

# Sikkim Co-Operative Societies Act, 1978

SIKKIM

India

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### Act 12 of 1978

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Sikkim Co-Operative Societies Act, 1978 (Act No. 12 of 1978) Last Updated 10th June, 2020 [Dated 5.04.1978] An Act to consolidate and amend the law relating to co-operative societies in the State of Sikkim. Whereas it is expedient to further facilitate the formation and working of co-operative societies for the promotion of thrift, self help and mutual aid among persons with common economic needs and to bring about improvement in agriculture and industry through better methods of production, better business and better living and for that purpose to amend and consolidate the law relating to co-operative societies in the State of Sikkim. Be it enacted by the State Legislature in the Twenty ninth Year of the Republic of India as follows ;

## Chapter I Preliminary

### 1. Short title, extent and commencement.

- (i) This Act may be called the Sikkim Co-operative societies Act, 1978. (ii) It extends to the whole of the State of Sikkim. (iii) It shall come into force on such date as the Government may, by notification in the Official Gazette appoint. In this act, unless the context otherwise requires.

### 2. Definitions.

(a) Agricultural Refinance and Development Corporation Means the Agricultural Refinance and Development Corporation constituted under the Agricultural Refinance and Development Corporation Act, 1963 (10 of 1963). (b) 'Bank' includes. (i) A banking company as defined in section 5 of the Banking Regulation Act, 1949 (10 of 1949). (ii) State Bank of India constituted under the State Bank of India Act, 1955 (23 of 1955). (iii) A corresponding new bank constituted under section 30 of the Banking Companies Acquisition and Transfer of Undertakings Act 1970 (5 of 1970). (iv) Any other banking institution notified by the Central Government under section 51 of the Banking

Regulation Act 1949 (10 of 1949).(c)'Bye-laws' means the Registered bye-laws for the time registered being in force, and includes amendments of such Bye-laws.(d)'Committee' means the governing body of a society, by whatever name called, to which the management of the affairs of the society is entrusted.(e)[ "Co-operative year" means the period beginning from the 1st day of April, or the date of commencement of business, or the date of registration of the society and ending on the 31st day of March every year for the purpose of drawing balance sheets of registered societies.] [Substituted by Act No. 7 of 1992, dated 28.9.1992](f)'Deposit Insurance Corporation' means the Deposit Insurance Corporation established under section 3 of the Deposit Insurance Corporation Act, 1961 (47 of 1961).(g)'Federal society' means a society other than state cooperative bank, (a) not less than five members of which are themselves societies; and (b) in which the voting rights are so regulated that the members which are societies have not less than three fourths of the total number of votes in the general meeting of such society.(h)'Government' means the State Government of Sikkim.(i)'Industrial Development Bank' means the Industrial Development Bank of India constituted under the Industrial Development Bank of India Act 1964 (18 of 1964).(j)'Member' means a person joining in the application for registration of a society and a person admitted to membership after such registration in accordance with this Act, the rules and the bye-laws, and shall include a nominal member and the Government when it subscribes to the share capital of a society.(k)'Nominal member' means a person admitted to membership as such after registration in accordance with the bye-laws.(l)'National Co-operative Development Corporation' means the National Co-operative Development Corporation constituted under the National Co-operative Development Corporation Act 1962 (16 of 1962).(m)'officer' means the president, vice-president, chairman, vice-chairman, managing director, secretary, manager, and member of committee, treasurer, liquidator, administrator and includes any other person empowered under the rules or the bye-laws, to give directions in regard to the business of society.(n)'prescribed' means prescribed in the rules.(o)'primary agricultural credit society' shall have the meaning assigned to it in clause c(ii) of section 2 of the Reserve Bank of India Act, 1934 (2 of 1934) and includes a Farmers Service Society or Large-sized Multipurpose Society.(p)'Registrar' means a person appointed to perform the functions of the Registrar of Co-operative Societies under this Act and includes any person appointed to assist the Registrar in exercise of all or any of his powers under this Act.(q)'Reserve Bank' means the Reserve Bank of India constituted under the Reserve Bank of India Act, 1934 (2 of 1934).(r)'Rules' means the rules made under this Act.(s)'Society' means a co-operative society registered or deemed to be registered under this Act.(t)'Society with limited liability' means a society the liability of whose members is limited by its bye-laws to the amount, if any, unpaid on the shares individually held by them or to such amount as they may individually undertake to contribute to the assets of the society, in the event of its being wound up.(u)'Society with unlimited liability' means society the joint or several liability of whose members to meet any deficiency in the assets of the society in the event of its being wound up is unlimited.(v)'State Co-operative Bank' means the 'Sikkim State Co-operative Bank Ltd.' registered as a society under this Act.

## Chapter II

### Registration of Societies

### **3. Registrar.**

(1)The Government may appoint a person to be the Registrar of Cooperative Societies for the State of Sikkim and may appoint other persons to assist him.(2)The Government may, by general or special order, confer on any person appointed to assist the Registrar all or tiny of the powers of the Registrar under this Act.(3)Every person appointed to assist the Registrar shall exercise the powers conferred on him under sub-section (2) subject to the general guidance, superintendence and control of the Registrar.(4)The Government may, be notification in the Official Gazette and subject to such conditions as it may think fit to impose, confer all or any of the powers of the Registrar under this Act on the State Co-operative Bank or any federal society or an officer of such bank or federal society and every such bank or federal society or officer on whom the powers of the Registrar are so conferred shall exercise such powers under the general guidance, superintendence and control of the Registrar.

### **4. Societies which may be registered.**

- Subject to the provisions hereinafter contained, a society which has as its object the promotion of the economic interests of its members in accordance with co-operative principles, or a society established with the object of facilitating the operations of such a society and the State Cooperative Bank may be registered under this Act:Provided that the Registrar shall not register any society with unlimited liability.

### **5. Conditions of registration.**

(a)No society other than a federal society shall be registered under this Act unless it consists of at least ten persons not belonging to the same family who are qualified to be members under this Act and who reside in the area of operation of the society.Explanation. - For the purpose of this Act 'Family' means the husband, wife, sons and unmarried daughters.(b)The word 'limited' shall be the last word in the name of every society with limited liability registered under this Act.

### **6. Application for registration.**

(1)for the purposes of registration, an application shall be made to the Registrar.(2)The application shall be signed-(a)in the case of a society of which no member is a society, by at least ten persons qualified in accordance with the requirements of section 5 and(b)in the case of a society of which a member is a co-operative society, by a duly authorised person on behalf of such society and where all the members of the society are not societies, by ten other members or when there are less than ten other members qualified to do so under section 5 by all of them.

### **7. Power of the Registrar to decide certain questions.**

- Where any question arises. whether, for the purpose of this Act, a person resides in the area of operation of a society or not, or whether a society is of the same type as another society or of

different type, the question shall be decided by the Registrar whose decision shall be final.

## **8. Registration.**

(1) If the Registrar is satisfied -(a) that the application complies with the provisions of this Act and the rules; (b) that the objects of the proposed society are in accordance with section 4; (c) that the proposed bye-laws are not contrary to the provisions of this Act and the rules; and (d) that the proposed society has reasonable chances of success, and that the registration thereof may not have any adverse effect on the development of co-operative movement, the Registrar may register the society and its bye-laws. (2) When the Registrar refuses to register a society, he shall communicate within a period of six months from the date of receipt of application the order of refusal, together with the reasons therefor, to the applicant as may be prescribed.

## **9. Registration Certificate.**

- Where a society is registered, the Registrar shall issue a certificate of registration signed by him, which shall be conclusive evidence that the society therein mentioned is duly registered under this Act

## **10. Registered Societies to be bodies corporate.**

- The registration of a society shall render it a body corporate by the name under which it is registered, having perpetual succession and a common seal, and with power to acquire, hold and dispose of property, enter into contracts, institute and defend suits and other legal proceedings and to do all things necessary for the purpose for which it is constituted.

## **11. Amendment of bye-laws of a Society.**

(1) No amendment of any bye-laws of a society shall be valid unless it is registered under this Act. (2) Every proposal for such amendment shall be forwarded to the Registrar and if the Registrar is satisfied that the amendment (a) is not contrary to the provisions of this Act and the rules; (b) does not conflict with Co-operative principles; and (c) will promote the economic interests of the members of the society; he may register the amendment. (3) The Registrar shall forward to the society a copy of the registered amendment together with a certificate signed by him and such certificate shall be conclusive evidence that the amendment has been duly registered. (4) Where the Registrar refuses to register an amendment of the bye-laws of a society, he shall communicate the order of refusal together with the reasons therefor to the society in the manner prescribed.

## **12. Registrar's power to direct amendment of bye-laws.**

- Notwithstanding anything contained in section 11, if in the opinion of the Registrar, an amendment of the bye-laws of a society is necessary or desirable in the interest of such society or of the co-operative movement he may, in such manner as may be prescribed, call upon the society to make

any amendment within such time as he may specify. If the society fails to make such an amendment within the time so specified the Registrar may, after giving the society an opportunity of making its representation, register such amendment and forward to the society by registered post a copy of the amendment together with a certificate signed by him, such a certificate shall be conclusive evidence that the amendment has been duly registered; and such an amendment shall have the same effect as an amendment of any bye-laws duly made by the society.

### **13. When amendments of bye-laws come into force.**

- An amendment of the bye-laws of a society shall, unless it is expressed to come into operation on a particular day, come into force on the day on which it is registered.

### **14. Change of name.**

(1)A society may, by an amendment of its bye-laws, in such manner as may be prescribed, change its name; but such change shall not affect any right or obligation of the society or of any of its members, past members or deceased members and any legal proceeding pending may be continued by or against the society under its new name.(2)Where a society changes its name, the Registrar shall enter the new name on the register of societies in place of the former name and shall amend the certificate of registration accordingly.

### **15. Change of Liability.**

(1)No society with limited liability shall change itself into a Society with unlimited liability.(2)Subject to the provision of sub-section (1), a society may change the form and extent of its - liability by an amendment of its bye-laws' in the manner prescribed.(3)When a society has amended its bye-laws under subsection (2), it shall give notice thereof in writing to all its members and creditors and notwithstanding any bye-law or contract to the contrary any member or creditor shall, within a period- of 30 days from the date of service of the notice upon him, have the option to withdraw his, shares or deposits or recall the loans, as the case may be.(4)Any member or creditor who does not exercise his option within the period - specified in sub-section (2) shall be deemed to have assented to the change.(5)An amendment of the by-laws of a society changing the form or extent of its liability shall not be registered or take effect until either -(a)the assent thereto of all members and creditors has been obtained' or is deemed to have 'been obtained; or(b)all claims of members and creditors who exercise the option referred to in sub-section (2) within 'the period specified therein, have been met in full.

