

Twelfth Kerala Legislative Assembly
Bill No. 299

**THE KERALA CO-OPERATIVE SOCIETIES (SECOND
AMENDMENT) BILL, 2009**

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further to amend the Kerala Co-operative Societies Act, 1969.

Preamble.— WHEREAS it is expedient further to amend the Kerala Co-operative Societies Act, 1969, for the purposes hereinafter appearing ;

BE it enacted in the sixtieth year of the Republic of India, as follows:—

1. *Short title and commencement.*—(1) This Act may be called the Kerala Co-operative Societies (Second Amendment) Act, 2009.

(2) It shall come into force at once.

2. *Amendment of the Preamble.*—In the Kerala Co-operative Societies Act, 1969 (21 of 1969) (herein after referred to as the principal Act), for the existing Preamble, the following Preamble shall be substituted, namely:—

“*Preamble.*—WHEREAS with a view to provide for the orderly development of the co-operative sector in the State, it is essential to organize the co-operative societies in accordance with Co-operative principles as self governing, democratic institutions, so as to achieve the object of equity, social justice and economic development as envisaged in the Directive Principles of State Policy of the Constitution of India and to promote scientific and technological development, health care, market intervention and management excellence in the co-operative sector, it is expedient to consolidate, amend and unify the law relating to co-operative societies in the State.”

3. *Amendment of section 2.*—In section 2 of the principal Act,—

(i) after clause (ec), the following clause shall be inserted, namely:—
“(ecc) ‘Co-operative Ombudsman’ means the person or persons appointed under sub-section (2) of section 69A ;”;

(ii) for clause (hb), the following clause shall be substituted, namely:—
“(hb) ‘Director of Co-operative Audit’ means the Director of Co-operative Audit appointed under sub-section (1) of section 63

and any officer to whom all or any of the powers of the Director of Co-operative Audit may be delegated by the Government by general or special order under sub-section (3) of section 63;”;

- (iii) in clause (ib), after the words “and having” and before the word “individuals”, the words “the Government,” shall be inserted ;
- (iv) after clause (1), the following clause shall be inserted, namely:—

“(1a) ‘Miscellaneous Societies’ means such societies as may be prescribed and which accept deposits from their members only and undertake business activities for the welfare of their members, as per their approved bye-laws except providing of agricultural and schematic loans and which do not deal with negotiable instruments under the Negotiable Instruments Act, 1881 (Central Act 26 of 1881);”;

- (v) for clause (oa), the following clause shall be substituted, namely:—

“(oa) ‘Primary Agricultural Credit Society’ means a Service Co-operative Society, a Service Co-operative Bank, a Farmers Service Co-operative Bank and a Rural Bank, the principal object of which is to undertake agricultural credit activities and to provide loans and advances for agricultural purposes, the rate of interest on such loans and advances shall be the rate fixed by the Government for such loans and having its area of operation confined to a Village, Panchayath or a Municipality :

Provided that the restriction regarding the area of operation shall not apply to societies or banks in existence at the commencement of the Kerala Co-operative Societies (Amendment) Act, 1999 (1 of 2000):

Provided further that if the above principal object is not fulfilled, such societies shall lose all characteristics of a Primary Agricultural Credit Society as specified in the Act, Rules and Bye-laws except the existing staff strength.”;

- (vi) after clause (ta), the following clause shall be inserted, namely:—

“(taa) ‘Urban Co-operative Society’ means a co-operative society the principal object of which is to undertake non-agricultural credit activities and to raise funds to be lent to its members with its area of operation confined to a municipality or a corporation :

Provided that the restriction regarding the area of operation shall not be applicable to the existing urban co-operative societies.”.

4. *Amendment of section 6.*—In section 6 of the principal Act, in clause (c) of sub-section (2), after the words “who is an individual” and before the words “and by a person duly authorized”, the words “as specified under clause (a) of sub-section (1) of section 16” shall be inserted.

5. *Amendment of section 9.*—After section 9 of the principal Act, the following proviso shall be added, namely:—

“Provided that the Government and the Registrar shall have power to regulate and control the working of a society for the economic and social betterment of its members and the general public.”.

6. *Amendment of section 28.*—In section 28 of the principal Act,—

- (i) in sub-section (I), the third and fourth provisos shall be omitted ;
- (ii) in sub-section (IA), for the word “fifteen”, the word “thirteen” shall be substituted ;
- (iii) after sub-section (IA), the following proviso shall be inserted, namely:—

“provided that in the case of committees of Primary Co-operative Societies constituted prior to the commencement of the Kerala Co-operative Societies (Second Amendment) Act, 2009 (..... of 2009), the maximum number of members shall be fifteen.”;

- (iv) after sub-section (IB) the following sub-section shall be inserted, namely :—

“(1C) Notwithstanding anything contained in the bye-laws of a Primary Credit Society or an Urban Co-operative Bank, one seat in the committee of each such society shall be reserved for the members having a deposit of ten thousand rupees and above.”;

- (v) in clause (a) of sub-section (2), for the words “another society of the same type; or”, the words “more than one society of the same type; or” shall be substituted ;
- (vi) in clause (b) of sub-section (2), for the words “two or more societies of a different type or different types;” the words “more than two societies of different types ;” shall be substituted.

7. *Amendment of section 28A.*—In section 28A of the principal Act,—

- (i) in sub-section (I), for the words “one seat for a woman member”, the words “two of the total seats for women members” shall be substituted ;
- (ii) for sub-section (3), the following sub-section shall be substituted, namely :—

“(3) Where there is no representation of women or members belonging to Scheduled Castes or Scheduled Tribes in the committee of a Society including those of the societies formed exclusively for the benefit of women and for persons belonging to Scheduled Castes or Scheduled Tribes, the Government or the Registrar shall nominate women and persons belonging to Scheduled Castes or Scheduled Tribes to the elected committee from among the members of such societies.”.

8. *Insertion of new section 28AA.*—In the principal Act, the existing section 28AA shall be renumbered as 28AB and before section 28AB so renumbered, the following section shall be inserted, namely :—

“28AA. *Reservation for persons with banking experience or professional qualification in the committees of Urban Co-operative Banks.*—Notwithstanding anything contained in the bye-laws of any Urban Co-operative Bank, there shall be reserved not less than two seats in the committees of such banks for members who possess experience in banking or professional qualifications :

Provided that this section shall not be applicable to the committees of Urban Co-operative Banks constituted prior to the commencement of the Kerala Co-operative Societies (Second Amendment) Act, 2009 (..... of 2009).

Explanation :—For the purpose of this section,—

(i) “members who possess experience in banking” means members who are or were in paid service of a Commercial Bank, State Co-operative Bank, District Co-operative Bank, an Urban Co-operative Bank or a Service Co-operative Bank in the managerial cadre.

(ii) “professional qualifications” means membership in the Institute of Chartered Accountants of India or Masters Degree in Commerce with experience in banking or experience in the inspection or audit of banks, including Co-operative Bank.”.

9. *Amendment of section 28B.*—In section 28B of the principal Act,—

- (i) in sub-section (1), after the words “the conduct of elections to the committees”, the words “and Representative General Bodies” and after the words “the conduct of election to the committee” the words “and Representative General Body” shall be added.
- (ii) in the proviso to sub-section (1), after the words “the conduct of elections to the committees”, the words “and Representative General Bodies” shall be inserted.
- (iii) in sub-section (3), after the words “in consultation with the Government”, the words “and the Registrar” shall be inserted ; and after the words “conduct of election to the committee”, the words “and Representative General Body” shall be inserted.
- (iv) in sub-section (4), after the words “elections to the committee” the words “and Representative General Body” shall be inserted.

10. *Amendment of section 32.*—In section 32 of the principal Act,—

(i) for clause (d) of sub-section (1), the following clause shall be substituted, namely :— ,

“(d) misappropriates or destroys or tampers with the records or causes the destruction of records to cover up any misconduct or malpractice, he may, after giving the committee an opportunity to state its objections, if any, by order in writing, remove the committee and appoint in its place, one administrator or an administrative committee consisting of not more than three individuals, one among them as convener, who need not be members of the society, to manage the affairs of the society for a period not exceeding six months as may be specified in the order, which period may, at the discretion of the Registrar, be extended from time to time, so however that the aggregate period does not exceed one year.

Explanation :—A notice and an order given as per this clause to the President, in his absence to the Vice President or any committee member who is holding charge of President or Vice President or to the Chief Executive of a society shall be treated as an order given to the committee of the society.”;

(ii) after clause (d) of sub-section (1), the following clause shall be added, namely :— .

“(e) Every member of the committee superseded under this section shall from the date of order of such supersession stand disqualified to contest in the election to or to be nominated to the committee of any Society or to be appointed as an administrator in any society for two consecutive terms.”.

