

GERMANY

COOPERATIVE SOCIETIES ACT, 1973, WITH REGULATIONS FOR THE REGISTRATION OF COOPERATIVE SOCIETIES

Trade & Industrial Cooperative Societies Act,
passed on 1 May 1889 (Reich Law Gazette (RGBl) p. 55) as issued on 20 May 1898 (Reich Law
Gazette (RGBl) pp. 369, 810) (German Civil Code (BGB) III 4125-1)

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CONTENTS

COOPERATIVE SOCIETIES ACT

Part I. Formation of a cooperative society

Sections 1 to 16

Part II. Legal status of a cooperative society and its members

Sections 17 to 23

Part III. Representation and management

Sections 24 to 52

Part IV. Auditing and audit unions

Sections 53 to 64c

Part V. Withdrawal by individual members

Sections 65 to 77a

Part VI. Dissolution and nullity of a cooperative society

Sections 78 to 97

Part VII. Insolvency proceedings and liability of members

Sections 98 to 118

Part VIII. Amount of liability

Sections 119 to 145

Part IX. Penalties and fines

Sections 146 to 154

Part X. Final provisions

PART I. FORMATION OF A COOPERATIVE SOCIETY

Section 1. *Definition and types of registered cooperative societies.* (1) Societies with a variable number of members, with the purpose of promoting their members' activities in trade or industry by means of commonly owned enterprise (cooperative societies), namely:

1. loan and credit associations;
2. commodity associations;
3. associations established for the joint sale of agricultural or industrial products (marketing cooperatives, warehousing associations);
4. associations established for the production of goods and the sale thereof on joint account (producers' cooperatives);
5. associations established for the joint purchase of victuals or commodities on a large and discounting on a small scale (consumer cooperatives);
6. associations established for procuring objects for agricultural or industrial purposes and use thereof on joint account;
7. associations established for the purpose of building houses, acquire the right of a "registered cooperative society" according to this Act.

(2) Membership of societies and other associations, including bodies incorporated under public law, is admissible if and when they are intended to:

8. promote the trading or industrial activities of the members of the cooperative society, or
9. serve the non-profit making activities of the cooperative society, without this being the sole or principle object of the cooperative society.

Section 2. *Liability of a cooperative society.* The liability of the cooperative society with regard to its creditors is limited to the assets of the cooperative society.

Section 3. *Trading name.* (1) The trading name of the cooperative society shall reflect the purpose of the undertaking. The trading name may not incorporate the names of its members or any other person.

(2) The trading name must include "registered cooperative society" ("eingetragene Genossenschaft") or abbreviation thereof ("eG"). Para. 30 of the Commercial Code shall apply accordingly.

(3) The trade name must not indicate whether, and if so to what extent, members are liable for additional contributions.

Section 4. *Minimum number of members.* The minimum number of members is seven.

Section 5. *Form of bye-laws.* The bye-laws of a cooperative society shall be laid down in writing.

Section 6. *Details to be included in the bye-laws.* The bye-laws shall include:

10. the trade name and the locality of the head office of the cooperative society;

11. the object of the undertaking;
12. details stipulating whether members are liable for additional contributions, should the creditors' claims not be satisfied in the event of insolvency of the cooperative society. If so, whether these are unlimited or limited to a specific sum (amount of liability),
13. details stipulating the way in which the general meeting of members shall be convened, how its resolutions shall be recorded, and who shall chair the meeting; the general meeting shall be convened by notifying all members directly or by announcement in the public journal; the court may allow exceptions; notification in the Federal Law Gazette (Bundesanzeiger) is not considered as adequate;
14. details stipulating the manner in which the cooperative society shall make its official announcements, and the journals in which such announcements shall be published.

Section 7. *Other details to be included in the bye-laws.* The bye-laws shall also stipulate:

15. the amount up to which individual members may purchase shares; as well as the payments on the shares which each member is obliged to make; these have to be fixed in terms of amount and time up to no less than one tenth of the share;
16. the establishment of legal reserves that are to cover any balance sheet loss, as well as the manner in which such reserves are to be established, especially that particular portion of the annual surplus which shall be allocated to these reserves, and the minimum amount of the latter up to which allocations have to be made.

Section 7a. *Purchase of several shares.* (1) The bye-laws may include a provision to the effect that a member may acquire more than one share. The bye-laws may limit the number and set additional conditions.

(2) The bye-laws may furthermore require that members purchase more than one share (compulsory participation). Compulsory participation has to be the same for all members or be based on the extent to which facilities or other services of the cooperative society are used by the members or on specific economic factors pertaining to the members' businesses.

Section 8. *Additional provisions of the bye-laws.* (1) Provisions stipulating that:

17. the cooperative society is limited to a specific period of time;
18. the membership is bound to the member being resident within a certain district;
19. the financial year, in particular the first year, is defined by a period not identical with the calendar year or by a period shorter than a year;
20. resolutions on certain subjects shall only be adopted by the general meeting by means of more than a simple majority of the votes or on the basis of other conditions;
21. the extension of business operations to persons who are not members of the cooperative society is permitted need to be included in the bye-laws in order to be valid.

(2) (repealed)

(3) The conclusion of transactions with persons having already signed their declaration of membership and having been accepted by the cooperative society shall not be deemed to be an extension of the business operations.

Section 9. *Board of directors and supervisory council.* (1) A cooperative society shall have both a

board of directors and a supervisory council.

(2) The board of directors and the supervisory council shall be composed exclusively of members of the cooperative society. Should registered cooperative societies have joined the cooperative society as members or should the cooperative society exclusively consist of such registered cooperative societies, members of the latter may be appointed members of the board of directors and supervisory council.

Section 10. *Registration in the register of cooperative societies.* (1) The bye-laws, as well as the members of the board of directors, shall be entered into the register of cooperative societies of the court where the cooperative society has its head office.

(2) The register of cooperative societies shall be kept at the court responsible for keeping the Trade Register.

Section 11. *Application for registration; documents.* (1) Application for registration is one of the responsibilities of the board of directors.

(2) The application shall be accompanied by:

22. the bye-laws, which have to bear the signature of the members, and a copy of the bye-laws;

23. a copy of the deeds confirming the appointment of the board of directors and the supervisory council;

24. the certificate of an audit union confirming that the cooperative society is eligible for admission, and an expert opinion of the audit union indicating whether in view of the personal and economic conditions, and in particular the financial position of the cooperative society, the interest of the members or creditors of the cooperative society may be jeopardised.

(3) The application also has to specify the kind of powers of representation of the board of directors.

(4) The members of the board of directors at the same time have to submit a specimen of their signatures certified by a public notary.

(5) The copy of the bye-laws will be certified by the court and returned together with the document confirming registration. The other documents will be kept in the court files.

Section 11a. *Control of formation by the court.* (1) The court shall verify whether the formation and the application for registration of the cooperative society conforms with the law. Where this is not the case, application for registration shall be rejected.

(2) The court shall also reject the application for registration, if the court finds that the interests of the members or creditors of the cooperative may be jeopardised due to the personal and economic and, in particular, financial situation of the cooperative society.

Section 12. *Publication of the bye-laws.* (1) The registered bye-laws shall be made public by the court in extracts.

- (2) The publication must include:
25. the date of the bye-laws;
 26. the trade name and the locality of the head office of the cooperative society;
 27. the object of the undertaking;
 28. the members of the board of directors and their powers of representation;
 29. the duration of the cooperative society, if limited to a specific time.

Section 13. *Implications of registration.* The cooperative society does not have the rights of a registered cooperative society until it has been entered into the register of cooperative societies of the locality of its head office.

Section 14. *Application for registration of a branch.* (1) The board of directors shall apply to the court of the locality of its head office for the establishment of a branch to be entered into the register of cooperative societies of the court of the branch. Accompanying the application shall be a copy of the bye-laws certified by a public notary. The court of the locality of the head office shall pass on the application to the court of the branch without delay, along with a certified copy of its entries, unless these exclusively relate to the situation of other branches.

(2) The members of the board of directors shall submit their signatures certified by a public notary to the court of the locality of the head office, which will then be filed with the court of the branch. The same applies to authorised signatories (Prokuristen), unless the procuration is expressly limited to the operation of another branch.

(3) The court of the branch shall verify that the branch has been established and that Para. 30 of the Commercial Code has been duly followed. If this is the case, the court shall register the branch without examining the facts passed on to it where the same have been entered into the register of cooperative societies of the locality of the head office. The entry shall include the details required by section 12 and the location of branch. Should the trade name of the branch include any addition, the same shall also be entered.

(4) The court of the locality of the head office shall be informed *ex officio* of the branch's registration, which shall be entered into its register of cooperative societies. Should the trade name of the branch include any addition, the same shall also be entered.

(5) These provisions apply correspondingly to the closing of a branch.

Section 14a. *Treatment of existing branches under the registry law.* (1) As soon as a branch has been entered into the register of cooperative societies, any changes concerning the establishment at the locality of the head office of the cooperative society or a registered branch shall be made with the court of the locality of the head office. The number of copies shall correspond to the number of establishments.

(2) Where entries have to be published, the court of the locality of the head office shall state in its publication that the same entry will be made for the branches at the courts of the branches, which shall be named. Should the trade name of the branch include any addition, the same shall also be stated.

(3) The court of the locality of the head office shall inform *ex officio* the courts of the branches of its entries. One copy of the application shall be included in the information. As soon as the registration has been made public, the court of the locality of the head office shall inform the courts of the branches as to which issue of the Federal Law Gazette contains the registration. The courts of the branches shall then include the registration in their register of cooperative societies without any further verification.

(4) If the application only relates to the situation of some branches, the number of copies submitted beyond the one intended for the court of the locality of the head office shall be limited to the number of branches concerned. Only the courts of the branches concerned by the entry shall be informed thereof by the court of the locality of the head office.

(5) Sections 2 to 4 shall also apply accordingly to entries made *ex officio*. Sections 1, 3 and 4 shall furthermore apply accordingly to the submission of documents and signatures.

Section 15. *Joining a cooperative society.* (1) Once the bye-laws have been submitted for registration, membership is acquired by a written unconditional declaration of membership and by admission through the cooperative society.

(2) Members shall be entered without delay into the membership register, and they shall be informed accordingly without delay. Should the cooperative society reject admission, it shall inform the applicant without delay, at the same time returning to him the declaration of membership.

Section 15a. *Contents of the declaration of membership.* The declaration of membership must make explicit reference to the member's obligation to effect the payments on the shares in due accordance with the Act and bye-laws. Should the bye-laws stipulate that members are obliged to make unlimited additional contributions or additional contributions limited to a specified amount of liability, the declaration of membership shall furthermore make explicit reference to the obligation to make the additional contributions required to satisfy creditors - either unlimited or up to the amount of liability fixed in the bye-laws.

Section 15b. *Purchase of additional shares.* (1) Purchase of additional shares is subject to an unconditional declaration of membership submitted in writing. For its contents, section 15a applies accordingly.

(2) Purchase of additional shares shall, except in cases of compulsory participation, not be accepted until all the member's shares have fully been paid up for, except for the most recently subscribed share.

(3) Purchase of additional shares shall become effective with the declaration of membership according to section 1 and the approval of the cooperative society. Subsection 15(2) shall apply accordingly.

Section 16. *Amendment of the bye-laws.* (1) Only the general meeting can resolve to amend the bye-laws or continue a cooperative society limited to a specific period.

(2) The following amendments of the bye-laws require a majority of no less than three quarters of votes cast:

30. changing the object of the undertaking;

31. increasing the shares;

32. introducing or extending compulsory purchase of more than one share;

33. introducing or extending the obligation of members to make additional contributions;

34. extending the term of notice to a period longer than two years;

35. introducing or extending the entitlement of withdrawing members in the revenue reserves according to subsection 73(3);

36. introducing or extending the plural voting right;

37. splitting shares.

