

WEST BENGAL CO-OPERATIVE SOCIETIES ACT, 1983

45 of 1983

[23rd May, 1984]

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WEST BENGAL CO-OPERATIVE SOCIETIES ACT, 1983

45 of 1983

[23rd May, 1984]

An Act to consolidate and amend the law relating to Co-operative societies in West Bengal. WHEREAS it is necessary and expedient to make provisions to give a healthy impetus and a sense of purpose for the co-operative movement in West Bengal, to promote thrift, self-help and mutual aid amongst people with needs and interests in common, to provide for clean, devoted and efficient management relevant to the needs of, and infuse a new life into, the co-operative societies in West Bengal, to diversify their activities, put them on sound financial footing and ensure democratic functioning, to generate employment, to increase production in all sectors of life including agriculture and industry, and above all, to bring about economic and social regeneration including better and happier conditions of living for the weaker sections of the community and to bring them within the fold of co-operative movement, and for that purpose, to consolidate and amend the law relating to co-operative societies in West Bengal; It is hereby enacted as follows

CHAPTER 1

Preliminary

1. Short title, extent and commencement :-

(1) This Act may be called the West Bengal Co-operative Societies Act, 1983.

(2) It extends to the whole of West Bengal.

(3) It shall come into force on such date as the State Government may by notification appoint, and different dates may be appointed for different provisions of this Act.

2. Definitions :-

In this Act, unless there is anything repugnant in the subject or context,

(1) "administrator" means an administrator appointed under section 30;

(2) "apex society" means a co-operative society whose ¹[area of membership] extends to the whole of West Bengal and the primary object of which is to promote the objects, and to provide facilities

(3) "arbitrator" means an arbitrator appointed under section 96 or section 97, and includes a Chief Arbitrator;

²(4) "audit officer" means a person appointed or authorised to act as audit officer under section 90, and includes an ³[Assistant Director of Co-operative Audit or Senior Auditor of Co-operative Societies, Grade-I,] appointed under sub-section (2) of section 9;

⁴(4a) "audit range" means an area within the jurisdiction of an audit officer not below the rank of ⁵[a Senior Auditor of Co-operative Societies, Grade-I, appointed under] sub-section (2) of section 9

;

(5) "board" means a board of directors for a co-operative society constituted under section 27;

(6) "by-law" means a by-law registered under this Act, and includes an amendment thereof;

²(7) "central co-operative bank" has the meaning as in the National Bank for Agriculture and Rural Development Act, 1981 ;

(8) "central co-operative land development bank" means a co-operative society, the objects of which include the creation of funds for lending money to its members and to co-operative land development banks;

²(9) "central society" means a co-operative society, the primary object of which is to facilitate the working of other co-operative societies which are its members, and includes a central co-operative bank;

(10) "consumers co-operative society" means a co-operative society, the primary object of which is to supply consumer goods

and to render such other services to its members as may be required in the matter of supply and production of consumer goods, and includes a federation of such co-operative societies;

(11) "co-operative farming society" means a co-operative society ⁸[, the principal object of which is to organise cultivation of lands] held by it or by its members jointly or otherwise with a view to increasing agricultural production and employment by proper utilisation of land, labour and other resources;

(12) "co-operative land development bank" means a co-operative society, the objects of which include the creation of funds for lending money to its members on long-term for improvement of agricultural land and for other productive purposes.

Explanation. In this clause,

(i) "long-term" shall mean a term exceeding ⁹[five years;]

(ii) "productive purpose" shall mean such effort, activity or constructions as may be prescribed.

(13) "co-operative society" means a co-operative society registered or deemed to be registered under this Act;

(14) "co-operative society with limited liability" means a co-operative society having the liability of its members limited by its by-laws to the amount, if any, unpaid on the shares respectively held by them or to such amount as they may respectively thereby undertake to contribute to the assets of the co-operative society in the event of its being wound up ;

(15) "co-operative society with unlimited liability" means a co-operative society having, subject to its by-laws, an unlimited liability of its members to contribute jointly and severally in any deficiency in the assets of the co-operative society;

(16) "co-operative year" means the year commencing on the first day of ¹⁰[April;]

(17) "co-operative credit society" means a co-operative society, the primary object of which is to create funds for lending money to its members ¹¹*****;

(18) "co-operative housing society" means a co-operative society, the object of which is to provide its members with dwelling houses,

apartments, or lands for construction of dwelling houses or apartments, and maintenance of common services in connection therewith, and includes a federation of such societies;

(19) "co-operative range" means such area within the jurisdiction of an officer not below the rank of an Assistant Registrar of Cooperative Societies as may be prescribed;

12(19a) "Director of Co-operative Audit" means the person appointed to be the Director of Co-operative Audit under sub-section (2) of section 9;

(20) "dispute" means any matter capable of being the subject of civil litigation, and includes a claim in respect of any sum payable to or by a co-operative society;

13(21) "district co-operative union" means a co-operative society which has an area of membership extending to the whole of a co-operative range and the primary object of which is to assist the State Co-operative Union in implementing its objects;

(22) "engineers' co-operative" means a co-operative society formed of unemployed

(i) degree holders in any branch of engineering, technology, science, commerce, arts or agriculture, or

(ii) diploma holders in any branch of engineering, technology or agriculture, or

(iii) certificate holders in any industrial trade, for their exclusive benefit, the percentage of degree or diploma holders in any branch of engineering or technology in the membership of the co-operative society being not less than sixty per cent.;

(23) "farmers' service co-operative society" means an agricultural cooperative society, the primary object of which is to render assistance, financial or otherwise, to farmers (particularly small and marginal farmers), rural artisans and agricultural labourers;

(24) "financing bank" includes a central co-operative bank, a State cooperative bank, a central co-operative land development bank, a primary co-operative bank, State Bank of India, or a nationalised bank or a regional rural bank, the object of which is to create funds for lending money to the co-operative societies or other institutions or both, declared as such by the State Government;

(25) "industrial co-operative society" means a co-operative society, the object of which includes manufacture and marketing of goods by or with the help of its members and providing supplies and services to them and to small producers and entrepreneurs, and includes a co-operative society established with the object of facilitating the operation of such society;

(26) "Inspector of Co-operative Societies" means a person appointed as such by the Registrar;

(27) "liquidator" means a liquidator appointed under section 100;

14(28) "member" means a person joining in an application for registration of a co-operative society or a person admitted to the membership of a co-operative society after registration in accordance with the provisions of this Act and the rules and the by-laws made thereunder, and includes a joint member and, subject to the provisions of sub-section (3) of section 69, a nominal member.

Explanation. For the purposes of this clause,

(a) "joint member" shall mean any one of two persons admitted jointly to the membership of a co-operative society under sub-section (4) of section 69, and shall include either of the following persons so admitted:

(i) husband and wife,

(ii) father and son or unmarried daughter, and

(iii) mother and son or unmarried daughter;

(b) "nominal member" shall mean any person admitted to the membership of a co-operative society as a nominal member under sub-section (3) of section 69 ;

15(28a) "the National Bank for Agriculture and Rural Development" means the National Bank for Agriculture and Rural Development established under section 3 of the National Bank for Agriculture and Rural Development Act, 1981 ;

(29) "net profit" means profit after deduction of establishment charges, contingent charges, interest payable on loans and deposits, audit fees and such other sums as may be prescribed ;

(30) "notification" means a notification published in the Official Gazette;

(31) "officer" includes a Chairman, Vice-Chairman, secretary, joint secretary, assistant secretary, managing director, manager, deputy manager, assistant manager, treasurer, director of a board, auditor elected, if any, from amongst members and any other person empowered under the rules or the by-laws to give direction relating to the affairs of a co-operative society, and also includes a Government officer deputed by the State Government or the Registrar under section 28 or an administrator appointed by the State Government or the Registrar under section 30 ¹⁶[or a special officer appointed under clause (c) of section 31] to manage the affairs of a co-operative society ;

(32) "prescribed" means prescribed by rules made under this Act ;

(33) "primary co-operative bank" has the same meaning as in the Reserve Bank of India Act, 1934 ;

(34) "primary co-operative credit society" means a co-operative society, the primary object of which is to create fund for lending money to its members;

(35) "primary co-operative agricultural credit society" means a co-operative society, the primary object of which is to create fund for lending short-term crop loan ¹⁷[,medium-term loan] and other agricultural inputs to its members.

18Explanation. In this clause,

(a) "short-term" shall mean a term not exceeding one year, and

(b) "medium-term" shall mean a term not less than three years and not more than five years;

(36) "primary society" means a co-operative society, the object of which is to promote the common interests of its members in accordance with the provisions of this Act or the rules or the by-laws;

(37) "Registrar" means a Registrar appointed under section 9, and includes any other person appointed under that section to assist the Registrar;

(38) "relative" has the same meaning as in the Companies Act, 1956;

(39) "Reserve Bank of India" means the Reserve Bank of India

constituted under the Reserve Bank of India Act, 1934;

(40) "rules" means the rules made by the State Government under this Act;

19(41) "State co-operative bank" has the same meaning as in the National Bank for Agriculture and Rural Development Act, 1981;

(42) "State Co-operative Union" means a co-operative society registered under this Act, having its **20** [area of membership] extending to the whole of West Bengal, and the primary object of which is

(a) to spread education on co-operative principles and practices,

(b) to arrange for training of the employees of co-operative societies, and of the employees deputed by the State Government, on co-operative principles and practices,

(c) to deal with and solve the problems of co-operative societies which are its members,

(d) to develop the existing co-operative societies,

(e) to organise and promote new co-operative societies,

(f) to propagate and publicise co-operative principles and ideas, and

(g) to perform such other functions as may be prescribed ;

(43) "Tribunal" means the Co-operative Tribunal constituted under section 135;

(44) "Trustee" means a trustee appointed under section 44.

1. Words subst. by W.B. Act 21 of 1990. for the operation of other co-operative societies which are its members, and includes a State Co-operative Bank;

2. Clauses (4), (7) and (9) subst. by W.B. Act 21 of 1990.

3. Words subst. by W.B. Act 22 of 1992.

4. Clause (4a) inst. by W.B. Act 21 of 1990.

5. Words subst. by W.B. Act 22 of 1992.

8. Words subst. by W.B. Act 21 of 1990.

9. Words subst. by W.B, Act 27 of 1989.

10. Word subst. by W.B. Act 27 of 1989.

11. Words om. by W.B. Act 21 of 1990.

12. Clause (19a) was first inst. by W.B. Act 27 of 1989, then subs. by W.B. Act 22 of 1992.

13. Clause (21) subst. by W.B. Act 21 of 1990.

14. Clause (28) subst. by W.B. Act 27 of 1989.
15. Clause (28a) inst. by W.B. Act 21 of 1990.
16. Words, figures, brackets and letter inst. by W. B. Act 21 of 1990.
17. Words inst. by W.B. Act 27 of 1989.
18. This "Explanation" subst. by W.B. Act 27 of 1989.
19. Clause (41) subst. by W.B. Act 21 of 1990.
20. Words subst. by W.B. Act 21 of 1990.

3. Repeal and savings :-

(1) The West Bengal Co-operative Societies Act, 1973, is hereby repealed.

(2) Notwithstanding such repeal, anything done or suffered or any action taken (including any rule made, any transaction entered into, any notification or notice issued with prospective or retrospective effect, any order passed, any appointment or registration made, any suit or proceeding commenced, any dispute decided or referred to arbitration, any right or title accrued, or any liability or obligation or penalty incurred) under the Co-operative Societies Act, 1912 or the Bengal Co-operative Societies Act, 1940 or the West Bengal Co-operative Societies Act, 1973 shall be deemed to have been done or suffered or taken under this Act, as if the provisions of this Act were in force at all material times when such thing was done or suffered or such action was taken.

(3) Every co-operative society existing at the commencement of this Act which has been registered or deemed to have been registered under the Cooperative Societies Act, 1912 or the Bengal Co-operative Societies Act, 1940 or the West Bengal Co-operative Societies Act, 1973 shall be deemed to have been registered under this Act, and its by-laws shall, in so far as they are not inconsistent with the provisions of this Act, continue in force until altered or rescinded and shall to such extent be deemed to be registered under this Act.

4. Construction of references to Act 2 of 1912, Ben. Act 21 of 1940 and West Ben. Act 38 of 1973 :-

All references to the Co-operative Societies Act, 1912 or to the Bengal Co-operative Societies Act, 1940 or to the West Bengal Co-operative Societies Act, 1973 occurring in any enactment for the time being in force in West Bengal shall, in the application of any such enactment thereto, be construed as references to this Act; and anything done or any proceeding commenced in pursuance of

any such enactment on or after the commencement of this Act shall be deemed to have been done or commenced and to have had effect as if any reference in such enactment to the Co-operative Societies Act, 1912 or to the Bengal Co-operative Societies Act, 1940 or to the West Bengal Co-operative Societies Act, 1973 had been a reference to this Act and no such thing or proceeding shall be deemed to have been invalid on the ground that such enactment did not refer to this Act.

5. The Companies Act, 1956 not to apply :-

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

6. Prohibition of the use of the word "co-operative" :-

No person other than a co-operative society shall trade or carry on business under any name or title of which the word "co-operative" or its equivalent in any language is a part :

Provided that nothing in this section shall apply to the use by any person or by his successor-in-interest of any name or title under which he lawfully traded or carried on business at the commencement of this Act.

7. Exemption of co-operative societies from the provisions of the Act :-

The State Government may, if it is satisfied that it is necessary so to do in the public interest, by notification, for reasons to be recorded,

(a) exempt any co-operative society or class of co-operative societies from the application of any of the provisions of this Act or the rules, or

(b) direct that any of the provisions of this Act or the rules shall apply to any co-operative society or class of co-operative societies to such extent as may be specified in the notification:

Provided that no notification to the prejudice of any co-operative society or class of co-operative societies shall be issued without an opportunity being given to it to represent its case.

8. Officers of co-operative societies to be public servants :-

Every officer of a co-operative society shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

9. Appointment of Registrar and 20[Director of Co-operative Audit] and other persons to assist them :-

¹(1) The State Government may appoint a person to be the Registrar of Co-operative Societies for West Bengal and such number of other persons to assist him as it may deem fit.

(2) The State Government may appoint a person to be the ²[Director of Co-operative Audit] and such number of other persons to assist him as it may deem fit.

1. Sections 9 and 10 subst. by W.B. Act 27 of 1989.
2. Words subst. by W.B. Act 22 of 1992.

10. Conferment of powers and duties of Registrar and 20[Director of Co-operative Audit] on other persons :-

1

(1) Subject to the rules; the State Government may, by general or special order in this behalf, confer all or any of the powers, or impose all or any of the duties, of the Registrar under this Act, other than those specified in the First Schedule, on any person appointed under sub-section (1) of section 9 to assist the Registrar.

(2) Subject to the rules, the State Government may, by general or special order in this behalf, confer all or any of the powers, or impose all or any of the duties, of the ²[Director of Co-operative Audit] under this Act, ³[including] those specified in the Sixth Schedule, on any person appointed under sub-section (2) of section 9 to assist the ² [Director of Co-operative Audit].

1. Sections 9 and 10 subst. by W.B. Act 27 of 1989.
2. Words subst. by W.B. Act 22 of 1992.
3. Word subst. by W.B. Act 21 of 1990.

11. Co-operative societies which may be registered :-

(V Subject to the provisions of this Act and the rules, a co-operative society established with the object of promoting the common interests of its members in accordance with co-operative principles and facilitating the operation of such co-operative society (including a co-operative society formed by division of an existing co-operative society or by amalgamation of two or more existing cooperative societies) may be registered under this Act with limited liability :

Provided that a co-operative society with unlimited liability functioning immediately before the commencement of this Act may continue to function as such or may convert itself into a co-operative society with limited liability within such time and in such manner as may be prescribed :

Provided further that a co-operative society registered under this Act may, subject to the provisions of this Act and the rules, by amendment of its by-laws, change the form, or the extent, of its liability.

1 Explanation. For the avoidance of doubts, it is hereby declared that "co-operative principles" shall include the following:

(a) the membership of a co-operative society shall be voluntary and

(b) every member of a co-operative society, other than a nominal member, shall have equal right of voting in accordance with the principle of "one member, one vote";

(c) any surplus or saving arising out of the operation of a co-operative society shall belong to such co-operative society as a whole, and no individual member shall have any claim to such surplus or saving;

(d) the surplus of a co-operative society shall be utilised for all or any of the following purposes:

(i) providing for development of business of the co-operative society,

(ii) providing service for common enjoyment of membership of the co-operative society,

(iii) distributing among the members of the co-operative society in proportion to the transaction of the members with the cooperative society;

(e) a co-operative society shall arrange for the education of its members, office-bearers and employees and of people in the principles and practices of co-operation;

(f) a co-operative society shall, in every practical way co-operate actively with other co-operative societies at the local, State or national level;

(g) the share capital of a co-operative society shall receive the

strictly limited rate of interest in the shape of dividend;

(h) the affairs of a co-operative society shall be administered in accordance with the will of its members expressed through unanimous or majority decision at a meeting of the general body of members of the co-operative society;

(i) the directors of the board for a co-operative society shall be accountable to the general body of members of the co-operative society.

(2) The word "Limited" shall be the last word in the name of a co-operative society registered under this Act.

1. This "Explanation" added by W.B. Act 21 of 1990.

12. Bar to registration :-

(1) No co-operative society the by-laws of which permit admission as its member of a person carrying on transaction or business of the same kind or nature as carried on by it shall be registered under this Act.

(2) In particular and without prejudice to the generality of the provisions of sub-section (1),

(a) no co-operative credit society shall be registered if the by-laws thereof do not specifically debar admission as its member of a person who is a money-lender by profession,

(b) no consumers' co-operative society shall be registered if the by-laws thereof do not specifically debar admission as its member of a person who is a grocer by profession, and

(c) no industrial co-operative society shall be registered if the by-laws thereof do not specifically debar admission as its member of a person who is carrying on, on his own account, or has any interest in, any business of the kind carried on by it:

Provided that the registration of an industrial co-operative society shall not be refused merely on the ground that its by-laws provide for admission as its member of a person who is an ordinary artisan or a small entrepreneur carrying on business of the same kind carried by it.

(3) No co-operative society established or organised for the promotion of the economic interests of any particular community,

class or group of people exclusively through any specific activity shall be registered if the by-laws thereof permit admission as its members of persons other than those to be directly benefited by such activity.

(4) No co-operative society established by tribals or farmers or females exclusively for their benefit shall admit as its member a person who is not a tribal or farmer or female, as the case may be.

13. Application for registration :-

(1) An application for registration of a co-operative society and its by-laws shall be made to the Registrar in the prescribed manner with one copy to the District Co-operative Union in the case of a co-operative society within a district and to the State Co-operative Union in the case of a State level society. The application shall be accompanied by two copies of the proposed by-laws of the co-operative society. The persons by whom or on whose behalf the application is made shall furnish such information in regard to the co-operative society as the Registrar may require.

(2) Where an application for registration of a co-operative society and its by-laws is made by individuals, the number of applicants shall not be less than ten, each of whom shall belong to a different family:

1 Provided that in the case of a co-operative housing society, the number of applicants shall not be less than eight.

Explanation. For the purpose of this sub-section, a family shall be deemed to consist of husband, wife, minor sons and daughters, dependent widow of a predeceased son, minor sons and daughters of a dependent widow of a predeceased son and husband's dependent parents.

(3) The State Government may prescribe the extent to which a co-operative society shall limit the number of its members.

(4)

(a) The Registrar shall dispose of an application for registration of a co-operative society (other than a co-operative housing society or an industrial co-operative society not entirely composed of rural artisans) and its bylaws within three months from the date of its receipt by him.

(b) An application for registration of a co-operative housing society or an industrial co-operative society not entirely composed of rural artisans and its by-laws shall be disposed of by the Registrar within four months from the date of its receipt by him.

(5) If the registration of a co-operative society and its by-laws is refused or the application for such registration is not disposed of by the Registrar within the period mentioned in clause (a) or clause (b), as the case may be, of sub-section (4), the Registrar shall transfer the application to the Cooperative Registration Council referred to in sub-section (7) with his comments, and shall inform, in writing, the applicant or the chief promoter of the application of such transfer, within one month of expiry of the aforesaid period. The Registration Council shall decide the matter within two months from the date of receipt of the application.

(6) If the applicant or the chief promoter of the application does not receive any information from the Registrar under sub-section (5) within the period mentioned in that sub-section, he shall have the right to appeal to the Co-operative Registration Council within one month from the date of expiry of the said period.

(7)

(a) The State Government shall constitute a council to be called the Co-operative Registration Council consisting of a Chairman and two other members.² [The Chairman of the Co-operative Tribunal or the Chairman of the principal Co-operative Tribunal, as the case may be,] referred to in section 135 shall be the Chairman of the Co-operative Registration Council. Of the two other members, one shall be nominated by the State Government and the other shall be nominated by the State Co-operative Union.

(b) The Co-operative Registration Council shall have jurisdiction throughout West Bengal and shall function in such manner as may be prescribed.