11. *Amendment of section 33.*—In section 33 of the principal Act, for clause (b) of sub-section (1), the following clause shall be substituted, namely:—

“(b) that a new committee is prevented from entering upon office or a new committee fails to enter upon office, on the date on which the term of office of the existing committee expires, the Registrar may, either *suo motu* or on the application of any member of the society, after intimating the Circle Co-operative Union, appoint one administrator or an administrative committee consisting of not more than three individuals, one among them as convener, who need not be member of the society to manage the affairs of the society, for a period not exceeding six months as may be specified in the order, which period may, at the discretion of the Registrar and for reasons to be recorded in writing, be extended, from time to time, so, however, that the aggregate period shall not, in any case, exceed one year or till a new committee enters upon office, whichever is earlier.”.

12. *Amendment of section 36A.*—In section 36A of the principal Act:—

- (i) after the words “in favour of the State Co-operative Bank or a District Co-operative Bank or a Primary Agricultural Credit Society or Primary Housing Society” the words “or an Urban Co-operative Bank” shall be inserted ;
- (ii) after the words “substituting the words “State Co-operative Bank or District Co-operative Banks”, “Primary Agricultural Credit Society or Primary Housing Society”, the words “or an Urban Co-operative Bank” shall be inserted ;
- (iii) in the Explanation, after the words “in favour of the State Co-operative Bank or a District Co-operative Bank, or a Primary Agricultural Credit Society or a Primary Housing Society”, the words “or an Urban Co-operative Bank” shall be inserted.

13. *Amendment of section 37.*—In section 37 of the principal Act, in sub-section (2), the following proviso shall be inserted, namely:—

“Provided that this sub-section shall not apply if the employees, whose salary is to be deducted, are not informed at least thirty days in advance, by notice duly acknowledged, about the dues on loan or award amount.”.

14. *Amendment section 53.*—In section 53 of the principal Act, after clause (f), the following clause shall be inserted, namely:—

“(g) set off any amount due to Government out of the financial assistances given under this section, in which case the gross amount of assistance before set off shall be treated as the original amount of assistance :

Provided that the Government may exempt any society, in eligible cases considering its financial position, from setting off Government dues.”

15. *Amendment of section 56.*—In section 56 of the principal Act,—

(i) clause (c) of sub-section (1) shall be omitted;

(ii) in clause (a) of sub-section (2) for the words “twenty” the words “twenty five” shall be substituted ;

(iii) for clause (c) of sub-section (2), the following shall be substituted, namely:—

“(c) seven percent of the net profit to Agricultural Credit Stabilization Fund” ;

(iv) for clause (e), the following shall be substituted, namely:—

“(e) balance of net profit may be utilised for any or all of the purposes specified in the bye-laws of the societies except for payment of bonus to employees.”.

16. *Amendment of section 57A.*—In section 57A of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:— .

“(2) A society shall contribute to the Fund at such ‘rates as may be specified in the scheme.”.

17. *Insertion of new section 57D.*—In the principal Act, after section 57C, the following section shall be inserted, namely:—

“57D. *Co-operative Risk Fund Scheme.*—(1) The Government may, by notification in the Gazette, frame a scheme to be called the “Risk Fund Scheme” for the establishment of a Fund for meeting the loan liability of those members who have availed loans from the co-operative societies and died within the repayment period of such loans.

(2) The types of societies and the types of loans covered by the scheme, the rate and manner of contribution towards the fund by the societies, the manner of administration and utilization of the fund and the maintenance of books of accounts in respect of the fund and its audit shall be such as may be specified in the scheme.”.

18. *Amendment of section 59.*—In section 59 of the principal Act, after sub-section (2), the following sub-section shall be added, namely:—

“(3) Granting of loans and advances to members or non members and the manner of recovery thereof shall be such as may be prescribed.”.

19. *Amendment of section 63.*— In section 63 of the principal Act,—

(i) for sub-section (3), the following sub-section shall be substituted, namely:—

“(3) The Government may by general or special order, delegate all or any of the powers of the Director of Co-operative Audit, in the Act to his subordinate officers.”;

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

“(7) The Director of Co-operative Audit shall be under the control of the Registrar of Co-operative Societies.”.

20. *Amendment of section 64.*—In section 64 of the principal Act,—

(i) in sub-section (6), after the words “The amount of fee”, the words “or cost” shall be inserted ;

(ii) in sub-section (7), after the words “The fee” and after the words “non-payment of the fee”, the words “or cost” shall respectively be inserted ;

(iii) in sub-section (8), after the words “the procedure for payment of the fee”, the words “or cost” shall be inserted ;

(iv) after sub-section (11), the following sub-section, shall be inserted, namely:—

“(12) Notwithstanding anything contained in the Act it shall be the duty of the committee of a society,—

(a) to request the Director of Co-operative Audit to get its accounts audited every year by remitting the required fee or cost for audit in advance or as determined by the Director of Co-operative Audit and to get its books, accounts, financial statements and all other statements required by the auditor for audit, written up and completed and to submit them for audit through its Chief Executive, to the Director of Co-operative Audit or officer authorised by him for the purpose of audit within the time limit stipulated in sub-section (4), before a request for audit is made to the Director of Co-operative Audit;

(b) to place the audit certificate in full before the general body or the representative general body and to read over to the general body or Representative General body of the defects mentioned in it and also to place the rectification reports of each defects before the general body or the Representative General body.

(c) to rectify all the defects mentioned in the audit certificate and to submit the rectification reports on the defects mentioned in the audit certificate, to the Director of Co-operative Audit and to the Registrar within two months of the receipt of the audit certificate.”.

21. *Amendment of section 66.*—In section 66 of the principal Act,—

(i) for sub-section (4), the following sub-sections shall be substituted, namely:—

“(4) The Registrar or any person authorised by him under sub-section (1) or sub-section (2) shall at all reasonable time have free access to and have power to inspect the books, records, accounts, documents, securities, cash balance and other properties belonging to the society and may summon any person in possession of or responsible for the custody of such books, records, accounts, documents, securities, cash balance and other properties, to produce the same for inspection at any place at the Head Quarters of the society or any branch thereof or where there is no working office for the society, at the office of the Registrar or at the office of any of his subordinate officers.

(4A) It shall be the duty of every officer and employee of the society to co-operate with and assist in such supervision or inspection, to furnish any information that may be required for the purpose and to produce the books, records, cash balance etc. referred to in sub-section (4), on demand by such officer, failing which it shall be treated as an offence under sub-section (4) of section 94.”.

(ii) after sub-section (10), the following sub-section and explanations shall be added, namely:—

“(11) Notwithstanding anything contained in sub-sections (1) and (2) above, the Registrar or his subordinate officers authorized by him under sub-section (1), shall have power to hold an enquiry with necessary records of a society, on any petition received, and to inspect the affairs of a society periodically, in such cases, the inspecting officers will have the same powers as specified in sub-section (4).

Explanation 1:—The “affairs of a society” for the purpose of this sub-section includes, among other things, matters relating to administration, management and the business of a society.

Explanation 2:—The duty of the officers and chief executive of a society and the nature of offences and penalties mentioned in sub-section (4) shall be applicable to this sub-section also.”.

22. *Amendment of section 66A.*—For section 66A of the principal Act; the following section shall be substituted, namely:—

“66A. *Powers of Registrar to give directions.*—Subject to the provisions of the Act and the rules made thereunder the Registrar may issue general directions and guidelines to any or all of the co-operative societies in furtherance of the purposes of the Act or for implementing government policies for the benefit of the members and the general public.”.

23. *Amendment of section 68.*—In section 68 of the principal Act after sub-section (2), the following sub-section shall be added, namely:—

“(3) Where the money, property, interest, cost or compensation is not repaid or restored as per sub-section (2), the Registrar shall take urgent steps to recover such amounts from the concerned persons as arrears of public revenue due on land as specified in section 79 of the Act.”.

24. *Insertion of new section 69A.*—In the principal Act, after section 69, the following section shall be inserted, namely:—

“69A. *Co-operative Ombudsman.*—(1) The Government may, by notification in the official Gazette, frame a scheme to be called the “Kerala Co-operative Ombudsman Scheme” with the object of enabling redressal of complaints relating to deficiency in banking or other services rendered by co-operative societies dealing with banking business.

(2) The Government may appoint one or more persons as Ombudsman or Ombudsmen to carry out the functions entrusted to them by or under the scheme.

(3) The term of office of the Ombudsman or Ombudsmen, as the case may be, shall be three years from the date of their entering office or sixty five years, whichever is earlier.

(4) The Ombudsman or Ombudsmen so appointed under sub-section (2) shall be a person or persons having experience and expertise in banking or co-operative field and shall have a degree in management or law.

