

- (iv) to provide for filling of casual vacancy by nomination, if the term of office of the committee is less than half of its original term;
- (v) to provide for co-option of expert directors and functional directors;
- (vi) to provide for suspension or supersession of the committees of the co-operative societies, for the period not exceeding six months where the Government has held the shares of such society or granted any loan or provided financial assistance or any guarantee, and for period not exceeding one year in case of co-operative banks;
- (vii) to provide for an audit of accounts of the societies at least once in each financial year through the auditor or auditing firms appointed by the general body of the co-operative society from a panel approved by the Government or any authority authorised by it;
- (viii) to provide for convening general body meeting of every society within a period of six months of close of the financial year;
- (ix) to provide for settlement of disputes by arbitration or conciliation and by mediation through Lok-Adalat, and for appointment of Grievances Settlement and Redressal Committees for settlement of grievances;
- (x) to provide that, in respect of the co-operative societies doing banking business the provisions of the Banking Regulation Act, 1949 shall also apply.

### **Important Changes carried out in the Maharashtra Co-operative Societies Act, 1960 and Model Bye-laws of Co-operative Housing Societies due to 97th Constitutional Amendment.**

**1. New Definition of "Active member" and right to vote at meeting restricted to Active Member.**—Section 2(19) (a-1) of the Maharashtra Co-operative Societies Act provides for "active member". An "Active member" means one who participates in the affairs of the co-operative society and utilizes the minimum level of services or products of that society as may be prescribed in the bye-laws.

Amended Section 26(1) of the MCS Act provides that a member shall be entitled to exercise such rights.

Provided that, no member shall exercise the rights, until he has made such payment to the society in respect of membership, or acquired such interest in the society, as may be prescribed and specified under the bye-laws of the society, from time to time:

Provided further that, in case of increase in minimum contribution of member in share capital to exercise right of membership, the society shall give a due notice of demand to the members and give reasonable period to comply with.

(2) It shall be the duty of every member of a society

(a) To attend at least one general body meeting within a consecutive period of five years,

Provided that, nothing in this clause shall apply to the member whose absence has been condoned by the general body of the society;

(b) To utilize minimum level of services at least once in a period of five consecutive years as specified in the bye-laws of the society:

**Constitution 97th Amendment Provision:** Article 243ZI of the Constitution Provided that "Subject to the provisions of this Part, the Legislature of a State may, by law, make provisions with

respect to the incorporation, regulation and winding up of co-operative societies based on the principles of voluntary formation, democratic member-control, member-economic participation and autonomous functioning." Article 243 ZO(2) provides "The Legislature of a State may, by law, make provisions to ensure the participation of members in the management of the co-operative society providing minimum requirement of attending meetings by the members and utilizing the minimum level of services as may be provided in such law"

Bye-law No. 3(xxiv) (a) defined an "Active member" means a person:

- 1) Who has purchased and/or owns the Flat / Unit in the Society.
- 2) Who attends at least one General Body Meeting of the Society in the previous Five consecutive Years?
- 3) He has at least paid the amount equivalent to one Year of society Maintenance and Service charges, within a consecutive period of Five years.

Bye-laws No. 22. (A) provides that "A member shall be entitled to exercise such rights as provided in the Act, Rules and bye-laws.

Provided that no member shall exercise the rights of member of a society, until he has made such payment to the society in respect of 10 shares of Rs. 50/- each along with the entrance fee of Rs. 100/-, to the society in respect of membership, or acquired such interest in the society.

Provided further that, in case of increase in minimum contribution of member in share capital to exercise right of membership, the society shall give a due notice of demand to the members and give reasonable period to comply with. Model Bye Law No. 22(B) provides that "A member shall be called as 'Active Member' if:-

- a. He has purchased and owns the Flat / Unit in the Society.
- b. He has attended at least One General Body Meeting within a consecutive period of Five years.
- c. He has at least paid the amount equivalent to one year of society Maintenance and Service charges, within a consecutive period of Five years.

Reading above provisions a member who is not an 'Active Member' shall be the 'non-Active Member.

**2. Meaning of "Non-Active Member" and its consequences:** Section 26(2) Proviso states that "a member who does not attend at least one meeting of the general body as above and does not utilize minimum level of services at least once in a period of five consecutive years, as specified in the bye-laws of such society, shall be classified as non-active member.

Provided further that, when a society classifies a member as a non-active member, the society shall, in the prescribed manner, communicate such classification to the concerned member within 30 days from the date of close of the financial year.

Provided also that, a non-active member who does not attend one meeting of the general body and does not utilize the minimum level of services as specified in the bye-laws, in next five years, from the date of classification as non-active member shall be liable for expulsion under section 35.

Provided also that, a member classified as non-active member shall, on fulfillment of the eligibility criteria as provided in clauses (a) and (b) of this sub-section, be entitled to be re-classified as an active member.

Provided also that, if a question of a member being active or non-active member arises, an appeal

shall lie to the Registrar within a period of sixty days from the date of communication of classification:

Provided also that, in any election conducted immediately after the date of commencement of the Maharashtra Co-operative Societies (Amendment) Ordinance 2013, all the existing members of the society shall be eligible for voting, unless otherwise ineligible to vote.

**Constitution 97th Amendment Provision:** Voting by Active Members is provided in Article 243ZO (2) of the Constitution of India as discussed above. That means a nonactive member cannot participate in the management of the society.

**Bye-laws No. 22(B)** provides meaning of "Non Active Member" as under:--:

- (1) A member who is not an 'Active Member' shall be the 'non-Active Member.
- (2) Society shall classify the members as 'Active' or Non-Active' member at the close of every financial year.
- (3) Society shall communicate to every Non-Active member about his classification, within a period of 30 days from 31st March of every year as prescribed under these By-laws as per Appendix
- (4) If a question, of a member being Active or Non-Active arises, an appeal shall lie to the Registrar within a period of 60 days from the date of communication of such classification.
- (5) The 'Non-Active' member can be reclassified as 'Active member' if he satisfies the conditions laid down under Byelaw no. 22(B)(1).

If any member has been reported as a non-active member by the Committee, said member shall make an appeal before the Registrar and get reclassified as Active member by submitting necessary proof of complying with the required conditions or get reclassified as active members in the subsequent period of 5 years by fulfilling all the conditions as prescribed under the Act and its bye-laws.

**3. Non- Active Members to incur expulsion from Society :** Section 26(2) Proviso states that a non-active member who does not attend one meeting of the general body and does not utilize the minimum level of services as specified in the bye-laws, in next five years, from the date of classification as non-active member shall be liable for expulsion under section 35.

**Constitution 97th Amendment Provision:** Article 243ZO (2) of the Constitution of India provides that the state has to provide for functioning of the co-operative societies by only active members. That means a non-active member cannot participate in the management of the society. Central Government through this amendment intends that dormant members to be encouraged and be active members through their participation or else they shall be declared as non-active member and may get expelled from the Society.

**Clause No. (vi) to Bye-law No. 51 is added to the grounds of expulsion of a Member of the society.**

**Bye-law No. 51 reads as under:**

A member may be expelled from the membership of the society, if such a member

- i) has persistently failed to pay the charges due to the society,
- ii) has willfully deceived the society by giving false information,
- iii) has used his flat for immoral purposes or misused it for illegal purposes habitually,
- iv) has been in the habit of committing breaches of any of the provisions of the byelaws of the society, which, in the opinion of the Committee, are of serious nature,
- v) has furnished false information or omitted to furnish the material information to the

Registering Authority at the time of registration of the Society.

- vi) Is classified as a Non-Active member who does not attend at least one meeting of the general body in next five years from the date of classification as Non-Active member with the intimation to such member and Registrar.

#### 4. Definition of Associate Member:

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

- (a-1) 'Active member' means one who participates in the affairs of the society and utilizes the minimum level of services and products of that society as may be specified in the bye-laws.
- (b) 'Associate member' means a member who holds jointly a share of a society with others, but whose name does not stand first in the share certificate;
- (c) "Nominal member" means a person admitted to membership as such after registration in accordance with the bye-laws

**Constitution 97th Amendment Provision:** Amendment to Constitution of India provides that those members who are active in working of the society shall be eligible to participate in day to day functioning of the Society. Further Article 243ZI provides that "Subject to the provisions of this Part, the Legislature of a State may, by law, make provisions with respect to the incorporation, regulation and winding up of co-operative societies based on the principles of voluntary formation, democratic member-control, member economic participation and autonomous functioning"

**Bye-laws No. 3(xxiv)(b) provides "Associate Member"** means a member who holds jointly a share of a society with others, but whose name does not stand first in the share certificate. Further Bye-law No. 19(B) provides "An individual, a firm, a company or a body corporate registered under any law for the time being in force, associate who/which is eligible to be an associate member and membership of who/which has made an application in the prescribed the society form for such membership, along with the entrance fee of Rs. 100/-, may be admitted as such member by the Committee.

**5. Rights to vote of Associate member and contest in the election:** Section 27(2) provides that "Where a share of a society 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. But in his absence the person whose name stands second, and in the absence of both, the person whose name stands next, and likewise, in the absence of the preceding persons the person whose name is next on the share certificate, who is present and who is not a minor, shall have the right to vote.

