

THE JAMMU AND KASHMIR CO-OPERATIVE SOCIETIES RULES, 2001

Cooperative deartment Notification SRO-404 dated 20th September, 2001.— In exercise of the powers conferred by sub-section (1) of section 176 of the Jammu and Kashmir Cooperative Societies Act, 1989 (Act No. X of 1989), the Government hereby appoint 20th September, 2001 as the date on which the Jammu and Kashmir Cooperative Societies Rules, 2001 shall come into force.

The same having been published vide SRO 370 dated 13th October, 2000.

CHAPTER – I

Preliminary

1. *Short title.*— These rules may be called the Jammu and Kashmir Co-operative Societies Rules, 2001.

2. *Definition.*— In these Rules unless the context otherwise requires,—

- (a) The “Act” means the Jammu and Kashmir Co-operative Societies Act, 1989 (Act No. X of 1989).
- (b) “Decree” means any order, decision or award referred to in section 72 & 153 of the Act.
- (c) “Decree holder” means any person holding a decree as defined in clause (b).
- (d) “Defaulter” means any Co-operative Society against which or any person against whom a decree as defined in clause (b) has been obtained.
- (e) “Additional Registrar” means a person or persons not below the rank of Joint Registrar to be appointed by the Government.
- (f) “Person” includes the State Government and a Co-operative Society.
- (g) “Recovery officer” means an officer empowered by the Registrar by general or special order to attach and sell the property of defaulters or to execute any decree by attachment and sale of property.
- (h) “owned funds” means the total paid up share capital and reserve fund

and other funds created out of profits and undistributed profits minus accumulated losses.

- (i) “Paid up share capital” means such portion of the subscribed share capital which is actually paid up.
- (j) “Section” means a section of the Act.
- (k) “Share capital” means subscribed share capital.
- (l) “Working capital” means the total of owned capital plus the borrowed capital.
- (m) Other words and expressions used in these rules but not defined shall have the same meaning as assigned to them in the Act.
- (n) “Schedule” means a form or forms appended to these Rules.
- (o) “Agricultural Society” means a Co-operative Society whose aims and objects are (I) To promote agricultural (II) Activities allied to agriculture.
- (p) “Non-agricultural Society” means a Co-operative Society other than those defined in clause “o”.

CHAPTER – II

Registration of Co-operative Societies and their bye-laws

3. *Registration of a Co-operative Society.* —(1) An application for the registration of a Co-operative Society shall mention the name and address of one of the applicants to whom correspondence may be addressed by the Registrar. In addition to this the application shall be accompanied by a copy of General Body Resolution and a copy of the receipt of share money having been deposited in the concerned Cooperative Bank or its Branch. The Registrar may for the purpose of satisfying himself of the matters specified in the section 6 of the Act call for such further particulars or make such inquiry, as he may deem necessary. He may permit the applicants, if so desired by them, in writing to make such alterations or additions in order to make them in conformity with the provisions of the Act and the rules thereunder.

(2) The Registrar will take a decision regarding the registration of the society within 30 days of the receipt of the application for registration and communication

of the decision thereof accordingly.

(3) Where Registrar is not satisfied with the certain aspects of the formalities required to be completed by the proposed society, he may grant provisional registration for a period of 6 months within which period the society will be bound to complete necessary formalities to the satisfaction of Registrar failing which the provisional registration may be cancelled.

(4) No other society with similar objects and for the same purpose will be registered in the same area of operation.

4. *Communication of order of a refusal to register a society.*— If the Registrar refuses to register a Co-operative Society he shall communicate the order of refusal to the applicant referred to in sub-rule (1) of rule 3 within 30 days.

5. *Subject matter of bye-laws.*—(1) The bye-laws of a Co-operative Society shall provide for the following matters, namely :—

- (a) The name and address of the society.
- (b) The area of its operation.
- (c) The objects of the society.
- (d) The manner in which funds may be raised and the maximum share capital which its single member may hold.
- (e) The nature and extent of the liability of the member.
- (f) The extent to which the society may borrow funds and the rates of interest payable on such funds.
- (g) The entrance and other fees to be collected from members.
- (h) The purposes for which its funds may be applied.
- (I) The terms and conditions of admission of members and their rights and liabilities.
- (j) In the case of credit societies :—
 - (i) the maximum loan admissible to a member ;

- (ii) the maximum rates of interest on loans to a member ;
 - (iii) the conditions on which loans may be granted to a member ;
 - (iv) the procedure for granting extension of time for repayment of loans ;
 - (v) the consequences of default in payment of any sum dues ; and
 - (vi) the circumstances under which a loan may be recalled.
- (k) In the case of non-credit societies the mode of conducting business, purchases, sale stock taking and other allied matters.
 - (l) The mode of holding meetings and issue of notices.
 - (m) The mode of appointment and removal of the committee and other officers, the duties and powers of the committee and such officers and their terms.
 - (n) The disposal of net profits.
 - (o) The preparation and submission of the annual statements specified by the Registrar and the publication of the same.
 - (p) The constitution of an Agricultural Credit Stabilization Fund in case of every Co-operative Society which facilitates the operation of affiliated Agricultural Co-operative Credit Societies and which has received financial assistance from the Government.
 - (q) The mode of custody and investment of the funds and the mode of keeping accounts.
- (2) A society may make bye-laws for the following matters, namely :—
- (a) the circumstances under which withdrawal from membership may be permitted ;
 - (b) the procedure to be followed in cases of withdrawal in eligibility and death of members ;
 - (c) the conditions, if any, under which the transfer of share or interest of a member may be permitted ;

- (d) the method of appropriating payments made by members from whom moneys are due ;
- (e) the method of recruitment, the conditions of service and the authority competent to fix, revise or regulate the scales of pay and allowance of paid officers and employees of the society and the procedure to be followed in the disposal of disciplinary cases against them ;
- (f) the authorisation of an officer or officers to sign documents and to institute and defend suits and other legal proceedings on behalf of the society.

(3) The bye-laws of a Co-operative Society may provide for such matters, not specified in sub-rule (1) and sub-rule (2) as are incidental to the organisation of the society and management of its business.

6. *Procedure regarding amendment of Bye-laws.* —(1) Where a Co-operative Society proposes to amend its bye-laws no such amendment shall be made save by a resolution passed by a two-third majority of the members present and voting at a general meeting of society.

(2) No such resolution shall be valid unless notice of the proposed amendment has been given to the members of the society in accordance with the bye-laws :—

- (a) a copy of the resolution referred to in sub-rule (1) ; and
- (b) a certificate signed by the presiding authority of the meeting that the procedure specified in sub-rule (1) and sub-rule (2) and in the bye-laws has been followed.

(3) Every such application shall be made within fourteen days from the date of the General meeting at which amendment was passed :

Provided that the Registrar may condone the delay, if any for sufficient cause.

(4) When the Registrar registers an amendment of the bye-laws of a Co-operative Society, he shall send a copy thereof to the society, if any, to which the Co-operative Society is affiliated.

(5) Where the Registrar Co-operative Societies refuses to register an amend-

Note.— Sub-rule (4) has been split by making the proviso as part of sub-rule (3) and the rest part as sub-rule (4) for the facility of the readers as the proviso can never by a sub-rule itself
(Author)

ment of the bye-laws of a Co-operative Society, he shall communicate order of refusal together with the reasons thereof to the society within sixty days.

6-A. Change of form and extent of liabilities. —(1) A change in the form and extent of liability of a Co-operative Society shall be effected by a resolution passed at a general meeting of the society.

(2) At least fifteen days clear notice of such meeting shall be given to all the members of the Co-operative Society, which shall be accompanied by a copy of the proposed resolution.

CHAPTER — III

Members of Co-operative Societies and their rights and liabilities

7. Disqualifications for membership. —(1) No person shall be eligible for admission as a member of a Co-operative Society if he—

- (a) is adjudicated as an insolvent ; or
- (b) has been sentenced for any offence other than an offence of political character or any offence not involving moral turpitude and a period of five years has not elapsed from the date of expiry of the sentence ;
- (c) has any other member of his family excepting his/her spouse as a member of that society.

Explanation.— For purposes of this rule, the expression “family” means wife, husband, father, mother, grand mother, grand step-mother, step father, son, daughter, step-daughter, brother, sister, living jointly in one house-hold and having a common kitchen.

(2) If the member become subject to any of the disqualifications specified in sub-rule (1), he shall be deemed to have ceased to be a member from the date when the disqualification was incurred.

8. Prohibition of membership in two Primary Co-operative Societies. — No individual being a member of Co-operative Society shall become a member of another primary Co-operative Society of the same type and having the same objects.

9. Admission of member before the General Body meeting of a Society.— No Co-operative Society shall admit members fourteen days prior to the date of its annual General meeting.

10. *Chairman having second or casting vote.*— In the event of equality of votes, the Chairman of meeting of Co-operative Society shall have a second or casting vote.

11. *Votes by Government nominees.*— Government nominees shall be the Government officers or other professionals well versed in a particular sector of activities. Such nominees shall not contest for the elections to the Co-operative Society. In the case of Apex societies only the senior officers of the level of Registrar or Joint Registrar shall be nominated by the Government.

12. *Disabilities of a defaulting member.*—(1) No member of a Co-operative Society, who is in arrears to the society in respect of any loan taken by him, for such period as is specified in its bye-laws or in any case for a period exceeding three months from the date it is due, shall be appointed to represent the society in any other Co-operative Society and to vote on its behalf in such other Co-operative Society.

(2) Where a member of Co-operative Society so appointed falls in arrears to the society for the period specified in sub-rule (1) subsequent to his appointment, he shall cease to be a representative of the society as from the end of the said period.

13. *Expulsion of a member.*—(1) The committee of a society may, by a resolution passed by three-fourths majority of the members present and voting at a meeting held for the purpose, expel a member, if he—

- (a) intentionally does an act likely to injure the credibility of the society or bring it into disrepute, or
- (b) wilfully deceives the society by false statement, or
- (c) carries on any business which comes or is likely to come into conflict with the business carried on by the society, or
- (d) persistently makes default in payment of his dues or fails to comply with any provisions of the bye-laws :

Provided that no such resolution shall be valid unless the member concerned has been given seven days' notice to expel him and has been given an opportunity to represent his case to the committee.

(2) Notwithstanding anything contained in these rules or the bye-laws of the society, where it appears to the Registrar to be necessary or desirable in the interest

of the society to expel a member from the society he may call upon such member and the society, to explain within a period to be specified by him why such member should not be expelled from the society. If the member or society fails to furnish his or its explanation within the time specified or after considering the explanation, if received, the Registrar may pass an order expelling the member from the society.

(3) No member of a society who has been expelled under sub-rule (1) or sub-rule (2) shall be eligible for re-admission as a member of the society for a period of one year from the date of such expulsion.

(4) Expulsion from membership may involve forfeiture of shares held by the member.

14. *Nomination of an heir.* —(1) A member of a Co-operative Society may nominate a person or persons to whom in the event of his death, his share or interest in the capital of the society shall be transferred to or the value thereof on any other money due to him from the society shall be paid, such member may, from time to time, revoke or vary such nomination.

(2) The number of persons who may be nominated as members shall not exceed the number of shares held by the member.

(3) When a member nominates more than one person in respect of any share held by him, he shall as far as practicable, specify the amount to be paid or transferred to each nominee in terms of a whole share.

(4) A nomination made by a member under this rule shall not be valid and shall not, in the event of the death of the member have effect unless :—

- (a) it is made in writing and is signed by the member in the presence of at least two witnesses ; and
- (b) it is registered in the books of the society kept for the purpose.

15. *Value of the share of a member.* —(1) If a member resigns his membership of Co-operative Society or is removed under rule 13 or dies or otherwise ceases to be member, the sum representing the value of his share or interest in the capital of the society to be paid to him or his nominee, heir or legal representatives as the case may be shall be ascertained in the following manner :—

- (i) In the case of a society with unlimited liabilities it shall be the actual amount received by the society in respect of such share or interest ;

- (ii) In the case of a society with limited liability it shall be the amount arrived at by a valuation based on the financial position of the society as shown in the last audited balance sheet proceeding the resignation, removal or death, as the case may be provided that the amount so ascertained shall not exceed the actual amount received by the society in respect of such share or interest.

(2) In case of dispute between a member or his nominee, heir or legal representative and the society regarding the value of the share or interest in the share capital, the decision of the Registrar thereon shall be final.

CHAPTER — IV

Management of Societies

16. *Election of the members of Committee/Board.* —¹[(1) The election of the members of the committee/Board of any cooperative Society having jurisdiction within a District, shall be held on such date as may be specified by the Registrar and shall be conducted under the control of Assistant Commissioner Revenue within whose jurisdiction registered office of the cooperative Society is situated, by such returning officer and other officers as may be appointed by him/her in this behalf.

(2) The election of members of a committee/Board of any cooperative society having jurisdiction in two or more districts, shall be held on such dates as may be specified by the Registrar and shall be conducted under the control of Deputy Commissioner of the District in which the registered office of the cooperative society is situated by such Returning officer and other officers as may be appointed by him/her in this behalf.]

(3) The voting at elections held under sub-rules (1) and (2) shall be by secret ballot.

(4) No elections shall be called in question except by an election petition presented in accordance with the provisions of Act.

(5) Any dispute arising out of an election held under sub-rules (1) and (2) shall be referred for decision to the Registrar who shall decide it himself.

(6) The reference of the dispute under sub-rule (5) may be made by any aggrieved party by submitting an election petition to the Registrar, within 30 days from the date of declaration of the result of the election.

1. Sub-rules (1) and (2) of rule 16 substituted by SRO-236 of 2013 dated 25.04.2013. (For earlier amendment see SRO-01 of 2005 dated 04.01.2005.)

(7) The decision of the Registrar shall be final.

(8) The election of representatives of a society or a higher level society shall be made by the committee of the society by a majority vote in the manner prescribed. In case of the tie, the Chairman shall have the casting vote.

17. *Election of members of committee by General Body.* —(1) A Co-operative Society may for the purpose of election of members to its committee divide its membership into different groups on a territorial or any other basis.

(2) The bye-laws of such a society may specify the number or proportion of the members of the committee who may be elected to represent each such groups on the committee and may specify further that such representatives may be elected:—

- (a) by all the members of the society ; or
- (b) by only that particular groups of members of the society to which such representatives belong.

