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PART V

Bills introduced in the Gujarat Legislative Assembly

(To be translated into Gujarati and the translation to be published in the *Gujarat Government Gazette*. The date of publication to be reported.)

The Following Bill is published with the consent of the Speaker given under the proviso to rule 127A of the Gujarat Legislative Assembly Rules:-

THE GUJARAT CO-OPERATIVE SOCIETIES (AMENDMENT) BILL, 2013.

GUJARAT BILL NO. 28 OF 2013.

A BILL

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

WHEREAS by the Constitution (Ninety-Seventh Amendment) Act, 2011, PART IXB relating to the Co-operative Societies has been inserted in the Constitution;

AND WHEREAS it is expedient to amend the Gujarat Co-operative Societies Act, 1961 in conformity with the Constitution (Ninety-Seventh Amendment) Act, 2011.

It is hereby enacted in the Sixty-fourth Year of the Republic of India as follows :-

Short title. 1. This Act may be called the Gujarat Co-operative Societies (Amendment) Act, 2013.

Amendment of section 2 of Guj. X of 1962. 2. In the Gujarat Co-operative Societies Act, 1961 (hereinafter referred to as "the principal Act"), in section 2, –

Guj. X of 1962.

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

"(1A) "authorised person" means a person duly authorised by the Registrar to take action under the provisions of this Act;";

(2) for clause (5), the following clause shall be substituted, namely:-

"(5) "committee" means the Managing Committee or other governing body of a society to which the direction and control of the management of the affairs of a society is entrusted to;".

Insertion of new sections 28A and 28B in Guj. X of 1962. 3. In the principal Act, after section 28, the following sections shall be inserted, namely :-

Attendance of meeting by members. "28A. It shall be the duty of every member of a society –

- (i) to attend atleast two meetings of the general body within a consecutive period of five years;
- (ii) to utilize minimum level of services as prescribed in the bye-laws :

Provided that a member who does not attend atleast two meetings of the general body as above or does not utilize minimum level of services as prescribed in the bye-laws for a consecutive period of five years, shall be liable to be removed by the Registrar as the member of the society :

Provided further that before removing such person from the membership of the society, he shall be afforded an opportunity of being heard and if his explanation is found satisfactory, his name shall not be removed from the membership of the society.

Provision for co-operative education and training to members.

28B. The State Government may impart co-operative education and training to the members of the co-operative societies so as to enable them to effectively manage the affairs of the society.".

4. In the principal Act, after section 41, the following section shall be inserted, namely :-

Insertion of new section 41A in Guj. X of 1962.

Returns, “41A. Every society shall file returns within six months of the etc. closure of every financial year to such authority as may be designated by the State Government for the purpose, including the following, namely :-

- (a) annual report of its activities;
- (b) its audited statement of accounts;
- (c) plan for surplus disposal as approved by the general body of a society;
- (d) list of amendments to the bye-laws of the society, if any;
- (e) declaration regarding date of holding of its general body meeting and conduct of elections when due; and
- (f) any other information required by the Registrar in pursuance of any of the provisions of the Act.”.

5. In the principal Act, in section 50, in sub-section (2), after the words “deducted to the society”, the words ‘within a period of fourteen days from the date on which such deduction is made” shall be inserted.

Amendment of section 50 of Guj. X of 1962.

6. (1) In the principal Act, in section 74, after sub-section (1), the following sub-sections shall be inserted, namely :-

Amendment of section 74 of Guj. X of 1962.

“(1A) Except as otherwise provided herein, the Managing Committee of a society shall consist of such number of members as may be provided in the bye-laws but not exceeding twenty-one members.

(1B) (i) There shall be reserved one seat for the Scheduled Castes or the Scheduled Tribes and two seats for Women in the managing committee of every society consisting of individuals as members and having members from such class or category of persons.

(ii) One seat may be reserved for the persons who are small farmers and marginal farmers.

Explanation.- The expressions “marginal farmer” and “small farmer” shall have the meanings respectively assigned to them in clauses (g) and (p) of section 2 of the Gujarat Rural Debtors Relief Act, 1976;

President's Act
No. 35 of 1976.