The bye-laws may stipulate requirements in addition to those listed above.

(3) Amendments of the bye-laws introducing or extending an obligation of the members to make use of facilities or other services of the cooperative society, or to supply goods or services, require a majority of no less than nine tenths of the votes cast. The bye-laws may stipulate additional requirements.

(4) Any other amendments of the bye-laws require a majority of no less than three quarters of votes cast, unless otherwise provided in the bye-laws.

(5) To the application for entry and the registration of the resolution, the provisions of section 11 apply accordingly, provided that the notification is accompanied by two copies of the resolution. The resolution need only be published if the same involves one of the provisions set forth in subsection 12(2).

(6) The resolution shall not have any legal effect until entered into the register of cooperative societies of the locality of the head office of the cooperative society.

PART II. LEGAL STATUS OF A COOPERATIVE SOCIETY AND ITS MEMBERS

Section 17. *Legal status of a registered cooperative society.* (1) A registered cooperative society as such has its own independent rights and obligations. It may acquire property and other rights in real estate, and it may sue and be sued.

(2) Cooperative societies are considered to be merchants within the meaning of the Commercial Code, unless this Act stipulates any provisions to the contrary.

Section 18. *Primacy of the Act over the bye-laws.* The legal status of a cooperative society and its members is in the first place based on the bye-laws. The latter may deviate from this Act only in as much as this is explicitly declared to be admissible.

Section 19. *Distribution of profits and losses.* (1) The profit or loss of a financial year resulting for the members from the adoption of the annual accounts shall be distributed among the members. For the first financial year, such distribution shall be proportional to payments made on shareholdings. For each successive year, in proportion to their credit balance established at the end of the previous

financial year as a result of profit added or loss put down. Profit addition shall be made as long as the share has not been paid up.

(2) The bye-laws may apply criteria for profit and loss distribution other than those stipulated above, and they may regulate the extent to which profits shall be paid out to the members before the share has been paid up. Profits shall not be paid out until a credit balance diminished by losses has been replenished.

Section 20. *Exclusion of profit distribution.* The bye-laws may stipulate that profits shall not be distributed, but will be added to the legal reserves and other revenue reserves.

Section 21. *Ban on the payment of interest on credit balance.* (1) Interest of a certain amount on the credit balance shall, except as provided in section 21a, not be paid, even if the contributions made by the member exceed the due amounts.

(2) Neither can members, having paid more than their due contributions, in the event of a loss make claims on other members for the sole reason that the latter have only made these contributions.

Section 21a. *Exemption from the ban on the payment of interests.* (1) The bye-laws may stipulate that interest shall be paid on the credit balance. Should the bye-laws not give a fixed interest rate, it has to fix a minimum rate. Interest shall be calculated on the basis of the credit balance at the end of the previous financial year. Interest shall be payable no later than six months after the end of the financial year for which it is granted.

(2) Should the balance of the cooperative society for a financial year include an annual deficit or a loss carried over from prior years, which is neither completely nor partly covered by the revenue reserves, or an annual surplus or a profit carried over, then interest must not be paid up to an amount corresponding to the amount not covered for the financial year in question.

Section 22. *Reduction of shares; ban on paying out the credit balance.* (1) Should the shares or the payments to be made on the shares be reduced, or should the periods fixed for payments be extended, the essentials of the resolution passed by the general meeting shall be stated by the court when publishing the entry into the register of cooperative societies.

(2) The creditors of the cooperative society who, within six months following publication, register their claims with the cooperative society have the right to be furnished security, unless they are entitled to claim satisfaction. The publication shall indicate this.

(3) Members belonging to the cooperative society at a time when the resolution was entered into the register cannot invoke this change until notification has been made and the creditors, having responded in due time, have either been satisfied or given security for any claims made.

(4) The cooperative society must not pay out the credit balance of a member, or receive it as security in its business operations, as long as this member has not withdrawn from the cooperative society, nor may a due contribution be waived. The cooperative society must not grant a member credit for the purpose of making contributions towards payment for shares.

(5) Members may not set off amounts against contributions due.

Section 22a. *Changes in the obligation to make additional contributions.* (1) Should the obligation of members to make additional contributions to the bankruptcy estate be limited to a liability amount or should it be waived, then subsections 22(1) to (3) shall apply accordingly.

(2) The introduction or extension of an obligation to make additional contributions shall not extend to members who have already withdrawn from the cooperative society at the time when the amendment in the bye-laws took effect (Sections 75, 76(4), and 115b).

Section 22b. *Splitting of shares.* (1) The shares may be split into a number of shares. Share splitting and a proportionate reduction of the contributions shall not be considered as a reduction of the share or the contributions.

(2) The resolution on share splitting having been registered, the members participate with that number of shares resulting from share splitting. Subsection 15b(3), shall not apply. The membership register shall be corrected without delay.

Section 23. *Liability of members.* (1) The members are liable for the obligations of the cooperative society pursuant to this Act.

(2) Members joining the cooperative society are equally liable for obligations incurred before their entry.

(3) Contracts that are in conflict with the foregoing provisions shall remain without any legal effect.

PART III. REPRESENTATION AND MANAGEMENT

Section 24. *Board of directors.* (1) The cooperative society is represented by the board of directors both in and out of court.

(2) The board of directors comprises two members; it is elected by the general meeting. The bye-laws may provide for a larger number of members or another way of appointing the board.

(3) Board members may or may not receive a salary. Their appointment may be revoked at any time, notwithstanding any compensation claims from existing contracts.

Section 25. *Representation; signatures by the board of directors.* (1) Board members are only authorised to represent the cooperative society jointly. The bye-laws may stipulate deviations from this principle. If a declaration has to be made towards the cooperative society, it will suffice to do so in the presence of one board member.

(2) The bye-laws may also stipulate that individual board members are entitled to represent the cooperative society either solely or jointly with an authorised signatory (Prokurist). Section 1, clause 3, shall in these cases apply accordingly.

(3) Board members authorised to act for the cooperative society jointly may empower individual board members to conduct specific transactions or specific kinds of transactions. The same applies accordingly if an individual board member is authorised to represent the cooperative society jointly with an authorised signatory (Prokurist).

(4) Board members sign on behalf of the cooperative society by adding their signature to the trade name of the cooperative society or to the title “Board of Directors”.

Section 25a. *Details on business letters.* (1) All business letters addressed to a specific addressee have to hold the legal nature and the locality of the head office of the cooperative society, the registration court of the locality of the head office of the cooperative society with the number under which the cooperative society has been entered in the register of cooperative societies, as well as all the members of the board of directors and, if the supervisory council has a chairman, the chairman with his surname and at least one first name written out in full.

(2) The details specified in section 1 are not required for messages or reports made in connection with an existing business relation where normally forms are used in which only certain details have to be entered as may be necessary from case to case.

(3) Order forms are considered to be business letters within the meaning of section 1. Section 2 does not apply to order forms.

Section 26. *Effects of representation for the cooperative society.* (1) Legal transactions entered into by the board of directors on behalf of the cooperative society confer rights and obligations upon the cooperative society; it is irrelevant whether the transaction was explicitly concluded on behalf of the cooperative society or whether it can be implied from the circumstances that it was the will of the signatories to conclude the transaction for the cooperative society.

(2) The legitimisation of the board of directors for official bodies is proven through a court certification (section 10) saying that the persons to be named in that certification are entered in the register of cooperative societies as members of the board of directors.

Section 27. *Managing powers of the board of directors.* (1) The board of directors shall manage the cooperative society on its own responsibility, due consideration being given to the limitations imposed on it by the bye-laws.

(2) In dealings with third parties, any limitation of the power of the board of directors to represent the cooperative society shall remain without legal effect. This applies in particular when representation is to extend to specific transactions or specific kinds of transactions only, or is to apply under certain conditions, or to a specific time or at specific places only, or that certain transactions are subject to the approval of the general meeting, the supervisory council or another body of the cooperative society.

Section 28. *Registration of changes in the board of directors.* (1) The board of directors shall apply for entry of any change concerning the board of directors or the representative powers of one of its members in the register of cooperative societies. The application shall be accompanied by the deeds

concerning the change, either in the original or by way of copy. The relevant entry shall be made public by the court.

(2) The members of the board of directors shall submit publicly certified specimens of their signature.

Section 29. Irrefutable presumption of accuracy of the register of cooperative societies. (1) As long as a change concerning the board of directors, or the representative powers of one of its members, has not been entered into the register of cooperative societies and has not been made public, the cooperative society cannot oppose this fact against a third party, unless the latter knew of such change.

(2) Once the change has been registered and made public, third parties have to accept its validity in its use against them. This does not apply to legal action entered into within a period of fifteen days after publication, provided the third party can prove that it neither knew, nor had to be aware of, such a change.

(3) Should the change have been wrongly published, a third party may invoke the publication of the change, except in the case where it knew of the inaccuracy.

(4) For business transactions with a registered branch, the entry in the register of cooperative societies of the branch shall rule in as much as the entry should be of any decisive effect under these provisions.

Section 30. Membership register. (1) The board of directors is obliged to keep a membership register.

(2) The membership register shall give the following details for each member:

38. Surname, first name and address, for legal persons and partnerships the trade name and the address, for other associations the name and address of the association or the surnames, first names and addresses of its members;

39. the number of additional shares subscribed;

40. his withdrawal from the cooperative society.

The time at which the details as entered are to become, or have become, effective, and also any facts substantiating the entry shall be stated.

(3) Documents on the basis of which entries into the membership register are made shall be kept for a period of three years. This period shall commence with the end of the calendar year in which the member withdrew from the cooperative society.

Section 31. Right of inspection; transmission of data by third parties. (1) Each member, and also third parties proving a legitimate interest, have access to the membership register. Copies of the membership register shall be handed out to the member upon request and to the extent as entries concern him personally.

(2) Third parties must not process and use acquired data except for the purpose for which it was

acquired; data may be processed and used for other purposes only to the extent to which it would have been admissible to transmit the data for such purposes. If the addressee is a non-public body, the cooperative society has to draw the addressee's attention to these circumstances; processing and use for other purposes is in this case subject to the approval of the cooperative society.

Section 32. *Submission of the membership register to the court.* The board of directors shall submit a copy of the membership register without delay if and when required by the court (section 10).

Section 33. *Book-keeping; annual accounts, status report.* (1) The board of directors has to ensure that necessary books of the cooperative society are properly kept. As soon as the annual accounts and the status report have been drawn up, they shall be submitted to the supervisory council and, together with the supervisory council's comments, to the general meeting.

(2) Infringement of the regulations concerning the format of the balance sheet and accounts of profit and loss as well as non-observance of forms cannot be invoked to justify contestation, if these affect the clarity of the annual accounts only in an insignificant manner.

(3) Should it emerge in drawing up the annual accounts or an interim balance sheet, or should due assessment of circumstances suggest that a loss has been incurred which is not covered by half the total amount of the credit balances and the reserves, the board of directors shall without delay convene and inform the general meeting.

Sections 33a - 33i (repealed)

Section 34. *Diligence and liability of the members of the board of directors.* (1) In conducting their management, the members of the board of directors shall exercise the due care of a conscientious manager of a cooperative society. They shall observe secrecy concerning all confidential information and secrets of the cooperative society, in particular business and trade secrets that have come to their knowledge through their board activities.

(2) Members of the board of directors failing to comply with their duties are jointly and severally liable to indemnify the cooperative society from any damage resulting therefrom. In case of dispute as to whether they have exercised the due care of a conscientious manager of a cooperative society, the onus of proof rests with them.

