

JAMMU & KASHMIR SELF RELIANT COOPERATIVES ACT, 1999

(Act No X of 1999)

PREAMBLE

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

Be it enacted by the Jammu and Kashmir State Legislature in the Fiftieth Year of the Republic of India, as follows:

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement

- (1) This Act may be called The Jammu & Kashmir Self-Reliant Cooperatives Act, 1999.
- (2) It extends to the whole of the State of Jammu & Kashmir.
- (3) It shall come into force on such date as the Government may, by notification in the Government Gazette, appoint.

2. Definitions

In this Act, unless the context otherwise requires,

- (1) "arbitral tribunal" means a group of five individuals constituted by the general body of a cooperative for settlement of disputes, in accordance with the articles of association of that cooperative;
- (2) "articles of association" means the regulations of a cooperative as originally framed or as amended from time to time;
- (3) "board" means the governing body of a cooperative by whatever name called, to which the direction of the affairs of the cooperative is entrusted by the articles of association of the cooperative;
- (4) "chief executive" means that individual, in paid or honorary capacity, nominated or elected or appointed by the board of a cooperative from among members, directors or others, in accordance with the articles of association, who shall sue or be sued on behalf of the cooperative, and shall perform such functions, and have such responsibilities and powers as are specified in the articles of association, and assigned by the board;

- (5) "common need" means that economic need which is common to all those who wish to form a cooperative, or have taken membership in a cooperative, and which the cooperative is expected to fulfil through the provision of core services;
- (6) "cooperative", where used as a noun, means an autonomous association of persons united voluntarily to meet their common economic need through a jointly owned and democratically controlled enterprise registered under this Act;
- (7) "Cooperatives Act" means the Jammu and Kashmir Self Reliant Cooperatives Act, 1998;
- (8) "cooperative society" means a cooperative association registered under the Jammu and Kashmir Cooperative Societies Act, 1960;
- (9) "Cooperative Societies Act" means the Jammu and Kashmir Cooperative Societies Act, 1960; and includes the Jammu and Kashmir Cooperative Societies Act, 1989;
- (10) "cooperative business" means a business which is committed to functioning in accordance with the principles of cooperation, and includes all cooperatives registered under this Act, and all cooperative societies registered under the Jammu and Kashmir Cooperative Societies Act, 1960;
- (11) "cooperative identity" means the statement of Cooperative Identity specified in Schedule A of this Act;
- (12) "Cooperative with limited liability" means a Cooperative in which the liability of its members for the debts is limited by its articles of association to such form and extent as they may undertake to contribute to any deficit in the assets of the cooperative in the event of its being wound up;
- (13) "Cooperative with unlimited liability" means a Cooperative in which its members are jointly and severally liable for the debts of cooperative and to contribute to any deficit in the assets of the cooperative in the event of its being wound up;
- (14) "core services" means those central services provided to members, through which a cooperative intends to meet that economic need common to all members for the fulfilment of which the cooperative was formed, and the fulfilment of which is expected to result in the economic and social betterment of members, and includes value-adding services;
- (15) "Court" means the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction;
- (16) "deficit" means the excess of expenditure over income, arrived at, at the end of a financial year, after the payment of interest, if any, on share capital;
- (17) "deficit charge" means the amount collected from/debited to the accounts of members, in proportion to the use and/or non-use of the services of the

cooperative, in accordance with the articles of association and resolutions of the general body, to meet deficit, if any, in whole or part;

- (18)"delegate" means a member nominated for the time being by a cooperative to represent its interests at the time of promotion of a secondary cooperative, and/or at meetings of a secondary cooperative to which the cooperative is affiliated;
- (19)"financial year" means the twelve month accounting period as provided for in the articles of association of a cooperative, for which the annual statements of accounts are prepared for placement at the annual general meeting of that cooperative;
- (20)"general body" in relation to a cooperative, means all its members;
- (21)"general meeting" means a meeting of the general body called and conducted in accordance with the provisions of this Act and the articles of association of the cooperative;
- (22)"Government" means the Government of Jammu and Kashmir;
- (23)"member" means a permanent Resident of the State as defined in Section 6 of the constitution of the Jammu and Kashmir who is in need of and is able to use the core services of a cooperative and who is admitted as a member of the cooperative, in accordance with the provisions of this Act and the articles of association, and includes a "member-cooperative";
- (24) "member-cooperative" means a primary or secondary cooperative which is in need of and is able to use the core services of a secondary cooperative, and which is admitted as a member of that secondary cooperative, in accordance with the provisions of this Act and the articles of association;
- (25)"office-bearer" means an individual elected by the board of a cooperative to any office of such cooperative in accordance with its articles of association;
- (26)"ordinary resolution" means a resolution of the general body which has the approval of the majority of members with the right of vote, present and voting at the general meeting;
- (27)"person" means Permanent Resident of the State competent to contract, or a cooperative;
- (28)"potential member" means a person who does need the core services being offered by a cooperative, may be accessing them, and is eligible to be a member of that cooperative, but who has not yet applied for membership and/or been admitted as a member;
- (29)"president" means an elected director who is further elected by the board to preside over its meetings and the meetings of the general body, and to perform such other functions and have such other powers and responsibilities as are specified in the articles of association and assigned by the board;

- (30)"primary cooperative" means a cooperative whose members are permanent residents of the State;
- (31)"Registrar" means an individual appointed under this Act, and includes any individual empowered to exercise the powers of the Registrar under this Act;
- (32)"Registrar of Cooperative Societies" means the individual appointed as such under the Cooperative Societies Act, and includes any individual empowered to exercise the powers of that Registrar of Cooperative Societies under that Act;
- (33)"representative" means a person elected by a section of members, in accordance with the articles of association, to participate on their behalf at the representative general body meeting;
- (34)"representative general body" in relation to a cooperative means all its representatives;
- (35)"representative general body meeting" means a meeting of the representatives, called and conducted in accordance with the provisions of this Act and the articles of association of the cooperative;
- (36)"secondary cooperative" means a cooperative whose members are cooperatives;
- (37)"special resolution" means a resolution of the general body which has the approval of at least 51% of all the members with right of vote at the time of the general meeting;
- (38)"service" means such facilities as are organised primarily for being provided to members to meet the objective of the cooperative;
- (39)"surplus" means the excess of income over expenditure, arrived at, at the end of the financial year, after the payment of interest, if any, on share capital, and before the payment of surplus refund, and allocation of reserves and other funds;
- (40)"surplus refund" means the refund from the surplus given/credited to the accounts of members, in proportion to their use of the services of the cooperative in accordance with the articles of association and resolutions of the general body;
- (39)"this Act" means the Jammu and Kashmir Self Reliant Cooperatives Act, 1998.

