

THE REGULATION REGARDING NON-AGRICULTURAL CO-OPERATIVE CREDIT SOCIETIES

STATEMENT OF OBJECT AND REASONS

Whereas, number of Non-Agricultural Co-operative Credit Societies are increasing and interest of members, depositors are at stake. Therefore in order to have the qualitative growth of the societies and to protect and safeguard the interest of the members and depositors of such societies, it is felt necessary to incorporate certain provisions by way of amendment in The Maharashtra Co-operative Societies Act, 1960, so far as they relate to non agricultural credit societies and incidental thereto. The amendment of the Act and inclusion of separate chapter has now become expedient. Therefore, a separate chapter incorporating specific provisions safeguarding the interest of members and depositors is proposed to be incorporated in Maharashtra Co-operative Societies Act 1960 in the form of an amendment, namely Chapter IV-A and Section 49A & 49B, 49C, 49D as well as incidental amendments are being provided in the respective sections and rules therein.

CHAPTER IV– A

NON-AGRICULTURAL CO-OPERATIVE CREDIT SOCIETIES

[(1)] Unless the context otherwise requires this chapter shall apply to Non-Agricultural Co-operative Credit Societies classified as Resource Societies and sub classified as Credit Resource Societies, excluding Agricultural Credit, Thrift Credit and Salary Earners Societies and shall be in addition to, and not, save as hereinafter expressly provided, in derogation of the Maharashtra Co-operative Societies Act 1960 and any other law for the time being in force, and shall not apply to any Co-operative Bank, as defined in section 2(10) of the Act. These provisions shall come to force on such date as the State Govt. by notification in the official Gazettes appoints.

For the purpose of this Chapter, the following terms shall mean and include.

A. active member – means a member qualified to be an active member as defined in the Bye-laws and includes borrower or depositor of such society as provided in the Byelaws.

- B. credit society** – means and includes a urban and rural co-operative credit society, not being a primary agricultural co-operative credit society, thrift society and salary earners' society whose main objective and principal business is to provide credit and accept deposits with respect to its members.
- C. regulatory board** – shall mean a Board of experts as constituted by the State Government as per Clause 49(A)(9)(a)(i) and (ii) of this Chapter.
- D. stabilisation fund** – shall mean the creation of fund to be contributed by the State Government and by the credit societies as may be notified by the State Government as per clause 49(A) (10) and as defined in Sec. 68A of the Act.

[(2)] Form of business in which Co-operative Credit Societies may engage –

- (a)** From the Appointed Day a Co-operative Credit Society may engage in any one or more of the following forms of business with respect to their members, namely –
- (i) The borrowing, raising, or accepting deposits; the lending or advancing of money either upon or without security, the negotiating of loan and advances, the providing of safe deposit vaults either by itself or with any other Co-operative Credit Society or Societies.
 - (ii) Managing, selling and realising any property which may come in possession of such society in satisfaction or part satisfaction of any of its claims;
 - (iii) Acquiring and holding and generally dealing with any property or any right, title or interest in any such property which may form the security or part of security for any loans or advances or which may be connected with any such security;
 - (iv) The acquisition, construction, maintenance and alteration of any building or works necessary or convenient for the purpose of the Society.
 - (v) Selling, improving, managing, developing, exchanging, leasing, mortgaging, disposing of or turning into

account or otherwise dealing with all or any part of the property and rights of the Society.

- (vi) Acquiring and undertaking the whole or any part of the business of any member or society when such business is of nature enumerated or described in this Sub-Section;
- (vii) Doing all such other things as are incidental or conducive to the promotion or advancement of the business of the Society.
- (viii) Any other form of business which the State Government may by notification in the official Gazette, specify as a form of business in which it is lawful for a Co-operative Credit Society to engage.

(b) No Co-operative Credit Society shall engage in any form of business other than those referred to in Sub Section (a).

(c) In case any other form of business not permitted under the foregoing clauses is already undertaken by any Co-operative Credit Society before the Appointed Day, such Society shall conclude such business.