1. Proviso added by W.B. Act 21 of 1990.

2. Words subst. by W.B. Act 21 of 1990.

14. Registrar to decide certain questions :-

(1) The Registrar shall decide all questions as to whether an application made under sub-section (1) of section 13 complies with the provisions of this Act and the rules and whether the co-operative society is eligible to be registered under sub-section (1)

of section 11.(2) If the Registrar requires any particulars or papers for deciding the questions referred to in sub-section (1), he shall forthwith call for such particulars or papers from the applicant or the chief promoter of the application.

15. Registration :-

(1) If the Registrar is satisfied that an application for registration of a co-operative society and its by-laws is in accordance with the provisions of this Act and the rules, he shall, unless for reasons to be recorded in writing he thinks fit to refuse, register the co-operative society and its bylaws within the period mentioned in sub-section (4) of section 13.

(2) If the Registrar fails to dispose of the application for registration of a co-operative society and its by-laws or if registration thereof is refused by him, he shall transfer the application to the Registration Council as required under sub-section (5) of section 13.

16. Evidence of registration :-

When a co-operative society and its by-laws have been registered under sub-section (1) of section 15, the Registrar shall issue to the co-operative society a certificate, attaching thereto a copy of the by-laws, in the prescribed form, and such certificate shall be the conclusive evidence that the co-operative society and its by-laws have been duly registered under this Act, unless it is proved that the registration of the co-operative society has been cancelled or its by-laws amended in accordance with the provisions of section 17 or section 18.

17. Amendment of by-laws :-

(1) A co-operative society may make by-laws for carrying out its functions under this Act or the rules and such by-laws shall not be valid unless they have been registered under sub-section (1) of section 15:

1 Provided that the provisions of any by-law shall, if in conflict with the provisions of this Act or the rules, be void and thereupon the matters governed by such by-law shall be governed by this Act or the rules until the bylaw is amended to remove the conflict.

(2) A co-operative society may amend its by-laws from time to time but no such amendment shall be valid unless it is registered under sub-section (3) of this section,

(3) Every proposal for amendment of by-laws of a co-operative society shall be forwarded to the Registrar. If the Registrar is satisfied that the proposed amendment is not inconsistent with the provisions of this Act or the rules, he shall, unless for reasons to be recorded in writing he thinks fit to refuse, register the amendment within three months or, if it relates to a co-operative housing society or an industrial co-operative society not entirely composed of rural artisans, within four months from the date of its receipt and forward a copy thereof together with a certificate in the prescribed form, and such certificate shall be the conclusive evidence that the amendment has been duly registered under this Act:

Provided that the Registrar shall not refuse to register any amendment of by-laws without giving the co-operative society an opportunity of making representation in the prescribed manner.

(4) If the Registrar refuses to register any amendment of by-laws, he shall communicate the order of refusal with reasons therefor within three months or, in the case of a co-operative housing society or an industrial cooperative society not entirely composed of rural artisans, within four months from the date of receipt of the amendment to the co-operative society in the prescribed manner.

(5) If any amendment of by-laws proposed by a co-operative society is refused by the Registrar under sub-section (4), the co-operative society may make an appeal against the decision of the Registrar to the Co-operative Registration Council, within one month from the date of receipt of the decision of the Registrar, The decision of the Registration Council concerned shall be final in this regard.

1. Proviso added by W.B. Act 21 of 1990.

18. Power of Registrar to direct amendment of by-laws :-

(1) If, of his own motion or on the application of the financing bank concerned, it appears to the Registrar that any amendment of the by-laws of a co-operative society is necessary or desirable in the interest of such co-operative society, the Registrar or any person authorised by him in this behalf may by order direct the co-operative society to call a special general meeting in the prescribed manner to make the amendment and apply for registration thereof within such time as he may specify in the order. If the co-operative society

(2) If the co-operative society fails to make the amendment and apply for registration thereof within the specified time the Registrar shall, after consulting the financing bank ¹ [, if any] of which the co-operative society is a member or a debtor, as the case may be, make and register the amendment and forward a copy thereof to the co-operative society together with a certificate which shall be the conclusive evidence that the amendment has been registered and, subject to the decision of appeal, if any, such amendment shall be binding upon the co-operative society and its members.

1. Words inst. by W.B. Act 21 of 1990.

CHAPTER 3

Transfer of assets and liabilities, and division and amalgamation of co-operative societies

19. Transfer of assets and liabilities, and division and amalgamation of co-operative societies :-

(1) Any co-operative society may, by a resolution passed by a majority of not less than two-thirds of the members thereof present and voting at a general or special general meeting,

(a) transfer, wholly or in part, its assets and liabilities to any other co-operative society, or

(b) divide itself to form two or more new co-operative societies.

(2) Any two or more co-operative societies may, by resolution passed by not less than two-thirds of the members present and voting at a general or special general meeting of each such co-operative society, amalgamate themselves and form a new co-operative society together with the assets and liabilities of the co-operative societies forming such new co-operative society.

(3) A resolution passed under sub-section (1) or sub-section (2) shall contain all particulars relating to the registration, transfer of assets and liabilities, and division or amalgamation, as the case may be, of the concerned cooperative societies.

(4) When a resolution has been passed under sub-section (1) or sub-section (2), the co-operative society or the co-operative societies concerned shall give notice thereof in writing to all its or their members and creditors, within thirty days from the date of the general or special general meeting, as the case may be, at which the resolution is passed and notwithstanding anything contained in any by-law or contract, any member of any such

cooperative society shall have option to withdraw his share or deposit or any creditor of any such co-operative society shall have option to demand repayment of his loan by such co-operative society within one month from the date of service of such notice. Such resolution shall not take effect until all the claims of the members and the creditors of any such co-operative society who exercise option under this sub-section have been met in full:

1 Provided that no member, who is a debtor of a co-operative society or is a surety for any other member in respect of any loan granted by a cooperative society, shall exercise option to withdraw his share or deposit until the debt or the loan, in respect of which he is the debtor or surety, as the case may be, is repaid in full with interest accrued thereon.

(5) On receipt of an application for registration of a new co-operative society formed under sub-section (1) or sub-section (2), the Registrar shall satisfy himself that the resolution is effective under sub-section (4) and the application and the by-laws of the co-operative society are in accordance with the provisions of this Act and the rules, and shall, unless for reasons to be recorded in writing he thinks fit to refuse, register the new co-operative society and the by-laws under sub-section (1) of section 15 and issue a certificate under section 16.

(6) After a new co-operative society formed by amalgamation of two or more co-operative societies or by division of a co-operative society has been registered, the registration of the co-operative societies which are amalgamated or the co-operative society which is divided shall stand cancelled and such co-operative societies shall be deemed to have been dissolved and shall cease to exist.

2*****

(8) Notwithstanding anything to the contrary contained in any other law for the time being in force,

(a) the registration of new co-operative societies formed by division of a co-operative society shall be a sufficient conveyance to vest the assets and liabilities of the co-operative society, which is divided, in such new co-operative societies in accordance with the resolution passed under sub-section (1) **3**[, and a schedule of such assets and liabilities shall be prepared and such schedule shall form a part of the certificate under section 16;]

(b) when a resolution is passed by a co-operative society under subsection (2), the resolution shall, if accepted by the transferee society by a resolution passed by a majority of not less than two thirds of the members present and voting at a general or special general meeting of such society, be a sufficient conveyance to vest the assets and liabilities of the transferor societies in the transferee society. Copies of such resolutions of the transferor societies and the transferee society shall be sent to the Registrar for record; and

(c) the registration of a new co-operative society formed by amalgamation shall be a sufficient conveyance to vest the assets and liabilities of the co-operative societies, which are amalgamated, in the new co-operative society in accordance with the resolution passed under sub-section (2) ³ [, and a schedule of such assets and liabilities shall be prepared and such schedule shall form a part of the certificate under section 16;]

1. Proviso inst. by W.B. Act 21 of 1990.

2. Sub-sec. (7) om. by W.B, Act 21 of 1990.

3. Words and figures inst. by W.B. Act 21 of 1990.

20. Powers of Registrar[to order division, reorganisation or amalgamation] of co-operative societies :-

1

(1) If the Registrar is satisfied after due consultation with the respective apex society in the manner prescribed that it is essential in the public interest or in the interest of cooperative movement or for the purpose of securing the proper management of any co-operative society that ²[any co-operative society or co-operative societies should be divided, reorganised or amalgamated,] then notwithstanding anything contained in section 19, the Registrar may by a notice ²[direct the said co-operative society or co-operative societies,] stating reasons therefor, ²[to cause such division, reorganisation or amalgamation,] as the case may be, with such constitution, property, rights, interest, authority, liabilities, duties, and obligations as may be specified in the notice within three months of the date of the notice. If the direction is not acted upon or complied with within the said period, the Registrar ²[shall cause, in the manner prescribed, division, reorganisation or amalgamation, as the case may be, of the concerned co-operative society or co-operative societies] ⁶[formed by division, reorganisation or amalgamation,] as the case may be, and the by-laws thereof framed by him:

Provided that notwithstanding anything to the contrary contained in any other law in force for the time being, ³[no order for division, reorganisation or amalgamation of any State co-operative bank, Central cooperative bank or primary co-operative bank shall be made without prior consultation with the National Bank for Agriculture and Rural Development or the Reserve Bank of India, as the case may be:]

Provided further that the Registrar shall not order amalgamation of a co-operative society which has a total accumulated loss exceeding its assets with any other co-operative society earning profit.

(2) No order shall be made under sub-section (1) unless

(a) a draft of the order has been sent to each of the co-operative societies in the prescribed manner inviting suggestions or objections, if any, within such period, not being less than three months, as the Registrar may fix in this behalf; and

(b) the Registrar has considered the suggestions or objections, if any, received from the co-operative societies or from any member, class of members, creditors or class of creditors thereof, and made such modification in the draft as he may deem fit.

(3) An order made under sub-section (1) may contain such incidental, consequential or supplemental provisions as may, in the opinion of the Registrar, be necessary for the purpose of the ³[division, reorganisation or amalgamation,] as the case may be.

(4) Every member or creditor of any of the co-operative societies to be ³[divided, reorganised or amalgamated,] who has filed objections under clause (a) of sub-section (2), shall be entitled to receive after the order has been made under sub-section (1) his share or deposit, if he is a member, or the amount in satisfaction of his claim, if he is a creditor:

10 Provided that no member, who is a debtor of co-operative society or is a surety for any other member in respect of any loan granted by a co-operative society, shall exercise option to withdraw his share or deposit until the debt or the loan, in respect of which he is the debtor or surety, as the case may be, is repaid in full with interest accrued thereon.

(5) An order made under sub-section (1) shall take effect,

(a) when no appeal from such order is preferred under section 136, on the expiry of the time allowed for preferring an appeal, or

(b) where an appeal from such order is preferred under section 136, upon rejection of the appeal by the appellate authority.

(6) Notwithstanding anything to the contrary contained in any other law for the time being in force, an order made under sub-section (1) ¹¹[for division, reorganisation or amalgamation] shall, upon taking effect under sub-section (5), be a sufficient conveyance to vest the assets and liabilities as per schedule of assets and liabilities specified in the order and the cooperative societies which are ⁵ [divided, reorganised or amalgamated,] shall be deemed to have been dissolved and shall cease to exist.

1. Words subst. by W.B. Act 21 of 1990.

2. Words subst. by W.B. Act 21 of 1990.

6. Words subst. by W.B. Act 21 of 1990.

10. Proviso inst. by W.B. Act 21 of 1990.

11. Words subst. by W.B. Act 21 of 1990.

21. Amalgamation of any central co-operative bank with any other central co-operative bank or with the State Co-operative Bank :-

(1) If the State Government is of opinion that

(a) in the public interest, or

(b) in the interest of the depositors, or

(c) in order to secure proper management of any central co-operative bank, or

(d) in the interest of the co-operative movement in the State as a whole, or

(e) in the interest of the co-operative banking system in the State as a whole, or

(f) to make co-operative credit adequately available to the primary co-operative credit societies of any particular area in the State from the State Co-operative Bank, it is necessary so to do, the State Government may, by an order published in the Official Gazette stating reasons therefor, make a scheme for the amalgamation of any central co-operative bank (in this section hereinafter referred to as the transferor bank) with any other central co-operative bank

or the State Co-operative Bank (in this section hereinafter referred to as the transferee bank).

(2) A scheme referred to in sub-section (1) may provide for all or any of the following matters, namely:

(a) the transfer of the business, properties (movable and immovable), assets (including cash balances and reserve funds), rights, privileges, liabilities, debts and obligations of the transferor bank to the transferee bank, on such terms and conditions as may be specified in the said scheme;

(b) the reduction of the interest or rights, which the members, depositors and other creditors have in or against the transferor bank before its amalgamation, to such extent as the State Government considers necessary in the public interest or in the interest of the members, depositors and other creditors of the transferor bank or for the maintenance of the business of such bank, having due regard to the proportion of the assets of the transferor bank to its liabilities;

(c) the payment in cash or otherwise to the depositors and other creditors in full satisfaction of their claims

(i) in respect of their interest or rights in or against the transferor bank before or after its amalgamation, or

(ii) where the interest or rights as aforesaid in or against the transferor bank has or have been reduced under clause (b), in respect of such interest or rights as so reduced;

(d)

(i) the allotment of shares in the transferee bank to the members of the transferor bank against the shares held by them in the transferor bank before the amalgamation, whether their interest in such shares has been reduced under clause (b) or not, or

(ii) where the members of the transferor bank elect to receive payment in cash and not in shares of the transferee bank, or where it is not possible to allot shares in the transferee bank to such members against the shares held by them in the transferor bank, the payment to such members in cash in full satisfaction of their claims in respect of their interest in the shares of the transferor bank or, where such interest has been reduced under clause (b), in respect of their interest in the shares as so reduced:

Provided that the aforesaid scheme shall secure

(i) that allotment of shares or payment in cash in favour of the members of the transferor bank under clause (d) shall not be made until all the depositors and creditors of the transferor bank have been paid under sub-clause (ij, or, as the case may be, under sub-clause (ii), of clause (c), and

(ii) that such allotment of share or payment in cash in favour of the members of the transferor bank shall be made only out of the surplus of the assets of the transferor bank, if any, that may be left after payment to the depositors and creditors as indicated in sub-clause (i);

(e) the continuance of the services of the employees of the transferor bank in the transferee bank on terms and conditions of service not being less advantageous than those to which they were entitled immediately before the amalgamation:

Provided that the transferee bank may not by an order in writing allow any employee of the transferor bank to continue in the services of the bank if, in the opinion of the transferee bank, the continuance of such employee in its service would be detrimental to its interest, and thereupon the services of such employee shall stand terminated on and from the date of such order, and the transferee bank shall, within three months of the date of the aforesaid order, make payment to such employee such compensation as such employee may be entitled under any law relating to the industrial disputes in force in the State and such pension, gratuity, provident fund and other retirement benefits as are ordinarily admissible to him under the rules of the transferor bank in force immediately before the amalgamation.

(3)

(a) An order under sub-section (1) shall not be made unless a copy of the proposed order including the scheme is sent to the transferor bank and the transferee bank calling upon such banks to invite objections or suggestions from the members, creditors and depositors thereof and to submit such objections and suggestions together with their own suggestions and objections, if any, to the State Government within six weeks from the date of receipt of the copy of the proposed order by such banks.

(b) The State Government shall consider the suggestions and

objections which may be received under clause (a), make such modifications in the proposed order including the scheme as it thinks just and fit and finalise the proposed order including the scheme in consultation with the Reserve Bank of India.

(4) An order under sub-section (1) may contain such incidental, consequential or supplemental provisions as the State Government may consider necessary to give effect to the proposed amalgamation and shall have effect on and from such date as may be specified in the order.

(5) On the coming into operation of any scheme referred to in sub-section (1), the provisions thereof shall be binding on the transferor bank, the transferee bank and all the members, depositors, creditors and employees of both such banks and on any person having any right or liability in relation to such banks.

(6) The provisions of this section shall have effect, notwithstanding anything to the contrary contained elsewhere in this Act or in any other law or any agreement, award or other instrument for the time being in force.

(7) Notwithstanding anything contained in the Transfer of Property Act, 1882, or the Registration Act, 1908, an order making schemes under subsection (1) shall be sufficient conveyance, in accordance with the provisions of this section, to transfer the assets and, liabilities of the transferor bank to the transferee bank.

(8) When by virtue of a scheme under sub-section (1) the assets and liabilities of the transferor bank have been transferred to the transferee bank, the transferor bank shall cease to exist and shall be deemed to have been dissolved.

(9) Notwithstanding anything contained in any other law for the time being in force, an order under sub-section (1) shall not be called in question in any Court.

1 (10) If in accordance with the provisions of sub-section (1), the State Government is of opinion that any unit of the State co-operative bank or a Central co-operative land development bank should, on being ceded from the State co-operative bank or the Central co-operative land development bank, be reorganised as a Central co-operative bank or primary

1. Sub-sec. (10) inst. by W.B. Act 21 of 1990.

22. Change of name and its effects :-

(1) A co-operative society may, with the previous approval of the Registrar, by a resolution passed at a general meeting, change its name.

(2) A co-operative society shall communicate its new name to the Registrar and the Registrar shall enter the new name in the relevant register and shall make necessary corrections in the certificate of registration issued under section 16.

(3) The change of name of a co-operative society under sub-section (1) shall not affect any right or obligation of such co-operative society or of any member or past member (including a deceased member) thereof, and any legal proceeding pending before any authority, tribunal or Court by or against such co-operative society may be continued in its new name.

CHAPTER 4

Status and management of co-operative societies

23. Co-operative society to be body corporate :-

A registered cooperative society shall be a body corporate by its registered name with perpetual succession and a common seal, and with power to acquire, hold and dispose of property, to enter into contracts, to institute and defend suits and other legal proceedings and to do all things necessary for the purposes for which it is constituted.

24. Final authority of co-operative society :-

(1) Subject to the provisions of this Act and the rules, the final authority of a co-operative society shall vest in the general body of its members in general meeting :

Provided that in such circumstances as may be prescribed, the final authority may vest in the delegates of such members elected in the prescribed manner and assembled in general meeting.

(2) The general meeting of a co-operative society shall be summoned, and the authority of the general body of members thereof shall be exercised, in such manner as may be prescribed.

25. Annual general meeting :-

(1) Every co-operative society shall hold at least once in every co-operative year a general meeting to be called the annual general

meeting for

(a) election, if any, in the prescribed manner, of the directors of the board :

Provided that if in a general meeting **1******* the election cannot be held owing to an order of any court or for any other reason or if the directors of the board elected in such general meeting cannot function owing to an order of any court, the Registrar may constitute a board of directors from amongst the members of the co-operative society in conformity with sub-section (1) and sub-section (2) of section 27 **2**[and may appoint office-bearers of the board. The board so constituted shall function till the directors of the board elected under this section assume charge and the office-bearers so appointed shall function till the directors of the board elected under this section elect the office-bearers in the first meeting of the board:]

3Provided further that where there is no order of any court to the contrary, the board of directors constituted under the first proviso shall hold the annual general meeting for the purposes of sub-section (1): **3**Provided also that if the board of directors constituted under the first proviso cannot function owing to an order of any court or for any other reason, the chief executive officer of the co-operative society, by whatever name called, shall manage the affairs of the co-operative society till the board of directors so constituted is in a position to function or till the directors of the board elected under this section assume office, whichever is earlier;

(b) consideration and record of the proceedings of the last annual general meeting;

(c) approval of the budget **5**[, the consideration of the annual report] and the programme of activities of the co-operative society for the following co-operative year prepared by the board;

(d) consideration of the audit report referred to in section 91;

(e) consideration of any report of inspection or enquiry made in accordance with the provisions of this Act or the rules;

(f)

(i) consideration of matters relating to loans and advances made to the directors of the board and their relatives and actions to be taken for recovery thereof;

(ii) approval of appointments, if any, of the relatives of the directors of the board;

(g) distribution, of net profits, if any;

⁶(gg) fixation of borrowing limit as may be necessary;

(h) consideration of any other matter which may be brought at the meeting in accordance with the rules and the by-laws.

(2) If the audit report for the immediately preceding co-operative year is not ready before the date fixed for the annual general meeting, the cooperative society shall hold a special general meeting for considering the said audit report within three months from the date of receipt thereof or shall consider it in the next annual general meeting, if such meeting is due within the said period of three months.

(3) On the failure of the board to call the general meeting ⁷[within twelve months from the date of the last preceding general meeting,] the Registrar shall call, or authorise any of his officers to call, a general meeting within a period of three months from the date of expiry of ⁶ [the aforesaid twelve months] without prejudice to the penal measures that may be taken under this Act against the directors of the board for not holding the general meeting within such period as required under sub-section (1) and sub-section (2).

(4) Notwithstanding anything contained in sub-section (1), sub-section (2) and sub-section (3), the State Government may, in special circumstances, permit the Registrar to call the general meeting even after the expiry of [fifteen months] from the date of the last preceding meeting held under sub-section (1).