(1C) The term of office of the elected members of the managing committee and its office bearers shall be five

years from the date of election. The term of office bearers shall be co-terminus with the term of managing committee :

Provided that the managing committee may fill up a casual vacancy in the committee by nomination out of the same class or categories members in respect of which the casual vacancy has arisen, if the term of office of the managing committee is less than half of its original term.

(1D) (a) The society shall co-opt persons having experience in the field of banking, management, finance or specialisation in any other field relating to the objects and activities undertaken by the society as the members of the managing committee:

Provided that the number of such co-opted members shall not exceed two in addition to the twenty-one members as specified in sub-section (1A).

(b) The co-opted members as aforesaid shall not have the right to vote in any election of the society in their capacity as such members or to be eligible to be elected as office bearers of the Managing Committee.

(1E) In case, where there are functional directors of a society, they shall also be members of the Managing Committee. Such members shall be excluded for the purpose of counting the total number of members of the Managing Committee.

Explanation.- For the purpose of this sub-section, "functional director" means and includes a Managing Director or a Chief Executive Officer by whatever designation called or any *ex-officio* member or any of the Head of the Department of the concerned society, nominated by the Committee.”.

**Deletion of
section 74B of
Guj. X of 1962.**

7. In the principal Act, section 74B shall be deleted.

**Amendment of
section 74C of
Guj. X of 1962.**

8. In the principal Act, in section 74C, after sub-section (3), the following sub-section shall be added, namely: -

"(4) The election of the Managing Committee shall be conducted before the expiry of its term so as to ensure that the newly elected members of the Managing Committee assumes office immediately on the expiry of the term of office of the members of the outgoing Managing Committee.”.

9. In the principal Act, after section 74C, the following section shall be inserted, namely:-

Insertion of new section 74CC in Guj. X of 1962.

Election of societies other than specified societies.

“74CC. (1) The election of the Committee and of the office bearers of the societies other than the specified societies as referred to in section 74C shall be conducted by such authority as the State Government may, by notification in the *Official Gazette*, notify.

(2) The authority appointed under sub-section (1) shall hold the election as per the rules as may be prescribed.

(3) The election of the Managing Committee shall be conducted before the expiry of its term so as to ensure that the newly elected members of the Managing Committee assumes office immediately on the expiry of the term of office of the members of the outgoing Managing Committee.”.

10. In the principal Act, section 74D shall be deleted.

Deletion of section 74D of Guj. X of 1962.

11. In the principal Act, in section 77,-

Amendment of section 77 of Guj. X of 1962.

(a) for sub-section (1) and the provisos thereunder, the following shall be substituted, namely :—

“(1) Every society shall convene the general meeting of its members within a period of six months of closure of the financial year to transact the business as provided under this Act.”.

(b) in sub-section (5), the words “or, as the case may be, the period extended by the Registrar under that sub-section” shall be deleted.

12. In the principal Act, for section 81' the following shall be substituted, namely :-

Substitution of section 81 of Guj. X of 1962.

Supersession or suspension of Managing Committee.

“81. (1) If in respect of a Managing Committee of a society having the Registrar as its members, the State Government, and in respect of a Managing Committee of a Society which does not have the Registrar as its member, the Registrar, is of the opinion that –

- (i) the Committee persistently makes default; or
- (ii) the Committee is negligent in the performance of its duties imposed on it by or under this the Act or the rules made thereunder or the bye-laws; or

- (iii) the Committee has committed any act prejudicial to the interest of the society or its members; or
- (iv) there is stalemate in the constitution or functions of the committee; or
- (v) the authority which is assigned the functions of conducting elections in respect of Managing Committee has failed to conduct elections in accordance with the provisions of this Act,

the State Government or, as the case may be, the Registrar, after giving the committee an opportunity of being heard, within fifteen days from the date of issue of notice, by an order in writing, supersede or kept under suspension the committee and appoint –

- (a) a Committee, consisting of one or more members of the society, not being the members of the Committee superseded under this sub-section, or
- (b) one or more Administrators who need not be members of the society, or from amongst the officers of the Co-operative Department of the State Government,

to manage the affairs of the society for a period not exceeding six months :

Provided that the committee of any such society shall not be superseded or kept under suspension where there is no Government shareholding or loan or financial assistance or any guarantee by the Government :

Provided further that in case of a society carrying on the business of banking, the provisions of the Banking Regulation Act, 1949 shall also apply : 10 of 1949.

