of the Registrar disqualifying a member of a society for election or appointment within' two months from the receipt of the order.

37. Dissolution of the Administrative Council Managing Body or any Committee and Appointment of persons to manage the Affairs of a, Society.

- If the 'Administrative Council, managing body or any committee as the case may be, of a society is not dissolved and reconstituted within the time specified by the Registrar under section 36, he may by order in writing dissolve such body and shall thereupon appoint a person or persons, on such conditions as prescribed by him, to manage the affairs of the society for such period not, exceeding one year when he shall arrange for the constitution of a new body to take the place of the dissolved body. The Registrar may extend this period from time to time as he may deem fit; provided that the aggregate of such periods shall not exceed three years.

38. Tenure of office of the person Appointed under section 37.

- The person appointed under section 37, shall hold office until the Administrative Council, managing body of committee, as the case may be, is reconstituted or his appointment is cancelled by the Registrar.

39. Powers of person appointed under section 37.

- During the tenure of office of a person appointed under section 37 he shall, subject to the control of the Registrar, exercise all the powers and perform all the functions and duties which may be exercised or performed by the superseded body under the provisions of this Act, rules or bye-laws.

Chapter V

Duties of Registered Society

40. Address of Society.

- Every registered society shall have a registered address, to which all notices and communications may be sent and shall send notice in writing of every change thereof within thirty days of such change, to the Registrar and to the affiliating society, if any.

41. Prescription and Inspection of Documents.

(1) Every registered society shall keep and allow inspection free of charge by any member of the society and such other persons as may be prescribed at all reasonable times at the office of the society (a) A copy of this Act. (b) A copy of the rules framed under this Act. (c) A copy of the bye-laws of the society. (d) A copy of all rules framed under the bye-laws of the society. (e) Annual balance sheet authenticated by the Audit Officer, and (f) Such other books, forms, registers or other documents as may be prescribed by the Registrar. (2) A society shall deliver to every member on payment of a sum prescribed by the society's bye-laws or rules, copies of documents certified to be true copies.

42. Restrictions on Borrowing.

- A registered society may receive deposits and may borrow From its members and from persons who are not members to such extent and on such conditions as may be prescribed in the Act and bye-laws.

43. Power of Durbar to give Financial Assistance.

- Notwithstanding anything contained in any Law for the time being in force, the Durbar may grant loans to take shares in guarantee or give any type of financial assistance to the registered society which puts forward a satisfactory scheme for the utilization of the funds so raised. The Durbar may recover from any society in any year all or any part of such financial assistance

44. Restrictions on Loans.

(1)A registered society shall not give Loans -(a)to any person other than a member except with the general or special sanction, of the Registrar;Provided that a loan may be given to a depositor of the society's on the security of his deposit or,(b)to a member in excess either of the maximum or of the normal credit determined by the society for that member in accordance with its bye-laws;Provided that in assessing normal credit the managing body shall take a full statement as to the member's means of earning.(c)on the security of the movable property or future movable property unless the movable: property is placed with the society.(d)on personal security without sureties, unless the borrowing member has unencumbered immovable property or attachable funded assets sufficient to cower the loan and a full statement of such securities is submitted by the borrower and the truth of the statement is ascertained by the managing body.(e)on personal security with sureties, unless the borrowing member and his sureties together have 'unencumbered immovable property or attachable funded assets sufficient to cover the loan and a full statement of such securities is submitted by borrower and the sureties separately and the truth of, the statements is ascertained by the managing body,(f)on personal security, with or without sureties, unless the loan is for a short period not exceeding the time required to reap the benefit of the loan and in no case exceeding three years.(2)(a)Notwithstanding the 'provisions of, sub-clause (1) (b), (d) and (e) It loan may' be given on personal security provided that the managing body of the society is satisfied as to the credit on the borrower and has taken from him a scheme for the utilization of the loan and has 'ascertained the truth of the statements contained in the scheme and the bona fides of the' borrowing member,(b)the resolution of the managing body granting a loan under this section shall contain the names of all assenting members,(c)notwithstanding the provisions of sub-clauses 1b to f and 2 a and b a registered society may issue a loan on mortgage or valuable security(d)no person shall be accepted as a surety for any borrower unless he is also a member of the same registered society(3)A registered society the primary object of which is not the issue of loans shall open a separate accounting or finance or banking branch in accordance with its bye-laws and frame rules for the conduct of business in such branch before it issues any loans and such rules shall first be approved by the Registrar.

45. Office-Bearer of Society is Required to Furnish Information and Produce Documents.

(1) Every office bearer of a registered society shall produce documents and books of accounts, cash balance in his custody and appear before and furnish such information in regard to the transactions or working or working of the society as may be required of him by the Registrar, or persons authorised by the Registrar in this behalf, and audit officer, Arbitrator, liquidator or any person conducting an inspection or inquiry under the provisions of this Act and the Rules made thereunder. (2)(a) At any sale of property, movable or immovable held under this Act or rules framed thereunder, no office-bearer of the registered society concerned or any person having any duty to perform in connection with such sale, shall either directly or indirectly bid for, acquire or attempt to acquire any interest in such property. (b) Any office-bearer, of a society or liquidator may on behalf of the society buy and purchase at a sale of mortgaged property.

