

Karnataka Souharda Sahakari (Amendment) Act, 2004

21 of 2004

[23 March 2004]

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Karnataka Souharda Sahakari (Amendment) Act, 2004

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An Act to amend the Karnataka Souharda Sahakari Act, 1997. Whereas it is expedient to amend the Karnataka Souharda Sahakari Act, 1997 (Karnataka Act 17 of 2000) for the purposes hereinafter appearing; Be it enacted by the Karnataka State Legislature in the fifty-fourth year of the Republic of India as follows:-

1. Short Title And Commencement :-

(1) This Act may be called the Karnataka Souharda Sahakari (Amendment) Act, 2004.

(2) It shall come into force on such 1[date] as the State Government may, by notification, appoint.

1. The Act has come into force on 31st March 2004, vide Notification No. CNW 116CLM 2002 (Karnataka Gazette Extraordinary No. 448, Dated 31-3-2004)

2. Amendment Of Section 2 :-

In section 2 of the Karnataka Souharda Sahakari Act, 1997 (Karnataka Act 17 of 2000) (hereinafter referred to as the principal Act),-

(i) after clause (e), the following clause shall be inserted, namely:-

"(ee) "Co-operative Bank" means a Co-operative engaged in or having as one of its objects, the business of banking;"

Explanation.- For the purpose of this clause "banking" shall have the meaning assigned to it in section 5 of the Banking Regulation Act, 1949 (Central Act 10 of 1949)."

(ii) after clause (k), the following clause shall be inserted, namely:-

"(kk) "Deposit Insurance Corporation" means the Deposit Insurance and Credit Guarantee Corporation established under section 3 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961 (Central Act 47 of 1961)"

(iii) for clause (1) the following clause shall be substituted, namely:-

"(l) Director means an elected or co-opted member of the board;"

(iv) in clause (o), for the word and figures "section 23", the words and figures "section 23 and section 53" shall be substituted;

(v) after clause (q), the following shall be inserted namely:-

"(qq) "Insured Bank" means a Co-operative Bank having the same meaning as assigned to it in clause (i) of section 2 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961 (Central Act 47 of 1961);"

(vi) in clause (r), the words "and includes a nominal and an associate member" shall be inserted at the end.

(vii) after clause (r), the following clause shall be inserted, namely:-

"(rr) "National Bank"- means the National Bank for Agriculture and Rural Development constituted under section 3 of the National Bank for Agriculture and Rural Development Act, 1981 (Central Act 61 of 1981);"

(viii) clause (v) shall be renumbered as clause (x) and before clause (x) as so renumbered, the following clause shall be inserted, namely:-

"(v) "Reserve Bank" means the Reserve Bank of India constituted under the Reserve Bank of India Act, 1934 (Central Act 2 of 1934)".

(ix) clause (w) shall be renumbered as clause (y) and before clause (y) as so renumbered, the following clause shall be inserted namely:-

"(w) Secondary Co-operative means a Co-operative whose membership is also open to another Co-operative"

3. Amendment Of Section 4 :-

Section 4 of the principal Act shall be renumbered as sub-section (2) thereof, and

(i) before sub-section (2) as so renumbered, the following sub-section shall be inserted, namely:-

"(1) No co-operative shall be registered under this Act, unless,-

(a) its main objects are to serve the interests of the members in the area of operation.

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

(ii) after sub-section (2) as so renumbered the following provisos shall be inserted, at the end, namely:-

"Provided that no Co-operative shall be registered if it is likely to be economically unsound or the registration of which may have an adverse impact on the development of the Co-operative movement. Provided further that no Co-operative shall be registered under this Act as a Housing Co-operative and no Housing Co-operative Society shall be converted into a Housing Co-operative."

