

**THE SIKKIM CO-OPERATIVE SOCIETIES (SELF RELIANT AND AUTONOMOUS)
ACT 2006**

(Number _____ 2006)

Preamble

An Act to facilitate the voluntary formation and democratic functioning of co-operatives based on self-help, mutual-aid and sound business principles with Cooperative character and ideology jointly owned, professionally managed and democratically controlled by the members of co-operative for the promotion of their economic and social betterment and for matters connected therewith or incidental thereto.

It is hereby enacted by the Legislature of the State of Sikkim by the exercise of power conferred upon it under entry 32 of List-II of 7th Schedule of the constitution of India in the _____ year of the Republic of India as follows: -

**CHAPTER - I
PRELIMINARY**

1. Short title, extent and commencement

- (1) This Act may be called the Sikkim Co-operative Societies Act _____ (Year of Enactment)..
- (2) It extends to the whole of the territorial limits of the State of Sikkim.
- (3) It shall come into force on such date as the state government may, by notification in the official Gazette, determine and different dates for enforcement may be determined for different provisions of this Act.

2. State Policy on Co-operatives (1) The state shall:

- (a) Endeavour to promote the viability and growth of co-operatives which are instruments of equity, social and economic justice in furtherance to fulfillment of directive principles of state policy as enshrined in Part IV of the Constitution of India
- (b) Protect economic rights and interest and political rights of co-operatives
- (c) Provide financial, technical and policy aid and assistance to co-operatives and its members in order to reduce poverty, ensure equality, fairness and social progress, for a specified period to be determined by state legislature.
- (d) Respect the right to self-control and regulation in the management, production and services activities of co-operatives.
- (e) Declare that it shall not intervene in the legitimate management functions and sound business principles based operations of any co-operative.

(f) Recognise co-operatives as democratic institutions jointly owned, professionally managed and democratically controlled by members of co-operative to promote their economic and social betterment.

(g) Ensure that co-operatives function in accordance with the co-operative principles incorporated under Section 6 (a) to 6(g) of this Act based on mutual aid.

(h) Assist and promote the co-operatives by providing appropriate tax, lending rate and other economic and social concessions.

3. Definitions: in this Act, unless the context otherwise requires -

(1) "Act" (the, this) refers to the Sikkim Co-operative Societies Act

_____(Year of Enactment). .

(2) "administrator(s)" refers to person(s) appointed by Registrar by virtue of exercise of power conferred upon him and for the purpose specified under sub-section (1) of 64.

(3) "arbitrator" means a person appointed by Registrar by virtue of power conferred upon him under the Act, to settle disputes referred to him, in accordance the provisions of law.

(4) "arbitration" means the method or process by which the disputes referred therein are finally decided or settled.

(5) "area of operation" means the area from which the membership is drawn and includes the territorial limit up to which a co-operative can extend its activities as provided under bye-law.

(6) "board" (or "Managing Committee") means the governing body of a co-operative by whatever name be called, to which the direction of the affairs of the co-operative is entrusted under the bye-laws of that co-operative in addition to the powers and functions assigned to it under section 54 of this Act.

(7) "bonus" means payment made in cash or kind out of the profits of a co-operative to a member, or to a person who is not a member, on the basis of his contribution (including any contribution in the form of labour or service) to the business of the co-operative.

(8) "bye-laws" means bye-laws registered under this Act for the time being in force and includes registered amendments of such bye-laws and deemed amendment of bye-laws.

(9) 'charge' means the lawful conferment of preferential right of enjoyment upon an entity over other rival claimants on the same entity.

(10) "chief executive" means an individual, in paid or honorary capacity, nominated or elected or appointed through selection by the board of a co-operative in accordance with the bye-laws of that co-operative, who is the appropriate person to sue or be sued on behalf of the co-operative and has such responsibilities and powers as are specified in the bye-laws and assigned by the board of management committee, in addition to performance of such other functions specified under section 60.

(11) "company" means a company as defined under the Companies Act, 1956 or Sikkim Companies Act and includes a banking company and also any board, corporation or other corporate body, constituted or established by any Central or State Act for the purpose of the development of any industry ;

(12) "co-operative" means a self-reliant, self- help, mutual-aid, autonomous, voluntary, democratic, business enterprise registered or deemed to have been registered under this Act, which is jointly owned, managed and controlled by its members, who may be individuals or co-operatives, for the purpose of fulfilling or meeting their economic, cultural and social betterment, through the financially gainful provision of core services which fulfill the common need felt by all members.

(13) "co-operative bank" means a society which is doing the business of banking as defined in clause (6) of sub-section (1) of section 5 of the Banking Regulation Act, 1949 and includes any society which is functioning or is to function as an Agriculture and Rural Development Bank

(14) "co-operative election commission" refers to the Election Commission constituted or to be constituted under Section 132 of this Act.

(15) "co-operative principles" or "principles of cooperation" means the principles specified under section 6 of this Act meant for strict observance by Co-operatives

(16) "co-operative Service Commission" refers to the Service Commission constituted under Section 133 of this Act by the Government.

(17) "co-operative tribunal" means a tribunal to be constituted by government in consultation with High court under this Act to decide disputes to be referred to it under any of the provisions of the Act.

(18) "co-operative with limited liability" means a co-operative having the liability of its members limited by its by-laws;

(19) "co-operative with unlimited liability" means a co-operative, the members of which are, in the event of its being wound up, jointly and severally liable for and in respect of its obligations and to contribute to any deficiency in the assets of the co-operative;

(20) "court" means the principal Civil Court of original jurisdiction in a district, and includes the High Court and Supreme Court in exercise of its original civil jurisdiction;

(21) "credit equalization fund" means a fund created and maintained by each co-operative bank in accordance with and for the purpose specified under section 124 of Chapter XIV of this Act.

(22) "decree" means a decision expressed in a suit conclusively determining the rights of the parties to the dispute with regard to all or any of the matters in controversy and such decision is given formal expression as an adjudication.

(23) "deemed" means the intended act, purpose, requirement, need gets its legal status on the expiry of time period provided for taking such action or decision, on such act, purpose, requirement or need, etc.

(24) "deficit" means the excess of expenditure over income, arrived at, at the end of a financial year, after the payment of interest, if any, on share capital;

(25) "delegate" means a member nominated or authorized by a co-operative to represent its interests at the time of promotion of a federal or central secondary co-operative, and/or to take part at meetings of such federal or central or secondary co-operative to which the co-operative is affiliated;

(26) "deregistration" means the act of withdrawing or taking back the legal right conferred upon a co-operative for the purposes specified under section 15.

(27) "director" means a member elected in accordance with the bye-laws to the board of Management or the Managing Committee.

(28) "dividend" means the amount paid, out of the net profits of co-operative to a member in proportion to the share capital held by him;

(29) "expulsion" (of members) means the act of keeping away members by force or authority who are found to be dishonest by engaging themselves in doing acts which are detrimental and harmful to the interest of the co-operative or to its proper working.

(30) "federal co-operative (or central or secondary co-operative)" means a co-operative formed by not less than two members which themselves are co-operative for the object and purpose specified under chapter III of this Act.

(31) "general body" in relation to a co-operative, means a body consisting of all its members;

(32) "general meeting" or "general body meeting" means a meeting of the general body called and conducted in accordance with the provisions of this Act and the bye-laws of the co-operative;

(33) "government" or state government refers to the Government of Sikkim unless stated otherwise.

(34) "liquidator" means a person appointed by the Registrar under section 111 of this Act for the object and purpose specified under Chapter XI of this Act;

35(a) "member" means a person who is in need of and is able to use the core services of a co-operative and who is joining in an application for registration or admitted and continues as a member of the co-operative after registration in

accordance with the provisions of this Act, bye-laws of that co-operative, and includes a "member-co-operative"; nominal, associate or sympathizer member.

(b) "active member" means the member who takes active part in the management and business affairs of the co-operative.

(c) "associate member" means a member who holds jointly a share of a co-operative with others, but whose name does not stand first in the share certificate;

(d) "in-active member" means a member who simply holds shares of the co-operative, but does not take part in the business affairs and management of co-operative upto the level expected or specified in the rules, bye-laws or otherwise.

(e) "member-co-operative" means a primary or secondary co-operative which is in need of and is able to use the core services of a secondary co-operative, and which is admitted as a member of that secondary co-operative, in accordance with the provisions of this Act and the bye-laws of that secondary co-operative;

(f) "nominal member" means a person admitted to membership as such after registration in accordance with the by-laws;

(g) "sympathizer member" means a person who sympathies with the aims and objects of the co-operative and who is admitted by the co-operative as such member.

(36) "office bearer" means a person elected or appointed by a co-operative to any office of such co-operative according to its by-laws; and includes a chairman, vice-chairman, president, vice-president, managing director, manager, secretary, treasurer, member of the committee, and any other person elected or appointed under this Act, the rules or the by-laws, to give directions in regard to the business of such co-operative.

(37) "person" means any individual or institution or company or government undertaking or central or state government competent to contract;

(38) "president" or "chairman" means an elected director who is further elected by the board of management committee to preside over its meetings and the meetings of the general body, and to perform such other functions and have such other powers and responsibilities as are specified in the bye-laws and assigned by the board of management committee.

(39) "primary co-operative" means a co-operative whose members are primarily individual natural persons.

(40) "Qualified" means possession of requisite qualification and experience as provided under the Sikkim State Cooperative Cadre Rules.

