

INTRODUCTION TO

Referential Bill: 2000

Cooperatives in a changing economic environment

Successive union governments have expressed, in word and deed, their commitment to releasing the economy from unnecessary restrictions. At such a time, it seems important to focus attention on the cooperative form of business, and the unreasonable and oppressive laws that it is subjected to. In India, we have managed to distort the definition, in practice, of a cooperative business, and have begun to believe it to be a government-controlled, government-promoted, monopolistic, public service institution. Before we can appreciate the urgent need for an overhauling of cooperative laws at state and union levels, we might take a few minutes to recall what indeed a cooperative really is, and can do.

A cooperative business believes that it came into existence, not because there was capital to invest, but because people had certain common needs - as producers, as consumers, as workers, as residents, as savers, as borrowers - which they felt they could themselves fulfil through joint effort and investment. A cooperative's aim is to service its members and provide them financial gain in their role as users of the services, while other forms of business aim at providing financial gain to their owners in their role as investors. Therefore, while most businesses tend to organise decision making rights on the basis of and in proportion to investments made, a cooperative gives every member who uses its services an equal say in its affairs. So, too, while owners of other businesses share profits in proportion to the investments made, members of a cooperative share profits and losses (surplus and deficit in cooperative parlance) in proportion to the utilisation (and/or non-utilisation) of the cooperative's services by each member.

Conceptually, cooperatives are designed to bring about sustained improvement in the quality of life of their members and their communities. Where a business aims at providing financial gain on the service being provided, and where members have a high stake in the continued provision of that service, the business will use sustainable means to provide that financial gain. While other forms of business, too, may use sustainable means to give

financial gain to their members, such means are not an integral or inherent part of the design, as the aim is to provide gain on investment, and there is not necessarily a commitment to the use to which the investment is put - it can be changed from time to time.

Impact of a cooperative

The primary aim of a cooperative is to bring about economic betterment of its members, and where its members are producers or workers, a cooperative's *raison d'être* is to increase significantly their income as producers, as workers - directly through increased productivity, higher returns on production or labour and sharing of surpluses, and indirectly through savings on costs.

Where the members of a cooperative are consumers, the aim is to reduce costs and improve quality. Where members are savers and borrowers, access to savings, access to credit, reduced interest rates on credit, all provide opportunity for increased investment and increased income.

Apart from these financial benefits to members, the surplus that a cooperative earns, by definition, must be equitably distributed amongst its members, in proportion to their use (and/or non-use) of the cooperative's services, or reinvested in the same business, or used for their common good. Whether it is a savings and credit cooperative, or a produce processing and marketing cooperative, or a labour cooperative, successful cooperatives share surplus amongst members, and since members, by and large, tend to come from contiguous areas, such an action has, over a few years, significant economic impact on the area, increasing local wealth, increasing purchasing power, increasing local demand for services since many families are benefited, increasing employment opportunities to meet the new demands, and improving quality of life.

Significant profits in the hands of one or two individuals operating in rural areas as rice millers, cotton ginners, money lenders, more often than not, result in their being unable, even if they so desired, to reinvest or utilise such amounts locally. On the other hand, surplus, in the hands of members of a cooperative engaged in any of these or other businesses, results in that amount getting utilised locally and/or being reinvested in the business. Rural capitalisation and growth of rural employment opportunities are closely linked to processes by which large sections of people can increase their incomes, and the cooperative form of business seems designed for this purpose.

Therefore, while personal initiative and effort must be encouraged in every field, such encouragement in the cooperative field, we feel, could contribute very significantly to the objective of the economic policies being pursued by the Indian government. Law and government policy regarding cooperatives, therefore, must change.

Present cooperative laws

Today, cooperative laws in most states and at union level are so appalling that,

- a) cooperative laws can prevent a group of people from conducting their business as a cooperative, by denying them registration on irrelevant and unreasonable grounds;
- b) the voluntary nature of a cooperative is violated by law resulting in forced admission of persons as members, and in compulsory amalgamation/division/merger of cooperatives leading to involuntary change in membership;
- c) staff recruitment, pay, service conditions are as decided, not by the cooperative, but by the registrar or government;
- d) the conduct of elections, an internal affair of the cooperative, is by law, made the responsibility of the registrar, and between the registrar and the government, elections get postponed for reasons as obtuse as the Gulf war;
- e) cooperatives are denied elected boards for years on end, and even when elections are conducted, supersession of boards on the flimsiest of grounds is common enough, with government officers or nominees taking over the management of cooperatives;
- f) audit, the responsibility of owners of any business, is the responsibility of the registrar, and the auditor reports, not to the general body, but to the registrar - and audit is in arrears in most cooperatives, for years on end;

- g) the right to decide what activities a cooperative may undertake, and what it may give up, too, is interfered with by the registrar, through the standardisation and compulsory amendment of bylaws;
- h) investment in the cooperative's own business requires the Registrar's permission !

Need for revision of cooperative law

As all these restrictions have their origin in cooperative law, they apply equally to the small number of cooperatives which have government share capital, as to the large number which do not, and are owned completely by their members. It is for this reason that it has become necessary and urgent to revise cooperative laws across the country. Therefore:

- a) cooperative law should respect the definition, values and principles adopted across the world by cooperators, through the International Cooperative Alliance; legal provisions should be supportive not violative of these;
- b) unreasonable restrictions in existing cooperative law must go, and the cooperative law should be one with fewer provisions but with such provisions as, with least external intervention, promote the effective practice of cooperative principles;
- c) cooperative law should facilitate and not obstruct the registration of new cooperatives, so that the right of groups of people seeking to engage in cooperative businesses is protected, and people's initiatives allowed to flower;
- d) the voluntary nature of membership in cooperatives should not be violated;
- e) cooperative law should ensure that cooperatives are managed democratically, and that managements are accountable to members;
- f) measures such as nominations to boards by governments should not be permitted by law;

- g) both government policy and law should recognise a cooperative as an instrument of its members for their social and economic betterment, and should not perceive it as an instrument of the government for meeting various goals of the government, or as an instrument of any other external entity.;
- h) the law should not permit government the right to give directives to cooperatives and government policy should require of cooperatives only such contribution to larger social objectives as are required of any other form of business;
- i) the law should respect the freedom of cooperatives to run their own businesses, and may place on them only such restrictions as are applied to other forms of business - it should ensure that cooperatives have a level playing field in which to compete on equal terms with other forms of business;
- j) cooperative law should recognise only genuine cooperatives, and para-statal or other forms of businesses should not be governed by cooperative law.

Self Reliant Cooperatives Bill: 2000

The Referential Bill: 2000 is preceded by three Referential Bills of 1990, 1994 and 1997. At the specific request of the Planning Commission, the 1990 Bill was prepared by the CDF. This draft drew inspiration from the Model Cooperative Bills drafted by the Indian Cooperative Union (1960) and the Asian Regional Office of the International Cooperative Alliance (1973) and it formed the basis of the deliberations of the Brahm Perkash Committee. The 1994 Bill was prepared at the instance of the Govt of Andhra Pradesh. The Reports of the Brahm Perkash Committee (1991) and the Ramakrishnayya Committee (1994) had set the guiding principles of the 1994 Bill. It resulted in the enactment of the **Andhra Pradesh Mutually Aided Cooperative Societies Act, 1995**. The Referential Bills of 1990, 1994 and 1997 were the outcome of a series of consultations, spread over several years, with eminent cooperators across the country, little known but highly successful and dedicated rural cooperative leaders in Andhra Pradesh and

elsewhere, jurists, parliamentarians, legislators, administrators, academicians, social scientists, officials of cooperative department and development workers.

The **Referential Bill: 2000** has tried to build on the experience gained and lessons learnt since the 1997 Bill. The Bihar Self Supporting Cooperatives Act of 1996, the the Jammu and Kashmir Self Reliant Cooperatives Act of 1999, the Madhya Pradesh Autonomous Cooperatives Act of 1999, and the discussions with policy makers, activists and cooperators in these states and in Tamil Nadu, Pondicherry, West Bengal, Gujarat, Goa, Karnataka, Kerala, Maharashtra, Orissa, and Uttar Pradesh have influenced the current draft. As in the case of the Referential Bill: 1997, the Referential Bill: 2000, too, is being recommended, not as a replacement to existing cooperative laws in various states, but as a parallel law, governing such cooperatives as are self-reliant.

The **Referential Bill: 2000** relates to such cooperatives as do not raise equity from the government or from any source other than their own members who are in need of and use the services of the cooperative. Even though this Bill is meant to be a parallel law, it also suggests that the existing cooperative law in each state be repealed within 10 years of a parallel law coming into force in the state.

Need for a parallel cooperative law

Currently, several state governments are reviewing their state cooperative laws with the intention of amending them, so that cooperatives can work in a more liberal atmosphere. Four choices lie before them:

- a) the first is to enact a new cooperative law, and give all cooperatives at least as much freedom as is available to other forms of business, so that they can compete on more level playing ground and repeal the existing law;
- b) the second is to amend the existing cooperative law selectively or to incorporate a separate chapter in the existing law, so that it offers two different sets of legal environment for two different types of cooperatives, namely, government dependent cooperatives, and self-reliant (not necessarily self-sufficient) cooperatives;

- c) the third is to amend in part the existing cooperative law so that it is not quite as unreasonable as it is today; and
- d) the fourth is to enact a liberal parallel cooperative law for such existing cooperatives and all new cooperatives, which are member-driven, and raise equity entirely from their members, and therefore, in which there can be no government share capital or government ownership.

The ground reality is that there are at least two types of "cooperatives" - one type which has come into existence at the instance of the government, to fulfil an important public service such as channelling of cheap credit, or subsidised goods, or for distress procurement, etc; and the other, is a cooperative which may have come into being with the encouragement of the government, but which essentially tries to meet its members' needs, and is driven by the desire to fulfil their needs, not the needs of the larger public.

In the case of the first type of "cooperative", since it performs an important function, obviously it ought not to be closed down, unless perhaps its capital base is fully eroded. Also, since such a "cooperative" may not exist if the subsidies are removed and since it is a public service agency, there seems little point in pretending that it is member-based, or member-sensitive, or that it is a cooperative. Therefore, there can be no objection to this being controlled by the government, since it fulfils important governmental objectives.

Therefore, the question of having one single, truly liberal law does not arise, since it may not be correct to give such "cooperatives" complete freedom, when they deal primarily with scarce public resources.

The second option (of having the existing law amended to accommodate both types of cooperatives) could have been a possibility, except that in almost every section in one comprehensive law, provisos will have to be inbuilt to take care of the public-service "cooperatives", or alternately, the member-service cooperatives. In matters of registration, member admission, compulsory amendment of bylaws, compulsory amalgamation/division/merger, staff matters, funds investment, conduct of elections, supersession, audit, inquiry, inspection, surcharge, recovery proceedings, winding up, etc, there will have to be different sets of provisions for the two different types of cooperatives, making the law a rather clumsy and confusing one. If less

clumsy, then it will probably be at the expense of the freedom which self-reliant cooperatives ought to have.

Even more important, since courts have been treating cooperatives as part of state, and accepting writs against them, it appears necessary that a clear distinction be made between the two types of cooperatives, so that the new generation of cooperatives can argue that they are guided by a new law, clearly treating them as autonomous, members' economic organisations.

Yet another reason for having two parallel laws (at least for the time being) - one liberal and the other a little less liberal, is that most state governments have a cooperative department, the bulk of whom draw their salaries, not from the treasury, but from being on deputation with cooperatives. These department officials will feel threatened if there is a single liberal law, as they may then have to revert to the department, and there may well be retrenchments. Given a second parallel liberal law, into which only such cooperatives can shift which can return to government its share capital, and under which new cooperatives without government share capital can be formed, the jobs of the department officers will not come immediately under scrutiny. Given a single, part-restrictive, part-liberal law, it will be difficult to prevent the development of vested interests (in the shape of job creation) in the new cooperatives, too.

One more reason for having two laws, is that a single liberal law will necessarily result in the winding up of large numbers of unviable cooperatives, all at once. Nabard, NCDC, NDDDB, etc, with whom the state governments may have stood guarantee for some of the unviable cooperatives, will demand repayment of their dues immediately. The government, too, will have to rewrite its balance sheet, as amounts shown as dues from cooperatives, will now have to be written off all at once, instead of being written off in a phased manner.

Where for public policy driven "cooperatives", it is not in the interest of either the public or the government to encourage multiple registrations in the same area, under a parallel law, for similar services to be provided to members, there can be more than one cooperative registered, as it will be left to the cooperatives to sink or swim.

For a ruling party, too, it is politically more wise to have two cooperative laws, as under the first, it can continue to exercise the influence it wants to on

certain types of "cooperatives", and at the same time, it can provide space for a whole new generation of cooperatives (including those which already exist and can benefit from autonomy) to emerge, which will be indicative of its willingness to keep up with the age of liberalisation.

Some existing cooperatives may want to and be easily able to make the shift from the old law to the new one which offers freedom with responsibility, but many will need preparatory time to make the shift, and by having parallel laws, these cooperatives are given time to make the psychological and organisational, or structural, shift. Those that cannot make the shift in the time made available to them, must necessarily be reorganised as some other (not cooperative) form of business, or face liquidation.

Several hundreds of cooperatives which were never born because registration was refused to them on the ground that they might become a threat to existing cooperatives, or because they did not want to come under the purview of a restrictive law, will now have the opportunity to emerge, to develop, to contribute to the growth of their members, and to the economy as a whole.

Government needs time to work out its strategy to deal with the unviable public-service "cooperatives" that it has set up, and if these remain under the old, less liberal law, then government has the option to wind them, or privatise them, or to convert them to corporations, etc depending on how important or strategic government perceives them to be.

Two cooperative laws

To sum up, two cooperative laws, one for public service and government resource dependent cooperatives, and the other for member service and member equity based cooperatives are better than a single cooperative law, because

- a) a single liberal cooperative law providing the same freedom to dependent and non-dependent cooperatives is not sensible;
- b) a single cooperative law distinguishing in practically every provision between a public service cooperative and a member service cooperative will have far too many provisos, and be legally clumsy, and perhaps be

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susceptible to frequent amendments affecting the autonomy of the self reliant cooperatives;

- c) such a single law distinguishing between cooperative and cooperative will not help the new generation cooperatives to impress on the judiciary that they are not part of the state, and, therefore, writs cannot be filed against them;
- d) reorganisation of the large department of cooperation will not become an immediate necessity, as the old dispensation will not be dismantled overnight, and inroads into the new cooperatives under a different law will be difficult;
- e) the government will not have to wind up overnight large numbers of unviable cooperative societies, and, therefore, it will not have to pay up overnight for all the guarantees that it gave to NCDC, NDDB, Nabard, etc;
- f) the government will not overnight have to rewrite its balance sheet, writing off amounts it currently shows as dues from cooperatives;
- g) in this age of encouraging multiple choices and discouraging monopolies, while under the old law competition need not be encouraged since it will be difficult to distribute scarce public resources amongst competing cooperatives, under the new law, there need be no monopoly, no protection offered to any cooperative, and this should result in overall improvement in the performance of cooperatives;
- h) the ruling party will not lose overnight its control on such cooperatives as anyhow cannot expect to be autonomous, even while it does create and is seen to be creating space and the foundations for a whole new breed of genuine cooperatives;
- i) existing cooperatives have time, if they need it, to make the shift from the controlling to the liberal law;
- j) a whole new breed of cooperatives which could never come into being because of the repressive cooperative law, can emerge in the state; and
- k) the government itself gets the time it needs to decide what to do with the white elephants that it perhaps has in the "cooperative" sector -

privatisation, etc will be less resisted under the old law, than under a single law.

Win-win game for all

All in all, having two co-existing cooperative laws, one liberal, the other less so, is a win-win game for all - for cooperatives which want government support, for those which do not, for department officials, for the government's finance department, for the ruling party. It would be a great pity if this opportunity to build new frontiers in the cooperative movement, to give to a battered people a whole range of new exciting economic options is lost, because some think the Indian not quite ready yet for truly liberal cooperative legislation, and recommend instead "gradual" release of cooperatives from controls. Our people deserve better than that.

In this context it must be mentioned that the AP Mutually Aided Cooperative Societies Act was initially drafted as an amendment of the existing Act, and only after the state government studied all the implications, did it revise its draft so that it developed into a parallel cooperative law.

Similarly, based on the AP experience, when Cooperative Development Foundation drafted the Self-Reliant Cooperatives Bill (Referential Bill) in 1997, it, too, drafted a parallel one. The very eminent ministers of cooperation, secretaries, registrars, cooperators, judges, advocates, activists, farmer leaders, members of union parliament & state legislatures and academicians who came to refine the draft, endorsed the idea of a parallel law, for all the reasons mentioned above. So far, parallel cooperative laws have been enacted in Bihar, Jammu & Kashmir, and Madhya Pradesh.