### **16. Amalgamation, transfer of assets and liabilities and division of societies.**

(1)A society may, with the previous approval of the Registrar and by a resolution passed by at least a two thirds majority of the members present and voting at a general meeting of the society-  
,(a)transfer its assets and liabilities in whole or in part to any other society;(b)divide itself into two or more societies.(2)Any two or more societies may, with the previous approval of the Registrar and

by a resolution passed by at least a two-thirds majority of the members present and voting at a general meeting of each society amalgamate themselves and form a new society.(3)The resolution of a society under sub-section (1) or Sub-section (2) shall contain all particulars of the transfer, division or amalgamation, as the case may be.(4)When a society has passed any such resolution, it shall give notice thereof, in writing, to all its members and creditors and, notwithstanding any bye-laws or contract to the contrary, any member or creditor shall, within a period of thirty days from the date of service of the notice upon him, exercise the option to withdraw his shares or deposits or recall the loans, as the case may be.(5)Any member or creditor who does not exercise his option within the period specified in sub-section (4) shall be deemed to have assented to the proposals contained in the resolution.(6)A resolution passed by a society under this section shall not take effect until(a)the assent thereto of all the members and creditors has been obtained or is deemed to have been obtained; or(b)all claims of the members and creditors who have exercised the option referred to in sub-section (4) within the period specified therein have been met in full.(7)Where a resolution passed by a society under this section involves the transfer of any assets and liabilities, the resolution shall, notwithstanding anything contained in any law for the time being in force, be a sufficient conveyance to vest the assets and liabilities in the transferee without any further assurance.

## **17. Power to direct amalgamation and reorganisation.**

(1)Notwithstanding anything contained in this Act, if the Registrar is of the opinion that(a)for the purpose of ensuring economic liability of any society or societies; or(b)for avoiding overlapping or conflict of jurisdictions of societies in any area; or(c)in order to secure proper management of any society; or(d)in the public Interest; or(e)in the interest of the co-operative movement in the State as a whole; or(f)in the interest of depositors; or(g)in the interest of the co-operatives credit structure in the State as a whole, it is necessary to amalgamate two or more societies or to reorganise any society, he may by order published in the Official Gazette provide for amalgamation of two or more such societies into a single society with limited liability or to reorganise the society.(2)Such order may also provide for(a)reduction of the interests or the rights which the members, depositors, creditors, employees and other persons may have in or against any society so to be amalgamated or reorganised, to such extent as the Registrar may consider necessary in the interest of such persons or for the maintenance of the business of that society having due regard to the proportion of the assets of such society to its liabilities.(b)such incidental, consequential and supplemental provisions as may in the opinion of the Registrar be necessary to give effect to the amalgamation of the societies, -(3)No order shall be made under sub-section 1 unless(a)a Copy of the proposed, order has been 'sent in draft to each of the societies, concerned(b)the Registrar has considered made such modifications in the draft order, as may deem to him desirable in the light of any suggestions or' objections which may be received by him within,' such period (not being less than fifteen days from, the date on which the copy of the proposed order was received by the societies) as the Registrar may fix in that behalf either from the societies or any members, depositors, creditors, employees or other persons concerned.(4)Notwithstanding anything contained in this Act or any other law, or in any contract, award or other instrument for the time being in force, on the issue of an order under sub-section (1), the provisions thereof shall be binding on all societies and their members, past members, depositors, creditors employees and all other persons having dealings with the concerned

societies.(5)On and from the date from which the amalgamation takes effect, the assets and liabilities of the societies referred to therein shall stand amalgamated or merged with the assets and liabilities of the societies formed out of such amalgamation and the members, creditors and debtors of such societies, shall be deemed to be members, creditors and debtors, as the case may be, of the new society or societies as ordered by the Registrar.(6)Notwithstanding anything contained in any law for the time being in force relating to transfer of properties or registration of documents, an order issued under this section shall be sufficient conveyance to transfer the assets and liabilities of the society or societies covered by any order passed under sub-section (1) of this section.(7)Any order made by the Registrar under this section shall be final and conclusive and shall not be called in question in any Court.

## **18. Liability of resultant society to be limited.**

- Where the whole of the assets and liabilities of a society are transferred to another society in accordance with the provisions of section 16 or where a society is directed to be amalgamated under section 17, the liability of the other society or the new society, as the case may be, shall be limited.

## **19. Cancellation of registration certificates of societies in certain cases.**

(1)Where the whole of the assets and liabilities of a society are transferred to another society in accordance with the provisions of section 16 or section 17, the registration of the society whose assets and liabilities are so transferred, shall stand cancelled and the said society shall be deemed to have been dissolved and shall cease to exist as a corporate body.(2)Where two or more societies are amalgamated into a new society in accordance with the provisions of section 16 or section 17, the registration of each of the amalgamating societies shall stand cancelled on the registration of the new society, and each society shall be deemed to have been dissolved and shall cease to exist as a corporate body.(3)Where a society divides itself into two or more societies in accordance with the provisions of section 16, the registration of that society shall stand cancelled on the registration of the new societies and that society shall be deemed to have been dissolved and shall cease to exist as a corporate body.(4)The amalgamation, division or reorganisation of societies shall not in any manner whatsoever affect any right or obligation of the amalgamated, divided or reorganised society or societies or render defective any legal proceedings by or against such society or societies and any legal proceeding that might have been commenced or continued by or against such society or societies, as the case may be, before the amalgamation, division or reorganisation, may be continued by or against the resulting or the reorganised society or societies.(5)Where a society has not commenced business within six months of its registration or such further time as may be granted by the Registrar after its registration or has ceased to function or if the Registrar is satisfied, after making such enquiry as he thinks fit, that the society no longer has genuinely as its objects one or more of the objects specified in section 4 and that its registration ought in the interests of the general public to be cancelled, he shall make an order cancelling the registration of the society. The society shall from the date of such order of cancellation be deemed to be dissolved and shall cease to exist as a corporate body.

## Chapter III

### Members of societies and their rights and liabilities

#### 20. Persons who may become members.

(1) No person shall be admitted as a member of a society except the following, namely; (a) an individual competent to contract under section 11 of the Indian Contract Act, 1872 (9 of 1872); (b) any other society; (c) the Government; (d) a firm, a company or any other body corporate constituted under any law for the time being in force or a society registered under any law in force relating to Registration of Societies or a bank as defined in the Act subject to such terms and conditions as may be laid down by the Government by general or special order in this behalf. (2) Any person who is duly qualified for admission as a member under the provisions of this Act and the bye-laws of a primary agricultural credit society, makes an application for membership of such society, shall be deemed to have been admitted as a member of such society from the date of receipt of the application in the office of the society: Provided that the Registrar may, either on his own motion at any time or on an application by the primary agricultural credit society or any member thereof made within fifteen days from the date of such admission and after giving reasonable opportunity to the society and the member concerned, by order declare such person as not eligible either to become or to continue as a member of such society for the reasons mentioned therein. Where the order is to be passed on an application of the society or a member thereof it shall be passed within thirty days from the date of receipt of the application by the Registrar. (3) Any order made by the Registrar under sub-section (2) of this section shall be final and shall not be called in question in any Court. (4) An application for membership in a society, other than a primary agricultural credit society shall be disposed of by the Society within one month from the date of receipt thereof, and the decision of the Society on the application shall be communicated to the applicant within fifteen days from the date of the decision: Provided that if the decision of the society is not communicated to the applicant within a period of forty five days from the date of the receipt of the application by the society, the society shall be deemed to have decided, on the date of expiry of such period, refusing admission to the applicant.

#### 21. Disqualification for membership.

(1) No person shall be eligible for admission as a member of a society, if he (a) has applied to be adjudicated an insolvent or is an undischarged insolvent; or (b) has been sentenced for any offence, other than an offence of a political character or an offence not involving moral turpitude, such sentence not having been reversed or the offence pardoned and a period of five years has not elapsed from the date of expiry of the sentence. (2) If a member becomes subject to any of the disqualifications specified in sub-section (1), he shall be deemed to have ceased to be a member from the date when the disqualification was incurred. (3) Subject to the general or special orders of the Registrar published in the Official Gazette, no individual who is a member of a credit society, shall be eligible for admission as a member of another credit society.



## **22. Votes of members.**

- Every member of a society shall have one vote in the affairs of the society: Provided that (a) a nominal member shall not have the right to vote; (b) a member of a primary agricultural credit society shall have no right to vote in a general meeting if he is in default in payment of any sums due to that society for more than one year; and (c) where the Government is the member of the society, each person nominated by the Government on the Committee of the society shall have one vote except when the right to vote is to be exercised for election of office bearers of the society.

## **23. Manner of exercising vote.**

(1) Every member of a society shall exercise his vote in person at a meeting of the society and no member shall be permitted to vote by proxy. (2) Notwithstanding anything contained in sub-section (1), a society or corporation or firm which is a member of another society may, subject to any rules made under this Act, appoint one of its members or partners, as the case may be, to vote on its behalf in the affairs of that society.

## **24. Nominal members.**

(1) A society may admit any individual or other person or firm as a nominal member in accordance with its bye-laws. (2) A nominal member shall not be entitled to any share, in any form whatsoever, in the assets or profits of the society or to become an officer of the society. (3) A nominal member shall have such privileges and rights of a member and be subject to such liabilities of a member, as may be specified in the Bye-laws of the society.

## **25. Member not to exercise rights till due payment made.**

- No member of a society shall exercise the rights the member unless he has made such payments to in respect of membership or has acquired such interest in the society, as may be specified in the bye-laws.

## **26. Restrictions on holding of shares.**

- In any society, no member other than the Government or any other society shall hold or have claim to more than such portion of the total share capital of the society which exceed one-fifth thereof or Rs. 5,000/- which ever is less: [Provided that in respect of certain class of societies as the Government may, by notification in the Official Gazette specify a member other than the Government or any other society, may hold share exceeding the prescribed limit.] [Substituted by Act No. 7 of 1992, dated 28.9.1992.]

## **27. Restriction on transfer of shares or interest.**

(1)The transfer of a share or interest of a member in the capital of a society shall be subject to the restrictions specified in section 26.(2)No transfer by a member of his share or interest in a society shall be valid unless(a)the member has held. such share or interest for not less than one year;(b)the transfer is made to the society or to a. member of the society; and(c)the transfer is approved by the Committee of the society.

## **28. Transfer of interest on death of a member.**

(1)On the death of a member the society shall transfer the share or interest of the deceased member to the person or persons nominated in accordance with the rules or, if no person has been so. nominated, to such person as may appear to the Committee to be the heir or legal representative of the deceased member:Provided that such nominee, heir or legal representative, as the case may be, is admitted as the member of the society.Provided further that nothing in this sub section shall prevent a minor or a Person of unsound mind from acquiring by inheritance the share or interest of a Deceased member in the society.(2)Notwithstanding anything contained in sub-section (1) any such nominee, heir, or a legal representative, as the case may be require the society to pay to him the value of the share or interest of the deceased member ascertained in accordance with the Rules.(3)The society may pay all other moneys due to the deceased member from the society to such nominee, heir or legal representative, as the case may be.(4)All transfers and payments made by a society in accordance with the provisions of this section shall be valid and effectual against any demand made upon the society by any other person.