(41) "Registrar" means an individual appointed in accordance with the requirements provided under this Act, and includes any individual or officers associated with or to Registrar such as additional Registrar, Joint Registrar, Deputy Registrar, Assistant Registrar Sub-Registrar entrusted with the performance of functions and discharge of duties and responsibilities of the Registrar under this Act;

(42) "representative general body" in relation to a co-operative means all the representatives authorized as per bye-laws to constitute and discharge such of the functions of general body.

(43) "representative general body meeting" means a meeting of the representatives, called and conducted in accordance with the provisions of this Act and bye-laws of the co-operative;

(44) "resolution" means a resolution of the general body at a meeting which has the approval of more than half of all the members of the co-operative with right of vote at the time of the general meeting, or of at least two-thirds of members or any other proportion with right of vote at the time of the general meeting and present in the general meeting, whichever is specified.

(45) "rules" means rules made under this Act by the government.

(46) "super session" means the act of removing or unseating or dissolving the duly and democratically elected management committee from its operation, in the larger interest of members of co-operative, public or co-operative movement, for managing the affairs of co-operative prejudicial to the interest of members or detrimental to the affairs and growth of co-operative.

(47) "surcharge" means the action or omission done in the preparation and maintenance of accounts for which credit should have been made and involve amounts in official books of accounts not approved by the auditor which amounts are recoverable from such of the persons including officials and employees of co-operative responsible for spending or incurring such expenditure.

(48) "surplus" means the excess of income over expenditure, arrived at, at the end of the financial year, after the payment of interest, on share capital, tax, if any and before the payment of surplus refund, and allocation of **reserves and other funds;**

(49) "Working capital" means funds at the disposal of a co-operative inclusive of paid-up share capital, funds built out of profits, and money rose by borrowing and by any other source.

(50) "winding up (or dissolution)" means the act of enabling or allowing an activity, subject or thing coming to an end in normal course or bringing or forcing an end to such activity, subject or thing in larger interest of member, public or co-operative or co-operative movement.

**CHAPTER-II: REGISTRAR AND REGISTRATION OF
CO-OPERATIVE SOCIETIES**

4 Appointment of Registrar: (1) The state government may appoint a person to be the Registrar of Co-operative Societies (herein after referred as Registrar) for the entire state or part thereof, as the case may be, for the purposes of registration, monitoring, regulation, control and supervision of co-operatives and such other functions, duties and responsibilities specified as under this Act.

(2) The state government, if satisfied, shall appoint a person or an officer to be the Registrar and such person before offering such an appointment shall have the following qualifications and experiences such as:

(a) served as qualified senior officer belonging to State Cooperative Cadre at least for a period ranging from three to five years in the department of cooperation or

(b) served as or qualified to become Chief Executive Officer in any state level co-operative institutions registered in the state of Sikkim, at least for a period ranging from three to five years or provided the said Chief Executive Officer worked in the cooperation department for a minimum period of five years.

(3) The minimum tenure of appointment of Registrar shall not be less than a period of three years without discontinuance any disturbance whatsoever.

(4) The state government, however, shall have the power to remove the Registrar from the position of Registrar before the completion or expiry of the full tenure in the event of the performance of Registrar is not found satisfactory based on a report placed before state legislature.

5. Co-operative which may be registered (1) A proposed co-operative which inter-alia, has its objects as the promotion of or serving the social, economic and overall interests of its members or of public through self-help and mutual aid in accordance with the internationally recognized principles of cooperation, in force from time to time incorporated under Section (6) may be registered under this Act.

(6) Co-operative to conduct business affairs on sound business principles and principles of cooperation: (1) Every co-operative registered under this Act shall conduct its affairs on sound legal business principles in accordance with the principles of cooperation referred under Section (5) which at present include the following:

(a) Voluntary and Open Membership:

Co-operatives are voluntary organisations, open to all persons able to use the services of such co-operatives and willing to accept the responsibilities of membership, without gender, social racial, political, or religious discrimination.

(b) Democratic Member Control:

Co-operatives are democratic organisations controlled by their members, who actively participate in setting their policies and making decisions. The elected representatives of co-operatives are responsible and accountable to their members. In primary co-operatives, members have equal voting rights (one member, one vote) and co-operatives at other levels are organised in a democratic manner based on proportional representation of voting.

(c) Member Economic Participation:

Members of cooperative contribute equitably to and democratically control the capital of their co-operative. Members usually receive limited compensation, if any, on capital subscribed as a condition of membership.

(d) Autonomy and Independence:

Co-operatives are autonomous, self help and self governing organisations controlled by their members. If co-operatives enter into agreement with other organizations, including governments, or raise capital from external sources, they do so on terms that ensure their democratic control by members by retaining its autonomous character.

(e) Education, Training and Information:

Co-operatives provide education and training for their members, elected representatives, managers and employees so that they can contribute effectively to the development of their co-operatives. They inform the general public particularly young people and opinion leaders about the nature and benefits of cooperation.

(f) Co-operation among Co-operatives:

Co-operatives serve their members most effectively and strengthen the co-operative movement by working together through available local, national, regional and international structures.

(g) Concern for Community:

While focusing on their member needs and wishes, co-operatives work for the sustainable development of communities, through policies approved by their members.

(7) Minimum members required to form a co-operative: (1) A primary co-operative may be registered with a minimum of fifteen natural persons drawn from or belonging to different families either with limited or unlimited liability.

(2) A cooperative, other than primary, may be registered with a minimum of two members which are already registered cooperatives

(8) Activities that may be undertaken by co-operative: The co-operative may undertake any one or more of the following production, distribution or service oriented activities:

(i) To promote, develop and encourage thrift and savings mobilization among members.

(ii) To generate funds and resources for providing credit financial and other support to the members for production oriented activities.

(iii) To encourage systematic production, marketing, distribution and sale of agricultural or non-agricultural produce and services among members.

(iv) To provide or ensure supply of consumer goods and services or to meet other household requirements of the members and their families.

(v) To develop expertise and skills among its members for the purpose of undertaking all kinds of production and service oriented activities.

(vi) To acquire land and buildings at concessional or reasonable rates either from government or others for providing housing facilities on easy terms and conditions among members.

(vii) To encourage fishermen to undertake joint or combined or group inland fishing activities and get loans and financial assistance at concessional rates from banking and financial institutions for the purchase of boats, nets and other essential equipments, inputs and materials

(viii) To provide services related and insurance related activities against possible losses of goods and services of members.

(ix) To establish, own, lease or operate, production, investment and service oriented activities in general and specific activities such as spinning, dairy, poultry, piggery, agro processing, handlooms, power looms, handicraft, fertilizer, pesticides, health, tourism, transport services and hospitality service.

(x) To promote, develop and advance the economic, social and educational status of members.

(xi) To undertake or promote any other activities not covered above.

Explanation: The activities undertaken or proposed to be undertaken by cooperatives must be strictly in conformity with other laws in force from time to time.

(9) Application for Registration: (1) An application for registration of co-operative under this Act shall be submitted to Registrar either by hand or registered post with acknowledgement due in such form and manner, if any, prescribed under law, rules or bye-laws.

(2) The application for registration of co-operative, in the case of primary shall be signed by every member who are natural persons and in the case of other than primary co-operative by persons duly authorized by respective boards of co-operatives or bodies or government as the case may be.

(3) Every such application for registration shall be accompanied by:

(a) four copies of proposed bye-laws of co-operative as adopted by the promoter members in the promoter's meeting called for the purpose together with registration fee prescribed, if any.

(b) the list of names of members admitted along with their addresses, occupation and the extent of equity share participation held.

(c) the list of members of the first board of management committee elected or selected by the promoter members.

(d) a true copy of the minutes of the meeting in which bye-laws were adopted duly signed by the Chairperson of the promoters meetings.

(e) A Business Development Plan showing feasibility and viability of the Cooperative.

(4) Where the applicants for registration of co-operative are individual natural persons, the number of such natural applicants shall not be less than ten, each such person being a member belonging to or drawn from different families as referred under Section (7).

Explanation: The term "members of family" means husband, wife, father, mother, son, daughter, brother, sister, step father, or mother, or son, step daughter, grand son or daughter, grand father or mother.

(5) Where the applicants for registration of co-operative are other than individual natural persons, the number of such applicant cooperative or bodies shall not be less than ten.

10. Registration: (1) The application for registration shall be disposed of by the Registrar within sixty days from the date of receipt of application.

(2) The Registrar, on receipt of the application for registration of co-operative, if satisfied:

(a) that the application for registration of a co-operative fully complies with the relevant provisions of this Act, rules and bye-laws framed thereunder.

(b) that the proposed co-operative fulfils the basic criterion of economic viability, promotion of economic and social interest as well as to serve the overall interest of its members.

(c) that the proposed objectives of the co-operative and bye-law provisions are not contrary to the provisions of this Act, rules and bye-laws may register the proposed co-operative, its bye-laws and forward the certificate of registration and a copy of the registered bye-laws by registered post to the Chairman of the proposed co-operative by whatever description be called within sixty days from the date of submission of the application for registration.

(3) The Registrar, if the conditions laid down under Section.9 and sub-section (2) of Section 10, are not fulfilled, shall communicate the order of refusal to register the co-operative together with reasons to the Chairperson of the proposed co-operative by registered post within fifteen days from the date of such decision taken provided that no order of refusal to register a co-operative shall be made without providing a reasonable opportunity of being heard to the applicants.