18.¹[(a) The Registrar shall specify and communicate to the Assistant Commissioner in the case of societies to which the provisions of sub-rule (1) of rule 16 apply or to the Deputy Commissioner in the case of societies mentioned in sub-rule (2) of rule 16, as the case may be, the date on which the election of the members of the committee/Board of the cooperative society is to held at least two months in advance.

(b) The Assistant Commissioner or the Deputy Commissioner as the case may be shall, on receipt of information under clause (a) fix the time and place for holding the election on the date specified by the Registrar and also appoint the Returning Officer and other officers to assist the Returning Officer in conducting the elections.

(c) The Deputy Commissioner/Assistant Commissioner, Revenue, shall get ballot papers printed at the expense of the concerned Cooperative Society and cause them to be placed in the custody of the Returning Officer.

(d) On the requisition of the Deputy Commissioner/Assistant Commissioner, the Committee/Board or the Administrators in office, as the case may be, shall, after giving fifteen days clear notice to the members, call the General body meeting of the Cooperative Society or Societies on the date specified by the Registrar and at the time and place fixed by Deputy Commissioner/Assistant Commissioner.]

1. Sub-clauses (a), (b), (c) and (d) added by SRO-236 of 2013 dated 25.04.2013. (For earlier amendment see SRO-01 dated 04.01.2005 whereby the said sub-clauses were omitted).

(e) The notice of the General meeting shall be sent to the members by any of the following modes, namely :—

- (i) by post under certificate of posting ;
- (ii) by circulation among members ;
- (iii) notice of the General meeting and the list of share holders eligible to vote shall also be affixed on the notice board of the society or the branches of the society, if any.

(f) The ¹[Deputy Commissioner/Assistant Commissioner] shall by order specify:—

- (i) the number of vacancies to be filled up by election ;
- (ii) the area of the constituency, if any, from which the members are to be elected ;
- (iii) the date on which, the place at which and the hours between the polling will take place ; and
- (iv) the date, time and place at which the nomination papers will be received, the last date of filling of nomination papers, the date and time place of scrutiny of nomination papers and last date of withdrawal of candidature.

(ff) The committee or the Administrators in office shall furnish to the returning officer who are ineligible for being re-elected or re-appointed as officers of the society under ²[sub-rule (1) (c) of rule 25] at least ten days before the date fixed for election.

(fff) On receipt of the information under sub-rule (ff) if the Returning Officer finds that the number of ineligible officers exceeds half the total number of officers of the society, he shall determine by lots, in the presence of the officers of the society or their authorised representatives, at least one week before the date fixed for election that who amongst the ineligible officers should be debarred from seeking re-election and re-appointment so that the total number of ineligible officers does not exceed half the total number of officers of the society.

1. Substituted for “Returning Officer” by SRO-236 of 2013 dated 25.04.2013.

2. Inserted *ibid.*(For earlier amendment see SRO-22 of 2007 dated 23.01.2007.

(ffff) For drawing lots as provided in sub-rule (fff) a closed container with an opening through which only an arm can pass shall be used and address of each ineligible officer shall be written by the Returning Officer, in presence of the officers of the society, or their authorised representative, on separate piece of paper of the same size and colour. These shall be folded into equal size in a manner that the name written on it does not remain visible and shall be dropped in the container one by one by the Returning Officer. The container then shall be shaken in a way the chits in it get intermingled. Thereafter, the Returning Officer shall draw out such number of chits in it get intermingled. Thereafter, the Returning Officer shall draw out such number of chits one after another, from the container which makes their number equal to half the total number of officers of society. Names of the officers so drawn out shall be written on a sheet of paper by the Returning Officer and they shall be declared ineligible for seeking re-election or re-appointment as officers of the society. The Returning Officer will send the list of ineligible candidates to the society on the same day.

(g) The nomination of the candidates for election shall be made in Form 'A', the Returning Officer shall decide the objections, if any, which may be made at the time of any nomination after making such summary enquiry as he thinks necessary and announce the name or names of the eligible candidate or candidate so nominated on the same day. In the case of rejection of nomination paper, the Returning Officer shall record the reasons.

(h) If for any area or constituency for which election is to be held, the number of candidates in respect of whom valid nominations have been made does not exceed the number of candidates to be elected for that area or constituency, the candidates for whom valid nominations have been made shall be deemed to have elected for the area or constituency, as the case may be, and the Returning Officer shall make a declaration to that effect.

(i) If the number of candidates for the area or constituency exceeds the number of candidates to be elected the Returning Officer shall arrange for taking a poll.

(j) The ballot paper shall contain the names of the candidates and the seal of the society.

(k) The member shall make the mark on the ballot paper issued to him against the name or names of the candidate for whom he desires to vote and put the ballot paper in the ballot box.

(l) If, owing to blindness or other physical infirmity or illiteracy, a member is unable to mark the ballot paper, the Returning Officer shall ascertain from the candidate or candidates in whose favour he desires to vote and make the mark on

his behalf on the ballot paper.

(m) As soon as all the members present have recorded their votes, the Returning Officer shall count the votes and announce the results of election with the number of votes secured by each.

(n) (1) A ballot paper shall be rejected :—

- (i) if it bears any mark by which the member who voted can be identified ;
or
- (ii) if it does not bear the seal of the returning officer ;
- (iii) if the mark indicating the vote thereon is placed in such a manner as to make it doubtful to which candidate the vote has been cast.

(2) The authority competent to reject a ballot paper shall be Returning Officer.

(o) The proceedings of the meeting with the results of election shall be recorded in the minute book of the society and attested by the Returning Officer.

(p) The Returning Officer shall take custody of the ballot papers and shall preserve them for three months from the date of the poll. The ballot papers and other records relating to the election shall be secured in a container which shall be affixed with a seal of the Returning Officer and of the candidates who desire to affix their seal.

The ballot papers shall be destroyed after the said period of three months, if no dispute relating to or in connection is these with referred to the ¹[Deputy Commissioner of the District].

19. *Postponement of election in case of emergencies.* —(a) If at an election the proceedings are interrupted or in any way disturbed and if in the opinion of the Returning Officer elections cannot be held fairly, he may adjourn the meeting and report the circumstances to the ²[Assistant Commissioner/Deputy Commissioner].

(b) Where an election has been postponed under sub-rule (a), the Returning Officer shall with the previous approval of the ²[Assistant Commissioner/Deputy Commissioner] fix a new date for purpose of election and the provision of these rules shall *mutatis mutandis* apply to such election.

1. Substituted for “Registrar who will act as arbitrator/or appoint an Arbitrator” by SRO-236 of 2013 dated 25.04.2013.

2. Substituted for “Deputy Registrar/Joint Registrar/Additional Registrar/Registrar” *ibid*.

20. *Election expenses.* —(a) A society with a paid up capital of rupees ten thousand or less shall not incur expenditure of more than ¹[five hundred] rupees of election.

(b) A society with a paid up share capital of more than rupees ten thousand but not exceeding rupees one lakh shall not incur more than rupees ²[one thousand] on election.

(c) A society with a paid up share capital of more than rupees one lakh shall not incur expenditure of more than rupees ³[two thousand] on election.

21. (a) Notwithstanding anything contained in the bye-laws of any society the election of members of the committee of every primary agricultural society shall be held after every three years in the manner indicated herein after :

Provided that the election of members of the committee of such primary societies whose election has already become due on the date of coming into force of this rule shall be conducted within three months of the said date in accordance with the provision of this rule.

⁴[(b) The Assistant Registrar Cooperative Societies having jurisdiction, shall in writing communicate at least two months in advance, to the committee/Board or Administrator, as the case may be, the date on which election of members of the committee/Board of the Cooperative Society is due to be held].

⁵[(c) Within seven days of the communication referred to in clause (b) a list of members of the Cooperative Society entitled to vote shall be prepared by the Assistant Registrar and authenticated under his signatures and official seal. A copy of this list shall be forwarded to the committee/Board/Administrator by the Assistant Registrar within two days of its preparation. The list so prepared shall constitute the draft electoral roll of the Cooperative Society].

(d) ⁶[On receipt of draft electoral roll from the Assistant Registrar, the Committee/Board or the Administrator, as the case may be, shall give not less than 15 days prior notice to the members of the Cooperative Society informing them of the aforesaid election and also of the fact that a general body meeting shall be held on a day to be fixed in this behalf for holding election].

1. Substituted for “two hundred” by SRO-236 dated 25.4.2013.

2. Substituted *ibid* for “four hundred”.

3. Substituted *ibid* for “one thousand”.

4. Clause (b) of rule 21 substituted *ibid*.

5. Clause (c) of rule 21 substituted *ibid*.

6. First para of clause (d) substituted *ibid*.

The notice shall be in form 'B' appended to these rules and shall specify :—

- (i) the number of vacancies to be filled by the election ;
- (ii) the place where the draft electoral roll can be examined and the last date upto which and the officer before whom objection to the entries therein may be filed, such date being not earlier than 15 days from the date of issue of the notice ;
- (iii) the date on which objections, if any, to the draft electoral roll shall be examined and disposed of ;
- (iv) the date, time and place upto and at which the nomination papers shall be received ;
- (v) the date, time and place of scrutiny of nomination papers and the name of the officer who shall make scrutiny ;
- (vi) the last date of withdrawal of candidatures ;
- (vii) the date, time and place at which the General Body meeting shall be held and the hours between which the polling shall take place, such date being not earlier than 30 days of issue of the notice.

A copy of the notice shall also be sent to the Assistant Registrar for record.

(e) The notice mentioned in clause (d) shall be given in the following manner :—

- (i) by post under certificate of posting ;
- (ii) by affixing a copy thereof on the notice board outside the registered office of the society and also at conspicuous places in the area of operation of the society ; and
- (iii) the beat of drum in the area of the operation of the society.

¹[(f) Sufficient copies of draft electoral roll shall be obtained by the Committee/ Board/Administrator. A copy each shall be kept open for public inspection at the registered office of the Cooperative Society and at the Panchyat Ghars located in the area of operation of the Cooperative Society].

1. Clause (f) substituted by SRO-236 dated 25.4.2013.

¹[(g) The objections to draft electoral roll shall be received by Committee/Administrator with a copy to Assistant Registrar for information. The Committee/Administrator shall be assisted by Assistant Registrar for scrutinising and disposing of the same :]

Provided that no entry shall be deleted from the draft roll nor shall any modifications be made therein unless the person affected thereby is given an opportunity of being heard.

Objections to the draft electoral roll shall be disposed of within two days from the date fixed for receipt thereof.

(h) The orders made on the objections filed shall be incorporated in the draft electoral roll under the signature of the ²[³{Assistant Registrar} and the electoral roll shall be countersigned by Assistant Registrar]. The rolls so amended shall constitute the final electoral roll of the society.

(i) A nomination paper shall be rejected if the person applying for nomination is ineligible for being elected as a member of the committee under the provisions of the Act or the rules made thereunder or the bye-laws of the society, notwithstanding that no objection is taken to his nomination by any one.

⁴[(j) The candidates whose nomination papers are found to be valid may withdraw their names within a period of two days from the date of scrutiny by addressing a communication in form 'C' appended to these rules to the ³[Assistant Registrar] with a copy to the ⁵[Committee/Administrator].]

(k) On the fixed date the General Body meeting shall be presided over by a member of the society who shall be elected on the spot by a majority vote to act as Chairman of the meeting :

Provided that no person shall be eligible to act as Chairman if he suffers from any of the disqualifications provided under the Co-operative Law ⁶[and Assistant registrar shall be representative of the Government who will act as enabler/facilitator only].

The Chairman shall act as the Returning Officer. The ⁷[Secretary of the Co-operative Society] having jurisdiction shall function as the *Ex-Officio* Secretary of the General Body Meeting.

1. Recast by SRO-1 dated 04.01.2005.

2. Substituted for "Assistant registrar" *ibid*.

3. Substituted for "Committee/Administrator" by SRO-236 dated 25.4.2013.

4. Recast vide SRO-01 dated 04.01.2005.

5. Substituted for "Assistant Registrar" by SRO-236 dated 25.04.2013.

6. Inserted by SRO-01 dated 04.01.2005.

7. Substituted *ibid* for "Assistant Registrar".

¹[(l) Before the election is conducted, the Assistant Registrar having jurisdiction, shall read out in the General Body Meeting the names of the persons whose nomination papers are found to be valid and who have not withdrawn their candidatures and are eligible to be elected to the Committee/Board of the Cooperative Society.]

(m) The proceedings of the General Body with the results of the election shall be recorded in the minute book of the society and attested by the Returning Officer and the ²[Assistant Registrar (*Ex-Officio* Secretary)] immediately after the conclusion of the elections and the announcement of the results.

The counting of votes shall take place immediately after the votes are cast in presence of the members present.

(n) For matters not specifically mentioned in this rule the provisions of clauses (g), (h), (i), (j), (k), (l), (m), (n) and (p) of rule 18 shall *mutatis mutandis* apply.

(o) If at an election the proceeding are interrupted or in any way disturbed and if in the opinion of the Returning Officer election cannot be held fairly, the General Body meeting be adjourned and the elections postponed.

(p) When an election has been postponed, the Chairman shall with the previous information to the Assistant Registrar fix a new date for the purpose of holding the elections and the provision of this rule shall *mutatis mutandis* apply to such elections.

(q) Any dispute arising out or in connection with the elections held under this rule shall be disposed of in the manner laid down for determination of the disputes arising out of or pertaining to elections under rule 16 of the Co-operative Societies Rules of 2000.

22. *Procedure for the election of representatives of a Society to other society or a higher level society.* —(1) Notices of a meeting of the committee to elect a representative shall be given to all members at least ten days before such election.

(2) The notice shall be sent to the members of the Managing Committee by post under certificate of posting. In addition the notice of such election meeting shall also be affixed on the notice board of the society or the branches of the society, if any :

Provided that in primary society notice shall be given by the circulation amongst the members, instead of by post under certificate of posting.

1. Clause (l) substituted by SRO-236 of 2013 dated 25.04.2013.

2. Substituted *ibid* for “Secretary Cooperative Societies”.

(3) The election in a primary society shall only be held in the presence of the Co-operative Supervisor having jurisdiction over that society; notice of the election meeting shall be sent at least ten days in advance to the Supervisor.

(4) For a Marketing Society the election would be conducted in the presence of the Assistant Registrar having jurisdiction.

