

Maharashtra Co-Operative Societies (Amendment) Act, 2008

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Maharashtra Co-Operative Societies (Amendment) Act, 2008

11 of 2008

(First published, after having received the assent of the Governor in the "Maharashtra Government Gazette", on the 2nd May, 2008).
An Act further to amend the Maharashtra Co-operative Societies Act, 1960. WHEREAS both Houses of the State Legislature were not

in session; AND WHEREAS the Governor of Maharashtra was satisfied that circumstances existed which rendered it necessary for him to take immediate action further to amend the Maharashtra Co-operative Societies Act, 1960, for the purposes hereinafter appearing; and, therefore, promulgated the Maharashtra Co-operative Societies (Second Amendment) Ordinance, 2007, on the 29th October, 2007; AND WHEREAS upon the re-assembly of the State Legislature on the 19th November, 2007, a Bill for converting the said Ordinance into an Act of the State Legislature was introduced in the Maharashtra Legislative Assembly on the 22nd November, 2007, but it could not be passed as the same came to be referred to the Joint Committee of both Houses of the State Legislature; AND WHEREAS the said Ordinance would have ceased to operate after 30th day of December, 2007, on which date the period of six weeks from the date of re-assembly of the State Legislature was to expire; AND WHEREAS both houses of the State Legislature were not in session and the Governor of Maharashtra was satisfied that circumstances existed which rendered it necessary for him to take immediate action to continue the provisions of the said Ordinance promulgated the Maharashtra Co-operative Societies (Second Amendment) (Continuance) Ordinance, 2007 on the 28th December, 2007; AND WHEREAS it is expedient to replace the Maharashtra Co-operative Societies (Second Amendment) (Continuance) Ordinance, 2007, by an Act of the State Legislature; it is hereby enacted in the Fifty-ninth Year of the Republic of India as follows :-

1. Short Title And Commencement :-

(1) This Act may be called the Maharashtra Co-operative Societies (Amendment) Act, 2008.

(2) It shall be deemed to have come into force on the 29th October, 2007.

2. Amendment Of Section 2 Of Mah. Xxiv Of 1961 :-

In section 2 of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as "the Principal Act"), -

(a) after clause (10-aii), the following clause shall be inserted, namely:-

"(10-aii-l) "co-operative credit structure entity" means the primary agricultural credit co-operative society, the District Central Co-operative Bank or the State Co-operative Bank ;";

(b) after clause (10-A), the following clause shall be inserted, namely:-

"(10-B) "depositor" or "financial service user" means a person who deposits certain amount in primary agricultural co-operative credit society for such period as may be prescribed;"

(c) in clause (19), in sub-clause (a), the following words shall be added at the end, namely :-

"and any depositor or financial service user of primary agricultural co-operative credit society";

(d) after clause (19), the following clause shall be inserted, namely:-

"(19A) "National Bank" means the National Bank for Agriculture and Rural Development (NABARD), constituted under the provisions of the National Bank for Agriculture and Rural Development Act, 1981;"

3. Amendment Of Section 6 Of Mah. Xxiv Of 1961 :-

In section 6 of the principal Act, in sub-section (1), after the first proviso, the following proviso shall be added, namely :-

"Provided further that, the condition regarding residence of the members in the area of operation of the society shall not apply for registration of the society, being the co-operative credit structure entity.".

4. Amendment Of Section 13 Of Mah. Xxiv Of 1961 :-

In section 13 of the principal Act, to sub-section (1), the following proviso shall be added, namely :-

"Provided that, the application for registration of the amendment of bye-laws of the co-operative credit structure entity shall be disposed of, by the Registrar within a period of one month from the date of its receipt.".

5. Amendment Of Section 21A Of Mah. Xxiv Of 1961 :-

In section 21A of the principal Act, in sub-section (1), after the word "served" the following words shall be inserted, namely :-

"or any primary agricultural co-operative credit society using the word Bank, Banking, Banker or any other derivative of the word Bank in its name.".