(4) Whereas the application for registration is not disposed of by Registrar within sixty days or the Registrar fails to communicate the order of refusal to register co-operative within the stipulated period specified under sub-section (3), the application for registration shall be deemed to have been accepted for registration by Registrar and he shall issue the Registration certificate in accordance with the provisions of this Act and rules.

(5) In the event of a co-operative is deemed registered as per sub-section (4) and the registration certificate is not received with seventy five days from the date of submission of application of registration, the Chairperson of such proposed co-operative shall prefer a specific application to the Registrar indicating the manner by which deemed status has been attained by the co-operative with a specific request to issue a registration certificate in accordance with sub-section (4) of Section 10.

(6) The Registrar, on receipt of such a request under sub-section (5) shall issue a registration certificate at once without any further delay

11. Registration Certificate: Conclusive evidence for registration: The registration certificate issued under sub-section (2) or (4) or (5) under Section (10) by the Registrar shall be a conclusive evidence to the effect that the co-operative mentioned therein is duly registered under this Act, unless proved that the same has been cancelled.

12. Co-operative to be a body corporate (1): The Registration of a co-operative shall render it a body corporate by the name under which it is registered having perpetual succession and a common seal;

(2) The co-operative shall, *inter-alia*, have power to acquire, hold and dispose of property, both movable and immovable, enter into contracts on behalf of co-operative, institute and defend suits and legal proceedings and to do all other things necessary for the purpose for which it was constituted and shall sue or be sued by its name.

(3) All the transactions entered into good faith prior to the registration of a co-operative shall be deemed to be transactions of the said co-operative entered after registration in furtherance of the objects of its registration.

13. Display of name of co-operative in prominent places and documents:

(1) Every registered co-operative shall display by paint or affix its full and complete name and address of its registered office and keep the same displayed, affixed or painted in legible characters in conspicuous positions such as:

- (a) at every office or place at which the co-operative 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, etc.
- (d) on all the bills of exchanges, promissory notes, cheques, endorsements, hundies, orders for money or goods it signs or that are signed on its behalf, and
- (e) have its name engraved in legible characters on its seal.

14 Cancellation of Registration: (1) The Registrar shall have the power to pass an order of cancellation of registration of a co-operative for the following reasons, namely, the co-operative

- (a) transferred the whole of its assets and liabilities to another co-operative
- (b) amalgamated with another co-operative or
- (c) divided itself into two or more co-operatives or
- (d) affairs are wound or
- (e) is deregistered under this Act.

(2) The co-operatives that have acted in one or more of the above said manner shall be deemed to be dissolved and ceased to exist as a body corporate from the date of such order of cancellation passed by Registrar.

15 Deregistration of a co-operative: (1) The Registrar shall have the power to deregister a co-operative for the following reasons, namely:

- (a) the registration of co-operative is obtained by misrepresentation or fraud made by promoter applicants.
- (b) the co-operative failed to commence the business within a period of two or three years after the receipt of registration certificate.
- (c) after the commencement of business, the co-operative failed to continue the business for a further period of two years.
- (d) the work or task of the co-operative is completed or exhausted or
- (e) the purpose for which the co-operative has been registered is not served within a reasonable time.
- (f) the cooperative deemed registered under sub-section (4) or (5) of section 10, in fact, failed to fulfill the conditions required for registration of cooperative which fact was noticed only after it received the deemed status.

(2) The power under sub-section (1) shall be exercised by the Registrar only after providing a reasonable opportunity of being heard to the existing chair person or chief promoter applicants and the answers or replies furnished by the existing chair person or chief promoters are not found satisfactory.

16 Bye-laws: (1) Every co-operative may make its own bye-laws or adopt in toto or adopt with necessary changes the bye-laws prepared and published by state government or that of same or similar kind of co-operatives, consistent with the provisions of this Act and rules made thereunder.

(2) The bye-laws of co-operative shall have legal force only when it is registered by the Registrar under this Act, but not otherwise.

(3) The bye-laws of co-operative may provide for all or most of the following subject matters, namely:

- a. the name, address and area of operation of the co-operative
- b. the objective and purpose behind the formation of the co-operative explicitly stated as a common central need of members
- c. the principles of cooperation as stated in this Act, according to which the co-operative shall conduct its affairs
- d. the type and kind of services to be provided to its members and non-members as well, if any.
- e. eligibility condition or criterion essential for obtaining membership in cooperative
- f. incorporation of the procedure for :
 - (i) obtaining membership
 - (ii) withdrawal or transfer of membership
 - (iii) termination and cessation of membership
- g. fulfillment of conditions necessary for continuing as a member

- h. the time limit within which a potential member must seek and obtain membership in order to continue to use the services of co-operatives
- i. rights made available to members and the extent of its enjoyment and non-enjoyment.
- j. fixation of minimum involvement or performance required annually of each member vis-à-vis use of services, financial commitment, participation in meetings, in order to be eligible to exercise the rights of membership including the right to vote.
- k. the consequences of default in payment of any sum due to co-operative by a member
- l. the nature, type and amount of capital, if any, of the co-operative
- m. the maximum capital upto the extent a single member can subscribe
- n. the nature and extent of the liability of members for the debts contracted by the co-operative
- o. the sources and type of funds to be raised by the co-operative
- p. the purposes for which the funds may be applied or utilized with express specification of approval or consent required from Registrar or management committee.
- q. the extent and conditions under which deposits, loans, debentures and other funds may be mobilized or utilized, as the case may be.
- r. the conditions and purposes for which state aid and aid from other financial institutions may be sought and obtained
- s. the manner of disposal of surplus
- t. the constitution of various funds, reserves and the purposes for which the same may or may not be utilized.
- u. the manner of convening general body and other special general meetings and quorum thereof required to conduct such meetings.
- v. the frequency of conducting general body meetings
- w. the manner of making or bringing amendment in the bye-laws
- x. the procedure for conducting elections in (a) normal circumstances and (b) in case the co-operative fails to conduct election
- y. the size and constitution of the board of directors
- z. fulfillment of conditions essential for: (a) becoming a director, (b) retaining directorship and (c) removal of directors and for filling up of vacancies
- za. the term of office of the directors, chairperson and other office bearers
- zb. the manner of convening management committee meetings and quorum required.
- zc. the frequency of conducting board meetings
- zd. powers and functions of office bearers including chairperson

- ze. penalties for acting against the interest of members and for non-fulfillment of duties by members, directors and staff
- zf. conduct of audit: (a) the appointment, role and functions of auditors, (b) procedure for conduct of audit where co-operatives fail to make necessary arrangements, (c) time limit for making audit compliance
- zg. the authorization of an officer(s) to sign documents and to institute and defend suits and other legal proceedings on behalf of the co-operative
- zh. the terms and condition on which a co-operative may: (a) deal with non-members, (b) associate with other co-operatives and (c) deal with organisations other than co-operatives.
- zi. the rights, if any, which the co-operative may confer on any co-operative or other federations and the circumstances under which these rights may be exercised by the federation/s.
- zj. the manner of disposal of funds of a co-operative under liquidation
- zk. the specification of accounting year for the co-operative
- zl. procedure and terms and conditions for transfer of shares and interest of deceased member in the name of a nominee after the death of a member
- zm. the grounds for and procedure to be followed for the dissolution of a co-operative
- zn. restrictions, if any, on services rendered or to be rendered to non-members
- zo. organisation of self-help groups of people living in its area of operation and to conduct education and training programmes.

17 Amendment of bye-laws: (1) Every co-operative shall have the authority to amend or delete any of its existing bye-laws or add new bye-law provisions by a resolution passed by majority of two thirds of members present and voting at a general body meeting of the co-operative called for the purpose.

(2) The said resolution shall be valid only when it is passed by general body after giving a twenty one days clear notice of the proposed amendment to all its members.

(3) Every application for registration of the amendment of bye-laws shall be forwarded by registered post or submitted directly by hand with due acknowledgement to the Registrar within a period of thirty days from the date of the resolution passed or sixty days from the general body meeting whichever is later, duly signed by the Chairperson and two members of the committee together with the following particulars and documents.

- (a) the date of the general body meeting in which the proposed amendment of bye-laws was approved along with a copy of the resolution adopted.
- (b) a copy of the issuance of notice to members for calling general body meeting
- (c) the details of actual number of clear days notice given to convene the general body meeting along with a copy of such notice issued.
- (d) the total number of members on the rolls of the co-operative having the right to vote on the date of such general body meeting.
- (e) the quorum required for conducting such meetings
- (f) the number of members having the right to vote and present at such general body meeting
- (g) the actual number of members who voted in such meetings
- (h) the actual number of members who voted in favour of as well as against the proposed amendment respectively.
- (i) A copy of the relevant bye-laws in force with the proposed amendment to be made together with reasons justifying such amendments.

(4) The Registrar, on receipt of an application under previous subsection, if satisfied that the proposed amendment of bye-laws:

- (a) is not contrary to the provisions of this Act and rules
- (b) does not conflict with the principles of cooperation

(c) is likely to promote the economic and social interest as well as serve the overall interest of the cooperatives:

shall register the proposed amendment within a period of sixty days from the date of receipt of the application meant for the purpose.

(5) The Registrar shall forward a copy of the registered amendment of bye-laws together with a certificate duly signed and sealed by him to the co-operative within a period of fifteen days after making such registration. The certificate so issued by the Registrar shall be conclusive evidence that the proposed amendment of bye-laws has been duly registered.

