

**LEGAL FRAME WORK FOR
CO-OPERATIVES**

B.COM

V SEMESTER

CORE COURSE

(Specialization – Co-operation)

2011 ADMISSION



UNIVERSITY OF CALICUT

SCHOOL OF DISTANCE EDUCATION

CALICUT UNIVERSITY P.O. MALAPPURAM, KERALA, INDIA - 673 635

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Study Material

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LEGAL FRAME WORK FOR CO-OPERATIVES

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SYLLABUS

BC5B11 LEGAL FRAME WORK FOR CO-OPERATIVES

Lecture Hours per week: 5

Credits: 4

Objectives:

- To enable the students to acquire knowledge about cooperative laws
- To enable the students to understand the provisions of Kerala Co-operative Societies Act

Societies Act

Module - I

Need for legal Framework for Co-operatives-General and specific needs – Co-operative laws visa-a-vise Co-operative Principles – Structure and Functions of co-operative Department in Kerala.

10 Hours

Module - II

History of co-operative legislations in India - Co-operative Credit Societies Act 1904 – overview of important provisions – drawbacks – Co-operatives Societies Act 1912 – important provisions - Report of the committee on model Co-operatives Act 1991 – features of model act.

15 Hours

Module - III

Multi state co-operative societies act 2002 – reasons for enactment – important provisions- registration – amendment of byelaws, amalgamation and division, promotion of subsidiary organization – federal co-operatives-members- rights and liabilities, management – audit, winding up of societies.

15 Hours

Module - IV

History of co-operative legislation in Kerala – Important provisions of Kerala cooperative societies act 1969 – registration – amendment of byelaws, amalgamation and division – members of co-operative societies – rights and liabilities.

15 Hours

Module - V

Management of societies – general body – representative general body – election – super session – privileges of co-operative societies – state and co-operatives – properties and funds of co-operatives – disposal of net profit – co-operative education fund - Audit, Inquiry and supersession – Disputes – settlement of disputes - winding- up and cancellation of registration – Execution – Appeals – Revision and Review.

20 Hours

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Module 1

LEGAL FRAME WORK FOR CO-OPERATIVES

A legal frame work is very essential to regulate and administrate the plans and policies of a state effectively and efficiently. According to modern writers, law is a social as well as a moral science and that it is concerned with the behavior of human beings in society. People living in an organized society have to follow certain common rules.

According to Salmond, Law is the body of principle recognized and applied by the state in the administration of justice.

Various sources from which rules of Indian Law are derived are

1. Customs and usages
2. Writings of the great jurists
3. Judgment of the court
4. Foreign law
5. Statutes or Acts

NEED FOR LEGAL FRAME WORK FOR CO-OPERATIVES

Due to the following reasons well defined and clear cut legislation is needed for regulating and administering the formation, functioning and even winding up of the co-operative societies.

NEED FOR LEGAL FRAME WORK FOR CO-OPERATIVES – GENERAL

The mutual contract with person is a general phenomenon in an organized society. In each and every human activity there may be some transactions either in social, economical or political nature. All these transactions have to be regulated by certain well defined and written regulations or legislations. So the state will enact various Acts and Legislation to ensure the well being and smooth functioning of the people in the state.

Each and every one is supposed to follow such rules of the state. Nobody can be escaped from the proceedings of the law due to their lack of knowledge on the law of the state. There is a saying that ignorance of law is not an excuse before the law.

NEED FOR LEGAL FRAME WORK FOR CO-OPERATIVES – SPECIFIC

The economic positions of Indian villages were completely shattered during the period of British rule. Indians were exploited by exporting their rich raw materials and importing manufactured goods from Britain. So the Indian industries were set back and they gradually collapsed. The British people did not pay attentions to the problems the agriculturists. Consequently it was a period of money lenders who exploited the agriculturists by lending money at a higher rate of interest.

Amidst of these worst situations on the life of the Indians, the government took many initiatives. It was the need of the time to solve the problems of the farmers etc in India to ensure the economic and social development of the nation. The only solution was to pass certain regulations or to create a legal frame work for the same.

The government took certain immediate steps by passing the legislations Deccan Agricultural Relief Act of 1879, Land Improvement Loans Act of 1885 and Agricultural Loans Act of 1884 to solve these serious economic unrests. The last two laws are called as Taccavi Laws. These legislations were intended mainly to provide agricultural loans to the farmers directly from the government. But this was not so success to serve its basic purpose.

The Madras government deputed Sir Frederick Nicholson to Europe for studying the co-operative movement in 1892. In 1895, he submitted his report on which he strongly recommended the Raiffeisen type of co-operative societies. Later in 1901, the report of Famine Commission came out, which also recommended the starting of co-operative credit societies to tackle the problem of rural farmers. As a result in 1903 a bill was presented in the parliament and the first Co-operative Credit Societies Act was passed in 1904.

CO-OPERATIVE PRINCIPLES

The following are the principles recognized as the principles of co-operation

1. Open and Voluntary Membership
2. Democratic Member Control
3. Member Economic Participation
4. Autonomy and Independence
5. Co-operative Education, Training and Information
6. Co-operation among Co-operatives
7. Concern for Community

CO-OPERATIVE DEPARTMENT IN KERALA

The growth of Co-operative movement in Kerala was insignificant during pre-independent era. Through sustained efforts, co-operatives have made impressive progress in various segments of Indian economy particularly in agriculture credit disbursement, fertilizer distribution, procurement and distribution of agricultural commodities, promotion of consumer activities, health, dairy, fisheries, handloom, coir etc. Before the formation of State of Kerala, Co-operatives under the area were administered by the Travancore Co-operative Societies Act V of 1112(M.E), Cochin Co-operative Societies Act XXVI of 1113(M.E) and Madras Co-operative Societies Act 1932.

After the integration of Travancore and Cochin, Travancore-Cochin Co-operative Societies Act 1951 came into force with effect from 1.9.1952. After the formation of Kerala State, the Kerala Co-operative Societies Act of 1969 came into force with effect from 15.5.1969 in order to enact a uniform law on co-operation applicable throughout the State. Consequent on the introduction of Kerala Co-operative Societies Act 1969, Societies with unlimited liability ceased to exist and societies with limited liability came into existence. Thereafter Government of Kerala passed the Kerala Co-operative (Amendment) Act 1999 which came into force with effect from 1.1.2000

STRUCTURE OF CO-OPERATIVE DEPARTMENT IN KERALA

The Department of Co-operation is headed by the Registrar of Co-operative Societies. At the Headquarters, the Registrar of Co-operative societies is assisted by four Additional Registrars of co-operative societies, two Joint Registrars, one Law Officer and one finance officer and a Research Officer. One Additional Registrar of co-operative societies is in charge of Credit wing and the second Additional Registrar looks after Consumer wing, and the third Additional Registrar is in charge of General administration and matters in respect of Circle Co-operative unions and publicity, and the fourth Additional Registrar is in charge of co-operative Information Bureau and Integrated Co-operative Development Project (ICDP) respectively.

FUNCTIONS OF CO-OPERATIVE DEPARTMENT IN KERALA

The following are the major functions performed by the Co-operative Department in Kerala.

1. Establishment papers of Gazetted employees of Co-operation Department.
2. Papers relating to RUBCO, Rubber Mark, Consumer-fed, Welfare Fund Board, Co-operative Service Examination Board, Co-operative Employees Pension Board, Kerala State Co-operative Tribunal, Tourism Co-operatives.
3. Plan Schemes of Co-operative Department including Centrally Sponsored Scheme.
4. Farmers Co-operative Societies, farming Co-operative Societies, Urban Co-operative Societies and
5. other Societies of all Districts.
6. Establishment and all papers of Co-operative Urban Banks
7. General Miscellaneous papers and consolidation work relating to Co-operation Department.
8. Co-ordination of Papers on Right to Information Act.
9. Appeal/Revision Petition filed under Co-operative Societies Act and Rules (excluding SC/ST Societies) & of all Districts.
10. Pay Revision of primary Co-operative Societies.
11. Infrastructure Consortium.
12. Vaidyanathan Committee Report (long term
13. Purchase of equipment materials of Co-operative Department including general Purchases
14. SC/ST Development Co-operative Societies including Appeal/Revision Petitions.

Module 2

HISTORY OF CO-OPERATIVE LEGISLATIONS IN INDIA

The economic positions of Indian villages were completely shattered during the period of British rule. Indians were exploited by exporting their rich raw materials and importing manufactured goods from Britain. So the Indian industries were set back and they gradually collapsed. The British people did not pay attentions to the problems the agriculturists. Consequently it was a period of money lenders who exploited the agriculturists by lending money at a higher rate of interest.

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THE CO-OPERATIVE CREDIT SOCIETIES ACT 1904

The Co-operative Credit Societies Act 1904 was the first Co-operative Societies Act in India. The object of this Act was stated in the preamble as to encourage thrift, self help and co-operation amongst agriculturists, artisans and persons of limited means.

This Act contains only 29 sections. As per section 1, this Act was extended to the whole of British India. Section 2 states the definitions of some important terms. Section 3 is concerned with the constitution of societies.

As per the preamble, the objects of the Co-operative Credit Societies Act 1904 are as follows:

- (a) To encourage thrift, self help and co-operation amongst agriculturists, artisans and persons of limited means and
- (b) For the constitution and control of co-operative credit societies, this Act was enacted.

FEATURES OF THE CO-OPERATIVE CREDIT SOCIETIES ACT 1904

1. Society could be formed by any ten persons living in the same village or town
2. Societies were classified as rural and urban. The rural societies are having unlimited liability. In the case of urban societies the question of liability was left to their option.
3. The Act provided only for the formation of credit societies.
4. The co-operative credit societies in each province were to be under the control and administration of the Registrar of co-operative societies.
5. The chief aim of the society should be to raise funds by deposits from members as well as loans from non-members, government and other co-operative societies and to distribute these funds as loans to members or with permission of Registrar, to other co-operative credit societies.
6. Accounts of these societies must be audited by the Registrar.
7. 25% of the surplus should be allotted to reserve fund.
8. The societies should be exempted from stamp duty and registration fees.

9. The societies could advance loans to members only on personal or real security.
10. Societies were given a legal personality and were authorized to raise funds and carry on their business in a corporate capacity.

LIMITATIONS OF THE CO-OPERATIVE CREDIT SOCIETIES ACT 1904

In the beginning the Co-operative Credit Societies Act 1904 had made much progress in the formation of credit societies. But it suffered from the following drawbacks.

1. There is no provision in the Act for the organization of the societies other than the credit.
2. There was no provision for the formation of a central agency for financing primaries.
3. The classification of societies in the Act as rural and urban was found to be unscientific.
4. Fixing of liability unlimited for rural society and limited for urban society is illogical.

However the above defects of the Co-operative Credit Societies Act 1904 was remedied by the Co-operative Societies Act of 1912.

THE CO-OPERATIVE SOCIETIES ACT OF 1912

The Co-operative Credit Societies Act 1904 was found insufficient to cope with the expanding movement. The Act was an improvement over the Co-operative Credit Societies Act 1904. Under this Act any society creditor otherwise may be registered which has its objects, the promotion of the economic interests of its members in accordance with the co-operative principles. A federal society like the central bank could be registered. No member can have more than $\frac{1}{5}$ th of the total share capital or hold shares exceeding Rs. 1000 in such a society.

The following are the important provisions or features of the Co-operative Societies Act 1912:

1. Any society which aimed at the promotion of the economic interests of its members could be now established and registered.
2. Societies are classified on the basis of liability as limited and unlimited.
3. Local governments were permitted to use their discretion in making rules and bye-laws of the societies.
4. Co-operative societies were given priority in regard to the recovery of certain dues.
5. The societies were permitted to receive deposits and loans even from non-members.
6. Restrictions were imposed on the investments of society's funds.
7. A society could be inspected by the Registrar on a requisition by a creditor.
8. The Registrar was given wide powers of conducting an enquiry into the constitution, working and financial condition of a society.
9. The interest of the shares in co-operatives was exempted from attachment.
10. The term 'co-operative' could not be used as a part of the title or any business concern registered under the Act unless it was already doing business under that name before commencement of the Act.
11. In matters of liquidation and winding up of a society the Registrar was given wide powers.
12. The Act provided for the first time for the registration of Central Societies.
13. While the former Act prescribed that no member could hold shares worth more than Rs.1000 the new Act recommended that a member could hold shares with more than Rs.1000.

**DIFFERENCES BETWEEN THE CO-OPERATIVE CREDIT SOCIETIES ACT 1904
AND THE CO-OPERATIVE SOCIETIES ACT OF 1912**

Sl. No	Co-operative Credit Societies Act 1904	Co-operative Societies Act of 1912
1	It classified the societies into rural and urban.	It classified the societies on the basis of their liabilities into limited and unlimited.
2	It confined co-operative societies into primary credit societies only.	It provided for the first time for the registration of central societies.
3	It was silent about the utilization of profit.	It suggested that 25% of the net profit must be carried over to the reserve fund of the society.
4	No provision for organization of societies other than credit.	Provision for the registration of non-credit societies also.
5	No member could hold shares worth more than Rs.1000.	A member could hold shares worth more than Rs.1000.
6	Individual members are organizing a society.	A society can become a member of another society.
7	Audit must be done by the Registrar directly.	The audit may be conducted with the help of other persons entrusted.
8	No audit fee is charged.	Provision for charging audit fee.
9	Deposits can be received only from the members of the society.	Deposits and loans can be received even from non-members.

**MODEL CO-OPERATIVE SOCIETIES ACT (BRAHM PRAKASH COMMITTEE
MODEL)**

A committee was constituted under the chairmanship of Chaudheri Brahm by the planning commission to prepare a model co-operatives Act. The approach of the model Act is to give a genuine character to co-operatives and to build up an integrated co-operative structure which is more responsible and to minimize government control and political interferences.

The inclusion of co-operative principles and the basic ideology of co-operation are the special features of the Model Act. The procedure of registration is simplified and all artificial restrictions by way of area of operation, economic viability etc are removed. The Model Act gives no rule making power to the government. The Act also prohibits co-operatives from accepting funds from the government by way of equity. Board of directors has been made accountable for timely conduct of elections, regularly convening of meetings and timely audit. The Model Act gives no power to the Registrar or the government to issue orders to the following:

- (a) Supersession of the board
- (b) Compulsory amalgamation or division of societies
- (c) Compulsory amendment of the bye-law
- (d) Issue directives

Andhra Pradesh was the first state passed the new Act on the basis of the Model Act called as Andhra Pradesh Mutually Aided Co-operative Societies Act, 1995 on 4th May 1995 which is the milestone in the history of the Indian Co-operative movement.

The salient features of the Act are the following:

1. To rely on the co-operative principles of voluntary, self financing and autonomy and free from the state control.
2. To enable not less than ten individuals belonging to different families to form a company.
3. To enable the co-operative societies to regulate their functioning by framing bye-laws subject to the provisions of the Act
4. To enable the co-operative societies to mobilize their own funds.
5. To empower the co-operative societies to provide for the qualifications and disqualifications for membership.
6. To define the powers and functions of the general body.
7. To provide for proper accountability and for that purpose to conduct audit, enquiry and for the recovery of loss caused to the society by misconduct or otherwise.
8. To provided for the settlement of disputes by constituting a co-operative tribunal.
9. To define the powers and functions of a general body.
10. To make the co-operative societies responsible to conduct the elections and to regulate the process thereof.