1. Words om. by W.B. Act 27 of 1989.

2. Words subst. by W.B. Act 27 of 1989.

3. Provisos added by W.B. Act 27 of 1989.

5. Words inst. by W.B. Act 27 of 1989.

6. Clause (gg) inst. by W.B. Act 27 of 1989.

7. Words subst. by W.B. Act 27 of 1989.

26. Special general meeting :-

(1) A special general meeting of any co-operative society may be called at any time by a majority of the directors of the board ¹[, and shall be called]

(a) on the requisition in writing of one-third of the members of the

co-operative society or the delegates, where there are delegates; or
(b) at the direction of the Registrar.

(2) The special general meeting ²[under clause (a) or clause (b) of subsection (1)] shall be called within two months from the date of the requisition or the direction, as the case may be.

(3) The Registrar or any person authorised by him in this behalf may, by an order in writing, call at any time a special general meeting of any cooperative society and shall call such a meeting upon refusal or failure by a majority of directors of the board to call a special general meeting ²[under clause (a) or clause (b) of subsection (1)].

(4) All expenditure incurred in connection with a special general meeting called under sub-section (3) shall be met out of the funds of the cooperative society or by ⁴[such person or persons] as are in the opinion of the Registrar responsible for the refusal or failure to call the special general meeting ⁵ [under clause (a) or clause (b) of sub-section (1)].

(5) When the majority of the directors of a board refuses or fails without reasonable cause to call a special general meeting, [under clause (a) or clause (6) of sub-section (1),] the Registrar may, after giving all the directors an opportunity of being heard, by an order in writing, declare such of the directors as are found responsible for such refusal or failure to be disqualified for continuing in office and for being directors of the board for such period not exceeding three years, as may be specified in the order.

1. Words inst. by W.B. Act 27 of 1989.

2. Words, figure, letters and brackets subst. by W.B. Act 27 of 1989.

4. Words subst. by W.B. Act 27 of 1989.

5. Words, figure, brackets and letters subst. by W.B. Act 27 of 1989.

27. Management of co-operative societies :-

(1) There shall be a board for every co-operative society to manage its affairs and the board shall consist of such number of directors as may be specified in the by-laws of the co-operative society. The directors shall be elected by the members of the co-operative society in a general meeting:

Provided that the number of directors to be elected by the

members of a co-operative society shall not be less than six or more than fifteen, but where any co-operative society has less than twelve members, the number of such directors shall not be ¹[less than three or more than six as may be specified in the by-laws of the co-operative society.]

(2) The State Government or any authority specified by it in this behalf may nominate on the board one or more persons under section 33.

(3) The employees of a co-operative society having not less than ²[five] employees may elect from amongst themselves one person on the board.

(4) Where a co-operative society has a Chief Executive paid out of the funds of the co-operative society, such Chief Executive shall be an ex officio director on the board.

(5) A Gram Panchayat, constituted under the West Bengal Panchayat Act, 1973, may nominate one of its members on the board of a primary cooperative agricultural credit society doing business within the jurisdiction of that Gram Panchayat. A Panchayat Samiti constituted under the said Act may nominate one of its members on the board of ³[a primary society doing business in the areas] covered by more than one Gram Panchayat within the jurisdiction of the concerned Panchayat Samiti. ⁴[A Zilla Parishad constituted under the said Act may nominate one of its members on the board of a central society or a co-operative land development bank within the jurisdiction of the Zilla Parishad:]

⁵Provided that no member of a Gram Panchayat or a Panchayat Samiti or a Zilla Parishad shall be so nominated, if he is a defaulter in respect of any loan granted by a co-operative society.

⁶(5A) Any financial institution which finances a co-operative society may nominate one person on the board of such co-operative society.

⁷(6) (a) The directors referred to in sub-section (3) shall have no right to vote in any meeting of the board.

(b) The directors referred to in sub-section (4) and sub-section (5) shall have no right to vote in any meeting of the board held for the purpose of election of office-bearers of the board or co-operation of

any person as a director of the board.

(c) The directors referred to in sub-section (3), sub-section (4) and subsection (5) shall not hold any office in the board.

(7) No act or proceedings of a board shall be deemed to be invalid merely by reason of the absence of any nomination under sub-section (2) or subsection (5) ⁸[or sub-section (5A)] or any election under sub-section (3) on account of such nomination not being made or such election not being held for any reason whatsoever.

(8) A director elected under sub-section (1) or sub-section (3) ⁸[or nominated under sub-section (5) or sub-section (5A)] shall hold office] for a period of three years from the date of his election or nomination, as the case may be:

Provided that a director elected under sub-section (3) or nominated under sub-section (5) shall not be eligible for re-election or re-nomination, as the case may be, within a period of three years from the date of expiry of his terms of office:

10 Provided further that a director elected under sub-section (3) shall not be entitled to attend any meeting of the board, if he incurs any disqualification as may be prescribed.

(9) ¹¹[No director] who has been or but for his voluntary resignation could have been ¹⁰[an office-bearer] for two consecutive terms or seventytwo months, whichever is less, shall be eligible for re-election, appointment, co-option or nomination, as an office-bearer until after the expiry of three years from the date of occurrence of the disqualification or of retirement:

Provided that nothing in this sub-section shall apply to a director nominated by the State Government under sub-section (2) ¹³[or a director nominated under sub-section (5A)].

14 Explanation. "office-bearer" shall mean the Chairman, Vice-Chairman, Secretary, Assistant Secretary or Treasurer of a co-operative society.

(10) No member of a co-operative society shall be eligible for being elected on the board, if

(a) he has been adjudged by a competent Court to be insolvent or of unsound mind;

(b) he has been convicted by a Court of any offence involving moral turpitude ¹⁵[or of any offence under this Act] and sentenced to fine or imprisonment or both;

(c) he holds any office of profit in the co-operative society: Provided that a member of an industrial co-operative society composed of artisans or workmen or of a transport co-operative society composed of workers or of a labour co-operative society composed of persons who live on manual labour (skilled or unskilled) or of an engineers' co-operative society or of a co-operative society established by tribals in receipt of salaries or wages from such co-operative society shall be eligible for being elected on the board;

(d) he has any interest in any business of the kind carried on by the co-operative society;

(e)

(i) he is an individual, not representing any co-operative society, and is in default of payment of loans or price of goods received by him on credit from the co-operative society on the date of filing nomination (in the case of a co-operative society where such nomination is required to be filed) or on the date of election (in the case of a co-operative society where nomination is not required to be filed); or

(ii) he is an individual representing a co-operative society which is in default of payment of more than forty per cent. of loans or price of goods received by it on credit from the co-operative society in relation to the board to which the election relates on the date of filing nomination or on the date of election (without nomination), as the case may be;

(f) he has any direct or indirect interest in any agreement or contract to which the co-operative society is a party;

(g) he receives emoluments or allowances (other than travelling allowances or sitting fees) or honorarium without the approval of the members of co-operative society at a general meeting and in excess of the prescribed limit or rate;

(h) he is disqualified under sub-section (5) of section 26.

(11) A director shall not receive any emoluments or allowances (other than travelling allowances and sitting fees) or honorarium

without the approval of the members of the co-operative society at a general meeting: Provided that such emoluments or allowances or honorarium shall not exceed such limit or rate as may be prescribed.

(12) No person shall at any time as a member or as a delegate of any cooperative society hold office as a director of the board of more than

(a) four primary societies;

(b) one central society; and

(c) one apex society: **16** *****

Provided further that the provision of this sub-section shall not apply to a director referred to in sub-sections (2), (3), (4) and (5).

(13) After the commencement of this Act, any person holding the office of a director of a board in contravention of sub-section (12) shall, within a period of two months from such commencement, resign his office as such in respect of such number of societies specified in sub-section (12) as may be necessary, failing which he shall cease to be a director of the board of all such societies on the expiry of the aforesaid period.

1. Words subst. by W.B. Act 21 of 1990.
2. Word subst. by W.B. Act 21 of 1990.
3. Words subst. by W.B. Act 21 of 1990.
4. Words inst. by W.B. Act 21 of 1990.
5. Proviso added by W.B. Act 21 of 1990.
6. Sub-sec. (5A) inst. by W.B. Act 21 of 1990.
7. Sub-sec. (6) subst. by W.B. Act 21 of 1990.
8. Words, figures, letter and brackets subst. by W.B. Act 21 of 1990.
10. Proviso added by W.B. Act 21 of 1990.
11. Words subst. by W.B. Act 21 of 1990.
13. Words, figure and letter inst. by W.B. Act 21 of 1990.
14. This 'Explanation' subst. by W.B. Act 21 of 1990.
15. Words inst. by W.B. Act 21 of 1990.
16. Proviso om. by W.B. Act 21 of 1990.

28. Deputation of Government officers to manage the affairs of co-operative society :-

(1) The State Government may, on the application of a co-operative society supported by a resolution of the board or the general body of its members, depute on such conditions [and in

such manner] as may be prescribed, a Government officer to the service of the cooperative society to manage its affairs. Such Government officer shall exercise such powers and perform such duties as may be prescribed:

Provided that if there is a condition by the financing agency that the State Government should depute a Government officer to manage the affairs of the co-operative society for which assistance from that agency is given or the State Government has given financial assistance directly to the co-operative society, the State Government shall, on the recommendation of the Registrar, appoint such officer ¹[on such conditions and in such manner as may be prescribed]. Such Government officer shall exercise such powers as may be prescribed.

(2) The Registrar may, on the application of a co-operative society supported by a resolution of the board or the general body of the members of the co-operative society, depute on such conditions ¹[and in such manner] as may be prescribed a Government officer in respect of whom he is the appointing authority or recommend to the State Government for deputation of a Government officer to the service of the co-operative society to manage its affairs. The Government officer ³ [so deputed] shall exercise such powers and perform such duties as may be prescribed.

1. Words inst. by W.B. Act 21 of 1990.

3. Words subst. by W.B. Act 21 of 1990.

29. Dissolution and reconstitution of board :-

(1) The Registrar may, if he is satisfied for reasons to be recorded in writing that the board of any co-operative society is mismanaging its affairs, under clause (b) of sub-section (1) of section 26, by order direct the board to call a special general

Explanation. For the purpose of this sub-section, the expression "mismanaging its affairs" shall include any act of wilfully disobeying or failing to comply with any lawful order or direction issued by the State Government or the Registrar.

(2) In any direction under sub-section (1) the Registrar may, for reasons to be recorded in writing, order that all or any of the members of the board ' to be dissolved shall be disqualified for election to the board or for appointment as an officer of the co-operative society for such period, not exceeding three years, as

may be specified in the order.

(3) If the board is not dissolved and re-constituted in such manner and within such period as provided in the order under sub-section (1), the Registrar may by order in writing stating reasons and after giving the board an opportunity of stating its objection, if any, dissolve the board, the directors of which shall forthwith vacate their offices and the Registrar may appoint a ¹ [board] with the nominees, if any, of the State Government and with such members of the co-operative society as he thinks fit to manage the affairs of the co-operative society for a period not exceeding one year at a time and to arrange for the reconstitution of the board by such date as may be specified in the order.

1. Word subst. by W.B. Act 21 of 1990.

30. Dissolution of board and appointment of administrator
:-

(1) If, in the opinion of the Registrar,

(a) any board

(i) has persistently made defaults, or has been grossly negligent, in the performance of its duties under this Act or the rules or the by-laws, or

(ii) has committed any act prejudicial to the interest of the concerned co-operative society or any other co-operative society, or

(iii) has wilfully disobeyed or wilfully failed to comply with any lawful order or direction of the State Government or the Registrar; or

(b) the affairs and business of any co-operative society have due to persistent default or negligence in the performance of duties by its board or a section thereof or otherwise come to a standstill, the Registrar may, after service of a notice upon the board and giving it an opportunity of being heard, by order in writing stating reasons therefor, dissolve the board, the directors of which shall forthwith vacate their offices and the Registrar shall appoint one or more administrators to manage the affairs of the co-operative society for such period, not exceeding one year at a time, as may be specified in the order and may also by an order in writing extend such period so, however, that the total period shall not exceed three years.

(2) If, on receipt of a report from the Registrar or of its own motion, the State Government is of opinion that in view of one or more circumstances referred to in sub-section (1), immediate dissolution of the board of any cooperative society is essential in the interest of that co-operative society or the co-operative movement in general, the State Government may, without giving such board any notice, by notification, giving reasons therefor, dissolve such board, the directors of which shall forthwith vacate their offices and the State Government shall appoint one or more administrators to manage the affairs of that co-operative society for such period, not exceeding two years at a time, as may be specified in the notification and may also by notification extend the period so, however, that the total period shall not exceed three years:

Provided that the State Government shall not take any step towards immediate dissolution of the board of directors of the State Co-operative Bank or the central co-operative land development bank or any central cooperative bank or such other co-operative bank as comes within the provision of Part V of the Banking Regulation Act, 1949 without prior consultation with the Reserve Bank of India ¹[or the National Bank for Agriculture and Rural Development, as the case may be:]

2 Provided further that if the administrator or administrators appointed under sub-section (1) or sub-section (2) fail to reconstitute the board within the period of three years from the date of dissolution of the board, they shall be removed from office and thereupon the Registrar shall reconstitute the board in the manner laid down in the proviso to clause (a) of sub-section (1) of section 25 within one year from the date of removal of the administrator or administrators, and the board so reconstituted shall function till the directors of the board elected under section 25 assume charge.

(3) The Registrar shall, after service of a notice under sub-section (1), by order, depute a Government officer ³***** to the service of a cooperative society to manage its affairs till ⁴[the notice issued by the Registrar under sub-section (1) is revoked, or] an administrator or administrators is or are appointed by him under sub-section (1) ⁵ [, as the case may be,] and such Government officer shall exercise such powers and perform such duties as the Registrar may specify in the order, and the board of the co-operative society shall allow the said Government officer to exercise

his powers and perform his duties accordingly.

(4) During the tenure of office of the administrator or administrators appointed under sub-section (1) or sub-section (2),

(a) all properties of the co-operative society shall vest in the Registrar; and

(b) subject to the control of the Registrar and notwithstanding the preferring of any appeal under section 136, the administrator or administrators shall exercise all the powers and perform all the duties which may be exercised or performed by the board or any officer of the co-operative society under this Act or the rules or the by-laws.

(5) If, during the tenure of office of the administrator or administrators appointed under sub-section (1) or sub-section (2), it appears to the Registrar or the State Government, as the case may be, that it is no longer necessary to manage the affairs of the co-operative society by the administrator or administrators, the Registrar or the State Government, as the case may be, may, by order in writing stating reasons therefor, direct the administrator or administrators to arrange, notwithstanding the provisions of section 25, for the reconstitution of the board of the said co-operative society in accordance with the rules and its by-laws and immediately on the reconstitution of the board the administrator or administrators shall make over the management of the co-operative society to the board and shall cease to function and a board reconstituted under this section shall be deemed to be validly reconstituted under section 25 for the purposes of this Act.

(6) The administrator or administrators appointed under sub-section (1) or sub-section (2) shall, before the expiry of his or their tenure of office, arrange, notwithstanding the provisions of section 25, for the reconstitution of the board in accordance with the rules and the by-laws of the cooperative society and shall hold office until the board so reconstituted takes over charge or the appointment of the administrator or administrators is cancelled, whichever is earlier, and a board reconstituted under this section shall be deemed to have been validly reconstituted under section 25 for the purposes of this Act.

(7) The Registrar shall by order fix the remuneration of the administrator or administrators appointed under sub-section (1) or

sub-section (2) and such remuneration shall be paid out of the funds of the co-operative society.

(8) Any action taken by the Registrar under sub-section (1) or by the State Government under sub-section (2) shall not be called in question in any court.

1. Words inst. by W.B. Act 21 of 1990.
2. Proviso added by W.B. Act 21 of 1990.
3. Words om. by W.B. Act 21 of 1990.
4. Words, figure and brackets inst. by W.B. Act 21 of 1990.
5. Words inst. by W.B. Act 21 of 1990.

31. Dissolution of the board in certain cases and appointment of special officer :-

Notwithstanding anything to the contrary contained elsewhere in this Act or in any other law for the time being in force,

(a) the board of directors of any of the co-operative societies mentioned in the Fifth Schedule shall, if the election of its directors has not been held within a period of thirty-six months from the date of their election under sub-section (1) of section 25, stand dissolved on and from the date immediately following the date of expiry of the said period;

(b) with effect from the date of dissolution of the board under clause (a), the directors thereof shall be deemed to have vacated their offices;

(c) upon the dissolution of the board under clause (a) the Registrar shall, by notification, appoint a special officer for managing the affairs of the co-operative society and for making arrangements for reconstitution of the board in accordance with the provisions of this Act, the rules and the by-laws of the co-operative society within a period not exceeding one year from the date of dissolution and, notwithstanding the provisions of section 25, a board reconstituted under this section shall be deemed to have been validly reconstituted under section 25 for the purposes of this Act:

Provided that until a special officer is appointed under this clause, the highest paid executive of the co-operative society, by whatever designation called, shall manage the affairs of the cooperative society:

1 Provided further that if the special officer fails to reconstitute the board within one year from the date of dissolution of the board, the

Registrar shall remove him from office and shall reconstitute the board in the manner laid down in the proviso to clause (a) of subsection (1) of section 25, and the board so reconstituted shall function till the directors of the board elected under section 25 assume charge.

Explanation. If there is any dispute as to who is the highest paid executive of the co-operative society, the Registrar's decision thereon shall be final;

(d) with effect from the date of dissolution of the board under clause (a)

(i) all properties of the co-operative society shall vest in the Registrar and shall remain vested till a new board assumes office; and

(ii) subject to the control and direction of the Registrar, the highest paid executive of the co-operative society or the special officer, as the case may be, shall exercise all the powers and perform all the duties which may, under this Act or the rules or the by-laws, be exercised or performed by the board or any officer of the co-operative society;

(e) where a special officer has been appointed under clause (c), the Registrar may, by order, fix the remuneration of the special officer and the remuneration fixed shall be paid out of the funds of the co-operative society;

(f) the special officer appointed under clause (c) shall hold office until the board is reconstituted.

1. Proviso inst. by W.B. Act 21 of 1990.

32. Summoning of meetings of co-operative society and rescinding or suspending resolution thereof :-

(1) Notwithstanding anything contained in the by-laws of a co-operative society, the Registrar, or any person authorised by him in writing in this behalf, may, at any time, direct the Chairman of a board or the Chief Executive of a co-operative society to summon a meeting of the board within such time as may be specified in the direction. If the Chairman or the Chief Executive, as the case may be, fails to summon the meeting of the board within the specified time, the Registrar or the person authorised by him shall summon the meeting of the board and such meeting shall be deemed to be

a meeting summoned in accordance with the by-laws of the co-operative society and shall be competent to transact such business (which may be transacted at a meeting of the board) as may be specifically mentioned in the summons.

(2) The State Government may, by order for reasons to be recorded in writing, rescind or suspend for a period specified in the order, any proceeding or resolution of any general meeting of a co-operative society OF of any meeting of the board thereof which it considers to be not in conformity with the provisions of this Act or the rules or with any order validly issued by the State Government or the Registrar, and may do all things necessary to secure such conformity, or may rescind any proceeding or resolution which it considers likely to affect adversely the interest of any co-operative society or members thereof or of the co-operative movement in general.

(3) The Registrar may, after giving the co-operative society an opportunity of being heard, by order for reasons to be recorded in writing, suspend the execution of any resolution or order of the board or prohibit the doing of any act if, in his opinion, such resolution, order or the doing of any act, as the case may be, is in excess of the powers conferred by this Act, or the execution of such resolution or order or the doing of such act is likely to prejudice the material interest of the co-operative society or the member thereof or of the co-operative movement in general.

(4) The Registrar shall while making an order under sub-section (3) simultaneously send a copy of his order to the Government.

(5) On receipt of a copy of the order under sub-section (4), the State Government shall by order rescind, modify or confirm the order of the Registrar under sub-section (3) and shall send a copy of such order to the cooperative society which shall be bound by such order.

33. Nomination by the State Government on the hoard :-

Where the State Government has

- (a) subscribed to the share capital of a co-operative society, or
- (b) guaranteed the principal and interest in respect of debentures issued by a co-operative society; or
- (c) guaranteed the principal and interest in respect of loans and

advances to a co-operative society; or

(d) assisted a co-operative society with loans or grants out of its own funds, the State Government, or any authority specified by the State Government in this behalf, shall have the right to nominate on the board of the cooperative society not more than three members of the board or one-third of the total number of elected members of the board, whichever is less.

34. Reservation of seats on the board :-

The State Government may, by notification stating reasons therefor, provide for reservation of not more than one-fifth of the seats on the board of a co-operative society for the community, class or group of persons which, in the opinion of the State Government, are socially, economically or educationally backward.