(5) The functions, powers, duties etc. of the Ombudsman shall be such, as may be specified in the scheme.

(6) The Ombudsman shall be under the control of the Government.”.

25. *Amendment of section 70A.*—In section 70A of the principal Act, for sub-section (4), the following sub-section shall be substituted, namely:—

“(4) The Government or Registrar shall appoint as many officers and employees as may be necessary, to assist the Co-operative Arbitration Court.”.

26. *Insertion of new chapter XB.*—In the principal Act, after chapter XA, the following chapter shall be inserted, namely:—

“CHAPTER X B

SPECIAL PROVISIONS RELATING TO CO-OPERATIVE SOCIETIES, THEIR
OFFICE BEARERS AND EMPLOYEES

74B. *Opening of Branches.*—(1) The State Co-operative Bank, The State Co-operative Agricultural and Rural Development Bank and District Co-operative Banks may open branches in the area of operation of their member credit societies if such member credit societies are weak or not functioning enough to provide service to the members or to the public.

74C. *Inspection in certain Co-operatives.*—Notwithstanding anything contained in section 66, the Registrar shall inspect or cause to inspect the “affairs” of all apex, federal and central societies every year and the power of inspecting officers and chief executives of these societies shall be as specified under sub-section (4) of section 66.

Explanation:—Inspection conducted under this section shall be in addition to and not in derogation of the inspection conducted under any other law for the time being in force.

74D. *Duty of Chief Executive to supply confirmation certificate.*—It shall be the duty of the chief executive of a society to supply confirmation certificate correctly and within the time limit required by the auditor in respect of any accounts maintained in that society by another society in whose favour the Auditor requires certificate.

74E. *Manner of acceptance of deposits and lending of money.*—Acceptance of deposits and lending of money by all co-operative societies and banks shall be in such manner, as may be prescribed.

74F. *Write off of loans.*—Notwithstanding anything contained in any Act or Rules, no Authority or Commission, other than the Government or Registrar, shall have the power to write off agricultural or non-agricultural debts of borrowers of any society.

74G. *Library in co-operative societies.*—Every co-operative society shall establish a library:

Provided that nothing contained in this provision shall apply to a society which is working on loss for a continuous period of three years.”.

27. *Amendment of section 80.*— In section 80 of the principal Act,—

(i) in sub-section (3A), after the words “the Kerala Public Service Commission”, the following words shall be added, namely:—

“and in making such recruitment the reservation principles under rule 14 to 17 of the Kerala State and Subordinate Service Rules, 1958 shall be followed.”;

(ii) after sub-section (3A), the following sub-section shall be inserted, namely:—

“(3AA) Notwithstanding anything contained in the principal Act or any other law, or judgment or order of any court, all appointments already made on the advice by the Kerala Public Service Commission following the reservation principles under rule 14 to 17 of the Kerala State and Subordinate Service Rules, 1958 to the societies mentioned in the schedule for which direct recruitment shall be resorted to shall be deemed to have been validly done as if such provisions were in force at that time.”;

(iii) after sub-section (4), the following sub-sections shall be inserted, namely:—

“(5) Notwithstanding anything contained in sub-section (1) or (2), three percent of the total posts of employees of every society shall be reserved for physically handicapped persons having disability of forty percent or above, as certified by the medical board and the procedure of appointment shall be such as may be prescribed :

Provided that in societies where there are more than ten and less than thirty three employees including cadre and sanctioned posts, there shall be reserved a minimum of one employee belonging to physically handicapped persons.

(6) Government shall have power to fix the pay, allowances and other benefits of employees of co-operative societies :

Provided that the Government may direct the Registrar to fix the pay and allowances of employees of co-operative societies, whose pay and allowances are not fixed by Government as per this sub-section.

(7) Notwithstanding anything contained in the bye-laws, a society shall not pay bonus to its employees not exceeding the amount and the rate fixed by the Government or the Registrar from time to time.

(8) Government shall, by order, frame uniform Service Rules and Conduct Rules for the employees of any or all of the co-operative societies.

(9) Suspension and disciplinary action in relation to an officer, employee or servant of a co-operative society shall be such, as may be prescribed.”.

28. *Amendment of section 80B.*—In section 80 B of the principal Act, after sub-section (1), the followings sub-section shall be inserted, namely:—

“(1A) The Co-operative Service Examination Board shall also conduct competitive or qualifying examinations for promotion of employees in the societies, in such manner as may be prescribed.”.

29. *Amendment of section 82.*—In section 82 of the principal Act, after sub-section (1), the following sub-section shall be inserted, namely:—

“(1A) The Tribunal shall pass an order under sub-section (1) within six months with direction to communicate the copies thereof within fifteen days to the parties thereof.”.

30. *Amendment of section 94.*—In section 94 of the principal Act,—

(i) for sub-section (8), the following sub-section shall be substituted, namely:—

“(8) If any officer, employee, agent, servant of a society or any other person dealing with the society misappropriates or unauthorisedly or illegally keeps any money belonging to that society, he shall be punishable with imprisonment for a term which may extend to three years and with fine which may extend to twice the amount of money involved in the offence.”;

(ii) after sub-section (8) so substituted, the following sub-sections shall be inserted, namely:—

“(8A) If any person dishonestly or fraudulently makes or executes or cause to make or execute, any false or improper document or valuation certificate or project report or register or cause to register any fictitious company or firm or society in order to support any application for loan and thereby induces any society to deliver any loan to him or to any other person which causes loss to the society, he shall be punishable with imprisonment for a term which may extend to three years and with fine which may extend to twice the amount of money involved in the offence.

(8B) If any officer, employee, member, agent or servant of a society or any other person abets, connives or conspires the commission of an offence

punishable under sub-section (8A), he shall be punishable with imprisonment for a term which may extend to three years and with fine which may extend to twice the amount of money involved in the offence.”;

(iii) after sub-section (9), the following sub-sections shall be inserted, namely:—

“(10) The Vigilance Officer appointed under section 68A shall have power of litigation and power to make complaints before a court of law in respect of offences mentioned in sub-sections (2), (3), (4), (5), (6) and (7) of this section subject to section 95.

(11) Amount of fine mentioned in sub-sections (4), (5), (6), (7), (8), (8A) and (8B) of this section shall not be met from the funds of the society.”.

31. *Amendment of section 95.*—For section 95 of the principal Act, the following section shall be substituted, namely:—

“95. *Cognizance of offences.*—(1) The offences punishable under sub-sections (8), (8A) and (8B) of section 94 shall be cognizable.

(2) Where a sentence of fine is imposed under sub-section (8), (8A) or (8B) of section 94, the court in fixing the amount of the fine shall take into consideration the amount involved in the offence, the amount or value of the property, if any, which the accused person has obtained by committing the offence and the loss caused to the society.

(3) When a court imposes a sentence of which fine forms a part, the court may, when passing judgment, order the whole or any part of the fine recovered to be applied in the payment to the society as compensation for any loss caused by the offence.

(4) No prosecution shall be instituted under sub-sections (2), (3), (4), (5), (6) and (7) of section 94 without the previous sanction of the Registrar.”

32. *Insertion of new section 95A.*—In the principal Act, after section 95, the following section shall be inserted, namely:— .

“95A. *Offences by Companies.*—(1) If the person committing any offence under this Act is a company, the Company as well as every person in charge of and responsible to the company for the conduct of its business at the time of the commission of the offences shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly :

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he exercised all the diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or that the commission of the offence is attributed to any neglect on the part of any Director, Manager, Secretary or other Officer of the Company, such Director, Manager, Secretary or other Officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation:—For the purpose of this section,—

(a) ‘Company’ means any body corporate and includes a firm or other association of individuals or a society or a co-operative society ;

(b) ‘Director’ in relation to firm, means partner in the firm.”.

33. *Substitution of section 99.*—For section 99 of the principal Act, the following section shall be substituted, namely:—

“99. *Orders to be pronounced.*—In cases where parties have been heard, the order, decision or award made or given by the Registrar, the Tribunal, the Co-operative Arbitration Court, the Arbitrator, the liquidator or any officer or other person under this Act, shall be pronounced on the day on which the case is finally heard or on some future day of which due notice shall be given to the parties or the date shall be pronounced openly on the day of final hearing.”.

34. *Substitution of section 108.*—For section 108 of the principal Act, the following section shall be substituted, namely:—

“108. *Duties of police Officer.*—(1) It shall be the duty of every Police Officer, as defined in the Kerala Police Act, 1960 (5 of 1961), to assist and protect the Registrar, the Director of Co-operative Audit, and the Vigilance Officer appointed under this Act or any officer subordinate to them in exercising the powers, duties and functions conferred on them under the Act, if any such officer demands the assistance and protection of a Police Officer as above.”.