**Constitution 97th Amendment Provision:** As read earlier Article 243ZO (2) of the Constitution of India provides that the state has to provide for functioning of the co-operative societies by only active members.

**Provision made in the New Model Bye-laws : Bye Law No. 22(A)** "A member shall be entitled to exercise such rights as provided in the Act, Rules and bye-laws. As per the definition given in the Act and Bye-laws, member includes an associate member, therefore, an associate member gets the right to vote.

**Bye Law No. 25** No Associate member shall have any rights or privileges of an Active member

except as provided under Section 27(2) of the Act.

**Bye-law No. 118.** No person shall be eligible for being elected as a member of the Committee or co-opted on it, if:.....(iv) In case of an associate member, non-submission of the no-objection certificate and undertaking, as prescribed under these bye-laws, by the member. And (v) he is not an Active member.

**6. Constitution of the Committee or Board of Directors, term etc :**

**Section 73-AAA of the MCS Act, 1960 provides for Committee, its constitution as under:**

(1) The Committee shall consist of such number of members as may be provided in the bye laws:

Provided that the maximum number of members of the committee of a Society shall not exceed twenty one.

Provided further that the provisions of the Banking Regulation Act 1949 shall apply to all societies carrying the business of banking.

(2) The Committee of the society may co-opt "expert directors" relating to the objects and activities undertaken by the society:

Provided that the number of Expert Directors shall not exceed two in addition to maximum twenty one members of the committee as specified in first proviso to sub-section (1).

Provided further that, the committee may, in case of the committee having not more than seventeen members, nominate a person as a functional director and in case the committee's having more than seventeen members and not more than twenty-one members, may nominate such number of functional directors not exceeding two.

Provided also that, in respect of the society having contribution of the Government towards its share capital, the members of the committee shall include two officers of the Government nominated by the State Government, which shall be in addition to the number of members specified in the first proviso to sub-section (1) :

Provided also that, in case the committee consists of two functional directors, one of such functional directors shall be an employee of the concerned society who is workman or is a representative of the recognized union of the employees of such society:

Provided also that, the functional directors and the members nominated by the State Government under the third proviso of a society shall also be the members of the committee and such members shall be excluded for the purposes of counting the total number of members of the committee specified in the first proviso to sub-section (1) :

Provided also that, such expert directors shall not have the right to vote at any election of the society and shall not be eligible to be elected as office bearers of the committee.

(3) The term of the office of the elected members of the committee and its office bearers shall be five years from the date of election and the term of office bearers shall be co-terminus with the term of the committee.

(4) Any casual vacancy in the Committee may be filled in from amongst the members belonging to the same category of persons in respect of which a casual vacancy has arisen.

(5) (a) If, at any general election of members of the committee, the committee could not be constituted after declaration of results, then notwithstanding anything contained in this Act or the rules or the bye-laws of the society, the returning officer or any other officer or authority conducting such election shall, within seven days of the declaration of two-thirds or more number of members,

forward their names together with their permanent addresses to the Registrar, who shall, within fifteen days from the date of receipt thereof by him, publish or cause to be published such names and addresses by affixing a notice on the Notice Board or at any prominent place in his office; and upon such publication of the committee of the society shall be deemed to be duly constituted. In determining two-thirds of the number of members, fraction shall be ignored;

Provided that, such publication shall not be deemed,-

(i) To preclude the completion of elections of the remaining members and the publication of their names and the permanent addresses of the elected members likewise as and when they are available; or

(ii) To affect the term of the office of members of the Committee under the Act;

(b) The names of the remaining members after they are elected (together with their permanent addresses), may also thereafter be likewise published by the Registrar.

**Section 73-B. Reservation of seats on committees of certain societies for Scheduled Caste, Scheduled Tribes or Other Backward Classes, De-notified, Tribes (Vimukta Jatis) Nomadic Tribes, Special Backward Classes and election thereto.**

(1) Notwithstanding anything contained in this Act or in the rules made thereunder or any bye-laws of any society, on the committee of such society or class of societies as the State Government may, by general or special order, direct, Three seats shall be reserved.—

(a) one for the members belonging to the Scheduled Castes or Scheduled Tribes;

(a-1) one for the members belonging to the Other Backward Classes;

(a-2) one for the members belonging to the De-notified Tribes (Vimukta Jatis), Nomadic Tribes or Special Backward Classes;

(3) Any individual member of the society, or any elected, member of the committee of a member-society, or any member of the committee of a member-society, whether elected, co-opted or appointed under this section, belonging to the Scheduled Castes or Scheduled Tribes, shall be eligible to contest the election to a reserved seat and every person who is entitled to vote at the election to the committee shall be entitled to vote at the election to any such reserved seats.

(4) Where no person is elected to any of the three reserved seats, then such seat or seats shall be filled in by nomination from amongst the persons entitled to contest the election to the reserved seats under sub-section (3);

**Section 73C: Reservation for Women:**

(1) Notwithstanding anything contained in this Act, or in the rules made there under, or in the bye-laws of any society, there shall be two seats reserved for women on the committee of each society consisting of individuals as members and having members from such class or category of persons, to represent the women members;

(2) Any individual women member of the society, or any woman member of the committee of a member society, whether elected, co-opted or nominated, shall be eligible to contest the election to the seat reserved under sub-section (1).

(3) Where no woman member or, as the case may be, women members are elected to such reserved seats, then such seat or seats shall be filled in by nomination from amongst the women members entitled to contest the election under sub-section (2)

(4) Nothing in this section shall apply to a committee of a society exclusively of women members.

**Constitution 97th Amendment Provision:** Article 243ZJ. (1) of the constitution provides that "The board shall consist of such number of directors as may be provided by the Legislature of a State, by law:

Provided that the maximum number of directors of co-operative society shall not exceed twenty-one:

Provided further that the Legislature of a State shall, by law, provide for the reservation of one seat for the Scheduled Castes or Scheduled Tribes and two seats for women on board of every co-operative society consisting of individuals as members and having members from such class or category of persons.

(2) The term of office of elected members of the board and its office bearers shall be five years from the date of election and the term of office bearers shall be co-terminus with the term of the board:

Provided that the board may fill a casual vacancy on the board by nomination out of the same class of members in respect of which the casual vacancy has arisen, if the term of office of the board is less than half of its original term Article 243ZK (1) of the constitution provides that "Notwithstanding anything contained in any law made by the Legislature of a State, the election of a board shall be conducted before the expiry of the term of the board so as to ensure that the newly elected members of the board assumes office immediately on the expiry of the term of the office of members of the outgoing board.

Bye Law No. 115 provides "The Committee shall consist of \*11/13/ ...../21 members of the society. This strength includes the reservation of seats as provided under section 73B and 73 C of the Act.

Provided that the Societies having less than 15 members can fix the number of members of the Committee in accordance with the provisions of the Act in this respect..

	No. Members Strength of the M.C.			Quorum in M.C.
	General	Reserved Seats W, SC/ ST, OBC, VJ/NT/ SBC.	Total	
Upto 50	4	1	5	3
Upto 100	6	2, 1, 1, 1.	11	6
101 to 200	8	2, 1, 1, 1.	13	7
201 to 300	10	2, 1, 1, 1.	15	8
301 to 500	12	2, 1, 1, 1.	17	9
501 and above	14	2, 1, 1, 1.	19	10

Provided that the Societies having less than 15 members can fix the number of members of the Committee in accordance with the provisions of the Act in this respect..

**Bye-Law No. 116. Election of the Committee.**—(a) Election of all the members of the Committee shall be held once in 5 years, before expiry of its term, in accordance with the provisions of Sec 73- CB

of the Act and the Rules / procedure framed there under. It shall be the duty of the committee to intimate to the State Election Authority for holding of its election before expiry of its term. On failure, the committee members shall cease to hold office after expiry of its term and attract action by the Registrar under section 77 A.

(b) The Committee of the society may co-opt Two "expert directors" relating to the objects and activities under taken by the society. The number of such co-opted members shall not exceed two in addition to the strength of the committee as provided in bye-laws No. 115., such co-opted members shall not have the right to vote in any election of the society in their capacity as such member or to be eligible to be elected as office bearers of the committee.

(c) The Committee of the society may co-opt Two "functional directors", such members shall be excluded for the purposes of counting the total numbers of the committee and shall have no right to vote.

**Bye-law No. 119** provides that "In a general election of members of the committee of a society, on the election of two-thirds or more number of members, the returning officer or any other officer or authority conducting such election shall within seven days after the declaration of results of the election of such members and where such election is held but the committee has, for whatever reason, not been so far constituted, forward their names together with their permanent addresses to the Registrar, who shall, within fifteen days from the date of receipt thereof by, publish or cause to be published such names and addresses by affixing a notice on the Notice Board or at any prominent place in his office; and upon Constitution of the Committee such publication, the committee of the society shall be deemed to be duly, constituted. In determining two-thirds of the number of members, a fraction shall be ignored.