CHAPTER 5

Election authority, cadre of services and Co-operative Service Commission

35. Co-operative election authority :-

(1) The State Government shall, by notification, appoint a Co-operative election authority with a Chairman [and a Secretary] and such number of other members, not exceeding three, as it may think fit for the superintendence, direction and control of election of the co-operative societies mentioned in the Fifth Schedule.

(2) The Chairman of the Co-operative election authority shall be a member of the West Bengal Civil Service (Executive) or the West Bengal Civil Service (Judicial) or the West Bengal General Service with not less than ten years' service as such. (2A) The Secretary of the Co-operative election authority shall be an officer of the Co-operative Directorate of the State Government, not below the rank of Assistant Registrar of Co-operative Societies, with five years' service as such.

(3) The Co-operative election authority shall discharge its functions in such manner as may be prescribed.

(4) The State Government shall appoint such staff to assist the Co-operative election authority in discharging its functions as may be required by the Co-operative election authority on such terms and conditions as may be prescribed.

36. Election of directors of the board :-

Subject to the provisions of this Act, the State Government shall

make rules providing for

- (a) the conduct of election of directors of the board of a co-operative society,
- (b) the preparation of electoral roll for the election of such directors,
- (c) fixing the date, place and manner of election of such directors,
- (d) fixing the date of publication of the results of the election of such directors.

37. Cadre of service of managers, assistant managers and other employees and constitution of cadre authority :-

The State Government may constitute one or more cadres of services of managers, assistant managers and other employees for all co-operative societies or a class of cooperative societies on such terms and conditions and in such manner as may be prescribed.

38. Co-operative Service Commission :-

1(1) The State Government shall constitute a Co-operative Service Commission (hereinafter referred to in this section as the Commission) and shall appoint the following three persons as the members of the Commission:

- (a) one person who is or was a Judge of the High Court at Calcutta or who holds or held a post not below the rank of Secretary to the Government of West Bengal, to be the Chairman of the Commission;
- (b) two persons from the apex societies, to be nominated by the State Government.

(1A) The State Government shall appoint the Additional Registrar of Co-operative Societies to be the Secretary of the Commission.

2(2) The Chairman and the other members of the Commission shall hold office for a term of three years:

Provided that no member of the Commission shall be reappointed or renominated as a member of the Commission after the expiry of the term of three years as aforesaid.

(3) The salaries and allowances ³[of the members including the Chairman of the Commission] shall be such as may be prescribed.

(4) The number of officers and other employees of the ⁴[Commission] and the salaries, allowances, terms and condition, of service (including conduct, discipline and control) of such officers and other employees shall be such as may be prescribed.

(5) The ⁴[Commission] shall select persons ⁶[for appointment to such posts][, other than the posts to be filled up by promotion,] in the ⁷[and in such manner] as may be prescribed. ⁸*****

(7) ⁹[There shall be a Selection Committee of the Commission and such Selection Committee] shall consist of

10(a) the Chairman and two other members of the Commission,

(b) a representative of the State Level Co-operative Society or District Level Co-operative Society, as the case may be, and

(c) a representative of the co-operative society for which the selection of employees is to be made:

Provided that in the case of selection of employees ⁶[for a State Level Co-operative Society,] the Selection Committee shall consist of

12(a) the Chairman and two other members of the Commission,

(b) a representative of the State Level Co-operative Society ¹³[for which the selection of employees is to be made], and

(c) one person conversant with the business of the ¹⁴[said] State Level Co-operative Society to be nominated by the Registrar from amongst the employees of the Co-operative Directorate of the State Government:

15 Provided further that the Chairman and the Secretary of the Commission shall respectively be the Chairman and the Convener of the Selection Committee.

1. Sub-sec. (1) subst. by W.B. Act 27 of 1997.

2. Sub-sec. (2) subst. by W.B. Act 27 of 1997.

3. Words subst. by W.B. Act 27 of 1997.

4. Words subst. by W.B. Act 27 of 1997.

6. Words subst. by W.B. Act 21 of 1990.

7. Words subst. by W.B. 21 of 1990.

8. Sub-sec. (6) om. by W.B. Act 27 of 1997.

9. Words subst. by W.B. Act 27 of 1997.

10. Clause (a) to sub-sec. (7) subst. by W.B. Act 27 of 1997.

12. Clause (a) to proviso subst. by W.B. Act 27 of 1997.
13. Words inst. by W.B. Act 21 of 1990.
14. Word inst. by W.B. Act 21 of 1990.
15. Proviso inst. by W.B. Act 27 of 1997.

CHAPTER 6

Duties and obligations of co-operative societies

39. Address of co-operative society :-

Every co-operative society shall have an address, registered in accordance with the rules, to which all notices and communications may be sent and shall send notice in writing of every change thereof within thirty days of such change to the Registrar, the financing bank, if any, and the co-operative society of which it is a member.

40. Books and documents to be open to inspection by members :-

Every co-operative society shall keep open to inspection by its members, free of charge, during office hours, at its address, such books and other documents as may be prescribed and certified copies thereof shall be supplied by it to its members on payment of the prescribed fee.

41. Affiliation to State and Regional Co-operative Unions :-

(1) Every co-operative society shall be required to be affiliated to the State Cooperative Union or the district co-operative union and the central society or the apex society on payment of the prescribed affiliation fee, periodical fee, subscription or contribution to share capital, as the case may be, and shall be required to be so organised as to promote the object of the co-operative societies to which it is affiliated.

(2) Non-compliance with the provisions of sub-section (1) shall be punishable with such penalty, not exceeding five hundred rupees, as may be prescribed.

42. Appointment of persons in the service of a co-operative society :-

(1) A co-operative society shall appoint, subject to the provisions of sub-section (5) of section 38, such officers and other employees as may be sanctioned by the Registrar to assist the co-operative society in the performance of its duties and discharge of its functions under this Act or the rules. The Registrar shall accord

such sanction, or, in case of refusal, intimate to the co-operative society the reasons for such refusal within three months from the date on which any such proposal is submitted by the cooperative society, failing which the sanction shall be deemed to have been accorded by the Registrar. The qualifications and conditions of service of the officers and other employees of the co-operative society shall be such as may be prescribed.

(2)

(a) The books and registers to be maintained by different classes of co-operative societies shall be such as may be prescribed.

(b) The books and registers as aforesaid shall be kept in the custody of such person and in such manner as may be prescribed. Any person who fails or refuses to produce the books and registers when required by the Registrar or any person authorised by him in this behalf shall be punishable with such fine, not exceeding five hundred rupees, as may be prescribed.

43. Restrictions on borrowings :-

A co-operative society may receive deposits and loans to such extent and under such conditions as may be prescribed.

44. Issue of debentures :-

(1) A co-operative society may receive loans by issue or re-issue of debentures of one or more denominations for such period as may be prescribed. Such debentures shall not be issued or reissued save with the express authority of the State Government.

(2) The State Government shall guarantee the principal and interest on the debentures, subject to such conditions as it may lay down. The State Government shall appoint the Registrar or any other person as Trustee for securing the fulfilment of the obligations of the co-operative society to holders of the debentures. The Trustee so appointed shall exercise the powers and perform the functions of a Trustee laid down in the Indian Trusts Act, 1882.

(3) The State Government may by order declare that the debentures issued under sub-section (1) shall be deemed to be securities within the meaning of section 20 of the Indian Trusts Act, 1882. The form of the debentures and any subsequent modification therein shall be subject to the previous approval of the State Government.

45. Vesting of assets of co-operative society in the Trustees upon issue of debentures :-

Upon the issue of debentures under sub-section (1) of section 44, the assets of a co-operative society (including any mortgage which it holds by acceptance, assignment or transfer) shall vest in the Trustee and the holders of debentures shall have a floating charge on all such assets (including the amounts paid under such mortgage and remaining in the custody of the Trustee or the co-operative society) and on other properties of the co-operative society.

46. Issue of bonds :-

(1) Notwithstanding anything contained elsewhere in this Act, a co-operative credit society may, with the prior approval of the State Government and subject to its by-laws, borrow money by issue of bonds in conformity with such directions or instructions as may be given by the Reserve Bank of India from time to time.

(2) The bonds shall be in the form of promissory notes repayable on the expiry of such period from the date of issue thereof as may be approved by the Reserve Bank of India:

Provided that the board may repay the amount due under the bonds to the holders thereof at any time before the expiry of the aforesaid period after issuing a notice in such manner as it may direct in this behalf.

(3) The provisions of section 44 shall, with such modifications as may be made by the State Government in consultation with the Reserve Bank of India, apply to the borrowings under sub-section (1) of this section.

47. Restrictions on lendings :-

(1) A co-operative society shall grant loans to its ¹[members (other than nominal members) only:]

Provided that a co-operative society may, with the sanction of the Registrar, grant, in the manner prescribed, loans to any other co-operative society which is not its member:

²Provided further that a co-operative society may grant advance to a non-member depositor against the security of his time-deposit:

² Provided also that a co-operative society may grant advance to a

nominal member against any tangible security.

(2) A co-operative society may grant loan to a member thereof belonging to such economically weaker sections as may be prescribed at a concessional rate of interest and against a lower scale of security, irrespective of the value of shares held by him.

1. Words and brackets subst. by W.B. Act 21 of 1990.

2. Provisos added by W.B. Act 21 of 1990.

48. Power of State Government to give financial assistance

:-

Notwithstanding anything contained in any other law for the time being in force, the State Government may, subject to the rules,

(i) grant loans to, take shares in, or give financial assistance in any other form to, any co-operative society;

(ii) guarantee the repayment of share capital of any co-operative society and dividends thereon at such rates as may be specified by the State Government; and

(iii) guarantee, the repayment of principal and payment of interest on loans and advances to any co-operative society.

49. Power of State Government to issue directive :-

The State Government may, for reasons to be recorded in writing and after giving the cooperative society an opportunity of being heard, at any time issue directive to any co-operative society or any class of co-operative societies to modify its policies in the manner specified in such directives or to take such other action as the State Government may consider necessary or expedient in the interest of such co-operative society or class of co-operative societies or of the co-operative movement in general.

50. Limitation :-

Notwithstanding the provisions of the Limitation Act, 1963, the period of limitation for the institution of a suit to recover any sum (including interest thereon) due to a co-operative society by a member thereof or any person having transaction with the co-operative society shall be computed from the date on which such member or person dies or ceases to be a member or, as the case may be, closes transaction with the co-operative society.

51. Debts due to co-operative societies to be first charge :-

(1) Notwithstanding anything contained in any other law for the

time being in force but subject to the provisions of the West Bengal Agricultural Credit Operations Act, 1973 and to any claim of the State Government in respect of land revenue, any debt or outstanding demand owing to a co-operative society by any member or any past or deceased member of such co-operative society shall be a first charge upon the lands, crops or other agricultural produce, cattle, fodder, agricultural or industrial implements or machinery, raw materials, finished products, house or building or any portion thereof belonging to such member or past member or forming part of the estate of such deceased member, as the case may be.

(2) No person shall transfer any property which is subject to a charge under sub-section (1) except with the previous permission in writing of the co-operative society which holds such charge.

(3) Notwithstanding anything contained in any other law for the time being in force, any transfer of property made in contravention of sub-section (2) shall be void.

(4) The charge created under sub-section (1) shall be available against any claim of the State Government arising from a loan granted under the Land Improvement Loans Act, 1883 or the Agriculturists' Loans Act, 1884 after the grant of the loan by a co-operative society.

52. Charge on immovable property of members borrowing from certain co-operative societies :-

Notwithstanding anything contained in this Act or in any other law for the time being in force,

(a) a member who makes an application for loan to a co-operative society of which the majority of the members are agriculturists shall, if he owns any land or has interest in any land as a tenant, make in the prescribed form a declaration that he thereby creates a charge upon such land or interest as may be specified in the declaration for repayment with interest of the loan or of the future loans, if any that may be granted to him by the co-operative society from time to time;

(b) a declaration made under clause (a) may be varied or cancelled by the member at any time with the consent of the co-operative society;

(c) the land or the interest upon which a charge has been created

under clause (a) shall not be transferred by the member until the entire amount of the loan including interest has been repaid by the member:

Provided that nothing in this clause shall apply to such part of the land or interest as has been released under clause (e) from the charge created under clause (a);

(d) any transfer made in contravention of clause (c) shall be void;

(e) if the member repays a part of the dues on account of any loan and makes an application for release of the land or interest from the charge created under clause (a), the co-operative society may, with the approval of the ¹ [central bank or concerned unit] of the State Co-operative Bank to which it may be indebted and having regard to the security of the outstanding amount of the loan and the interest thereon, release from the charge such portion of the land or the interest as it may deem proper.

1. Words subst. by W.B. Act 21 of 1990.

53. Loan by Gehan :-

(1) Notwithstanding anything contained in this Act or in any other law for the time being in force, if any member owning any land or other immovable property or having interest in any land or otherwise being in lawful occupation of any land (including a share cropper), who has not borrowed money under section 52, makes an application to a co-operative credit society for loan, he shall by a declaration in the prescribed form create a special charge to be called Gehan in favour of the co-operative credit society on such land or other immovable property or his interest therein to secure payment with interest of the loan to be granted to him for the present and in future by the said co-operative credit society on such application and any other loan that may be granted to him by it from time to time so, however, that the total amount of all loans taken together does not exceed the maximum limit fixed by it and for payment of interest due on all such loans and expressly reserving in favour of the cooperative credit society a right of sale without intervention of court in case of default. The Gehan shall take effect from the date of its execution.

(2) Notwithstanding anything contained in the Registration Act, 1908 ¹ [it shall not be necessary] to register a Gehan:

Provided that when a Gehan has been executed in favour of a primary co-operative credit society for repayment of any loan, the manager of the primary co-operative credit society or any officer deputed by the State Government or the Registrar under section 28 or the financing bank which advances the loan to the primary co-operative credit society shall send a copy of the Gehan to the registering officer having jurisdiction over the loan

(3) An officer deputed by the State Government or the Registrar under section 28 shall administer the oath, where necessary, for affirming or swearing the declaration under sub-section (1),

(4) A Gehan shall be deemed to have created an interest in the property to which the declaration relates and shall constitute notice to any one dealing with such property.

(5) The provisions of clauses (b), (c) and (d) of section 52 shall apply to a Gehan and the provisions of sections 110, 113 and 114 shall apply mutatis mutandis to a Gehan.

1. Words subst. by W.B. Act 21 of 1990.

54. Appointment of sale officer :-

The Registrar shall appoint a sale officer for conducting the sale under section 53. The sale officer shall conduct the sale in the prescribed manner.

55. Utilisation of the sale proceed :-

Out of the sale proceeds of a sale under section 54, the land revenue or any sum recoverable as a public demand shall be paid first and then any amount due to the land development bank on account of any outstanding loan from that bank and the amount payable to the co-operative society together with the cost incurred for effecting the sale shall be paid. Thereafter the dues to the creditor shall be paid and the residue, if any, shall be paid to the debtor.

56. Levy of water rate and embankment protection rate on non- members :-

(1) A co-operative society having its object to provide irrigational facilities and embankment protection facilities to lands of its members may levy water rate and embankment protection rate on persons, who, although not members thereof, hold not less than forty per cent. of the agricultural land to be irrigated, under such circumstances and at such rates as may be prescribed.

(2) A co-operative society, an object of which is agricultural farming through consolidation of land holdings may admit any non-member owning agricultural lands as its member under such circumstances and stipulations as may be prescribed.

57. Charge and set off of shares and interests :-

(1) A co-operative society shall have a charge upon the shares or interests in the capital and deposits of a member (including a past or deceased member) and upon the amount payable out of profits to a member or past member or to the estate of a deceased member on account of any debt due to it by such member or past member or deceased member, as the case may be.

(2) Subject to the provisions of sections 80 to 84 and the rules and the bylaws, a co-operative society may set off any amount credited or payable to a member or past member or the estate of deceased member in or towards payment of any debt referred to in sub-section (1).

58. Deduction of dues to co-operative societies from members and sureties :-

(1) A member of a co-operative society may execute an agreement in favour of the co-operative society providing that his employer shall be competent to deduct from the salaries or wages and retiring gratuity or death gratuity payable to him by such employer such amount as may be specified in the agreement and to pay the amount to the co-operative society in satisfaction of any debt or other demands of the co-operative society against the member.

(2) Upon the execution of the agreement under sub-section (1), the employer shall on the requisition of the co-operative society in writing and for so long as the co-operative society does not intimate that the debt or demand has been fully paid, make the deduction in accordance with the agreement and pay the amount to the co-operative society ¹ [within fifteen days from the date of such deduction] as if it were part of the wages payable by him under the Payment of Wages Act, 1936 on the date on which he makes the payment.

(3) If the employer fails to make the deduction under sub-section (2) or defaults in making payment to the co-operative society, he shall be liable to make the payment to the co-operative society

together with interest at twelve per cent, per annum and the entire amount shall be recoverable from the employer by the co-operative society as an arrear of land revenue and such amount shall rank in priority in respect of the liability of the employer as wages in arrear.

1. Words inst. by W.B. Act 21 of 1990.

59. Exemption from compulsory registration of instruments relating to shares and debentures of co-operative society and mortgage deeds executed in favour of co-operative land development bank or primary co-operative society :-

(1) Nothing in clauses (b) and (c) of sub-section (1) of section 19 of the Registration Act, 1908 shall apply to

(a) any instrument relating to shares in a co-operative society, or

(b) any debenture issued by any co-operative society without creating, declaring, assigning, limiting or extinguishing any right, title or interest to or in any immovable property except in so far as it entitled the holder of the debenture to the security afforded by a registered instrument whereby the co-operative society has mortgaged, conveyed or otherwise transferred the whole or part of its immovable property or interest therein to trustees upon trust for the benefit of the holder of the debenture; or

(c) any endorsement upon, or transfer of, any debenture issued by any co-operative society.

(2) Notwithstanding anything contained in the Registration Act, 1908, it shall not be necessary to register a mortgage deed executed in favour of a co-operative land development bank or a primary co-operative society of which the majority of the members are agriculturists;

Provided that the manager of, or any officer deputed by the State Government or the Registrar under section 28 to, any co-operative land development bank or the financing bank which advanced loan to the primary cooperative society shall send within such time and in such manner as may be prescribed a copy of the mortgage deed to the registering officer within the local limits of whose jurisdiction the whole or any part of the immovable property is situate and the registering officer shall file such copy in his book No. 1 prescribed under section 51 of the Registration Act, 1908.

60. Power to remit duties, fees, etc. and to grant preference and exemption :-

(1) Where the State Government is competent to remit any tax, cess or fee payable under any law for the time being in force, it may in the case of a co-operative society or class of co-operative societies ¹[or a member of a co-operative society] remit such tax, cess or fee by general or special order.

(2) The State Government may, by notification, remit (a) the stamp duty (other than the stamp duty falling within entry 91 or entry 96 of List 1 of the Seventh Schedule to the Constitution of India) in respect of any instrument executed by, or on behalf of, or in favour of, any co-operative society or a class of co-operative societies or an officer or member thereof and relating to the business of such co-operative society or such class of co-operative societies in cases where but for such remission such co-operative society or class of co-operative societies or the officer or member thereof would have been liable to pay the stamp duty chargeable under any law for the time being in force in respect of such instrument:

²Provided that no such remission of stamp duty payable by any member of a co-operative housing society in whose favour a plot of land or a house or an apartment in a building is allotted or to whom such land, house or apartment is transferred, shall be made for the amount by which the value of such land, house or apartment, as the case may be, exceeds three lakh and fifty thousand rupees; and

(b) any fee payable by a co-operative society or a class of co-operative societies ³[or a member of a co-operative society] under any law for the time being in force for the registration of any document: ⁴ Provided that no such remission of fee for registration of any document payable by any member of a co-operative housing society in whose favour a plot of land or a house or an apartment in a building is allotted, shall be made for the amount by which the

(3) Notwithstanding anything contained in any other law for the time being in force, the State Government may, by general or special order, grant such preference and such exemption as may be prescribed.

1. Words inst. by W.B. Act 27 of 1989.

2. Proviso first subst. by W.B. Act 27 of 1989, then again subst. by W.B. Act 20 of 1995.
3. Words inst. by W.B. Act 27 of 1989.
4. Proviso added by W.B. Act 20 of 1995.

61. Compromise or arrangement between co-operative society and its creditor :-

No compromise or arrangement between a co-operative society and its creditor shall be made except with the prior approval of the Registrar and in such manner as may be prescribed.

CHAPTER 7

Properties and funds of co-operative societies

62. Investment of funds :-

A co-operative society may invest or deposit its funds

- (a) in a Government savings bank; or
- (b) in any security specified in section 20 of the Indian Trusts Act, 1882; or
- (c) in the share or debenture or security of any other co-operative society with the previous sanction of the Registrar and in the manner prescribed:

Provided that no such sanction shall be necessary where a primary co-operative society invests or deposits its fund in the share or debenture of a central society or an apex society or where a central society or apex society invests or deposits its fund in the share or debenture of a primary co-operative society; or

- (d) in such other manner as may be prescribed.

