

No. 7-47/2007-Coop. (Liquidation)
Directorate of Cooperation
Himachal Pradesh.

To

The Additional Registrar,
Cooperative Societies, Dharamshala.

The Deputy Registrar,
Cooperative Societies,
Shimla, Mandi & Dharamshala.

All the Assistant Registrar,
Cooperative Societies, H.P.

Dated Shimla-9

19, November, 2024

Subject:-

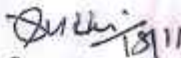
Guidelines and SOP's regarding Winding up and Dissolution of Cooperative Societies.

Memo,

Please find enclosed herewith a photocopy of Guidelines and SOP's regarding Winding up and Dissolution of Cooperative Societies for the State of Himachal Pradesh.

In this regard, Guidelines and SOP's framed by the department for Winding up and Dissolution of Cooperative Societies is forwarded for information and necessary action at your end. Further you are, also directed to share the progress in the above matter under your jurisdiction to this office at a regular intervals.

Enclosed: as above

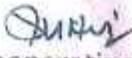

Registrar Cooperative Societies,
Himachal Pradesh, Shimla-9.

Endst. No.- 7-47/2007-Coop. (Liquidation)

Dated: Shimla-9, 19, November, 2024

Copy to:-

- 1 The, Secretary, Ministry of Cooperation, Government of India, , Atal Akshay Urja Bhawan, New Delhi, for favour of information.
- 2 The Secretary (Cooperation) to the Government of Himachal Pradesh, Shimla-2, for favour of information.
- 3 All the Branch officer, Directorate of Cooperation, Himachal Pradesh, Shimla-9, for information.


Registrar Cooperative Societies,
Himachal Pradesh, Shimla-9.

GUIDELINES AND SOP's REGARDING WINDING UP AND DISSOLUTION OF COOPERATIVE SOCIETIES, HIMACHAL PRADESH

Though the exact number of Cooperative Societies under winding up over longer period is not known yet there are instances where societies are under winding up for over 20 years. Rule 117 of the H.P. Cooperative Societies Rules, 1971 require the liquidation proceedings to be closed with in a period of 5 years from the date on which the order of winding up takes effect unless the period is extended by the Registrar subject to the period fixed in Memorandum of liquidation under Rule 104(2)(b) (where the period is intended to be further reduced)

1.WINDING UP UNDER THE LAW

A Cooperative Society is a legal person (Body Corporate). It is created by law and owes its existence to law. It can not be liquidated except according to law. The Registrar has no power to cancel the registration of a cooperative society without passing a winding up order except where fraud is proved. According to Cooperative law in Himachal Pradesh, Section 83 lays down that the Registrar after considering the report of the liquidator, if any, may order the registration of the society to be cancelled.

Relevant provisions in the Himachal Pradesh Cooperative Societies Act, 1968 relating to winding up and dissolution of cooperative societies are from section 78 to 85 and Rules 104 to 118. According to Section 78, a society may be placed in winding up (i) if the Registrar is of the opinion that the society ought to be wound up after an inspection has been made under section 65 (Rectification of Cooperative Societies) or Section 66 (Inspection at the instance of creditor) or any enquiry has been held under section 67 (Statutory enquiry).

2.VOLUNTARY WINDING UP

Under section 78(i) (b) the society may be wound up on an application made upon a resolution passed by 3/4th of the members of the society present at a special General Meeting called for the purpose.

3. WINDING UP ON THE MOTION OF REGISTRAR

A society may also be wound up under section 78(1) (c) on the motion of the Registrar if a society has not commenced working within a priod of 12 months from the date of its registration (Rule 104 (1)(a) or has ceased working during the previous 18 months (Rule 104(1)(b) or has share capital and members deposits not exceeding Rs.1000/- or had ceased to comply with any condition as to Registration in the Act or in the rules or bye-laws. The Registrar has to give a show cause notice to the society and an opportunity to be heard.