**Bye-law No. 122** provides "The period of office of the Committee elected under the bye-law No. 116(a) shall be for 5 years from the date of election." Bye Law No. 123 provides "The first meeting of the newly elected and outgoing Committee shall be held within 15 days from the date of constitution of the new committee as per bye-law No. 119 and the provisions of Section 73AAA." And all other relevant changes are done in the Model Bye-laws.

**7. Election of every co-operative Societies including Housing societies to be conducted by a State Co-operative Election Authority :** The election to every co-operative societies including the co-operative Housing Society shall be done by the independent State Co-operative Election Authority.

**Section 73CB** has been introduced in the MCS Act, 1960 which provides as under regarding the election:

(1) The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to a society shall vest in the authority called as 'the State Co-operative Election Authority', as may be constituted by the State Government in that behalf. Every general election of the members of the committee and election of the office bearers of a society including any casual vacancy to the extent applicable shall be held as per the procedure prescribed.

(2) The State Co-operative Election Authority shall consist of a State Co-operative Election Commissioner, who held the post not below the rank of Secretary to the State Government. The State Co-operative Election Commissioner shall be appointed by the Governor. The State Co-operative Election Commissioner shall hold the office for a period of three years, and he may be re-appointed for a further period of two years. The office of the State Co-operative Election Authority shall be at such place as may be notified by the State Government:



Provided that a person appointed as the State Co-operative Election Commissioner shall retire from the office on completion of the age of 65 years.

(3) The State Government shall appoint on deputation, any person holding a post not below the rank of Additional Registrar as a secretary to the State Co-operative Election Authority.

(4) Subject to the provisions of sub-section (2), other conditions of services, including the salary and allowances, of the State Co-operative Election Commissioner, shall be such as may be prescribed. Subject to the provisions of sub-section (6), the State Co-operative Election Commissioner shall be removed from his office only by an order of the Governor on the ground of proved misbehavior and incapacity after an inquiry ordered by the Governor and conducted by a retired Judge of the High Court, who has, on inquiry, reported that the State Co-operative Election Commissioner ought to be removed on such ground.

(5) The Governor may suspend the Co-operative Election Commissioner from his office, and if deemed necessary, also prohibit him from attending the office during inquiry if an inquiry has been ordered under sub-section (4), until the Governor has passed the orders on receipt of the report of the retired High Court Judge.

(6) Notwithstanding anything contained in sub-section (5), the Governor may, by order, remove the Co-operative Election Commissioner from his office, if he-

- (a) Is adjudged an insolvent; or
- (b) Has been convicted of an offence which, in the opinion of the Governor, involves moral turpitude; or
- (c) Has engaged during his term of office in any paid employment outside the duties of his office; or
- (d) Is, in the opinion of the Governor, unfit to continue in office by reason of infirmity of mind or body; or
- (e) Has acquired such financial or other interest as is likely to affect prejudicially his functions as the State Co-operative Election Commissioner.

(7) The State Government, after consultation with the State Co-operative Election Commissioner, shall provide the officers and employees for his office, to assist him in performing the functions under this Act.

(8) The State Government shall, when so requested by the State Co-operative Election Commissioner, make available to the State Co-operative Election Authority such staff as may be necessary for discharge of the functions conferred on the State Co-operative Election Authority by sub-section (1).

(9) (a) If any person to whom sub-section (8) applies is without reasonable cause, guilty of any act or omission in breach of his official duty, he shall, on conviction, be punished with fine which may extend to five hundred rupees.

(b) No suit or other legal proceedings shall lie against any such person for damages in respect of any such act or omission as aforesaid.

*Explanation.*- For the purpose of this sub-section, the expression, "persons to whom sub-section (8) applies are the Returning Officers, Assistant Returning Officers, Presiding Officers, Polling Officers, and any other persons appointed to perform any duty in connection with the receipt of nominations or withdrawal of candidatures, or the recording or counting of votes at an election; and the expression "official duty" shall be construed accordingly, but shall not include duties imposed otherwise than by

or under this Act.

(10) Notwithstanding anything contained in any law for the time being in force, the election of the committee of each society shall be conducted by the State Co-operative Election Authority before the expiry of the term of the existing committee so as to ensure that the newly elected members of the committee assume office immediately on the expiry of the office of the members of the outgoing committee.

(11) The State Co-operative Election Authority shall hold election of the society or class of societies as per the procedure, guidelines, and the manner, including using the latest technology and expertise, as may be prescribed.

Provided that, the State Government may, considering the objects of the society, class of societies, area of operation, and norms of business, and for proper management and interest of members, may by general or special order, classify the societies in such manner as may be prescribed.

(12) The State Co-operative Election Authority shall conduct elections to the committee and also to office of President or Chairperson, Vice-President or Vice-Chairperson and such other office bearers as are required to be elected as per the bye-laws of the Society within fifteen days from the constitution of the Committee after a general election.

(13) There shall be an Election Fund maintained at the level of the State Co-operative Election Authority. Every society shall deposit in advance the estimated amount of expenditure on its election, as may be prescribed and required by the State Co-operative Election Authority towards the Election Fund. The State Co-operative Election Authority shall incur the necessary expenses for the conduct of the election of the societies, including the election of the office bearers from the said fund. The expenses of holding any election, including the payment of travelling allowances, daily allowances and remuneration, if any, to the persons appointed to exercise the powers and perform the duties in respect of the election, shall be incurred from the said fund and the expenditure shall be made in the manner prescribed. The Registrar, on requisition by the State Co-operative Election Authority, shall recover expenses of holding election from any such society or class of societies;

Provided that, if any society fails to pay the election expenses, the Registrar may issue the recovery certificate for recovery of the amount due, and such amount shall be recovered as arrears of land revenue.

(14) The Committee of every co-operative society shall, -

- a. Inform the State Co-operative Election Authority about the expiry of its term of office at least six months before the date of expiry of such term;
- b. Inform any casual vacancy occurred in the committee or its office bearers within fifteen days of the occurrence of such vacancy;
- c. Furnish such books, records and information as the State Co-operative Election Authority may require as per the calendar specified by the State Co-operative Election Authority;
- d. Provide all necessary help, assistance and co-operation for the smooth preparation of election rolls for the conduct of the election.

(15) Notwithstanding anything contained in this Act, the rules or the byelaws of any co-operative society, the election to the committee and consequent election of the office bearers which is due on the date of commencement of the Maharashtra Co-operative Societies (Amendment) Act, 2013, or may become due after such date, until 31st March, 2013, shall be held before the 31st December 2013.

**Constitution 97th Amendment Provision:** Article 243ZK (2) of the Constitution provides that "The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to a co-operative society shall vest in such an authority or body, as may be provided by the Legislature of a State, by law:

Provided that the Legislature of a State may, by law, provide for the procedure and guidelines for the conduct of such elections.

**Bye-laws :Model Bye-laws No. 116(a)** provides that " Election of all the members of the Committee shall be held once in 5 years, before expiry of its term, in accordance with the provisions of Sec 73- CB of the Act and the Rules / procedure framed there under.

It shall be the duty of the committee to intimate to the State Election Authority for holding of its election before expiry of its term. On failure, the committee members shall cease to hold office after expiry of its term and attract action by the Registrar under section 77 A which provides for appointment of authorized officer to manage the affairs in extreme cases when the Committee has failed to perform the duties cast in the Act, Rules and Byelaws.

**8. Provisions to bring Professional Management in every Co-operative Societies :** Section 73-AAA(2) of the Act provides for co-option of two expert directors and also one or two functional directors to bring professionalism in the working of co-operative Societies. In order to have a professional management, co-option of expert directors and functional directors are provided. Such directors do not have voting in the election of office bearers but in other management decisions have voting rights and also shall be contributing their expert knowledge to take an appropriate decision. Such Directors shall be appointed on remuneration basis. Modern method of management is being brought into co-operative sector by the Central Government thereby management, record keeping etc. shall be as per new professional norms.

**Section 73AAA-(2)** The Committee of the society may co-opt "expert directors" relating to the objects and activities undertaken by the society:

Provided that the number of Expert Directors shall not exceed two in addition to maximum twenty one members of the committee as specified in first proviso to sub-section (1).

Provided further that, the committee may, in case of the committee having not more than seventeen members, nominate a person as a functional director and in case the committee's having more than seventeen members and not more than twenty-one members, may nominate such number of functional directors not exceeding two.

Provided also that, in respect of the society having contribution of the Government towards its share capital, the members of the committee shall include two officers of the Government nominated by the State Government, which shall be in addition to the number of members specified in the first proviso to sub-section (1) :

Provided also that, in case the committee consists of two functional directors, one of such functional directors shall be an employee of the concerned society who is workman or is a representative of the recognized union of the employees of such society:

Provided also that, the functional directors and the members nominated by the State Government under the third proviso of a society shall also be the members of the committee and such members shall be excluded for the purposes of counting the total number of members of the committee specified in the first proviso to sub-section (1) :

Provided also that, such expert directors shall not have the right to vote at any election of the

society and shall not be eligible to be elected as office bearers of the committee.