63. Co-operative Education Fund :-

(1) There shall be a Fund to be called the Co-operative Education Fund to be administered by such authority and in such manner as may be prescribed. Every co-operative society shall contribute to the Co-operative Education Fund such portion of its net profit in any co-operative year as may be prescribed.

(2) All references to the Co-operative Development Fund established under the West Bengal Co-operative Societies Act, 1973 shall be construed as references to the Co-operative Education Fund established under this Act.

64. Bad Debt Fund :-

Every co-operative society shall create a Bad Debt Fund by transfer of not less than fifteen per cent. of its net profit in a co-operative year and shall utilise it in any business if it has no outside liability in the form of bad debt certified by the audit or in such other manner as may be prescribed.

65. Reserve Fund :-

Every co-operative society shall transfer in every co-operative year not less than ten per cent. of its net profit to a Reserve Fund:

Provided that the Reserve Fund shall be invested in a Government Saving Bank including Nationalised Banks and Regional Rural Banks or in any security specified in section 20 of the Indian Trusts Act, 1882 or in the business of the co-operative society in such manner as may be prescribed.

66. Employees Provident Fund :-

A co-operative society may, notwithstanding anything contained in the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, establish a provident fund for the benefit of its whole-time employees with the contributions of such employees and may make contribution to the fund at the prescribed rate and the fund shall be administered in such manner as may be prescribed.

67. Gratuity Fund :-

A co-operative society may establish a Gratuity Fund in accordance with the provisions of the Payment of Gratuity Act, 1972 for the benefit of its employees.

68. Distribution of profit :-

(1) Subject to the provisions of sections 63, 64 and 65 and sub-section (2) of this section, the net profit of a co-operative society in a co-operative year shall be distributed among its members by way of bonus or dividend.

(2) Subject to such conditions as may be prescribed, the balance of the net profit in a co-operative year together with the undistributed net profit, if any, of the previous year may, to such extent and under such conditions as may be prescribed, be utilised for all or any of the following purposes:

(a) payment of dividend to members on their paid up share capital at a rate not exceeding twelve per cent.;

(b) contribution to such special funds as may be prescribed or as

may be provided in the by-laws;

(c) contribution of any amount not exceeding ten per cent. of the net profit in a co-operative year for any charitable purpose as defined in section 2 of the Charitable Endowments Act, 1890 or for such other purposes as may be prescribed.

CHAPTER 8

Eligibility for membership and privileges, liabilities and obligations of members

69. Eligibility for membership of co-operative society :-

(1) Subject to the rules and the by-laws, the following persons shall be eligible for membership of a co-operative society:

(a) an individual competent to contract under section 11 of the Indian Contract Act, 1872;

(b) any other co-operative society;

(c) the State Government;

(d) subject to the approval of the State Government by general or special order, any association or body of persons (whether incorporated or not) or any financing bank:

Provided that a student who has not attained the age of majority according to the law to which he is subject shall be eligible for membership of a cooperative society formed in an educational institution to which he belongs.

(2) An employee of a co-operative society who is eligible under sub-section (1) to be its member shall, on an application made by him, be admitted as a member of such co-operative society but shall have no right to vote at an election of, or for being elected as, a director of the board [or delegate to any other co-operative society]:

Provided that an employee of a co-operative society composed of worker members who is eligible under sub-section (1) to be its member shall, on an application made by him, be admitted as a member of such co-operative society and shall have a right to vote at an election of, or for being elected as, a director of the board [or delegate to any other co-operative society].

(3) Notwithstanding anything to the contrary contained elsewhere in this Act, a co-operative society may, in its interest, admit any person as a nominal member who shall not be entitled to any share

in any form in the assets or profits of the co-operative society and shall not be eligible to be elected as a director of the board and shall have no right to attend the general meeting of the co-operative society but shall have such rights and privileges and shall be subject to such liabilities of a member as may be specified in the by-laws.

(4) Notwithstanding anything to the contrary contained elsewhere in this Act, a co-operative society may admit pairwise any two persons as joint members and may issue a single share in their joint names. Such members shall, except in such cases as may be 'prescribed, ordinarily enjoy the rights and privileges of a member jointly.

(5) Notwithstanding anything contained in sub-section (1), no central society shall have the right to admit individuals to its membership otherwise than as nominal members in terms of sub-section (3) and the existing individual members shall be deemed to be nominal member for the purposes of this Act:

Provided that the existing individual members of a central society shall have the right to withdraw, after serving three months' notice on the society

70. Admission as member :-

(1) Any person eligible for membership under sub-section (1) of section 69 may apply to a co-operative society for admission as a member thereof in the prescribed form and manner. A copy of the application shall be hung up on the date of its receipt by the cooperative society on its notice board, and written objection, if any, thereto from any member of the co-operative society shall be received by the cooperative society within a period of seven days from that date. The application shall be granted within a period of forty-five days from the date of receipt thereof if no written objection thereto is received by the co-operative society within seven days from the date of its receipt.

(2) If any objection is received within the period referred to in sub-section (1), it shall be disposed of in the prescribed manner within a period of thirty days from the date of its receipt.

(3) The decision of the co-operative society on the application shall be communicated to the applicant within thirty days from the date of the decision. If no such communication is made, the application

shall be deemed to have been refused by the co-operative society.

(4) Any person whose application for admission as a member has been refused or deemed to have been refused by the co-operative society may appeal to the Registrar within such period as may be prescribed and the Registrar shall pass such order thereon as he thinks fit and such order shall be final. If the Registrar is of opinion that the co-operative society has not deliberately communicated to the applicant the decision on his application, as required under sub-section (3), he may take such action in the matter as may be deemed fit.

(5) Notwithstanding anything contained in sub-sections (1), (2), (3), and (4), any person eligible for membership of a primary co-operative credit society or a farmers' service co-operative society shall, on application for such membership, be deemed to have been admitted as a member of the primary co-operative credit society or the farmers' service co-operative society, as the case may be, from the date of receipt of the application.

(6) The State Government may, by notification, extend the provisions of sub-section (5) to such other co-operative society as it may deem necessary.

(7) Any person being aggrieved may file objection thereto to the Registrar within fifteen days from the date of receipt of an application under subsection (5). The Registrar shall either dispose of the objection himself or refer it to an officer subordinate to him, not below the rank of an Inspector of Co-operative Societies, for disposal. Such objection shall be disposed of within thirty days from the date of receipt thereof after giving the parties concerned an opportunity of being heard.

(8) Notwithstanding anything contained in sub-sections (5) and (7), the Registrar may, at any time of his own motion and after giving the individual concerned an opportunity of being heard, cancel the membership of such individual for reasons to be recorded in writing.

71. Votes of members :-

(1) Subject to the rules relating to voting by delegates, no member of a co-operative society shall have more than one vote in any matter that is put to vote or be permitted to vote by proxy:

Provided that in the case of an equality of votes, the Chairman of the meeting shall have a second or casting vote:

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(2) Where two persons are joint members of a co-operative society² [the elder of such joint members or, in his absence, the next member] may attend a meeting of the co-operative society and shall have the right to vote at such meeting.

(3) A co-operative society which is a member of any other co-operative society (hereinafter referred to as the latter co-operative society) may in writing authorise one of its members, not otherwise disqualified for being so authorised under this Act or the rules or the by-laws, to vote at any meeting of the latter co-operative society.

1. Proviso om.by W.B. Act 27 of 1989.

2. Words subst. by W.B. Act 27 of 1989.

72. Members not to exercise rights till payment duly made :-

No member of a co-operative society shall exercise his right as such member till he has made such payments to the co-operative society in respect of his membership or has acquired such interest in the co-operative society as may be provided by rules or by-laws.

73. Utilisation of loans :-

A loan granted by a co-operative society to a member thereof shall be utilised by such member for the purpose for which it was granted. If the co-operative society is of opinion that the loan has not been utilised for the purpose for which it was granted, it may direct such member in the prescribed manner to refund the entire amount of the loan, and the amount shall be refundable forthwith.

74. Share or interest not liable to attachment :-

Notwithstanding anything contained in any law for the time being in force but subject to the provisions of section 57, the share or interest of a member in the capital of a co-operative society or in the provident fund established under section 66 shall not be liable to attachment or sale under any decree or order of a court in respect of any debt or liability incurred by such member, and neither the Official Assignee under the Presidency-towns Insolvency Act, 1909 nor the receiver under the Provincial Insolvency Act, 1920 shall be entitled to, or have any claim on, such share or

interest.

75. Liability of members :-

The members of a co-operative society shall, upon the winding of the co-operative society, be jointly and severally liable to contribute towards any deficiency in the assets of the co-operative society,

(a) if the co-operative society is a co-operative society with unlimited liability, without limit; and

(b) if the co-operative society is a co-operative society with limited liability, subject to such limitation as may be provided in the by laws:

Provided that where any shares of a co-operative society are purchased by the State Government or by any other co-operative society, the liability in respect of such shares shall, upon the winding up of the co-operative society, be limited to the amount paid in respect of such shares.

76. Liability of past member or estate of deceased member :-

The liability of a past member or the estate of a deceased member of a co-operative society for debts of the co-operative society as they existed on the date of ceasing to be a member of the co-operative society or on the date of death of the member, as the case may be, shall continue for a period of two years from that date:

Provided that where a co-operative society is directed to be wound up under section 99 within the period of two years as aforesaid, such liability shall continue until the proceedings for winding up of the co-operative society are completed by the liquidator

.

77. Restrictions on interest of members of co-operative society with limited liability and share capital :-

Where the liability of a member of a co-operative society is limited by shares, no member other than the State Government or another co-operative society shall

(a) hold more than such portion of the ¹ [paid-up] share capital of the co-operative society as may, subject to a maximum of one-fifth, be prescribed; or

(b) have or claim any interest in the form of dividend, profit or return with respect to the share of the co-operative society exceeding five thousand rupees:

Provided that the State Government may, by notification, raise in respect of any co-operative society or any class of co-operative societies and to such extent as may be specified in the notification the maximum limit of share capital referred to in clause (a) or the maximum limit of interest referred to in clause (b).

1. Word inst. by W.B. Act 21 of 1990.

78. Restriction on transfer of share or interest :-

(1) The transfer or charge of the share or interest of a member or a co-operative society in the capital of the co-operative society shall be subject to the provisions of this Act and to such conditions as to the maximum holding as may be prescribed and shall require the approval of the board:

Provided that in the case of a member of a co-operative society with unlimited liability, such transfer or charge shall not require the approval of the board.

(2) No transfer or charge of his share or interest by a member of a co-operative society with unlimited liability shall be valid unless

(a) he has held such share or interest (save in the case of transfer under sections -80, 81, 83 or 84) for not less than one year; and

(b) the transferee or the mortgagee is either a member of such cooperative society or a person whose application for membership has been accepted by any other co-operative society.

(3) Where the State Government is a member of a co-operative society, the restrictions under this section shall not apply to any transfer made by it of its share or interest in the capital of the co-operative society.

79. Nomination of transferee :-

Subject to the by-laws of a co-operative society, any member of such co-operative society may in accordance with the rules nominate a person in whose favour the co-operative society shall dispose of the share or interest of such member on his death.

80. Disposal of deceased members share or interest :-

(1) On the death of a member of a co-operative society ¹ [, other than a central society,] his share or interest in the co-operative society shall, subject to the provisions of Sections 57 and 78 and to the further provisions of this section, be transferred

(a) to the person, if any, nominated under section 79; or

(b) if there is no nominee or if the existence or residence of the nominee cannot be ascertained by the board or if, for any other cause, the transfer cannot be made without unreasonable delay, to the person who (subject to the production by such person of probate, letter of administration or succession certificate) appears to the board to be entitled in accordance with the rules to the possession of such share or interest as part of the estate of the deceased member; or

(c) on the application of the person referred to in clause (b) within three months from the date of death of the member, to such person as may be specified in the application.

(2) If the share or interest of a deceased member cannot be transferred in accordance with the provisions of sub-section (1) or if the person to whom such share or interest is payable under that sub-section claims payment of the value of such share or interest or if the co-operative society in accordance with the rules and its by-laws decides to proceed under this sub-section,

(a) the share shall be transferred to a person qualified to be a transferee of the share under section 78 on receipt of the value of the share from such person; and

(b) the value of the share or the interest of the deceased member determined in accordance with the rules shall be paid to the person nominated under section 79 or to the person referred to in clause (b) of sub-section (1) of this section after deducting the amount payable under this Act to the co-operative society from the estate of the deceased member.

1. Words inst. by W.B. Act 21 of 1990.

81. Disposal of share or interest of member on expulsion or resignation or on becoming insane :-

¹ When a member of a co-operative society is expelled or resigns in accordance with the rules or the bylaws of the co-operative society or becomes insane, his share or interest in the capital or the co-

operative society shall be transferred to a person qualified to be a transferee of such share or interest under section 78, and the value thereof shall be paid to the member or, in the case of his becoming insane, to such person as may be appointed to manage his properties under the Mental Health Act, 1987, within two years from the date on which the member is expelled or resigns or the person as aforesaid is appointed, as the case may be.

1. Sec. 81 subst. by W.B. Act 21 of 1990.

82. Restriction on transfer of possession of, and interest in, land held under co-operative society :-

Notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force,

(a) a member of a co-operative society, the object of which is the reclamation and colonization of land or the acquisition of land and the leasing thereof to its members, shall not be entitled to transfer his possession of, or interest in, any land held by him under the co-operative society except to the co-operative society or with its previous approval in accordance with its by-laws, to a member thereof;

(b) when the membership of a member of a co-operative society referred to in clause (a) terminates by reason of death, expulsion, resignation or insanity or any other cause, his possession of, or interest in, any land held by him under the co-operative society shall vest in his heir, executor or administrator or in the person, if any, nominated by him under section 79, if such heir, executor, administrator or person is willing to be admitted as a member of the co-operative society and is eligible for membership under section 69;

(c) if the heir, executor, administrator or person referred to in clause (b) does not become a member of the co-operative society, the possession of, and interest in, the land including the structure thereon, if any, of the deceased, expelled, resigned or insane member shall vest in the co-operative society, and the co-operative society shall pay to such heir, executor, administrator or person, as the case may be, a sum equivalent to the value of the land including the structure, if any, as determined in accordance with the rules or the by-laws of the co-operative society;

(d) no land held by a member under a co-operative society referred to in clause (a) or vested in his heir, executor or administrator or in

the person under clause (b) shall be attachable in any suit or proceeding for the recovery of any debt other than a debt due to the co-operative society or to a member thereof.

83. Disposal of share or interest of member of wound-up co-operative society :-

When an order is issued under section 99 for winding up of a co-operative society which is a member of a co-operative society with limited liability and, liquidator is appointed under section 100, the liquidator shall transfer the share or interest of the co-operative society being wound up, subject to the provisions of section 78, to any person or any other cooperative society on receipt from such person or co-operative society the value of such share or interest determined in accordance with the rules:

Provided that if the transfer of share or interest is not possible within a reasonable period from the date on which the order issued under section 99 for winding up of the co-operative society takes effect, the value of such share or interest determined in accordance with the rules shall, within two years from the date of the order for winding up, be paid to the liquidator, or may with the previous approval of the Registrar, be set off by the liquidator against any sum which is due from the co-operative society being wound up to the co-operative society with limited liability of which the co-operative society being wound up is a member.

84. Disposal of moneys to a deceased, expelled, resigned or insane member :-

(1) All sums calculated in accordance with the rules to be due from a co-operative society to a member, other than payments to be made in respect of share or interest of such member to the co-operative society, shall, subject to the provisions of section 57, be paid within one year,

(a) in the case of a deceased member, to the person to whom the share and interest are transferred or their value is paid in accordance with the provisions of section 80;

(b) in the case of a member who has been expelled by, or has resigned from, a co-operative society, to him; and

(c) in the case of a member who has become insane, to the person appointed to manage his properties under the Indian Lunacy Act, 1912.

(2) All payments and transfers made by a co-operative society in accordance with the provisions of sections 80 to 83 and sub-section (1) of this section shall be valid and effectual against any demand made upon the cooperative society by any other person.

CHAPTER 9

Special provisions for co-operative housing societies

85. Membership or promotership of co-operative housing society :-

(1) Notwithstanding anything contained elsewhere in this Act, but subject to such conditions as may be prescribed, any individual who is a permanent resident of West Bengal or who intends to reside in West Bengal permanently and the State Government shall be eligible for membership of a co-operative housing society.

(2) Any person eligible for membership of a co-operative housing society under sub-section (1) may apply to such society for being admitted as a member thereof, and membership shall not be denied to him if plots of land, houses or apartments in ¹* * * buildings constructed or under construction by it are available for allotment to such person on the date of application, and plot of land or house or apartment as applied for shall be allotted to him,

(3) A person shall not be a promoter or admitted as a member of a cooperative housing society until he has made a declaration and sworn before ²[a Magistrate or a Notary Public] to the effect that he is not a member of any other co-operative housing society in West Bengal and that he or any member of his family does not own any house or apartment or plot of land in the city, town or village where the co-operative housing society is located ³[, other than the one in relation to which the promotership or the membership of the co-operative housing society is applied for by him under this section.)

(4) Before a co-operative housing society is registered, its promoters shall, in a meeting called for the purpose, elect from amongst themselves a chief promoter, a chairman, a vice-chairman and a treasurer of the co-operative housing society. The powers and functions of the chief promoter, chairman, vice-chairman and treasurer shall be such as may be prescribed.

(5) All payments to or by a co-operative housing society shall be made, and all accounts thereof shall be maintained, in such manner

as may be prescribed.

(6) The owners of apartments in any 4* * * building constructed or under construction by any 89a* * * authority may, if all such owners agree in writing, form a co-operative housing society and apply for registration thereof under section 15, and the application in this behalf shall be supported by the agreement.

(7) A member of a co-operative housing society in whose favour a plot of land or a house or an apartment, as the case may be, in a 89a* * * building has been allotted shall, unless he is compelled to reside elsewhere under such circumstances as may be prescribed, use the same as residence of 5[himself, his family and persons dependent on him.]

(8) A member of a co-operative housing society shall communicate to the co-operative housing society in writing his intention to vacate the possession of the plot of land or the house or the apartment in a 4* * * building in such manner as may be prescribed.

(9) A member of a co-operative housing society in whose favour a plot of land or a house or an apartment in a 4* * * building has been allotted may transfer such plot or house or apartment, as the case may be, with the written consent of the co-operative housing society, under such terms and conditions and in such manner as may be prescribed, to any other person eligible to be a member of the co-operative housing society under sub-section (1). If the co-operative housing society refuses to give its consent to such transfer, it shall record the reasons for such refusal in writing and communicate the same to the member within one month from the date of receipt of his application in this regard, and the member shall have a right of appeal to the Registrar within such period as may be prescribed.

(10) After a co-operative housing society has been registered under section 15 and the certificate of registration issued under section 16 has been received by the co-operative housing society, all bank accounts opened by the chief promoter of the co-operative housing society shall be closed and all amounts thereof shall be credited to the account of the co-operative housing society.

(11) No expenditure incurred by a promoter or chief promoter of a cooperative housing society for any land or house or apartment in a

8* * * building shall be binding on the co-operative housing society unless such expenditure is authorised by a resolution in a meeting of promoters.

(12) A member of a co-operative housing society shall not make any alteration or addition or repair to any house or apartment in a 6 * . * * * building in his possession except with the previous approval of the co-operative housing society. The member shall apply to the co-operative housing society for the aforesaid purpose in the prescribed manner. The co-operative housing society shall consider the application in a meeting of the board and communicate to the member its decision thereon within one month from the date of receipt of the application, failing which the application shall be deemed to have been approved:

Provided that if the board decides to refuse the application, the member shall have a right to make an appeal against such decision to the Registrar within fifteen days from the date of communication of the decision and the Registrar shall decide the appeal within fifteen days from the date on which the appeal is made.

(13) The cost of land (including its development charges) and the cost of any house or apartment on such land built by a co-operative housing society, either by itself or by contractors appointed by it, shall be apportioned amongst its members in such manner as may be prescribed.

1. Word om. by W.B. Act 27 of 1989.
2. Words subst. by W.B. Act 27 of 1989.
3. Words inst. by W.B. Act 27 of 1989.
4. Word om. by W.B. Act 27 of 1989.
5. Words subst. by W.B. Act 27 of 1989.
8. Word om. by W.B. Act 27 of 1989.

86. First general meeting of co-operative housing society :-

(1) Notwithstanding anything contained in this Act, a co-operative housing society shall, within ninety days from the date of receipt of the certificate of registration under section 16, call its first general meeting for the purpose of

- (a) electing the directors of the board;
- (b) placing a report on the progress of work and other particulars relating to the project of the co-operative housing society;
- (c) finalising the policy and mode of allotment of plots, houses and

apartments in multi-storied buildings.

(2) If the election referred to in clause (a) of sub-section(1) is not held within the specified time, the Registrar may, after such inquiry as he thinks necessary, notwithstanding anything contained in section 99, order cancellation of registration of the co-operative housing society or winding up of its affairs and impose such penalty on the officers of the co-operative housing society as he may deem expedient.