CDF hopes that governments in various states and at union level, cooperators, and others find **the Referential Bill: 2000** useful and worth adapting and enacting for their respective areas.

1 January 2000: Hyderabad Cooperative Development Foundation

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PREAMBLE

An Act to provide for the formation and transformation of cooperatives as self-reliant, self-help, mutual-aid, autonomous, voluntary, democratic, business enterprises, jointly owned, managed and controlled by their members for their economic and social betterment, through the financially gainful provision of core services which fulfil a common need felt by them, and for the matters connected therewith or incidental thereto, be it enacted by the Legislature of the State of in the year of the Republic of India, as follows:

[Comment: Most existing state cooperative laws have a preamble which says little more than introducing the Act as one which consolidates earlier Acts applicable to different parts of the state. The cooperative laws themselves and court judgments relating to cooperative cases have projected cooperative societies as government promoted, government dependent, government controlled, government managed organisations with the social and economic objective of distributing governmental resources equitably. Many cooperative institutions and their members have accepted this image of themselves, and have functioned accordingly. The preamble in this Act indicates clearly the essential characteristics of a cooperative business, and, thereby, the kinds of organisations that are meant to be incorporated under this Act.]

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement

- (1) This Act may be called the Self Reliant Cooperatives Act,
- (2) It extends to the whole of the State of
- (3) It shall come into force on such date as the Government may, by notification in the Gazette, appoint.

2. Definitions

In this Act, unless the context otherwise requires,

- (1) "arbitral tribunal" means an individual or a group of individuals not exceeding five, constituted by the general body of a cooperative for settlement of disputes, in accordance with the articles of association of that cooperative;
- (2) "articles of association" means the terms and conditions as originally framed by the promoters of a cooperative or as amended from time to time by the general body of that cooperative, in accordance with this Act, for the management of the affairs of that cooperative;

[Comment: This Act has chosen to replace the more commonly used term "bylaws" with "articles of association". Organisations registered under laws relating to societies and companies, that is, associations of persons, use the terms "articles of association". The term "bylaws" seem more appropriate to use when referring to regulations adopted by local governments (panchayats, municipalities, etc) which are applicable in their jurisdiction in relation to all individuals.

This Act expects a cooperative to function in accordance with the provisions of this and all other applicable Acts, the articles of association of the cooperative, and

various lawful internal policies and resolutions made by the cooperative from time to time.

Rules, which are normally prescribed by government on behalf of legislature, have not been provided for in this Act. It may be noted that they have not been provided

for in the Societies Registration Act, 1860, and certain other Acts, too. The Rules accompanying Cooperative Societies Acts have often aggressively ventured beyond the scope provided for by the Acts, to the detriment of cooperative growth. When such Rules were challenged in and struck by courts of law, more often than not, the provisions of the Act were amended to accommodate the erring Rules. The Rules have also tended to provide for "classification" of cooperative societies, resulting in uniform approach in law to each "type" of cooperative society, restricting severely the opportunity for creative response by each cooperative society to its changing environment and changing member needs. This Act provides neither for Rule making power by the government, nor for the "classification" of cooperatives by the Registrar.]

- (3) "board" means the governing body of a cooperative by whatever name called, to which the direction of the affairs of the cooperative is entrusted by the articles of association of that cooperative;
- (4) "chief executive" means that individual, in paid or honorary capacity, nominated or elected or appointed by the board of a cooperative from among members, directors or others, in accordance with the articles of association, who is the person to sue or be sued on behalf of the cooperative, and who performs such functions, and has such responsibilities and powers as are specified in the articles of association, and assigned by the board;

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(5) "common need" means that economic need which is common to all those who wish to form a cooperative, or have taken membership in a cooperative, and which the cooperative is expected to fulfil through the provision of core services;

(6) "cooperative", where used as a noun, means a self-reliant, self-help, mutual-aid, autonomous, voluntary, democratic, business enterprise incorporated under this Act, which is jointly owned, managed and controlled by its members, who may be individuals or

cooperatives, for their economic and social betterment, through the financially gainful provision of core services which fulfil a common need felt by them;

[Comment: Existing cooperative laws use the word "cooperative" only as an adjective, and term cooperative organisations as cooperative societies. The text of these laws, use the word "society" when referring to a cooperative, a term also commonly used when referring to societies registered under laws relating to the registration of societies. In this Act, the word "cooperative" has been used as both noun and adjective. Since this Act provides for the incorporation not only of newly formed cooperatives, but also of those in existence and registered under the cooperative law already in force in the state, a distinction has been sought to be made between the cooperative organisations registered under the older Act and those that this Act regulates, through clauses (6), (7), (11) and (12) of this section.]

(7) "Cooperatives Act" means the Self Reliant Cooperatives Act,

(8) "cooperative business" means a business which is committed to functioning in accordance with the principles of cooperation, and includes all cooperatives incorporated under this Act, and all cooperative societies registered under the Cooperative Societies Act, 19....;

- (9) "cooperative identity" means the Statement of Cooperative Identity specified in Schedule A of this Act;

[Comment: The International Cooperative Alliance (ICA) is a democratically managed federation of national associations of cooperative societies. Its membership includes major national associations of cooperative societies in India. The ICA General Assembly formally

adopted the Statement of Cooperative Identity at its meeting in Manchester, England, in September 1995. Earlier exercises by the ICA on the principles of cooperation are recorded in the 1937 Report of the ICA Special Committee on the Present Application of the Rochdale Principles of Cooperation, and the 1966 Report of the ICA Commission on Cooperative Principles.]

- (10) "cooperative principles" means the principles included in the Statement of Cooperative Identity specified in Schedule A of this Act;
- (11) "cooperative society" means an organisation registered under the Cooperative Societies Act, 19.....;
- (12) "Cooperative Societies Act" means the Cooperative Societies Act, 19.....;
- (13) "core services" means those central services provided to members, through which a cooperative intends to meet that economic need common to all members for the fulfilment of which the cooperative was established, and the fulfilment of which is expected to result in the economic and social betterment of members;

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- (14) "Court" means the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its original civil jurisdiction;
- (15) "deficit" means the excess of expenditure over income, arrived at, at the end of a financial year, after the payment of interest, if any, on share capital;
- (16) "deficit charge" means the amount collected from/debited to the accounts of members, in proportion to the use and/or non-use of the services of the cooperative, in accordance with the articles of association and resolutions of the general body, to meet deficit, if any, in whole or part;
- (17) "delegate" means a member nominated by a cooperative to represent its interests at the time of promotion of a secondary cooperative, and/or at meetings of a secondary cooperative to which the cooperative is affiliated;
- (18) "director" means a member elected in accordance with the articles of association, to the board of the cooperative;
- (19) "financial year" means the twelve month accounting period as provided for in the articles of association of a cooperative, for which the annual statements of accounts are prepared for placement at the annual general meeting of that cooperative;

[Comment: Several cooperative laws require all cooperative societies to adopt 1 Apr to 31 Mar as their financial year. However, different types of businesses may need different accounting years, based on the commodities they handle, or services they offer. It is, therefore, important that cooperative laws leave it to each cooperative to decide its financial year. It may be noted that while tax laws require the submission of financial statements pertaining to the year ending 31 Mar, these laws do not prevent any organisation from opting for such twelve-month period as its financial year as it thinks appropriate for its activities.]

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- (20) "general body" in relation to a cooperative, means all its members;
- (21) "general meeting" means a meeting of the general body called and conducted in accordance with the provisions of this Act and the articles of association of the cooperative;
- (22) "Government" means the Government of
- (23) "member" means a person who is in need of and is able to use the core services of a cooperative and who is admitted and continues as a member of the cooperative, in accordance with the provisions

of this Act and the articles of association of that cooperative, and includes a "member-cooperative";
- (24) "member-cooperative" means a primary or secondary cooperative which is in need of and is able to use the core services of a secondary cooperative, and which is admitted as a member of that secondary cooperative, in accordance with the provisions of this Act and the articles of association of that secondary cooperative;
- (25) "memorandum of association" means the document expressing the desire of the promoters to form themselves into a cooperative;
- (26) "office-bearer" means a director elected by the board of a cooperative to any office of such cooperative in accordance with its articles of association;
- (27) "ordinary resolution" means a resolution of the general body which has the approval of the majority of members with the right of vote, present and voting at the general meeting;
- (28) "person" means an individual or institution competent to contract;

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- (29) "potential member" means a person who needs the core services being offered by a cooperative, may be accessing them, and is eligible to be a member of that cooperative, but is not yet its member;
- (30) "president" means an elected director who is further elected by the board to preside over its meetings and the meetings of the general body, and to perform such other functions and have such other powers and responsibilities as are specified in the articles of association and assigned by the board;
- (31) "primary cooperative" means a cooperative whose members are individuals;
- (32) "Registrar" means the individual appointed as such under this Act, and includes any individual entrusted with the performance of

functions and the discharge of responsibilities of the Registrar under this Act;
- (33) "Registrar of Cooperative Societies" means the individual appointed as such under the Cooperative Societies Act, and includes any individual entrusted with the performance of functions and the discharge of responsibilities of the Registrar of Cooperative Societies under that Act;
- (34) "representative" means a person elected by a section of members, in accordance with the articles of association, to participate on their behalf at the representative general body meeting;
- (35) "representative general body" in relation to a cooperative means all the representatives;
- (36) "representative general body meeting" means a meeting of the representatives, called and conducted in accordance with the provisions of this Act and the articles of association of the cooperative;

(37) "secondary cooperative" means a cooperative whose members are cooperatives;

[Comment: Secondary cooperatives include unions and federations, by whatever name called, at various levels. All that has been said in the Preamble about the characteristics of a cooperative incorporated under this Act, also applies to a secondary cooperative incorporated under this Act.]

(38) "special resolution" means a resolution of the general body, at a meeting called with at least 15 days notice, which has the approval of more than half of all the members of the cooperative with right of vote at the time of the general meeting, or of at least two-thirds of members with right of vote at the time of the general meeting and present in the general meeting, whichever is less;

(39) "service" means such facilities as are organised primarily for being provided to members to meet the objective of the cooperative;

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

(41) "surplus refund" means the refund from the surplus given/credited to the accounts of members, in proportion to their use of the services of the cooperative in accordance with the articles of association and resolutions of the general body;

(42) "this Act" means the Self Reliant Cooperatives Act,

CHAPTER II

INCORPORATION

3. Incorporation of a new cooperative

- (1) Notwithstanding anything in the Cooperative Societies Act, from the date of notification of this Act, all new cooperative businesses, whose members are drawn from within the state of may be incorporated only under this Act.
- (2) A memorandum of association, in the form provided for in Schedule B, may be submitted to the Registrar by hand or by registered post, signed by the individuals who wish to form a primary cooperative or by the delegates of cooperatives which wish to form a secondary cooperative.
- (3) Every such memorandum shall be in such form containing such particulars as are specified in Schedule B, and shall be accompanied by
 - (a) a declaration by the promoters of their commitment to the principles of cooperation as provided for in Schedule A;
 - (b) the articles of association of the proposed cooperative as adopted by the promoters;
 - (c) a true copy of the resolution passed at a meeting of the promoters adopting the articles of association;
 - (d) a declaration from an advocate practising in the High Court, or a chartered accountant practising in the state, that all the requirements of this Act have been complied with by the promoters in respect of registration and matters precedent and incidental thereto, and the Registrar may accept such declaration as evidence of such compliance.
- (4) The Registrar shall register the memorandum of association, and also take on record its articles of association and communicate by

registered post a certificate of incorporation, as specified in Schedule C, and a certified copy of the memorandum of association and of the articles of association signed by him/her, within sixty days from the date of submission of the memorandum of association, to such person as is specified in the memorandum;

provided that the Registrar has no reason to believe that the requirements of this Act in respect of registration and related matters have not been complied with.

- (5) If the conditions laid down in sub-sections (3) are not fulfilled, the Registrar shall communicate by registered post the order of refusal together with the specific reasons therefor, within sixty days from the date of submission of memorandum, to such person as is specified in the memorandum;

provided that no order of refusal shall be passed except after giving an opportunity of making representation on behalf of the promoters by the person specified in the memorandum.

- (6) Where a cooperative is registered under sub-section (4), the certificate of incorporation signed and sealed by the Registrar shall be conclusive evidence that the association mentioned therein is a cooperative duly registered under this Act, unless it is proven that the incorporation of the cooperative has been cancelled.
- (7) Where within seventy five days of submission of the memorandum for incorporation, the person specified in the memorandum receives neither the certificate of incorporation nor the order of refusal, the promoters may move the Court for redressal.

[Comment: Incorporation as a cooperative is a basic right of the citizens of this country. While citizens are not restricted by law from carrying on business through the setting up of companies, most cooperative laws in the

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country require the Registrar to be satisfied, before registering a cooperative society, that the proposed cooperative society is likely to be viable, that its coming into existence is not likely to jeopardise the interests of any other cooperative society, that its "area of operation" does not overlap with that of another cooperative society - that is, cooperative laws prevent citizens from carrying on business on a cooperative basis, from forming an association on cooperative basis. Such provisions have been misused widely, preventing the formation of several cooperative societies, encouraging monopoly, and the ills that monopoly is usually associated with. Viability, or lack of it, is the concern of promoters and subsequent members, especially as the consequences will be borne by them. The registering authority need not be required to look into this at the time of incorporation, or thereafter, for that matter. Similarly, when it is not possible to prevent the emergence of a non-cooperative competitor to a cooperative society, there should be no legal restriction on the emergence of a cooperative competitor. Such "competition" at any rate will probably be a result mainly of serious malfunctioning of an existing cooperative, or

serious conflict within an existing cooperative, or prevention by an existing cooperative of entry of new members, or incapacity of the existing cooperative to expand any further. And finally, no other business - except for banks, and the results are there for all to see - has been stifled with the concept of "area of operation". There should be no need for a cooperative to declare its "area of operation". The "area of operation" or "jurisdiction" concept has restricted the natural growth of cooperative societies, and appears to exist in statute books primarily for the benefit of administration in its delineation of powers and responsibilities amongst its staff. Over the years, cooperators, too, have become conditioned into thinking

in terms, not of what makes good member-business sense, but of political and administrative boundaries.]

4. Conversion of a cooperative society into a cooperative under this Act

- (4) Notwithstanding anything in the Cooperative Societies Act, from the date of notification of this Act, any cooperative society registered and functioning under the Cooperative Societies Act, which is not in receipt of any share capital from the Government, at the time of seeking incorporation under this Act, may opt for incorporation under this Act;

provided that where the Government does have share capital in a cooperative society desiring to convert itself into a cooperative under this Act, the cooperative society shall, before opting for incorporation under this Act, return such share capital to the Government, and the Government shall accept such returned share capital;

provided further that any cooperative society which does not convert itself into a cooperative under this Act, within 10 years of this Act being notified, may be converted into a corporation owned by the government, or dissolved, or otherwise restructured.

[Comment: When this Act is first notified, it is unlikely that every cooperative society registered under the older Act will be in a position to forthwith convert itself into a cooperative under this Act. Therefore, a period of 10 years is being provided for, by which time members can decide whether or not they wish to be independent of the government in their functioning. Those that do wish to become self reliant and take responsibility for their functioning can use the period of 10 years to return to the government its financial support and replace these funds with other funds. All the same, it is likely that at

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the end of 10 years there will be some cooperative societies in which the members do not have a sense of ownership and are unwilling to take responsibility for the cooperative's future. The government should have the right to dissolve these, or privatise them, or convert them into government owned corporations, based on governmental appreciation of the purpose that each of these serves.

Provision for "deemed" incorporation for all such cooperative societies as do not have government share capital, is not being recommended. The general body must discuss and choose to be governed by this Act, if the spirit of voluntarism advocated by this Act is not to be diluted.]

- (2) A memorandum for incorporation, in the form provided for in Schedule D, may be submitted to the Registrar by hand or by registered post, by the board of such cooperative society as wishes to convert itself into a cooperative under this Act, on the basis of a decision of a majority of members present at a meeting of the general body of the cooperative society, called with at least fifteen days notice, and attended by at least one-fourth of total members or five hundred members, whichever is less.

- (3) Every such memorandum shall be in such form containing such particulars as are specified in Schedule D, and shall be accompanied by
 - (a) a true copy of the resolution of the general body expressing commitment to the principles of cooperation as provided for in Schedule A;
 - (b) the articles of association of the proposed cooperative as adopted by the general body;

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- (c) a true copy of the resolution of the general body adopting the articles of association;
- (d) a true copy of the declaration of the general body stating that the cooperative society is not in receipt of any share capital from the Government or any other external source, and does not intend ever to raise share capital from the Government or any source other than members;
- (e) a true copy of the latest annual report and audited statement of accounts;
- (f) a true copy of the resolution of the general body, along with a financial statement duly certified by a chartered accountant indicating the adjustment of accumulated losses, if any, to various reserves and/or by debiting to the accounts of members as decided at the meeting;
- (g) a statement of the total number of members of the cooperative society with right of vote as on the day of the meeting, the members who attended the meeting, and the number who voted for the resolution;
- (h) a declaration from an advocate practising in the High Court, or a chartered accountant practising in the state, that all the requirements of this Act have been complied with by the cooperative society in respect of registration and matters

precedent and incidental thereto, and the Registrar may accept such declaration as evidence of such compliance.