## **29. Liability of past members and estate of deceased member.**

(1)Subject to the provisions of sub-section (2), the liability of a past member or of the deceased member of a society for the debts of the society as they existed shall continue for a period of two years(a)in the case of a past member, from the date on which he ceased to be a member; and(b)in the case of a deceased member from the date of his death.(2)Where a society is ordered to be wound up under section 75, the liability of a past member or of the estate of a deceased member who ceased to be a member or died within two years immediately preceding the date of the order of winding up, shall continue until the entire liquidation proceedings are completed but such liability shall extend only to the debts of a society as they existed on the date of his ceasing to be a member or death, as the case may be.

## **30. Final authority of a society.**

(1)The final authority of every society shall vest in the general body of members in general meeting:Provided that in such circumstances as may be prescribed the final authority may vest in -the delegates of such members elected in the prescribed manner and assembled in general meeting.(2)The general meeting shall be summoned and shall exercise its authority in such manner as may be prescribed.

### **31. Management of Society.**

(1)The management of every society shall vest in a committee constituted in accordance with the bye-laws.(2)No person shall be eligible to be elected as a member of a committee unless he is a member of the society.(3)No member of a society shall be eligible for being elected as a member of the committee of that society or of any other society to which such society is affiliated, if such member(a)has been adjudged by a competent court to be insolvent or of unsound mind;(b)is concerned or participates in the profits of any contract with the society;(c)has been punished with imprisonment for an offence involving moral turpitude;(d)has been in default in payment of his dues to the society' for a continuous period of three months from the due date or any extended period thereof;(e)carries the business of the same kind carried on by the society.(4)A member of the committee of a society shall cease to be a member of such committee if he becomes subject to any of the disqualifications mentioned in sub-section (3) and the vacancy so arising in the committee shall be filled in accordance with the bye-laws.

### **32. Annual general meeting.**

(1)The general meeting of every society shall be held within a period of six months after the date fixed for making up its accounts for the cooperative year under the rules for the time being in force, for the purpose of(a)approving the programme of the activities of the society prepared by the committee for the ensuing co-operative year;(b)electing the members of the committee other than members nominated under section 38;(c)considering the audit report and the annual report;(d)disposing of the net profits; and(e)considering any other matter which may be brought forward in accordance with the bye-laws:Provided that the Registrar may, by general or special order extend the period for holding such meeting for a further period not exceeding three months:Provided further that, if in the opinion of the Registrar no such extension is necessary or such meeting is not called by the society within the extended period, if any, granted by him, the Registrar or any person authorised by him may call such meeting and exercise all powers and functions of an officer of the society authorised to convene such meeting and that meeting shall be deemed to be a general meeting duly called by the society. The Registrar may order that the expenditure incurred in calling such a meeting shall be paid out of the funds of the society or by such person or persons who, in the opinion of the Registrar, were responsible for the refusal or failure to convene the general meeting.(2)At every annual general meeting of a society, the committee shall lay before the society a statement showing the details of the loans, if any, given to any of the members of the committee during the preceding year.

### **33. Special general meeting.**

(1)The committee of a society may, at any time, call a special general meeting of the society and also shall call such meeting within one month after the receipt of a requisition in writing from the Registrar or from such number of members or a proportion of the total number of members, as may be provided in the bye-laws.(2)If a special general meeting of a society is not called in accordance with the requisition referred to in subsection (1), the Registrar or any person authorised by him in this behalf shall call such meeting and exercise all powers and functions of an officer of the society

who is authorised to convene such special general meeting and that meeting shall be deemed to be a meeting called by the committee, and the Registrar may order that the expenditure incurred in calling such a meeting shall be paid out of the funds of the society or by any such person or persons who, in the opinion of the Registrar, were responsible for the refusal or failure to convene the special general meeting.

### **34. Election of members of committees.**

(1)The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, elections of the members of the committees of such societies or class of societies as may be notified by the State Government in the Official Gazette shall be vested in such returning officers not below the rank of Gazetted officers as may be appointed by the Government in this behalf.(2)The vote at such elections shall be by secret ballot.

### **35. Term of office of a Committee.**

- The term of office of the elected members of the committee shall be such, not exceeding three co-operative years including the co-operative year of their election, as may be specified in the bye-laws of the society:Provided that the elected members shall continue to hold office till their successors are elected or nominated under the provisions of the Act or the rules or bye-law..,

### **36. Disqualifications to be an officer of a society.**

- Notwithstanding anything contained in this Act, a person shall be disqualified for election as, or for being, the president, vice-president, chairman, vice-chairman, secretary, joint secretary or treasurer of a committee,(a)if he has held any such office on that committee during the preceding two consecutive terms, whether full or part;(b)if he holds any such office on a committee of another society of the same type;(c)if he holds any such office on the committees of three or more societies of different types including the State Co-coordinative Bank or a federal society:Provided that nothing contained in this sub-section shall be deemed to disqualify any such person for election as, or for being, a delegate of a society or a member of another committee.Explanation 1. - Where any person holding any office as aforesaid at the commencement of this Act is again elected to any such office after such commencement, he shall, for the purpose of this sub-section, be deemed to have held that office for one term before such election.Explanation 2. - A person who has ceased to hold any such office as aforesaid continuously for one full term shall again be qualified for election to any of those offices.

### **37. Representation of weaker section on the committee.**

- On the committee of a primary agricultural credit society or other societies as may be prescribed, not less than one-third of total seats shall be reserved for economically weaker sections of the members who, as land owners or tenants or as both do not hold more than the prescribed area of agricultural land or who fulfil the prescribed conditions, and if no such persons are elected, the

committee shall co-opt the required number of members from amongst the persons entitled to such representation.

### **38. Nomination of members to the Committee.**

(1)Notwithstanding anything contained in this Act, but subject to the provisions of section 36, where the Government has subscribed to the share capital of a society or has assisted directly or indirectly, in the formation or augmentation of the share capital of a society, or has guaranteed the repayment of principal and payment of interest on loans and advances to a society, the government or any other person authorised by it in this behalf shall have the right to nominate [Chairman and] [Inserted vide Act No. 6 of 1985, dated 28.6.1985.] members on the committee in the manner prescribed below viz.(i)where the Government shareholding is not less than one third and not more than two-thirds of the equity the number of Government nominees shall not exceed a third of the total number of members of the committee or three, whichever is less.(ii)where the Government holds more than two-thirds of the total equity, the number of Government nominees shall not exceed one-half of the total number of members of the committee or five whichever is less:Provided that in the case of societies registered after the commencement of this Act, the Government may have the power to nominate the initial committee for a period of 3 years or such extended period as may be decided by the Government.(2)A person nominated under sub-section (1) shall hold office during the pleasure of the Government.

### **39. Super session of committee.**

(1)If, in the opinion of the Registrar, the committee of any society persistently makes default or is negligent in the performance of the duties imposed on it by this Act or the rules or the bye-laws, or commits any act which is prejudicial to the interest of the society, or its members, or the cooperative movement in the state, or will fully disobeys or fails to comply with any lawful order or directions issued under this Act or the rules. the Registrar may, after giving the committee an opportunity to state its objections, if any by order in writing, remove the committee; and(a)order fresh election of the committee, or(b)appoint one or more administrators who need not be members of the society, to manage the affairs of the society for a period not exceeding one year specified in the order which period may, at the discretion of the Registrar be extended from time to time, so, however, that the aggregate period does not exceed three years.(2)The Registrar may fix any remuneration for the administrator, as he may think fit. Such remuneration shall be paid out of the funds of the society.(3)The administrator shall, subject to the control of the Registrar and to such instructions he may from time to time issue, exercise all or any of the powers of the committee or of any officer of the society and take all such actions as may be required in the interest of the society.(4)The administrator or administrators shall, before the expiry of his or their term of office, take all steps to constitute a new committee in accordance with the bye-laws of the society.(5)Before taking any action under sub-section (1) in respect of a society. the Registrar shall consult the State Co-operative Bank to which it is indebted.

#### **40. Securing possession of records etc.**

(1)(a)If the records, registers, documents or the books of accounts of a society are likely to be tampered with or destroyed and the funds, securities and other properties of a society are likely to be misappropriated or misapplied; or(b)If the committee of a society is reconstituted at a general meeting of the society or the committee of a society is removed by the Registrar under section 39 or if the society is ordered to be wound up under section 75 and the outgoing members of the committee refused to hand over charge of the records and properties of the society to those having or entitled to receive such charge the Registrar or any other person authorised by him in this behalf may apply to the magistrate within whose jurisdiction the society functions, for securing the records and property of the society.(2)On receipt of an application under sub-section (1), the magistrate may, by a warrant, authorise any police officer not below the rank of sub- Inspector to enter and search any place where the records and the property are kept or are believed to be kept and to seize such records and properties; and the records and properties so seized shall be handed over to the new committee or administrators of the society or the liquidator, as the case may be.

#### **41. Acts of societies not to be invalidated by certain defects.**

- No act of a society or of any committee or of any officer shall be deemed to be invalid by reason only of the existence of any defect in procedure followed or in the constitution of the society or of the committee or in the appointment or election of an officer or on the ground that such officer was disqualified for his appointment.

### **Chapter V**

#### **Rights and privileges of societies**

#### **42. First charge of a society on certain movable assets of member for the amount due by him.**

(1)Notwithstanding anything contained in any other law for the time being in force but subject to any claim of the Government in respect of land revenue or any sum recoverable as land revenue or as public demand, any claim, any debt or other amount due to a society by any member including a past or deceased member shall be a first charge upon the crops or other agricultural produce, cattle, fodder for cattle, agricultural or industrial implements or machinery, raw materials for manufacture and any finished products manufactured from such raw materials owned by or belonging to such member, past member or forming part of the estate of the deceased member as the case may be.(2)Such charge shall be available even as against any amount, recoverable by the Government as if it were an arrear of land revenue subsequent to the incurring of the debt or the liability for the other amount due to the society referred to in sub-section (1).(3)No person shall transfer any property which is subject to such charge except with the previous, permission in writing of the society which holds the charge and any transfer, without such permission shall, notwithstanding anything contained in any law for the time being in force, be void.(4)The charge under this section

shall not be available against the following articles of such member:(a)the necessary wearing apparel, cooking vessels, beds and bedding and such personal ornaments of a woman as in accordance with religious usage cannot be parted with by her;(b)ploughs, implements of husbandry, one pair of ploughing cattle, such manure and seed grains stocked by him, 'as may be necessary for the due cultivation of his lands in the ensuing year.