6. Amendment Of Section 22 Of Mah. Xxiv Of 1961 :-

In section 22 of the principal Act, in sub-section (1), after clause (f), the following clause shall be inserted, namely :-

"(g) the depositor or the financial service user:".

7. Amendment Of Section 27 Of Mah. Xxiv Of 1961 :-

In section 27 of the principal Act, after sub-section (11), the following sub-section shall be added, namely :-

"(12) In the case of a primary agricultural credit co-operative society, the depositor or financial service user shall have right to vote :

Provided that, out of joint depositors, joint financial service users whose name stands first in the relevant documents shall have the right to vote and in his absence whose name stands second and in the absence of both, the next shall have the right to vote:

Provided also that, unless two years by an individual depositors or financial service users are completed from the date of deposit or financial service use, no such person shall have right to vote ; and, the depositor or the financial service user, other than an individual, shall have right to vote in the affairs of a primary agricultural credit co-operative society, provided they complete three years from the date of deposit or financial service use.".

8. Amendment Of Section 43 Of Mah. Xxiv Of 1961 :-

In section 43 of the principal Act, -

(a) to sub-section (1), the following proviso shall be added, namely:-

" Provided that, the co-operative credit structure entity shall adopt its own policies regarding interest rates on deposits and loans in conformity with the Reserve Bank of India guidelines.";

(b) in sub-section (2), after the first proviso, the following proviso shall be added, namely :-

"Provided further that, nothing in this sub-section shall apply to the co-operative credit structure entity. However, such entity may adopt its own policy in conformity with the Reserve Bank of India guidelines.";

(c) after sub-section (2), the following sub-section shall be added, namely :-

"(3) Notwithstanding anything contained in sub-sections (1) and (2), and subject to the guidelines issued by the Reserve Bank of India and the National Bank, from time to time, a co-operative credit structure entity may, -

- (a) borrow from any financial institution regulated by the Reserve Bank of India, keeping in view the interest of the society and its members;
- (b) decide interest rates on deposits and loans; and
- (c) decide loan policies and issues relating to individual loans."

9. Amendment Of Section 44 Of Mah. Xxiv Of 1961 :-

In section 44 of the principal Act, after the first proviso, the following proviso shall be added, namely :-

"Provided further that, nothing in this section shall apply to the loan making policy made by the co-operative credit structure entity. However, such entity shall adopt its own policy in conformity with the Reserve Bank of India guidelines."

10. Amendment Of Section 50 Of Mah. Xxiv Of 1961 :-

To section 50 of the Principal Act, the following proviso shall be added, namely :-

"Provided that, in the case of the co-operative credit structure entity, the State Government shall not hold more than 25% of the total share capital and the entity shall have option to further reduce the share capital contributed by the Government."

11. Amendment Of Section 67 Of Mah. Xxiv Of 1961 :-

To section 67 of the principal Act, the following proviso shall be added, namely :-

"Provided that, the primary agricultural credit co-operative society shall pay dividend to its members as per the guidelines issued by the Registrar, in accordance with criteria specified by the National Bank."

12. Amendment Of Section 68 Of Mah. Xxiv Of 1961 :-

In section 68 of the principal Act, in sub-section (1), for the words "Every society" the words "Every society not being co-operative credit structure entity" shall be substituted.

13. Substitution Of Section 69A Of Mah. Xxiv Of 1961 :-

For section 69A of the principal Act, the following section shall be substituted, namely :-

"69A. Constitution of Co-operative State Cadre of Secretaries of

certain societies and establishment of Employment Fund for such Cadre. - (1) There shall be constituted a Co-operative State Cadre of Secretaries of primary agricultural credit societies, multipurpose co-operative societies and service co-operatives and such other classes of societies as may be prescribed in this behalf (hereinafter in this section referred to as "the Co-operative State Cadre") consisting of persons recruited for this purpose by the Central Societies notified in this behalf by the State Government. The number of persons to be recruited and their conditions of service shall be determined by the Central Societies in accordance with such general or special guidelines, if any, as may be issued by the State Government, from time to time.