4. WINDING UP ORDER:

Under section 78(2) the winding up order has to be in writing and a copy of such has to be communicated to the society and to the financing bank if any of which the society is a member. It has to be published either in the official Gazette or the local regional paper as the Registrar may deem fit if the liability of the society exceeds Rs.25000/- (Rule105).

In addition to the winding up order, the Registrar may also issue a memorandum of liquidation together with the order of winding up containing (a) statement of reasons for

9. LIQUIDATION
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placing the society under liquidation (b) time to be taken by the liquidator to complete the winding up process from the date on which the order of winding up takes effect (c) guidelines to the liquidator for the beneficial winding up or revival of the society (Rule 104(2)).

There is however, no performa prescribed for the winding up order as is found under rule 79 Appendix G in Punjab and Haryana. The order has to be self- contained as appeal has been provided (under section 93).

5. EFFECTIVENESS OF THE WINDING UP ORDER

Under section 78 (3) the order of winding up shall take effect where no appeal is preferred on the expiry of the time allowed for preferring an appeal or where an appeal is preferred upon the rejection of the appeal by the appellate authority, but the liquidator shall continue to have custody and control of the property effective and actionable claims (section 79 (4)).

6. REQUIREMENTS OF WINDING UP ORDER.

Winding up order has to be a speaking order as there is an appeal provided against the winding up. Such an order should state briefly the history of the case factual position with regard to cause of action including reasons and circumstances for holding inspection or inquiry where the winding up order is based upon such inspection or Enquirer. A mention of the fact also is necessary that the opportunity was afforded to the Society to represent its case and gist of the points raised in defense by the society as well as the grounds for their rejection by the Registrar.

7. APPEAL

Appeal has been provided under section 93(1) (I) and has to be made within 60 days from the date of decision or order. If the decision or order was made by the Registrar the appeal has to be filed to the Govt, and if the decision or order was made by any other person to the Registrar. There is, however, no appeal from any decision or order made by the Registrar in appeal.

8. APPOINTMENT OF LIQUIDATOR:

The appointment of Liquidator is an essential requirement as discussed earlier as it is only on the consideration of the liquidators report that the Registrar can either cancel the registration or the winding up order.

The law provides that where the Registrar has made an order for the winding up of a cooperative society, he may in accordance with provisions of section 79 (1) of the Act, appoint a liquidator and may remove him and appoint another in his place and may also fix his remunerations (s.79). The appointment and removal of a liquidator has to be published in the manner as the Registrar may deem fit. It has also to be communicated in writing to the society (Rule 106). When the liquidator is removed, he has to handover all the property and documents relating to the society, order to be wound up to such person as Registrar may direct (Rule 112). The appointment of liquidator may be either by a general order or by a special order including any change.

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9. LIQUIDATION COMMITTEE

Under section 79 (2) the Registrar may, if the circumstances require, appoint by nomination from the share holders of the society, liquidation committee, comprising not more than 7 and not less than 3 share holders to advise and assist the liquidator, and may at any time remove any member of the committee or the whole committee and appoint another in its place as the case may be (s. 79-2).

10. LIQUIDATORS'S CHARGE.

The liquidator on appointment is empowered to take into his custody or under his control all the properties, effectors and actionable claims to which the society is or appears to be entitled and shall take such steps as he may deem necessary or expedient to prevent loss, or deterioration or damage to such property effects and claims. Even if appeal has been preferred the liquidator is empowered to continue to have custody and control pending the decision of the appeal. When an order of winding up of a society is set aside in the appeal the property, effects and actionable claims of the society shall revert in the society (s.79)

11. VESTING OF ASSETS

The assets of the society in respect of which an order of winding up has been made, vest in the liquidator from the date on which the order takes effect and the liquidator from the date on which the order takes effect and the liquidator has powers to realise such assets by sale or otherwise(s.80)sub section (1). Under section 79 the liquidator has to take charge immediately on appointment without vesting the assets of the society in him. Therefore, the position of the liquidator after taking over charge under section 79 and before becoming of the winding up order effective is that of a care taker or a custodian or a trustee, The liquidator can take charge irrespective of the fact whether appeal has been filed or not. This has been done with a view to prevent any loss which may be caused to the society by frittering away its assets.