CHAPTER II
INCORPORATION

3. Registration of a new cooperative

- (1) Notwithstanding anything contained in any law for the time being in force all new Cooperatives shall comprise of permanent residents of State and be registered under this Act only and no new Cooperative society shall be registered under any other law for the time being in force.
- (2) An application for registration may be submitted to the Registrar by hand or by registered post, signed by the individuals who wish to form a primary cooperative or by the delegates of cooperatives which wish to form a secondary cooperative.
- (3) Every such application shall be accompanied by
 - (a) the original of a declaration signed by the applicants expressing commitment to the principles of cooperation as provided for in Schedule A;
 - (b) the original and one copy of the articles of association of the proposed cooperative as adopted by the applicants;
 - (c) a true copy of the resolution passed at a meeting by the applicants adopting the articles of association; and
 - (d) a list of names of the applicants with their complete addresses.
- (4) The Registrar shall register the cooperative and also take on record its articles of association and communicate by registered post a certificate of registration and the original of the registered articles of association signed and sealed by him/her, within sixty days from the date of submission of application, to such person as specified in the application;

provided that

- (a) the application is in conformity with the requirements laid down by this Act; and
 - (b) the proposed articles of association are not contrary to the provisions of this Act.
- (5) If the conditions laid down in sub-sections (3) and (4) are not fulfilled, the Registrar shall communicate by registered post the order of refusal together with the specific reasons therefor, within sixty days from the date of submission of application, to such person as specified in the application;

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

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

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

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

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

- (2) An application for registration may be submitted to the Registrar by hand or by registered post, by the board of such cooperative society as wishes to convert itself into a cooperative under this Act, on the basis of a decision of a majority of members present at a meeting of the general body of the cooperative society, called with at least twenty days notice, and attended by at least twenty-five percent of total members or five hundred members, whichever is less.
- (3) Every such application shall be accompanied by
 - (a) a true copy of the resolution of the general body expressing commitment to the principles of cooperation as provided for in Schedule A;
 - (b) the original and one copy of the articles of association of the proposed cooperative as adopted by the general body;
 - (c) a true copy of the resolution of the general body adopting the articles of association;
 - (d) a true copy of the declaration of the general body stating that the cooperative is not in receipt of any share capital from the Government or any other external source, and does not intend ever to raise share capital from the Government or any source other than members;
 - (e) a true copy of the latest annual report and audited statement of accounts;
 - (f) a true copy of the resolution of the general body along with particulars

regarding the wiping off of accumulated losses, if any, from various reserves and/or by debiting to the accounts of members as decided at the meeting;

- (g) a statement of the total number of members of the cooperative society as on the day of the meeting, the members who attended the meeting, and the number who voted for the resolution.
- (4) The Registrar shall register the cooperative and also take on record its articles of association and communicate by registered post a certificate of registration and the original of the registered articles of association signed and sealed by him/her, within sixty days from the date of submission of application, to such person as specified in the application;

provided that

- (a) the application is in conformity with the requirements laid down by this Act; and
 - (b) the proposed articles of association are not contrary to the provisions of this Act.
- (5) If the conditions laid down in sub-sections (3) and (4) are not fulfilled, the Registrar shall communicate by registered post the order of refusal together with the specific reasons therefor, within sixty days from the date of submission of application, to such person as specified in the application;

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

- (6) Where a cooperative is registered, under sub-section (4), the certificate of registration signed and sealed by the Registrar shall be conclusive evidence that the association mentioned therein is a cooperative duly registered under this Act, unless it is proven that the registration of the cooperative has been cancelled.
- (7) Where within seventy five days of submission of the application for registration, the person specified in the application receives neither the certificate of registration nor the order of refusal, that person may move the Court for redressal.
- (8) Where a cooperative is registered under sub-section (4), its earlier registration as a cooperative society under the Cooperative Societies Act shall stand cancelled and it shall send within seven days of receipt of the registration certificate, by registered post, to the Registrar of Cooperative Societies a copy of the registration the registration certificate under the Cooperative Societies Act, and a copy of the registration certificate under this Act, and the Registrar of Cooperative Societies shall, within seven days of receipt of such information, delete the name of such cooperative society from the register.
- (9) Where a cooperative is registered under sub-section (4), the assets and liabilities, the rights and obligations, and the members of the applicant

cooperative society shall become the assets and liabilities, the rights and obligations, and the members of the cooperative registered under this Act, and all transactions of the applicant cooperative society shall be deemed to have been the transactions of the cooperative registered under this Act.

(10) Where a cooperative society is in receipt of loan or guarantee from the Government at the time of applying for registration as a cooperative under this Act, it shall apply within a month of registration under this Act, to the Government for entering into a memorandum of understanding with the Government for the loan and/or guarantee made available by the Government, failing which, it shall repay the entire amount due as loan to the Government or other source for which guarantee was made available by the Government, within six months from the date of registration.

11) Where, in accordance with sub-section (10), a memorandum of understanding is not entered into with the Government, for whatsoever reason, and a cooperative does not repay to the Government or other source such amounts as are due by it, it shall be competent for the Government to recover from the cooperative the amounts due to it or to any other source for which the Government stood guarantee in the same manner as arrears in land revenue.

(12) Where a cooperative society which is a member of secondary cooperative society is registered as a cooperative under this Act, the cooperative may continue to receive services from the secondary cooperative society and to participate in its affairs for a period of one year from the date of its registration under this Act, at the end of which period, its membership in that secondary cooperative society shall cease, unless, by then, the secondary cooperative society, too, is registered under this Act;

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

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

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

5. Cooperative to be body corporate

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

6. Articles of association

- (1) The members constituting a cooperative, shall have a set of articles of association, formulated and amended from time to time, in accordance with the provisions of this Act, and the affairs of the cooperative shall be managed in accordance with the terms, conditions and procedures specified in the articles of association.
- (2) Except on such specific matters which the Act has provided for and which the articles of association may further regulate on but not contravene, the functioning of every cooperative shall be regulated by its articles of association.
- (3) The articles of association may contain such matters as are decided by the members and shall be specific on all matters listed in Schedule B of this Act.

7. Amendment of articles of association

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

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

- (2) A copy of any amendment shall be forwarded by the cooperative by registered post to the Registrar within a period of thirty days from the date of the general meeting at which the resolution was passed.
- (3) Every such information forwarded to the Registrar shall be signed by the President and two Directors and shall be accompanied by the following particulars:
 - (a) a copy of the resolution agreeing to the amendment;
 - (b) the date of the general meeting at which the amendment was approved;
 - (c) the date on which the amendment comes into force.
- (4) The Registrar shall take on record the amendment immediately on receipt of the notice;

provided that such action shall not preclude the Registrar from challenging the legal validity of the amendment before the Court, after giving the cooperative a fair opportunity to reconsider the amendment.

8. Name of a cooperative

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

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

- (2) Every cooperative shall display its full name in legible characters in a conspicuous position:
 - (a) at every office or place at which it carries on business;
 - (b) in all notices and other official publications;
 - (c) on all its contracts, business letters, orders for goods, invoices, statements of account, receipts and letters of credit; and
 - (d) on all bills of exchange, promissory notes, endorsements, cheques and orders for money it signs or that are signed on its behalf.
- (3) Every cooperative shall display its full name in legible characters on its common seal.
- (4) A cooperative with limited liability shall have as a suffix to, or as part of its name, the expression "limited" or its equivalent in any Indian language.
- (5) Nothing in sub-section (2) shall prevent a cooperative displaying more conspicuously than the full name, any shorter name by which it is popularly known and which, too, is included in the articles of association.
- (6) A cooperative may, by an amendment to its articles of association, change its name;

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

- (7) Where a cooperative changes its name, the Registrar shall enter the new name of the cooperative on the register of cooperatives in place of the former name and issue a certificate to this effect.
- (8) The change of name of a cooperative shall not affect any rights or obligations of the cooperative or any of its members or past members or render defective any legal proceedings by or against it; and any legal proceedings which might have been continued or commenced by or against the cooperative by its former name may be continued or commenced by its new name.
- (9) A cooperative which changes its name shall publicise such change in name in a popular newspaper in the district in which its head office is located.