**Constitution 97th Amendment Provision:** Article 43B of the constitution provides that "The State shall endeavour to promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies". Article 243ZJ (3) provides that "The Legislature of a State shall, by law, make provisions for co-option of persons to be members of the board having experience in the field of banking, management, finance or specialization in any other field relating to the objects and activities undertaken by the co-operative society as members of the board of such society:

Provided that the number of such co-opted members shall not exceed two in addition to twenty one directors specified in the proviso to clause (1) (elected directors):

Provided further that such co-opted members shall not have the right to vote in any election of the co-operative society in their capacity as such member or to be eligible to be elected as office-bearers of the board:

Provided also that the functional directors of a co-operative society shall also be the members of the board and such members shall be excluded for the purpose of counting the total number of directors specified in first proviso of clause (1) of this article.

**Housing Society Model Bye-laws No 116 (b) provides as under:**

The Committee of the society may co-opt Two "expert directors" relating to the objects and activities under taken by the society. The number of such co-opted members shall not exceed two in addition to the strength of the committee as provided in bye-laws No. 115., Such co-opted members shall not have the right to vote in any election of the society in their capacity as such member or to be eligible to be elected as office bearers of the committee.

**116(c) The Committee of the society may co-opt Two "functional directors", such members shall be excluded for the purposes of counting the total numbers of the committee and shall have no right to vote.**

Thus enabling provisions are made in the MCS Act and Model Bye-laws to appoint expert directors and functional directors in the Co-operative Housing Societies. It is recommended that every Housing Society in order to have professional management co-opt Housing society Consultants, Advocates, Chartered accountants or any other professionals as expert directors and pay their remuneration to attend the meeting. Further, Housing Society Managers can be appointed as functional directors, so that the other elected directors will have only powers to make policy decisions and day to day activities will be supervised by the functional directors.

**9. Administrators not to be appointed in Non-aided societies.--**If a managing committee of a society is unable to manage, it will be the active members who will be selected as "authorized officer" or "interim committee", who will have to manage the affairs of the society and bring it back on track.

**As per section 77A. Appointment of member of committee, new committee, authorized officers, where there is failure to elect member, to constitute committee or where committee does not enter upon office, etc.**

(1) Where the Registrar is satisfied that,—

(1-a) a provisional committee has failed to make necessary arrangements for holding election for the constitution of the first committee, before the expiry of its term as specified in sub-section (1A) of section 73,

(a) At the first constitution of the committee of any society there is a failure to elect all or any

- of the members of the committee;
- (b) the term of the committee of any society or of any of its members has expired or for any other reason election to committee could not be held before the expiry of its term or election is held and there is a failure to elect all or any of the members required to fill the vacancies;
  - (b-1) there is a stalemate in the constitution or committee has ceased to function and vacuum is created in the management;
  - (c) Any committee is prevented from entering upon office; or
  - (d) A new committee has failed to enter upon office on the date on which the term of office of the existing committee expired;
  - (e) \*\*\*\*\*
  - (f) Where more than one group of persons in a society is claiming to be elected as the committee members and proceedings in respect thereof have been filed in the Co-operative Court; The Registrar may, either, *suo moto* or on the application of any officer or member of the society, by order appoint-
    - (i) any member or members of the society to be the member or members of the Committee to fill the vacancies;
    - (ii) A committee, consisting of not more than three members of the society, or one or more authorized officers, who need not be members of the society, to manage the affairs of the society till a new committee enters upon office;

Provided that, before making such order, the Registrar shall publish a notice on the notice board at the head office of the society, inviting objections and suggestions with respect to the proposed order within a period specified in the notice and consider all objections and suggestions received by him within that period;

Provided further also that, it shall not be necessary to publish such notice in any case where Registrar is satisfied that immediate action is required to be taken or that it is not reasonably practical to publish such notice.

Provided also that if no member or members of the Society are willing to work on such Committee, it shall be lawful for the Registrar, to appoint one or more Authorized Officers not being a member of the society, as he may deem fit, to look after affairs of the society.

(2) The Committee or Authorized Officer so appointed shall, subject to the control of the Registrar and to such instructions as he may, from time to time, give, have power to discharge all or any of the functions of the committee or of any officer of the society and take all such actions as may be required to be taken in the interests of the society.

(3) The Committee or Authorized Officer so appointed shall hold office for a period of six months from the date of assuming the management of the society and shall make necessary arrangements for constituting a new committee within the said period and for enabling the new Committee including any new Committee referred to in sub-clause (1) of sub-section (1), which is determined by the Court to have been legally elected, to enter upon office.

Provided that, in no circumstances the term of office of the committee or Authorized Officer shall exceed six months from the date of their holding office.

(4) The Registrar shall have the power to change the committee or any or all members thereof or any or all the authorized officers appointed under sub-section (1) at his discretion even before the expiry of the period specified in the order made under sub-section (1) from the date of their holding

office.

(5) The provisions of sub-section (4) of Section 78-A shall apply *mutatis mutandis* for fixation of remuneration to be paid to the authorized officers appointed under sub-section (1).

#### 78. Power of suspension of committee.-

(1) If in the opinion of the Registrar, the committee makes a persistent default in performance of its duties or is negligent in the performance of duties or is otherwise not discharging its functions properly and diligently or there is a stalemate in the constitution or functioning of the committee, occasioned by resignation, disqualification of members of committee or otherwise, the Registrar, after giving the committee an opportunity of showing cause, in writing, if any, within fifteen days from the date of receipt of the notice and after giving reasonable opportunity of being heard, and after consultation with the federal society to which the society is affiliated, comes to a conclusion that the charges mentioned in the notice *prima facie* exist, but capable of being remedied with, he may by order. -

- (i) keep the committee under suspension for such temporary period not exceeding six months, as may be specified in the order;
- (ii) And appoint an administrator or committee of administrators consisting of three or more members of the society, otherwise than the members of the committee so suspended, in its place or appoint an administrator or committee of administrators who need not be the members of the society, to manage the affairs of society;

Provided that nothing in this sub-section shall apply to a society, where there is no government shareholding or loan or financial assistance in terms of any cash or kind or any guarantee by the Government;

Provided further that, in the case of a society carrying on the business of banking, the provisions of Banking Regulation Act, 1949, shall also apply;

Provided also that, in case of a society carrying on the business of the banking, the provisions of this clause shall have effect as if for the words, "six months", the words "one year" had been substituted.

Provided also that the Registrar shall have the power to change the committee or any member thereof or Administrator appointed, at his discretion even before the expiry of the period specified in the order made under that section.

Provided also that, such notified State Federal Society, shall communicate its opinion to the Registrar within forty-five days from the date of receipt of communication, failing which it shall be presumed that such notified federal society has no objection to the order of suspension and the Registrar shall be at liberty to proceed further to take action accordingly.

(2) The Administrator or Committee of Administrators as the case may be so appointed under clause (ii) of sub-section (1), shall submit a report to the Registrar within such period as may be specified in the order as to the remedial measures taken and after going through the report or any other material placed on record, if the Registrar is satisfied that the charges mentioned in the notice are made good or remedied, he shall by order revoke the order of suspension and direct the Administrator or the committee of Administrators to handover the management to the suspended committee with immediate effect.

(3) When a notice is issued against any committee or a member under sub-section (1), if resignation from any office is tendered by the committee or a member, it shall not be valid or effective until two

months have elapsed from the date of issue of the notice or until it is permitted to be accepted by the Registrar, whichever is earlier.

(4) The Administrator or Committee of Administrators so appointed shall, subject to the control of the Registrar, and such instructions as he may from time to time give, have power to exercise all or any of the functions of the committee or of any officer of the society and take all such actions as may be required in the interest of the society and shall arrange for conduct of the election, through the State Co-operative Election Authority, within the period specified and handover the management to the newly elected committee in accordance with the Act, Rules and bye-laws of the society. The administrator or committee of administrators so appointed as aforesaid shall, notwithstanding anything contained in the bye-laws, have power to call a special general body meeting of the society to review or reconsider the decisions or the resolutions taken or passed at the general body meetings called by the previous committee or to endorse the action taken by it.

(5) The conditions of the service of the administrator shall be fixed by the Registrar which shall include the remuneration payable to him and expenses of management. Such remuneration and expenses shall be payable out of the funds of the society within such time and at such intervals as the Registrar may fix, and if such remuneration or expenses are not paid within such time or at intervals, the Registrar may direct the person having custody of the funds of the society to pay to the administrator or committee of administrators such remuneration and expenses in priority to any other payments, except land revenue, any arrears of land revenue, or any sum recoverable from the society as arrears of land revenue, and he shall, so far as the funds to the credit of the society allow, comply with the orders of the Registrar.

(6) All acts done or purported to be done by the administrator or committee of administrators during the period the affairs of the society are carried on by the administrator or committee or administrators appointed under sub-section (1) shall be binding on the new committee.

