

## **West Bengal Co-Operative Societies Act, 2006**

### **40 of 2006**

#### CONTENTS

#### **CHAPTER 1 :- PRELIMINARY**

1. Short title, extent and commencement
2. State policy on Co-operative societies
3. Co-operative principles
4. Definitions
5. Interpretation of certain words and expression used in the Act
6. Repeal and savings
7. Construction of reference to Act 2 of 1912, Ben. Act XXVI of 1940, West Ben. Act XXXVIII of 1973 and West Ben. Act XLV of 1983
8. The Companies Act 1956 not to apply
9. Prohibition of the use of word "Co-operative"
10. Officers of Co-operative societies to be public servants
11. Exemption of Co-operative societies from provisions of this Act

#### **CHAPTER 2 :- REGISTRATION**

12. Appointment of Registrar and Director of Co-operative Audit and other persons to assist them
13. Conferment of powers and duties of Registrar and Director of Co-operative Audit on other persons
14. Co-operative society which may be registered
15. Bar to registration
16. Application for registration
17. Co-operative society to be body corporate
18. Display of name
19. Amendment of by-laws
20. By-Laws

#### **CHAPTER 3 :- CHANGE OF LIABILITIES, TRANSFER OF ASSETS AND DIVISION AND AMALGAMATION OF CO-OPERATIVE SOCIETIES**

21. Transfer of assets and liabilities and division and amalgamation of Co-operative societies
22. Powers of Registrar to order division, re-organisation or amalgamation of Co-operative societies
23. Amalgamation of any Central Co-operative Bank with any other Central Co-operative Bank or with State Co-operative Bank

- 24. Change of name and its effect
- 25. Promotion of subsidiary organisation
- 26. Partnership of Co-operative Societies

#### **CHAPTER 4 :-STATUS AND MANAGEMENT OF CO-OPERATIVE SOCIETY**

- 27. General body of Co-operative society
- 28. Final authority of Co-operative society
- 29. Annual general meeting
- 30. Half-yearly general meeting
- 31. Special general meeting
- 32. Management of Co-operative societies
- 33. Deputation of Government officers to manage the affairs of Cooperative society
- 34. Dissolution and reconstitution of board
- 35. Dissolution of the board and appointment of administrator
- 36. Dissolution of the board in certain cases and appointment of special officer
- 37. Summoning of meeting of Co-operative society and rescinding or suspending resolution thereof
- 38. Reservation of seats on board

#### **CHAPTER 5 :-DUTIES AND OBLIGATIONS OF CO-OPERATIVE SOCIETIES**

- 39. Address of Co-operative society
- 40. Power of State Government to issue directive
- 41. Books and documents to be open to inspection by members
- 42. Affiliation to State and Regional Co-operative Union
- 43. Appointment of persons in the service of a Co-operative society
- 44. Restrictions on borrowings
- 45. Issue of debentures
- 46. Vesting of assets of Co-operative society in Trustees upon issue of debenture
- 47. Issue of bonds
- 48. Issue of preference share
- 49. Application for loan
- 50. Loans and advances to members and non-members
- 51. Power of State Government to give financial assistance
- 52. Limitation
- 53. Debts due to Co-operative societies to be first charge
- 54. Charge on immovable property of members borrowing from certain Co-operative society
- 55. Loan by Gehan
- 56. Appointment of sale officer
- 57. Utilisation of the sale proceed
- 58. Charge and set off of shares and interests
- 59. Deduction of dues to Co-operative societies from members and sureties

- 60. Exemption from compulsory registration of instruments relating to shares and debentures of Co-operative society and mortgage deeds executed in favour of Co-operative agriculture and rural development bank or primary Co-operative society
- 61. Power to remit duties, fees, etc. and to grant preference and exemption
- 62. Compromise or arrangement between Co-operative society and its creditor

## **CHAPTER 6 :-MEMBER OF CO-OPERATIVE SOCIETIES AND THEIR DUTIES, RIGHTS, ACCOUNTABILITY,PRIVILEGES AND LIABILITIES**

- 63. Eligibility for membership of Co-operative society
- 64. Admission as member
- 65. Votes of members
- 66. Utilisation of loans
- 67. Share or interest not liable to attachment
- 68. Liability of members
- 69. Liability of past member or the state of deceased member
- 70. Disposal of deceased members share or interest
- 71. Disposal of share or interest of member on expulsion or resignation or on becoming insane
- 72. Restriction on transfer of possession of, and interest in land held under Co-operative society
- 73. Disposal of share of interest of member or dissolved Co-operative society
- 74. Disposal of moneys of the deceased, expelled, resigned or insane member
- 75. Restrictions on holding of shares
- 76. Nomination by member
- 77. Restriction on transfer of share or interest
- 78. Redemption of share

## **CHAPTER 7 :-PROPERTIESAND FUNDS OF CO-OPERATIVE SOCIETIES**

- 79. Investment of funds
- 80. Co-operative Education Fund
- 81. Bad Debt Fund
- 82. Reserve Fund
- 83. Employees Provident Fund
- 84. Retirement Benefit Fund
- 85. Creation and maintenance of special funds
- 86. Distribution of profit

## **CHAPTER 8 :-SPECIALPROVISIONS FOR HOUSING CO-OPERATIVE SOCIETIES**

- 87. Eligibility for membership of housing Co-operative society
- 88. Type of housing Co-operative societies to be registered

- 89. First general meeting of housing Co-operative society
- 90. Annual general meeting of housing Co-operative society
- 91. Unit of assessment
- 92. Rights of members
- 93. Restrictions on letting out of house or flat by member in housing Co-operative society

## **CHAPTER 9 :-**CO-OPERATIVE SERVICE COMMISSION, CO-OPERATIVE REGISTRATION COUNCIL AND CO-OPERATIVE ELECTION COMMISSION

- 94. Co-operative Service Commission
- 95. Co-operative Registration Council
- 96. Co-operative Election Commission

## **CHAPTER 10 :-** AUDIT, INSPECTION AND INQUIRY

- 97. Audit of accounts of Co-operative society
- 98. Audit report
- 99. Inspection by Registrar or financing bank or apex Co-operative society or Central Co-operative society
- 100. Inquiry by Registrar
- 101. Cost of inspection of inquiry

## **CHAPTER 11 :-** STATEMENT OF DISPUTE

- 102. Disputes to be filed before Registrar
- 103. Settlement of Disputes
- 104. Appointment of forum of arbitrators
- 105. Force and effect of certain award

## **CHAPTER 12 :-** DISSOLUTION OF CO-OPERATIVE SOCIETY

- 106. Dissolution of Co-operative society by Registrar on basis of report of inspection, inquiry etc
- 107. Dissolution of Co-operative society by Registrar at instance of board or its members
- 108. Dissolution of Co-operative society by Registrar of his own motion
- 109. Order of dissolution to be published and communicated
- 110. Appointment or removal of liquidator
- 111. Powers and obligation of liquidator
- 112. Priority of contribution assessed by liquidator
- 113. Cancellation of order of dissolution

## **CHAPTER 13 :-**SPECIAL PROVISIONS FOR STATE CO-OPERATIVE BANK, CO-OPERATIVE AGRICULTURE AND RURAL DEVELOPMENT BANK, CENTRAL CO-OPERATIVE BANK, PRIMARY CO-OPERATIVE CREDIT SOCIETY, APEX HOUSING CO-OPERATIVE SOCIETY AND URBAN CO-OPERATIVE BANK

- 114. Payment of prior debts of mortgagor
- 115. Procedure for dealing with applications for loan
- 116. Restriction on transfer of, or charge on, equity of redemption
- 117. Mortgage not to be questioned on insolvency of mortgagor
- 118. Priority of mortgage over certain loans
- 119. Constructive borrowings
- 120. Power to distrain and sale
- 121. Application of the proceeds of distrain and sale
- 122. Power to bring mortgaged property to sale and deliver possession in respect of property sold without intervention of court
- 123. Right to purchase and sell under this Chapter
- 124. Title of purchaser not to be questioned
- 125. Appointment of Receiver
- 126. Power of Co-operative bank or the Co-operative societies etc., if mortgaged property is destroyed or security becomes insufficient
- 127. Power of trustee or West Bengal State Co-operative and rural development bank to direct or to take certain action
- 128. Officers of agriculture and rural development bank etc, not to bid on personal account at sales
- 129. Exemption from personal attendance
- 130. Power to Co-operative agriculture and rural development bank etc. to receive money notwithstanding transfer of mortgage deed to West Bengal State Co-operative agriculture and rural development bank etc
- 131. Mortgage executed by members of joint Hindu family
- 132. Special provisions for Co-operative agriculture and rural development bank to apply to branches of West Bengal State Co-operative agriculture and rural development bank
- 133. Provision of sections 126, 127 and 130 to apply to loans issued against Gehan
- 134. Special provisions for Urban Co-operative Bank

### **CHAPTER 13A :-SPECIALPROVISIONS APPLICABLE TO THE CO-OPERATIVE CREDIT STRUCTURE ENTITIES**

- 134A. Overriding effect
- 134B. Definitions
- 134C. Special provisions applicable to the Co-operative Credit Structure Entities

### **CHAPTER 14 :-ENFORCEMENTOF OBLIGATION AND RECOVERY OF SUMS DUE**

- 135. Access to documents etc
- 136. Power to enforce attendance of witness and production of documents
- 137. Delivery of possession of books, accounts etc. of Co-operative society
- 138. Power to direct conditional attachment
- 139. Power to direct payment of dues

- 140. Charge and surcharge
- 141. Penalty for certain misdemeanours
- 142. Registrars power to enforce performance of obligations
- 143. Recovery of sums due
- 144. Acts of Co-operative society not to be invalidated by certain defects

#### **CHAPTER 15 :- JURISDICTION, APPEAL AND REVIEW**

- 145. Indemnity and bar to jurisdiction of Courts
- 146. Tribunal
- 147. Appealable orders, appellate authority and period of limitation
- 148. Review and revision

#### **CHAPTER 16 :- OFFENCES, PENALTIES AND PROCEDURES**

- 149. Offences and penalties
- 150. Cognizance of offence
- 151. Presumption raised by entry in register of members
- 152. Proof of entry in book of Co-operative society
- 153. Punishment for Corrupt practices

#### **CHAPTER 17 :- MISCELLANEOUS**

- 154. Overriding effect of the Act
- 155. Co-operative bank to get insured
- 155A. Fees for supply of Certified copies etc
- 156. Power to add to Fifth Schedule
- 157. Power to make rules

#### **SCHEDULE 1 :- FIRST SCHEDULE**

#### **SCHEDULE 2 :- SECOND SCHEDULE**

#### **SCHEDULE 3 :- THIRD SCHEDULE**

#### **SCHEDULE 4 :- FOURTH SCHEDULE**

#### **SCHEDULE 5 :- FIFTH SCHEDULE**

#### **SCHEDULE 6 :- SIXTH SCHEDULE**

### **West Bengal Co-Operative Societies Act, 2006**

**40 of 2006**

[Passed by the West Bengal Legislature.]

[Assent of the President of India was first published in the Koikata Gazette, Extraordinary, of the 25th May, 2010.]

An Act to consolidate and amend the law relating to Co-operative societies in West Bengal.

Whereas in order to infuse a new life into the Co-operative

movement of West Bengal on the face of the new challenge of globalisation and liberalization of Indian Economy, it is necessary and expedient to make provisions to give healthy impetus and a sense of purpose for the Co-operative movement in West Bengal, to facilitate the voluntary formation and democratic functioning of the Co-operative societies in the State, to ensure members' involvement in making decisions, to make the Co-operative societies self-reliant and vibrant by changing the vision and mission of the institutions as required to face a new competitive economic scenario to promote thrift, self-help and mutual aid amongst the people with needs and interest in common, to provide for transparent, devoted and efficient management and services relevant to the needs of the Co-operatives, to diversify their activities, to put them on sound financial footing and 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 and poorer section of the community including womenfolk and to bring them within the fold of Co-operative movement and for that purpose to consolidate and amend the law relating to the Co-operative societies in West Bengal.

It is hereby enacted in the Fifty-seventh Year of the Republic of India, by the Legislature of West Bengal, as follows:--

\* Published in the Koikata Gazette, Extraordinary, dated 25.5.2010, vide Notification No. 712-L, dated 25th May, 2010.

## **CHAPTER 1 PRELIMINARY**

### **1. Short title, extent and commencement :-**

- (1) This Act may be called the West Bengal Co-operative Societies Act. 2006.
- (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 in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act.

### **2. State policy on Co-operative societies :-**

- (1) It shall be the policy of the State to promote Co-operative societies, which are instruments of equity, social justice and economic development in fulfilment of the Directive Principles of the State Policy as enshrined in the Constitution of India.

(2) Save as otherwise expressly provided in this Act the State shall not interfere in the management and operation of the Co-operative societies and shall recognise Co-operative societies as democratic institutions owned, managed and controlled by members for their economic and social betterment, operating their business based on mutual aid and Co-operative principles.

### **3. Co-operative principles :-**

The following shall constitute the Co-operative principles:--

- (i) membership in Co-operative societies shall be voluntary and available irrespective of caste, creed, race and religion to all persons who can make use of its services and are willing to accept the responsibilities of membership;
- (ii) Co-operative societies are democratic organisations controlled by their members who actively participate in setting their policies and making decisions. Their affairs shall be managed and administered by persons elected or appointed in the manner agreed by the members and accountable to them. 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";
- (iii) member holding share capital shall only receive a strictly limited compensation, by way of dividend, if any;
- (iv) the economic results, arising out of the operations of a Co-operative society belonging to the members of that Co-operative society shall be distributed in such a manner as to avoid one member gaining at the expenses of other. This may be done by decision of the members as follows:--
  - (a) by provision for development of the business of the Co-operative societies;
  - (b) by provision of common services; and
  - (c) by distribution among the members in proportion to their transactions with the Co-operative societies;
- (v) as autonomous, self-help organisations, controlled by their members, Co-operative societies, if they enter into agreements with other organisations, including Governments or raise capital from external sources, they can do so on terms that ensure democratic control by their members and maintain their Co-operative autonomy;
- (vi) all Co-operative societies shall make provision for the education of their members, officers and employees and of the general public,



in the principles and techniques of co-operation, both economic and democratic;

(vii) all Co-operative societies, in order to serve better the interest of their members and their communities, shall actively co-operate in every practical way with other Co-operative societies at a local, national and international levels having as their aim the achievement of unity of action by co-operators throughout the world; and .

(viii) all Co-operatives shall have concern for the communities and shall work for the sustainable development of their communities through policies approved by their members.

#### **4. Definitions :-**

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

(1) "administrator" means an administrator appointed under section 35;

(2) "apex Co-operative society" means a Co-operative society whose 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 for the operation of other Co-operative societies which are its members and includes West Bengal State Co-operative Bank Limited and West Bengal State Co-operative Agriculture and Rural Development Bank Limited;

(3) "arbitrator" means an arbitrator appointed under section 103 and includes a board of arbitrators and a forum of arbitrators;

(4) "area of membership" means the area as specified in the by-laws of a Co-operative society from which the membership is drawn;

(5) "auditor" means a person appointed or authorised to act as an auditor under section 97;

(6) "audit range" means an area over which an audit officer not below the rank of an Assistant Director of Co-operative Audit exercises his jurisdiction;

(7) "block-level mahila self-help group Co-operative societies" means a credit Co-operative society formed by the self-help groups consisting of women members only within the administrative jurisdiction of a community development block;

(8) "board" means a board of directors, the governing body of a Co-operative society constituted under section 32;

(9) "borrowed capital" means the total of loans, deposits and such

other borrowings as the Board of a Co-operative Society may decide;

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

(11) "Central Co-operative bank" has the same meaning as in the National Bank for Agriculture and Rural Development Act, 1981 (61 of 1981);

(12) "State Co-operative agriculture and rural development bank" means a Co-operative, the primary object of which include the creation of funds for lending money to its members and to the Co-operative agriculture and rural development banks;

(13) "Central Co-operative 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 within an area as may be prescribed and includes a Central Co-operative Bank Ltd.;

(14) "consumer 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 and other consumers as may be required in the matter of supply and production of consumer goods and includes a federation of such Co-operative societies;

(15) "Co-operative society" means a Co-operative society registered under this Act and includes all Co-operative societies registered under the previous Acts;

(16) "Co-operative agriculture and rural development bank" means a primary Co-operative society, the object of which include the creation of funds for lending money to its members on long-term basis and also to the beneficiaries of long-term loan on short-term basis for improvement of agricultural land and for other productive purposes and for construction of house and higher education of members or their wards.

Explanation.-- In this clause--

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

(ii) "productive purposes" shall mean such effort, activity or construction as may be provided in the by-laws;

(17) "Co-operative farming" means a Co-operative society, 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;

(18) "Co-operative society with limited liability" means a Co-operative 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 have respectively thereby undertaken to contribute to the assets of the Co-operative in the event of its being wound up;

(19) "Co-operative society with unlimited liability" means a Co-operative 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;

(20) "Co-operative Credit Society" means a Co-operative society, the primary object of which is to create funds for lending money to its members;

(21) "Co-operative range" means such area over which an officer not below the rank of an Assistant Registrar of Co-operative societies exercises his jurisdiction;

(22) "chief executive" means a person, by whatever designation he may be called, who being appointed by the board, manages the affairs of the Co-operative, subject to the superintendence, control and direction of the board and includes Chief Executive Officer appointed by the State Government or the Registrar of Co-operative societies under section 33;

(23) "Co-operative year" means the year commencing on the 1st day of April;

(24) "Director of Co-operative audit" means the person appointed under section 12 and includes Additional Director of Co-operative Audit, Deputy Director of Co-operative Audit, Assistant Director of Co-operative Audit or any other officer who are appointed under that section to assist him and on whom all or any of the powers of the Director under this Act are conferred;

(25) "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;

(26) "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 object and includes a central society;

(27) "distrainer" means a person who is empowered by a Registrar to distrain and sell the produce of mortgaged land including the standing crops thereon, in accordance with the provisions of section 120;

(28) "electric Co-operative society" means a Co-operative society, the primary object of which is to provide electricity through

generation, distribution or otherwise to its members and also to others if approved by the Board;

(29) "engineers Co-operative society" 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, agriculture; or

(iii) certificate holders in any industrial trade.

The percentage of degree, diploma or certificate holders in any branch of engineering, technology or industrial trade in the membership of the Co-operative society shall not be less than sixty per cent.

Explanation.--"unemployed" includes any person who is not in full time employment;

(30) "equity share capital" means and include share capital raised from members by a Co-operative society which shall be eligible to receive dividend in terms of section 86 of this Act, if and when declared subject to prior approval of the Reserve Bank of India;

(31) "farmers service Co-operative society" means an agricultural Co-operative society, the primary object of which is to render assistance, financial or otherwise to farmers particularly small and marginal farmers, rural artisans, agricultural labourers including bargadars and pattaholders;

(32) "federal Co-operative society" means a Co-operative society whose membership is available only to Co-operative societies and not to individuals but includes apex and central Co-operative society;

(33) "financing bank" include State Co-operative Bank, a central Co-operative Bank, State Co-operative agricultural and rural development bank, a primary Co-operative Bank, State Bank of India, a nationalised Bank, a regional rural Bank or National Bank for Agriculture and Rural Development, the object of which is to create funds for lending money to the Co-operative societies or other institutions or both;

(34) "general body" in relation to a primary Co-operative society means all the members of that Co-operative society either by convoking delegates or by direct participation and in relation to apex or central society, as the case may be, means all the delegates or the representatives of the member Co-operative societies;

(35) "general meeting" means a meeting of the general body of the

Co-operative society;

(36) "housing Co-operative society" means a Co-operative society, the primary object of which is to provide to its members with dwelling houses, flats or lands for construction of dwelling houses or flats or with finance for purchase of land for construction of dwelling houses and maintenance of common services in connection therewith, and includes a federation of such Co-operative societies;

(37) "industrial Co-operative society" means a Co-operative society, the primary 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 Co-operative society;

(38) "inspector of Co-operative societies" means a person appointed as such by the Registrar;

(39) "labour Co-operative society" means a primary Co-operative society composed of persons who live on manual labour, skilled or unskilled;

(40) "liquidator" means a liquidator of a Co-operative society appointed under section 110;

(41) "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, or a self-help group and, subject to the provision of sub-section (3) of section 63, a nominal member.

Explanation.-- For the purpose of this clause--

(a) "joint member" shall mean any one or two persons admitted jointly to the membership of a Co-operative society under sub-section (4) of section 63 and shall include either of the following persons so admitted--

(i) husband and wife;

(ii) father and son or daughter; and

(iii) mother and son or 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 63;

(42) "multipurpose Co-operative society" means a primary Co-operative society, the object of which is to provide various services including credit, business, industry consumer to its members;

(43) "National Bank for Agricultural and Rural Development" means

the National Bank for Agricultural and Rural Development established under section 3 of the National Bank for Agricultural and Rural Development Act, 1981 (61 of 1981);

(44) "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 provided in the by-laws;

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

(46) "office-bearer" shall mean the chairman, vice-chairman, secretary, assistant secretary or treasurer of the Co-operative society;

(47) "officer" includes a chairman, vice-chairman, secretary, joint secretary, assistant secretary, treasurer, director of a board and managing director, general manager, deputy general manager, assistant general manager, development officer, chief executive, deputy manager, assistant manager, field executive officer, and any other person appointed and authorised by the board to give direction relating to the affairs of the Co-operative society and also includes a Government Officer appointed under section 33 and Special Officer appointed under section 36 or an administrator appointed by the State Government or the Registrar under section 34 to manage the affairs of the Co-operative society;

(48) "owned capital" means the total paid-up share capital and accumulated reserve fund and other funds created out of profits of a Co-operative society or otherwise;

(49) "patronage refund" means annual refund to members in proportion to their transactions with the Co-operative societies during the year;

(50) "preference share capital" means and includes share capital raised by the State Co-operative Banks and the Central Co-operative Banks from persons friendly supporting the cause of Co-operative movement who shall be eligible to receive dividend at a rate fixed by such Banks subject to prior approval of the Reserve Bank of India and shall be entitled to such rights as provided in this Act;

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

(52) "primary Co-operative society" means a Co-operative society whose membership is available only to individuals and self-help groups;

(53) "primary Co-operative bank" has the same meaning as in the Reserve Bank of India Act, 1934 (2 of 1934);

(54) "primary Co-operative credit society" means a Co-operative society, the primary object of which is to create fund for lending money to its member and which undertakes such other credit and non-credit activities commensurate with the primary object;

(55) "primary agricultural credit Co-operative society" means a Co-operative society, the primary object of which is to create fund for granting short-term crop loan, medium and long-term loan for supplying agricultural inputs to its members and selling of outputs of its members and to undertake rural non-farm sector activities including cottage and small scale industries, allied farm activities including aquaculture, animal husbandry, horticulture, sericulture and such other business, services and activities for development of the rural areas as specified in the by-laws.