[(3)] Prohibition of Trading :- Notwithstanding anything contained in Sub Section 2 or in any contract, no Co-operative Credit Society shall directly or indirectly deal in the buying or selling or bartering of goods, except in connection with the realisation of security given to or held by it, or engage in any trade, or buy , sell or barter goods for others.

(Provided that this Sub Section shall not apply to any such business as is specified in pursuance of Sub Section (2) (a).)

Explanation :- For the purposes of this Sub Section, 'Goods' means every kind of property, other than actionable claims, stock, money, bullion and specie and all instruments referred to in clause (i) of Sub Section (2) (a).

[(4)] DISPOSAL OF PROPERTY NOT REQUIRED FOR BUSINESS OF CREDIT SOCIETY –

Notwithstanding anything contained in Sub-Section (2), no Credit Society shall hold any immovable property howsoever acquired, except such as is

required for its own use, for any period exceeding seven years from acquisition thereof or from the commencement of the Sub Section, whichever is later or any extension of such period as in this Sub Section provided, and such property shall be disposed of within such period or extended period, as the case may be

Provided that, the credit society may within the period of seven years as aforesaid deal in any such property for the purpose of facilitating the disposal thereof;

Provided further that, the Registrar, Cooperative Societies, Maharashtra State may in any particular case extend the aforesaid period of seven years by such period not exceeding five years where he is satisfied that such extension would be in the interest of the credit society.

[(5)] (A) MANAGING COMMITTEE TO INCLUDE PERSONS WITH PROFESSIONAL EXPERTISE OR OTHER EXPERIENCED PERSONS –

(1) Notwithstanding anything contained in any other law for the time being in force, not more than two members of the Managing Committee of a Credit Society shall consist of persons, who shall have knowledge and practical experience of not less than ten (10) years in respect of one or more of the following areas, will be co-opted, namely–

Accountancy or Audit

Banking or Finance

Commerce or Economics

Law or Taxation

(2) Where no such person is co-opted, the Registrar shall give directions to such credit societies to co-opt two such directors within a period of three months from the date of the constitution of the managing committee, failing which the Registrar shall nominate such two directors from the above categories.

[(6)] CASH RESERVE

Every credit society shall maintain by way of Cash Reserve with itself or by way of average balance in Current Account in District Central Co-operative Bank and or State Cooperative Bank and or Nationalised Bank

and or Scheduled Co-operative Bank (having Past three years in Grade I gradation or A(+), A, A(-) rating made by Reserve Bank of India / NABARD) a sum equivalent to not less than two percent of the total of its deposits and shall submit the same to the respective Registrar, Cooperative Societies on or before fifteenth day of the end of each quarter a return showing the amount so held.

Provided that, the Registrar, Cooperative Societies, Maharashtra State in consultation with the Regulatory Board may decide and vary the percentage of Cash Reserve from time to time.

[(7)] STATUTORY LIQUIDITY RESERVE

Every Co-operative Credit Society shall maintain by way of Statutory Liquidity Reserve by way of average balance in Term Deposit in District Central Co-operative Bank and / or State Co-operative Bank and / or Nationalised Bank and / or Schedule Co-operative Bank (having past three years in Grade I gradation or A(+), A, A(-) rating made by Reserve Bank of India) a sum equivalent to not less than Twenty Three percent of the total of its deposits and shall submit the same to the respective Registrar, Cooperative Societies on or before fifteenth day of the end of each quarter a return showing the amount so held.

Provided that, the Registrar, Cooperative Societies, Maharashtra State in Consultation with the Regulatory Board may decide and vary the percentage of Statutory Liquidity Reserve from time to time.

[(8)] (A) RESTRICTIONS ON LOANS AND ADVANCES

- (1) (1) No Co-operative Credit society shall –
 - (a) Grant any loans or advances on the security of its own shares
 - (b) Enter into any commitment for granting any loan or advance to or on behalf of –
 - (i) Any of its present Directors and his/her family members as defined in Sec.73-FF of the Act, except against his/her own Fixed Deposits or those held in the names of the family members of the same credit

society, where he/she is the director.