(6) Whereas, the Registrar formed an opinion that the proposed amendment of bye-laws failed to qualify for registration in accordance with the provisions of this Act and rules, he may refuse to register the same and communicate his decision to the chairperson of the co-operative by giving reasons for not registering the proposal for amendment within fifteen days from the date of such refusal.

(7) If the application for registration is not disposed of within sixty days after the receipt of such proposal or no order or refusal is communicated within that

period to the chairperson of the co-operative, the said application shall be deemed to have been accepted for registration of amendment of bye-laws and the Registrar shall issue a registration certificate to that effect in accordance with this Act and rules.

(9) The Registrar shall not register the amendment of bye-laws proposed or the bye-laws deemed to have been registered shall not have legal effect, if the proposed or deemed registered amendment of bye-laws, as the case may be, is either contrary to or repugnant to the policy directions issued by the state government as the case may be or contrary to the principles of cooperation or likely to affect the very purpose and objective behind the formation of such co-operative.

18. Power to direct amendment of bye-law in public interest: (1) If, at any time, the Registrar forms the opinion that an amendment of bye-laws of co-operative is necessary or desirable in the interest of co-operative or co-operative movement, he may advise such co-operative to make the amendment proposed by him within the specified time.

(2) If the said co-operative fails to make the proposed amendment by the Registrar within the specified time, the Registrar may, after giving such co-operative an opportunity of being heard, register such amendment and issue a copy of such registered amendment of bye-laws duly certified by him to the co-operative. The bye-laws so registered shall be deemed to have been duly amended and shall become legally effective and binding on the co-operative and its members.

19. When amendment of bye-law comes into force: The amendment of bye-laws of a co-operative, unless expressed to come into operation on a particular date, shall come into force on the date on which it was registered.

20. Change of liability, transfer of assets and liabilities, amalgamation, division of co-operatives (1) A co-operative may, by a resolution passed by a two thirds majority of members present and voting in its general body meeting, **change the extent of its liability** as provided under law, rules or bye-laws.

(2) A co-operative may, by a resolution passed by a two thirds majority of members present and voting in its general body meeting, decide to **transfer its assets and liabilities**, either in whole or in part to any other co-operatives which agree to such transfer by the said resolution in its general body meeting in accordance with the provisions of law, rules or bye-laws.

(3) A co-operative may, by a resolution passed by a two-thirds majority of members present and voting in its general body meeting, **divide** itself into two or more co-operatives.

(4) Any two or more co-operatives may, by a resolution passed by a two thirds majority of members present and voting in their respective general body meetings, decide to **amalgamate** themselves to form a new co-operative.

(5) The resolutions referred under sub-section (1), (2), (3) and (4) shall contain all relevant particulars regarding the extent of liability, transfer of assets and liabilities, division, amalgamation of co-operatives, respectively, as the case may be.

(6) Where a co-operative has passed a resolution under this section, it shall give notice thereof together with a copy of the resolution to all its members, depositors, debtors and creditors with an advice either to express their consent in favour of the resolution or exercise the right of option to withdraw their shares, deposits, loans or services within a period of thirty days from the date of service of notice.

(7) The members, depositors, debtors and creditors who or which failed to express their consent in favour of the above said resolution or exercise the right of option within the stipulated thirty days period , shall be deemed to have been given their consent in favour of the said resolution.

(8) A resolution passed by co-operative under this section shall not take effect until:

(a) all the members, depositors, debtors and creditors have assented to or deemed to have been assented to the resolution referred under sub-section (6) or (7).

(b) all claims of the members, depositors, debtors and creditors who have exercised the right of option referred under sub-section (6) or (7) have been fully met or otherwise satisfied;

(c) in the case of change of liability, the proposed amendment of bye-laws of concerned co-operative for the purpose have been either registered or deemed to have been registered.

(d) in the case of division or amalgamation, the certificate of registration of new co-operatives have been either issued or deemed to have been issued.

(9) On receipt of an application for registration of new co-operatives either by making division or amalgamation of existing co-operatives in accordance with the resolutions passed under sub-sections (3) or (4) as the case may be, the Registrar may register the new co-operative(s) or societies and the bye-laws thereof. The Registrar may also have power to refuse registration of new co-operative(s), for

reasons to be recorded in writing for such refusal of registration of new co-operative(s).

(10) Where a resolution passed by a co-operative under sub-section (2) takes effect, such resolution shall be a sufficient conveyance to vest all the assets and liabilities in the transferee co-operative without any further assurance.

(11) The registration of a co-operative shall stand cancelled and the same co-operative shall be deemed to have been dissolved and shall cease to exist as a corporate body:

(a) when the whole of assets and liabilities of such co-operatives are transferred to another co-operative or

(b) when such co-operatives divides itself into two or more co-operatives or

(c) where two or more co-operatives are amalgamated into a new co-operative, the registration of the co-operatives so amalgamated shall stand cancelled or deemed to have been dissolved and also cease to exist as corporate bodies.

21. Promotion of subsidiary cooperative organisation: (1) Any co-operative, by a resolution passed by two thirds of total members of general body meeting present and voting, may promote one or more subsidiary organisations for the furtherance of its objectives and such organisations may be registered under any law for the time being in force, as agreed to by the general body.

(2) The annual report and accounts of such subsidiary co-operative organisations so established shall be placed before the general body meeting of the promoting co-operative each year.

(3) Any subsidiary co-operative organisation so created under sub-section (1) shall exist only so long as the general body meeting of the promoting co-operative deems it necessary.

22. Partnership of Co-operatives (1) Any two or more co-operatives, by resolution passed by two thirds of total members of general body meeting present and voting in each co-operative may enter into contract of partnerships for carrying out any specific business permissible under the bye-laws on such terms and conditions as may be mutually agreed upon.

(2) Whereas such contract of partnership requires creation of new co-operative organisations, the participating co-operatives shall be its members.

CHAPTER-III: FEDERAL CO-OPERATIVE

23. Registration of Federal Co-operative: (1) Federal co-operatives for respective type, category or sector or co-operative unions consisting of primary or secondary co-operative may be established and be made eligible for registration in accordance with the provisions of this Act in general and section 8,9, 10 and 11 in particular.

(2) Every federal, central or secondary co-operative shall be represented in its general body meeting by its member co-operatives

(3) All the provisions of this Act applicable to any co-operative shall be equally applicable to federal co-operatives.

24. Functions of Federal or Central or secondary Co-operatives (1)

The federal or central or secondary co-operatives or co-operative union for the state may, subject to the provisions of this Act and any other law in force discharge, inter-alia, such of the functions to facilitate the voluntary formation and democratic functioning of co-operatives based on self-help and mutual aid.

(2) The federal or central or secondary co-operatives or co-operative union for the state in addition to the overall functions specified under sub-section (1) may also undertake or perform any or all of the following functions:

- (a) secure and safeguard the observance of or ensure compliance of the principles of cooperation by member co-operatives.
- (b) assist or extend support for making or preparing or modifying or deleting appropriate bye-laws and policies for the consideration of its member co-operatives.
- (c) make appropriate planning and designing for providing specialized training and education programmes to employees and members respectively and provide required data based information.
- (d) undertake evaluation and research works on an ongoing basis for the purpose of extending help and support in the preparation of annual or periodical perspective plan for its member co-operatives.
- (e) undertake business services on behalf of its member co-operatives
- (f) provide management development services to member co-operatives
- (g) evolve a common and suitable code of conduct for general observance by member co-operatives
- (h) evolve model viability norms for member co-operatives based on their business prospects and development indicators.
- (i) provide legal aid, assistance and advice to member co-operatives
- (j) assist member co-operatives in organizing self-help groups and providing services for people living in their respective areas
- (k) develop market information system, logo brand promotion, quality control measures and technology upgradation details for the benefit of member co-operatives.
- (l) ensure timely conduct of election in member co-operatives and assist them in the regular conduct of general body and other meetings
- (m) prepare a panel of qualified auditors and ensure timely conduct of various kinds of annual and other audits in member co-operatives.
- (n) promote harmonious relations amongst member co-operatives.

25. Establishment of co-operative Union: (1) There shall be established co-operative union for the whole of the state and registered in accordance with the provisions of this Act. The co-operative union so established, in addition to the functions specified under Section 24, inter-alia, may also undertake any or all of the following functions:

- (a) create and receive 'co-operative education fund' from member co-operatives at the rate prescribed under this Act or rules and utilize and maintain the same in accordance with the provisions of this Act.
- (b) utilise the funds so received, inter-alia, for conducting awareness and education programmes for members and also providing all support services to member co-operatives.
- (c) liaise with government and other promotional bodies on behalf of and amongst co-operatives.
- (d) represent at state and district level bodies for the purpose of protecting the interest and welfare of all type of co-operatives.
- (e) undertake research and consultancy projects towards the promotion and application of co-operative philosophy, principles and ideology.
- (f) serve as a data bank on co-operative form of activities for the entire state.
- (g) play a pivotal role on an ongoing basis in framing the co-operative policy by state government.

CHAPTER –IV: MEMBERS AND THEIR DUTIES, RIGHTS,

LIABILITIES AND RESPONSIBILITIES

26. Who may become member of co-operative: (1). Membership in co-operative shall be made open to all eligible persons without any discrimination on grounds of sex, race, caste, greed, political or religious affinity.