Explanation.--

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

<sup>1</sup>[(b) medium-term shall mean a term exceeding one year but not exceeding five years; and]

(c) "long-term" shall mean a term exceeding five years;

(56) "Registrar" means the Registrar of Co-operative societies appointed under section 12 and includes Additional Registrar, Joint Registrar, Deputy Registrar, Assistant Registrar of Co-operative society and any other officer who is appointed under that section to assist the Registrar and on whom all or any of powers of the Registrar under this Act are conferred;

(57) "relative" has the same meaning as in the Companies Act, 1956 (1 of 1956);

(58) "Reserve Bank of India" means the Reserve Bank of India constituted under the Reserve Bank of India Act, 1934 (2 of 1934);

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

(60) "self-help group" means a group of persons, men or women of five to twenty in number coming from different families and belonging to. economically weaker section of the society and having their residential address within a contiguous place for effective implementation of viable economic activities;

(61) "service Co-operative society" means a Co-operative society formed primarily with unemployed persons for rendering services such as security service and education, allied supply of food and consumers goods, healthcare including nursing and aya services, domestic help, car parking facility or any other services as may be prescribed including providing services for agricultural, veterinary, fishery and other allied farm sector including agricultural clinics and

service centres to Government authorities, institutions and individuals;

(62) "State Co-operative Bank" has the same meaning as in the National Bank for Agricultural and Rural Development, 1981 (61 of 1981);

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

(a) to spread education on Co-operative principles and practices;

(b) to arrange for training of the members and 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;

(64) "secretary" means a person who subject to the control of board, is entrusted with the management of the affairs of Co-operative society and includes any person by whatsoever name called discharging the duties of a secretary;

(65) "State" means the State of West Bengal;

(66) "transport Co-operative society" means a Co-operative society composed of transport operators including driver, conductor, cleaner, mechanic and other persons engaged in transport business;

(67) "Tribunal" means the Co-operative Tribunal constituted under section 146;

(68) "Trustee" means a trustee appointed under section 45;

(69) "working capital" means the total capital of a Co-operative consisting of borrowed capital and owned capital.

1. Subs, by s. 2 of the W.B. Co-operative Societies (Amendment) Act, 2011 (West Ben. Act XIV of 2011), w.e.f.6.2.2012, before subs, which was as follows:

(b) medium-term" shall mean a term more than one year and less than five years; and.

## **5. Interpretation of certain words and expression used in the Act :-**



Unless otherwise specified in this Act--

- (a) expressions referring to writing include printing, typing, lithography, photography, photocopy, e-mails, fax and other method of representing or reproducing words in a visible form; and
- (b) with reference to a person who is unable to write his name, the words "signature" shall include his thumb impression or other mark duly attested to signify his signature.

## **6. Repeal and savings :-**

(1) The West Bengal Co-operative Societies Act, 1983 (West Ben. Act XLV of 1983) is hereby repealed.

(2) Notwithstanding such repeal anything done or suffered or any action taken including any rule made, and 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 (2 of 1912) or the Bengal Co-operative Societies Act, 1940 (Ben. Act XXI of 1940) or the West Bengal Co-operative Societies Act, 1973 (West Ben. Act XXXVIII of 1973) or the West Bengal Co-operative Societies Act, 1983 (West Ben. Act XLV of 1983) 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 Co-operative Societies Act, 1912 or the Bengal Co-operative Society Act, 1940 or the West Bengal Co-operative Act, 1973 or the West Bengal Co-operative Act, 1983 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.

## **7. Construction of reference to Act 2 of 1912, Ben. Act XXVI of 1940, West Ben. Act XXXVIII of 1973 and West Ben. Act XLV of 1983 :-**

All reference to the Co-operative Societies Act, 1912 or to the Bengal Co-operative Societies Act, 1973 or to the West Bengal Co-operative Societies Act, 1983 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 reference 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, 1940 or to the West Bengal Co-operative Societies Act, 1983 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.

#### **8. The Companies Act 1956 not to apply :-**

The provision of the Companies Act, 1956 (1 of 1956) shall not apply to Co-operative societies.

#### **9. Prohibition of the use of word "Co-operative" :-**

(1) 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.

(2) Any violation of the provision of sub-section (1) shall constitute an offence punishable with imprisonment for a term which may extend to two years or with fine which may extend to five thousand rupees or both.

#### **10. 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, 1860 (45 of 1860).

#### **11. Exemption of Co-operative societies from provisions of this Act :-**

(1) The State Government may, by notification, for such reasons as may be prescribed, to be recorded in writing, exempt any Co-operative society or class of Co-operative societies or any other institution under this Act from the operation of any of the provisions of this Act, considered unsuited thereto and thereupon the said provisions shall not apply to such Co-operative society or

class of Co-operative Societies or any other institutions under this Act until such provisions are applied thereto by notification:

Provided that no notification to the prejudice of any Co-operative society or class of Co-operative societies or any other institution under this Act shall be issued without an opportunity being given to it to represent its case <sup>1</sup>[\*\*\*].

<sup>2</sup>[Provided further that exemption under this section cannot be accorded in case of extension of the tenure of the Board of Directors of any Co-operative Society or class of Co-operative Societies, as the case may be, or for appointment of employees or officers in any Co-operative Society.]

(2) While the exemption, as aforesaid, remains in force, the State Government may make rules consistent with the provisions of this Act in respect of any matter within the purview of such provisions of this Act from the operation of which the Co-operative society or class of Co-operative societies or any other institutions under this Act as aforesaid are exempted.

1. Omitted by s. 3(a) of the W.B. Co-operative Societies (Amendment) Act, 2011 (West Ben. Act XIV of 2011), w.e.f. 6.2.2012, before omission it was as follows: "Such opportunity or hearing has to be notified inviting objection, if any from interested persons".

2. Subs, by s. 3(6), ibid, w.e.f. 6.2.2012, before subs, it was as follows:

"Provided further that exemption under this sub-section cannot be accorded in case of extension of the tenure of the Board of Directors of any Co-operative society or class of Co-operative societies, as the case may be, appointment of employees or officers of the Co-operative society holding Annual General meeting, Special Annual General meeting and reconstitution of the Board of Directors of any Co-operative society..

## **CHAPTER 2 REGISTRATION**

### **12. Appointment of Registrar and Director of Co-operative Audit and other persons to assist them :-**

(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 Director of Co-operative Audit for West Bengal and such number of other persons to assist him as it may deem fit.

### **13. Conferment of powers and duties of Registrar and Director of Co-operative Audit on other persons :-**

(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, or the Registrar under this Act, other than those specified in the First Schedule, on any person appointed under sub-section (1) of section 12 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 Director of Co-operative Audit under this Act, other than those specified in the Sixth Schedule, on any person appointed under sub-section (2) of section 12 to assist the Director of Co-operative Audit.

### **14. Co-operative society which may be registered :-**

(1) Subject to the provisions of this Act and rules, a Co-operative society established with the object of social and economic betterment of its members in their common interest through self-help and mutual aid in accordance with the 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 or reorganisation of two or more Co-operative societies with the approval of their members may be registered under this Act with limited liability.

(2) A Co-operative society shall be registered 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 if the members of such Co-operative society want:

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

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

### **15. 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 its, shall be registered under this Act or violate the provisions of existing laws of the land.

(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 specially 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 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 provided 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 on 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 such activity.

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

## **16. Application for registration :-**

(1) An application for registration of a Co-operative society in Form as prescribed and its by-laws shall be submitted to the Registrar by hand or by registered post with acknowledgement due with one copy to the District Co-operative Union in the case of the Co-operative society having its area of membership within a district and to the State Co-operative Union in more than one Co-operative range.

(2) Every such application shall be accompanied by--

(a) four copies of the proposed by-laws of the Co-operative society as adopted by the promoting members;

(b) a list of names of the members with their addresses,

occupations and equity participations and signatures;

(c) a list of members of the first board elected by the promoting members;

(d) a true copy of the minutes of the meeting at which the by-laws were adopted and election was held, duly signed by the chairman; and

(e) a scheme of the project if any, to be undertaken by the proposed Co-operative society.

(3) Every such application shall be signed by at least ten individuals from different families in the case of a proposed primary Co-operative society and by the authorised representatives of at least five primary Co-operative societies in the case of a proposed Federal Co-operative society:

Provided that in the case of a housing Co-operative society the number of applications 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, dependant widow of a pre-deceased son, minor sons and daughters of a dependant widow of a pre-deceased son, husbands and wives dependant parents and dependant divorcee daughter.

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

(5) The Registrar shall register the Co-operative society and also its by-laws and communicate by hand or by registered post with acknowledgement due the certificate of registration in Form as prescribed and a copy of the registered by-law, within sixty days from the date of receipt of the application to the applicant as the chief promoting member. A copy of the certificate of registration in prescribed form may be sent to the District Co-operative Union of the State Co-operative Union as the case may be:

Provided that in the case of a housing Co-operative society the Registrar shall register the Co-operative society and its by-laws and communicate by hand or by registered post with the acknowledgement due the certificate of registration in Form as prescribed and the copy of the registered by-laws within ninety days from the date of receipt of the application to the applicant or the chief promoting member with a copy to the District Co-operative Union or the State Co-operative Union, as the case may be:

Provided further that the certificate of registration, so issued, shall be conclusive evidence that the Co-operative society mentioned as a Co-operative society duly registered under this Act:

Provided also that if the Registrar requires any particulars or papers for disposing of the application referred to in sub-section (1), he shall forthwith call for such particulars or papers from the applicant or the chief promoting member.

<sup>1</sup>[Provided also that the Registrar shall, in case of a Co-operative Credit Structure Entity, dispose of the application within thirty days from the date of receipt of the application.]

(6) The Registrar, if the condition laid down in sub-sections (1), (2) and (3) and such other conditions as may be prescribed are not fulfilled, shall communicate by hand or by registered post with acknowledgement due the order of refusal together with the reasons therefor, within the period as mentioned in sub-section (5) to the applicant or the chief promoting member with a copy to the District Co-operative Union or the State Co-operative Union, as the case may be.

(7) In case no communication is received by the Co-operative society within sixty days or by the housing Co-operative society within ninety days from the date of submission of the application from the Registrar under sub-section (5) or in the case of refusal under sub-section (6), the Co-operative society shall have the right to appeal to the Co-operative Registration Council referred to in section 95 within one month from the date of expiry of the said period or from the date of receipt of the order of refusal, as the case may be, against such non-receipt of information or refusal from the Registrar and the registration Council shall dispose of the appeal within two months from the date of receipt of the same:

Provided that similar procedure shall also apply in the case of amendment of by-laws of the Co-operative society.

(8) If the registration of a Co-operative society and its by-laws is refused, the registrar shall transfer the application to the Co-operative Registration Council with his comments and shall inform the applicant or the chief promoting member in writing within one month of expiry of the aforesaid period with a copy to the District Co-operative Union or to the State Co-operative Union, as the case may be and the Co-operative Registration Council shall decide the matter within three months from the date of receipt of the same.

(9) After registration of a Co-operative society, the first board shall continue till election of the new board in the first annual general meeting.

1. Proviso added by s. 4 of the W.B. Co-operative Societies (Amendment) Act, 2011 (West Ben. Act XIV of 2011), w.e.f. 6.2.2012.

## **17. Co-operative society to be body corporate :-**

(1) The registration of a Co-operative society shall render it a body corporate by the name under which it is registered, having a perpetual succession and a common seal and the Co-operative society shall be entitled to acquire, hold and dispose of property, to enter into contracts on its behalf, to institute and defend suits and other legal proceedings, and to do all other things necessary to achieve its objectives.

(2) All transactions entered into in good faith prior to registration of the purposes of the Co-operative, shall be deemed to be transactions of the Co-operative society after registration.

## **18. Display of name :-**

(1) Every Co-operative society shall display its name and the address of its registered office along with the registration number in legible character in a conspicuous position--

(a) at every office or place at which it carries on business;

(b) in all notices and other official publications;

(c) on all its contracts, business letters, orders for goods, invoices, statements of accounts, receipts and letters of credit; and

(d) on all bills of exchange, promissory notes, endorsements, cheques and orders for money it signs or that are signed on its behalf.

(2) The name of every Co-operative society shall contain the words Co-operative and limited or their equivalent in the official language of the State.

## **19. Amendment of by-laws :-**

<sup>1</sup>[(1) A Co-operative Society may by resolution in general meeting adopted by two-thirds of the members or delegates or representatives present but not less than one-third of the total number of members or delegates or representatives as on the register of members, or delegates or representatives on the date of issue of notice of such general meeting amend its by Laws.]

(2) An application in prescribed form for registration of amendment shall be forwarded by registered post or by hand to the Registrar within a period of thirty days from the date of adoption of resolution.

(3) Every application forwarded to the registrar shall be signed by the chairman and two members of the board and shall be



accompanied by the following particulars:--

- (a) in case of partial amendment, three copies of statement showing the existing by-laws and the proposed amendment of by-laws and three copies of the resolution approving the amendment;
  - (b) in case of complete amendment by substitution of an entire set of by-laws, three copies of the new by-laws and existing by-laws and three copies of the resolution approving the substitution;
  - (c) the date of the general meeting in which the amendment was approved;
  - (d) the date of the notice issued for the general meeting;
  - (e) the number of members having the right of vote present at such general meeting; and
  - (f) the number of members who voted for the resolution.
- (4) Procedure for disposal of application for registration of Co-operative societies, as provided in this Chapter shall apply to disposal of application for amendment of by-laws in complete or partial as may be considered by the Registrar.

1. Subs. bys. 5 of the W.B. Co-operative Societies (Amendment) Act, 2011 (West Ben. Act XIV of 2011), w.e.f. 6.2.2012, for "(1) A Co-operative society, may, by resolution in general meeting, adopted by two-third of the total members or delegates or representatives amend its by-laws."

## **20. By-Laws :-**

(1) By-laws to be made on such specific matter which the Act has provided for and under the provision of this Act on such other matters and such by-laws shall not be valid unless they have been registered under the Act.

(2) Subject to provision of this Act, the function of every co-operative society shall be regulated by its by-laws.

(3) The by-laws of the Co-operative society may provide for the following matters as may be decided by the general body:

(a) Identification of the Co-operative--

- (i) the name, address and registration number of the co-operative;
- (ii) the custody and use of the common seal;
- (iii) the area of membership.

(b) Objective and services--

- (i) the objective of the Co-operative explicitly stated as a common central need of the members which the co-operative aims at fulfilling;
- (ii) the co-operative principles stated in this Act, according to which the co-operative shall conduct its affairs;

- (iii) key service and support services to be provided to its members to fulfill the common central need stated in the objective;
- (iv) the conditions under which the services may be provided to non-members.

(c) Capital and funds--

- (i) the nature and amount of share capital if any of the co-operative and the manner in which the capital may be raised;
- (ii) the maximum capital to which a single member can subscribe;
- (iii) the nature and extent of the liability of the member for the debts contracted by the co-operative;
- (iv) the sources and type and extent of funds to be raised by the co-operative;
- (v) the purposes for which the funds to be utilized;
- (vi) fixation of maximum rate of dividend;
- (vii) the extent and conditions under which deposits, loans, debentures and other fund may be mobilized;
- (viii) conditions and purposes for which state aid and aid from financial institutions may be sought for and obtained;
- (ix) the constitution of various funds, reserves and their purposes;
- (x) the manner of disposal of surplus and bad debt;
- (xi) mode of investment;
- (xii) custody of funds.

(d) Membership:--

- (i) eligibility to obtain membership and the terms of admission of members;
- (ii) conditions for continuing membership;-
- (iii) procedure for obtaining membership;
- (iv) procedure for withdrawal and transfer of membership;
- (v) procedure for termination of membership;
- (vi) circumstances under which membership ceases;
- (vii) procedure for cessation of membership;
- (viii) eligibility of a nominal member and the terms on which a co-operative may deal with a nominal member;
- (ix) nomination by member.

(e) Members right and obligation--

- (i) the rights and liabilities of the members;
- (ii) fixation of minimum performance expected annually of each member vis-a-vis use of services, financial commitment, participation in meeting and adherence to by-laws, in order to be eligible to exercise the rights of membership including the right to vote;
- (iii) the consequences of performing below the minimum level

fixed;

(iv) the consequence of default in payment of any due by a member.

(f) General body--

(i) the role of the general body and subjects which shall be dealt with by the general body;

(ii) the manner of convening the annual general meeting, half-yearly general meetings, and special general meetings, the mode of communication of the intimation of these meetings and quorum required and holding general meeting with delegates or representatives;

(iii) the procedures and powers of the general meeting;

(iv) the frequency of the general meeting;

(v) the mode of summoning and conducting meetings and the right of voting;

(vi) the procedure for conducting election in case the co-operatives fail to do so;

(vii) the minutes of proceeding of general meetings;

(viii) the size, composition and constitution of the board of directors;

(ix) eligibility of becoming a director;

(x) eligibility for retaining directorship;

(xi) the terms of office of the directors, chairman and other office bearers;

(xii) the procedure for removal of director and filling up of vacancies;

(xiii) the manner of convening board meetings and quorum thereof;

(xiv) the frequency of board meetings;

(xv) functions, power, responsibilities and duties of the board;

(xvi) functions, power, responsibilities and duties of the Chairman, Vice Chairman, Treasurer and Secretary (when the Secretary is not a Chief Executive) and the Chief Executive by whatever designation he may be called and directors.

(g) Chief executive and staff--

(i) the person qualified to be appointed as chief executive by whatever designation he may be called and other officers and staff and their emolument;

(ii) the manner of appointment and removal of chief executive, other officers and staff;

(iii) the functions, power, responsibilities and duties of the chief executive, other officers and staff;

(iv) penalties for acting against the interest of the co-operatives

and its members and non fulfilment of duties by members, directors, chief executive, other officer and staff;

(v) the authorization of an officer or officers to sign documents, institute and defend suit and other legal proceedings on behalf of the co-operative;

(vi) procedure for drawing up disciplinary proceedings against the chief executive, other officers and staff.

(h) Finances--

(i) the manner of appointment of internal auditors and their functions and duties;

(ii) the debt equity ratio that the co-operative wishes to maintain and the maximum external debt that a co-operative wishes to permit itself at any point of time;

(iii) procedure for transfer of shares or interest thereon by a member;

(iv) procedure for redemption of shares held by the State Government;

(v) procedure for transfer or payment of interest on death of member;

(vi) the manner of disposal of funds if under liquidation;

(vii) guidelines for granting loans, determination of normal and maximum credit of members and maximum loan admissible to a member in case of a co-operative;

(viii) purpose for which loans may be granted;

(ix) extension of period of repayment and renewal of loans;

(x) the terms on which a co-operative may associate with other co-operative;

(xi) the rights, if any, which the co-operative may confer on any co-operative, and federal co-operative of which it is a member and circumstances under which such rights may be exercised;

(xii) the procedure for appointing and changing representative to other co-operative and federal co-operative;

(xiii) mode of keeping the accounts of the co-operative.

(i) Other matters--

(i) the terms on which a co-operative may deal with organizations other than co-operative;

(ii) restriction, if any, on services of co-operative societies;

(iii) settlement of disputes;

(iv) supply of copies of by-laws and of the annual balance sheet and annual profit and loss accounts to members;

(v) formation of self-help group of people in the area and conduct of education and training programmes.

### **CHAPTER 3 CHANGE OF LIABILITIES TRANSFER OF ASSETS AND DIVISION AND AMALGAMATION OF CO-OPERATIVE SOCIETIES**

#### **21. 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 societies; 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 as certified by the Audit Officer 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 as certified by the Audit Officer and division or amalgamation, as the case may be, of the concerned Co-operative 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 such Co-operative 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:

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 Co-operative society, shall exercise option to withdraw his share or deposit until the debt bV 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 (1) and the application and by-laws of the Co-operative society are in accordance with the provisions of this Act and the rules, and shall, unless or reasons to be recorded in writing he thinks fit to refuse, register the new Co-operative society and the by-laws under sub-section (5) of section 16 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.

(7) 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, as certified by the Audit Officer which is divided, in such new Co-operative societies in accordance with the resolution passed under sub-section (5) 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 sub-section (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 as certified by the Audit Officer in the transferee society, copies of such resolution of the transferor societies and the transferee society shall be sent to the Registrar for records; 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, as certified by the Audit Officer which are amalgamated in the new Co-operative society in accordance with the resolution passed under sub-section (2) and a schedule of such assets and liabilities shall be prepared and such

schedule shall form a part of the certificate under section 16.

**22. Powers of Registrar to order division, re-organisation or amalgamation of Co-operative societies :-**

(1) Unless otherwise directed by the State Government and 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 Co-operative movement or for the purpose of securing the proper management of any Co-operative society that any Co-operative society or Co-operative societies should be divided, reorganised or amalgamated then notwithstanding anything contained in section 21, the Registrar may by a notice direct the said Co-operative society or Co-operative societies stating therefor, 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 within the said period, the Registrar 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 by an order in writing and communicate the order to all concerned and shall issue registration certificate or certificates under sub-section (5) of section 16 in respect of the Co-operative society or societies formed by division, reorganisation or amalgamation, as the case may be, and the by-laws thereof framed by him:

Provided 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 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

division, reorganisation or amalgamation as the case may be.

(4) Every member or creditor of any of the Co-operative societies to be 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:

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 146, on the expiry of the time allowed for preferring an appeal, or

(b) where an appeal from such order is preferred under section 147 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, and order made under sub-section (1) for division, re-organisation or amalgamation shall, upon taking effect under sub-section (5) be a sufficient conveyance to vest the assets and liabilities as per audited schedule of assets and liabilities specified in the order and the Co-operative societies which are divided, reorganised or amalgamated shall be deemed to have been dissolved and shall cease to exist.