The Role of the Registrar under the Model Act has been confined to the registration and liquidation of co-operatives, conduct of inquiry and in case of default to conduct elections, audit and to convene meeting of general body.

The Model Act prohibits co-operatives from accepting funds from the Government by way of equity.

To ensure the character of co-operative as a member user organization, special obligations have been imposed on members.

Board of Directors has been made accountable for timely conduct of elections, regular convening of meetings of the managing committee and the general body and for participation therein and for the timely conduct of the audit of the books of accounts.

Model Act prohibits officers of the Government to work in a co-operative.

The Model Act provides for the Constitution of Co-operative Tribunal for settlement of disputes including appeals on matters relating to constitution, management and business of a co-operative and to take cognizance of any offence under the Act.

Module 3

THE MULTI-STATE CO-OPERATIVE SOCIETIES ACT, 2002

The Multi-State Co-operative Societies Act, 2002 is an Act to consolidate and amend the law relating to co-operative societies, with objects not confined to one State and serving the interests of members in more than one State, to facilitate the voluntary formation and democratic functioning of co-operatives as people's institutions based on self-help and mutual aid and to enable them to promote their economic and social betterment and to provide functional autonomy and for matters connected therewith or incidental thereto. This Act was enacted by Parliament in the Fifty-third Year of the Republic of India and it extends to the whole of India.

This Act shall apply to -

(a) All co-operative societies, with objects not confined to one State which were incorporated before the commencement of this Act

(i) Under the Co-operative Societies Act, 1912 (2 of 1912), or

(ii) Under any other law relating to co-operative societies in force in any State or in pursuance of the Multi-unit Co-operative Societies Act, 1942 or the Multi-State Co-operative Societies Act, 1984 and the registration of which has not been cancelled before such commencement; and

(c) All multi-State co-operative societies.

(d)

REGISTRATION OF MULTI-STATE CO-OPERATIVE SOCIETIES

As per Section 5, Multi-state co-operative societies which may be registered

(1) No multi-state co-operative society shall be registered under this Act, unless,

(a) Its main objects are to serve the interests of members in more than one state; and

(b) Its bye-laws provide for social and economic betterment of its members through self-help and mutual aid in accordance with the co-operative principles.

(2) The word "limited" or its equivalent in any Indian language shall be suffixed to the name of every multi-state co-operative society registered under this Act with limited liability.

The Central Government may, as per Section 4, appoint a person to be the Central Registrar of Co-operative Societies and may appoint such other persons as it may think fit to assist the Central Registrar. The Central Government may, by notification, direct that any power exercisable by the Central Registrar under this Act (other than the power of registration of a multi state co-operative society) shall, in relation to such society, and such matters as may be specified in the notification, be exercisable also by any other officer of the Central Government or of a State Government as may be authorized by the Central Government subject to such conditions as may be specified therein. No officer of a state government shall be empowered to exercise such power in relation to a national co-operative society.

The following is the procedure for registration of a multi-state co-operative society under this Act.

I. APPLICATION - SECTION 6

For the purposes of registration of a multi-state co-operative society under this Act, an application shall be made to the Central Registrar in such form and with such particulars as may be prescribed. The application shall be signed

(a) In the case of a multi-state co-operative society of which all the members are individuals, by at least fifty persons from each of the state concerned

(b) in the case of a multi-state co-operative society of which the members are co-operative societies, by duly authorized representatives on behalf of at least five such societies as are not registered in the same state and

(c) in the case of a multi-state co-operative society of which another multi-state co-operative society and other co-operative societies are members, by duly authorised representatives of each of such societies: Not less than two of the co-operative societies referred to in this clause, shall be such as are not registered in the same state

(d) in the case of a multi-state co-operative society of which the members are co-operative societies or multi-state co-operative societies and individuals, by at least fifty persons, being individuals, from each of the two states or more; and one co-operative society each from two states or more or one multi-state co-operative society.

The application shall be accompanied by four copies of the proposed bye-laws of the multi-state co-operative society and the persons by whom or on whose behalf such application is made shall furnish such information in regard to the society as the Central Registrar may require.

II. REGISTRATION – SECTION 7

If the Central Registrar is satisfied

- (a) That the application complies with the provisions of this Act and the rules
- (b) That the proposed multi-state co-operative society satisfies the basic criterion that its objects are to serve the interests of members in more than one state
- (c) That its bye-laws provide for social and economic betterment of its members through self-help and mutual aid in accordance with the co-operative principles
- (d) That the proposed bye-laws are not contrary to the provision of this Act and the rules, he may register the multi-state co-operative society and its bye-laws.

The application for registration shall be disposed of by the Central Registrar within a period of four months from the date of receipt thereof by him. Where the Central Registrar refuses to register a multi-state co-operative society, he shall communicate, within a period of four month from the date of receipt of the application for registration, the order of refusal together with the reasons thereof to the applicant or applicants, as the case may be. No order or refusal shall be made unless the applicants have been given a reasonable opportunity of being heard. If the application for registration is not disposed of within a period of four months specified in sub-section (2) or the Central Registrar fails to communicate the order of refusal within that period, the application shall be deemed to have been accepted for registration and the Central Registrar shall issue the registration certificate in accordance with the provisions of this Act and the rules made hereunder.

III. REGISTRATION CERTIFICATE – SECTION 8

Where a multi-state co-operative society is registered under this Act, the Central 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, unless it is proved that the registration of the society has been cancelled.

BYE-LAWS OF MULTI-STATE CO-OPERATIVE SOCIETIES – SECTION 10

Every multi-state co-operative society may make its bye-laws consistent with the provisions of this act and the rules made there under. In particular, and without prejudice to the generality of the foregoing power, such bye-laws may provide for all or any of the following matters, namely:

- (a) The name, address and area of operation of the society
- (b) The objects of the society
- (c) The services to be provided to its members
- (d) The eligibility for obtaining membership
- (e) The procedure for obtaining membership
- (f) The conditions for continuing as member
- (g) The procedure for withdrawal of membership
- (h) The transfer of membership
- (i) The procedure for expulsion from membership
- (j) The rights and duties of the members
- (k) The nature and amount of capital of the society
- (l) The manner in which the maximum capital to which a single member can subscribe
- (m) The sources from which the funds may be raised by the multistate co-operative society
- (n) The purpose for which the funds may be applied
- (o) The manner of allocation or disbursement of net profits of the multi-state co-operative society
- (p) The constitution of various reserves
- (q) The manner of convening general meetings and quorum thereof other than those provided under this Act
- (r) procedure for notice and manner of voting, in general and other meetings
- (s) The procedure for amending the bye-laws
- (t) The number of members of the board not exceeding twenty-one
- (u) The tenure of, directors, chairperson and other office bearers of the society, not exceeding five years
- (v) The procedure for removal of members of the board and for filling up of vacancies
- (w) The manner of convening board meetings, its quorum, number of meetings in a year and venue of such meetings
- (x) The frequency of board meetings
- (y) The powers and functions of the Chief Executive in addition to those provided under section 52
- (z) The manner of imposing the penalty
- (za) The appointment, rights and duties of auditors and procedure for conduct of audit

- (zb) The authorisation of officers to sign documents and to institute and defend suits and other legal proceedings on behalf of the society
- (zc) The terms on which a multi-state co-operative society may deal with persons other than members
- (zd) The terms on which a multi-state co-operative society may associate with other co-operative societies
- (ze) The terms on which a multi-state co-operative society may deal with organization other than co-operative societies
- (zf) The rights, if any, which the multi-state co-operative society may confer on any other multi-state co-operative society or federal co-operative and the circumstances under which such rights may be exercised by the federal co-operative
- (zg) The procedure and manner for transfer of shares and interest in the name of a nominee in case of death of a member;
- (zh) The educational and training programmes to be conducted by the multi-state co-operative society
- (zi) The principal place and other places of business of multi-state co-operative society
- (zj) The minimum level of services, to be used by its members
- (zk) Any other matter which may be prescribed.

AMENDMENT OF BYE-LAWS OF A MULTI-STATE CO-OPERATIVE SOCIETY – SECTION 11

No amendment of any bye-law of a multi-state co-operative society shall be valid, unless such amendment has been registered under this Act. The amendment to the bye-laws of a multi-state co-operative society shall be made by a resolution passed by a two-third majority of the members present and voting at general meeting of the society. No such resolution shall be valid unless fifteen clear days' notice of the proposed amendment has been given to the members.

In every case in which a multi-state co-operative society proposes to amend its bye-laws, an application to register such amendments shall be made to the Central Registrar together with-

- (a) A copy of the resolution referred above
- (b) A statement containing the particulars indicating-
 - (i) The date of the general meeting at which the amendments to the bye-laws were made
 - (ii) The number of days' notice given to convene the general meeting
 - (iii) The total number of members of the multi-state co-operative society
 - (iv) The quorum required for such meeting
 - (v) The number of members present at the meeting
 - (vi) The number of members who voted in such meeting
 - (vii) The number of members who voted in favour of such amendments to bye-laws
- (c) A copy of the relevant bye-laws in force with the amendment proposed to be made together with reasons justifying such amendments
- (d) Four copies of the text of the bye-laws incorporating therein the proposed amendments signed by the officer duly authorised in this behalf by the general body
- (e) A copy of the notice given to the members and the proposal to amend the bye-laws

- (f) A certificate signed by the person who presided at the general meeting certifying that the procedure specified in the Act and the bye-laws had been followed
- (g) Any other particular which may be required by the Central Registrar in this behalf

Every such application shall be made within sixty days from the date of the general meeting at which such amendment to the byelaws was passed. The procedure given in the Act shall apply to the amendment of the bye-laws of a co-operative society desiring to convert itself into a multi-state co-operative society as per the provisions of section 22.

If, on receipt of application, the Central Registrar is satisfied that the proposed amendment-

- (a) Is not contrary to the provisions of this Act or of the rules
- (b) Does not conflict with co-operative principles; and
- (c) Will promote the economic interests of the members of the multistate co-operative society, he may register the amendment within a period of three months from the date of receipt thereof by him.

The Central Registrar shall forward to the multi-state co-operative society a copy of the registered amendment together with a certificate signed by him within a period of one month from the date of registration thereof and such certificate shall be conclusive evidence that the amendment has been duly registered. Where the Central Registrar refuses to register an amendment of the bye-laws of a multi-state co-operative society, he shall communicate the order of refusal together with the reasons therefore to the Chief Executive of the society in the manner prescribed within fifteen days from the date of such refusal. If the application for registration is not disposed of within a period of three months or the Central Registrar fails to communicate the order of refusal within that period, the application shall be deemed to have been accepted for registration and the Central Registrar shall issue registration certificate in accordance with the provisions of this Act.

As per Section 12, an amendment of the bye-laws of a multi-state co-operative 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.

CHANGE OF NAME – SECTION 13

A multi-state co-operative society may, by an amendment of its byelaws, change its name but such change shall not affect any right or obligation of the multi-state co-operative society or of any of its members or past members, and any legal proceedings which might have been continued or commenced by or against the multi-state co-operative society by its former name, may be continued or commence by or against its new name. Where a multi-state co-operative society changes its name, the Central Registrar shall enter the new name on the register of multistate co-operative society in place of former name and shall amend the certificate of registration accordingly.

CHANGE OF ADDRESS – SECTION 14

Every multi-state co-operative society shall have principal place of business and an address registered in the manner prescribed to which all notices and communications may be sent.

LIABILITY – SECTION 16

No multi-state co-operative society with unlimited liability shall be registered after the commencement of this Act. Where a multi-state co-operative society with unlimited liability was functioning before the commencement of this Act, such a society shall exercise the option within a period of one year from such commencement either to continue to function as such or to convert itself into a multi-state co-operative society with limited liability by following the procedure specified in the Act. Subject to the provisions of this Act and the rules, a multi-state co-operative society may, by an amendment of its bye-laws, change the extent of its liability.

When a multi-state co-operative society has passed a resolution to change the extent of its liability, it shall give notice thereof in writing to all its members and creditors, and, notwithstanding anything contained in the bye-laws or contract to the contrary, any member or creditor shall, during the period of one month from the date of service of the notice upon him, have the option of withdrawing his shares, deposits or loans, as the case may be.

Any member or creditor who does not exercise his option within the period specified shall be deemed to have assented to the change. An amendment of a bye-law of a multi-state co-operative society changing the extent of its liability shall not be registered or shall not take effect until either the assent thereto of all members and creditors has been obtained or all claims of members and creditors who exercise the option within the period specified therein have been met in full or otherwise satisfied.

AMALGAMATION OR TRANSFER OF ASSETS AND LIABILITIES, OR DIVISION OF MULTI-STATE CO-OPERATIVE SOCIETIES – SECTION 17

As per Section 17(1), a multi-state co-operative society may, by a resolution passed by a majority of not less than two-thirds of the members, present and voting at a general meeting of the society held for the purpose,-

- (a) Transfer its assets and liabilities in whole or in part to any other multi-state co-operative society or co-operative society
- (b) Divide itself into two or more multi-state co-operative societies
- (c) Divide itself into two or more co-operative societies.

Any two or more multi-state co-operative societies may, by a resolution passed by a majority of not less than two-thirds of the members present and voting at a general meeting of each such society, amalgamate themselves and form a new multi-state co-operative society. The resolution of a multi-state co-operative society under subsection (1) or sub-section (2) shall contain all particulars of the transfer or division or amalgamation, as the case may be.

When a multi-state co-operative society has passed a resolution under sub-section (1) or sub-section (2), it shall give notice thereof in writing to all the members and creditors, and, notwithstanding anything contained in the bye-laws or contract to the contrary, any member or creditor shall, during the period of one month of the date of service of the notice upon him, have the option of withdrawing his share, deposits or loans, as the case may be.

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.

(a) A resolution passed by a multi-state co-operative society under this section shall not take effect until the assent thereto of all the members and creditors has been obtained.

(b) The multi-state co-operative society shall make arrangements for meeting in full or otherwise satisfying all claims of the members and creditors who exercise the option within the period specified in sub-section (4).

On receipt of an application for the registration of new societies formed by division in accordance with the resolution passed under sub-section (1) or of a new society formed by amalgamation in accordance with the resolution passed under sub-section (2), the Central Registrar, on being satisfied that the resolution has become effective under sub-section (6) shall, unless for reasons to be recorded in writing he thinks fit to refuse so to do, Register the new society or societies, as the case may be, and the bye-laws thereof.

On the issue of an order under sub-section (7), the provisions of section 21 shall, so far as may be, apply to the multi-state co-operative society so divided or the multi-state co-operative societies so amalgamated. Where a resolution passed by a multi-state co-operative society under this section involves the transfer of any assets and liabilities, the resolution shall, notwithstanding anything contained in any other law for the time being in force, be a sufficient conveyance to vest the assets and liabilities in the transferee without any further assurance.