- (ii) Any Firm or Company in which any of Directors and his/her family members is interested as Partner, manager, Employee or Guarantor or Major Share Holder or in which he holds substantial interest.
- (2) Where any loan or advance granted by a Co-operative Credit Society is such that a commitment for granting it could not have been made by it had clause (b) of Sub Section (1) been in force on the date on which the loan or advance was made, or is granted by a Co-operative Credit Society after the commencement of this sub Section, but in pursuance of a commitment entered into before such commencement, shall be steps to recover the amount due to Co-operative Credit Society on account of the loan or advance together with interest, if any, due thereon within a period stipulated at the time of granting of the loan or advance, or where no such period has been stipulated, before the expiry of two years from the commencement of the said Sub- Section.
- (3) If any question arises whether any transaction is a loan or advance for the purpose of this Sub-Section, it shall be referred to the Registrar, Cooperative Societies, Maharashtra State whose decision there on shall be final.

(B) RESTRICTIONS ON POWER TO REMISSION OF DEBTS

- (1) Notwithstanding anything to the contrary contained in this Act, a Co-operative Credit Society shall not except with prior approval of the Registrar, Cooperative Societies, Maharashtra State in consultation with the Regulatory Board remit in whole or in part any debt due to it by
- (a) Any of its past and present Directors and his/her family members or
 - (b) any firm or company in which any of its past and present Directors and his/her family members is interested as Director, Partner, managing Agent or

Guarantor

- (2) Any remission made in contravention of the provisions of Sub-Section (1) shall be void and of no effect.

[(9)] MACHINERY TO IMPLEMENT THE REGULATORY MEASURES

Notwithstanding anything contained under any of the provisions of Maharashtra Co-operative Societies Act 1960 or Rules 1961 made there under and in addition to the powers vested in various authorities under the said Act and Rules, it is provided that

- (a) (i) To give consultation to the Registrar, Cooperative Societies, Maharashtra State in discharging of his duties and responsibilities, there shall be a Regulatory Board which shall consist of Chairperson and four (4) other members, not being a public servant, who shall possess suitable academic qualification, knowledge and minimum 15 (fifteen) years experience in the field of functioning of Cooperative Credit Society / Banking / Finance and Economics; **one of the members shall be from Judicial background not below the rank of District Sessions Judge (retired)** to be nominated by the State Government. Such nomination shall be on such terms and conditions on the basis of the selection made by the State Government's Empowered Committee which shall consist of Secretary (Cooperation), Secretary (Finance), Registrar, Cooperative Societies, Maharashtra State and Official nominee of R.B.I. The Registrar, Cooperative Societies, Maharashtra State shall appoint the secretary for the Regulatory Board who shall not be below the rank of Joint Registrar of Cooperative Societies. The tenure of the Board shall be of three years.

- (ii) Wherever necessary, the Registrar, Cooperative Societies, Maharashtra State, may form a Regional Regulatory Board consisting of not more than three members . A member of the Regulatory Board shall be the ex-officio chairperson of the Regional Regulatory Board. The Registrar, Cooperative Societies, Maharashtra State shall appoint a secretary on the Regional Regulatory Board not below the rank of

District Deputy Registrar. The Registrar, Cooperative Societies, Maharashtra State shall delegate such functions to the Regional Regulatory Board as he may deem fit. The tenure of the Regional Regulatory Board shall be co-terminus with the Regulatory Board.