- (4) The Registrar shall register the memorandum of association and also take on record its articles of association and communicate by registered post a certificate of incorporation, as specified in Schedule E, and a certified copy of the memorandum of association and of the articles of association signed and sealed by him/her, within sixty days

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from the date of submission of application, to such person as is specified in the memorandum;

provided that the Registrar has no reason to believe that the requirements of this Act in respect of registration and related matters have not been complied with.

- (5) If the conditions laid down in sub-section (3) are not fulfilled, the Registrar shall communicate by registered post the order of refusal together with the specific reasons therefor, within sixty days from the date of submission of memorandum, to such person as is specified in the memorandum;

provided that no order of refusal shall be passed except after giving an opportunity of making representation on behalf of the cooperative society by such person as is specified in the memorandum.

- (6) Where a cooperative is registered under sub-section (4), the certificate of incorporation signed and sealed by the Registrar shall be conclusive evidence that the association mentioned therein is a cooperative duly incorporated under this Act, unless it is proven that the incorporation of the cooperative has been cancelled.
- (7) Where within seventy five days of submission of the memorandum for incorporation, the person specified in the memorandum receives neither the certificate of incorporation nor the order of refusal, the cooperative society may move the Court for redressal.
- (8) Where a cooperative is registered under sub-section (4), its earlier registration as a cooperative society under the Cooperative Societies

Act shall stand cancelled and it shall forward within seven days of receipt of the incorporation certificate, by registered post, to the Registrar of Cooperative Societies the original certificate of registration issued under the Cooperative Societies Act, and a copy of the incorporation certificate under this Act, and the Registrar of Cooperative Societies shall, within seven days of receipt of such information, delete the name of such cooperative society from the register.

- (9) Where a cooperative is registered under sub-section (4), the assets and liabilities, the rights and obligations, and the members of the converting cooperative society shall become the assets and liabilities, the rights and obligations, and the members of the cooperative incorporated under this Act, and all transactions of the cooperative society shall be deemed to have been the transactions of the cooperative incorporated under this Act.
- (10) Where a cooperative society is in receipt of loan or guarantee from the Government at the time of submission of memorandum for incorporation as a cooperative under this Act, it shall apply within a month of incorporation under this Act, to the Government for entering into an agreement with the Government for the loan and/or guarantee made available by the Government, failing which, it shall repay the entire amount due as loan to the Government or other source for which guarantee was made available by the Government, within six months from the date of incorporation under this Act.
- (11) Where, in accordance with sub-section (10), an agreement is not entered into with the Government, for whatsoever reason, and a cooperative does not repay to the Government or other source such amounts as are due by it, it shall be competent for the Government to recover from the cooperative the amounts due to it or to any other source for which the Government stood guarantee in the same manner as for collection of arrears in land revenue.
- (12) Where a cooperative society which is a member of a secondary cooperative society is registered as a cooperative under this Act, the cooperative may continue to receive services from the secondary

cooperative society and to participate in its affairs for a period of one year from the date of its incorporation under this Act, at the end of which period, its membership in that secondary cooperative society shall cease, unless, by then, the secondary cooperative society, too, is registered under this Act;

provided that in all matters governing the internal functioning of the cooperative, this Act shall prevail, whereas in matters governing the relationship of the cooperative with the secondary cooperative society to which it is affiliated, the Cooperative Societies Act shall prevail;

provided further that even on cessation of membership, the cooperative may continue to receive such services, and have such business relations as are mutually agreed upon, and permissible under the Cooperative Societies Act, and the internal regulations of the secondary cooperative.

- (13) Where a secondary cooperative society which has other cooperative societies as its members is registered as a secondary cooperative under this Act, it may continue to serve and have its affairs managed by its member-cooperative societies, for a period of one year from the date of its incorporation under this Act, at the end of which period it may have as its members only such cooperatives as are registered under this Act;

provided that in all matters governing the relationship between the secondary cooperative and its member-cooperative societies, the provisions of this Act shall prevail.

5. Cooperative to be body corporate

The incorporation of an association as a cooperative shall render it a body corporate by the name under which it is registered having perpetual succession and a common seal. The cooperative is entitled to acquire, hold and dispose of property, to enter into contracts, to institute and defend suits and other legal proceedings and to do all other things necessary for the purpose for which it was constituted.

6. Articles of association

- (1) The members constituting a cooperative, shall have a set of articles of association, formulated and amended from time to time, not contrary to the provisions of this Act, and the affairs of the

cooperative shall be managed in accordance with the terms, conditions and procedures specified in the articles of association.

- (2) Except on such specific matters which the Act has provided for and which the articles of association may further regulate on but not contravene, the functioning of every cooperative shall be regulated by its articles of association.
- (3) The articles of association may contain such matters as are decided by the members and shall be specific on all matters listed in Schedule D of this Act.

[Comment: The articles of association of a cooperative is the equivalent of a contract that members of that cooperative jointly enter into, to run their business. It is really an internal document, drafted carefully by members, and needs to be as specific as possible on some issues of long standing nature, while other issues such as terms of provision of services, terms of employment, etc, which change from time to time, are best left to business regulations. "Model bylaws" framed by the Registrar under the Cooperative Societies Act for various "types" or "classes" of cooperative societies have had a most undesirable effect on cooperative societies. Typifying or classifying cooperative societies has resulted in the limiting of a cooperative society's definition of itself, and in enabling administration to deal with several cooperative societies en masse, as a class. It appears necessary, therefore, that the Act refrain from providing for the framing of model articles of association, or for special provisions relating to one or other "type" or "class" of cooperatives.]

7. Amendment of articles of association

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- (1) A cooperative may decide, by a special resolution, to amend its articles of association;

provided that the text of such proposed amendment with reasons therefor shall be sent to each member, along with the notice of the general meeting at which the proposed amendment is to be discussed.

- (2) A copy of any amendment shall be forwarded by the cooperative by registered post to the Registrar within a period of thirty days from the date of the general meeting at which the resolution was passed.

- (3) Every such amendment forwarded to the Registrar shall be signed by the President and two Directors and shall be accompanied by the following particulars:

- (a) a copy of the resolution agreeing to the amendment;
- (b) the date of the general meeting at which the amendment was approved;
- (c) the date on which the amendment comes into force.

- (4) The Registrar shall take on record the amendment immediately on receipt of the notice;

provided that such action shall not preclude the Registrar from challenging the legal validity of the amendment before the Court, after giving the cooperative a fair opportunity to reconsider the amendment, if, in the opinion of the Registrar, the amendment violates the provisions of this Act.

[Comment: For too long, the Registrar has been given the power to compulsorily amend the bylaws of a cooperative society. For too long, the amendment of a bylaw has required prior or post consent of, and registration by the Registrar, before coming into effect. By and large such provisions have been used against

the interests of the members, and of the cooperative society. The section above attempts at restoring to the

members of every cooperative their right to amend their articles of association, so long as such amendments are not contrary to the provisions of the Act. It may be noted that the laws relating to companies and societies do not require the registration of amendments to articles of association.]

8. Name of a cooperative

- (1) A cooperative may not be registered with the same name as another cooperative business already registered under this Act or the Cooperative Societies Act;

provided that where the articles of association of a secondary cooperative require all its member-cooperatives to use a common name, the name of each such member-cooperative shall have its location or other distinguishing feature included in common name.

- (2) Every cooperative shall display its full name in legible characters in a conspicuous position:
- (a) at every office or place at which it carries on business;
 - (b) in all notices and other official publications;
 - (c) on all its contracts, business letters, orders for goods, invoices, statements of account, receipts and letters of credit; and
 - (d) on all bills of exchange, promissory notes, endorsements, cheques and orders for money it signs or that are signed on its behalf.
- (3) Every cooperative shall display its full name in legible characters on its common seal.
- (4) A cooperative with limited liability shall have as a suffix to, or as part of its name, the expression "limited" or its equivalent in any Indian language.

- (5) Nothing in sub-section (2) shall prevent a cooperative displaying more conspicuously than the full name, any shorter name by which it is popularly known and which is specifically provided for in the articles of association.

[Comment: Cooperatives engaged in the marketing of their members' produce, sometimes use a brand name to popularise the product, and the above section enables a cooperative to be identified with such a brand name, where felt useful by it.]

- (6) A cooperative may, by an amendment to its articles of association, change its name;

provided, however, that before changing its name it shall send notice of its intention to change its name to the Registrar, along with the proposed name/s, and the Registrar shall, within fifteen days of receiving such notice inform the cooperative if such name is already in use by another cooperative.

- (7) Where a cooperative changes its name, the Registrar shall
- (a) enter the new name of the cooperative in the register of cooperatives in place of the former name;
 - (b) make necessary changes in the memorandum of association and articles of association;
 - (c) issue a fresh certificate of incorporation with the necessary alterations;
 - (d) communicate to the cooperative, by registered post, the fresh certificate of incorporation along with certified copies of the amended memorandum and articles.
- (8) The change of name of a cooperative shall not affect any rights or obligations of the cooperative or of any of its members or past members or render defective any legal proceedings by or against it; and any legal proceedings which might have been continued or commenced by or against the cooperative by its former name may be continued or commenced by its new name.

- (9) A cooperative which changes its name shall publicise such change in name in a popular newspaper in the district in which its registered office is located.

9. Location of registered office

- (1) Every cooperative shall notify to the Registrar the full address of its registered office, within ninety days of being registered as a cooperative.
- (2) Every cooperative shall display in full the address of its registered office in legible characters in a conspicuous position:
- (a) at every office or place at which it carries on business;
 - (b) in all notices and other official publications;
 - (c) on all its contracts, business letters, orders for goods, invoices, statements of account, receipts and letters of credit; and
 - (d) on all bills of exchange, promissory notes, endorsements, cheques and orders for money it signs or that are signed on its behalf.
- (3) A cooperative may, by a resolution of the board of directors, change the address of its registered office;
- provided, however, that it shall give notice of such change to its members, creditors, the Registrar and to any secondary cooperative/s to which it may be affiliated, within fifteen days of the board resolution, and to its members and creditors, at least ten days before effecting the change.
- (4) The Registrar shall, within fifteen days of receiving information from a cooperative, take on record, in the register of cooperatives, the full address of the registered office of a cooperative, and any changes thereof.

10. Transfer of assets and liabilities

- (1) A cooperative may, by a special resolution, decide to transfer its assets and liabilities, in whole or in part, to any other cooperative which agrees, by a special resolution, to receive such assets and liabilities.
- (2) Where special resolutions are passed under sub-section (1), each cooperative shall, within the following 15 days, give notice thereof together with a copy of the resolution passed by it to all its members and creditors, and notwithstanding any provision in the articles of association or contract to the contrary, any member other than one who voted in favour of the proposed transfer of assets and liabilities and any creditor shall, during a period of fifteen days from the date of service of the notice upon him/her, have the option of withdrawing from the cooperative, his/her interests, subject to the discharge of his/her obligations to the cooperative.
- (3) Any member or creditor who does not exercise his/her option within the period specified in sub-section (2) shall be deemed to have agreed to the resolution.
- (4) The special resolutions passed under sub-section (1) shall not take effect until
 - (a) all claims of the members and creditors of each cooperative who have exercised the option under sub-section (2) have been met in full or otherwise satisfied; and
 - (b) information about the transfer of assets and liabilities has been sent by the cooperatives concerned to the Registrar and his/her acknowledgement of receipt of the information received.

- (5) When special resolutions passed under sub-section (1) take effect, the resolutions shall be sufficient conveyance to vest the assets and liabilities in the transferee without any further assurance.
- (6) When a cooperative transfers the whole of its assets and liabilities to any other cooperative, under this section, the incorporation of the cooperative shall stand cancelled and it shall be deemed to have been dissolved and shall cease to exist as a corporate body, and the Registrar shall delete the name of the cooperative from the register of cooperatives.

[Comment: Most state laws provide for involuntary amalgamation, division, etc by the Registrar, with or without members' consent. This Act provides for organisational restructuring only at the will of the general body as provisions for compulsory amalgamation, division, merger, etc under the directions of the Registrar, have been used frequently in most states to the detriment of cooperative societies and their members. The result has been that members wishing to cooperate with one another have been prevented, through forced divisions, from doing so, while persons not wishing to work together have been forced, through compulsory amalgamations and mergers, to associate with one another. The right to form association under the Constitution of India, includes the right to decide with whom to form the association and with whom to continue it, and provisions in existing cooperative laws dealing with compulsory amalgamation, division, etc negate the fundamental right of association guaranteed by the Constitution, as well as the principle of voluntary association, an essential cooperative characteristic. Moreover, most state cooperative laws confuse issues by dealing through common provisions with change of liability, transfer of assets and liabilities, division, amalgamation, and merger. Each of these needs to be dealt with separately, as the implications are different in

each case. In this Act, change of liability is being provided for in the sections related to membership.]

11. Division

- (1) A cooperative may, by a special resolution, decide to divide itself into two or more cooperatives.
- (2) Where a special resolution is passed under sub-section (1), the cooperative shall, within the following 15 days, give notice thereof together with a copy of the resolution to all its members and creditors and, notwithstanding any provision in the articles of association or contract to the contrary, any member other than one who voted in favour of the proposed division, or creditor shall, during a period of fifteen days from the date of service of the notice upon him/her, have the option of withdrawing from the cooperative, his/her interests, subject to the discharge of his/her obligations to the cooperative.
- (3) Any member or creditor who does not exercise his/her option within the period specified in sub-section (2) shall be deemed to have agreed to the resolution.
- (4) A special resolution passed under sub-section (1) shall not take effect until
 - (a) all claims of the members and creditors of the cooperative who have exercised the option under sub-section (2) have been met in full or otherwise satisfied;
 - (b) information of the impending division and settlement of claims of members and creditors is sent to the Registrar and his/her acknowledgement of receipt of the information is obtained; and

- (c) the certificates of incorporation and the copies of the registered memorandum and articles of association of the resultant cooperatives, signed and sealed by the Registrar, are issued in accordance with section 3.

- (5) When a cooperative divides itself into two or more cooperatives under this section, the incorporation of the cooperative shall stand cancelled and it shall be deemed to have been dissolved and shall

cease to exist as a body corporate and the Registrar shall delete the name of the cooperative from the register of cooperatives.

- (6) When a cooperative divides itself into two or more cooperatives, each member who has assented to the division shall be deemed to have become a member of that newly formed cooperative to which his/her interests were transferred, in accordance with the scheme of division approved by the general body.

- (7) When a special resolution passed under sub-section (1) takes effect, the resolution shall be sufficient conveyance to vest the assets and liabilities in the transferees without any further assurance.

12. Amalgamation

- (1) Any two or more cooperatives may, by special resolutions, decide to amalgamate themselves and form a new cooperative.

- (2) Where special resolutions are passed under sub-section (1), each cooperative shall, within the following 15 days, give notice thereof together with a copy of the resolution passed by it to all its members and creditors, and notwithstanding any provision of the articles of association or contract to the contrary, any member other than one who voted in favour of the proposed amalgamation, or creditor shall, during a period of fifteen days from the date of service of the notice upon him/her, have the option of withdrawing from the cooperative, his/her interests, subject to the discharge of his/her obligations to the cooperative.

- (3) Any member or creditor who does not exercise his/her option within the period specified in sub-section (2) shall be deemed to have assented to the resolution.
- (4) The special resolutions passed under sub-section (1) shall not take effect until
 - (a) all claims of the members and creditors of each cooperative who have exercised the option under sub-section (2) have been met in full or otherwise satisfied;
 - (b) information of the impending amalgamation and settlement of claims of members and creditors is sent to the Registrar and his/her acknowledgement of receipt of the information is obtained; and
 - (c) the certificate of incorporation and a copy of the memorandum and articles of association of the resultant cooperative, signed and sealed by the Registrar, is issued in accordance with section 3.
- (5) When two or more cooperatives amalgamate themselves into a new cooperative under this section, the incorporation of the cooperatives so amalgamated shall stand cancelled and they shall be deemed to have been dissolved and shall cease to exist as body corporates, and the Registrar shall delete the names of the cooperatives from the register of cooperatives.
- (6) When two or more cooperatives amalgamate themselves into a new cooperative under this section, all the members of the cooperatives who have assented or are deemed to have assented to the amalgamation shall be deemed to have become members of the new cooperative.

- (7) When special resolutions passed under sub-section (1) take effect, the resolutions shall be sufficient conveyance to vest the assets and liabilities in the transferee without any further assurance.