PROMOTION OF SUBSIDIARY INSTITUTION – SECTION 19

Under Section 19(1), any multi-state co-operative society may, by a resolution passed at general meeting by a majority of members present and voting, promote one or more subsidiary institutions, which may be registered under any law for the time being in force, for the furtherance of its stated objects. Any subsidiary institution promoted under sub-section (1) shall exist only as long as general body of the multi-state co-operative society deems its existence necessary. A multi-state co-operative society while promoting such a subsidiary institution shall not transfer or assign its substantive part of business or activities undertaken in furtherance of its stated objects.

For the purposes of this section, an institution shall be deemed to be a subsidiary institution, if the multi-state co-operative society controls the management or board of directors or members of governing body of such institution or holds more than half in nominal value of equity shares of such institutions or if one or more members of such multi-state co-operative society, hold whether by themselves or together with subsidiary institution or their relatives, as the case may be, the majority of equity shares in this institution. A subsidiary institution shall not include a partnership firm. The annual reports and accounts of any such subsidiary institution shall be placed each year before general meeting of the promoting multi-state co-operative society.

REGISTRATION AND FUNCTIONS OF FEDERAL CO-OPERATIVES – SECTION 23 & 24

Every federal co-operative shall obtain registration certification in accordance with the provisions of this Act under Section 23(1). As per Section 23(2), every federal co-operative shall in its general meeting be represented by its member co-operative. The classification of federal co-operative and other terms and conditions applicable to it shall be such as may be prescribed. All provisions of this Act, applicable to a multi-state co-operative society shall, as far as may be, apply to a federal co-operative.

Subject to the provisions of this Act and any other law for the time being in force, a federal co-operative may discharge the functions to facilitate the voluntary formation and democratic functioning of co-operative societies as federal co-operative or multi-state co-operatives based on self-help and mutual aid. Without prejudice to the generality of the provisions contained in Section 24(2) the federal co-operative may-

- (a) Ensure compliance of the co-operative principles
- (b) Make model bye-laws and policies for consideration of its member co-operative
- (c) Provide specialized training, education and data-base information
- (d) Undertake research, evaluation and assist in preparation of perspective development plans for its member co-operative
- (e) Promote harmonious relations amongst member co-operative
- (f) Help member co-operative to settle disputes among themselves
- (g) Undertake business services on behalf of its member co-operative, if specifically required by or under the resolution of the general body or the board, or bye-laws of a member of co-operative
- (h) Provide management development services to a member co-operative
- (i) Evolve code of conduct for observance by a member co-operative
- (j) Evolve viability norms for a member co-operative
- (k) Provide legal aid and advice to a member co-operative
- (l) Assist member co-operative in organising self-help
- (m) Develop market information system logo brand promotion, quality control and technology upgradation.

MEMBERS OF MULTI-STATE CO-OPERATIVE SOCIETIES AND THEIR DUTIES, RIGHTS AND LIABILITIES

As per Section 25(1), no person shall be admitted as a member of a multi-state co-operative 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 multi-state co-operative society or any co-operative society
- (c) The Central Government
- (d) A State Government
- (e) The National Co-operative Development Corporation established under the National Co-operative Development Corporation Act, 1962 (26 of 1962)
- (f) Any other corporation owned or controlled by the Government
- (g) Any Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956)
- (h) Such class or classes or persons or association of persons as may be permitted by the Central Registrar having regard to the nature and activities of a multi-state co-operative society.

No individual person shall be eligible for admission as a member of a national co-operative society or a federal co-operative. Any person eligible for membership of a multi-state co-operative society may, on his application, be admitted as a member by such society.

Every application for admission as a member of a multi-state co-operative society shall be disposed of by such society within a period of four months from the date of receipt of the application, and the decision of such society on the application shall be communicated to the applicant within fifteen days from the date of such decision. It shall be the duty of every member of a multi-state co-operative society to promote and protect the interests and objects of such society.

NOMINAL OR ASSOCIATE MEMBERS OF SOCIETY – SECTION 26

A multi-state co-operative society may, if provided in its bye-laws, admit a person as nominal or associate member. No such nominal or associate member shall be entitled to subscribe the shares of such society or have any interest in the management thereof including right to vote, elect as a director of the board or participate in the general body meetings.

As per Section 29, no person shall be eligible for being a member of a multi-state co-operative society if-

- (a) His business is in conflict or competitive with the business of such multi-state co-operative society; or
- (b) He used for two consecutive years the services below the minimum level specified in the bye-laws; or
- (c) He has not attended three consecutive general meetings or the multi-state co-operative society and such absence has not been condoned by the members in the general meeting; or
- (d) He has made any default in payment of any amount to be paid to the multi-state co-operative society under the bye-laws of such society.

EXPULSION OF MEMBERS – SECTION 30

A multi-state co-operative society may, by resolution passed by a majority of not less than two-thirds of the members present and voting at a general meeting of members held for the purpose, expel a member for acts which are detrimental to the proper working of the society as per Section 30(1).

The member concerned shall not be expelled unless he has been given a reasonable opportunity of making representation in the matter. No member of the multi-state co-operative society, who has been expelled under section 30 (1), shall be eligible for re-admission as a member of that society, for a period of one year from the date of such expulsion.

VOTE OF MEMBERS - SECTION 31

Every member of a multi-state co-operative society, including a member who is an employee of such society, shall have one vote in the affairs of the society. A member who is an employee of such society shall not be entitled to vote

- (i) At the election of a member of the board of such society
- (ii) In any general meeting convened for framing the bye-laws of such society or any amendments thereto

In the case of an equality of votes, the chairperson shall have a casting vote. Where any of the authorities, multi-state co-operative society or a co-operative society referred to in clauses (b) to (g) of sub-section (1) of section 25 is a member of a multi-state co-operative society, each person nominated by such authority or society, on the board in accordance with provisions contained in this Act and the rules shall, have one vote.

A multi-state co-operative society, the membership of which include co-operative societies or other multi-state co-operative society, may provide in its bye-laws for an equitable system of voting having regard to the membership of, and the extent of business carried on by such co-operative societies or multi-state co-operative societies.

RESTRICTION ON HOLDING OF SHARES – SECTION 33

No member, other than the authorities referred to in clauses (c) to (g) of sub-section (1) of section 25 of a multi-state co-operative society or a co-operative society, shall hold more than such portion of the total share capital of the society (in no case exceeding one-fifth thereof) as may be prescribed in the rules or bye-laws of such multi-state co-operative society.

RESTRICTION ON TRANSFER OF SHARES OR INTEREST – SECTION 34

The transfer of share or interest of a member in the capital of a multistate co-operative society shall be subject to such conditions as to maximum holding as specified in section 33.

REDEMPTION OF SHARES – SECTION 35

As per Section 35(1), shares held in a multi-state co-operative society by any of the authorities referred to in clauses (c) to (g) of sub-section (1) of section 25 shall be redeemable in accordance with the bye-laws of such multi-state co-operative society and in a case where the byelaws do not contain any provision in this regard, in such manner as may be agreed upon between the multi-state co-operative society and such authority. The redemption of shares referred to in sub-section (1) shall be on the face value of the shares.

TRANSFER OF INTEREST ON DEATH OF MEMBERS – SECTION 36

On the death of a member, a multi-state co-operative society may transfer the share or interest of the deceased member to the person nominated in accordance with the bye-law made in this behalf or, if there is no person nominated, to such person as may appear to the board to be the heir or legal representative of the deceased member, or pay to such nominee, heir or legal representative, as the case may be, a sum representing the value of such member's share or interest as ascertained in accordance with the rules.

No such transfer or payment shall be made except with the consent of the nominee, heir or legal representative, as the case may be. A multi-state co-operative society shall, unless within six months of the death of the member prevented by an order of a competent court, pay to such nominee, heir or legal representative, as the case may be, all other moneys due to the deceased member from the society. All transfers and payments made by a multi-state co-operative 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.

LIABILITIES OF PAST MEMBER AND ESTATE OF DECEASED MEMBER – SECTION 37

As per Section 37(1), subject to the provisions of Section 37(2), the liability of a past member or of the estate of a deceased member of a multi-state co-operative society for the debts of the society as they existed-

- (a) In the case of a past member, on the date on which he ceased to be a member
- (b) In the case of a deceased member, on the date of his death, shall continue for a period of two years from such date.

As per Section 37(2), notwithstanding anything contained in Section 37(1), where a multi-state co-operative society is ordered to be wound up under section 86, the liability of a past member who ceased to be a member or of the estate of a deceased member who 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 the society as they existed on the date of cessation of membership or death, as the case may be.

MANAGEMENT OF MULTI-STATE CO-OPERATIVE SOCIETIES

As per Section 38(1), the general body of a multi-state co-operative society shall consist of all the members of such society. Where the bye-laws of a multi-state co-operative society provide for the constitution of, a smaller body consisting of delegates of members of the society elected or selected in accordance with such bye-laws, that smaller body shall exercise such powers of the general body as may be prescribed or as may be specified in the bye-laws of the society.

Subject to the provisions of this Act, the rules and the bye-laws, the ultimate authority of a multi-state co-operative society shall vest in the general body of its members. Where the bye-laws of a multi-state co-operative society provide for representation of other institutions in any meeting of general body or the board of such multi-state co-operative society, such institutions shall be represented through its nominee.

ANNUAL GENERAL MEETING OF GENERAL BODY – SECTION 39

The board of every multi-state co-operative society shall, within such period as may be prescribed, and not later than six months after the close of the corresponding year, call the annual general meeting in the manner prescribed for the purpose of-

- (a) Consideration of the audited statement of accounts
- (b) Consideration of the audit report and annual report
- (c) Consideration of audit compliance report
- (d) Disposal of net profits
- (e) Review of operational deficit, if any
- (f) Creation of specific reserves and other funds
- (g) Approval of the annual budget
- (h) Review of actual utilisation of reserve and other funds
- (i) Approval of the long-term perspective plan and the annual operational plan
- (j) Review of annual report and accounts of subsidiary institution, if any
- (k) Expulsion of members
- (l) List of employees who are relatives of members of the board or of the Chief Executive
- (m) Amendment of bye-laws, if any
- (n) Formulation of code of conduct for the members of the board and officers
- (o) Election of members of the board, if any.

BOARD OF DIRECTORS – SECTION 41

Subject to the provisions of this Act and rules, there shall be a board of directors for every multi-state co-operative society consisting of not more than twenty-one members. The members of a multi-state co-operative society, by a resolution in a general meeting, shall elect directors who shall be members of board. The board shall consist of such number of directors as may be specified in the bye-laws.

POWERS AND FUNCTIONS OF BOARD – SECTION 49

The board may exercise all such powers as may be necessary or expedient for the purpose of carrying out its functions under this Act.

As per Section 49 (2), without prejudice to the generality of the foregoing powers, such powers shall include the power-

- (a) To admit members
- (b) To interpret the organisational objectives and set up specific goals to be achieved towards these objectives;
- (c) To make periodic appraisal of operations
- (d) To appoint and remove a Chief Executive and such other employees of the society as are not required to be appointed by the Chief Executive
- (e) To make provisions for regulating the appointment of employees of the multi-state co-operative society and the scales of pay, allowances and other conditions of service of, including disciplinary action against such employees
- (f) To place the annual report, annual financial statements, annual plan and budget for the approval of the general body
- (g) To consider audit and compliance report and place the same before the general body
- (h) To acquire or dispose of immovable property
- (i) To review membership in other co-operatives
- (j) To approval annual and supplementary budget
- (k) To raise funds
- (l) To sanction loans to the members; and
- (m) To take such other measures or to do such other acts as may be prescribed or required under this Act or the bye-laws or as may be delegated by the general body.

CHIEF EXECUTIVE – SECTION 51

There shall be a Chief Executive, by whatever designation called, of every multi-state co-operative society to be appointed by the board and he shall be a full-time employee of such multi-state co-operative society. The Chief Executive shall be a member of the board and of the Executive Committee and such other committees or subcommittees as may be constituted under section 53 (1).

Where the Central Government or the State Government holds fifty one per cent, or more of the equity share capital or of total shares of the multi-state co-operative society, the salary and allowances payable to and other terms and conditions of service including pension, gratuity and other retirement benefits of the Chief Executive shall be such as may be prescribed.

APPOINTMENT AND REMUNERATION OF AUDITORS – SECTION 70

Every multi-state co-operative society shall cause to be audited by an auditor, its accounts at least once in each year. Every multi-state co-operative society shall, at each annual general meeting, appoint an auditor or auditors to hold office from the conclusion of that meeting until the conclusion of the next annual general meeting and shall, within seven days of the appointment, give intimation thereof to every auditor so appointed.

Every auditor appointed shall, within thirty days of the receipt from the multi-state co-operative society of the intimation of his appointment, inform the Central Registrar in writing that he has accepted, or refused to accept, the appointment. Where at an annual general meeting no auditors are appointed or re-appointed, the Central Registrar may appoint a person to fill the vacancy.

First auditor or auditors of a multi-state co-operative society shall be appointed by the board within one month of the date of registration of such society and the auditor or auditors so appointed shall hold office until the conclusion of the first annual general meeting.

As per Section 70(9), the remuneration of the auditors of a multi-state co-operative society-

(a) In the case of an auditor appointed by the board or the Central Registrar may be fixed by the board or the Central Registrar, as the case may be and

(b) Subject to clause (a), shall be fixed by the multi-state co-operative society in general meeting or in such manner as the multi-state co-operative society in general meeting may determine.

QUALIFICATIONS AND DISQUALIFICATIONS OF AUDITORS – SECTION 72

A person shall not be qualified for appointment as an auditor of a multi-state co-operative society unless he is a chartered accountant within the meaning of the Chartered Accountants Act 1949 (38 of 1949).

None of the following persons shall be qualified for appointment as auditor of a multi-state co-operative society under Section 72(2)-

(a) A body corporate

(b) An officer or employee of the multi-state co-operative society

(c) A person who is a member, or who is in the employment, of an officer or employee of the multi-state co-operative society

(d) A person who is indebted to the multi-state co-operative society or who has given any guarantee or provided any security in connection with the indebtedness of any third person to the multi-state co-operative society for an amount exceeding one thousand rupees.

A person shall also not be qualified for appointment as an auditor of a multi-state co-operative society if he is disqualified for appointment as an auditor of any other body corporate or multi-state co-operative society or co-operative society. If an auditor becomes subject, after his appointment, to any of the disqualifications specified, he shall be deemed to have vacated his office as such.

POWERS AND DUTIES OF AUDITORS – SECTION 73

(1) Every auditor of a multi-state co-operative society shall have a right of access at all times to the books, accounts and vouchers of the multi-state co-operative society, whether kept at the head office of the multi-state co-operative society or elsewhere, and shall be entitled to require from the officers or other employees of the multi state co-operative society such information and explanations as the auditor may think necessary for the performance of his duties as an auditor.

(2) Without prejudice to provisions of sub-section (1), the auditor shall inquire,-

(a) Whether loans and advances made by the multi-state co-operative society on the basis of security have been properly secured and whether the terms on which they have been made are not prejudicial to the interests of the multi-state co-operative society or its members

(b) Whether transactions of the multi-state co-operative society which are represented merely by book entries are not prejudicial to the interests of the multi-state co-operative society

(c) Whether personal expenses have been charged to revenue account and

(d) Where it is stated in the books and papers of the multi-state co-operative society that any shares have been allotted for cash, whether case has actually been received in respect of such allotment, and if no cash has actually been so received, whether the position as stated in the account books and the balance-sheet is correct, regular and not misleading.