4. Amendment Of Section 5 :-

In section 5 of the principal Act;

(i) in sub-section (3), after clause (a), the following clause shall be inserted namely;

"(aa) the proposed Co-operative complies with the requirements of sound business and has reasonable chances of success,"

(ii) after sub-section (3), the following proviso shall be inserted at the end, namely:

"Provided that in the case of either a proposed or an existing Co-operative Bank, the registration in terms of this section shall take place only with the prior approval of the Reserve Bank".

5. Amendment Of Section 10 :-

In section 10 of the principal Act;

(i) in sub-section (2),

(a) after clause (iii), the following shall be inserted, namely;

"(iiia) the rights, privileges, duties and liabilities of membership including those of nominal and associate members"

(b) in clause (xxi), the sub-clause (c) shall be omitted;

(ii) after sub-section (2), the following sub-section shall be inserted, namely;

"(3) Notwithstanding anything to the contrary contained in this Act, in the case of a cooperative bank, the bye-laws framed under sub-section (2) pertaining to acceptance of deposits, borrowing of funds, maintenance of reserve fund, appropriation of profit grant of loan, fixation of interest rate on deposits and advances, and such other activities as mentioned in section 6 of the Banking Regulation Act, 1949 as applicable to co-operative societies shall be subject to the provisions of the said Act, the rules, regulations or directions made or issued thereunder from time to time by the Reserve Bank or the National Bank".

6. Amendment Of Section 11 :-

In section 11 of the principal Act, in sub-section (3), after clause (b), the following clause shall be inserted, namely:-

"(c) in the case of a Co-operative Bank, a certificate signed by the President or Chairperson, stating that the proposed amendments are in conformity with sub-section (3) of section 10;"

7. Amendment Of Section 12 :-

In section 12 of the principal Act, in sub section (2), after the

proviso, the following proviso shall be inserted, namely:-

"Provided further that in the case of a Co-operative Bank, no resolution under subsection (1) or under this sub-section, shall be passed without the prior sanction in writing of the Reserve Bank".

8. Amendment Of Section 14 :-

In section 14 of the principal Act, in sub-section (1) the following proviso shall be inserted, namely:-

"Provided that a co-operative Bank, shall not enter into such a partnership without obtaining prior permission of the Reserve Bank in writing."

9. Amendment Of Section 15 :-

In section 15 of the principal Act, in sub-section (1), the following proviso shall be inserted, namely:-

"Provided that a Co-operative Bank shall not promote a subsidiary, nor shall a Cooperative promote a subsidiary whose by-laws permit the carrying on of banking business, without the prior permission of the Reserve Bank in writing."

10. Amendment Of Section 16 :-

In section 16 of the principal Act, the following proviso shall be inserted at the end, namely:-

"Provided that in the case of a Co-operative Bank, such collaboration shall be entered into with the prior approval of the Reserve Bank in writing."

11. Amendment Of Section 17 :-

In section 16 of the principal Act, the following proviso shall be inserted at the end, namely:-

"Provided that in the case of a Co-operative Bank, such collaboration shall be entered into with the prior approval of the Reserve Bank in writing."

In section 17 of the principal Act, after the proviso, the following proviso shall be inserted, namely:-

"Provided further that nothing contained in the first proviso shall apply to a Co-operative Bank."

12. Amendment Of Section 18 :-

In section 18 of the principal Act, the following proviso shall be inserted at the end namely:-

"Provided that in the case of a Co-operative Bank, such investment shall be made in accordance with the instructions and directives issued by the Reserve Bank from time to time".

13. Amendment Of Section 21 :-

In section 21 of the principal Act, after sub-section (3), the following sub-section shall be inserted, namely:-

"(4) Notwithstanding such removal, a past member shall be liable to be proceeded against, under this Act or the rules or the bye-laws for his acts of commission or omission as such member."

14. Insertion Of New Section 21A :-

After section 21 of the principal Act, the following section shall be inserted, namely:-

"21A. Nominal and associate members.-

(1) Notwithstanding anything contained in section 20, a Co-operative may admit,

(a) any individual,

(b) any firm, company, Co-operative Society, Co-operative or any body or Corporation constituted by or under any law for the time being in force;

- as a nominal or associate member for any specific purpose for any specific period as may be mentioned in the bye-laws.