STATEMENT OF OBJECTS AND REASONS

Government have constituted a committee vide G.O.(Rt.) No.434/2007. dated, 28-6-2007 under the Chairmanship of Shri E. Narayanan, Chairman, State Co-operative Union, to make proposals and recommendations so as to amend the Co-operative Law in the State with the object of strengthening the Co-operative movement and to make it free from corruption. Based on the recommendations of the committee and considering the overall development of the co-operative societies in the State, the Government have decided to bring comprehensive amendments to the Kerala Co-operative Societies Act, 1969 (21 of 1969).

2. The Preamble of the Principal Act is proposed to be amended incorporating the “co-operative principles” for the diversification of the working of the co-operatives, to empower them to run institutions of professional education and health care and also to enable market intervention by the co-operatives. It has also been decided to include the Government as a member of Apex, Central and Federal Co-operative Societies. The powers of the Director of Co-operative Audit and the powers of the Vigilance Officer in the principal Act are also to be conferred upon the subordinate officers for easy implementation of the provisions of the Act. It is also proposed to define certain new terms like “Miscellaneous Societies” and “Urban Co-operative Societies”. The term “Primary Agricultural Credit Societies” is needed to be defined with the object of compulsorily requiring such societies to provide loans and advances for agricultural purposes.

3. As regards the registration of co-operative societies under section 6 of the principal Act, clause (c) of sub-section (2) of Section 6 at present does not specify the requirement as to age of the applicant. Hence it has been decided that an individual signing the application for registration of a society shall attain the age of 18 years as provided under clause (a) or sub-section (1) of section 16 of the Act. In order to fulfill the objectives of public policy, it is intended to confer power on the Government and the Registrar to regulate and control the working of a society by inserting a proviso to section 9 of the Act. It has also been decided to amend section 28 of the Principal Act so as to reduce the maximum number of members of the committees of primary co-operative societies from fifteen to eleven and also to add a proviso to sub-section (IA) of the said section to maintain the status quo of the existing committees where such committees are elected before the commencement of the Amendment Act. Sub-section (IC) is also proposed to be newly inserted to section 28 so as to reserve one seat in the committees to primary credit societies and urban co-operative banks, for members who have deposit of more than Rupees 10,000. It has also been decided to increase the reservation for women in the committees to two of

the total seats in the place of one and to empower the Government or the Registrar to nominate women and SC/ST members to the committees of all societies where there are no such elected members by suitably amending section 28A of the Act. Provision is also made for the reservation of persons with banking experience or professional qualification in the Urban Co-operative Banks.

4. At present the State Election Commission has power to conduct elections only to the committees of Apex, Federal, Central and Credit societies. Government have decided to amend section 28B of the Principal Act with the object of entrusting the State Co-operative Election Commission the duty of conducting elections to the Representative General Bodies also of all Apex, Federal, Central and Credit societies.

5. It has been decided to disqualify the member of the committee superseded under section 32 of the Act from contesting the election to any society or for being appointed as administrator in any society for the next two consecutive terms. The amendments proposed to sections 32 and 33 of the principal Act are mainly intended to make the provision clear. that where a Committee is superseded, the administrator or the members of the administrative committee appointed by the Registrar under the said sections need not be members of the society and also that in the case of administrative committee, one member shall be appointed by the Registrar as Convener.

6. The Gehan system is at present applicable only to the borrowers of State Co-operative Bank, District Co-operative Banks, Primary Agricultural Credit Societies and Primary Housing Societies. Government have decided to amend section 36A of the principal Act so as to extend the 'Gehan' system to the borrowers of Urban Co-operative Banks also.

7. At present no advance intimation is made to employees before requiring their employers to deduct from their salaries. It is intended to amend section 37 of the principal Act to the effect that societies shall inform the employees (loanees/sureties) about their dues to such societies 30 days in advance before requiring the employers (salary disbursing officers) to deduct dues from their salaries. Government have decided to insert a new clause to section 53 of the principal Act so as to enable government to recover any dues to government out of new financial assistance given to such societies.

8. It is also intended to enhance the rate of dividend payable to members by societies from twenty per cent to twenty five per cent and to effect a contribution of seven per cent of the net profit to Agricultural Credit Stabilization Fund by making necessary amendments to section 56 of the Act. Provision is

also made in the said section to divert the utilization of balance of the net profit for any or all of the purposes specified in the bye-laws of the societies other than payment of bonus to employees. The contribution by a society towards Co-operative Development and Welfare Fund under section 57A of the Act has been made compulsory. Government have also decided to insert a new section 57D in the Principal Act for framing Co-operative Risk Fund Scheme for meeting the loan liability of those members who had availed loans from the co-operative societies and died within the repayment period of such loans.

9. At present there is no provision in the Act to prescribe a criterion or standard for payment of loans and their recovery by societies. Government have, therefore, decided to amend section 59 of the Principal Act for enabling the Government to make Rules for the purpose. Necessary amendments are also effected in section 63 of the Principal Act so as to incorporate provisions to delegate the powers of the Director of Co-operative Audit in the Act to his subordinates and to bring the post of Director of Co-operative Audit under the control of the Registrar.

10. The existing sub-sections to section 64, refers to the rate and levy of audit fees only. It has been decided to include audit cost also in the said provisions. The committee of a society is at present not entrusted with the duty of getting its accounts audited in time and making available the necessary books and accounts for audit. As a result, audit has been pending for years. Government have decided to specify certain duties to the committees of societies to get their accounts audited in time. The Committee is made responsible to place and read over the defects contained in the audit certificates in the General body or Representative General Body meeting and to submit rectification report to the Registrar and the Director of Co-operative Audit. Comprehensive amendments are accordingly made to section 64 of the Act.

11. Government have also decided to amend section 66 of the Principal Act to empower the inspecting officers of the government department to verify the cash balance, securities and other properties of societies in addition to books, accounts, records etc. and to incorporate provisions in the Act to conduct an enquiry and inspection in a society on the basis of public petitions. It is also intended to insert a new sub-section, sub-section (12) to section 66 to empower Registrar to inspect the Charitable societies and companies formed under the auspices of a society or where such companies and Charitable societies are funded by Co-operative Societies.

12. As per the provisions in section 66A of the Act, Registrar has power to issue general directions and guidelines to the societies in furtherance of the purpose of the Act. Government have decided to amend section 66A of the Principal Act with the object that the Registrar shall have power to issue general or specific directions and guidelines to societies in furtherance of the purpose of the Act or for implementing government policies for the benefit of the members and the general public. Amendments are also proposed in section 68 of the Principal Act so as to empower Registrar to recover the loss sustained by a society, on account of the conduct of any officer of a society, as arrears of public revenue due on land as specified in section 79 of the Principal Act. At present, Registrar has power only to issue an order of surcharge to recover such amounts.

13. Government have decided to insert section 69A to the Principal Act so as to appoint Co-operative Ombudsman with the object of enabling redressal of complaints relating to deficiency in banking or other services rendered by co-operative societies dealing with banking business. The Ombudsman or Ombudsmen so appointed shall be a person or persons having experience and expertise in banking or co-operative field and shall have a degree in management or law. Amendments have also been proposed to section 70A of the Act so as to enable Government to appoint necessary officers and staff to assist the Co-operative Arbitration Court. It has also been decided to insert a new Chapter, Chapter XB, in the Principal Act so as to incorporate special provisions relating to societies, their office bearers and employees.

14. Government intends to amend section 80 of the Act in order to incorporate express provision for making applicable the reservation principles in the Kerala State and Subordinate Service Rules, 1958, to the posts to which appointment is made from a select list prepared by the Kerala Public Service Commission. Further amendments are also made in the said section to provide for reservation to handicapped persons in the appointment of employees of the societies, to empower the Government to fix pay, bonus, allowances and other benefits of employees of co-operative societies and to frame uniform service rules and conduct rules of any or all of the co-operative societies. The Co-operative Service Examination Board will be entrusted with the conduct of all examinations to the posts which are to be filled up by promotion on the basis of a competitive or qualifying examination by suitably amending section 80. Government have decided to amend section 82 of the Principal Act in order to prescribe a time limit for passing an award after receipt of the case by the Tribunal.

15. Comprehensive amendments are also to be effected to section 94 of the Act for enhancing the gravity of the offences specified thereunder. The offences punishable under section 94 have also been made cognizable under the proposed amendments to section 95 of the Act. Government have decided to newly insert section 95A to the Principal Act to specify the offences committed by companies.