(3) The auditor shall make a report to the members of the multi-state co-operative society on the accounts examined by him and on every balance-sheet and profit and loss account and on every other document required to be part or annexed to the balance-sheet or profit and loss account, which are laid before the multi-state co-operative society in general meeting during his tenure of office, and the report shall state whether, in his opinion and to the best of his information and according to the explanations given to him, the said accounts give the information required by this Act in the manner so required and give a true and fair view-

(a) In the case of the balance-sheet, of the state of the multi-state co-operative society's affairs as at the end of its financial year and

(b) In the case of the profit and loss account, of the profit or loss for its financial year.

(4) The auditor's report shall also state-

(a) Whether he has obtained all the information and explanations which to the best of his knowledge and belief were necessary for the purposes of his audit

(b) Whether, in his opinion, proper books of account have been kept by the multi-state co-operative society so far as appears from his examination of those books, and proper returns adequate for the purposes of his audit have been received from branches or offices of the multi-state co-operative society not visited by him

(c) Whether the report on the accounts of any branch office audited by a person other than the multi-state co-operative society's auditor has been forwarded to him and how he has dealt with the same in preparing the auditor's report

(d) Whether the multi-state co-operative society's balance-sheet and profit and loss account dealt with by the report are in agreement with the books of account and returns.

(5) Where any of the matters referred to in clauses (a) and (b) of subsection (3) or in clauses (a), (b), (c) and (d) of sub-section (4) is answered in the negative or with a qualification, the auditor's report shall state the reason for the answer.

WINDING UP OF MULTI-STATE CO-OPERATIVE SOCIETIES – SECTION 86

If the Central Registrar, after audit has been conducted under section 70 or special audit has been conducted under section 77 or an inquiry has been held under section 78 or an inspection has been made under section 79, is of opinion that the society ought to be wound up, he may, after giving the society a reasonable opportunity of making its representations by order, direct it to be wound up.

The Central Registrar may, of his own motion and after giving the multi-state co-operative society a reasonable opportunity of making its representation, make an order directing the winding up of the multi-state co-operative society under 86(2),-

(a) Where it is a condition of the registration of the society that the society shall consist of at least fifty members and the number of members has been reduced to less than fifty, or

(b) Where the multi-state co-operative society has not commenced working within a period of six months of the date of its registration or such extended period as the Central Registrar may allow in this behalf or has ceased to function in accordance with co-operative principles.

The Central Registrar may cancel an order for the winding up of a multi-state co-operative society, at any time, in any case where, in his opinion, the society should continue to exist. A copy of such order shall be communicated by registered post to the multi-state co-operative society and to the financial institutions, if any, of which the society is a member. No co-operative bank shall be wound up except with the previous sanction, in writing of the Reserve Bank.

The Central Registrar shall make an order for the winding up of a multi-state co-operative society, if the society, by a resolution passed by two-third majority of members present and voting in a general meeting decides for winding up of that society.

WINDING UP OF CO-OPERATIVE BANK AT THE DIRECTION OF RESERVE BANK – SECTION 87

Notwithstanding anything to the contrary contained elsewhere in this Act, the Central Registrar shall make an order for the winding up of a co-operative bank, if so required by the Reserve Bank in the circumstances mentioned in section 13D of the Deposit Insurance and Credit Guarantee Corporation Act, 1961 (47 of 1961).

LIQUIDATOR – SECTION 89

Where the Central Registrar has made an order under section 86 for the winding up of multi-state co-operative society, the Central Registrar may appoint a liquidator for the purpose and fix his remuneration. A liquidator shall, on appointment, take into his custody or under his control all the property, effects and actionable claims to which the multi-state co-operative society is or appears to be entitled 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 and he may carry on the business of the multi-state co-operative society so far as may be necessary with the previous approval of the Central Registrar.

POWERS OF LIQUIDATOR – SECTION 90

Subject to any rules made in this behalf, the whole of the assets of a multi-state co-operative society in respect of which an order for winding up has been made, shall vest in the liquidator appointed from the date on which the order takes effect and the liquidator shall have power to realise such assets by sale or otherwise.

As per Section 90(2), the liquidator shall also have power, subject to the control of the Central Registrar-

(a) To institute and defend suits and other legal proceedings on behalf of the multi-state co-operative society by 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 the deceased members or by an officers or former officers, to the assets of the multi-state co-operative society

(c) To investigate all claims against the multi-state co-operative society and subject to the provisions of this Act, to decide questions of priority arising between claimants

(d) To pay claims against the multi-state co-operative society, including interest up to the date of winding up according to their respective priorities, if any, in full or rateably, as the assets of the society may permit; and the surplus, if any, remaining after payment of the claims being applied in payment of interest from the date of such order or 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 costs of the liquidation are to be borne

(f) To determine whether any person is a member, past member or nominee of a deceased member

(g) To give such directions in regard to the collection and distribution of the assets of the multi-state co-operative society as may appear to him to be necessary for winding up the affairs of that society

(h) To carry on the business of the multi-state co-operative 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, present or future, whereby the multi-state co-operative society may be rendered liable

(j) To make any compromise or arrangement with any person between whom and the multi-state co-operative society there exists any dispute and to refer any such dispute for decision

(k) After consulting the members of the multi-state co-operative society, to dispose of the surplus, if any, remaining after paying the claims against the society, in such manner as may be prescribed.

(l) To compromise all calls or liabilities to calls and debts and liabilities capable of resulting in debts, and all claims, present or future, certain or contingent, subsisting or alleged to be subsisting between the multi-state co-operative society and a contributory or other debtor or person apprehending liability to the multi-state co-operative society 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 or claim and give a complete discharge in respect thereof.

When the affairs of a multi-state co-operative society have been wound up, the liquidator shall make a report to the Central Registrar and deposit the records of the society in such place as the Central Registrar may direct.

Module 4

HISTORY OF CO-OPERATIVE LEGISLATIONS IN KERALA

During the British rule there was no unified co-operative laws operative in Kerala. The present Kerala state consists of Old Travancore state, Cochin State which were joined and formed Travancore Cochin State in 1949, and old Malabar district of Madras state.

The Registrar of co-operative societies at Madras province Sir Rajagopalachari was appointed as the Diwan of Cochin and subsequently as Diwan of Travancore state. As he was experienced in co-operative societies he took the initiative and thereby the first Act named Cochin Co-operative Societies Act 1913 was passed.

As per the provision of this Act, the first society organized in Cochin State, is still working by the name Edavanakkad Service Co-operative Bank. Sir Rajagopalachari was also appointed as Diwan of Travancore state. He took the initiative and thereby Travancore Co-operative Societies Regulation was passed in 1914. The first Registrar late C. Govindapillai was appointed in Travancore State in November 1914. The first society was registered by the name Trivandrum Central Co-operative Bank Ltd which is the present Kerala State Co-operative Bank.

In 1949, the Travancore and Cochin state were integrated and thereby Travancore Cochin State was formed. At that time Travancore Co-operative Societies Act was applicable to the Travancore state and Cochin Co-operative Societies Act 1913 was applicable to Cochin State. In order to integrate the co-operative laws the Travancore Cochin Co-operative Societies Act was passed in 1952. This was applicable to the entire Travancore, Cochin state and old Acts were replaced.

While the formation of Kerala State in 1956 there were two co-operative enactments in existence namely Travancore Cochin Co-operative Societies Act which was in force in Travancore Cochin area and Madras Co-operative Societies Act 1932 was in force in Malabar area which was a part of Madras province. At that time it was essential to unify the co-operative society's laws for the orderly development of the societies in newly formed Kerala state. So the Kerala Co-operative Societies Act of 1969 was enacted which came into force on 15th May 1969 and the rules framed under the Act came into force in July 1969.

COCHIN CO-OPERATIVE SOCIETIES ACT 1913

The co-operative movement in the Cochin State has the same character of the pre-independent British – Indian Co-operative movement. The Cochin Co-operative Societies Act was passed under the leadership of the then Diwan Sri. A. R. Banerje.

SALIENT FEATURES OF COCHIN CO-OPERATIVE SOCIETIES ACT

1. Separate societies were started for extending agricultural and non agricultural credit.
2. Supervising unions must be started for supervising the societies.
3. There is Cochin Central Co-operative Institute, an open body to co-ordinate the unions.
4. Unions are members in the central bank under the Act.
5. The Act gives priority for cottage industries.

Edavanakkad Service Co-operative Bank in Vaipinikara was the first primary co-operative society under the Cochin Co-operative Societies Act. Subsequently a central bank at Trichur was also registered. Many primary societies are members in this central bank.

TRAVANCORE CO-OPERATIVE SOCIETIES ACT OF 1914

The Travancore Co-operative Societies Regulation was passed in 1914. It was the first co-operative enactment in the former Travancore state. During this time Sir Rajagopalachari was the Registrar of co-operative societies. He was a dedicated co-operator who was closely connected with co-operative activities directly.

The first co-operative society registered under the Act was Travancore Central Co-operative Bank. After much reorganization it became the present Kerala State Co-operative Bank. This is against the original pattern of co-operative movement in other provinces. In other provinces government is financing the primary co-operative societies. But in Travancore, the central bank has been organized and registered to act as the financing agency for the primary societies.

Various types of co-operative societies such as urban banks, employees' societies, women societies, marketing societies etc. have been registered during this period. In 1918 the Act permitted to register co-operative societies with limited liabilities. It was also decided to organize taluk banks between primary societies and central banks with the object of attracting more deposits. The first taluk bank was registered in 1923 at Nagarcoil and then in all taluks. In taluk banks, membership is opened to both individuals and societies. For supervising the societies according to their growth and correct irregularities, the supervising unions were also set up. For co-ordinating the activities of unions the Travancore Co-operative Institute was set up.

In 1938 Travancore Credit Bank was organized. This Act remained in force until the passing of the Travancore-Cochin Co-operative Societies Act 1952.

MADRAS CO-OPERATIVE SOCIETIES ACT 1932

The Malabar area was a part of Madras State until the formation of Kerala State. The Co-operative Societies Acts of 1904 and 1912 were applicable to this area until 1932 when Madras Co-operative Societies Act came into force. This Act was prevalent in the area until enacting the present Kerala Co-operative Societies Act in 1969.

Facilitating better living, better business and better production were the objectives of Madras Co-operative Societies Act 1932. It also aimed at promoting thrift, self help and co-operation among member agriculturists and persons with common economic interest. The Koduvayur Agricultural Credit Society was the first society registered under this Act in the Malabar area in 1909. The Act provided a strong foundation for the co-operative movement in the state.

The following are the important provisions of Madras Co-operative Societies Act 1932.

1. At least 10 members are required to register a society.
2. Societies were registered with limited liability as well as unlimited liability.
3. Members were liable to the society jointly and severally at the time of liquidation.
4. Maximum number of shares for which a member was entitled was 1/5th of the total paid up share capital or Rs. 1000 whichever is less.
5. Societies were not allowed to invest the amount in unlimited liability societies.
6. There is provision for amalgamation and absorption of societies.
7. The Registrar has the right to decide whether the members are agriculturists or not.
8. Registrar should audit the accounts periodically.

9. The funds of the societies were invested in government savings bank or in other securities under Indian Trust Account or in the banks approved by the Registrar.
10. Society can change its liability by giving notice to all its members.
11. Three months notice is needed to convene the general body meeting.
12. Maximum amount of fine imposed shall be Rs. 500.

COCHIN CO-OPERATIVE SOCIETIES ACT 1913 V/S TRAVANCORE CO-OPERATIVE SOCIETIES ACT 1914

Cochin Co-operative Societies Act 1913	Travancore Co-operative Societies Act 1914
1. The primary co-operative societies are registered first	1. Firstly the central bank has been organized and registered and the same is acting as financial agency for the primary societies
2. Separate societies were registered for agriculture and non-agriculture	2. Many types of co-operative societies such as urban banks, employees societies, women Societies, marketing societies etc. ere organized and registered
3. Gave more priority for the cottage industries in the co-operative movement	3. It did not give priority for the cottage industries in the co-operative movement
4. There were no intermediary bodies in between primary societies and central societies.	4. There were taluk banks in between primary societies and central banks

TRAVANCORE COCHIN CO-OPERATIVE SOCIETIES ACT 1952

On 1 July 1949, Travancore Cochin State came into force. The state became a part of the Indian Union in 1950 along with other states in India, when India was declared as a Republic. It was found necessary to have uniform co-operative law applicable to the entire Travancore Cochin State. Accordingly, in 1951 Travancore Cochin Co-operative Societies Act was passed. This Act was in existence in the Travancore Cochin State until the enactment of the present Co-operative Societies Act of 1969.

After passing the Travancore Cochin Co-operative Societies Act, the Travancore Central Banks area of operation was extended to the whole of the Travancore Cochin State and it was renamed as the Travancore Cochin Co-operative Bank and the Cochin Co-operative Central Bank has been changed as an affiliated unit of the Travancore Cochin State Co-operative Bank.

The following are the main features of Travancore Cochin Co-operative Societies Act 1952.

1. Provisions for registration of co-operative societies, procedures of general body meeting, determining rights and powers of members, enquiry, inspection, liquidation, arbitration, penalties and prosecution.
2. Finding separate fund for meeting working capital, Bye-law amendment, division of net profit etc. are other provisions.

3. Keeping liquid resources by limited liability societies.
4. Those debts which have outstanding for a continuous period of three years may be considered as bad debts and same may be written off by the general body subject to the consent of the Registrar.
5. Working capital composed of reserve funds, other funds, paid up capital, debt, investments and debentures.
6. The audit fees existed to the unlimited liability societies as four Annas for every 100 Rupees subjected to maximum of Rs. 50. For limited liability societies the audit fee is Rs. 100. However the supervising union, self audit societies and those societies which are not completed six years operation need not pay the audit fees.
7. For registering a farming society detail may be collected from those persons who are possessing land for such and the people of the area. The decision may be taken jointly by Registrar, Agricultural Director or Revenue Board member.

KERALA CO-OPERATIVE SOCIETIES ACT 1969

Kerala Co-operative Societies Act 1969 (KCSA) is the law relating to the co-operative societies in Kerala State. The Act has come into force on 15th May 1969. This Act replaced the Travancore Cochin Co-operative Societies Act 1952 and the Madras Co-operative Societies Act 1932. The Act has consolidated, amended and unified the law relating to the co-operative societies in the state. As a result of this legislation all the co-operative institutions in the state are governed by the Kerala Co-operative Societies Act 1969.

OBJECTS OF KERALA CO-OPERATIVE SOCIETIES ACT 1969

The objects and intentions of this Act were to provide for the orderly development of the co-operative societies in the state of Kerala by organizing them as self governing democratic institutions, in accordance with the directive principles of the state policy as envisaged in the constitution of India.

SPECIAL FEATURES OF KERALA CO-OPERATIVE SOCIETIES ACT 1969

The following unique features of Kerala Co-operative Societies Act 1969 make the Act distinguished from all other Indian Co-operative Societies Acts.

1. Co-operative Union

Section 88 deals with the circle co-operative unions and section 90 deals with state co-operative union and these unions have wide powers and independent source of income.