#### **43. Charge on the immovable property of a member for the loans borrowed.**

(1)Notwithstanding anything contained in this Act or in any other law for the time being in force, but subject to any claim of the Government in respect of land revenue, whether prior in time or subsequent, any member of a society, owning any land or having interest in any land or other immovable property as a tenant, making an application for financial assistance from the society shall make a declaration in the form prescribed creating a charge in favour of the society on such land or interest or such portion thereof as may be specified in the declaration, as security for the payment of the loan to be granted to him on the application and for all future loans, if any that may be granted to him by the society from time to time subject to such maximum as may be determined by the society together with the interest on such amount of the loans.(2)Such declaration may be varied or cancelled at any time by the member with the consent of the society in whose favour it is made.(3)Subject to the provisions of sub-section (1) and to the claim of any person in whose favour a charge has been created before the date of registration of the declaration made under sub-section (1), no land in respect of which such declaration has been made or any part thereof or any interest therein shall be sold or otherwise transferred until the entire amount of the loan or advance taken by the member from the society together with interest thereon is paid to the society; and any transaction in contravention of this sub-section shall be void:Provided that if a part of the amount borrowed by a member is paid, the society may on application from the member release from the charge such part of the land or interest therein as it may deem proper, having due regard to the security or the balance of the amount remaining outstanding from the member.

#### **44. Priority of mortgage over certain claims.**

- A mortgage executed in favour of primary agricultural credit society or the State Co-operative Bank shall have priority over any claim of the Government arising from a loan granted subsequent to the execution of the mortgage.

#### **45. Registration of charge and mortgage in favour of societies.**

(1)Notwithstanding anything contained in the Indian Registration Act, 1908 (16 of 1908), a declaration made under sub-section (1) of section 43 or a variation or cancellation made under sub-section (2) of section 43 or a mortgage executed by a member in favour of a primary agricultural credit society or State Co-operative Bank, as the case may be, in respect of financial assistance given by that society shall be deemed to have been duly registered in accordance with the provisions of that Act with effect from the date of such declaration, variation, cancellation or mortgage, as the case may be, provided that the society sends to the Sub-Registrar within the local limits of whose jurisdiction the whole or any part of the property charged or mortgaged is situated within thirty days

from the date of such declaration, variation, cancellation or mortgage, as the case may be, by registered post acknowledgement due, a copy of the document making such declaration, variation, cancellation" or mortgage duly certified to be a true copy by an officer of the society authorised to sign on its behalf.(2)The Sub-Registrar receiving the declaration in respect of a charge or variation or a mortgage referred to in subsection (1) shall, as immediately as practicable on receipt thereof, record in a register to be maintained in this behalf, the fact of the receipt of such declaration, variation or mortgage for registration.

#### **46. Noting of charge or mortgage created in the Record of Rights.**

- Whenever a charge or a mortgage of land or interest therein is created in favour of a society or is discharged by a society, the society shall give intimation to such revenue official as may be designated in this behalf by the Government, of the particulars of the charge or mortgage in its favour or discharge thereof. The revenue official shall make a note of the particulars of charge or mortgage or discharge thereof in the Record of Rights:Provided that the absence of an entry in the record of rights on the basis of such declaration or a defective entry passed in the record in respect thereof shall not affect the validity of the charge or mortgage or discharge thereof.

#### **46A. Registration to constitute notice.**

- The Registration in the records of the Sub-Registrar or the recording in the record of rights of a change or variation made under section 43 shall constitute sufficient notice of such change or variation to any person dealing with the property subject thereto.

#### **47. Restriction on disposal of property charged or mortgaged to a society.**

(1)Notwithstanding anything in any law for the time being in force, a member who has availed himself of financial assistance from a society by creating a charge or mortgage on land or interest therein, shall not, so long as the financial assistance continues to be outstanding, lease, transfer or create any encumbrance on such land or interest therein without prior permission in writing of the society in whose favour such charge or mortgage is created.(2)Any lease or transfer or encumbrance created in contravention of this section shall be void.(3)Nothing contained in any law relating to ceiling on agricultural holdings shall apply to the acquisition of land by a society charged or mortgaged to it as security for a loan.

#### **48. Charge and set off of shares or interest of a member.**

- A society shall have a charge upon the share or contribution or interest in the capital and on the deposits of a member or past member, or deceased member and upon any dividend, or profits payable to a member or past member or the estate of a deceased member, in respect of any debt or outstanding demand owing to the society, and may set off any sum credited or payable to a member or past member or the estate of deceased member in or towards payment of any such debt.



#### **49. Shares, interest etc, not liable to attachments.**

- Subject to the provisions of section 48 the share or contribution or interest of a member to past member or deceased member in the capital of a society shall not be liable to attachment or sale under any decree or order of any court in respect of any debt or liability incurred by such member and any receiver appointed under any law relating to insolvency for the time being in force shall not be entitled to or have any claim on such share or contribution or interest.

#### **50. Register of members.**

- Every society shall keep and maintain a register or list of members or shares of the society which shall be prima facie evidence of the following particulars entered therein;(a)the date' on which any person entered in such register or list became a member;(b)the date on which any such person ceased to be a member.

#### **51. Admissibility of copy of entry as evidence.**

(1)A copy of any entry in the books of a society which are maintained in the ordinary course of business shall, if certified in the manner as may be prescribed, be received in any suit or legal proceedings 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 to the same extent as the original entry.(2)No officer of a society and no officer in whose office the books of a society are deposited after liquidation shall, in any legal proceedings to which the society or the liquidator is not a party, be compelled to produce any of the society's books or documents the contents of which can be proved under this section, or to appear as a witness to prove the matters, transactions and accounts therein recorded, except under order of the court, tribunal or the arbitrator made for special cause.

#### **52. Exemption from compulsory registration of instruments.**

- No provision relating to registration of documents contained in any law for the time being in force apply to -(1)any instrument relating to shares in a society notwithstanding that the assets of the society consist in whole or in part of immovable property; or(2)any debenture or bond 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 entitles the holder thereof to the security afforded by a registered instrument whereby the society has mortgage 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 bonds; or(3)any endorsement, upon or transfer of any debenture or bond issued by any such society.

### **53. Exemption from certain taxes, fees and duties.**

(1)The Government may, by notification in the Official Gazette, remit in respect of any class of societies(a)the stamp duty chargeable under any law for the time being in force in respect of any instrument executed by or on behalf of a society or by an officer or member thereof and relating to the business of such society or any class of such instruments or in respect of any award or order made under this Act, in cases, where, but for such remission the society, officer or member as the case may be, would be liable to pay such stamp duty;(b)any fee payable under any law for the time being in force relating to the registration of documents or court fee.(2)The Government may, by notification, exempt any class of societies from-(a)land revenue;(b)taxes on agricultural income;(c)taxes on sale or purchase of goods; and(d)taxes on professions, trades, callings and employments.

### **54. Deduction from, salary to meet societies claim in certain cases.**

(1)Notwithstanding anything contained in any law for the time being in force, a member of a society may execute an agreement in favour of the society providing that his employer shall be competent to deduct- from the salary or wages payable to him by the employer, such amount as may be specified in the agreement and to pay the amount so deducted to the society in satisfaction of any debt or other demand owing by the member to the society.(2)On the execution of such agreement, the employer shall, if so required by the society by a requisition in writing and so long the society does not intimate that the whole of such debt or demand has been paid, made the deduction in accordance with the agreement and pay the amount so deducted to the society within seven days of such deduction. Such payment shall be valid discharge of the employer of his liability to pay the amount so deducted and paid to the society.(3)If after the receipt of II requisition made under subsection (2), the employer at any time fails to deduct the amount specified in the requisition from the salary or wages payable to the member concerned or makes default in remitting to the society the amount so deducted, the society shall be entitled to recover any such amount from the employer as arrears of land revenue.(4)Nothing contained in this section shall apply to establishment (under the Railway administration operating any railway as defined in clause (20) of article 366 of the Constitution.

### **55. State aid to societies.**

- Notwithstanding anything contained in any law for the time being in force, the Government may(a)subscribe to the share capital of a society;(b)give loans or make advances to societies;(c)guarantee the repayment of principal and payment of interest on debentures or bonds issued by a society;(d)guarantee the repayment .of share capital of a society and dividends thereon at such rates as may be specified by the Government;(e)guarantee the repayment of principal and payment of interest on loans and advances to a society; and(f)give financial assistance in any other form, including subsidies, to any society.

## **56. Registrar's power to determine terms of employment in societies.**

(1)The Registrar may from time to time frame rules governing the terms of employment and working conditions of officers and employees in a society including the State Co-operative Bank or a class of societies and the society or the class of societies to which such terms of employment and of working conditions are applicable shall comply with the order that may be issued by the Registrar in this behalf:Provided that while prescribing the remuneration of the officers and other employees of the State Co-operative Bank, the Registrar shall have due regard to the salary structure of the employees of the Government and the local authorities of comparable level and status in the State.(2)Where a dispute regarding term of employment, working conditions and disciplinary action taken by a society, arises between a society and its employees, the Registrar or any officer appointed by him shall decide the dispute and his decision shall be binding on the society and its employees:

## **57. Funds not to be divided by way of profit.**

- No part of the funds of a society shall be divided by way of bonus or dividend or otherwise among its members:Provided that after at least one-fourth of the net profit in the year has been transferred to the reserve fund, payments from the remainder of such profits and from any profits' of past years, if any, available may be made to the members by way of dividend or bonus to such extent and subject to such conditions as may be prescribed by the rules or bye-laws.

## **58. Contribution to charitable purpose.**

- A society may, with the sanction of the Registrar and after one-fourth of the net profits of the year has been transferred to the reserve fund, contribute an amount not exceeding five per cent 'of the remaining net profits to any purpose connected with the development of co-operative movement or charitable purpose as defined in section 20 of the charitable Endowments Act, 1890 (6 of 1890).

## **59. Contribution to Cooperative Education Fund.**

- A society shall, out of its net profit's in any year, contribute such portion of the profits not exceeding five per cent as may be prescribed to the Co-operative Education Fund constituted under the rules.

## **60. Investment of funds.**

(1)A society may invest or deposit its fund(a)in the post office savings bank;(b)in any of the securities specified in section 20 of the Indian Trusts Act, 1882 (2 of 1882);(c)in the shares or debentures or securities of any other society; or(d)with the financing bank; or(e)with any society or bank carrying on the business of banking as may be approved by the Registrar; or(f)in the bonds issued by itself; or(g)in any other mode permitted by the rules or by the Registrar.

## **61. Restrictions on loans.**

(1)A society shall not make a loan to any person other than a member:Provided that with the general or special sanction of the Registrar a society may make loan to another society:Provided further that a society may make such loans as maybe specified in the bye-laws to any of its paid employees.(2)Notwithstanding anything contained in sub section (1) a society may make a loan to depositor on the security of his deposit.

## **62. Restrictions on borrowings.**

- A society shall receive deposits and loans only to such extent and under such conditions as may be prescribed or as may be specified in the bye-laws.

## **63. Restrictions on other transactions with non members.**

- Save as provided in sections 61 and 62 the transactions of a society with any person other than a member shall be subject to such prohibitions or restrictions, as may be prescribed.

