GOVERNMENT OF GOA,
DEPARTMENT OF COOPERATION
OFFICE OF THE REGISTRAR OF COOPERATIVE SOCIETIES,
"Sahakar Sankul", 4th Floor, Patto Plaza,
Panaji, Goa 403 001
Tel: +91 832 2437165/2437174/2437175 Email: **reg-orcs.goa@nic.in**
Fax: +91 832 2437134 website: **www.coopgoa.gov.in**

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Sub: - Guidelines for imposing fine in proceedings under Section 73 (5) of the Goa Cooperative Societies Act, 2001 for late submission of unaudited Balance Sheet.

ORDER

{Under Section 69 of the Goa Co-operative Societies Act, 2001 (Goa Act no. 36 of 2001)}

In exercise of the powers conferred upon the undersigned Registrar of Co-operative Societies under Section 69 of the Goa Cooperative Societies Act, 2001 (Goa Act No. 36 of 2001) {hereafter referred to as 'Act'} and to ensure proper implementation of Cooperative provisions, proper management of the business of all the Cooperative Societies functioning in the State of Goa, the following Guidelines for imposing fine in proceedings under sub-section (5) of Section 73 of the Goa Cooperative Societies Act, 2001 for late submission of unaudited Balance Sheet are hereby issued for strict compliance by all the authorities as under.

Whereas, vide Notification no. 60/137/Amendment/2020/TS-I/RCS/4579 dated 28/02/2023, the amended provisions of the Goa Co-operative Societies

(Amendment) Act, 2021 (Goa Act no. 34 of 2021) **have been made effective from 01/04/2023** except part of Section 23 relating to insertion of new sections 76C, 76D, 76E, 76F, 76G and Section 30 relating to insertion of new sections 104A and 104B of the amendments.

And whereas, in view of above, all the Societies are required to ensure that they comply with the timelines as laid down under Sections **72, 73, 74 & 81** of the Act pertaining to preparation of Balance Sheet, Audit Report, holding of Annual General Body Meetings, etc. which are briefly summarized as under.

Sr. no	**Relevant legal provisions of the Act**	**Brief description of Compliances**	**Statutory time lines**	**Penalty that may be applicable for violation/non-compliance**
1	Section 72	Holding of Annual General Meeting of Society	30th September following the close of the Financial Year.	Disqualification of all Directors on BoD for not exceeding six years u/s. 61 of the Act
2	Section 73(4) & 73(5)	Preparation and filing of unaudited balance sheet with Zonal Office/registering authority and for sending to the statutory Auditor.	30th Mayfollowing the close of the FinancialYear.	Rs. 500/- per day of delay till compliance is made u/s. 73(5) of Act
3	Section 74(3) & 74(4)	Appointment of statutory Auditor by general body and completion of Audit, placing of Audit report before Annual general meeting of society and submission of Audit report to the Zonal Office/registering	30th September following the close of the FinancialYear.	Disqualification of all Directors on BoD for not exceeding six years u/s. 61 of the Act.

		authority.		
4	Section 81	Filing of Annual Return along with filing fees.	30th September following the close of the FinancialYear.	Rs. 500/- per day of delay u/s. 118(b) & Section 119 of the Act.In addition to disqualification of all Directors on BoD for not exceeding six years u/s. 61 of the Act

In some cases, it is observed that Societies have failed to comply with the aforesaid statutory provisions within the given time limit. In such cases it is necessary to ensure that defaulting societies are forced to prepare the receipt & payment statements/Trial balance, Trading/Manufacturing Accounts, Profit & Loss Account, Income & Expenditure Account, and Balance Sheet and thereafter to complete the Audit of their Books of Accounts and place the Audit report before General Body Meeting of the Society and file the Annual return.

It is enjoined upon all the stake holders that it is essential for development of cooperative movement that the societies should function in a democratic and transparent manner. The above compliances are such that they relate to the very existence and well-being of the institution and hence are of utmost importance. These compliances are non-negotiable, and if they are not performed in time, then there is a reason to suspect that Society may not be maintaining proper records and needs immediate corrective action. All Co-operative Societies are requested to adhere to the above timelines so that there is timely compliance and there is no occasion for invoking penal provisions.

REGISTRAR OF CO-OP SOCIETIES

Now therefore, in order to compel such defaulting Societies to comply with the statutory provisions of Sections 72, 73, 74 and 81 of the Act, it is hereby directed as under.