2. Co-operative Tribunal

Section 81 deals with a special provision for the establishment of Co-operative Tribunal which is meant for hearing appeals against the orders, awards or decisions of the Registrar or arbitrator.

3. Appointment and Service Conditions

In section 80, the qualification, salary, service conditions etc. of the employees are mentioned. This unique feature of the Act is aimed at improving the moral and efficiency of the staff.

4. Penal Provision

As per section 68 a new penal provision namely 'Surcharge' is imposed in the Act to deal with the incidence of corruption, malpractices, misuse of powers etc. in a co-operative society.

5. Check on Bogus Societies

As per the Act, the minimum number of persons required for registering a co-operative society is fixed at 25 and such persons should be from different families. This provision in the Act is a check against the registration of bogus societies.

6. Limited Liability

As per the KCSA societies shall be registered in the state only with limited liability irrespective of the merits and attractions of societies with unlimited liability.

PROVISIONS OF KERALA CO-OPERATIVE SOCIETIES ACT 1969

The following are the important provisions of the Kerala Co-operative Societies Act 1969

SHORT TITLE, EXTENT AND COMMENCEMENT – SECTION 1

1. This Act may be called the Kerala Co-operative Societies Act 1969.
2. It extends to the whole of the State of Kerala.
3. It shall come into force on such date (with effect from 15.05.1969) as the government may, by notification in the Gazette.

DEFINITION – SECTION 2

- a) **Apex Society** – means a society having the whole of the state as its area of operation and having as its members only other societies with similar objects and declared as such by the Registrar.
- b) **Bye-laws** – means the registered bye-laws of a co-operative society for the time being in force.
- c) **Circle Co-operative Union** – means a circle co-operative union constituted under section 88.
- d) **Central Society** – means a society having jurisdiction over one or more Revenue Districts but not the whole of the State as its area of operation and having as its members only other societies and declared as such by the Registrar or the government.
- e) **Committee** – means the governing body of a co-operative society by whatever name called, to which the management of the affairs of the society is entrusted.
- f) **Co-operative Society or Society** – means a co-operative society registered or deemed to be registered under this Act.
- g) **Co-operative Society with Limited Liability** – means a society in which the liability of its members for the debts of the society in the event of its being wound up is limited by its bye-laws as
 - i. To the amount, if any, unpaid on the shares respectively held by them; or
 - ii. To such amount as they may, respectively, under take to contribute to the assets of the society.
- h) **Co-operative Society with Unlimited Liability** – means a society, the members of which are, in the event of its being wound up, jointly and severally liable for and in respect of all its obligations and to contribute to any deficits in the assets of the society.
- i) **Dispute** – means any matter touching the business, constitution, establishments or management of a society capable of being the subject of litigation and includes a claim in respect of any sum payable to or by a society, whether such claim be admitted or not.

- ia) **District Co-operative Bank** – means a central society the principal object of which is to raise funds to be lent to its members with jurisdiction over one revenue district and having as its members any primary societies and federal and central societies having head quarters in such district.
- ib) **Federal Co-operative Society** – means a society having more than one district as its area of operation and having individuals and other co-operative societies.

- j) **Financing Bank** – means a co-operative society having as its members only other co-operative societies and the main object of which is to raise money and lend the sum to its members.
- k) **General Body Meeting** – means a meeting of the members who are entitled to vote in the affairs of the society.
- l) **Member** – means a person joining in the application for the registration of a co-operative society or a person admitted to membership after such registration in accordance with this Act, Rules and the Bye-laws and includes a nominal or associate member.
- m) **Nominal or Associate Member** – means a member who possesses only such privileges and rights of a member who is subjected only to such liabilities of a member as may be specified in the Bye-laws.
- n) **Officer** – means the President, Vice-president, Chairman, Vice Chairman, Secretary, Manager, Member of Committee or Treasurer and includes a liquidator, administrator and any other person empowered under the rules or the bye-laws to give directions in regard to the business of a co-operative society.
- o) **Prescribed** – means prescribed by rules made under this Act.
- oa) **Primary Agricultural Credit Society** – means a Service Co-operative Society, a Service Co-operative Bank, a Farmers Service Co-operative Bank and a Rural Bank, the principal object of which is to undertake agricultural credit activities and having its area of operation confined to a village, panchayath or a municipality.
- ob) **Primary Credit Society** – means a society other than an apex or central society which has its principal object of raising funds to be lent to its members.
- oc) **Primary Co-operative Agricultural and Rural Development Bank** – means a society having its area of operation confined to a taluk and the principal object of which is to provide for long term credit for agricultural and rural development activities.
- p) **Registrar** – means the Registrar of co-operative societies appointed under section 3(1) and includes any person on whom all or any of the powers of the Registrar under this Act are conferred.
- q) **Rules** – means the rules made under this Act.
- r) **State** – means the state of Kerala.
- ra) **State Co-operative Agricultural and Rural Development Bank** – mean an apex society having only Primary Co-operative Agricultural and Rural Development Banks as its members functioning in accordance with the provisions contained in the Kerala Co-operative Agricultural and Rural Development Banks Act, 1984.

- rb) **State Co-operative Bank** – means an apex society having only District Co-operative Banks as members.
- rc) **State Co-operative Election Commission**- means the State Co-operative Election Commission constituted under section 28B.
- s) **State Co-operative Union** – means the State Co-operative Union established under section 89.
- t) **Tribunal** – means the tribunal constituted under section 81.
- ta) **Urban Co-operative Bank** – means a society registered under this Act having its area of operation in the urban areas and which undertakes banking business.
- tb) **Vigilance Officer** – means Vigilance Officer appointed under section 68 A.
- u) **Year** – means the period commencing on the first day of April of any year and ending with 31st of March of the succeeding year or in the case of registered society or class or registered societies, the accounts of which are made up to any other date with the previous sanction of the Registrar, the year ending with such date.

THE KERALA CO-OPERATIVE SOCIETIES RULES 1969

The following are the important definitions as per Rule 2

- a) **Act** – means the Kerala Co-Operative Societies Act 1969.
- b) **Decree** – means any order, decision or award referred to in section 70 of the Act.
- c) **Decree holder** – means any person holding a decree.
- d) **Default** – means the failure on the part of any person to repay the financing bank or to any other society a loan or any other amount due to it within the time fixed for the repayment or to return to the society within the time fixed the finished goods in respect of raw materials advanced or to keep any other obligation for the fulfillment of which a time limit has been specified in the bye-laws.
- e) **Defaulter** – means any co-operative society against which or any person against whom a decree has been obtained.
- f) **Form** – means a form set out in appendix II
- g) **Net profit** – means net profit as certified by the Registrar.
- h) **Person** – person includes the government and a co-operative society.

REGISTRATION OF CO-OPERATIVE SOCIETIES

In order to become a legal entity it is compulsory to a co-operative society to register under the Kerala Co-operative Societies Act 1969. Only after getting the registration, it can commence its operation. Section 4 to 8 and Rules 3 and 4 of the Kerala Co-operative Societies Act 1969 deal with the registration of co-operative society.

REGISTRAR – SECTION 3(1)

The government may appoint a person to be the Registrar of co-operative societies for the state. He is competent authority to register a co-operative society in the state.

OBJECTS – SECTION 4

This provision describes the objects for which a co-operative society may be registered. A co-operative society which has its object, the promotion of the economic interest of the public in accordance with co-operative principles, or a society established with the object of facilitating the operation of such a society may be registered.

LIMITED LIABILITY – SECTION 5

A society must be registered only under limited liability.

APPLICATION FOR REGISTRATION – SECTION 6 & RULE 3

An application for the registration of a co-operative society shall be made to the Registrar in the prescribed form. The following particulars should be accompanied with the application

- a. Three copies of the proposed Bye-laws of the society
- b. A certificate from the bank showing the balance in the account of the proposed society.
- c. A list of persons in duplicate who have contributed fee.
- d. A scheme showing the economic soundness of the proposed society.

A court fee stamp of Rs. 50 shall be affixed to the original application and the same should be signed by all the applicants. The application shall be sent to the Registrar by registered post or delivered in office in person.

REGISTRATION – SECTION 7 & RULE 4

Once the application for registration is received the Registrar shall scrutinize the application in the following respects

- a. The application is in accordance with the provisions of the Acts and Rules.
- b. The objects of the proposed society are in accordance with section 4.
- c. The area of operation of the proposed society and the area of operation of another society of similar type of do not overlap.
- d. The proposed bye-laws are not contrary to the provisions of this Act and Rules.
- e. The proposed society complies with the requirements of sound business.

If the Registrar is satisfied with the above matters he should issue registration within 90 days from the date of application.

If the Registrar refuses to register the society, he shall pass an order of refusal together with the reasons thereof and communicate it by registered post to the chief promoter within seven days from such order.

REGISTRATION CERTIFICATE – SECTION 8

The Registrar has to issue a registration certificate and a copy of the registered bye-law to the chief promoter as soon as the society is registered. The registration certificate shall be the conclusive evidence that the said society is duly registered under this Act. The registration certificate contains the register number and date of registration and is signed and sealed by the Registrar.

By registering the society it becomes a body corporate and as per Rule 7 every society shall start its business within a period of six months of its registration.

BYE-LAWS – RULE 5

As per the Act, bye-law means the registered bye-laws of a co-operative society for the time being in force. The Registrar shall register the bye-laws of the society along with its registration and it should be kept in fact until the liquidation of the society. The preparation of bye-law conform to co-operative societies Act, Rules and its fundamental principles.

The following are the important subject matter of bye-laws

1. The name and address of the society
2. The area of operation
3. The objects of the society
4. The share capital
5. The terms and qualifications for admission to membership
6. The privileges, rights and duties and liabilities of members
7. Nature and extent of the liability of members for the debts contracted by the societies
8. The manner of making, amending and repealing bye-laws
9. Disposal of net profit
10. Duties and powers of the committee and office bearers
11. The mode of convening annual and special general body meeting
12. The conduct of election to the committee and other bodies of the society
13. Procedure regarding valuation of shares for the purpose of refund of shares

MODEL BYE-LAWS – RULE 6

The Act empowers the Registrar for preparation of model bye-laws for each class of societies and to suggest modifications thereto from time to time. Such model bye-law shall be adopted by a society with such modification if any as may be suggested by the society and agreed to by the Registrar.

CHANGE OF NAME OF SOCIETY – SECTION 10

A society may change its name by an amendment of its bye-laws. When the name of a society is changed the Registrar enter the name in the register of co-operative societies in the place of the former name.

CHANGE OF LIABILITY – SECTION 11 & RULE 12

A society having unlimited liability can be changed to the society with limited liability by amendment to its bye-laws. But the Act does not permit to change limited liability into unlimited liability.

The procedures for the amendment are the following

1. The amendment must be passed by at least 2/3 members present and vote at a general meeting convened for that purpose.
2. Minimum seven clear days notice for the meeting is to be given to all the members.
3. The resolution regarding the change has to be communicated to all members and creditors.
4. The members have been given option for withdrawing shares, deposits etc.
5. The amendment shall be registered and change in liabilities given effect to only after entering the claims of all the members and creditors.
6. If a member or creditor does not exercise option within the specified time it will be deemed to have given his assent to the change.

AMENDMENT OF BYE-LAW – SECTION 12 & RULE 9

The amendment of bye-law of a co-operative society shall be in three ways; by addition to, alteration or cancellation of existing provisions in the bye-law. A society can amend its bye-law at any time according to the following procedures

1. The committee has to take a decision as how to amend the bye-law
2. Convene a general body meeting after giving notice to the members in accordance with the bye-law
3. An item of agenda of the notice shall be the amendment of bye-law, under which the existing provision and proposed amendment shall be shown clearly
4. The proposed amendment shall be approved by not less than 2/3rd majority of the members present and voted
5. Within 30 days from the date of general body an application for registration of amendment shall be made to the Registrar in the prescribed manner.

As per section 13, the registered amendment of bye-law come into fore on the day it was registered unless it is expressed to come into operation on a particular day.

COMPULSORY AMENDMENT OF BYE-LAW – SECTION 12(5) & (6) & RULE 10

When the Registrar is satisfied that an amendment of bye-law is necessary to alter he area of operation of a society or for the purpose of improving the services rendered by the society, he may after consulting with the financing bank and the concerned circle co-operative union require the society to make the amendment in the bye-law of the society.

When the society fails to obey the order within the time specified, the Registrar after giving the society an opportunity for making the representation registers the amendment and issues the copy of the amendment together with the certificate of registration.

AMALGAMATION AND DIVISION OF SOCIETIES – SECTION 14 & RULE 13

A society can be divided into two or more societies and two or more societies can be amalgamated to one. As per the Act, a society can transfer its assets and liabilities in full or in part to another society subjected to the following procedures

Before taking any of the above steps, the society should get the consent to the Registrar. The concurrence of the transferee society is to be obtained by the Registrar before giving permission, in case of transfer of assets and liabilities. If the Registrar approves the proposal for amalgamation, division etc. a special general body meeting shall be convened by giving 15 days notice to members. A resolution with 2/3 majority of members in the general body should support the proposed action. The resolution shall specify the transfer of assets and liabilities or division or amalgamation. In the case of division or amalgamation, a draft of the proposed bye-law should also be included in the resolution.

After passing the resolution in the general body the society may give notice to all its members, creditors etc. and give two months time to exercise their option either to continue in the societies as members or continue their lending as the case may be. If anybody puts forward their claims, it must be settled by the society. If nobody claims it can be presumed that members and creditors have agreed to the proposal. After that a formal application for the proposed c hang should be sent to the Registrar and after the verification of the action the Registrar will approve the change.

COMPULSORY AMALGAMATION AND DIVISION OF SOCIETIES – SECTION 14 (8) & (9) & RULE 14

The Registrar can compulsorily amalgamate two or more societies into one or compulsorily divide one society into two or more societies. The Registrar can carry out this process only after consulting with the concerned union and the financing bank. The Registrar has to prepare the draft bye-laws for the purpose. If the society fails to amalgamate as specified by the Registrar he may after giving the society an opportunity direct the amalgamation.

Every society so directed shall give notice to all its members, creditors etc. and give two months time to exercise their option either to continue in the societies as members or continue their lending as the case may be. If any member does not desire to continue as members, can withdraw their lending by this time. If nobody claims it can be presumed that members and creditors have agreed to the proposal of Registrar for amalgamation or division of societies.

MEMBERS OF CO-OPERATIVE SOCIETIES

As per Section 16 of the Co-operative Societies Act, membership of a co-operative society is given to the following category of people and institutions:

1. An individual
2. Any other society
3. A local self government
4. The government
5. Anybody of persons whether incorporated or not and approved by the government.

However, in the following cases there are certain restrictions

1. A society formed for the promotion of economic interest of its members through specified activities.
2. A society formed exclusively for the benefit of persons engaged in any particular industry.
3. A society for the benefit of a particular industry.

When society receives the application for membership it will have to take a decision within two months from the date of application. If it is not disposed of within the specified time Registrar shall be bound, on the written request of the applicant, to determine whether such membership shall be given or not. If this is not done, the applicant may make a representation before the Registrar, if the request is made to a person on whom the powers of Registrar is conferred or before the government. If the request is made to the Registrar and the Registrar or government as the case may be, shall within 30 days from the date of request, determine whether such membership should be given or not.