(5) The Chairman or President of the society shall invite nominations in writing at the meeting itself. The nominations could be duly seconded. Thereafter voting, if necessary would be by show of hands.

(6) The results of the election would be declared immediately after the voting in the presence of the members and recorded in the minute book. The representative of the Co-operative Department present at the election shall sign the results so recorded.

23. Procedure for filling up vacancy in the Board/Committee of the Co-operative society. — Any interim vacancy caused in the Board/Committee of a Co-operative Society arising due to death, resignation, expulsion or incurring any of the disqualifications as laid down in the Act/Rules/Bye-laws may be filled by Co-option by the Board/Committee of that society from the constituency to which the Ex-member belonged. '[x x x x]'.
 1. Words "In case the number of vacancies do not exceed fifty percent the vacancies can be filled by Co-option" omitted by SRO-236 dated 25.04.2013.

24. Remuneration payable to new committee or Administrator. —(1) The remuneration payable to a committee or Administrators appointed under section 30 shall be such as the Registrar may from time to time determine.

(2) The amount of such remuneration and the other costs, if any, incurred in relation to the management of the Co-operative Society by the committee or the Administrators shall be payable from the funds of the society.

25. Disqualification for membership/appointment/election of committee. — (1) No person shall be eligible for appointment/election as a member of the committee of Co-operative Society, if,—

(a) he is in default to the society in respect of any loan taken by him, for such period as is specified in the bye-laws of the society, or in any case for a period exceeding three months ;

(b) he has directly or indirectly, any interest in any subsisting contract made with the society or in any property sold or purchased by the

1. Words "In case the number of vacancies do not exceed fifty percent the vacancies can be filled by Co-option" omitted by SRO-236 dated 25.04.2013.

society or in any other transaction of the society, except in an investment made or in any loan taken from the society ;

- (c) no person other than the *[State Government] should be member of the committee of more than two apex or central societies ;
- (d) no person who is a money lender or a shopkeeper whose interests conflict or are likely to conflict with the objects of the society and carries his business or trade within the area of operation of the society shall be eligible for election as a member of the committee or an officer thereof ;
- (e) subject to the provisions of this rule no person shall be or shall continue to be an office bearer of any society for a consecutive period of more than 3 years :

Provided that a person who has held the office of any society for 3 years shall not be eligible for being re-elected or re-appointed as an office bearer until a period of 3 year has elapsed from the date of vacating his office as such officer :

Provided that where in a society the number of office bearers not eligible for re-election or re-appointment under provision to sub-rule (e) exceeds half the total number of office bearers of the society, the number of such office bearers who shall be ineligible for re-election or re-appointment shall be equal to only half the total number of office bearers of the society. The names of such ineligible office bearers shall be determined by lots by such authority and in such manner as may be prescribed :

Provided further that any person holding the office of president, Vice-President, Chairman, Vice-Chairman, Secretary or Assistant Secretary shall in no case be eligible for being re-elected or re-appointed to any of these offices until a period of 3 years has elapsed from the date of such election or nomination.

Explanation.— For purposes of clause (e) :—

- (i) If any person resigns his office as an office bearer or member within 12 months prior to the expiry of the consecutive period of 3 years in the office he shall be deemed to have completed the said period of 3 years.

* Now Union territory Government.

- (ii) The expression “person” shall not include the Government or a Co-operative Society.
- (iii) The expression “office bearer” shall not include a whole time paid employee of the society.
- (f) Notwithstanding anything contained in any law for the time being in force a person shall be disqualified for appointment as or for being office bearer of the society if he is a member of the committee of another society of the same type or of two societies of different types :

Provided that nothing in this clause shall be deemed to disqualify a member of the committee of a (primary) society for appointment as or for being a member of either two central societies of different types and one (Apex Society) or of one Central Society and two Apex societies :

Provided further that no person shall be the President, Vice-President, Chairman, Vice-Chairman, Secretary or Assistant Secretary of more than one society at a time.

- (g) In the case of societies which gives loans to members for purchasing machinery implements, equipments, commodities or other goods no member, whose near relation is dealer in such goods or is a Director of the company or a partner of a firm carrying one business in such goods shall be eligible for being elected or appointed as a member of the committee of such society.
- (h) (i) No person shall be eligible for election or appointment as an office bearer of the Co-operative Society or as a representative of a Co-operative Society in any other Co-operative Society or to vote at a meeting held for the purpose of electing the members of the Managing Committee of a society, if he is :—
 - (a) in arrears to any society in respect of any loan taken by him, for a period exceeding three months ; or
 - (b) found guilty of embezzlement or misappropriating of funds or stocks of any Co-operative Society.
- (ii) Where a person while being an office bearer of Co-operative Society incurs any of the disqualifications specified in clauses (h), (i) he shall forthwith cease to be an office bearer of such society.

Explanation .— For the purpose of this clause the expression “office bearer” shall include Storekeeper and paid Secretary of the Co-operative Society.

- (i) He is a member of any Panchyat, Institution, other local bodies, Legislative Assembly, *[Council] and Parliament shall not be eligible to contest the election of any “office”/“officer bearer” of the society.
- (j) He is concerned or participates in the profits or any contract with the society.
- (k) He has been convicted for an offence involving moral turpitude.
- (l) He holds any office or place of profit under the society except the full-time paid employee on the Board/Committee in ex-officio capacity.
- (m) He has been a member of the society for less than twelve months immediately proceeding the date of election or appointment.
- (n) He has taken loan or goods on credit from the society or is otherwise indebted to the society and has defaulted after receipt of due notice.
- (o) He is a person against whom any amount due under a decree, decision or order is pending recovery under the Act.
- (p) He is retained or employed as a legal practitioner on behalf of or against the society.
- (q) He has been convicted for any offence under the Act.
- (r) If he abstains from more than three consecutive meetings of the Board/Committee of Management.
- (s) The society represented by him is classified in the audit below “C” category.
- (t) His family member is a paid employee of the society ; and
- (u) He has not fulfilled all the obligations laid down in the Act, Rules and Bye-laws.

* Due to abolition of the J&K Legislative Council the word “Council” has become redundant.

(2) A member of the committee of a Co-operative Society shall cease to hold his office as such if he incurs any of the classifications mentioned in the sub-rule (1) :

Provided further that if the General Body meeting of a Co-operative Society is not convened by the Board/Committee in time, the entire Board/Committee will incur disqualification in terms of sub-rule (1) of this rule, and arrangements for holding elections of the Board/Committee in such an event shall be made by the Registrar in accordance with the provisions of the Act, Rules and Bye-laws.

(3) The Chairman or any other office bearer shall cease to hold such office in case a motion of non-confidence is passed at a meeting of the Committee/Board by two-third majority of the total number of committee members who are for the time being entitled to sit and vote at any meeting of the Committee/Board against the officer or such Chairman, or any office bearer, as the case may be.

The requisition for such special meeting shall be signed by not less than one-third of the total number of members of the committee who are for the time being entitled to sit and vote at any meeting of the committee and shall be delivered to Registrar.

26. Officers and employees of Co-operative Societies. —(1) No Co-operative Society shall appoint any person as its paid officer or employee in any category of service, unless he possesses the qualification and furnishes the security as specified by the Registrar from time to time for such category of service in society, or for class of societies to which it belongs.

27. Prohibition against being interested in contracts etc. —(1) No officer of Co-operative Society shall have an interest, directly or indirectly otherwise than as such officer :—

- (a) in any contract made with the society ; or
- (b) in any property sold or purchased by the society ; or
- (c) in any other transaction of the society except as investment made or as loan taken from the society or the provision of resident accommodation by the society to any paid employees of the society.

(2) No officer of a Co-operative Society shall purchase, directly or indirectly, any property of a member of the society said for the recovery of his dues to the society.

CHAPTER — V

Properties and Funds of Co-operative Societies

28. *Co-operative Education Fund*.— Every Co-operative Society shall contribute such amount not exceeding five percent, as may be directed by the Registrar from time to time out of its net profits of the year to the Co-operative Education Fund to be administered by the State Co-operative Union, or if there is no such union, by a committee appointed by the Registrar. The contribution payable by a society shall be charge on funds of the society and shall be recoverable in the manner provided in section 53. The State Co-operative Union or the committee shall prepare regulations with the approval of the Registrar for the stabilization and administration of the Fund. Such regulations shall among other things provided for the contribution to the All India Co-operative Union.

29. *Disposal of unappropriated profits*.— Any profits not appropriated in the manner specified in the Act, the Rules and the Bye-laws shall forthwith be credited by a Co-operative Society to its reserve fund.

30. *Investment of Funds* . —(1) A Co-operative Society may with previous sanction of the Registrar, invest the whole or any portion of its funds in the purchase of lease of land or in the acquisition, construction or renewal of any building that may be necessary to conduct its business. The amount of the funds so invested shall be recouped on such terms as may be determined in each case by the Registrar.

(2) The provision of sub-rule (1) shall not apply :—

(a) to immovable property purchased :—

- (i) by a Co-operative Society at a sale held in execution of a decree obtained by it, for the recovery of any sum due to it, or
- (ii) by a financing bank at a sale held in execution of a decree obtained by a Co-operative Society financed by it, for the recovery of any sum due to such society or at a sale brought about by the liquidator of such society.

(b) to the purchase or lease of lands or purchase, construction or renewal of buildings by a Co-operative Society whose objections according to its bye-laws include such purchase, lease, construction or renewal.

(3) No recoupment of the amount invested under this rule shall be necessary when the investment is made :—

- (a) by a Co-operative Society from its building fund constituted out of profits, or
- (b) by a Co-operative Society, other than a credit society in which the Share Capital raised from the member is intended to build up the special kind of business for which it has been registered.

(4) Nothing in this rule shall apply to the investment of the reserve fund of a Co-operative Society and such investment shall be governed by rule 31.

31. *Object and Investment of reserve fund.* —(1) A reserve fund maintained by a Co-operative Society shall belong to the society and is intended to meet unforeseen losses. It shall be indivisible and no member shall have any claim to share in it.

(2) A Co-operative Society shall not invest or deposit its reserve fund except in one or more of the modes mentioned in clause (a) to (d) of section 59 of the Act :

Provided that the Registrar may by general or special order, permit any Co-operative Society or any class of Co-operative Society to invest the reserve fund or a portion thereof in its own business.

(3) No Co-operative Society whose reserve fund has been separately invested or deposited shall draw upon pledge or otherwise employ such fund, except with the sanction of the Registrar previously obtained in writing.

32. *Disposal of reserve fund on winding up of Co-operative Society.* — (1) On the winding up of a Co-operative Society, the reserve fund together with other funds constituted by the society in accordance with its bye-laws, shall be applied by the liquidator to the discharge of such liabilities of the society as may remain undischarged out of the assets of the society in the following order, namely:—

- (a) the debts of the society ;
- (b) the paid up share capitals ; and
- (c) the dividend upon paid up share capital at the rates not exceeding six percent for any period or periods for which dividend has not been paid or such dividend to the maximum rates for any period for which dividend at a rate lower than the maximum specified has been paid. No

dividend shall, however, be paid on share capital if the bye-laws of the society do not provide for payment of dividend.

(2) Any surplus funds remaining after the payment in sub-rule (1) shall be utilized in the following manner and subject to the following conditions, namely :—

- (a) in the case of a Co-operative Society other than a financing Bank:—
 - (i) the surplus funds shall be applied to such object of public utility as may be selected by the General Body of the dissolved society at a meeting and approved by the Registrar. It shall be competent for the liquidator to constitute a trust to carry out such object and to require the General Body to select a trustee or trustees from among the ex-members or other persons. If the General Body does not select a trustee or trustees or if the selection of a trustee or trustees by the General Body is not acceptable to the liquidator, the liquidator may himself appoint a trustee or trustees. The trustee or trustees, as the case may be, shall execute a deed in such form as the Registrar may from time to time specify. A trust created under this sub-rule/clause shall be governed by the provisions of the law relating to the public charitable trusts, for the time being in force ;
 - (ii) if within thirty days after the issue of notice by the liquidator appointed to wind up the affairs of the society the General Body fails to make any selection that is approved by the Registrar, the Registrar may place the surplus funds on deposit or otherwise with a financing bank working in the area in which the society which is being wound up carried on its operations, until a new Co-operative Society with similar object is registered in such area, in which case the funds shall be carried to the reserve funds of such society. If in the opinion of the Registrar, there is no prospect of a new society being formed in such area within a reasonable time, the Registrar shall assign the amount to the bad debt reserve or the reserve fund of the financing bank working in such area ;
- (b) in the case of financing bank the surplus funds shall be assigned by the Registrar to the reserve fund or funds of any other financing banks to which the societies working in the area in which the financing bank which is being wound up carried on its operations, are affiliated. If there is no financing bank working in such area, the Registrar shall invest the amount in the State Co-operative Bank until a new financing

bank is formed in such area, in which case the funds shall be credited to the reserve fund of such financing bank.

33. *Restrictions on borrowings by Co-operative Societies.* —(1) Subject to the provision of sub-rule (2) a Co-operative Society shall not receive deposits and loan, whether from members or non-members which exceed the limit fixed, from time to time, by the Registrar in this behalf for the society or for class of societies to which it belongs.

(2) A Co-operative Society which accepts deposits and loans from members only and has no liability to any person other than the members, may receive such deposits and loans in excess of the limit referred to in sub-rule (1) if the excess amount is deposited in a Co-operative Bank to which it is affiliated or is invested in Government or other securities specified in "[section 20 of the Trusts Acts, Samvat 1977]":

Provided that the amount so deposited or invested or any part thereof, is not withdrawn otherwise or utilised except for the repayment of the deposits accepted in excess of the aforesaid limit.

34. *Transactions with Non-members.*— No Co-operative Society shall enter into any transaction with a person other than a member except for the furtherance of the business of the society and those referred to in sections 61 and 62 unless: —

- (a) the bye-laws of the society permit it to enter into such transaction, and
- (b) previous sanction of the Registrar has been obtained by the society and also permitted by the resulting of society.

35. *Restrictions on grant of loans by a Co-operative Society against its own shares.*— No Co-operative Society shall grant loans or make advance against the society of its own shares.

36. *Maintenance of fluid resources.*— Every Co-operative Society of accepting deposits and granting cash credits shall maintain fluid resources in such form and according to such standards as may be fixed by the Registrar from time to time by general or special order.