(3) Members of the board of directors are liable for damages in particular if contrary to this Act or the bye-laws:

41. a credit balance is paid out;
42. members are granted interest or shares in the profit;
43. cooperative assets are distributed;
44. payments are made after insolvency has occurred or liabilities are in excess of assets, which for the cooperative society is cause for bankruptcy proceedings according to subsection 98(1);
45. credit is granted.

(4) Liability for damages towards the cooperative society does not arise if and when the action is based on a lawful resolution adopted by the general meeting. The fact that the supervisory council

has approved the action does not exclude liability for damages.

(5) In cases as set forth in section 3, the liability for damages may also be asserted by the creditors of the cooperative society to such an extent as they cannot obtain satisfaction from the cooperative society. As far as the creditors are concerned, the liability for damages shall not be rescinded, either by renunciation or compromise of the cooperative society, nor by the fact that the action is based on a resolution adopted by the general meeting. In the case of bankruptcy, an administrator will exercise the rights of the creditors vis-à-vis the members of the board of directors.

(6) Any claims resulting from these provisions expire within five years.

Section 35. *Deputies of members of the board of directors.* The provisions given for the members of the board of directors shall equally apply to their deputies.

Section 36. *Supervisory council.* (1) Unless otherwise specified in the bye-laws, the supervisory council shall comprise three members to be elected by the general meeting. The number required for adopting a resolution shall be fixed in the bye-laws.

(2) The members must not receive any compensation based on the business results (management bonus).

(3) Appointment of a member to the supervisory council may also be revoked by the general meeting before the period for which this member was elected has elapsed. The resolution requires a majority of no less than three quarters of the votes cast.

Section 37. *Incompatibility with regard to membership of the board of directors and the supervisory council.* (1) Supervisory council members may not simultaneously be members of the board of directors or act as permanent deputies of the latter, neither may they as officers manage the cooperative society. The supervisory council may appoint individual council members as stand-ins for indisposed members of the board of directors only for a predetermined and fixed period. During this period and until granted discharge, the stand-in may not exercise the functions of a member of the supervisory council.

(2) Members terminating their membership in the board of directors may not be elected to the supervisory council until granted discharge.

Section 38. *Functions of the supervisory council.* (1) The supervisory council shall supervise the board of directors in its managing functions in all administrative sectors, and it shall for that purpose obtain information on the course of the business matters of the cooperative society. It may at any time ask the board of directors to report on these matters, and it may itself inspect accounts and records of the cooperative society, or appoint members to do so; it is also entitled to inspect the cooperative's cash in hand and the security and commercial documents as well as the stocks. The supervisory council shall audit the annual accounts and examine the status report and the proposal made for use of the annual surplus or coverage of the annual deficit; it shall report to the general meeting the results of its auditing and inspection work before adoption of the annual accounts.

(2) It shall convene a general meeting if and when this is in the interest of the cooperative society.

(3) Any other obligations of the supervisory council shall be set forth in the bye-laws.

(4) Supervisory council members may not transfer the exercise of their obligations to other persons.

Section 39. *Power of representation and authority of the supervisory council.* (1) The supervisory council is authorised to represent the cooperative society when contracts are to be concluded with the board of directors, and to pursue legal action against members of the board of directors determined by the general meeting.

(2) Any credit granted to a member of the board of directors is subject to the approval of the supervisory council, unless the bye-laws set forth additional conditions for, or preclude, such granting of credits. The same applies when accepting a member of the board of directors as a guarantor when granting a credit.

(3) In any legal action against members of the supervisory council, the cooperative society will be represented by an authorised person elected by the general meeting.

Section 40. *Suspension of members of the board of directors.* The supervisory council is authorised to suspend members of the board of directors at its own discretion until a decision is taken by the general meeting, which shall be called without delay, and to take any action required to ensure the continuation of business.

Section 41. *Diligence and liability of the members of the supervisory council.* Concerning the duty to take due care and liability of the members of the supervisory council, section 34 concerning the liability of the members of the board of directors shall apply correspondingly.

Section 42. *Procurator and power of attorney.* (1) The cooperative society may confer the authority to sign pursuant to Para. 48 to 53 of the Commercial Code. Entry into the trade register is replaced by entry into the register of cooperative societies. Para. 28, section 1, clause 3, Para. 29 shall apply accordingly.

(2) The cooperative society may also grant power of attorney, which is subject to Para. 54 of the Commercial Code.

Section 43. *General meeting, responsibility and members voting rights.* (1) The members exercise their rights in cooperative matters in the general meeting, unless otherwise provided in the Act.

(2) The general meeting shall pass its resolutions by the majority of votes cast (simple majority), unless either the Act or the bye-laws call for a larger majority or make additional requirements. For elections, the bye-laws may set forth deviating provisions.

(3) Each member has one vote. The bye-laws may provide for the granting of plural voting rights. Plural voting rights shall only be created for members who further the business matters of the cooperative society in a special manner. The conditions for granting plural voting rights have to be set forth in the bye-laws. No member may be granted more than three votes. When resolutions are passed for which the Act provides a majority of three quarters of the votes cast or a larger majority, and for which the bye-laws cannot fix a majority smaller than the legally required majority, and also when passing resolutions on the revocation or restriction of provisions in the bye-laws concerning plural voting rights, each member shall only have one vote, even if he may have been granted the right to plural voting. For cooperative societies, whose members are exclusively or primarily registered cooperative societies, clauses 3 to 6 shall not apply; the bye-laws of these cooperative societies may base the voting right of the members according to their credit balance or other criteria. The revocation or amendment of the provisions of the bye-laws concerning plural voting rights is not subject to the consent of the members concerned.

(4) Members are to exercise their voting right personally. The voting right of legally incompetent natural persons or natural persons having restricted legal capacity, and also the voting right of legal persons, shall be exercised by their legal representative, the voting right of partnerships by members of the partnership having representative powers.

(5) The member or his legal representative may vote by proxy. Appointment of a proxy must be in writing. A proxy may not represent more than two members. The bye-laws may stipulate personal requirements for a proxy, and it may in particular prohibit the authorisation of persons offering to exercise the right to vote on a commercial basis, or it may entirely rule out representation by proxy.

(6) No person can exercise the right to vote for himself or another person when a resolution is being passed on whether he or the member he represents shall be granted discharge or be relieved from his liability, or on whether the cooperative society is to assert a claim against him or the member represented.

Section 43a. Delegates' meeting. (1) For cooperative societies with more than 1'500 members, the bye-laws may stipulate that the general meeting be composed of the members' delegates (delegates' meeting).

(2) Any natural person of unlimited legal competence, who is a member of the cooperative society but not a member of either the board of directors or the supervisory council, can be elected as a delegate.

(3) The delegates' meeting shall comprise a minimum of fifty delegates elected by the members. Delegates cannot be represented by an authorised person. They cannot be granted plural voting rights.

(4) Delegates are elected by general, direct, equal and secret vote; plural voting rights notwithstanding. For the representation of members in voting, subsections 43(4) and (5) shall apply accordingly. No delegate may be elected for a period extending beyond the end of that delegates' meeting which decides on the discharge of the members of the board of directors and the supervisory council for the fourth financial year after commencement of their term of office. The financial year

in which the term commences shall not be counted. The bye-laws shall stipulate:

46. how many members are represented by one delegate;

47. the term of office of delegates.

Any further details on the election procedure, including the establishment of the result of the election, may be set forth in election rules introduced on the basis of concurrent resolutions by the board of directors and the supervisory council. The election rules have to be approved by the general meeting. The board of directors has to pass a unanimous resolution.

(5) Should a delegate not be able to complete his term, a substitute has to take his place. The term of the latter shall expire at the latest when the term of the delegate he replaces expires. The election of the substitute is subject to the same rules that apply to the delegate.

(6) A list of delegates and substitutes elected shall be displayed in the cooperative's offices for a period of two weeks for inspection by the members. The display of the list shall be announced in a public journal. The display period shall commence with that publication. Upon request, every member shall be provided with a copy of the list without delay.

Section 44. *Calling a general meeting.* (1) The general meeting shall be called by the board of directors, unless the bye-laws or this Act bestow this right on others as well.

(2) Above and beyond the cases explicitly provided in the bye-laws or in this Act, the general meeting shall also be called if and when this appears to be in the interest of the cooperative society.

Section 45. *Members' right to call a general meeting.* (1) The general meeting shall be called without delay when a tenth of the membership, or less, as set forth in the bye-laws for that purpose, submit a signed petition stating the purpose and reasons for convening this general meeting.

(2) Subject to the same conditions, the members are entitled to demand that subjects are announced for resolution by a general meeting.

(3) Should this request not be complied with, the court (section 10) may authorise those members, who made the demand to call the general meeting or announce the subject for resolution. In calling the general meeting or announcing the subject for resolution, the judicial authorisation shall be referred to.

Section 46. *Form and deadline for calling a meeting.* (1) The general meeting shall be called in the form set forth in the bye-laws, within a period of no less than one week.

(2) The purpose of the general meeting shall always be announced when calling the meeting. No resolution can be passed on subjects not announced in the way provided by the bye-laws or in subsection 45(3) at least three days before the general meeting; exempt from this rule are resolutions on how the assembly shall be chaired or on motions requiring an extraordinary general meeting to convene.

(3) Motions and debates without a resolution need not be announced.

Section 47. Minutes of the meeting. (1) Minutes shall be kept on the resolutions passed by the general meeting. The minutes are to state the place and day of the meeting, the name of the chairman, the voting procedure adopted and the result of the vote, and the chairman's statement on the resolutions adopted.

(2) The minutes shall be signed by the chairman and the members of the board of directors present. The records proving the calling of the meeting shall be attached to the minutes.

(3) Should the bye-laws provide for plural voting rights or should it be resolved to amend the bye-laws concerning any of the subjects mentioned in Para. 16, section 2, Nos. 2 to 5, section 3, or any major change in the object of the enterprise, the minutes shall also be accompanied by a list of the members present or represented and of the representatives of the members. For each member present or represented, the number of votes shall be stated.

(4) Every member has the right to inspect the minutes. The minutes shall be kept by the cooperative society.

Section 48. Area of responsibility of the general meeting; approval of the balance sheet. (1) The general meeting adopts the annual accounts. It decides on the use of the annual surplus or coverage of an annual deficit, and also on the discharge of the board of directors and the supervisory council. The general meeting shall be held within the first six months of a financial year.

(2) Adoption of the annual accounts is subject to the same provisions applied in drawing them up. Should the annual accounts be modified when adopted, and should the audit according to section 53 already have been concluded, then any resolutions passed before a new audit on the adoption of the annual accounts and on the use of the surplus shall not become effective until the new audit has been completed and the annual accounts have been certified without qualification in respect of the modification.

(3) The annual accounts, the status report and the report of the supervisory council are to be displayed for inspection by the members, not later than one week before the general meeting, in the cooperative offices or another appropriate place as notified by the board of directors, or shall otherwise be brought to their attention. Each member can demand to be furnished with a copy of the annual accounts, the status report and the report of the supervisory council at his expense.

Section 49. Credit restrictions. The general meeting shall decide on the restrictions to be applied in granting credit to one and the same debtor.

Section 50. Assessment of payments on shares. Should the bye-laws oblige members to make payments on shares without fixing this in terms of amount and time, assessment of the payments shall be subject to a resolution passed by the general meeting.

Section 51. Contestation of resolutions passed by the general meeting. (1) A resolution passed by the general meeting may be contested by way of legal action on the grounds of a violation of the Act or of the bye-laws. Legal proceedings have to be initiated within one month.