QUALIFICATION FOR MEMBERSHIP IN A CO-OPERATIVE SOCIETY – SECTION 16 & RULE 16

An individual must have the following qualifications for membership in a co-operative society:

- (a) He must have attained 18 years. However, the societies exclusively for the benefit of students are exempted.
- (b) He is of sound mind.
- (c) He must be a resident within the area of operation of the society or in the occupation of land within the area of operation of the society.

- (d) He should not be adjudicated as an insolvent.
- (e) He should not have been sentenced for an offence other than of political nature or involving moral turpitude.
- (f) He is not a paid employee of the society or of its financing bank. This restriction shall not apply to Co-operative Motor Transport Societies, Co-operative Workshop, societies for the employees of financing bank and societies formed for the benefit of actual workers.
- (g) He should not have been surcharged, if surcharged, a period of three years have been elapsed.

As per Rule 16 and 20 of the Co-operative Societies Act, there are the following procedures for getting membership:

1. He should apply in the prescribed form given by the society.
2. His application is approved by the committee.
3. He has fulfilled all other conditions laid down in the Act, Rules and Bye-laws.
4. In case of other societies or body of persons or non-statutory board approved by governments, committee or corporation the application for membership shall be accompanied by a resolution authorizing it to apply for such membership.

A decision on an application for membership has to be taken within two months of its receipt.

In case of refusal, the same has to be communicated within 15 days.

The membership of a society is terminated in the following cases:

1. By removal of members.
2. By expulsion of members.
3. By withdrawing all his shares.
4. By transfer of all his shares.
5. By liquidating the society.
6. By death of a member.

REMOVAL OF A MEMBER – RULE 16

If a member of society becomes ineligible to continue as such he may be removed from membership either by Registrar or by the committee on the basis of representation made by any member or by financing bank. The member concerned shall be given opportunity of being heard before his removal and Registrar has to pass an order in writing stating that the person has ceased to be a member of the society.

EXPULSION OF A MEMBER – SECTION 17 & RULE 18

A member will be expelled from a society if he has acted adversely to the interest of the society. The following are the procedures:

1. If one member desires to bring a resolution against any other member he has to give the complaint in writing to the president of the society.
2. When such complaint is received the committee shall give a registered notice to the person concerned to give his explanation within 15 days from the date of receipt of notice.
3. The committee shall give an opportunity to the complainant also to substantiate his allegations.
4. The member shall also be given an opportunity for being heard in person if he desires so.

5. Thereafter the committee shall decide whether further action is necessary or not.
6. If in the opinion of the committee further action is necessary, a special general body shall be convened for this purpose only.
7. In that special general body the proposal of expulsion shall be approved by not less than 2/3 majority of the members present and voting.
8. Within 15 days from the date of general body the copy of general body resolution shall be served upon the member and thereby he ceases to be a member.
9. If the member is aggrieved on the decision of general body he can present an appeal against the general body decision before the Registrar.
10. The Registrar may take a decision on the appeal and it will be final and binding both member and society.

ASSOCIATE MEMBER – SECTION 18

A society can admit any individual as a nominal or associate member. An associate member will not have all rights and liabilities as in the case of a full fledged member. As per this Act, he is not entitled to share assets and profits of the society. He has no voting right and he cannot stand for election. But District Co-operative Bank may admit any co-operative society other than Primary Agricultural Credit Societies and Urban Co-operative Banks functioning within its area of operation as nominal or associate member.

RIGHTS OF MEMBERS – SECTION 19 & RULE 20

A member shall exercise the right of a member after making payments in respect of membership. The following are the rights of members:

1. RIGHT TO VOTE – SECTION 20

Every active member of a society shall have one vote in the affairs of a society, subject to certain restrictions. But a member who is admitted within 60 days immediately prior to the date of election shall not have the right to vote. Associate member shall not have the right to vote. Where the government is a member of the society, each person nominated to the committee shall have only one vote. An ex-officio member cannot exercise the voting right. If the total votes happen to be equal for and against, the chairman shall have a second vote called casting vote.

As per section 21, every member of a society shall exercise his vote in person. A society or corporation or a board committee or other body of persons which is a member of another society may appoint one of its members to vote on its behalf in the affairs of that society.

2. RIGHT TO HOLD SHARES – SECTION 22

A member can subscribe to the shares in a society to the extent of 1/5th of the total share capital. But, this is not applicable to government, any statutory or non-statutory board committee, or corporation approved by the government in this behalf.

3. RIGHT TO TRANSFER SHARES – SECTION 23

Subject to the following conditions a member can transfer his shares:

- a. The transfer should be subject to the restrictions according to Section 22
- b. The member has held such share for a period not less than three years.
- c. The transfer is approved by the committee of the society.

4. RIGHT TO WITHDRAW TRANSFER OF SHARES – SECTION 24

Subject to the following conditions a member can withdraw his shares

- a. The member has held such share for a period not less than three years.
- b. The withdrawal is in accordance with the bye-laws of the society.

5. RIGHT TO NOMINATE HEIR – RULE 23

A member shall nominate a person as nominee in order to inherit his share or interest in the society in the event of his death. The nomination made shall be in writing and signed by the members. It shall be attested by at least two witnesses, each of whom has been the member signing it and registered in the books of the society kept for the purpose.

6. RIGHT TO OBTAIN DOCUMENTS FROM THE REGISTRAR'S OFFICE – RULE 24

Any person can obtain a certified copy of any public document not being a document privileged under the Indian Evidence Act, on payment of a prescribed fee. The application fee shall be paid in the form of court fee stamps.

7. RIGHT TO INSPECT THE ACCOUNTS OF THE SOCIETY – RULE 25

A member can inspect himself or through an agent who shall be a member the records of a society relating to his transactions with the society. This inspection can be made only in office hours. He has to pay fees as prescribed by the committee.

LIABILITY OF A MEMBER

The members of co-operative society having limited liability have only liability to the sum occurred from the society. That means the liability is extended to the debts of the society as on the date of ceasing to be a member.

As per Section 25 and Rule 21, a society shall transfer the share or interest of the deceased member to a person or persons nominated in accordance with the Rules or Bye-laws. If he has no nominee it will be transferred to his legal heirs.

LIABILITIES OF PAST MEMBER OR LIABILITIES OF ESTATE OF DECEASED MEMBER – SECTION 26

A past member is liable only for the debts of the society on the date on which he ceased to be a member. In the case of deceased member, his estate is liable for the debt of the society on the date of his death and it shall continue for a period of two years from such date. Where a society is ordered to wound up, the liability of the past members who ceased to be a member or estate of the deceased member, within two years immediately preceding the date of the order of winding up and shall continue until the entire liquidating proceedings are completed.

Module 5

MANAGEMENT OF CO-OPERATIVE SOCIETIES

The management of co-operative societies is very vital like any other concerns. The following are the major areas of management of co-operative societies.

GENERAL BODY - SECTION 27

The general body is the supreme and final authority of a co-operative society. All members of the society other than associate or nominal members are to attend the general body meeting. Proxy is not allowed in the general body meeting of societies. Usually the managing committee convenes the general body meeting. Registrar will convene the general body meeting, if the managing committee fails to convene the meeting.

REPRESENTATIVE GENERAL BODY – SECTION 27 (2&3) & RULE 34.

As per this provision general body meeting of a society may constitute a smaller general body meeting which is called representative general body where the area of society is one or more taluks or the total number of members is not less than 1000. Representative General Body meeting consists of committee members and representatives elected from each unit as provided in the Bye-law. The representative general body meeting shall be convened once in five years.

As per the rules member may be represented for every 50 members. The norms of representation are as under:

1. 50 in case the total number of members of the society does not exceed 2500.
2. 200 in case the total number of members is above 2500 but below 10000.
3. 500 in any other cases.

MANAGING COMMITTEE – SECTION 28

As per Section 28(1) the general body of a society shall constitute a committee for period not exceeding five years in accordance with Act, Rules and Bye-laws and entrust the management, the affairs of the society to such committee. The maximum number of members of the committee shall not exceed 15 in the case of primary societies and 25 in other societies. In the case of federal society, number of individuals in the society and the committee there of shall not exceed 25% of the total number of members in the society.

ADHOC COMMITTEE

In case of a new society the person who has signed the application to register the society may appoint a committee to conduct the affairs of the society. This is known as adhoc committee. This committee will be in power for a period of three months from the date of registration. The Registrar may extend the period of such committee if necessary. But this committee shall cease to function as soon as the committee in accordance with the Bye-law has been constituted. If Bye-law provides the government or Registrar may nominate all or any of the members of the first committee including the president or chairman for a period not exceeding 12 months.

FUNCTIONS OF MANAGING COMMITTEE

1. To formulate plans for the development of the society.
2. To frame policies, programmes, procedures etc for the attainment of the goal of the society.
3. To build organizational structure and create proper climate for its successful working.

4. To take timely and appropriate decisions and also render dictions and guidance for the effective implementation of these decisions.
5. To exercise control over financial and administrative matters.
6. To co-ordinate the various activities of the society.

POWERS OF MANAGING COMMITTEE

1. Election of office bearers.
2. Admission of members and allocation of shares.
3. To raise necessary funds in the form of deposits and loans.
4. To convene the general body meeting.
5. To arrange for proper maintenance of accounts of the society.
6. To appoint, control and supervise the staff.
7. To decide on how to invest the funds of the society.
8. Consideration of audit, inspection and enquiry reports.
9. To sanction transfer of shares and withdrawal of shares.
10. To constitute the sub committees.

STATE CO-OPERATIVE ELECTION COMMISSION – SECTION 28B

The government, shall by notification in the Gazette, constitute a state co-operative election commission for the superintendence, direction and control of the conduct of the elections to the committees of all credit, apex, central and federal societies in the state.

The commission shall be an officer not below the rank of a government secretary appointed by the government for a period of five years. The commission, in consultation with government, designates or nominates government staff for the execution of election work.

PROCEDURE OF ELECTION IN THE COMMITTEE OF SOCIETIES – RULE 35

According to Rule 35 of the Act, the election of the members of the committee shall be conducted in the following manner.

1. DECISION TO CONDUCT ELECTION

Before expiry of the term, the committee shall meet at least 60 days in advance and pass a resolution fixing the date, time and place for the conduct of election of the new committee. A copy of such resolution shall be sent to the Registrar by registered post within a week.

2. APPOINTMENT OF RETURNING OFFICER

On receipt of resolution the Registrar may appoint a returning officer for the conduct of the election. He is eligible to get the remuneration at the rate fixed by the Registrar and is responsible for conducting the election.

3. ISSUE VOTERS LIST

Under this stage, prepare preliminary voters list and invite objection, if any within three days of the date of publication. Final list must be published not less than 10 days prior to the date of election.

4. ISSUE OF ELECTION NOTICE

The returning officer has to send election notification containing the following to all members whose names are included in the final list.

- a. Number of vacancies to be filled up.
- b. Area from which members are to be elected.
- c. Date, place and hours between which nomination papers shall be filled by the contesting candidates.
- d. Date and hours when nomination papers will be scrutinized.
- e. Last date of withdrawal.
- f. Date, place and hours between which polling will take place.

5. FILING OF NOMINATION.

Nomination paper of the proposed candidate shall be presented before the returning officer before the specified time. Every nomination paper shall be signed by two members whose names are included in the list of members; one of the members should propose the name and the other should second the nomination.

6. SCRUTINY OF NOMINATION PAPERS.

The returning officer should examine the nomination papers on the day following the date fixed for the receipt of nomination papers. The candidate or his proposer or seconder may be present at the time of scrutiny. He may reject the nomination on the valid reasons which should be recorded.

7. PUBLICATION OF VALID NOMINATION.

The returning officer has to publish the list of valid nomination on the notice board of the society without delay.

8. WITHDRAWAL OF NOMINATION.

A candidate may withdraw nominations at any time after the presentation of his nomination paper but before 5 pm on the day following the day on which the valid nominations are published.

9. POLLING

If the number of candidates whose nominations are valid exceeds the number to be elected for any area or constituency, the returning officer shall arrange for conducting a poll on the date fixed for the purpose. For every 1200 voters one booth should be arranged and the polling officers and assistants should be appointed. The contesting candidate can appoint chief election agents and other agents. Voting compartments must be arranged in order to ensure the secrecy of voting.

Every member who wishes to exercise his right of vote shall be supplied with a ballot paper. It should be noted that no ballot paper shall be issued to a member unless he produces his identity card and no voter shall be allowed to vote after the hours fixed for the poll.

10. COUNTING OF VOTES

Votes shall be counted by the supervision of the returning officer. Each candidate and his agents have right to be present at the time of counting. At the close of the counting, the results shall be recorded in the minutes book. It should also be notified on the notice board of the society.

ESSENTIAL REQUIREMENTS OF MEETING OF A SOCIETY

The following are the essentials of meetings of a society

1. Notice
2. Quorum
3. Agenda

NOTICE

Notice should be given to all the members of the society in the case of general body, and to all the members of the committee or subcommittee in the case of committee meeting or sub-committee meeting. A notice should contain the place, date and time of the meeting. The notice should be given at least before the minimum number of days fixed in the bye-laws.

QUORUM

The minimum number of persons to be present at the general, managing committee or sub-committee is called quorum. In the absence of quorum the proceedings of meeting shall become invalid and irregular. The quorum for the general body meeting is usually 1/5 of the total number of members or a fixed number, whichever is less.

AGENDA

The notice of a meeting should contain a statement of the business to be transacted at the meeting of the society. Such a statement is called the agenda for the meeting. The agenda is prepared by the secretary. It may be written on a paper called agenda paper or in a book called agenda book.

MINUTES BOOK

The minutes of a meeting are a written record of the proceedings of the meeting. Minutes are prepared by the secretary after the meeting is over. A separate book is kept by the societies for recording the minutes. Each page of such book must be signed and the last pages of the record of each meeting must be dated and signed.

ANNUAL GENERAL BODY MEETING – SECTION 29

For the following purposes a general body meeting of society shall be held once in every year.

1. Approval of the budget for the year.
2. Election, if any of the members of the committee.
3. Consideration of the audit report and annual report.
4. Disposal of net profit.
5. Consideration of any other matter in accordance with the bye-laws.

The Registrar or any other person deputed by him shall have the right to attend the committee or general body meeting of the society.

SPECIAL GENERAL BODY MEETING – SECTION 30 & RULE 36.

At any time the committee can call for a special general body meeting. The committee is also responsible for calling such a special general body within one month of getting a requisition either from Registrar or 1/5 of the total members of the society.

If the committee in default to convene such a meeting, the Registrar or any person authorized by him in this behalf shall have the power to call such meeting and that meeting shall be deemed to a meeting called by the committee.

GOVERNMENT NOMINEES ON THE COMMITTEE – SECTION 31 & RULE 37.

The government or any other authority specified have the right to nominate not more than three persons or 1/3 of total members of the committee whichever is less on the committee of an apex or central society under the following situations.

1. Where the government have subscribed to the share capital of the society.
2. Where the government have assisted indirectly in the formation of the share capital of an apex or central society.
3. Where the government have guaranteed the repayment of principal and payment of interest on loans and advances to an apex or central society.
4. Where the government have guaranteed the repayment of principal and payment of interest on debentures issued by an apex or central society.