**78-A. Power of suspension of committee or removal of member thereof—**(1) If in the opinion of the Registrar, the committee or any member of such committee has committed any act, which is prejudicial to the interest of the society or its members or if the State Co-operative Election Authority constituted under section 73-E has failed to conduct the elections in accordance with the provisions of this Act or where situation has arisen in which the committee or any member of such committee refuses or has ceased to discharge its or his functions and the business of the society has, or is likely to, come to a stand-still, or if serious financial irregularities or frauds have been identified or if there are judicial directives to this effect or, if there is a perpetual lack of quorum or where in the opinion of the Registrar the grounds mentioned in sub-section (1) of section 78 are not remedied or not complied with, or where any member of such Committee, stands disqualified by or under this Act for being a member of committee, the Registrar may after giving the committee or the member, as the case may be an opportunity of stating its or his objections in writing as provided under sub-section (1) of section 78 and after giving a reasonable opportunity of being heard, and after consultation with the federal society to which the society is affiliated comes to a conclusion that the charges mentioned in the notice are proved, and the administration of the society cannot be carried out in accordance with the provisions of this Act, Rules and bye-laws, he may by order stating reasons therefor -

(a) (i) supersede the committee and -

(ii) appoint a committee consisting of three or more members of the society otherwise than the members of the committee so superseded, in its place or appoint an administrator or committee of administrators who need not be the members of the society, to manage the affairs of society for a period not exceeding six months:

Provided that the Registrar shall have the power to change the committee or any member thereof, or administrator or administrators appointed at his discretion even before the expiry of the period specified in the order made in this sub-section:

Provided further that, such federal society shall communicate its opinion to the Registrar within forty-five days, from the date of receipt of communication, failing which it shall be presumed that such federal society has no objection to the order of supersession or removal of a member and the Registrar shall be at liberty to proceed further to take action accordingly :

Provided also that, in case of a society carrying on the business of banking, the provisions of the Banking Regulation Act 1949 shall also apply and the committee shall not be superseded for a period exceeding one year:

Provided also that, nothing in this sub-section shall apply to a society, where there is no government shareholding or loan or financial assistance in terms of any cash or kind or any guarantee by the government;

(b) Remove the member:

Provided that the member who has been so removed shall not be eligible to be re-elected, re-co-opted or re-nominated as a member of any committee of any society till the expiry of period of next one term of the committee from the date on which he has been so removed:

Provided further that in case of a society carrying on the business of banking, the provisions of Banking Regulation Act, 1949, shall also apply.

(2) The provisions of sub-sections (3), (4), (5) and (6) of section 78 shall apply *mutatis mutandis*, in relation to supersession or removal under this section.

**Constitution 97th Amendment Provision:** Article 243ZL provides: (1) Notwithstanding anything contained in any law for the time being in force, no board shall be superseded or kept under suspension for a period exceeding six months:

Provided that the board may be superseded or kept under suspension in case—

- (i) of its persistent default; or
- (ii) of negligence in the performance of its duties; or
- (iii) the board has committed any act prejudicial to the interests of co-operative society or its members; or
- (iv) there is a stalemate in the constitution or functions of the board; or
- (v) the authority or body as provided by the Legislature of the State, by law, under clause (2) of article 243ZK, has failed to conduct elections in accordance with the provisions of the State Act:

Provided further that the board of any such co-operative society shall not be superseded or kept under suspension where there is no Government shareholding or loan or financial assistance or any guarantee by the Government:

Provided also that in case of co-operative society, other than a multi-State co-operative society, carrying on the business of banking, the provisions of this clause shall have the effect as if for the words "six months", the words "one year" had been substituted.

(2) In case of supersession of a board, the administrator appointed to manage the affairs of such co-operative society shall arrange for conduct of elections within the period specified in clause (1) and handover the management to the elected board.



(3) The Legislature of a State may, by law, make provisions for the conditions of service of the administrator.

**Bye Law No. 116. (a)** Election of all the members of the Committee shall be held once in 5 years, before expiry of its term, in accordance with the provisions of Sec 73- CB of the Act and the Rules / procedure framed there under. It shall be the duty of the committee to intimate to the State Election Authority for holding of its election before expiry of its term. On failure, the committee members shall cease to hold office after expiry of its term and attract action by the Registrar under section 77 A.

**Bye Law No 132 (e)** In case entire committee intends to resign, the resignations of the committee shall be placed before the general body and such resignations shall be effective from the date of acceptance of such resignations by the General Body. This fact of acceptance of resignations of the entire Committee by the General Body, shall be communicated to the Registrar by the outgoing officers and Registrar may take necessary action as provided under section 77 A of the Act.

**10. Co-operative Education and Training to Members, Member of the Committee and Employees.**—Managing committee members have to undergo education and training at least once in five years. The Government may make necessary Rules and also issue notification to the effect that the members of the Committee need to undergo certain hours of training to continue as the committee members.

**Section 24-A.—Co-operative Education and Training to Members, Member of the Committee and Employees, and Contribution thereof:**—(1) Every society shall organize co-operative education and training, for its members, officers and employees through such State federal societies of State Apex Training Institutes as the State Government may, by notification in the *Official Gazette*, specify;

Such education and training shall –

- (i) ensure the effective and active participation of the members in the management of the society.
- (ii) groom talented employees for leadership position
- (iii) develop professional skills through co-operative education and training

(2) Every member of the committee, whether elected or co-opted, shall undergo such co-operative education and training for such period and at such intervals as may be prescribed.

(3) Every society shall contribute annually towards the education & training fund of the State federal societies or State Apex Training Institutes notified under subsection (1), at such rates as may be prescribed, and different rates may be prescribed for different societies or classes of societies.

**Constitution 97th Amendment Provision:**—Article 243 ZN (3) The Legislature of a State may, by law, provide for co-operative education and training for its members.

**Bye Law No. 5(b)** To provide co-operative education and training to develop co-operative skills to its members, committee members, officers and employees of the society.

**Creation of Funds in Bye-laws 23** has been added clause (d) To create Education and Training Fund from the Members as contribution of Rs 10 per month / per unit or as decided by the General Body.

**Utilisation of the funds added further clause No (d)** The Education & Training Fund be utilized as provided under section 24(A) of the Act.

**Bye-laws No. 68** provides for the service charges to be collected from members for different aspects and clause (vi) provides “ Subscription to the Education Fund as per section 24 A of the Act.

**11. Autonomous Functioning and disputes to resolved through arbitration process:** There will be two committees functioning in the society. One looking after day to day affairs and also the implementation of policy decisions of the society. Second committee consisting of 3 members to be elected by the General Body shall hear and decide on the disputes arising in the functioning of the society. Obligation is cast upon the Society to report to the registration constitution of committee. In the normal cases, the dispute redressal committee can settle any disputes amicably between two parties and the same will be binding on both the parties.

As per Section 93 (3) Notwithstanding anything contained in this Act, where it appears to the Co-operative Court that there exist elements of settlement which may be acceptable to the parties, the court may formulate the issues of the settlement and give them to the parties for their observation and after receiving the observations of the parties, the court shall formulate the issues of possible settlement and refer the disputes for,-

- (i) Arbitration;
- (ii) Conciliation;
- (iii) Judicial Settlement including settlement through *Lok Adalat*;
- (iv) Mediation.

(4) Where dispute has been referred-

(a) for arbitration or conciliation, the provisions of the Arbitration and Conciliation Act, 1996, shall apply as if proceedings for Arbitration and Conciliation were referred for settlement of the dispute under the provisions of the said Act;

(b) to *Lok Adalat*, the Court may refer the same to the *Lok-Adalat* in accordance with the provision of Legal Services Authorities Act, 1987 and all other provisions of that Act shall apply in respect of the dispute so referred to in the *Lok-Adalat*;

(c) for judicial settlement, the Court may refer the same to a suitable institution or a person working in that field and such institution or a person shall be deemed to be a *Lok Adalat* and all the provisions of Legal Services Authorities Act, 1987 shall apply as if the disputes were referred to *Lok-Adalat* under the provisions of the said Act;

(d) for mediation, the Court may affect compromise between the parties and shall follow such procedure as may be prescribed.

To reduce the numbers of disputes reaching co-operative court and other judicial forums, and to enable members of co-operative societies to try to resolve their internal differences easily, painlessly and in the spirit of compromise, a "Grievance Redressal Committee" has been mandated. Further . Duty has been cast on Co-operative Court to try and resolve problems through arbitration, negotiation and compromise, rather than in a typical court-like fashion

**Constitution 97th Amendment Provision:—Article 243ZI.** Subject to the provisions of this Part, the Legislature of a State may, by law, make provisions with respect to the incorporation, regulation and winding up of co-operative societies based on the principles of voluntary formation, democratic member-control, member economic participation and autonomous functioning.

**12. Audit by an Independent person to be appointed by General Body :** The Societies have to appoint their own auditors and also fix their remuneration in the General Body meeting from the auditors panel maintained by the Registrar. Within 6 months of close of co-operative Financial year, the audit should be completed and report to be submitted by the Auditor before the issue of Notice for General Body meeting which is scheduled to be held on or before six months of close of financial

year. In case the society fails to appoint the auditor, the Registrar shall appoint from the panel of auditors.