(2) A nominal member shall not be entitled to any share in any form whatsoever in the assets or profits of the Co-operative and shall not be entitled to become an office-bearer of the Co-operative.

(3) An associate member may hold shares but shall not be entitled to become an office-bearer of the Co-operative.

(4) A nominal or associate member shall not have the right to participate in the management and to vote at any meeting of the Co-operative including the election to the board of the Co-operative.

(5) Save as provided in this section, a nominal or associate member shall have such privileges and rights of a member and be subject to such liabilities of a member as may be specified in the bye-laws of the Co-operative."

15. Amendment Of Section 25 :-

In section 25 of the principal Act, in sub-section (1),-

(i) for clause (d), the following shall be substituted, namely:-

"(d) is convicted for an offence involving moral turpitude under any law for the time being in force, or for an offence under this Act; or"

(ii) clause (e) shall be renumbered as clause (f), and before clause (f) as so renumbered, the following clause shall be inserted, namely:-

"(e) has been a defaulter in the repayment of any instalment of a loan taken by him or has been a surety for a borrower who has defaulted in repaying his loan continuously for three instalments."

16. Amendment Of Section 26 :-

In section 26 of the Principal Act,-

(i) in sub-section (1), for the words "specified in the bye-laws", the words "prescribed" shall be substituted.

(ii) After sub-section (1), the following provisos shall be inserted, namely:-

"Provided that the first general meeting after registration of a Co-operative other than a Co-operative registered on conversion of a Co-operative Society into a Co-operative, shall be held within one month from the date of its registration to elect the board and the chief promoter shall arrange to hold such meeting.

Provided further that the first general meeting after registration of a Co-operative registered on conversion of a Co-operative Society into a Co-operative, shall be held within sixty days from the date of its registration to elect the board and the chief Executive shall arrange to hold such a meeting."

(iii) in sub-section (2), for the words "The Federal Co-operative" the words "The Registrar" shall be substituted.

17. Insertion Of New Section 32A :-

After section 32 of the principal Act, the following section shall be inserted, namely:-

"32-A Profits and losses of Co-operative.-

A Co-operative shall out of its net profits in any year, transfer an amount being not less than ten percent of the profits to a fund called deficit cover fund, which shall be utilised for wiping or off-setting the losses, if any, caused in the working of the co-operative:

Provided that nothing in this section shall prevent a Co-operative

from charging the losses on the members of the Co-operative in accordance with the majority decision taken at the Special or Annual General Meeting."

18. Amendment Of Section 34 :-

In section 34 of the principal Act, after the word "Registrar" the words "and in the case of a Co-operative Bank also to the Reserve Bank" shall be inserted.

19. Amendment Of Section 35 :-

For section 35 of the principal Act, the following section shall be substituted, namely:-

"35. Inquiry.-

(1) The Registrar may conduct an inquiry or cause an inquiry to be conducted expeditiously into any specific matter touching the constitution, management, working or financial condition of a Co-operative.

(2) An inquiry of the nature referred to in sub-section (1) shall be held on the application of.-

(a) the Federal Co-operative to which the Co-operative is affiliated;
or

(b) not less than one third of the members of the Board of the Co-operative or

(c) not less than one tenth of the total number of members of the Co-operative.

(3) The application under sub-section (2) shall be accompanied by such fee as may be prescribed.

(4) The Registrar may himself conduct the inquiry or appoint an inquiry officer to conduct the inquiry. The cost of inquiry shall be met by the creditor or the Federal Co-operative or the Co-operative, as the case may be, as may be decided by the Registrar.

(5) An inquiry under sub-section (2) shall be completed within a period of twelve months which may however be extended by the Registrar for a further period of six months for reasons to be recorded in writing.