Chapter VI

Privileges of Registered Societies

46. Prior Claim of Society.

(1) Notwithstanding anything contained in any other Act or Rules having the force of law, any debt or outstanding demand due to a registered society by any member, surety past member, or the estate of any deceased member shall be a first charge. (a) if such debt or demand is due in respect of the supply, or any loan to provide the means of such supply, of seed, manure, labour, fodder for cattle or any other thing incidental to the conduct of agricultural operations, upon the crop or agricultural produce of such member, past member or belonging to the estate of such deceased member, at any time within two years from the date of such supply or loan or from the date on which the last installment of such supply or loan became repayable. (b) if such debt or demand is due in respect of the supply of or any loan for the purchase, of cattle, agricultural implements or warehouses for the storage of agricultural produce in the manner and to the extent aforesaid upon the crops or agricultural produce of such member, past member or belonging to the estate of such deceased member and also upon the cattle, agricultural implements or warehouse thus supplied or purchased wholly or in part from any such loan; (c) if such debt or demand is due in respect of the supply or any loan for the purchase of raw materials, industrial implements, machinery, workshop, warehouses or business premises, upon the materials or other things supplied or purchased by such member, past member or the deceased member wholly or in part from any such loan and also upon any articles manufactured from raw materials or with implements or machinery so supplied or purchased wholly or in part from any such loan. (d) if such debt or demand is due in respect of any loan for the purchase, improvement or redemption of land or for the purchase or construction of any house, building or any portion thereof, upon the land purchased, improved or redeemed or the house or, building so purchased or constructed by such member, past member or, the deceased member from any such loan. (2) Notwithstanding anything contained in any law, any transfer made in contravention of the provisions of sub clause (1) shall be void.

47. Charge and set off in Respect of Shares or Interest of Members.

- A registered society shall have a charge upon the share or interest in the Capital and on the deposits of a member.; or past member or deceased member and upon any dividend, bonus or surplus payable to a member or past member or the estate of a deceased member in respect of any debt due from such member or past member or estate of such deceased member to the society, and may set off any' sum credited or payable to a member or past member or estate of a deceased member in or towards payment of any such debt.

48. Deduction of Dues from Salary of Members.

- If 'a member of a registered society, who is an employee of the Durbar, takes a loan from a society and contracts to repay it by installments, and authorizes the society to recover such installments by deduction from his salary, the person who disburses any amount payable to such member as salary or remuneration in respect of such employment shall on demand from the society deduct the amount of such installment from the amount disbursed to such member as salary and shall forthwith remit to the society the amount so deducted.

49. Exemption from Compulsory Registration and Personal Attendance from Registration of Instrument.

- Nothing in any Act or Rule having the force of law shall apply to : (1) any instrument relating to shares in a registered society, notwithstanding that assets of such society consist in whole or in part of immovable property; or (2) any debenture issued by any such society and not creating declaring. assigning, limiting or extinguishing any right title or interest to or in immovable Property except in so far as it entitle the holder to the security afforded by a registered instrument whereby' the society has mortgaged, conveyed or otherwise transferred the' whole or part of its immovable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures: or (3) any endorsement upon or transfer of any debenture issued by any such society; (4) It shall not be necessary for any office bearer of a registered society or liquidator of society to appear' in person or by agent at any registration office in any proceeding connected with the registration of any instrument executed by him in his official capacity or to sign. (5) Where any instrument is so executed, the registering to whom such instrument is presented for registration may, if he thinks fit refer to such office-bearer or liquidator for information regarding the same and on being satisfied of the execution thereof, shall register the instrument.

50. Power to Remit certain Duties Fees, etc.

(1) The Durbar may by general or special order in the case of a registered society or class of registered societies remit any tax, cess or fee payable under any law for the time being in force or the rule; thereunder. (2) The Durbar may, in 'respect of any registered society or class of registered societies, remit -(a) the stamp duty in respect' of any instrument executed by or on behalf of, in favour of, a registered society or by an' officer or on behalf of a member thereof, and relating to the

business of such society or any calls of such instruments, Co-operative demand certificates or decisions, awards or orders of Registrar or arbitrators under this Act, in cases where, but for such remission, the registered society, officer or member thereof, as the case may be, would be liable to pay the stamp duty chargeable under any law for the time being in force, in respect of such instrument, and (b) any fee payable by a registered society under any law for the time being in force for the registration of documents or of court fee for the time being in force.

Chapter VII

Property and Funds of Registered Society

51. Investment of Funds.

(1) A registered society may invest or deposit its funds (a) in a Recognised Savings Bank, or (b) in any of the securities approved by the Registrar, or (c) with the sanction of the Registrar, in the shares or debentures or in the security of any other registered society, or (d) with a any registered society, bank or persons carrying on the business of banking approved for this purpose by the Registrar, or (e) in any other mode permitted by the Rule. (2) Such investment shall be accounted for separately to show whether it is from the Reserve Fund or from the general funds of the registered society.