9. Location of head office

- (1) Every cooperative shall notify to the Registrar the full address of its head office, within ninety days of being registered as a cooperative.
- (2) Every cooperative shall display in full the address of its head office in legible characters in a conspicuous position:
 - (a) at every office or place at which it carries on business;
 - (b) in all notices and other official publications;
 - (c) on all its contracts, business letters, orders for goods, invoices, statements of account, receipts and letters of credit; and
 - (d) on all bills of exchange, promissory notes, endorsements, cheques and orders for money it signs or that are signed on its behalf.
- (3) A cooperative may, by a resolution of the board of directors, change the address of its head office;

provided, however, that it shall give notice of such change to its members, creditors, the Registrar and to any secondary cooperative/s to which it may be affiliated, within fifteen days of the board resolution.
- (4) The Registrar shall, within fifteen days of receiving information from a cooperative, take on record, in the register of cooperatives, the full address of the head office of a cooperative, and any changes thereof.

10. Transfer of assets and liabilities

- (1) A cooperative may, by a special resolution, decide to transfer its assets and liabilities, in whole or in part, to any other cooperative which agrees, by a special resolution, to receive such assets and liabilities.
- (2) Where special resolutions are passed under sub-section (1), each cooperative shall give notice thereof together with a copy of the resolution passed by it to all its members and creditors, and notwithstanding any provision in the articles of association or contract to the contrary, any member other than those who voted in favour of the proposed transfer of assets and liabilities and any creditor shall, during a period of fifteen days from the date of service of the notice upon him/her, have the option of withdrawing the shares, deposits or loans from the cooperative, as the case may be, subject to discharge of his/her obligations to the cooperative.
- (3) Any member or creditor who does not exercise his/her option within the period specified in sub-section (2) shall be deemed to have assented to the resolution.
- (4) The special resolutions passed under sub-section (1) shall not take effect until
 - (a) all claims of the members and creditors of each cooperative who have exercised the option under sub-section (2) have been met in full or

- otherwise satisfied; and
 - (b) information about the transfer of assets and liabilities has been sent by the cooperatives concerned to the Registrar and his/her acknowledgement of receipt of the information received.
- (5) When special resolutions passed under sub-section (1) take effect, the resolutions shall be sufficient conveyance to vest the assets and liabilities in the transferee without any further assurance.
- (6) When a cooperative transfers the whole of its assets and liabilities to any other cooperative, under this section, the registration of the cooperative shall stand cancelled and it shall be deemed to have been dissolved and shall cease to exist as a corporate body, and the Registrar shall delete the name of the cooperative from the register of cooperatives.

11. Division

- (1) A cooperative may, by a special resolution, decide to divide itself into two or more cooperatives.
- (2) Where a special resolution is passed under sub-section (1), the cooperative shall give notice thereof together with a copy of the resolution to all its members and creditors and, notwithstanding any provision in the articles of association or contract to the contrary, any member other than those who voted in favour of the proposed division or creditor shall, during a period of fifteen days from the date of service of the notice upon him/her, have the option of withdrawing his/her shares, deposits or loans, as the case may be, subject to discharge of his/her obligations to the cooperative.
- (3) Any member or creditor who does not exercise his/her option within the period specified in sub-section (2) shall be deemed to have assented to the resolution.
- (4) A special resolution passed under sub-section (1) shall not take effect until
- (a) all claims of the members and creditors of the cooperative who have exercised the option under sub-section (2) have been met in full or otherwise satisfied;
 - (b) information of the intended division and settlement of claims of members and creditors is sent to the Registrar and his/her acknowledgement of receipt of the information is obtained; and
 - (c) the certificates of registration and the copies of the registered articles of association of the resultant cooperatives, signed and sealed by the Registrar, are issued in accordance with section 4.
- (5) When a cooperative divides itself into two or more cooperatives under this section, the registration of the cooperative shall stand cancelled and it shall be deemed to have been dissolved and shall cease to exist as a corporate body, and the Registrar shall delete the name of the cooperative from the register of cooperatives.

- (6) When a cooperative divides itself into two or more cooperatives, each member who has assented to the division shall be deemed to have become a member of that newly formed cooperative to which his/her interests were transferred, in accordance with the scheme of division approved by the general body.
- (7) When a special resolution passed under sub-section (1) takes effect, the resolution shall be sufficient conveyance to vest the assets and liabilities in the transferees without any further assurance.

12. Amalgamation

- (1) Any two or more cooperatives may, by special resolutions, decide to amalgamate themselves and form a new cooperative.
- (2) Where special resolutions are passed under sub-section (1), each cooperative shall give notice thereof together with a copy of the resolution passed by it to all its members and creditors, and notwithstanding any provision of the articles of association or contract to the contrary, any member other than those who voted in favour of the proposed amalgamation or creditor shall, during a period of fifteen days from the date of service of the notice upon him/her, have the option of withdrawing his/her shares, deposits or loans from the cooperative, as the case may be, subject to the discharge of his/her obligations to the cooperative.
- 3) Any member or creditor who does not exercise his/her option within the period specified in sub-section (2) shall be deemed to have assented to the resolution.
- (4) The special resolutions passed under sub-section (1) shall not take effect until
 - (a) all claims of the members and creditors of each cooperative who have exercised the option under sub-section (2) have been met in full or otherwise satisfied;
 - (b) information of the intended amalgamation and settlement of claims of members and creditors is sent to the Registrar and his/her acknowledgement of receipt of the information is obtained; and
 - (c) the certificate of registration and a copy of the articles of association of the resultant cooperative, signed and sealed by the registrar, is issued in accordance with section 4.
- (5) When two or more cooperatives amalgamate themselves into a new cooperative under this section, the registration of the cooperatives so amalgamated shall stand cancelled and they shall be deemed to have been dissolved and shall cease to exist as corporate bodies, and the Registrar shall delete the names of the cooperatives from the register of cooperatives.
- (6) When two or more cooperatives amalgamate themselves into a new cooperative under this section, all the members of the cooperatives who have assented or are deemed to have assented to the amalgamation

shall be deemed to have become members of the new cooperative.

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

13. Merger

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

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

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

- (4) The special resolutions passed under sub-section (1) shall not take effect until

(a) all claims of the members and creditors of each cooperative who have exercised the option under sub-section (2) have been met in full or otherwise satisfied; and

(b) Information of the intended merger and settlement of claims of members and creditors is sent to the Registrar and his/her acknowledgement of receipt of the information is obtained.

- (5) When a cooperative merges itself into any other cooperative under this section, the registration of the cooperative shall stand cancelled and it shall be deemed to have been dissolved and shall cease to exist as a corporate body, and the Registrar shall delete the name of the cooperative from the register of cooperatives.

- (6) When a cooperative merges itself into any other cooperative under this section, the members of the first cooperative who assented to the merger, shall be deemed to have become the members of the second cooperative.

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

14. Registration offices

- (1) For the purpose of registration of cooperatives under this Act there shall be offices at such places as the Government thinks fit.

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

provided that this restriction shall not apply where the individual appointed under this section is a member of a cooperative.

15. Fee for services

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

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

- (2) The Registrar may declare a reasonable scale of fee to be paid by cooperatives and others for various services rendered by him/her under this Act.

