

*BYE-LAWS OF THE
CO-OPERATIVE HOUSING SOCIETY*

MAHARASHTRA CO-OPERATIVE SOCIETIES (AMENDMENT) ACT,2013

MAHARASHTRA ACT NO.16 OF 2013

Dtd.13th August,2013

The Amended Act is applicable w.e.f.14th Feb.2013

- ✓ The Draft Rules to give effect to the Amendments in MSC Act,1960 were notified on 22nd nov.2013 and the **Final Rules, The Maharashtra Co-operatives Societies (1st Amendment) Rules 2014** are notified **vide Notification No.182 dtd.30th Aug.2014.**
- ✓ Maharashtra Co-op.Societies (**Election to Committee Rules,2014**) are notified **vide notification No.221 dtd.12th Sept.2014** having applicability w.e.f.11th Sept.2014 followed by various circulars covering aspects related to Elections and Election procedure
- ✓ The **New Model Bye laws** are uploaded on www.sahakarayukta.maharashtra.gov.in site **on 8th Oct.2014** for adoption of the same by the Co-op.Housing Societies.

Types of Co-operatives

Each state has got various types of cooperative societies depending upon its socio economic culture

In Maharashtra we have almost 50+ types of cooperative societies depending upon the objects with which they are formed and the needs of the end users they cater to.

Rough statistics in Maharashtra: 1.80 lacs societies. almost 90,000 are housing societies & almost 40000 housing societies are in Mumbai and Thane.

- **Multi State Cooperative Societies**
- **State level Cooperative Societies**
- **District level Cooperative Societies**
- **Primary Co-operative Agricultural and Rural Development Bank Ltd,.(PCARDB)**
- **Primary Agriculture Co-operative Societies (PACS)**

Recap of 97th Constitutional Amendment

- Fixed term of **five years** to elected board.
- **Active members-** Economic Participation & attending meetings
- **Professional Mgt** by Expert & Functional Directors
- Equality by providing reservations for **women & SC/ST**
- Provides for **independent professional audit**
- Empowers Govt to obtain periodic reports & A/cs.
- Provides for **offences** relating to Coop Societies & **penalties** for such offences

ACT RULES AND BYE LAWS

The legal frame work for cooperatives consists of

- (1) the Cooperative Societies Acts passed by the legislatures
- (2) the rules framed under the Cooperative Societies Act to carry out the purpose of the Act and
- (3) the bye-laws adopted by the cooperatives and registered by the Registrar Cooperative Societies.

Why we need Bye Laws?

- **Act, is the parent law of the concerned subject,** which is only by legislation and the Act basically will give the provisions on various aspects right from the Definitions to the Disputes resolution mechanism that needs to be followed or adhered to and its content is common in nature...so basically **its POLICY**
- **Rules are framed after the Act comes into place and it gives procedural guidelines** on the implementation and compliance of the various provisions of the said Act.. **THE WHEELS TO MAKE** the Act implementable.

What Is Bye Law?

- **Set of rules and regulations for internal management, business or administration.** These separate and distinct set of rules and regulations wrt a Co-operative society is known as Bye-laws .
- The bye-laws are **adopted by the members** of the cooperative and **registered** by the Registrar of the Cooperative Societies.

- As the bye-laws are framed and adopted by the cooperatives, **they differ from one cooperative to another**, as per their respective objectives and the needs.
- The provisions of byelaw cannot be **inconsistent with the provisions of the Act and the Rules**. The provisions of Cooperative Societies Act and Rules have overriding effect on the provisions of the bye-laws. In case of conflict between the bye-laws and the provisions of the Act or Rules the provisions of the Act or Rules will prevail.

Each Act will define the meaning of the Bye law in its definition section.

Maharashtra Cooperative Societies Act, 1960 defines Bye law as:

Sec.2(5) bye-laws' means the bye-laws registered d under this Act and for the time being in force and includes a registered amendment of such bye-laws;

So the Bye laws needs to be adopted and registered including the amendments to the already registered Bye laws if any.

Model & Autonomous Bye law

- In Maharashtra the State Govt. sets up a committee which prepares the Model Bye laws for various types of societies and the same are uploaded on the website of the Dept. of Co-operation.

Model and Autonomous Bye laws:

Model bye laws is standard bye law which is available for adoption as it is with or without amendments and **Autonomous** by laws are prepared by the co operative society as per their requirements , of course within the ambit of the provisions of the Act and Rules.

Which Section & Rule of MCS Act has Reference to the Bye laws

- **Sec.13 & Rule 12 on Amendment of Bye laws of Society – Society on their own wants to amend**
- **Sec 14 & Rule 13 on Power to direct amendment of bye laws – Registrar's Power to call for amendment**
- The proviso to this section provides that , The Registrar may specify the Model Bye laws ,for such type of societies or class of societies , as he may deem fit .