CHAPTER — VI

Audit

37. *Subject matter of audit.*— (1) The audit under sub-section (1) of section 64 shall include in addition to the matters specified in sub-section (2) of the said

* Now section 20 of the Indian Trust Act, 1882.

section, the following particulars :—

- (a) a verification of the balance at the credit of the depositors and creditors and of the amount due from the society's debtors of such proportion thereof as may be fixed by the Registrar,
- (b) an examination of the transactions of the member of its committee,
- (c) an examination of the statement of accounts of the society to be prepared by the committee in such form as may be determined by the Registrar,
- (d) a certificate of the profits actually realised, and
- (e) any other matter that may be directed by the Registrar.

38. *Audit fees.* —(1) Every co-operative society shall pay to the Government a fee for the audit of its accounts for each co-operative year in accordance with the scale fixed by the Registrar with the previous approval of the Government, in respect of the class of societies to which it belongs.

(2) All fees payable under this rule shall be recoverable in the manner specified in section 156 of the Act.

(3) The Registrar may subject to such condition as may be laid down by the Government remit the whole or any part of the fees payable under sub-rule (1) by a particular society or by a particular class of societies for any year or other specified period.

(4) All the fees collected under sub-rule (1) shall be credited in the Treasury provided that the Registrar Co-operative Societies may with the approval of the Government retain a part of the amount collected for payments to be made to auditors (other than the said staff of the Department) appointed for audit of important Co-operative Societies like Co-operative Bank, Apex Marketing and State Co-operative Union.

CHAPTER — VII

Reference of Disputes to Arbitration and Settlement of Disputes

39. (1) *Reference of Disputes to arbitration.* —(i) The Registrar/authority may on receipt of the reference of a dispute under sections 70, 71 & 72:—

- (a) decide the dispute himself, or
- (b) transfer it for disposal to any person who has been invested by the Government with powers in that behalf,
- (c) refer it for disposal to an arbitrator.

(ii) The Registrar may withdraw any reference transferred under clause (b) of sub-rule (i) or referred under clause (c) of that sub-rule and decide it himself.

(iii) The Registrar or any other person to whom a dispute is referred for decision under this rule may pending the decision of the dispute make such interlocutory orders, as he may deem necessary in the interests of justice.

(2) *Procedure for arbitration.*— A reference to the Registrar/authority of any dispute under sections 70 (1), 71 (1) and 72 (1) of the Act shall be in writing.

(3) The period of limitation for referring a dispute touching the constitution, management for the business of a Co-operative Society under sub-section (1) of section 70, sub-section (1) of section 71 and sub-section (1) of section 72 of the Act, shall be regulated by the provisions of *[the Jammu and Kashmir Limitation Act, Samvat 1995 (IX of 1995)] as if the dispute were a suit and the Registrar/authority/arbitrator a civil court.

(4) Where on receipt of a reference under sub-rule (1), the Registrar/authority decides under clause (c) of sub-rule (1) of Rule 39 to refer it for disposal by arbitrator, the reference shall be made to one arbitrator appointed by the Registrar.

(5) The Registrar/authority/arbitrator deciding the dispute shall record a brief note of the evidence of the parties and witnesses who attend and upon the evidence so recorded and after consideration of any documentary evidence produced by the parties, a decision or award as the case may be, shall be given in accordance with justice, equity and good conscience by such Registrar/authority/arbitrator. The decision or award given shall be reduced in writing. In the absence of any party duly summoned to attend, the dispute may be decided *ex-parte*.

(6) (a) The Registrar/authority/arbitrator shall have power to require the persons referring a dispute under sub-section (1) of section 70, sub-section (1) of section 71 and sub-section (1) of section 72 of the Act to deposit in advance the fee specified by the Registrar/authority/arbitrator for deciding the dispute.

(b) The Registrar/authority/arbitrator deciding a dispute under sections 70, 71 and 72 of the Act and sub-rule (1) of this rule shall have power to order the expenses

* Now Limitation Act, 1963.

incurred in determining such dispute to be paid either out of the funds of the society or by such party or parties to the dispute, as he may think fit.

The Registrar/authority/arbitrator may, in his discretion, remit the whole or any part of the fee collected under clause (a).

40. *Mode of service of summons.*— Mode of service of summons will be as per procedure mentioned in *[J&K Civil Procedure Code] and the procedure laid down in rules of these rules.

CHAPTER — VIII

Winding up and Dissolution of Co-operative Societies

41. *Procedure to be adopted by liquidator.*— Where a liquidator has been appointed under sub-section (1) of section 75 of the Act, the following procedure shall be adopted :—

- (a) The appointment of the liquidator shall be notified by the Registrar in the **[Government Gazette].
- (b) The liquidator shall, as soon as the orders of winding up of the society takes effect, publish by such means as he may think proper a notice requiring all claims against the society the winding up of which has been ordered, to be submitted to him within two months of publication of the notice. All liabilities recorded in the account book of society shall be deemed to see facts to have been duly submitted to him under this clause.
- (c) The liquidator shall after setting the assets and liabilities of the society as they stood on the date on which the order for winding up is made, proceed next to determine the contribution to be made by each of its members, past members, or by the estates or nominees, heirs or legal representatives of the deceased members or by any office bearer or former office bearer to the assets of other society under clauses (b) and (e) of sub-section (2) of section 76 of the Act, should necessity arise, however, he may also make a subsidiary order regarding such contribution and such order shall be enforceable in the same manner as the original order.

* Now Code of Civil Procedure, 1908.

** Now Official Gazette.

- (d) The liquidator shall submit to the Registrar a quarterly report in such form as the Registrar may specify, showing the progress made in the liquidation of the society.
- (e) The liquidator may empower any person, by general or special order in writing to make collections and to grant valid receipts on his behalf.
- (f) All funds in the charge of the liquidator shall be deposited in the Government Treasury or in the Post-Office Saving Bank or in a Co-operative Bank or with such other Bank or persons as may be approved by the Registrar and shall stand in his name.
- (g) The Registrar shall fix the amount of remuneration, if any, to be paid to the liquidator, the remuneration shall be included in the cost of liquidation which shall be paid out of the assets of the society in priority to all other claims.
- (h) The liquidator shall have power to call for meetings of members of the society under liquidation.
- (i) At the conclusion of the liquidation, a General meeting of the society which has wound up shall be called at which the liquidator or any person authorised by him by special or general order in writing in this behalf shall summarize the result of his proceedings and shall take a vote as to the disposal of any surplus funds in the manner prescribed in Rule 32.
- (j) If any liability cannot be discharged by the liquidator owing to the whereabouts of the claims not being known or for any other cause, the amount covered by such undischarged liabilities may be deposited in a Co-operative Bank and shall be available for meeting the claims of the persons concerned.
- (k) A liquidator may at any time, be removed by the Registrar and he shall on such removal be bound to hand over all the property and documents relating to the society under liquidation to such persons as the Registrar may direct.
- (l) The liquidator shall keep such books and accounts as may from time to time be required by the Registrar who may at any time cause such books and accounts to be audited.

- (m) All the books and records of a society whose registration has been cancelled, and the proceedings of liquidation may be destroyed by the Registrar after the expiry of the three years from the completion of the liquidation.

CHAPTER — IX

Housing Societies

42. *Procedure for sanctioning loan.* —(a) All loan applications shall be in such form as may be prescribed by the HOUSEFED and the Housing Society. The procedure for sanction of loan shall be regulated by the terms and conditions prescribed by the HOUSEFED from time to time.

(b) The HOUSEFED and Housing Society shall make loan applications available to the borrowers on payment of the prescribed fee.

(c) The intending borrower after completing all the formalities shall submit the application to the Housing Society, which will consider the same and forward the same to the HOUSEFED for sanction of loan. The Housing Society shall forward each loan application to the HOUSEFED within 30 days from the date of its receipt.

(d) The HOUSEFED shall consider each case for sanction of loan under its bye-laws. In case the loan application is rejected the applicant shall be informed within 30 days from the date of its receipt from the society.

43. *Manner of effecting distraint etc.* —(a) When distraint is to be effected the Board/Committee of the society may apply to the sale officer appointed under section 135 of the Act to arrange the sale of the movable property. The sale officer shall after giving previous notice to the decree holder proceed to the place, where the defaulter resides or the property to be distrained is situated and serve a demand notice upon the defaulter stating therein that the amount as mentioned in the demand notice be paid to the decree holder at once. If the amount due together with the expenses is not paid, the sale officer shall distraint the property of the defaulter immediately, deliver him a list of inventory of the property to be distrained with an intimation of place and hour at which distrained property will be brought to sale. If the defaulter is absent, the sale officer shall serve the demand notice on some adult male member of his family or his authorised agent. When such service cannot be effected, the sale officer shall affix copy of the demand notice at same conspicuous part of his last known place of residence. He shall then proceed to make the distraint and affix a list of the property attached on the last known place of residence of the defaulter endorsing thereon the place where the property may be lodged or kept and intimate him the place, day and time of sale.

(b) After the distraint is made, the sale officer may arrange for the custody of the property attached with the decree holder. If the sale officer requires the decree holder to undertake the custody of the property, the latter shall be bound to do so and any loss incurred owing to his negligence shall be made good by the decree holder. If the attached property is live stock, the decree holder, who is the custodian of the distrained property shall be responsible for providing necessary feed and fodder etc. to the live stock. The sale officer may at the instance of the defaulter or any person claiming any interest in such property leave it in the village or place, where it was attached in the charge of defaulter or any other person, if he enters into an agreement prescribed by the HOUSEFED or the Housing Society with one or more sufficient securities for production of the distrained property when called for.

(c) The distraint shall be made after sunrise and before the sunset.

(d) The value of the distrained property shall be as nearly as possible proportionate to the sum due by the defaulter together with interest and all other expenses incidental to the distraint retention and sale.

(e) If the crop or ungathered products of the land belonging to the defaulter are attached the sale officer may cause them to be sold when harvested and store them in a proper place till the time these are finally sold. In the latter case the expenses of thrashing and storage shall be defrayed by the defaulter.

¹[(f) The procedure adopted for search of the premises shall be as per sub-rule (5) (h) of rule 53.]

(g) The sale officer shall not use the distrained property for his person. He shall provide necessary fodder and feed to the cattle or the live stock and expenses incurred therein, shall be defrayed by the defaulter.

(h) The sale officer on the day previous to and on the day of the sale cause proclamation of the time and place of the intended sale to be made by the beat of drum in the village/town or mohalla in which the defaulter resides and in such other place or places as the sale officer may consider necessary to give due publicity of the sale. The sale of the distrained property will be made after the expiration of 15 days from the services of notice as provided under rule :

Provided that the property seized is subject to speedy and natural decay or the expenses of keeping it in the custody are likely to exceed its value, the sale officer may sell it at any time before the expiry of the said period of 15 days unless the amount due is cleared by the defaulter.

1. Sub-rule (f) of rule 43 recast vide SRO-1 of 2005 dated 04.01.2005.

(i) At the appointed time the property shall be put up in one or more lots as the sale officer may consider advisable and shall be disposed off at the highest bid :

Provided that it shall be open to the sale officer to decline the highest bid where the price offered is unduly low or for any other reasons to be recorded in writing. Where the property is sold for the more than the amount due, the excess amount after deducting the interest and expenses of process, and other incidental charges shall be paid to the defaulter :

Provided further, that the sale officer may adjourn the auction to any other day and hour after recording his reasons for such adjournment or postponement.

(j) The property shall be paid for in cash at the time of sale, or soon thereafter as the officer holding the sale shall determine and the purchaser shall not be permitted to carry away any part of the property unless and until he has paid the full amount. Where the purchaser fails to make the payment in full within the prescribed period shall be resold.

(k) Where prior to the day and time fixed for sale the defaulter or any person acting in his behalf or any person claiming any interest in the property distrained pays the full amount due including interest, and other cost incurred in making the attachment of the property, the sale officer shall cancel the order of distraint and release the property in favour of such persons. The articles of movable property exempted from attachment under section 60 of the "[Code of Civil Procedure, 1977] shall not be attached or put to sale under these rules.

¹[Note:— After the sale has been effected the recovery officer shall grant certificate to this effect which shall not be called in question in any suit or legal proceedings as per rule 53, sub-rule (14) (v) and (vi).]

44. (a) Where the movable property to be attached is salary or allowance or wages of a public servant or a railway company or local authority or a firm or a company, the sale officer, may order that the amount shall be subject to the provisions of section 60 of the "[Code of Civil Procedure 1977 (Act No. X of 1977)] be withheld from such salary or allowance or wages as the said sale officer may direct and upon service of the order, the officer or other person whose duty is to disburse such salary or allowance or wages shall withhold and remit to the sale officer, the amount due in lump sum or in monthly installments, as the case may be.

(b) When the property to be attached consists of the share or interest of the defaulter is movable property belonging to him and other person as co-sharer, the

* Now Code of Civil Procedure, 1908.

1. Added by SRO-1 of 2005 dated 04.01.2005.

attachment shall be made by a notice to the defaulter, prohibiting him from transferring his share or his interest or charging it in any manner.

(c) Where the property to be attached is negotiable instrument either deposited in court or in the custody of public officer, the attachment will be made by actual seizure and the instrument shall be brought to the office of the sale officer for conducting the sale.

(d) Where the property to be attached is a decree for the payment of money or for sale in endorsement of a mortgage or charge, the attachment shall be made if the decree sought to be attached was passed by Registrar or arbitrator appointed under section 72 of the Act.

(e) Where the Registrar or any other authority or arbitrator makes an order under clause (d) he shall on the application of the decree holder proceed to execute the attached decree and apply the net proceeds in satisfaction of the decree sought to be executed.

(f) The holder of decree sought to be executed by the attachment of another decree of the nature specified in clause (d) shall be deemed to be the representative of the holder of the attached decree in any manner for the holder thereof.

(g) Where the property attached in the execution of a decree of the nature referred to in clause (f) the attachment shall be made through a notice by the sale officer to the holder of such decree, prohibiting him from transferring or charging the same in any way.

(h) On the application of the holder of a decree sought to be executed by the attachment of another decree, the sale officer making an order of attachment under this sub-rule shall give notice of such order to the judgement debtor bound by the attached decree and no payment or adjustment of the attached decree shall be made by the judgement debtor in contravention of such order after receipt of the notice thereof.

