

## **LAW ON MAHARASHTRA CO-OPERATIVE HOUSING SOCIETIES**

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## **MAHARASHTRA CO-OPERATIVE SOCIETIES ACT, 1960**

The MCS Act has been formulated with a view to providing for the orderly development of the co-operative movement in the State of Maharashtra in accordance with the Directive Principles of State Policy enunciated in the Constitution of India. It was found beneficial to consolidate and amend the law relating to co-operative societies in the State.

### **HISTORY**

India is primarily an agricultural country. As per a report of 1925, farmers in India were in debt due to which the owning of lands was shifting from the farmers to the money lenders. In order that a group of persons get together to provide loans to its members the seeds of the 'co-operative movement' were sowed. Initially, the All India Act 1912 was formulated. However, it was soon realised that mere legislative fiat could not efficiently control the working of economic laws and the problem of diminishing rural indebtedness amid bringing credit facilities within the reach of agriculturists on reasonable terms remained unsolved'.

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In Punjab, Mr. (now Sir) Edward Maclegan and Capt. Crosthwaite and in Bengal Mr. Lyon began to organise societies. A few societies then organised still survive in Punjab. The Report of the Indian Famine Committee of 1901 powerfully advocated the introduction of mutual credit associations. Their recommendation after careful consideration by the two committees took shape in the Cooperative Credit Societies Act of 1904.

Prior to 1904 associations and societies could be formed and registered under either of the two Acts. The Societies Registration Act, (XXI of 1860) and the Indian Companies Act of 1882. Under the Societies Registration Act of 1860 any seven or more persons associated for any literary, scientific, charitable purpose (now also for diffusion of political education) could form a society by signing a Memorandum of Association in a form prescribed by the Act.

Under the Indian Companies Act of 1882, any seven or more persons associated for any lawful purpose could incorporate a Company. There being no other Act under which an association or a society could be formed for the purpose of promoting the economic interests of its members in accordance with cooperative principles, co-operative societies had to be organized under the Indian Companies Act of 188~ (now Act VII of 1913).

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But it was found that the elaborate provisions contained in 290 sections of that Act were wholly unsuited to societies of the kind it was desired to encourage. Legislation was therefore called upon to take such societies out of the operation of the general law on the subject and substitute provisions specially adopted to their constitution and objects. It was also thought desirable to confer upon them special privileges and facilities in order to encourage their formation and assist their operations. But since they were to enjoy exemption from the general law and facilities of a special nature such precautions were considered necessary as were needed in order to prevent speculators and capitalists from availing themselves under colourable pretexts of privileges which were not intended for them.

The Law Committee appointed under the orders of the Government of India to consider the question of the establishment of cooperative societies in India (1903) thought that the term 'Bank' was not altogether suitable and was likely to convey a misleading impression of the objects of the societies. The committee, therefore preferred to use the term "Co-operative Credit Societies" as indicating more clearly the aims and scope of the institutions which it was desired to see established. The said Act of 1904 was largely framed on the English Friendly Societies Act of 1896 and was put in practice throughout India. There were two cardinal objects which

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the Government of India kept in view in framing the Act, simplicity and elasticity.  
The same was done keeping in view the class it is was intended to be used by and  
for.



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**TYPES OF CO-OPERATIVE SOCIETIES:**

Few types of co-operative societies are:

(i) Agricultural Societies, (ii) Crop Protection Societies, (iii) Lift Irrigation Societies, (iv) Consumers' Societies, (v) Co-operative Banks, (vi) Farming Societies, (vii) Housing Societies, (viii) Housing Societies of Backward Class Persons, (ix) Processing Societies (x) Co-operative Sugar Factories, (xi) Co-operative Spinning Mills, (xii) Producers' Societies, (xiii) Resources Societies.

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## **RELEVANCE OF HOUSING SOCIETIES (Mumbai)**

‘Makan’ or a place of residence is one of the three essential needs. Today the other utilities offered together with the house are given equal importance as the house. The idea of open plot societies where constructing houses with own expenses by purchasing land is no longer feasible. Therefore the main purpose of co-operative housing societies has shifted from making available residence by constructing houses for its members to providing basic amenities, management etc. in such residences. Even though the Act lays down for orderly development of co-operative movement and the rules/procedure for management of facilities, people residing in the same building or the same complex, who are unknown to each other sometimes, have disputes based on how one interprets the provision of the said Act, Rules and Bye-laws. Some issues or disputes are worked out amicably within the Society by holding meetings however some are escalated and are taken to Courts.

As on 31.3.2010 there were about 2,18,320 Co-operative societies in Maharashtra State out of which 81,255 are Housing Societies. This means that housing societies are more in number than any other society. The concept of housing Society is

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unique as a Housing Society is such type of society where the members of the society stays with their family day and night in each other's close contact/company. This type of close contact is not found in any other type of society. Therefore it is often seen that the complaints of Housing societies arise out of human nature, behaviour, egoism, anger, greed etc.

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**DEFINITION**

**Co-operative** is defined as "an autonomous association of persons united voluntarily to meet their common economic, social, and cultural needs and aspirations through a jointly-owned enterprise"

The important point of is that all the members are also the joint owners which is why shares are issued to the members and that all the members work towards their needs through joint effort.

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## **RECENT AMENDMENTS**

### **97<sup>th</sup> Amendment**

The Governor of Maharashtra was satisfied that circumstances existed which rendered it necessary for him to take immediate action further to amend the MCS Act, 1960 and therefore promulgated the MCS (Amendment) Ordinance, 2013 on the 14<sup>th</sup> February, 2013. Therefore from 14 February, 2013 the MCS Act was amended.

One of the most important features of this amendment was that the right to form a co-operative society is a fundamental right.

The text of the 97th amendment to the Indian Constitution makes the right to form cooperative societies a fundamental right under Article 19(1)(c) [now, the right to form “associations or unions or cooperative societies” (emphasis supplied)]. The amendment also inserts a new directive principle into Part IV of the Constitution, Article 43B, which reads: “The State shall endeavour to promote voluntary formation, autonomous functioning, democratic control and professional management of cooperative societies”.