13. Merger

- (1) A cooperative may, by a special resolution, decide to merge itself into any other cooperative which agrees, by a special resolution, to such merger.

- (2) Where special resolutions are passed under sub-section (1), each cooperative shall, within the following 15 days, give notice thereof together with a copy of the resolution passed by it to all its members and creditors, and notwithstanding any provision in the articles of association or contract to the contrary, any member other than one who voted in favour of the proposed merger, or creditor shall, during a period of fifteen days from the date of service of the notice upon him/her, have the option of withdrawing from the cooperative, his/her interests, subject to the discharge of his/her obligations to the cooperative.

- (3) Any member or creditor who does not exercise his/her option within the period specified in sub-section (2) shall be deemed to have assented to the resolution.

- (4) The special resolutions passed under sub-section (1) shall not take effect until
 - (a) all claims of the members and creditors of each cooperative who have exercised the option under sub-section (2) have been met in full or otherwise satisfied; and
 - (b) Information of the impending merger and settlement of claims of members and creditors is sent to the Registrar and his/her acknowledgement of receipt of the information is obtained.

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- (5) When a cooperative merges itself into any other cooperative under this section, the incorporation of the cooperative shall stand cancelled and it shall be deemed to have been dissolved and shall cease to exist as a corporate body, and the Registrar shall delete the name of the cooperative from the register of cooperatives.
- (6) When a cooperative merges itself into any other cooperative under this section, the members of the first cooperative who assented to the merger, shall be deemed to have become the members of the second cooperative.
- (7) When special resolutions passed under sub-section (1) take effect, the resolutions shall be sufficient conveyance to vest the assets and liabilities in the transferee without any further assurance.

14. Registration offices

- (1) For the purpose of incorporation of cooperatives under this Act there shall be offices at such places as the Government thinks fit.
- (2) The Government shall appoint a Registrar of Cooperatives and such other individuals as it thinks necessary to carry out the duties, to perform the functions, and to exercise the powers of the Registrar in pursuance of this Act.
- (3) No individual appointed under this section shall, either during the course of his/her service with the Government, or for a period of two years thereafter, serve in any capacity as an employee or as a director with any cooperative;

provided that such restriction shall not apply in relation to a cooperative in which an individual appointed under this section is a member.

[Comment: Whereas most cooperative laws place great emphasis on the Registrar and his role, providing for his/her appointment as the cornerstone on which the edifice of the cooperative movement is to be built, the Companies Act provides for the appointment of the Registrar under the provisions relating to registration offices, towards the end of the Act, making it evident that the law centres around companies, and not around the Registrar. This draft has drawn from the Companies Act in this regard, and has relocated the appointment of the Registrar in the Cooperative Act, keeping in view the redefined relationship between the Registrar and the cooperatives.]

15. Fee for services

- (1) The submission of memorandum for incorporation as a cooperative under this Act shall be accompanied by a fee amounting to one percent of the authorised equity capital of the proposed cooperative, such, however, that the fee shall be not less than rupees five hundred and not more than rupees five thousand;

provided that the fee shall be rupees five hundred in the case of such cooperatives as do not intend to have any equity capital.

- (2) The fee to be paid by cooperatives and others for various services rendered by the Registrar under this Act may be fixed by the Government and made known to the Registrar, who in turn shall make such information available to any interested person;

provided that any change in the fee payable for any service may be made by the Government only after publishing in two leading vernacular newspapers or advertising in the vernacular electronic media, inviting comment from those affected.

[Comment: With more and more state governments going bankrupt, cooperative departments must provide

appropriate services to cooperatives and collect appropriate fee for the services provided. It may be noted that in some countries, the departments first became self reliant through the collection of such fee, then found they had surplus, and then actually reduced fee, and provided information support services.]

CHAPTER III

MEMBERSHIP

[Comment: *Many cooperative societies across the country have a large, unwieldy, inactive, even non-*

genuine membership. The reasons for this bloated membership figure are many, including:

- (a) admission of members by officials in charge of cooperative societies during an interregnum created by the government's failure to conduct elections on time;*
- (b) extension of the "open membership" concept into a "universal membership" concept, even at the cost of the principle of "voluntary association" of members and between a member and his/her cooperative society;*
- (c) power of Registrar to admit members;*
- (d) "one area, one cooperative society" concept, hence admission of all inhabitants in a given area in an existing cooperative society, even if their preference was to have another cooperative society;*
- (e) assumption that cooperative societies are basically conduits for services that government*

- wishes to provide to the public at large, and, therefore, active induction by government of all adults into cooperative societies as members;*
- (f) *forced reorganisation through division, merger and amalgamation of cooperative societies without the consent of their members.*

Most of the practices mentioned above have the support of statutory provisions which are in violation of Article 19(1)(c) of the Constitution of India relating to citizens' right to form associations. The result has been that a large section of membership is active only on the day of elections, and is neither serviced by the cooperative society, nor can be serviced by it, nor invests in the cooperative society. This in turn results in very poor quality leadership, as non-users, non-stakeholders play a major role in the choice of leadership. This Act has attempted to correct these imbalances, by leaving the

questions of member admission, expulsion, etc largely to a cooperative. As this Act does not prevent the setting up of more than one cooperative for the same purpose in the same "area", it is expected that cooperatives will either behave in matters of admission, expulsion, etc, or face competition, and at the same time protect themselves from heterogenous, conflicting, undesirable and/or unserviceable membership.]

16. Eligibility for membership in a cooperative

- (1) Any person who needs the services of a cooperative, expresses willingness to accept the responsibilities of membership, meets such other conditions as may be specified in the articles of association of the cooperative, and is in a position to use the services, may seek membership and be admitted as a member;

provided that the cooperative is in a position to extend its services to the applicant.

- (2) Every applicant for membership, and every member of a cooperative must keep each cooperative of which the person is a member, informed of membership in other cooperatives, and it shall be available to a cooperative to refuse admission or remove from membership on grounds, among others, of dual or conflicting membership.

17. Member admission

- (1) Admission to membership shall be made, in accordance with the procedure specified in the articles of association, only by an elected board.
- (2) Where admission is refused, the decision with the reasons thereof shall be communicated by registered post to such applicant within fifteen days of the date of the decision, or within sixty days from the date of application for membership, whichever is earlier.
- (3) Where an applicant has been refused admission by the board, or has had no response from the board, the applicant may request the board to place the matter for review by the general body. The board shall place the matter before the general body at its next general meeting and the decision of the general body shall be final;

provided that the applicant shall be given an opportunity to be heard by the general body.

18. Member withdrawal

- (1) A member may at any time withdraw from membership in a cooperative in accordance with the procedure specified in the articles of association of that cooperative.
- (2) Withdrawal from membership will nonetheless require the person to fulfil such obligations as were undertaken/assumed as a member,

under the provisions of this Act, the articles of association or other agreements.

19. Cessation of membership

- (1) A person shall cease to be a member on death or on incurring such disqualification as may be specified in the articles of association.
- (2) Every cooperative shall inform, in the event of the death of the member, the nominee of the member, and in every other instance, the member, about the cessation of membership and consequences thereof.

20. Termination of membership

- (1) The board of a cooperative may terminate the membership of a person who has acted adversely to the objects and interests of the cooperative, including the violation by the member of the articles of association of the cooperative, the policies of the general body or board, and/or contracts entered into by the member with the cooperative;

provided the member has been given a fair opportunity to make representation at the board meeting as to why membership should not be terminated.

- (2) Where the membership of a person has been terminated by the board, the person may request the board to place its decision for review by the general body. The Board shall place the matter before the general body at its next general meeting and the decision of the general body shall be final;

provided that pending the decision of the general body the person may have only such transactions, if any, with the cooperative, as may be permitted by the board.

21. Register of members

- (1) Every cooperative shall maintain a register of members. The name of every person admitted as a member of the cooperative, the date of admission, and the address of the member shall be entered in the register along with such other particulars as are deemed necessary by the board.
- (2) The name of every person whose membership has ceased, or was terminated or withdrawn, shall be struck off the register.

22. Cooperative education

- (1) Every cooperative shall include in its budget annually, provision for expenses on member and potential member education and staff and board training for the development of the cooperative in accordance with the principles and practices of cooperation.
- (2) Any balance under the budget head provided for under sub-section (1) shall be transferred at the end of the year into a cooperative education fund, and may be used only for the purpose of educating and training members, potential members, staff and directors in cooperative principles and practices.

[Comment: Cooperative education and training is the responsibility of a cooperative. However, most cooperative laws tend to make cooperative education and training the responsibility of the state/district cooperative unions, and, through law, force contributions to such unions from out of the net profits of cooperative societies. The result is that most cooperative societies are not engaged in keeping members, staff or directors well informed and trained about the theory and practice of cooperation, and about their cooperative societies, and treat cooperative education as the job of unions. The best of unions, cannot possibly be expected to reach out to lakhs of

members, staff and directors from thousands of cooperative societies, and at the end of the day, the transparency, the levels of member/staff/director awareness, member participation, member control expected of any good cooperative society, are rarely reached, and almost never sought. This Act makes cooperative education and training the responsibility of each cooperative, providing enough space for cooperatives to seek the assistance of their unions, or others to fulfil such responsibility. Further, this Act expects education and training to be organised from out of regular expenses, and not out of net surplus, if any.]

23. Services primarily for members

- (1) A cooperative's services shall normally be available to members only.
- (2) After two years of its being registered under this Act, any cooperative found to be providing more than one-fourth of its core services, as specified in its articles of association, in terms of the value of transactions, to non-members in any given financial year shall be deemed to be an "aberrant cooperative" and may be liable

to lose for that year exemptions, if any, provided to it, on the ground that it is a cooperative, by this or other laws.

- (3) Any cooperative found to be "aberrant" for three continuous years shall be deemed to be an organisation not operating on a cooperative basis and the Registrar or any person may apply to the Court for an order dissolving the cooperative.

[Comment: A cooperative claims to be different to other forms of business in that it seeks to fulfil certain specific needs of its members, to provide quality services needed by members on terms determined by them. If such services became available to others as well, the

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cooperative would look like any other business, where a few persons get together to provide services to others. It is, therefore, important that a cooperative retains its identity as a cooperative, remembering at all times that its primary business is to service its members, and that if others, too, need its services, they should become members, so that all users can be decision makers and share in surplus/deficit.

A cooperative, however, in order to service its members, may well have to deal with the world outside. A producers' (including a labourers') cooperative, for example, has to sell its members' produce (including labour and skill) to the world outside. Similarly, a consumers' cooperative (including an agro input supply cooperative), may have to procure goods from outside in order to supply them to members. A cooperative ought not to be prevented from conducting any transaction with non-members, which is either a "pre", or for that matter, a "post" requisite to providing services to members. What needs to be looked at perhaps is that services meant for members are not being made available to non-members as well - for, in that instance, the cooperative would be like any other business, and still have the right to exist, but not under

the form of a cooperative business. Cooperators argue for different treatment under tax and other laws, on the basis that cooperatives exist primarily to serve their members, unlike other businesses which exist to serve third parties. The argument is that a cooperative-member transaction should not be treated as a normal purchase or sale transaction between a firm and its supplier or customer, as a cooperative is merely an agent of its members and is not distinct from them. This being the case, where a cooperative's services to non-

members are significant, the cooperative should not be treated any differently from other forms of business.]

24. Exercise of rights

- (1) No member of a cooperative shall exercise the rights of membership, including the right of vote, unless the member has made such payments to the cooperative in respect of membership or has acquired and continues to have such interest in the cooperative, including a minimum use of the services of the cooperative, as may be specified in the articles of association.
- (2) Every year, within twenty days of closure of the previous financial year, the chief executive shall prepare a list of members with the right of vote, and a list of members without the right of vote, valid for the current financial year. The list shall be affixed to the notice board of the cooperative for information of all members, and any member, not satisfied with the specific instances of inclusion or non-inclusion of members in the lists, may appeal to the board within ten days of the affixation of the lists on the notice board, for re-examination of the records, and the board shall, within forty five days of closure of the previous financial year, review the lists, finalise them, and have them affixed to the notice board of the cooperative.

[Comment: This provision is aimed at enabling a cooperative to identify its stakeholders on a regular basis, and to make sure that only stakeholders control the cooperative's affairs. Even though most cooperative

laws already have similar provisions to the one given above, since the provision does not specify that the right of vote, too, can be denied to a member, most registrars and Governments have interpreted the provision to mean that only other rights can be denied, not the right of vote. Under this provision, the articles of association of a cooperative can, for example, deny the right of vote to a member who has not used the cooperative's

services to the minimum extent, or in the manner specified in the articles of association.]

25. Voting rights of members

In primary cooperatives, members shall have equal voting rights (one member, one vote), and secondary cooperatives, too, shall be organised in a democratic manner;

provided that a person shall have been a member for at least one full financial year, before being eligible to vote;

provided that the condition of one year membership shall not apply to the members who join at incorporation or at any time after the incorporation of a cooperative but before the first financial year ending;

provided further that the articles of association of a secondary cooperative may fix an upper limit on the number of votes that a member-cooperative can have.

[Comment: It is possible that a person may join as a member but then discover that he/she does not really need the cooperative. By providing a year's time from the time of admission as member, during which the potential member may enjoy the services of the cooperative, but may not have a say in the management of its affairs, this Act is providing the member an opportunity to get to know and use the cooperative well before exerting influence in it.

This section also enables a secondary cooperative to correct imbalances which arise from different sizes of member-cooperatives, by giving them proportionate voting rights. Where sizes vary very significantly, the section also enables a secondary cooperative to fix an

upper limit on the number of votes that a member-cooperative can enjoy.

There is an on-going debate on whether or not to let secondary cooperatives offer voting rights in proportion to the business that each member-cooperative conducts with the secondary cooperative. It is through the democratic principle of one-member one-vote that respect for and sensitivity to the varying needs of members can be ensured. Where such democracy is tempered by the requirement of a threshold level of interest in the cooperative, (such as the condition that the use of services in any year be equal to or above a certain minimum level), the ills of the present "democratic" organisation of cooperatives can be overcome.

An argument often used is that since other forms of businesses provide for voting rights and profit distribution in proportion to the shares held by each person, cooperatives should give voting rights and distribute surplus in proportion to the use by each member of the services of the cooperative. Other forms of business believe that the stake of each member in that business is what should get right to both decision making and profit, hence their need to keep share holding as a basis for both. A cooperative, however, believes in distributing the surplus based on an analysis of how the surplus was created in the first place, and to give equal decision making rights to all stake holders. Therefore, while cooperatives are not expected to distribute to members the surplus created out of non-member use of services, they do distribute the rest of

the surplus to each member in proportion to the member's use of services because the surplus was created out of the use of the services. However,. cooperatives are organised democratically when it comes to decision making, because it is possible that a

member who uses less services than another has in fact higher stakes in the cooperative, since such member may have no alternative than to work through the cooperative for fulfilling needs, while the member using more services may or may not be also using similar services provided by other agencies, and, therefore, may in fact have less stake in the cooperative, even while relatively using more services.]

26. Member liability

- (1) A cooperative may be registered with limited or unlimited liability, where
 - (a) a "cooperative with limited liability" means a cooperative in which the liability of its members for the debts of the cooperative is limited by its articles of association, to such form and extent as they may undertake to contribute to any deficit in the assets of the cooperative, in the event of its being wound up; and
 - (b) a "cooperative with unlimited liability" means a cooperative in which its members are jointly and severally liable for the debts of the cooperative and to contribute to any deficit in the assets of the cooperative, in the event of its being wound up.
- (2) Where a cooperative amends its articles of association to change the form and extent of its members' liability, it shall, within the fifteen days of such amendment, give notice thereof together with a copy of the amendment to its members and creditors and, notwithstanding any provision in the articles of association or contract to the contrary, any member other than one who voted in favour of the proposed change, or creditor shall, during a period of

fifteen days from the date of service of the notice upon him/her, have the option of withdrawing from the cooperative, his/her

interests, subject to the discharge of his/her obligations to the cooperative.

- (3) Any member or creditor who does not exercise his/her option within the period specified in sub-section (2) shall be deemed to have assented to the resolution.
- (4) An amendment passed under sub-section (2) shall not take effect until
 - (a) all claims of the members and creditors of the cooperative who have exercised the option under sub-section (2) have been met in full or otherwise satisfied; and
 - (b) notice of the amendment of the articles of association of the cooperative has been received by the Registrar in accordance with this Act.
- (5) Subject to the provisions of sub-section (6), the liability of a member or of the estate of a deceased member for the debts of the cooperative as they existed
 - (a) in the case of a past member, on the date on which the person ceased to be a member; and
 - (b) in the case of a deceased member, on the date of his/her death;

shall continue for a period of two years from such date.

- (6) Where a cooperative is ordered to be dissolved, the liability of a past member, who ceased to be a member, or of the estate of a deceased member, who died, within two years immediately preceding the date of order of dissolution, shall continue until completion of the liquidation proceedings, but such liability shall be limited only to the debts of the cooperative as they existed on the date of cessation of membership or death, as the case may be.