(2) Resolutions may be contested by any member present at the general meeting, provided he declared his protest against the resolution to be recorded in the minutes. Any member not present may do so as well, provided he had, for unjustifiable reasons, not been admitted to the general meeting, or provided his contestation is based on the allegation that the general meeting had not been called or the subject of the resolution had not been announced in due form. The board of directors and, should the resolution concern a measure which when implemented would render the members of the board of directors and the supervisory council liable for prosecution or answerable to the creditors of the cooperative society, any member of the board of directors and the supervisory council is also entitled to contest the resolutions.

(3) Legal action shall be brought against the cooperative society. The cooperative society will be represented by the board of directors, provided it is not the board of directors itself that is taking legal action, and by the supervisory council. The regional court (Landgericht) of the locality of the head office of the cooperative society has the exclusive jurisdiction for legal action. The hearing will not be held until the period given in section 1 has expired. Several rescissory actions shall be combined to one court hearing and one court order.

(4) Commencement of legal action and the hearing date shall be published by the board of directors in the journals used for notifications of the cooperative society without delay.

(5) Should a judgement finally and absolutely declare the resolution null and void, this judgement shall also be effective for members who are not party to the action. Should the resolution have been entered into the register of cooperative societies, then the board of directors shall submit the judgement to the court (section 10) for entry into the register of cooperative societies. The entry shall be made public if the entered resolution had been made public.

Section 52 *Liability of claimants in a rescissory action.* Should claimants have made an unfounded contestation of the resolution, they will be jointly and severally liable for any damages incurred to the cooperative society, where this was malicious practice in taking legal action.

PART IV. AUDITING AND AUDIT UNIONS

Section 53. *Compulsory audit.* (1) For purposes of establishing the economic situation and verifying that the operations of the cooperative society are properly conducted, its facilities, assets, management, and also the way in which the membership register is kept, shall be subjected to audits in at least every second financial year. For cooperative societies with a balance sheet total in excess of two million Euro, audits have to be undertaken every financial year.

(2) Audits according to section 1 require the annual accounts to be audited with the books and the status report. Para. 316, section 3; Para. 317, section 1, clauses 2 and 3 of the Commercial Code shall apply accordingly.

Section 54. *Compulsory membership.* The cooperative society has to belong to a union which has been granted auditing rights (audit union).

Section 54a. *Withdrawal from an audit union.* (1) Should a cooperative society withdraw from the

audit union, then the union shall inform the court (section 10) without delay. The court shall fix a period within which the cooperative society has to join an audit union.

(2) Should the cooperative society fail to prove to the court within the period specified that it has joined an audit union, the court, having heard the board of directors, shall ex officio declare the cooperative society dissolved. Subsection 80 (2) shall apply.

Section 55. Auditing competency. (1) The cooperative society is audited by the audit union to which it belongs. This has the audits made by its auditors, who are to be adequately trained and experienced in the auditing of cooperative societies.

(2) Members of the board of directors and supervisory council, employees and members of the cooperative society to be audited may not audit the cooperative society.

(3) The audit union may make use of an auditor not employed by that union if there is good reason to justify this in a particular case. However, it may entrust only another audit union, a certified chartered accountant or an auditing company with the audit.

Section 56. Suspension of auditing rights. (1) The auditing right of the union shall be suspended as long as a member of its board of directors or one of its special representatives (Para. 30 of the Civil Code) is a member of the board of directors or supervisory council, liquidator or an employee of the cooperative society to be audited, or was a member thereof for the period covered by the audit or during the two previous financial years.

(2) Should the auditing rights of the union be suspended, the apex organisation of which the union is a member shall upon request of the cooperative's board of directors appoint another audit union, a chartered accountant or an auditing company as auditors. Should the apex organisation fail to appoint an auditor or should the union not belong to an apex organisation, the court (section 10) shall upon request of the cooperative's board of directors, appoint an auditor according to clause 1. The board of directors shall file its request without delay.

(3) The rights and obligations of the auditor appointed according to section 2 are defined by the provisions of this Act that apply to the union. The auditor shall present a copy of his audit report to the union.

Section 57. Auditing procedure. (1) The board of directors of the cooperative society shall give the auditor permission to inspect the books and documents of the cooperative society, as well as the cash in hand, the securities and cooperative commodities; the board shall furnish the auditor with any information and proof the auditor requires to conduct his audit in a conscientious manner. The same applies to extraordinary audits ordered by the union.

(2) The union shall advise the chairman of the supervisory council of the cooperative society in due time of the commencement of the audit. The chairman of the supervisory council shall in his turn inform the other members of the supervisory council without delay of the commencement of the audit, and he shall call them in the auditing procedure if and when requested either by them or by the auditor.

(3) The auditor shall inform the chairman of the supervisory council without delay of any important findings on the basis of which he deems it necessary that immediate measures be taken by the supervisory council.

(4) Immediately after completion of the audit, the auditor is to present the expected audit result orally in a joint meeting with the board of directors and the supervisory council of the cooperative society. He can for that purpose require the board of directors or the chairman of the supervisory council to call a meeting; should his request not be complied with, he himself may call the board of directors and the supervisory council, indicating the reason for the call.

Section 58. *Audit report.* (1) The union shall present the auditing results in writing. Para. 321, section 1 of the Commercial Code shall accordingly be applied to the audit report in as much as the annual account and the status report are concerned.

(2) Audits for cooperative societies, whose size of operation comes under Para. 267, section 3 of the Commercial Code, shall be verified in an audit certificate according to Para. 322 of the Commercial Code.

(3) The audit report shall be signed by the union and presented to the board of directors of the cooperative society, the chairman of the supervisory council having been informed at the same time. Every supervisory council member is entitled to inspect the audit report.

(4) Immediately after receipt of the audit report, the board of directors and the supervisory council of the cooperative society shall deliberate on the auditing result in a joint meeting. The union and auditor are entitled to participate in this meeting; the board of directors is obliged to inform the union of the meeting.

Section 59. *Review of the audit report at the general meeting.* (1) The board of directors shall submit to the register of cooperative societies a certificate of the union confirming that the audit has taken place, and it shall announce the audit report as a subject of resolution when calling the next general meeting.

(2) At the general meeting, the supervisory council shall account for major findings or objections raised during the audit.

(3) The union is entitled to participate in the general meeting without a vote; the audit report shall be read either in part or in its entirety when required by the union or if so resolved by the general meeting.

Section 60. *General meeting convened by the union.* (1) Should the union come to the conclusion that the resolution on the audit report is unduly delayed or that the general meeting, when adopting the resolution, was inadequately informed on major findings or objections in the audit report, it is entitled to call an extraordinary general meeting of the cooperative society at the expense of the latter and to determine the subjects to be discussed and resolved in order to remedy defects noted.

(2) A general meeting called by the union shall be chaired by a person appointed by the union.

Section 61. *Right to compensation.* The union has the right to claim compensation from the cooperative society for reasonable cash expenditure incurred and for services rendered.

Section 62. *Rights, obligations and liability of auditing bodies.* (1) Unions, auditors and auditing companies are obliged to perform their audits in a conscientious and impartial manner and to observe strict secrecy. They must not make unauthorised use of any business or trade secrets having come to their knowledge in fulfilling their obligations. Whoever infringes upon his obligations, either wilfully or by negligence, shall be liable to the cooperative society for any damages thus incurred. Several persons are jointly and severally liable.

(2) For persons having acted negligently, the liability to compensate is limited to two million Euro for one audit. The same applies if more than one person was involved in the audit or if more than one action subject to compensation was involved, irrespective of whether other persons involved acted wilfully.

(3) The union may inform its affiliated cooperative societies and the central business offices of the cooperative system of the contents of audit reports, if by virtue of an existing business relationship or an intended future business relationship, these have a vested interest in being informed of the auditing result. The union may furnish its apex organisation with copies of audit reports which the apex organisation may use in a way required to allow it to fulfil its obligations.

(4) The duty to observe secrecy according to section 1 clause 1 applies if audits are made by an auditing company with respect to the supervisory council and the members of the supervisory council of the auditing company. The chairman of the supervisory council of the auditing company and the deputy chairman are, however, entitled to inspect reports prepared by the auditing company, but any information thus obtained may not be used unless to an extent required to fulfil the supervisory functions incumbent on the supervisory council.

(5) Liability under these provisions cannot be excluded or limited by contract; the same applies to the liability of the union for those persons it employs for conducting the audit.

(6) Any claims according to these provisions are subject to a limitation period of three years. The limitation period runs from the date the cooperative society receives the audit report.

Section 63. *Granting authority.* The union is granted auditing rights by the highest authority of the federated state (Landesbehörde) in whose district the union has its head office. Should the district of the union extend beyond the territory of a federated state (Land), the auditing right is granted in consultation with the federated states (Länder) concerned.

Section 63a. *Prerequisites of granting auditing rights.* (1) An application to grant auditing rights may be allowed only if and when the union can guarantee to fulfil the functions to be assumed.

(2) The application to grant auditing rights can, in particular, be rejected when there is no need for the union to audit.

(3) The authority responsible for granting auditing rights may make the granting of the auditing

rights dependent on certain obligations, in particular on the obligation that the union take out adequate insurance against claims for damages resulting from its auditing work, or alternatively that the union prove that another adequate form of security has been provided for. Section 63, clause 2, shall apply accordingly.

Section 63b. *Legal form, members and objective of the union.* (1) The union is to have the legal form of a registered association.

(2) Members of the union can only be registered cooperative societies, or, irrespective of their legal form, enterprises that are either totally or predominantly owned by registered cooperative societies, or serve purposes of the cooperative system. Whether or not these conditions are satisfied shall, in case of doubt, be decided by the highest authority of the federated state (Landesbehörde) responsible for granting auditing rights (section 63). Given good cause, it may permit exceptions to the provisions of clause 1.

(3) Enterprises which are not registered cooperative societies and are subject to other auditing laws, shall, despite their affiliation with the union, continue to be subject to these other laws and are not subject to auditing under this Act.

(4) Notwithstanding the provisions of section 3, the purpose of the union shall be the auditing of its members, and it may otherwise also be the common protection of their interests, in particular the maintenance of mutual business relationships. It shall not pursue any other purposes.

(5) The board of directors of the audit union is to include at least one chartered accountant. Should none of the members of the board of directors be a chartered accountant, the audit union shall appoint a chartered accountant as its special representative (Para. 30 of the Civil Code). The authority responsible for granting auditing rights may, under special circumstances, exempt the audit union from clauses 1 and 2, at the longest however for the period of one year. In exceptional cases it may also permit an exemption for a longer period, provided that, and as long as, both the type and extent of the operation of the members of the audit union do not call for any audits by chartered accountants.

(6) General meetings of the union may only be held within the district covered by the union.

Section 63c. *Bye-laws of the audit union.* (1) The union 's bye-laws shall include:

48. the purposes of the union;

49. its name; the name shall distinguish it clearly from the name of other existing unions;

50. the locality of its head office;

51. its district.

(2) The bye-laws are, furthermore, to include provisions on the selection of auditors to be employed and the proof of their qualifications, on the kind and extent of audits, as well as on the appointment, locality, functions and powers of the board of directors and on any other bodies of the union.

(3) Any modifications of the bye-laws of the union concerning its purpose or its district (section 1 Nos. 1 and 4) are subject to the approval of the authority responsible for granting the auditing rights;

Para. 63 clause 2 and Para. 63a, sections 2, 3 shall apply accordingly.

Section 63d. *Submission to the registration court.* The union shall submit to the courts (section 10), in whose districts the cooperative societies have their head office, its bye-laws, together with an authorised copy of the granting deeds, as well as, in January of each year, a register showing the cooperative societies that are members of the union.

