

# Provisions in MCS ACT & RULES



# Sec 12 Classification of societies

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The Registrar shall classify all societies in to one or other classes & sub classes

- Rule 10 After registration of society ,Registrar classify society in to one or other class considering it''s activities & functioning of society
- There are 10 classes & different sub classes e.g. processing , resource, housing,farming , agricultural etc



## Section 13 Amendments of bylaws of society

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- ① 1) No amendments of bylaws of society shall be valid until registered under the Act .
- ② 2) For the purpose of registration of amendments , copy of amendments passed at AGM , shall be forwarded to Registrar
- ③ Registrar shall dispose of application for registration of bylaws within 60 days of its receipt.



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- Sub section 1A if Registrar fails to dispose of application within 60 days , then he has to refer the application to next higher authority within 15 days from expiration of 60 days .
  - Such higher officer shall dispose of application within 2 months from date of receipt . On failure of higher officer to dispose of application within that period , amendments of bylaws shall be deemed to be registered .



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- Where registrar refuses to register amendments of bylaws , he shall communicate order of refusal together with reasons to the society
  - It has been held that while refusing any amendments , the Registrar has to give reasons . Registrar must give hearing to the society & if hearing is not given , order of refusal will be bad .( Gao urban coop bank vs Registrar . Any order passed under this section is appealable



# Power to direct amendments of By-laws section 14

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- If it appears to the Registrar that amendments of by-laws is necessary or desirable in the interest of such society or by-laws of society are inconsistent with the provisions of Act & Rules , he may call upon the society to make amendments within such time as he may specify
- If society fails to make amendments within time specified , registrar may after



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- After giving opportunity of being heard & after consulting federal society register the amendments & issue copy of such amendments .
  - Federal society shall communicate its opinion to the Registrar within 45 days , failing which Registrar shall be at liberty
  - To proceed further .



# Section 24 A Rule 20 B coop education & training

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- Every society shall organise education & training programs for its members , directors & employees through federal societies or state apex training institutes notified by state Govt
- Period of training for BOD shall be minimum three days during their tenure
- Every member of committee whether elected or coopted shall undergo training



# Duties of members Section 26

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- It shall be duty of every member of society
- A) to attend at least 1 AGM within consecutive period of 5 years
- B) to utilize minimum level of service at least once in period of 5 years as specified in by-laws
- Otherwise , he will be classified as non-active member .
- Society has to communicate such classification to concerned member



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- ◉ Within 30 days from the close of the year .
  - ◉ If non-active member does not satisfy above 2 conditions in next 5 years from date of classification of non –active member , shall be liable for expulsion .
  - ◉ Member can appeal to the Registrar within period of 60 days from the date of communication of classification.



# Section 38 Register of members

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- Every society shall keep register of members & enter therein
- a) Name , address & occupation of each member
- b) shares held by each member
- c) date on which he was admitted as member & date on which he ceased to be member



Appointment of Auditor –  
Article 243 ZM of Constitution  
Section 75 (2 A)

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- ❖ Every society shall appoint an auditor or auditing firm from panel approved by State Government in its Annual General Body meeting.
- ❖ Society shall file in form of return to the Registrar the name of auditor & his written consent within 30 days from the date of Annual General Meeting.
- ❖ Same auditor shall not be appointed for more than 3 consecutive years.



# Section 81

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- ❖ Audit shall be completed within 4 months from close of financial year.
- ❖ Audit report also in compact disk shall be submitted to society & Registrar ( Rule 69 1b)
- ❖ Part A of audit report , audited financial statements & audit certificate shall be uploaded on website of Govt
- ❖ If society has not appointed auditor and failed to file return under sub section (2 A) of 75 or sub section (1 B) of section 79, Registrar shall appoint auditor from panel.
- ❖ No auditor shall accept audit of more than 20 societies excluding societies having paid up capital of less than Rs.1 lakh.



## Article 243 zm of constitution

- ❖ Registrar shall submit audit report of every Apex society to State Government for being laid before both houses of State Legislature.
- ❖ Audit report shall have
  - ✓ All particulars of defects or irregularities.
  - ✓ In case of financial irregularities & misappropriation or fraud, auditor shall investigate & report modus operandi, entrustment & amount involved.



Rule 69 (3) :- Auditor shall submit audit memorandum in case of banks in form N1 and in case of other societies in form N2.