CHAPTER III

MEMBERSHIP

16. Eligibility for membership in a cooperative

No person shall be admitted as member of a cooperative except the following namely

- (a) the person who needs the services of a cooperative, expresses willingness to accept the responsibilities of membership and meets such other conditions as may be specified in the articles of association of the cooperative, and is in a position to use the services, provided he is:
 - (i) competent to contract under Sec II of the Jammu and Kashmir Contract Act Samvat, 1977;
 - (ii) a permanent resident of the State as defined under Section 6 of the Constitution of Jammu and Kashmir:

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

- (a) any other Cooperative registered under this Act.
- (b) a firm, company or any other body corporate under any Law for

the time being in force or a society registered under the Jammu and Kashmir Society Registration Act, Samvat, 1998.

Provided that every Partner, Director or member as the case may be of such firm, Company, corporate body or society is a permanent resident of the State.

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

17. Member admission

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

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

18. Member withdrawal

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

19. Cessation of membership

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

20. Termination of membership

- (1) The board of a cooperative may terminate the membership of a person who has acted adversely to the objects and interests of the cooperative, including the violation by the member of the articles of association of the

cooperative, the policies of the general body or board, and/or contracts entered into by the member with the cooperative;
provided the member has been given a fair opportunity to make representation at the board meeting as to why membership should not be terminated.

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

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

21. Register of members

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

22. Cooperative education

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

23. Services primarily for members

- (1) A cooperative's services shall normally be available to members only.
- (2) After two years of its being registered under this Act, any cooperative found to be providing more than 25% of its core services, as specified in its articles of association, in terms of the value of transactions, to non-members in any given financial year may be defined by the Registrar as an "aberrant cooperative" and stand to lose for that year exemptions, if any, provided to it, on the ground that it is a cooperative, by this Act or other laws.
- (3) Any cooperative found to be "aberrant" for three years in any continuous period of five years, shall be treated as a cooperative not operating on a cooperative basis and the Registrar or any person may apply to the Court for an order dissolving the cooperative.

24. Exercise of rights

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

25. Voting rights of members

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

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

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

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

26. Members' liability

- (1) A cooperative may be registered with limited or unlimited liability, where
- (2) Where a cooperative amends its articles of association to change the form and extent of its members' liability, it shall give notice thereof together with a copy of the amendment to its members and creditors and, notwithstanding any provision in the articles of association or contract to the contrary, any member other than one who voted in favour of the proposed change or creditor shall, during a period of fifteen days from the date of service of the notice upon him/her, have the option of withdrawing his/her shares, deposits or loans, as the case may be.
- (3) Any member or creditor who does not exercise his/her option within the period specified in sub-section (2) shall be deemed to have assented to

the resolution.

- (4) An amendment passed under sub-section (2) shall not take effect until
 - (a) all claims of the members and creditors of the cooperative who have exercised the option under sub-section (2) have been met in full or otherwise satisfied; and
 - (b) notice of the amendment of the articles of association of the cooperative has been received by the Registrar in accordance with this Act.
- (5) Subject to the provisions of sub-section (6), the liability of a member or of the estate of a deceased member for the debts of the cooperative as they existed
 - (a) in the case of a past member, on the date on which the person ceased to be a member; and
 - (b) in the case of a deceased member, on the date of his/her death;shall continue for a period of two years from such date.
- (6) Where a cooperative is ordered to be dissolved, the liability of a past member, who ceased to be a member, or of the estate of a deceased member, who died, within two years immediately preceding the date of order of dissolution, shall continue until completion of the liquidation proceedings, but such liability shall be limited only to the debts of the cooperative as they existed on the date of cessation of membership or death, as the case may be.

27. General body

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

provided that where the general body of a cooperative decides that the size, spread, or types of its membership requires a representative body for more effective decision making, its articles of association may provide for a smaller body called the representative general body drawn from the members, to be formed in such a democratic manner, with such functions and powers, and such relationship with members as may be specified in the articles of association.
- (2) Any reference in this Act to the general body shall apply to the representative general body where it exists:

provided, however, that the representative general body shall not alter any provision in the articles of association or take any decisions relating to such subjects as the general body may have explicitly retained for itself.
- (3) Subject to the provisions of this Act and the articles of association of a cooperative, the ultimate power of a cooperative shall vest in the general body of its members:

provided that nothing contained in this sub-section shall affect the exercise by the board or any other authority of a cooperative of any

power conferred on such board or such other authority by this Act.

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

28. Functions, responsibilities and powers of general body

- (1) The following, among such other matters as considered necessary by the board, shall be dealt with by the general body at its annual general meeting:

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

- (2) The following, among other matters considered necessary by the board, may be dealt with by the general body at its annual or any general meeting:

- (a) amendments to articles of association;
- (b) removal of directors;
- (c) elections/appointments to vacancies on the board;
- (d) removal, and consequent appointment, of auditors;
- (e) membership of the cooperative in secondary cooperatives;
- (f) partnership with other cooperatives;
- (g) amalgamation, division, merger, transfer of assets and liabilities;
- (h) dissolution of the cooperative;

- (i) consideration of the Registrar's report of inquiry or reasons for the non-completion of the inquiry.

29. General meetings

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

provided that one such meeting known as the annual general meeting shall be held within one hundred and fifty days of the closure of the cooperative's financial year to consider and/or to approve, among other matters, the returns to be filed with and the information to be furnished to the Registrar.

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

- (a) at least 25% of the members having the right to vote; or
- (b) the Registrar;

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

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

- (4) All directors shall cease to be directors at the annual general meeting, if the audited annual financial statement and auditor's report, along with the report of activities for the previous financial year were not made available to each of the members along with the notice to attend the annual general meeting at which the report and accounts are to be considered by the general body.

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

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

30. Minutes of general meetings

- (1) Every cooperative shall record, in the language specified by the articles of association, in the minutes book, minutes of all proceedings of every general meeting and send the copy of the minutes within fifteen days of the conclusion of every such meeting to all members.

- (2) The minutes so recorded shall be signed, by the person who chaired the said meeting, or in the event of his/her incapacity to sign the minutes within the time required, by a director duly authorised by the board.

- (3) The minutes so recorded shall be deemed to have been confirmed on the thirtieth day after its dispatch to all members, if no comments on the correctness or otherwise of the recorded minutes are received from members within that time;

provided that where comments have been received from members, the board will take them into consideration while taking action on the resolutions and suggestions of the general body and place the matter before the general body at its next meeting.

CHAPTER IV

MANAGEMENT

31. Board of directors

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

provided that in the case of a cooperative newly registered under this Act, the persons who have signed the application for the registration of the cooperative may appoint a promoter board, for a period not exceeding one year from the date of registration, to direct the affairs of the cooperative and to get elections of directors conducted within the period mentioned above; and the promoter board appointed under the proviso shall cease to function as soon as a regular board has been constituted in accordance with the articles of association;

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

32. Functions, responsibilities and powers of board

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

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

- (a) to interpret the organisational objectives, to set up specific goals to be achieved towards these objectives, and to make periodic appraisal of operations;

- (b) to elect and remove office bearers;
 - (c) to appoint and remove the chief executive;
 - (d) to make provisions for regulating the recruitment and appointment of all employees of the cooperative and the scales of pay, allowances and other conditions of service including disciplinary action;
 - (e) to finalise long term perspective plan, and the annual plan and budget, and to direct the affairs of the cooperative in accordance with the plan and budget approved by the general body;
 - (f) to arrange for funds;
 - (g) to authorise acquisition and disposal of immovable property; and
 - (h) to frame, approve and amend regulations relating to services, funds, accounts and accountability, and information and reporting systems.
- (2) Every director of a cooperative while performing functions, discharging responsibilities, and exercising powers shall:
- (a) act honestly and in good faith and in the best interests of the cooperative; and
 - (b) exercise such due care, diligence and skill as a reasonably prudent person would exercise in similar circumstances.
- (3) A director who is guilty of misappropriation, breach of trust or any other omission or commission, resulting in loss or shortfall in revenue to the cooperative, shall be personally liable to make good that loss or shortfall, without prejudice to any criminal action to which the director may be liable under law.