The above amendment has brought about some changes to the MCS Act such as

(1) the right to form a Co-operative Society become enforceable as a fundamental right, (2) the above amendment has brought to fore autonomous functioning of

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Society with minimal interference from outside agencies including the Registrar. This promoted the management and administration of Society through its members and not Administrators as was done previously. Democratic Control ensures that elections are held in a free and fair manner by the members of the Society. Professional Management is achieved by enrolling the members of the Society to various training classes and courses.

**MAHARASHTRA ORDINANCE No. IX OF 2019;**

The Maharashtra Co-operative Societies Act, 1960 governs all the co-operative societies having different objects, classifications and sub-classifications. The provisions of the MCS Act regulate the management and administrative aspects of the co-operative societies and protect the interest of its members. However among all co-operative societies governed by MCS Act, the co-operative housing societies are largest in number being around 50% of the total societies in the State. Even though the affairs of co-operative housing societies are distinct and peculiar, they were regulated in the same manner as all other co-operative societies. The uniform application of the provisions of the said Act, despite of the uniqueness of the co-operative housing societies, was creating problems and was inadequate to address all the affairs of the co-operative housing societies. This led to large number of

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disputes and litigation and created hurdles in smooth functioning of the co-operative housing societies. In this view of the scenario, an urgent need was felt to provide a separate Chapter to cater to the specific requirements of the co-operative housing societies. Therefore a separate Chapter providing for regulation of co-operative housing societies was inserted in the said Act. The proposed Chapter, among other things, has catered primarily to the issues of the co-operative housing societies viz. members and their rights, management of societies, audit, enquiry and inspection, settlement of disputes, liquidation, elections of societies, recovery of claims, etc.

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MAHARASHTRA CO-OPERATIVE SOCIETIES ACT

The Maharashtra Co-operative Societies Act (MCS Act) consists of about XIV Chapters (equivalent to about 18 chapters in all as some of the Chapters have been numbered as XIII-A and XIII-B etc.).

**Chapter 1 - Definitions**

Section 1 deals with the short title, extent and commencement of the Act.

Section 2 deals with the definitions. Some of the important definitions are:

*S. 2 (16) "housing society" means a society, the object, of which is, to provide its members with open plots for housing, dwelling houses or flats; or if open plots, the dwelling houses or flats are already acquired, to provide its members common amenities and services;*

*S. 2 (19)(a) "member" means a person joining in an application for the registration of a co-operative society which is subsequently registered, or a person duly admitted to membership of society after registration, and includes a nominal, associate or sympathiser member;*

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## **Chapter 2 – Registration**

Explains and deals with the procedure, requirements and steps to be taken for the formation of a society. It is important that the main purpose of a Co-operative Society is the promotion of economic interest and general welfare of its members. However Societies which are economically unsound, contrary to the policy directive or which might have adverse effect on development cannot be formed. A Co-operative Society can be formed with either Limited / Unlimited liability. Section 6 lays down the conditions required to be complied with for the purpose of various kinds of co-operative societies. For example the condition for registration of a co-operative housing society has been reduced from 10 persons belonging to different families to 5 persons belonging to different families. As per Section 7 the State Government may exempt any Society from complying with the above conditions subject to such conditions which they may impose from time to time. Section 8 lays down that the Application for formation of such a Society shall be filed with the Registrar by submitting the papers and documents and by following the procedure laid down thereunder. For example an Application for Registration shall *inter alia* contain (i) 4 copies of Bye-laws, (ii). Registration Fee as applicable (iii). Information to be given

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by the person making the application or the Chief Promoter and there should a resolution authorizing the person or the Chief Promoter to sign such application. As per Section 9 of the MCS Act, if the Registrar is satisfied that a Society has complied with: (i) all the Rules and Regulations, other laws, State Directives, (ii) the bye laws proposed Society are not contrary to the Act, or the Rules the Registrar shall within 2 months of receipt of the such Application register the Society. The Registrar shall also classify the Society under a particular class. As per the judgement:

*2016 DGLS(Bom.) 1563 (BOMBAY HIGH COURT) Equivalent Citations :-*

*2017 (1) AIR Bom R 673 :*

*Before :- S.C. Dharmadhikari : B.P. Colabawalla : J J*

*Paul Parambi and Another*

*Versus*

*Bombay Dyeing and Manufacturing Company Limited and Another*

*Case No. : Writ Petition No.2034 of 2016*

*It has been observed by the Bench of the Hon'ble High Court that: 'Even otherwise, considering the provisions of the MOFA, 1963 read with the provisions of the MAO Act, we find that the order of Respondent No.2 cannot be sustained. Section 10(1) of MOFA, 1963 inter alia provides that,*

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*once a minimum number of persons required to form a co-operative society or a company have taken flats, the promoter shall within the prescribed period submit an application to the Registrar for registration of the organisation of persons who take the flats as a co-operative society or, as the case may be, as a company. The first proviso to Section 10(1) stipulates that if the Promoter fails within the prescribed period to submit an application to the Registrar for registration of the society as provided in Section 10(1), the Competent Authority (Section 5A of the MOFA, 1963) may, upon receiving an application from the persons who have taken flats from the said promoter, direct the District Deputy Registrar, Deputy Registrar or as the case may be Assistant Registrar concerned, to register the society. Section 10(2) provides that if any property consisting of building or buildings is constructed or to be constructed and the Promoter submits such property to the provisions of the MAO Act, by executing and registering a Declaration as provided by that Act, then the Promoter shall inform the Registrar as defined in MCS Act accordingly, and in such case, it shall not be lawful to form any cooperative society/company.*

A Society once formed may amend its bye-laws, change its liability, change

its name, may amalgamate with any other Society or further be divided into

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two or more societies, or may convert itself from a class of society to another class of society. There may also be reconstruction, partnership or collaboration between two societies. There are some conditions to be followed for all or any of the above. The Registrar has got powers to either cancel the Registration of a Society or De-Register a Society as per Section 21-A of the MCS Act. Cancellation of a Registration of a society takes place when the Society is no longer required to be in existence due to change in circumstances as elaborated in Section 21. De-Registration of a Society takes place in case of these three conditions: (i) where the Society has been registered on misrepresentation, or (ii) the Work of the society is completed or exhausted and (iii) where the Purpose for which a Society was registered is not served. On de-registration of a Society, an Official Assignee is appointed to realize the Assets and liabilities of the Society.