27. General body

- (1) There shall be a general body for every cooperative consisting of all the members of such cooperative:

provided that where the general body of a cooperative decides that the size, spread or types of its membership requires a representative body for more effective decision making, its articles of association may provide for a smaller body called representative general body drawn from the members, to be formed in such a democratic manner with such functions and powers, and such relationship with members as may be specified in the articles of association.

- (2) Any reference in this Act to the general body shall apply to the representative general body where it exists:

provided, however, that the representative general body shall not alter any provision in the articles of association or take any decisions relating to such subjects as the general body may have explicitly retained for itself.

- (3) Subject to the provisions of this Act and the articles of association of a cooperative, the ultimate power of a cooperative shall vest in the general body of its members:

provided that nothing contained in this sub-section shall affect the exercise by the board or any other authority of a cooperative of any power conferred on such board or such other authority by this Act.

- (4) Any function or responsibility, falling within the scope of a cooperative as a body corporate, which has not been specifically entrusted by this Act or the articles of association, to any of the several authorities within the cooperative, may be dealt with by the general body, on a reference by the board of directors.

28. Functions and responsibilities of general body

- (1) The following and such other matters as are considered necessary by the board, shall be dealt with by the general body at its annual general meeting:
- (a) action on resolutions of the previous meeting;
 - (b) consideration of the long term plan and budget, when required;
 - (c) consideration of the annual operational plan and budget for the current financial year;
 - (d) appointment of auditors for the current financial year;
 - (e) consideration of the annual report of activities for the previous financial year;
 - (f) consideration of the annual audited statements of accounts, and the audit report relating to the previous financial year;
 - (g) consideration of the report on deviations, if any, from the approved budget relating to the previous financial year and the appropriate action to be taken;
 - (h) disposal of surplus, if any, of previous financial year;
 - (i) management of deficit, if any, of previous financial year;
 - (j) creation of specific reserves and other funds;
 - (k) review of actual utilisation of reserves and other funds;
 - (l) review of the report on the attendance at meetings by directors;
 - (m) review of the use of the cooperative's services by the directors;
 - (n) review of remuneration paid to any director or member of any committee or internal auditor in connection with his/her duties in that capacity or his/her attendance at related meetings;
 - (o) review of quantum and percentage of services provided to non-members vis-à-vis services provided to the members;
 - (p) appeal of a person whose application for membership has been rejected by the board;
 - (q) appeal of a person who has been expelled from membership by the board;
 - (r) report of activities and accounts related to member education and board and staff training.

- (2) The following and other matters when considered necessary by the board, shall be dealt with by the general body at its annual or other general meeting:
- (a) election of directors;
 - (b) amendments to articles of association;
 - (c) removal of directors;
 - (d) elections/appointments to casual vacancies on the board;
 - (e) removal, and consequent appointment , of auditors;
 - (f) membership of the cooperative in secondary cooperatives;
 - (g) partnership with other cooperatives;
 - (h) amalgamation, division, merger, transfer of assets and liabilities;
 - (i) dissolution of the cooperative;
 - (j) consideration of the Registrar's report of inquiry, if any.

29. General meetings

- (1) The board of a cooperative may, at any time, call a general meeting of the members of the cooperative:

provided that one such meeting known as annual general meeting shall be held within one hundred and fifty days of the closure of the cooperative's financial year to deal with the matters specified in Sec 28(1).

[Comment: For any business to be well run, it must finalise its accounts as quickly as possible after the close of its financial year, and its general body must meet at the earliest after the completion of the year. The review of the previous year will be more relevant, as will the decisions taken based on that review, if the accounts are presented early. As this Act leaves the choice of auditors to the cooperatives, delay in audit cannot be a reason for delay in conducting the general body meeting.]

(2) The board shall hold a special general meeting within thirty days of the date of receipt of a requisition from:

(a) the lesser of 500 or one-fifth of the members having the right to vote; or

(b) the Registrar, in pursuance of his/her functions under this Act;

provided that any such requisition shall contain the reasons why the meeting is felt necessary and the proposed agenda, and no subject other than the subjects included in the proposed agenda shall be discussed at the special general meeting.

(3) All directors shall cease to be directors at the end of the period within which an annual general meeting under sub-section (1) or a special general meeting under sub-section (2) is required to be held, if the board fails to hold such general meetings within the specified period.

(4) All directors shall cease to be directors at the annual general meeting, if the audited annual financial statement and auditor's comments and observations, if any, along with the report of activities for the previous financial year were not made available to the members along with the notice to attend the annual general meeting at which the report and accounts are to be considered by the general body, and such general meeting shall be conducted by a three-member ad hoc board consisting of members who are neither directors, nor members of the arbitral tribunal, appointed by the arbitral tribunal .

(5) The quorum for a general meeting shall be as specified in the articles of association, but shall not be less than one-fifth of the members eligible to vote at the meeting;

provided that quorum for a representative general body meeting shall not be less than two-fifths of the representatives eligible to vote at the representative general body meeting.

[Comment: Most businesses, cooperative or not, prefer to have a smaller quorum for their general body meeting. As this Act aims at enabling a cooperative to

emerge as a strong, genuine, member-used, member-controlled, member-sensitive business, it is in the spirit of this Act to require a higher percentage of membership to be present at the general body meetings.]

30. Minutes of general meetings

- (1) Every cooperative shall maintain, in the language specified by the articles of association, in the minutes book, minutes of all proceedings of every general meeting and the chief executive shall send the copy of the minutes within fifteen days of the conclusion of every such meeting to all members.
- (2) The minutes so recorded shall be signed by the person who chaired the said meeting, or in the event of his/her incapacity to sign the minutes within the time required, by a director duly authorised by the board;

CHAPTER IV

MANAGEMENT

31. Board of directors

There shall be an elected board of directors for every cooperative constituted and entrusted with the direction of the affairs of the cooperative in accordance with the provisions of the articles of association;

provided that in the case of a cooperative newly registered under this Act, the persons who have signed the application for the incorporation of the cooperative may appoint a promoter board, for a period not exceeding one year from the date of incorporation, to direct the affairs of the cooperative and to get elections of directors conducted within the

period referred to herein; and the promoter board appointed under the proviso shall cease to function as soon as a regular board has been constituted in accordance with the articles of association;

provided further that in the case of a cooperative society originally registered under the Cooperative Societies Act and subsequently registered under this Act, the elected members of the board, whose term has not expired at the time of incorporation under this Act, may be deemed to be the promoter board, for a period not exceeding one year from the date of incorporation under this Act, to direct the affairs of the cooperative and to get elections of directors conducted within the period referred to herein; and the deemed promoter board under the proviso shall cease to function as soon as a regular board has been constituted in accordance with the articles of association.

[Comment: Many cooperative laws across the country require uniformity in the size of boards, in their constitution including reservations, in the manner of conduct of elections, in tenure of office, in office-bearers to be elected, etc. Each cooperative has its own management needs, and members of each cooperative are the best judges to decide on what type of board will best take care of their special interests.]

32. Functions and responsibilities of board

- (1) The board may perform functions and discharge responsibilities as specified in and in accordance with the terms, conditions and procedure laid down in the articles of association;

provided that the following functions and responsibilities shall be those of the board:

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- (a) to interpret the organisational objectives, to set up specific goals to be achieved towards these objectives, and to make periodic appraisal of operations;
- (b) to elect and remove office bearers;
- (c) to appoint and remove the chief executive;

- (d) to frame regulations for the appointment of all employees of the cooperative and the scales of pay, allowances and other conditions of service including disciplinary action;

[Comment: *Most cooperative laws get into great detail on chief executive and staff matters, giving the government and the Registrar a role in staffing pattern, fixation of wages, setting up of common cadres, setting up of appointment/selection committees, reservations on staff, initiating disciplinary action and transfers.*

Cooperative laws also provide a role to the Registrar and/or the government in the settlement of employer-employee disputes. This has led to lack of staff accountability, very poor staff performance, insensitivity towards members and bad business. Wages in many cooperatives are higher than the business can sustain, and staff strength, too, is higher than required or sustainable – and much of this is the result of the government's/Registrar's right to intervene in employer-employee disputes.

On the other hand, in many cooperatives, staff service conditions are very poor, with cooperatives pleading their inability to meet even minimum needs of staff. This Act has, therefore, steered clear of staff matters, with the understanding that these are - subject to other laws relating to workers - the responsibility of the board, and while a set of cooperatives might still get

together and opt for a common cadre through their secondary structure, they will do so voluntarily, and as far as the Act is concerned, regardless of the rights they may give their secondary cooperative, the board of each cooperative will continue to be legally responsible on all staff matters. Random appointments, random wage fixation, etc, by elected committees are not likely when other provisions in the Act require responsibility to be fixed on annual basis for deficit, if

any, and when that deficit has to be covered either by reserves or by debiting to members' account, on the basis of a general body resolution, as required by this Act.

By not giving the Registrar and/or the government a role in staff matters, this Act hopes to remove yet another hindrance to growth of cooperatives.]

- (e) to finalise long term perspective plan, annual plan and budget, and to direct the affairs of the cooperative in accordance with the plan and budget approved by the general body;
 - (f) to make arrangements for the mobilisation of funds;
 - (g) to authorise acquisition and disposal of immovable property; and
 - (h) to frame, approve and amend regulations relating to services, funds, accounts and accountability, and information and reporting systems.
- (2) Every director of a cooperative while performing functions, discharging responsibilities, and exercising powers shall:

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- (a) act honestly and in good faith and in the best interests of the cooperative; and
 - (b) exercise such due care, diligence and skill as a reasonably prudent person would exercise in similar circumstances.
- (3) Any director who is guilty of misappropriation, breach of trust or any other omission or commission, resulting in loss or shortfall in revenue to the cooperative, shall be personally liable to make good that loss or shortfall, without prejudice to any criminal action to which the director may be liable under law.

[Comment: Although there is an underlying expectation that in any organisation every director act in good faith and with due care, skill, etc, by requiring such behaviour in law from persons concerned, it becomes possible to treat violation of this provision as an offence under this Act to be tried by Court, and it also makes it amply clear to potential directors what standards are expected of them as directors.]

33. Eligibility for directorship in a cooperative

In addition to such other conditions as may be specified in the articles of association, a member of a cooperative shall be eligible for being chosen as a director of the cooperative, if:

- (1) such member has the right to vote in the affairs of the cooperative; and
- (2) such member has patronised the services of the cooperative during the previous financial year to the extent and in the manner specified in the articles of association; and
- (3) such member has no interest in any subsisting contract made with or work being done for the cooperative except as otherwise specified in the articles of association; and

- (4) six years have lapsed from the date that such member may have ceased to be a director of the cooperative for reasons of
 - (a) non-conduct of general meeting;
 - (b) non-conduct of elections to the board;
 - (c) non-submission of annual report of activities, audited annual financial statements and/or auditor's report to the general body; or
 - (d) absence from board meetings.

[Comment: This Act has high expectations of the directors on the board of a cooperative. It recognises

that while leadership of a cooperative requires several of the qualities that leadership of any business needs, cooperative leadership places a high premium on local reputation, especially as leadership in most cooperatives is easily accessible to members. Therefore, for failure in accountability, along with such other penalties that may follow, one immediate penalty that will visit the directors under this Act is their ineligibility to contest elections, which amounts to a loss of face.]

34. Elections

- (1) The conduct of elections of directors to the board and of representatives to the representative general body of a cooperative shall be the responsibility of the incumbent board of the cooperative.
- (2) Elections shall be conducted in the manner specified in the articles of association. Elections shall be conducted before the term of office of the outgoing directors or representatives comes to an end.

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- (3) All directors on the board shall cease to be directors at the point of time when any task required for the conduct of elections by the articles of association is not undertaken or completed and the board has not immediately taken necessary steps to continue with the process as required by the articles of association.
- (4) Elections of directors shall normally take place at the annual general meeting.
- (5) Where a board fails to conduct elections before the expiry of the term of the directors or representatives, or where the process of elections is discontinued or suspended at any stage of the process and the board has not initiated remedial measures, or where there are no directors remaining on the board, the arbitral tribunal, within such time and in such manner as specified in the articles of association, shall appoint a three-member ad-hoc board from among members who are not members of the arbitral tribunal, nor members of the outgoing board, nor intend to stand as candidates for the elections on hand, for the specific purpose of conducting elections and to perform all functions of the board during the interregnum except those proscribed by the articles of association.
- (6) The term of the ad-hoc board so appointed shall not exceed three months and the ad-hoc board shall cease to function as soon as a regular board is elected in accordance with the articles of association.
- (7) The directors shall hold office for the period for which they were elected and the newly elected directors shall assume office at the end of this period.
- (8) The directors may not be eligible, if so specified in the articles of association, for re-election.
- (9) Where there are vacancies on the board and where there is a quorum, the remaining directors may exercise all the powers of the board or may fill the vacancies by cooption for the remainder of the respective terms.

- (10) Where there are vacancies on the board and where there are not sufficient number of directors to constitute a quorum for board meetings, the arbitral tribunal shall call a general meeting for the purpose of electing directors to fill the vacancies.

[Comment: Many of the ills in the cooperative movement can be traced directly to the conduct, or rather deliberate non-conduct of elections by the Registrar. No other voluntary organisation, be it a society, a trust, a company, a club, or other association registered under any other law, or unregistered, has its elections conducted by an outside authority. A registered cooperative society, however, is treated as part of governance structure, as a creature of the government in which membership is involuntary.

Conditioned as many are by years of government control, they sometimes recommend the setting up of a "statutory authority" to conduct elections to cooperative societies, as otherwise, cooperative elections might not be "fair". It must be emphasised that the ills of cooperative elections themselves are due to

- (a) bar on serving on the board for more than 2 consecutive terms leaving the field wide open to pretenders;*
- (b) large scale admission of bogus members, by the government and its nominees/appointees in cooperative societies just before elections;*
- (c) prevention of formation of a second cooperative society in the same area for the same purpose making the "capture" of the existing cooperative society a prestige issue;*

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- (d) *expansion of the department of cooperation to three or four times of its budgeted strength, making control over and positions in cooperative societies imperative for department officers;*
- (e) *conduct of elections for all cooperative societies on a single day in the manner of general elections, giving cooperative societies a political and not a business colour; and*
- (f) *conduct of cooperative elections by outside authorities creating unnecessary public and political interest in them.*

Each of these issues has been addressed and resolved to the extent possible by this Act, and, therefore, each cooperative is being left to conduct elections in the manner decided by its members, in the normal course, by persons authorised by members to handle this matter.]

35. Tenure of directors

Where the articles of association provide for retirement of all directors at once, the tenure of office of all the directors, and, where the articles of association provide for retirement of directors by rotation, the tenure of office of the individual directors shall be for such period as specified in the articles of association, not exceeding three years from the date of assumption of office, as specified in the articles of association.

*[**Comment:** Although many cooperative laws permit the retirement by rotation of directors, through Rules, government sets uniform terms for all boards and requires all directors to retire at once. This Act merely places a maximum limit on tenure of office, but leaves it to cooperatives to fix any tenure within that, for each of the directors, or for the board as a whole. Although retirement by rotation is probably the best for continuity in decision*

making, in this matter, too, the members are the best judges. For example, in a cooperative with a small membership, all the members might well form the board and the general body, or choose to elect the entire board every year. Hence the matter of whether or not to have staggered terms has been left to the articles of association.]

36. Board meetings

- (1) The president of a cooperative may, at any time, call a meeting of the board of directors:

provided, however, that at least four board meetings shall be held in a financial year, and the period between two consecutive board meetings shall not exceed one hundred and twenty days.

- (2) The president shall hold a special board meeting within fifteen days of the date of receipt of a requisition from:

- (a) at least one-third of the directors on the board; or

- (b) the Auditor;

provided that any such requisition shall contain the reasons why the meeting is felt necessary and the proposed agenda, and no subject other than the subjects included in the proposed agenda shall be discussed at the special board meeting.

- (3) The president shall cease to be president at the end of the period within which a board meeting under sub-section (1) or (2) or the articles of association has to be held if he/she fails to hold such board meeting within the specified period.

- (4) An individual who ceases to be president under sub-section (3) shall not be eligible to hold the office of president for a period of six years from the date of such cessation.

- (5) The quorum for a board meeting shall be as specified in the articles of association, but shall be more than half of the total number of directors on the board.
- (6) The procedure to convene and conduct the board meetings shall be such as specified in the articles of association.
- (7) If a director fails to attend three consecutive board meetings, he/she shall cease to be a director, from the date of the third board meeting.

[Comment: A director's primary job is to direct the affairs through participation at the board meetings, and regardless of the merits of the case, absence from three consecutive board meetings, whatever the intervals between these meetings, should be taken as inability - though not necessarily unwillingness - to accept the responsibilities of directorship.]