# **Chapter VII**

## **Audit, Enquiry, Inspection and Surcharge**

### **64. Audit.**

(1)The Registrar shall audit or cause to be audited by a person authorised by him by general or special order in writing in this behalf, the accounts of every society at least once in each co-operative year.(2)The audit under sub-section (1) shall include an examination of overdue debt, if any, the verification of the cash balance and securities, and a valuation of the assets and liabilities of the society,(3)The person auditing the accounts of a society shall have free access to the books, accounts, papers, vouchers, stock and other property of such society and shall be allowed to verify its cash balance and securities,(4)The directors, managers, administrators and other officers of the society shall furnish to the person auditing the accounts of a society all such information as to the society's transactions and working as such person may require.(5)The Registrar or the person authorised by him under Sub-section (1) to audit the accounts of a society shall have power, where necessary(a)to summon at the time of his audit any officer, agent, servant or member of the society, past or present, who he has reason to believe can give valuable information in regard to transactions of the society or the management of its affairs; and(b)to require the production of any book or document relating to the affairs of, or any cash securities belonging to, the society 'by any officer, agent, servant, or member in possession of such books, documents, cash or securities and in the event of serious irregularities discovered during audit,. to take them into custody.(6)If at the time of audit the accounts of a society are not complete, the Registrar or person authorised by him under sub-section (1) to audit may cause the accounts to be written up at the expense of the society.(7)Audit fee, if any, due from any society shall be recoverable in the same manner as is

provided in section 85.

## **65. Inspection of societies.**

- The Registrar, or any person authorised by general or special order in this behalf by him, may inspect a society, For the purpose of inspection, the Registrar or the person so authorised by him, shall at all times have access to all books accounts, papers, vouchers, securities, stock and other property of the society and may, in the event of serious irregularities discovered during inspection, take them into custody and shall have power to verify the cash balance of the society and to call a committee meeting or a general meeting as he may deem necessary in the circumstances Every officer or a member of the society shall furnish such information with regard to the working of the society as the Registrar or the person making such inspection may require.

## **66. Enquiry by Registrar.**

(1)The Registrar may of his own motion or on application .of a majority of the members of the committee or of not less than one-third of the members of the society, hold an enquiry or direct a person authorised by him by order in writing in this behalf to hold an enquiry into the constitution, working and financial condition of a society.(2)The Registrar or the person authorised by him under sub-section (1) shall have the following powers, namely:(a)he shall at all time have, far purpose of examination, free access to the books, accounts, cash and other properties belonging to or in the custody of the society and may summon any person in possession ,or responsible far the custody of any such books, accounts, documents, securities, cash or other properties to produce the same, at any place specified by, him.(b)he may, notwithstanding any rule or, bye-laws specifying the period, of Notice for a general meeting of the society require the officers of the society to call a general meeting at such time and place at the headquarters of the society to consider such matters, as may be directed by him ; and where the officers of the society refuse or fail to call such a meeting he shall have power to call it himself;(c)he may summon any person who is reasonably believed by him to have any knowledge of the affairs of the society to appear before him at any place at the headquarters of the society or any branch thereof and may examine such person on oath.(3)Any meeting called under clause (b) of sub-section (2) shall have the powers of a general meeting called under the bye-laws of the society and its proceedings shall be regulated by such bye-laws.(4)The Registrar shall communicate a brief summary of the report of the enquiry to the society, the State Co-operative Bank or a federal society to which the society is affiliated, and to the person or authority, if any, at whose instance the enquiry is made.

## **67. Inspection of books of Indebted Societies.**

(1)The Registrar shall, on the application of a creditor of a society, inspect or direct some person authorised; by, him, by order in writing in this behalf to inspect the books of 'the society:Provided that no such inspection shall be made unless the applicant(a)satisfies the Registrar that the debt is a sum then due, and that he was demanded payment thereof and has not received satisfaction within a reasonable time; and(b)deposit with the Registrar such sum as security for the cost of proposed inspection as the Registrar may require.(2)The Registrar shall communicate the result of any such

inspection to the creditor.

## **68. Costs of enquiry.**

- Where an enquiry is held under section 66, or an inspection is made under section 67, the Registrar may apportion the costs, or such of the costs, as he may think fit, between the society, the members or creditors demanding an enquiry or, inspection, and the officers or former officers and the members or past members of the society as the case may be: Provided, however, that, (a) no order of the apportionment of the costs, shall be made under this section unless the society or the person liable to pay the costs there under has had a reasonable opportunity of being heard; and (b) the Registrar shall state in writing the manner in which the costs are apportioned. '

## **69. Recovery of costs.**

- Any sum awarded by way of costs under section 68 may be recovered, on application to, a magistrate having jurisdiction in the place where the person from whom the money is claimable, actually and voluntarily resides or carries on business, and such magistrate shall recover the same as if it were a fine imposed by himself.

## **70. Surcharge.**

(1) Where in the course of an audit, enquiry, inspection, or winding up of the society, it is found that any person who is or was entrusted with the organisation or management of such society or who is or has at any time been an officer or an employee of the society; has made any payment contrary to this Act, the rules or the bye-laws or has caused any deficiency in the assets of the society by breach of trust or willfully default or negligence or has misappropriated or fraudulently retained, any money or other property belonging to such society, the Registrar may, of his own motion or on the application of the committee, liquidator or any creditor, enquire himself or cause an enquiry to be made by any person authorised by him, by an order in writing in this behalf. (2) Where an enquiry is made under sub-section (1), the Registrar or the person authorised by him may, after giving the person concerned an opportunity of being heard, make an order, requiring him to repay or restore the money or property or any part thereof, with interest at such rate, or to pay contribution and costs or compensation to such extent, as the Registrar or the person authorised by him may consider just and proper.

## **71. Suspension of officer or employee of society.**

(1) Where in the course of an audit under section 64 or an enquiry under section 66 or an inspection under section 65, or section 67, it is brought to the notice of the Registrar that a paid officer or employee of the society has committed or has been otherwise responsible for misappropriation, breach of trust or other offence, in relation to the society, the Registrar may, if he is satisfied that there is prima facie evidence against such paid officer or employee and the suspension of such paid officer or employee is necessary in the interest of the society, direct the committee of the society,

pending the investigation and disposal of the matter, to place or cause to be placed such paid officer or employee under suspension from such date and for such period as may be specified by him.(2)On receipt of a direction from the Registrar under sub-section (1), the committee of the registered society shall, notwithstanding any provision to the contrary in the bye-laws, place or cause to be placed such paid officer or employee under suspension forthwith.(3)The Registrar may direct the committee to extend from time to time, the period of suspension and the paid officer or employee suspended shall not be reinstated except with the previous sanction of the Registrar.

## Chapter VIII

### Settlement of Disputes

#### 72. Disputes which may be referred to arbitration.

(1)Notwithstanding anything contained in any law for the time being in force, if any dispute touching the constitution, management or the business of a society arises:(a)among members, past members and persons claiming through members, past members and deceased members, or(b)between a member, past member or person. claiming through a member, past member or deceased member and the society, its committee or any officer, agent or employee of the society past or present, or(c)between the society or its committee and any past committee, any officer, agent or employee, or any past officer, past agent or past employee or the nominee, heirs or legal representatives of any deceased officer, deceased agent, or deceased employee of the society, or(d)between the society and any other society, between a society and liquidator of another society or between the liquidator of one society and the liquidator of another society, or(e)between the society and a person other than member of the society who has been granted a loan by the society or with whom the society has or had business transactions or any person claiming through such a person; or(f)between the society and a creditor of the society, such disputes shall be referred to the Registrar for decision and no court shall have jurisdiction to entertain any suit or other proceedings in respect of such dispute.(2)For the purpose of sub-section (1), the following shall be deemed to be disputes touching the constitution, management or the business of a society namely:(a)a claim by the society for any debt or demand due to it from a member or the nominee, heirs or legal representatives of a deceased member, whether such debt or demand be admitted or not;(b)a claim by a surety against the principal debtor where the society has recovered from the surety any amount in respect of any debt or demand due to it from the principal debtor as a result of the default of the principal debtor whether such debt or demand is admitted or not;(c)any dispute arising in connection with the election of any officer of a society;(d)a claim by a society against a member, past member or the nominee, heir or legal representative of a deceased member for delivery of possession to the society of land or other immovable property resumed by it for breach of the conditions of assignment or allotment of such land or other immovable property.(3)If any question arises whether a dispute referred to the Registrar under this section is or is not a dispute touching the constitution, management or the business of a society, the decision thereon of the Registrar shall be final and shall not be called in question in any court.(4)(a)Notwithstanding anything contained in any law for the time being in force providing for any period of limitation for suits and other proceedings but subject to the specific provisions made in this Act, the period of limitation within

which the dispute shall be referred to the Registrar under sub-section (1) shall -(i)when the dispute relates to the recovery of any sum including interest thereon due to a society by a member thereof, be computed from the date on which such member dies or ceases to be a member of the society;(ii)save as otherwise provided in sub-clause (iii), when the dispute relates to any act or omission on the part of any of the parties referred to in clause (b) or clause (c) of sub-section (1), be six years from the date on which the act or omission with reference to which the dispute arose, took place;(iii)when the dispute relates to a society which has been ordered to be wound up under section 75 or in respect of which an administrator has been appointed under section 39 be six years from the date of the order issued under section 75 or section 39 as the case may be;(iv)when the dispute is in respect of an election of an officer of a society other than a society referred to in sub-section (1) of section 34, be one month from the date of the declaration of the result of the election.(b)the period of limitation in the case of any other dispute except those mentioned in the foregoing clause which are required to be referred to the Registrar under the last preceding section shall be regulated by the provisions of the law for the time being in force providing for any period of limitation for suits and other proceedings, as if the dispute was a suit and the Registrar, a civil court.(c)Notwithstanding anything contained in clauses (a) and (b) the Registrar may admit a dispute after the expiry of the period of limitation, if the applicant satisfies the Registrar that he had sufficient cause for not referring the dispute within such period and the dispute so admitted shall be a dispute which shall not be barred on the ground that the period of limitation has expired.

### **73. Reference of dispute to arbitration.**

(1)The Registrar may, on receipt of the reference of dispute under section 72 -(a)decide the dispute himself, or(b)transfer it for disposal to any person who has been invested by the Government with powers of the Registrar in that behalf, or(c)refer it for disposal to one or more arbitrators to be appointed by the Registrar.(2)Where the reference relates to any dispute involving immovable property the Registrar or such person or arbitrator, may order that any person be joined as a party who has acquired any interest in such property subsequent to the acquisition of interest therein by a party to the reference and any decision that may be passed on the reference by the Registrar or the person or the arbitrator aforesaid, shall be binding on the party so joined as if he were an original party to the reference.(3)The Registrar may withdraw any reference transferred under clause (b) of sub-section (1) or referred under clause (c) of that subsection and decide it himself or refer the same to another arbitrator or such another person for decision.(4)The Registrar or such person or arbitrator to whom a dispute is referred for decision under this section may, pending the decision of the dispute, make such interlocutory orders he may deem necessary in the interest of justice.(5)The Registrar or such person shall decide the dispute or the arbitrator shall pass an award, in accordance with the provisions of the Act and the rules and the bye-laws.