- (b) (i) Wherever necessary and in all financial and operational policy matters, the Registrar, Cooperative Societies, Maharashtra State shall have consultation with the Regulatory Board. Consultation received in writing from the Regulatory Board on such matters shall be binding on the Registrar, Cooperative Societies, Maharashtra State, while taking the final decision on such matters.
- (ii) The Registrar, Cooperative Societies, Maharashtra State may seek opinion of the Regulatory Board by referring a written query to the said Board. The Regulatory Board, in discharging its duties may on its own refer its opinions to the Registrar, Cooperative Societies, Maharashtra State for the consideration and implementation.
- (c) (i) Any appeal against any order or decision of the Registrar, Cooperative Societies, Maharashtra State under this Chapter shall lie to the appropriate authority under Sec. 152 of the Act.
- (d) The Chairman and the Regulatory Board members shall be honorary officers who shall be paid honorarium duly determined / fixed by the State Government.

[(10) Contribution to the Stabilisation Fund

- (i). Every credit society shall contribute towards the Stabilization Fund as established under this Chapter for a sum as may be provided in the Rules and there shall be an initial contribution of Rs.100 crores towards the said Fund by the State Government
- (ii) Every credit society shall pay its contribution towards the Stabilisation Fund on or before 15th of August of each year.

However, in a given case, the Registrar may extend the time not more than three months. On failure to contribute such amount it shall be recovered with standard rate of interest as arrears of land revenue.

- (iii) Mechanism, administration and distribution of such Stabilisation Fund shall be done by the committee consisting of following persons namely-
- (a) Secretary (Cooperation) to the State Government as chairperson.
 - (b) Registrar Co-operative Societies, State of Maharashtra as Secretary.
 - (c) Two members of State Federation of Co-operative Credit Societies.
 - (d) One member to be nominated by State Government.

The above committee shall administer the Statbilisation fund for specified purpose in the manner as prescribed in the Rules.

- (iv) Such Stabilisation Fund shall be used and utilized for the following purposes in the manner and procedure prescribed and laid down in the rules-
- (a) to provide liquidity support as a loan in case of such credit societies facing liquidity crunch.
 - (b) towards the administrative expenses of the Regulatory Board.

Provided that such credit society to which such liquidity support as a loan is made available, shall repay on such terms and conditions as may be prescribed in the Rules.

49B

Enforcement of Securities –

1. Notwithstanding anything contained in this Act and the rules framed thereunder and the Transfer of Property Act, 1882 and the Indian Contract Act, 1872, the non-agricultural cooperative credit society through its Special Recovery officer appointed u/s 156 of the Act, if having any of the

following securities either immovable or movable, created in its favour may enforce such securities against the borrowers to satisfy its dues in case of default, without the intervention of the court. The following securities shall be treated as secured securities or assets :

(i) Mortgage of immovable property

(ii) Charge over the immovable property

(iii) Hypothecation or pledge of movable property

2(a) The society through its Special Recovery officer appointed u/s 156 of the Act, shall be entitled to take possession of such security or secured assets of the borrower including the surety for the purposes of realizing its debts.

(b) To sell such securities or secured assets by public auction for realizing its debts.

(c) For the purposes of sale and confirmation of sale of property, the procedure laid down in Rule 107 of MCS Rules, 1961 shall be followed.

Provided that no such action of possession and sale without the intervention of the Court shall be taken under this section and no such power shall be exercised unless and until the society has given a notice in writing to a borrower and surety who is under liability to pay the society under a Security Agreement makes any default and shall also give such notice to the following persons mentioned herein after, in repayment of any secured debt or any installment thereof whose account in respect of such debt is classified as non-performing asset as per the norms set by the Regulatory Board from time to time, to discharge and pay in full his debts and other liabilities to the society within a period of 60 days from

the date of issue of such notice. The persons to whom the notice is to be issued in writing are as follows i.e. (1) Mortgagor (2) Borrower (3) Sureties (4) any person who has any interest in or charge upon the property mortgaged.

Provided further that on receipt of the notice by the borrower if the borrower makes any representation or raises any objection, the society shall consider such representation or objection and the society comes to conclusion that such objection or representation is not tenable or acceptable.

Provided further that the society shall communicate within 15 days from the receipt of such representation or objection the reasons for non acceptance of representation or objection to the borrower or the surety as the case may be.