(2) A Central Society may, from time to time, depute any person appointed by it to that cadre to work under any society referred to in sub-section (1), as it may consider necessary. Where any such person is posted to work under any society, his services shall be taken over by the society on such post, for such period and on such other terms and conditions, as the Central Society may determine, but the person so posted shall draw his salary and allowances from the Fund established under sub-section (3).

(2A) The immediate initial supervisory control on the person appointed to the cadre and deputed or posted to work as secretary under each of the societies referred to in sub-section (1) shall be with the Taluka Supervision Society consisting of the societies, in each respective Taluka to which such persons are deputed, as members thereof and registered for the purpose. The Taluka Supervision Society shall, exercise such powers and discharge such functions or perform such duties as may be conferred or imposed on it by the bye-laws of such society.

(3) An Apex society notified in this behalf by the State Government shall establish a Fund to be called "the Co-operative State Cadre Employment Fund", which, when established, shall be deemed to have been established with effect from the 1st day of July, 1973. It shall be utilized for meeting the expenses on the salaries, allowances and other emoluments to be paid to the persons appointed to the Co-operative State Cadre and the other expenditure relating to the Cadre.

(4)(a) Every society or class or classes of societies, which in the opinion of the State Government, derive any benefit, directly or indirectly, from the services of any Secretary belonging to the Co-operative State Cadre of Secretaries, and

(b) Every other body corporate carrying on any trade, business or

industry or class or classes of such corporate bodies, which in the opinion of the State Government, derives such benefit as aforesaid, and which are notified by the State Government in this behalf, from time to time, by general or special order, shall, with effect from the first day of July, 1977, contribute annually to the said Fund, at such rate and in such manner as may be prescribed, and different rates may be prescribed for different societies or other corporate bodies or class or classes of societies or class or classes of other corporate bodies. In determining the rate or rates of contribution, the State Government shall take into consideration the expenditure referred to in sub-section (3), the services likely to be rendered and the financial condition of the societies or other bodies concerned.

Explanation. - Notwithstanding anything contained in any law for the time being in force, for the purposes of levy and collection of the contribution to the said Fund by any other corporate body to which this section applies, such corporate body shall be deemed to be a society governed by this Act.

(5) Where there is a failure to comply with the requirements of the last preceding sub-section, the Registrar may serve a demand notice on the society concerned to pay the contribution within two months from the date of demand. Such demand shall be a charge on the income of the society. If the contribution is not paid within the period aforesaid, the Registrar may direct any Bank or person having custody of the Funds of the society to pay the amount of the contribution immediately, and such Bank or person shall comply with the orders of the Registrar. Every payment made pursuant to such direction shall be a sufficient discharge to such Bank or person from all liability to the society in respect of any sum so paid by it or him out of the moneys of the society in his custody.

(6) The State Government may make rules regulating all matters connected with or ancillary to the custody and maintenance of, the payment of moneys into, and the expenditure and withdrawal of moneys from, the said Fund.

(7) Notwithstanding anything contained in sub-sections (1) to (6), on and from the 1st day of January, 2009, nothing in sub-sections (1) to (6) shall apply to a co-operative credit structure entity."

14. Insertion Of Section 69B In Mah. Xxiv Of 1961 :-

After section 69A of the principal Act, the following section shall be inserted, namely :-

"69B. Constitution of District Level and State Level Committees. -

The State Government shall constitute District Level Committees and the State Level Committee, from time to time, as it shall deem fit, for solving the problems of Group Secretaries in the State."

15. Substitution Of Section 70 Of Mah. Xxiv Of 1961 :-

For section 70 of the principal Act, the following section shall be substituted, namely :-

"70. Investment of funds. - Every society other than the co-operative credit structure entity shall invest or deposit its funds in one or more of the following :-

(a) in a Central Bank, or the State Co-operative Bank;

(b) in any of the securities specified in section 20 of the Indian Trusts Act, 1882;

(c) in the shares, or security bonds, or debentures, issued by any other society with limited liability and having the same classification to which it belongs:

Provided that, no society shall invest more than such proportion of its paid up share capital as may be prescribed :

Provided further that, the co-operative credit structure entity shall invest its funds subject to guidelines as may be issued, from time to time, by the Reserve Bank of India."