(i) The immovable property shall not be sold in execution of a decree unless such property has been previously attached :

Provided that where the decree has been obtained on the basis of a mortgage of such property it shall not be necessary to attach it.

45. For the attachment and sale or sale without attachment of immovable property the following conditions shall be observed :—

- (a) The application presented for the sale of immovable property shall contain full description of the immovable property to be sold.
- (b) Upon the receipt of application, the sale officer shall serve a demand notice upon the defaulter showing the amount due including expenses if any, and in case of non payment thereof within the prescribed period, he shall notify the particulars of properties to be attached and sold or to be sold without attachment as the case may be. The sale officer shall serve or cause to be served a copy of the demand notice upon the defaulter or upon some adult male member of his family at his usual place of residence, or upon his authorised agent or if such personal service is not possible, he shall affix a copy thereof on some conspicuous part of the immovable property about to be attached and sold or sold without attachment as the case may be :

Provided that where the sale officer is satisfied that a defaulter with intent to defeat or delay the execution proceedings against him is about to dispose whole or any part of his property, the demand notice issued by the sale officer shall not allow any time to the defaulter for payment of the amount due by him and the property of the defaulter shall be attached forthwith.

- (c) If the defaulter fails to pay the amount specified in the demand notice within the time allowed the sale officer shall proceed to attach and sell or sell without attachment, as the case may be, the immovable property noted in the application for execution in the following manner :—
 - (i) Where attachment is required before the sale, the sale officer shall serve an attachment notice on the defaulter. Where personal service is not possible the fact of attachment may be proclaimed by the beat of drum or other customary mode at some place adjacent to such property and set at such other places as the sale officer may consider necessary to give due publicity to the attachment. The attachment notice shall set forth that unless the amount due with interest and expenses be paid within the date mentioned thereon the property will be sold ;
 - (ii) Proclamation of sale shall be published by affixing a notice in the office of the sale officer and the Tehsil office at least thirty days before the date fixed for the sale and also by the beat of drum in the village or town consecutive days previous to the date of sale and on the day of sale notice shall also be given to the decree holder and the defaulter. The proclamation shall state the time

and place of sale and specify as fairly and accurately as possible,—

- (1) The property to be sold.
 - (2) Any encumbrance to which the property is liable ;
 - (iii) The amount of recovery for which the sale is ordered ; and
 - (iv) Other matters which the sale officer considers essential for a purchase to know in order to judge the nature and value of the property.
- (d) When immovable property is sold under these rules the sale shall be subject to the prior encumbrance on the property, if any. The decree holder shall, when the amount for realization of which the sale is held exceeds Rs. 100/- furnish to the sale officer within such time as may be fixed by him encumbrance certificate from the Registration Department for a period of not less than twelve years prior to the date of attachment of the property sought to be sold. The time for production of encumbrance certificate may be * {extended at the discretion of the sale officer or the recovery officer as the case may be.} The sale shall be by public auction to the highest bidder, provided that it shall be open to the sale officer to decline to accept the highest bid where the price offered appears to be unduly low or for other reasons to be recorded in writing. The sale officer may in his discretion, adjourn the sale to another specified day and hour by recording his reasons for such adjournment. Where the sale adjourned for a longer period than 7 days, a fresh proclamation under clause (e) shall be made. The sale shall be held after expiry of not less than fifteen days calculated from the date on which notice of the proclamation was affixed in the office of the sale officer. The time and place on sale shall be at the place where the property to be sold is located.
- (e) A sum of money equal to 25 percent of the price of the immovable property shall be deposited by the purchaser in the hands of the sale officer at the time of the acceptance of bid and in default of such deposit the property shall forthwith be re-sold :

Provided that where the decree holder is the purchaser and is entitled to set off the purchase money under clause (h) the sale officer shall dispense with the requirement of this rule.

* The words within braces have been added to make the sentence meaningful. The Administrative Department may have a view.(Author/Incharge Codification Branch).

- (f) The remainder of the purchase money and the amount required for the stamp duty for the sale certificate shall be paid within 15 days from the date of sale.
- (g) In default of payment within the period mentioned in the preceding clause the deposit made by the highest bidder including other expenses, if any, shall be forfeited to the decree holder and the defaulting purchaser shall forfeit all claims to the property, or to any part of the deposit sum for which it may subsequently be sold.
- (h) Every re-sale of immovable property in default of payment of the amount mentioned in clause (h) within the period allowed for such payment shall be made after issuing a fresh proclamation in the manner prescribed for conducting the sale.
- (i) Where a decree holder purchases the property the purchase money and the amount due on the decree shall be set off against one another to the satisfaction of the sale officer.
- (j) Where prior to the date fixed for a sale, the defaulter or any person acting on his behalf or any person claiming an interest in the property to be sold tenders payment of the full amount together with interest, and other expenses incurred in bringing the property to sale, including the expenses of attachment if any, the sale officer shall forthwith release the property after cancelling the order of attachment.

46. Where immovable property has been sold by the sale officer any person either owing such property or holding an interest therein by virtue of a title acquired before such sale may apply to have the sale set aside on his depositing the due amount with the sale officer subject to the condition :—

- (a) of payment to the highest bidder a sum equal to 5% of the purchase money, and
- (b) For the payment to the decree holder the amount of arrears specified in the proclamation of sale together with interest thereon and the expenses of attachment if any,—
 - (i) if such payments are made within thirty days from the date of sale, the sale officer shall pass an order setting aside the sale and shall repay to the highest bidder, the purchase money together with 5% additional sum.

- (ii) Provided that if more than one person has made the highest bid the offer of the first depositor to set aside the sale shall be accepted.

47. If any lawful purchaser of immovable property is resisted and prevented by any person in taking over the possession of the property purchased any court of competent jurisdiction on application and production of the certificate of sale shall cause the proper process to be issued for the purpose of putting such purchaser in possession in the same manner as if the immovable property purchased has been decreed to the purchaser by the decision of the court.

48. It shall be lawful for the sale officer to sell the whole or any part of the immovable property of the defaulter in discharge of money due.

49. Every person making payment towards, any amount due for recovery payment of which has been made he shall be issued proper receipt by the sale officer. Such receipt shall state the name of the person making the payment and the subject matter in respect of which the payment is made.

50. (a) Where any claim is preferred to, or any objection is made to the attachment of any property attached under these rules on the grounds that such property is not liable to such attachment the sale officer shall investigate the objections and dispose of the same on merits :

Provide that no such investigation shall be made when the sale officer considers that the claim or objection is frivolous.

(b) Where the property to which the claim or objection relates has been advertised for sale, the sale officer may postpone the sale pending the investigation of the claim or objection.

51. Where a defaulter dies before the decree has been fully satisfied, application under these rules may be made against the legal representatives of the deceased and thereupon all the provisions of these rules shall apply as if such legal representatives were defaulters, where the decree is executed against legal representatives, they shall be liable only to the extent of the property of the deceased which has come to his hands. For the purpose of ascertaining such liability, the sale officer executing the decree may, of his own motion or on the application of the decree holder, compel such legal representatives to produce such accounts as he thinks fit.

52. *Issue of debentures.* —(a) The HOUSEFED may issue debentures for the purpose of raising funds under section 115 of the Act with prior permission of the

Govt., and the trustee. The Registrar, Co-operative Societies will be the sole trustee for which necessary documents will be executed by the HOUSEFED.

(b) The debentures will be of Rs. 500.00 each and the rate of interest will be 10% per annum as specified by the HOUSEFED from time to time with the previous approval of the trustee. The debentures shall be issued for a period of 20 years. For earlier redemption three months advance notice shall be issued.

(c) The Government will stand guarantee for the repayment of the principal and interest on debentures to the extent of rupees one crore. This amount may be increased with the increase of the assets of HOUSEFED.

CHAPTER — X

Execution of Awards, Decrees, Orders and Decisions

53. *Procedure in execution of award etc.*—(1) Any decree holder requiring the provisions of clause (c) of section 153 of the Act to be applied shall apply to the Recovery Officer within whose jurisdiction the defaulter resides or the property of the defaulter is situated.

(2) Every such application shall be made in the form specified by the Registrar and shall be signed by the decree holder may indicate whether he wishes to proceed against the immovable property mortgaged to the decree holder or other immovable property or to secure the attachment of immovable property.

(3) On receipt of such application, the Recovery Officer shall verify the correctness and genuineness of the particulars set forth in the application with the records, if any, in the office of the Registrar and prepare a demand notice in writing in duplicate in the form specified by the Registrar setting forth the name of the defaulter and the amount due and forward it fit to a sale officer.

(4) Unless the decree holder has expressed a desire that proceedings should be taken in a particular order as laid down in sub-rule (2) execution shall ordinary be taken in the following manner :—

- (i) Movable property of the defaulter shall be first proceeded against but this shall not preclude the immovable property being proceeded against simultaneously in case if necessary ;
- (ii) If there is no movable property, or if the sale proceeds of the movable property, or properties attached and sold are insufficient to meet in full the demand of the decree holder, the immovable property mortgaged to

the decree holder or other immovable property belonging to the defaulter may be proceeded against.

(5) In the seizure and sale of movable property the following rules shall be observed :—

- (a) The sale officer shall after giving previous notice to the decree holder, proceed to the village where defaulter resides or the property to be distrained is situated and serve a demand notice upon the defaulter if he is present. If the amount due together with the expenses be not at once paid the sale officer shall make the distress and shall immediately deliver to the defaulter in a list or inventory of the property distrained and an intimation of place and day and hour at which the distrained property will be brought to sale if the amounts due are not previously discharged. If the defaulter is absent the sale officer shall serve the demand notice on some adult member of his family, or on his authorised agent, or when such service cannot be effected shall affix a copy of the demand notice on some conspicuous part of his residence. He shall then proceed to make the distress and shall affix the list of the property attached on the usual place of residence of the defaulter endorsing thereon the place where the property may be lodged or kept and an intimation of the place, day and hour of sale.
- (b) After the distress is made, the sale officer may arrange for the custody of the property attached with the decree holder or otherwise. If the sale officer requires the decree holder to undertake the custody of the property, he shall be bound to do so and also loss incurred owing to his negligence shall be made good by decree holder. If the attached property is livestock, the decree holder shall be responsible for providing the necessary food therefor. The sale officer may at the instance of the defaulter or of any person claiming an interest in such property, leave it in the village or place where it was attached, in the charge of such defaulter or person, if he enters into a bond in the form specified by the Registrar with one or more sufficient sureties for the production of the property when called for.
- (c) The distress shall be made after sunrise and before sunset and not at any other time.
- (d) The distress levied shall not be excessive, that is to say, the property distrained shall be as nearly as possible proportionate to the sum due by the defaulter together with interest and all expenses incidental to the distraint, detention and sale.

- (e) If crops or un-gathered products of the land belonging to the defaulter are attached the sale officer may cause them to be sold when fit for reaping or gathering, or at his option may cause them to be reaped or gathered in due season and stored in proper place until sold. In the later cases, the expenses of reaping or gathering and storing such crops or products shall be defrayed by the owner upon his redeeming the property or from the proceeds of the sale in event of its being sold.
- (f) The sale officer shall not work the bullocks or cattle or make use of the goods or effect distrained, and he shall provide the necessary food for the cattle or livestock, the expenses incurred thereon shall be defrayed by the owner upon his redeeming the property or from proceeds of the sale in the event of its being sold.
- (g) It shall be lawful for the sale officer to force open any stable, cow-house, granary, godown, out-house or other building and he may also enter any dwelling house, the outer door of which may be open and may break the door of any room in such dwelling house for the purpose attaching property belonging to a defaulter and lodged herein, provided always that it shall not be lawful for the officer to break open or enter apartment in such dwelling house appropriated for the Zenana or residence of women except as hereinafter provided.
- (h) Where the sale officer may have reason to suppose that property of a defaulter is lodged within a dwelling house, the outer door of which may be shunt or within any apartments appropriated to women which by custom or usage are considered private, the sale officer represent the fact to the officer in charge of the nearest Police station. On representation the officer in charge of the said station shall send a police officer to the post in the presence of whom the sale officer may force open the other door of such dwelling house, in like manner as he may break open the door of any room within the house except Zenana, the sale officer may also in the presence of a police officer after due notice given for the removal of women within Zenana and after furnishing means for their removal in a suitable manner if they be women of rank who, according to the custom of usage cannot appear in public, enter the Zenana apartment for the purpose of distraining the defaulters property, if any deposited therein, but such property, if found, shall be immediately removed from such apartments after which they shall be kept free to the former occupants.
- (i) The sale officer shall on the day previous to and on the day of sale cause proclamation of the time and place of the intended sale to be

made by beat of drum in the village in which the defaulter resides and in such other place or places as the officer may consider necessary to give due publicity to the sale. No sale shall take place until after expiration of the period of 15 days from the date on which the sale notice has been served or affixed in the manner prescribed in clause (a) :

Provided that where the property seized is subject to speedy and natural decay, or where the expense of keeping it in custody is likely to exceed its value, the sale officer may sell it at any time before the expiry of the said period of 15 days, unless the amount due is sooner paid.

- (j) At the appointed time the property shall be put up in one or more lots, as sale officer may consider advisable, and shall be disposed off to the highest bidder :

Provided that it shall be open to the sale officer to decline to accept the highest bid where the price offered appears to be unduly low or for other reasons. Where the property is sold for more than the amount due, the excess amount, after deducting the interest and the expenses of process and the other charges, shall be paid to the defaulter :

Provided further that the recovery officer or the sale officer may, in his discretion, adjourn the sale to a specified day and hour recording his reasons for such adjournment. Where a sale is so adjourned for a longer period than 7 days, a fresh proclamation under clause (h) shall be made unless the judgement debtor consents to waive it.

- (k) The property sold shall be paid for in cash at the time of sale, or as soon thereafter as the office holding the sale shall appoint, and the purchaser shall not be permitted to carry away any part of the property until, he has paid for it in full; where the purchaser may fail in the payment of purchase money the property shall be resold.
- (l) Where it is proved to the satisfaction of any civil court of competent jurisdiction that any property which has been distrained under these rules has been forcibly or clandestinely removed, by any person the court may order forthwith such property to be restored to the sale officer.
- (m) Where prior to the day fixed for sale, the defaulter or any person acting on this behalf or any person claiming an interest in the property attached, pays the full amount due including interest, batta and other costs incurred in attaching the property, sale officer shall cancel the order of attachment and release the property forthwith.