### **23. Amalgamation of any Central Co-operative Bank with any other Central Co-operative Bank or with 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 balance 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 of 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 (a) 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 clause (c) in respect of their interest in the shares as so reduced:

Provided that the aforesaid scheme shall secure--

(i) that allotment of share or payment in cash in favour of the members of the transferor bank under clause (d) shall not be made until all depositors and creditors of the transferor bank have been paid under sub-section (c) or, as the case may be, under sub-clause (c) or clause (d); 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 entitled immediately before the amalgamation:

Provided that the transferee bank may not by an order in writing allow any employee to 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, made 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) made 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 provision 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 (4 of 1882) or the Registration Act, 1908 (16 of 1908) and order making schemes under sub-section (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.

(10) If in accordance with the provision of sub-section (1) the State Government is of opinion that any unit of the State Co-operative Bank or a Central Co-operative Agriculture and Rural 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 Co-operative Bank; Agriculture and Rural Development Bank, as the case may be, the State Government shall direct the Registrar to effect such reorganisation by dividing the State Co-operative Bank or the State Co-operative Agriculture and Rural Development Bank, as the case may be, and forming a separate Central Co-operative Bank or Primary Co-operative Agriculture and Rural Development Bank, and thereupon the Registrar shall divide the State Co-operative Bank or the Central Co-operative Agriculture and Rural Development Bank and form a separate Central Co-operative Bank or Primary Co-operative Agriculture and Rural Development Bank, as the case

may be, in accordance with the provisions of section 22.

#### **24. Change of name and its effect :-**

(1) A Co-operative society may, with the previous approval of the Registrar, by a resolution passed at a general meeting change its name by two-third majority of members present and voting.

(2) A Co-operative society shall communicate its new name by 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 sub-section (5) of 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.

#### **25. Promotion of subsidiary organisation :-**

(1) Any Co-operative society may, by a resolution passed at a general meeting by a two-third majority of members present and voting, promote one or more subsidiary organisation for the furtherance of its stated objectives, and such organisation or organisations may be registered under any law for the time being in force, as agreed to by the general body.

(2) The annual reports and accounts of any such subsidiary organisation <sup>1</sup>[shall be placed before the general meeting] of the promoting Co-operative societies each year.

(3) Any subsidiary organisation created under sub-section (1) shall exist only as long as the general body of the Co-operative society deems its existence necessary.

1. Subs, by s. 6 of the W.B. Co-operative Societies (Amendment) Act, 2011 (West Ben. Act XIV of 2011), w.e.f. 6.2.2012, for "shall replace before the general meeting".

#### **26. Partnership of Co-operative Societies :-**

<sup>1</sup>[ Any two or more Cooperative Societies may, by resolution passed at general meetings by a majority of members present and voting in each of such Co-operative Societies, enter into a contract of partnership for carrying on any specific business permissible under the bye-laws of such Co-operative Societies on such terms

and conditions as may be mutually agreed upon. Such partnership of Co-operative Societies shall be governed by the provisions of the Indian Partnership Act, 1932 (Act 9 of 1932).]

1. Subs, by s. 7 of the W.B. Co-operative Societies (Amendment) Act, 2011 (West Ben. Act XIV of 2011), w.e.f. 6.2.2012, before subs, it was as follows:

"26. Partnership of Co-operative Societies.-- Any two or more Co-operative societies may, by resolution passed at general meetings by a majority of members present and voting in each such Co-operative society, enter into a contract or partnership for carrying out any specific business permissible under the by-laws on such terms and conditions as may be mutually agreed upon. Where such partnership requires the creation of a new organisation, the participating Co-operative societies shall be its members."

#### **CHAPTER 4 STATUS AND MANAGEMENT OF CO-OPERATIVE SOCIETY**

##### **27. General body of Co-operative society :-**

(1) The general body of a Co-operative society shall consist of all the members of such society.

(2) Where the by-laws of a Co-operative society provide for constitution of a smaller body consisting of delegates of members of the Co-operative society elected in accordance with such by-laws, the smaller body shall exercise all powers of the general body in a general meeting.

(3) Where other Co-operative societies are members of a Co-operative society, the representative from the members Co-operative societies elected in a meeting of respective boards of such Co-operative societies shall exercise all powers of the general body in a general meeting.

##### **28. Final authority of Co-operative society :-**

Subject to the provisions of this Act, the final and ultimate authority of a Co-operative society shall vest in the general body of its members or its delegates or representatives elected under section 29 of this Act and assembled in a general meeting:

Provided that where the by-laws of a Co-operative society so provide for representation of self-help group in any meeting of the general body of the Co-operative society, such self-help group shall be represented through one of its members elected in a meeting of the self-help group.

## **29. Annual general meeting :-**

(1) Every Co-operative society shall hold a general meeting of its members or delegates or representatives in every Co-operative year in accordance with a fixed programme as mentioned in the table below and such general meeting shall be called the annual general meeting:--

Table

Category of Co-operative society    Period during which the annual general meeting to be held

(a) all primary Co-operative societies    April, May and June

(b) all central Co-operative societies    September

(c) all apex Co-operative societies    December

(2) An annual general meeting shall be convened by the secretary or any other officer authorised by the board in accordance with direction of the board.

(3) Unless otherwise provided in the by-laws, all notices of the meeting stating the place, date and hour of the meeting together with the statement of business to be transacted at it, shall be sent to every member or delegate or representative not less than twenty-one days before the date of the meeting.

(4) Any accidental omission to give notice to any member or delegate or representative or non-receipt of the notice by any or a few of them shall not invalidate the proceeding of the meeting.

(5) The agenda of the annual general meeting shall be as follows:--

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

Provided that such election shall be held once in every five Co-operative years:

Provided further that after constitution of the Co-operative Election Commission, such election shall be held in an annual general meeting or a special general meeting under the provision of sections 29 and 31;

(b) confirmation of the proceedings of the last half-yearly and annual general meetings and special general meeting, if any;

(c) consideration of the annual report prepared and presented by the board;

(d) consideration of the latest audit report and compliance thereof and audited statement of accounts referred to in section 98;

(e) approval of the annual budget;

(f) consideration of any report of inspection or inquiry made in accordance with the provision of this Act and by-laws, if any;

(g) consideration of matters relating to loans and advances given to

the directors and their relatives and action to be taken for recovery thereof in case of default;

(h) approval of appointments, if any, of the relatives of directors of the board other than those selected by the Co-operative Service Commission;

(i) creation of specific reserves and other funds and review of the actual deployment of reserves and other funds;

(j) distribution of net profit, if any;

(k) review of operational deficit or loss and consideration of the plan to make good the losses, if any;

(l) approval of the long-term perspective plan and annual operational plan;

(m) fixation of borrowing limit as may be necessary;

(n) approval of code of conduct of members of the board formulated by it;

(o) amendment of by-laws, if any;

(p) expulsion of members, if any;

(q) consideration of such other matters as specified in by-laws;

(r) consideration of any other matter which may be brought at the meeting as miscellaneous items in accordance with the provisions of this Act and by-laws of the Co-operative society.

<sup>1</sup>[(6) On the failure of the board to call the annual general meeting within the period as mentioned in sub-section (1), the Registrar shall call or authorize any of his officers to call a annual general meeting to transact any business specified in sub-section (5) of this section.]

<sup>2</sup>[(7) If the election as referred to in the second proviso to clause (b) of sub-section (1) of section 35 or in clause (cc) of section 36 cannot be held owing to an order of any court or for any other reasons or if the directors of the board elected in a general meeting cannot function owing to an order of any court or for any other reason, or if the elected directors of the board resign simultaneously, the Registrar may constitute a board of directors from amongst the members or delegates or representatives of the Co-operative Society in conformity with section 32 and the constituted board shall elect its office-bearers from amongst themselves:

Provided that the board, so constituted, shall function till the directors of the board elected under this section assume charge]

(8) If the board of directors, constituted under <sup>3</sup>[sub-section] (7), cannot function owing to an order of any court or for any other reason, the chief executive officer of the Co-operative society or

where there is no chief executive officer appointed by the State Government or the Registrar the highest designated employee of the Co-operative society, by whatever name called, shall manage the affairs of the Co-operative society till a board is in a position to function.

(9) If the audit report of the immediate preceding Co-operative year is not received by the Co-operative society before the date fixed for the annual general meeting, the Co-operative society shall place the said audit report in the next half-yearly general meeting or in a special general meeting.

1. Subs, by s. 8(a) of the W.B. Co-operative Societies (Amendment) Act, 2011 (West Ben. Act XIV of 2011), w.e.f. 6.2.2012, before subs, it was as follows:

"(6) On the failure of the board to call the annual general meeting within the period as mentioned in sub-section (1), the apex Co-operative society or the federal Co-operative society or the central Co-operative society, as the case may be or where there is no such society the Registrar shall call or authorise any of his officer to call the annual general meeting within a period of three months from the date of expiry of the period so mentioned.\*.

2. Subs, by s, 8(b), ibid, w.e.f. 6.2.2012, before subs, it was as follows:

"(7) If in a general meeting, election as referred to in clause (a) of sub-section (5) of section 29 cannot be held owing to an order of any court or for any other reasons or if the directors of the board elected in such general meeting cannot function owing to an order of any court, the apex Co-operative society or the federal Co-operative society or the central Co-operative society, as the case may be, or where there is no such society, the Registrar may constitute a board of directors from amongst the members or delegates or representatives of the Co-operative society in conformity with section 32 and the constituted board shall elect its office-bearers from amongst themselves:

Provided that the board, so constituted, shall function till the directors of the board elected under this section assume charge."

3. Subs, by s. 8(c) of the W.B. Co-operative Societies (Amendment) Act, 2011 (West Ben. Act XIV of 2011), w.e.f. 6.2.2012, for "sub-sections (1) and".

### **30. Half-yearly general meeting :-**

(1) A half-yearly general meeting of a Co-operative society shall be called at any time after six months but within eight months from the date of last annual general meeting for the following purposes:

(a) to review of the activities of the Co-operative society on the



basis of the report placed by the board;

(b) to consider audit report, if any;

(c) to review financial position on the basis of provisional accounts;

(d) any other item as may be specified in the by-laws.

(2) A half-yearly general meeting shall be called in accordance with the provisions of sub-section (1) of section 29.

### **31. Special general meeting :-**

(1) A special general meeting of a Co-operative society may be called at any time for the following reasons:

(a) where the board decides to call a special general meeting on urgent matter or under sub-section (1) of section 29;

(b) where at least one-third of the members or delegates or representatives of the Co-operative society place before the board a requisition in writing for discussion and decision on a specific object including a call for adoption of resolution in a special general meeting for no confidence against the board or its reconstitution before the expiry of the full term of five years.

<sup>1</sup>[(c) if Registrar decides to call a special general meeting to transact any specified business.]

(2) The secretary or the chief executive or any director authorised by the board shall call the special general meeting under sub-section (1) within two months from the date of requisition under clause (b) of sub-section (1):

Provided that on the failure of the Board to call special general meeting under sub-section (1), the Registrar shall call such meetings.

(3) When a resolution in a special general meeting is passed for dissolution of the board and its reconstitution, a subsequent special general meeting shall be called within two months from the date of adoption of such resolution for the purpose of election of directors of a new board, if the Co-operative Election Commission is not constituted and where the Commission has been constituted, the chief executive shall refer the matter to the Commission within seven days from the date of adoption of such resolution. The Commission shall hold election of directors of the new board within two months from the date of receipt of the reference.

(4) The board constituted under sub-section (3) shall function till the expiry of the remaining period of the total term of five years:

Provided that if the remaining period is less than six months, such election shall be held within the period scheduled to be held as

mentioned in sub-section (1) of section 29 and in such election, all members of the dissolved board shall not be eligible to be elected to the new board.

(5) The board against which no confidence has been passed shall stand dissolved immediately after adoption of such resolution and the chief executive shall function in accordance with sub-section (8) of section 29 until a new board constituted under sub-section (3) assumes charge:

Provided that the chief executive shall not function for more than one year.

1. Ins. by s. 9, *ibid*, w.e.f. 6.2.2012.

### **32. Management of Co-operative societies :-**

(1) There shall be a board of directors 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 included in the board in the following manner to constitute it--

(a) by election of directors in accordance with the provisions of section 29 from amongst the members or delegates or representatives of the Co-operative society:

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:

Provided further that where the number of members of Co-operative society is less than twelve, the number of directors shall not be less than three or more than six.

(b) where the State Government has--

(i) subscribed to the share capital of a Co-operative society; or

(ii) guaranteed the principal and interest in respect of debentures issued by a Co-operative society; or

(iii) guaranteed the principal and interest in respect of loans and advances to the Co-operative society; or

(iv) assisted the Co-operative society with loans and grants out of its own fund, the State Government or any authority specified by it may nominate one person on the board or change them or fill up any casual vacancy of a nominated member;

<sup>1</sup>[(c) The chief executive of a co-operative society shall be an ex-officio director of the society and where there is no chief executive, the manager or the highest designated employee of the Co-operative Society, by whatever name called shall be an ex-officio

director;]

(d) the employees of a Co-operative society having not less than five employees may elect one person amongst themselves for being a director of the board;

(e) a Gram Panchayat, constituted under the West Bengal Panchayat Act, 1973, may nominate one of its members on the board of a primary Co-operative society doing business within the jurisdiction of that Gram Panchayat. A Panchayat Samiti constituted under the said Act may nominate one of its elected members on the board of primary Co-operative society or central Co-operative society doing business in the area covered by more than one Gram Panchayat within the jurisdiction of the concerned Panchayat Samiti. A Zilla Parishad constituted under the said Act may nominate one of its elected members on the board of the central Co-operative society or a Co-operative agriculture and rural development bank doing business in the area covered by more than one Panchayat Samiti within the jurisdiction of the Zilla Parishad;

(f) any financial bank which finances a Co-operative society may nominate one person on the board of such Co-operative society;

(g) professionals not exceeding two may be co-opted by the board.

Explanation.--"Professionals" means and includes Chartered Accountant, Cost Accountant, Engineer, Lawyer, Graduate in Agriculture or Veterinary, Master of Business Administration, Master of Computer Application, Bachelor of Computer Application or Bachelor of Medicine and Bachelor of Surgery; (h) in primary Co-operative societies and primary co-operative banks dispensing credit including womens co-operative credit societies and womens co-operative banks which have promoted self-help groups composed of women shall have a woman member, elected from amongst the self-help groups by the members of such self-help groups in an election to be conducted by the societies concerned, in the board of directors of society.

(2) No person shall be elected, nominated or co-opted as a director under sub-section (1), if he is a defaulter in repayment of any loan granted by or in repaying price of any commodity purchased on credit from a Co-operative society, Government and other statutory authority or has been convicted by any competent court of law for criminal offence of moral turpitude or of any offence under this Act and sentenced to fine or imprisonment or both.

(3) No act or proceedings of a board shall be invalid merely by reasons of absence of any nomination under clauses (b), (d), (e), (f) and (g), Or absence of the chief executive under clause (c) of

sub-section (1) for any reason whatsoever.

(4) (a) The director referred to in clause (d) of sub-section (1) shall have no right to vote in any meeting of the board.

(b) The directors referred to in clauses (c), (e) and (g) of sub-section (1) shall have no right to vote in any meeting of the board for election of officebearer.

(c) The directors referred to in clauses (c), (d), (e) and (g) of sub-section (1) shall not be any office-bearer of the board.

(5) (a) A director elected or nominated under sub-section (1) except the chief executive shall hold office throughout a term of five years of the board or till the board is dissolved under sections 34 or 35 or 36 whichever is earlier:

Provided that a director under clauses (d) and (e) of sub-section (1) shall not be eligible for re-election or nomination, as the case may be, within a period of five years from the date of expiry of his term of office:

Provided further that a director under clause (c) of sub-section (1) shall not be entitled to attend any meeting of the board, if he is suspended or punished in a departmental proceeding or a departmental proceeding against him is pending.

(b) A director under sub-section (1) shall before taking charge of his office, take oath or affirmation in the prescribed Form before the returning officer or election officer or the Registrar.

(6) (a) No director who has been an office-bearer for two consecutive terms or 120 months, whichever is less, shall be eligible for re-election as an office-bearer until after expiry of five years of the next term:

Provided that an office-bearer who resigns or becomes disqualified before expiry of the term, he shall be deemed to have served the full term of five years, (b) No member of a board shall be eligible to be elected as an office-bearer of a Co-operative society, if such member is a Minister of the State Government or the Central Government.

(7) No member of a Co-operative society shall be eligible<sup>2</sup> [for being elected and continued on the board] if--

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

(b) he has been convicted by a court of any criminal offence including moral turpitude 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 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 category including labour and service Co-operative societies shall be eligible for being elected on the board of the respective category of Co-operative society;

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

(e) (i) he is an individual, 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 or on the date of election, as the case may be;

(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 scrutiny, as the case may be;

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

(g) he received any salary from the Co-operative society except member of such societies which provide employment;

(h) member disqualified under proviso to sub-section (4) of section 31. (8) No person at any time hold office as a director of the board in more than--

(a) four primary Co-operative societies;

(b) two central Co-operative societies; and

(c) two apex Co-operative societies.

1. Subs, by s. 10(a) of the W.B. Co-operative Societies (Amendment) Act, 2011 (West Ben. Act XIV of 2011), w.e.f. 6.2.2012, before subs, it was as follows:

"(c) the chief executive of the Co-operative society shall be an ex officio director;.

2. Subs. by s. 10(b) of the W.B. Co-operative Societies (Amendment) Act, 2011 (West Ben. Act XIV of 2011), w.e.f. 6.2.2012, for "for being elected on the board.

### **33. Deputation of Government officers to manage the affairs of Cooperative 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 Co-operative 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 the 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, 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 and in such manner, as may be prescribed, a Government officer in respect of whom he is the appointing authority or recommended 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 so deputed shall exercise such powers and perform such duties as may be prescribed.

#### **34. 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 mis-managing its affairs, under clause (a) of sub-section (1) of section 35, by order direct to call a special general meeting of the Co-operative society to dissolve the board and reconstitute it within such periods may be specified in the order.

Explanation.-- For the purpose of this sub-section, the expression "mis-managing 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 reconstituted in such manner and within such period as provided in the order under sub-section (1), the Registrar may, after service of a notice upon the board and giving it opportunity of stating its objections of being heard, and after being satisfied, by an order in writing stating reasons therefor, dissolve the board, the directors of which shall forthwith vacate their offices and the Registrar may appoint a board with the members of the Co-operative society as he thinks fit to manage the affairs of the Co-operative society for a period of six months at a time and may extend such period so, however, that the total period shall not exceed one year:

Provided that the Registrar shall reconstitute an elected board of directors of the Co-operative society in a general meeting to be convened for the purpose in accordance with this Act, rules and by-laws within the tenure of office of the nominated board as specified in the notification so that such nominated board may vacate and the newly elected board takes over before expiry of such tenure.

### **35. Dissolution of the board and appointment of administrator :-**

(1) If, on receipt of a report from the Registrar, the State Government is of opinion that--

(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 the members of any other Co-operative society; or

(iii) has willfully disobeyed or wilfully failed to comply with any, lawful order or direction of the State Government or the Registrar issued under this Act; or

(b) the affairs and business of any Co-operative society has come to a stalemate due to persistent default or negligence in the performance of duties by its board, the State Government may, after service of a notice upon the board and giving it an opportunity for stating its objections and upon hearing such objections, by a notification stating reasons therefor, dissolve the board, the directors of which shall forthwith vacate their offices and by the said notification <sup>1</sup>[the State Government shall appoint one or more of its officers to manage the affairs of one or more co-

operative societies who shall be called the administrator or administrators, as the case may be,] for a period not exceeding six months and may also, by notification extend such period so, however, that the total period shall not exceed one year in any case:

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 General Co-operative Land Development Bank or any Central Co-operative Bank or such other Co-operative Bank as comes within the provision of Part V of the Banking Regulation Act, 1949 (10 of 1949), without prior consultation with the Reserve Bank of India or the National Bank for Agriculture and Rural Development, as the case may be:

Provided further that the Registrar shall reconstitute an elected Board of Directors of the Co-operative society in a general meeting to be convened for the purpose in accordance with the Act, rules and by-laws within the tenure of the office of the administrator as specified in the notification so that he may make over his charge to the newly elected Board before expiry of his tenure.

<sup>2</sup>[(1A) if an elected Board cannot be reconstituted within the period of one year from the date of dissolution of the board, the administrator shall be removed from his office by the State Government and thereupon the provision , contained in sub-section (7) of section 29 shall be followed.]

(2) During the tenure of office of the administrator appointed under sub-section (1)--

(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 147, the administrator 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.

1. Subs, by s. 11(a) of the W.B. Co-operative Societies (Amendment) Act, 2011 (West Ben. Act XIV of 2011), w.e.f. 6.2.2012, for the words "the State Government shall appoint one of its officers to manage the affairs of the Co-operative society who shall be called the administrator,".

2. Ins. by s. 11(6) of the W.B. Co-operative Societies (Amendment) Act, 2011 (West Ben. Act XIV of 2011), w.e.f. 6.2.2012.

### **36. 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) <sup>1</sup>[the board of directors of any of the Co-operative Societies] shall, if the election of its directors has not been held within a period of sixty months from the date of their election under sub-section (1) of section 29 <sup>2</sup>[or within a period of thirty six months from the date of their election under sub-section (8) of section 27 of the West Bengal Co-operative Societies Act, 1983 (West Ben. Act XLV of 1983)], 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;

<sup>3</sup>[(c) upon dissolution of the board under clause (a), the State Government on report from the Registrar by notification, appoint a special officer from amongst its officers for managing the affairs of one or more cooperative societies for a period not exceeding six months and may also, by notification extend such period so, however, that the total period shall not exceed one year in any case,]

<sup>4</sup>[(cc) the Registrar shall reconstitute an elected board of directors of the Co-operative Society in a general meeting to be convened for the purpose in accordance with the Act, rules and by-laws within the tenure of the special officer as specified in the notification so that special officer may make over his charge to the newly elected board before expiry of his tenure;

(ccc) if an elected Board of directors cannot be reconstituted within one year from the date of dissolution of the Board, the special officer shall be removed from office by the State Government and thereupon the provision contained in sub-section (7) of section 29 shall be followed.]

(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 or 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:

5[\* \* \*]

1. Subs, by s. 12(a)(/) of the W.B. Co-operative Societies (Amendment) Act, 2011 (West Ben. Act XIV of 2011), w.e.f. 6.2.2012, for "the board of directors if any of the Cooperative societies mentioned in the Fifth Schedule".