(6) When an inquiry is made under this section, the Registrar shall, within a period of one month from the date of receipt of inquiry report, send a copy of the inquiry report to-

(a) the applicants;

(b) the Co-operative concerned;

(c) the creditors concerned;

- (d) the Federal Co-operative and
- (e) the Reserve Bank in case the inquiry conducted under this section relates to a Co-operative Bank".

20. Amendment Of Section 36 :-

In section 36 of the principal Act:-

(i) in sub-sections (1) and (2) for the words " The Federal Co-operative, the Registrar or the inquiry officer" wherever they occur, the words " The Registrar or the inquiry officer " shall be substituted.

(ii) for sub-section (3), the following sub-section shall be substituted, namely;

"(3) For the purpose of inquiry under this Act, the Registrar or the inquiry officer conducting such inquiry:-

(a) may require in writing the President or Chairperson or the Chief Executive or other authority concerned to produce such receipts, vouchers, statements, returns, correspondence, notice or any other documents as he may consider necessary for the purpose of inquiry.

(b) shall, at all time, have free access to the books, accounts, documents, securities, cash and other properties belonging to, or in the custody of, the Co-operative and may summon any person in possession or responsible for the custody of any such books, accounts, documents, securities, cash or other properties to produce the same at any public office at the headquarters or at the head office of the Cooperative or any branch thereof;

(c) may summon any person who, he has reason to believe has knowledge of any of the affairs of the Co-operative relating to the charges in the inquiry to appear before him at any public office at the headquarters or at the head office of the Co-operative or any branch thereof and may examine such person on oath; and

(d) may, notwithstanding any rule or bye-law specifying the period of notice for a general meeting of the Co-operative, require the office bearers of the Co-operative to call a general meeting at such time and place at the head quarters of the Co-operative or any branch thereof and to determine such matters as may be directed by him, and where the office bearers of the Co-operative refuse or fail to call such a meeting he shall have power to call it himself;

Explanation:- Any meeting called under clause (d) shall have the powers of the general meeting called under the bye-laws of the Co-operative and its proceedings shall be regulated by such bye-laws

except that no quorum shall be necessary for such meeting".

21. Amendment Of Section 37 :-

In section 37 of the principal Act, for the words "The Federal Co-operative or the Registrar, as the case may be" wherever they occur, the words " The Registrar " shall be substituted.

22. Amendment Of Section 38 :-

In section 38 of the principal Act,-

(1) In sub-section (4) for the words and brackets " Reserve Bank of India or National Bank for Agriculture and Rural Development (hereinafter referred as NABARD)", the words "Reserve Bank or National Bank" shall be substituted;

(2) In sub-section (6) for the words "Reserve Bank of India or NABARD", in the two places where they occur, the words "Reserve Bank or National Bank" shall be substituted.

23. Amendment Of Section 39 :-

In section 39 of the principal Act, the words " and no civil or labour or revenue court or Industrial Tribunal shall have jurisdiction to entertain any suit or other proceedings in respect of such dispute" shall be omitted.

24. Amendment Of Section 47 :-

In section 47 of the principal Act,-

(i) in sub-section (2),-

(a) the following proviso shall be inserted at the end, namely:-

"Provided that in the case of a Co-operative Bank, no action in terms of sub-sections (1) and (2) shall be taken unless a copy of the application referred to in sub-section (1) is sent to the Reserve Bank or National Bank, as the case may be, and its consent obtained" and

(b) for the words "The Federal Co-operative", the words "The Registrar" shall be substituted,

(ii) in sub-section (3),

(a) for the words " Federal Co-operative " the word "Registrar" shall be substituted,

(b) for the words " it may require " the words " he may require " shall be substituted,

(iii) for sub-section (4), the following sub-section shall be

substituted:-

"(4) The Registrar after consideration of the information under sub-section (3) may approve the resolution to wind up the Co-operative and communicate the same to the said Cooperative and the Federal Co-operative. Such resolution shall take effect from the date of approval by the Registrar".