### **74. Power of State Cooperative Bank to proceed.**

(1)If a society is unable to pay its debts to the State Co-operative Bank by reason of its members committing default in the payment of the moneys due by them, the State Co-operative Bank may direct the committee of such a society to proceed against such members under section 72 and if the committee fails to do so within a period of ninety days from the date of receipt of such direction, the



State Co-operative Bank itself may proceed against such members in which case the provisions of this Act, the rules or the bye-laws shall apply as if all reference to the society or its committee in the said provisions were references to the State Cooperative Bank.(2)Where the State Co-operative Bank has obtained a decision or award against a society in respect of moneys due to it from the society, the State Co-operative Bank may proceed to recover such moneys firstly from the assets of the society and secondly from the members to the extent of their debts due to the society.

## **Chapter IX**

### **Winding up of Societies**

#### **75. Winding up of Societies.**

(1)If the Registrar, after an enquiry has been held under section 66 or an inspection has been made under section 67, or on receipt of an application made by not less than three fourths of the members of a society, is of opinion that the society ought to be wound up, he may in consultation with the State Co-operative Bank issue an order directing it to be wound up.(2)The Registrar, may, of his own motion, make an order directing the winding up of a society(a)where it is a condition of the registration of the society that the society shall consist of at least ten members and the number of members has become less than ten, or(b)where the society has not commenced working within six months of its registration or such further time as may be granted by the Registrar or has ceased to function in accordance with co-operative principles.(3)The Registrar may cancel an order for the winding up of society, at any time, in any case, where, in his opinion, the society should continue to exist.(4)A copy of such order shall be communicated by registered post to the society and to the State Co-operative Bank of which the society is a member.

#### **76. Liquidator.**

(1)Where the Registrar has made an order under section 75 for the winding up of a society, the Registrar may appoint a liquidator for the purpose and fix his remuneration and may remove such person and appoint another in his place.:Provided that it shall not be necessary to appoint any liquidator for winding up of a society which has not commenced working, or has share capital and members' deposits not exceeding five hundred rupees.(2)A liquidator shall, on appointment, take into his custody or under his control all the property, effects and actionable claims to which the society is or appears to be entitled and all books, records and other documents pertaining to the business of the society and shall take such steps as he may deem necessary or expedient, to prevent loss or deterioration of, or damage to, such property, effects and claims. He may carry on the business of the society so far as may be necessary with the previous approval of the Registrar.(3)Where an appeal is preferred under section 98, an order of winding up of a society made under section 75 shall not operate thereafter until the order is confirmed in appeal:Provided that the liquidator shall continue to have custody or control of the property, effects and actionable claims mentioned in subsection (2) and have authority to take the steps referred to in that subsection.(4)Where an order of winding up of a society is set aside in appeal, the property, effects and actionable claims of the society shall revert in the society.

## 77. Powers of Liquidator.

(1) Subject to any rules made in this behalf, the whole of the assets of a society, in respect of which an order for winding up has been made, shall vest in the liquidator appointed under section 76 from the date on which the order takes effect and the liquidator shall have power to realise such assets by sale or otherwise. (2) Such liquidator shall also have power, subject to the control of the Registrar (a) to institute and defend suits and other legal proceedings on behalf of the society in the name of his office; (b) to determine from time to time the contribution (including debts due and costs of liquidation) to be made or remaining to be made by the members or past members or by the estates or nominees, heirs or legal representatives of deceased members by or any officers or former officers, to the assets of the society; (c) to investigate all claims against the society and subject to the provisions of this Act, to decide questions of priority arising between claimants; (d) to pay claims against the society including interest up to the date of winding up according to their respective priorities, if any, in full or rate ably, as the assets of the society may permit; the surplus, if any, remaining after payment of the claims being applied in payment of interest from the date of such order of winding up at a rate fixed by him but not exceeding the contract rate in any case; (e) to determine by what persons and in what proportions the cost of the liquidation are to be borne; (f) to determine whether any person is a member, past member or nominee of deceased member; (g) to give such directions in regard to the collection and distribution of the assets of the society as may appear to him to be necessary for winding up the affairs of the society; (h) to carry on the business of the society so far as may be necessary for the beneficial winding up of the same; (i) to make any compromise or arrangement with creditors or persons claiming to be creditors or having or alleging to have any claim, presently or future, whereby the society rendered liable; (j) to make any compromise or arrangement with any person between whom and the society there exists any dispute and to refer any such dispute to arbitration; (k) after consulting the members of the society to dispose of the surplus if any, remaining after paying the claims against the society in the manner prescribed; and (l) to compromise all calls of liabilities to calls and debts and liabilities capable of resulting in debts, and all claims, present or future, certain or contingent, subsisting or supposed to subsist between the society and a contributory or alleged contributory or other debtor or person and all questions in any way relating to or affecting the assets or the winding up of the society on such terms as may be agreed and take any security for the discharge of any such call, liability, debt for claim and give a complete discharge in respect thereof. (3) When the affairs of a society have been wound up, the liquidator shall make a report to the Registrar and deposit the records of the society in such place as the Registrar may direct.

## 78. Priority of contributions assessed by liquidator.

- Notwithstanding anything contained in any law relating to insolvency as may for the time being in force, the contribution assessed by a liquidator shall rank in order of priority next to debt due to the Government or to any local authority in solvency proceedings.

## **79. Powers of Registrar to cancel registration of a co-operative society.**

(1)The Registrar may, after considering the report of the liquidator made to him under sub-section (3) of section 77 order the registration of the society to be cancelled.(2)An order passed under sub-section (1) shall be communicated by registered post to the president of the society and to the federal society, if any, and to the State Co-operative Bank, of which the society was a member.

## **Chapter X**

### **Execution of awards, decrees, orders and decisions**

#### **80. Enforcement of charge.**

- Notwithstanding anything contained in Chapter VIII or any other law for the time being in force, but without prejudice to any other mode of recovery provided in this Act, the Registrar or any person subordinate to him empowered by the Registrar in this behalf may, on the application of a society, make an order directing the payment of any debt or outstanding demand due to the society by any member or past or deceased member, by sale of the property or any interest therein which is subject to a charge under section 42:Provided that no order shall be made under this section unless the member, past member or the nominee, heir or legal representative of the deceased member, has been served with a notice in the manner prescribed and has failed to pay the debt or outstanding demand within the time specified in the notice which shall not be less than thirty days.

#### **81. Execution of orders etc.**

- Every decision, award or order duly passed by the Registrar or arbitrator under section 32, section 33, 70, section 73, section 80 or section 98 shall, if not, carried out(a)where the recovery of money, be time being in force revenues: decision, award or order provides for the be executed according to the law for the relating to the recovery of the land Provided that an application for the recovery of any sum in the manner aforesaid accompanied by a certificate signed by the Registrar or any person subordinate to him and empowered by the Registrar in this behalf shall be made to the competent revenue authority that may be prescribed within twelve years from the date of the order; and(b)in any other case be executed by the Registrar or any person subordinate to him and empowered by the Registrar in this behalf by attachment and sale or sale without attachment of any property of the person or society against whom the order, decision or award has been obtained or passed.

#### **82. Execution of orders of liquidator.**

- The orders of the liquidator under section 77 shall be executed in accordance with the Act and rules for the time being in force for the recovery of arrears of land revenue.

### **83. Attachment before award.**

- Where the Registrar 'is satisfied that a party to any reference made to him under section 72 with intent to defeat or delay the execution of any decision that may be passed thereon is about to(a)dispose of the whole or any part of the property; or(b)remove the whole or any part of the property from the local limits of the jurisdiction of Registrar, the Registrar may unless adequate security is furnished, direct attachment of the said property or such part thereof as he thinks necessary. Such attachment shall have the same effect as if made by a competent civil court:Provided that the powers of the Registrar under this section shall not be delegated to any officer below such rank as may be prescribed:Provided further that immovable property shall not be sold in execution of a decree unless such property has been previously attached:Provided further that where the decree has been obtained on the basis of a mortgage of such property, it shall not be necessary to attach it.

### **84. Registrar or person empowered by him 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 sale without attachment of any property, or when passing any orders on any application made to him for such recovery to be a civil court for the purposes of any law relating to limitation.

### **85. Recovery of sums due to Government.**

(1)All sums due from a society, or from an officer or member or past member of a society as such, to Government, including any costs awarded to Government under any provision of this Act, may, on a certificate issued by the Registrar in this behalf, be recovered in the same manner as arrears of land revenue.(2)Sums due from a society to Government and recoverable under sub-section (1), may be recovered, firstly from the property of the society; secondly, in the case of a society the liability of the members of which is limited, from the members, past members or the estates of deceased members, subject to the limit of their liability and thirdly, in the case of other societies, from the members, past members or the estates of the deceased members:Provided that the liability of past members and the estates of deceased members shall in all cases be subject to the provisions of section 29.

## **Chapter XI**

### **State Co-operative Bank**

### **86. Applicability of Chapter.**

- Notwithstanding anything contained to the contrary in this Act or rules, the provisions of this Chapter shall apply to the State-Co-operative Bank that may be registered in the State under' this Act.

## **87. Registration of State Co-operative Bank.**

- Notwithstanding anything contained in this Act, a society shall not be registered as the State Co-operative Bank unless the application for registration thereof is signed by at least 10 persons of whom one shall be the Government and the rest shall consist of not less than 5 societies.

## **88. Business which the State Co-operative Bank may transact.**

- It shall be lawful for the State Co-operative Bank to carry on all or any of the following business viz.:(1)to do banking business as defined in Clause (b) of 'section 5 and section 6 (1) read with section 56 of the Banking Regulation Act, 1949 or any other law for the time being in force and in general to carry on and discharge such functions and business as are usually undertaken by banks or banker's;(2)to serve as an apex bank for the co-operative societies and 'to provide all types of financial accommodation, including short, medium and long-term loans for all kinds of economic activities, including agriculture and allied activities, industry, trade and commerce, to Cooperative societies as well as to other persons including firms, companies or other corporate bodies;(3)to act as an agent of the Reserve Bank in the matter of operating currency chests on such terms and conditions as may be mutually agreed upon; and(4)to open branches, pay offices or regional offices in any part of the State of Sikkim or outside Sikkim with the previous sanction of the Registrar.

## **89. Government Share Capital.**

- The Government shall contribute not less than 51 per cent of the total issued capital of the State Co-operative Bank.

## **90. Committee.**

- The Committee of the State Co-operative Bank shall consist of 9 members of whom 3 shall be nominated by the Government, 3 shall be representatives of societies, 2 shall be representative of members other than societies to be elected or nominated as per the bye-laws of the Bank, and one Managing Director to be appointed by the Government in consultation with the Reserve Bank:Provided that the initial committee shall be entirely nominated by the Government for a period of 3 years or such other extended period as may be decided by the Government.