Sections 63e to 63i (repealed)

Section 64. *Supervising authority.* The competent highest authority of the federated state (Landesbehörde), in whose district the union has its head office, is entitled to have the audit unions inspected with a view to whether or not they fulfil their obligations; it may urge the unions to comply with certain conditions and to fulfil their functions.

Section 64a. *Revocation of auditing rights.* Auditing rights may be withdrawn from the union if it can no longer guarantee that the functions it has assumed will be fulfilled, if it does not comply with the conditions imposed by the competent authority under section 64, or if there is no longer any need for auditing. The board of directors of the union having been heard, the revocation shall be pronounced by the authority responsible for granting auditing rights. Para. 63 clause 2 shall apply accordingly. The courts named in section 63d shall be advised of the revocation.

Section 64b. *Auditing of cooperative societies - not members of a union.* Should a cooperative society not belong to an audit union, the court (section 10) may appoint an audit union to fulfil the functions which the Act confers upon audit unions. The factors that are to be considered in this context are the special characteristics of the cooperative society and the locality of its head office.

Section 64c. *Auditing dissolved cooperative societies.* Dissolved cooperative societies are also subject to the provisions of this part.

PART V. TERMINATION OF MEMBERSHIP OF INDIVIDUAL MEMBERS

Section 65. *Resignation from the cooperative society.* (1) Each member has the right to resign from the cooperative society by giving notice.

(2) The resignation may take effect only at the end of a financial year. It requires a written notice at least three months prior to that date. The bye-laws may fix a longer term of notice, not more, however, than five years. If the bye-laws provide for a term of notice in excess of two years, a member, having belonged to the cooperative society for a minimum of one full financial year, may resign from the cooperative society by giving three months' notice prior to the end of a financial year, even if the bye-laws do not allow for such a resignation, but provided that in view of his personal or economic situation he cannot be expected to maintain membership until the end of the period fixed in the bye-laws as the term of notice. Clause 4 does not apply for cooperative societies composed exclusively or predominantly of registered cooperative societies.

(3) Should a cooperative society be dissolved at a time before the member would have resigned in accordance with section 2, his membership will not be terminated. Dissolution of a cooperative

society does not preclude the member's resignation, if continuance of the cooperative society has been resolved. The period during which the cooperative society was dissolved shall in that case be considered in establishing the term of notice; membership shall, however, not be terminated before the end of that financial year in which the resolution concerning continuance of the cooperative society is entered into the register of cooperative societies.

(4) Any agreements that are in conflict with the above provisions shall be null and void.

Section 66. *Notice by a member's creditor.* (1) The creditor of a member may, for the purpose of having his claims satisfied, exercise the right to terminate membership on behalf of the member if, during the previous six months, it was attempted in vain to levy judicial execution against the member's assets, and if he effected seizure and remittance of the member's credit balance resulting from the resignation, and on further condition that the executory title is not only enforceable on a provisional basis.

(2) Attached to the notice shall be a certified copy of the executory title and the deeds confirming unsuccessful judicial execution.

Section 67. *Withdrawal when relocating.* (1) Should the bye-laws link membership with residence within a given district (Para. 8 No. 2), the member abandoning his residence in that district may give written notice of his resignation with effect to the end of the financial year.

(2) The cooperative society may likewise inform the member in writing that he must resign by the end of the financial year.

(3) Change of residence shall be verified by the relevant document issued by a public authority.

Section 67a. *Extraordinary right of resignation.* (1) Should a resolution be passed on amending the bye-laws in respect to one of the items listed in Para. 16, section 2, Nos. 2 to 5, section 3, or should the resolution constitute a major change in the purpose of the enterprise, membership may be terminated by:

52. any member present at the general meeting if his protest against the resolution was recorded in the minutes, or if inclusion of his protest in the minutes was refused;

53. any member not present at the general meeting if he had wrongfully not been admitted to the meeting, or if the meeting had not been properly called, or if the subject matter on which a resolution was to be passed had not been properly announced.

If a delegate meeting has resolved to amend the bye-laws, any member may resign from the cooperative society; to delegates, clause 1 shall apply.

(2) Resignation shall be declared in writing. It must be submitted within one month with effect as of the end of the financial year. In the case of section 1, No. 1, this period shall commence with the resolution; in the case of section 1, No. 2, once the member is aware of the resolution. Should there be disagreement as to the exact point in time when the member received this information, the onus of proof of such shall rest with the cooperative society. In cases of resignation, amendment of the bye-laws shall remain without effect neither for nor against the member.

(3) In the case of Para. 16, Section 2, Nos. 2 and 3, sections 1 and 2 shall apply only in the event that the bye-laws should provide for a term of notice in excess of two years; resignation may only be declared at that point in time at which it could be declared if the term of notice were two years.

Section 67b. *Withdrawal of shares.* (1) A member holding more than one share may withdraw one, or more, of his additional shares by giving notice in writing with effect to the end of a financial year, unless either the bye-laws or a separate agreement with the cooperative society require participation with more than one share or the use of services of the cooperative society by the member was subject to participation with more than one share.

(2) Subsections 65(2) to (4) shall apply correspondingly.

Section 68. *Expulsion from a cooperative society.* (1) A member may be expelled from the cooperative society by the end of a financial year if he has joined another cooperative society which is involved in a similar line of business in the same area. Expulsion from credit and loan cooperatives on the grounds of membership in another such cooperative may occur even if the latter does not do business in the same area.

(2) The bye-laws may stipulate reasons beyond those given above for expulsion from a cooperative society.

(3) Members shall be informed of the resolution deciding on their expulsion by means of a registered letter sent out to them by the board of directors without delay.

(4) As from the date of dispatch the member concerned may neither attend a general meeting, nor be a member of the board of directors or the supervisory council.

Section 69. *Registration of the time of termination of membership.* In the cases of sections 65 to 67a and 68 the date of termination of membership, and in the case of section 67b the date when reducing the number of shares as well as the number of additional shares the member continues to hold, shall be entered into the list of members without delay; the member shall be informed without delay.

Sections 70-72 (repealed)

Section 73. *Partition of assets with former members.* (1) The partition of assets between former members and the cooperative society shall be dealt with on the basis of the financial situation and the total membership at the time of the member's termination of membership.

(2) The partition is settled on the basis of the balance sheet. The member's credit balance shall be paid out within a period of six months after termination of membership; he is not entitled to any claims to the reserves or any other of the society's assets, except as provided in section 3. Should the assets, including reserves and all credit balances, not suffice to cover debts, the former member shall pay the cooperative society his portion of the deficit if, and to the extent to which, he was obliged to make additional payments in the event of bankruptcy; should the bye-laws not contain any other provisions, the number of members shall serve as a basis to calculate the due portion.

(3) The bye-laws may grant that members, having paid up their share in full, can, in the event of termination of membership, claim payment of a portion of the revenue reserve that has to be created for this purpose from the annual surplus. The bye-laws may make this claim contingent on a minimum period during which the member must have belonged to the cooperative society, and it may make additional requirements and restrict the claim. Payment of claims is subject to clause 2, subclause 1.

Section 74. *Expiry of claims for payment.* Claims of former members to be paid their credit balance and a portion of the revenue reserve according to subsection 73(3), shall be limited to a period of two years.

Section 75. *Dissolution and its repercussions on termination of membership.* Should the cooperative society be dissolved within a period of six months after termination of membership, the same shall be regarded as not having taken place. Should continuation of the cooperative society be resolved, termination of membership shall be regarded as having taken effect at the end of the financial year in which the resolution on the continuation of the cooperative society was entered into the register of cooperative societies.

Section 76. *Transfer of credit balance.* (1) Through an agreement made in writing members may at any time, including during the course of a financial year, transfer their credit balance to another person and thus resign from the cooperative society without any partition of assets, provided the transferee joins the cooperative society in his place, or is already a member of the same, and provided further that the transferee's previous credit balance together with the amount to be transferred to him does not exceed his share. The bye-laws may preclude such transfer or make it dependent on further conditions.

(2) Withdrawal of the transferor shall be entered into the list of members without delay, and he shall be informed of this entry without delay.

(3) Should the cooperative society be dissolved within six months after withdrawal by the member, the member shall, in the event that bankruptcy proceedings are instituted, make the additional payments which he would have been obliged to make to the extent to which the transferee cannot make payments.

(4) Should the bye-laws permit members to participate with more than one share, these provisions shall apply on condition that transfer of the credit balance to another member is permitted as long as the credit balance of the transferee, after addition of the transferor's credit balance, does not exceed the total shares the transferee holds or has subscribed to.

Section 77. *Death of a member.* (1) Should a member die, his membership shall pass to his heirs. It shall terminate at the end of that financial year in which the inheritance occurred. If more than one heir succeeds the deceased member, the right to vote in the general meeting can only be exercised by a joint representative.

(2) The bye-laws may stipulate that, after the death of a member, his membership in the cooperative society will be continued by his heirs. The bye-laws may make continuation of membership

dependent on personal conditions which the legal successor has to meet. In the event that more than one heir should succeed the deceased member, it may be stipulated that membership shall be terminated, unless it is conferred upon one of the co-heirs within a period fixed in the bye-laws.

(3) The death of a member as well as the date determining the termination of membership, and in the case of section 2, also the continuation of membership by one or several heirs, shall be entered into the list of members without delay. The heirs of the deceased member shall be informed without delay.

(4) Should membership of the heir be terminated, sections 73 to 75, in the event of continued membership, subsection 76(3), shall apply accordingly.

Section 77a. *Dissolution or termination of a legal person or trading partnership.* Should a legal person or a trading partnership be dissolved or terminated, membership shall end with the end of the financial year in which dissolution or termination took effect. In the event of universal succession, membership shall be maintained by the universal successor until the end of the financial year. Termination of membership shall be entered into the list of members without delay; the member or universal successor shall be informed accordingly without delay.

PART VI. DISSOLUTION AND NULLITY OF A COOPERATIVE SOCIETY

Section 78. *Dissolution resolved by the general meeting.* (1) The cooperative society may be dissolved at any time if so resolved by the general meeting; a resolution passed to this effect requires a majority of no less than three quarters of the votes cast. The bye-laws may also stipulate conditions in addition to this majority.

(2) Dissolution of the cooperative society shall be notified for entry into the register of cooperative societies by the board of directors without delay.

Sections 78a, 78b. (Repealed)

Section 79. *Dissolution after expiry.* (1) If the bye-laws limit the period of the cooperative society, dissolution of the same shall become effective with expiry of the specified period.

(2) The provision in subsection 78(2), shall apply.

Section 79a. *Continuation of a dissolved cooperative society.* (1) A cooperative society dissolved by a resolution of the general meeting or dissolved due to expiry of time may be continued if so resolved by the general meeting, as long as the distribution of cooperative assets remaining after adjustment of debts among its members has not yet commenced; the resolution is subject to a majority of no less than three quarters of the votes cast. The bye-laws may also stipulate conditions in addition to this majority. Continuation may not be resolved if the members have been called upon to effect payments as stipulated in subsection 87a(2).

(2) Before a resolution is adopted, the audit union, of which the cooperative society is a member, shall be heard as to whether continuation of the cooperative society complies with the interests of

its members.

(3) The memorandum of the audit union shall be read at every general meeting deliberating on the continuation of the cooperative society. The audit union shall have the opportunity to justify its memorandum at the general meeting.

(4) Should the audit union in its memorandum find that the continuation of the cooperative society does not comply with the interests of the members, the resolution shall, notwithstanding additional conditions in the bye-laws, require a majority vote of three quarters of the total voting rights at two successive general meetings, held at an interval of at least one month apart.