(2) The eligible persons as per the provisions of this Act who are desirous of utilizing the services of co-operative at the same time ready and willing to undertake the responsibilities of members alone shall be admitted as members of any co-operative.

(3) Any individual natural person who, is the citizen of India and above the age of eighteen years in the case of adult or between the age group of fifteen to eighteen years in the case of student and voluntarily applies for joining the co-operative may be admitted as a member only in primary cooperatives.

(4) Any person other than natural person such as co-operative, government, national or state level co-operative development organisations, government company or any class or association of persons, may also be admitted as members of a co-operative, primary as well as secondary, central or federal cooperative.

(5) Every application received by a co-operative for admission as its member shall be disposed of by such co-operative within a period of sixty days from the date of receipt of such application and the decision of such co-operative on such application shall be communicated to the applicant within fifteen days from the date of such decision taken.

(6) The admission of members in a co-operative shall be made only by an elected board of directors or by the general body meeting where such a board does not exist.

(7) The administrator or committee of administrators as the case may be appointed by the Registrar during the intervening period of supersession of a co-operative shall not have the right to admit new members.

(8) The persons enrolled as members into a Cooperative shall immediately after enrollment be compulsorily trained on the right, duties, liabilities and responsibilities of members either at the cost of Cooperative or at the cost of Government if the Cooperative is not in a position to incur such expenses.

(9) The member shall become eligible to exercise his right only after undergoing training as specified under Sub-clause (8).

(10) The State Government may take the help and assistance of State Cooperative Union or already established District, State or National Cooperative Training Institutions referred under Section 133 as the case may be for the purpose of imparting training to members admitted into a Cooperative.

27. Admission of nominal, associate or sympathizer members: (1). A co-operative may admit persons as nominal or associate or sympathizer members if due provision is made in the bye-laws of respective co-operatives.

(2) The nominal or associate or sympathizer members shall not be entitled to subscribe to the shares of such co-operative or have any interest in the management thereof including the right to vote or to be elected as a director of the board.

28. Disqualification for members of co-operative: (1) No person shall be eligible for being a member of a co-operative whose /whom:

(a) business or business interest is directly in conflict with or competitive with the business or business interest of such co-operative or ,

(b) used the services of co-operative below the minimum level prescribed under the bye-laws for two consecutive years or,

(c) has not attended three consecutive general body meetings of the co-operative and such absence has not been condoned by its members or,

(d) has made default in the payment of any amount payable to the co-operative under the bye-laws of such co-operative.

(e) any officer or employee of the government or government undertaking shall be disqualified from being elected or appointed to any position in a co-operative except in salary earners co-operatives.

(2) No co-operative, without sufficient cause or reason, shall refuse admission of membership to any person duly qualified for membership under this Act, rules or bye-laws. Where the admission is refused for whatever reason, the decision together with reason for such refusal of membership shall be communicated to such person by registered post within fifteen days of the decision taken or within sixty days from the date of the application for membership is made.

29. Deemed admission of member: (1) In the event of the application for membership is not disposed of within sixty days or the decision taken is not communicated within a period of fifteen days as stipulated under sub-section (5) of section 26, the co-operative shall be deemed to have taken a decision favouring the admission of the applicant as a member, accordingly, the person who applied for membership shall be deemed to have been admitted as a member of the co-operative at the expiry of sixty days of the receipt of application for membership or fifteen days from the date of such decision taken.

(2) Where a person has been denied or refused membership by the board of directors, an appeal shall lie to the general body or Special General Meeting called for the purpose within a ;period of three months whichever is earlier against the

decision of such board. Any applicant aggrieved by such decision of general body meeting may apply to the Registrar or Co-operative Tribunal, as the case may be, for review of the decision.

30. Co-operative member not to exercise his rights till due payments are made and also not exercise right to vote if failed to transact minimum business with Cooperative.

(1) No member of a co-operative shall exercise the rights of a member, unless he has made all payment due to the co-operative in respect of his membership, or has acquired such interests in such co-operative as may be specified in the bye-laws.

(2) The member, in addition, shall not enjoy the right to cast his vote in the election as well as to contest the election if such member failed to transact minimum business stipulated for the purpose either in the bye-laws or otherwise during the relevant period.

31. Right of members: (1) The member of co-operative, inter-alia, shall have the following rights:

(a) to work for the benefit of co-operative and be paid in accordance with the bye-laws of co-operative.

(b) to enjoy dividend and profit corresponding to the extent of contribution made in the form such as capital, labour and production by the members and to the level or extent of using the service of the co-operative.

(c) to be provided with necessary technical and economic information, copy of the Act, rules, bye-laws and annual statement of accounts of the co-operative.

(d) to enjoy common welfare benefits of the co-operative

(e) to participate in or elect representatives to general body meeting, other meetings of members for the purpose of taking part in the decision making process of cooperative and also vote on the affairs of the co-operative

(f) to contest election to the management committee, other committees such as executive committee, loan committee, deposit committee, etc. and other posts of co-operative to be filled by the process of election, selection or nomination.

- (g) to seek opinions from the board of management committee and chief executive on all aspects and functioning of co-operative.
- (h) to make demand or call to convene special or extra-ordinary general meeting of members for specified purposes in accordance with the provisions of the Act, rules and bye-laws.
- (i) to cast vote in elections conducted by co-operative
- (j) to transfer share capital contribution, rights, interests and duties to other members or co-operative or other persons in accordance with the provisions of bye-laws.
- (k) to withdraw from the membership of co-operative in accordance with the provisions of the Act, rules and bye-laws.
- (l) to get the share capital contribution and other interest be returned upon the withdrawal and termination of membership from the co-operative on the grounds specified under Section 33 and 35 of the Act respectively.
- (m) to utilize lawfully the services made available to members by the cooperative as and when required under the Act, rules and bye-laws.
- (n) to know the reasons for the refusal, if any, to render services by the co-operative.
- (o) to make representation to the Registrar or the respective federation against the refusal, if any, made to render services by the co-operative
- (p) to participate in and benefit from the activities of co-operative.
- (q) to question its management committee and chief executive as to their failures to implement adopted resolutions and to have access to all information concerning his own interests.
- (r) to seek the overturning of resolution or actions by the co-operative(s) bodies which contravene the law or its statutes or are found inappropriate.
- (s) A member of a co-operative who has contributed land to cooperative shall further enjoy the rights subject to the provisions of "existing laws.

32. Duties of members: (1) The members shall owe the following duties to the co-operative:

(a) to abide by the provisions of the Act, rules, bye-laws and other lawful decisions taken by the General body, management Committee, other committees and Registrar

(b) To make share capital contribution, other fees and payment to the co-operative in accordance with the provisions of the Act, rules and bye-laws.

(c) To extend full cooperation and support to other members and co-operative, thereby, contributing to the overall development of co-operative.

(d) To perform or extend the minimum economic commitment and business support to the co-operative as prescribed under the Act, rules and bye-laws.

(e) to undertake jointly and severally the responsibility to bear liability on debts, risks, losses, damage caused to co-operative within the limit of members share capital contribution in the case of limited co-operative and beyond the limit in the case of unlimited cooperative.

(f) To compensate for damages caused to the co-operative, if any, in accordance with the provisions of the Act, rules and bye-laws.

(g) To bear the loss incurred by the Cooperative, proportionate to the share capital held or volume of business transacted by the Society.

33. Withdrawal of membership: (1) A member of a co-operative at any time during the continuance of his membership, may withdraw his membership from the co-operative by giving sixty days notice to the board of directors.

(2) The co-operative, based on an application referred under sub-section (1), may allow a member to withdraw his membership only after fulfilling all the obligations of such member towards such co-operative.

(3) The withdrawing member shall be entitled to the refund of his share capital contribution and all other interest in the co-operative subject to the condition that the assets of such co-operative, after making such repayment shall not go below the debts and liabilities of such co-operative.

34. Expulsion of member (1) A co-operative, by a resolution passed by a majority of not less than two-thirds members present and voting at the general body meeting held for the purpose, may expel a member for acts which are detrimental to the proper working of the co-operative. After providing a reasonable opportunity for making representation on the subject matter.

(2) Where the member of a co-operative has been expelled by the board of directors, an appeal shall lie to the general body whose decision shall become final.

(3) An expelled member of a co-operative may be made eligible for re-admission as a member of that co-operative only, after the expiry of three years from the date of such expulsion which period may be increased or decreased by the Managing Committee as per the nature of detrimental Acts committed, provided the concerned member assures or gives an undertaking that he shall not work against the interest or benefit of the co-operative in future.

35. Termination of membership: (1). The death, insanity, judicial sentence for any offence involving moral turpitude or any other offence with imprisonment for one year and upward shall lead to automatic termination of membership.

(2) A member of a co-operative may, in addition, by vote of the majority of all members of the board of directors, be terminated for the following reasons or causes:

(a) where, the member of a co-operative failed to patronize, utilize or enjoy the services of the co-operative as per the minimum limit or standard prescribed under the bye-laws for an unreasonably longer period as may be fixed by the board of directors, which in any case shall not be less than two years.

(b) where the member of a co-operative has continuously failed to discharge, carryout or comply with his duties, responsibilities and obligations as the case may be.

(c) where a member acted in violation of the provisions of law, rules and bye-laws of the co-operative

(d) for any act done or omitted to do or not to do an act which is injurious or prejudicial to the interest or welfare of the co-operative.

(e) where the member of a co-operative has transferred all his share capital contribution, other rights, interests and duties towards to other persons in accordance with the provisions of this Act, rules or bye-laws.