52. Reserve Fund.

(1) Every registered society shall maintain a Reserve Fund formed from its profits and carry to the fund in each year not less than twenty per centum of its net profits. (2) The Reserve Fund shall be invested separately in any of the ways prescribed in section 51, or, with the sanction of the Registrar, in immovable property required for the furtherance of the activities of the society. Any such investment shall be deemed to constitute Reserve Fund No. instrument securing a loan on a Reserve Fund shall be valid. (3) The Reserve Fund shall not be utilized for any purpose whatsoever except with the sanction of the Registrar, who shall accord such sanction only in exceptional circumstances.

53. Distribution of Net Profit.

- After making the allocation to the Reserve Fund as prescribed in section 52, the remaining net profits of a registered society may be distributed 'according to the bye-laws of the society, provided that the rate of dividend on shares does not exceed 61-4 per cent.

54. Restriction on Distribution of Profit.

(1) Save as may be prescribed, no distribution of profit shall be made in the case of a registered society with unlimited liability and no part of the net profit or of a fund of any society shall be divided by way of dividend, bonus, rebate or otherwise among its members, except with the previous approval of the Registrar and as provided in the bye-laws of the society. (2) No dividend, bonus, or rebate shall be paid - (a) otherwise than out of net profits certified by the audit officer to

have been actually realized; provided that advance patronage dividend maybe paid in accordance with the directions of the Registrar and on the certificate of an internal auditor approved by the Registrar; or(b)without the previous sanction of the Registrar, if the audit officer report that any asset is bad or doubtful and also recommends that such action is necessary.

55. Registrar is Responsible for Audit.

(1)The Registrar shall audit or 'cause to be audited by some person' authorised by him by general or special order in writing in this behalf the 'account of every registered, society and society under liquidation once at least in every year.(2)The Registrar or the persons authorised by him in this behalf shall at all reasonable time have free access to the books, accounts, documents securities, cash and other properties belonging to, or in the custody of the society and may summon any person in possession or responsible for the custody of any such books, accounts documents, securities, cash or other properties to produce the, same and furnish such information in regard to the transactions and working of the society at any convenient place or at the headquarters of the society or any branch thereof by the same means and, so far as may be in, the same manner as provided in the Code of Civil Procedure, applicable to the State.(3)In respect of every audit 'of the accounts, a registered society shall pay such audit fee as may be prescribed and such fee shall be deemed to, be outstanding dues from the society.

56. Power of the Registrar to have the Accounts Written up.

- If at the time of the audit the accounts of a registered society are not complete, the Registrar or with his sanction, the audit officer, may cause the accounts to be written up at the' expense of the society.

57. Nature of Audit.

- The audit shall include'(i)a verification of the cash balance and securities(ii)a verification of the, balance at the credit of the depositors and creditors and of the amounts due from the debtors of the society;(iii)an examination of the overdue debts; if any(iv)the valuation of the assets including stock verifications, and liabilities of the society(v)an examination of the statement of accounts and balance sheets to be prepared by the managing body of the society in such forms as, may be prescribed.(vi)a certification of the, realized profits; and(vii)any other relevant' matter.

58. Audit Report.

- The audit officer shall, within a' week from the date of completion of audit, submit to the registered society, and to the Registrar', together with the statement of accounts audited, and report including a statement of -(i)every transaction which appears to him to be contrary to law or to the rules or bye-laws(ii)every sum which ought to have been has not been brought into account;(iii)the amount of deficiency or loss which appears to have resulted from any negligence or misconduct or to require further investigation;(iv)an money, or; property belonging to the society which appears; to have

been misappropriated or fraudulently retained by any person;(v)any of the asset which appears to him to be bad or doubtful;(vi)any irregularity 'for 'maintaining account; and(vii)any other relevant matter.

59. Rectification of Defects.

- A registered society shall be afforded by the Registrar an opportunity of explaining any defect, or irregularities pointed out' and objected to by the audit Officer, and thereafter the society shall, within such time and in such manner as the Registrar-may direct remedy such defects and irregularities and report to the registrar the action taken by it thereon.

Chapter IX Inquiry and Inspection

60. Inquiry by Registrar.

(1)The Registrar may, at any time, of his, own motion or' shall at the request of the Administrative head 'in-charge of the civil Sub-division or other Administrative Area, hold an inquiry or direct some person authorized by him by order in writing in this behalf, to' hold an enquiry into the constitution, working and financial condition of a, registered society.(2)Such an inquiry shall also be held on the application of(i)affiliating society, if any, of which the society is a member and a debtor;(ii)a majority of the members of the managing body;(iii)one-third of the members of the society, who shall have deposited such security for costs, if any and the Registration' may direct;(iv)creditors representing not less than one half of the borrowed Capital of the society, who shall have deposited such security for costs, if any, as the Registrar may direct.(3)The Registrar shall communicate to result of any enquiry under this section to society and to the person at whose request such enquiry was made.