12. QUALIFICATION OF LIQUIDATOR

No qualifications has been prescribed for a liquidator, could be a department officer or any other person. His appointment may be made by name or by designation. Where the liquidator has been appointed by designation, his successor in office ipso facto becomes the liquidator. Where a liquidator has been appointed by name, the change will necessitate fresh notification.

13. REFUSAL TO HANDOVER CHARGE

If the out-going members of the committee refuse to handover the charge of the records and property of the society to the liquidator, the Registrar or the person authorised by him may apply to the Magistrate (Executive) with in whose jurisdiction, the society is functioning for seizing and taking possession of the records and property of the society. On receipt of an application, the Magistrate may authorise any police officer not below the rank Sub-inspector to enter and search any place where the record and property are kept or are believed to be kept and seize them and handover the possession thereof to the Registrar or the liquidator as the case may be.

In addition to the above remedy, section 96 (5) prescribes a penalty of fine which may extend to Rs. 200/- and in case of continuing breach with a further fine which may extend to Rs. 5/- for every day during which the breach is continuing after conviction for the first such breach against any officer or custodian who willfully fails to handover custody of books, record, cash, security and other property belonging to society of which he is an officer or custodian. The cognizance of this offence cannot be taken by a court inferior to that of a Magistrate first class and prosecution can be instituted with a previous sanction of the Registrar (S.97).

14. TIMELY WINDING UP

Under Rule 117, the liquidation proceedings of a society shall be closed within a period of 5 years from the date on which the order of winding up takes effect, unless a period is extended by the Registrar. This, however, is subject to the period fixed in the memorandum of liquidation (Rule 104).

15. POWERS OF LIQUIDATOR

1. Subject to any rule made in this behalf, the whole of the assets of society in respect of which an order for winding up has been made, shall vest in the liquidator appointed under section 79 from the date on which the order takes effect and the liquidator shall have power to realise such assets by sale or otherwise.
2. Such liquidator shall also have power subject to control of the Registrar
 - a) to institute and defend suits and other legal proceedings on behalf of the society by the name of his office;
 - b) to determine, from time to time, the contribution including, debts due to be made or remaining to be made by the members or the past members or by the estates, or nominees, heirs or legal representatives of deceased members or by any officers or former officers, to the assets of the society;
 - c) to investigate all claims against the society and, subject to the provisions of this Act, to decide questions of priority arising between claimants,
 - d) to pay claims against the society including interest upto the date of winding up according to their respective priorities, if any, in full or ratably, as the assets of the society may permit, the surplus, if any, remaining after payment of the claims being applied in payment of interest from the date of such order of winding up at a rate fixed by him, but not exceeding the contract rate in any case;
 - e) to calculate the cost of liquidation and to determine by what person and in what proportions they are to be born.
 - f) To determine whether any person is a member, past member or nominee of deceased member;
 - g) To give such directions in regard to the collection and the distribution of assets of the society as may appear him to be necessary for winding up of the affairs of the society:

may extend
Rs. 5/-
such

- h) To carry of the business of the society so far as may be necessary for the beneficial winding up of the same,
- i) To make any compromise or arrangement with creditors or person claiming to be creditors or having or alleging to have any claim present or future whereby the society may be rendered liable,
- j) To make any compromise or arrangement with any person between whom and the society there exists any disputes and to refer any such dispute to arbitration;
- k) After consulting the members of the society, to dispose of the surplus, if any, remaining after paying the claims against the society, and
- l) To compromise all calls or liabilities to calls, and debts and liabilities capable of resulting in debts, and all claims, present or future, certain or contingent, subsisting or supposed to subsist between the society and a contributory or alleged contributory or other debtor or person apprehending liability to the society and all questions in any way relating to or affecting the assets or the winding up of the society on such terms and may be agreed and take any security for the discharge of any such call, liability, debt or claim and give a complete discharge in respect thereof.