(5) Continuation of the cooperative society shall be notified for entry into the register of cooperative societies by the board of directors without delay. In notifying the continuation, the board of directors shall declare that the resolution was adopted by the general meeting at a time when distribution of the cooperative assets remaining after adjustment of debts among its members had not yet commenced.

Section 80. Dissolution due to insufficient membership. (1) Should the number of members be less than seven, the court (section 10) shall, upon request of the board of directors, and should no such request be filed within a period of six months, *ex officio* declare the cooperative society dissolved, the board of directors having been heard beforehand.

(2) The cooperative society shall be notified of the decision. The decision is subject to immediate appeal in accordance with the Code of Civil Procedure. The dissolution shall take effect from the date when the decision becomes final.

Section 81. Dissolution following unlawful deeds. (1) If a cooperative society is guilty of unlawful deeds or the failure to act, thus compromising the public interest, or if it pursues commercial purposes other than those defined in this Act (section 1), it may be dissolved without being granted compensation.

(2) The proceedings and the responsibility of the authorities are based on the provisions governing contentious administrative matters.

(3) The court (section 10) shall be notified of the dissolution by the authority ruling in the first instance.

Section 81a. Dissolution following total loss of assets. The cooperative society will be dissolved:

1. upon final decision that insolvency procedures may not be started because the cooperative society has no assets;
2. upon deregistration of the cooperative society according to Section 141a of the Law on “Freiwillige Gerichtsbarkeit” because the cooperative society has no more assets.

Section 82. Registration and publication of dissolution. (1) Dissolution of a cooperative society shall be entered into the register of cooperative societies by the court without delay.

(2) Dissolution shall be made public in the journals determined for notifications of the cooperative society by the liquidators. In the same publication the creditors shall be requested to report to the cooperative society.

Section 83. *Appointment and dismissal of liquidators.* (1) Liquidation shall be effected by the board of directors, unless the bye-laws or a resolution adopted by the general meeting confers the same upon other persons.

(2) Legal persons may also assume the function of a liquidator.

(3) Upon request by the supervisory council or by at least one tenth of the membership, liquidators may be appointed by the court (section 10).

(4) Dismissal of the liquidators by the court may proceed under the same conditions defined for their appointment. Liquidators not appointed by the court may also be dismissed by the general meeting before the period for which they had been appointed has expired.

Section 84. *Notification and registration of liquidators.* (1) The first liquidators and their powers of representation shall be notified for entry into the register of cooperative societies by the board of directors; any change concerning the liquidators and any change in their powers of representation shall be notified for entry into the register of cooperative societies by the liquidators. Notification shall be accompanied by a copy of the deeds certifying appointment or dismissal and the powers of representation.

(2) Entry of the appointment or dismissal of liquidators by the court shall proceed *ex officio*.

(3) Liquidators shall submit their signatures in a form certified by a public notary.

Section 85. *Representation and signatures of liquidators.* (1) Liquidators shall make legally binding declarations and sign on behalf of the cooperative society in the manner determined when appointed. Where no details are specified, these declarations and the signatures shall be given by all the liquidators.

(2) The said manner shall be notified for entry into the register of cooperative societies together with the appointment of the liquidators.

(3) The liquidators sign by affixing their signatures to the trade name now to include a reference to the liquidation.

Section 86. *Irrefutable presumption of accuracy of the register of cooperative societies.* The provisions of section 29 concerning the relationship with third parties shall apply in respect to the liquidators.

Section 87. *Provisions to be observed during the liquidation phase.* (1) Provided that the provisions of the present part of this Act, and provided that the nature of the liquidation proceedings do not call for any measures to the contrary, the provisions in Parts II and III shall, notwithstanding the

dissolution of the cooperative society, apply in respect to the legal status of the cooperative society and its members until the liquidation proceedings have been completed.

(2) The cooperative's court of jurisdiction during the period prior to dissolution, shall remain the same until partition of the assets has been completed.

Section 87a. *Measures to avoid insolvency.* (1) Should there be reason to assume that there will not be sufficient cover for debts on drawing up the opening accounts in the liquidation proceedings, or a later annual balance or an interim balance, or after a conscientious assessment of the circumstances where contributions in arrears have been taken into consideration, the general meeting may oblige members, not having paid up their share in full, to make further payments on shares to an extent necessary to cover the deficit. Deviating provisions in the bye-laws may not prevent this resolution from being adopted by the general meeting.

(2) Should these further payments on shares not suffice to cover the deficit, the general meeting may oblige members to make supplementary payments in proportion to their shareholdings to an extent necessary to cover the deficit. For cooperative societies whose members are not required to make supplementary payments towards the bankruptcy estate, this provision shall only apply if stipulated in the bye-laws. Members may be called upon to make supplementary payments only up to an amount equal to the total of their shareholdings. Section 1, clause 2, shall apply accordingly. When establishing the ratio of shareholdings to the total amount of shareholdings, shares which, contrary to the provisions in the bye-laws concerning compulsory participation, have not yet been acquired shall also count as shareholdings.

(3) The resolutions require a majority of no less than three quarters of the votes cast. The bye-laws may call for a larger majority and make additional requirements.

(4) The resolutions may not be adopted if, even after taking into consideration the obligation to make supplementary payments, assets will not cover debts.

Section 87b. *No increase in shares and in the amount of liability.* Following the dissolution of the cooperative society, neither the shareholdings nor the amount of liability may be increased.

Section 88. *Functions and powers of representation of liquidators.* The function of the liquidators is to wind up current business, to assume the obligations of the dissolved cooperative society, to recover its claims, and to convert the cooperative assets into cash; they shall represent the cooperative society both in and out of court. In order to wind up current business, liquidators may also conclude new contracts.

Section 88a. *Assignability of claims.* (1) With the approval of the audit union liquidators may transfer the cooperative's claim to payments on shares that are in arrears (Para. 7, No. 1) and any claims to a pro rata contribution regarding deficiencies (subsection 73(2)).

(2) The audit union shall approve the transfer of the claim only if it is transferred to a cooperative central credit union, or to a body which is under constant supervision by an audit union, and if this does not conflict with the members' legal interests.

Section 89. *Rights and obligations of liquidators.* Liquidators have the rights and obligations assigned to the board of directors by sections 26; 27; subsection 33(1), clause 1; section 34; sections 44 to 47; subsection 48(3); section 51; sections 57 to 59, and, like the board of directors, they are supervised by the supervisory council. They shall draw up a balance immediately upon the commencement of liquidation proceedings and again in each of the following years. The first balance shall be made public; publication shall be notified to the register of cooperative societies.

Section 90. *Prerequisites for the partition of assets.* (1) Assets may not be divided among members before all debts have either been redeemed or covered; neither may they be divided before the end of a one-year period following the day on which creditors were notified in the journals used for that purpose (subsection 82(2)).

(2) Should a known creditor not make any claims, the amount due shall be deposited for the creditor, provided the depositing of money has been authorised. Should it for the time being not be possible to meet a liability, or should a liability be contentious, the assets may be divided only if the creditor has been furnished security.

(3) (repealed)

Section 91. *Partition of assets.* (1) Assets are divided among members up to the total of their credit balance established on the basis of the first balance drawn up by the liquidators (section 89) in proportion to the total of credit balances. If the members were called upon to make payments in accordance with subsection 87a(2), these payments shall be reimbursed first in proportion to the amounts paid. In establishing the credit balance for each member, payments made after the last annual accounts shall not be considered for distribution of profits and losses that have resulted during the period between the last annual accounts (section 33) and the first balance drawn up by the liquidators. The profit from that period shall be added to the credit balance even if the amount of shareholdings is thus exceeded.

(2) Any surplus in excess of the total of these credit balances shall be distributed on a per capita basis.

(3) The bye-laws may prohibit any partition of assets, or they may stipulate different ratios when dividing assets.

Section 92. *Use of residual assets.* Unless the bye-laws provide for those net assets remaining upon dissolution of the cooperative society (subsection 91(3)) to be transferred to a natural or a legal person for a specific purpose, these residual net assets shall go to the community where the cooperative society had its head office. The interest on this fund shall go to charity.

Section 93. *Custody of books and documents.* Following liquidation, the books and documents of the dissolved cooperative society shall be placed in the custody of one of its former members or a third person for a period of ten years. In the absence of any provisions in the bye-laws, or in the absence of a resolution passed by the general meeting to this effect, the member or the third person shall be appointed by the court (section 10). This court may also authorise members and their legal successors, or the creditors of the cooperative society, to inspect the books and documents.

Sections 93a to 93s. (repealed)

Section 94. *Action for declaration of nullity.* Should the bye-laws not include the essential provisions, or should one of these provisions be null and void, any member of the cooperative society and any member of the board of directors and the supervisory council may take legal action demanding that the cooperative society be declared invalid.

Section 95. *Reason and remedy for nullity.* (1) In accordance with section 94, the provisions of the bye-laws set forth in sections 6, 7 and 119 are essential with the exception of those concerning the authentication of the resolutions adopted by the general meeting and the chairmanship at those meetings, as well as those concerning the principles governing the drawing up and auditing of annual accounts.

(2) Any shortcomings concerning provisions of the bye-laws regarded as essential, as defined above, may be remedied by a resolution adopted by the general meeting which complies with the rules set forth in this Act for the amendment of the bye-laws.

(3) Should the shortcomings relate to the provisions determining the manner in which the general meeting shall be convened, the general meeting shall be called by placing an announcement in the publication in which the entries in the register of cooperative societies of the locality of the head office of the cooperative society are placed.

(4) Should the shortcomings relate to the provisions concerning the amount of liability in a cooperative society whose members are obliged to make limited additional contributions to the bankruptcy estate, the resolutions adopted to remedy must not result in a reduction of the total amount of liability assumed by the members.

Section 96. *Proceedings for annulment.* The legal proceedings for annulment and the effects of the judgement passed are governed by the provisions of subsections 51(3) to (5), and section 52.

Section 97. *Winding-up a cooperative society declared invalid.* (1) Once nullity of a cooperative society has been entered into the register of cooperative societies, the provisions set forth for its dissolution shall apply accordingly to the winding-up of its affairs.

(2) Legal transactions with third parties on behalf of the cooperative society shall remain unaffected by the declaration of nullity.

(3) Members having assumed liability for the debts of the cooperative society are obliged to make payments required to satisfy the creditors' claims as set forth in the next part of this Act.

PART VII. INSOLVENCY PROCEEDINGS AND LIABILITY OF MEMBERS

Section 98. *Conditions of insolvency.* (1) Contrary to Para. 19, subparagraph 1 of the Law on insolvency, and where the cooperative society is insolvent, the cooperative assets are subject to insolvency proceedings only:

1. in the case of a cooperative society whose members are obliged to make additional contributions

up to a specific amount of liability and if the excessive debts exceed one quarter of the total of the amount of liability of all members;

2. in the case of a cooperative society whose members are not obliged to make additional contributions, or

3. in the case of a dissolved cooperative society.

Section 99. *Duty to file a petition in the event of insolvency.* (1) Should the cooperative society become insolvent, the board of directors, for a dissolved cooperative society, the liquidators, shall, without undue delay, however not later than three weeks after insolvency has occurred, file a petition for insolvency proceedings or a petition to commence judicial composition proceedings. The same shall apply correspondingly if, upon drawing up the annual accounts or an interim balance, it is found, or if assessment of circumstances suggests, that excessive debts have been incurred, which constitute the reason for the insolvency according to section 98. The petition shall not be regarded as having been unduly delayed if the board of directors initiates the opening of judicial composition proceedings with the due care of a conscientious manager of a cooperative society.