Rule 69 (3) :- Auditor shall state whether accounting policies adopted by societies are consistent with Accounting Standards laid down by State Government or ICAI.

Rule 69 (3) :- While certifying Profit and Loss account, auditor shall quantify effect of shortfall in various provisions like NPA, OIR, Depreciation etc. over profit or loss and state clearly that after considering effect of all provisions, whether there is profit or loss.



# Book entry transactions

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Section 81 (2) –Whether there are any book entry transactions & whether they are prejudicial to the interest of depositors

- ⦿ Verification of overdue debts
- ⦿ Cases where legal action for recovery not initiated
- ⦿ Verification of cash balance by surprise
- ⦿ Whether personal expenses charged to revenue



# Eligibility of auditor for panel

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- a) Chartered Accountant having fair knowledge of functioning of society and experience of at least one year in auditing of societies and working knowledge of Marathi.
- b) Auditing Firm – A firm of more than one Chartered Accountant having fair knowledge of functioning of society and knowledge of marathi.
- c) Certified Auditor –
  - i) Who holds degree
  - ii) Fair knowledge of functioning of society
  - iii) Three years experience in audit of society



d) Departmental Auditor :-

- i. Who has passed G.D.C.&A. / D.C.M. /H.D.C.M. / DCA.
- ii. Who has completed probationary period satisfactorily.



## Section 81 (2)

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- ❖ Audit shall be carried out as per Auditing Standards notified by State Government.



Provision of Act / Rules with  
which auditor is more  
concerned



# Section 65 & Rule 49 (a)

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- ❖ Amounts to be deducted before calculating Net Profit :-
  - ✓ Interest payable on loans and deposits
  - ✓ Establishment expenses
  - ✓ Rent, Rates & Taxes
  - ✓ Audit fee
  - ✓ Provision for depreciation
  - ✓ Provision for Bonus
  - ✓ Provision for Bad and Doubtful Debts.
  - ✓ Provision for Gratuity, leave encashment as per AS 15
  - ✓ Capital redemption fund
  - ✓ Provision for depreciation in Investment
  - ✓ Provision for O.I.R.
  - ✓ Provision for N.P.A.
  - ✓ Provision for election expenses
  - ✓ Provision for income Tax
  - ✓ Provision for training & education Directors, employees & members



# Books of Accounts - Rule 65

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- ❖ Society shall keep the following book of accounts :-
  - ✓ Member Register in form "I"
  - ✓ Share Register
  - ✓ Minute book of Annual General Body Meeting.
  - ✓ Minute book of Board of Directors Meeting / Sub committee meeting.
  - ✓ Cash Book.
  - ✓ Day book
  - ✓ Bank book
  - ✓ General Ledgers.
  - ✓ Individual Ledgers
  - ✓ Stock Register
  - ✓ Property Register



- ✓ Property Register in form “X1”
- ✓ Register of auditors appointed and their written consent.
- ✓ Register of audit objection and their rectification.
- ✓ Returns of society in form “Y”
- ✓ List of Active Members in form “J 1”
- ✓ List of Non-Active Members in form “J 2”
- ✓ Record of attendance of general body meeting.



# Rul 107 (a) :- Travelling expenses of Directors.

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- ❖ Chairman or Vice Chairman of Apex society, State level society, Sugar factory, Spinning mill can only travel by air but they have to attach air ticket to their travelling bill.
- ❖ Director of Apex society, State level society, Sugar factory, Spinning mill & society whose paid up share capital is 50 crore or more can travel by highest class of Railway. He can claim one and half of the actual railway fare but he has to attach railway ticket to his travelling bill.
- ❖ If he doesn't attach railway ticket he shall be entitled to second class fare.



# Refund of share capital Rule 23

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- ❖ If a person has ceased to be a member of society then shares shall be returned to him or his nominee by making valuation of shares based on last

<b>Value per share =</b>	<b>Networth</b>
	No. of shares.

<b>Net worth =</b>	<b>Paid up share capital + Free Reserves – Accumulated loss – shortfall in provisions</b>
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- ❖ If nominal value of share is Rs.1000/- & valuation comes at Rs.400/-, society shall return share = Number of shares x 400/-
- ❖ If valuation comes at Rs.1200/-, society shall return Rs.1000/- per share.