3 Any private transfer or delivery of, or an encumbrance or charge on, property, made or created after the order of the liquidator order the section shall be null and void as against the society under liquidation.

16. CONTROL OF REGISTRAR.

The above powers are to be exercised subject to the control of the Registrar, the word control, however, does not imply that the liquidator shall seek guidance or directions at every stage in exercising all or any of the powers vested in him. Control means power of supervision and it is in the nature of administrative control. A liquidator of a society under winding up is appointed by the Registrar. He is, therefore, answerable to the Registrar for all his actions. The Registrar has the power to curtail any of his powers and direct that certain acts shall be done by him which he considers to be in the interest of the institution. Such directions or curtailment would arise in any or all of the powers.

17. PUBLIC NOTICE BY LIQUIDATOR

Under rule 108 the liquidator shall, as soon as the order of winding of the society takes effect, publish in such manner as the Registrar may direct requiring of claims against the society to be submitted to him with in 45 days of, the publication of the notice. All liabilities recorded in the accounts books of the society shall be deemed if-so-facto to have been duly submitted to him under this clause.

This public notice is time bound and debars submission of further claims after the required period is over.

18. PROCEDURE TO BE ADOPTED BY THE LIQUIDATOR

The liquidator on appointment has to prepare an upto date list of the members including past members and legal heirs of the deceased members. The liquidator has to first ascertain the assets and liabilities of the society as they stood on the date of his appointment and then

proceed to determine the contributions (including debts due). He can issue subsidiary contributions orders. The liquidator has to send to the Registrar periodically returns as are required by him. The liquidator can appoint staff to assist him with the approval of the Registrar. He has to deposit all funds in his charge with such an institutions or a person and in the manner as the Registrar may approve. He may call meeting of the members or creditors separately or jointly. He has to call annual general meeting of the society, during each cooperative year, to consider the annual audit report or other points specified by the Registrar (Rule 108).

19. CONTRIBUTIONS

The liquidator is vested with the power to determine the contributions to be made by the members to the assets of the society in the event of its winding up. It has the following ingredients:-

- a) That it shall be paid not only by one member but by other members of the society also.
- b) This liability would arise when the assets including the reserve fund invested are not sufficient to meet the liability, or claims against the society and,
- c) When the liability of the society has been satisfied by one member, the liquidator can call upon the others to contribute towards the assets even though the object may be to reimburse the party who had satisfied the liability.

20. BAR OF JURISDICTION OF COURTS

While a Cooperative society is being wound up, no suit or other legal proceedings relating to the business of such society shall be proceeded with or instituted against the liquidator as such or against the society, any member their of except by the leave of the Registrar and subject to such terms as he may impose. No order decision or award made under the Cooperative Societies Act, concerning winding up of a cooperative society shall be questioned in any court on any ground whatsoever (Sections 84&92)(1-d(2)).

21. PRIORITY AMONG CLAIMANTS

The liquidator has the power to determine from time to time the contribution (including debts due etc) to be made or remaining to be made by the estates of nominees, heirs and legal representatives of deceased members or by any officer or former officer to the assets of the society,

The past members and the estates of the deceased members are liable for the debts of a society for period of two years from the date of death or ceasing to be member. In case, a society is placed under winding up order within two years from ceasing to be a member, the liability is to continue until the entire liquidation proceeding are complete but only to the extend of debts that existed on his ceasing to be a member (S-29)

Instances where the liabilities of a Cooperative Society exceed the value of its assets and thereby pose a technical problem to a liquidator as to how, in what proportion and in what priority- the assets of a Cooperative Society under liquidation may be distributed.