16. As per section 99 of the Principal Act the decision or award passed by Registrar or any officer or liquidator under the Act shall be pronounced on the same day. If it is pronounced on a subsequent day, it must be informed to the parties by due notice. Government have decided to include the Co-operative Tribunal, Arbitration Court and the Arbitrator within the purview of the said provision. It is also intended to specify that the future date of passing the award may be declared openly on the last day of hearing and sending separate notice is not compulsory. The amendments proposed to section 108 of the Principal Act are intended to ensure the assistance and protection of the Police Officers to the Registrar, Director of Co-operative Audit and the Vigilance Officer or any officer subordinate to them in the exercise of the powers, duties and functions conferred on them under the Act.

The Bill is intended to achieve the above objects.

FINANCIAL MEMORANDUM

The applicability of 'Gehan' to the borrowers of urban co-operative banks is envisaged in Clause 11 of the Bill. As per Gehan system, loan mortgages need not be registered with the Sub-registry. It is estimated that 707 Crores of Rupees will be disbursed as mortgage loans by Urban Co-operative Banks per year. By implementing 'Gehan' in Urban Co-operative Banks, Government will lose 2 per cent of mortgage registration fee and 2 per cent of the fee for registration of release deeds thereof. Thus, there will be a revenue shortage of Rs. 28 crores to Government by registration fee (i.e., 4 per cent of Rs. 707 crores).

Framing of a Co-operative Ombudsman Scheme is envisaged in Clause 27 of the Bill. A recurring expenditure of Rs. 10,36,000 for payment of salary and allowances to the Ombudsman or Ombudsmen and officers and servants attached to him or them and for payment of rent for the office building. An initial non-recurring expenditure of Rs. 5 lakhs for establishment purpose will also have to be met from the Consolidated Fund of the state.

There will be no financial expenditure from the consolidated fund of the State if the other clauses of the Bill are enacted and brought into implementation.

MEMORANDUM REGARDING DELEGATED LEGISLATION

The proviso proposed to be inserted to section 9 of the Kerala Co-operative Societies Act, 1969 (21 of 1969) by Clause 5 of the Bill, seeks to empower the Government to regulate and control the working of a society for the fulfillment of the aim and objectives of public policy.

2. Sub-section (3) of section 28A of the Act proposed to be substituted by sub-clause (ii) of clause 7 of the Bill, seeks to empower the Government to nominate women members and a member belonging to the Scheduled Caste/ Scheduled Tribe in the committees of all societies in the absence of such elected members in the committees of the said societies.

3. Clause (g) of section 53 proposed to be inserted by clause 14 of the Bill, seeks to empower the Government to set off any amount due to it from societies out of the financial assistance given to societies and also to exempt any societies from setting off its dues.

4. Section 57D proposed to be inserted by clause 17 of the Bill, seeks to empower the Government, to frame Co-operative Risk Fund Scheme by, notification in Gazette for the constitution of a Risk Fund.

5. Sub-section (3) of section 59 proposed to be inserted by clause 18 of the Bill, seeks to empower the Government to make Rules regarding granting of loans and advances to members or non-members by societies and the manner of recovery thereof.

6. Sub-section (3) of section 63 of the principal Act proposed to be substituted by clause 19 of the Bill, seeks to empower the Government to delegate all or any of the powers of the Director Co-operative Audit in the Act to his subordinate officers.

7. Section 66A of the Act proposed to be substituted by clause 22 of the Bill, seeks to empower the registrar to issue general directions to any or all of the co-operative societies in furtherance of the purposes of the Act or for implementing Government policies, for the benefit of the members and the general public subject to the provisions .of the Act and the rules made thereunder.

8. Section 69A proposed to be inserted by clause 24 of the Bill, seeks to empower the Government to frame a scheme to be called the Kerala Co-operative Ombudsman Scheme, by notification in the official Gazette, which the object of enabling redressal of complaints relating to deficiency in banking or

other services rendered by co-operative societies dealing with banking business and to appoint one or more persons as Ombudsman for the purpose of the scheme.

9. Sub-section (6) of section 80 proposed to be inserted by sub-clause (iii) of clause 27 of the Bill, seeks to empower the Government to fix the pay allowances and other benefits of employees of co-operative societies.

10. Sub-section (8) of section 80 proposed to be inserted by sub-clause (iii) of clause 27 of the Bill, seeks to empower the Government, to frame by order, uniform service rules and conduct rules for the employees of co-operative societies.

11. Sub-section (9) of section 80 proposed to be inserted by sub-clause (iii) of clause 27 of the Bill, seeks to empower the Government to make rules in respect of suspension and disciplinary action to be taken against employees of co-operative societies.

12. Sub-section (1A) of section 80B proposed to be inserted by clause 28 of the Bill, seeks to empower the Government to prescribe the manner in which the Co-operative Service Examination Board shall conduct competitive examinations for promotion of employees in societies.

13. The matters in respect of which notifications may be issued or rules may be made are matters of procedure and are of routine and administrative in nature. Further, the rules are subject to the scrutiny of the Legislative Assembly. The delegation of legislative power is, therefore, of a normal character.

G. SUDHAKARAN

EXTRACT FROM THE KERALA CO-OPERATIVE
SOCIETIES ACT, 1969

(21 of 1969)

** ** ** **

Preamble.—WHEREAS with a view to provide for the orderly development of the Co-operative Sector in the state, by organizing the Co-operative Societies as self governing, democratic institutions, to achieve the object of equity, social justice and economic development, as envisaged in the directive principles of state policy of the Constitution of India, it is expedient to consolidate, amend and unify the law relating to co-operative societies in the state.

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2. *Definitions.*—In this Act, unless the context otherwise requires,—

** ** ** **

(ec) “Co-operative Development and Welfare Fund” means the Co-operative Development and Welfare Fund established under section 57A ;

** ** ** **

(hb) “Director of Co-operative Audit” means the Director of Co-operative Audit appointed under sub-section (1) of section 63 and includes any officer on whom all or any of the powers of the Director of Co-operative Audit under this Act are conferred ;

** ** ** **

(ib) “Federal Co-operative Society” means a society having more than one district as its area of operation and having individuals and other Co-operative societies as its members ;

** ** ** **

(1) “member” means a person joining in the application for the registration of a co-operative society or a person admitted to the membership after such registration in accordance with this Act, the Rules and the bye-laws and includes a nominal or associate member ;

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(oa) “Primary Agricultural Credit Society” means a Service Co-operative Society, a Service Co-operative Bank, a Farmers Service Co-operative bank and a Rural Bank, the principal object of which is to undertake agricultural credit activities and having its area of operation confined to a Village, Panchayat or a Municipality:

Provided that the restriction regarding the area of operation shall not apply to societies or banks in existence at the commencement of the Kerala Co-operative Societies (Amendment) Act, 1999 ;

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(ta) “Urban Co-operative Bank” means a society registered under this Act, having its area of operation in the urban areas and which undertakes banking business ;

** ** ** **

6. *Application for registration of Co-operative societies.*—An application for the registration of a Co-operative society shall be made to the Registrar in such forms as may be prescribed and the applicant shall furnish to him such information about the society as he may require.

(2) Every such application shall conform to the following requirements, namely:—

(a) the application shall be accompanied by three copies of the proposed bye-laws of the society ;

(b) where all the applicants are individuals, the number of applicants shall not be less than twenty-five each of such persons being member of a different family ;

(c) the application shall be signed by everyone of the applicant who is an individual and by a person duly authorized on behalf of the Government or any society or other body of persons which is an applicant.

Explanation:—For the purpose of this clause, the expression “member of a family” means wife, husband, father, mother, grand father, grand mother, step father, step mother”, son, daughter, step son, step daughter, grand son, grand daughter, brother, sister, half brother, half sister and wife of brother or half brother.

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9. *Co-operative Societies to be bodies corporate.*—The registration of a society shall render it a body corporate by the name under which it is registered, having perpetual succession and a common seal and with power to hold property, enter into contracts, institute and defend suits and other legal proceedings and to do all things necessary for the purposes for which it was constituted.

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28. *Appointment of committee.*—(1) The General Body of a society shall constitute a committee, for a period not exceeding five years in accordance with the bye-laws and entrust the management of the affairs of the society to such committee:

Provided that in the case of society registered after the commencement of this Act, the persons who have signed the application to register the society may appoint a committee to conduct the affairs of the society for a period of three months from the date of registration or for such further period as the Registrar may consider necessary; but the committee appointed under this proviso shall cease to function as soon as a committee has been constituted in accordance with the bye-laws:

Provided further that where the bye-laws so provide, the Government or the Registrar may nominate all or any of the members of the first committee, including the President or the Chairman, for a period not exceeding twelve months :

Provided also that a committee constituted prior to the commencement of the Kerala Co-operative Societies (Amendment) Act, 1999, shall be eligible to continue for a period of five years :

Provided also that the above proviso is not applicable to a committee where the committee has passed a resolution before the commencement of the Kerala Co-operative Societies (Amendment) Act, 1999, for the conduct of election thereof.