2. Ins. by s. 12(a)(/7) of the W.B. Co-operative Societies (Amendment) Act, 2011 (West Ben. Act XIV of 2011), w.e.f. 6.2.2012.

3. Subs. by s. 12(b) of the W.B. Co-operative Societies (Amendment) Act, 2011 (West Ben. Act XIV of 2011), w.e.f. 6.2.2012, before subs, it was as follows:

"(c) upon the dissolution of the board under clause (a) the State Government on report from the Registrar by notification, appoint a special officer from amongst its officers for managing the affairs of the Co-operative society for a period not exceeding six months from the date of dissolution:

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 Co-operative society.

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

4. Clause (cc) and (ccc) ins. by s. 12(c), *ibid*, w.e.f. 6.2.2012.

5. Proviso omitted by s. 12(d) of the W.B. Co-operative Societies (Amendment) Act, 2011 (West Ben. Act XIV of 2011), w.e.f. 6.2.2012, before omission it was as follows:

"Provided that the Registrar shall reconstitute the board in the manner laid down in the proviso to clause (a) of sub-section (5) of section 29, before expiry of the period of six months and the board so reconstituted shall assume office immediately on such reconstitution."

### **37. Summoning of meeting of Co-operative society and rescinding or suspending resolution thereof :-**

<sup>1</sup>[(1)] Notwithstanding anything contained in the by-laws of a Co-operative society, the Registrar or any person authorised by him specifying reasons in writing in his 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 with such agenda and

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 and furnish the proceedings thereof to the Registrar or the person authorized within a week of holding of such meeting, the Registrar or the person authorised by him shall summon the meeting of the board and such meeting shall be deemed to have summoned in accordance with the by-laws of the Co-operative society and shall be competent to transact such business as may be specified in the summons.

<sup>2</sup>[(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 annual general meeting of a co-operative society or of any other meeting of the board thereof which it considers to be not in conformity with the provisions of this Act or the rules framed under this Act 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 cooperative 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 or order or the doing of such Act is likely to prejudice the material interest of the co-operative society or the membersthereof 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 State 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 co-operative society which shall be bound by such order.]

1. Ins. sub-section No. (1) by s. 13, *ibid*, w.e.f. 6.2.2012.

2. Sub-section (2) to (5) ins. by s. 13, *ibid*, w.e.f. 6.2.2012.

### **38. Reservation of seats on 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 such community, class or group of persons which, in the opinion of the State Government, are socially, economically or educationally backward.

## **CHAPTER 5 DUTIES AND OBLIGATIONS OF CO-OPERATIVE SOCIETIES**

### **39. Address of Co-operative society :-**

(1) Every Co-operative society shall mention in the by-laws its address indicating place of business, post office, police station, district which shall be taken to be the registered office of the Co-operative society to which all notices and communications may be sent.

(2) A change of the registered office shall be reported by the Co-operative society along with the resolution of the board by registered post with acknowledgement due or by hand delivery with acknowledgement to--

(a) the Registrar;

(b) the Director of Co-operative Audit;

(c) financing bank, if any;

(d) the Co-operative society to which this Co-operative society is affiliated;

(e) the Reserve Bank of India, by a Co-operative society coming under the purview of the Banking Regulation Act, 1949 (10 of 1949).

### **40. Power of State Government to issue directive :-**

The State Government may for the reasons to be recorded in writing and after giving the Co-operative 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 Co-operative movement in general.

### **41. 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.

#### **42. Affiliation to State and Regional Co-operative Union :-**

(1) Every Co-operative society shall be required to be affiliated to be State Co-operative Union or the District Co-operative Union, as the case may be, and the central society or the respective apex society, as the case may be, 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.

#### **43. Appointment of persons in the service of a Co-operative society :-**

(1) The Board of a Co-operative society may, from time to time, create posts of different categories of employees to assist the Co-operative society in the performance of its duties and discharge of its function and such creation of posts shall only be made with prior approval by the general body.

(2) The Board of a Co-operative society shall appoint, subject to the provisions of this Act, the Rules and the by-laws, such officer and other employees in respect of which the posts are created under sub-section (1).

#### **44. Restrictions on borrowings :-**

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

#### **45. Issue of debentures :-**

(1) A Co-operative society may receive loans by issue of debentures of one or more denominations repayable within twentyfive years and such debentures shall not be issued or re-issued save with the express authority of the State Government.

(2) The issue or re-issue of debentures shall be subject to the

following conditions:

(a) that such debentures are secured by mortgages or any other security like Hypothecation of assets, Government securities and others as may be prescribed, held by the Co-operative society and assigned to the trustee or secured by Gehan under section 55, and  
(b) that the total amount payable in respect of the debenture does not exceed three-fourths of the total value of the mortgage or any other security like Hypothecation of assets, Government securities and others as may be prescribed, held by the Co-operative society and assigned to the trustee.

(3) The State Government shall guarantee the principal and interest on the debentures, subject to such condition as it may be laid 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 (2 of 1882).

(4) 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.

#### **46. Vesting of assets of Co-operative society in Trustees upon issue of debenture :-**

Upon the issue of debentures under sub-section (1) of section 45, 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:

#### **47. 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 45 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.

#### **48. Issue of preference share :-**

(1) Notwithstanding anything contained elsewhere in this Act, the State Co-operative Bank and the Central Co-operative Banks may issue preference share to persons friendly and supporting the cause of Co-operative movement at a fixed rate of dividend and on such terms, as may be decided by general body of such banks subject to prior approval of the Reserve Bank of India.

(2) The preference shareholders shall have no right to attend the general meeting and for election as directors of the Board of the bank.

(3) The preference shareholders shall be eligible to the dividend due at the fixed rate in respect of any period, whether a dividend has been declared by the bank on such shares for such period or not.

#### **49. Application for loan :-**

(1) An application for loan shall be in such form as may be prescribed by the board and shall state the purpose for which the loan is required.

(2) A member of a primary Co-operative society applying for loan shall furnish a full statement of his--

(i) property and debts;

(ii) a scheme in case of medium term or long term loan;

(iii) annual expenditure incurred and proposed to be incurred; and

(iv) surplus available for repayment of the loan applied for.

(3) For every loan, a member shall furnish such security as may be required under the by-laws of the Co-operative society.

## **50. Loans and advances to members and non-members :-**

(1) A Co-operative society may grant loans to its members subject to provision of section 49:

Provided that a Co-operative society may also grant loans to its members, self-help groups for lending its members against the surety of the group.

(2) A Co-operative society except a Co-operative bank may grant loans and advances to a member against a tangible security.

(3) A Co-operative society may, with the approval of the general body, grant loans to any other Co-operative society which is not its member against a tangible security.

(4) A Co-operative society may grant loans and advances to a non-member depositor against the security of his time deposit not exceeding ninety per cent of the deposit.

(5) A Co-operative society may grant loan to a member thereof belonging to economically weaker sections as prescribed, at a concessional rate of interest and against a lower scale of securities irrespective of the value of shares held by them.

## **51. 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,--

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

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

(c) guarantee the repayment of principal and payment of interest on loans and advances to any Co-operative society.

## **52. Limitation :-**

Notwithstanding the provisions of the Limitation Act, 1963 (36 of 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.



### **53. 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 Operation Act, 1973 (West Ben. Act XXXIV of 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 members, 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 (19 of 1883), or the Agriculturists Loans Act, 1884 (12 of 1884), after the grant of the loan by a Co-operative society.

### **54. Charge on immovable property of members borrowing from certain Co-operative society :-**

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 (e) 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 centr. bank or concerned region 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.

## **55. 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 54, makes an application to a Co-operative credit society for loan, he shall by 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 Co-operative 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, it shall not be necessary to register a Gehan:

Provided that when a Gehan has been executed in favour of 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 33 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 or part thereof or other property and the registering officer shall like such copy in his book No. 1 prescribed under section 51 of the Registration Act, 1908.

(3) An officer deputed by the State Government or the Registrar under section 33 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 54 shall apply to a Gehan and the provisions of sections 120, 123 and 124 shall apply mutatis mutandis to a Gehan.

#### **56. Appointment of sale officer :-**

The registrar shall appoint a sale officer for conducting the sale in respect of the land covered by declaration under Gehan under section 55 in case of default. The sale officer shall conduct the sale in the prescribed manner.

#### **57. Utilisation of the sale proceed :-**

Out of the sale proceeds of a sale under section 56, the land revenue or any sum recoverable as a public demand shall be paid first and then any amount due to the agriculture and rural development bank on account of any outstanding loan from the 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.

#### **58. 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 profit 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 70 to 73 and the rules and the by-laws, a Co-operative society may set off any amount credited or payable to a member or past member or the estate of a deceased member towards payment of any debt referred to in sub-section (1).

**59. 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 or the drawing and disbursing officer where applicable shall be competent to deduct from the salaries or wages and retiring gratuity or death gratuity payable to him by such employer or the drawing and disbursing officer where applicable 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. A copy of such agreement shall be furnished to the employer or the drawing and disbursing officer where applicable.

(2) Upon the execution of the agreement under sub-section (1), the employer or the drawing and disbursing officer where applicable 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 within fifteen days from the date of such deduction as if it were part of the wages payable by him under the Payment of Wage Act, 1936 (4 of 1936) on the date on which he makes the payment. (3) If the employer or the drawing and disbursing officer 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 or drawing and disbursing officer 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 or drawing and disbursing officer as wages in arrear.

**60. Exemption from compulsory registration of instruments relating to shares and debentures of Co-operative society and mortgage deeds executed in favour of Co-operative agriculture and rural 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 (16 of 1908), shall apply:--

(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 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 trustee 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 (16 of 1908), it shall not be necessary to register a mortgage deed executed in favour of a Co-operative agriculture and rural development bank or a primary Co-operative of which the majority of the members are agriculturists:

Provided that the manager of any Co-operative agriculture and rural development bank or the financing bank which advanced loan to the primary Co-operative society shall send 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 situated and the registering officer shall file such copy in his book no. 1 prescribed under section 51 of the Registration Act, 1908.

(3) A copy of mortgage deed referred to in sub-section (2) of section 60 duly certified by the manager or branch manager, shall be sent to the registering officer through a messenger or by registered post with acknowledgement due within thirty days from the date of its execution.

## **61. 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 or a member of a Co-operative society remit such tax, cess or fee by general or special order.

(2) (a) The State Government may, by notification, remit 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:

Provided that such remission of stamp-duty payable by any member of a Co-operative housing society in whose favour a plot of land of a house or an apartment in a building is allotted or to whom such land, house or apartment is transferred, shall be made at the rate of one per centum of the market value of such land, house or apartment, as the case may be:

Provided further that in no case such remission, as referred to in the first proviso, shall exceed an aggregate amount of twenty thousand rupees.

(b) No 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 or to whom such land, house or apartment is transferred, is allowed.

(3) No such remission under clause (a) or clause (b) of sub-section (2) shall be made in the case of purchase or acquisition of any house or flat already constructed or under construction from any private promoter by the persons, who subsequent to such purchase or acquisition form a housing Co-operative society or in the case of any subsequent transfer of any plot of land, house or flat of any housing Co-operative society by a member under the provision of section 88.

(4) Notwithstanding anything contained in any other law for the time being in force, the State Government may, by general or special order, grant preference and exemption in respect of any Co-operative society or class of Co-operative societies in the interest of promotion of Co-operative movement in the state as may be prescribed.

## **62. Compromise or arrangement between Co-operative society and its creditor :-**

The settlement shall be made between Co-operative society and its creditor by the Board to be ratified by the General Body.

## **CHAPTER 6 MEMBER OF CO-OPERATIVE SOCIETIES AND THEIR DUTIES, RIGHTS, ACCOUNTABILITY, PRIVILEGES AND LIABILITIES**

### **63. Eligibility for membership of Co-operative society :-**

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

(a) an individual competent to contract under section II of the Indian Contract Act, 1872 (9 of 1872) and a permanent resident of India;

(b) any other Co-operative society;

(c) the State Government;

(d) a self-help group;

(e) any financing bank:

Provided that a student who has not attained the age of majority according to the law shall be eligible for membership of Co-operative society formed in an education institution to which he belongs.

(2) An employee of the 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 member of an engineers, labour, industrial, service, transport and the like Co-operative societies shall have 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 admit [an application] any person, any association or body of persons (whether incorporated or not) as a nominal member who shall not be entitled to any share in any form in the assets or profit of the Co-operative society and shall not be eligible to be elected as director of the board and shall have no right to attend the general meeting of the Co-operative society but shall have such right and privilege 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 the 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 privilege jointly, but voting right shall be exercised by the first named member and in his/her absence by the other member.

(5) Notwithstanding anything contained in sub-section (1), no Central Co-operative society shall have 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 members for the purpose of this Act:

Provided that the existing individual members of a Central Co-operative society shall have right to withdraw, after serving three months notice on the Co-operative society concerned, the share capital contributed by such members within one month from the date of acceptance of such withdrawal and the concerned Co-operative society shall refund the same to such members after deduction of the debts, if any, due to the concerned Co-operative society from such members.

#### **64. Admission as member :-**

(1) Any person eligible for membership under sub-section (1) of section 63 may apply to the Co-operative society for admission as a member thereof in the form and manner as prescribed.

(2) Every application for membership shall be disposed of by the Co-operative society within a period of forty-five days from the date of receipt of application. The decision of the Co-operative society on such application shall be communicated to the applicant within fifteen days from the date of such decision. If no such communication is received, the application shall be deemed to have been accepted on the expiry of sixty days from the date of receipt of the application by the Co-operative society.

(3) No Co-operative society shall, without sufficient cause refuse admission to any person duly qualified for membership under this Act and the by-laws of the Co-operative society. Where the application is so refused, the decision with reason shall be communicated by registered post or by hand delivery to such person within fifteen days from the date of decision. Any person whose application for membership has been refused by the Co-operative society may appeal to the Registrar within thirty days from the date of receipt of the decision communicated to him.

(4) The Registrar shall dispose of the appeal within sixty days from the date of receipt of the appeal and pass such order, as he thinks



fit and such order shall be final.

#### **65. Votes of members :-**

(1) Every member of a Co-operative society shall have one vote on any matter that is put to vote in the affairs of the Co-operative society in a meeting.

(2) Every member of a Co-operative society shall cast his vote in person.

(3) In the case of equality of vote in meeting the Chairman shall have second vote.

(4) Where two persons are joint members of a Co-operative society, the first named joint member or in his/her absence, the other joint member may attend the meetings of the Co-operative society and shall have right to vote at such meetings:

Provided that both the joint members shall not attend the meeting at a time.

(5) A Co-operative society which is a member of any other Co-operative society (hereinafter referred to as the later Co-operative society) may by adopting a resolution in the board, authorise any of its members who is not otherwise disqualified for being so authorised under this Act or the by-laws to vote at any meeting of the later Co-operative society:

Provided that 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.

#### **66. 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.

#### **67. 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 58, the share or interest of a member in the capital of a Co-operative society or in

the provident fund established under section 83 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.

#### **68. Liability of members :-**

The members of a Co-operative society shall, upon the dissolution 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 dissolution of the Co-operative society, be limited to the amount paid in respect of such shares.

#### **69. Liability of past member or the state of deceased member :-**

The liability of 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 death of the member, as the case may be, shall continue for a period of five years from the date or till finalisation of the legal proceedings, if any, started within the period of five years as aforesaid:

Provided that the legal heirs of the deceased member shall be liable for his debts to the extent of the estate inherited by them and such debts are recoverable from the legal heirs:

Provided further that where a Co-operative society is directed to be dissolved under section 107 within the period of five years as aforesaid such-liability shall continue until the proceedings for dissolution of the Co-operative society are completed by the liquidator.

## **70. Disposal of deceased members share or interest :-**

(1) On the death of a person who is a member of Co-operative society, his share or interest in the Co-operative society shall, subject to the provisions of section 58 and 72 and to the further provisions of this section, be transferred--

(a) to the nominee, if any; made under section 76; or

(b) if there is no nominee or if the existence or residence of the nominee cannot be ascertained by the board or if the nominee does not claim possession of such share or interest or if for any other reason, the transfer cannot be made within one year from the date of death, to the person who (subject to the production by such person of probate, letter of administration or succession certificate issued by a competent court having jurisdiction) appears to the board to be entitled to the possession of such share and interest as per of the estate of the deceased member; or

(c) on the application of the person referred to in clause (b), within one year 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 provision 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 of interest or if the Co-operative society in accordance with its by-laws decide 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 72 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 its by-laws shall be paid to the person nominated under section 76 or to the person referred to 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.

## **71. Disposal of share or interest of member on expulsion or resignation or on becoming insane :-**

When a member of a Co-operative society is expelled or resigns in accordance with its by-laws or becomes insane, his share or interest in the capital of the Co-operative society shall be transferred to a person qualified to be a transferee of such share or interest under

section 77, and the value thereof shall be paid to the member after deducting his dues, if any or in the case of his becoming insane, to such person as may be appointed by the competent authority to manage his properties under the Mental Health Act, 1987 (35 of 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.

## **72. 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 force:

(a) a member of a Co-operative society, the object of which is the reclamation or acquisition of land and 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 new 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, insanity or any other cause, his possession of or interest in, and 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 76, 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 64;

(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 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 on the basis of prevailing market price;

(d) no land held by a member under the Co-operative society referred to in clause (a) or vested in his heir, executor or administrator or the person under clause (b), shall be attachable in any suit or proceedings for recovery of any debt other than a debt due to the Co-operative society.

### **73. Disposal of share of interest of member or dissolved Co-operative society :-**

When an order is issued under section 106 for dissolution of a Co-operative society which is a member of a Co-operative society with limited liability and liquidator is appointed under section 110, the liquidator shall transfer the share or interest of the Co-operative society being dissolved, subject to the provisions of section 77, to any person or any other Co-operative 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 107 for dissolution 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 dissolution, 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 dissolved to the Co-operative society with limited liability of which the Co-operative society being dissolved is a member.

### **74. Disposal of moneys of the deceased, expelled, resigned or insane member :-**

(1) All sums, calculated in accordance with the provisions or 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 provision of section 58, 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 provision of section 70;

(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 Mental Health Act, 1987 (35 of 1987).

(2) All payments and transfers made by a Co-operative society in accordance with the provisions of sections 70, 71, 72 and 73 and sub-section (1) of this section shall be valid and effectual irrespective of any demand made upon the Co-operative society by

any other person.

#### **75. Restrictions on holding of shares :-**

Where the liability of a member of a Co-operative society is limited by shares, no member other than State Government shall hold more than such portion of the share capital of the Co-operative society as may, subject to the maximum of one-fifth be prescribed in the by-laws of the Co-operative society and shall have any claim in the form of dividend or profit or return in respect of the shares of the Co-operative society in excess of the limit prescribed in the by-laws:

Provided that the State Government may subscribe to the share capital of a Co-operative society up to a maximum of one-fourth of the paid up share capital.

#### **76. Nomination by member :-**

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.

#### **77. Restriction on transfer of share or interest :-**

(1) The transfer or change of the share or interest by a member in the capital of the Co-operative society shall be subject to such condition as to maximum holding as may be prescribed and shall require the approval of the board.

(2) No transfer or change of a 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 70, 71, 73 or 74) for not less than one year; and

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

(3) Where the State Government is a member of a Co-operative society, the restriction 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.

#### **78. Redemption of share :-**

(1) Shares held in a Co-operative society by the State Government

shall be redeemable in such manner as may be agreed upon between the Co-operative society and the State Government.

(2) Redemption of shares referred to in sub-section (1) shall be on the face value of the shares.

## **CHAPTER 7 PROPERTIES AND FUNDS OF CO-OPERATIVE SOCIETIES**

### **79. 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 Trust Act, 1882 (2 of 1882); or
- (c) in the share or debenture or security of any other Co-operative society; or
- (d) in the West Bengal State Co-operative Bank limited; or
- (e) in the Central Co-operative Bank of the area within which its registered office lies, including branches of the said banks if any; or
- (f) in such other manner as may be prescribed.

### **80. Co-operative Education Fund :-**

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, after the close of each Co-operative year contribute to the Co-operative Education Fund such portion of its net profit in any Co-operative year as may be prescribed.

### **81. Bad Debt Fund :-**

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

### **82. 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 Bank, Co-operative Banks and

Regional Rural Banks or in any security specified in section 20 of the Indian Trust Act, 1882 or in the business of the Co-operative society in such manner as may be prescribed.

### **83. Employees Provident Fund :-**

Employees Provident Fund Co-operative Societies, which are not coverable under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (19 of 1952), may establish provident fund for the benefit of its employees with the contribution 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.

### **84. Retirement Benefit Fund :-**

A Co-operative society may establish retirement benefit fund for payment of gratuity to its employees in accordance with the provision of the Payment of Gratuity Act, 1972 (39 of 1972) and for payment of cash equivalent of leave salary, if any, to its employees on retirement from service.

### **85. Creation and maintenance of special funds :-**

A Co-operative society may, if it considers expedient, create and maintain the following funds:

- (a) inventory loss fund;
- (b) price fluctuation fund;
- (c) sinking fund;
- (d) development fund;
- (e) staff welfare fund;
- (f) members welfare fund;
- (g) dividend equalisation fund;
- (h) building fund;
- (i) community welfare fund;
- (j) natural calamity fund;
- (k) self-help group development fund; and
- (l) such other funds as may be deemed to be beneficial to the general interest of the Co-operative society and may make regulation for the management of such funds.

### **86. Distribution of profit :-**

(1) Subject to the provisions of sections 80 to 85 of this Act, the



balance of the net profit in a Co-operative year together with the undistributed net profit, if any, of the previous year may be utilised for all or any of the following purposes:--

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

(b) contributions 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 Endowment Act, 1890 (6 of 1890).

(2) (a) In any Co-operative society dealing in goods, rebate may be allowed in the total amount of payments made by a member during a Co-operative year towards his purchase of goods from the Co-operative society during that year.

(b) In case of Co-operative credit society, rebate on interest may be allowed to members making timely repayment.

(3) No dividend shall be paid--

(i) otherwise than out of profit certified by the audit officer to have been actually realised; or

(ii) if the audit officer reports that any asset is bad debt or doubtful debt and not adequately recovered:

Provided that this sub-section shall not be applicable in respect of dividend at fixed rate payable to preferential shareholders of a bank.

(4) No dividend shall be paid by any Co-operative society unless recommended by the board and approved in the general meeting and no bonus or rebate shall be allowed without approval of the board in a meeting:

Provided that this sub-section shall not be applicable in respect of dividend at fixed rate payable to preferential shareholders of a bank.

