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PART IV

Acts of Gujarat Legislature and Ordinance Promulgated
and Regulations made by the Governor.

The Following Act of the Gujarat Legislature, having been assented to by the Governor on the 23rd January, 2008 is hereby published for general information.

H. D. VYAS,

Secretary to the Government of Gujarat,
Legislative and Parliamentary Affairs Department.

GUJARAT ACT NO. 1 OF 2008.

(First published, after having received the assent of the Governor in the "Gujarat Government Gazette", on the 23rd January, 2008).

AN ACT

further to amend the Gujarat Co-operative Societies Act, 1961.

It is hereby enacted in the Fifty-eighth Year of the Republic of India as follows :-

1. (1) This Act may be called the Gujarat Co-operative Societies (Amendment) Act, 2008.

Short title and commencement.

(2) It shall be deemed to have come into force on the 8th October, 2007.

Guj. X of 1962.

2. In the Gujarat Co-operative Societies Act, 1961 (hereinafter referred to as "the principal Act"), in section 2,-

Amendment of section 2 of Guj. X of 1962.

(1) after clause (7), the following clause shall be inserted, namely :-

"(7A) "co-operative credit structure" means (i) the Primary Agricultural Credit Co-operative Societies; (ii) the Central Co-operative Banks; and (iii) the State Co-operative Bank;";

(2) after clause (13), the following clause shall be inserted, namely:-

"(13A) "National Bank" means the National Bank for Agriculture and Rural Development established under section 3 of the National Bank for Agriculture and Rural Development Act, 1981;";

61 of 1981.

IV-EX.-1-1

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Amendment of
section 6 of
Guj. X of 1962.

3. In the principal Act, in section 6, after sub-section (1), the following sub-section shall be inserted, namely :-

“(1A) In case of the society in co-operative credit structure registered under sub-section (1), the society shall have power to decide their respective area of operation without any restrictions.”.

Amendment of
section 13 of Guj.
X of 1962.

4. In the principal Act, in section 13, to sub-section (2), after the existing proviso, the following proviso shall be added, namely :-

“Provided further that the application for registration of amendment of bye-laws of a society shall be disposed of within sixty days from the date of its receipt.”.

Amendment of
section 22 of Guj.

5. In the principal Act, in section 22,-

(1) in sub-section (1), after clause (f), the following clause shall be inserted, namely:-

“(g) a group of the individuals eligible under clause (a), whether incorporated or not and whether established or not by or under any law.”;

(2) for sub-section (2), the following sub-section shall be substituted, namely:-

“(2) Every person seeking admission as a member of a society, if duly qualified for membership of such society under the provisions of this Act, the rules and the bye-laws of the society, may make an application to the society for membership. The society shall take decision on the application and shall communicate the decision within a period of three months from the date of the receipt of the application.”;

(3) after sub-section (3), the following sub-sections shall be added, namely:-

“(4) All the depositors having deposits of rupees ten thousand or above for a minimum period of one year and the borrowers shall be compulsorily made members in the Primary Agricultural Credit Co-operative Societies:

Provided that the depositors having deposits less than rupees ten thousand shall be made nominal members.

(5) The State Government may, by notification in the *Official Gazette*, alter the limit of rupees ten thousand specified by sub-section (4) and also specify such amount of deposit as it deems necessary for a class of society and different amount may be specified for different classes of societies. In the case of borrowing members, the society shall prescribe in its bye-laws, linking shares subject to minimum of two and half per cent. of the loan taken by the borrowers.”.