Provided also that in case of a society, other than a Multi-State Co-operative Society, carrying on the business of banking, the provisions of this section shall have the effect as if for the words "six months", the words "one year" had been substituted.

- (2) In the case of supersession of a Managing Committee, where an Administrator is appointed to manage the affairs of the society, he shall arrange for conduct of elections within the period specified in sub-section (1) or sub-section (3) and handover the management to the incoming Managing Committee.

- (3) No Committee of a society shall be kept under suspension for a period exceeding six months for the reasons stated in sub-section (1).
- (4) In case where the committee is superseded or kept under suspension and the committee or Administrator so appointed, shall, subject to the control of the State Government or, as the case may be, the Registrar and to such instructions as he may from time to time give, have powers to exercise all or any of the functions of the committee or of any office of the society and take all such actions as may be required in the interest of the society.
- (5) The conditions of service of the Administrator shall be such as may be prescribed by the State Government.”.

13. In the principal Act, for section 84, the following shall be substituted, namely :—

Substitution of
section 84 of
Guj. X of 1962.

Audit of
Accounts
of society.

“84. (1) The society shall cause to be audited its accounts atleast once in each financial year and also cause it to be completed within a period of six months from the closure of the financial year to which such accounts relate:

Provided that if the society fails to get its accounts audited within the stipulated period as stated above, the Registrar shall cause to be audited the accounts of the society and the cost incurred for such audit shall be recovered from the society.

(2) The society shall cause to be audited its accounts by an Auditor or auditing firm from a panel approved by the Government or an authority authorized by the State Government in this behalf, having required qualifications and experience as may be prescribed to be eligible for auditing accounts of the societies:

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

(3) The audit report of the accounts of an apex Co-operative society shall be laid before the State Legislature as soon as possible after it is received.

(4) The auditor shall for the purpose of audit, at all times have access to all the books, accounts, documents, papers,

securities, cash and other properties belonging to, or in the custody of the society and may summon any person in possession or responsible for the custody of any such books, accounts, documents, papers, securities, cash or other properties to be produced the same at any place at the headquarters of the society or any branch thereof.

(5) If it appears to the Registrar on an application or otherwise that it is necessary or an expedient to get any account of the society re-audited, the Registrar may, by an order, provide for such re-audit and the provisions of this Act applicable to the audit of accounts of the society shall apply to such re-audit.

(6) For auditing the accounts of a society under this section, every society shall be liable to pay to the auditor such amount as audit fee as may be prescribed by the Government for different categories or class of societies.

(7) 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.

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

Amendment of 14. In the principal Act, in section 107,-

section 107 of

Guj. X of 1962. (1) in sub-section (1), before the words "If the Registrar" the words, figure, letter and brackets "Except as otherwise provided in sub-section (1A)," shall be inserted;

(2) after sub-section (1), the following sub-section shall be inserted, namely :-

"(1A) Notwithstanding anything contained in sub-section (1), in case where the members of the society, after having discharged liabilities towards the debt and assets of the society, upon a resolution carried by three-fourth majority of the members of the society present at a special general meeting called for the purpose, *suo motu* resolves to wind up the society and conveys such resolution to the Registrar. The Registrar shall, after disposing off the surplus assets in accordance with the provisions of section 115, cancel the registration of such society under section 20."

15. In the principal Act, in section 147, in sub-section (1), -

Amendment of
section 147 of
Guj. X of 1962.

(i) after clause (f), the following shall be inserted, namely :-

“(f-a) any person before, during or after the election of members of the Managing Committee or office bearers, adopts corrupt practice;”

(ii) after clause (n), the following shall be inserted, namely :-

“(n-a) any person wilfully or without any reasonable excuse disobeys any summons, requisition or lawful written order issued under the provisions of this Act;”;

(iii) after clause (o), the following shall be inserted, namely :-

“(o-a) any officer or custodian who wilfully fails to hand over custody of book, accounts, records, cash, security and other property belonging to a co-operative society of which he is an officer or custodian, to an authorised person;”.