(f) a member of a co-operative whose membership is likely to be terminated by the board of director for the reasons or causes specified under sub-section (a) to (e) shall be informed of such proposed action in writing either in person or by registered post and such member shall be given a reasonable opportunity of being heard before such decision is finally taken.

(g) the decision of the board of directors to terminate the member of a co-operative shall be subject to an appeal before the general body within thirty days after the decision is communicated and its decision shall become final and binding, if no appeal is preferred.

36. Cessation of membership: (1) A person shall be ceased to be a member of a co-operative in the following circumstances:

(a) on acceptance of resignation from membership by the co-operative:

(b) on transfer of whole of share capital contribution or interest in co-operative to another member, person or cooperative.

(c) on death, removal, expulsion or termination of membership from co-operative.

(d) in the case of institutional members i.e. firm, company, body corporate, trust etc., on its dissolution or having ceased to exist.

37. Manner of casting vote and power of members: (1).Every member of co-operative shall have one vote regardless of the number of shares held by him in primary co-operative and this right to vote shall be exercised personally and not by proxy and whereas in the case of equality of votes, the Chairman or President, as the case may be shall have a casting vote.

(2) Where the share of a co-operative is held jointly by more than one person, the person whose name stands first in the share certificate, if present, shall have the right to vote and in the absence of first named person, the next named person may cast his vote.

(3) In the case of institutional members, such co-operative, company, body corporate, trust, government which have invested funds in the shares of co-operatives, the authorized representative or member or director for such institution shall have the right to vote on behalf of the institution they represent.

(4) The nominees of government, Registrar, financing bank or federal co-operative shall not have any right to vote at any election of office bearers of management committee or any other committees.

(5) The voting right of members of federal co-operative may be regulated by the provisions of the Act, rules or bye-laws.

(6) A member who has availed loan from co-operative and remained as a defaulter on due dates in making payment for two or more instalments consecutively towards the repayment of loan facility availed shall not enjoy the right to vote in the affairs of any cooperative.

38 Restriction on holding of shares: (1) The member of a co-operative, other than government or government undertaking or financing institution shall not hold share capital of such cooperative more than the limit prescribed under the bye-laws and in no case such holding shall exceed one fifth of the total share capital contribution of the co-operative or Rs.20,000/- whichever is less.

39 Restriction on transfer of shares or interest: (1) The transfer of share capital or interest of a member in the co-operative shall be subject to the conditions and limits prescribed under section 38.

(2) No member shall be permitted to transfer the share capital held by him or his interest in the capital or property of the cooperative, unless:

(a) the member held the share or interest in the co-operative for a period not less than three years;

(b) the transfer is made to a member of co-operative or to a person whose application for membership has been accepted by cooperatives.

(c) in the event of members or prospective members not coming forward to acquire such share or interest in the co-operative, the same may be transferred to non-members who are interested in the acquirement of such share and interest and who are prepared to abide by rules and regulations governing the co-operative with the condition that they shall become members of the co-operative at once.

40. Transfer of share or interest on death of a member (1). Any co-operative on the death of its member shall, transfer the share or interest of such deceased member to the person(s) nominated to receive such share or interest, as per the provisions of the Act, rules or bye-laws and such member if, failed to nominate

any person, the co-operative in such cases, may transfer such share or interest in co-operative to the legal heir or representative of such deceased member.

(2) If the nominee(s) mentioned therein or legal heirs or representatives of the deceased, so desire, may require the co-operative to pay to him or them, the value of share or interests of the deceased member and on receipt of such request, the co-operative shall make the payment of share or equivalent to interest to such nominee(s), legal heirs or representatives, after duly deducting the dues, if any, due to co-operative from the deceased member.

41. Liability of past member and estate of deceased members: (1)

The liability of past member or of the estate of the deceased member of the co-operative for the debts of the cooperative shall be determined:

- (a) in the case of past members on the date on which he ceased to be a member and
- (b) in the case of deceased member on the date of his death; and
- (c) the liability mentioned under clause (a) and (b) of sub-section (1) shall continue for a period of two years from such date(s).

(2) Whereas the cooperative is under winding proceedings, the liability of past and deceased member shall continue until the entire liquidation proceedings are completed, of course, within the period prescribed under this Act and the liability in such cases, however, shall extend only to the debts of co-operative as existed on the date of cessation of membership or death, as the case may be.

42. Share or interest of members not liable for attachment: (1) The share or interest of a member in the capital of co-operative shall not be liable for attachment or sale under any decree or order of a court in respect of any debt or liability incurred by the member and accordingly, no person shall have any claim on such share or interest.

CHAPTER-V: RIGHTS AND DUTIES OF CO-OPERATIVES

43. Rights of Co-operative: (1) The co-operative registered under this Act shall, inter-alia, have possess and enjoy the following rights, i.e. the right:

(a) to choose the type or kind of business or service or activity to be undertaken

(b) to determine the form, structure and extent and economies of scale of business and services of the co-operative.

(c) to hire employees only in case members of co-operative are unable to satisfy or meet the requirements of business or service or activities of the co-operative.

(d) to decide on admission of new members, prescription of qualification disqualification, basis or grounds for withdrawal, expulsion and termination of membership and procedure therefore in accordance with the provisions of this Act.

(e) to decide or determine the manner and method of distribution of surplus or losses incurred by co-operative.

(f) To decide on grant of appreciation and reward for individuals who made substantial contribution and achievement in building, promoting and developing the co-operative.

(g) To take appropriate action against members who violate provisions of this Act, rules and bye-laws.

(h) to direct erring members, officers and employees to compensate for damages they may or might have caused to the co-operative.

(i) to borrow money from banks, raise funds from other sources and lend money to members of co-operative in accordance with the provisions of this Act, rules and bye-laws.

(j) to legally refuse or deny demands of individuals, institutions and organisations which are contrary to the provisions of this Act and rules.

44. Duties of co-operative: (1). The Co-operative shall, inter-alia, owe have follow, observe or discharge the following duties i.e. the duty:

(a) to undertake or carry on business or service or activities in conformity with law and legally recognised or accepted standards or norms.

(b) to follow and observe the legally reorganised accounting systems, procedure and standards prescribed under this Act or any other laws for the time being in force.

(c) to pay the prescribed tax, fee and duty and fulfill all financial obligations as per provisions of law in force from time to time

(d) to mobilize, maintain and raise working capital for the co-operative as per the provisions of this Act, rules and bye-laws.

(e) to undertake the responsibility for the repayment of debt and discharge of obligations of cooperative to be met by the capital and assets owned by such co-operative.

(f) to ensure enjoyment of right of members and provide economic, social and business commitment to members.

(g) to protect the interest of members who work for the benefit of cooperative and other employees engaged by such co-operative.

(h) to ensure regular and periodical conduct of educational and training programmes for members, officers, employees and officials and ensure that all such members, officers, employees and officials of co-operative actively participate in building the co-operative.

(i) To create favourable conditions for the production, business and service oriented co-operatives to operate within co-operative framework by following the principles of cooperation.

(j) To protect, promote and preserve the environment, landscape and human ecology in accordance with the provisions of law.

CHAPTER-VI: MANAGEMENT OF COOPERATIVE

45. Constitution, power and functions of general body: (1) The general body of a co-operative shall consist of all the members of co-operative

(2) Where the area of operation of the co-operative is far and wide that it shall be neither possible nor feasible for all members to meet in one place without much inconvenience, the bye-laws may provide for the constitution of smaller representative general body consisting of delegates of members of cooperative either elected or selected in accordance with the provisions of Act, rules and bye-laws and in such cases, the smaller representative general body shall exercise all or such powers of the general body as prescribed or specified in the bye-laws of the cooperative.

(3) The ultimate authority of co-operative shall, subject to the provisions of the Act, rules and bye-laws, vest in the general body consisting of its own members and any reference under this Act to general body shall equally apply to the representative general body wherever exists.

(4) The representative general body, however, shall not have the right to amend bye-laws of co-operative except those in relation to which the bye-laws have delegated the power of amendment to the representative general body.

46 Annual General Meeting of General Body: (1). It shall be the duty and responsibility of existing board of management committee of every co-operative to call the annual general meeting within ninety days after the closure of the financial year, for the purposes specified under sub-section (2) of this section .

(2) The annual general body meeting shall deal with all or any of the following subject matters:

- a. election of directors of the board of management committee
- b. removal of directors of the board of management committee and filling up of vacancies
- c. consideration of the:-
 - (i) balance sheet and annual reports presented by the board of management committee
 - (ii) audit reports and auditor's statement of accounts
 - (iii) audit compliance report
- d. grant of approval for the maintenance of qualified auditors, make appointment and removal of such auditors including statutory and internal auditors
- e. consideration of the action taken report on inquiry under section 91, if any.
- f. disposal of net surplus
- g. review of: (i) operational deficit, if any,
 - (ii) actual utilization of reserve and other funds,
 - (iii) annual report and accounts of subsidiary organisations
- h. approval of the long term perspective plan, the annual operational plan and the annual budget
- i. creation of specific reserves and other funds
- j. report on membership of the co-operative in other co-operatives
- k. decide on partnership with other co-operatives

- l. to hear and decide appeal of a person whose application for membership has been rejected or whose membership has been terminated by the board of management committee
- m. list of employees recruited who are relatives of board of directors or the chief executive.
- n. amendment of byelaws
- o. formulation of code of conduct for the board directors, officers, employees and members.
- p. admission, termination and expulsion of members
- q. dissolution, liquidation or winding up of the co-operative
- r. any other functions specified in the byelaws

(3) Whereas the board of management committee of a co-operative failed to convene the annual general body meeting within the period specified under sub-section (1) without cogent and convincing reasons, the Registrar shall convene such annual general body meeting within a period of sixty days from the date of expiry of period mentioned under sub-section (1) and the expenditure incurred for calling such meeting shall initially be borne by the co-operative, which amount shall be recovered from the members of the board of management committee responsible for not calling such meeting as per law.