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In this case, the liquidator shall first proceed to realize the assets as usual and the amount realized as such shall be distributed on priority basis in the following manner to satisfy the Claims/liabilities:-

I) First Priority:

- 1) Remuneration of the liquidator, if any (rule 108(7)).
- 2) Pay or remuneration of the staff/employees or ex-employees of the society Rule 108(7)
 - a) salary
 - b) bonus, if any
 - c) EPF/CPF.etc.
 - d) TA/DA etc.
- 3) Audit fee payable to the Govt. (rule 111).
- 4) Costs of all types (rule 111)
 - a) legal fee
 - b) stationery
 - c) rent
 - d) electricity/water bills
 - e) other costs of liquidation viz Money paid for publication of notices, summons, postage, etc.
- 5) Charges and expenses.
 - A) Income tax
 - B) sales tax, passenger tax, goods tax, etc..
 - C) other chargeable miscellaneous expenses.

II) Second Priority:

- 1) Govt. loan under State and Central sector.
- 2) Interest on Govt. loan.
- 3) Dues of any other local authority.

III. Third Priority.

Secured loans (based on charge on assets of the society).

- 1) 1st charge.
- 2) Second charge.
- 3) Any subsequent charge.

IV. Fourth Priority.

Unsecured debts and other liabilities (prorata refund) A liquidator is, however, at liberty to employ or utilize that realized amount in such proportion and in such way to pay off the liabilities of first priority as is reasonable and justifiable. It is, however, clarified that the liabilities other than the first priority shall only be paid, in case all the claims of first priority have been paid in full. The surplus if any, left with the liquidator may, thereafter, be utilized for paying other liabilities under the second priority and once its cleared, then of the third priority and so on.

After all the liabilities, other than the owned capital as they stood on the date of order of liquidator are paid off, the assets, if any, left with the liquidator may be employed in accordance with the provisions of sub-rule(2) of rule 111 of the I.L.P. Cooperative Societies Rules, 1971 as under: -

- i) Proportional refund to members of any contributions realised from them in addition to their own personal debts.

ii) Prorate refund of share capital; and

iii) Prorate payment of dividend on the shares at the rate and in the manner fixed in rule 111.

In any other case, if the assets of a cooperative society with limited liability are inadequate to meet the remaining liabilities, even after having issued the contribution order, the liquidator, in that event, shall after realising all the assets and bringing asset portion of the balance sheets to more, proceed to submit his final report to the Registrar. The final report as submitted by the liquidator shall, inter alia, contain the details of remaining liabilities and resources for non-payment thereof. The Registrar, on receipt of the final report of the liquidator under section 83 (2) shall pass a reasoned and detailed order of cancellation of registration of the society.

22. CODAL FORMALITIES FOR DISPOSAL OF ASSETS

(a) In case of Immoveable property such as land, building etc., valuation be got done by professional valuers taking into consideration the market price in addition to taking note of value as per revenue record. such value be kept as reserve price in the sealed cover and sealed bids from eligible persons as per instructions be called from the general public to sell such property in transparent manner. On opening of sealed bids by the competent authority as per instructions, negotiations may not be done. If in rarest of the instances, negotiations are to be resorted to, it should be done with highest bidder only. If highest bid is still lower, fresh offers should be invited after wide publicity. On acceptance of highest bid, 25% of the total value be asked to be deposited on the spot and remaining to be deposited within one month.

(b) In case of moveable property, the valuation be got done from the competent authority which be kept as reserve price and open bids be invited from the general public. On acceptance of highest bid, 25% of the cost shall be deposited on the spot and remaining shall be deposited within 10 days.

(c) In case the moveable property is to be condemned, the case be submitted to the competent authority and reserve price be fixed after condemnation.

(d) Competent authority shall be a committee as mentioned below

For immovable property:

- (i) Assistant Registrar Co-operative Societies
- (ii) Revenue Officer not below the rank of Naib Tehsildar
- (iii) Liquidator of concerned Co-operative society.

For moveable property-

- (i) Assistant Registrar Co-operative Societies
- (ii) Liquidator of concerned Co-operative society
- (ii) Technical person not below the rank of Junior Engineer (mechanical) PWD or foreman of HRTC.