6. In the principal Act, in section 27, the existing section shall be renumbered as sub-section (1) of that section and after sub-section (1) as so renumbered, the following sub-section shall be added, namely:-
- Amendment of section 27 of Guj. X of 1962.
- “(2) The person who has committed a default and remains as such defaulter in making repayment of loan or interest thereon for a period of one year from the due date of repayment of such loan or interest or installment shall not be entitled to exercise voting rights of a member of a society till all such repayments are made.”.
7. In the principal Act, after section 44, the following section shall be inserted, namely:-
- Insertion of new section 44A in Guj. X of 1962.
- “44A. Notwithstanding anything contained in this Act or the rules or the bye-laws made thereunder, the committee of every society in a co-operative credit structure shall have freedom to decide its financial and internal administrative matters, especially:-
- (i) interest rates on deposits and loans, subject to the directives issued by the Reserve Bank of India;
- (ii) borrowing, investment, depositing its surplus funds, loaning policies (including individual loans) and other business policies;
- (iii) personnel policies including issues relating to recruitment, promotion, staffing, training, posting and compensation to staff as per business requirement of the society;
- (iv) internal checks and control systems, appointment of auditors, their compensation and other internal administrative issues; and
- (v) borrowing from any financial institution regulated by the Reserve Bank of India, keeping in mind the interest of the society and its members.”.
- Power of Committee of co-operative credit structure.
8. In the principal Act, in section 45, after sub-section (2), the following sub-section shall be added, namely:-
- Amendment of section 45 of Guj. X of 1962.
- “(3) Notwithstanding anything contained in this Act, no person or group of persons other than a member or members shall be eligible to borrow from or make deposit in a Primary Agricultural Credit Co-operative Society.”.
9. In the principal Act, in section 51, to sub-section (1), the following proviso shall be added, namely :-
- Amendment of section 51 of Guj. X of 1962.
- “Provided that in the case of societies in the co-operative credit structure, the State Government shall not subscribe for more than twenty-five per cent. of the total share capital and the State Government or the society shall have the option to reduce the share capital contributed by the State Government.”.
10. In the principal Act, after section 67, the following section shall be inserted, namely:-
- Insertion of new section 67A in Guj. X of 1962.

Bad Debt Reserve Fund.

"67A. (1) Every society which earns profit from its transactions, shall maintain a Bad Debt Reserve Fund.

(2) Every year, the society shall carry at least fifteen per cent. of the net profit to the Bad Debt Reserve Fund.

(3) All debts which are found to be irrecoverable and certified as such by a certified auditor and expenses incurred in recovering the same shall first be written off against the Bad Debt Reserve Fund.

(4) Notwithstanding anything contained in section 67-

(a) the balance of bad debts, if any, remaining after first writing them off under sub-section (3); and

(b) all losses incurred by a society including those suffered on account of settlement of disputes under section 98 which are certified as such by a certified auditor,

may be written off against the reserve fund maintained under section 67 to the extent of not more than thirty per cent. of the balance in that fund;

Provided that no bad debt or loss shall be written off against the bad debt fund or, as the case may be, the reserve fund, unless the society in the general meeting passes a resolution approving the same by a majority of total membership of the society and by a majority of not less than two- third of the members of the society present and voting.

(5) Notwithstanding anything contained in the Act, no society in co-operative credit structure shall be directed by the State Government or otherwise required to contribute to any fund other than those for improving the net worth and owned fund of the society."

Substitution of section 68 of Guj. X of 1962.

11. In the principal Act, for section 68, the following section shall be substituted, namely :-

Restriction on dividend.

"68. No society shall pay dividend to its members at a rate exceeding the rate as may be prescribed by the State Government, by notification in the *Official Gazette*, from time to time for all societies generally or a class of societies in particular :

Provided however that the dividend payable in case of co-operative credit structure shall be subject to the guidelines of the Reserve Bank of India or, as the case may be, the National Bank."

Amendment of section 69 of Guj. X of 1962.

12. In the principal Act, in section 69, after sub-section (3), the following sub-section shall be added, namely :-

"(4) The provisions of sub-sections (1) to (3) shall not apply to the societies in the co-operative credit structure."