(2) As soon as the cooperative society has become insolvent or excessive debts have been incurred constituting a reason for insolvency according to section 98 the board of directors may no longer make payments. This does not apply to payments made after this which are commensurate with the due care of a conscientious manager of a cooperative society.

Section 100. (repealed)

Section 101. *Dissolution as a result of commencement of bankruptcy proceedings.* Commencement of bankruptcy proceedings is tantamount to dissolution of the cooperative society.

Section 102. *Registration of commencement of insolvency proceedings.* (1) Commencement of insolvency proceedings shall be entered into the register of cooperative societies ex officio. The same applies:

1. to the cancellation of the decision to commence insolvency proceedings;

2. to the nomination of a provisional insolvency trustee in cases where the debtor is prohibited from disposing of any of the assets or where he should require the consent of the provisional trustee to do so, as well as to the cancellation of such decision;

3. to the order to have the debtor administer the estate and to the cancellation of that order, as well as to the order that certain decisions of the debtor require permission;

4. to the decision to stop the proceedings or to reverse the decision to commence insolvency proceedings and

5. to the decision to monitor the implementation of an insolvency plan and to the decision to end such monitoring.

(2) Registrations made according to subsection (1) are not published.

Section 103. (repealed)

Section 104. (repealed)

Section 105. *Obligation of members to make additional contributions.* (1) Should the claims made by the bankrupt cooperative society's creditors, which were considered in the final distribution procedure (Insolvency Act, Paragraph 196), not be met by distributing the assets available when commencing insolvency proceedings, the members are obliged to make additional payments to the insolvency estate, unless the bye-laws preclude such an obligation.

(2) Unless otherwise provided for in the bye-laws, additional payments shall be made by the members on a per-capita basis.

(3) Contributions which individual members are incapable of making shall be distributed among the other members.

(4) After the creditors' claims have been met, members shall be reimbursed out of the additional contributions for payments made in excess of the amounts required by the above provisions. The same applies to payments effected by the members on the basis of subsection 87a(2), once the payments specified in clause 1 have been reimbursed.

(5) Members may set off their additional payments against debts due from the cooperative society; this is on condition that a member may, in his capacity as a creditor of the bankrupt cooperative society, claim satisfaction out of the additional payments.

Section 106. *Calculation of advance payments.* (1) As soon as the balance sheet has been filed with the office of the court (Insolvency Act, Paragraph 153), the trustees shall calculate the amount to be paid in advance by the members in order to cover the deficit stated in the balance sheet.

(2) When calculating the advance payment, all members shall be named and the amounts payable shall be distributed among them. The actual amounts shall, however, be calculated such that the anticipated inability of individual members to make payments will not produce a deficit in the total amount to be covered.

(3) In submitting the calculation to the insolvency court, a petition shall be filed asking for a writ of execution to be granted. The petition shall be accompanied by a certified copy of the list of members and, unless the register of cooperative societies is kept with the insolvency court, by the bye-laws.

Section 107. *Setting the hearing date regarding the calculation of advance payments.* (1) The court shall appoint a hearing date for presentation of the calculation, which must not be fixed more than two weeks in advance. This hearing date shall be made public; members named in the calculation shall be especially summoned.

(2) The calculation shall be made available for inspection by the parties concerned at the office of the court, not later than three days before the appointed date. This shall be pointed out in the publication and the summons.

Section 108. *Statement hearing.* (1) At the hearing the board of directors and the supervisory council of the cooperative society, the trustees and the committee of creditors shall be heard, as well as any parties otherwise concerned, should objections be raised.

(2) The court shall decide on the objections raised, correct the calculation where necessary or order correction of the same, and shall grant a writ of execution. The decision shall be declared at the hearing or at a hearing to be fixed without delay, which is not to be, however, later than one week after that first hearing. The calculation, together with the writ of execution, shall be displayed at the office of the court for inspection by the parties concerned.

(3) Appeals may not be made against this decision.

Section 108a. Assignability of claims. (1) The trustees may assign the right of the cooperative society to claim payments on shares in arrears (section 7, No. 1), proportionate deficits (subsection 73 (2)) and additional payments (sections 106, 108); assignment is subject to approval by the insolvency court.

(2) Approval shall only be given after the audit union has been heard, and only on condition that the claim is assigned to a central cooperative credit union or a body which is under the constant supervision of an audit union.

Section 109. Collection of fixed amounts. (1) Once the calculation has been declared enforceable, the trustees shall collect the amounts from the members without delay.

(2) Judicial execution against a member shall be based on the Code of Civil Procedure and shall be enforced by means of an enforceable copy of the decision and an extract of the calculation.

(3) The court responsible for legal actions to be taken in the case of Para. 731, 767, 768 of the Code of Civil Procedure is the local court (Amtsgericht) where the insolvency proceedings are pending, and, if the matter in dispute is not within the jurisdiction of that local court, it will fall under the exclusive jurisdiction of the regional court (Landgericht) in whose district the insolvency court's district is located.

Section 110. Custody of collected amounts. Amounts collected shall be taken in custody or invested as determined by the creditors' meeting (Para. 149, Insolvency Act).

Section 111. Rescissory action. (1) Every member has the right to contest by way of legal action the calculation declared enforceable. The action shall be directed against the trustees. It will only be allowed within a strict statutory period of one month after pronouncement of the decision, and only in as much as the claimant asserted his claim at the hearing (section 107), or was unable to do so through no fault of his own.

(2) The final decision of the court shall apply both in favour of and against all members liable to make contributions.

Section 112. Procedure in a rescissory action. (1) The legal action may only be brought before the local court (Amtsgericht) which declared the calculation enforceable. The hearing shall not be held before expiry of the strict statutory period mentioned. If more than one rescissory action has been filed, these shall be combined into a single hearing and judgement.

(2) Should the matter in dispute exceed the amount normally limiting the local courts' (Amtsgericht) jurisdiction, and if one of the parties involved so requests before the main hearing has started, the court shall transfer by way of order all the matters in dispute to the regional court (Landgericht) in whose district it is located. This order is subject to a special appeal which must be made immediately. The strict statutory period for appeal commences with the pronouncement of the order.

(3) Once the order has final and binding effect, the matters in dispute shall be considered pending before the regional court (Landgericht). The costs incurred in the proceedings before the local court (Amtsgericht) shall be dealt with as part of the costs incurred before the regional court (Landgericht) and shall be considered as the costs of one single instance.

(4) The provisions of Para. 769, 770 of the Code of Civil Procedure concerning the stay of execution and cancellation of enforcement measures shall apply accordingly.

Section 112a. *Settlement on additional payments.* (1) The trustee may, with the approval of the committee of creditors, effect a compromise on the additional payment to be made by a member. The compromise is subject to confirmation by the insolvency court in order for it to take effect.

(2) The compromise shall be null and void if the member defaults.

Section 113. *Supplementary calculation.* (1) Should the total amount to be covered not be reached due to the inability of individual members to effect payments, or should the calculation have to be modified due to judgement passed in a rescissory action or for any other reason, the trustee shall draw up a supplementary calculation. The provisions of sections 106 to 112a shall apply also to the supplementary calculation.

(2) If and when required, the supplementary calculation shall be repeated.

Section 114. *Calculation of additional payments.* (1) Once the final distribution (Insolvency Act, Para.196) commences, the trustee shall establish in writing whether a deficit, and, if so, what deficit will remain after the division of proceeds, and to what extent the same is covered by the additional payments already made. The statement made by the trustee shall be deposited at the court's office.

(2) If a deficit remains, and if the members can be called upon to make further additional payments, the trustee shall calculate, and thus supplement or correct the calculation of advance payments and possible supplementary calculations to the extent to which the members are liable to make additional payments according to section 105 (calculation of additional payments).

(3) Calculation of additional payments is subject to the provisions of sections 106 to 109, 111 to 113, of subsection 106(2), provided that payments are not imposed on members who have been found to be incapable of making payments.

Section 115. *Distribution of payments made to cover deficits.* (1) Once the calculation of additional payments has been declared enforceable, the trustee shall distribute (Insolvency Act, Para.203) the amount of these payments in accordance with section 110, among the creditors without delay, and also whenever sufficient assets have been received through outstanding additional payments. If there

is no need to calculate additional payments, the trustee shall proceed with distribution without delay, once the statement according to subsection 114(1) has been deposited at the court's office.

(2) In addition to retaining the portion of claims defined in Para. 189 to 191 of the Insolvency Act, the portions of claims expressly contested by the board of directors at the hearing shall also be retained. It is left to the creditor's discretion to reject the board's objection by way of legal action. Should the objection finally be declared to be well-founded, the relevant portion will be available for distribution among the remaining creditors.

(3) The trustee shall repay members any surplus not required to satisfy the creditors' claims.

Section 115a. *Intermediate distribution.* (1) In insolvency proceedings expected to continue for a considerable period of time, the trustee may, with the approval of the insolvency court and, if appointed, of the committee of creditors, distribute the amounts collected (section 110) among the creditors before the time fixed in accordance with subsection 115(1), using the intermediate distribution procedure in compliance with the provisions of Para. 187 to 197 of the Insolvency Act; this may, however, only be done to the extent to which refunding to members for amounts collected (subsection 105(4); subsection 115(3)) can be assumed to be excluded on the basis of the proportion between debts and assets.

(2) Should the insolvency estate still produce a surplus after having satisfied the creditors' claims, the remaining excess payments shall so be repaid to the members from that surplus.

Section 115b. *Obligation of former members to make additional payments.* As soon as it can be assumed with certainty that collection of additional payments from the members will not suffice to satisfy the claims of the society's creditors according to subsection 105(1), or furnish the creditors security, the members, whose membership terminated within a period of eighteen months before commencement of the insolvency proceedings, shall make the required contributions to the bankruptcy estate in accordance with section 105, if they are not already subject to the obligation to make additional payments in accordance with section 75 or subsection 76(3).

Section 115c. *Obligation of former members to contribute.* (1) The trustee shall draw up a calculation for the contributions to be made by former members without delay.

(2) The calculation shall state the names of these members and distribute the contributions among them, unless it can be assumed that certain members will not be able to make payments.

(3) In all other respects, the provisions of subsection 106(3); sections. 107 to 109, 111 to 113 and 115 shall apply accordingly.

Section 115d. *Reimbursement of former members.* (1) Collection of additional payments from current members of the cooperative society shall remain unaffected by the provisions of sections 115b, 115c.

(2) The additional payments made by the current members shall be used to reimburse former members for their contributions as soon as the claims of all the society's creditors, according to

subsection 105(1), have been satisfied or the creditors have been furnished security.

Section 115e. *Guardian.* In the case of an order to the cooperative society to administer itself the insolvency estate under a guardian according to Para.270 or 271 of the Insolvency Act, sections 105 to 115d apply and the guardian takes the position of the administrator.

Section 116. *Insolvency plan.* The provisions of the Insolvency Act concerning the insolvency plan apply, except for the following deviations:

1. An insolvency plan is to be taken into account if it reaches the insolvency court before the proceedings concerning the additional payments are finalised;
2. in that part of the plan which details the facts, the amount of additional payments by the members as well as the remaining amount they are obliged to pay according to the by-laws are to be specified;
3. in grouping the creditors in order to specify their rights, those creditors who are members of the cooperative society may be distinguished from those who are not;
4. before the hearing, the insolvency court is to hear the audit union to which the cooperative society belongs as to whether the plan complies with the interests of the members.