16. In the principal Act, in section 148, in sub-section (1), -

Amendment of
section 148 of
Guj. X of 1962.

(i) after clause (f), the following clause shall be inserted, namely: -

“(f-(i)) if it is an offence under clause (f-a) of that section, with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both;”;

(ii) after clause (n), the following clause shall be inserted, namely: -

“(n-(i)) if it is an offence under clause (n-a) of that section, with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both;”;

(iii) after clause (o), the following shall be inserted, namely: -

“(o-(i)) if it is an offence under clause (o-a) of that section, with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both;”.

Insertion of new
section 168A in
Guj. X of 1962.

17. In the principal Act, after section 168, the following section shall be inserted, namely :-

Transitory provisions. "168A. Notwithstanding anything contained in this Act and amendments made in view of the Constitutional (Ninety-Seventh Amendment) Act, 2011, the Committees of the societies existing immediately before the commencement of the Gujarat Co-operative Societies (Amendment) Act, 2013, shall continue till the expiration of their term unless sooner superseded. All the orders of the Administrator or any other order passed by the Registrar shall continue for the period mentioned in such order as if passed under the amended provisions. All proceedings pending before the Registrar or person authorised by him or any other authority under the provisions of this Act shall stand transferred wherever necessary to the Registrar or any authority according to the amended provisions of the Gujarat Co-operative Societies (Amendment) Act, 2013, as the State Government may notify.".

Guj. of 2013.

Guj. of 2013.

STATEMENT OF OBJECTS AND REASONS

The Parliament has enacted the Constitution (Ninety-Seventh Amendment) Act, 2011, thereby inserting PART IXB after PART IXA in the Constitution of India comprising therein the provisions relating to co-operative societies in order to see that the co-operative societies have in their affairs greater autonomy, democratic functioning and professional management. The provisions of PART IXB mainly relate to number and term of the members of the Managing Committee, election of members of the Managing Committee, supersession and suspension of the Managing Committee, audit of accounts of co-operative societies, convening of general body meetings, returns required to be filed by the co-operative societies, etc. The State Legislatures are required to insert the above provisions in their law relating to co-operative societies in view of the above said constitutional amendments. It is, therefore, considered necessary to amend the Gujarat Co-operative Societies Act, 1961 in tune with the provisions contained in PART IXB of the Constitution of India.

This Bill seeks to achieve the aforesaid objects.

The following notes on *clauses* explain, in brief, the important provisions of the Bill: -

Clause 2. - This clause provides for the definitions of "authorized person" and "committee".

Clause 3. -- New sections 28A and 28B proposed to be inserted by this clause provide for the attendance of the members of the Society in the general body and failure on the part of member to comply with the provisions his membership shall be liable for removal. Section 28B casts duty upon the State Government to provide for co-operative education and training to the members of the co-operative society for effective participation in managing the affairs of the society.

Clause 4. -- New section 41A proposed to be inserted by this clause casts duty upon the co-operative society to file returns containing the matters specified therein, within six months of the closure of financial year, to the authority as may be designated by the State Government.

Clause 5.-- This clause provides that the deduction made by the employer from the salary or wages payable to the employees shall be required to be deposited within a period of fourteen days from the date on which such deduction is made.

Clause 6.- (i) New sub-section (1A) proposed to be inserted in section 74 by this clause provides that the members of the Managing Committee of a Society shall not exceeds twenty-one in number;

(ii) New sub-section (1B) proposed to be inserted in section 74 by this clause provides for the reservation of one seat for Scheduled Castes or Scheduled Tribes and two seats for Women on the Managing Committee of every society; and also one seat be reserved small farmers and marginal farmers;

(iii) New sub-section (1C) proposed to be inserted in section 74 by this clause provides that the term of office of the elected members of the Managing Committee and its office bearers shall be five years from the date of the election of the Committee and filling up of the casual vacancies by nomination if the term of office of the elected members of the Managing Committee and its office bearers;

(iv) New sub-section (1D) proposed to be inserted in section 74 by this clause provides for co-option of the persons not exceeds two, having experience in the Field as mentioned therein;

(v) New sub-section (1D) proposed to be inserted in section 74 by this clause provides that the co-opted members shall not have the right to vote in any election of the society in their capacity as such members or be eligible for contesting election of office of bearers of the Managing Committee;

(vi) New sub-section (1E) proposed to be inserted in section 74 by this clause provides that the functional directors of the society, shall also be members of Managing Committee but shall be excluded from the total number of members of the Managing Committee.