37. Minutes of board meetings

- (1) Every cooperative shall maintain, in the language specified by the articles of association, in the minutes book, minutes of all proceedings of every board meeting and the chief executive shall send the copy of the minutes within seven days of the conclusion of every such meeting to all directors.
- (2) The minutes so recorded shall be signed by the person who chaired the said meeting or by the person who chairs the following meeting, wherein the minutes are confirmed.

CHAPTER V

FINANCE

38. Mobilisation of funds

- (1) A cooperative may mobilise funds including equity capital, deposits, grants, and loans from its members in such form, to such extent and under such conditions as may be specified in the articles of association.
- (2) A cooperative may raise funds and other forms of financial support including guarantee from non-members including individuals, banks, other financial and non-financial institutions, and the Government, on mutually agreed terms, to such extent and subject to such conditions as may be specified in the articles of association.

[Comment: Equity capital, by definition, should come from the owners of a business - from members, in the case of a cooperative. It is for this reason that this Act does not permit a cooperative to raise equity capital from the government or from other non-members. It is often argued that but for government share capital, several cooperatives would never have come into existence. All businesses, at all times, in all places, do not lend themselves to the cooperative design. If indeed potential members or members are not convinced about putting equity capital into a proposed cooperative

venture, it appears illogical that an external party should bother to put that money in, and still try to run it as a cooperative with decision making rights lying with the members.

It is also argued that cooperatives should be permitted to raise capital from "the market". Providers of capital to other forms of business might be investor-owners, but are not expected to be user-owners. In the case of cooperatives, all "owners" are expected to be users, and, therefore, the question of raising equity capital

from "the market" does not arise. Other forms of capital, however, can be raised from the market, the government, commercial and cooperative banks, other financial institutions, individuals and other institutions.]

39. Deployment of funds

- (1) The funds mobilised by a cooperative shall be for the furtherance of its objectives.
- (2) Such of its funds as are not needed for use in its business, a cooperative may invest or deposit, outside its business, in any manner specified in Sec 11(5) of the Income Tax Act, 1961

*[**Comment:** In most states, the Cooperative Societies Act, if read carefully, aims at preventing a cooperative society from investing idle funds in a speculative manner, since a cooperative society aims at providing benefit to its members not from speculation, or on their investment, but on their use of services. However, the Rules, clearly going beyond the scope of the Act, require a cooperative society to seek the Registrar's permission even for investing in the cooperative society's own business! In order to ensure that cooperatives do not face the unnecessary irritants that cooperative societies face today in this regard, this Act steers clear of telling a cooperative what to do with its*

funds, and instead tells them specifically and clearly what they may not do with their funds, viz, that they may not use their funds to speculate or "play the market" with.]

40. Disposal of surplus

- (1) Surplus, if any, arising out of the business of a cooperative in a financial year may be used in one or more of the following ways:
 - (a) towards a deficit cover fund;

- (b) to be distributed as surplus refund among its members;
- (c) to develop its business;
- (d) towards reserves and funds constituted in accordance with the articles of association;
- (e) to provide common services to its members;
- (f) to provide rewards or incentives to staff;
- (g) towards a non-divisible corpus fund;

provided that surplus arising out of services provided to non-members may not be distributed amongst members or staff, but may be used for the provision of common services to the community at large, and for encouraging potential members to become members.

(Comment: A cooperative is essentially an agent of its members. It either pools member produce (including labour, skills, grain, etc), adds value where possible and markets these, or it procures inputs (including credit, fertiliser, consumer goods, etc) based on member needs, and supplies these to them. In both the instances, it needs to hold back for itself only such margins as are needed to meet the costs of operation, or for further improvement/increase in services to members. The rest of the surplus is returned to members, since the produce was underpaid for, or the inputs overcharged. Tax laws, therefore, must distinguish between the transactions between a cooperative and its members, and between a

cooperative and non-members. While the latter may be treated on par with similar transactions in other forms of business, the former must receive separate treatment, as the service is one of pooling or indenting, and not one of purchase or sale.]

- (2) Surplus must be fully allocated at the annual general meeting in which the audited statements of accounts for the financial year in

which the surplus arose are presented for the consideration of the general body.

[Comment: A cooperative is set up primarily to provide services to its members in a manner that is financially advantageous to them. A cautious cooperative would, while providing that financial advantage at the time of giving the service, keep a margin for itself just in case an unexpected shortfall occurs later or in order to expand facilities, etc. During a given year, if the feared shortfall does not occur, at the year end the margin or surplus set aside should be distributed to members as patronage refund, except for such amounts as are needed for expansion. Well functioning cooperatives often tend to set aside huge reserves each year returning little to members by way of patronage refund, and also carry forward "accumulated profit". This Act requires the general body to discuss the surplus each year, and to fully dispose of it as patronage refund and/or as reserves and funds, and does not permit the carrying forward of unallocated/undistributed surpluses into the next year. This Act also prohibits the members and staff of a cooperative benefiting directly from surplus earned from services provided to non-members. This is done with a view to ensuring that a cooperative functions as a cooperative and not as other forms of businesses, where the owners benefit from services provided to third parties.]

41. Management of deficit

- (1) Deficit, if any, arising out of the business of a cooperative in a financial year, shall be fully settled by debiting a part or all of the deficit to the deficit cover fund, if any, and/or as deficit charge, among its members;

provided that nothing in this sub-section shall preclude a cooperative from also proceeding against its directors for recovery of amounts contributing to the deficit, where such deficit is the result of deviation from the approved plan and/or budget, and where such deviation does not receive the approval of the general body, or is the result of gross negligence or mismanagement;

provided further that where such amounts are recovered, the general body may resolve to credit a part or all of the amount to the deficit cover fund and/or to the account of each member in proportion to the deficit charge levied on him/her in this regard.

- (2) No member shall be permitted to withdraw from the membership of the cooperative without paying his/her share towards clearing the deficit, if any.

[Comment: Few think twice about recommending that surplus be shared amongst members in proportion to their use of services, but it is often argued that a similar sharing of deficit amongst members is unwarranted, and may lead to management indiscipline. Misdeeds of management should not be thrust on members it is argued. However, if organisational gain is to lead to member gain, then organisational loss, too, should lead to member loss. Not all good performance by management leads to organisational gain, and not all organisational gain is necessarily the result of good management performance. Similarly, not all bad performance by management leads to organisational loss, and not all organisational loss is rooted in poor management performance. This being the case,

organisational gain and loss should belong to members. This should not prevent members from rewarding management for good performance or proceeding against it for bad performance. It is only when members

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understand their responsibilities as owners that they will value their vote, and take seriously their participation in the cooperative's affairs. Under the above section, while the balance sheet at the end of a particular year may show a deficit, such deficit must be covered during the year in which the accounts are presented, and the next year's balance sheet may not show any "accumulated" deficit.

Existing cooperative laws encourage financial indiscipline among members, directors and staff by permitting cooperatives to accumulate losses for years, requiring their settlement only at the time of dissolution. The laws require the Registrar to be the one who decides whether or not a cooperative should be dissolved, and the laws permit liquidation proceedings to go on indefinitely. Members are rarely, if ever, called upon to fulfil their obligations, even at the time of dissolution. Further, by not requiring audited statements of accounts for a given financial year to be placed in the very next year for consideration by the general body, the laws make it possible for losses to mount and yet to be concealed from the general body for several years.

This Act ensures that members and directors take their respective responsibilities seriously, even as they exercise their rights.]

42. Operation of special funds

- (1) A cooperative may, in the interest of its members and towards the fulfilment of its objectives, create reserves and such other funds as are specified in the articles of association or resolved on by the general body.
- (2) Funds so created may be used in the business of the cooperative, but at the end of every year, on that portion of each fund which was not applied for the purpose for which it was created, the cooperative shall credit to the account of such fund an annual

interest, at not less than the rate paid by scheduled banks on long term fixed deposits, debiting such interest as operational expenditure.

[Comment: As already mentioned, successful cooperatives tend to set aside huge reserves and other funds from surpluses, and treat these as zero cost funds. In several instances, year-end surplus, although in itself quite significant and impressive is quite deceptive, as it may in fact be less than the cost of inflation on the reserves and other funds. In order that members have a more accurate picture of the financial condition of a cooperative, this Act requires that the reserves and other funds be costed annually. Yet another issue is that huge reserves and other funds tend to make management and staff feel that a cooperative can exist in spite of its members, since the earnings on the reserves and other funds are enough to meet salaries, honorarium, etc. Servicing of members takes a back seat, while staff bonus, management perks, etc, take precedence. For this reason, too, this Act requires that the reserves and other funds be costed, and the surplus be reduced by that amount as an expenditure, and the reserves and other funds be credited with the same in the balance sheet.]

43. First charge

Notwithstanding anything in any law for the time being in force, but subject to any claim of the Government in respect of land revenue, any debt or other amount due to a cooperative by any member shall be a first charge upon such properties of the member as agreed to by the cooperative, and as the member may declare in the manner specified in the articles of association, at the time of membership, and subsequently thereafter.

[Comment: Most cooperative laws provide that arrears to a cooperative shall be a first charge on certain properties of members. In this Act, however, such charge while being given legal cognisance is sought to be created through the articles of association and through loan or other agreements that a member enters into with his/her cooperative. Sec 43 read with Sec 49 also provide for summary recovery of overdue loans and other arrears, as provided for in these internal documents of a cooperative, and agreed to by a member.]

CHAPTER VI

ACCOUNTABILITY

44. Accounts, records and documents to be maintained

- (1) Every cooperative shall keep at its registered office, the following accounts, records and documents:
 - (a) a copy of this Act, with amendments made from time to time;
 - (b) a copy of its articles of association, with amendments made from time to time;
 - (c) the minutes books;
 - (d) account of all sums of money received and expended by the cooperative and their respective purposes;
 - (e) account of all purchases and sales of goods by the cooperative;
 - (f) account of the assets and liabilities of the cooperative;

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- (g) a list of members, their fulfilment of responsibilities over the previous financial year, their eligibility to exercise their rights for the current financial year updated within forty five days of closure of the cooperative's financial year; and
- (h) all such other accounts, records and documents as may be required by this Act or other laws and regulations;

provided that where a cooperative has branch offices, summarised statements of accounts relating to such branch office/s, shall be available at the registered office for each quarter, within fifteen days of the end of that quarter.

- (2) Every cooperative shall keep open the books of account and other records for inspection by any director during business hours, in accordance with the procedure framed by the Board.
- (3) Every cooperative shall make available during its business hours to any member who so requests, copies of this Act, articles of association, minutes book of the general body, voters' list and such accounts and records of transactions that relate to that member.
- (4) Every cooperative shall preserve its books of accounts relating to a period of at least eight years before the current year together with supporting records and vouchers.

[Comment: Since most cooperative laws are silent on how long cooperatives should hold on to old books of accounts, most cooperatives face the harrowing experience of having to set aside precious space just for storing old books of accounts. This Act, taking its cue from the law relating to companies, makes clear its expectation in this regard, leaving it to each cooperative to decide on the preservation of even older books of accounts if it so desires.]

45. Audit

- (1) A cooperative shall get its accounts audited by a chartered accountant within the meaning of the Chartered Accountants Act, 1949, or by any other auditor from the office of the Registrar;

provided that where a cooperative's business turnover is less than Rs forty lakhs, it may appoint as auditor, any person/s, from within its membership or outside, with such qualifications as are specified in the articles of association.

Explanation: For the purpose of this section, business turnover shall mean the value of sales, services provided and/or loans recovered.

- (2) A cooperative, at its annual general meeting, shall appoint an auditor. This appointment will be valid only until the close of the next succeeding annual general meeting.
- (3) The remuneration of an auditor may be fixed by the general body or, if not so fixed, by the arbitral tribunal.
- (4) An auditor ceases to hold office when the auditor
- (a) resigns;
 - (b) is removed from office under sub-section (6); or
 - (c) completes his/her term of office.
- (5) The resignation of an auditor becomes effective at the time a written resignation is received by the cooperative, or at the time specified in the resignation whichever is later.
- (6) The general body may, by a special resolution, remove an auditor from office.
- (7) An auditor, who
- (a) resigns; or

(b) receives a notice or otherwise learns of a general meeting called for the purpose of removing him/her from office;

is entitled to submit to the general body a written statement giving the reasons for his/her resignation or the *comments* on the proposed removal, as the case may be.

- (8) A vacancy created by the resignation of an auditor shall be filled up by the arbitral tribunal.
- (9) A vacancy created by the removal an auditor shall be filled up by the general body.
- (10) An auditor appointed to fill a vacancy holds office for the unexpired term of his/her predecessor.
- (11) The auditor shall be given notice of every general meeting and, at the expense of the cooperative, will be entitled to attend and be heard thereat on matters relating to his/her duties as auditor and their exercise.
- (12) It shall be the duty of the board to ensure that annual financial statements are prepared and presented for audit within forty-five days of closure of the cooperative's financial year.
- (13) Upon the reasonable demand of the auditor of a cooperative, the chief executive shall arrange to
 - (a) provide such access to records, documents, books, accounts and vouchers of the cooperative; and
 - (b) furnish such information and explanations,

as are, in the opinion of the auditor, necessary to enable him/her to make the examination and report, and as the chief executive or a

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present or former director, members, managers, or employees are reasonably able to furnish.

- (14) It shall be the duty of the auditor to ensure that audited annual financial statements and his/her accompanying report are furnished to the cooperative within forty five days of the submission of annual financial statements by the board.
- (15) The auditor's report to the members of the cooperative shall:
 - (a) state whether the auditor has obtained all the information and explanations which to the best of his/her knowledge and belief were necessary for the purpose of his/her audit;
 - (b) state whether the cooperative's balance sheet and income and expenditure account dealt with by the report are in agreement with the books of accounts;
 - (c) indicate the basis on which each asset and liability was valued, and make specific mention of any change in the manner in which such valuation was done in the year under examination and its effect on surplus/deficit;
 - (d) indicate the amount of surplus earned/deficit incurred from provision of services to non-members as distinct from surplus/deficit accruing because of members or in normal course of business;
 - (e) indicate every deviation in actual expenses and income from the estimated expenses and income in the approved budget;
 - (f) specify the gross remuneration and/or honorarium and/or allowances paid and/or value of benefits provided, if any, to the chief executive, any of the office bearers, or directors, in the financial year under audit;

- (g) state whether or not any of the office bearers or directors had become, at any time during the year under review, ineligible under this Act to continue in office as an office bearer or director; and
- (h) state whether the decisions on disposal of surplus or assessment of deficit, of the general body, at its previous annual general meeting were implemented correctly and completely or not.

[Comment: Under most state cooperative laws, responsibility for audit lies not with a cooperative society, but with the Registrar. Payment of audit fee is the only responsibility that a cooperative society has with regard to audit. The auditor, too, is seen as accountable, not to the cooperative society, but to the Registrar, and is appointed by the latter. Cooperative laws also do not require that audited statements of accounts for a given year be submitted to the general body - or for that matter, to the Registrar - in the very next year. The result is that

- (a) audit is conducted only by officers of the department, who know more about checking vouchers for errors, than about business;*
- (b) audit is almost always years behind schedule;*
- (c) by the time a general body gets to see the audited statements of accounts, it is too late to take any corrective action;*
- (d) the department uses its monopoly over audit to*
 - (i) charge high fees disproportionate to the services provided; and*
 - (ii) depute its officers for "concurrent audit" also at abnormally high cost to the cooperative society.*

This Act has made audit the responsibility of the cooperative, and of the auditor who it appoints.

Further, most cooperatives do not take their planning and budgeting exercises seriously, and this Act places responsibility on the directors for ensuring that these are not given short shrift and requires auditors to bring

deviations from the budget to the notice of the general body.]

46. Returns to be filed with the Registrar

- (1) Every year, within thirty days of the holding of the annual general meeting, every cooperative shall file the following returns with the Registrar:
 - (a) annual report of activities;
 - (b) audited annual statements of accounts with auditor's report;
 - (c) statistical statement indicating name of the cooperative; core services offered by the cooperative to its members; total number of members as on the last day of the year; total liabilities expressed as (i) funds from members, and surpluses, (ii) funds from the Government, if any, and (iii) funds from other external sources as on the last day of the financial year; quantum in rupees of services provided (i) to members, and (ii) to non-members; and surplus/deficit at end of year.
- (2) Along with the returns specified in sub-section (1), every cooperative shall furnish the following information to the Registrar:
 - (a) the date of the annual general meeting at which the returns being filed with the Registrar were considered and/or approved;

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- (b) the total number of members on the rolls of the cooperative who were eligible to vote on the date of such annual general meeting;
 - (c) the number of eligible members present at such annual general meeting;
 - (d) list of names of directors, their addresses and their terms of office;
 - (e) name and address of the auditor appointed for auditing the current year's accounts.
- (3) The Registrar shall submit an annual report to the Government by 31st March of each year, containing statistical information on the cooperatives in the state compiled from the returns received during the previous calendar year, under sub-section (1)(c), with regard to the total number of cooperatives in the state, their membership, funds, services and surplus/deficit; and the report shall also contain information on the strength of staff in the department of cooperation, including those on deputation, establishment expenses on the department, fee raised under this Act by the department, and a statistical summary of statutory powers exercised during the previous calendar year.
- (4) Any person may apply in writing to the Registrar seeking a copy of the Registrar's annual report, or of any return/s or any information filed by the cooperatives with the Registrar, and such information shall be made available by the Registrar on reasonable fee.