# Limit on interest -Section 44 A

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- ❖ Co-operative society including urban co-operative banks cannot recover as interest more than principal in respect of loan granted for agricultural purpose. Case – Hinganghat Nagari Sah.Patsanstha Vs Ashok Keshav Fukat.
- ❖ In case of non-agricultural loan upto Rs.10,000/-, co-operative society including Urban Co-operative Bank cannot recover as interest more than principal.
- ❖ Reserve Bank of India vide its circular dated 26/08/2002 directed banks to charge simple interest on Agricultural loans and at annual rests.



# Rule 49 – Write off of Bad debts

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- i. Debt certified as irrecoverable by auditor.
- ii. Sanction of Annual General Meeting.
- iii. Prior approval of Registrar in writing.
- iv. If society is indebted to Central bank, prior approval of Central bank.
- v. If society is in 'A' or 'B' audit class, no approval of Registrar is required.
- vi. Debt should be write off from Bad debt fund specially created.



# Article 243 ZP of Constitution

## Section 79 (1 A)

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- ❖ Every society shall file returns within 6 months of close of financial year to Registrar
  - ✓ Annual report of activities.
  - ✓ Its audited statement of accounts.
  - ✓ Plan for disposal of surplus.
  - ✓ List of amendment to the bylaws
  - ✓ Declaration of date of holding Annual General Body Meeting & conduct of election when due.



## Section 79 (1 B)

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- ❖ Every society shall file return regarding name of auditor & his written consent within one month from Annual General Meeting.



## Section 81 (1) (f)

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- ❖ Remuneration of auditor or auditing firm shall be borne by society & shall be at such rates as may be prescribed.
- ❖ Rule 69 – Remuneration of auditors shall be at such rates as may be notified by Government.
- ❖ Government of Maharashtra has issued notification regarding revised audit fees on 29/10/2014.



# Section 70 :- Investment of funds

- ❖ In DCC / SCB having A class in last 3 consecutive years.
- ❖ Securities specified in Section 20 of Indian Trust Act 1882.
- ❖ In shares / bonds of societies having similar classification.
- ❖ CCSE shall invest its funds subject to guidelines issued by R.B.I.
- ❖ Any other mode permitted by Rules or general or special order by Government.
- ❖ In Urban Co-operative banks having 'A' audit class for last 3 consecutive years.
- ❖ In RRB, nationalized banks at HO vide Government of Maharashtra order dated 05/12/13



# Section 43 Restriction on borrowing - Rule 35

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- ❖ Society shall receive deposits & loans only to such extent as may be prescribed.
- ❖ Borrowing limit as per Rule = Paid up share capital + Reserve fund + Building fund – Accumulated loss x 10.
- ❖ Not applicable if not received any financial assistance from Governme& send it to Registrar .
- ❖ Not applicable to C.C.S.E.



## Section 28 :- Restriction on holding shares

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- A member can not hold shares more than Rs.20,000/-
- Restriction on Share holding by member of UCB – up to 5% of paid up share capital of that bank.
- Restriction on share holding by members of Credit society – upto Rs.2 lakh.



# Criteria for Removal of Auditor.

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The criteria for removal of the name of auditor and auditing firms from the panel shall be as follows

- ⦿ Non-submission of audit report as specified in sub-section (5B) of section 81, to the society and the Registrar within the period of one month from the date of completion and in any case before the issuance of notice of the general body meetin.
- ⦿ not-disclosure the true and correct picture of accounts as specified in clause (c) of sub-section (3) of section 81.



- after giving consent for audit by the auditor or auditing firm and after issuance of order of appointment of auditor or auditing firm, audit is not completed within stipulated period as specified in subsection (1) of section 81.
- non-submission of specific report stating that, any person is guilty of any offence relating to the accounts or any other offences within a period of fifteen days from the date of submission of audit report to the society and the Registrar.
- failure to file special report to the Registrar if any



- failure to file the First Information Report, if required thereof.
- non-submission of scrutiny of audit rectification report within six months to the society.
- if in the test audit or re-audit of the society it is found that, the auditor or auditing firm is responsible for any commissions and omissions.
- if the auditor is borrower of the society and has conducted the audit of the same society without disclosing the said fact to the society.
- if the auditor or his family member is employee or ex-employee of the concerned co-operative society.