13. In the principal Act, -
- (i) in section 70, after the words and figures "section 67 and", the words, figures and letter "for the bad debt reserve fund as provided in section 67A and" shall be inserted;
- (ii) to section 70, the following proviso shall be added, namely :-
- "Provided that the provisions of this section shall not apply to the societies in the co-operative credit structure."
14. In the principal Act, in section 71, in sub-section (1), for the clauses (f) and (g), the following clauses shall be substituted, namely:-
- "(f) in a Scheduled co-operative bank as defined in clause (2) of section 2 of the Reserve Bank of India Act, 1934 and having its registered office within the State or in any nationalised bank,
- (ff) in any land or building-
- (i) where the money in a building fund established by a society is sufficient for the purpose, or
- (ii) where the money in such a fund is insufficient for the purpose or where a society has not established such fund, with the previous sanction of the Registrar :
- Provided that the Registrar shall endeavor to decide the question as to previous sanction be given or not, within ninety days of the receipt of an application for such sanction,
- (g) in any corporation owned or controlled by the Government of Gujarat and other Scheduled Banks not covered under clause (f), with the prior approval of the State Government subject to such terms and conditions as may be prescribed in this behalf :
- Provided that in the case of the State Co-operative Bank, the Central Co-operative Banks and the Primary Agricultural Credit Co-operative Societies, the Reserve Bank of India may issue further guidelines restricting or enlarging the scope of investment in any institutions approved for the purpose under this section."
15. In the principal Act, after section 73, the following section shall be inserted, namely :-
- "73A. Notwithstanding anything contained in this Act or the rules for the time being in force, the societies in the co-operative credit structure shall be at liberty to affiliate or disaffiliate with any federal society of its choice provided a resolution approving such affiliation or disaffiliation with a federal society is passed in the annual general meeting held for the purpose with three - fourth majority of total members, and subject to the rules as may be prescribed and the guidelines issued by the Reserve Bank of India."

Amendment of section 70 of Guj. X of 1962.

Amendment of section 71 of Guj. X of 1962.

2 of 1934.

Insertion of new section 73A in Guj. X of 1962.

Freedom for affiliation or disaffiliation with a federal society of choice.

Amendment of section 74 of Guj. X of 1962. 16. In the principal Act, section 74 shall be renumbered as sub-section (1) of that section and after sub-section (1) as so renumbered, the following sub-section shall be inserted, namely :-

“(2) There shall be two professionals on the committee of the Central Co-operative Bank and the State Co-operative Bank having qualification prescribed by the Reserve Bank of India or, as the case may be, the National Bank. If such members are not elected on committee of the Central Co-operative Bank and the State Co-operative Bank, the Registrar shall direct the concerned bank to co-opt such professional on the committee within the time limit specified in such direction of the Registrar. If the bank fails to comply with the aforesaid directions, the Registrar shall appoint such professional member on the committee of the concerned bank. The professional member shall have all the rights of members inclusive of voting right and the term of such member shall be co-extensive with the term of other elected members.”.

Amendment of section 74D of Guj. X of 1962. 17. In the principal Act, in section 74D,-

- (1) in sub-section (1), -
- (i) for the words “or having been elected not functioning within a period of six months after”, the word “before” shall be substituted;
 - (ii) before the words “the Registrar may”, the words “or having been elected not functioning” shall be inserted;
- (2) after sub-section (1), the following sub-section shall be inserted, namely :-
- “(1A) The Registrar shall hold election of such society within a period of two months and the Committee shall be constituted before the expiration of that period.”.

Amendment of section 76 of Guj. X of 1962. 18. In the principal Act, in section 76, after the existing proviso, the following proviso shall be added, namely :-

“Provided further that the qualifications for appointment of the Chief Executive Officer and the Directors of the Central Co-operative Banks and the State Co-operative Bank shall be such, as may be determined by the Reserve Bank of India from time to time :

Provided also that the Registrar of the Co-operative Societies or the Board of the Central Co-operative Banks or the State Co-operative Bank shall remove, at the request of Reserve Bank, such Directors and Chief Executive Officers who do not fulfill the criteria stipulated by Reserve Bank. However, the existing elected Directors holding their post as such Directors on the date of the commencement of the Gujarat Co-operative Societies (Amendment) Act, 2008, shall continue to hold their offices till the expiry of their current remaining term.”.