(1A) Notwithstanding anything contained in the bye-laws of a society, the maximum number of members of the committee shall not exceed fifteen, in the case primary co-operative societies, and twenty five in the case of all other types of co-operative societies.

(1B) Notwithstanding anything contained in the bye-laws of any Federal Co-operative Society, the number of individuals in the society and the committee thereof shall not exceed twenty five per cent of the total number of members in the society or in the committee, as the case may be.

(2) Notwithstanding anything contained in any law for the time being in force, a person shall be disqualified for appointment as or for being, a member of a committee:—

(a) if he is a member of the committee of another society of the same type; or

(b) if he is a member of the committees of two or more societies of a different type or different types :

Provided that nothing contained in this sub-section shall be deemed to disqualify a person for election as, or for being, a delegate of a society.

(3) Nothing contained in clause (a) of sub-section (2) shall be deemed to disqualify a member of a committee of a society for appoint as, or for being, a member of the committee of the apex or central society of the same type :

Provided that no member of a committee shall be the President or Chairman of more than one society of the same type.

(4) The members of a committee may be paid honorarium at such rates, as may be prescribed.

(5) The quorum for a meeting for a committee shall be such number of members just above fifty per cent of the total number of members of that committee.

28A. *Reservation for women members and members belonging to Scheduled Castes or Scheduled Tribes in the Committee.*—(1) Notwithstanding anything contained in this Act, the rules or the bye-laws, there shall be reserved in the committee of every society, one seat for a woman member and one seat for a member belonging to the Scheduled Castes or Scheduled Tribes.

(2) Nothing contained in sub-section (1) shall prevent the women members and members belonging to Scheduled Castes or Scheduled Tribes from being elected to the non reserved seats in the committee.

(3) Where there is no representation of woman or a member belonging to the Scheduled Castes or Scheduled Tribes in the committee of any apex or central society at the commencement of the Kerala Co-operative Societies (Amendment) Act, 1999, the Government or the Registrar respectively may nominate a woman member or a member belonging to the Scheduled Castes or Scheduled Tribes to the committee.

(4) A person nominated to the committee of a society or bank shall have all the powers of a member elected to such committee and shall hold office during the pleasure of the Government or the Registrar, as the case may be.

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28AA. *Election and Removal of President, Vice President, etc.*—(1) A committee constituted under sub-section (1) of Section 28 shall elect from themselves a President, a Vice President, a Treasurer or any other officer, by whatever name he is designated in the manner as may be prescribed.

(2) A committee shall remove from office the President, Vice President or the Treasurer or any other officer of the committee if a motion expressing want of confidence in any or all of them is carried with the support of the majority of the members of such committee in accordance with the procedure as may be prescribed.

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28B. *State Co-operative Election Commission.*—(1) Notwithstanding anything contained in this Act or in the Rules the Government shall by notification in the gazette, constitute a State Co-operative Elections Commission for the superintendence, directions and control of the conduct of election to the committees of all credit, apex central and federal societies in the State. The Government may, by notification in the gazette, entrust the superintendence, directions and control of the conduct of election to the committee of any other society or any other class of societies to the State Co-operative Election Commission.

Provided that in respect of societies not coming under this sub-section, the provisions contained in this Act and the Rules made thereunder shall be followed for the conduct of elections to the committee thereof.

(2) The State Co-operative Election Commission shall be an officer not below the rank of Secretary to Government appointed by the Government for a period of five years. The terms and conditions of appointment of the State Co-operative Election Commission shall be such, as may be prescribed.

(3) The State Co-operative Election Commission shall, in consultation with the Government, designate or nominate officers and employees of the Government to assist the Commission in the conduct of election to the Committee of such society.

(4) Subject to the provisions of this Act, the Government may by rule, make provision with respect to all matters relating to or in connection with elections to the committee of a society.

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32. *Supersession of Committee.*—(1) If the Registrar, after an enquiry by himself or through his subordinates or on a report of the financing bank, or the Vigilance and Anti Corruption Bureau of the Government or the Vigilance Officer or otherwise is satisfied that the committee of any society,—

- (a) persistently makes default or is negligent in the performance of the duties imposed on it by this Act or the rules or bye-laws or does anything which is prejudicial to the interests of the society ; or
- (b) willfully disobeys or fails to comply with any lawful order or direction issued under this Act or the rules ; or
- (c) makes any payment contrary to this Act or the rules or the bye-laws or causes any loss or damage to the assets of the society by breach of trust or willful negligence ; or
- (d) misappropriates or destroys or tampers with the records or causes the destruction of records to cover up any misconduct or malpractice,

he may, after giving the committee an opportunity to state its objections, if any, by order in writing, remove the committee and, appoint a new committee consisting of not more than three members of the society in its place or, appoint not more than three administrators, who need not be members of the society, to manage the affairs of the society for a period not exceeding six months, as may be specified in the order, which period may, at the discretion of the Registrar, be extended from time to time, so however that the aggregate period does not exceed one year.

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33. *Appointment of new committee or administrator on failure to constitute committee, etc.*—(1) where the term of office of a committee has expired and a new committee has not been constituted, or where a no-confidence motion is passed by the general body against the existing committee or where the existing committee resigns enbloc or where vacancies occur in the committee either by resignation or otherwise and the number of remaining members cannot

constitute the quorum for the meeting of the committee, or where the committee fails to hold its regular meeting consecutively for six months or where the Registrar is satisfied ;

- (a) that a new committee cannot be constituted before the expiry of the term of office of the existing committee ; or
- (b) that a new committee is prevented from entering upon office or a new committee fails to enter upon office, on the date on which the term of office of the existing committee expires, the Registrar may, either *suo motu* or on the application of any member of the society after intimating the circle co-operative union, appoint :—
 - (i) a new committee consisting of not more than three members of the society ; or
 - (ii) not more than three Administrators who need not be members of the society to manage the affairs of the society for the period not exceeding six months as may be specified in the order, which period may at the discretion of the Registrar and for reasons to be accorded in writing, be extended, from time to time, so, however, that the aggregate period shall not, in any case, exceed one year or till a new committee enters upon office, whichever is earlier.

Provided that before making such order, the Registrar shall publish a notice on the notice board of the head office of the society inviting objections to the making of the order within a period specified in the notice and consider such objections.

Provided further that it shall not be necessary to publish such notice in cases where the Registrar is satisfied that it is not reasonably practicable to do so.

Provided also that, where a committee, administrator or administrators, as the case may be is in office at the commencement of the Kerala Co-operative Societies (Amendment) Act, 1992, the Registrar may extend the term of such committee, administrator or administrators, as the case may be, for a further period not exceeding one year from the date of such commencement.

Explanation :—For the purpose of this sub-section, a tender of resignation by a member of the committee shall have the effect of terminating his membership from the committee.

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36A. *Charge on movable or immovable property of borrower by creating Gehan.*—Notwithstanding anything contained in any other provisions of this Act, charge on movable or immovable property of a borrower in favour of the State Co-operative Bank or a District Co-operative Bank or a Primary Agriculture Credit Society, or a Primary Housing Society may be created by Gehan in respect of which the provisions of sections 10 to 15 (both inclusive) of the Kerala State Co-operative Agricultural and Rural Development Banks Act, 1984 (20 of 1984), as amended from time to time, shall apply with the modification of substituting the words “State Co-operative Bank or District Co-operative Banks”, “Primary Agricultural Credit Society or Primary Housing Society”, “Society” and “said Bank or Society”, respectively for the words, “Agricultural and Rural Development Bank”, “primary bank”, “bank” and “said banks” occurring in the said sections.

Explanation.—For the purpose of the section, Gehan means a special charge on movable or immovable property, in favour of the State Co-operative Bank or District Co-operative Bank or a Primary Agricultural Credit society or a Primary Housing society by a mere declaration in writing by the borrower, for securing the payment of money advanced or to be advanced by way of loan, which will have all the characteristics of a valid mortgage.

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37. *Deduction from salary to meet society's claim in certain cases.*—(1) Notwithstanding anything contained in any law for the time being in force, a member of a society, may execute an agreement in favour of the society providing that his employer or the officer disbursing his salary or wages shall be competent to deduct from the salary or wages payable to him by the employer, such amount as may be specified in the agreement and to pay the amount so deducted to the society in satisfaction of any debt or other demand owing by the member to the society.

(2) On the execution of such an agreement, the employer or the officer disbursing the salary or wages of any such member as is referred to in subsection (1) shall, if so required by the society by requisition in writing and so long as such debt or demand or any part of it remains unpaid, make the deduction in accordance with the agreement and pay the amounts so deducted to the society within seven days from the date of the deduction.