2. After the society takes any steps for recovery of its dues as mentioned in Sub Section 2(a) and 2(b), the person aggrieved by such measures shall be entitled to file a revision application before the concerned Competent Authority under Section 154 of the Act and in such case provisions of Section 154 (2A) shall apply to such revision mutatis mutandi.

49C

Offences –

- (1) It shall be an offence under this Chapter if any member of a Committee or officer of such society violates any of the provisions under Sec.49A(2)(a), 49A(2)(b), 49A(3), 49A(4), 49A(8)(A), 49A(8)(B).
- (2) It shall be an offence under this Chapter if any society violates any of the provisions under Sec.49A(6), 49A(7), 49A(10).

Fine and Penalties –

- (1) Every member of the committee or officer who commits an offence under Sec.49C(1) shall be liable to pay fine which may extend up to Rs.10,000/- per member / officer per month so long as the offence continues.
- (2) Any society who commits an offence under Sec.49C(2) shall be liable to pay penalty which may extend up to Rs.25,000/- per default.
- (3) No officer below the rank of Divisional Joint Registrar, Cooperative Societies shall exercise the powers under the aforesaid sub sections (1) and (2).

Provided that no such fine or penalty shall be levied by such authority unless notice in writing has been issued to such erring officer or a society and an opportunity of being heard is given to him or it as the case may be.

- (4) If any such member of a committee or officer of the society or a society is found guilty after holding such enquiry shall be liable to pay such fine or penalty as may be levied by such authority. If such a member of a committee or officer of the society or a society commits a default in payments of such fine or penalty, such amount of fine or penalty shall be recovered by the Registrar as per the procedure laid down under Sec.156 of the Act.

Amendments suggested in present Maharashtra

Co-operative Societies Act 1960

2(10-a)ii-m) **co-operative credit society** – shall mean and include a urban and rural co-operative credit society not being a primary agricultural co-operative credit society whose main objective and principal business is to provide credit and accept deposits with respect to its members.

2(19)(a)- “ member ” means a person joining in application for the registration of a cooperative society which is subsequently registered or a person duly admitted to the membership of a Society after a registration and includes an active member, nominal, associate or sympathizer member and any depositor or financial service user of primary agricultural cooperative credit society.

(ai) “active member” means a member having stakes in the business of the society as provided in the byelaws of the society.

2(27) “Society” is an autonomous association of persons united voluntarily to meet their common needs and aspirations through jointly owned and democratically controlled enterprise and adhering to the cooperative principles and values, registered or deemed to be registered under this Act.

Proviso to Sec.26

Provided that a member who has committed a default in payment of his any dues as contemplated by Sec.73FF of the Act, shall not be eligible to vote in the election of the Committee of a society.

27(1) – Save as otherwise provided under sub-section (2) to (7), both inclusive, only active *member* of any society shall have right to vote provided every active member shall not have more than one vote in affairs of the society and every right to vote shall be exercised *by such active member* personally and not by proxy.

68A- Every cooperative credit society not being a primary agricultural cooperative credit society shall contribute annually towards the Stabilisation Fund of the State as established under sec.49A of Chapter IVA of the Act at such rate as may be prescribed.

Section 73 FF (1)(viii) - Is a Director of any other Co-operative Credit Society and cooperative banks (excluding Agricultural Credit, Thrift Credit and Salary Earners Credit and other societies)

147(A) – Notwithstanding anything contained in provisions of sec.146 and 147 for the purposes of Chapter IVA of the Act and in addition to that fine and penalties shall be levied by the Registrar as per sec.49C, 49D of the Act.

152 – Appeals

(1) An appeal -----35, 49A, 49B ----- 77A

Rule 86E

(3) After the case has been heard, the Registrar shall decide the application within 3 months from the date of hearing or soon thereafter as may be practicable and in any case within 6 months from the date of the application. The Registrar shall fix up a date for that purpose.