- (n) The movable properties mentioned as exempt from attachment in the provision to section 60 of the *[Code of Civil Procedure, 1977 (X of 1977)] shall not be liable to attachment of sale under these rules.

(6) Where the movable property to be attached is the salary or allowance or wages of a public officer or a servant of a railway company or local authority or a firm or a company the Recovery Officer may, on receiving a report from the sale officer, order that the amount shall subject to the provisions of section 60 of the *[Code of Civil Procedure, 1977 (X of 1977)] be withheld from such salary or allowance or wages either in one payment or by monthly installments as the said Recovery Officer may direct and upon notice of the order, the officer or other person whose duty it is to disburse such salary or allowance or wages, shall withhold and remit to the sale officer, the amount due under the order or the monthly instalment, as the case may be.

(7) (i) Where the property to be attached consists of the share or interest of the defaulter in movable property belonging to him and another as co-owners, the attachment shall be made by a notice to the defaulter, prohibiting him from transferring the share or interest or charging it in any way.

(ii) Where the property to be attached is a negotiable instrument not deposited in a court, nor in the custody of a public officer, the attachment shall be made by actual seizure and the instrument shall be brought to the office of the Recovery Officer ordering the attachment and be held subject to his further orders.

(iii) Where the property to be attached is in the custody of any court or public officer, the attachment shall be made by a notice to such court or officer, requesting therein that such property and any interest or dividend becoming payable thereon may be held subject to the further orders of the Recovery Officer issuing the notice :

Provided that where such property is in the custody of a court or Recovery Officer of another district, any question of title or property arising between the decree holder and any other person not being the defaulter, claiming to be interested in such property by virtue of any assignment, attachment or otherwise shall be determined by such court or Recovery Officer.

(8) (i) Where the property to be attached is a decree either for the payment of money or for sale in enforcement of a mortgage or charge, the attachment shall be made if the decree sought to be attached was passed by the Registrar, authority or by a person to whom a dispute was transferred by the Registrar under rule 39(1) of these rules or by an arbitrator, by the order of the Registrar.

* Now Code of Civil Procedure, 1908.

(ii) Where the Registrar/authority/arbitrator makes an order under clause (i), he shall on the application of the decree holder who has attached the decree, proceeded to be executed.

(iii) The holder of a decree sought to be executed by the attachment of another decree of the nature specified in clause (i) shall be deemed to be the representative of the holder of the attached decree and to be entitled to execute such attached decree in any manner for the holder thereof.

(iv) Where the property to be attached in execution of a decree is a decree other than a decree of the nature referred to in clause (i), the attachment shall be made by the issue of a notice by the Recovery Officer to the holder or such decree prohibiting him from transferring or charging the same in any way.

(v) The holder of a decree attached under this sub-rule shall give the Recovery Officer executing the decree such information and aid as may reasonably be required. On the application of the holder of a decree sought to be executed by the attachment of another decree the Recovery Officer making an order of an attachment under this sub-rule shall give notice of such order to the judgement debtor bound by the decree attached and no repayment or adjustment of the attached decree made by the judgement debtor in contravention of such order after receipt of notice thereof either through the said Recovery Officer or otherwise shall be recognized so long as the attachment remains in force.

(9) Where the movable property to be attached is,—

- (a) A debt due to the defaulter in question ;
- (b) A share in the capital of a corporation or a deposit invested therein ; or
- (c) Other movable property not in the possession of the defaulter except property deposited in or in the custody of, any civil court,

the attachment shall be made by a written order signed by the Recovery Officer prohibiting :—

- (i) In the case of a debt, the creditor from recovering the debt and the debtor from making payment thereof ;
- (ii) In the case of a share or deposit, the person in whose name the share of the deposit may be standing from transferring the share or deposit or receiving any dividend of interest thereon; and

- (iii) In the case of any other movable property except aforesaid the person in possession of it from giving it over to the defaulter.

A copy of such order shall be sent in the case of the debt to the debtor, in the case of the share of deposit to the proper officer of the corporation and in the case of the other movable property except as aforesaid to the person in possession of such property. As soon as the debt referred to in clause (a) or the deposit referred to in clause (b) mature, the Recovery Officer may direct the person concerned to pay the amount to him. Where the share is not withdrawable the said Recovery Officer shall arrange for its value shall be paid to the said Recovery Officer or to the party referred to in clause (c) the person concerned shall place it in the hands of the said Recovery Officer as it becomes deliverable to the defaulter.

(10) Immovable property shall not be sold in execution of decree unless such property has been previously attached, provided that the decree has been obtained on the basis of a mortgage of such property it shall not be necessary to attach it.

(11) The attachment and sale or sale without attachment of immovable property the following procedure shall be observed :—

- (a) The application presented under sub-rule (3) shall contain a description of the immovable property to be proceeded against, sufficient for its identification and in case such property can be identified by boundaries or numbers in record of settlement of survey, the specification of such boundaries or number in a record of settlement or survey, the specification of such boundaries or numbers and the specification of the defaulters share or interest in such property to the best of the decree holder and so far as he has been able to ascertain it.
- (b) The demand notice issued by the Recovery Officer under sub-rule (3) shall contain the name of the defaulter, the amount due including the expenses if any, and the batta to be paid to the person who shall serve the demand notice, the time allowed for payment, and in the case of non-payment the particulars of the properties to be attached and sold or to be sold without attachment as the case may be. After receiving the demand notice, the sale officer shall serve or cause to be served a copy of the demand notice upon the defaulter or upon some adult male member of his family at his usual place of residence, or upon his authorised agent or if such service is not possible shall affix a copy thereof on some conspicuous part of the immovable property about to be attached and sold or sold without attachment, as the case may be :

Provided that where recovery officer is satisfied that a defaulter with intent to defeat or delay the execution proceeding against him is about to dispose of the whole or any part of his property, the demand notice issued by the recovery officer under sub-rule (3) shall not allow any time to the defaulter for payment of the amount due by him and the property of the defaulter shall be attached forthwith.

- (c) If the defaulter fails to pay the amount specified in the demand notice within the time allowed, the sale officer shall proceed to attach and sell, or sell without attachment, as the case may be, the immovable property noted in the application for execution in the following manner.
- (d) Where attachment is required before the sale, the sale officer shall, if possible, cause a notice of attachment to be served on the defaulter personally. Where personal service is not possible, the notice shall be affixed in some conspicuous part of the defaulter's last known residence, if any. The fact of attachment shall also be proclaimed by beat of drum or other customary mode at some place on or adjacent to such property and at such other places as the recovery officer may consider necessary to give due publicity to the sale. The attachment notice shall set forth that, unless the amount due with interest and expenses be paid within the date therein mentioned, the property will be brought to sale. A copy shall be sent to the decree holder. Where the sale officer so directs, the attachment shall also be notified by public proclamation in the *[Government Gazette].
- (e) Proclamation of sale shall be published by affixing a notice in the office of the recovery officer and the Tehsil Office at least thirty days before the date fixed for the sale and also by beat of drum in the village, on two consecutive days previous to the date of sale and on the day of sale prior to the commencement of sale such proclamation shall where attachment is required before sale, be made after the attachment has been effected. Notice shall also be given to the decree-holder and the defaulter. The proclamation shall state the time and place of sale and specify as fairly and accurately as possible,—
 - (i) the property to be sold ;
 - (ii) any encumbrances to which the property is liable ;
 - (iii) the amount for the recovery of which the sale is ordered ; and

* Now Official Gazette.

- (iv) other matters which the sale officer considers essential for a purchaser to know in order to judge the nature and value of the property.
- (f) When an immovable property is sold under these rules, the sale shall be subject to the prior encumbrances on the property, if any. The decree-holder shall, when the amount for the realization of which the sale is held exceeds Rs 100/-, furnish to the sale officer within such time as may be fixed by him or by the recovery officer an encumbrance certificate from Registration Department for the period of not less than twelve years prior to the date of attachment of the property sought to be sold or in cases falling under the proviso to sub-rule 10, prior to the date of application of execution. The time for production of the encumbrance certificates may be extended at the discretion of the sale officer or the recovery officer as the case may be. The sale shall be by public auction to the highest bidder, provided that it shall be open to the sale officer to decline to accept the highest bid where the prices offered appears to be unduly low or for other reasons and provided also that the recovery officer or the sale officer to decline to accept the highest bid where the price offered appears to be unduly low or for other reasons and provided also that the recovery officer or the sale officer may, in his discretion, adjourn the sale to a specified day and hour recording his reason for such adjournment. While a sale is so adjourned for a longer period than 7 days, a fresh proclamation under clause (e) shall be made unless the judgement debtor consents to waive it. The sale shall be held after the expiry of not less than thirty days, calculated from the date on which notice of the proclamation was affixed in the office of the recovery officer. The time and place of sale shall be the village where the property to be sold is situated or such adjoining prominent place of public resort as may be fixed by the said recovery officer :

Provided that in case where an encumbrance certificate is not obtainable owing to the destruction of the connected records and affidavit from the village Patwari in regard to the encumbrances known to him supported by a certificate from the Registration Department that the encumbrance certificate cannot be granted owing to the destruction of the connected records, shall be accepted in the place, of an encumbrance certificate.

- (g) A sum of money equal to 15 percent of the price of the immovable property shall be deposited by the purchaser in the hands of the sale officer at the time of the purchase, and in default of such deposit, the property shall forthwith be sold :

Provided that where the decree-holder is the purchaser and is entitled to set off the purchase money under clause (k) the sale officer shall dispense with the requirements of the rules.

- (h) The remainder of the purchase money and the amount required for the general stamp for the sale certificate shall be paid within fifteen days from the date of sale :

Provided that the limit for such repayment may be at the discretion of the recovery officer for a period of 10 days from the date of sale :

Provided further that in calculating the amounts to be paid under this clause, the purchaser shall have the advantage of any set off to which he may be entitled under clause (k).

- (i) In default of payment within the period mentioned in the preceding clause the deposit may, if the recovery officer thinks fit after defraying the expenses of the sale be forfeited to the Government and the defaulting purchaser shall forfeit all claims to the property, or to any part of the sum for which it may subsequently be sold.
- (j) Every resale of immovable property in default of payment of the amount mentioned in clause (h) within the period allowed for such payment, shall be made after the issue of a fresh proclamation in the manner and for the period therein before prescribed for the sale.
- (k) Where a decree-holder purchases the property, the purchase money and the amount due on the decree shall be set off against the another and the sale officer shall make entry regarding satisfaction of the decree in whole or in part accordingly.

(12) Where prior to the date fixed for a sale, the defaulter or any person acting on his behalf or any person claiming an interest in the property sought to be sold tenders payment of the full amount due together with interest, batta and other expenses incurred in bringing the property to sale, including the expenses of attachment if any, the sale officer shall forthwith release the property after cancelling where the property has been attached by the order of attachment.

(13) (i) Where immovable property has been sold by the sale officer, any person either owing such property or holding an interest therein by virtue of a title acquired before such sale may apply to have the sale set aside on his depositing with the recovery officer—

- (a) for payment to the purchaser a sum equal to 5 percent of the purchase money ; and
- (b) for payment to the decree-holder the amount of arrears specifying the proclamation of sale as that for the recovery of which the sale was ordered together with interest thereon and expenses of attachment, if any, and sale and other costs due in respect of such amount, less amount which may since the date of such proclamation have been received by the decree-holder.

(ii) If such deposits on application are made within thirty days from the date of sale, the recovery officer shall pass an order setting aside the sale and shall repay to the purchaser the purchase money so far as it has been deposited together with the 5 percent deposited by the applicant :

Provided that if more than one person have made deposit and application under this sub-rule, the application of the first depositor to the officer authorised to set aside the sale shall be accepted.

(iii) If a person applies under sub-rule (14) to set aside the sale of immovable property, he shall not be entitled to make an application under this sub-rule.

(14) (i) At any time within thirty days of the date of the sale of immovable property, the decree-holder or any person entitled to share in a rateable distribution of the assets or whose interests are effected by the sale, may apply to the recovery officer to set aside the sale on the grounds to a material irregularity or mistake or fraud in publishing or conducting it :

Provided that no sale shall be set aside on the grounds of irregularity or fraud unless the said recovery officer is satisfied that the applicant has sustained substantial injury by reason of such irregularity, mistake or fraud.

(ii) If the application be allowed, the said recovery officer shall set aside the sale and may direct a fresh one.

(iii) On the expiry of thirty days, from the date of sale if no application has been made to set aside the sale or if such application has been made and rejected, the said recovery officer shall make an order confirming the sale :

Provided that, if he shall have reason to think that the sale ought to be set aside notwithstanding that no such application has been made or on grounds other than those alleged in any application which has been made and rejected, he may after recording his reasons in writing set aside the sale.

(iv) Whenever the sale of any immovable property is not so confirmed or is set aside the deposit or the purchase money, as the case may be, shall be returned to the purchaser.

(v) After the confirmation of any such sale the said recovery officer shall grant a certificate of *{sale} bearing his seal and signature to the purchaser and such certificate shall state the property sold and name of the purchaser, and it shall be conclusive evidence of the fact of the purchase in all courts and tribunals where it may be necessary to prove it. No proof of the seal or signature of the recovery officer shall be necessary unless the authority before whom it is produced has reason to doubt its genuineness.

(vi) An order made under this sub-rule shall be final and shall not be liable to be questioned in any suit or other legal proceedings.

(15) Where any lawful purchaser of immovable property is resisted and prevented by any person other than a person (not being the defaulter) claiming in good faith to be in possession of the property on his own account from obtaining possession of the immovable property purchased and court of competent jurisdiction on the application, and production of the certificate of sale provided for by sub-rule (14), shall cause the proper process to be issued for the purpose of putting such purchaser in possession, in the same manner as if the immovable property purchased had been decreed to the purchaser by a decision of the Court.

(16) It shall be lawful for the sale officer to sell the whole or any portion of the immovable property of the defaulter in discharge of money due :

Provided always that so far as may be practicable so larger section or portion of immovable property shall be sold that may be sufficient to discharge the amount due with interest and expenses of attachment, if any, and sale.