(4) At every annual general body meeting of a co-operative, the board of management committee, in addition to all other matters shall lay before such meeting a statement containing details of loans or goods or services on credit, if any, given to any members of the board of management committee or to their spouse, sons, daughters or relatives of the members of the board of management committee.

47. Calling of special General Body Meeting: (1). The Chief Executive of the co-operative shall, on the direction of board of management committee, call a special general body meeting within thirty days after the receipt of requisition in writing from Registrar or required proportion of total number of members of cooperative, board of directors, creditors as may be provided under the Act, rules or bye-laws.

(2) If the said special general body meeting of a co-operative is not called as per sub-section (1), the Registrar or persons authorized by him shall have the power to call such meeting which shall be deemed as a meeting called by the Chief Executive of the co-operative as per law and the expenditure incurred for calling such ,meeting shall be borne by the co-operative or recovered from such person(s) who

was or were responsible for the refusal or failure to call such special general body meeting.

48. Board of Directors or Management Committee or Committee of Management: (1). There shall be a board of directors of management committee for every co-operative (herein after referred as board of management committee) constituted by the general body consisting of such number of persons specified in the bye-laws which number in any case shall not exceed fifteen.

(2) The Board, may however, co-opt two more additional directors who are exceptionally qualified in the areas such as finance, audit, law, economics and found useful for the essential and effective management of cooperatives.

(3) The Chief Executive of the co-operative shall be an ex-officio member convener of the meeting of management committee.

49. Representation from Scheduled Caste/Scheduled Tribe/ Weaker Section and Women in the Board of Management Committee: (1). Notwithstanding anything contained under this Act, rules or bye-laws of the concerned co-operative, the seats in the committee of management shall be reserved as per the specified number for the following category of persons:

- (a) atleast one seat for members belonging to scheduled caste or scheduled tribe
- (b) atleast one seat for members belonging to weaker section of the co-operative as defined by state government.
- (c) atleast one seat for women members

(2) The representation of scheduled case or scheduled tribe, weaker sections or women in the meeting of management committee may be more than the number of seats specified under sub- section (1) but in no case it shall be less than such number specified therein.

(3) whereas, if persons belonging to reserved categories failed to get elected in the normal course of election, the management committee shall co-opt atleast such number of members not defeated in the election, belonging to such reserved categories specified under sub-section (1).

50. Representation for employees in the management committee: (1) Every co-operative shall reserve atleast one seat in the management committee for employees' representative whose primary responsibility shall be to protect the interest of all employees while decisions pertaining to employees are taken at such meetings.

The employee representative may be associated either through election or by nomination by the management committee and in the event of nomination, it shall be ensured that the person so nominated is acceptable to or having the support of majority of employees.

51. Qualification for becoming a member of the Management Committee:

(1) The members of cooperative desirous to become members of management committee shall fulfill or meet all the requirements specified under this sub-section.:

(a) a citizen of India and all residents of Sikkim state as per the provisions of the existing laws of Sikkim for a minimum period of three years; and

(b) a member of a concerned co-operative for a minimum period of three years with good moral character and possess the vision and ability to administer the affairs of the co-operative; and

(c) preferably a bachelor degree holder in co-operatives, economics, finance, agriculture, or other disciplines having direct relation to the type of activities undertaken or to be undertake by the co-operative and if the required number of members of management committee with bachelors degree are not available, the qualification may be relaxed to the level of senior or higher secondary education or Xth standard or VIIIth standard respectively but in any case not below Vth standard.

(d) in the absence of qualified persons available as mentioned under sub-section(1) (c) a person worked or currently working for the benefit of co-operatives and its development for a period of at least two years may also be admitted as a member of management committee duly elected.

52. Disqualification for being a member of Management Committee: (1)

The following persons shall be disqualified for being a member of the Management Committee: A person who:

(a) has been convicted for an offence involving moral turpitude or for an offence involving simple or rigorous imprisonment for more than one year or fine beyond rupees five hundred or both.

(b) has been adjudged as an insolvent or a person of unsound mind by a competent court

(c) participates or has participated in the profit or any contract with the co-operative

- (d) holds any office or place of profit under the co-operative
- (e) has been a member of concerned co-operative for less than three years immediately proceeding the date of such election or appointment.
- (f) has taken loan or goods on credit from the co-operative, and defaulted in making repayment of loan or failed to repay the cost of goods taken on credit, as the case may be, within a period of sixty days from the due date for repayment.
- (g) is a person against whom any amount due under a decree, decision or order of court is pending recovery under this Act?
- (h) has been convicted for an offence committed under this Act.
- (i) is disqualified for being a member of a co-operative under section 28.
- (j) has been expelled from being a member of co-operative under section 34.
- (k) has been terminated from membership of co-operative under section 35.
- (l) failed to transact minimum business as stipulated in the rule, bye-laws or otherwise with Cooperative during the relevant period.
- (m) failed to maintain minimum deposit with the Cooperative as stipulated in the rules, bye-laws or other wise.
- (n) remained as an inactive member during the relevant period or year.
- (o) absented himself from attending three consecutive management committee meetings or general body meetings as the case may be and such absence has not been condoned by the members of the management committee or general body respectively.

(2) In addition to the above, all the directors of board or management committee shall collectively, jointly and severally incur disqualification for a period of three years from being chosen as directors, if the current or existing board of management committee fails to:

- (a) conduct election to the management committee under Section 55.

(b) call the annual general body meeting under Section 46 within ninety days after the closure of the corresponding financial year

(c) to prepare annual financial statement of account and present the same in the annual general body meeting within the specified period under this Act or any other related law.

(3) In addition to the requirements mentioned under sub-section (1) and (2), a person who failed to have been a member of a co-operative for at least three years or failed to attend three general body meetings of the co-operative immediately preceding the election, shall also ipso facto incur disqualification.

53 Term of office of the board or Management Committee: (1) The term of office of the board or management committee shall be as specified in the bye-laws, but in no case, exceed three years from the date of assumption of office by the management committee.

(2) The term of office referred under sub-section (1) may be terminated before the expiry of the full term by the general body at its meeting specifically called for the purpose with two-third majority of members present and voting for reasons to be recorded in writing after duly providing an opportunity of hearing to the affected board of management committee.

53(3) In the event of a decision, to retire the entire management committee before the completion of its full term, is taken by the general body as specified under sub-section (2), it shall be the duty of the general body to prepare a scheme of election to be conducted at the earliest possible by following the required procedure and during the intervening period, the Chief Executive shall be vested with the required additional power by the general body, if any, required to look after the affairs of the management of the cooperative till the newly elected board of management committee or administrator appointed, assumed office.

54. Powers and functions of the board of directors or Managing Committee: (1) The board or management committee shall, in accordance with the byelaws, have the authority to:

- a. admit new members in accordance with section 26 and 27,
- b. elect the President or chairperson and other office bearers of various committee meetings.

- c. remove the President or and other office bearers of various committee from office for reasons to be recorded in writing after following the due procedure required under law, rules or bye-laws.
- d. appoint and remove the President or chief executive of co-operative for reasons to be recorded in writing after following the due procedure required under law, rules or bye-laws.
- e. fix staff strength in proportion to the volume of business of cooperative as determined or prescribed by concerned statutory regulatory authority, if any.
- f. frame policies concerning:
 - i) the organisation and provision of services to members
 - ii) prescription of qualifications, experience, method of recruitment, service conditions and other staff related matters.
 - iii) the mode of custody, mobilisation, utilization and investment of funds
 - iv) method and manner of keeping books of accounts
 - v) monitoring and creation, prescription and maintenance of management information systems including statutory returns to be filed
- g. place the annual report, annual financial statement of accounts of accounts, plan and budget for the approval of general body.
- h. consider audit and compliance reports and place the same before the general body.
- i. review membership in other co-operatives.
- j. undertake such other subjects and matters necessary for the effective performance of the co-operative including functions as delegated by the general body.
- k. terminate membership under section 35(2) and confirm termination of membership under section 35(1).

(2) The President or Chairperson and other office bearers as may be prescribed in the bye-laws shall be elected by the board members from among the elected members within seven days from the date of declaration of election results in accordance with the byelaws and the President or chairperson shall:

- a. preside over meetings of the board and the general body
- b. have a second vote in the event of equality of votes on any matter being decided upon by the board except in the matters relating to the conduct of election.
- c. exercise such other powers as delegated by the board specified in the policies framed or resolutions adopted by the board.

55. Elections of members to the Management Committee: (1) The duty and responsibility to conduct timely elections to the management committee primarily lies with the existing management committee.

(2) Elections to the management committee shall be:

(a) conducted before the expiry of the term of outgoing board of management committee as per the provisions of the Act, rules or bye-laws and

(b) held in its general body meeting by secret ballot in the manner provided under law

(3) The persons elected as directors of the management committee may be made eligible for re-election if so provided under the byelaws.