19. In the principal Act, in section 80, after sub-section (2), the following sub-section shall be added, namely:- **Amendment of section 80 of Guj. X of 1962.**

“(3) Notwithstanding anything contained in this Act or the rules or in the bye-laws, there shall be only one nominee of the State Government in the committee of the State Co-operative Bank or the Central Co-operative Banks where the State Government has subscribed to the share capital of such co-operative banks and no such nomination shall be made where the State Government has not subscribed to the share capital of such co-operative banks and no such nomination shall be made on the committee of a Primary Agricultural Credit Co-operative Society irrespective of whether the State Government has subscribed to the share capital of a society or not.”

20. In the principal Act, in section 80A, after sub-section (3), the following sub-section shall be added, namely :- **Amendment of section 80A of Guj. X of 1962.**

“(4) The provisions contained in sub-sections (1) to (3) shall not apply to the societies in the co-operative credit structure.”

21. In the principal Act, in section 81,- **Amendment of section 81 of Guj. X of 1962.**

- (1) in sub-section (1),-
- (a) in clause (a), the word “or” appearing at the end shall be deleted;
- (b) clause (b) shall be deleted;
- (c) in sub-clause (i), after the words “of the society”, the words “not being the members of the committee removed under this sub-section” shall be inserted;
- (d) (i) for sub-clause (ii), the following sub-clause shall be substituted, namely:-
- “(ii) one or more administrators from amongst the members of the society, not being the members of the committee removed under this sub-section, or from amongst the officers of the co-operative department of the State Government.”;
- (ii) in paragraph below sub-clause (ii), for the words “two years” and “four years”, the words “one year” and “two years” shall be substituted respectively;
- (2) to sub-section (4), the following proviso shall be added, namely:-

“Provided that the committee or the administrator shall make arrangements for constitution of a new committee of a society in the co-operative credit structure within a period of two months from the date of the order of removal of the said Committee.”;

(3) in sub-section (6), for the words "Before taking any action", the words "Before making an order in writing removing the committee and appointing another committee in its place or one or more administrators" shall be substituted;

(4) after sub-section (6), the following sub-section shall be added, namely:-

"(7) The remuneration of the Administrator appointed under sub-section (1) shall be such as may be determined by the Registrar and the same shall be paid from the fund of the society."

Insertion of new section 81A in Guj. X of 1962. 22. In the principal Act, after section 81, the following section shall be inserted, namely :-

Super session of Committee of Primary Agricultural Credit Co-operative Society. "81A. (1) Notwithstanding anything contained in section 81, the supersession of the committee of the State Co-operative Bank or a Central Co-operative Bank under any provision of the Act shall be done only in consultation with Reserve Bank of India.

(2) The committee of a Primary Agricultural Credit Co-operative Society shall be removed by the Registrar only under the following circumstances, namely :-

- (i) if a society incurs losses for three consecutive years; or
- (ii) if serious financial irregularities or frauds have been identified; or
- (iii) if there is perpetual lack of quorum over a period of three months.

(3) The members of the committee of a Primary Agricultural Credit Co-operative Society which has been removed under sub-section (2) shall not be eligible to become a member of the committee for a period of three years from the date of such removal."

Amendment of section 82 in Guj. X of 1962. 23. In the principal Act, in section 82, after sub-section (3), the following sub-section shall be added, namely :-

"(4) The provisions of sub-sections (1) to (3) shall apply to the societies in the co-operative credit structure subject to the guidelines, if any, issued by the Reserve Bank of India."

Amendment of section 84 of Guj. X of 1962. 24. In the principal Act, in section 84, -
(1) to sub-section (1), the following proviso shall be added, namely :-

"Provided that the audit of the Central Co-operative Banks and the State Co-operative Bank shall be conducted only by the Chartered Accountants from the panel approved by the National Bank."