25. Substitution Of Section 48 :-

For section 48 of the principal Act, the following section shall be substituted, namely:-

"48 Winding up by the Registrar.-

(1) If the Registrar after an audit has been made under section 33 or an inquiry has been held under section 35 or on receipt of an application made by not less than three fourths of the members of a Co-operative, is of the opinion that the Co-operative ought to be wound up, he may issue an order directing it to be wound up.

(2) Where the Registrar has reasonable cause to believe that a Co-operative.-

(a) has not commenced business within two years after registration; or

(b) has not carried on business for two consecutive years; or

(c) is no longer operating in accordance with the co-operative principles and the provisions of this Act, rules and the bye-laws of the Co-operative,

- he may suo motu, require the Chief Executive of the Co-operative to intimate whether such Co-operative is carrying on business or is submitting annual returns.

(3) If no reply is received from the Chief Executive within one month, the Registrar shall within fourteen days after the expiry of the said period record that no reply has been received by him and shall publish a notice in the newspaper having wide circulation in the local area to wind up the Co-operative.

(4) If the Registrar receives a reply from the Co-operative that it is not carrying on business or is not in operation or does not wish to continue as a Co-operative or can not submit an annual return, he shall publish in the newspaper and send to the Co-operative a notice specifying the date on the expiry of which the Co-operative shall, unless cause is shown to the contrary, be wound up.

(5) If the Registrar after considering the reply, if any, is satisfied.-

(i) that the Co-operative has no assets and liabilities, he shall issue a certificate that the Co-operative has been wound up and cancel

the registration of such Co-operative forthwith; or

(ii) that the Co-operative has assets and liabilities, he shall on receipt of a report from the Chief Executive of such Co-operative that a liquidator has not been appointed by the general body after a resolution to wind up has been passed,

- appoint a liquidator and communicate the same to the Co-operative and the Federal Cooperative.

(6) The Registrar may cancel an order for the winding up of a Co-operative, at any time, in any case, where in his opinion, the Co-operative should continue to exist.

(7) Notwithstanding anything contained in this section, no Co-operative bank shall be wound up or an order for winding up shall be cancelled except with the previous sanction in writing of the "Reserve Bank or National Bank".

26. Amendment Of Section 49 :-

In section 49 of the principal Act, in sub-section (3),-

(i) in clause (b), the following shall be inserted at the end, namely:-

"and in the case of a Co-operative Bank, also to Reserve Bank"

(ii) for clause (f), the following clause shall be substituted, namely:-

"(f) where at any time, he determines that the co-operative or the co-operative bank is unable to pay or adequately provide for the discharge of its obligations, apply in the case of a Co-operative Bank to Reserve Bank, and in other cases to the Registrar for directions;"

(iii) in clause (g), for the words " the Federal Co-operative " wherever they occur " the words " the Registrar " shall be substituted and the following shall be inserted at the end, namely:-

"and in the case of a Co-operative Bank, deliver such financial statements also to the Reserve Bank".

27. Amendment Of Section 50 :-

In section 50 of the principal Act, in sub-section (2), for the words "the Federal Co-operative" the words " the Registrar " shall be substituted.

28. Amendment Of Section 51 :-

In section 51 of principal Act;

- (i) in sub-sections (2) and (3), for the words "the Federal Co-operative" wherever they occur, the words "the Registrar" shall be substituted,
- (ii) in sub-section (3), for the word "it", the word "he" shall be substituted,
- (iii) for sub-section (4), the following shall be substituted, namely:-
"(4) Where the Registrar discharges the liquidator under sub-section (3), he shall issue a certificate of winding up of the Co-operative and cancel the registration of such Co-operative".