In case Assistant Registrar Co-operative Societies is himself a liquidator, then D.A.O/DI will be member of the committee in his place.

(e) In case the reserve price of the property is more than Rs. One lac, then notice regarding inviting of bids be published in one local Hindi daily.

(f) In case the reserve price of property is more than Rs. two lacs, then prior approval of the Directorate be obtained before inviting bids alongwith detailed terms and conditions.

23. POWERS OF CIVIL COURT

The liquidator has to exercise powers in respect of investigation of claims, scouring up of assets and paying of liability. In order to facilitate his work, he has been delegated powers of a civil court which he can exercise while discharging various functions conferred on him or under cooperative societies act. Powers of civil court are the same or it exercises while trying suit, under the code of civil procedure, 1908, in respect of following matters:-

- a) Summoning and enforcing the attendance of any person and examining him on oath:
- b) Requiring the discovery and production of any documents:
- c) Issuing commissions for examination of witnesses.
- d) Proof of facts by affidavits, and

In case of an affidavit liquidator may administrator oath to the dependant (S.71). Himachal Pradesh Cooperative Societies Rules, 109, further lays down that the liquidator may issue, summons for person where attende is required either to give evidence or produce documents. The service-of-summons shall be arranged by the liquidator himself. For warrants, the liquidator shall send to the competent Magistrate having local jurisdiction for execution. The said Magistrate is to execute the warrants as issued by him. This, however, appears to have been done to limit the power of liquidator under section 71. Mode of summons is given under rule 141 also.

24. EXECUTION OF ORDERS:

The orders of the liquidator in exercise of his powers are to be executed according to the Act and under the rules for the time being inforce for the recovery of arrears of land revenue (Section 88).

25. TERMINATION OF LIQUIDATION PROCEEDINGS

The Registrar shall after considering the report of the liquidator if any, order the registration of the society to be cancelled (S.83). If any liability cannot be discharged by the liquidator for any cause the amount covered by such undischarged liability may be deposited in financing bank for three years after which it may be transferred to cooperative education fund (Rule-113).

The liquidator has to call a general meeting of the members at the conclusion of the liquidation proceedings to consider the report of the liquidator and pass resolution requesting the Registrar to cancel the registration or the order of the winding etc. (Rule-114). The liquidator is required to submit final report (Rule-115). The record after cancellation of

registration has to be deposited with the Registrar or such person or institution as the Registrar may be, direct which shall be destroyed after three years under orders of the Registrar (Rule-118)

26. INDEMNITY

The liquidator enjoys indemnity against any suit prosecution or other legal proceeding for acts done in good faith. (S.91).

27. PUBLIC SERVANT

Under rule 142, the liquidator has been deemed to be public servant within the meaning of (S.21) of the Indian Penal Code 1860.

28. ACTS NOT TO BE INVALIDATED

No act of liquidator done in good faith in pursuance of business of the society shall be deemed to be invalidated by reason only of some defect, subsequently discovered in the appointment of liquidator was disqualified for his appointment. The Registrar to decide whether any act was done in good faith in pursuance of the business of a society (Section-102).

29. PENALTIES

Under section 96 (5) any officer or custodian who willfully fails to handover custody of book records, cash security and other property belonging to a society of which he is an officer or custodian to the liquidator, shall be punishable with fine, which may extend to two hundred rupees and in case of continuing breach with a further fine which may extend to Rs. 5/- everyday during which the breach is continued after conviction. The prosecution has to be launched before-judicial Magistrate first class with previous sanction of the Registrar and a complaint in writing made by him or by any person authorised by him in this behalf. The offences are non-cognizable (S-96(5) and 97).

Wilful breach of mandatory provisions of the act and rules have been made culpable negligence under rule 147 and are punishable under section 109(3) by court, with fine which may extend to the fifty rupees and rupees ten for continuing breach.

30 .SERVICE OF SUMMONS

Mode of service of summons by liquidator has been laid down under (Rule 141), read with rule 109.