**81. Audit.**—(1) (a) The society shall cause to be audited its accounts at least once in each financial year and also cause it to be completed within a period of six months from the close of financial year to which such accounts relate and in any case before issuance of notice of the holding of annual general body meeting, by auditor or auditing firm from a panel prepared by the Registrar and approved by the State Government or an authority authorized by it in this behalf, possessing required qualifications and experience as may be prescribed to be eligible for auditing accounts of societies, appointed by a general body of a society, as provided in sub-section (2A) of section 75 and shall lay such audit report before the annual general body meeting. In case of apex society, the audit report shall also be laid before both houses of State Legislature, in such manner, as may be prescribed:

Provided that, if the Registrar is satisfied that the society has failed to intimate and file the return as provided by sub-section (2A) of section 75 and sub-section (1B) of section 79, by order, for the reasons to be recorded in writing, he may cause its accounts to be audited, by an auditor from the panel of the auditors approved by the State Govt. or an authority authorized by it in this behalf:

Provided further that no auditor shall accept audit of more than twenty societies for audit in a financial year excluding societies having paid up share capital of less than Rs. one lakh.

Provided also that, the Registrar shall maintain a panel of auditors and auditing firms as approved by the State Government or an authority authorized by it in this behalf.

(b) The manner of preparation, declaration and maintenance of the panel of auditors and auditing firms by the Registrar shall be such as may be prescribed.

(c) The board of every society shall ensure that the annual financial statements like the receipts and payments or income and expenditure, profit and loss and the balance sheet along with such schedules and other statements are audited within four months of closure of financial year.

(d) The Registrar shall submit the audit report of every apex co-operative society to the State Government annually for being laid before both houses of state legislature in the manner prescribed.

(e) The auditor's report shall have:

- (i) All particulars of the defects or the irregularities observed in audit and in case of financial irregularities and misappropriation or embezzlement of funds or fraud, the auditor or the auditing firm shall investigate and report the *modus operandi*, the entrustment, amount involved.
- (ii) Accounting irregularities and their implications on the financial statements to be indicated in detail in the report with the corresponding effects on the profit and loss
- (iii) The functioning of committee and sub-committees of the societies be checked and if any irregularities or violation are observed or reported, duly fixing the responsibilities for such irregularities or violations.

(f) The remuneration of the auditor or auditing firm of a society shall be borne by the society and shall be at such rate as may be fixed by general body of the society.

(g) The Registrar shall maintain the list of societies district-wise, the list of working societies, the lists of societies whose accounts are audited, the list of societies whose accounts are not audited within the prescribed time and reasons therefor. The Registrar shall co-ordinate with the societies and the auditors or auditing firms and ensure the completion of audit of accounts of all the co-operative societies in time every year.

Explanation-1: For the purposes of this section, the expression "possessing required qualifications" for being included in the panel duly approved by the State Government or an authority authorized by the State Government in this behalf, from time to time, shall mean and include-

- (a) A person who is Chartered Accountant within the meaning of the Chartered Accountants Act, 1949, who has a fair knowledge of the functioning of the societies and an experience of at least three years in auditing of societies, with a working knowledge of Marathi language;
- (b) "Auditing firm" means a firm of more than one Chartered Accountant within the meaning of the Chartered Accountants Act, 1949, who have a fair knowledge of the functioning of the societies, with a working knowledge of the Marathi language;
- (c) A "certified auditor" means a person who holds a Degree from recognized University and also has completed a Government Diploma in Co-operation and Accountancy and who has a fair knowledge of the functioning of the societies and an experience of at least three years in auditing of societies, with a working knowledge of Marathi language;
- (d) "Government Auditor" means an employee of the Co-operation Department of the State possessing the Higher Diploma in Co-operative Management or Diploma in Co-operative Audit or Government Diploma in Co-operation and Accountancy with a working knowledge of Marathi knowledge, who has completed a period of probation successfully;

Explanation-2: The terms and conditions for inclusion and retention of name as an auditor or auditing firm in the panel of auditors shall be subject to the terms and conditions, as may be prescribed.

Clause (b) of sub-section (3) of section 81 provides that if the Registrar has reason to believe that there exists an element of fraud, misapplication of funds, manipulation of the accounts and the accounts of the society are likely to be tampered with, thereby causing loss to the society, he shall be competent to depute Flying Squad to a society or societies for examination of books, records, accounts, and such other papers and for verification of cash balance. The report of the Flying Squad shall be treated as sufficient evidence for further action, if any.

Section 81(5B) provides that the Auditor shall submit his audit report within a period of one month from its completion and in any case before issuance of notice of the annual general body meeting, to the society and to the Registrar in such form as may be specified by the Registrar, on the accounts examined by him and on the balance sheet and profit and loss account as on the date and for the period up to which the accounts have been audited, and shall state whether in his opinion and to the best of his information and according to the explanation given to him by the society they said accounts give all information required by or under this Act and present the true and fair view of the financial transactions of the society.

Provided that, where the auditor has come to a conclusion in his audit report that any person is guilty of any offence relating to the accounts or any other offences, he shall file a specific report to the Registrar within a period of 15 days from the date of submission of his audit report. The Auditor concerned shall, after obtaining written permission of the Registrar, file a First Information Report of the offence. The Auditor who fails to file First information Report shall be liable for disqualification and his name shall be liable to be removed from panel of auditors, and he shall also be liable to any other action as the Registrar may think fit:

Provided further that when it is brought to the notice of the Registrar that the Auditor has failed to initiate action as specified above, the Registrar shall cause a First Information Report to be filed by a person authorized by him in that behalf:

Provided also that, on conclusion of his audit, if the auditor finds that there are apparent instances of financial irregularities resulting into losses to the society caused by any member of the committee, or officers of the society or by any other person, then he shall prepare a Special Report and submit the same to the Registrar along with his audit report. Failure to file such Special Report would amount to negligence in the duties of the Auditor, and he shall be liable for disqualification for appointment as an auditor or any other action as Registrar may think fit

**Constitution 97th Amendment Provision:--**Article 243ZM provides that--

(1) The Legislature of a State may, by law, make provisions with respect to the maintenance of accounts by the co-operative societies and the auditing of such accounts at least once in each financial year.

(2) The Legislature of a State shall, by law, lay down the minimum qualifications and experience of auditors and auditing firms that shall be eligible for auditing accounts of the co-operative societies.

(3) Every co-operative society shall cause to be audited by an auditor or auditing firms referred to in clause (2) appointed by the general body of the co-operative society.

Provided that such auditors or auditing firms shall be appointed from a panel approved by a State Government or an authority authorized by the State Government in this behalf.

(4) The accounts of the every co-operative society shall be audited within six months of the close of the financial year to which such accounts relate.

(5) The audit report of the accounts of an apex co-operative society, as may be defined by the State Act, shall be laid before the State Legislature in the manner, as may be provided by the State Legislature, by law.

**Bye Law No. 147.** (1) within 45 days of the close of every co-operative year, the Secretary of the society or any other person, authorised by the Committee in that behalf, shall finalize the account of the preceding co-operative year, prepare the Receipts and Payments Statement, the Income and Expenditure Statement for the said year and the Balance Sheet as at the close of the said year in the forms prescribed under Rule 62(i) of MCS Rules 1961 alongwith the list of Active members and Non-Active members as at the close of the preceding co-operative year, with amounts to their credit in the share capital account and deposits, if any, the schedules of investments, the debtors, the creditors, the furniture, the fixtures and the office equipments etc.

As per Bye-laws 147 (3) Every society shall also file a return regarding the name of the auditor or auditing firm from a panel approved by a State Government in this behalf, appointed in the general body meeting together with his written consent within a period of one month from the date of annual general body meeting.

As per Bye-laws 147 (4) If the Society fails to intimate and file the returns as provided by section 75(2A) and section 79(1B), the Registrar may cause Societies accounts to be audited by appointing an Auditor from the panel of Auditors.

**13. Conduct the AGM within 6 months from close of Financial year :** Section 75 provides that General Body cannot be held later than 30th September of every year. For failure to hold the AGM, the Registrar will appoint his own officer to conduct the meeting. Thus there will be no extension or permission shall be granted. The committee will be held responsible and accountable for such lapses.

(1) Every society shall, within a period of four months after the close of the financial year, get its books of accounts audited and within six months after the close of financial year to transact its business

as may be provided in this Act, call the annual general body meeting of its members:

Provided that, where such meeting is not called by the society, the Registrar or any officer authorized by him may call such meeting in the manner prescribed and that meeting shall be deemed to be a general body meeting duly called by the society.

(2) At every general body meeting of a society, the committee shall lay before the society,-

- (i) a statement showing the details of the loans (if any) given to any members of the committee, or any member of the family of any committee member including a society or firm or company of which such member or members of his family is a member, partner or director, as the case may be;
- (ii) the details of repayment of loan made during the preceding year and the amount outstanding and overdue at the end of that year; annual report of its activities;
- (iii) plan for disposal of surplus;
- (iv) list of amendments of the bye-laws of the society, if any;
- (v) declaration regarding date and conduct of its election of its committee, when due;
- (vi) audit report of the preceding financial year;
- (vii) rectification report of earlier audit;
- (viii) annual budget for next year;
- (ix) any other information required by the Registrar in pursuance of any of the provisions of the Act and Rules, and;
- (x) such other business will be transacted as may be laid down in the byelaws, and of which due notice has been given.