[Comment: Most cooperative laws require some information or other to be furnished by cooperative societies to the Registrar, but few require that the information be relevant and up to date, that it be available for public scrutiny, that the Registrar use and report on the information received. This Act has, therefore, included appropriate provisions, and also

requires the department of cooperation to give an account of its own performance.]

47. Inquiry

(1) The Registrar may, after first providing an opportunity to the cooperative concerned to present its case, for reasons to be recorded in writing, of his/her own motion, and shall, on the application of a secondary cooperative to which the cooperative concerned is affiliated, or of a creditor to whom the cooperative is indebted, or of not less than one-third of the directors, or of not less

than one-tenth of the members, hold an inquiry or cause an inquiry to be made into any specific subject or subjects relating to any gross violation of any of the provisions of this Act by the cooperative.

(2) Except when an inquiry is undertaken on his/her own motion, the Registrar shall order an inquiry only after the receipt of a fee, from the applicant or the applicants, deemed sufficient to meet the costs of the inquiry to be conducted.

(3) The inquiry shall be completed within a period of one hundred and twenty days from the date of ordering the inquiry.

(4) The Registrar shall, within a period of thirty days from the date of the completion of the inquiry, as specified in sub-section (3) or of the lapse of the inquiry as specified in sub-section (4), communicate the report of the inquiry or the reasons for the non-completion of the inquiry, as the case may be,

- (a) to the cooperative concerned;
- (b) to the applicant secondary cooperative, if any;
- (c) to the applicant-creditor, if any;
- (d) to the person designated by the applicant-directors, if any;

- (e) to the person designated by the applicant-members, if any; and
- (f) to any person, on payment of fee specified by the Registrar.

[Comment: Most cooperative laws empower the Registrar to conduct an inquiry on his/her own motion on any aspect relating to the constitution, working and financial condition of a cooperative society. Experience has shown that this power has largely been a misused one. This Act, while retaining the right of the Registrar to, suo-moto or on application, undertake an inquiry, permits him/her to exercise that power only where some gross violation of this Act is suspected. Inquiries on frivolous or general charges are not permitted, and as the Registrar specialises in cooperative law and not in criminal or other laws, the inquiry can be only in respect of gross violation of this Act.]

CHAPTER VII

OFFENCES

48. Offences

- (1) A person, who makes or assists in making a report, return, notice or other document required in this Act to be sent to the Registrar or to any other person that contains an untrue statement of a material fact or that omits a material fact which is required in the report or omits a material fact whose absence makes a statement in the report misleading is guilty of an offence and liable on summary conviction,
 - (a) in the case of an individual, to a fine not greater than one thousand rupees or to imprisonment for a term not greater than ninety days or to both such fine and imprisonment;
 - (b) in the case of a person other than an individual, to a fine not greater than ten thousand rupees.

- (2) Where the person guilty of an offence under sub-section (1) is a body corporate and whether or not the body corporate has been prosecuted or convicted, any director or officer of the body corporate who knowingly authorises, permits or acquiesces in the offence is also guilty of an offence and liable on summary conviction to a fine of not more than one thousand rupees or to imprisonment for a term not exceeding ninety days or to both such fine and imprisonment.
- (3) No person is guilty of an offence in pursuance of subsection (1) or (2) where the untrue statement or omission:
- (a) was unknown to him/her; and
 - (b) in the exercise of reasonable diligence, could not have been known to him/her.
- (4) Every person who:
- (a) without reasonable cause, contravenes a provision of this Act for which no penalty is otherwise provided; or
 - (b) fails to give any notice, send any return or document that is required by this Act;
- is guilty of an offence and is liable on summary conviction to a fine of not more than one thousand rupees.
- (5) An offence by a cooperative shall be deemed to have been also committed by each office-bearer of the cooperative bound by the articles of association thereof to fulfil the duties whereof the offence is a breach, or if there is no such office-bearer, then by each of the directors, unless the office-bearer or directors, as the case may be, prove to have attempted to prevent the commission of the offence.

- (6) Where a person is convicted of an offence in pursuance of this Act, the Court may, in addition to any punishment imposed, order the person to comply with the provisions of the Act or the regulations for the contravention of which he/she has been convicted.
- (7) No prosecution for an offence under this Act shall be commenced after two years from the time when the subject matter of the complaint arose.
- (8) No civil remedy for an act or omission under this Act is suspended or affected by reason that the act or omission is an offence under this Act.

[Comment: Most cooperative laws recognise only such offences as are committed by cooperative societies. This Act, however, requires every person, and that includes the Registrar, bound by this Act, to act in

accordance with it - failing which, he/she will be deemed to have committed an offence. It may be noted that since this Act requires that directors and employees act with diligence, acting without diligence constitutes an offence. This Act also assumes every director to be guilty of the offence, unless the articles of association place responsibility on office-bearers, or the director has attempted to have prevented the commission of the offence. Once again, this Act has converted the position of director/office-bearer from being one of privilege, to one of serious responsibility.]

CHAPTER VIII

DISPUTES

49. Disputes

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- (1) Notwithstanding anything in any law for the time being in force, if any dispute touching the constitution, management or business of a cooperative arises
- (a) among members, past members and persons claiming through members and deceased members; or
 - (b) between a member, past member or a person claiming through a member, past member or deceased member and the cooperative, its board, director, office-bearer, or liquidator, past or present; or
 - (c) between the cooperative or its board and any past board, any director, office-bearer, or any past director, past office-bearer, or the nominee, heir, or legal representative of any deceased director or deceased office-bearer of the cooperative,

such dispute shall be referred to the arbitral tribunal of the cooperative.

Explanation: For the purposes of this sub-section, a dispute shall include a claim by a cooperative for any debt or other amount due to it from a member, past member, the nominee, heir or legal representative of a deceased member, and/or surety, whether such debt or other amount be admitted or not.

***[Comment:** A cooperative law, when dealing with the settlement of disputes, can at best deal with disputes among the constituents of a cooperative. Even when doing that, it cannot take away from the members of a cooperative their right to decide how they would like to resolve disputes among themselves. Most cooperative laws, however, establish an external mechanism for the resolution of disputes among members or between members and their cooperatives, and even between cooperative managements and staff of cooperatives.*

This Act requires cooperatives to set up their own internal mechanism for the resolution of disputes

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among members, or between members and their cooperatives. Where cooperatives are members of a secondary cooperative, there, too, an internal dispute resolving mechanism is available to them for disputes in relation to their functioning as constituents of the secondary cooperative. All other disputes are expected to be resolved in the same manner as are disputes between any two legal persons in a court of law.]

- (2) If any question arises whether a dispute referred to the arbitral tribunal under this section is a dispute touching the constitution, management or business of the cooperative, such question shall be decided by the arbitral tribunal.
- (3) The arbitral tribunal shall decide the dispute in accordance with the provisions of this Act and the articles of association, and such decisions shall be final. Pending final decision on the dispute, the arbitral tribunal may make such interlocutory orders, as it may deem necessary in the interest of justice.
- (4) Every order or decision made under this section, shall be executed by the civil court having jurisdiction, as if such order is a decree of that court, on a certificate issued by the arbitral tribunal.
- (5) Notwithstanding anything in sub-section (4), or in any other law for the time being in force, and without prejudice to any other mode of recovery which is being taken or may be taken, an arbitral tribunal may, on the application made by the cooperative for the recovery of arrears due to the cooperative by any of its members, and on its furnishing a statement of accounts in respect of the arrears and after making such inquiry as the tribunal deems fit, issue a certificate for the recovery of the amount stated therein to be due as arrears.
- (6) A certificate issued by the arbitral tribunal under sub-section (5) shall be final and conclusive proof of the arrears stated to be due

and the certificate shall be executed by the chief executive in the manner specified in the articles of association.

50. Arbitral tribunal

- (1) The articles of association of each cooperative shall provide for the constitution of an arbitral tribunal consisting of an individual or a group of individuals not exceeding five, elected by the general body from among its members or others, whose term of office shall be not more than three years;

provided when an arbitral tribunal consists of more than one member, it may choose for reasons to be set forth in writing that a dispute or set of disputes referred to it for settlement be resolved by one or more of its members, and the decision of such member or members shall be deemed to be a decision of the arbitral tribunal.

- (2) A member of the arbitral tribunal shall have such qualifications as are specified in the articles of association;

provided that no person who has served as member of arbitral tribunal shall be eligible ever to contest elections to the board of that cooperative.

CHAPTER IX

DISSOLUTION

51. Dissolution by members

- (1) A cooperative may, by a special resolution, authorise its own dissolution;

provided that a copy of the notice of the general meeting shall be sent by registered post with an invitation to attend, to the Registrar, to all to whom the cooperative owes money, to any secondary cooperative to which the cooperative is affiliated, and to any cooperative/s with which a partnership contract has been entered into.

- (2) Invitees under the proviso of sub-section (1) shall have the right to make a presentation to the general body, if they so wish to, on the issue of the proposed dissolution.
- (3) Within fifteen days of such authorisation for dissolution, the cooperative shall send to the Registrar a copy by registered post of the authorisation to dissolve the cooperative.
- (4) The authorisation approved in pursuance of sub-section (1) is required to set out:
 - (a) the assets and liabilities of the cooperative;
 - (b) the claims of creditors;
 - (c) the number of members;
 - (d) the nature and extent of the members' interest in the cooperative;
 - (e) the name and address of the liquidator appointed by the cooperative.
- (5) When the Registrar receives the special resolution passed in pursuance of sub-section (1):
 - (a) where he/she is satisfied that the cooperative has no assets or liabilities, he/she may dissolve the cooperative, strike off its name from the register of cooperatives and issue a certificate of dissolution; or

- (b) he/she shall, within thirty days of such approval, cause at the expense of the cooperative a notice of the special resolution to be published once a week for two consecutive weeks in a newspaper published or distributed in the district where the registered office of the cooperative is located.
- (6) In the case of dissolution, the Registrar may require, till the certificate of dissolution is issued by him/her, from the liquidator appointed by the cooperative or any other person who is required to furnish information, a periodical return showing:
- (a) the progress of dissolution;
 - (b) the distribution of any undistributed surplus or reserve; and
 - (c) any other relevant information that he/she may require.

[Comment: Cooperative Societies Acts do not at present permit the members of a cooperative society to authorise their own cooperative society's dissolution. Members can only recommend dissolution to the Registrar, who then takes a decision on the matter. It would appear that this is the reason that any number of cooperative societies which are defunct, and have been

so for decades, continue to be included in statistical statements inflating the number of cooperative societies and cooperators in any state. Since a cooperative is to come into existence because of its members, it should be allowed to go out of existence when they no longer need it. This Act restores this basic right of cooperators.]

52. Dissolution by Registrar

- (1) Where the Registrar has reasonable cause to believe that a cooperative:

(a) has not commenced business within two years after the date shown on its certificate of incorporation; or

(b) has not carried on business for two consecutive years;

he/she shall send to the cooperative a letter by registered post, inquiring whether the cooperative is carrying on business.

(2) Where the Registrar does not, within thirty days of the date he/she sent a letter in pursuance of sub-section (1), receive an answer to the letter, he/she shall, within fifteen days after the expiry of thirty days, send to the cooperative a letter stating that:

(a) a letter was sent to the cooperative in pursuance of sub-section (1);

(b) no answer to that letter has been received by him/her; and

(c) if an answer is not received to the letter sent under this sub-section within thirty days from the date it is sent, a notice will be published in the Gazette to dissolve the cooperative.

(3) Where the Registrar:

(a) receives an answer from the cooperative that it is not carrying on business; or

(b) does not, within thirty days after the date that he/she sent a letter in pursuance of sub-section (2), receive an answer to that letter;

he/she may publish in the Gazette and send to the cooperative a notice that, at the expiry of thirty days from the date of that notice, the cooperative will have its name struck off the register, or, unless cause is shown to the contrary, be dissolved.

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- (4) At the expiry of thirty days after the date of the issue of the notice in pursuance of sub-section (3), the Registrar may, unless cause to the contrary is previously shown by the cooperative:
- (a) where he/she is satisfied that the cooperative has no assets or liabilities, dissolve the cooperative, strike off its name from the register of cooperatives and issue a certificate of dissolution; or
 - (b) appoint a liquidator, in accordance with section 54, to dissolve the cooperative.
- (5) Where a cooperative fails to file returns and furnish information, as required under section 46, even after a lapse of two hundred and forty days from the close of the cooperative's financial year, the Registrar shall require the board to call a special general meeting for the purpose of considering the annual returns to be filed with and the information to be furnished to the Registrar.
- (6) Where the board fails to call a special general meeting within the time period specified in Section 29(2), the Registrar may call the special general meeting to ascertain whether the general body desires to continue the cooperative.
- (7) Where:
- (a) a quorum of members is not present at a special general meeting called in pursuance of sub-section (5) or (6); or
 - (b) the general body fails to pass a resolution to the effect that:
 - (i) the cooperative is to carry on business;
 - (ii) the board must present, within sixty days from the date of the special general meeting, to the general body the annual returns to be filed with and the information to be furnished to the Registrar; and

- (iii) the cooperative will file the returns with and furnish the information to the Registrar within ninety days from the date of the special general meeting; or
- (c) the cooperative fails to file the returns with and furnish the information to the Registrar within ninety days from the date of the special general meeting;

the Registrar may:

- (i) where he/she is satisfied that the cooperative has no assets or liabilities, dissolve the cooperative, strike off its name from the register of cooperatives and issue a certificate of dissolution; or
- (ii) appoint a liquidator, in accordance with section 54, to dissolve the cooperative.

[Comment: It is possible that after incorporation, a cooperative does not quite take off, or that after some years of successful or unsuccessful functioning, it becomes so irrelevant that there are not enough members interested even to organise its dissolution.

The Registrar should in such circumstances be able to dissolve the cooperative, and this Act provides him/her with such an opportunity.]

53. Dissolution by Court

- (1) The Registrar or an interested person may, after giving the cooperative ninety days notice of the proposed application, apply to the Court for an order dissolving a cooperative, where the cooperative:

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- (a) obtained its incorporation by fraud or mistake;
 - (b) exists for an illegal purpose;
 - (c) has wilfully, after notice by the Registrar, violated any of the provisions of this Act or its articles of association; or
 - (d) is no longer operating on a cooperative basis.
- (2) Where an interested person applies to a Court in pursuance of this section, he/she shall give the Registrar notice of his/her application and the Registrar is entitled to appear and be heard in person or by counsel.
- (3) Where the Court receives an application in pursuance of this section, it may order that the cooperative be dissolved or liquidated and dissolved under the supervision of the Registrar.
- (4) Where the Registrar receives an order made in pursuance of subsection (3), he/she shall:
- (a) if the order is to dissolve the cooperative, dissolve it, strike off its name from the register of cooperatives and issue a certificate of dissolution; or
 - (b) if the order is to liquidate and dissolve the cooperative, appoint any person as a liquidator to wind up the affairs of the cooperative.

[Comment: While the previous section dealt with dissolution initiated by the Registrar where there was

unlikely to be any dispute between the Registrar and the cooperative, this section deals with dissolution initiated by the Registrar where there may be some difference of opinion between the Registrar and the

cooperative, and where an offence may well have been committed under this Act. Hence the Act requires the intervention of the Court for dissolution.]

54. Appointment of liquidator

Where a cooperative is to be dissolved and no liquidator is appointed by the general body or the Court, the Registrar may

- (a) appoint any person as a liquidator to wind up the affairs of the cooperative; or
- (b) where he/she is satisfied that the cooperative has no assets and liabilities, issue a certificate of dissolution.