(5) A Co-operative society incurring loss or having accumulated loss on its account shall not make any ex-gratia payment or payment of bonus at a rate more than the minimum prescribed under the Payment of Bonus Act, 1965 (21 of 1965).

## **CHAPTER 8** SPECIAL PROVISIONS FOR HOUSING CO-OPERATIVE SOCIETIES

### **87. Eligibility for membership of housing Co-operative society :-**

(1) In addition to the requirements under section 63, an individual shall be eligible for membership of a housing Co-operative society,

if--

- (a) he is a citizen of India or a non-resident Indian;
- (b) he is not a member of any other housing Co-operative society in West Bengal;
- (c) he or any member of his family does not own any plot of bastu land, house or flat within the local limits of any municipal corporation or municipality or town or any gram Panchayat or any notified area authority where the housing Co-operative society is situated other than the one in relation to which the membership of a housing Co-operative society is applied for by him under this section;
- (d) he is a permanent resident of West Bengal or intends to reside in West Bengal permanently within a period of one year from the date of application;
- (e) he has genuine need for housing or additional accommodation from such Co-operative society; and
- (f) he has not entered into any contract with the housing Co-operative society in the matter of any work constructional or otherwise relating to a project of the Co-operative society.

(2) No person shall be admitted as a member or function as an organiser of a housing Co-operative society until he has made a declaration to be sworn by him before an Executive Magistrate or judicial Magistrate in accordance with the requirements specified in clauses (a) to (f) of sub-section (1):

Provided that if such declaration is subsequently found to be false in whole or in part, it shall be an offence punishable under this Act.

## **88. Type of housing Co-operative societies to be registered :-**

Housing Co-operative societies of the following types may be registered under section 16:--

- (a) a housing Co-operative society of which all the members eligible under section 87 have purchased a consolidated land for the purpose of construction of unit houses on separate plots which shall be allotted by the Co-operative society and the common services and amenities shall be provided by the Co-operative society to all members who may construct their houses either on their own or through the Co-operative:

Provided that the members opting for construction of houses on their own must undertake construction within three years from the date of possession, failing which he shall surrender the plot of land

in favour of the Co-operative society:

Provided further that if he does not surrender, it shall be deemed to have been surrendered by him and the price of land shall be refunded to him by the Co-operative society which may re-allot the plot to a new member;

(b) a housing Co-operative society of which all members eligible under section 87 have purchased a consolidated land for construction of flats which shall be allotted to each of them by the Co-operative society and maintenance, common services and amenities to all members will be provided by the Co-operative society;

(c) a housing Co-operative society of which all the members eligible under section 87 are the owners of the flats in any building constructed or under construction by any authority or agency and have entered into an agreement to form the Co-operative society for providing maintenance, common services and amenities to all members.

### **89. First general meeting of housing Co-operative society :-**

(1) Notwithstanding anything contained elsewhere in this Act, the first board of the housing Co-operative society shall, within three months from the date of registration under section 16, call the first general meeting of the housing Cooperative society for the purposes-

(a) electing directors of new board;

(b) placing a report on progress of work and other particulars relating to the project of the Co-operative housing society;

(c) apportionment of cost of land, house or flat, if applicable;

(d) placing a report of fund raised from the members, expenses incurred under various heads prior to, and after registration, any resignation and enrolment of members, latest estimate of the project cost and manner of payment towards cost of construction;

(e) appointing architects, contractors and valuers:

Provided such appointment shall be made after inviting application for the same through a daily newspaper, if applicable:

Provided further that no person acting as an architect or contractor or valuer shall act as any of the other two;

(f) revising allotment of plots of land or flats on the basis of draw of lots if there is any change in the sanctioned plan of the housing project, if applicable:

Provided that if the sanctioned plan is not received before the

general meeting, the revision of allotment, if any shall be considered in the next annual or half-yearly or special general meeting.

(2) If the election referred to in clause (a) of sub-section (1) is not held within the time specified therein, the Registrar notwithstanding anything contained elsewhere in this Act may, after such inquiry as he thinks fit and necessary and giving an opportunity of hearing to the directors of the Co-operative housing society, impose such penalty, as he may deem expedient, on the delinquent directors of the Co-operative housing society and may debar them from being further elected as directors for a period not exceeding two terms.

<sup>1</sup>[(3) \* \* \*]

1. Omitted by s. 14 of the W.B. Co-operative Societies (Amendment) Act, 2011 (West Ben. Act XIV of 2011), w.e.f. 6.2.2012, before omission it was as follows:

"(3) 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 costs thereof shall be apportioned amongst the members of the Co-operative housing society in such manner as may be prescribed".

## **90. Annual general meeting of housing Co-operative society**

:-

(1) In the annual general meeting of a housing Co-operative society held in term of section 29, in addition to agenda mentioned therein, whichever applicable the board shall submit a comprehensive report covering the following points wherever applicable:--

- (a) progress of implementation of project;
- (b) particulars of fund for the project received from individual members and cases of default, if any;
- (c) particulars of default in payment of service charges and maintenance, if any;
- (d) confirmation of cost of land, house or flats as per up to date estimate of escalation, as the case may be;
- (e) latest position as to drawal of loans from the West Bengal State Co-operative Housing Federation Limited, or any other financial institution and recovery of such loans;

- (f) cases of resignation, expulsion and death, if any, of members and fresh enrolment in consequential vacancies;
  - (g) cases of transfer, letting out, repair, addition or alternation of any house or flat of the member;
  - (h) cases of allotment and re-allotment of garage spaces in the area of the Co-operative society, if any;
  - (i) utilisation of common areas of the Co-operative society;
  - (j) dispute and court cases, if any, and consideration for institution or withdrawal of such cases; and
  - (k) regulation of common services in the Co-operative society.
- (2) The housing Co-operative society shall send copies of the notice and the resolutions of the annual, half-yearly and special general meetings along with audit report to the Registrar within one month from the date of holding such meeting.

### **91. 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) After a Co-operative housing society has been registered and till the possession of land, house or apartment in a 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.

### **92. Rights of members :-**

- (1) Any allotment (including re-allotment) of a plot of land or a house or apartment in a building made by a Co-operative housing society to its member in accordance with its by-laws 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 (1) of section 61 an instrument of transfer in accordance with the provisions of Transfer of Property Act, 1882 (4 of 1882) and the Registration Act, 1908 {16 of 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 building until he has made such payment as may be prescribed towards the cost of such plot or 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 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 the purpose whatsoever:

Provided further that notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force, an heir who is a nominee in respect of a share and interest in a flat or house or plot in a Co-operative housing society shall be eligible to be admitted as a member of the Co-operative housing society irrespective of the fact whether he owns any property by his own right or inheritance or by marriage provided he declares that he has requirement for such residential accommodation:

Provided also that membership of a person in a Co-operative housing society shall not cease if the member himself or any member of his family becomes owner of any land house or flat through inheritance and if he still continues to have genuine need of accommodation in the project of the society.

(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 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.

**93. Restrictions on letting out of house or flat by member in housing Co-operative society :-**

(1) No member of a housing Co-operative society shall, except under the following circumstances, be allowed to let out his house or flat allotted in his favour by the housing Co-operative society--

(a) where the member is transferred to his employer to any other place which is not agglomerated with the area of the housing Co-operative;

(b) where the member is under the condition of his service compelled to stay outside such as in office quarters;

(c) where the member is compelled to reside elsewhere due to reasons of his business or profession;

(d) where the member is compelled to reside elsewhere under such other circumstances as the board may approve.

(2) (a) No member of the housing Co-operative society shall allow any of his relatives besides the members of his family to reside in his house or flat without prior consent of the housing Co-operative society;

(b) No member of the housing Co-operative society shall let out his house or flat under any or more of the circumstances as enumerated in sub-section (1) and receive any income in respect of such house or flat without prior written consent of the housing Co-operative society.

(3) For obtaining written consent of the housing Co-operative society allowing any of his relatives to reside in terms of clause (a) of sub-section (2) or letting out in terms of clause (b) of sub-section (2), the member shall apply in duplicate to the Co-operative society with credentials of the relative or the person, to whom permission or letting out has been applied for, with evidence of circumstances under which he is compelled to reside outside his house or flat.

(4) The decision of the housing Co-operative society, on any application under sub-section (3), shall be communicated to the member within thirty days from the date of receipt to the application. If the housing Co-operative society refuses to give its written consent to such application, it shall record the reasons for such refusal and communicate the same to the member. If the

housing Co-operative society give its consent, a tripartite agreement amongst the member, tenant or relative and the Co-operative society embodying the terms and conditions of the proposed licence or lease, as the case may be, shall be executed and the Registrar shall be informed.

(5) (a) Where a housing Co-operative society refuses or fails to give the written consent under sub-section (4) and if the member intends to prefer an appeal to the Registrar against such refusal by or failure of the housing Co-operative society, he may prefer such appeal within thirty days from the date of communication of the refusal or within sixty days from the date of receipt of the application of the member by the housing Co-operative society but after expiry of thirty days from the said date in the case of failure of the housing Co-operative society to give such consent.

(b) The Registrar shall, after hearing the applicant and the housing Co-operative society, dispose of the appeal within thirty days from the date of preferring the appeal.

(6) If the members relative or the tenant has been misusing the house or flat occupied by him in a housing Co-operative society, in such a manner which is objectionable on the ground of security, moral decency and public order or has been habitually acting in a manner which, in the opinion of the housing Co-operative society, has caused serious nuisance to any other member, relative or tenant, the housing Co-operative society shall withdraw the written consent and shall ask the relative or the tenant to vacate the house or the flat within thirty days from the date of decision of the housing Co-operative society and the member shall take all steps for restoration of his house or flat from the relative or the tenant, as the case may be.

(7) In the event of letting out of a house or flat by the member, the housing Co-operative society may realise a tenancy charge at the rate of ten per cent of the monthly rent from the tenant per month.

## **CHAPTER 9** CO-OPERATIVE SERVICE COMMISSION, CO-OPERATIVE REGISTRATION COUNCIL AND CO-OPERATIVE ELECTION COMMISSION

### **94. Co-operative Service Commission :-**

(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 has held a post not below the rank of a Special Secretary to the Government of West Bengal to be the Chairman of the Commission;

(b) two persons from two different apex Co-operative societies, to be nominated by the State Government.

(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 re-appointed or re-nominated as a member of the Commission:

Provided further that if the office of the Chairman of the Commission becomes vacant or if he is by reason of absence or for any other reason unable to perform the duties of his office, those duties shall, until some person, appointed under this sub-section to the vacant office, has entered on the duties thereof or, as the case may be, until the Chairman has resumed his duties, be performed by one of the members of the Commission as decided by all the members of the Commission.

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

<sup>1</sup>[(3A) the State Government may remove the Chairman from his office on such grounds and in such manner as may be prescribed.]

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

(5) The Commission shall select persons for appointment to such posts other than the posts of Group D category and posts to be filled up by promotion in the Co-operative societies mentioned in the Fifth Schedule of this Act and in doing so shall follow the procedure and guidelines as may be prescribed:

Provided that any appointment made by a Co-operative society of the Fifth Schedule in this Act in violation of this clause shall be void.

(6) There shall be a Selection Committee of the Commission and such committee shall consist of--

(a) the Chairman and two other members of the Commission;

(b) a representative of the Co-operative society for which the selection of the employee is to be made;

(c) a subject matter expert where help of such expert is necessary:

Provided that the Chairman of the Commission will preside over the meeting of the Selection Committee and in his absence, one of the

members of the Commission as decided by themselves, shall preside over the meeting.

(7) The State Government shall appoint an Additional Register of Co-operative societies to be the Secretary of the Commission. The Secretary shall discharge his duties as per rules of business and guidelines framed by the Commission. He shall also act as the convener of the Selection Committee.

(8) The other terms and condition of service of the Chairman and the members of the Commission shall be such as may be decided by the State Government.

1. Ins. by s. 15 of the W.B. Co-operative Societies (Amendment) Act, 2011 (West Ben. Act XIV of 2011), w.e.f. 6.2.2012.

### **95. Co-operative Registration Council :-**

(1) The State Government shall constitute a Co-operative Registration Council (hereinafter referred to in this section as the Council) consisting of a Chairman and two other members.

(2) The State Government shall appoint a person who is or has been a member of the West Bengal Higher Judicial Service, as the Chairman of the Council. The Vice-Chairman or any director of the State Co-operative Union as nominated by it shall be a member of the Council and the other member shall be nominated by the State Government.

(3) The Chairman and the members of the Council shall hold office for a term of three years.

(4) The State Government shall appoint an officer not below the rank of Deputy Registrar of Co-operative society as the secretary of the Council. The Secretary shall perform his duties as may be assigned to him by the Council.

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

(6) The number of officers and other employees of the Council and conditions of service (including conduct, discipline and control) of such officers and employees shall be such as may be prescribed by the State Government.

### **96. Co-operative Election Commission :-**

(1) The State Government shall constitute a Co-operative Election Commission (hereinafter referred to as the Election Commission) and shall appoint a person to be the Co-operative Election

Commissioner of the Election Commission for the Superintendence, direction and control of election of all registered Co-operative societies in West Bengal.

(2) The Co-operative Election Commissioner of the Election Commission shall hold office for a term of three years.

(3) The Co-operative Election Commissioner of the Election Commission shall be a person who is or has been a member of Indian Administrative Service not below the rank of the Secretary or Special Secretary to the Government of West Bengal <sup>1</sup>[\*\*\*]

(4) The Election Commission shall hold election of all registered Co-operative societies in West Bengal in due time under the provisions of Chapter IV of this Act and shall take all measures in this regard as it may think fit in such manner as may be prescribed.

(5) The State Government shall appoint a Joint Registrar of Co-operative society to be the Secretary of the Election Commission and such other staff as may be required by the Election Commission in discharging its function.

(6) The salaries, allowances and the terms and conditions of service of the Co-operative Election Commissioner of the Election Commission shall be such as may be prescribed.

<sup>2</sup>[(6A) The State Government may remove the Co-operative Election Commissioner from his office on such grounds and in such manner as may be prescribed.]

(7) The number of officers and other employees of the Election Commission and the salaries, allowances, terms and conditions of service (including conduct, discipline and control) of such officers and employees shall be such as may be prescribed.

(8) Subject to the provisions of this Act, the Co-operative Election Commission shall make rules, regulations and procedure providing for--

(a) the conduct of election;

(b) the preparation of electoral roll for the election;

(c) fixing the date, place and manner of election;

(d) fixing the date and manner of publication and declaration of the results of the election;

(e) fixing the cost of holding of election of a Co-operative society and the manner of assessing and realization of such cost;

(f) symbols that may be used for election by the candidates.

(9) Until the Co-operative Election Commission is constituted and required regulations for conduction of election of Co-operative societies are made State Government may, by notification, notifies the date with effect from which the election of all the Co-operative

societies shall be conducted by the Co-operative Election Commission. The Co-operative societies shall be liable to comply with all the provisions of section 29 of this Act.

1. Omitted by s. 16(a) of the W.B. Co-operative Societies (Amendment) Act, 2011 (West Ben. Act XIV of 2011), w.e.f. 6.2.2012, before omission it was as follows: "and has served at least for two years either in Co-operative Department or in Co-operative Directorate".

2. Ins. by s. 16(A) of the WB Co-operative Societies (Amendment) Act, 2011 (West Ben. Act XIV of 2011), w.e.f. 6.2.2012.

## **CHAPTER 10 AUDIT, INSPECTION AND INQUIRY**

### **97. Audit of accounts of Co-operative society :-**

(1) (a) Every Co-operative society send to the Director of Co-operative 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, profit and loss account, a balance sheet and trading account where applicable in the Form as prescribed.

(b) Account of every Co-operative society shall at least in each Cooperative year, be audited at the expenses of the Co-operative society by the Director of Co-operative Audit or by a person appointed or authorised by him 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 which shall include the members of the Institute of Cost and Works Accountant of India constituted under the Cost and Works Accountant Act, 1959 and members of the Institute of Chartered Accountants of India both having certificate of practice issued by the respective institutions. Such panel of auditors shall be prepared either by the State Government or by the Director of Co-operative Audit with the approval of the State Government in the manner as may be prescribed, from the members of the abovenamed two institutions by obtaining applications from them and the panel shall remain valid for three years.

(2) (a) The Director of Co-operative Audit shall draw up an audit programme and issue appointment letters to the audit officer under intimation of such appointment to the Co-operative societies not later than 28th February of each Co-operative year In the case of running audit, the audit programme shall be drawn up and intimated two months before commencement of each Co-operative year. All apex Cooperative societies, Central Co-operative societies,

primary urban Co-operative Banks, primary Agriculture and Rural Development Banks and such other Co-operative societies whose working capital on the last day of the Co-operative year exceeds rupees two crore rupees, shall come under the purview of running audit.

(b) An audit officer shall complete the annual audit within nine months from the closing date of the relevant Co-operative year, failing which the audit officer shall explain in writing to the Director of Co-operative Audit the reasons for non-completion of audit.

(c) If the audit officer appointed from the panel of auditors does not take up the audit within two months from the closing date of the Co-operative year or of the date of his appointment and does not intimate sufficient reason for not taking up audit, his appointment shall stand cancelled and the Director of Co-operative Audit shall appoint another audit officer in his place:

Provided, that nothing in this clause shall apply to officers of the Directorate of Co-operative Audit of the State Government but the audit officer shall submit report in writing to the Director of Co-operative Audit stating the reasons for which he has failed to take up the audit within two months from the closing date of the Co-operative year; failing which it would be treated as negligence on the part of the audit officer.

(3) (a) The Director of Co-operative Audit shall not appoint the same audit officer to audit the accounts of the same Co-operative society for more than three successive Co-operative years.

(b) Unless otherwise directed by the State Government the accounts of the apex Co-operative society, Central Co-operative Banks, urban Co-operative Banks and the Agriculture and rural development banks shall be audited by the panel of auditors appointed by the State Government or by the Director of Co-operative Audit:

Provided that when the audit of the accounts of a Co-operative society is in arrear for three years or more, an audit officer may be entrusted by the Director of Co-operative Audit to audit the accounts of the Co-operative society for all such Co-operative years.

(4) (a) If at the time of audit, the audit officer finds the accounts of the Co-operative societies are not complete, he shall report the matter to the Director of Co-operative audit who shall cause the accounts to be completed at the expense of the Co-operative society by an accountant from the panel of accountants to be maintained in the range office. The panel shall be prepared by obtaining application from the persons who have qualification in

commerce and live in range area.

(b) A Co-operative society may, at its discretion, get its accounts prepared with the help of an accountant empanelled under clause (a) of this sub-section.

(5) The audited statement of accounts of a Co-operative society together with the auditors report shall be final and binding on the Co-operative society.

(6) An audit under clause (b) of sub-section (1) shall include annual audit, monthly running audit, concurrent audit and re-audit and other matters as may be prescribed.

Explanation I.--"annual audit" shall mean audit of accounts of Co-operative society annually for each Co-operative year.

Explanation II.--"running audit" shall mean audit of accounts of the Co-operative society within a co-operative year on monthly basis. The auditor shall issue running audit memo monthly pointing out the irregularities noticed and the board of the Co-operative society shall submit rectification report after considering the audit memo in its next meeting.

Explanation III.--"concurrent audit" shall mean audit of accounts of Co-operative society within a Co-operative year on daily basis. The auditor shall issue audit memo pointing out the errors and irregularities daily and the Co-operative society shall submit a rectification report within three days from the date of receipt of the audit memo.

Explanation IV.--"re-audit" of accounts of the Co-operative society shall mean fresh audit of accounts of the Co-operative society by a senior auditor appointed by the Director of the Co-operative Audit. The order for re-audit shall be issued by the Director of Co-operative Audit when a major discrepancy in the audited accounts of the Co-operative society in particular Co-operative year is noticed by him or when such re-audit is demanded by the Co-operative society on the basis of a resolution passed in its general meeting.

(7) Other types of audit are as follows:--

(a) "cost and performance audit" where in the opinion of the State Government, it is necessary in the public interest so to do in relation to any Co-operative society or a class of Co-operative societies for ensuring management thereof in accordance with sound business principles and 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 Co-operative

society or a class of Co-operative societies, as may be specified in the order, shall be conducted. On receipt of the order of the State Government, the Director of Co-operative Audit shall appoint under clause (a) of sub-section (2) a member or members of the Institute of Cost and Works Accountant from the panel of the auditors referred to in clause (b) of sub-section (1) to be the audit officer to conduct the cost audit or performance audit or both of such Co-operative society or a class of Co-operative societies and such audit officer shall complete the audit within the period specified in sub-section (2) and shall submit the report in accordance with the provisions of clause (b) of sub-section (1). The Director of Co-operative Audit may also appoint such audit officers for conducting cost audit or performance audit, or both, at the instance of any Co-operative society at the expenses to be borne by it.

(b) "internal audit"--the Co-operative society mentioned in clause (a) of sub-section (2) or any other Co-operative society may appoint internal auditor to get its accounts internally audited so that the board of director can get a report from the internal auditor in each month and take appropriate decision.

(8) The audit officer appointed from the panel of auditors shall be paid by the concerned Co-operative audit fees as may be prescribed.

(9) The Director of Co-operative Audit may, as and when exigency arises, depute an auditor or a group of auditors for examination of books, accounts and such other papers and for verification of cash balance. The report thereof shall be deemed to be an audit report for the purpose of taking further action.

(10) Every person, who is or has, any time within the period of 5 years from the date of audit, been an officer or employee or a member or a director of the Co-operative society shall furnish such information in regard to the transactions and working of the Co-operative society as the Director of Co-operative Audit or the person authorised by him may require.

(11) If during the course of audit of any Co-operative society the auditor is satisfied that some books of accounts or other documents contained any incriminatory evidence against the past or present officer or employee of the Co-operative society, the auditor shall immediately report the matter to the Director of Co-operative audit and with the previous permission of the director may seize the books of accounts and give a receipt thereof to the Co-operative society.

(12) The audit or accounts of a Co-operative society shall be

conducted in the manner and place as may be prescribed by the State Government. However, such Co-operative society shall give the audit officer all assistance necessary for completion of the audit and for this purpose, the audit officer shall prepare such statements and take such actions with regard to verification or examination of its accounts as he may require.