(17) Where an attachment has been made under these rules any private transfer or delivery of the property attached or of any interest therein and any payment to the defaulter of any debt, dividend or other moneys contrary to such attachment shall be void as against all claims enforceable under the attachment.

Explanation:— For the purpose of this sub-rule, claims enforceable under an attachment include claims for the rateable distribution of assets under sub-rule (24).

* Word within braces inserted by the Author (Incharge Codification Branch, Law Department).

(18) Persons employed in serving notice or in other process under these rules shall be entitled to batta at such rates as may from time to time be fixed by the recovery officer.

(19) Where the cost and charges incurred in connection with attachment and also of movable property or the attachment and sale or sale without attachment of immovable property under this rule, exceeds the amount of the cost deposited by the decree holder under sub-rule (1) such excess shall be deducted from the sale proceeds of the property sold for the moneys paid by the defaulter, as the case may be, and the balance shall be made available to the decree-holder.

(20) Every person making a payment towards, any money due for the recovery of which application has been made under the rules shall be entitled to a receipt for the amount signed by the sale officer or the officer empowered by the recovery officer in that behalf, such receipts shall state the name of the person making the payment and the subject matter in respect of which the payment is made.

(21) (a) Where any claim is preferred to, or any objection is made to the attachment of any property attached under this rule on the ground that such property is not liable to such attachment, the sale officer shall investigate the claim or objection and dispose of it on the merits :

Provided that no such investigation shall be made when the sale officer considers that the claim or objection is frivolous.

(b) Where the property to which the claim or objection relates has been advertised for sale, the sale officer may postpone the sale pending the investigation of the claim or objection.

(c) Where a claim or an objection is preferred, the party against whom an order is made may institute a suit within six months from the date of the order to establish the right which he claims against the property in dispute, but, subject to the outcome of such suit if any, the order shall be conclusive.

(22) (i) Any deficiency of price which may occur on a re-sale held under clause (j) of sub-rule (11) by reason of the purchaser's default and all expenses incurred on such re-sale shall be certified by the sale officer to the recovery officer and shall, at the instance of either decree-holder or the defaulter, be recoverable from the defaulting purchaser under the provisions of this rule. The costs, if any, incidental to such recovery shall also be borne by the defaulting purchaser.

(ii) Where the property is on the re-sale, sold for a higher price than at the first sale the defaulting purchaser at the first sale shall have no claim to the difference or increase.

(23) Where any property has been attached in execution of a decree but by reason of the decree holder's default the recovery officer is unable to proceed further with the application for execution, he shall either dismiss the application or for any sufficient reason adjourn the proceedings to a future date. Upon the dismissal of such application the attachment shall cease.

(24) (a) Where the sale officer attaches or has attached under these rules, any property not in the custody of any court, which is already under attachment made in execution of a decree of any court, such court shall receive and realize such property and shall determine claims thereto and any objections to the attachment thereof :

Provided that where the property is under attachment in the execution of decree of more courts than one, the court which shall receive or realize such property and shall determine any claim thereto and objection to the attachment thereof shall be the court of the highest grade, or where there is no difference in grade between such courts, the court under whose decree the property was first attached.

(b) Where assets are held by the sale officer and before the receipt of such assets demand notices in pursuance of application for execution of decree against the same defaulter have been received from more than one decree-holder and the decree-holders have not obtained satisfaction of their decrees the assets after deducting the costs of realization, shall be rateably distributed by the sale officer among all such decree-holders in the manner provided in section 73 of the * [Code of Civil Procedure, Samvat 1977].

(25) Where a defaulter dies before the decree has been fully satisfied an application under sub-rule (1) may be made against the legal representative of the deceased and thereupon all the provisions of this rule shall save as otherwise provided in this sub-rule apply as if such legal representative was the defaulter. Where the decree is executed against such legal representative he shall be liable only to the extent of the property of the decrees which has come to his hands and has not been duly disposed off and for the purpose of ascertaining such liability, the recovery officer executing the decree may, of his own motion or on the application of the decree-holder, compel such legal representative to produce such accounts as he thinks fit.

* Now Code of Civil Procedure, 1908.

(26) Where in connection with proceedings on an application under section 153 of the Act, any person requires the issue of any process or objects to any process issued or objects to any order passed, he shall pay such fee as may be specified by the Registrar in this behalf.

54. *Mode of making attachment before judgement.* —(1) Attachment of property under section 154 of the Act shall be made by the authority as provided in the rule 53.

(2) Where a claim is preferred to property attached under sub-rule (1) such claim shall be investigated in the manner and by the authority specified in rule 53.

(3) Where a direction is made for the attachment of any property under sub-rule (1), the recovery officer shall order the attachment to be withdrawn :—

- (a) when the party concerned furnishes the security required, together with security for the costs of the attachment ; or
- (b) When the liquidator determines under clause (d) of sub-section (2) of section 76 of the Act that no contribution is payable by the party concerned ; or
- (c) when the Registrar passes an order under sub-section (1) of section 69 that the party concerned need not repay or restore any money or property or contribution or any sum to the assets of the society by way of compensation ; or
- (d) when the dispute referred to in sub-section (1) of sections 70, 71, 72 and rule 39 (1) of these Rules has been decided against the party at whose instance the attachment was made.

(4) Attachment made under sub-rule (1) shall not effect the rights existing prior to the attachment, of persons who are not parties to the proceedings, there shall be no bar on the decree holder for applying for the sale for the property under attachment in execution of such decree.

(5) Where property is under attachment by virtue of the provisions of this rule and a decree is subsequently passed against the persons whose property is attached, it shall not be necessary upon an application for execution of such decrees to apply for re-attachment of the property.

55. *Proceeding for the distraint and sale of property under section 99 and for the sale of mortgaged property under section 100.*— The procedure prescribed

under rule 53 for execution of the decree, shall, to the extent of necessity be applicable in respect of mortgage to bank requiring the provision of section 99 and section 100 to be applied against a defaulter.

56. Procedure for service of summons . —(1) Every summons issued under the Act shall be in writing authenticated by the seal, if any, of the officer who issued it and shall be signed by such officer or by any person authorised by him in writing in that behalf. It shall require the person summoned to appear before the said officer at a given time and place and shall also specify whether his attendance is required for purpose of giving evidence or to produce a document, or for to both the purposes, and any particular document the production of which is required, shall be described in the summons.

(2) Any person summoned to produce a document only shall be deemed to have complied with the summons if he causes such documents to be produced by post or by any other person.

(3) The service of summons under the Act may be effected in any of the following methods :—

- (a) by giving or tendering it to such person ; or
- (b) if such person is not found, by leaving it at his last known place of residence or business or by giving or tendering it to some adult member of his family ; or
- (c) if the address of such person is known to the Registrar or other authorised person, by sending it to him last *{known address} by post registered ; or
- (d) if none of the means aforesaid is available, by affixing it in some conspicuous part of his last known place of residence, abode or business.

(4) Where the serving officer delivers or tenders copy of the summons to the defendant personally or to an agent or other person on his behalf, he shall require the signature of the person to whom the copy is so delivered or tendered to an acknowledgment or service endorsed on the original summons.

(5) The serving officer shall in all cases in which the summons had been served under sub-rule (4) endorse or annex or cause to be endorsed or annexed on or to the original, summons a return stating the time and the manner in which the

* Words within braces inserted by the Author (Incharge Codification Branch, Law Department) for making the clause meaningful. Administrative Department may have a view.

summons was served and the name and address of the person, if any, identifying the person served and witnessing the delivery of tender of the summons.

(6) Where the party to be summoned is a public officer or is the servant of a railway, company or local authority, the officer issuing the summons may, if it appears that the summons may be most conveniently so served, send it by registered post prepared for acknowledgment for service or for service on the party to be summoned to the head of the office in which he is employed together with a copy to be served/endorsed on the original summons.

CHAPTER — XI

Agriculture and Rural Development Banks

57. Procedure for submission and consideration of application for loans from an Agriculture and Rural Development Bank. —(1) All applications for loan from an Agriculture and Rural Development Bank shall be made in the form prescribed by the State Agriculture and Rural Development Bank with the approval of the Registrar. The form shall among other things contain a list of documents, which are required to be submitted for purposes of dealing with the applicant.

(2) Every Agriculture and Rural Development Bank shall keep sufficient stock of printed copies of the forms of loan application and shall issue them to the intending borrower on payment of such fee as may be specified from time to time by the State Agriculture and Rural Development Bank with the approval of the Registrar.

(3) Every Agriculture and Rural Development Bank shall specify from time to time, the name, designation and address of the officer (hereinafter in this chapter referred to as “the receiving officer”) who shall receive all loan application forms from the intending borrowers.

(4) The application together with copies of necessary documents and amount of all fees specified by the State Agriculture and Rural Development Bank with the approval of the Registrar and deposit equivalent to the value of one share of the Bank, shall be submitted by the applicant to the receiving officer.

(5) On receipt of an application for loan, the receiving officer shall put his initials on the application and mention his designation and the date of receipt of the application.

(6) After an application for loan has been received the receiving officer shall verify whether it contains all the necessary particulars and is accompanied by the

necessary documents. If any details are lacking, he shall get the application completed by the applicant.

(7) Each application shall be entered in the chronological order in the register of application for loan from the Agriculture and Rural Development Bank to be maintained by the receiving officer and shall be dealt with in the same order.

(8) Immediately after the application is entered in the register of application for loans from the Agriculture and Rural Development Bank, the receiving officer shall forward it to the Land Valuation Officer or such other persons as may be nominated in this behalf by the Registrar Cooperative Societies within whose jurisdiction the land in respect of which the application is made is situated (being the person prescribed for the purposes of sub-section (1) of section 88 of the Act, hereinafter in this chapter referred to as the 'Public Inquiry Officer'). The Public Inquiry Officer shall give at least eight days public notice in form 'F' calling upon all persons interested to present their objections to the loan, if any. The notice shall also be given by beat of drum and shall be affixed at conspicuous places in the village or villages where the applicant resides and in the limits of which the land or lands proposed to be improved or offered as security for the loan is or are situated. A copy of the notice shall be exhibited in the Head Office and relevant branch office, if any, of the Agriculture and Rural Development Bank concerned and in the office, if any of the person giving notice.

(9) If any person interested to raise objection fails to appear as stated or required by the aforesaid notice, the question at the issue will be decided in their absence and such persons will till such time as the loan together with interest thereon or with other dues arising out of the loan are paid in full by the loanee. The Public Inquiry Officer shall consider every objection submitted under sub-section (1) of section 88 in the manner laid down in the section.

(10) The Public Enquiry Officer shall then forward the application within two days after its disposal to the Agriculture and Rural Development Bank concerned. The Agriculture and Rural Development Bank may appoint an Enquiry Officer (hereinafter in this chapter referred to as the "Enquiry Officer") to enquire into the application. The Enquiry Officer shall make enquiry by personally visiting the land in which the improvement is proposed to and shall verify the records of the lands and other property offered as security. He shall conduct his enquiry in accordance with the form to be prescribed by the State Agriculture and Rural Development Bank.

In case the Public Enquiry Officer is unable to forward the application within two days, he shall make a report to the Registrar, stating thereunder, the reasons therefor and he shall thereafter act in accordance with such directions as may be

issued to him by the Registrar.

The Enquiry Officer may make such other enquiries as may be necessary and shall value lands according to such formula as may be laid down by the State Agriculture and Rural Development Bank, with the approval of the Registrar from time to time, estimate the repaying capacity of the applicant and examine the feasibility and the utility of the proposed improvement. He shall then submit his report stating therein the amount of loan which may be granted to the applicant against the security and specify the period within which it may be recovered from him. The Enquiry Officer shall complete his enquiry within fifteen days of the receipt of the application.

If the Enquiry Officer is unable to complete his enquiry within fifteen days, he shall make a report to the Registrar stating therein the reasons therefor and he shall thereafter act in accordance with such directions as may be issued to him by Registrar.

(11) After completion of the enquiry, the application together with his report shall be submitted by the enquiry Officer to the Agriculture and Rural Development Bank together with the following certificates :—

- (a) Certificate regarding outstanding Government dues ;
- (b) Any other relevant certificate.

(12) On receipt of the report of the Enquiry Officer under sub-rule (11), the Agriculture and Rural Development Bank shall satisfy itself that the inquiry has been properly conducted. If there are any deficiencies, the Bank shall get them completed immediately.

(13) The Agriculture and Rural Development Bank may then undertake such further scrutiny as may be necessary and pass orders within 30 days. Decision shall be communicated to the applicant within 7 days thereafter. In case the final orders are not passed within 30 days, the Bank shall make a report to the Registrar stating therein the reason therefor and shall thereafter act in accordance with such directions as may be issued to it by Registrar.

(14) All the applications received by the Agriculture and Rural Development Bank shall be disposed of by the Bank within maximum period of four months. If the Bank is unable to dispose of an application for loan within the period of 4 months, it shall make a report to the Registrar stating therein the reasons therefor and the Bank shall thereafter act in accordance with such directions as may be issued to it by the Registrar.

(15) In the case of rejection of application for loans, the reasons therefor shall be communicated by the Bank to the applicant. When the loan has been sanctioned, the Bank shall lay down the terms and conditions regarding grant of loan and payment of installments, submission of report on the progress of improvement of land and release of subsequent installment, the applicant shall be asked by the Agriculture and Rural Development Bank to remain present at the Head Office or Branch Office of the Bank on a date to be fixed for execution of the mortgage deed and for receiving loan or the communication of sanction of loan to the applicant.

First installment thereof, such date shall not ordinarily be later than 15 days from the date of receipt of application.

(16) The applicant while receiving the amount of the loan or the first installment of the loan shall purchase share of the Bank to such extent as may be required under bye-laws of the Bank. The Agriculture and Rural Development Bank shall issue a receipt to the applicant giving full particulars of the amount paid by him from time to time.

(17) Failure to comply within time limits specified in this rule shall not in any manner affect the validity of the sanction of the loans by the Agriculture and Rural Development Bank or by the State Agriculture and Rural Development Bank.

58. Registration of Copies of Instruments under section 94.— Copies of instruments referred to in section 94 duly certified by the Manager of the Agriculture and Rural Development Bank shall be sent by Agriculture and Rural Development Bank to the Registering Officer concerned within a period of 3 months from the date of execution of the instrument by registered post or by hand delivery.