(4) Whereas the existing management committee if, for one reason or the other, failed to conduct the election to constitute the new management committee as per law, the tenure of such management committee shall automatically come to an end on the expiry of its full term and in such cases, the Registrar shall hold the election within a period of sixty days from the due date of election and during the intervening period, the Chief Executive may be authorized to discharge the functions of management committee to the extent necessary to continue the normal business of cooperative.

(5) Except the circumstances specified under sub-section 4, the elected members may continue to hold office till their successors are elected or nominated and assume charge of the office.

(6) Where there arise vacancies on the board of directors and where there exists a quorum, the remaining directors may either exercise all powers of the management committee or may fill such vacancies from eligible persons through co-

option for the remaining period if the remaining tenure of the management committee exceeds six months.

(7) Where there arise vacancies on the board without having a required quorum of directors, the remaining directors, may call a special general meeting for the purpose of electing members to fill such vacancies for the remaining period.

(8) The expenses for holding election either by the existing board or Registrar shall be borne by the concerned co-operative.

56. Removal of elected members by general body: (1) Any elected board member of management committee, who had acted adversely or against the interest of a co-operative shall be removed by the management committee by a resolution passed at the general body meeting with prescribed majority of members present and voting.

(2) Such member, however, shall not be removed without providing a reasonable opportunity for making representation to the appropriate authority in the matter.

(3) The appropriate authority for the purpose of making representation under this section shall be the general body of cooperative..

57. Periodicity to conduct Management Committee Meeting: (1) The management committee shall meet as frequently as possible and in no case the gap between two board meetings shall exceed ninety days.

58. Minimum Quorum to hold meetings: (1). **Board Meeting:** The management committee shall conduct its official business only if it has a minimum quorum of more than fifty percent of the total members of the management committee as provided under law or bye-laws. Any such meeting held without fulfilling the said quorum shall be considered invalid and the decisions taken in such meeting without the required quorum shall not have legal force or validity or binding.

(2) **General Body Meeting:** The general body meeting shall conduct its official business only if it has a minimum quorum of fifty percent of the total members of the general body meeting. Any general body meeting held without fulfilling the said quorum shall be considered invalid and the decisions taken in such meeting without the required quorum shall not have legal force or validity or binding.

59. Punishment for the Board of Director for being disloyal to the co-operative: (1) The board of director of management committee, by virtue of holding the office of director of a co-operative, as and when acquires an opportunity,

which otherwise should have belonged to the co-operative, for himself or his relatives including full blood and half blood relations shall be liable for all damages caused to the co-operative and must account for double the cost or profit which otherwise should have occurred to the co-operative by refunding the same, provided that the said board of director shall be given a full and complete opportunity to defend his case before awarding such punishment, or.

(2) If the said board of directors are found willfully or knowingly vote for or assent to patently unlawful acts or found guilty of gross negligence or bad faith in directing the affairs of the co-operative or acquire any personal or pecuniary interest in conflict with their official duty, shall be made severally, collectively and jointly liable for all damages or profits resulting to the co-operative or its members or other persons.

60. Duties and responsibilities of Board of Directors or Managing Committee: (1) The board of directors of management committee, shall;

(a) observe and follow the provisions of this Act, rules, bye laws and abide by the decisions taken by general body, management committee and other committees;

(b) follow and adhere to the rules and regulations governing the business of the co-operative which, inter-alia, include credit regulations, production, procurement, marketing, supply and storage regulations, labour regulations, housing regulations, etc.

(c) perform their duties faithfully and loyally for the benefit of co-operative

(d) be held responsible either individually or collectively to compensate the co-operative for the loss as suffered or damages incurred.

(e) If found negligent in performing their official duties, such directors shall be individually or jointly or collectively held or made liable to compensate the losses suffered or damages incurred.

(2) The duties and responsibilities cast upon board of directors under section 129 shall equally, mutatis mutandi, be applicable to other board of directors, in addition to the same cast upon them under sub-section (1) of section 60.

61. Appointment, role, powers and functions of chief executive: (1). There shall be a Chief Executive, by whatever designation may be called, for every co-

operative to be appointed by the management committee who shall be a full time employee of the co-operative.

(2) The chief executive shall be a member of the board, executive and other committees or sub-committees as may be constituted by the co-operative from time to time.

(3) Where the government holds more than fifty one percent of equity share capital contribution of a co-operative, the appointment of the chief executive in such cooperative, his salary and other allowances including terms and conditions of employment shall be as approved and borne by the government.

(4) The chief executive shall perform the following functions and such other functions specified in the bye-laws:

- a. have overall and general control over the day to day functions, activities and operations of the co-operative.
- b. be the authorized person to sue or be sued on behalf of the co-operative.
- c. be an authorized person on behalf of co-operative: (i) to have powers to endorse, sign, negotiate cheques and other negotiable instruments, (ii) to operate bank accounts of the co-operative either individually or along with such other person as the board may desire, (iii) be the person to enter into agreements or contracts with other individuals, firms, concerns, companies, organisations and institutions, etc.
- d. be responsible for staff recruitment, discipline, performance, growth and development.
- e. to ensure proper maintenance of records and accounts of the co-operative.
- f. present draft annual report and financial statements of accounts for the approval of the board, within thirty days of the closure of financial year.
- g. convene or ensures the conduct of the general body, board, executive and other meetings in consultation with the chairperson as per bye-laws and record the proceedings thereof.
- h. assist the board of management committee in the formulation of policies and plans.

- i. be accountable to the general body.
- j. furnish the board necessary information for monitoring the performance of co-operative.
- k. perform any other function as specified in the bye-laws or as decided by a resolution of board and general body.

62. Committees of Board: (1) The management committee is empowered to constitute executive and other committees as may be considered necessary, provided that the total number of committees at a particular time including executive committee but excluding statutory committee shall not exceed three.

63. No confidence motion against elected officials of a co-operative:

(1) The requisition for calling a special board meeting for the purpose of moving no confidence motion against the president, vice president, chairman, vice chairman, secretary, treasurer or any other elected officials of a co-operative, by whatever description or name be called, shall be signed by not less than one third of the total members of the management committee and shall be delivered to the convener of such committee meeting by duly making a copy of the same to the Registrar with a request to call such a special board meeting if the convener of such meeting failed to call the meeting within fifteen days of the receipt of such request.

(2) If the proposed no confidence motion is passed by a simple majority of the total number of management committee members who are entitled to vote, it shall be deemed that such position(s) against which the motion was passed, had fallen vacant from the date of passing such no confidence motion against such elected officials.

(3) No such requisition, however, shall be made or entertained even if made, for calling a special board meeting within a period of six months from the date on which the said elected officials entered upon the office and there shall be a minimum gap of six months between the two special board meetings intended for the said purpose.

(4) If the convener of the management committee failed to call a special board meeting within fifteen days from the date of receipt of the requisition under sub-section(1), the Registrar may call such a special board meeting within seven days after the expiry of fifteen days notice given to the convener of such special meeting.

(5) The special meeting so referred shall be presided over by the Registrar or his authorized officer, who while presiding the meeting shall have the same power as that of president or chairman of the co-operative as the case may be.

64. Supersession of a co-operative: (1) The Registrar for the reasons, basis or grounds specified under sub-section (2) shall have the power to supersede or remove the duly elected management committee from office before the expiry of its full tenure and in its place appoint one or more officers to be called as administrators to manage the affairs of the co-operative for a period not exceeding six months as may be specified in the order which period may at the discretion of Registrar for the reasons to be recorded in writing, be extended for a further period not exceeding six months and that the aggregate period in any case shall not exceed one year.

(2) The basis or reasons or grounds for superseding the duly elected management committee may include any one or more of the following, that the management committee:

(a) is persistently making default or is negligent in the performance of duties imposed upon it under the Act, rules or byelaws or

(b) has committed acts which are prejudicial to the interest of the co-operative or its members, or

(c) has omitted or failed to comply with any direction or order issued to it by Registrar or government in general or public interest or.

(d) experienced a stalemate in the constitution or discharge of functions of the management committee or

(e) without sufficient cause or reason failed to conduct the election as per scheduled due date

(3) The Registrar shall prescribe the minimum qualification and experience essential for appointment of persons as administrator(s) referred under sub-section (1) and ensure that only qualified and experienced persons related to the particular type of co-operative alone are appointed as administrator(s).

(4) For the purpose of sub-section (3), the Registrar may prepare and maintain a panel of specialist who possess proved competency to discharge the functions in the respective field of co-operatives with the approval of government and as and when the occasion arises for the appointment of administrator(s), the Registrar shall appoint persons as administrators from the said list.

(5) The Registrar may fix the remuneration for the administrators as he deems fit payable out of the funds of the co-operative which is subject to recovery from the directors of the board superseded after providing adequate opportunity of hearing to the affected directors or connected persons

(6) The administrator(s) so appointed shall have the power to exercise all or any of the functions of the management committee or of any officer of the co-operative which are essential for the continuance of smooth functioning of the co-operative or other functions considered necessary in the interest of co-operative. The administrator during his tenure as an administrator, however, shall not exercise the power of admission of new members.

(7) The administrator(s) so appointed shall, before the expiry of his tenure of office, arrange for the constitution of a new management committee in accordance with the rules or byelaws of the co-operative and hand over the management of the co-operative peacefully to the newly constituted management committee and cease to function thereafter.