(2) after sub-section (6), the following sub-section shall be inserted, namely :-

“(6A) The Registrar shall, by an order provide for a special audit of the co-operative credit structure on the basis of the recommendation of the Reserve Bank of India or, as the case may be, the National Bank. A copy of the report of such special audit shall be submitted to the Reserve Bank of India or, as the case may be, the National Bank within the period specified by the Reserve Bank of India or, as the case may be, the National Bank. The provisions relating to audit of accounts of the society made under this section shall also apply to such special audit.”

(3) after sub-section (9), the following sub-sections shall be inserted, namely :-

“(10) The Registrar shall, in consultation with the National Bank prescribe Prudential Norms including Capital to Risk Weighted Assets Ratio for Primary Agricultural Credit Co-operative Societies.

(11) The Registrar shall, by an order, provide for the periodical inspection by the officers subordinate to the Registrar or by federal society or by financing bank, for a class of society under section 87 or, section 88.”

25. In the principal Act, in section 115A, after sub-section (2), the following sub-section shall be inserted, namely :-

Amendment of section 115A of Guj. X of 1962.

“(2A) Notwithstanding anything contained in this Act or the rules made thereunder, the Registrar shall ensure the implementation of regulatory prescription given by the Reserve Bank of India including supersession and winding up of the State Co-operative Bank and the Central Co-operative Bank and shall appoint the liquidator within a period of one month of being so advised by the Reserve Bank of India.”

26. In the principal Act, in section 145F, after sub-section (1), the following sub-section shall be inserted, namely:-

Amendment of section 145F of Guj. X of 1962.

“(1A) (i) (a) No member of a society in the Central Co-operative Bank and the State Co-operative Bank shall be eligible to be elected as a member in the committee if he is in default for a period of twelve months in payment of dues to the society;

(b) no person elected as a member of a society in the Central Co-operative Bank and the State Co-operative Bank shall be continued as a member if he is in default for a period exceeding twelve months in payment of dues to the society unless the amount in default with due interest is paid to the society;

(c) no member of a Primary Agricultural Credit Co-operative Society shall be eligible to be elected as a member in the committee of the State Co-operative Bank or a Central Co-operative Bank if the society is in default in payment of dues to the co-operative bank unless the default with due interest is paid to the co-operative bank;

(d) no member of a non-credit society who is a member in the committee of a Central Co-operative Bank or the State Co-operative Bank shall be continued as such member if the society commits default for a period exceeding 90 days in payment of dues to the bank.

(ii) The above provisions shall be in addition to and not in derogation of any other provisions for disqualification contained in this Act."

Amendment of section 146 of Guj. X of 1962. 27. In the principal Act, in section 146, after sub-section (2), the following sub-section shall be added, namely:-

"(3) No Primary Agricultural Credit Co-operative Society shall use the word "bank", "banker", "banking" or any other derivative of the word "bank" in its name and the existing society using such name shall be deregistered by the Registrar."

Amendment of section 161 of Guj. X of 1962. 28. In the principal Act, in section 161, after the existing proviso, the following proviso shall be added, namely:-

"Provided further that the aforesaid provision shall apply to societies in the co-operative credit structure subject to the guidelines issued by the Reserve Bank of India."

Power to remove difficulty. 29. (1) If any difficulty arises in giving effect to the amendments made by this Act, the State Government may, by order, published in the *Official Gazette*, make such provisions not inconsistent with the provisions of the principal Act, as appears to it to be necessary or expedient for removing the difficulty :

Provided that no such order shall be made under this section after the expiry of two years from the date of commencement of this Act.

(2) Every order made under this section shall, as soon as may be, after it is made, be laid before the State Legislature.

Repeal and savings. 30. (1) The Gujarat Co-operative Societies (Amendment) Ordinance, 2007 is hereby repealed. Guj. Ord. 2 of 2007.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act as amended by the said Ordinance, shall be deemed to have been done or taken under the principal Act as amended by this Act.