However, a person nominated to the committee shall not participate in the discussion of any confidence motion or vote on such motion.

SUPERSESSION OF A COMMITTEE – SECTION 32

Under certain circumstances the Registrar can supersede the committee of a society. On supersession the Registrar may appoint a new committee consisting of not more than three administrators who need not be the members of the society to manage the affairs of the society for a period not exceeding six months. This period may be extended for one more year.

In the following circumstances the order of supersession may be issued.

1. The society is continuously making default or negligent in performing the duties vested on them according to the Act, Rules and Bye-laws.
2. The committee acts prejudicially to the interest of the society.
3. The committee willfully disobeys any lawful order.
4. The committee willfully fails to carry out any lawful order.

The following is the procedure for supersession.

1. The Registrar has to give an opportunity to the committee to state its objections.
2. The Registrar shall consult with the financing bank and concerned union.

However, the Registrar shall supersede the committee if in his opinion it is not reasonably practicable to give an opportunity to the committee to state its objections and consult with the financing bank and concerned union.

APPOINTMENT OF ADMINISTRATOR OR NEW COMMITTEE – SECTION 33 & RULE 40

A new committee of not more than three members or one or more administrators may be appointed by the Registrar on the application of any member or suo moto after consulting the circle co-operative union and financing bank under the following situations:

1. Where the term of office of the committee has expired and a new committee cannot be constituted.
2. Where a new committee cannot be constituted before the expiry of the term of office of the existing committee.
3. Where a new committee is prevented from assuming office.
4. When a no confidence motion is passed by the general body against the existing committee
5. Where the existing committee resigns enblock.
6. When there is no quorum for the committee due to the resignation of the members of the committee or other reasons.
7. When the committee fails to hold regular meeting consecutively for six months.

CONSTITUTION OF COMMITTEE, RESIGNATION AND REMOVAL FROM THE COMMITTEE – RULE 38

The president and office bearers are to be elected within seven days from the date of election. The elected members after the election of the president and other office bearers shall take a resolution to take charge from the outgoing office bearers. A report showing the name of all committee members and the date of taking charge of the new committee shall be sent to the Registrar, financing bank and the concerned union by the president within one week.

Resignation of committee members both elected and nominated shall be tendered to the president. The president shall place it in the committee for consideration in the case of elected members. The membership in the committee will cease after acceptance of resignation by the committee. The president shall send it to the nominated authority in case of nominated members. The nominated authority will take the decision of acceptance and inform the society. In case of president his resignation shall be placed in the committee meeting for consideration.

TERM OF MEMBERS OF COMMITTEE – RULE 39

All the members of the committee shall vacate office on the date specified in the bye-laws. Here one year of term shall be taken to be a period of 12 months from the date of assumption of office by the committee.

REMUNERATION TO THE COMMITTEE OR ADMINISTRATOR – RULE 40

The committee or administrator appointed as per the Act are eligible for remuneration at the rate fixed by the Registrar and the expense thereof shall be borne by the society concerned.

ELECTION OF THE PRESIDENT AND VICE PRESIDENT – RULE 43

After the constitution the meeting of the newly elected committee members shall be convened. This meeting shall be presided over by any member who is not a candidate for the election. He is called the presiding officer. When there is only one valid nomination the presiding officer shall declare him elected as president. When there is more than one valid nomination he has to arrange for the poll.

PRESIDENT AND HIS POWERS

In the democratic set up of a co-operative society the president occupies an important position. He is the head of administrative management and exercises over all control and supervision. He is elected by the managing committee from themselves.

The following are the main powers of the president:

1. To ensure general control and supervision of the affairs of the society.
2. He has top render direction and guidance in policy matters of the society.
3. To preside over the meetings of the society and conduct the meeting properly.
4. To lead discussions in such meetings and to ensure that appropriate decision are taken on the issues.
5. To exercise casting votes in case of equality of votes.
6. To ensure proper maintenance of register and records.
7. To take certain disciplinary actions against the employees of the society.
8. To operate joint accounts on behalf of the society.
9. To hear appeal against the disciplinary action taken by the chief executive.
10. To do all other duties and responsibilities specified in the bye-law.

SECRETARY

The secretary is the chief executive of the co-operative society. His main duty is to preserve confidence and carry on duties and responsibilities with loyalty and dedication.

DUTIES AND RESPONSIBILITIES OF SECRETARY

1. Day to day administration and management of the society.
2. To convene general body as per the decision of the committee.
3. To prepare and submit necessary report for decision at the meeting.
4. To render assistance to managing committee in the formation of policies and programmes.
5. To implement the decisions of the general body, managing committee etc.
6. To give guidance and directions to the subordinates for their working.
7. To make arrangements for the proper maintenance of records and registers.
8. To hold the custody of cash balance, securities and other valuables of the society.
9. To invest surplus funds of the society as per the direction of the managing committee.
10. To receive money and make payments on behalf of the society.
11. To enter into contract on behalf of the society.
12. To operate joint accounts of the society.
13. To deal in legal matters and arbitration cases as per the directions of the committee.
14. To prepare and submit periodical statements.
15. To take timely action for rectification in audit and related matters.
16. To represent the society in matters of seminar, conference etc.
17. To render assistance for audit, inspection, enquiry etc.

PRIVILEGES OF CO-OPERATIVE SOCIETIES

Co-operative societies are registered under the Co-operative Societies Act of Kerala and these institutions have been granted special privileges and concessions under the Co-operative Societies Act of Kerala.

FIRST CHARGE OF SOCIETY ON CERTAIN ASSETS- SECTION 35

As per section 35 any debt due from a member or past member or deceased member shall be a first charge.

- a. Upon the crops or agricultural produce which are raised with the loan availed from the society and
- b. Upon any cattle, fodder for cattle agricultural or industrial implements or machinery purchased out of any loan given by society.

The charge made in favor of society shall not be transferred without the previous permission of the society. Such charges shall be available as against any claim of the government arising from any loan granted by them.

CHARGE ON LAND HELD BY MEMBERS – SECTION 36 & RULE 51

A member of an agricultural society where he holds any land can create declaration in the prescribed form. This declaration creates charge on land for the payment of loan taken by the member. The declaration shall be registered.

DEDUCTION FROM SALARY TO MEET SOCIETY'S CLAIM – SECTION 37 & RULE 52

A member of the society as loanee or surety may execute the agreement in favor of the society providing that the employer or salary disbursement officer shall be competent to deduct from his salary such amount as may be specified in the agreement and to pay the amount so deducted to the society towards any debt or dues payable by the member to the society. In case of default by such member the society has to inform the salary disbursement officer to deduct such amount from his salary until the full realization of the debt.

CHARGES AND SET OFF IN RESPECT OF SHARES OR INTEREST OF A MEMBER IN THE CAPITAL OF A SOCIETY – SECTION 38

The co-operative society shall have the right to set off the share and dividend on the members for recovery of his dues by giving him a notice on this subject. To adjust this amount no legal proceedings are required.

SHARES OR INTEREST OR RESERVE FUND NOT LIABLE TO ATTACHMENT – SECTION 39

The share of member in the society and dividend on share shall not be attached by any court for recovery of debt except the dues of the society itself.

EXEMPTION FROM STAMP DUTY – SECTION 40

A society is exempted from stamp duty in respect of transactions made between the society and member up to a certain limit. The government may by notification in the official gazette exempt any class of societies from taxes on

- a. Agricultural income
- b. Sale or purchase of goods and
- c. Professions, trade, callings and employments.

PROPERTIES AND FUNDS OF CO-OPERATIVE SOCIETIES

Co-operative societies are also business organizations. They are dealing in funds and financial matters. So they also require sound financial base and control. For the systematic and sound financial operations societies are framed properly with measures and rules in Co-operative Societies Act as follows:

FUNDS NOT TO BE DIVIDED – SECTION 55

The funds of a co-operative society except the net profit shall not be paid as bonus or dividend or otherwise distributed to members. But a member may be paid such allowances and remuneration as may be laid down in the Bye-laws for the service rendered by him to the society.

DISPOSAL OF NET PROFIT – SECTION 56

The disposal of net profit of a co-operative society shall be in the following manner.

1. Transfer an amount not less than 15% of net profit to the reserve fund.
2. An amount not exceeding 5% shall be paid to the co-operative education fund subject to a maximum of Rs. 40000.
3. In the case of central society including a District Co-operative Bank an amount not exceeding 25% of the paid up capital for dividend to its members.

The balance of profits may be utilized for any of the following purposes.

- a. Dividend to members at a rate not exceeding 20% of the paid up share capital.
- b. Bonus to members in proportion to the business transacted with the society.
- c. Contribution to special funds as specified in the Bye-law.
- d. Contribution to common fund to the extent of 10%.
- e. Payment of bonus to employees of the society as specified in the Bye-law.

CO-OPERATIVE EDUCATION FUND – SECTION 56 & RULE 53

A society having net profit of Rs. 1000 and above shall set a part a sum of 5% of the net profit to the co-operative education fund subject to a maximum of Rs. 40000. The purpose of this fund is to meet the development activities of co-operative education in the state. A separate account for this fund is to be maintained by Kerala Co-operative Union, the custodian of the fund.

INVESTMENT OF FUNDS – SECTION 57

In the following manner the funds of a society shall be invested:

- a. In government savings bank.
- b. In shares or securities of the society approved by the Registrar.
- c. Securities specified in section 20 of the Indian Trust Act.
- d. In any bank approved by the Registrar.
- e. In any other manner prescribed in Rule 54.

THE CO-OPERATIVE DEVELOPMENT AND WELFARE FUND – SECTION 57A

Government may by notification frame a scheme called ‘co-operative welfare and development scheme’. The society may contribute at the rate specified in the scheme. The fund shall be utilized for payment of grant or loans to the societies.

MANNER OF INVESTMENT OF FUNDS – RULE 54

A society may invest the whole or any portion of its funds in the purchase or lease of land, construction or renewal of building that may be necessary to conduct its business. However previous written sanction of the Registrar has to be obtained before the investment is made. The amount of fund so invested shall be recouped as directed by the Registrar.

PROVIDENT FUND – SECTION 61

Every society shall establish a contributory provident fund for the benefit of its employees. It is provided that the contributory provident fund established under the section shall not apply to the employees of such societies to which the provisions of the self financing pension scheme are made applicable. Such societies shall establish a provident fund in such manner as prescribed.

GRATUITY – SECTION 62 & RULE 59

Every society shall make in its Bye-law a provision for the payment of gratuities to its employees and frame regulations for its administration.

RESERVE FUNDS AND ITS INVESTMENTS – RULE 60 & 61

The society shall invest or deposit its funds in the following manner.

1. In case of societies with an area of operation limited on district except financing bank in the district co-operative bank.
2. In the case of all other societies in the apex bank.

The government may by general or special order, permit any society or class of societies to utilize the reserve fund either in full or in part in the business of societies.

WRITING OFF BAD DEBTS AND LOSSES – RULE 62

A society may write off bad debts or loses only with the approval of the general body and with the sanction of the Registrar. If the society is indebted with financing bank such bank's opinion must also be obtained in this regard.

AUDIT, ENQUIRY AND INSPECTION

As a democratic institution the persons who are related with the society want to know whether the society is going for the common interest of all. For this, enquiry, audit and inspection are required.

DIRECTOR OF CO-OPERATIVE AUDIT – SECTION 63

It provides that the director of co-operative audit ore any body authorized by him shall audit the accounts of the society at least once in a year.

SCOPE OF AUDIT-POWERS OF THE DIRECTOR OF CO-OPERATIVE AUDIT AD PROCEDURE FOR THE AUDIT – SECTION 64

Audit includes the examination of overdue debts, if any, verification of cash balance and securities and valuation of asset and liabilities of the society and any other matters prescribed. The Director of Co-operative Audit or the people authorized by him can audit books of accounts of the society. The government may by a general or a special order confer on any person all or any of the powers of the director.

The accounts of every co-operative society shall be audited at least once in a year by the Registrar or by person authorized by the Registrar. As per section 64(1) audit includes examination of overdue debts, verification of cash balance and securities and valuation of assets and liabilities of the society.

As per section 64(2) the Registrar or any other persons authorized by him shall have access to all books and accounts, documents, papers, securities, cash and other properties belonging to the custody of the society.

As per section 64(3) every person who is or has been at any time an officer or the employee of the society is bound to furnish such information in regard to transactions and working of the society as required by the Registrar or persons authorized by him.

As per section 64(4) the financial statements and other details required for the audit shall be prepared by the society within three months from the end of the year and the fact should be intimated to the director of c-operative audit.

Section 64(5) insists that the audit shall be commenced with one month fro the report by the director and shall be completed within a period of nine months.

Section 64(6) provides for the levy of audit fees accordingly every society is to pay such fees for the audit of its accounts every year as fixed by the Registrar.

Section 64(7) provides for the payment of audit fee and (8) prescribes for the payment. Section 64(9) provides that if the audit held discloses any defects in the working of society, the director may bring such defects to the notice of the society.

Section 64(10) relates with serious defects in the audit. Section 64(11) provides that the director of o-operative audit may by order in writing direct the society or its officers to take such actions as may be specified I the order within time mentioned and there into rectify the defects disclosed in the audit under intimation to the Registrar.

AUDIT MEMORANDUM

After the audit of the society the auditor shall submit an audit memorandum or report to the Registrar in the form prescribed by the Registrar. This memorandum is concerned with the audit work done by him or the accounts examined by him and on the balance sheet and final account.

Memorandum will state the following

- I. Whether in the opinion of the auditor proper books of accounts have been kept as per the Act and Bye-laws.
- II. Whether he has obtained all the information and explanation for the conduct of audit.
- III. Whether the final accounts are in tally with the books of account.

AUDIT FEES – RULE 65

Every society has to pay to the government an audit fee within one month of the receipt of audit certificate. The audit fee is calculated on the basis of working capital of the societies on the last day of the co-operative year or on the total sales during the year of audit as the case may be.

EXEMPTION FROM AUDIT FEE – SUB RULE 3

Certain societies are exempted from the payment of audit fees. They are as follows:

1. All co-operative societies of which all or majority of members are harijans or girijans.
2. All farming societies
3. All social welfare societies.

The following societies are given exemption for certain periods

1. Any society for its first year of audit
2. Weavers society or coir or fishermen society for six years
3. Every credit society where working capital does not exceed Rs. 2000 and any other society whose sales or gross income does not exceed Rs. 10000.

At present audit fee is calculated at the rate of 50 paise for every 100 rupees or part thereof on the working capital, the value of sales or the gross income, as the case may be provided the maximum audit fees shall not exceed Rs. 15000.

ENQUIRY – SECTION 65 & RULE 66

An enquiry is held by the Registrar to enquire into the constitution, working and financial conditions of a society as and when occasion arises and circumstances warrant it. Generally enquiry is held when there are serious irregularities noticed in the working of the society.

Generally the enquiry is held in the following situations.

- a) Registrar on his own accord
- b) On an enquiry report of the vigilance officer
- c) On a reporter of the director of co-operative audit.
- d) On an application by majority of the committee members
- e) On an application by the apex society or financing bank.
- f) On an application of the affiliated society.