33. Eligibility for directorship in a cooperative

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

- (a) such member has the right to vote in the affairs of the cooperative; and
- (b) such member has patronised the services of the cooperative during the previous financial year to the extent and in the manner specified in the articles of association; and
- (c) such member has no interest in any subsisting contract made with or work being done for the cooperative except as otherwise specified in the articles of association; and
- (d) three years have lapsed from the date that such member may have ceased to be a director of the cooperative for reasons of
 - (a) non-conduct of general meeting;
 - (b) non-conduct of elections to the board;
 - (c) non-submission of annual report of activities, audited annual financial

- statements and/or auditor's report to the general body; or
(d) absence from board meetings.

34. Elections

- (1) The conduct of elections of directors to the board and of representatives to the representative general body of a cooperative shall be the responsibility of the incumbent board of the cooperative.
- (2) Elections shall be conducted in the manner specified in the articles of association. Elections shall be conducted before the term of office of the outgoing directors or representatives comes to an end.
- (3) Where a board fails to conduct elections in time in accordance with the articles of association of the cooperative, all directors on the board shall cease to be directors at the annual general meeting at which the elections were due.
- (4) Elections of directors shall normally take place at the annual general meeting.
- (5) Where a board fails to conduct elections before the expiry of the term of the directors or representatives, or, where there are no directors remaining on the board, a minimum of 10% of total members of the cooperative may jointly convene a general meeting, or request a secondary cooperative of which the cooperative is a member to convene a general meeting, for appointing an ad-hoc board for the specific purpose of conducting elections and to perform all functions of the board during the interregnum except those prescribed by the general body.
- (6) The term of the ad-hoc board so appointed shall not exceed three months and the ad-hoc board shall cease to function as soon as a regular board is elected in accordance with the articles of association.
- (7) The directors shall hold office for the period for which they were elected and the newly elected directors shall assume office at the end of this period.
- (8) The directors may not be eligible, if so specified in the articles of association, for re-election.
- (9) Where there are vacancies on the board and where there is a quorum, the remaining directors may exercise all the powers of the board or may fill the vacancies by co-option for the remainder of the respective terms.
- (10) Where there are vacancies on the board and where there are not sufficient number of directors to constitute a quorum for board meetings, the remaining directors shall call a general meeting for the purpose of electing directors to fill the vacancies.

35. Tenure of directors

Where the articles of association provide for retirement of all directors at once, the tenure of office of all the directors, and, where the articles of association provide for retirement of directors by rotation, the tenure of office

of the individual directors shall be for such period as specified in the articles of association, not exceeding three years from the date of assumption of office, as specified in the articles of association.

36. Board meetings

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

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

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

- (a) at least one-third of the directors on the board; or
- (b) the Registrar; or
- (c) the Auditor;

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

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

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

- (5) The quorum for a board meeting shall be as specified in the articles of association, but shall be at least fifty percent of the total number of directors on the board.

- (6) The procedure to convene and conduct the board meetings shall be such as is specified in the articles of association.

- (7) If a director fails to attend three consecutive board meetings, he/she shall cease to be a director, from the date of the third board meeting.

37. Minutes of board meetings

- (1) Every cooperative shall record, in the language specified by the articles of association, in the minutes book, minutes of all proceedings of every board meeting and send the copy of the minutes within seven days of the conclusion of every such meeting to all directors.

- (2) The minutes so recorded shall be signed by the person who chaired the said meeting or by the person who chairs the following meeting, wherein the minutes are confirmed.

- (3) The minutes so recorded shall be deemed to have been confirmed on the fifteenth day after its despatch to all directors, if no comments on the

correctness or otherwise of the minutes are received from directors within that time;

provided that where comments have been received from directors, corrections, if any, will be made by the board when the said minutes are placed before the next meeting of the board for confirmation.

38. Staff

Subject to other laws regulating employer-employee relations, all employees of a cooperative shall be appointed, regulated and removed by, and accountable to authorities within the cooperative, in accordance with such service conditions as may be approved by the board.

CHAPTER V

FINANCE

39. Mobilisation of funds

(1) A cooperative may mobilise funds' in shape of equity capital, deposits and loans from its members in such form, to such extent, and under such conditions as may be specified in the articles of association.

(2) A cooperative may borrow funds from non-members – individuals and institutions - to such extent and under such conditions as may be specified in the articles of association.

40. Deployment of funds

(1) The funds mobilised by a cooperative shall be primarily for the furtherance of its objectives.

(2) Such of its funds as are not needed for use in its business, a cooperative may invest or deposit, outside its business, in any non-speculative manner.

41. Disposal of surplus

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

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

provided that surplus arising out of services provided to non-members may not be distributed amongst members or staff.

- (2) Surplus must be fully disposed of at the annual general meeting in which the audited statements of accounts for the financial year in which the surplus arose are presented for the consideration of the general body.

42. Management of deficit

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

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

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

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

43. Operation of special funds

- (1) A cooperative may, in the interest of its members and towards the fulfilment of its objectives, create reserves and such other funds as are specified in the articles of association.

- (2) Funds so created may be used in the business of the cooperative, but at the end of every year, on that portion of each fund which was not applied for the purpose for which it was created, the cooperative shall credit to the account of such fund an annual interest, at not less than the rate paid by scheduled banks on long term fixed deposits, debiting such interest as operational expenditure.

CHAPTER VI

ACCOUNTABILITY

44. Accounts, records and documents to be maintained

- (1) Every cooperative shall keep at its head office, the following accounts, records and documents:

- (a) a copy of this Act, with amendments made from time to time;
- (b) copies of other laws and regulations to which the cooperative is subject;
- (c) a copy of its articles of association, with amendments made from time to time;

- (d) the minutes books;
- (e) account of all sums of money received and expended by the cooperative and their respective purposes;
- (f) account of all purchases and sales of goods by the cooperative;
- (g) account of all the assets and liabilities of the cooperative;
- (h) a list of members, their fulfilment of responsibilities over the previous financial year, their eligibility to exercise their rights for the current financial year updated within forty five days of closure of the cooperative's financial year; and
- (j) all such other accounts, records and documents as may be required by this Act or other laws and regulations;

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

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

45. Audit

- (1) A cooperative shall get its accounts audited by a chartered accountant within the meaning of the Chartered Accountants Act, 1949.
- (2) A cooperative, at its annual general meeting, shall resolve to appoint a chartered accountant as auditor. This resolution will be valid only until the close of the next succeeding annual general meeting.
- (3) The remuneration of an auditor may be fixed by the general body or, if not so fixed, by the board.
- (4) An auditor ceases to hold office when the auditor
 - (a) resigns;
 - (b) is removed from office under sub-section (6); or
 - (c) completes his/her term of office.
- (5) The resignation of an auditor becomes effective at the time a written resignation is received by the cooperative, or at the time specified in the resignation whichever is later.