(13) A Co-operative society shall pay an audit fee calculated in such manner and at such rate as may be prescribed:

Provided that State Government may by notification exempt or remit such payment of audit fees for certain categories of Co-operative societies as may be prescribed.

(14) The Director of Co-operative audit may undertake audit of accounts of organisations other than Co-operative societies only with the prior approval of the State Government on such terms and conditions as may be prescribed or specified by the Government.

### **98. Audit report :-**

(1) After completion of audit of accounts of any Co-operative society, the audit officer shall submit his report to the Director of Co-operative Audit, to the Registrar of Co-operative societies and to the Co-operative society together with the audited statement of accounts within the period of thirty days from the date of completion of audit specified in sub-section (2) of section 97. The audit report shall be prepared and submitted in such manner and with 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 Director of Co-operative Audit a report of compliance within fortyfive days from the date of receipt of the audit report. The Co-operative society shall acknowledge the receipt of the audit report as soon as the same is delivered to it.

(3) Where the 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.

### **99. Inspection by Registrar or financing bank or apex Co-operative society or Central Co-operative society :-**



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

(a) by the Registrar or any persons authorised by the Registrar or by the State Government;

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

(c) by the apex Co-operative society or Central Co-operative society, if any, of which it is a member.

(2) The financing bank, the apex Co-operative society or the Central Co-operative society, as the case may be, may authorise its officer, to conduct inspection of the Co-operative society.

(3) An inspecting officer may inspect any book or document of the Co-operative society at its office during the office hours. He may, if require, interrogate any present or past office bearer, member, employee of the Co-operative society or any person having transaction with the Co-operative society for the purpose of inspection.

(4) (a) The inspecting officer may seize any book or document of the Co-operative society from its office in the manner as may be prescribed during the office hours or from any present or past office bearer, member or any person having possession of it on prior written requisition specifying therein the book or document to be seized and the reason therefor. A copy of the seizure list shall be handed over to the Co-operative society or the person from whom such book or documents has been seized. The seized books or documents shall be returned to the Co-operative societies or to the person, as the case may be, after meeting the purpose for which the books or documents were seized along with the inspection report.

(b) The inspecting officer shall report the fact of such seizure together with a copy of seizure list to the Registrar or the financing bank or the apex Co-operative society or the Central Co-operative society as the case may be, within the next working day.

(5) The Registrar or the financing bank or the apex Co-operative society or the Central Co-operative society as the case may be, shall fix a date within which the inspection shall be completed and the report or inspection shall be submitted by the inspecting officer to the concerned authority:

Provided that on an application by the inspecting officer stating the reasons for non-completion of inspection, the date fixed for completion of inspection and submission of report may be extended by the concerned authority.

(6) The Registrar or the financing bank or the apex Co-operative

society or the Central Co-operative society, as the case may be, shall direct that the report of inspection be communicated to the concerned Co-operative society within one month from the date of receipt of the said report. The Co-operative society shall submit rectification and compliance report, if any, within sixty days from the date of receipt of such inspection report to the concerned authority, failing which it will tantamount to contravention of the provisions of this Act.

**100. Inquiry by Registrar :-**

(1) The Registrar may, at any time of his own motion, hold by himself or by any person authorised by him an inquiry into the affairs of any Co-operative society.

(2) An inquiry under sub-section (1) may also be held on the application of--

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

(b) one-third of the director of the board or one-tenth of the delegates or representatives of the Co-operative societies;

(c) one-tenth of the members of the Co-operative societies 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 cost, if any, as the Registrar may direct;

(d) the creditor 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:

Provided that, the Registrar may, before initiating any action for inquiry, satisfy himself whether the signatures of the applicants are genuine and whether claim of the applicants is supported by proper documents.

(3) The inquiring officer may examine any book or document of the Co-operative society and interrogate any past or present office bearer, member, employee of the Co-operative society and any other person having transaction with the Co-operative society.

(4) The inquiring officer may seize any book or document of the Co-operative society from its office in the manner as may be prescribed, during office hours or from any past or present office bearer and member of the Co-operative society or from any person having possession of it on prior written requisition specifying therein the books and documents to be seized and the reasons therefor:

Provided that the inquiring officer shall report the fact of such seizure to the Registrar together with a copy of the seizure list within the next working day and the copy of the seizure list shall also be handed over to the Co-operative society or the person from whom the books and documents have been seized.

(5) The Registrar shall fix the date within which the inquiry shall be completed and the report of inquiry shall be submitted to him by the inquiring officer:

Provided that on an application by the inquiring officer stating the reasons for non-completion of inquiry, the date fixed for completion of inquiry and submission of report may be extended by the Registrar.

(6) The Registrar shall communicate the report of inquiry held under this section to the Co-operative society and the applicant.

(7) The Registrar upon examination of the report of inquiry is of the opinion that there has been specific contravention of some provisions of this Act, he shall, after giving parties an opportunity of being heard, issue directions to the Co-operative society, any past or present member or office bearer of the Co-operative society, non-compliance of which shall constitute an offence.

### **101. Cost of inspection of 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 99 or section 100, 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 member (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 STATEMENT OF DISPUTE**

### **102. Disputes to be filed before Registrar :-**

(1) Any dispute concerning the management or business or affairs of a Co-operative society other than the dispute relating to election

in a Co-operative society as and when such election is conducted by the Co-operative Election Commission and disciplinary action taken by Co-operative society against its paid employees regarding the terms and conditions of the service shall be filed before the Registrar for settlement if it arises--

(a) among members, past members and persons claiming through members and deceased members or then sureties; or

(b) between member, past member or a person claiming through a member, past member or deceased member representing through heirs or legal representatives and the Co-operative society, its board or any officer, agent or employees of the Co-operative society or liquidator, past or present; or

(c) between the Co-operative society or its board and any past board, any officer, agent or employee or any past officer, past agent; or past employee or the nominee, heirs or legal representatives of any deceased officer or deceased employee of the Co-operative society; or

(d) between two Co-operative society or between a Co-operative society and a liquidator of another Co-operative or between liquidator of two different Co-operative or between a Co-operative society and any person having transaction with it or between a Co-operative society and its financing bank.

(2) Any dispute mentioned in sub-section (1) other than a dispute relating to recovery of money shall be filed before the Registrar within three months from the date on which the cause of action arises.

(3) Notwithstanding anything contained in this section or in any other law for the time being in force, the Registrar may admit any dispute after the expiry of the period of limitation provided in sub-section (2), if the applicant can show sufficient cause for not filing the dispute within such period of limitation and the dispute so admitted shall not be barred by limitation..

(4) Any Civil court or any consumers Dispute Redressal Forum shall not have any jurisdiction to try any dispute as mentioned in sub-section (1).

(5) Any dispute to be filed before the Registrar shall be made in writing to be called the plaint and it shall be filed in such manner and form as may be prescribed.

### **103. Settlement of Disputes :-**

(1) The State Government shall constitute a board of arbitrators

consisting of a chief arbitrator of the rank of Additional Registrar of Co-operative Societies and 10 other Arbitrators--five from among the officers of the Department of Co-operation of that Government and five from among the distinguished Co-operators of this State.

(2) A dispute under section 102 relating to all apex Co-operative societies, all Central Co-operative societies and all housing Co-operative societies in the Kolkata and Metropolitan Area as defined in the Kolkata Metropolitan Development Authority Act, 1972 (West Ben. Act XI of 1972) shall be filed before the Registrar who shall after condoning the delay, if any, and admitting the dispute, forthwith refer it for decision to the board of arbitrators as constituted under sub-section (1) of this section. The chief arbitrator of the board may dispose it of himself or transfer it to any arbitrator or arbitrators for disposal.

(3) A dispute relating to any Co-operative society other than those mentioned in sub-section (2) shall be filed before the officer authorised to exercise the powers of Registrar, who may--

(a) decide the dispute himself as an arbitrator; or

(b) appoint one arbitrator or a forum of arbitrators for disposal of the dispute.

(4) The Registrar or an arbitrator or the board of arbitrators or the forum of arbitrators, as the case may be: may on the application of any party to a dispute referred under sub-sections (2) and (3) and on such terms as he or it thinks fit, make, after giving the parties an opportunity of being heard, such interlocutory order as he or it considers necessary for preservation of any property or right which is the subject matter of the dispute.

(5) (a) A dispute filed before the Registrar under sub-section (2) and before the officer authorised to exercise the power of Registrar under sub-section (3) shall be decided within six months from the date of receipt thereof by the arbitrator or the board of arbitrators or the forum of arbitrators, as the case may be.

(b) If the dispute is not decided within the period specified in clause (a), the arbitrator, the board of arbitrators or the forum of arbitrators, as the case may be, shall submit a report to the Registrar stating reasons for such failure and applying for further period to be specified by him or it at least fifteen days before the expiry of the period and the Registrar may allow further time not exceeding six months for disposal of the dispute:

Provided that where the dispute is being decided by the Registrar, he shall record the reasons in writing for extension of the period for disposal of dispute not exceeding six months.

(c) The dispute shall be decided within the time as extended under clause (b). If the dispute is not decided within the period of twelve months, the arbitrator, the board of arbitrators, or the forum of arbitrators, as the case may be, shall submit report stating reason with the case record before the appointing authority for appropriate orders.

(6) In the case of a dispute relating to recovery of money, the provisions of the section shall apply notwithstanding that any party thereto is punishable for an offence under any law for the time being in force.

(7) All such disputes shall be disposed off following the procedure and the manner as may be prescribed.

#### **104. Appointment of forum of arbitrators :-**

(1) When the Registrar under sub-section (3) of section 103 decides to refer a dispute to a forum of arbitrators, he shall--

(i) call upon each of the parties to nominate one person as arbitrator within 15 days or such time as he may direct and where a party consists of more than one person, such persons shall jointly make only one nomination; and

(ii) nominate the third arbitrator who shall act as its Chairman.

(2) If a party fails to make a nomination within the time as under clause (i) of sub-section (1), the Registrar may himself make the nomination.

(3) Where three arbitrators are appointed, the opinion of the majority shall prevail.

#### **105. Force and effect of certain award :-**

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 DISSOLUTION OF CO-OPERATIVE SOCIETY**

#### **106. Dissolution of Co-operative society by Registrar on basis of report of inspection, inquiry etc :-**

(1) If on examination of a report of inspection under section 99 or a report of inquiry under section 100 or an audit report under section 98, the Registrar is of the opinion that the Co-operative society should be dissolved, he shall give a notice containing grounds for

dissolution of the Co-operative society to its Chairman and Secretary requiring them to reply within forty-five days from the date of receipt thereof. A copy of the notice shall be sent to the federal Co-operative society and the financing bank, if any, for sending their comments to the Registrar within forty-five days from the date of receipt thereof.

(2) The Chairman or the Secretary of the Co-operative society shall call a general meeting of the members to consider whether any consent to such dissolution, as proposed in the notice under sub-section (1), shall be given or not. The Chairman or the Secretary shall send a reply within the period as mentioned in sub-section (1).

(3) If after consideration of the reply of the Co-operative society and comments of the federal Co-operative society and the financing bank, if any, or after expiry of the period of forty-five days as mentioned in sub-section (1), the Registrar is still of the opinion that the Co-operative society should be dissolved, he may by order direct it to be dissolved and may appoint a liquidator to dissolve it: Provided that the Registrar shall not, in the case of the State Co-operative Bank or West Bengal Co-operative Agriculture and Rural Development Bank or Central Co-operative Bank or Primary Co-operative Bank, make any order without prior consultation with the Reserve Bank of India or the National Bank for Agriculture and Rural Development Bank or State Co-operative Bank or the West Bengal Co-operative Agriculture and Rural Development Bank or the Central Co-operative Bank, as the case may be.

**107. Dissolution of Co-operative society by Registrar at instance of board or its members :-**

(1) If the board of the Co-operative society decides for any specific reason that it should be dissolved, the board shall cause a notice for holding a general meeting with a specific agenda as to dissolution to be sent to each member or delegate or representative for the purpose of authorising dissolution of the Co-operative society and such notice shall contain the following items:--

- (a) details of assets and liabilities of the Co-operative society;
- (b) details of claims of the creditors; and
- (c) details of shares, loans, deposit and obligation of all members and the number of members.

(2) When the members approved dissolution by special resolution of two-thirds of members present and voting, the board shall send

the copies of the notice and special resolution to the Registrar, the federal Co-operative society and the financing bank, if any, within thirty days from the date of adoption of special resolution.

(3) The federal Co-operative society and financing bank may send their comments on the matter of dissolution of the Co-operative society to the Registrar within fifteen days from the date of receipt of the reference from the Co-operative society under sub-section (2).

(4) If after examination of the authorisation of the Co-operative society and the comments of the federal Co-operative society and the financing bank, if received or after expiry of the period mentioned in sub-section (3), the Registrar is of the opinion that the Co-operative society should be dissolved, he may by order direct it to be dissolved within ninety days from the date of receipt of authorisation from the Co-operative society and may appoint a liquidator to dissolve it:

Provided that the Registrar for forming his opinion may cause an inquiry to be made under section 100.

(5) The Registrar on an application made by not less than two-thirds of the total members of any Co-operative society for its dissolution may direct the board of the Co-operative society to take steps under sub-section (1) and sub-section (2). If the board fails to comply with the direction within forty-five days from the date of receipt thereof the Registrar may cause an inquiry under section 100 and proceed under Chapter XII.

### **108. Dissolution of Co-operative society by Registrar of his own motion :-**

The Registrar of his own motion after giving thirty days notice by order direct dissolution of a Co-operative society on one or more of the following grounds:--

- (a) where the Co-operative society has not commenced working within twenty four months from the date of its registration; or
  - (b) where the Co-operative society has not carried on business or ceased to function for two consecutive years; or
  - (c) where the Co-operative society has obtained its registration by mistake or fraud; or
  - (d) where the Co-operative society has lost the minimum number of members provided in section 16 for the purpose of registration:
- Provided that where there is a provision under the by-laws to make good the deficit in the minimum number, this ground is not



applicable.

**109. Order of dissolution to be published and communicated :-**

When the Registrar passes an order under section 106 or 108 directing dissolution of a Co-operative society and appointing a liquidator to dissolve it, he shall:--

- (a) publish the order in such manner in the focal newspaper as he thinks fit;
- (b) communicate the order to the Co-operative society by registered post with acknowledgement due or through a messenger;
- (c) send a copy of the order to the federal Co-operative society and the financing bank, if any, by registered post with acknowledgement due or through a messenger.

**110. Appointment or removal of liquidator :-**

(1) The Registrar shall, in consultation with the federal Co-operative society, if any, appoint one or more than one liquidator from amongst:--

- (a) officers of Government of West Bengal preferably retired officers of Co-operation Department or Co-operation Directorate and Co-operative Audit Directorate and the financing bank, if any;
- (b) retired officers of apex Co-operative society and Central Co-operative society;
- (c) chartered accountants, cost accountants and chartered engineers:

Provided that it shall not be necessary to appoint any liquidator for dissolution of a Co-operative society which has not commenced working. In such case, the Registrar, being satisfied that the Co-operative society has no assets and liabilities may issue a certificate of dissolution and cancel its registration.

(2) (a) The Registrar may remove the liquidator on the ground of negligence or misconduct or for any other sufficient ground after giving him an opportunity of being heard and appoint another person in his place.

(b) On the death or resignation of the liquidator, the Registrar may also appoint another person in his place.

(3) The appointment and removal of a liquidator shall be published in the locality in such manner as the Registrar may think fit.

### **111. Powers and obligation of liquidator :-**

(1) On the appointment of a liquidator under section 110, 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 subject to general superintendence and control of the Registrar. The liquidator shall immediately take all necessary steps to take possession of, and to prevent any loss or deterioration to, all assets, properties, effects and actionable claims of the Co-operative society or to which the Co-operative society is entitled.

(2) (a) Immediately after the date on which the order directing the dissolution of the Co-operative society takes effect, liquidator shall publish a notice in such Form as may be prescribed requiring all claims against the Cooperative society to be submitted to him within one month of the publication of the notice.

(b) Publication of notice shall be made by hanging it in the offices of the Co-operative society, the concerned Gram Panchayat, municipality, Panchayat Samity and Zilla Parishad and in the local daily or weekly newspaper if there be any. In case of Co-operative society having an assets of more than ten lakh rupees, publication of the notice shall, in addition to the above manner, be made in one leading Bengali daily newspaper.

(3) Notwithstanding anything contained elsewhere in this Act or in the by-laws of the Co-operative society, the services of all employees of the Co-operative society, which has been ordered to be dissolved, shall be deemed to have been terminated with effect from the date on which the order directing dissolution of the Co-operative society takes effect:

Provided that liquidator may, subject to the approval of the Registrar, re-appoint any such employees in connection with the work of liquidation on such terms and conditions and for such period as he deems fit and such re-appointed employee shall be paid his remuneration out of the fund of the Co-operative society.

(4) (a) The liquidator shall open a savings bank account with the bank where the Co-operative society had its account or with any other bank as the Registrar may approve and authorise in the name of the "Liquidator of..... the Co-operative society". No money shall be invested in any other manner except by way of fixed deposit with any Co-operative society or nationalised bank without prior approval of the Registrar.

(b) All moneys received in the proceedings of dissolution of the Co-operative society shall be deposited into such account within the

next working day following the date of receipt of moneys.

(c) All payments over one hundred rupees out of the aforesaid account shall be made by the liquidator by crossed or account payee cheque. The receipts and payments shall be entered in the cash book which shall be signed by the liquidator on the date of receipts or payments.

(5) (a) The liquidator shall maintain separate list of members, debtors and creditors having claims against the Co-operative society. Debts due to the Co-operative society by a member including a past member or the estates, nominee, heirs or legal representatives of a deceased person and its employees shall be determined by the liquidator.

(b) The liquidator may at any time call meetings of the members or the creditors or joint meetings of the members and creditors and such meetings may be called, held and conducted at such time and place and in such manner as he thinks fit.

(6) For recovery of dues of the Co-operative society, the liquidator shall immediately issue notice to the debtors for payment of the debt with interest at usual rates. If such debts are not repaid within six months, the liquidator shall apply to the certificate officer for recovery under the Bengal Public Demand Recovery Act, 1913 (Ben. Act III of 1913).

(7) For disposal of movable and immovable properties of the Co-operative society where total asset is worth two lakh rupees and above, the Registrar may constitute a disposal committee consisting of the liquidator, an officer of the financing bank, an officer of federal Co-operative society and a Government officer authorised by him. Absence of any of the members of the disposal committee shall not invalidate the proceedings of the disposal of properties.

(8) A notice shall be issued by the liquidator within three months from the date when the order directing dissolution takes effect, asking the creditors of the Co-operative society to submit claims against it with proper and relevant documents within two months of the date of notice. He shall prepare a final list of creditors with details of claims according to priority as mentioned in section 112.

(9) Movable properties and actionable claims of the Co-operative society shall be sold to the highest bidder in public auction or to the person who has quoted highest price. For disposal of the immovable properties, the liquidator shall collect the prevailing market rate from the office of the Sub-Registrar of the area and after fixing a minimum price, he shall invite quotations and sell such properties to the person who has quoted highest price. In

both the cases of movable and immovable properties, the disposal committee shall select the person who has offered the highest price:

Provided that no liquidator or his relatives shall purchase directly or indirectly any part of the assets of the Co-operative society.

(10) The liquidator shall submit to the Registrar at least once in every six months period after his appointment or more often as the Registrar may require financial statement of the Co-operative society.

(11) The Director of Co-operative Audit shall cause accounts prepared by the liquidator to be audited and for the purpose of such audit, the liquidator shall furnish the audit officer with such documents, voucher and information as may be necessary. Audit fee shall be paid at reduced rate. The Director of Co-operative Audit may, in his discretion, remit such fee in absence of adequate fund of the Co-operative society.

(12) If, after adequate steps taken by the liquidator, any debt to the Co-operative society is found not realizable, the Registrar on recommendation of the liquidator may declare the debt as bad debt and non-realizable. Such debt shall be deleted from the assets of the Co-operative society.

(13) The liquidator shall have power to give directions to any present or past office bearer, member, employee or any person possessing books, documents and assets of the Co-operative society for returning the same to him within the period to be fixed by him. He may, for the purpose of dissolution, interrogate any of the abovementioned persons or any person having transaction with the Co-operative society.

(14) The liquidator shall, subject to general control and direction of the Registrar so far as it necessary for dissolution of the Co-operative society and for carrying on its affairs have the following powers or such powers as may be prescribed:

- (a) to do all acts and execute all documents in the name and on behalf of the Co-operative society;
- (b) to institute and defend suits and other legal proceedings;
- (c) to borrow money, if required, on the security of the assets of the Co-operative society;
- (d) to retain at the expenses of the Co-operative society any lawyer, accountant, engineer, appraiser and other professional advisor whose services are required;
- (e) to carry on business of the Co-operative society as required for liquidation;

- (f) to calculate the cost of liquidation and determine the persons by whom and proportion by which, they are to be borne;
- (g) 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;
- (h) to determine from time to time the contribution to be made to the assets of the Co-operative society by members including past members or estates, nominees, heirs or legal representatives of the deceased members or by the past or present officers of the Co-operative society or by the estate, nominees, heirs and legal representatives of the deceased officer;
- (i) to pay claims against the Co-operative society including interest up to the date of the order for its dissolution according to the priority in full or rateably as the assets of the Co-operative society permit;
- (j) to give such directions as may be appear to him to be necessary in regard to realization, or distribution of assets of the Co-operative society;
- (k) to take with the prior approval of the Registrar such action as may be necessary for such reconstruction, if there is any reason to believe that the Co-operative society can be reconstructed.

(15) In the event of an order of dissolution being set aside on appeal or a subsequent order of the Registrar for cancellation of the order of dissolution, the liquidator shall deliver possession of all estates, properties, effects, actionable claims, books, records and other documents 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 actions or proceeding shall be pursued and continued by the officers of the Co-operative society:

### **112. 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.

### **113. Cancellation of order of dissolution :-**

(1) If the Registrar on examination of any representation of at least one-third of the total number of members or on his own motion, is

of the opinion that a Co-operative society which has been directed to be dissolved under this Chapter should continue to function, he may with prior approval of the State Government, cancel such order of dissolution.

(2) In the event of cancellation of the order of dissolution, the Registrar shall constitute a board of directors from amongst the members of the Co-operative society to take charge from its liquidators and the said board shall convene a general meeting of the members for reconstitution of the board.