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### **Chapter 3 – Members and their Rights and Liabilities**

One of the most important aspect of a Co-operative Society is its members. The members of a Society have ample rights however there are certain duties which a member of the Society is bound to follow. Section 22 deals with who may become members of a Society. Apart from individuals (who are competent to contract), corporate body, societies, public trusts can also be admitted as members of the Society. All societies have to follow the concept of open membership and where a person is refused admission as a member of the society, the decision shall be communicated to that person within 15 days from the date of decision or within 3 months (date of receipt of application) whichever is earlier. If no decision communicated then in such circumstances the person is deemed to have been admitted as a member of the society. In case of any dispute relating to the above the Registrar shall decide the above by giving reasonable opportunity to all concerned parties.

*As per judgement:-2019 (5) Bom.C.R. 249 : Before :- S.S. Shinde : J in the matter of Sopan Baug Co-operative Housing Society Limited Versus Deputy Joint Registrar of Co-operative Society Pune and Others it was held that Maharashtra Co-operative Societies Act, 1960, Secs. 22(2) & 136(3) -*

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*Granting of co-membership - Validity of - Dy. Registrar of Co-operative Society directed petitioner to make respondent 3 as co-members with original members of petitioner society - Whether granting of co-membership to respondent 3 with original members of society can be said to be perverse or contrary to record - Held, under section 22(2) of said Act, it is necessary to communicate decision by society to person who applied for membership within three months from receipt of application. There was no communication within time from petitioner to respondent 3 that his request for membership has been turned down.*

A person may either cease to be a member or be removed from the membership of the Society. A member shall not be entitled to exercise rights until payment of membership charges to the society or being admitted to the membership of the Society. A member shall have voting rights subject to terms and conditions. There are also restrictions on transfer of membership in a society. A member of the society is entitled to nominate a person/ persons in accordance with the Rules.

Section 30: Nomination by members is one of the salient features available to members of a co-operative society. As per provisions of Section 30 of the

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MCS Act, on death of a member the Society shall transfer the interest of the deceased member to such nominee or, if no person has been so nominated, to such person as may appear to the committee to be the heir or legal representative of the deceased member. In view of the 2019 Amendment the provisions of Section 30 however are not applicable to Housing Societies.

**Section 32:** Gives a right to the member of a society to inspect the a copy of the Act, the rules, and the by-laws, the last audited annual balance sheet, the profit and loss account, a list of the members of the committee, a register of members, the minutes of general meetings, minutes of committee meetings and **those portions of the books and records in which his transactions with the society have been recorded.** The same is free of cost and can be conducted at the office of the society. This is one of the important rights available to the member of the Society with view to promote transparency.

**Section 35:** A right is given to the Society and its General Body to expel a member for acts which are detrimental to the interest or proper working of the society. The same is however subject to the approval of the Registrar.

There is a detailed procedure which is required to be followed including

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giving the member against whom such an expulsion is to be brought about notice as well as allowing him/her to make his representation.

***Imp Judgement: Reported in 2015 BCI 548 (BOMBAY HIGH COURT)***

*[2015 (4) Mh.L.J. 945]: Before :- Dalvi Roshan Shamim : JJ, in the matter of:*

*Radhika Malhotra and another*

*Versus*

*Naresh Chandra Malhotra and others*

*It has been observed by the Hon'ble High Court that under the provisions of the Maharashtra Co-operative Societies Act, 1960, Sec. 35 read with Maharashtra Co-operative Societies Rules, 1961, Rules 28 & 29 together with Constitution of India, Art. 14 – while dealing with Expulsion of members – that since the Petitioners were not present at Special General Body Meeting - For want of service of notice - No opportunity of hearing was given to petitioners and therefore it was held that the whole procedure adopted by Society and confirmed by concerned Authorities are illegal and contrary to law. It affects rights of petitioners. Breach of principles of*

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*natural Justice and the Matter remanded to Assistant Registrar for hearing.*

*(Paras 10 to 13)*



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## **Chapter 4- Incorporation, Duties and Privileges of Societies**

Upon registration a Society is rendered a body corporate. A Society shall have a registered address as per its bye-laws. A society shall also maintain a register containing details of its members. Every society shall also keep a copy of the MCS Act, Rules, bye-laws and a list of members. **Section 41** exempts from compulsory registration of instruments relating to shares and debentures of society. As per **Section 42**, the State may by notification exempt any society or class of societies from stamp duty, any fees, tax, etc. as the case may be. In certain cases, certain restrictions may be imposed on the borrowings by a society. There are also certain regulations regarding loans which may be given by a Society. In all cases where certain amounts of money are recoverable by the society, the prior claim will be of the society. In certain cases the societies may also create charge on immoveable property or deduction from the salaries of members, borrowing from the societies.

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**Chapter 5 – State Aids to Societies**

The same commence from Sections 50 to 63. The provisions deals with State Aids provided to certain societies. The State Government may in this regard subscribe to the share capital of a society with limited liability upon terms and conditions.

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## **Chapter 6 – Property and Funds of Societies**

A society being a body corporate is entitled to hold property. This Chapter deals with the manner in which the society may deal with its funds. No part of funds, other than the net profits of a society, shall be divided by way of bonus, dividend or otherwise distributed among its members. A society may also appropriate its net profit to reserve fund or other funds as may be prescribed subject however to the decision of the General Body of the Society. Every society which makes profit shall maintain a **RESERVE FUND**. This chapter also deals with restriction on dividends, contribution to education fund of the State federal society, contribution to public purposes, investment of funds, employees provident fund, etc.

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## **Chapter 7 – Management of Societies**

This chapter deals with the manner in which the society is to run and administered. As per Section 72: FINAL AUTHORITY OF SOCIETY - Subject to the provisions in this Act and the rules, the final authority of every society shall vest in the general body of members in general meeting, summoned in such a manner as may be specified in the bye-laws. [Where the bye-laws of a society so provide, the general meeting shall be attended by delegates appointed by the members, and such meeting shall be deemed to be the meeting of the general body, for the purpose of exercising all the powers of the general body.] *In this regard it is important to rely upon the judgement reported in: 2003 (3) All.M.R. 570 : Before :- R.J. Kochar : J The Venus Co-op. Housing Society and Anr. Vs. Dr. J. Y. Detwani & Ors.* where it is held that the General Council meeting - Supremacy of the assembly cannot be disputed but even the supreme general body has to be reasonable and rational resolution must pass taking into account all the facts and circumstances of the case.