## **91. Taking over the business of the State Bank of Sikkim.**

- The State Co-'Operative Bank may at any time acquire in whole or in part' the business of the State Bank of Sikkim established, under the State Bank of Sikkim Proclamation, 1968, as may ,be provided by Central Government by law.

## **92. Issue of bonds.**

(1)the' State Co-operative Bank may with the prior approval of the Government, and subject to such terms and conditions as the Government may deem fit to impose, borrow money by issue of bonds.(2)The bonds shall be in the Form of promissory note and shall not be repayable before the expiry of five years from the date of issue thereof:.,Provided that the committee may repay the amount due under the bonds at any time before the date so fixed, after issue of notice in such manner as the committee may direct in that behalf to the holders of the bonds.

## **93. Guarantee by Government of principal of and interest on the bonds.**

(1)The principal of and interest on the bonds issued under section 92 shall, subject to such maximum amount as may be fixed by the Government and subject to such conditions as the Government may think fit to impose, carry the guarantee of the Government.(2)the Government may, subject to the provisions of any Act in that regard, increase the maximum amount of any guarantee given under subsection (I).(3)The Government may, after consulting the Committee,(a)by notification in the Official Gazette, and(b)by notice of not less then fourteen days in such of the important news papers in the State and in other States of India, as the Government may select in this behalf, withdraw any guarantee given by them or reduce the maximum amount thereof or modify the conditions, subject to which it was given:Provided that the withdrawal, reduction or modification of any guarantee under this sub-section shall not in any way affect the guarantee carried by any bonds issued prior to the date on which such withdrawal, reduction or modification takes effect.

## **94. Other Guarantee by Government.**

- Where the State Co-operative Bank or the primary agricultural credit society has given a long-term loan to a member for the improvement of any land in excess of the amount of the loan to which such member would be entitled on the basis of the value of the land as determined in accordance with the principles of valuation approved by the committee from time to time with the approval of the Registrar, the Government may guarantee for a specified period the repayment of the loan to the extent of the excess

## **95. Right of primary agricultural credit society or the State Co-operative Bank to pay prior debts to mortgagor.**

(1)Where a mortgage is executed in favour of a primary agricultural credit society or the State Co-operative Bank for payment of prior debts of the mortgagor, the society or the bank may, notwithstanding anything in any law for the time being in force relating to the transfer of properties, by notice in writing, require any person to whom any such debt is due, to receive payment of such debt or part thereof from the bank at its registered office within such period as may be specified in the notice.(2)Where any' such person fails 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: Provided that where there is a dispute as regards the amount of any such debt, the person to whom such debt is due shall be bound to receive payment of the amount offered by the primary agricultural credit society or the State Co-operative Bank, as the case may be, towards the debt but such receipt shall not prejudice the right, if any of such person to recover the balance claimed by him.

## **96. Power of the State Co-operative Bank to supervise.**

- The State Co-operative Bank may maintain general supervision over or inspect societies affiliated to or financed by it and take up the management of the societies on such terms and conditions as may be approved by the Registrar.

## **96A. Allotment of share and voting rights of the members of the State Co-operative Bank.**

(1) Subject to the provisions of section 89 allotment of shares to members of the State Co-operative Bank shall be governed by the provisions of its bye-law as approved by the Registrar. (2) The voting rights of members shall be proportionate to the shares held by each member.

## **Chapter X**

## **II Insured Co-operative Banks**

### **97. Insured Co-operative Bank.**

- Notwithstanding anything contained in this Act, in the case of an insured co-operative bank - (1) an order for the winding up, or an order sanctioning a scheme of compromise or arrangement or of amalgamation or reconstruction (including division or reorganisation), of the bank may be made only, with the previous sanction in writing of the Reserve Bank; (2) an order for the winding up of the bank shall be made by the Registrar if so required by the Reserve Bank in the circumstances referred to in section 13D of the Deposit Insurance Corporation Act, 1961 (47 of 1961); (3) if so required by the Reserve Bank in the public interest or for preventing the affairs of the bank being conducted in a manner detrimental to the interests of the depositors or for securing the proper management of the bank, an order shall be made for the super session (removal) of the committee or other managing body (by whatever name called) of the bank and the appointment of an administrator therefor for such period or periods, not exceeding five years in the aggregate, as may from time to time be specified by the Reserve Bank and the administrator so appointed shall, after the expiry of his term of office, continue in office until the day immediately preceding the date of the first meeting of the new committee; (4) no appeal, revision or review shall lie or be permissible against an order such as is referred to in clauses (1), (2) or (3) made with the previous sanction in writing or on the requisition of the Reserve Bank and such order or sanction shall not be liable to be called in question in any manner; (5) the liquidator of the insured co-operative bank or transferee bank, as the case may be, shall be under an obligation to repay to the Deposit Insurance Corporation in the circumstances,

to the extent and in the manner referred to in section 21 of that Act. Explanation. - (i) For the purposes of this section "a co-operative bank" means a bank as has been defined in the Deposit Insurance Corporation Act, 1961 (47 of 1961). (ii) "Insured co-operative bank" means a society which is an insured bank under the provisions of the Deposit Insurance Corporation Act, 1961 (47 of 1961). (iii) "Transferee bank" in relation to an insured co-operative bank means a co-operative bank (a) with which such insured co-operative bank is amalgamated, or (b) to which the assets and liabilities of such insured co-operative bank are transferred, or (c) into which such insured co-operative bank is divided or converted under the provisions of this Act. Chapter - XIII Appeals and Revision

## 98. Appeals.

- An appeal shall lie under this section against (a) an order of the Registrar made under sub-section (2) of section 8 refusing to register a society; (b) an order of the Registrar made under sub-section (4) of section 11 refusing to register an amendment of the bye-laws of a co-operative society; (c) a decision of a society other than a primary agricultural credit society, refusing to admit any person as a member of the society who is otherwise duly qualified for membership under the bye-laws of that society; (d) a decision of a society expelling any of its members; (e) an order of the Registrar removing the committee of a society made under section 39; (f) an order made by the Registrar under section 68 apportioning the cost of an enquiry held or an under section 66 inspection made under section 67; (g) any order of surcharge under section 70; (h) any decision or award made under section 73; (i) an order made by the Registrar under section 75 the winding up directing the winding up of a society; (j) any order made by the liquidator of a society in exercise of the powers conferred on him by section 77; (k) any order made under section 13. (2) (a) An appeal against any decision or order under sub-section (1), excepting those mentioned in clauses (c) and (d), shall be made to the Government within sixty days from the date of the decision or the order; and (b) the appeal against any decision of a society mentioned in clauses (c) and (d) of sub-section (1) shall be made to the Registrar within sixty days from the date of such decision; (3) No appeal shall lie under this section from decision or order made by the Registrar in appeal any; (4) The Government or the Registrar, to whom an appeal is made under sub-section (2) may call for and examine the record relating to the matter appealed, for the purpose of satisfying itself or himself as to the legality or propriety of any decision or order passed and if in any case it appears to the Government or the Registrar, as the case may be, that any such decision or order should be modified, annulled or reversed, the Government or the Registrar, as the case may be, may pass such order thereon as he may deem fit.

## 99. Revision.

- Subject to the provisions of section 97, the Government may on the application of a party to a reference, call for and examine the record of any proceedings in which no appeal lies to the Government under section 98 for the purpose of satisfying itself as to the legality and propriety of any decision or order passed and if in any case it shall appear to it that any such decision or order should be modified, annulled or revised, it may pass such order thereon as it may deem fit.



## 100. Interlocutory orders.

- Where an appeal is made under section 98 or where the Government calls for the record of a case under section 99, the appellate authority for the Government as the case may be, may, in order to meet the ends of justice make such interlocutory order, including an order of stay, pending the decision of the appeal or revision as such authority or Government may deem fit.

## Chapter XIV Offences and Penalties

### 101. Offences.

(1) No person, other than a society, shall carry on business under any name or title of which the word "co-operative" or its equivalent in any Indian language, is part, without the sanction of the Government. (2) Any person carrying on any trade or business in contravention of sub-section (1) shall be punished with a fine which may extend to two hundred rupees and in the case of a continuing offence with a fine of rupees 25 for each day on which the offence is continuing after conviction thereof. Provided always that nothing in this section shall apply to the use by any person or his successor in interest of any name or title under which he carried on his business with the word "co-operative" or its equivalent in any Indian language, at the date on which the Sikkim Co-operative Societies Act, 1955 came into operation. (3) Any member or past member or the nominee, heir, or legal representative of a deceased member of a society who contravenes the provisions of section 42 by disposing of any property in respect of which the society is entitled to have a first charge under that section or do any other act to the prejudice of such claim, shall be punishable with fine which may extend to two hundred rupees. (4) The committee of a society or an officer or member thereof willfully making a false return or furnishing false information, or any person willfully or without any reasonable excuse disobeying any summons, requisition or lawful written order issued under the provisions of this Act or willfully does not furnish any information required from him by a person authorized in this behalf under the provisions of this Act, shall be punishable with fine which may extend to two hundred rupees. (5) Any employer, who, without sufficient cause, fails to deduct or fails to pay to a society the amount deducted by him under sub-section (2) of section 54 within a period of seven days from the date on which such deduction is made shall be punishable with fine which may extend to five hundred rupees and in the case of a continuing default with a further fine of Rs. 25 for each day on which the offence continues after conviction thereof. (6) If default is made in complying with provisions of section 28, sub-section (1) of section 33, section 57, section 60, Section 61, section 62, the society, and every officer or member of committee of the society who is default shall be punishable with fine which may extend to two hundred rupees. (7) If any person - (i) after ceasing to be a member under sub-section (2) of section 25 acts as a member; or (ii) exercises the rights of member in contravention of the provisions of section 25 shall be punishable with fine which may extend to two hundred rupees. (8) If any person collecting the share money for a society in formation does not deposit the same in the State Co-operative Bank within fourteen days of its receipt, he shall be punishable with fine which may extend to five hundred rupees. (9) If any person collecting the share money for a society in formation

makes use of the funds so raised for conducting any trade or business in the name of the society to be registered or otherwise, he shall be punishable with fine which may extend to five hundred rupees.(10)If any officer or member of a society misappropriates or unauthorizedly or illegally keeps any money belonging to that society he shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

## **102. Offences by companies.**

- Where an offence under sub-section (1) or sub-section (4) of section 101 has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:Provided that nothing contained in this section shall render any such person liable to any punishment provided in the aforesaid sub-section if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence:Provided further that if it is proved that the offence has been committed by the consent or connivance of or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.Explanation. - For the purposes of this section(a)"company" means a body corporate, and includes a firm or other association of individuals; and(b)director" in relation to firm means a partner of the firm.

## **103. Cognisance of Offences.**

(1)No court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence under this Act.(2)No prosecution shall be instituted under this Act without the previous sanction of the Registrar and such sanction shall not be. given.(i)without giving to the person concerned an opportunity to represent his case;(ii)if the Registrar is satisfied that the person concerned acted in good faith.