### **CHAPTER 13 SPECIAL PROVISIONS FOR STATE CO-OPERATIVE BANK, CO-OPERATIVE AGRICULTURE AND RURAL DEVELOPMENT BANK, CENTRAL CO-OPERATIVE BANK, PRIMARY CO-OPERATIVE CREDIT SOCIETY, APEX HOUSING CO-OPERATIVE SOCIETY AND URBAN CO-OPERATIVE BANK**

#### **114. Payment of prior debts of mortgagor :-**

(1) When any property is mortgaged to a Co-operative agriculture and rural development bank, financing bank or a primary agricultural credit Co-operative society for payment of a prior debt or part thereof of a mortgagor, the Co-operative agriculture and rural development bank, financing bank or the primary agricultural credit Co-operative society shall, notwithstanding the provisions of sections 83 and 84 of the Transfer of Property Act, 1882 (4 of 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 agriculture and rural development bank, financing bank or the primary agricultural credit Co-operative society. 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 agriculture and rural development bank, financing bank or a primary agricultural credit Co-operative society 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 sub-section (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.

### **115. Procedure for dealing with applications for loan :-**

(1) When application for loan is made to a Co-operative agriculture and rural development bank for any approved purpose as may be prescribed, the bank shall, after due inquiry as to the title of the chargeable assets offered as security of loan:

(a) make such further inquiry in connection with the application for loan as it thinks necessary;

(b) value the land according to the instructions issued in this connection by the State Co-operative agriculture and rural development bank from time to time;

(c) estimate the repaying capacity of the applicant for loan; and

(d) examine the feasibility and utility of the purpose and dispose of the application within a period of two months from the date of receipt of the same.

(2) When an application for loan is rejected, the reasons therefore shall be communicated by the bank to the applicant within seven days of its decision and where a loan is sanctioned either wholly or in part, the bank shall simultaneously lay down the terms and conditions subject to which such loan has been sanctioned.

### **116. 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 agriculture and rural development bank, financing bank or a primary agricultural credit Co-operative society without the concurrence of the said bank:

Provided that the said bank shall not give its concurrence without the previous sanction of the financing bank, if any:

Provided further that the financing bank shall, if it accords sanction, send a copy thereof to the trustee, if any, appointed under section 45.

### **117. 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 Co-operative agriculture and rural development bank, financing bank or a primary agricultural credit Cooperative society

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 said bank preference over the creditors of the mortgagor.

**118. Priority of mortgage over certain loans :-**

A mortgage executed in favour of Co-operative agriculture and rural development bank, financing bank or a primary agricultural credit Co-operative society before or after commencement of this Act shall have priority over loans of the State Government under Land Improvement Loans Act, 1883 (19 of 1883) or the Agriculturists Loan Act, 1884 (12 of 1884) granted after the execution of the mortgage and over all other registered or un-registered transfers effected on any account.

**119. Constructive borrowings :-**

(1) Where a credit Co-operative society has granted a loan for improvement of any land to any person who in its opinion, 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 pay to the credit Co-operative society such loan as if that other person had executed the Gehan under section 55 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 sole or otherwise.

(2) The Gehan executed or deemed to have been executed in favour of, and all other assets charged to, a financing bank or a Primary Agricultural Credit Co-operative society shall be construed to have been charged or deemed to have been charged by the said Co-operative society to the central Co-operative bank or the financing bank, as the case may be, 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 Co-operative agriculture and rural development bank, shall be construed to have been charged by the said bank to the West Bengal State Co-operative agriculture and rural 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 the credit Co-operative grants loan to its member belonging to scheduled castes or scheduled tribes, or to any other member having restricted rights of alienation of any immovable property, such member may create Gehan on such immovable property in favour of the credit Co-operative society as security for such loan. If any such member defaults in making repayment of loan, the credit Co-operative 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 castes or tribes as the defaulting member belongs to and appropriate the next receipts from the lessee in repayment of loan and the defaulting member shall not be entitled to recover possession of such immovable property until loan has been repaid in full.

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

### **120. 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 Co-operative agriculture and rural development bank, central Co-operative bank or financing bank or primary agricultural credit Co-operative society has remained unpaid for more than one month from the date on which it fell due, the co-operative agriculture and rural development bank, Central co-operative bank, the financing bank or the primary agricultural credit co-operative society, as the case may be, may, in addition to any other remedy available to it, apply to the Registrar for recovery of such sum by distrain and sale of not more than half of the produce of the mortgaged land, the produced stored in the house and its premises and the standing crops thereon by distrain and sale of the movable property that has been acquired by the mortgagor with the amount of the loan advanced to him.

(2) Notwithstanding anything contained in the Transfer of Property Act, 1882 (4 of 1882) and subject to provisions of this Act, the Registrar may on receipt of such application, signed and verified by

the secretary or the manager or any other person duly authorised by the board in this behalf setting forth full particulars of the property required to be distrained and on being satisfied about correctness of such particulars, appoint a distrainer.

### **121. Application of the proceeds of distraint and sale :-**

The proceeds of any distraint and sale under section 120 shall be applied as follows:

(1) First, there shall be paid to the Co-operative agriculture and rural 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.

### **122. Power to bring mortgaged property to sale and deliver possession in respect of property sold without intervention of court :-**

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 agriculture and rural development bank or a Central Co-operative bank or a primary co-operative bank or an apex housing society, or primary housing society or financing bank or primary agricultural credit co-operative society by a mortgage deed in favour of the bank or the society, as the case may, 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 mortgage property to sale and to deliver possession of the property sold to the purchaser without the intervention of any court.

### **123. Right to purchase and sell under this Chapter :-**

(1) The bank or the Co-operative society; as the case may be, shall be competent to purchase any mortgaged property sold under this chapter, but such property shall be disposed of by such bank or the Co-operative society, as the case may be, by sale within one year from the date of purchase or where a trustee has been appointed, the bank or the Co-operative society, as the case may be, shall dispose of the property by public auction unless otherwise directed by the trustee, on the date not later than one year from the date of purchase.

(2) The sale shall be advertised at least a month before the date of sale by--

(a) describing the property with full details in the local newspaper;  
(b) proclamation by beat of drum in the locality where it is situate and

(c) publication of the sale notice in the office of--

(i) block level and land reforms officer of the area concerned;

(ii) the collector of the district;

(iii) the block development officer if the area concerned; and

(iv) panchayat or municipality of the area in which the property is situate.

(3) The provisions of sections 14M and 14Q of the West Bengal Land Reforms Act, 1955 (West Ben. Act X of 1956) shall not apply to land acquired by the bank or Co-operative society as the raiyat by virtue of purchase under sub-section (1).

#### **124. Title of purchaser not to be questioned :-**

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

#### **125. 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 (4 of 1882) and determine his remuneration in the manner as may be prescribed.

#### **126. Power of Co-operative bank or the Co-operative societies etc., if mortgaged property is destroyed or security**

### **becomes insufficient :-**

(1) If any property mortgaged under this chapter is destroyed wholly or in part of, 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 agriculture and rural development bank or the State C<sup>^</sup> operative and rural development bank or the Central Co-operative bank or the apex housing society or the housing co-operative society or the financing bank or the primary agricultural credit co-operative 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.

### **127. Power of trustee or West Bengal State Co-operative and rural development bank to direct or to take certain action :-**

A trustee and, in the case of a member of Co-operative society, the West Bengal State agriculture and rural development bank may, in accordance with the provisions of this chapter and by order, direct a Co-operative agriculture and rural 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 agriculture and rural development bank fails to take such action within the specified period, the trustee or the West Bengal State Co-operative agriculture and rural development bank, as the case may be, may take such action and the provisions of this Act and the by-laws shall apply in respect thereto, as if all references to the Co-operative agriculture and rural development bank were references to the trustee or West Bengal State Co-operative agriculture and rural development bank, as the case may be.

### **128. Officers of agriculture and rural 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 the bank or the Co-operative 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 any interest in such property on his personal account.

### **129. Exemption from personal attendance :-**

(1) Notwithstanding anything contained in the Registration Act, 1908 (16 of 1908), it shall not be necessary for a trustee or for any officer of a Co-operative agriculture and rural development bank or Co-operative bank or primary credit Co-operative society or West Bengal State Co-operative agriculture and rural development bank or any apex Co-operative society or any co-operative society to appear in person or by agent at any registration office in any proceeding connected with 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.

### **130. Power to Co-operative agriculture and rural development bank etc. to receive money notwithstanding transfer of mortgage deed to West Bengal State Co-operative agriculture and rural development bank etc :-**

(1) Where a Co-operative agriculture and rural development bank or a housing Co-operative society or a primary Co-operative credit society including primary agricultural credit Co-operative society advances money on a mortgage, hypothecation, Gehan or any other charge out of the funds borrowed wholly or in part from the West Bengal State Co-operative agriculture and rural development bank or the apex housing Co-operative 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 society or the primary co-operative credit society including primary agricultural credit co-operative society to the West Bengal State

Co-operative Agriculture and Rural Development Bank or 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 West Bengal State Co-operative agriculture and rural development bank or apex housing society or the financing bank, as the case may be, or shall be deemed to have been assigned to the trustee.

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

(a) all money 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 provisions of this Act 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 agriculture and rural development bank, the primary housing co-operative society or the primary credit Co-operative society including primary agricultural credit co-operative society, as the case may be, and such payment shall be valid as if the mortgage, hypothecation, Gehan or any other charge had not been so transferred or assigned; and

(b) the Co-operative agriculture and rural development bank, the primary housing Co-operative society or the primary credit Co-operative society including primary agricultural credit co-operative society, as the case may be, shall, in the absence of any such direction communicated to it, be entitled to sue on the mortgage, hypothecation, Gehan or any other charge.

**131. 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 agriculture and rural development bank or a financing bank or primary credit co-operative society including primary agricultural credit co-operative society, as the case may be, is called in question on the ground that it was executed by the manager of the 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 sub-clause (ii) of Explanation to clause (16) of section 4 shall be deemed to be a purpose binding

on the members (major or minor) of a joint Hindu family.

**132. Special provisions for Co-operative agriculture and rural development bank to apply to branches of West Bengal State Co-operative agriculture and rural development bank :-**

The special provisions for the Co-operative agriculture and rural development bank contained in this chapter shall apply, mutatis mutandis, to the branches of the West Bengal State Co-operative agriculture and rural development bank in so far as they perform the function and discharge the duties of a Co-operative bank.

**133. Provision of sections 126, 127 and 130 to apply to loans issued against Gehan :-**

The provisions of sections 126, 127 and 130 shall apply, mutatis mutandis, to loans issued against a Gehan of immovable property and hypothecation of assets credited with the help of loan.

**134. Special provisions for Urban Co-operative Bank :-**

- (1) Registration and administration of an Urban Co-operative Bank will be governed by this Act and the rules made thereunder.
- (2) Such bank will be regulated by the direction of the Reserve Bank of India and shall have the power to amend its by-laws.

**CHAPTER 13A SPECIAL PROVISIONS APPLICABLE TO THE CO-OPERATIVE CREDIT STRUCTURE ENTITIES**

**134A. Overriding effect :-**

134A. Overriding effect.--

<sup>1</sup>[CHAPTER XIII A

**SPECIAL PROVISIONS APPLICABLE TO THE CO-OPERATIVE CREDIT STRUCTURE ENTITIES**

Notwithstanding anything contrary or inconsistent contained in this Act or the rules framed thereunder or by-laws of any registered society or orders issued thereunder, the provisions of this Chapter shall have overriding effect.

1. Insertion of new Chapter XIII A by s. 2 of the West Bengal Co-operative Societies {Amendment} Act, 2010 (West Ben. Act XX of 2010), w.e.f. 18.1.2011.

### **134B. Definitions :-**

(1) In this Chapter unless the context otherwise requires,--

(a) "Co-operative Credit Structure Entity" includes the West Bengal State Co-operative Bank, a District Central Co-operative Bank, a Primary Agricultural Credit Co-operative Society, the West Bengal State Agricultural and Rural Development Bank, a Primary Co-operative Agricultural and Rural Development Bank;

(b) "National Bank" means the National Bank for Agricultural and Rural Development established under section 3 of the National Bank for Agricultural and Rural Development Act, 1981 (61 of 1981);

(c) "Primary Agricultural Credit Co-operative Society" includes a Farmers Service Co-operative Society, a Large-sized Multipurpose Cooperative Society and any other Co-operative Society primarily dealing with agricultural credit identified under revival package.

(2) All other words and expressions used in this Chapter but not defined shall have the same meaning respectively assigned to them in this Act.

### **134C. Special provisions applicable to the Co-operative Credit Structure Entities :-**

(1) The following provisions shall apply to the Co-operative Credit Structure Entities:--

(a) a depositor holding a minimum deposit of rupees five thousand or such minimum sum as may be specified by the Government for a continuous period of minimum two years in the Primary Agricultural Credit Co-operative Society preceding the date of notification of election in a Primary Agricultural Credit Co-operative Society, shall become a member of the society under sub-section (1) of section 63 by subscribing at least the minimum share capital specified in the by-laws and shall have full voting rights;

(b) an individual or group borrower shall have the right to become a member of a Primary Agricultural Credit Co-operative Society or Primary Co-operative Agricultural and Rural Development Bank under sub-section (1) of section 63.

(2) A Co-operative Credit Structure Entity shall have autonomy in all financial and internal administrative matters including the following areas:--

(a) interest rates on deposits and loans;

(b) borrowing and investments;



- (c) loan policies and individual loan decisions;
- (d) personnel policy, staffing, recruitment, posting and compensation to staff;
- ( e ) internal control systems, appointment of auditors and compensation for the audit:

Provided that in the case of Co-operative Credit Structure Entities other than the State Co-operative Agriculture and Rural Development Bank and Cooperative agriculture and rural development bank, the interest rates on deposits and loans shall be in conformity with the guidelines issued by the Reserve Bank of India:

Provided further that in the case of the state Co-operative agriculture and rural development bank and Co-operative agriculture and rural development banks, the interest rates on deposits and loans shall be in conformity with the guidelines issued by the National Bank.

(3) (a) The State Governments subscription to the equity share capital of a Co-operative Credit Structure Entity shall not exceed twenty-five per cent of its subscribed equity share capital and the State Government or the Cooperative Credit Structure Entity may reduce the State Governments subscription further at its choice.

(b) There shall be only one nominee of the State Government in the Board of the State Co-operative Bank or a Central Co-operative Bank or "West Bengal State Co-operative Agricultural and Rural Development Bank if the Government has subscribed to its share capital.

(4) A Co-operative Credit Structure Entity may affiliate or disaffiliate with a Federal Co-operative Society of its choice.

(5) A Co-operative Credit Structure Entity shall have the freedom of entry and exit at any tier and there shall be no mandatory restrictions of geographical boundaries for its operations.

(6) A Co-operative Society covered under this section may invest or deposit its funds in any financial institutions regulated by the Reserve Bank of India of its choice with a minimum net worth and on any other criteria as may be prescribed by the National Bank and not necessarily in the federal Co-operative Society to which it is affiliated.

(7) A Co-operative Society covered under this section may obtain loans from any financial institution regulated by the Reserve Bank of India and refinance from the National Bank or any other financing agency directly or through any Reserve Bank of Indias regulated financial institutions of its choice and not necessarily from

the Federal Co-operative Society to which it is affiliated.

(8) A Primary Agricultural Credit Co-operative Society or a Co-operative agriculture and rural development bank may pay dividend in accordance with the guidelines framed by the Registrar in consultation with the National Bank.

(9) There shall be no compulsion on contribution to any fund other than those required for improving the net worth or own funds of such societies covered under this section.

(10) No person shall be elected, nominated or co-opted or allowed to continue as a member of the Board of a Co-operative Credit Structure Entity, if he is--

(a) a person who represents a society other than a Primary Agricultural Credit Co-operative Society or a Co-operative agriculture and rural development bank on the Board of a Central Co-operative Bank, the State Co-operative Bank or the State Co-operative agriculture and rural development bank, if such society he represents has committed a default towards the payments of such Bank for a period exceeding ninety days;

(b) a person who committed a default towards the payments to a Primary Agricultural Credit Co-operative Society or a Co-operative agriculture and rural development bank, as the case may be, or represents a Primary Agricultural Credit Co-operative Society or a Co-operative agriculture and rural development bank on the Board of a Central Co-operative Bank or the State Co-operative Bank or the State Co-operative Agriculture and Rural Development Bank, if such society he represents has committed a default towards the payments of such bank for a period exceeding one year unless the default is cleared;

(c) a person, who represents a society whose Board is superseded.

(11) (a) The Board of the State Co-operative Bank or a Central Co-operative Bank shall be superseded only with the prior approval of the Reserve Bank of India.

(b) The Board of the State Co-operative agriculture and rural development bank shall be superseded only with the prior approval of the National Bank.

(c) The Board of a Primary Agricultural Credit Co-operative Society or a Co-operative agriculture and rural development bank shall be superseded by the Registrar only under the following conditions:--

(i) that a society incurs losses for three consecutive years; or

(ii) that serious financial irregularities or frauds have been identified; or

(iii) that there are judicial directives to this effect; or

(iv) there is perpetual lack of quorum.

(12) (a) The elections to the Board of a Co-operative Credit Structure Entity shall be conducted before the expiry of the term of the Board.

(b) The elections to the Board of a Co-operative Credit Structure Entity which has been superseded shall be conducted within two months from the date of its supersession:

Provided that in circumstances beyond control, the State Government may allow holding of such elections within a period not exceeding six months from the date of supersession.

(c) A member of the Board of a Primary Agricultural Credit Co-operative Society or a Co-operative agriculture and rural development bank which has been superseded under sub-clauses (i) and (ii) of clause (c) of sub-section (11) of this section shall not be entitled to contest in the election again for a period of five years after supersession.

(13) (a) The by-laws or any amendment to the by-laws of a Co-operative Credit Structure Entity shall be registered by the Registrar within thirty days from the date of receipt of the application.

(b) If the Registrar is satisfied that the proposed bye laws or the amendments to the by-laws are contrary to the provisions of this Act and the rules made thereunder, he shall reject the same duly recording his reasons thereon within thirty days from the date of receipt of the application.

(14) The prudential norms including Capital to Risk Weighted Assets Ratio shall be prescribed by the Registrar for all the Primary Agricultural Credit Co-operative Societies, the State Co-operative agriculture and rural development bank and Co-operative agriculture and rural development banks in consultation with the National Bank.

(15) (a) The Chief Executive Officer and the members of the Board of the State Co-operative Bank and Central Co-operative Banks shall fulfil the criteria stipulated by the Reserve Bank of India for the time being in force and such person who, in the opinion of the Reserve Bank of India or the National Bank does not fulfil the criteria stipulated by the Reserve Bank of India shall be removed on advice of the Reserve Bank of India or the National Bank.

(b) The Chief Executive Officer and the members of the Board of the State Co-operative agriculture and rural development bank shall fulfil the criteria stipulated by the National Bank for the time being in force and such person who, in the opinion of the National

Bank, does not fulfil the criteria stipulated by the National Bank shall be removed on advice of the National Bank.

(16) There shall be such number of professionals, having special knowledge or experience in such fields, as may be stipulated by the Reserve Bank of India on the Board of the State Co-operative Bank and Central Co-operative Banks and in case such number of professionals do not get elected, the Board of such State Co-operative Bank or the Central Co-operative Bank, as the case may be, shall co-opt such number of professionals with full voting rights.

(17) The accounts of the State Co-operative Bank, a Central Co-operative Bank and the State Co-operative agriculture and rural development bank shall be audited and certified by Chartered Accountants as defined in the Chartered Accountant Act, 1949 (38 of 1949) appointed by it from the panel approved by .. the National Bank.

(18) (a) The Director of Co-operative Audit shall ensure conduct of special audit of State Co-operative Bank or a Central Co-operative Bank or West Bengal State Co-operative Agricultural and Rural Development Bank if requested by the Reserve Bank of India in the manner and form stipulated by the Reserve Bank of India and also furnish the report to the Reserve Bank of India within the time stipulated.

(b) The Director of Co-operative Audit shall ensure conduct of special audit of the State Co-operative agriculture and rural development bank if requested by the National Bank in the manner and form stipulated by the National Bank and also furnish the report to the National Bank within the time stipulated.

(19) (a) The Registrar shall, within one month of being so advised by the Reserve Bank of India, ensure that Reserve Banks regulatory prescriptions in case of State Co-operative Bank and Central Co-operative Banks including recommendation for supersession of the Board and winding up of the State Cooperative Bank and Central Co-operative Banks are implemented.

(b) The Registrar shall, within one month of being so advised by the Reserve Bank of India for winding up or supersession, ensure that the liquidator or the Administrator, as the case may be, is appointed.

(c) The Registrar shall, on his own motion or within one month of being so advised by the Reserve Bank of India or the National Bank, ensure removal of Chief Executive Officer of the State Co-operative Bank or a Central Cooperative Bank who does not fulfil eligibility criteria specified by the Reserve Bank of India.

(d) The Registrar shall, within one month on being advised so by the Reserve Bank of India or the National Bank, ensure removal of any person elected or co-opted as a member of the Board under sub-section (16) without having the requisite knowledge or experience as stipulated by the Reserve Bank of India.

(20) No Primary Agricultural Credit Co-operative Society or its federation or association except those which are permitted to act as a bank under the Banking Regulation Act, 1949 (10 of 1949) shall be registered with the word "bank" or any other derivative of the word "bank" in its registered name or shall use the same as a part of its name:

Provided that where any Primary Agricultural Credit Co-operative Society or its federation or association, except those which are permitted to act as a bank under the Banking Regulation Act, 1949 (10 of 1949) has been registered or using the same as a part of its name before the commencement of the West Bengal Co-operative Societies (Amendment) Act, 2010 with the word "bank" or any of its derivatives in its registered name, the State Government will ensure that the change of name, so as to remove the word "bank", is done in case of such societies in a phased manner.

(21) No Co-operative Credit Structure Entity shall be exempted by the State Government from the application of the provisions of this Chapter without the prior approval of the Reserve Bank of India or the National Bank.

(22) The State Government or the Registrar shall not do anything or take action or issue any order or directives which may have effect of undertaking any of the freedoms or powers given under this Chapter to any Co-operative Credit Structure Entity or adversely affect other provisions of this Chapter.]

## **CHAPTER 14 ENFORCEMENT OF OBLIGATION AND RECOVERY OF SUMS DUE**

### **135. Access to documents etc :-**

The Registrar, 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.