59. Appointment, qualification, powers and functions of a Sale Officer under section 100.— An Agriculture and Rural Development Bank may, from time to time, by a resolution of its board appoint any of its officers or any other person as a Sale Officer for the purpose of effecting sale of mortgaged property under section 100. Such Sale Officer shall exercise the same powers and functions as are conferred upon a Sale Officer, under these rules.

60. Circumstances under which the State Agriculture and Rural Development Bank or the Trustee may take action under section 99.— Where action under section 99 and 100 is not taken against the defaulter by the Agriculture and Rural Development Bank or by the State Agriculture and Rural Development Bank, the Trustee may call upon them to take necessary action within 7 days and report compliance, if no such report of compliance is received, the Trustee may himself take the necessary action.

61. *Sale of immovable property purchased by Agriculture and Rural Development Bank or the State Agriculture and Rural Development Bank.* —(1) The Agriculture and Rural Development Bank or the State Agriculture and Rural Development Bank which has purchased any immovable property sold under section 92 of the Act, shall unless otherwise directed by the Trustee, use its best endeavor to sell it to the best advantage of the Bank. The sale shall be effected by public auction within a period of six months from the date of purchase or within such further period as may be permitted by the Trustee.

(2) The date and the place of such public auction shall be notified not less than thirty days before—

- (a) Advertising the sale of property with full details in one or more local newspapers.
- (b) Proclamation of sale by beat of drum in the village where the property is situated.
- (c) Publication of sale notice at :—
 - (i) The village panchayat ;
 - (ii) The office of the Tehsildar or Naib-Tehsildar ;
 - (iii) The office of Agriculture and Rural Development Bank or the branch office of the State Agriculture and Rural Development Bank ;
 - (iv) The principal office of Assistant Registrar of the Tehsil. The sale shall be subject to confirmation by the Registrar.

(3) The State Agriculture and Rural Development Bank or the Registrar may call for any clarification deemed necessary from the Agriculture and Rural Development Bank and satisfy itself or himself that the sale has properly been conducted and the Agriculture and Rural Development Bank shall furnish the same forthwith. The Registrar may call for any clarification from the State Agriculture and Rural Development Bank for the same purpose and such clarification shall be furnished forthwith by the State Agriculture and Rural Development Bank.

CHAPTER — XII

Appeal, Revision and Review

62. *Sittings of the Tribunal.* — The Headquarters of the Tribunal shall be at Srinagar/Jammu and all appeals and applications shall be heard at Srinagar/ Jammu :

Provided that if, in opinion of the Chairman of the Tribunal there is sufficiently a large number of appeals and applications arising out of orders and other proceedings in any particular area, he may direct the Tribunal to sit at any convenient place in the *[State] of J&K to hear and dispose of such appeals and applications in which case sufficient notice of the sitting indicating place and date shall be given in writing to the parties concerned, and by publication on the notice board of the Tribunal and in any two newspapers having large circulation in the *[State].

63. *Qualification of member of Tribunal.*— No person shall be qualified to be appointed as a member of the Tribunal unless he—

- (a) is a District Judge or has exercised the powers of a District Judge ; or
- (b) is an Advocate of at least ten years standing ; or
- ¹[(c) is a person who has obtained a Degree in law and has experience of working as Registrar Cooperative Societies or a person with a degree in law and having higher diploma in Co-operative Movement and is equal in status to Registrar Co-operative Societies.]

CHAPTER XIII

64. *Maintenance of registers of names etc. of Co-operative Societies.*— The Registrar shall maintain :—

- (1) a register of the names and addresses of all Co-operative Societies registered under the Act ; and
- (2) a record of the bye-laws of each such Co-operative Society with all subsequent amendments thereto, arranged in the order in which the amendments are registered.

65. *Accounts and other books to be maintained by the Societies.*— A Co-operative Society shall keep such account books and registers in connection with business of the society as the Registrar may, from time to time require.

66. *Power of Registrar to direct account and books to be written up .*— The Registrar may, by order in writing, direct Co-operative Society to get any or all the accounts and books required to be kept by it **{under file 40} written up to such date, in such form and within such time as he may direct.

* Now Union territory.

** The words and figure “under file 40” need to be clarified by the Adm. Department.

1. Clause (c) recast vide SRO-1 of 2005 dated 04.01.2005.

In case of failure by any society to do so, the Registrar may depute an officer subordinate to him to write up the accounts and books. In such cases, it shall be competent for the Registrar to determine, with reference to time involved in the work and the emoluments of the officer deputed to it, the charges which the society concerned should pay to the Government and to direct its recovery from the society.

67. *Statement and returns to be furnished by Societies.* —(1) Every Co-operative Society shall prepare for each Co-operative year in such form as may be specified by the Registrar :—

- (a) a statement showing the receipts and disbursement for the year ;
- (b) a profit and loss account ;
- (c) a balance sheet ; and
- (d) such other statements or returns as may be specified by the Registrar.

(2) Every Co-operative Society shall submit to the Registrar annually, within such time as he may direct a copy of the statements specified in sub-rule (1). After the Registrar or the Auditor has verified the statements and granted his Audit Certificate, the society shall publish the Audit Certificate and such of the prescribed statement as he may direct in the manner specified by him and the Audit Certificate shall so far as practicable be granted within one year from the date of receipt of the statements specified in sub-rule (1).

(3) Every Co-operative Society shall, in addition to annual statement specified in sub-rule (1) also submit to the Registrar any statement or return in such form, within such time and for such period as the Registrar may specify.

(4) In case of failure by any society to submit any statement or return specified in sub-rule (1) or sub-rule (3) within the specified time, the Registrar may depute an officer to prepare necessary statement or returns, in such cases, it shall be competent for the Registrar to determine the charges/expenses and emoluments of the officer deputed to do the same and such expenses and charges shall be borne by the concerned society and shall be paid to the Govt. and also the Registrar shall direct such recovery from the society.

(5) Every Co-operative Society shall prepare a list of its members as on the last day of each Co-operative year.

The list shall be kept open at the office of the society during office hours for inspection by any member of the society. The list of members shall be revised

fourteen days prior to the date of meeting fixed for election of the committee of the society and shall include the members admitted and exclude the members removed during the period commencing from the date when the list was revised and ending with the date of the revision of the list.

68. *Proof of entries in Co-operative Society's Books and certified copies thereof.*—(1) A copy of any entry in a book of a Co-operative Society regularly kept in the course of its business, shall, if certified in such manner as may be prescribed, be received in any suit or legal proceeding as *prima facie* evidence, of such entry and shall be admitted as evidence of the matters, transactions and accounts therein recorded in the same manner and to the same extent as the original entry itself is admissible.

(2) A Co-operative Society may grant copies of any document obtained and kept by it in the course of its business, or of any entries in such documents, and copy so granted shall, when certified in such manner as hereinafter provided, be admissible in evidence for any purpose in the same manner and to the same extent as the original document, or the entries therein as the case may be.

(3) No officer of a Co-operative Society or in whose office the books of a Co-operative Society are deposited after liquidation shall, in any proceedings to which the society or the liquidator is not a party, be compelled to produce any of the Society's books or documents the contents of which can be proved under this rule or to appear as a witness to prove the matters, transactions and accounts therein recorded, except under order of the Government, Court, Tribunal or the Arbitrator made for the special cause.

(4) For the purpose specified in this rule a copy of any entry in the books of a Co-operative Society regularly kept in the course of business shall be certified—

- (a) by the Chairman or Secretary of the society and shall also bear the society's seal ; or
- (b) by the liquidator where an order has been passed under section 66 appointing a liquidator of the society.

(5) The charges to be levied for the supply or such certified copies shall not exceed the amount specified in that behalf by the Registrar from time to time.

69. *Restriction on persons appearing as legal practitioners.*—(1) In the proceeding before the Registrar, the Arbitrator or any other person deciding a dispute or in appeals before the Registrar, the Tribunal or the Govt. a legal practitioner shall not be entitled to appear to represent any of the party, but the Registrar or

any other authority deciding dispute or hearing an appeal may permit such appearance in special cases.

(2) Any officer of a Co-operative Society who appears as a legal practitioner—

- (i) against such society or against any other Co-operative Society which is a member of the former society ; or
- (ii) (otherwise than in an honorary capacity), on behalf of such society or on behalf of any other society which is a member of the former society,

shall be deemed to have vacated his office in the society.

70. *Inspection of documents.*— A member of a Co-operative Society or a member of the public may inspect the following documents in the office of the Registrar free of charges and may obtain certified copies thereof on payment of the following fees :—

- | | |
|---|--------------------------|
| (1) Application for registration of a society | Re. 1/- each. |
| (2) Certificate of Registration | Re. 1/- each. |
| (3) Bye-laws of societies | Re. 1/- per folio. |
| (4) Amendment of bye-laws of a society | Re. 1/- per folio. |
| (5) Order of cancellation of the registration of society | Re. 1/- per folio. |
| (6) Audit Memorandum of a society. | |
| (7) Annual Balance Sheet | Re. 1/- per folio. |
| (8) Order for surcharge under section 72 | Re. 1/- per folio. |
| (9) Order of supersession of a committee or removal of any member thereof | Re. 1/- per folio. |
| (10) Any other order against which an appeal is provided | Re. 1/- per folio. |

71. *Form of declaration.* —(1) Form of declaration as required under section 35 of the Co-operative Societies Act, 1989 is appended to these rules as form “D”.

(2) Declaration Form shall be recorded in a register to be maintained for the purpose as per form “E” appended to these rules.

72. *Power to exempt societies from condition of registration.*— Notwithstanding anything contained in the Act, the Government may by special order in each case and subject to such condition, if any, as it may impose, exempt a Co-operative Society from any of the requirements of this Act as to registration.

73. *Register of members.*— A register or list of members or share kept in any Co-operative Society shall be *prima facie* evidence of any of the following entries therein :—

- (a) the date on which the name of a person was entered in otherwise or listed as a member ;
- (b) the date on which any such person ceased to be member.

74. *Acts of Co-operative Societies not be invalidated by certain defects.*— No act, of a Co-operative Society or any committee or of an officer appointed under these rules shall be deemed to be invalid by reason only of the existence of any defect in the constitution of the society of the committee or in the appointment or election of an officer or on the ground that such officer was disqualified for his appointment.

FORM "A"**FORM OF NOMINATION TO THE COMMITTEE OF CO-OPERATIVE
SOCIETY**

I _____ individual/society hereby propose the nomination _____
_____ Society.

Name of the proposer.

Status

Name of the Seconder

Status

Note :— In the case of nomination of the representative by a Co-operative Society, the proxy form issued by the Society in favour of the proposer and sec-
onder must accompany this form.

(Receipt for nomination paper)

The nomination of _____ a can-
didate of election as member to the society _____
was delivered to me on _____.

Signature of Returning Officer

FORM "B"*(See Rule 21 (d))***NOTICE OF ELECTION**

Election to_____

Notice is hereby given that :—

- (1) An election to be held of_____.
- (2) The electoral rolls may be examined in the office of the_____at_____between the hours of_____and_____from_____to_____.
- (3) Any objection to the entries made in the electoral rolls may be made before_____within_____days from the date of issue of this notice.
- (4) The objections, if any, to the entries made in the electoral rolls shall be considered on_____.
- (5) Nomination papers may be delivered between the hours of_____and_____by a member of the society to_____at his office on_____day of_____.
- (6) The nomination papers will be taken up for scrutiny by_____at_____ (hours) on_____ (date) at_____ (place).
- (7) Notice of withdrawal of candidature may be delivered by a candidate_____at his office before 3 p.m. on_____.
- (8) The General Body meeting shall be held between the hours of_____and_____on the_____day of_____at_____ (place) and in the event of the election being contested, the poll will take place between the hours of_____and_____.

Place:_____

Date:_____

PRESIDENT/ADMINISTRATOR OF
THE COMMITTEE

SOCIETY

Note:—Here appropriate particulars of the election are to be inserted.

FORM "C"

[See Rule 21 (j)]

NOTICE OF ELECTION

Election to the_____

The Assistant Registrar,

I_____a candidate nominated at the above
election hereby give notice that i withdraw my candidature.

Signature of candidate

Place:_____

Date:_____

Copy forwarded to the Committee/Administrator.

FORM “D”

*[See Rule 60(i)]

DECLARATION FORM

I, _____ (age) _____ residing at _____ having been admitted to the membership of _____ Society Ltd./with unlimited liability and being desirous of borrowing/having borrowed loans from the society before the date of coming into force of the J&K Co-operative Societies Act, 1989, make this declaration as required by *[Rule 60(i)] and/or hold land as tenant as specified in the Schedule and I hereby create a charge on the land owned and/or on my interest in the land held by me as tenant, and/or on the standing crops on the said land in favour of the society for the payment of the amount of the loan which may be made to me subject to the maximum amount of Rs. _____ (Rupees _____ only) together with interest on such amount of the loan and advances.

Schedule

Name of Village		Name of Tehsil	Name of District	Khasra No.	Plot No.
1		2	3	4	5
Boundaries		Area	Approximate value	Encumbrances (if any)	Remarks
South East	North west			Nature of Amount	
6		7	8	9	10

In witness thereof I, Shri _____ hereunder sent my hand _____ day of _____ in the year **[one thousand nine hundred and] _____ signed and delivered by the above _____ in presence of _____.

Witness: 1. _____ 2. _____.

Signature	
Applicant's	Borrower's

* Should be Rule 71(1).

** Words have become redundant.

Forwarded with compliments to the Tehsildar with a request to include the particulars of the charge _____ under the declaration in the record of rights and to return to the society for its record.

Chairman/Secretary

Returned with compliments to the Chairman _____ Society Ltd./unlimited. The charge created under the declaration is duly included in the record of rights on the _____ day of _____.

Tehsildar

Note:— Forms D, E, F need to be amended by the Administrative Department so that they fulfil the requirements of the rules in vogue.

* Land owned and lands held as tenants to be shown separately.

FORM “E”

*[See Rule 60(2)]

REGISTER OF DECLARATION MADE UNDER RULE

S.No	Date of entry in the register	Name of member	Date of declaration	Name of the Village in which land is situated	Plot No.
1	2	3	4	5	6

Area		Approximate	Encum- brances (if any)	Amount of maximum loan	Remarks	Initial of the Chairman
Kanals	Marlas					
7		8	9	10	11	12

Nature of Amount

* Should be Rule 71(2).