*Explanation I.*- For the purposes of this sub-section, the expression "family" means a wife, husband, father, mother, brother, sister, son, daughter, son-in-law, or daughter-in-law;

*Explanation II.*- In the case of a society not carrying on business for profit, an audited income and expenditure account shall be placed before the society at the annual general body meeting instead of audited profit and loss account, and all references to audited profit and loss account, and to "profit" or "loss" in this Act, shall be construed in relation to such societies as references respectively to the "excess income over expenditure" and "excess of expenditure over income".

**Constitution 97th Amendment Provision:**—Article 243ZN provides, The Legislature of a State may, by law, make provisions that the annual general body meeting of every co-operative society shall be convened within a period of six months of close of the financial year to transact of its business with such member.

**Bye-Law No 95.** (a) The annual general body meeting of the society shall be held on or before 30th September each year as provided under Section 75(1) of the Act. (As there is no provision for extension to hold AGBM )

(b) In case of default in calling the Annual General Body Meeting as above shall attract disqualification and action as provided under section 75(5) of the Act.

As per Model Bye-laws No. 96. The annual general body meeting of the Society shall transact the following business :

- (i) to read the minutes of the last annual general body meeting of the society and the special general body meeting of the society, if any and to note the action taken thereon,

- (ii) to receive from the committee, the annual report of its activities on the preceding co-operative year's working, together with the statement of accounts in form 'N' prescribed under Rule 62(1) of the Rules, showing the income and expenditure during the preceding co-operative year and the balance sheet as at the close of the preceding co-operative year
- (iii) to consider audit report, received from the Auditor appointed as provided in section 75(2A) of the Act for the previous co-operative year along with audit rectification report of the committee thereon,
- (iv) to declare regarding date and conduct of election of its Committee when due,
- (v) to appoint an auditor, for the Audit, from the panel approved by State Government.
- (vi) to consider any other matters, specifically requiring decisions, concurrence or sanction of the general body meeting of the society, by virtue of the provisions in the Act, Rules and the bye-laws of the society,
- (vii) to consider any important communications received from the Registering Authority, the Statutory Auditor, Government, Collector, Local or any other competent authority,
- (viii) to consider any other matter, with the permission of the Chair, excepting those requiring proper notice, after the regular agenda is over and which are permitted under the provision of the Act, Rules & bye-laws.
- (ix) To place annual budget for the next financial year for consideration.
- (x) To receive from committee the Audit Rectification Report and Action taken thereon.
- (xi) To appoint the Grievance settlement and Redressal Committee as provided in Bye-law No. 173.

**14. Filing of Annual Returns by every Co-operative Societies:** Non filing of Annual Returns disqualify the entire committee from contesting the election for the next term. It is compulsory for every society to file a return in the prescribed form within 6 months of close of co-operative year. Corresponding rules are yet to be framed.

**Section 79 provides: Society's obligation to file returns and statements and Registrar's power to enforce performance of such obligations.—**

(1) The Registrar may direct any society or class of societies, to keep proper books of accounts in such form, including electronic or any other form, as may be prescribed with respect to all sums of money received and expended by the society, and the matters in respect of which the receipt and expenditure take place all sales and purchases of goods by the society, and the assets and liabilities of the society, and to furnish such statements and returns and to produce such records as he may require from time to time; and the officer or officers of the society shall be bound to comply with his order within the period specified therein.

(1A) Every society shall file returns within six months of the close of every financial year to which such accounts relate, to the Registrar or to the person authorized by him. The returns shall contain the following matters, namely-

- (a) Annual report of its activities;
- (b) Its audited statement of accounts;
- (c) Plans for disposal of surplus funds as approved by the general body of the society;
- (d) List of amendments to the byelaws of the society, if any;
- (e) Declaration regarding date of holding of its general body meeting and conduct of elections

when due;

- (f) Any other information required by the Registrar in pursuance of any of the provisions of this Act.

(1B) Every society shall also file a return regarding the name of the auditor or auditing firm from a panel approved by State Government in this behalf, appointed in the general body meeting together with his written consent, within a period of one month from the date of annual general body meeting.

(2) Where any society is required to take any action including filing of returns under this Act, the rules or the bye-laws, or to comply with an order made under the foregoing sub-sections, and such action is not taken-

- (a) Within the time provided in this Act, the rules or the bye-laws, or the order as the case may be, or
- (b) where no time is so provided, within such time, having regard to the nature and extent of the action to be taken, as the Registrar may specify by notice in writing, the Registrar may himself, or through a person authorized by him, take such action, at the expense of the society; and such expense shall be recoverable from the society as if it were an arrear of land revenue.

(3) Where the Registrar takes action under sub-section (2), the Registrar may call upon the officer or officers of the society whom he considers to be responsible for not complying with the provisions of this Act, the rules or the byelaws, or the order made under sub-section (1) and after giving such officer or officers an opportunity of being heard, may require him or them to pay to the society the expenses paid or payable by it to the State Government as a result of their failure to take action and to pay to the assets of the society such sum not exceeding twenty-five rupees as the Registrar may think fit for each day until the Registrar's directions are carried out.

(4) The Registrar or the authorized person on his behalf shall scrutinize the returns and information so received and take further necessary action, if required.

**Constitution 97th Amendment Provision:—**Article 243ZP. Every co-operative society shall file returns, within six months of the close of every financial year, to the authority designated by the State Government including the following namely:—

- (a) annual report of its activities;
- (b) its audited statement of accounts;
- (c) plan for surplus disposal as approved by the general body of the co-operative society;
- (d) list of amendments to the bye-laws of the co-operative society, if any;
- (e) declaration regarding date of holding of its general body meeting and conduct of elections when due; and
- (f) any other information required by the Registrar in pursuance of any of the provisions of the State Act.

**Bye Law No. 147 (2)** The society shall prepare and file annual returns as prescribed in the Act & the Rules. The society shall file annual returns on or before 30th September of every year to the Registrar including the following matters, namely:—

- (a) Annual reports of Societies activities.
- (b) Societies audited statement of accounts;
- (c) Plans for surplus disposal as approved by the general body of the society;



- (d) List of amendments to the byelaws of the society, if any;
- (e) Declaration regarding date of holding of its general body meeting and conduct of elections when due;
- (f) Any other information required by the Registrar in pursuance of any of the provisions of the Act.

(3) Every society shall also file a return regarding the name of the auditor or auditing firm from a panel approved by a State Government in this behalf, appointed in the general body meeting together with his written consent within a period of one month from the date of annual general body meeting.

**15. Offences and Penalties:—Section 146 has provided for type of Offences and Section 147 provided for the Punishment that shall given to every society, officer or past officer, member or past member, employee or past employee of a society, or any other person, who commits an offence under section 146, on conviction.**

Section 146 provides that it shall be an offence under this Act, if every society, officer or past officer, member or past member, employee or past employee of a society, or any other person, who commits an offence under section 146 shall, on conviction, be punished-

**1 Section 146(b) provides that any employer and every director, manager, secretary or other officer or agent acting on behalf of such agent acting on behalf of such employer who without any sufficient cause fails to pay a co-operative society amount deducted by him from its employee within a period of 14 days from the date on which such deduction is made, and also any person who fails to comply with sub-section (2) of section 49. Punishment prescribed under section 147(b) with imprisonment for a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both**

**2 Section 146(c) A committee of a society or an officer or member thereof fails to invest funds of such society in the manner required by section 70. Punishment prescribed under section 147(c) with fine which may extend to five thousand rupees**

**3 Section 146(d) any person, collecting share money for a society in formation, does not within a reasonable period deposit the same in the State Co-operative Bank, or a Central Co-operative Bank, or an Urban Co-operative Bank, or a Postal Savings Bank. Punishment prescribed under section 147(d) with fine which may extend to five thousand rupees**

**4 Section 146(e-1) any person, who collects share money or any other sum by misrepresentation to the members or prospective members in the name of the society to be registered or after registration of a society by such misrepresentation, or otherwise. Punishment prescribed under section 147(e-1) with imprisonment of a term which may extend to three years, or with fine which may extend to fifteen thousand rupees, or with both.**

**5 Section 146(e-2) any person knowingly gives a false certificate in whatever form showing that a person is or is not a "defaulter" within the meaning of that expression in the Explanation to clause (i) of sub-section (1) of section 73CA. Punishment prescribed under section 147(e-2) with imprisonment of a term which may extend to three years, or with fine which may extend to fifteen thousand rupees, or with both**

**6 Section 146(f) A committee of a society or an officer or member thereof, fails to comply with the provisions of sub-sections (2), (2A), (3) or (4) of section 75. Punishment prescribed under section 147(f) with fine which may extend to five thousand rupees**

**7 Section 146(g) a co-operative society or an officer or member thereof willfully makes a false return or fails to furnish a return under section 75 or 79 of the Act, or furnishes false information or willfully fails to furnish any information required from him by a person holding an inquiry under section 83, person authorized under section 88 or as required under any provisions of this Act, any officer or member of a society who is in possession of information books and records, fails to furnish**

such information or produce books and papers, or give assistance to a person appointed or authorized by the State Government or the Registrar under-sections 77A, 78, 78A, 81, 83, 84, 88, 89A, 94, 103 or 110A. **Punishment prescribed under section 147(g)** with fine which may extend to five thousand rupees

**8 146(h)** any officer or custodian who willfully fails to hand over custody of books, accounts, documents, records, cash, security and any other property belonging to a co-operative society of which he is an officer or custodian, to an authorized person or, to a person appointed under section 77A, 78, 78A, 103 or 110A, or any other person appointed under this Act. **Punishment prescribed under section 147(h)** with fine which may extend to five thousand rupees;

**9 146(h-1)** a committee of a society or an officer or member thereof involved in corrupt practices during the election. **Punishment prescribed under section 147(h-1)** with fine which may extend to five thousand rupees

**10 Section 146(i)** a committee of a society with a working capital of fifty thousand rupees or more, or any officer or a member thereof, fails without any reasonable excuse to give any notice, send any return or document, do or allow to be done anything, which the committee, officer or member is by this Act required to give, send, do or allow to be done. **Punishment prescribed under section 147(i)** with fine which may extend to five thousand rupees comply with orders made under section 79.