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**Section 73: COMMITTEES ITS POWERS AND FUNCTIONS.** The management of every society vests in a committee. The members of a committee are jointly and severally liable for all decisions taken by the committee during its term relating to the business of the Society.

**Section 73-ID: MOTION OF NO-CONFIDENCE AGAINST**

**OFFICERS OF SOCIETIES:** Two-thirds majority members of a Managing Committee may by motion of no confidence remove a member of the Managing Committee of any Society by following due process of law.

Members may also face disqualification for being designated officer simultaneously of certain categories of societies. A society shall consist of as many committee members as are mentioned in the bye laws of the society. There are certain reservations for women in the committee of the Society. A committee of the Society and its members are subject to disqualification under certain conditions.

**Section 75 - Annual General Body Meeting -** Every society shall within a period of four months, after the close of the financial year, get its books of accounts audited and within six months after the close of financial year to

transact its business as may be provided in this Act, call the AGM of its

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members. At the AGM, the committee shall lay before the society all the relevant information relating to the society and business of the society in the preceding year. In case there is a default in calling a general meeting, the Registrar may, by order declare any office or member of the committee whose duty it was to call such a meeting and who without reasonable excuse failed to comply, disqualified for being elected and for being any officer or member of the committee for such period not exceeding five years, as he may specify in such an order. It is also provided that if the officer is a servant of the society, the Registrar may impose a penalty on him to pay an amount not exceeding five thousand rupees.

#### **Section 76. SPECIAL GENERAL MEETING.**

In order to resolve any urgent matters, a Society may call for Special General Meetings (SGM). SGM may be called at any time by the Chairman or by a majority of the committee. SGM shall be called within one month under these three circumstances: (i) on a requisition in writing by one-fifth of the members of the society of members, (ii) at the instance of the Registrar or (iii) in the case of a society, which is a member of a federal society, at the instance of the committee of such federal society.

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Acts of the Society not to be invalidated by certain defects. The power to decide whether any Act was done in good faith is with the Registrar and his decision will be final.

**Section 77A: APPOINTMENT OF MEMBER OF COMMITTEE, NEW COMMITTEE OR ADMINISTRATOR, WHERE THERE IS FAILURE TO ELECT MEMBER TO CONSTITUTE COMMITTEE OR WHERE COMMITTEE DOES NOT ENTER UPON OFFICE.**

This Section discusses about power of the Registrar to supersede the Committee of the Society and in their place appoint either a member of Committee, new Committee or Administrator under the following circumstances: (i) a provisional committee has failed to make necessary arrangements for holding election for the constitution of the first committee, before the expiry of its term, (ii) at the first constitution of the committee of any society there is a failure to elect all or any of the members of the committee, (iii) the term [or extended term as the case may be,] of the committee of any society or of any of its members has expired or for any other reason election is held and there is a failure to elect all or any of the

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members required to fill the vacancies, (iv) any committee is prevented from entering upon office, (v) a new committee has failed to enter upon office on the date on which the term of office of the existing committee expired, or (vi) a new committee cannot for any reason be constituted before the expiry of the term of office of the existing committee, (vii) where more than one group of persons in a society is claiming to be elected as the committee members and proceedings in respect thereof have been filed in the Co-operatives Court. The Registrar may, in the circumstances above either suo-motu or on the application of any officer of the society, by order appoint—

- (i) any member or members of the society to be the member or members of the committee to fill the vacancies;
- (ii) a committee, consisting of not more than three members of the society, or one or more administrators, who need not be members of the society, to manage the affairs of the society till a new committee enters upon office.

The Registrar shall however before appointment of the member or committee have to publish a notice on the notice board at the head office of the society, inviting objections and suggestions with respect to the proposed order and further it shall not be necessary to publish such notice in any case

where registrar is satisfied that immediate action is required to be taken or

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that it is not reasonably practical to publish such notice. The Registrar may also, if circumstances exist, appoint an Authorised officer who is not a member of the Society to look after the affairs of the Society.

*In the Judgement reported in: 2019 (5) AIR Bom R 601 and 2020 (1) All.M.R. 734, in the matter of Ponvel Nadarajan and Others Versus State of Maharashtra and Others it was held that:*

*Maharashtra Co-operative Societies Act, 1960, Secs. 73CB(11), 1(2) & 77(A) - Appointment of authorized officer - Election of managing committee of society - Legality of - Petitioners claimed to be members of Managing Committee of respondent 4 society - Deputy Registrar, respondent 2 appointed respondent 3 as authorized officer under section 77(A) of Act - Whether Registrar was empowered to take action as contemplated under section 77A of Act read with section 73-I(1) of Act and could appoint Authorized Officer under section 77A - Held, since respondent 4 society was not "Housing Society", Ordinance thereby adding proviso to section 73CB(11) of Act providing that in case of "Housing Society" having less than or upto 200 members, election of committee shall be conducted by such Housing Society in manner as may be prescribed would not apply to respondent 4 at all. Respondent 4 could not have conducted election of*

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*managing committee on its own upon expiry of term of managing committee.*

*In view of failure on part of then managing committee members of respondent 4 to comply with its duty to intimate to State Co-operative Election Authority as provided under section 73CB(14) of Act, in view of provisions of section 73-1(2) of Act since there was willful failure on part of committee not to inform State Co-operative Election Society, members of committee of respondent 4 ceased to hold their office. In such situation, Registrar was empowered to take action against respondent 4 as contemplated under section 77A of Act. Deputy Registrar, Co-operative Societies had followed requisite procedure under section 77A read with other provisions of Act. Thus, there was no infirmity in order passed by Deputy Registrar, Co-operative Society. (Paras 30, 33, 34 & 35)*

#### **SECTION 78. POWER OF SUSPENSION OF COMMITTEE**

This Section explains the powers available with the Registrar to supersede a Committee of the Society and in its place appoint an administrator or committee of administrators to manage the affairs of the society. The powers available to the Registrar are very dominant in nature and therefore the same are to be used sparingly. Some examples under which the power

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of suspension of Committee may be used are as under: (i) the committee of any society makes persistent default or is negligent in the performance of the duties, or (ii) is otherwise not discharging its functions properly and diligently, or (iii) there is a stalemate in the constitution or functioning of the Committee. The Registrar has to give reasonable opportunity to the erring committee and consult with the federal society before passing such an order. However the above provision cannot be applied to a society where there is no Government shareholding or loan or financial assistance.