61. Inspection of Society.

(1)Every registered society shall be liable to inspection at any time by the Registrar or any-person authorised by him in this behalf any general or special order; and by' any affiliating society if so provided in its bye-laws.(2)An inspection of a registered society shall be made by the Registrar or any person authorised by, him in this behalf by an order in writing at any time on the application of a creditor of a registered society.Provided that no inspection shall be made under this sub-section unless (1) the creditor deposits with the Registrar such sum as security for the cost of the proposed inspection as the Registrar may require and (ii) the creditor satisfies the Registrar that the alleged debt is a sum then due and that he has demanded payment thereof and has not received satisfaction within a reasonable timeProvided further that no inspection shall be conducted under this sub-section with out giving the society an opportunity of being heard.(3)The result of an inspection under this section shall be communicated to the society and at held at the instance of a creditor, to the a-creditor.

62. Cost of Enquiry and Inspection.

(1)When an inquiry is held under section 60 (1) or an inspection is made under section 61 (1) the Registrar may after giving the parties an opportunity of being heard, apportion the cost or such part of the cost as he may deem fit, between the society, the members thereof or the affiliating society or the creditor or' creditors applying for such inspection or inquiry, as the use may be, and the officers, former officers, members and past members of the society.(2)No expenditure from the fund of a registered society shall be incurred for the purpose of defraying any cost in support of any appeal preferred by any person other than the society itself against an order under sub-section (1).(3)Any person authorised by the Registrar under sections '60 and 61 shall have all the powers of the Registrar when acting under these sections.(4)Recovery of costs - Any sum awarded by way of cost under this section shall be recoverable through a Co-operative demand certificate.

Chapter X Settlement of Disputes

63. Reference of Dispute.

- Any dispute touching the business of a registered society, other than a dispute regarding, disciplinary action taken by a society against an employee of the society, or of the liquidator of a society shall be referred to the' Registrar for decision if the parties thereto are among the following:(a)the society, its past or present controlling or managing body, any past or present officer, agent or employee or, the liquidator of the society; or(b)member, past member or persons claiming through a member, past member, or deceased member of the society; or(c)a surety of a member, a past member or deceased member of a society;(d)any other registered society or the liquidator of such society.

64. Settlement of Dispute.

(1)The Registrar shall on receipt of a reference under section 63(a)decide the dispute himself or authorize any officer to decide the dispute or(b)refer it for disposal to an arbitrator appointed by the Registrar or to three arbitrators one to be nominated by each of the parties to the dispute and the third, who shall be nominated by the Registrar, to act as, Chairman. Where any party to dispute fails to nominate an arbitrator within fifteen days after the communication of this notice, the Registrar may himself make 'the nomination.(2)The Registrar may withdraw any reference of such dispute referred under sub-section (1) and may deal with it himself under the said sub-section.(3)Where the Registrar is satisfied that a party to any reference made to him under. section 63 with, intent to defeat or delay the execution of any, decision that may be passed thereon- :(a)is about to dispose of the whole or any part of his property; 'or(b)is about to remove the whole or' any part of his property from the Local limits of the jurisdiction of the Registrar, the Registrar may, unless from the local limits of the jurisdiction of the Registrar, the Registrar may, unless adequate security is furnished; direct the conditional attachment of the said property or such part thereof 'as he deems necessary; and such attachment shall have' the same effect as if it had been made by a competent Civil Court.

Chapter XI

Dissolution of Society

65. Cancellation of Registration.

(1) If the Registrar, on receipt of an application made upon a resolution adopted in a meeting of the General Assembly by a three fourths majority of the members present at the meeting provided that the notice of dissolution was included in the circulated agenda of the meeting, is of opinion that a society ought, to be dissolved, he may by an order in writing cancel the registration of the society. (2) The Registrar after an enquiry has been held under section 60, or after an inspection has been made under section 61 may cancel the registration of a society which-(i) has not commenced, working; (ii) or has ceased working; or (iii) has ceased to comply materially with any condition as to registration in this Act, rules or bye-laws, and (iv) in his opinion ought to be dissolved. (3) A copy of the order 'canceling the' registration of a society shall forthwith be published in the Official Gazette by a notice which shall be communicated to the society and to any affiliating society concerned by registered post. The notice shall contain the name of the liquidator appointed under 'section 66, who shall take full charge of the society forthwith and shall require all claims against the said society to be made to the liquidator within two months of publication of the notice. All liabilities recorded in the account books of the society shall be deemed ipso facto to have been so claimed. (4) When the cancellation of the registration of a society takes effect, the society shall cease to exist as a corporate body, but shall vest in the liquidator. (5) Any member of the society may, within two months from the date of publication of the order of cancellation, appeal to the Dewan, Sikkim State against such order. (6) Where no appeal is presented within two months from the publication of an order canceling the registration of the society, the order shall take effect on the expiry of that period. (7) When an appeal is presented within two months of an order of cancellation the order 'shall not take effect until it is confirmed by the Dewan and such confirmation is communicated to the society by registered post.