**11 Section 146(j)** any person willfully or without any reasonable excuse disobeys any summons, requisition or lawful written order issued under sections 81, 83, 88 or any other provisions under the Act, or a committee of a society or an officer or member thereof willfully neglects or refuses to do any act, or to furnish any information required for the purposes of this Act by the Registrar, or other person duly authorized by him in writing in this behalf. **Punishment prescribed under section 147(j)** with imprisonment for a term which may, extend to one month, or with fine which may extend to five hundred thousand rupees, or with both

**12 Section 146(k)** a committee of a society, or an officer or member thereof, willfully makes a false return, or furnishes false information, or fails to maintain proper accounts. **Punishment prescribed under section 147(k)** with imprisonment for a term which may extend to one year, or with fine which may extend to two ten thousand rupees, or with both.

**13 Section 146(l)** any officer, member, agent or servant of a society fails to comply with the requirements of sub-section (4) of section 81. **Punishment prescribed under section 147(l)** with fine which may extend to one thousand rupees

**14 Section 146(l-1)** the Committee fails to submit Audit Rectification Report to the Registrar and the Annual General Body Meeting as per Section 82. **Punishment prescribed under section 147(l-1)** with fine which may extend to five thousand rupees

**15 Section 146(m)** Any officer or a member of a society willfully fails to comply with any decision award or order passed under section 96. **Punishment prescribed under section 147(m)** with imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both

**16 Section 146(n)** A member of a society fraudulently disposes of property over which the Society has a prior claim, or a member or officer or employee or any person disposes off his property by sale transfer, mortgage, gift or otherwise, with the fraudulent intention of evading the dues of the society. **Punishment prescribed under section 147(n)** with imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both

**17 146(o)** any officer of a society willfully recommends or sanctions for his. **Punishment prescribed under section 147(o)** with imprisonment for a term which may extend own personal use or benefit or for the use or benefit of a person in whom he is interested, a loan in the name of any other person to two years, or with fine which may extend to ten thousand rupees or with both

**18 Section 146(p)** any officer or member of a society destroys, mutilates, tampers with, or otherwise alters, falsifies or secretes or is privy to the destruction, mutilation, alteration, falsification or secreting of any books, papers or securities or makes, or is privy to X the making of any false or fraudulent entry in any register, book of account or document belonging to the society. **Punishment prescribed under section 147(p)** with imprisonment for a term which may extend to three years, or with fine which may extend to RS.15,000/- (fifteen thousand rupees), or with both.

**19 Section 146(q)** Any officer or member of a society or any person does any act declared by the rules to be an offence. **Punishment prescribed under section 147(q)** with fine which may extend to Rs.1000/- (one thousand rupees)

**20 Explanation.**—For the purpose of this section, an officer or a member referred to in the section shall include past officer and past member, as the case may be.

**Constitution 97th Amendment Provision:**—Article 243ZQ provides as under”

(1) The Legislature of a State may, by law, make provisions for the offences relating to the co-operative societies and penalties for such offences.

(2) A law made by the Legislature of a State under clause (1) shall include the commission of the following act or omission as offences, namely:—

- (a) a co-operative society or an officer or member thereof willfully makes a false return or furnishes false information, or any person willfully not furnishes any information required from him by a person authorized in this behalf under the provisions of the State Act;
- (b) any person willfully or without any reasonable excuse disobeys any summons, requisition or lawful written order issued under the provisions of the State Act;
- (c) any employer who, without sufficient cause, fails to pay to a co-operative society amount deducted by him from its employee within a period of fourteen days from the date on which such deduction is made;
- (d) any officer or custodian who willfully fails to hand over custody of books, accounts, documents, records, cash, security and other property belonging to a co-operative society of which he is an officer or custodian, to an authorized person; and
- (e) whoever, before, during or after the election of members of the board or officer bearers, adopts any corrupt practice

**As per Bye Law No. 166.** The meeting of the General body of the society may prescribe penalties for different breaches of the bye-laws of the society. The Secretary of the society, under instructions from the Committee, shall bring to the notice of the member concerned, the breach/breaches of the bye-law/bye-laws committed by him. If the member persists in continuing the breach / breaches, the Committee shall give the notice to the member to show cause as why the penalty should not be inflicted on him for breach/breaches of the byelaw/byelaws. The general body meeting, after considering the say of the member and after giving him hearing, may levy penalty to the extent of maximum consolidated penalty of not more than Rs.5000/- in a particular year.

**As per Bye-laws No. 154(b)** If the Committee of the Society fails to submit Audit Rectification Report to the Registrar and the Annual General Body Meeting, all the members of the Committee shall be deemed to have committed an Offence under section 146 of the Act and shall be liable for Penalty under section 147 of the Act.

## SALIENT FEATURES OF THE MAHARASHTRA ACT No. 7 OF 1997 (IN FORCE FROM 2-1-1997)

**Section 9(2).**—Section 9(2) now provides that on failure of the Registrar to dispose of the application for registration of proposed society within two months, he shall refer the matter to the next higher officer, in case of Registrar himself fails to dispose of application within fifteen days then he shall refer the application to the State Government to dispose of the application. If the next higher officer or the State Government fails to dispose of such referred case within two months then the society shall be deemed to have been registered with its bye-laws. Now it has been explicitly made clear that the after the society becomes deemed society then the said society shall get its Certificate of Registration from the Registrar under his seal and signature within a period of fifteen days.

**Section 22(2).**—Amendment to Section 22(2) provides that If a society fails to communicate any decision to the applicant within three months from the date of receipt of such application, the applicant shall be deemed to have been admitted as a member of the society. **If any question arises whether a person has become a deemed member or otherwise, the same shall be decided by the Registrar after giving all the parties a reasonable opportunity of being heard. It means that when a member who becomes deemed member by virtue of section 22(2) can be questioned later on by the concerned parties and the same question shall be decided by the Registrar.**

**Section 23(1A).**—Amendment to section 23(1A) provides that where a society refuses to accept the application from an eligible person for admission as a member, or the payment made by him in respect of membership, the applicant shall fill up the application form together with the payment in respect of membership, if any, to the Registrar who shall within thirty days from the receipt of the application forward the application and the amount, if any paid by the applicant, to the concerned society; and if the society fails to communicate any decision to the applicant within sixty days from the date of receipt of such application and the amount by the society, the applicant shall be deemed to have been admitted as member of the society, and **if any question arises as to the deemed membership, the Registrar shall decide the said question after giving all the concerned parties a reasonable opportunity of being heard.**

**Section 27.**—Section 27 deals with voting powers of members. Substituted sub-section (9) provides that **No nominee of the Government or of any financing bank on the committee of any society, shall be entitled to vote at any election of its officers i.e. President, Vice-President, Chairman, Vice-Chairman, Secretary, Treasurer or any other officer by whatsoever designation called who holds the office by virtue of his election to that office.**

**Section 73-ID.**—Amendment to section 73-ID now provides that A resolution for no confidence shall be passed by simple majority of the total number of committee members who are entitled to vote at the election of such President, Vice-President, Chairman, Vice-Chairman, Secretary, Treasurer or any other officer. Previously it required two-third majority.

Amendment made to sub-section (2) provides that the requisition of special meeting shall be signed by not less than one third of the total number of members of the Committee who are for the time being entitled to elect President, Vice-President, Chairman, Vice-Chairman, Secretary, Treasurer or any other officer, as the case maybe, of the Committee and shall be delivered to the Registrar.

Amendment to sub-section (7) provides that **if motion of no-confidence is rejected, no fresh motion of no-confidence shall be brought before the committee within a period of one year from the date of such rejection of the motion.**

**Section 73BB.**—Amendment made to section 73BB provides that the seat reserved for the employees on committee of certain societies shall be reserved for employees. The seat so reserved