- (6) The general body may, by a special resolution, remove an auditor from office.
- (7) An auditor, who
- (a) resigns; or
 - (b) receives a notice or otherwise learns of a general meeting called for the purpose of removing him/her from office;
- is entitled to submit to the general body a written statement giving the reasons for his/her resignation or the comments on the proposed removal, as the case may be.
- (8) A vacancy created by the resignation or the removal shall be filled up by the general body. An auditor appointed to fill a vacancy holds office for the remaining term of his/her predecessor.
- (9) The auditor shall be given notice of every general meeting and, at the expense of the cooperative, will be entitled to attend and be heard thereat on matters relating to his/her duties as auditor and their exercise.
- (10) It shall be the duty of the board to ensure that annual financial statements are prepared and presented for audit within forty-five days of closure of the cooperative's financial year.
- (11) Upon the reasonable demand of the auditor of a cooperative, the present or former directors, members, managers or employees of the cooperative shall
- (a) provide such access to records, documents, books, accounts and vouchers of the cooperative; and
 - (b) furnish such information and explanations,
- as are, in the opinion of the auditor, necessary to enable him/her to make the examination and report, and as the present or former director, members, managers or employees are reasonably able to furnish.
- (12) It shall be the duty of the auditor to ensure that audited annual financial statements and his/her accompanying report are furnished to the cooperative within forty five days of the submission of annual financial statements by the board.
- (13) The auditor's report to the members of the cooperative shall:
- (a) state whether the auditor has obtained all the information and explanations which to the best of his/her knowledge and belief were necessary for the purpose of his/her audit;
 - (b) state whether the cooperative's balance sheet and income and expenditure account dealt with by the report are in agreement with the books of accounts;
 - (c) indicate the basis on which each asset and liability was valued, and make specific mention of any change in the manner in which such

valuation was done in the year under examination and its effect on surplus/deficit;

- (d) indicate the amount of surplus earned/deficit incurred from provision of services to non-members as distinct from surplus/deficit accruing because of members or in normal course of business;
- (e) indicate every deviation in actual expenses and income from the estimated expenses and income in the approved budget;
- (f) state whether or not any of the directors had at any time during the year under review, become ineligible under this Act to continue in office as a director; and
- (g) state whether the decisions on disposal of surplus or assessment of deficit, of the general body, at its previous annual general meeting were implemented correctly and completely or not.

46. Returns to be filed with the Registrar

- (1) Every year, within thirty days of the holding of the annual general meeting, every cooperative shall file the following returns with the Registrar:
 - (a) annual report of activities;
 - (b) annual statements of accounts as audited by a chartered accountant with auditor's report;
 - (c) statistical statement indicating name of the cooperative; core services offered by the cooperative to its members; total number of members as on the last day of the year; total liabilities expressed as (i) funds from members, and surpluses, (ii) funds from the government, and (iii) funds from other external sources as on the last day of the financial year; quantum in rupees of services provided (i) to members, and (ii) to non-members; and surplus/deficit at end of year; and
 - (d) annual disposal of surplus or management of deficit.
- (2) Alongwith the returns specified in sub-section (1), every cooperative shall furnish the following information to the Registrar:
 - (a) the date of the annual general meeting at which the returns to be filed with the Registrar were considered and/or approved;
 - (b) the total number of members on the rolls of the cooperative who were eligible to vote on the date of such annual general meeting;
 - (c) the number of eligible members present at such annual general meeting;
 - (d) list of names of directors, their addresses and their terms of office;
 - (e) name and address of the chartered accountant appointed for auditing the current year's accounts; and
 - (f) any other relevant and specific information required by the Registrar

which will enable him/her to decide whether the cooperative has conducted its affairs in accordance with the principles of cooperation and this Act.

- (3) If the returns and information, as specified in sub-section (1) and (2), are not filed with the Registrar within the time specified in sub-section (1) it shall be treated as an offence under this Act and the cooperative shall be penalised in accordance with the provisions of this Act.
- (4) The Registrar shall submit an annual report to the Government by 31st March of each year, containing statistical information on the cooperatives in the state compiled from the returns received during the previous calendar year, under sub-section (1)(d), with regard to the total number of cooperatives in the state, their membership, funds, services and surplus/deficit; and the report shall also contain information on the strength of staff in the department of cooperation, including those on deputation, establishment expenses on the department, fee raised under this Act by the department, and a statistical summary of statutory powers exercised during the previous calendar year.
- (5) Any person may apply in writing to the Registrar seeking a copy of the Registrar's annual report, or of any return/s or any information filed with the Registrar, and such information shall be made available by the Registrar on reasonable fee.

47. Inquiry

- (1) The Registrar may, after first providing an opportunity to the cooperative concerned to present its case, for reasons to be recorded in writing, of his/her own motion, and shall, on the application of a secondary cooperative to which the cooperative concerned is affiliated, or of a creditor to whom the cooperative is indebted, or of not less than one-third of the directors, or of not less than one-tenth of the members, hold an inquiry or cause an inquiry to be made into any specific subject or subjects relating to any gross violation of any of the provisions of this Act by the cooperative.
- (2) Except when an inquiry is undertaken on his/her own motion, the Registrar shall order an inquiry only after the receipt of a fee, from the applicant or the applicants, deemed sufficient to meet the costs of the inquiry to be conducted.
- (3) The inquiry shall be completed within a period of one hundred and twenty days from the date of ordering the inquiry.
- (4) If the inquiry is not completed within the time specified in sub section (3), it shall lapse at the end of the said period, and the Registrar shall refund to the applicants the fee collected from them.
- (5) The Registrar shall, within a period of thirty days from the date of the completion of the inquiry, as specified in sub-section (3) or of the lapse of the inquiry as specified in sub-section (4), communicate the report of the inquiry or the reasons for the non-completion of the inquiry, as the case may be,
 - (a) to the cooperative concerned;

- (b) to the applicant secondary cooperative, if any;
- (c) to the applicant-creditor, if any;
- (d) to the person designated by the applicant-directors, if any;
- (e) to the person designated by the applicant-members, if any; and
- (f) to any person, on payment of fee specified by the Registrar.

CHAPTER VII

OFFENCES

48. Offences

- (1) A person who makes or assists in making a report, return, notice or other document required in this Act to be sent to the Registrar or to any other person that:
 - (a) contains an untrue statement of a material fact; or
 - (b) omits to state a material fact required in the report or necessary to make a statement contained in the report not misleading in the light of the circumstances in which it was made;is guilty of an offence and liable on summary conviction
 - (i) In the case of an individual, to a fine not greater than one thousand rupees or to imprisonment for a term not greater than ninety days or to both such fine and imprisonment;
 - (ii) In the case of a person other than an individual, to a fine not greater than ten thousand rupees.
- (2) Where the person guilty of an offence under sub-section (1) is a body corporate and whether or not the body corporate has been prosecuted or convicted, any director or officer of the body corporate who knowingly authorises, permits or acquiesces in the offence is also guilty of an offence and liable on summary conviction to a fine of not more than one thousand rupees or to imprisonment for a term not exceeding ninety days or to both such fine and imprisonment.
- (3) No person is guilty of an offence in pursuance of sub section (1) or (2) where the untrue statement or omission:
 - (a) was unknown to him/her; and
 - (b) in the exercise of reasonable diligence, could not have been known to him/her.
- (4) Every person who:

- (a) without reasonable cause, contravenes a provision of this Act for which no penalty is otherwise provided; or
- (b) fails to give any notice, send any return or document that is required for the purposes of this Act;

is guilty of an offence and is liable on summary conviction to a fine of not more than one thousand rupees.