55. Duties of liquidator

On his/her appointment, a liquidator shall:

- (a) immediately give notice of his/her appointment:
 - (i) in the case of a liquidator not appointed by the Registrar, to the Registrar; and
 - (ii) to each claimant and creditor known to the liquidator;
- (b) immediately publish notice of his/her appointment in the Gazette and once a week for two consecutive weeks in a newspaper published or distributed in the district where the cooperative has its registered office and take reasonable steps to give notice of the liquidation in every jurisdiction where the cooperative carries on business;
- (c) place in the notice mentioned in clause (a) and (b) a provision requiring any person:

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- (i) indebted to the cooperative, to render an account and pay to the liquidator at the time and place specified any amount owing;
 - (ii) possessing property of the cooperative, to deliver it to the liquidator at the time and place specified; and
 - (iii) having a claim against the cooperative, whether liquidated, unliquidated, future or contingent, to present particulars of the claim in writing to the liquidator not later than sixty days after the first publication of the notice;
- (d) take into custody and control the property of the cooperative;
 - (e) open and maintain a trust account for the moneys of the cooperative;
 - (f) keep accounts of the moneys of the cooperative received and paid out by him/her;
 - (g) maintain separate lists of the members, creditors and other persons having claims against the cooperative;
 - (h) where at any time he/she determines that the cooperative is unable to pay or adequately provide for the discharge of its obligations, apply to the Registrar/general body as the case may be, for directions; and
 - (i) deliver to the Registrar/general body, periodically as the Registrar/general body may require, financial statements of the cooperative in any form that the liquidator considers proper or that the Registrar/general body may require.

56. Functions and responsibilities of liquidator

- (1) The liquidator may:
 - (a) retain lawyers, accountants, engineers, appraisers and other professional advisors;
 - (b) bring, defend or take part in any civil, criminal or administrative proceeding in the name and on behalf of the cooperative;
 - (c) carry on the business of the cooperative as required for an orderly liquidation;
 - (d) sell by public auction or private sale any property of the cooperative;
 - (e) do all acts and execute any documents in the name and on behalf of the cooperative;
 - (f) borrow money on the security of the property of the cooperative;
 - (g) settle or compromise any claims by or against the cooperative; and
 - (h) do all other things that he/she considers necessary for the liquidation of the cooperative and distribution of its property.
- (2) Where a liquidator has reason to believe that any person has in his/her possession or under his/her control, or has concealed, withheld or misappropriated any property of the cooperative, he/she may apply to the Court for an order requiring that person to appear before the Court at the time and place designated in the order and to be examined.
- (3) Where the examination mentioned in sub-section (2) discloses that a person has concealed, withheld or misappropriated property of

the cooperative, the Court may order that person to restore the property or pay compensation to the liquidator on behalf of the cooperative.

- (4) No liquidator shall purchase, directly or indirectly, any part of the stock-in-trade, debts or assets of the cooperative.

57. Final accounts

- (1) A liquidator shall pay the costs of liquidation out of the property of the cooperative and shall pay or make adequate provision for all claims against the cooperative.
- (2) After paying or making adequate provision for all claims against the cooperative, the liquidator shall apply to the Registrar for approval of his/her final accounts and for permission to distribute in money or in kind the remaining property of the cooperative in accordance with the articles of association.
- (3) Where the Registrar approves the final accounts rendered by a liquidator in pursuance of sub- section (2), he/she shall:
- (a) issue directions with respect to the custody or disposal of the documents and records of the cooperative; and
 - (b) discharge the liquidator.
- (4) Where the Registrar discharges a liquidator in pursuance of sub-section (3), he/she shall dissolve the cooperative, issue a certificate of dissolution and strike off its name from the register of cooperatives.
- (5) The cooperative ceases to exist on the date shown in the certificate of dissolution, which shall not be later than two years after the appointment of the liquidator.

[Comment: As cooperative laws do not place any time limit on liquidation proceedings, and as they permit reversal of liquidation proceedings at any stage of

liquidation, several cooperative societies spend as many years under liquidation as they did under actual functioning. It is for this purpose that this Act requires a stricter time frame for liquidation.]

CHAPTER X

MISCELLANEOUS

58. Exemption from certain taxes, duties and fees

The Government, if in its opinion it is necessary in the public interest so to do, may, by notification in the Gazette, and subject to such restrictions and conditions as may be specified in such notification, reduce or exempt in respect of cooperatives

- (a) the taxes on professions, trades, callings and employments;
- (b) the stamp duty with which, under any law for the time being in force, instruments executed by or on behalf of a cooperative or by an office bearer or director or member and relating to business of such cooperative or any class of such instruments or decisions or orders of the Registrar or arbitral tribunal or liquidator under this Act, are respectively chargeable; or
- (c) any fee payable under the law relating to incorporation for the time being in force or court fees.

59. Exemption from compulsory incorporation of instruments

Nothing in clauses 17(1)(b) and (c) of the Indian Registration Act, 1908 shall apply to -

- (a) any instruments relating to shares in a cooperative notwithstanding that the assets of the cooperative consist in whole or in part of immovable property;

- (b) any debentures issued by any such cooperative and not creating, declaring, assigning, limiting or extinguishing any right, title or interest to or in immovable property except in so far as it entitles the holder to the security afforded by a registered instrument whereby the cooperative has mortgaged, conveyed or otherwise transferred the whole or part of its immovable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures; or
- (c) any endorsement upon or transfer of any other debenture issued by any such cooperative.

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Schedule A
[Sections 2 (9), 2(10), 3 (3)(a) and 4(3)(a)]

Statement of Cooperative Identity

1. **Definition:** A cooperative is an autonomous association of persons united voluntarily to meet their common economic, social and cultural needs and aspirations through a jointly owned and democratically controlled enterprise.
2. **Values:** Cooperatives are based on the values of self-help, self-responsibility, democracy, equality, equity, and solidarity. In the tradition of their founders, cooperative members believe in the ethical values of honesty, openness, social responsibilities, and caring for others.
3. **Principles:** The cooperative principles are guidelines by which cooperatives put their values into practice.

1st Principle: Voluntary and Open Membership

Cooperatives are voluntary organisations, open to all persons able to use their services and willing to accept the responsibilities of membership, without gender, social, racial, political, or religious discrimination.

2nd Principle: Democratic Member Control

Cooperatives are democratic organisations controlled by their members, who actively participate in setting their policies and making decisions. Men and women serving as elected representatives are accountable to membership. In primary cooperatives members have equal voting rights (one member, one vote), and cooperatives at other levels are also organised in a democratic manner.

3rd Principle: Member Economic Participation

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Members contribute equitably to, and democratically control, the capital of their cooperative. At least part of that capital is usually the common property of the cooperative. Members usually receive limited

compensation, if any, on capital subscribed to as a condition of membership. Members allocate surpluses for any of the following purposes: developing their cooperative, possibly by setting up reserves, part of which at least would be indivisible; benefiting members in proportion to their transactions with the cooperative; and supporting other activities approved by the membership.

4th Principle: Autonomy and Independence

Cooperatives are autonomous, self-help organisations controlled by their members. If they enter into agreements with other organisations, including Governments, or raise capital from external sources, they do so on terms that ensure democratic control by their members and maintain their cooperative autonomy.

5th Principle: Education, Training and Information

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

6th Principle: Cooperation among Cooperatives

Cooperatives serve their members most effectively and strengthen the cooperative movement by working through local, national, regional, and international structures.

7th Principle: Concern for Community

Cooperatives work for the sustainable development of their communities through policies approved by their members.

[Comment: Most cooperative laws express commitment to cooperative principles without defining them. The result has been that several

provisions in cooperative laws are violative of the concept of cooperative business. It, therefore, appears necessary to include as a schedule the internationally accepted principles of cooperation.]

**Schedule B
[Section 3 (2)]**

Memorandum of Association

(for cooperatives to be newly incorporated)
(form in which to be submitted)

1. We, the following persons,

S No	Full Name in capital letters	Full postal address in capital letters	Occupation, if the promoters are individuals

desire to incorporate ourselves into a cooperative under Self Reliant Cooperatives Act,

(Please have as many rows above, as there are promoters.)

2. For the purposes of incorporation, Shri/Shrimati at serial number ... above shall be our representative, and all communication may be addressed to him/her, at his/her address.

3. The name of our cooperative shall be

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4. The registered office of our cooperative will be situated in

(Please provide name of village/town/city in the blank space provided)

5. The object of our cooperative shall be

(Please state here only that need common to all members, which the cooperative hopes to fulfil, and for which it is being established – eg increase in returns on dairying/sericulture/paddy farming, etc; or access to quality consumer goods/housing/production inputs at reasonable prices; or access to savings and credit/insurance, etc. Please do not provide here the list of services or activities through which this object will be fulfilled.)

6. We hereby declare that we are committed to the principles of cooperation as provided for in Schedule A of the Act and intend to manage our cooperative in conformity with these..

7. We have enclosed

- (a) the articles of association of the proposed cooperative as adopted by us, the promoters;
- (b) a true copy of the resolution passed by us, at a meeting, adopting the articles of association;
- (c) a declaration from advocate/chartered accountant, Shri/Shrimathi, that all the requirements of this Act have been complied with by us in respect of registration.

8. Signed by us, dated at place

S No	Full Name (preceded by name and designation of representative, where the promoters are cooperatives)	Signature

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Schedule C
[Section 3(3)(d)]

Certificate of Incorporation
(for a cooperative to be newly incorporated)

Registrar of Self Reliant Cooperatives

Government of

Certificate of Incorporation under section 3 of the
..... Self Reliant Cooperatives Act,

I do hereby certify that the

.....

.....

.....

is registered with No together with its
memorandum of association and articles of association.

Given under my hand and seal
this day of

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Registrar of Self Reliant Cooperatives
Government of

**Schedule D
[Section 4(2)]**

Memorandum of Association

**(for cooperatives to be converted from the
..... Cooperative Societies Act, 19....)**
(form in which to be submitted)

1. We, the directors of the board of the,
state hereby, that the general body of our cooperative society desires that
our cooperative society now be incorporated as a cooperative under the
..... Self Reliant Cooperatives Act,

(Please fill the current complete name of the cooperative society.)

2. For the purposes of incorporation, all communication may be addressed
to, at

*(Please fill the first blank with the name and designation of the contact person in the cooperative
society, and the second blank with the full postal address of the cooperative society.)*

3. The name of our cooperative, on conversion to the Self
Reliant Cooperatives Act,, shall remain the same/become
.....

*(Based on whether or not the name will undergo change, please strike out whatever is inapplicable
above.)*

4. The registered office of our cooperative society is situated in
....., and shall remain the same/change to

*(Please provide name of village/town/city in the blank space provided, and strike out that which is
not applicable.)*

5. The object of our cooperative society is, and on
conversion shall be the same/change to

(Please state in the first blank only that need common to all members, for which the cooperative society was established, and in the second blank, please fill change, if any, in this object, upon conversion. Please do not provide here the list of services through which this object will be fulfilled.)

6. We have enclosed

- (a) a true copy of the resolution passed by our general body expressing commitment to the principles of cooperation as provided for in Schedule A of the Act.
- (b) the articles of association of the proposed cooperative as adopted by our general body;
- (c) a true copy of the resolution passed by the general body, adopting the articles of association;
- (d) a true copy of the declaration of the general body stating that our cooperative society is not in receipt of any share capital from the government or any other external source, and does not intend ever to raise share capital from the government or any source other than members;
- (e) a true copy of the latest annual report and audited statement of accounts;
- (f) a true copy of the resolution of the general body along with particulars regarding the wiping off of accumulated losses from various reserves and/or by debiting to the accounts of members as decided at the meeting; (or) a true copy of the resolution of the general body stating that our cooperative society does not have losses, accumulated or current;
- (g) the statement on adjustment of accumulated losses, if any, certified by an auditor as correct;

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(h) a declaration from advocate/chartered accountant, Shri/Shrimathi, that all the requirements of this Act have been complied with by us in respect of registration.

7. Particulars about the general body meeting at which the decision to convert was taken.

Date of general body meeting	No. of members as on date of general body meeting	No. of members present at general body meeting	No. of members who voted for the conversion

8. Signed by us, dated at place

S No	Full name of the Director	Designation	Signature

(Please note that there should be as many rows as there are directors. The signature of the chief executive, too, should be obtained.)

Schedule E
[Section 4(4)]

Certificate of Incorporation
(for cooperative to be converted from
..... Cooperative Societies Act 19....)

Registrar of Self Reliant Cooperatives
Government of

Certificate of Incorporation under section 4 of the
..... Self Reliant Cooperatives Act

I do hereby certify that the

.....
.....

is registered with No..... together with its
memorandum of association and articles of association.

This cooperative is successor to the

.....

(Registration NoDt) registered under the
..... Cooperative Societies Act 19.... whose registration now
stands cancelled, and is now deemed to have assumed all rights and
obligations and assets and liabilities of its predecessor cooperative society.
All acts and transactions of that predecessor cooperative society shall stand
devolved on this cooperative.

Given under my hand and seal

.....*Self Reliant Cooperatives Bill*

thisday of,

Registrar of Self Reliant Cooperatives
Government of

Schedule F
[Section 6(3)]

Subject matter for specific consideration when framing articles of association of a cooperative

1. Identity of the cooperative

- (a) the name of the cooperative, and any shorter name by which the cooperative is to be popularly known
- (b) the village/town/city where the registered office of the cooperative is to be located
- (c) the custody and use of the common seal

2. Aim and services

- (a) the aim of the cooperative explicitly stated as a common central need of the members which the cooperative aims at fulfilling
- (b) core services, and support services to members to fulfil the common central need stated in the aim
- (c) the conditions under which services may be provided to non-members

3. Membership

- (a) form for applying for membership
- (b) form for declaring assets by member upon which arrears due to the cooperative shall be a first charge
- (c) eligibility, ineligibility for obtaining membership
- (d) eligibility, ineligibility for continuing membership
- (e) procedure for obtaining membership
- (f) procedure for withdrawing membership
- (g) procedure for termination of membership
- (h) circumstances under which membership ceases
- (i) procedure for cessation of membership

4. Member rights and obligations

- (a) the rights of members
- (b) manner of fixation of minimum performance expected annually of each member vis-à-vis use of services, financial commitment, participation in meetings, and adherence to articles of association, in order to be eligible to exercise the rights of membership including the right to vote
- (c) the consequences of performing below the minimum level fixed
- (d) the consequences of default in payment of any sum due by a member

5. General body

- (a) the role of the general body, and of the representative general body, if any, and subjects which must be dealt with by the general body, and by the representative general body, if any
- (b) the manner and frequency of convening general meetings, and quorum required
- (c) the quorum necessary for adjourned meetings
- (d) conditions and manner in which arbitral tribunal may convene general meeting
- (e) the minutes of proceedings of general meetings
- (f) the person/s to take responsibility for, and the manner of convening an extraordinary general meeting, and the period within which such meeting ought to be convened, for the purpose of appointing an ad-hoc board

6. Board of directors

- (a) the size and composition of the board of directors
- (b) eligibility, ineligibility for becoming director
- (c) eligibility, ineligibility for retaining directorship
- (d) the procedure for election and removal of directors
- (e) the terms of office of the directors
- (f) the frequency of board meetings

- (g) the manner of convening board meetings, and quorum
- (h) the functions, responsibilities and powers of the board

- (i) the minutes of proceedings of board meetings
- (j) the functions, responsibilities and powers of the directors
- (k) eligibility, ineligibility for being appointed by arbitral tribunal as member of ad hoc board

7. President and other office-bearers

- (a) the election and removal of president and other office-bearers, if any
- (b) the functions, responsibilities and powers of the president and other office-bearers, if any

8. Chief executive and staff

- (a) the person to sue or be sued on behalf of the cooperative
- (b) the manner of appointment and removal of chief executive
- (c) the functions, responsibilities and powers of the chief executive

9. Finances

- (a) the financial year which the cooperative wishes to adopt
- (b) the manner of appointment of auditors and their role
- (c) the manner of appointment of internal auditors and their role
- (d) the nature and amount of equity capital, if any, of the cooperative
- (e) the maximum capital which a single member can hold
- (f) the types and extent of funds to be raised
- (g) the purposes for which the funds raised by the cooperative may be applied
- (h) the equity-debt ratio that the cooperative wishes to maintain at all times, and the maximum external debt that a cooperative wishes to permit itself at any point of time
- (i) procedure for transfer of shares or interest by a member
- (j) procedure for redemption of shares by the cooperative
- (k) procedure for transfer or payment of interest on death of member
- (l) the nature and extent of the liability of the members for the debts contracted by the cooperative

- (m) the nature and extent of the liability of the directors for the debts contracted by the cooperative
- (n) the manner of disposal of funds if under liquidation

- (o) the manner of recovery of dues from members

10. Secondary cooperatives

- (a) the rights, if any, which the cooperative wishes to confer on any secondary cooperative of which it is a member, and the circumstances under which these rights may be exercised by such secondary cooperative
- (b) the procedure for appointing and changing delegates to secondary cooperative

11. Arbitral Tribunal

- (a) the manner of constitution and functioning of Arbitral Tribunal for settlement of disputes
- (b) eligibility, ineligibility for being chosen as arbitrator
- (c) eligibility, ineligibility for being continued as arbitrator
- (d) the manner in and conditions under which the arbitral tribunal may appoint ad hoc board

12. Other matters

- (a) the language in which the internal affairs of the cooperative are to be conducted
- (b) any provisions of transitory nature
- (c) the manner of dissolution of the cooperative
- (d) the manner of amending articles of association.

Notes

Notes

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