**Section 78A Power of Supersession of committee or removal of member thereof.** Under this provision the Registrar has the power to either suspend the whole committee or a member of the committee. Some of the circumstances under which the above power can be used are where the person/committee has committed any act which is prejudicial to the interest of the Society, elections have failed to take place in the Society, person/committee refuses or ceases to discharge their function or the business of the society has come to a standstill. However, the above provision cannot be applied to a society where there is no Government shareholding or loan or financial assistance.

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Societies are under obligation to file returns and statements and in case they do not file the same, the Registrar has to power to enforce performance of such obligation. As per Section 79-A the State Government has powers to give directions in Public Interest. The Registrar has the power to give directions to societies to frame regulations. The Registrar also has powers to seize records of the Society when such circumstances exist however the same shall be done only after obtaining prior permission.

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## **Chapter 8 – Audit, Inquiry, Inspection and Supervision**

Societies are required to get their accounts audited at least once in each financial year. In case the audit discloses any defects in the working of the Society, the Society shall within 3 months give explanation of the same to the Registrar and take steps to rectify and remedy the same. The Registrar may either suo moto or on an application by 1/5<sup>th</sup> members of the society order an enquiry into the constitution, working and financial condition of the Society. The costs of such an enquiry may be apportioned either on the society or the members. The Registrar shall bring the defects disclosed in the above enquiry to the notice of the Society. In case it is found that the members of the society has misapplied or retained or become liable or accountable for any money or property of the Society than the Registrar may frame charges against such person/s and thereafter if found guilty may order that person to repay or restore the money or property with interest to the assets of the society. The Registrar has the power to inspect the working of a society.

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## **Chapter 9 – Settlement of Disputes**

A society may have disputes *inter alia* either with its members, past members or any other societies. There are two Authorities under the MCS Act who can be approached to settle disputes. One of the Authority under the MCS Act is Registrar which has exclusive jurisdiction to try disputes relating membership, inspection of books, etc. The other are Co-operative Courts. As per **Section 91**, any dispute touching the constitution, elections of the committee or its officers, conduct of general meetings, management or business of a society shall be tried by a Co-operative Court provided that both the parties thereto are not or either as are exhaustively mentioned in the Section. Section 91 makes a clear distinction of all such matters which are to be referred to the Co-operative Court and clearly specifies that no Court shall have jurisdiction to entertain any suit or other proceedings in respect of any disputes referred to in the Section.

**Section 91A** deals with **the CONSTITUTION OF CO-OPERATIVE COURTS**. A Co-operative Court consists of one member appointed by the State Government possessing such qualifications as may be prescribed. A

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as may be specified. For e.g there are about 5 Co-operative Courts in Mumbai (including 1 in Thane) to deal with disputes. The jurisdiction of each Co-operative Court is distributed on the Municipal Wards, Area and Postal District numbers in which the Societies are located. For example Co-operative Court no. 1 has exclusive jurisdiction to deal with matters of societies situated in A, B, C, E and M Wards.

Section **92 deals with the period of LIMITATION** in the case of a dispute referred to the Co-operative Court. For example when the dispute relates to the recovery of any sum, including interest thereon, due to as society by a member thereof be, the period of limitation will be computed from the date on which such member dies or ceases to be a member of the society or when the dispute is between a society or its committee and any past committee, any past or present officer, or past or present agent or past or present servant or the nominee heir or legal representative or a deceased officer. deceased agent or deceased servant of the society, or a member, or past member, or the nominee, heir or legal representative of a deceased member, and when the dispute relates to any act or omission on the part of either party to the dispute, be six years from the date on which the act or omission with

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reference to which the dispute arose, took place. However, it is important to note that when the dispute is in respect of an election the limitation is two months from the date of the declaration of the result of the election. The period of limitation in the case of any other dispute except those specifically mentioned in the present section shall be regulated by the provisions of the Limitation Act, 1963, as if the dispute were a suit, and the Co-operative Court a Civil Court. The Co-operative Court may admit a dispute after the expiry of the limitation period, if the applicant satisfies the Court that he had sufficient cause for not referring the dispute within such period, and the dispute so admitted shall be a dispute which shall not be barred on the ground that the period of limitation had expired. The President of the Co-operative Appellate Court may transfer disputes from one Co-operative Court to another and in some other cases suspend proceedings in certain cases at any time, for reasons to be recorded in writing.

**Section 94 lays down the PROCEDURE FOR SETTLEMENT OF DISPUTES AND POWER OF CO-OPERATIVE COURT.** The Co-operative Court, shall hear the dispute in the manner prescribed, and shall have power to summon and enforce attendance of witnesses including the

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parties interested or any of them and to compel them to give evidence on oath, affirmation or affidavit, and to compel the production of document by the same means and as far as possible in the same manner, as is provided in the case of a Civil Court by the Code of Civil Procedure, 1908. Every dispute in relation to any election shall be heard and decided by the Co-operative Court as expeditiously as possible and endeavour shall be made to conclude the hearing and decision within six months from the date on which the dispute is filed before it. The Co-operative Court may either add or remove any party to the dispute. The Co-operative Court may further at any stage of the hearing of the dispute, order any other person to be substituted or added as a plaintiff or a defendant. The Co-operative Court may at any stage of the proceedings, order that the name of any party improperly joined whether as plaintiff or defendant, be struck out, and the name of any person who ought to have been joined whether as plaintiff or defendant or whose presence before the Court, may be necessary be added. In a case in which a dispute is decided by the Co-operative Court *ex-parte* against any person, he may apply to the Court, within thirty days from the date of the decision, to set it aside. If he satisfied the Court that there was sufficient cause for his failure to appear when the dispute was called and heard, the Court shall

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make an order setting aside the decision as against him, upon such terms as to costs, payment into Court or otherwise, as it thinks fit, and appoint a day for hearing and deciding the dispute so far as it relates to him. Unless otherwise provided every dispute shall be decided in such summary manner as may be prescribed and as expeditiously as possible. Section 95 deals with interlocutory powers of the Co-operative Court to ATTACHMENT BEFORE AWARD OR ORDER AND INTER-LOCUTORY ORDERS. **Section 96** deals with the DECISION OF CO-OPERATIVE COURT.