Clause 7.- This clause provides for deletion of existing section 74B.

Clause 8.- Sub-section (4) proposed to be inserted in section 74C by this clause provides that the election of the Managing Committee shall be conducted before the expiry of its term so that newly elected members of the Managing Committee assumes office on the expiry of the term of office of the members of the outgoing Managing Committee.

Clause 9.- (i) Sub-section (1) of new section 74CC proposed to be inserted by this clause empowers the State Government to notify, by notification in the *Official Gazette*, the authority which shall conduct the election of the Committee and of the office bearers of the societies other than the specified societies;

(ii) sub-section (2) of new section 74CC proposed to be inserted by this clause empowers the State Government to prescribe by rules, the manner in which the authority shall conduct the election of the Committee and of the office bearers of the societies other than the specified societies.

Clause 10.- This clause provides for deletion of existing section 74D.

Clause 11.- Sub-section (1) of section 77 is proposed to be substituted by this clause casts duty upon the co-operative society to convene general meeting within six months of the closure of financial year.

Clause 12.- Section 81 proposed to be substituted by this clause provides for the supersession or suspension of the Managing Committee for a period not exceeding six months, for default as specified therein; and also provides for appointment of one or more administrator or a committee of one or more members for managing the affairs of the society.

Clause 13.- Section 84 proposed to be substituted by this clause provides that the audit of accounts of the Societies shall be audited atleast once in each financial year within a period of six months from the closure of the financial year by an Auditor or auditing firm from approved panel by the Government or an authority authorized by the State Government having prescribed qualifications and experience; it also provides for re-audit of the societies, audit fee to be paid to the auditor and periodical inspection of the societies by the officers subordinate to the Registrar or by the federal society or financial bank

Clause 14.- Sub-section (1A) proposed to be inserted in section 107 by this clause provides for the winding up the society in the manner specifies therein after discharging the liabilities towards the debt and assets of the society.

Clauses 15 and 16.- Section 147 proposed to be amended by this clause provides for the certain other offences in contravention of the provisions this Act; and section 148 provides for penalties for certain other offences made punishable under provisions of section 147 as amended by this Bill.

Clause 17.- New section 168A proposed to be inserted by this clause provides for transitory provisions for-

- (i) the term of existing societies;
- (ii) orders passed by the administrator or Registrar;

(iii) transfer of pending proceedings before the Registrar or authorized person or any other officer, authority as may be notified by the State Government.

BABUBHAI BOKHIRIA,

MEMORANDUM REGARDING DELEGATED LEGISLATION

The Bill involves the delegation of legislative powers in the following respect :-

Clause 9.- (i) Sub-section (1) of new section 74CC proposed to be inserted by this clause empowers the State Government to notify, by notification in the *Official Gazette*, the authority which shall conduct the election of the Committee and of the office bearers of the societies other than the specified societies;

(ii) sub-section (2) of new section 74CC proposed to be inserted by this clause empowers the State Government to prescribe by rules, the manner in which the authority shall conduct the election of the Committee and of the office bearers of the societies other than the specified societies.

Clause 12.- Sub-section (5) of section 81 proposed to be substituted by this clause empowers the State Government to prescribe by rules, the conditions of service of the Administrator.

Clause 13.- (i) Sub-section (2) of section 84 proposed to be substituted by this clause empowers the State Government to prescribe by rules, the qualifications and experience for an Auditor or auditing firm or an authority to be authorized to be eligible for auditing accounts of the societies.

(ii) sub-section (6) of section 84 proposed to be substituted by this clause empowers the State Government to prescribe by rules, the amount as audit fee to be paid to the auditor for different categories or class of societies.

The delegation of legislative powers as aforesaid is necessary and is of a normal character.

Gandhinagar,
Dated the 21st March, 2013.

BABUBHAI BOKHIRIA.

By order and in the name of the Governor of Gujarat,
Gandhinagar
Dated the 22nd March, 2013

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