(3) The board of a co-operative housing society in its first meeting and, whenever necessary, the members of a co-operative housing society in a general meeting shall prepare a panel of architects, valuers and building contractors in the manner prescribed, fix the fees to be paid to each of them and obtain their written consent thereto. The co-operative housing society shall send a copy of the panel and the schedule of fees to the Registrar and shall not have any of its works done by any person other than those included in the panel.

87. Members right of ownership :-

¹(1) Any allotment (including re-allotment) of a plot of land or a house or an apartment in a building made by a co-operative housing society to its member in accordance with its bylaws shall entitle such member to hold such plot of land, house or apartment, as the case may be, with such title or interest as may be granted under the prescribed conditions, and, subject to the provisions of sub-section (2) of section 60, an instrument of transfer in accordance with the provisions of the Transfer of Property Act, 1882 and the Registration Act, 1908, shall be the conclusive evidence of such title or interest in favour of such member.

(2) A member of a co-operative housing society shall not be entitled to any title or interest in any plot of land or house or apartment in a ²* * * building until he has made such payment as may be prescribed towards the cost of such plot of land or construction of such house or apartment or both, as the case may be, to the co-operative housing society.

(3) A plot of land or a house or an apartment in a ²* * * building (including the undivided interest in the common areas and facilities) shall constitute a heritable and transferable immovable property within the meaning of any law for the time being in force:

Provided that notwithstanding anything contained in any other law for the time being in force, such heritable and transferable immovable property shall not be partitioned or sub-divided for any purpose whatsoever.

(4) Every member of a co-operative housing society shall be entitled to an undivided interest in the common areas and facilities pertaining to the plot of land or house or apartment allotted to him.

(5) Every member of a co-operative housing society in whose favour a plot of land or a house or an apartment in a ⁴ * * * building has been allotted shall have the right to use the common areas and facilities as aforesaid for the purpose for which they are intended without interfering with or encroaching upon the lawful rights of other members in whose favour similar allotment has been made.

(6) The work relating to the maintenance, repair and replacement of the common areas and facilities (including additions or improvements thereto) shall be carried out in accordance with the by-laws of the co-operative housing society and the building rules of the concerned municipality, notified area authority or competent authority, as the case may be and the costs thereof shall be apportioned amongst the members of the co-operative housing society in such manner as may be prescribed.

1. Sub-sec. (1) subst. by W.B. Act 20 of 1995.

2. Word om. by W.B. Act 21 of 1990.

4. Word om. by W.B. Act 21 of 1990.

88. Unit of assessment :-

(1) Notwithstanding anything contained in any other law for the time being in force, each plot of land or house or apartment in a * * * building (including the undivided interest in the common areas and facilities) shall constitute a separate unit for the purpose of assessment of rates and taxes to be realised by a municipality or a notified area authority or a competent authority.

(2) A co-operative housing society shall be liable to furnish to the Registrar such information or particulars in regard to its affairs at the end of each co-operative year or at any other time as the Registrar may by general or special order direct,

(3) After a co-operative housing society has been registered and till the possession of land, house or apartment in a ¹ * * * building, as

the case may be, is made over to the members of the co-operative housing society on the completion of a project undertaken by it, the co-operative housing society shall furnish to its members and to the Registrar at the end of every quarter a statement in the prescribed manner.

1. Word om. by W.B. Act 21 of 1990.

89. Restrictions on letting out :-

(1) Notwithstanding anything contained in any other law for the time being in force, no member of a cooperative housing society, who has been allotted a plot of land or a house or an apartment in a 92a*** building, shall let out such plot of land or house or apartment, as the case may be, and receive any compensation or income in respect of the plot of land or house or apartment, as the case may be, without the written consent of the co-operative housing society on an application made in this behalf. The co-operative housing society may give its consent or refuse such consent for reasons to be recorded in writing and

(2) If the co-operative housing society fails to take decision on the application within one month from the date of its receipt or refuses such consent, the member shall have a right of appeal to the Registrar.

CHAPTER 10

Audit, inspection and inquiry

90. Audit of accounts of co-operative society :-

(1) The accounts of every co-operative society shall, at least once in each co-operative year, be audited at the expense of the co-operative society by the ¹[Director of Cooperative Audit] or ²[by a person appointed or authorised by the 93(Director of Co-operative Audit) to act as audit officer by general or special order in writing in this behalf! from among the officers under his administrative control or from the panel of auditors ³[, which shall include, among others, members of the Institute of Cost and Works Accountants of India constituted under the Cost and Works Accountants Act, 1959 (hereinafter referred to in this section as the Institute),] prepared by him for this purpose.

⁴(1A) Where in the opinion of the State Government it is necessary in the public interest to do so in relation to any society or class of societies for ensuring management thereof in accordance with

sound business principles or prudent commercial practices, the State Government may by order, which shall be issued at least one month prior to the closing date of a co-operative year, direct that the cost audit, or performance audit or both, of such society or class of societies as may be specified in the order shall be conducted.

4(1B) Where any order is issued under sub-section (1A) the **1**[Director of Co-operative Audit] shall appoint under clause (a) of sub-section (2) a member or members of the Institute from the panel of auditors referred to in sub-section (1) to be the audit officer or audit officers to conduct the audit of such society or class of societies, and such audit officer or audit officers shall complete the audit within the period specified in sub-section (2) and shall submit the report in accordance with the provisions of sub-section (1) of section 91.

(2)

(a) The **1**[Director of Co-operative Audit] shall draw up an audit programme (including appointment of audit officers, issue of appointment letters to audit officers and intimation of such appointment to the co-operative society) not later than **2**[the closing date of each co-operative year.]

(b) An audit officer appointed under clause (a) shall complete the audit **2**[within nine months from the closing-date of the co-operative year concerned.]

(c) If the audit officer appointed under clause (a) does not take up the audit within three months from the date of his appointment shall stand **10**[Director of Co-operative Audit] shall appoint another audit officer in his place:

11 Provided that nothing in this clause shall apply to the officers of the Directorate of Co-operative Audit of the State Government,

(3) Every co-operative society shall send **12**[to the **5**(Director of Cooperative Audit) and to the Registrar within three months from the closing-date of each co-operative year] an annual return consisting of a cash account, a profit and loss account, a balance sheet and a trading account (where applicable) in the prescribed form.

(4) The ⁵[Director of Co-operative Audit] shall not appoint the same audit officer to audit the accounts of the same co-operative society for ⁵[more than two] successive co-operative years;

Provided that when the audit of the accounts of any co-operative society is in arrear for two years or more, an audit officer may be entrusted by the ⁵[Director of Co-operative Audit] to audit the accounts of the co-operative society for all such co-operative years.

(5) If, at the time of audit, the audit officer finds that the accounts of the co-operative society are not complete, he shall report the matter to the ⁵[Director Co-operative Audit]. The ⁵[Director Co-operative Audit] or, with his approval, the audit officer may cause the accounts to be completed at the expense of the co-operative society.

(6) An audit under sub-section (1) shall include examination of overdue debts (if any), verification of cash balance and securities and valuation of assets and liabilities of a co-operative society and such other matters as may be prescribed.

(7) The audited statement of accounts of a co-operative society together with the modifications, if any, made therein by the ⁵[Director of Co-operative Audit] shall be final and binding on the co-operative society.

(8) An audit under sub-section (1) shall include annual audit, running audit and re-audit.

Explanation

(i) "Annual audit" shall mean audit of accounts of a cooperative society for each co-operative year.

(ii) "Running audit" shall mean audit of the accounts of a co-operative society within a co-operative year on monthly or quarterly basis as the ⁵[Director of Co-operative Audit] may decide.

(iii) "Re-audit" shall mean audit of the accounts of a co-operative society for checking up the quality or standard of any previous audit. The co-operative society shall pay for every annual audit, running audit or re-audit such audit fee in such manner as may be prescribed.

21 (9) The audit officers appointed from the panel of auditors shall be paid by the co-operative society concerned such audit fee as

may be prescribed.

1. Words subst. by W.B. Act 27 of 1989 and W.B. Act 22 of 1992. respectively.
2. Words, figures and brackets subst. by W.B. Act 27 of 1989.
3. Words inst. by W.B. Act 21 of 1990.
4. Sub-sees. (1A) and (1B) Inst. by W.B. Act 21 of 1990.
10. Words subst. by W.B. Act 27 of 1989 and W.B. Act 22 of 1992, respectively.
11. Proviso inst. by W.B. Act 27 of 1989.
12. Words subst. by W.B. Act 27 of 1989.
21. Sub-sec. (9) inst. by W.B. Act 27 of 1989.

91. Audit officers report :-

(1) After completion of audit of the accounts of any co-operative society the audit officer shall submit his report ¹[to the Director of Co-operative Audit] and to the co-operative society together with the statement of accounts within the period specified in subsection (2) of section 90. The audit report shall include such information as, may be prescribed.

(2) A co-operative society shall rectify the defects pointed out in the audit report and submit to the ¹[Director of Co-operative Audit] a report of compliance within forty-five days from the date of receipt of the audit report.

(3) Where the ¹ [Director of Co-operative Audit] is of opinion that the defects pointed out in the audit report have not been fully rectified by the co-operative society, he may direct the co-operative society to rectify the defects still persisting in the accounts and to submit a further report of compliance with explanations within forty-five days from the date of receipt of such direction, and the co-operative society shall rectify such defects and submit a further report of compliance accordingly.

1. Words subst. by W.B. Act 27 of 1989 and W.B. Act 22 of 1992,

92. Inspection by Registrar or financing bank :-

(1) Every co-operative society shall be liable at any time to inspection

(a) by the Registrar or by any person authorised by the State Government or the Registrar in this behalf by general or special order;

(b) by the financing bank, if any, of which it is a debtor;

(c) by the apex society or the central society, if any, of which it is a member.

(2) An inspection under sub-section (1) by a financing bank or an apex society or a central society, as the case may be, shall be made by an officer of such financing bank or apex society or central society certified by the Registrar in accordance with the rules as competent to conduct such inspection.

(3) The Registrar may by general or special order direct that the report of an inspection under sub-section (1) or a summary thereof in respect of a respectively.

(4) An inspecting officer may seize in the manner prescribed any book or document of a co-operative society during its working hours and shall report the fact of such seizure to the Registrar within twenty-four hours with a copy of the seizure list and the requisition:

Provided that no such seizure shall be made unless a written requisition is served on the co-operative society specifying therein the books and documents to be seized and the reasons therefor.

93. Inquiry by Registrar :-

(1) The Registrar may, at any time of his own motion, hold by himself or by any person authorised by him by order in writing an inquiry into the constitution, working and financial condition of a co-operative society or into any specific matter relating to the affairs of a co-operative society.

(2) An inquiry under sub-section (1) may also be held by the Registrar or by any person authorised by him by order in writing on the application of

(a) the financing bank, if any, of which the co-operative society is a member or a debtor;

(b) the majority of the directors of the board of the co-operative society;

(c) one-third of the members of the co-operative society each of whom has been a member for not less than six months immediately preceding the date of application and who have deposited such security for costs, if any, as the Registrar may direct:

Provided that in the case of a co-operative society having more

than one thousand and five hundred members, an application under this sub-section may be made by the delegates elected in the prescribed manner;

(d) the creditors, representing not less than one-half of the borrowed capital of the co-operative society, who have deposited such security for cost, if any, as the Registrar may direct,

(3) The Registrar shall communicate the report of an inquiry under this section or a summary thereof to the co-operative society and to the applicant who made the application under sub-section (2).

94. Cost of inspection or inquiry :-

(1) The Registrar may, after giving the parties an opportunity of being heard, by order stating reasons, apportion the cost of inspection or inquiry held under section 92 or section 93, as the case may be, either wholly or in part, between the co-operative society and the directors, members, delegates or creditors thereof or the financing bank, as the case may be, making the application for inspection or inquiry, and the officers (including former officers) and the members (including past members) of the co-operative society.

(2) No expenditure shall be incurred from the funds of any co-operative society for defraying the cost of any appeal preferred against an order under sub-section (1) by any person other than the co-operative society.

CHAPTER 11

Settlement of disputes

95. Disputes to be referred to Registrar :-

(1) Any dispute concerning the business of a co-operative society capable of being the subject of civil litigation or any dispute relating to the affairs of a co-operative society (other than a dispute relating to the disciplinary action taken by a co-operative society against the paid employees of the co-operative society or the terms and conditions of service of the paid employees of the co-operative society) shall be referred in the prescribed manner to the Registrar, if the parties thereto are among the following:

(a) a co-operative society or its board or an officer (past or present), agent, employee or liquidator of a co-operative society; or

(b) a member or a past member or a person claiming through a

member or a past member or on behalf of a deceased member of a cooperative society or a financing bank of a co-operative society; or

(c) a surety of a member or past member or deceased member of cooperative society, whether such surety is or is not a member of the co-operative society; or

(d) any other co-operative society or any person including any financing bank having transaction with a co-operative society or any liquidator of a co-operative society.

96. Settlement of dispute :-

(1) On receipt of a reference under subsection (1) of section 95, the Registrar shall, subject to the rules,

(a) decide the dispute himself; or

(b) transfer the dispute for disposal to any person authorised by the State Government to exercise the powers of the Registrar in this behalf; or

(c) refer the dispute for disposal to one or more arbitrators to be appointed by the Registrar or, in the case of the co-operative societies in the Calcutta Metropolitan Area as defined in the Calcutta Metropolitan Development Authority Act, 1972, to the Court of Arbitrators constituted under section 97.

(2) Subject to the rules, the Registrar may withdraw any dispute transferred or referred under sub-section (1) and may decide it himself or transfer or refer it to any other person or arbitrator or Court of Arbitrators for disposal.

(3) The Registrar may, on the application of any party to a dispute referred to him under sub-section (1) of section 95 and on such terms as he may think fit, make such interlocutory order as he considers necessary.

(4) A person or an arbitrator or a Court of Arbitrators may, on the application of any party to the dispute transferred or referred to him or it under sub-section (1) and on such terms as he or it may think fit, make such interlocutory order as may be considered necessary for preservation of any property or right which is the subject matter of the dispute.

(5) A dispute referred to the Registrar under sub-section (1) of section 95 or transferred or referred to any person or arbitrator or

arbitrators or the Court of Arbitrators, as the case may be, under sub-section (1) of section 96 shall be decided within six months from the date of receipt thereof by the Registrar.

(6) If the Registrar or the person or the arbitrator or arbitrators or the Court of Arbitrators fails to decide the dispute within the period specified in sub-section (5), he shall submit a report to his or its appointing authority stating reasons for such failure at least fifteen days before the expiry of the said period and such authority shall allow further time not exceeding six months for disposal of the dispute.

97. Court of Arbitrators :-

For the purpose of disposal of disputes relating to the affairs of the co-operative societies in the Calcutta Metropolitan Area, the State Government may constitute a Court of Arbitrators consisting of a Chief Arbitrator and such number of other arbitrators as may be prescribed, and the Chief Arbitrator and other arbitrators shall be appointed by the State Government from among the officers of the Department of Co-operation of that Government or from among the distinguished co-operators residing within the Calcutta Metropolitan Area.

98. Force and effect of certain awards :-

Where a dispute involves property pledged as collateral security, the person deciding the dispute may make an award which shall have the same force and effect as a final mortgage decree of a civil court having jurisdiction to make such decree.

CHAPTER 12

Winding up and dissolution of co-operative societies

99. Winding up of co-operative society :-

(1) If, after an audit under section 90 or an inspection under section 92 or an inquiry under section 93 or on an application made by not less than three-fourths of the members of any co-operative society, the Registrar is of opinion that the co-operative society should be wound up, he may by order direct it to wound up.

(2) The Registrar may of his own motion, after giving thirty days' notice in the form prescribed, by order direct the winding up of a co-operative society

(a) where the co-operative society has not commenced working within twenty-four months from the date of its registration or has

ceased to function for eighteen months; or

(b) where the number of members of the co-operative society has been reduced to less than the minimum provided in section 13 for the purpose of registration:

Provided that the Registrar shall not, in the case of a State co-operative bank or Central co-operative land development bank or Central cooperative bank, or primary co-operative bank, make any order under subsection (1) or sub-section (2) without prior consultation with the Reserve Bank of India or the National Bank for Agriculture and Rural Development or the State co-operative bank or the Central co-operative land development bank or the Central co-operative bank, as the case may be.

(3) The Registrar may, after orders have been issued under sub-section (1) or sub-section (2), consider the reports, if any, of the liquidator appointed under section 100 and may by order cancel the registration of the cooperative society,

(4) If, however, the Registrar is of opinion that a co-operative society which has been directed to wound up under sub-section (1) or sub-section (2) should continue to function, he may, with the prior approval of the State Government, cancel such order for winding up.

100. Appointment of liquidator :-

After an order has been issued under sub-section (1) or sub-section (2) of section 99, the Registrar may, in accordance with the rules, appoint a person to be liquidator of the co-operative society in respect of which such order has been issued and fix his remuneration in the manner prescribed and may, if necessary, in the like manner remove such person and appoint another person in his place:

Provided that it shall not be necessary to appoint any liquidator for winding up of a co-operative society which has not commenced working.

101. Powers and obligation of liquidator :-

(1) On the appointment of a liquidator under section 100, all assets, properties, effects and actionable claims of the co-operative society or to which the co-operative society is entitled shall vest in the liquidator.

(2) The liquidator shall from the date of his appointment have power

(a) to take immediate possession of

(i) all assets, properties, effects and actionable claims of the co-operative society or to which the co-operative society is entitled,

(ii) all books, records and other documents pertaining to the affairs of the co-operative society; and

(b) to take, under the general direction and control of the Registrar, such steps as may be necessary to prevent loss or deterioration of, or damage to, such assets, properties, effects and actionable claims.

(3) In the event of an order under sub-section (1) or sub-section (2) of section 99 being set aside on appeal, the liquidator shall deliver possession of all assets, properties, effects, actionable claims, books, records and other documents referred to in sub-section (2) of this section to the appropriate officers of the co-operative society, provided that anything done, any action taken or any proceeding initiated by the liquidator shall be binding on the co-operative society and such action or proceeding shall be pursued and continued by the officers of the co-operative society.

(4) From the date on which an order under sub-section (1) or sub-section (2) of section 99 takes effect, the liquidator shall, subject to the rules and under any general direction and control of the Registrar, have power, so far as is necessary for winding up of the co-operative society on behalf of the cooperative society to carry on its affairs and to do all acts and execute all documents necessary for the purpose of winding up, and, in particular, shall exercise such of the following powers, as the Registrar may from time to time direct, namely :

(a) to institute and defend suits and other legal proceedings;

(b) to carry on the affairs of the co-operative society so far as may be necessary for the beneficial winding up of the co-operative society;

(c) to sell any movable ¹ [or immovable] property and actionable claim

(d) to raise, if required, money on the security of the assets of the

cooperative society;

(e) to make compromise or arrangement with any person between whom and the co-operative society there exists a dispute and to refer such dispute to arbitration;

(f) to determine the debts due to the co-operative society by a member (including a past member) or the estates, nominees, heirs or legal representatives of a deceased member;

(g) to calculate the costs of liquidation and determine the persons by whom, and the proportions by which, they are to be borne;

(h) to determine from time to time the contributions, including the items referred to in clauses (f) and (g), to be made to the assets of the co-operative society by the members (including past members) or the estates, nominees, heirs or legal representatives of deceased members or by the past or present officers of the cooperative society or by the estates, nominees, heirs or legal representatives of deceased officers;

(i) to investigate into all claims against the co-operative society and, subject to the provisions of this Act, to decide questions of priority arising amongst the claimants;

(j) to fix the time within which the creditors of the co-operative society shall prove their debts and claims or take steps to be included for the benefit of any distribution that may be made before such debts and claims are proved;

(k) to pay claims against the co-operative society (including interest up to the date of the order for its winding up) according to their priority in full or rateably as the assets of the co-operative society permit;

(l) to give such directions as may appear to him. to be necessary in regard to the realisation, collection or distribution of assets of the co-operative society;

(m) to do all acts and, in the name and on behalf of the co-operative society, to execute all deeds and other documents and to grant all receipts as may be necessary for the winding up of the co-operative society; and

(n) if there is reason to believe that the co-operative society can be reconstructed, to take, with the prior approval of the Registrar,

such action as may be necessary for such reconstruction.

(5) The liquidator shall, at such times as may be prescribed but not less than once in a co-operative year, present to the Registrar an account, in the prescribed form, of receipts and payments by him. The Registrar shall cause such account to be audited and, for the purpose of such audit the liquidator shall furnish the Registrar with such vouchers, documents and information as the Registrar may require.

(6) The liquidator shall pay such fees as the Registrar may direct for the audit of the accounts referred to in sub-section (5).

(7) The liquidator shall cause a summary of the audited accounts to be prepared and shall send a copy of the same to the contributors and creditors.