**As per Section 97** Any party aggrieved by any decision or order passed by the Co-operative Court may within two months from the date of the decision or order, appeal to the Co-operative Appellate Court.

**AS PER SECTION 101, THE RECOVERY OF ARREARS DUE TO CERTAIN SOCIETIES ARE RECOVERABLE AS ARREARS OF LAND REVENUE.** It is important to note here that prior to the 2019 Amendment, Housing Societies would file application for recovery dues from their members under the present Section. After the 2019 Amendment, Housing Societies may now apply under the relevant provision for recovery of dues from its members.

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## **Chapter 10 – Liquidation**

The Registrar may, after enquiry and if circumstances exist, order a Society to be wound up. A liquidator may be appointed for the same purpose. The order passed by the Registrar ordering winding up of a society may be challenged by filing an appeal challenging the same. The liquidator appointed to wind up a society has certain powers which are enumerated under Section 105. When an order for winding up of a society becomes effective, the Liquidator will proceed to realize the assets of the society by sale or otherwise. It is important to note that no Civil Court shall take cognizance of any matter connected with the winding up or dissolution of a Society under the MCS Act. The Liquidator shall present an account of receipts and payments of the Society and the same shall be caused to be audited by the Registrar.

## **Chapter 10A – Insured Co-operative Bank**

It deals with order of winding up, reconstruction, suspension or supersession of committee, etc. of insured Co-operative Bank.

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**Chapter 11 – Co-operative Agriculture and Rural Multipurpose Development**

**Bank**

It deals with which banks fall under the term Co-operative Agriculture and Rural Multipurpose Development Bank and the constitution and management, etc. of such Banks

**Chapter 11-1A – Non Agricultural Co-operative Credit Societies**

It deals with which co-operative credit societies constitute such non-agricultural credit societies their management, etc.

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**Chapter 12 – Offences and Penalties.**

No person shall be entitled to use the word co-operative unless registered as a Co-operative Society. It further explains the list of acts or omissions which constitute an offence under the MCS Act and the punishments for such offences. What constitutes Contempt of orders passed by a Co-operative or Co-operative Appellate Court and the procedure to be followed when there is a contempt are explained in detail.

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### **Chapter 13 – Appeals, Review and Revision**

Deals with the constitution of Maharashtra State Co-operative Appellate Courts and their powers. Section 152 deals with Appeals. The same is required to be filed within a period of two months from the date of communication of the order. Section 152-A deals with Appeal to be filed against rejection of nomination paper at election. The same is required to be filed within 3 days of rejection of nomination and is required to be disposed within 10 days of filing of such Appeal. The appellate authority may admit an appeal after the expiry of the period, if the appellant satisfies the appellate authority that he had sufficient cause for not preferring the appeal within such period. Section 154 deals with Revisionary Powers of the State Government and the Registrar.

### **Chapter 13A – Maharashtra State Co-operative Council**

deals with the Constitution of State Co-operative Council and their functions.

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### **Chapter 13 B – Co-operative Housing Societies**

A separate Chapter providing for regulation of co-operative housing societies is inserted in the said Act primarily to deal with the issues of the co-operative housing societies viz. members and their rights, management of societies, audit, enquiry and inspection, settlement of disputes, liquidation, elections of societies, recovery of claims, etc.

**S. 154B-1** – Deals with **Definitions** (relating to housing societies).

**S. 154B-2** – Deals with requirements for **Registration of a Housing Society**. Examples of requirement for formation of a housing society (depending upon its classification) are as follows: (1) **Tenant co-partnership housing society**: at least five persons (each of such persons being a Member of different family) or at least fifty-one per cent. (of total number of flats as per sanctioned plan) flat purchasers or intending Members and who are qualified to become Member under this Act, whichever is higher, joins the registration proposal of housing society to be registered, (2)

**Tenant ownership housing society**: at least five persons (each of such persons being a Member of different family) or at least fifty-one per cent. (of total number of plots as per proposed or sanctioned lay-out) plot purchasers and who are qualified to become Member under this Act, whichever is

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higher, joins the registration proposal of housing society to be registered, (3) **Association of society** at least five housing societies as its Members, (4) **Co-operative Housing Association** at least two housing societies or other legal bodies as its Members.

Further “Member of a family” means a wife, husband, father, mother, dependent son or unmarried dependent daughter.

**S. 154B-3** – deals with **Application for reservation of name and permission for opening bank account**. Before registration of a housing society the promoters get together and reserve a name for the proposed society. The promoters also have to seek permission from the Registrar of C.S. for opening an account in the name of the proposed society. The same account is transferred to the name of the society once it is registered.

**S. 154B-4:** deals with admission of any person as an **associate, joint or provisional Member** and their right to vote and contest the election.

**S. 154B-5:** deals with the subject of housing society limiting its Membership to the number of flats or plots, as the case may be, available for allotment in that co-operative housing society. Provision is however made for a plot owners co-operative housing society where an organization (co-operative housing society, company, association, etc.) may be admitted to its

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Membership, in case the plot owner had constructed and sold flats as per prevailing rules.

**S. 154B-6:** Deals with the issue that societies will organise **co-operative education and training** for its Members, officers and employees through such State federal societies or the State Apex Training Institutes.

**S. 154B-7:** deals with the **restrictions on transfer of share or interest** of a Member or the occupancy right, except the transfer of his heir or a nominee unless– (a) the dues of housing society are paid, (b) the transferee applies and acquires Membership of the cooperative housing society in due course of time.

**S. 154B-8:** deals with the Rights of Members to inspect books of documents and is similar to Section 32 of the MCS Act.

**S. 154B-9** deals with the issue of **Removal of Member**. The Registrar is empowered to decide the question in respect of a Membership of a person as to whether he has been duly admitted to the Membership of society or has been admitted in violation of the provisions of this Act, rules and byelaws.

**S. 154B-10:** deals with the Rights and Duties of a member. Rights of a Member include: (i) A Member shall be entitled to exercise such rights as provided under this Act, rules and bye-laws. (ii) Every Member of a

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housing society shall be issued certificate of allotment by the co-operative housing society under its seal and signature in such form as may be prescribed. (iii) Any allotment (including re-allotment), of a plot of land or dwelling unit in a building of a co-operative housing society to its Member as per terms of allotment shall entitle such Member to hold such plot of land or dwelling unit with such title, right and interest, as the case may be. A Member of cooperative housing society shall however have to make such payment as may be specified by the co-operative housing society towards the cost of such plot of land or, construction of such dwelling unit, as the case may be, to the co-operative housing society. (iv) No Member shall be eligible for being appointed, nominated, elected, co-opted or for being a Member of a Committee, if he is a defaulter of the society. An Associate Member shall have right to contest the election to the Committee with prior written consent of a Member. Any action contemplated against the original Member in the Act shall be applicable to such an Associate Member.