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53. *Order forms of State aid to societies.*—Notwithstanding anything contained in any law for the time being in force, the Government may—

- (a) give loans or make advances to societies ;
- (b) guarantee the repayment of principal and payment of interest on debentures issued by a society;
- (c) guarantee the repayment of share capital of a society and dividends thereon at such rates as may be specified by the Government ;
- (d) guarantee the repayment of principal and payment of interest on loans and advances to a society ;
- (e) guarantee the repayment of deposits received by the society and payment of interest on such deposits ; and
- (f) give financial assistance in any form, including subsidies to any society.

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56. *Disposal of net profit.*—(1) A society shall out of its net profits in any year

- (a) transfer an amount not be in less than 15% of the net profits to the reserve fund ; and
- (b) credit such portion of the net profits, not exceeding five per cent, as may prescribed to the Co-operative Education Fund referred to in clause (xix) of sub-section (2) of section 109 ;
- (c) pay in the case of a Central Society, including a District Co-operative Bank, dividend to its members, on their paid up share capital at such rate not exceeding twenty per cent.

(2) The balance of the net profit may be utilized for all or any of the following purpose namely :—

- (a) Payment of dividends to members on their paid up share capital at such rate not exceeding twenty per cent as may be prescribed ;
- (b) Payment of bonus to members on the amount or volume of business done by them with the society, to the extent and in the manner specified in the bye-laws ;

- (c) Constitution of, or contributions to, such special funds as may be specified in the bye-laws ;
- (d) Donations of amounts not exceeding ten percent of the net profit for any charitable purposes as defined in section 2 of the Charitable Endowments Act, 1890 (Central Act 6 of 1890) ; and
- (e) Payment of bonus to employees of the society to the extent and in the manner specified in the bye-laws or in the payment of Bonus Act 1965 (Central Act 21 of 1965), the case may be.

57. *Investment of funds.*—A society may invest or deposit its funds—

- (a) in Government Savings Bank, or
- (b) in any of the securities specified in section 20 of the Indian Trusts Act, 1882 (Central Act 2 of 1882) ; or
- (c) in the shares or securities of any other society approved for the purposes by the Registrar by general or special order ; or
- (d) in any bank approved for the purpose by the Registrar ; or (e) in any other prescribed manner.

57A. *The Co-operative Development and Welfare Fund.*—The Government may, by notification in the Gazette, frame a scheme to be called the Co-operative Development and Welfare Fund Scheme for the establishment of a fund under this Act and there shall be established, as soon as may be after the framing of the scheme, a Fund to be called Co-operative Development and Welfare Fund, in accordance with the provisions of this Act and the scheme ;

(2) A society may contribute to the Fund at such rates, as may be specified in the scheme.

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59. *Restriction on loans.*—(1) A society shall not make a loan to any person or a society other than a member :

Provided that a District Co-operative Bank may make loan to nominal or associate members :

Provided further that, with the general or special sanction of the Registrar, a society may make loans to another society.

(2) Notwithstanding anything contained in sub-section (1), a society may make a loan to a depositor on the security of his deposit.

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63. *Director of Co-operative Audit.*—(1) The Government shall, by notification in the official Gazette, appoint a person to be the Director of Co-operative Audit with jurisdiction over whole of the State.

(2) The qualification and the terms and conditions of the person to be appointed as the Director of Co-operative Audit shall be such, as may be prescribed.

(3) The Government may, by general or special order, confer on any officer all or any of the powers of the Director of Co-operative Audit under this Act.

(4) It shall be the duty of the Director of Co-operative Audit to audit or cause to be audited through persons authorized by him, the accounts of every society, at least once in each year.

(5) The Government shall prescribe the manner, in which audit is to be conducted by the Director of Co-operative Audit.

(6) Notwithstanding anything contained in any other law for the time being in force, the Audit Certificate issued by the Director of Co-operative Audit, or by any officer authorized by him shall be valid for all purposes required to be filed before the State Government and non-Governmental authorities.

64. *Scope of audit, powers of the Director of Co-operative Audit and procedure for audit* :—(1) The audit shall include and examination of overdue debts, if any, the verification of cash balance and securities and a valuation of the assets and liabilities of the society concerned and such other audit matters, as may prescribed.

(2) For the purpose of audit, the Director Co-operative Audit or the person authorized by him under section 63 shall have the following powers, namely :—

- (a) he shall, at all reasonable time, have access to all the books, accounts, documents, papers and all other relevant records, securities, cash and other properties belonging to, or in the custody of control of the society ;

(b) he may summon any person in possession of or responsible for the custody of any such books, accounts, documents, papers, other records, securities, cash or other properties, to produce the same at any place at the head quarters of the society or any branch thereof or, where there is no working office for a society, at the office of the Director of Co-operative Audit or at the office of any of his subordinate officers as may be specified by him ; and

(c) such other powers as may be prescribed.

(3) Every person who is or has been, at any time an officer or employee of the society and every member and past member of the society, who is in possession of any information and records in regard to the transactions and working of the society, shall furnish such information in regard to the transactions and working of the society, as the Director or the person authorized by the Government under sub-section (3) of section 63, may require.

(4) The financial statement and other details required for the completion of audit shall be prepared by the society within three months from the date of completion of the year and the fact shall be reported to the Director of Co-operative Audit or to the person authorized by him in this behalf.

(5) The audit shall be commenced within one month from the date of receipt of the report under sub-section (4) by the Director of Co-operative Audit or the person authorized by him, as the case may be, and shall be completed within a period of nine months.

(6) The amount of fee for the audit of accounts of the society for each year shall be such, as may be fixed by the Director of Co-operative Audit, in accordance with the rules made in this behalf.

(7) The fee shall be paid by the society concerned within thirty days of intimation thereof and in case of non-payment of the fee within the period, it shall be recoverable in the manner specified in section 79.

(8) The procedure for payment of the fee shall be such, as may be prescribed.

(9) If the result of the audit held under section 63 discloses any defects in the working of a society, the Director of Co-operative Audit may bring such defects to the notice of the society and if the society is affiliated to another society, also to the notice of that other society.

(10) If the result of the audit held under section 63 discloses any serious defects in the working of the society, the Director of Co-operative Audit or the person authorized by him shall communicate the same forthwith to the Registrar for immediate further action.

(11) The Director of Co-operative Audit may, by order in writing direct the society or its officers to take such action, as may specified in the order, within the time mentioned therein to rectify the defects disclosed in the audit, under intimation to the Registrar.

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66. *Supervision and Inspection.*—(1) The Registrar shall supervise or cause to be supervised by a person authorized by him by general or special order in writing in this behalf, the working of every society as frequently as he may consider necessary. The supervision under this sub-section may include an inspection of the books of the society.

(2) The Registrar may, on his own motion, or on the application on the creditor of a society, inspect or direct any person authorized by him by order in writing in this behalf to inspect the books of the society :

Provided that no such inspection shall be made in the application of a creditor unless the applicant—

(a) satisfies the Registrar that the debt is a sum then due and that he has demanded payment thereof and has not received satisfaction within a reasonable time ;

(b) deposits with the Registrar such a sum as security for the costs of the proposed inspection as the Registrar may require.

(3) Where the inspection under sub-section (2) is made on the application of the creditor, the Registrar shall communicate the result of such inspection to such creditor.

(4) The Registrar or any person authorized by the Registrar under sub-section (1) or sub-section (2) shall at all reasonable time have free access to the books, records and accounts of the society and may summon any person in possession of or responsible for the custody of such books, records and accounts to produce the same for inspection at any place at the head quarters of the society or any branch thereof or where there is no working office for the society at the office of the Registrar or at the office of any of his subordinate officers. It shall be the duty of every officer and employee of the society to

assist in such supervision or inspection and to furnish any information that may be required for the purpose.

(5) The Registrar or the person authorized by him under sub-section (1) or sub-section (2) may, by order in writing, direct the society or its officers to take such action as may be specified in such order within the time that may be mentioned in such order.

(6) The Circle Co-operative Union shall have the power to direct that a non-official member thereof shall be present at an inspection under sub-section (2) :

Provided that such non-official member shall not have the power to make the inspection himself.

(7) Apex society or Federal co-operative society or a financing bank shall have the right to inspect the books of any registered society which is affiliated to it, through its officers.

(8) An officer of an Apex society or Federal co-operative society or a financing bank, inspecting the books of a society shall at all reasonable times have the access to the books, accounts, documents securities, cash and other properties belonging to the society and may call for such information, statements and returns as may be necessary to ascertain the financial condition of the society and the safety of the sums lent to it.

(9) Any officer referred to in sub-section (8) shall also have the power to summon any person in possession of or responsible for the custody of any books, accounts, documents, securities, cash and other properties referred to in that sub-section to produce the same for inspection or verification at any place at the head quarters of the society or any branch thereof.