Amendments to the Bye laws: Sec.13

- **If society wants to amend** any of the clauses in the Bye laws then the copy of the amendment passed, in the prescribed manner , at a general meeting of the society , shall be forwarded to the **Registrar** . And every application, for registration of an amendment of the bye laws shall be disposed off by the registrar within a period of 2 months from the date of receipt of the
- If Registrar is **unable to dispose off** the application within 2 months then, within next 15 days he has to refer the application to the next higher authority and where the Registrar himself is the registering authority then to the State Government who has to dispose it off within next 2 months or else the amendments will be **deemed to have** been registered .

Sec.13 contd..

- No amendment of the bye laws of a society shall be registered by the Registrar under this section or in the case of the bye laws which are deemed to have been registered shall have effect, if the amendment is repugnant to the policy directives , if any, issued by the State Government under Sec.4.
- Once the amendments are registered or deemed to have been registered then Registrar has to **issue a copy of amendment certified** by him to the society which will be a conclusive proof that amendments have been registered.
- Where Registrar refuses to register the amendments then he has to communicate the **order of refusal along with the reasons** thereof.

Procedure for Amemndment of the Bye laws: R- 12

- **Convene the General Body Meeting by giving 15 days notice and the text of existing bye law and text of the proposed amendment** needs to be given to the members.
- The resolution should be passed by the **2/3rd majority** of members present & voting at GBM.
- The application needs to be submitted to the office of the Registering Authority within 2 months from the date of the meeting at which resolution was passed alongwith following documents:

Documents to be submitted

1. A copy of **existing registered bye laws** with amendments proposed alongwith reasons thereof
2. **4 copies of the text** of the bye laws as it would stand after the amendments signed by the officer duly authorised in this behalf by the committee of the society
3. **A copy of the notice** given to the members of the society of the proposal to amend the bye laws.
4. **Copy of resolution** passed by the general body,
5. Any other particular that may be required by the Registrar
6. The application should be submitted within 2 months from the date of the General Meeting at which such amendment has been passed.
7. The Registrar has to register the amendment within 2 months from the date of the receipt of the application.

Why to study Bye laws:

- The entire audit of the Co-operative society will be done based on the bye laws of that society.
- ICAI Auditing standard specifically wants each auditor to collect the basic information about the client and his business. So, to understand the business you will have to see the objects with which its being formed just like MOA & AOA incase of co form of organisation
- Again knowing contents of the bye laws is essential for the members to know and defend their rights and creating awareness about the provisions and compliances which they should do for the smooth functioning of the society

- From Board's perspective knowing the contents of the Bye laws will help them to manage the smooth functioning of the society, do the compliances , get better audit classifications for their societies and know their rights and responsibilities
- It also help in case litigation takes place either between the member and society or an outsider and the society
- Access to the copies of registered bye laws is a basic right. Members may not understand the technical language of ACT and Rules and Bye laws will help them to understand the provisions at micro and macro level.
- It also contain various forms as are prescribed in the Acts and Rules

Contents In the Bye Laws/Subject Matter of the Bye laws-Rule 5

Irrespective of the type of the co-operative society, the following are the contents of the Bye laws in general

1. Name & Address and Procedure to change the name & address of the society
2. Interpretations or Definitions
3. Area of Operation
4. Objects of the Co-op. Society
5. Affiliations with Federal Society
6. Funds Raising, Their Utilisation and Investment

Contd...

7. Members, Rights

8. Responsibilities and Liability

9. Levy of charges of society

10. Incorporation/ Duties Powers of society

11. General Meetings

12. Management of affairs of society

13. Maintenance of books of accounts &
registers

14. Appropriation of profits

Contd..

15. Writing off irrecoverable dues

16. Audit of accounts of society

17. Conveyance of property and repairs
maintenance

18. Miscellaneous

19. Redressal of members complaints

20. Redevelopment of Society's buildings

Drafting of the Model /Autonomous Bye laws:

- Each society will have **different object** for which it is formed may be a primary co op society or a district co-op society or a federation. So, the **Object clause** in the Bye laws of each such type of societies will be different and **rest of the standard provisions** will remain the same like conduct of AGM, audit, composition of board, maximum term, max board of directors, meetings etc.
- So **while drafting** a bye law for a society **one has to amplify and list out the objects** for which it is getting formed and these objects are **subject to modification** by amending the same as and when required by complying with the procedure for amendment.

Drafting contd...