### **136. Power to enforce attendance of witness and production of documents :-**

(1) The Registrar, 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 enforce the attendance of witness 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 (5 of 1908).

(2) Where any person summoned under sub-section (1) fails, or refuses to produce books, accounts, documents, securities, cash or other properties 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 books, accounts, documents, securities cash or other properties 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 previous sanction of the Registrar.

### **137. Delivery of possession of books, accounts etc. of Co-operative society :-**

(1) If the board of a Co-operative society or a liquidator appointed under section 107 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 board of directors or the liquidator, 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 person resides or such books, accounts, documents, securities, cash or other properties 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 person authorised by the board in this behalf or to the liquidator, as the case may be.

### **138. 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 sum or such portion thereof as may be considered sufficient by the Registrar or to show cause why he or it should not be furnished such security. The Registrar may also in the said order direct the conditional attachment of said property or such portion thereof as he thinks fit.

### **139. 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 or the successors, or a legal heir of a deceased person, who may or may not be a member of the co-operative society, to make payment of the amount found to be due.

### **140. Charge and surcharge :-**

(1) Where on an audit under section 97 or an inspection under section 99 or an inquiry under section 100 or an inquiry by a commission constituted under the Commission of Inquiry Act, 1952 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 provision of this Act, or the by-laws or any other law for the time being in force, or

(b) by reason of negligence in respect of any matter involved the Co-operative society in any loss or deficiency; or

(c) mis-appropriated or fraudulently retained any property of the Co-operative society or committed criminal breach of trust or forgery or falsification of the accounts, the Registrar may, after giving such officer an opportunity of being heard, by order in writing require, such officer to pay such sum with interest to the assets of the Co-operative society for making good the loss sustained by it in direct consequence of 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 provision 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.

#### **141. Penalty for certain misdemeanours :-**

Where it appears to the Registrar that any person has contravened the provisions of this Act 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 the Co-operative society as the representative of another Co-operative society which a member of such Co-operative society or exercising the rights of member of the Co-operative society when such person was not entitled to sit or vote or exercise such rights, as the case may be; or

(b) by continuing, as an officer or office bearer of a Co-operative society after incurring disqualification thereof; or

(c) by utilizing 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

(e) by resisting or preventing the board of a Co-operative society or its officer or a liquidator from taking possession of any books,



accounts, documents, securities, cash or other properties of a co-operative society; or

(f) by not producing any books, accounts, documents, securities, cash or other properties summoned under sub-section (1) of section 136; or

(g) by transferring a plot of land or a house or flat in a building in contravention of the provision of section 92, the Registrar may 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 with interest, as the Registrar thinks fit for each such contravention and such person, if he is a director of the board, shall cease to be the director forthwith and shall not be eligible for being re-elected to the board for a period of five years.

#### **142. 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 its by-laws--

(a) within such period as may be specified in this Act 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 any person authorised by him in this behalf, may 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 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.

#### **143. 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 a decree of a court under the Code of Civil Procedure 1908 (5 of 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 139 shall be recoverable--

(a) if the salary or wages of the member of the Co-operative society or surety exceeds one thousand five hundred rupees per mensem, by attachment of such salary or wages to the extent of instalment in default or half of the difference between such salary or wages and five hundred rupees whichever is less, or

(b) if the salary or wages of the member of the Co-operative society or of a surety does not exceed one thousand five hundred rupees, by attachment of such salary or wages to the extent of instalment in default or six paise in every rupee of such salary or wages whichever is less.

**144. 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 REVIEW**

**145. Indemnity and bar to jurisdiction of Courts :-**

(1) No suit, prosecution or other legal proceedings shall lie against the Registrar or any person authorised by him or against a board of directors 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 or Consumer Disputes Redressal Forum 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 of the board or a Co-operative society and the management of such Co-operative society on such dissolution; or

(c) any matter concerned with dissolution or liquidation of a Co-operative society;

(d) any dispute required to be referred to the Registrar under section 102.

(3) While a Co-operative society is being dissolved, 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 condition 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.

#### **146. Tribunal :-**

(1) The State Government shall, by notification, constitute one or more Tribunals which shall consist of a Chairman and not less than-

(i) one judicial Member; and

(ii) one administrative Member.

(2) No person shall be qualified for appointment--

(a) as the Chairman unless he is or has been a Judge of the High Court or is holding or has held a post not below the rank of Judicial Secretary or Legal Remembrancer;

(b) as a Judicial Member unless he has held or is holding a post not below the rank of District Judge belong to Higher Judicial services;

(c) as an administrative Member unless he has held or is holding a post not below the rank of Joint Secretary in the State Government.

(3) Where more than one Tribunal is constituted, the State Government shall, by notification, specify the district or districts over which such Tribunals shall have jurisdiction. The Tribunals, so constituted, shall have jurisdiction over the affairs of Co-operative society having registered offices situated within the territorial jurisdiction of such Tribunals.

(4) (a) 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 (5 of 1908).

(b) 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 grounds specified in rule 1 of Order XLVII of the Code of Civil Procedure, 1908.

(c) A Tribunal shall not make any order on an application made under clause (b) without giving the person likely to be affected adversely by such order an opportunity of being heard and such application shall be disposed of by the Tribunal within three months from the date of its presentation.

(d) When an appeal or application for review is filed before a Tribunal, it may make, on such terms and condition as it thinks fit, such interlocutory order as may appear to it just and convenient after giving the parties an opportunity of being heard.

(e) The Tribunal shall exercise jurisdiction, power and authority and perform function conferred or imposed on it by or under this Act by one or more benches, each bench consisting of such number of Judicial Member and administrative Member as may be determined by the Chairman:

Provided that each such bench shall consist of one Judicial Member and one administrative Member:

Provided further that if the Judicial Member and the administrative Member of the bench are divided in their opinion on any matter such matter shall be referred to a bench which shall consist of one administrative Member and two Judicial Member of whom the Chairman shall be one:

Provided also that in the case of difference of opinion between two or more benches, the State Government shall constitute a large bench consisting of such number of members as the State Government may think fit.

Explanation.--For the purpose of this sub-section Judicial Member shall include the Chairman.

(5) The State Government shall by notification fix the place at which the Tribunal may hold its sitting.

#### **147. Appealable orders, appellate authority and period of limitation :-**

(1) An appeal shall lie from an order shown in column (2), to the authority shown in column 4, within the period shown in column (5), of the Third Schedule to this Act.

(2) The provisions of the Limitation Act, 1963 (36 of 1963), shall

not apply to an appeal referred in sub-section (1).

(3) When an appeal is presented after the expiry of the period of limitation specified therefor in the Third Schedule to this Act, it shall be accompanied by an application for condonation of delay setting forth the facts on which the Appellant relies to satisfy the Appellate Authority that he had sufficient cause for not preferring appeal within such time. If, after hearing the both sides, the Appellate Authority is satisfied that the appellant had sufficient cause for not preferring the appeal within such time, then it may condone delay and may proceed to deal with the appeal.

(4) Save as provided in the Third Schedule to this Act, no appeal shall lie against an order, decision or award made under this Act.

(5) An appeal referred to in sub-section (1) shall be disposed of by the Appellate Authority within six months from the date of its presentation.

#### **148. 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 147.

### **CHAPTER 16 OFFENCES, PENALTIES AND PROCEDURES**

#### **149. Offences and penalties :-**

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.

#### **150. Cognizance of offence :-**

(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 (2 of 1974) every offence under 2 this Act shall be deemed to be non-cognizable.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, an offence punishable under section 403 of the Indian Penal Code, 1860 (45 of 1860) in respect of any movable property of a Co-operative society shall be cognizable.

(4) No prosecution shall be instituted under this Act, without the previous sanction of the Registrar.

(5) A prosecution under this Act shall be instituted by the Registrar or any person authorised by him in this behalf. 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.

#### **151. Presumption raised by entry in register of members :-**

(1) A register of members or shares properly maintained by a Co-operative society in the course of its business shall be prima facie evidence of--

(a) the date on which the name of any person has been entered in such register as member of such Co-operative society, and

(b) the date of which such person has ceased to be a member of such Co-operative society.

(2) If for any reason the register of members or shares is not available, the detailed list of members with shareholding enclosed with the audit report or inspection report, if any, shall be treated as prima facie evidence of membership as on the date the balance sheet is drawn up or inspection is held.

#### **152. 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 shall, if certified by duly authorised person, be accepted in any suit or legal proceedings as a prima facie evidence of the matters, transactions 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 dissolved shall, in any legal proceedings 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 can be proved under sub-section (1) or to appear as a witness to prove matters, transactions or accounts therein recorded unless he is specifically directed by the order of the court or the Registrar or an arbitrator.

### **153. Punishment for Corrupt practices :-**

Any officer or employee or member of Co-operative society or any arbitrator or liquidator appointed under this Act, who--

(a) sanctions and 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, 1860 (45 of 1860), 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 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 practice 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 such fine as may be prescribed:

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**

### **154. Overriding effect of the Act :-**

<sup>1</sup>[Overriding effect of the Act]

This Act shall have effect notwithstanding anything 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.

1. Marginal note subs, by s. 17 of the W.B. Co-operative Societies (Amendment) Act, 2011 (West Ben. Act XIV of 2011), w.e.f. 6.2.2012, for the words "Offences and penalties".

### **155. Co-operative bank to get insured :-**

<sup>1</sup>[(1) Every co-operative bank accepting deposits from non-members shall get itself insured under the Deposit Insurance and Credit Guarantee Corporation Act, 1961 (47 of 1961).

(2) Notwithstanding anything contained elsewhere in this Act, in respect of an insured co-operative bank (mentioned in this subsection as the said bank),--

(i) an order for the winding up, or an order sanctioning a scheme of compromise or arrangement or of amalgamation or reconstruction, of the said bank may be made only with the previous sanction in writing of the Reserve Bank of India;

(ii) an order for the winding up of the said bank shall be made, if so required by the Reserve Bank of India in the circumstances referred to in section 13D of the Deposit Insurance and Credit Guarantee Corporation Act, 1961;

(iii) if so required by the Reserve Bank of India in the public interest or for preventing the affairs of the said bank being conducted in a manner detrimental to the interest of the depositors or for securing the proper management of the said bank, an order shall be made for the supersession of the Board of Directors of the said bank and the appointment of an administrator for such period or periods as may from time to time be specified by the Reserve Bank of India;

(iv) an order for the winding up of the said bank or an order sanctioning a scheme of compromise or arrangement or of amalgamation or reconstruction or an order for the supersession of the Board of Directors of the said bank and the appointment of an administrator thereof made with the previous sanction in writing or



on the requisition of the Reserve Bank of India shall not be liable to be called in question in any manner; and

(v) the liquidator or the insured co-operative bank or the transferee bank as the case may be shall be under an obligation to repay the Deposit Insurance Corporation established under section 3 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961 (47 of 1961), in circumstances, to the extent and in the manner referred to in section 21 of the said Act.

Explanation.-- For the purpose of this section,--

(i) co-operative bank has the same meaning as in the Deposit Insurance and Credit Guarantee Corporation Act, 1961,

(ii) Insured Co-operative Bank shall mean a co-operative bank which is an insured bank within the meaning of clause (i) of section 2 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961,

(iii) transferee bank in relation to an insured co-operative bank means co-operative bank--

(a) with which such insured co-operative bank is amalgamated, or

(b) to which the assets and liabilities of such insured co-operative bank are transferred, or

(c) into which such insured co-operative bank is divided or converted.]

1. Subs, by s. 18, ibid, w.e.f. 6.2.2012, before subs, it was as follows:

" 155. Co-operative bank to get insured.--

(1) Every Co-operative Bank accepting deposits from non-members shall get itself insured under the Deposit Insurance Corporation Act, 1961 (47 of 1961).

(2) 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."

### **155A. Fees for supply of Certified copies etc :-**

<sup>1</sup>[ Certified copies of certain documents, as may be prescribed, be supplied on payment of prescribed fees:

Provided that the fees for filing disputes before the Registrar under section 102 of this Act shall be such as may be prescribed.]

1. Ins. by s. 19 of the W.B. Co-operative Societies (Amendment) Act, 2011 (West Ben. Act XIV of 2011), w.e.f. 6.2.2012.

**156. Power to add to 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.

**157. 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 Co-operative 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 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 <sup>1</sup>[\*\*\*I 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.

1. Omitted by s. 20 of the W.B. Co-operative Societies (Amendment) Act, 2011 (West Ben. Act XIV of 2011), w.e.f. 6.2.2012, before omission it was as "for not less than fourteen days".

**SCHEDULE 1**

## FIRST SCHEDULE

### FIRST SCHEDULE

Power exclusively exercisable by the Registrar  
[See section 13(1)]

| Serial No. | Section                         | Power   |
|------------|---------------------------------|---|
| (1)        | (2)                             | (3)   |
| 1.         | Sub-section (1) of section 140. | To require any office (including a former officer) to pay to the assets of the Co-operative society for making good to loss sustained by it in direct consequences of the commission or omission specified or to restore any property misappropriate or fraudulently retained and to pay the cost of any proceeding under this section. |
| 2.         | Section 141.                    | To impose penalties for certain contravention of the provisions of this Act or the rules or the by-laws.  |
| 3.         | Sub-section (3) of section 145. | To give leave and impose conditions for proceeding with or instituting any suit or other legal proceeding against a liquidator or a Co-operative society or a member thereof.   |
| 4.         | Sub-section (4) of section 150. | To sanction the institution of any prosecution under this Act.  |

## **SCHEDULE 2**

### SECOND SCHEDULE

### SECOND SCHEDULE

Recovery of sums due  
[See section 143(1)]

| Serial No. | Nature of sum due   | Method of recovery  |
|------------|---|---|
| (1)        | (2)   | (3)   |
| 1.         | Sums payable towards dues recoverable under section 59.   | By the certificate officer as a public demand upon requisition by the Co-operative society.   |
| 2.         | Audit fee payable under sub-section (1) and the expenses for completing the accounts payable under sub-section (4) of section 97. | By the certificate officer as a public demand upon requisition by the Director or Co-operative Audit or with his approval by the Audit officer. |
| 3.         | Cost of inspection or inquiry apportioned under section 101.  | By the certificate officer as a public demand upon requisition by the Registrar.  |
| 4.         | Sums payable by way of  | By the certificate officer as a public  |

|    |   |   |
|----|---|---|
| 4. | Sums payable by an award under section 103.   | By the certificate officer or by a civil court having local jurisdiction upon applications by the awardee as a public demand upon requisition by the awardee.               |
| 5. | Sums assessed by a liquidator or contributions under clause (h) of Sub-section (14) of section 111.               | By the certificate officer as a public demand upon requisition by the liquidator.   |
| 6. | Dues payable by a member or his surety of successor of a deceased member under section 139.                       | By the certificate officer as a public demand upon requisition by the Registrar or by any person authorized by him or by the Co-operative society or by the financing bank. |
| 7. | Sums payable by an officer (including a former officer) of a Co-operative society under section 140.              | By the certificate officer as a public demand upon requisition by the Registrar.  |
| 8. | Sums payable under section 141 by a person for certain contravention of the provision of this Act or the by-laws. | By the certificate officer as a public demand upon requisition by the Registrar.  |
| 9. | Expenses incurred and the sums payable under section 142.   | By the certificate officer as a public demand upon requisition by the Registrar.  |

### **SCHEDULE 3**

#### **THIRD SCHEDULE**

#### **THIRD SCHEDULE**

##### Appeals

[See section 147]

| <b>Sl. No.</b> | <b>Appeal lies against</b>  | <b>By whom appeal may be preferred</b>                                  | <b>Authority to whom appeal shall lie</b> | <b>Period of limitation</b>   |
|----------------|---|---|---|---|
| <b>(1)</b>     | <b>(2)</b>  | <b>(3)</b>  | <b>(4)</b>                                | <b>(5)</b>  |
| 1.             | An order of change of liability, transfer of assets and liability, division and amalgamation of a | Any member or creditor or Co-operative society aggrieved by such order. | The Cooperative Tribunal.                 | Two months from the date on which the order is communicated or two months from the date of knowledge of such order. |

|    |  |   |                            |   |
|----|--|---|----------------------------|---|
|    | Cooperative society under section 21.  |   |                            |   |
| 2. | An order of amalgamation or reorganization of Cooperative societies under section 22.                    | Any member or creditor or Co-operative society aggrieved by such order. | The Co-operative Tribunal. | Two months from the date on which the order is communicated or two months from the date of knowledge of such order.   |
| 3. | An order for dissolution of a board of directors or disqualification thereof under section 34.           | Any director of the board.  | The Co-operative Tribunal. | Two months from the date on which the order is communicated or two months from the date of knowledge of such order.   |
| 4. | An order dissolving a board and appointing administrator under section 35.                               | Any director of the board.  | The Co-operative Tribunal. | Two months from the date on which the order is communicated or two months from the date of knowledge of such order.   |
| 5. | Any refusal by a Co-operative society to admit an application as member under section (3) of section 64. | Any applicant aggrieved.  | The Registrar.             | Thirty days from the date of receipt of decision.   |
| 6. | An order for appointment of cost under section 101.  | Any person aggrieved.   | The Co-operative Tribunal. | One month from the date on which the order is communicated.   |
| 7. | An order of the Registrar in an appeal under sub-section (5) of section 93.                              | Any person aggrieved.   | The Co-operative Tribunal. | One month from the date on which the order is communicated.   |
| 8. | An order, decision or award under section 103.   | Any person aggrieved.   | The Co-operative Tribunal. | One month from the date on which the certified copy of the order, decision or award is supplied provided that the period of delay in filing an application for certified copy |

|     |   |  |                           |   |
|-----|---|--|---------------------------|---|
|     |   |  |                           | shall be taken into account in computing the period of one month.                                   |
| 9.  | An order for dissolution of a Co-operative Society under Chapter XII.               | Any member of the Cooperative society of a creditor or the Co-operative society. | The Cooperative Tribunal. | Two months from the date on which the order is communicated or the date of knowledge of such order. |
| 10. | An order, decision or award of a liquidator under section 111.                      | Any person aggrieved.  | The Registrar.            | Two months from the date on which the order, decision or award is communicated.                     |
| 11. | An order, under section 140 for payment of compensation or restoration of property. | Any person aggrieved.  | The Cooperative Tribunal. | Two months from the date on which the order is communicated.  |
| 12. | An order under section 141 for payment by way of penalty.                           | Any person aggrieved.  | The Cooperative Tribunal. | Two months from the date on which the order is communicated.  |
| 13. | An order under section 142 for payment of fine.                                     | Any person aggrieved.  | The Cooperative Tribunal. | Two months from the date on which the order is communicated.  |

#### **SCHEDULE 4**

#### **FOURTH SCHEDULE**

#### **FOURTH SCHEDULE**

#### **Offences and Penalties**

[See section 149]

| <b>Sl. No.</b> | <b>Offence</b>  | <b>Person liable</b>                | <b>Penalty</b>  |
|----------------|---|-------------------------------------|---|
| <b>(1)</b>     | <b>(2)</b>  | <b>(3)</b>                          | <b>(4)</b>  |
| 1.             | Unauthorized used of the word "Co-operative" or its equivalent in | Any Company, Cooperative society or | Imprisonment for a term which may extend to two years or fine which may extend to five thousand rupees or both. |

|    |   |   |   |
|----|---|---|---|
|    | contravention of section 9.   | Person or a body of persons.  |   |
| 2. | Wilfully making false return or furnishing false information required to be made or furnished under this Act.   | 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 Cooperative society on which it holds a first charge under section 53.                          | Person by whom or on whose behalf the property is transferred.                  | Fine which may extend to the value of the property of five thousand rupees which is more.   |
| 4. | Transfer of any property on which a charge has been created under clause (a) of section 54 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 property five thousand rupees which is more.  |
| 5. | Failure to make deduction and payment under section 59 in satisfaction of debt due to a Co-operative society from a member.                               | The employer of the member or the Drawing and Disbursing Officer of the member. | Imprisonment for a term which may extend to six months or fine which may extend to one thousand rupees or both.   |
| 6. | Wilful neglect or refusal to comply with any lawful order or direction giving by the Registrar or the Director of Co-operative Audit.                     | Any person so neglecting or refusing.   | Imprisonment for a term which may extend to six months or fine which may extend to five hundred rupees or both.   |
| 7. | Wilful neglect or refusal to any act, make any return or furnish any false information required under this Act or any false declaration under section 87. | 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 fifty rupees for each day for so long as it continue after conviction. |
| 8. | Non compliance of   | Any person  | Imprisonment for a term which   |

|    |   |                                       |   |
|----|---|---------------------------------------|---|
| 8. | non-compliance or order of the Registrar under section 100. | 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 fifty rupees for each day for so long as it continue after conviction. |
|----|---|---------------------------------------|---|

## **SCHEDULE 5**

### **FIFTH SCHEDULE**

#### **FIFTH SCHEDULE**

Co-operative societies

[See section 94]

| <b>Sl.</b> | <b>Type of Co-operative society</b>                                      |
|------------|--|
| 1.         | All Apex Co-operative society.   |
| 2.         | All Central Co-operatives including District Co-operative union.         |
| 3.         | All Agriculture & Rural Development Banks.                               |
| 4.         | All Primary Co-operative Banks.  |
| 5.         | Any Co-operative, Annual Turnover of which is Rupees one crore or above. |

## **SCHEDULE 6**

### **SIXTH SCHEDULE**

#### **SIXTH SCHEDULE**

Power exercisable by the Director of Co-operative Audit

[See section 13(2)]

| <b>Serial No.</b> | <b>Section</b>                 | <b>Power</b>   |
|-------------------|--------------------------------|--|
| <b>(1)</b>        | <b>(2)</b>                     | <b>(3)</b>   |
| 1.                | Sub-section (1) of section 97. | To appoint Audit officer.  |
| 2.                | Sub-section (2) of section 97. | To draw audit programme and to appoint new audit officer on the failure of the audit officer to take up audit. |
| 3.                | Sub-section (1) of section 97. | To receive annual return from co-operative societies.  |
| 4.                | Sub-section (1) of section 98. | To accept report of audit officer.   |
| 5.                | Sub-section (2)                | To accept report of rectification of defects in the  |



|    |                                   |  |
|----|-----------------------------------|--|
|    | of section 98.                    | audit report from a Co-operative society.  |
| 6. | Sub-section (3)<br>of section 98. | To direct rectification of defects in the audit report<br>and to receive report of compliance from Co-<br>operative society. |