Duties: (i) It shall be the duty of the Member of the society to pay the dues of the society within time as decided by society in its general meeting. (ii) Member shall vacate the flat when required for redevelopment of the

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building or buildings of the society as decided in its general meeting. (iii)

Member shall perform his duties as provided in this Act, rules and bye-laws.

**S. 154B-11: Voting Rights of Members.** No Member of society shall have more than one vote in its affairs and that every right to vote shall be exercised personally. The Associate Member shall have right to vote with prior written consent of a Member. The provisional Member shall have right to vote. In case of joint Member, the person whose name stands first in the share certificate shall have right to vote or in his absence, the person whose name stands second, and in the absence of both, the person whose name stands next and likewise.

**S. 154B-12:** A Member may transfer his share, right, title and interest of his property in the society by way of registered document by following the due procedure as provided in the rules or bye-laws.

**S. 154B-13: deals with Transfer on the death of a Member:** On the death of a Member of a society, the society shall transfer share, right, title and interest in the property of the deceased Member in the society to a person or persons on the basis of testamentary documents or document of family arrangement executed by the persons, who are entitled to inherit the property of the deceased Member or to a person duly nominated in accordance with

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the rules. A nominee may be admitted as a provisional Member after the death of a Member till the legal heirs are determined by a competent Court. If no person has been so nominated, society shall admit such person as a provisional Member as may appear to the Committee to be the heir or legal representative of the deceased Member in the manner as may be prescribed.

**S. 154B-19:** deals with Constitution of the Committee of the society. The term of the office of the elected Members of the Committee and its office bearers shall be five years from the date of first meeting of newly constituted Committee and the term of the office bearers shall be co-terminus with the term of the Committee. Any casual vacancy in the Committee may be filled by co-option and term of the co-opted Member shall be co-terminus with the term of the Committee.

**S. 154B-20:** deals with the reservation of certain seats on Committee of societies and Elections thereto. **S. 154B-21:** deals with reservation for Women in the Committee of the society. **S. 154B-22:** lays down that till the time the Members of reserved categories are not available or elected to fill the reserved seats as provided in sections 154B20 and 154B-21, such reserved seats shall not be counted for strength of managing Committee for composition of quorum for conducting its meetings.

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**S. 154B-23:** deals with Disqualification of Committee and its members. No person shall be eligible to be appointed, nominated, elected, co-opted for being a Member of Committee,— (i) if he is a defaulter of any society, or (ii) if he carries on business of letting, subletting and selling of flats in the housing society of which he is a Member, or (iii) if he has been held responsible under section 79, 88, 154 B-8(2) or 154B-27 or for payment of cost of enquiry under section 85, or (iv) if he has incurred any disqualification under this Act or the rules made thereunder, or (v) if he incurs any of the disqualification similar to that mentioned in the provisions of clause (vii), (viii) or (ix) of clause (f) of sub-section (1) of section 73CA. A Member, who has incurred any disqualification shall cease to be a Member of Committee and his seat shall thereupon be deemed to be vacant and shall not be eligible to be re-elected, re-co-opted or re-nominated as a Member of Committee for five years from the date on which he or she has so ceased to be a Member of the Committee.

**S. 154B-24:** Motion of No Confidence. A motion of no confidence is to be passed at a meeting of a Committee by not less than two third majority of the Committee Members who are present and entitled to vote at such meeting. Once such motion is passed the office of such a member against

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whom vote of no confidence has been passed shall thereupon be deemed to be vacant.

**S. 154B-26:** Allotment of plots of land, flats, house or other dwelling units shall be made by the Committee of a housing society to the Members strictly on the basis of draw of lots in respect of duly enrolled Members

**S. 154B-27:** Obligation of Society to take action and Registrar's power to enforce. If any society is required to take action for performance of its obligations, responsibilities and duties as provided in this Act, rules and bye-laws or to execute the orders issued by the State Government or by the Registrar, from time to time, and such actions are not taken or such orders are not executed, the Registrar may issue directions to take such action or actions or execute such orders. Where a society is required to take any action or to execute the orders such action is not taken or orders are not executed within the time the Registrar may himself or through a person authorized by him take such action or execute such order at the expense of the society and such expenses shall be recoverable from the responsible officer of the society as if it were arrears of land revenue. An opportunity of being heard shall be given to the officer of society to whom the Registrar considers to be responsible for not taking such action or not executing such

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orders. If a Member applies to the society for the certificate or certificates for sale of his flat or mortgaging it for obtaining loan or for any other purpose shall be decided by the society within a period of thirty days from the date of receipt of such application. This provision is similar to Section 79 – A (3) of the MCS Act.

**S. 154B-28:** deals with Housing Federation, their powers and duties. The State Government may notify any society as a Housing Federation for the areas specified and every society may affiliate to notified Housing Federation of the area wherein society is located.

**S. 154B-29:** Recovery of dues. This Section is similar to Section 101 of the MCS Act. A housing society may apply for the recovery of its dues or for the recovery of its repairs and maintenance, construction cost and service charges with the Registrar of C.S. The housing society may also furnish a statement of accounts and any other documents as may be prescribed, in respect of the arrears. The Registrar may, after making such inquiries as he deems fit, grant a certificate for the recovery of the amount stated therein, to be due as arrears.

In case the concerned society has failed to take action, the Registrar may, on his motion, after making such inquiries as he deems fit, grant a certificate for

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the recovery of the amount stated therein, to be due as arrears and such a certificate shall be deemed to have been issued as if on an application made by the society concerned. A certificate granted by the Registrar under subsection (1) or (2) shall be final and a conclusive proof of the arrears stated to be due therein, and the same shall be recoverable according to the law for the time being in force, as arrears of land revenue. A revision shall lie against such order or grant of certificate, in the manner laid down under section 154 and such certificate shall not be liable to be questioned in any court. It shall further be lawful for the Collector and the Registrar to take precautionary measures until the arrears due to the concerned society are paid, or security for payment of such arrears is furnished to the satisfaction of the Registrar.