16. Insertion Of Section 72A In Mah. Xxiv Of 1961 :-

After section 72 of the principal Act, the following section shall be inserted, namely :-

"72A. Freedom of affiliation or disaffiliation with a federal structure of choice. - Notwithstanding anything contained in this Act or any other law for the time being in force, the co-operative credit structure entity shall have the liberty for the affiliation or disaffiliation with the federal structure of its choice :

Provided that, in the general meeting of the co-operative credit structure entity, a resolution for this purpose is passed by a majority of not less than 3/4th of the total members of such entity."

17. Insertion Of Section 73-Ea In Mah. Xxiv Of 1961 :-

After section 73-E of the principal Act, the following section shall be inserted, namely :-

"73-EA. Disqualification for being Director of District Central Co-operative Bank or State Co-operative Bank. - Without prejudice to

the other provisions of this Act or the rules made thereunder, in relation to the disqualification of being a member of a committee, no person shall be eligible for being appointed, nominated, co-opted or, for being a Director of a District Central Co-operative Bank or of the State Co-operative Bank, if he, -

(i) is a person who represents a society other than a primary agricultural credit co-operative society on the board of a District Central Co-operative Bank or State Co-operative Bank, if the society to whom he represents has committed a default towards the payments of such Bank for a period exceeding ninety days ;

(ii) is a person who is defaulter of a primary agricultural credit co-operative society or is an office bearer of a defaulting primary agricultural co-operative credit society;

(iii) is a person, who represents a society whose Managing Committee is superseded."

18. Amendment Of Section 73-G Of Mah. Xxiv Of 1961 :-

In section 73-G of the principal Act, after sub-section (3), the following sub-section shall be inserted, namely :-

"(4) (a) There shall be two professionals on the Board of Directors of District Central Co-operative Bank and State Co-operative Bank having qualifications prescribed by the Reserve Bank of India or the National Bank.

(b) The Registrar shall direct the bank concerned to co-opt such professionals on the Board of Directors within the time limit specified in the direction by the Registrar. If the bank fails to comply with the aforesaid directions, the Registrar himself shall appoint such professional directors and such appointment shall be binding on the said bank. The professional director shall have all the rights inclusive of voting right."

19. Amendment Of Section 73-H Of Mah. Xxiv Of 1961 :-

In section 73-H of the principal Act, after sub-section (2), the following proviso shall be added, namely :-

"Provided that, in the case of co-operative credit structure entity, the Registrar or Administrator shall hold election within a period of two months from the date of taking over the management of the society."

20. Amendment Of Section 74 Of Mah. Xxiv Of 1961 :-

In section 74 of the principal Act, to sub-section (2) the following proviso shall be added, namely:-

"Provided that, the qualification for appointment of the Chief Executive Officer of the District Central Co-operative Bank and the State Co-operative Bank shall be such as may be prescribed by the Reserve Bank of India, from time to time."

21. Amendment Of Section 77-A Of Mah. Xxiv Of 1961 :-

In section 77A of the principal Act, in sub-section (3), for the proviso, the following provisos shall be substituted, namely :-

Provided that, a Committee or Administrator so appointed shall make necessary arrangements for constituting a new committee of the co-operative credit structure entity within two months from the date of assuming the management of the society:

Provided further that, if a committee is not, or cannot be, constituted at the expiry or determination of the term of office of the committee or the Administrator, the term of office of the committee or the Administrator, as the case may be, shall be deemed to be extended until the new committee is duly constituted :

Provided also that, in no circumstances the term of office of the committee of, or the Administrator appointed on, the co-operative credit structure entity shall exceed six months from the date of expiry of the term of its committee.