66. Winding Up.

(1) Where an order of cancellation of the registration of a society is made by the Registrar under section 65 he may appoint any person to be the liquidator of the society and may remove such person and appoint another in his place. (2) The liquidator appointed under sub-section (i) shall have power from the date of his appointment to take immediate possession of all assets, properties, effects and actionable claims of the society or to which the society is entitled and of all books, records, cash and other documents pertaining to the business of the society and, in the interests of the society shall hold charge of the society notwithstanding the provisions of section 65 Provided that no steps shall be taken for the winding up of the society during the pendency of any stay order. (3) The liquidator shall, with the sanction of the Registrar, have power, so far as is 'necessary for the winding up of the society, on behalf of the society to carry on the business thereof and to do all acts and execute all documents necessary to such winding up, and in particular shall exercise the following powers: (a) to institute, compromise and defend suits and other legal, proceedings on behalf of the society by his name of office. (b) to make any compromise or arrangement with any

person between whom and the society there exists any dispute;(c)to determine the debts due to the society by a, member, past member or the estate, nominees, heirs or legal representatives of a deceased member,(d)to determine from time to time the contribution to be made or remaining to be made by the members, past members or by the estates or nominees, heirs or legal representatives of deceased members or by any officers or former officer to the assets of the society and to determine the debts due from such members or persons and' cost of liquidation;(e)to calculate the cost of liquidation. and to determine by what persons and in what proportion they are to be borne;(f)to investigate all claims against the society and, subject to the provisions of this Act to decide questions of priority arising between claimants;(g)to pay claims against the society including interest up to the date of cancellation of registration according to their respective priorities, if any in full or rateably as the assets including the reserve fund of the society, permit; the surplus any, remaining after payment of claims being applied in payment from the date of such cancellation at a rate fixed by him but not exceeding the contract rate in any case;(h)to take steps to recover dues according to the provisions of section 83, if necessary; and(i)to dispose of the surplus, if any, remaining after paying the. claims against the society in accordance with section 67 of this Act.(4)Subject to the provisions of this Act and rules made thereunder, a liquidator appointed under this section shall, in so far as such powers are necessary for carrying out the purposes of this section, have power to summon and enforce the attendance of witnesses and to compel the production of any book, accounts, documents, securities, cash or other properties belonging to or in the custody of the society by the, same means and so far as may be in the same manner as is provided in 'the case of a Civil Court 'in the State.(5)Notwithstanding anything contained in any law for the time being in force, if any. landed property is held by a liquidator as such the title over the land shall complete as soon as the mutation of the name of his office is effected and no court shall question the title on' the ground of dispossession, want of possession or physical delivery of possession.

67. Distribution of Fund of a dissolved Society.

- On dissolution of a, society, the reserve fund- and' any un-disbursed cash in hand shall be applied to, discharging the liabilities of the society and the repayment of the share. capital. Any sum, that may, remain shall be credited to the reserve fund of a society to be formed to replace, the dissolved society or, if there be any such society, to any other deserving society existing' within the same area of operation and having objects similar-to those of the dissolved society or, if there be no such society, to any other registered society in Sikkim as may, be determined by the Registrar and till then. the amount shall be deposited in the' name' of the Registrar 'in some Bank approved by the Durbar.

68. Liquidator to deposit the books and submit a final report.

- When, the affairs of a registered society have. been wound up, the liquidator shall make a report to the Registrar, who when satisfied shall order the liquidation proceedings to be closed and direct the liquidator to deposit the records whomsoever the Registrar thinks fit.

69. Bar of Suit.

- Save in so far as is expressly provided in this Act, no Civil' court shall take 'cognizance of any matter connected with. the winding up or dissolution of a society under this Act and when a liquidator has been appointed no suit or other legal proceedings shall lie or be proceeded with against him except by leave of the Registrar and subject to such terms as he may impose.

Chapter XII

Recovery of Sums due and Enforcement of Obligations

70. Power of Registrar to direct' payment of due.

- Notwithstanding anything contained in Chapter X, the Registrar or such other person as may be authorized in this behalf, may, on his own motion or on the written requisition of a registered society or an affiliating society for the recovery of any loan due by a defaulting member, after due enquiry, make an award directing payment by such member of the amount found to be due.

71. Charge and Surcharge.

(1)Where, as the result of an audit under section 55, Or an enquiry under section 6'o -or an inspection under section 61 or a report made in the course of the winding up of a registered society, it appears to the Registrar that any member, officer or employee, past or present, of the society has at any time-(a)intentionally, whether individually or as an assenting member of any' Managing or other controlling body, made or authorised any payment or granted any loan which is contrary to the provision of this Act or to the rules or bye-laws. or failed to, take ' timely steps to recover any loan at the, due date or if it was being improperly utilized, or(b)was grossly negligent in respect of any loss or deficiency. or(c)failed to bring into account any sum which ought to have been brought into account, or(d)misappropriation or fraudulently retained any property of the society; or(e)committed breach of trust in relation to the society; the Registrar may inquire into the conduct of such' officer or member of the managing or other controlling body.(2)the Registrar may similarly inquire into the conduct relating to the affairs of the society of any member, officer or employee, past or present, of a registered society,' on the application of the present controlling or managing body of the society, or liquidator or any creditor, or any other registered society to which the society is affiliated or any contributory.(3)Upon such enquiry, after giving such member, officer or employee an opportunity of being heard and, in the case of a payment made contrary to the provisions of this Act or rule or bye-laws, after affording such member, officer or employee to recover the amount of such payment from the payee and credit it to the funds of the society the Registrar may by an order in writing require such member, officer or employee to pay such sum with interest at such rate as the Registrar may direct, to the society by way of compensation in respect of such payment or loss or to restore such property as the Registrar thinks fit, and to pay such sum as the Registrar may fix to meet the cost of the proceedings under this section.(4)Any award made by the Registrar under sub-section (3) shall be reduced to the form of a Co-operative' demand certificate by the officer authorised to issue such certificates.(5)This section shall apply