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

CHAPTER VIII

DISPUTES

49. Disputes

- (1) Notwithstanding anything in any law for the time being in force, if any dispute touching the constitution, management or business of a cooperative arises

- (a) among members, past members and persons claiming through members and deceased members; or
- (b) between a member, past member or a person claiming through a member, past member or deceased member and the cooperative, its board, director, office-bearer, or liquidator, past or present; or
- (c) between the cooperative or its board and any past board, any director, office-bearer, or any past director, past office-bearer, or the nominee, heir, or legal representative of any deceased director or deceased office-bearer of the cooperative,

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

Explanation: For the purposes of this sub-section, a dispute shall include

- (i) a claim by a cooperative for any debt or other amount due to it from a member, past member, the nominee, heir or legal representative of a deceased member, whether such debt or other amount be admitted or not;
- (ii) a claim by surety against the principal debtor where the cooperative has recovered from the surety amount in respect of any debtor or other amount due to it from the principal debtor as

- a result of the default of the principal debtor whether such debt or amount due be admitted or not;
- (iii) a claim by a cooperative against a member, past member or the nominee, heir or legal representative of a deceased member for the delivery of possession to the cooperative of land or other immovable property resumed by it for breach of the conditions of assignment or allotment of such land or other immovable property.
- (2) If any question arises whether a dispute referred to the arbitral tribunal under this section is a dispute touching the constitution, management or business of the cooperative, such question shall be decided by the Arbitral Tribunal.
 - (3) The arbitral tribunal shall decide the dispute in accordance with the provisions of this Act and the articles of association, and such decisions shall be final. Pending final decision on the dispute, the arbitral tribunal may make such interlocutory orders as it may deem necessary in the interest of justice.
 - (4) Every order or decision made under this section, shall be executed by the Civil Court having jurisdiction, as if such order is a decree of that Court, on a certificate issued by the arbitral tribunal.
 - (5) Notwithstanding anything in sub-section (4), or in any other law for the time being in force, and without prejudice to any other mode of recovery which is being taken or may be taken, an arbitral tribunal may, on the application made by the cooperative for the recovery of arrears of any sum advanced by the cooperative to any of its members, and on its functioning a statement of accounts in respect of the arrears and after making such inquiry as the tribunal deems fit, issue a certificate for the recovery of the amount stated therein to be due as arrears.
 - (6) A certificate issued by the arbitral tribunal under sub-section (5) shall be final and conclusive proof of the arrears stated to be due and the certificate shall be executed by the chief executive in the manner specified in the articles of association.

50. Arbitral tribunal

- (1) The articles of association of each cooperative shall provide for the constitution of an arbitral tribunal consisting of five members, elected by the general body from among its members or others, whose term of office shall be not more than three years.
- (2) The arbitral tribunal may choose for reasons to be set forth in writing that a dispute or set of disputes referred to it for settlement be resolved by one or three or five of its members, and the decision of such member or members shall be deemed to be a decision of the arbitral tribunal.

CHAPTER IX
DISSOLUTION

51. Dissolution by members

- (1) A cooperative may, by a special resolution, authorise its own dissolution;
- provided that a notice of the general meeting shall be sent by registered post with an invitation to attend, to the Registrar, to creditors, if any, to any secondary cooperative to which the cooperative is affiliated, and to any cooperative/s with which a partnership contract has been entered into.
- (2) Invitees under the proviso of sub-section (1) shall have the right to make a presentation to the general body, if they so wish to, on the issue of the proposed dissolution.
- (3) Within fifteen days of such authorisation for dissolution, the cooperative shall send to the Registrar a copy by registered post of the authorisation to dissolve the cooperative.
- (4) The authorisation approved in pursuance of sub-section (1) is required to set out:
- (a) the assets and liabilities of the cooperative;
 - (b) the claims of creditors;
 - (c) the number of members;
 - (d) the nature and extent of the members' interest in the cooperative;
 - (e) the name and address of the liquidator appointed by the cooperative.
- (5) When the Registrar receives the special resolution passed in pursuance of sub-section (1):
- (a) where he/she is satisfied that the cooperative has no assets or liabilities, he/she may dissolve the cooperative, strike off its name from the register of cooperatives and issue a certificate of dissolution; or
 - (b) he/she shall, within thirty days of such approval, cause at the expense of the cooperative a notice of the special resolution to be published once in the gazette and once a week for two consecutive weeks in a newspaper published or distributed in the district where the registered office of the cooperative is located.
- (6) In the case of dissolution, the Registrar may require, till the certificate of dissolution is issued by him/her, from the liquidator appointed by the cooperative or any other person who is required to furnish information, a

periodical return showing:

- (a) the progress of dissolution;
- (b) the distribution of any undistributed surplus or reserve; and
- (c) any other relevant information that he/she may require.

52. Dissolution by Registrar

- (1) Where the Registrar has reasonable cause to believe that a cooperative:
 - (a) has not commenced business within two years after the date shown on its certificate of registration; or
 - (b) has not carried on business for two consecutive years;he/she shall send to the cooperative a letter by registered post, inquiring whether the cooperative is carrying on business.
- (2) Where the Registrar does not, within thirty days of the date he/she sent a letter in pursuance of sub-section (1), receive an answer to the letter, he/she shall, within fifteen days after the expiry of thirty days, send to the cooperative a letter stating that:
 - (a) a letter was sent to the cooperative in pursuance of sub-section (1);
 - (b) no answer to that letter has been received by him/her; and
 - (c) if an answer is not received to the letter sent under this sub-section within thirty days from the date it is sent, a notice will be published in the Government Gazette to dissolve the cooperative.
- (3) Where the Registrar:
 - (a) receives an answer from the cooperative that it is not carrying on business; or
 - (b) does not, within thirty days after the date that he/she sent a letter in pursuance of sub-section (2), receive an answer to that letter;he/she may publish in the Government Gazette and send to the cooperative a notice that, at the expiry of thirty days from the date of that notice, the cooperative will have its name struck off the register, or, unless cause is shown to the contrary, be dissolved.
- (4) At the expiry of thirty days after the date of the issue of the notice in pursuance of sub-section (3), the Registrar may, unless cause to the contrary is previously shown by the cooperative:
 - (a) where he/she is satisfied that the cooperative has no assets or liabilities, dissolve the cooperative, strike off its name from the register of cooperatives and issue a certificate of dissolution; or
 - (b) appoint a liquidator to dissolve the cooperative, in accordance with

section 54.

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

53. Dissolution by Court

- (1) The Registrar or an interested person may, after giving the cooperative ninety days notice of the proposed application, apply to the Court for an order dissolving a cooperative, where the cooperative:
 - (a) obtained its registration by fraud or mistake;
 - (b) exists for an illegal purpose;

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

54. Appointment of liquidator

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

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

55. Duties of liquidator

On his/her appointment, a liquidator shall:

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

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

56. Powers of liquidator

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

misappropriated any property of the cooperative, he/she may apply to the Court for an order requiring that person to appear before the Court at the time and place designated in the order and to be examined.

- (3) Where the examination mentioned in sub-section (2) discloses that a person has concealed, withheld or misappropriated property of the cooperative, the Court may order that person to restore the property or pay compensation to the liquidator on behalf of the cooperative.
- (4) No liquidator shall purchase, directly or indirectly, any part of the stock-in-trade, debts or assets of the cooperative.