- Before Drafting a Bye law for any co-operative society **we should also know the meaning** as it is defined in the Act or Rules if it is specifically mentioned .
- We may get the **sample Bye laws of the societies which are there in the same line of business** the way we do **view public documents**, download MOA/AOA before floating a company.
- Then we have to see which are the clauses where we want to have a modification over the sample bye laws subject to provisions of Act and Rules
- The drafted Bye laws needs to be discussed with the promoters before finalising .

Major Changes in MSC Act,1960 vis a vis Model Bye Laws:

- Condition for membership- Applicant to take 10 shares of Rs.50 each as against 5 shares.Bye law No.22 on rights of membership talks about the right to receive the notice of demand from society if there is increase in min. contribution of member in share capital.
- Classification of Active and Non-Active members.
- Associate member definition- ownership in the property individually or jointly with others is must and whose name does not stand first in the share certificate.
- Co-op. Education and training to members, committee members, officers and employees.
- Education and Training fund of Rs.10 per member per month to be collected as against Rs.3 per member per annum.
- Sinking fund can be utilised by the society and no permission of the Registrar is needed-General body permission however, is must.

- NOC of society for transfer of flat or property is not required. However, Rule 24 and Bye law No.38 on transfer of shares and interest requires that the transferring member give 15 days notice to the society of his intention to do so along with the consent of the transferee member.
- Elections of management committee must be notified six months in advance and to be held under the supervision of the newly constituted State Co-operative Election Authority (SCEA).-**Sec.73CB**
- Casual vacancy in management committee to be informed to Election Authority and direct co-option is not allowed.
- Disqualification of committee and its members- **Sec.77-A & 78**
- Strength of Management committee and Reservation of seats for Women and for members of SC,ST & OBC category with Expert and Functional Directors appointment possible subject to conditions.-**Sec.73AAA & bye law No.113**

- Last date for conducting AGM is 30th Sept. No extension.
- Appointment of Auditors ,their Remuneration, Rights and Responsibilities ,removal etc.-Auditor should be a panel auditor and Maximum appointment for consecutive three years and maximum 20 audits **excluding** for societies with paid capital of less than Rs.1 lac.-Additional responsibility to file FIR if misappropriation etc is noticed –Special & Specific Reports to be filed with Registrar- **Sec.81/R-69/Bye la 150-152**
- Cash expenses limit Rs.1500/- as against Rs.4500/-in Bye laws.-**Bye law No.144 /R-107D subject to provision of IT Act(43)**
- Cash in Hand at the close of the day limit increased from Rs.300 to Rs.10000/-**Bye law 143/R-107C**
- For encroachment of common areas by members to be charged at 5 times the monthly maintenance charges for the period of such encroachment.-**Bye law No.169**

- Applicability and adoption of Accounting standards prescribed by state government and by **ICAI-Sec.81 & notification dtd.29th Oct.2014-SA700**
- Filing of Annual Mandatory Returns with the Registrar.-**Sec.79(1A) & 79(1B)**
- Penalties prescribed for various offenses and consolidated penalty for all defaults to be Rs.5000/-maximum in any financial year.-**Bye law No.165(a)**
- **Concept of Emergency Planning Scheme and Fire Safety Audit introduced.**-Bye law No.76***The Maharashtra Fire Prevention and Life Safety Measures Rules, 2009, made it mandatory for building owners and residents to conduct half – yearly fire safety audits and submit the report to the fire department. As per the directive of Directorate of Maharashtra Fire Services, the safety audit has to be conducted by the ‘Licensed Agency’ approved by them.**

Other imp bye law provisions auditor should know:

- Structural Audit –once in 5 yrs for Bldg ageing 15-30 years and once in 3 years if Bldg ageing more than 30 yrs.by BMC approved structural engineers.
- One time limit for repairs and maintenance exps. management committee can decide is Rs.1 lac Max.- else General Body permission must.
- Cheques should be signed by Secretary And Chairman/Treasurer and same with the vouchers.
- Awareness regarding Nomination to be created.
- Mandatory filing of Annual returns and auditors appointment should be insisted for.

- Security bond for holding cash from the employee and officer -500 and 1000 if paid up capital is less than 1.50 lacs and Rs.1000 & 2000 if it is more than 1.50 lacs-**R-107B**
- “Administrator” is appointed under sec 78 and “authorised officer” is appointed under sec 77A
- Audit rectification memo needs to be submitted to Registrar in O form within 3 months from the date of the audit report and even auditor has to give remarks on **that-Penalty for society of Rs.5000 u/s 147**
- **Sec.146 explains offences and Sec 147** defines penalties
- Dismissal of committee if the election due date is not intimated or mandatory returns are not filed & non submission of audit rectification report etc.
- Copy of Bye laws ,list of members to be kept open for inspection to public free of **charge-Sec.39 – to public**