notwithstanding that such member, officer or employee may by his act or omission have incurred in addition criminal liability under this Act or any other law for the time being in force.(6)An appeal shall lie to the Dewan against an order passed 'under sub-clause (1) (a) within thirty days of the communication of the order.

Chapter XIII

. Penalty

72. Prohibition of the use of the word "Co-operative".

(1)No person other than a society registered under this Act shall trade or carryon business under any name or title of which the word" Co-operative," is part:Provided that nothing in this section shall apply to the use by any person, or by his successor in interest of any name of title under which he lawfully traded or carried on business at the commencement of this Act(2)Whoever contravenes the provisions of this section shall be punishable with fine which may extend to fifty rupees, and in the case of a continuing offence with further fine of five rupees for each day on 'which the offence is continued after conviction therefore.

73. Punishment for false return, false information, Disobeying summons, orders etc.

- If (a) a registered society or an officer or member thereof or any liquidator, willfully makes a false return or furnishes false Information or willfully neglects or refuses to do any act required. by this Act or the rules or bye-laws&; or does any thing contrary to this Act Or the rules or bye-laws or(b)any person willfully or without reasonable excuse disobeys any summons, requisition or lawfully written order issued under the provisions of this Act or. does not produce documents, or cash balance of the society or furnish, any information lawfully required from him by a person authorized in this behalf under the provisions of this Act (or fails to maintain up-to: date accounts, records, and other documents of the society required to be maintained by him under this Act or the rules or bye-laws) he shall be punishable with fine which may extend to five hundred rupees and in the case of-a continuing offence a further line of five rupees for each day on which the offence is continued after conviction therefore.

74. Punishment for disposing property in contravention of Section 46.

- Any member, past member or the nominee, heir or legal representative of a deceased member removing or otherwise disposing of, or suffering to be removed or otherwise disposed of, any property on this registered society holds a first charge under section 46 with intent to defraud the society or with such intent doing any other act to the prejudice of the society's first charge, shall be. punishable with fine not exceeding five hundred rupees.

75. Penalty for certain misdemeanors.

- Where it appears to the Registrar that any person has contravened the provisions of this Act, the rules or bye-laws (a) by sitting or voting or exercising his rights as a member, or as a member of any managing or controlling body, or voting in the affairs of a registered society as a representative of another society which is a member of such society, when such person was not entitled so to sit, vote or exercise such rights, as the case may be, or (b) by utilizing a loan for a purpose different from that for which it was granted; the Registrar may, after affording such person an opportunity to be heard, by an order in writing direct them to pay the assets of the society by way of penalty such sum not exceeding fifty rupees as the Registrar thinks fit.

76. Power to enforce performance of obligations.

- Notwithstanding anything contained in this Act, where any registered society is required to take any action under this Act, the rules or bye-laws and such action is not taken within the time provided in this Act, the rules or bye-laws or within such time as the Registrar may specify by a notice in writing, where no time is so provided, the Registrar may call upon any officer of the society whom he considers to be responsible for carrying out these directions, and after giving such officer an opportunity to be heard, may require him to pay to the assets of the society such sum not exceeding twenty-five rupees as the Registrar may think fit for each day until the Registrar's directions are carried out.

77. Cognizance of offence.

(1) No court inferior to that of a Magistrate of the second class shall try any offence under this Act. (2) No prosecution for an offence under this Act shall be instituted without the previous sanction of the Registrar. (3) Offences under this Act may be tried summarily.

Chapter XIV

Jurisdiction

78. Indemnity.

- No suit, proceeding or prosecution whatever shall lie against the Registrar or any person acting on his authority or against any liquidator in respect of anything done in good faith under this Act

79. Bar to Jurisdiction of Courts.

(1) save as provided in this Act no Civil or Revenue Court shall have the Jurisdiction in respect of (a) registration of a registered society or its bye-laws or amendments of bye-laws (b) the dissolution of a managing or controlling body and the management of the affairs of the society on dissolution thereof; or (c) any dispute referred to the Registrar; or (d) any matter in relation to the winding up

and dissolution of as registered society(2)Save, as provided in this Act, no order, decision or award under this Act,or working of the affairs of a registered society shall be liable to be challenged, set aside, modified, revised or declared void in any, court on any ground whatsoever except on grounds of jurisdiction.