57. Final accounts

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

CHAPTER X

MISCELLANEOUS

58. Exemption from certain taxes, duties and fees

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

- (a) the stamp duty with which, under any law for the time being in force, instruments executed by or on behalf of a cooperative or by an office

bearer or member and relating to business of such cooperative or any class of such instruments or decisions or orders of the Registrar or arbitral tribunal or liquidator under this Act, are respectively chargeable; or

- (b) any fee payable under the law relating to registration for the time being in force, or court fees.
- (c) the taxes on profession, trades, callings and employments;
- (d) land Revenue;
- (e) Taxes on agriculture income;
- (f) Taxes on sale or purchase of Goods
- (g) Toll Tax on transportation of chemical fertilizers & food grains.

59. Exemption from compulsory registration of instruments

Nothing in clauses (b) and (c) of sub-section (1) of section 17 of the Jammu and Kashmir Registration Act, Samvat 1977 shall apply to

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

Schedule A

[Sections 3 (3)(a) and 4(3)(a)]

Statement of Cooperative Identity

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

1st Principle: Voluntary and Open Membership

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

2nd Principle: Democratic Member Control

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

3rd Principle: Member Economic Participation

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

4th Principle: Autonomy and Independence

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

5th Principle: Education, Training and Information

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

6th Principle: Cooperation among Cooperatives

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

7th Principle: Concern for Community

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

-x-

Schedule B

[Section 6(3)]

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

1. Identity of the cooperative
 - (a) the name of the cooperative
 - (b) the village/town/city where the head office of the cooperative is to be located
 - (c) the custody and use of the common seal
2. Aim and services
 - (a) the aim of the cooperative explicitly stated as a common central need of the members which the cooperative aims at fulfilling
 - (b) key service and support services to members to fulfil the common central need stated in the aim
 - (c) the conditions under which services may be provided to non-members
3. Membership
 - (a) eligibility, ineligibility for obtaining membership
 - (b) eligibility, ineligibility for continuing membership
 - (c) procedure for obtaining membership
 - (d) procedure for withdrawing membership
 - (e) procedure for termination of membership
 - (f) circumstances under which membership ceases
 - (g) procedure for cessation of membership
4. Member rights and obligations
 - (a) the rights of members
 - (b) manner of fixation of minimum performance expected annually of each member vis-a-vis use of services, financial commitment, participation in meetings, and adherence to articles of association, in order to be eligible to exercise the rights of membership including the right to vote
 - (c) the consequences of performing below the minimum level fixed
 - (d) the consequences of default in payment of any sum due by a member
5. General body
 - (a) the role of the general body, and of the representative general body, if any, and subjects which must be dealt with by the general body, and by the representative general body, if any
 - (b) the manner and frequency of convening general meetings, and quorum required
 - (c) the quorum necessary for adjourned meetings
 - (d) the minutes of proceedings of general meetings

6. Board of directors
 - (a) the size and composition of the board of directors
 - (b) eligibility, ineligibility for becoming director
 - (c) eligibility, ineligibility for retaining directorship
 - (d) the procedure for election and removal of directors
 - (e) the terms of office of the directors
 - (f) the frequency of board meetings
 - (g) the manner of convening board meetings, and quorum
 - (h) the functions, responsibilities and powers of the board
 - (i) the minutes of proceedings of board meetings
 - (j) the functions, responsibilities and powers of the directors

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

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

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

10. Secondary cooperatives
 - (a) the rights, if any, which the cooperative wishes to confer on any secondary cooperative of which it is a member, and the circumstances under which these rights may be exercised by such secondary cooperative

(b) the procedure for appointing and changing delegates to secondary cooperative

11. Arbitral Tribunal

(a) the manner of constitution and functioning of Arbitral Tribunal for settlement of disputes

(b) eligibility, ineligibility for being chosen as arbitrator

(c) eligibility, ineligibility for being continued as arbitrator

12. Other matters

(a) the language in which the internal affairs of the cooperative are to be conducted

(b) any provisions of transitory nature

(c) the manner of dissolution of the cooperative

(d) the manner of amending articles of association.

(Sd.)

Additional Secretary to Government,
Law Department.

- x -

The Jammu & Kashmir Self-Reliant Cooperatives Act, 1998

Statement of Objects and Reasons

The people of Jammu & Kashmir have been through untold pain and suffering, and it is the desire of the State Government that an environment be created, whereby citizens can once again engage in productive, creative, economic activity.

In this context, the State Government recognises that cooperatives can play a major role in rebuilding the economies of individuals, since the primary aim of a cooperative is to bring about economic betterment of its members. Apart from the financially beneficial services that a cooperative provides to its members, successful cooperatives also can have a major impact on the local economy, because successful cooperatives share surplus amongst members. Since members, by and large, tend to come from contiguous areas, such action, over a few years, can have significant economic impact on the area, increasing local wealth, increasing purchasing power, increasing local demand for new services since many families are benefited, increasing employment opportunities to meet the new demands, and improving quality of life.

Rural capitalisation, and growth of rural employment opportunities are closely linked to processes by which large sections of people can increase their incomes, and the cooperative form of business seems designed for this purpose.

Therefore, while the State Government will continue to encourage citizen initiative and effort in every field, such encouragement in the cooperative field, in the view of the Government, could contribute very significantly to the objective of the economic policies being pursued by the Government.

The State Government is conscious that the ground reality is that there are at least two types of cooperatives in the state. The first type came into existence at the instance of the Government, to fulfil important public services such as channelling of cheap credit, or subsidised goods, or for distress procurement, etc; and the other type of cooperative may have come into being with the encouragement of the government, but it essentially tries to meet its members' needs, and is driven by the desire to fulfil their needs, not the needs of the larger public.

For the first type of cooperative, which more often than not, is dependent on government equity, government guarantee, and government loans and subsidies for survival, it may not be possible to provide full autonomy, except where the cooperative is willing to break the umbilical cord with the government. It should be possible, even with such cooperatives, to remove unreasonable restrictions that have crept into the cooperative law.

However, for the second type of cooperative, it is possible, and necessary and urgent, to provide a liberal cooperative law, which gives full autonomy and seeks the highest standards of accountability. Both government policy and law should recognise such a cooperative as an instrument of its members for their social and economic betterment, and should not perceive it as an instrument of the government for meeting various goals of the government, or as an instrument of any other external entity. Such a liberal law, therefore, would need to respect the definition, values and principles adopted across the world by cooperators, through the International Cooperative Alliance;

have such provisions as will, with least external intervention, promote the effective practice of cooperative principles;

facilitate and not obstruct the registration of new cooperatives, so that the right of groups of people seeking to engage in cooperative businesses is protected, and people's initiatives allowed to flower;

ensure that the voluntary nature of membership in cooperatives is not violated;

ensure that cooperatives are managed democratically, and that boards are accountable to members;

respect the freedom of cooperatives to run their own businesses, and may place on them only such restrictions as are applied to other forms of business - it should ensure that cooperatives have a level playing field in which to compete on equal terms with other forms of business;

recognise only genuine cooperatives, and para-statal or other forms of businesses should not be governed by such a cooperative law.

The Jammu & Kashmir Self-Reliant Cooperatives' Act, 1998 has been drafted keeping in mind the issues raised above. It has drawn inspiration from the Report of the Brahm Perkash Committee (1991), the Andhra Pradesh Mutually Aided Cooperative Societies Act, 1995, the Mirdha Committee Report (1996), and the Referential Act (1997).

The Jammu & Kashmir Self-Reliant Cooperatives' Act, 1998 relates to such cooperatives as do not raise equity from the government or from any source other than their own members who are in need of and use the services of the cooperative.

- x -