(10) Apex society or Federal co-operative society or the financing bank may also report to the Registrar about the action to be taken against the society as a result of the inspection by its officers.

66A. *Powers of Registrar to give direction.*—Subject to the provisions contained in the Act and the rules made thereunder the Registrar may issue general directions and guidelines to the Co-operative societies in furtherance of the purposes of this Act.

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68. *Surcharge.*—(1) If in the course of an audit, inquiry, inspection or the winding up of a society it is found that any person, who is or was entrusted with the organization or management of such society or who is or has at any time been an officer or an employee of the society, has made any payment contrary to the Act and the rules or bye-laws, or has caused any loss or damage in the assets of the society by breach of trust or willful negligence or mismanagement or has misappropriated or fraudulently retained any money or other property belonging to such society or has destroyed or caused the destruction of the records, the Registrar may, of his own motion or on the application of the committee, liquidator or any creditor inquire himself or direct any person authorized by him by an order in writing in this behalf, to inquire into the conduct of such person.

(2) Where an inquiry is made under sub-section (1), the Registrar may, after giving the person concerned an opportunity of being heard, by order in writing, require him to repay or restore the money or other property or any part thereof, with interest at such rate, or to pay contribution and costs and compensation to such extent, as the Registrar may consider just and equitable.

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70A. *Co-operative Arbitration Courts.*—(1) The Government shall constitute such number of Co-operative Arbitration Courts, as are necessary to exercise the powers and discharge the functions conferred on it under this Act.

(2) The qualifications, term, salary and allowances and other conditions of services of the person to be appointed as Co-operative Arbitration Court shall be such as may be decided by the Government from time to time.

(3) The Government shall make rules for regulating procedure and disposal of business of the Co-operative Arbitration Court.

(4) The Registrar or the Government shall lend the services of such number of officers and employees as may be necessary to assist the Co-operative Arbitration Court.

(5) The officers and employees referred to in sub-section (4) shall continue to be Government servants for all purposes and their terms and conditions of service shall continue to be the same as applicable to them under the Government.

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80. *Officers, etc. of Co-operative Societies.*—(1) The Government shall classify the societies in the State according to their type and financial position.

(2) The Government shall, in consultation with the State Co-operative Union, fix or alter the number and designation of the officers and servants of the different classes of societies specified in sub-section (1).

(3) The Government shall, in consultation with the State Co-operative Union, make rules either prospectively or retrospectively regulating the qualification, remuneration, allowances and other conditions of the officers and servants of the different classes of societies specified in sub-section (1).

(3A) Notwithstanding anything contained in this Act, or the rules made or orders issued thereunder or in the bye-laws of any society relating to the recruitment and conditions of service of officers and servants of societies, all appointments of officers and servants of the societies mentioned in the schedule for which direct recruitment is resorted to shall be made from a select list of candidates furnished by the Kerala Public Service Commission.

(3B) All appointments made by direct recruitment to the societies referred to in sub-section (3A) or after the 25th day of April 1995 and before the date of publication of the Kerala Co-operative Societies (Amendment) Ordinance, 1995 (Ordinance number 10 of 1995) shall be invalid.

(4) Notwithstanding anything contained in sub-section (1) or sub-section (2), ten percentage of the post of employees of every society shall be reserved for appointment from persons belonging to the Scheduled Castes and Scheduled Tribes where the method of appointment to such posts is by direct recruitment.

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80B. *Co-operative Service Examination Board.*—(1) Notwithstanding anything contained in this Act, or the rules or in the bye-laws of any society relating to the recruitment of officers and servants thereof, the Government shall, by notification in the Gazette, constitute a Co-operative Service Examination Board for the conduct of written examination for all direct recruitment to posts of and above the category of Junior Clerks in the Primary Agricultural Credit Societies, Primary Credit Societies, Urban Co-operative Banks and Primary Agricultural and Rural Development Banks in the State.

(2) The Examination Board shall consist of not more than three members and the term of the Board shall be five years. The powers and functions and other conditions of appointment of the members of the board and the procedure to be followed by the board for the conduct of examination and the preparation of the list of candidates to be interviewed for appointment shall be such as may be prescribed.

(3) All appointments shall be made by the committee concerned from the list of candidates after conducting an interview of the candidate and making a select list therefrom in such manner as may be prescribed.

(4) Notwithstanding anything contained in sub-section (3A) of section 8C and in sub-section (1) of this section, the committee of a society may, with prior approval of the Registrar, appoint persons who are professionally or technically qualified or persons with experience and expertise to posts requiring such technical or professional qualifications on contract basis or by the method of deputation for such period, but not exceeding five years, as may be prescribed.

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82. *Appeals to Tribunal.*—(1) Any person aggrieved by—

(a) an award of the Co-operative Arbitration Court, under sub-section (1) of section 70 ; or

(b) an order of the Registrar made under clause (ii) of sub-section (8) or clause (ii) of sub-section 9 of section 14 ; or

(c) any decision of the Registrar made under sub-section (6) of section 70; or

(d) any decision under sub-section (6) of section 70 of the person invested with powers in that behalf, by the Government; or

(e) any award of the Arbitrator under sub-section (6) of section 70 may, within sixty days from the date of such decision or award, as the case may be, appeal to the Tribunal and the Tribunal, may pass such orders on the appeal as it may deem fit.

(2) An order passed by the Tribunal under sub-section (1) shall be final.

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94. *Offences.*—(1) No person other than a society shall trade or carry on business under any name or title of which the word co-operative or its equivalent in any Indian language in part without the sanction of the Government :

Provided that nothing in this section shall apply in any area to the use by any person or his successor in interest of any name or title under which he carried on business at the date on which the Co-operative Societies Act, 1912 (Central Act 2 of 1912), the Co-operative Societies Act (Travancore Act X of 1089) or the Cochin Co-operative Societies Act, XXVI of 1113, as the case may be, came into operation in that area.

(2) Any person carrying on any trade or business in contravention of sub-section (1) shall be punishable with fine which may extend to two thousand rupees.

(3) Any member or past member or the nominee, heir or legal representatives of a deceased member of a society who contravenes the provisions of section 35 by disposing of any property in respect of which the society is entitled to have a first charge under that section or does any other act to the prejudice of such claim, shall be punishable with fine which may extend to two thousand rupees.

(4) The committee of a society or an officer or member thereof willfully making a false return or furnishing false information or failing to produce cash balance on demand or failing to make the records available for audit, inquiry or inspections or any person willfully or without any reasonable excuse disobeying any summons, requisition or lawful written order issued under the provisions of this Act, or willfully not furnishing- any information required from him by a person authorized in this behalf under the provisions of this Act shall be punishable with fine which may extend to five thousand rupees.

(5) Any employer or officer who, without sufficient cause :—

(a) fails to deduct any amount as required by sub-section (2) of section 37; or

(b) fails to pay a society the amount deducted by him under that sub-section within a period of seven days from the date on which such deduction is made, shall be punishable with fine which may extend to five thousand rupees.

(6) If any person collecting the share money for a society in formation does not deposit the same in the State Co-operative Bank, a Central Co-operative Bank or Postal Savings Bank or in any other bank approved by the Registrar within fourteen days of its receipt, he shall be punishable with fine which may extend to five thousand rupees.

(7) If any person collecting the share money for a society in formation makes use of the funds so raised for conducting any trade or business in the name of the society to be registered or otherwise he shall be punishable with fine which may extend to five thousand rupees.

(8) If any officer or member of a society misappropriates or unauthorizedly or illegally keeps any money belonging to that society he shall be punishable with imprisonment for a term which may extend to three years; or with fine which may extend to ten thousand rupees; or with both.

(9) The provisions of this section shall be without prejudice to any action' that may be taken against the offenders under any other law for the time being in force.

95. *Cognizance of offences.*—No court inferior to that of a Magistrate of the first class shall try any offence under this Act and no prosecution shall be instituted under this Act without the previous sanction of the Registrar:

Provided that no such sanction shall be required in the case of an offence under sub-section (8) of section 94.

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99. *Orders to be pronounced.*—In cases where parties have been heard, the order, decision or award made or given by the Registrar or any officer or other person or a liquidator under this Act, shall be pronounced on the day on which the case is finally heard or on some future day of which due notice shall be given to the parties.

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108. *Duties of Police Officer.*—(1) It shall be the duty of every Police Officer to assist the Registrar or any person subordinate to the Registrar reasonably demanding his aid for the lawful exercise of any power vesting in the Registrar or such person under this Act, or any rule, or bye-law made thereunder.

(2) Any Police Officer who omits or refuses to perform any duty imposed on him under sub-section (1) shall be deemed to have committed an offence under clause (d) of section 41 of the Kerala Police Act, 1960 (5 of 1961).