80. Appeal or Review.

- Except where otherwise expressly provided to the contrary an appeal shall lie to the Registrar from the decisions made under this Act or rules framed under it by any Government Officer, Liquidator or, non official helper appointed under sub-section (3) of section 3.(3)Save as provided in this Act or rules, no appeal shall lie to the Durbar against any order of the Registrar, except, on a question of law, and provided such appeal is preferred within two months of the communication of such order.(4)Any appellate authority. and the Registrar in case of review may pass any order pending any appeal or review before such an authority, and may award costs against such an authority, and may award costs against any party appealing or petitioning for review if such appeal or review petition is considered false, vexations or frivolous by the authority concerned.

81. Power of Attachment of Property.

- Where the Registrar or such gazetted officer as may have powers delegated to him under section 83 is satisfied that any persons holding property within his jurisdiction with intent to defeat or delay the execution of any order, under a Cooperative demand certificate for recovery of dues, or with intent to avoid payment of dues from such person under this Act, rules or bye-laws(a)is about to dispose of the whole or any part of such property; or(b)is about to remove the whole or any part of such property from the local limits of the jurisdiction of the Registrar or of such gazetted officer may, unless adequate, security is furnished, as he. may require, direct the conditional attachment of the said property or such part thereof as he thinks necessary, notwithstanding that the claimant or owner, of the property may reside elsewhere, and such attachment shall have the same force and effect as if it had been made by a competent Civil Court and shall continue in force until withdrawn or cancelled.

82. Registrar to be Civil Court for Certain purposes.

- The Registrar or any person empowered by him in this behalf shall be deemed, when exercising any powers under this Act for the recovery of any amount by attachment and sale or by the sale without attachment of any property, or when passing any orders on any application made to him for such recovery or to, take any step-in-aid of such recovery, to be a Civil Court.

83.

Recovery of Sums Due. - (1) All dues recoverable under this Act or Rules framed thereunder shall be reduced to the form of a Co-operative demand certificate, as in Schedule A over the signature of the Registrar or of such gazetted officers as may have powers delegated to them by the Registrar in this

behalf and shall be recovered as an arrear of land revenue and shall be 'paid to the certificate holder or his authorised nominee. Such certificate shall be in the name of the claimant and shall be delivered to him.(2)Notwithstanding anything contained in sub-section (1) all the said dues shall also be recoverable as a public demand, on a written requisition sent to the certificate officer. in the prescribed form over the signature of the Registrar or of such gazetted officer as may have powers delegated to him by the Registrar in this behalf.(3)For the purpose of this section a member of an affiliated society shall be deemed to be a member of the affiliating society and loans due to the affiliated society be deemed also to be loans due to the affiliating society to the extent that loans from the affiliating society to the affiliated society outstanding and cannot be recovered from the affiliated society directly, provided that not more than one demand certificate maybe executed against a single loan.

84. Registrar may Order a Meeting of Creditors.

(1)Notwithstanding anything contained in this Act, where a compromise or arrangement is proposed between a registered society and its, creditor or any class of them the Registrar, upon an application made by a registered society or by liquidator in case of a society in-respect of which an order has been passed for the winding up thereof. or by a creditor or creditors or any class of creditors, may order a meeting of the creditors.(2)If a majority in number of creditors or the class of creditors as the case may be, representing claims to three' fourths of the debts due by the society to the creditors or class of creditors, at a meeting agree to any compromise or arrangement and if the Registrar agrees to such compromise or arrangement and gives his sanction then the compromise or the arrangement shall be binding on all the creditors or class of creditors and also on the society or on the liquidator in the case of a society in respect of which an order has been passed for winding up thereof and of all persons who may be required by the registrar to contribute to the assets, of the society.

Chapter XV

Miscellaneous

85. Society to be a Body Corporate.

- Every registered society shall be deemed to be a body corporate by the name under which it is registered, with perpetual succession and a common seal, and with power to hold property, to enter into contracts, to institute and defend suits and other legal proceedings and do all things necessary' for the purposes for which it was constituted.

86. Register of Members.

- Any register or list of members or shares kept by any registered society shall be prima facie evidence of any of the following particulars entered therein-(a)the date on which the name of any person was entered in such register or list as a member; and(b)the date on which any such member ceased to be a member.

87. Entries in Books of Registered Society shall be Received as Prima Facie Evidence.

(1) A copy of any entry in a book of a registered society, regularly kept in the course of business shall, if certified by the Chairman or Secretary of the society, be received in any suit or legal proceeding as prima facie evidence of the existence of such entry, and shall be admitted as evidence of the matters, transaction and accounts therein recorded in every case where, and to the same extent as the original entry itself is admissible. (2) No officer or liquidator of a registered society and no officer in whose office the books of a registered society are deposited after liquidation shall in any legal proceeding to which the society or the liquidator is not a party, be compelled to produce any of the society's books the contents of which can be proved under sub-section (1) or to appear as a witness to prove the matters, transactions and accounts therein recorded, unless specially so directed by an order of the Court or the arbitrator.