(8) The by-laws of a co-operative society may provide as to how the surplus assets, if any, shown in the final report of the liquidator of a co-operative society which has been wound up, may be utilised, and the liquidator shall deal with such surplus assets accordingly. If the by-laws of any cooperative society do not contain such provision, the surplus assets as aforesaid shall vest in the liquidator who shall credit such assets to the Co-operative Education Fund.

(9) When a co-operative society has been wound up, the liquidator shall preserve the records of the co-operative society in the prescribed manner and shall make a report thereon to the Registrar.

(10) Notwithstanding anything contained elsewhere in this Act or in the rules or by-laws of a co-operative society, the services of all the employees of a co-operative society, which has been ordered to be wound up, shall be deemed to have terminated with effect from the date on which the order directing the winding up of the co-operative society takes effect:

Provided that the liquidator may, subject to the approval of the Registrar, reappoint any such employee in connection with the work of liquidation on such terms and conditions and for such period as he deems fit.

1. Words inst. by W.B. Act 27 of 1989.

102. Priority of contribution assessed by liquidator :-

Notwithstanding anything contained in any law relating to insolvency, the contribution assessed by a liquidator shall rank next to debts due to the State Government or to any local authority in the order of priority in insolvency proceedings.

103. Power of Registrar to cancel registration of co-operative society :-

(1) If the Registrar is of opinion that it is not necessary to appoint a liquidator for a co-operative society in respect of which an order for winding up has been issued under sub-section (1) or sub-section (2) of section 99, he shall by order cancel the registration of such co-operative society.

(2) Where a liquidator has been appointed by the Registrar under section 100, the Registrar shall consider the report of the liquidator regarding the winding up of the co-operative society and shall, if necessary, by order cancel its registration.

(3) After an order has been issued under sub-section (1), or sub-section (2), the co-operative society shall be deemed to have been dissolved and have ceased to exist as a corporate body on and from the date of such order.

CHAPTER 13

Special provisions for co-operative land development bank, central co-operative bank, primary co-operative credit society and apex housing society

104. Payment of prior debts of mortgagor :-

(1) When any property is mortgaged to a co-operative land development bank for payment of a prior debt or part thereof of a mortgagor, the co-operative land development bank shall, notwithstanding the provisions of sections 83 and 84 of the Transfer of Property Act, 1882, by serving a notice in writing in the prescribed manner require any person to whom such debt is due to receive payment of such debt or part thereof from it within such period as may be specified in the notice.

(2) The person on whom a notice is served under sub-section (1) shall be bound to receive payment of the amount tendered by the co-operative land development bank. If there is a disagreement between the mortgagor and such person as regards the amount of the debt, the receipt of the sum tendered by the co-operative land development bank shall not prejudice the right of such person to recover the balance amount of the debt claimed by him.

(3) If any person does not accept the notice served under subsection (1) or fails to receive payment of the debt or part thereof within the period specified in the notice, the debt or part thereof shall cease to carry interest from the expiry of such period.

105. Procedure for dealing with applications for loan :-

Subject to the provisions of section 104 and the rules, a co-operative land development bank shall receive applications for loan made in the prescribed manner and deal with such applications in accordance with the rules before granting the loan.

106. Restriction on transfer of, or charge on, equity of redemption :-

Notwithstanding anything contained in any other law for the time being in force, a mortgagor shall not be entitled to transfer or create a charge on the property mortgaged to a co-operative land development bank without the concurrence of the co-operative land development bank:

Provided that the co-operative land development bank shall not give its concurrence without the previous sanction of the financing bank :

Provided further that the financing bank shall, if it accords sanction, send a copy thereof to the Trustee, if any, appointed under section 44.

107. Mortgage not to be questioned on insolvency of mortgagor :-

Notwithstanding anything contained in any law relating to insolvency for the time being in force, a mortgage executed in favour of a co-operative land development bank shall not be called in question on the ground that it was not executed in good faith for valuable consideration or on the ground that it was executed in order to give the co-operative land development bank preference over the creditors of the mortgagor.

108. Priority of mortgage over certain loans :-

A mortgage executed in favour of a co-operative land development bank before or after the commencement of this Act shall have priority over loans of the State Government under the Land Improvement Loans Act, 1883 or the Agriculturists' Loans Act, 1884 granted after the execution of the mortgage and over all other registered or unregistered transfers effected on any account.

109. Constructive borrowing :-

(1) Where a co-operative credit society has granted a loan for improvement of any land to any person who, in the opinion of the co-operative credit society, has title to the said land or is in lawful possession thereof and the amount of the loan has been utilised wholly or in part for such improvement, any other person taking such land under a superior title or otherwise shall be liable to repay to the co-operative society so much of the loan as established to have been utilised for the improvement of the land as if that other person had executed the Gehan under section 53 for such part of the loan and shall be deemed to be the debtor to that extent for the purpose of enforcing the Gehan by sale or otherwise.

(2) The Gehan executed or deemed to have been executed in favour of, and all other assets charged to, a primary co-operative credit society shall be construed to have been charged by the primary co-operative credit society to the central co-operative bank with effect from the date on which it was executed or deemed to have been executed.

(3) The Gehan executed or deemed to have been executed in favour of, and all other assets charged or deemed to have been charged to, a cooperative land development bank shall be construed to have been charged by the co-operative land development bank to the central co-operative land development bank with effect from the date on which it was executed or deemed to have been executed.

(4) Notwithstanding anything contained in any law for the time being in force, where a co-operative credit society grants loan to its member belonging to scheduled caste or scheduled tribe, or to any other member having restricted rights of alienation of any immovable property, such member may create a Gehan on such immovable property in favour of the co-operative credit society as security for such loan. If any such member defaults in making repayment of the loan, the co-operative credit society shall, without prejudice to any other remedy available under any law, contract or otherwise, be entitled to take possession of such immovable property and lease the same to any person belonging to the same caste or tribe as the defaulting member belongs to and appropriate the net receipts from the lessee in repayment of the loan, and the defaulting member shall not be entitled to recover possession of such immovable property until the loan has been repaid in full.

(5) Before taking possession of any immovable property under sub-section (4), the co-operative credit society shall serve upon the defaulting member a notice of demand in writing for repayment of the outstanding amount of the loan within such period as may be specified in the notice stating that in default of such repayment within such period, the right of possession under sub-section (4) shall be enforced.

110. Power to distrain and sale :-

(1) If any sum due as an instalment or part of an instalment payable under mortgage in favour of a cooperative land development bank, central co-operative bank or primary co-operative credit society has remained unpaid for more than one month from the date on which it fell due, the bank or the co-operative society, as the case may be, may, in addition to any other remedy available to it, apply to the Registrar for the recovery of such sum by distraint and sale of not more than half the produce of the mortgaged land, including the standing crops thereon.

(2) Upon receipt of such application, and notwithstanding anything contained in the Transfer of Property Act, 1882, the Registrar may, subject to the provisions of this Act and the rules, take such action as is deemed necessary to distrain and sell the produce or such portion thereof as he thinks fit.

111. Application of the proceeds of distraint and sale :-

(1) The proceeds of any distraint and sale under section 110 shall be applied as follows:

(1) First, there shall be paid to the co-operative land development bank or the central co-operative bank or the primary co-operative credit society, as the case may be, at the prescribed rate

(a) the costs of the sale; and

(b) the other expenses incurred on account of the distraint.

(2) Secondly, there shall be paid to the bank or the co-operative society, as the case may be, the amount for which the distraint was made and there shall be given to the person whose property has been sold a receipt for the amount so paid.

(3) Thirdly, the residue, if any, shall be paid to the person whose property has been sold.

112. Power to bring mortgaged property to sale and deliver possession in respect of the property sold without the intervention of court Section :-

1 *** Notwithstanding anything contained in any other law for the time being in force, where a power of sale and delivery of possession in respect of the property sold, without the intervention of any court, is expressly conferred on a co-operative land development bank or a central cooperative bank or an apex housing society, by a mortgage deed in favour of the bank or the society, as the case may be, if any instalment under such mortgage is not paid in full on the date on which it falls due, the board of directors of the bank or the society, as the case may be, shall, in addition to any other remedy available to it, have the power, subject to the provisions of this Act and the rules, to bring the mortgaged property to sale and to deliver possession of the property sold to the purchaser without the intervention of any court.

1. Figures and brackets "[1]" om. by W.B. Act 21 of 1990.

113. Right to purchase at sale under this Chapter :-

(1) A co-operative land development bank or a central co-operative land development bank or a central co-operative bank or an apex housing society or a cooperative housing society shall be competent to purchase any mortgaged property sold under this Chapter but such property shall be disposed of by such co-operative land development bank or central co-operative bank or apex housing society or a co-operative housing society, as the case may be, by sale within the prescribed period or, where a Trustee has been appointed, within such period as the Trustee may specify in accordance with the rules.

(2) The provisions of sections 14M and 14Q of the West Bengal Land Reforms Act, 1955 shall not apply to land acquired by a co-operative land development bank or central co-operative land development bank or central co-operative bank or apex housing society as the raiyat by virtue of purchase under sub-section (1).

114. Title of purchaser not to be questioned :-

The title of a purchaser of any property sold under this Chapter shall not be questioned in any court by any mortgagor or his successor-in-interest.

115. Appointment of Receiver :-

For the purpose of conduct of sale and delivery of possession of any property sold under this Chapter the Registrar may, where no Receiver has been appointed by any court in respect of such property, appoint a Receiver in accordance with the provisions of the Transfer of Property Act, 1882 and determine his remuneration in the manner prescribed.

116. Power of co-operative land development bank, etc., if mortgaged property is destroyed or security becomes insufficient :-

(1) If any property mortgaged under this Chapter is destroyed wholly or in part or if the security for any loan is found to be insufficient on valuation in the manner provided in the rules or the by-laws, the mortgagor shall be required on the service of a notice on him in the prescribed manner, to furnish such further security, and within such period, as may be specified in the notice.

(2) If the mortgagor fails to furnish such further security within specified period, the entire amount of the loan together with the interest accrued thereon shall fall due at once and the co-operative land development bank or the central co-operative land development bank or the central co-operative bank or the apex housing society shall, subject to the rules, be entitled to take action for recovery thereof under this Chapter.

Explanation. For the purpose of this section a security shall be deemed to be insufficient if the value of the mortgaged property does not exceed the amount for the time being due on the mortgage by such proportion as may be specified in the rules or the by-laws.

117. Power of Trustee or central co-operative land development bank to direct or to take certain action :-

A Trustee and, in the case of a member co-operative society, a central co-operative land development bank may, in accordance with the rules and by order, direct a co-operative land development bank to take action against a defaulter under this Chapter within such period as may be specified in the order. If the co-operative land development bank fails to take such action within the specified period, the Trustee or the central co-operative land development bank, as the case may be, may take such action and the provisions of this Act and the rules or the by-laws shall apply in respect thereto, as if all references to the cooperative land development

bank were references to the Trustee or the central co-operative land development bank, as the case may be.

118. Officers of co-operative land development bank, etc., not to bid on personal account at sales :-

At any sale of movable or immovable property held under the provisions of this Chapter, no officer of a cooperative land development bank or central co-operative land development bank or central co-operative bank or apex housing society or sale officer or other person having any duty to perform in connection with such sale shall directly or indirectly bid for or acquire or attempt to acquire any interest in such property on his personal account.

119. Exemption from personal attendance :-

(1) Notwithstanding anything contained in the Registration Act, 1908 it shall not be necessary for a Trustee or for any officer of a co-operative land development bank or central co-operative bank or primary co-operative credit society or central co-operative land development bank or apex housing society or of any such class of co-operative societies as may be prescribed to appear in person or by agent at any registration office in any proceeding connected with the registration of any instrument executed by him in his official capacity or to sign as provided in section 58 of that Act.

(2) Where any such instrument is presented for registration, the registering officer may, if he thinks fit, refer to the Trustee or to the officer as aforesaid for any information relating thereto and, on being satisfied about the execution thereof, shall register such instrument.

120. Powers to co-operative land development bank, etc., to receive moneys notwithstanding transfer of mortgage deed to central co-operative land development bank etc :-

(1) Where a co-operative land development bank or a primary co-operative housing society or a primary co-operative credit society advances money on a mortgage, hypothecation. Gehan or any other charge out of the funds borrowed, wholly or in part, from the central co-operative land development bank or the apex housing society or a financing bank, as the case may be, such mortgage, hypothecation, Gehan or any other charge shall be deemed, with effect from the date of execution thereof, to have been transferred by the co-operative land development bank or the primary co-operative housing society or the primary co-operative credit society

to the central co-operative land development bank or the apex housing society or the financing bank, as the case may be, and such mortgage, hypothecation, Gehan or any other charge which shall be deemed to have been transferred to the central co-operative land development bank shall be deemed to have been assigned to the Trustee.

(2) Notwithstanding the transfer and assignment of a mortgage, hypothecation, Gehan or any other charge as aforesaid,

(a) all moneys due under the mortgage shall, in the absence of any specific direction to the contrary issued by the Registrar or a Trustee in accordance with the rules and communicated to the mortgagor or any person liable under a hypothecation or a Gehan or any other charge, be payable to the co-operative land development bank, the primary co-operative housing society or the primary co-operative credit society, as the case may be, and such payment shall be valid as if the mortgage had not been so transferred and assigned; and

(b) the co-operative land development bank, the primary co-operative housing society or the primary co-operative credit society, as the case may be, shall, in the absence of any direction communicated to it, be entitled to sue on the mortgage or to take any other proceeding for the recovery of moneys due under the mortgage, hypothecation, Gehan or any other charge.

121. Mortgage executed by members of joint Hindu Family
:-

(1) Where a mortgage executed before or after the commencement of this Act in favour of a co-operative land development bank is called in question on the ground that it was executed by the manager of a joint Hindu Family for a productive purpose not binding on the members thereof, the burden of proof shall, notwithstanding anything contained in any other law for the time being in force, rest on the person who calls the mortgage in question.

(2) For the purpose of this section, the expression "productive purpose" within the meaning of clause (ii) of the Explanation to clause (12) of section 2 shall be deemed to be a purpose binding on the members (major or minor) of a joint Hindu Family.

122. Special provisions for co-operative land development

bank to apply to branches of central co-operative land development bank :-

The special provisions for the co-operative land development bank contained in this Chapter shall apply, mutatis mutandis, to the branches of the central cooperative land development bank in so far as they perform the functions and discharge the duties of a primary co-operative land development bank.

123. Provisions of sections 116, 117 and 120 to apply to loans issued against Gehan :-

The provisions of sections 116, 117 and 120 shall apply, mutatis mutandis, to loans issued against a Gehan or immovable property and hypothecation of assets created with the help of loan.

CHAPTER 14

Enforcement of obligations and recovery of sums due

124. Access to documents, etc :-

(1) The Registrar and, subject to any restrictions prescribed, an audit officer, arbitrator or any person conducting an inspection or inquiry under Chapter X shall, at all reasonable times, have free access to books, accounts, documents, securities, cash and other properties belonging to, or in the custody of, a co-operative society.

125. Power to enforce attendance of witnesses and production of documents :-

(1) The Registrar and, subject to any restrictions prescribed, a Government officer deputed under section 28 or a committee appointed under section 29 or an administrator appointed under section 30 to manage the affairs of a co-operative society or an audit officer, arbitrator, liquidator or any person conducting an inspection or inquiry under Chapter X shall, in so far as necessary for carrying out any of the purposes of this Act, have power to summon and to enforce the attendance of witnesses and parties concerned and to examine them upon oath and to compel the production of any books, accounts, documents, securities, cash and other properties by the same means and so far as may be in the same manner as provided in the Code of Civil Procedure, 1908.

(2) Where any person summoned under sub-section (1) fails or refuses to produce any book, account, document, security, cash or other property specified in the summons, any Metropolitan Magistrate or Judicial Magistrate of the first class in whose

jurisdiction such person resides shall without prejudice to the penal measures provided in this Act, on a complaint from the Registrar or any person authorised by him in this behalf, issue a warrant for the production of such book, account, document, security, cash or other property to the Registrar or to such authorised person:

Provided that the person authorised by the Registrar shall not make any complaint under this section without the previous sanction of the Registrar.

126. Delivery of possession of books, accounts, etc., of co-operative society :-

(1) If the board of a co-operative society or a Government officer deputed under section 28 or an administrator appointed under section 30 or a special officer appointed under section 31 or a liquidator appointed under section 100 is resisted in, or prevented from, taking possession of any books, accounts, documents, securities, cash or other properties of a co-operative society by any person not entitled to be or to remain in possession of the same, the Registrar or any person authorised by him in this behalf may, without prejudice to the penal measures provided in this Act, apply to any Metropolitan Magistrate or Judicial Magistrate of the first class within whose jurisdiction such books, accounts, documents, securities, cash or other properties may lie for seizing and taking possession of the same.

(2) On receipt of an application under sub-section (1), such Metropolitan Magistrate or Judicial Magistrate of the first class, as the case may be, shall authorise any police officer not below the rank of sub-inspector to enter and search any place where such books, accounts, documents, securities, cash or other properties are kept or likely to be kept and to seize and hand over possession of the same to the Registrar or the person authorised by him in this behalf,

127. Power to direct conditional attachment :-

Where it appears to the Registrar that any person or any co-operative society, with intent to defeat or delay the execution of any order that may be made under this Act,-

(a) is about to dispose of the whole or any part of his or its property, or

(b) is about to remove the whole or any part of his or its property

from the local limits of the jurisdiction of the Registrar, the Registrar may, by order in writing, direct such person or co-operative society within a time to be fixed by him either to furnish security in such sum as may be specified in the order or to produce and place at the disposal of the Registrar, when required, the said property or the value of the sums or such portion thereof as may be considered sufficient by the Registrar or to show cause why he or it should not furnish such security. The Registrar may also [in the said order] direct the conditional attachment of the said property or such portion thereof as he thinks fit. Such attachment shall have the same force and effect as if it has been made by a civil court and shall continue in force until it is withdrawn or cancelled by the Registrar.

128. Power to direct payment of dues :-

Notwithstanding anything contained in Chapter XI, the Registrar or any person empowered under the rules may, of his own motion Or on the written requisition of a co-operative society or the financing bank for the recovery of any sum due by a defaulting member (including a deceased member) of a co-operative society, after such inquiry as he may consider necessary or expedient, make an award directing such member or his surety who may or may not be a member of the co-operative society or the successor of a deceased member to make payment of the amount found to be due.

129. Charge and surcharge :-

(1) Where, on an audit under section 90 or an inspection under section 92 or an inquiry under section 93 or an inquiry by a commission constituted under the Commissions of Inquiry Act, 1952 or an inquiry by an inquiry committee constituted by the State Government or a report from the liquidator, it appears to the Registrar that any officer (including a former officer) of any co-operative society has [at any time] after the commencement of this Act and within six years prior to the date of such audit, inspection, inquiry or report, as the case may be,

(a) intentionally made or authorised or allowed any payment which is, or may be deemed to be, contrary to the provisions of this Act or the rules or the by-laws or any other law for the time being in force, or

(b) by reason of negligence in respect of any prescribed matter involved the co-operative society in any loss or deficiency, or

(c) misappropriated or fraudulently retained any property of the cooperative society or committed criminal breach of trust or forgery or falsification of accounts, the Registrar may, after giving such officer an opportunity of being heard, by order in writing require such officer to pay such sum to the assets of the co-operative society for making good the loss sustained by it in direct consequence of the commission or omission specified in this section or to restore such property as the Registrar may think fit and also to pay such sum as the Registrar may fix to meet the cost of any proceeding under this section.

(2) The provisions of this section shall apply notwithstanding that such officer is by reason of his act or omission punishable under any law for the time being in force.

130. Penalty for certain misdemeanours :-

Where it appears to the Registrar that any person has contravened the provisions of this Act or the rules or the by-laws

(a) by sitting or voting as a director of the board of a co-operative society or voting in the affairs of a co-operative society as the representative of another co-operative society which is a member of such co-operative society or exercising the rights of a member of a co-operative society, when such person was not entitled to sit or vote or exercise such rights, as the case may be,

(b) by continuing as an officer ¹[or office-bearer] of a co-operative society after incurring disqualification therefor,

(c) by utilising a loan for a purpose other than the purpose for which it was granted, or

(d) by not depositing with the financing bank any amount of loan recovered from any member of a co-operative society which the co-operative society or such member is bound to deposit with the financing bank by way of repayment under any agreement or under the rules,

(e) by resisting or preventing the board of a co-operative society or a Government officer deputed under section 28 or an Administrator appointed under section 30 or a Special Officer appointed under section 31 or a liquidator appointed under section 100 or a Government officer deputed under sub-section (3) of section 30 from taking possession of any books, accounts, documents, securities, cash or other properties of a co-operative society.

(f) by not producing any books, accounts, documents, securities, cash or other properties summoned under sub-section (1) of section 125,

²(g) by transferring a plot of land or a house or an apartment in a building in contravention of the provisions of sub-section (9) of section 85, the Registrar may, subject to the rules and after giving such person an opportunity of being heard, by order in writing direct such person to pay to the assets of the co-operative society by way of penalty such sum as the Registrar thinks fit for each such contravention ³ [, and such person, if he is a director of the board shall not be eligible for being re-elected to the board for a period of three years on the expiry of his term of office].