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## **Chapter 14 – Miscellaneous**

The same deals with recovery of sums due to Government, Registrar's power to recover certain sums by attachment and sale of property. Power to exempt certain societies from provisions of the MCS Act. On election of a new committee, the retiring Chairman shall hand over charge of the office of the committee and all papers and property, if any to the new Chairman of the committee. If the retiring Chairman fails or refuses to hand over charge, or to hand over the papers and property of the society as aforesaid, the Registrar, or any person empowered by him in this behalf, may by order in writing direct him to forthwith hand over such charge and property. If the retiring Chairman does not comply with such direction, he shall, on conviction, be punished with simple imprisonment which may extend to one month, or with fine which may extend to five hundred rupees, or with both; and the Registrar may, on the retiring Chairman's failure to comply with such direction, take order for seizing the records and property and handing it over to the new Chairman, in the manner provided in Section 80. No suit shall be instituted against a society, or any of its officers, in respect of any act touching the business of the society, until the expiration of two months

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next after notice in writing has been delivered to the Registrar or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims, and the plaint shall contain a statement that such notice has been so delivered or left.



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**REDEVELOPMENT OF A SOCIETY:**

In recent times, redevelopment of society is a very important issue concerning Housing Societies. Rapid Urbanisation, increasing population, old buildings, changes in development rules and limited availability of space are some of the primary reasons why members of societies are proposing to redevelop old buildings. With the redevelopment of societies increasing, the number of disputes relating to redevelopment of societies also increased. The State Government therefore introduced guidelines relating to Redevelopment of society. Two circulars dated 3rd January, 2009 and 4<sup>th</sup> July, 2019 have been issued in this regard. The entire object of the circulars are that there is transparency maintained while discussing the matter of redevelopment of societies and further that members are given ample opportunity to discuss their issues and views through General Body Meetings of the Society. The guidelines further make certain that experts are appointed by the Society so that the members are aware about the entire process of redevelopment of the Society.

**Some of the points to be kept in mind while carrying out the redevelopment of Societies are:** 1. Requisition for convening Special

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General Body Meeting for Redevelopment of Society's Building,  
2. Convening Special General Body Meeting to discuss whether members intend to go for redevelopment of the building of the Society, 3. To accept written suggestions from members relating to redevelopment of the building, 4. Taking decisions relating to the redevelopment of societies by way of Special General Body Meetings, 5. Providing minutes of Meeting to all members, 6. Appointment of professionals for the purpose of redevelopment like Architect, Project Management Consultants, etc. 7. Inviting Bids from prospective Builder/Developers, 8. Preparing List of Bids Received with Comparative Chart, etc.

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## **CONVEYANCE**

One of the main objects of a housing society is to obtain conveyance of the land and building from the promoters of the Society. In this respect it is necessary to rely upon certain provisions of MOFA. The same are as under:

**As per Section 10.** A promoter is required to form a society as soon as the flats have been sold to the minimum number of persons required to form a Cooperative society or a company within the prescribed period. The promoter is required to submit an application to the Registrar for registration of the organisation of persons who take the flats as Co-operative society or, as the case may be as, a company; and the promoter shall join, in respect of the unsold flats.

In case the promoter fails within the prescribed period to submit an application to the Registrar for registration of society in the manner provided in the Maharashtra Co-operative Societies Act, 1960, the Competent Authority may, upon receiving an application from the persons who have taken flats from the said promoter, direct the District Deputy Registrar, Deputy Registrar or, as the case may be, Assistant Registrar concerned, to register the society :

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**As per Section 11:** A promoter shall take all necessary steps to complete his title and convey to the organisation of persons, who take flats, which is registered either as a co-operative society or as a company as aforesaid or to an association of flat takers, his right, title and interest in the land and building, and execute all relevant documents therefor in accordance with the agreement executed under Section 4. If no period for the execution of the conveyance is agreed upon, he shall execute the conveyance within the prescribed period and also deliver all documents of title relating to the property which may be in his possession or power. It shall be the duty of the promoter to file with the Competent Authority, within the prescribed period, a copy of the conveyance executed by him.

If the promoter fails to execute the conveyance in favour of the Cooperative society formed under section 10 or, as the case may be, the Company or the association of apartment owners, within the prescribed period, the members of such Co-operative society or, as the case may be, the Company or the association of apartment owners may, make an application, in writing, to the concerned Competent Authority accompanied by the true copies of the registered agreements for sale, executed with the promoter by each

individual member of the society or the Company or the association, who

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have purchased the flats and all other relevant documents (including the occupation certificate, if any), for issuing a certificate that such society, or as the case may be, Company or association, is entitled to have an unilateral deemed conveyance, executed in their favour and to have it registered.

The Competent Authority, on receiving such application, within reasonable time and in any case not later than six months, after making such enquiry as deemed necessary and after verifying the authenticity of the documents submitted and after giving the promoter a reasonable opportunity of being heard, on being satisfied that it is a fit case for issuing such certificate, shall issue a certificate to the Sub-Registrar or any other appropriate Registration Officer under the Registration Act, 1908, certifying that it is a fit case for enforcing unilateral execution, of conveyance deed conveying the right, title and interest of the promoter in the land and building in favour of the applicant, as deemed conveyance.

On submission by such society, or as the case may be, the Company or the association of apartment owners, to the Sub-Registrar or the concerned appropriate Registration Officer appointed under the Registration Act, 1908, the certificate issued by the Competent Authority alongwith the unilateral

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instrument of conveyance, the Sub-Registrar or the concerned appropriate registration Officer shall, notwithstanding anything contained in the Registration Act, 1908, issue summons to the promoter to show cause why, such unilateral instrument should not be registered as 'deemed conveyance' and after giving the promoter and the applicants a reasonable opportunity of being heard, may on being satisfied that it was fit case for unilateral conveyance, register that instrument as, 'deemed conveyance'.]

On perusing the above provisions, it is clear that the as per the provisions of MOFA where a promoter has failed to convey the right, title and interest to a society, the society may file an application with the Competent Authority (presently the District Deputy Registrar of Co-operative Societies) in order to obtain unilateral Conveyance with necessary documents. The entire process of obtaining conveyance of a society has become society friendly.

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