1) The respective Unit Incharges (ARCS or CO) of these defaulting Societies are hereby directed to issue Show Cause Notices to all defaulting Societies under Section 73(5) of the Goa Co-operative Societies Act, 2001 directing them to Show Cause why Order should not be passed imposing fine upon them at the rate not exceeding of Rs. 500/- per day of the default starting from 31/05/2023 onwards and till the date they actually submit the copy of unaudited balance sheet to the Zonal office;

2) The respective Unit Incharge shall issue Show Cause Notices under Section 73(5) of the Act to all defaulting Societies and start the proceedings within the month of June itself. The societies should be compelled to submit their unaudited balance sheet during pendency of such proceedings and after the copy is submitted, the concerned Unit Incharge to decide the proceedings on merits of each case and pass a reasoned speaking order;

3) Section 73(5) of the Act provides for imposing a fine which shall not exceed rupees five hundred per day till such society complies with the provisions of sub-section (4). Therefore, it is the discretion of concerned Unit Incharge to decide on the quantum of fine that is to be imposed in the facts and circumstances of each case;

4) The purpose of amendment of Act and incorporation of provisions relating to fine is not to generate revenue by imposing fine, but is to compel the Societies to timely write and complete their books of accounts and subsequent statutory Audit (if applicable) so as to safeguard the interest of members of Societies and public at large. The desired situation is that there should be cent per cent compliance by Societies and no occasion for imposing any fine;

5) The following general Guidelines are hereby issued to be taken into consideration while deciding the amount of fine that may be imposed on the defaulting societies during proceedings initiated under sub-section (5) of Section 73 of the Act;

a) Compliance by society since its registration till previous year shall be verified & if most of the times society was compliant, it is a case for taking a lenient view for imposing fine, while if society was defaulter always then it will not be eligible for a lenient view;

b) Although any Society had failed to submit unaudited balance sheet to zonal office in time u/s. 73(4) of the Act, but had duly complied with sections 72 and 74 of the Act by timely submitting Audit report and timely holding AGM, in such cases also it is a case for taking a lenient view for imposing fine;

c) The reasons for delayed submission of balance sheet shall be taken into consideration, like non-availability of any paid employee with the Society and if Honorary duty is performed by the elected BoD/office bearers of Society, then it is a case for taking a lenient view for imposing fine;

d) The reason of sickness of any office bearer or employee of the Society who was entrusted the work of preparing balance sheet, or such other factors may be taken into considerationfor taking a lenient view for imposing fine;

e) Due consideration needs to be given to the financial status of concerned official of the Society and whether he/she is a senior citizen to see whether he/she is capable of paying fine imposed or not. Accordingly, the amount of fine imposed should be such that the concerned society official should be in a position to pay the same without affecting his/her financial stability;

f) The yardsticks applied for deciding quantum of fine should be the same in all cases and inconsistent views shall not be taken in similar facts of similar cases;

g) The factors taken into consideration for deciding amount of fine by the authority and reasons should be clearly stated in the Order itself;

6) The concerned Unit Incharge shall provide proper opportunity of hearing to the concerned officials of Society who were liable to prepare the balance sheet and

submit it to zonal office in time, the BoD of the concerned Society and after following the principles of natural justice, shall pass a reasoned order imposing fine in accordance with these guidelines;

7) It may be noted that the Hon'ble Supreme Court of India in the case of Hindustan Steel Ltd. V/s. State of Orissa [(1969) 2 SCC 627] has observed that *"An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute."*

8) Therefore, each Authority has to decide the case having due regard to the facts of the case and it is not necessary that maximum amount provided under the law has to be imposed as fine. In a justified case, taking a lenient view would mean imposing as fine even a token minimum cumulative amount of Rs. 100/- may suffice. The thrust of the proceedings shall be to secure compliance by Societies at the earliest possible so that there is no further delay resulting in violation of Section72, 74(3) & 74(4) and Section 81 of the Act.

9) The above general guidelines shall be taken into consideration by all Unit Incharges while finalizing the proceedings under Section 73(5) of the Act.

Given under the seal of this Office.

16/06/2017

(Vishant S. N. Gaunekar)
Registrar of Cooperative Societies & Ex-Officio Joint Secretary (Co-operation)
Government of Goa, Panaji, Goa

To,
The Director of Printing & Stationary, Government Printing Press, Panaji, Goa for publication in the next issue of Official Gazette.

Copy to: -

1) All the Cooperative Societies in the State of Goa through their respective Unit Incharge ARCS or CO in the respective Zonal Offices;
2) The Dy. Registrar of Coop. Societies (Tech), O/o. RCS, Patto, Panaji;
3) The Dy. Registrar of Coop. Societies (Admin), O/o. RCS, Patto, Panaji;
4) ARCS (Audit) / ARCS (Election – North & South) / ARCS (HQ) / ARCS (Mktg.) O/o.RCS, Patto Plaza, Panaji, Goa;
5) ARCS & CO Central Zone, Panaji, Goa / ARCS& CO North Zone, Mapusa, Goa / ARCS & CO Bicholim Zone, Sankhali, Goa / ARCS & CO, Ponda Zone, Curti, Ponda, Goa / ARCS & CO South Zone, Margao, Goa / ARCS & CO, Quepem Zone, Quepem, Goa for information and strict compliance;
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