## **Chapter XV Miscellaneous**

### **104. Address of society.**

- Every society shall have an address registered in accordance with the rules to which all notices and communications may be sent and shall send to the Registrar notice of any change thereof within thirty days of the change.

### **105. Copy of the Act, Rules and bye-laws to be open to inspection.**

- Every society shall keep a copy of this Act, the rules and its bye-laws open to inspection free of charge at all reasonable times at the registered address of the society.

### **106. Orders to be pronounced.**

- Every order, decision or award made or given by the Registrar, or any officer or other person or a liquidator, under this Act, shall be pronounced on the day on which the case is finally heard or on some future day of which due notice shall be given to the parties.

### **107. Procedure for settlement of disputes and power of the Registrar or any other person to whom a dispute is referred or an appeal is made for decision.**

(1)The Registrar or any other person to whom a dispute is referred for decision or an appeal is made against any order or decision made under this Act, shall hear the dispute or the appeal in the manner prescribed, and shall have power to summon and enforce attendance of witnesses including the parties interested or any of them and to compel them to give evidence on oath, affirmation or affidavit, and to compel the production of documents by the same means and as far as possible in the same manner, as is provided in the case of a civil court by' the Code of Civil Procedure, 1908.(2)except with the permission of the Registrar or any other person deciding" a dispute, as the case may be, no party shall be represented at the hearing of a' dispute by a legal practitioner.(3)(a)If the Registrar or any other person to whom a dispute is referred is satisfied that a person, whether he' be a member of the society or not, has acquired any interest in the property of a person who is a party to a dispute he may order that the person who has acquired the interest in the property may join as a party to the dispute; and any decision, order or award that may be passed by the Registrar or his nominee or any other person shall be binding on the party so joined, in the same manner as if he were an original party to the dispute.(b)Where a dispute has been instituted in the name of a wrong person, or where all the defendants have not been included, the Registrar or any other person to whom a dispute is referred for decision under section 72 may at any stage of the hearing of the dispute, if satisfied that the mistake was bonafide, order substitution of parties upon such terms as he may think just.(c)The Registrar or any other person, to whom a dispute is referred for decision under section 72, may at any stage of the proceedings, either upon or without the application of any party, and on such terms. as may appear to the Registrar or any other person deciding a dispute, as the case may be, to be just, order the removal of the name of any party improperly included in the dispute and substitution of the name of any person who ought to have been included in the dispute or whose presence before the Registrar, or any other person deciding the dispute, as the case may be, may be necessary for effectually and completely adjudicating upon and'; settling all the questions involved in the dispute.(d)Any person who is a party to the dispute and entitled to more than one relief in respect of the same cause of action may claim all or any or any of such relief's; but if he omits to claim for all such relief's he shall not forward a claim for any relief so omitted, except with the leave of the Registrar or any other person to whom a dispute is referred for decision.

## **108. Powers of civil court.**

(1) In exercising the function conferred by or under this Act, the Government, the Registrar, the arbitrator or other person deciding a dispute and the liquidator or an auditor of a society shall have all the powers of a civil court, while trying a suit, under the Code of Civil Procedure, 1908 (5 of 1908) in respect of the following matters namely: (a) summoning and enforcing the attendance of any person and examining him on oath; (b) requiring the discovery and production of any document; (c) proof of facts by affidavits; and (d) issuing commissions for examination of witness. (2) In the case of any affidavit, any officer appointed by the Government, the Registrar, the arbitrator or any other person deciding a dispute or the liquidator, or the auditor as the case may be, may administer the oath to the deponent.

## **109. Bar of jurisdiction of courts.**

(1) Save as provided in this Act, no civil or revenue court shall have any jurisdiction in respect of (a) the registration of a society or bye-laws or of an amendment of bye-laws; (b) the removal of a committee; (c) any dispute required under section 72 to be referred to the Registrar; or order for payment of moneys under 85. (2) While a society is being wound up, no suit or other legal proceeding relating to the business of such society shall be proceeded with, or instituted against the liquidator as such or against the society or any member thereof, except by leave of the Registrar and subject to such terms as he may impose. (3) Save as provided in this Act, no order, decision or award made under this Act shall be questioned in any court or on any ground whatsoever.

## **110. Application of limitation Act, 1963 (36 of 1963).**

- The provisions of sections 4, 5, 12 and 14 of the Limitation Act, 1963 shall be applicable to the filing of any appeal or application for revision under this Act.

## **111. Power to exempt class of societies.**

- The Government may, by general or special order, published in the Official Gazette, exempt any society or any class of societies from any of the provisions of this Act or may direct that such provisions shall apply to such society or class of societies with such modifications as may be specified in the order.

## **112. Service of notice under the Act.**

- Every notice or order issued or made under this Act, may be served on any person, by properly addressing it to the last known place of residence or business of such person prepaying and posting by registered post a letter containing the notice or order and unless the contrary is proved, such service shall be deemed to have been effected at the time at which the letter would be delivered in the ordinary course.

### **113. Notice necessary in suits.**

- No suit shall be instituted against a society or any of its officers in respect of any act touching the constitution, management, or the business of the society until the expiration of two months next after notice in writing has been delivered to the Registrar, or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left.

### **114. Indemnity.**

- No suit prosecution or other legal proceedings shall lie against the Registrar or any person subordinate to him or acting under his authority in respect of anything in good faith done or purporting to have been done under this Act.

### **115. Companies Act, 1956 not to apply.**

- The provisions of the Companies Act, 1956 shall not apply to societies.

### **116. Saving of existing societies.**

(1) Any society, which is existing as on the date of coming into force of this Act and which has been registered under the Sikkim Co-operative Societies Act, 1955 or under any other law relating to co-operative Societies in force in (1 of 1965) the State of Sikkim shall be deemed to have been registered under this Act and its bye-laws shall, so far as the same are not inconsistent with the express provisions of the Act, continue in force until altered or rescinded. (2) All appointments, rules and orders made, notifications and notices issued and suits and other proceedings instituted under the Sikkim Co-operative Societies Act, 1955 shall be deemed to have been respectively, made issued or instituted under this Act, unless duly revoked or cancelled.

### **117. Powers to make rules.**

(1) The Government may, for the whole or any part of the State of Sikkim and for any class of societies, after previous publication in the Gazette, make rules to, carry out the purposes of this Act. (2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all, or any of the following matters, namely: (a) the applicant to whom the order refusing the registration of a society may be sent by the Registrar; (b) the procedure and conditions for change in the form and extent of the liability of a society; (c) the matters in respect of which a society shall or may make bye-laws; (d) the procedure to be followed for amendment of bye-laws by a society; (e) the qualifications or disqualifications of individuals who may be admitted as members of societies; (f) the provisions for a, second or casting vote by the chairman of a meeting of a society; (g) the appointment by a society of one of its members to represent and vote on its behalf at a meeting of another society of which it is a member; (h) the maximum number of shares or portion of the share capital of a society which may be held by an individual member; (i) the procedure for the nomination of a person

to whom the share or interest of a member on his death may be transferred or the value thereof may be paid;(j)the mode in which the value of a deceased member's share shall be ascertained;(k)the election of members of committee by the general body of a society including the appointment of Returning Officers and the powers and functions of such Returning Officers;(l)the requisitioning of a general meeting of a society;(m)the remuneration payable to a new committee or Administrators appointed in place of a, committee removed by the Registrar;(n)the qualifications or disqualifications for membership of committee of a society, the authority competent to decide questions of disqualifications and appeals from such decisions;(o)the qualifications of employees of societies;(p)the prohibition against officers of a society being interested in contracts with the society;(q)the matters connected with Government in societies; the partnership of the Government with the society;(r)the rate at which dividend may be paid by societies;(s)the payment to be made to the 'Co-operative Education Fund' by a society out of its net profits and the mode of its investment;(t)the mode of investment of funds of a society;(u)the objects of the reserve fund of a society and mode of its investment;(v)the mode of disposal of reserve fund of a society on its winding up;(w)the extent and conditions subject to which a society may receive deposits and loans;(x)the restrictions on transactions by a society with non-members;(y)the restrictions on grant of loans by a society against its shares;(z)the form and standards of fluid resources to be maintained by societies accepting deposits and granting cash credits;(aa). the levy of audit fees on societies;(bb)the procedure to be followed in proceedings before the Registrar, arbitrator or other person deciding disputes;(cc)the conditions subject to which assets of a society shall vest in a liquidator and the procedure to be adopted in winding up of a society;(dd)the procedure for recovery of amounts due or payable to a society;(ee)the mode of. making attachment before judgements;(ff)the procedure and conditions for the issue, redemption, re-issue, transfer, replacement or conversion of bonds issued by a society;(gg)the maximum amount of principal, the rate of interest and other conditions for the guarantee of debentures/bonds issued by a society;(hh)the procedure for the distraint and sale of property, mortgaged to a primary agricultural credit society or to the State Co-operative Bank;(ii)the immediate sale of perishable articles;(jj)the manner of registering the address of a society:(kk)the account books and registers to be kept by a society and power of Registrar to direct the accounts and books to be written up;(ll)the manner of certification of entries in the books of a society and of copies of documents kept by it in the course of its business;(mm)the statements and returns to be furnished by societies to the Registrar;(nn)the restrictions on person appearing as legal practitioners;(oo)the inspection of documents and the levy of fees for granting certified copies thereof; and(pp)the matters expressly required or allowed by the Act to be prescribed.(3)Every rule made under this section shall immediately after it is made, be laid before the State Legislature if it is in session and if it is not in session, in the session immediately following for a total period of fourteen days which may be comprised in one session or in two successive sessions, and if, before the expiration of the session in which it is so laid or the session immediately following, the House agrees, in making any modification in the rules or in the annulment of the rules, the rules shall thereafter have effect only in such modified form or shall stand annulled, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

## **118. Repeal.**

- On the day on which this Act comes into force the Sikkim Cooperative Societies Act, 1955 as in force in the State of Sikkim shall stand repealed: Provided that the repeal shall not affect (a) the previous operation of the Act so repealed or anything duly done or suffered there under; or (b) any right, privilege, obligation or liability acquired, accrued or incurred under the Act so repealed; or (c) any penalty, forfeiture or punishment incurred in respect of any offence committed against the Act so repealed; or (d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if that Act had not been repealed.

## **119. Power to remove difficulties.**

(1) If any difficulty arises in giving effect to the provisions of this Act in consequence of the transition to the said provisions from the provisions of the Acts in force immediately before the commencement of this Act, the Government may, by notification in the Official Gazette, make such provisions as appear to it to be necessary or expedient for removing the difficulty. (2) If any difficulty arises in giving effect to the provisions of this Act (otherwise than in relation to the transition from the provisions of the Acts in force before the commencement of this Act), the Government may by notification make provisions, not inconsistent with the purpose of this Act, as appear to it to be necessary or expedient for removing the difficulty.