1. Words inst. by W.B. Act 21 of 1990.

2. Clause (g) inst. by W.B. Act 21 of 1990.

3. Words Inst. by W.B. Act 21 of 1990.

131. Registrars power to enforce performance of obligations :-

Notwithstanding anything contained elsewhere in this Act, when a co-operative society fails to take any action required to be taken by it under this Act or the rules or its by-laws

(a) within such period as may be specified in this Act or the rules or the by-laws, or

(b) where no such period is specified within such period as the Registrar may, having regard to the nature and extent of the action to be taken, specify by notice in writing, the Registrar may himself or by any person authorised by him in this behalf take such action at the expense of the co-operative society or may call upon any officer of the co-operative society, whom he considers in accordance with the prescribed principles to be responsible for carrying out his directions, and may, after giving such officer an opportunity of being heard, require him to pay to the assets of the co-operative society a sum not exceeding twenty five rupees for each day until his directions are carried out.

132. Recovery of sums due :-

Any sum payable to the State Government or to the co-operative society in accordance with any order, decision or award under this Act shall be recoverable in the manner provided in the Second Schedule to this Act or as the decree of a Court under the Code of Civil Procedure, 1908:

Provided that notwithstanding anything contained in the Code of Civil Procedure, 1908 or in any other law for the time being in force, any sum payable in accordance with an award made under section 128 shall be recoverable

(a) if the salary or wages of the member of the co-operative society or of his surety exceeds one hundred and fifty rupees per mensem, by attachment of such salary or wages to the extent of the instalment in default or half the difference between such salary or wages and fifty rupees, whichever is less, or

(b) if the salary or wages of the member of the co-operative society or of his surety does not exceed one hundred and fifty rupees, by attachment of such salary or wages to the extent of the instalment in default or six paise in every rupee of such salary or wages, whichever is less.

133. Acts of co-operative society not to be invalidated by certain defects :-

(1) No act of a co-operative society or its board or any officer or liquidator of such co-operative society done in good faith in connection with the affairs of such co-operative society shall be invalidated by reason only of some defect subsequently discovered in the organisation or in the constitution of the board or in the appointment of such officer or liquidator or on the ground that such officer or liquidator was disqualified for such appointment.

(2) No act done in good faith by any person appointed under this Act shall be invalid merely by reason of the fact that his appointment has been cancelled by or in consequence of any order subsequently made under this Act.

(3) The Registrar shall decide whether any act was done in good faith in connection with the affairs of a co-operative society.

CHAPTER 15

Jurisdiction, appeal and revision

134. Indemnity and bar to jurisdiction of Courts :-

(1) No suit, prosecution or other legal proceeding shall lie against the Registrar or any person authorised by him or against a Trustee in respect of anything done or purported to be done in good faith under this Act.

(2) Save as provided in this Act, no Civil Court or Revenue Court

shall have jurisdiction [in regard to anything done or any action taken or any order passed under this Act and, in particular,] in regard to (a) the registration of a co-operative society or its by-laws or an amendment of its by-laws; or (b) the dissolution or the supersession of the board of a co-operative society and the management of such co-operative society on such dissolution or supersession; or (c) any directive issued by the State Government under section 49; or (d) any dispute [required to be] referred to the Registrar under section 95; or (e) any matter concerned with the winding up or dissolution of a cooperative society.

(3) While a co-operative society is being wound up, no suit or other legal proceeding relating to the affairs of such co-operative society shall be proceeded with or instituted against the liquidator or such co-operative society or any member thereof except by leave of the Registrar and subject to such conditions as the Registrar may impose.

(4) Save as provided in this Act, no order, decision or award made under this Act shall be challenged, set aside, modified, revised or declared void in any Court on any ground whatsoever except for want of jurisdiction.

135. Tribunal :-

(1)

(a) The State Government may by notification constitute one or more co-operative Tribunals. A Tribunal shall consist of such number of persons ¹ [(including a Chairman)] possessing such qualifications and shall have such jurisdiction as may be prescribed.

(b) When more than one Tribunal is constituted under clause (a), the State Government shall declare by notification one of the Tribunals to be the Principal Tribunal.

(2) A Tribunal shall exercise all the powers conferred upon an Appellate Court by Order XLI in the First Schedule to the Code of Civil Procedure, 1908.

(3) Any person aggrieved by an order made by a Tribunal may, within ninety days from the date of such order, apply to such Tribunal for review of such order on one or more of the grounds specified in rule 1 of Order XLVII of the Code of Civil Procedure, 1908.

(4) A Tribunal shall not make any order on an application made under sub-section (3) without giving the person likely to be affected adversely by such order an opportunity of being heard.

(5) When an appeal or application for review is filed before a Tribunal, it may make, on such terms and conditions as it thinks fit, such interlocutory order as may appear to it to be just and convenient.

(6) A Tribunal may hold its sittings at any place within its jurisdiction for the convenience of the parties concerned after previous notice to them and may by regulation lay down its own procedure with the previous approval of the State Government.

1. Words and brackets inst. by W.B. Act 21 of 1990.

136. Appeal :-

(1) An appeal shall lie from an order shown in column 2, to the authority shown in column 3, and within the period shown in column 4, of the Third Schedule to this Act.

(2) The provisions of the Limitation Act, 1963 shall not apply to an appeal referred in sub-section (1).

(3) Save as provided in this Act or the rules, no appeal shall lie against an order, decision or award made under this Act.

(4) An appeal referred to in sub-section (1) shall be decided by the appellate authority (other than the Co-operative Tribunal) within six months from the date of its presentation :

Provided that if the appellate authority fails to decide an appeal within the aforesaid period , it shall submit a report to the State Government before the expiry of the said period, stating reasons for its failure, and the State Government may allow it such further time as it thinks fit for decision of such appeal.

137. Review and revision :-

(1) The State Government may, of its own motion or on an application made in the prescribed manner by any person aggrieved, call for and examine the records of any inquiry held or inspection made under this Act or the proceedings of the Registrar or of any person subordinate to him or acting on the authority of the Registrar and may make thereon such orders as it thinks fit after serving notices to persons likely to be affected by such orders.

(2) The Registrar may, of his own motion or on an application made in the prescribed manner by any person aggrieved,

(a) revise any order made by himself, or

(b) call for and examine the records of an inquiry held or inspection made under this Act or the proceedings of any person subordinate to him not vested with the powers of Registrar or acting on his authority, and if he is of opinion that any order, decision or award or any proceeding so called for should be for any reason modified, annulled or reversed, he may make such orders thereon as he thinks fit:

Provided that the Registrar shall, before he makes an order under clause (a) or clause (b), give any person likely to be affected adversely by such order an opportunity of being heard.

(3) Nothing contained in sub-section (1) or sub-section (2) shall apply to any proceeding in which an appeal lies to the Tribunal under section 136.

CHAPTER 16

Offences, penalties and procedure

138. Offences and penalties :-

In addition to the penalties specified in sub-section (3) of section 147, any person mentioned in column 3 and guilty of an offence shown in column 2 of the Fourth Schedule to this Act shall, notwithstanding anything contained elsewhere in this Act or any other law for the time being in force, be liable on conviction to the penalty shown in column 4 of the said Schedule.

139. Cognizance of offences :-

(1) No Court inferior to the Court of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence under this Act.

(2) For the purpose of the Code of Criminal Procedure, 1973, every offence under this Act shall be deemed to be non-cognizable.

(3) No prosecution shall be instituted under this Act without the previous sanction of the Registrar.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence punishable under section 403 of the Indian Penal Code in respect of any movable property of a co-

operative society shall be cognizable.

(5) A prosecution under this Act shall be instituted by the Registrar or any person authorised by him in this behalf and all expenses for a prosecution instituted on the request of a co-operative society shall be borne by or recoverable from such co-operative society.

140. Presumption raised by entry in register of members :-

(1) A register of members or shares maintained by a co-operative society in the prescribed manner shall be prima facie evidence of

(a) the date on which the name of any person has been entered in such register as a member of such co-operative society, and

(b) the date on which any such person has ceased to be a member of such co-operative society.

(2) If for any person the register of members or shares is not available, the detailed list of members with shareholding enclosed with the audit report, if any, shall be treated as prima facie evidence of membership as on the date the balance sheet is drawn up.

141. Proof of entry in book of co-operative society :-

(1) A copy of any entry in a book of a co-operative society regularly kept in the course of its business and in the prescribed manner shall, if certified in the prescribed manner, be accepted in any suit or legal proceeding as a prima facie evidence of the existence of such entry in such book and shall be admitted as evidence of the matters, transaction and accounts therein recorded in every case where, and to the same extent as, the original entry is admissible.

(2) No officer or liquidator of a co-operative society or no other officer in whose custody the books and other records of a co-operative society have been kept after the co-operative society has been wound up shall, in any legal proceeding to which the co-operative society or the liquidator thereof is not a party, be compelled to produce any such books or other records the contents of which can be proved under sub-section (1) or to appear as a witness to prove the matter, transactions or accounts therein recorded unless he is specifically so directed by order of the Court or the Registrar or an Arbitrator.

142. Punishment for corrupt practices :-

Any officer or employee or member of a co-operative society who

- (a) sanctions or receives, as the case may be, any benami loan, or
- (b) accepts or obtains or induces to accept or attempts to obtain from any person for himself or for any other person any gratification as a motive or reward as is mentioned in section 161 of the Indian Penal Code, or
- (c) signs the minutes of any meeting of the co-operative society without attending such meeting, or
- (d) dishonestly or fraudulently misappropriates or otherwise converts for his own use any property of the co-operative society entrusted to him or under his control or allows any other person so to do, shall be guilty of corrupt practices and shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to two years and shall also be liable to fine:

Provided that the Court may, for any special reason to be recorded in writing, impose a sentence of imprisonment of less than one year.

CHAPTER 17

Miscellaneous

143. Overriding effect of the Act :-

This Act shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force or in any contract express or implied or in any instrument having effect by virtue of any enactment.

144. Insurance of co-operative society :-

Such co-operative societies as may be prescribed shall get themselves insured within such time and in such manner as may be prescribed.

145. Insured co-operative bank :-

Notwithstanding anything contained elsewhere in this Act, the Registrar shall not take any action under this Act in respect of an insured co-operative bank without obtaining previous sanction of the Reserve Bank, of India and without compliance with the requirements of the Deposit Insurance Corporation Act, 1961,

Explanation. "Insured co-operative bank" shall mean a co-operative bank which is an insured bank within the meaning of clause (1) of section 2 of the Deposit Insurance Corporation Act, 1961.

146. Power to add to the Fifth Schedule :-

The State Government may, with the approval of the Central Government, by notification, add to the Fifth Schedule any other co-operative society and thereupon the Schedule shall be deemed to be amended accordingly.

147. Power to make rules :-

(1) The State Government may, after previous publication in the Official Gazette, make rules for carrying out the purposes of this Act for the whole or any part of West Bengal or for any cooperative society or class of co-operative societies:

Provided that any such rules may be made without previous publication if the State Government is of opinion that in the public interest such rules should be brought into force at once.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the matters which may be, or are required to be, prescribed or made by rules.

(3) Any rule made under this Act may provide that any person committing a breach thereof shall on conviction by a court be punishable with fine which may extend to five hundred rupees and, when the breach is a continuing one, with a further fine which may extend to ten rupees per day for so long as the breach continues after such conviction.

(4) All rules made under this Act shall be laid before the State Legislature for not less than fourteen days as soon as they are made and shall be subject to such modification, if any, whether by way of repeal or amendment, as the State Legislature may make during the session in which they are laid or the session immediately following.

(5) Any modification in the rules made by the State Legislature under sub-section (4) shall be published by the State Government by notification and shall, unless some latter date is specified in the notification, come into force on the date of the notification.

SCHEDULE 1

Power exclusively exercisable by the Registrar

[See section 10 (1).]

SCHEDULE 1

Power exclusively exercisable by the Registrar

[See section 10 (1).]

Serial No.	Section 2	Power 3
1.	Sub-section (1) of section 47	To sanction granting of loan by a co-operative society to another co-operative society which is not its member.
2.	Sub-section (1) of section 129	To require any officer (including a former officer) to pay to the assets of the co-operative society for making good the loss sustained by it in direct consequences of the commission or omission specified, or to restore any property misappropriated or fraudulently retained and to pay the cost of any proceeding under this section.
3.	Section 130	To impose penalties for certain contravention of the provisions of this Act or the rules or the bylaws.
4.	Sub-section (3,) of section 134	To give leave and impose conditions for proceeding with or instituting any suit or other legal proceeding against a liquidator or a cooperative society or a member thereof.
5.	Sub-section (3) of section 139	To sanction the institution of any prosecution under this Act.

SCHEDULE 2

Recovery of sums due

(Sec section 132.)

SCHEDULE 2

Recovery of sums due

(Sec section 132.)

Serial No. 1	Nature of sums due 2	Method of recovery 3
1.	Audit fee payable under sub-section (1), and the expenses for completing the accounts payable under sub-section (5) of section 90.	By the Certificate Officer as a public demand upon requisition by the [Director of Cooperative Audit] or with his approval by the audit officer.
2.	Cost of inspection or inquiry apportioned under section 94.	By the Collector as a public demand upon requisition by the Registrar.
3.	Sums payable by an order under section 94.	By the Certificate Officer as a public demand upon requisition by the co-operative society or the Registrar or by any Civil Court having jurisdiction, in the same manner as a decree of such court

		upon application by the co-operative society.
4.	Sums payable by an award under section 96	Ditto.
5.	Sums assessed by a liquidator as contributions under [clause (h) of sub-section (4) of section 01.]	By the Certificate Officer as a public demand upon requisition by the liquidator
6.	Dues payable by a member or his surety or successor of a deceased member under section 128.	By the Certificate Officer as a public demand upon requisition by the Registrar or by any person authorised by him or by the co-operative society.
7.	Sums payable by an officer (including a former officer) of cooperative society under section 129.	By the Certificate Officer as a public demand upon requisition by the Registrar.
8.	Sums payable under section 130 by a person for certain contravention of the provisions of this Act or the rules or the by-laws.	Ditto.
9.	Expenses incurred and the sum payable under section 13 1.	Ditto.
10.	Sums due under any rule made under this Act.	In the prescribed manner.

SCHEDULE 3
Appeals

(See section 136.)

SCHEDULE 3

Appeals

(See section 136.)

Serial No.1	Appeal lies against 2	By whom appeal may be referred 3	Authority to whom appeal shall lie 4	Period of limitation 5
1.	[An order] of division or transfer of assets and liabilities of a co-operative society under section 19.	Any member of the co-operative society.	To the Co-operative Tribunal having jurisdiction.	Two months from the date on which the order is communicated.
2.	[An order] of amalgamation or reorganisation of co-operative societies under section 20.	Any member of the co-operative society	To the Cooperative Tribunal having jurisdiction.	Two months from the date on which the order is communicated.
	An order for	Any director of	Ditto.	Ditto.

3.	dissolution of a board of directors or disqualification of directors thereof under section 29.	the board.		
4.	An order dissolving a board and appointing administrator under section 30.	Ditto.	Ditto.	Ditto.
5.	An entry in or omission from the statement prepared for levy of water rate or embankment protection rate under section 56.	Any person aggrieved.	To the Collector.	One month from the date of publication of the statement.
6.	Assessment of water rate or embankment protection rate under section 56.	Any person aggrieved.	To the Registrar.	One month from the date of assessment.
7.	Any refusal by a co-operative society to admit an applicant as member under sub-section (4) of section 70.	Any applicant aggrieved.	Ditto.	Such period as may be prescribed.
8.	An order for apportionment of cost under section 94.	Any person aggrieved.	To the State Government.	One month from the date on which the order is communicated.
9.	An order of the Registrar in an appeal under sub-section (9) of section 85.	The appellant.	To the Co-operative Tribunal.	Within 90 days from the date of order or from the date on which the Appellant gets knowledge of the order
10.	A decision or order of a co-operative society on an application under section 89.	Any applicant aggrieved.	To the [Registrar.]	Within 90 days (1) from the date on which the decision or order is communicated to the applicant or, (2) if the decision or order is not so communicated, from the date on which the applicant

				gets knowledge of the decision or order, or (3) from the date on which the period of one month under section 89 expires if no decision is taken or any order is passed on the application.
11.	An order, decision or award under section 96.	Any person aggrieved.	To the Co-operative Tribunal having jurisdiction.	One month from the date on which the order, decision or award is communicated.
12.	An award under section 98.	Any person aggrieved.	To the Co-operative Tribunal having jurisdiction.	One month from the date on which the award is communicated.
13.	An order for winding up of a co-operative society under section 99,	Any member of the co-operative society.	To the Co-operative Tribunal having jurisdiction.	Two months from the date on which the order is communicated.
14.	An order, decision or award of a liquidator under section 101.	By the person aggrieved.	To the Registrar.	Two months from the date on which the order, decision or award is communicated.
15.	An order under section 129 for payment of compensation or restoration of property.	Any person aggrieved.	To the Co-operative Tribunal having jurisdiction.	Two months from the date on which the order, is communicated.
16.	An order under section 130 for payment by way of penalty.	Any person aggrieved.	To the Co-operative Tribunal having jurisdiction.	Two months from the date on which the order is communicated.
17.	An order under section 131 for payment of fine.	Ditto.	Ditto.	Ditto.
18.	Any other order or decision declared by rules as appealable.	Any person declared by rules to be competent.	To the prescribed authority.	Such period as may be prescribed.

SCHEDULE 4
Offences and penalties

(See section 138.)

SCHEDULE 4
Offences and penalties

(See section 138.)

Serial No.	Offence	Person liable	Penalty
1	2	3	4
1.	Authorised use of the word "cooperative" or its equivalent in contravention of section 6.	Any company, co-operative Society or person.	Fine which may extend to fifty rupees and in the case of a continuing offence a further fine of five rupees for each day for so long as it continues after conviction.
2.	Wilfully making false return or furnishing false information required To be made or furnished under this Act or the rules.	Any person making such return or furnishing such information.	Imprisonment for a term which may extend to six months or fine which may extend to five hundred rupees or both.
3	Transfer of any property without Previous permission of a co-operative Society on which it holds a first charge under section 51.	Person by whom or on hose behalf the property is transferred.	Fine which may extend to the value of the property or five hundred rupees which is more.
4	Transfer of any property on which a charge has been created Under clause (a) of section 52 in contravention of clause (c) of that section.	Person by whom or on whose behalf the property is transferred.	Fine which may extend to the value of the roperty or five hundred rupees which is more.
5-	Faliure to make deduction and payment under section 58 in satisfaction Of debt due to a co-operative society from a member.	The employer of the member.	Imprisonment for a term which may extend to six months or fine which may extend to one thousand rupees or both and in the case of a continuing offence a further fine which may extend to one hundred rupees for each day for so long as it continues after conviction.
6.	Wilful neglect or refusal to comply With any lawful order or direction given by the Registrar or the State Government under this	Any person so neglecting or refusing.	Imprisonment for a term which may extend to six months or fine which may extend to five

	Act.		hundred rupees or both.
7.	Wilful neglect or refusal to do any act, make any return or furnish any information required to be done, made or furnished under this Act or the rules.	Any person so neglecting or refusing.	Imprisonment for a term which may extend to three months or fine which may extend to five hundred rupees or both and in the case of a continuing offence a further fine of fifty rupees for each day for so long as it continues after conviction.
8.	Any act or omission declared by the rules to be an offence.	The person committing the act or omission.	Such penalty as may be provided in the rules.

SCHEDULE 5
Co-operative Societies

[See section 31(a).]

SCHEDULE 5
Co-operative Societies

[See section 31(a).]

Serial No.	Name of co-operative society
1	2
1.	Apex Society.
2.	Central Co-operative Bank.
3.	West Bengal State Co-operative Agriculture and Rural Development Bank Limited.
4.	Central Society.
5.	Co-operative Agriculture and Rural Development Bank Limited.
6.	Primary Co-operative Bank.
7.	State Co-operative Bank.

SCHEDULE 6
Power exercisable by the [Director of Co-operative Audit]

[See section 10(2).]

SCHEDULE 6
Power exercisable by the [Director of Co-operative Audit]

[See section 10(2).]

Serial No. 1	Section 2	Power 3
	Sub-section (1) of section	To appoint audit officers

1.	Sub-section (1) of section 90	To appoint audit officers.
2.	Sub-section (2) of section 90	To draw up audit programme and to appoint new audit officer on the failure of the audit officer to take up audit.
3.	Sub-section (3) of section 90	To receive annual return from co-operative societies.
4.	Sub-section (7) of section 90	To modify the audited statement of accounts of a co-operative society.
5.	Sub-section (1) of section 91	To accept report of audit officer.
6.	Sub-section (2) of section 91	To accept report of rectification of defects in the audit report from a co-operative society.
7.	Sub-section (3) of section 91	To direct rectification of defects in the audit report and to receive report of compliance from co-operative society.