88. Act of Societies, etc. to be Invalidated by Certain Defects.

(1) No act of a registered society or of a managing or controlling body or of any officer or liquidator done, in good faith in pursuance of the business of the society shall be deemed to be invalid by reason only of some defect subsequently discovered in the organization of the society or in the constitution of any such body or in the appointment or election of the officer or liquidator on the ground that such officer or liquidator was disqualified from appointment. (2) No act done in good faith by any person appointed under this Act shall be invalid merely by reason of the fact that, his appointment has been cancelled or in consequence of any order subsequently passed under this Act. (3) The Registrar shall decide whether any act was done in good faith in pursuance of the business of a society.

89. Rules and bye-Laws not to be Deemed to go beyond the Act.

- Rules framed under this Act and bye-laws registered under this Act shall not be deemed to go beyond the provision of this Act if their effect is not to lessen the degree of control expressly provided for in the Act.

90. Power to Exempt from Conditions as to Registration.

- Notwithstanding anything contained in this Act, the Durbar may by special order and subject to such conditions, if any, as it may impose, exempt any society from any of the requirements of this Act as to registration.

91. Power to Order Recoupment of Expenditure.

- Notwithstanding anything contained in any Law for the time being in force the Durbar may, by a general or special order, require every registered society or a class of registered societies to make contribution of such sum annually to be fixed by the Registrar towards the recoupment of

administrative expenditure incurred by the' State in respect of inspection, supervision and guidance of a society or class of societies or of any service, to such society or class of societies.

92. Power To Seize Records of Society.

(1) If the Registrar or any person authorised by him in this behalf, while making audit, inspection, inquiry or supervision as the case may be, believes or has reason to believe that the Registered society is not keeping or maintaining the accounts, books and records of the society properly or finds or reasonably suspects gross negligence of duties, misappropriation or misuse of funds of the society, irregularity in recording 'proceedings -or keeping accounts or book he shall have power to take possession of any or an books, registers or documents, cash in hand or account books of the society and remove such seized property or keep in proper custody such seized property till it is disposed of in any manner -as may be directed by the Registrar.(2) The person seizing the property of the society under sub-section (1) shall prepare an inventory of the properties seized in duplicate with his signature and require the officer or member of the society from whose possession or custody the property is seized to put his signature in, witness thereof and, if such officer or member refuses to sign, the person seizing the property shall call upon two or more persons. to sign to the seizure list. A copy of the list prepared under the section, signed by the witnesses shall be delivered to the officer 'Of the society.(3) The Registrar shall take immediate steps in way of audit or inspection and pass such orders as he may think fit.(4) The administrative head of a civil sub-division or administrative area shall give police help to an officers mentioned in sub-section (1) of this section when sought for.

93. Power of the Managing Body of an Affiliating Society to Inquire into the Affairs of a Member Society.

- When a registered society takes a loan from an, affiliating society and defaults payment of or any installment thereof, any member of the managing body of the affiliating society, may examine and look into the accounts and working of such borrowing society and report the result of his enquiry or examination particularly with reference to the said loan to the affiliating society and may recommend any suggestion in his report. The borrowing society shall furnish such information and produce such documents, books and accounts. as the member of the managing body may require.

94. Power to make Rules.

- The Durbar may, after previous publication make rules to carry out the purpose and objects of this Act, and such rules may provide a penalty not exceeding fifty Rupees for a breach thereof.

A

(See Section 83) Co-Operative Demand Certificate Granted under Section 83 of the Sikkim, Co-operative' Societies Act, 1955, (Co-operative Demand Certificate' granted under section 83 (1) of the' Sikkim Co-operative Societies Act 1955). (To be realized as an arrear of land revenue by the

Revenue authority within whose jurisdiction the judgment debtor's property is situated)

Case No: Tahsil of 19 Sub tahsil

In the matter of. Versus Whereas, has made a reference, in writing to me complaining, 'determining as a result of my personal inspection I decide, that a sum of Rs.....(Rupees.....) by way of..... under section.....of the Sikkim Co-operative Societies, Act, 1955 and a sum of Rs.....(Rupees.....) by way 'of interest is/are due from you and you have evaded payment of the same and whereas a notice of demand calling on you to pay the dues within the specified time was served with notice to show cause. And whereas you have not paid up your dues specified in the notice; And whereas you have not submitted explanation-your explanation is unsatisfactory Now, therefore, I under authority of 'sub-section (1) of Section 83 of the Sikkim Co-operative Societies Act, 1955 do hereby order that the above mentioned, sum of Rs..... is due to the above, named from you and that you pay further interest on the principal sum at the rate of..... per cent per annum from..... together with all, cost till the date of realization. I further order that right title and interest of..... in the properties set out and described, in the Schedule below be sold as an, arrear of land' revenue and that, if the sale proceeds should be found insufficient to discharge the dues with 'subsequent interest at the above rate till the date of realization and costs in full the' balance be realized by attachment and sale of other moveable and immoveable property of the judgment debtor as an arrear of land revenue. Registrar, Co-operative Societies Sikkim. The ..Officer empowered under section 83 (1) of Sikkim Co-operative Societies Act 1955 N.B The irrelevant words may be struck off and 'relevant entries, may be made where necessary. This, Act has been repealed by the Sikkim, Cooperative Societies Act No. 12 of 1978. - ED. (As published in Sikkim Darbar Gazette Extraordinary April, 1955)