29. Amendment Of Section 53 :-

In section 53 of the principal Act,-

- (i) in sub-section (5), for the words "filed with the Registrar", the words "approved by the Registrar" shall be substituted,
- (ii) in sub-section (7), for clauses (u) and (v), the following shall be substituted, namely:-
"(u) have the power of inspection of the member Co-operatives:
Provided that in the case of a Co-operative Bank, no action under this clause shall be taken unless it has the approval of the Reserve Bank."
(iii) sub-section (8) shall be renumbered as sub-section (9) and before subsection (9) as so renumbered the following sub-section shall be inserted, namely:-
"(8) The provisions of section 23 relating to general body shall mutatis mutandis apply to the Federal Co-operative".

30. Amendment Of Section 55 :-

In section 55 of the principal Act,-

- (i) in sub-section (1), for clause (v), the following shall be substituted, namely:-
"(v) is convicted for an offence involving moral turpitude under any law for the time being in force or for an offence committed under this Act."
- (ii) after sub-section (2), the following sub-section shall be inserted namely:-
"(3) If any question arises as to whether a member of the board was or has become subject to any of the disqualification mentioned in this section, the Registrar shall either suo motu or on a report made to him shall decide the question after giving the person concerned a reasonable opportunity of being heard".

31. Amendment Of Section 58 :-

In section 58 of the principal Act, in sub-section (1), the words "The Registrar shall appoint a returning officer for conducting such elections" shall be inserted at the end.

32. Insertion Of New Chapter Xa :-

After Chapter X of the principal Act, the following chapter and section shall be inserted, namely:-

"CHAPTER XA

SPECIAL PROVISIONS FOR INSURED BANKS

67A. Certain orders to be passed by the Registrar if so required by the Reserve Bank.-

(1) Notwithstanding anything to the contrary contained in this Act, in the case of a cooperative bank which is an insured bank, the Registrar shall have power, -

(i) if so required by the Reserve Bank, in the circumstances mentioned in section 13D of the Deposit Insurance and Credit Guarantee Corporation Act, 1961, to make an order for winding up of a Co-operative Bank;

(ii) where an order of moratorium has been made by the Central Government under subsection (2) of section 45 of the Banking Regulation Act, 1949 to make an order sanctioning a scheme of compromise or arrangement or amalgamation or reconstruction including division or re-organisation of the Co-operative Bank;

(iii) if so required by the Reserve Bank, in the public interest, or for preventing the affairs of the co-operative bank being conducted in a manner detrimental to the interest of depositor or for securing the proper management of the bank to make an order for supersession and removal of the Committee of the Management or other Managing Body, by whatever name called, of the co-operative bank and the appointment of an Administrator therefor for such period or periods not exceeding five years in the aggregate as may from time to time be specified by the Reserve Bank and the Administrator so appointed, shall after the expiry of his term, continue in his office until the day preceding the date of the first taking over by the new board of such bank.

(2) In the case of co-operative bank which is an insured bank, the Federal Co-operative or the General body of a Co-operative bank shall not decide the winding up or sanctioning a scheme of compromise or arrangement or amalgamation or reconstruction of

the bank or make an order for supersession of the committee of management or other managing body (by whatever name called) of the bank and the appointment of an Administrator therefor, unless previous sanction in writing from the Reserve Bank is obtained.

(3) No appeal, revision or review shall lie against an order made under sub-sections (1) and (2) on the requisition or previous sanction granted by the Reserve Bank and such order or sanction shall not be liable to be called in question in any manner.

67B. Reimbursement to the Deposit Insurance Corporation by the liquidators.-

Where a co-operative bank being an insured bank is wound up or taken into liquidation and the Deposit Insurance Corporation has become liable to the depositors of the insured bank under sub-section (1) of section 16 of that Act, the Deposit Insurance Corporation shall be reimbursed by the liquidator or such other person in the circumstances, to the extent and in the manner provided in section 21 of the Deposit Insurance Corporation Act, 1961."