Section 117. *Termination of insolvency proceedings.* (1) In case the insolvency proceedings are terminated upon petition of the debtor, or the decision to commence insolvency proceedings, containing a stipulation as to the continuation of the cooperative society, is cancelled after the insolvency plan has been confirmed, the general assembly may decide to continue the cooperative society. At the same time the general assembly must include a clause into the by-laws according to Para.6, No. 3 as to whether the members have to make additional payments or not in case the creditors are not satisfied during the insolvency proceedings and whether this obligation is unlimited, or limited to a specified amount.

(2) Decisions according to subsection 1 may only be taken by a majority of three quarters of the votes cast. The by-laws may require additional conditions. Subsections 79a(2 - 4) apply.

(3) The board of directors has to file the decision to continue the cooperative society together with the decision concerning the obligation of the members to make additional payments immediately with the registration office for registration.

Section 118. *Extraordinary right of resignation.* (1) In case a decision as to the continuation of the cooperative society is taken according to section 117, resignation may be pronounced by:

1. any member present at the general meeting if his protest against the resolution was recorded in the minutes, or if inclusion of his protest in the minutes was refused;
2. any member not present at the general meeting if he had wrongfully not been admitted to the meeting, or if the meeting had not been properly called, or if the subject matter on which a resolution was to be passed had not been properly announced.

If a delegate meeting has resolved to continue the cooperative society, any member may resign from the cooperative society; to delegates, sentence 1 shall apply.

(2) Resignation shall be declared in writing within one month. In the case of subpara.1, sentence 1, no.1, this period shall commence with the resolution; in the case of subpara. 1, sentence 1, no.2, once the member is aware of the resolution. Should there be disagreement as to the exact point in

time when the member received this information, the onus of proof of such shall rest with the cooperative society. In cases of resignation, the decision to continue the cooperative society shall remain without effect, neither for nor against the member.

(3) The date of the termination of membership is to be entered immediately into the membership list, the member is to be informed immediately of this entry.

(4) The opening balance, which was established for the continuation of the cooperative society, will be the basis for the financial settlement between the resigning member and the cooperative society. The balance in favour of the resigning member is to be paid within six months after the resignation. Notwithstanding subsection. 73(3), the member may not claim any share in the reserves or other assets of the cooperative society. Para.74 applies.

PART VIII. AMOUNT OF LIABILITY

Section 119. *Minimum amount of liability.* If the bye-laws require members to make limited additional payments to the bankruptcy estate, the amount of liability, as set forth in the bye-laws, shall not be less than the shares.

Section 120. *Reduction of amount of liability.* With regard to the reduction of the amount of liability, subsections 22(1 - 3), shall apply correspondingly.

Section 121. *Amount of liability in the case of more than one share.* In the case of members holding more than one share, the amount of liability, when lower than the total amount of shares, shall be increased to the total amount. The bye-laws may stipulate a higher amount. They may also stipulate that additional shares do not call for an increase in the amount of liability.

Sections 122-145. (repealed)

PART IX. PENALTIES AND FINES

Section 146. (repealed)

Section 147. *Fraudulent misrepresentation and false statements.* (1) Any person who, as a member of the board of directors or as a liquidator, makes false statements in a written declaration according to Para. 79a, section 5, clause 2, on the resolution adopted to continue the cooperative society, or fails to disclose material facts, shall be liable to a term of imprisonment not exceeding three years or to a fine.

(2) Facing a penalty is also any person who, as a member of the board of directors or of the supervisory council or as a liquidator:

1. misrepresents, or conceals facts concerning the situation of the cooperative society in statements with respect to assets and liabilities, and with respect to the membership or the amount of liability, or statements given to the general meeting, unless the deed is subject to a penalty in accordance with Para. 340m in conjunction with Para. 331, No. 1, of the Commercial Code;
2. makes false statements or conceals facts or misrepresents the situation of the cooperative society

in supplying auditors of the cooperative society with information and proof as required by the provisions of this Act, unless the deed is subject to a penalty in accordance with Para. 340m in conjunction with Para. 331, No. 4, of the Commercial Code.

Section 148. Punishable omissions. (1) Any person, as a member of the board of directors or as a liquidator, is liable to a term of imprisonment not exceeding three years or a to fine who:

3. contrary to subsection 33(3) fails to call a general meeting and to notify it accordingly, should a loss not be covered by half the total amount of credit balances and the reserves;
4. contrary to subsection 99(1) fails to institute bankruptcy proceedings or judicial composition proceedings, should insolvency or excessive debts have been incurred.

(2) In the case of negligence, the penalty is a term of imprisonment not exceeding one year or a fine.

Section 149. (Repealed)

Section 150. Criminal liability of auditors and assistants. (1) Any person who, as an auditor or the assistant of an auditor, makes false statements as to the result of the audit or conceals material facts in his report, shall be liable to a term of imprisonment not exceeding three years or to a fine.

(2) If the offender acts for reward with the intent to enrich himself or another, or to bring loss to another, the penalty shall be a term of imprisonment not exceeding five years or a fine.

Section 151. Punishable breach of obligation to observe secrecy. (1) Any person disclosing without authorisation a secret of the cooperative society, in particular business or trade secrets, having acquired this knowledge in his capacity as:

5. a member of the board of directors or of the supervisory council, or as a liquidator, or as
6. an auditor or an assistant of the auditor,

shall be liable to a term of imprisonment not exceeding one year or to a fine, but in the case of No. 2, however, only unless the deed is subject to penalty in accordance with Para.340m in conjunction with Para. 333 of the Commercial Code.

(2) If the offender acts for reward with the intent to enrich himself or another, or to bring loss to another, the penalty shall be a term of imprisonment not exceeding two years or a fine. Also subject to a penalty are persons who make unauthorised use of a secret of the kind defined in section 1, in particular a business or trade secret, having acquired this knowledge as defined in section 1.

(3) Prosecution proceedings shall only take place on application by the cooperative society. If the offender is a member of the board of directors or a liquidator, the application may be filed by the supervisory council, if the offender is a member of the supervisory council, it may be filed by the board of directors or the liquidators.

Section 152. Vote trafficking as an administrative offence. (1) An administrative offence is committed by any person who:

7. demands or accepts special advantages, or has such advantages promised to him, in return for not casting a vote or for casting a fixed vote when resolutions are being adopted by the general meeting or the delegates' meeting or when delegates are being elected, or
8. offers, promises or grants special advantages to another in return for not casting a vote or casting

a fixed vote when resolutions are being adopted by the general meeting or the delegates' meeting or when delegates are being elected.

(2) The administrative offence may be sanctioned by a fine of up to twenty thousand Deutsche Mark.

Sections 153, 154. (repealed)

PART X. FINAL PROVISIONS

Section 155. (irrelevant)

Section 156. *Register of cooperative societies.* (1) The provisions of Para. 8a, 9, 9a of the Commercial Code shall apply to the register of cooperative societies. Publication by the court concerning entries shall only be made in accordance with Para. 12; 16, section 5; Para. 28, section 1, clause 3; Para. 42, section 1, clause 3; Para. 51, section 5, as well as in the cases of Para. 22, section 1; Para. 22a, section 1; Para. 82, section 1, and Para. 97, and only in the Federal Law Gazette (Bundesanzeiger). The board of directors may petition the court to use other journals for publication in addition to the Federal Law Gazette (Bundesanzeiger); in which case, the court shall, in December of each year, name the journals in which publications shall be made in the course of the following year. If more than one judge at the court is responsible for the register of cooperative societies, and if they cannot come to an agreement as to which journals should be named, a decision will be taken by the higher-instance regional court (Landgericht); if this court has a division for trade and commerce, this division shall substitute the division for civil matters.

(2) Entries made in the register of cooperative societies of both the central office and the branch shall be made public by the court of the central office. The court of the branch shall publish only when so requested by the board of directors.

(3) Unless otherwise provided, entries shall be made public in full.

(4) Publication shall be regarded as having been made with the end of the day on which the Federal Law Gazette (Bundesanzeiger) was published or, in the case of section 1, clause 3, when the last of the journals containing the publication has been published.

Section 157. *Form of application for publication.* (1) Application for entries into the register of cooperative societies shall be filed by all the members of the board of directors or by all the liquidators in a form certified by a public notary.

(2) (repealed)

Sections 158, 159. (repealed)

Section 160. *Judicial fines.* (1) Members of the board of directors shall be urged by the court (Para. 10) to comply with the provisions contained in Para. 14; 25a; 28; 30; 32; 57, section 1; Para. 59, section 1; Para. 78, section 2; Para. 79, section 2, by fixing a fine. Members of the board of directors and the liquidators shall similarly be urged to comply with the provisions contained in Para. 33,

section 1, clause 2; Para. 42, section 1 in conjunction with Para. 53 of the Commercial Code; Para. 47; 48, section 3; Para. 51, sections 4 and 5; Para. 56, section 2; Para. 84; 85, section 2; Para. 89 of this Act, and Para. 242, sections 1 and 2; Para. 336, section 1; Para. 339 of the Commercial Code, and the members of the board of directors and of the supervisory council as well as the liquidators shall be urged to ensure that a cooperative society does not remain without a supervisory council, nor one lacking a quorum, for a period of more than three months

(2) With respect to the procedure, the provisions required by the Commercial Code for the enforcement of applications to the Trade Register will apply. In order to enforce compliance with the provisions set in Para. 242, sections 1 and 2; Para. 336, section 1; Para. 339 of the Commercial Code, Para. 335, clauses 2, 4 to 7 of the Commercial Code shall be applied.

Section 161. *Provisions of implementation.* The Federal Ministry of Justice is authorised to regulate with the approval of the Upper House of Parliament (Bundesrat) details regarding the provisions for establishing and keeping a register of cooperative societies. In those cases where the governments of the federated states (Länder) have decided, in compliance with Para. 8a, section 1 of the Commercial Code, that the register of cooperative societies be kept in the form of automated data files, detailed provisions can also be adopted by virtue of a regulation according to clause 1; this may include rules which apply to details concerning the set-up of automated processes for the transmission of data from the register of cooperative societies, and to details concerning the approval thereof (Para. 9a of the Commercial Code).

Section 162. *Housing societies.* Companies recognised on 31 December 1989 as non-profit making housing societies, or bodies effecting government housing policies, and which are not registered cooperative societies, shall remain members of the audit union to which they belonged at that particular time. The companies may notify the audit union by 30 June 1990 of their withdrawal, which will become effective as of 31 December 1991; the right to give notice in compliance with the bye-laws of the audit union shall remain unaffected.

Section 163. *Entries into the list of members.* (1) Applications for entries into the list of members kept by the court, which were filed by the end of the year 1993 with the court but were not dealt with, shall be passed on to the cooperative society by the court without delay.

(2) Should the termination of membership have been noted down in the list of members kept by the court, the member shall be regarded as having withdrawn, or having been expelled, on the day on which it was noted down, provided the board of directors accepts this in a form certified by a public notary or is bound to do so by a final court decision. The cooperative society shall enter the time of termination of membership into the list of members without delay and inform the member accordingly without delay.

Section 164. *Conversion of the shares into Euro.* (1) Despite subsection 16(4), the General Assembly takes its decision on the conversion of the shares into Euro by a simple majority vote. This applies equally to cases where the conversion is combined with a decrease of the value of the shares to full Euro amounts. Subsections 16(5, 6) apply to the registration of the conversion in the register of cooperative societies.

(2) The application for registration of decisions according to subpara.1, sentence 1, which do not but concern the conversion of the value of the shares from Deutsche Mark into Euro at the rate fixed through Article 109 l, section 4, sentence 1 of the EC Treaty by the Council of the European Union needs not be filed in the form prescribed in Para.157. Article 45, section 2 of the Law on the Introduction of the Commercial Code applies *mutatis mutandis*.