POWERS OF THE REGISTRAR

The Registrar or a person authorized by him shall have the following powers for the purpose of enquiry.

- a) He shall have free access to the books, accounts, documents, securities, cash and other properties belonging to or under the custody of the society.
- b) He may summon the persons in possession of or responsible for the custody of the above things.
- c) The enquiry officer may himself call a general body or as the president or secretary to convene a general body meeting irrespective of the provisions in the Bye-law.

PROCEDURE OF CONDUCT OF ENQUIRY

When the Registrar makes orders for enquiry it shall contain a specific point of enquiry. A copy of such order is served to the president or secretary of the society.

On receipt of the enquiry order the person authorized to conduct the enquiry shall proceed to examine the relevant books, accounts and other documents in the possession of the society or any of its officers, members etc. he will submit report concerning all the points of enquiry. It also contains his findings.

The Registrar shall pass such orders after giving a reasonable opportunity of being heard to the society or persons concerned. The Registrar may communicate the result of enquiry to the financing bank and the circle co-operative union and also to the society by directing the society to take appropriate action to remedy the defects on the part of the society.

SUPERVISION AND INSPECTION – SECTION 66

According to Kerala Co-operative Societies Act, the Registrar can by himself or through the inspecting staff supervise or inspect the working of co-operative institutions. Inspection of the books of accounts of a society may be made by the Registrar or by his staff authorized by him periodically to see that the accounts and registers are kept up to date and in the proper form.

As per section 66 (2), the Registrar on his own accord or on the application of a creditor of the society may inspect or authorize any person to inspect by a specific order in writing.

As per section 66(3) the results of the inspection is to be communicated to the creditor, if it is at the desire of the creditor.

As per section 66(4) the Registrar or a person authorized by him shall have the following power for the purpose of inspection.

- i. He shall have full access to books of accounts
- ii. The inspecting officer may summon any person who is in the possession of such books and accounts
- iii. The employees of the society are bound to assist such inspection.

As per section 66(5) the Registrar or a person authorized by him may direct the society by an order in writing to take such action as specified within a stipulated time.

Section 66(6) empowers the circle co-operative union to direct a non official member to be present at the time of inspection under section 66(2).

As per section 66(7) the financing bank is also competent to inspect the books of any society which is affiliated to it through its officers. As per section 66(8) and (9) inspecting officers have full access to books, accounts, documents, securities, cash and other property belonging to the society.

As per section 66(10), the financing bank may report to the Registrar, the action to be taken against the society as a result of inspection by its officers.

SUSPENSION OF OFFICERS – SECTION 66B

During the enquiry, inspection or on audit, if the Registrar is satisfied that any officer other than president, vice president, chairman, vice chairman and member of the committee of any society has done any act detrimental to the interest of the society or its members and that there is a reason to believe that such officer has indulged in misappropriation, manipulation of accounts, forgery, destruction or tampering of records of the society, issue a direction to the committee of the said society to suspend the officer or officers responsible for the offence.

DISPUTES

As per section 2(1) of Kerala Co-operative Societies Act, a dispute means any matter touching the business, constitution, establishment, or management of a society capable of being the subject matter of litigations and includes a claim in respect of any sum payable to or by a society whether such claim be admitted or not.

ARBITRATION

Arbitration is the determination of dispute by the decision of one or more person. Arbitration is a legally effective adjudication of a dispute otherwise than by ordinary procedures of court. The person who takes such decision is called arbitrator.

Under the Co-operative Societies Act the Registrar is empowered to act as an arbitrator and the power of the civil court have been conferred on him.

POWERS OF ARBITRATOR – RULE 67(2) & (3)

- a. To administer, oath, to require attendance of all parties concerned and examine the witness.
- b. To require production of all the books and documents relating to the dispute.
- c. To inspect any property this is the subject matter of dispute.
- d. To summon and examine any person as a witness.
- e. To issue commissions for examination of witness, whose evidence is necessary for deciding the dispute?

PROCEDURE OF ARBITRATION – RULE 67

According to this rule the application is to be in writing accompanied by a list of relevant records on which the dispute is based. The arbitration fees at the stipulated rate should be remitted in the treasury and receipted challan should be attached with the petition. A certified copy of the resolution adopted by the committee for filing the case shall be enclosed if the application is filed on behalf of the society. He has also to produce certified copies of other records when called for by the Registrar.

The following procedure is to be followed by the arbitrator (Registrar) as per sub rules (4) and (b).

- a. He shall record a brief note of the evidence of the party's witness to dispute.

- b. H should prepare a case diary in which the date leaving the case, the parties to examine the documents produced etc will be noted in it.
- c. On each day of hearing it shall be noted and signed.
- d. The summons of the parties should be properly served.
- e. In the absence of the party duly summoned, the dispute may be decided on ex-parte basis.

DISPUTES TO BE DECIDED BY CO-OPERATIVE ARBITRATION COURT AND REGISTRAR – SECTION 69

Any dispute touching the constitution or business or establishment or management of a society which fall under the following categories shall be referred to the Registrar for decision and no court shall have jurisdiction for such disputes.

- a. Among members, pasty members
- b. Deceased member and the society
- c. Between the society or its committee and past committee, any officer or employee or past officer.
- d. Between the society and the members of a society affiliated to it.
- e. Between the society an surety of a member
- f. Between a society and a creditor of a society

As per section 69(2) the disputes may be in the following cases

1. A claim by the society or any amount due to it from a member nominee or legal representatives of the deceased member.
2. A claim by a surety against the principal debtor
3. Any dispute arising in connection with the election of the board of management or an officer of the society.

The person deciding the dispute should pass an award (order) under the provisions of the Act, Rules and Bye-laws. Such an award shall be final subject to the provision of section 82.

AWARD ON DISPUTE – SECTION 70

On receipt of references of a dispute, the co-operative arbitration court shall pass an award in accordance with the provisions of this Act, Rules and Bye-laws made there under and such award shall, subject to the provisions of section 82, be final. The co-operative arbitration court may, pending award of a dispute, make such interim orders as it may deem necessary in the interest of justice.

CO-OPERATIVE ARBITRATION COURT – SECTION 70A

The co-operative arbitration court is empowered to entertain non-monetary disputes. The co-operative arbitration court shall have the same powers of civil court under Civil Procedure Code 1908 in the following manner

1. The summoning and enforcing the attendance of any dependent or witness and examining the witness.
2. The discovery and production of any document or other materials.
3. The reception of evidence on affidavits.
4. Issuing of any commission for the examination of witness and
5. Any other matter which may be prescribed

The co-operative arbitration court shall pass an award on dispute in accordance with the provisions of this Act, Rules and Bye-laws made there under and such award shall, subject to the provisions of section 82, be final.

PROVISIONS AS TO PENDING PROCEEDINGS – SECTION 70B

On the constitution of the co-operative arbitration court every disputes pending before the Registrar or any person has the power to dispose of the dispute by the government or the arbitrator appointed by the Registrar, in respect of non-monetary disputes relating to the local area of jurisdiction of the co-operative arbitration court and the court shall dispose of the same.

REFERENCE OF DISPUTES, PAYMENT OF EXPENSE AND DECISIONS ON DISPUTES – RULE 67

The reference of any dispute to the Registrar shall be in writing. The application shall be accompanied by a list of relevant records on which the dispute is based and a receipted challan to evidence payment of the fee for deciding the dispute.

WINDING UP OF SOCIETIES – SECTION 71(1) & (2)

As per section 71(1), if the Registrar after an enquiry has been held under section 65 or an inspection has been made under section 66 or on receipt of application made by not less than $\frac{3}{4}$ of members of a society, is of the opinion that, the society ought to be wound up he may make an order in writing to direct the society to be wound. He should consult the financing bank and circle co-operative union and gives an opportunity to the society to state its objection, if any, before giving such order.

The following are also the circumstances for the liquidation.

- a. Where the total number of members has been reduced to less than 25
- b. Where the society has not commenced working within six months of its registration
- c. Where the number of actual workers falls below the prescribed limit in the case of a society formed exclusively for the benefit of persons engaged in a particular industry or operation.

APPOINTMENT OF LIQUIDATOR – SECTION 72

A person who is appointed to liquidate the society or to wind up the affairs of the society is called liquidator. As per section 71 the Registrar is competent to fix the remuneration for the liquidator. Under section 72 liquidators is appointed by the Registrar and issue orders for the winding up of the society.

The liquidator shall take all the properties and other assets etc of the society into his custody or under his control. He shall also take necessary steps to prevent loss ore deterioration or damage of such properties or assets.

POWERS OF LIQUIDATOR – SECTION 73 AND RULE 69

Subject to the rules the whole of the assets of a society, which is ordered to be wound up shall vest in the liquidator appointed under section 72 from the date on which the order takes effect and he shall have powers to realize such assets by sale or otherwise.

As per section 73(2), subject to the control of Registrar the liquidator has the following powers.

1. He shall publish a notice requiring all claims against the society to be submitted to him within a period of two months.
2. File the case for and on behalf of the society.
3. To determine the contribution to be made by members, past members, legal heirs, nominees etc after settling the assets and liabilities of the society.
4. Liquidator shall investigate the claim against the society. He shall have the powers to fix the rate of payment as per the availability of funds.
5. Cost of liquidation shall be decided by him.
6. He shall have the power to decide whether a person is a member, past member, nominee, heir etc.
7. He shall have the authority to carry on the business for the beneficial winding up of the society.
8. He shall have to submit periodical reports to the Registrar with regard the progress of the winding up.
9. He can empower any person to assist him.
10. He can call general body meeting of the members whenever necessary and explain the proceedings taken so far and decide the utilization of balance of fund with him.

LIQUIDATION PROCEDURE – RULE 69

As per Rule 69(1), the appointment of the liquidator is to be notified by the Registrar on the official gazette. As per Rule 69(2), as soon as the order of winding up takes effect the liquidator is to publish a notice requiring all claims against the society to be submitted within two months from the date of publication. All liabilities recorded in the books of society shall be deemed to have duly submitted to him.

As per Rule 69(3), the liquidator shall first settle the assets and liabilities of the society as stood on the date of order of winding up. As per Rule 69(4), the liquidator is required to submit to the Registrar in the prescribed proforma, quarterly progress report stating the progress made on the winding up of the society. As per Rule 69(5), the liquidator may act with the previous sanction of the Registrar if it is specified in the rules.

As per Rule 69(6), the liquidator shall deposit all funds in his charge in the post office savings bank or in the financing bank or in any other bank as approved by the Registrar.

As per Rule 69(7), the Registrar shall fix the amount of remuneration if any, to the liquidator or to the charge to be paid to government to meet the cost of liquidators. The charges are to be met from the assets of the society in priority to all the claims.

Rule 69(8) gives powers to the liquidator to call for general body meeting of the members. As per Rule 69(9), in the general body meeting the liquidator shall summarize the proceedings and take decision regarding utilization of the surplus funds if any.

As per Rule 69(10), the undischarged liabilities if any are to be deposited in the financing bank for giving it to the claimant on future date.

DISPOSAL OF RECORDS OF WOUND UP SOCIETY

When the affairs of a society have been finally wound up the liquidator is to keep in his office all books and records for a period of three years. On expiry of this period the same may be destroyed by the liquidator, on taking orders to that effect from the Registrar.

CANCELLATION OF REGISTRATION OF A SOCIETY – SECTION 75

The Registrar shall make an order for the cancellation of the registration of the society under the following circumstances.

1. If the liquidator fails to take charge of the liquidation within two months from the date of order.
2. If an appeal made to the government is confirmed and by the time the liquidator has not been appointed within two months.
3. When the affairs of the society are wound up.
4. When the Registrar is satisfied that the final wind up is not possible due to destruction of records.

EXECUTION OF ORDER, AWARD ETC. – SECTION 76

Generally execution of awards or decrees is the duty of civil court. But, under the Co-operative Societies Act, for the speedy implementation of their work this power is specially conferred on the Registrar or any other person authorized by him.

The following orders, awards etc. if not carried out shall be executed as a decree of a civil court.

1. The order of surcharge issued under section 68.
2. Order passed under section 75 for enforcement of charge.
3. Award issued under section 70.
4. Order made by liquidator under section 73.
5. Every order in appeal reviewed by the tribunal under section 82, 84, 85 or 86.
6. The order in appeal made by other authorities under section 83.

If the parties fail to carry out orders they shall be executed in the following ways.

- a. On a certificate signed by the Registrar or any person authorized by him in his behalf, be deemed to be a decree of a civil court and shall be executed in the same manner as a decree of such court.
- b. Where the order is for the recovery of money, be executed according to the law for the time being in force for the recovery of arrears of public revenue due on land. The application of such a recovery shall be made to the collector accompanied by a certificate signed by the Registrar. The application should be submitted within 12 years from the date of order.
- c. The Registrar or any other person empowered by the Registrar in this behalf shall execute it by the attachment and sale or sale through attachment of any property of the person or a society.

PROCEDURE FOR EXECUTION OF DECISION, AWARD OR ORDER – RULE 74

If any decision, award or order has to be executed, the holder of such an order, award or order (decree holder) shall apply to Registrar.

Every such application shall be made in the form specified by the Registrar and shall be signed by the decree holder and shall be accompanied by the original of the order, decision or award and the receipted challan obtained from the treasury for payment of the fee specified by the Registrar.

On receipt of such application the Registrar shall verify the correctness of the particulars given on the application with the records available in his office and forward it to the sale office for necessary action. The sale officer will prepare a demand notice in writing in duplicate, in the form prescribed by the Registrar stating the name of defaulter and the amount due from him and serve it on the defaulter concerned.

If a defaulter dies before the decree has been fully satisfied, an application may be made against the legal representative of the deceased defaulter.

TRIBUNAL – SECTION 81

Tribunal is a person who has been holding the post of District Judge in the State. The government shall make rules for regulating the procedure and disposal of the business of the tribunal. Trivandrum is the Headquarters of the co-operative Tribunal.

APPEAL TO TRIBUNAL – SECTION 82

Any person aggrieved by the decision of the Registrar or any such authority can prefer an appeal to the tribunal within 60 days from the date of such order.

1. An order passed by the Registrar for the compulsory amalgamation or compulsory division of societies.
2. Any decision of the Registrar under Section 70(3)
3. Any decision of the person appointed by the government to hear arbitration reference as per Section 70(3)
4. Any award of the Arbitrator under Section 70(3)

An order passed by the Tribunal shall be final.

REVISION – SECTION 84

Where in the case, if an appeal lies to the Tribunal against the order, decision or award by the Registrar or Arbitrator and the same has not been filed within the limited time the Tribunal can admit the revision petition. It is done for the purpose of satisfying the legality or propriety of any decision passed. It is the responsibility of the party to convince the Tribunal about the legality of the earlier decision. Revision petition will be admitted only after the appeal period is over.

REVIEW – SECTION 85

The Tribunal is given the power to review its own order under the following circumstances. The application for review must be given within 90 days from the date of communication of order. The conditions are

- (a) There must be an important evidence or matter which was not within the knowledge of the applicant.
- (b) There is mistake or error apparent in the order.
- (c) Any other sufficient reason.

Notice of the review will be issued to both the parties and they have been given an opportunity for being heard. After hearing the case that Tribunal will raise its original order if necessary.