- if the auditor is an auditor or a partner of an auditing firm which is also conducting internal or concurrent audit of concerned Co-operative society.
- if the auditor or his family member, as specified under explanation (1) of sub-section (2) of section 75 of the Act, is committee member of the concerned co-operative society.
- if the auditor has conducted audit, without appointment order issued by the society with the prior approval of general body or the Registrar, if any, as the case may be.
- if the auditor is family member of a employee of the department of co-operation



# SPECIFIC REPORT & SPECIAL REPORT & FRAUD DETECTION.



# Section 81 (5 B) Specific Report

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- ❖ Auditor shall submit audit report within one month from its completion & in any case before issuance of notice of Annual General Body meeting.
- ❖ If auditor comes to the conclusion that any person is guilty of an offence, he shall file specific report to Registrar within 15 days of date of submission of his report & after obtaining permission from Registrar file F.I.R.
- ❖ Auditor who fails to file F.I.R., his name shall be removed from panel. Rule 69 (g/6)



# Special Report when required

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- If auditor finds that are apparent instances of financial irregularities resulting in to loss to the society caused by any member of committee or any officer , he should prepare special report & send along with audit report to the Registrar .
- Failure to submit special report will amount to negligence in duties & auditor shall be liable for disqualification



## Management of society

- ~~Sec. 73 (1) - The management of every socy shall vest in a committee constituted in accordance with this Act, Rules and byelaws.~~
- 73 (1AB) Members of committee shall be jointly and severally responsible for all decisions taken by committee. Members of committee shall be jointly and severally responsible for all acts and ommission detrimental to interest of society. The provision relating to execution of Bond is removed by MCS Amend Act 2013 (w.e.f.14/02/2013).



- Before fixing responsibility, Registrar shall after inspecting records decide as to whether the ~~losses incurred by society are on account of acts or Omission on part of member of committee or on account of natural calamities, accident or any circumstances beyond control of committee members.~~
- Any committee member (director) who does not agree with any of the resolution of decision of BOD, may express his dissenting opinion which shall be recorded in proceeding of meeting and such member shall not be held responsible for that decision.



○ Such dissenting member, if he desires, may communicate in writing his dissenting note to the Registrar within 15 days from the date of said Resolutions from date of confirmation of said resolution (previously he has to intimate within 7 days ) w.e.f. 14/2/13 - 15 days vide MCS Amend Act 2013.

○ Any member who is not present in the meeting in which business is transacted and who has not subsequently confirmed the proceedings, such member is not



2) Member of Committee who has ~~ceased to be a member thereof.~~ On account of disqualification u/s (A) and clauses i) to IX of sub. sec. I shall not be eligible to be re-elected, re-elected etc. as member of committee till the expiry of next term of 5 years of committee from the date on which he has so ceased to be member of committee.



- **Sec. 73 AAA Constitution of committee**

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- Committee shall consists of such number of members as may be provided in bylaws subject to max. 21.
- Sub. 2 - Committee may co. op. 'expert directors' relating to objects and activities but number of expert directors shall not exceed two which shall be in addition of max number of committee.



- **Functional Directors**

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**Committee having not more than 17 directors**

**Committee may nominate one functional director**

- **Committee having more than 17 directors**

**Committee may nominate two functional directors one should be employee or representative of recognized Union of employees.**

- **Term of Office of committee shall be five years from the date of election.**
- **In case of govt capital – Govt may appoint 2 nominated directors**



## Section 73 CA Disqualification of committee members

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A1) In case of socy which gives loan to members for purchasing machinery, implement, equipment, commodities or other goods or which deals in such goods, no member who or whose member of family is dealer in such goods, in the area of operation of socy shall be eligible for being elected or noninated as member of committee of such socy.

- 1) Disqualification for being appointed as director, if he
  - a) Defaulter of any socy.
  - b) has deliberately committed breach of co-op. discipline with reference to linking of credit with marketing /process socy.
  - c) has been classified as non-active member under sub. Sect. 2 of Sec. 26.



- d) has been held responsible u/s 79 or 88
  - e) has incurred disqualifications under this Act
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- f) Carries on the business carried on by socy either in the area of operation of socy or in contravention of provs. of CL (b) of sub sec.
  - g) is salaried employee of any socy. or holds any office of profit under any socy.
  - h) has more than 2 children.
  - i) is held guilty for any offence u/s 146 and convicted under sec. 147
  - j) is convicted with imprisonment of not less than one year for, an offence under provisions of any law.



THANKS

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