22. Amendment Of Section 78 Of Mah. Xxiv Of 1961 :-

In section 78 of the principal Act, -

(a) in sub-section (1), the following provisos shall be added at the end, namely :-

"Provided further that, the supersession or removal of the committee of the District Central Co-operative Bank or the State Co-operative Bank under this sub-section shall not be done without prior consultation with the Reserve Bank of India :

Provided also that, the committee of a primary agricultural co-operative credit society shall not be superseded by the Registrar, except under the following circumstances, namely :-

- (i) if a society incurs losses for three consecutive years; or
- (ii) if serious financial irregularities or frauds have been identified; or
- (iii) if there are judicial directives to this effect; or
- (iv) if there is perpetual lack of quorum :

Provided also that, the members of the Board of a primary agricultural credit co-operative society which has been superseded shall not be eligible to

be re-elected, re-appointed, re-nominated or re-co-opted, as a member of the committee for a period of three years from the date of supersession of the Board.";

(b) in sub-section (4), -

(i) before the existing proviso, the following proviso shall be inserted, namely :-

"Provided that, the committee or Administrator shall make arrangements for constitution of a new committee of co-operative credit structure entity, within a period of two months from the date of order of supersession of board of co-operative credit structure entity;"

(ii) in the existing proviso, for the words, "Provided that" the words "Provided further that" shall be substituted;

(iii) after the existing proviso, the following proviso shall be added, namely :-

"Provided also that, in no circumstances the term of office of the committee of, or the Administrator appointed on, the co-operative credit structure entity shall exceed six months from the date of supersession of the committee.".

23. Amendment Of Section 81 Of Mah. Xxiv Of 1961 :-

In section 81 of the principal Act, -

(i) in sub-section (1), -

(a) after sub-clause (a), the following proviso shall be inserted, namely :-

"Provided that, the audit of the District Central Co-operative Bank and the State Co-operative Bank shall be conducted by a Chartered Accountant approved by the National Bank ;"

(b) in sub-clause (b), after the existing proviso, the following proviso shall be inserted, namely :-

"Provided further that, the primary agricultural credit co-operative society shall arrange to get their accounts audited at least once in each co-operative year by an auditor from the panel of auditors maintained by the Registrar; or by a Chartered Accountant holding a certificate in co-operative audit issued by the Institute of Chartered Accountants of India. The District Central Co-operative Bank and the State Co-operative Bank shall arrange to get their accounts audited at least once in each co-operative year through a

Chartered Accountant from the panel of auditors approved by the National Bank.";

(ii) after sub-section (6), the following sub-section shall be added, namely :-

"(7) Special audit of the Co-operative Bank if requested by the Reserve Bank of India shall be conducted and report thereof shall be submitted to the Reserve Bank of India under intimation to the Registrar along with the Special Audit Report.".

24. Amendment Of Section 110A Of Mah. Xxiv Of 1961 :-

Section 110A of the principal Act shall be re-numbered as sub-section (1) thereof; and after the sub-section (1), so re-numbered, the following sub-section shall be inserted, namely :-

"(2) Notwithstanding anything contained in this Act, in the case of the District Central Co-operative Bank and the State Co-operative Bank, the supersession of the Board and appointment of liquidator shall be made by the Registrar, within one month of being so advised by the Reserve Bank of India.".

25. Amendment Of Section 157 Of Mah. Xxiv Of 1961 :-

In section 157 of the principal Act, after the word "societies", at both the places where it occur, the words "other than co-operative credit structure entity " shall be inserted.

26. Amendment Of Section 165 Of Mah. Xxiv Of 1961 :-

In section 165 of the principal Act, in sub-section (2), clause (xxxii-a) shall be deleted.

27. Repeal Of Mah. Ord. Viii Of 2007 And Saving :-

(1) The Maharashtra Co-operative Societies (Second Amendment) (Continuance) Ordinance, 2007, is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the said Ordinance, shall be deemed to have been done or taken under the principal Act, as amended by this Act.