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MINISTRY OF LAW
(Legislative Department)

New Delhi, the 29th January, 1960/*Magha* 9, 1881 (*Saka*)

The following President's Acts are published for general information:—

THE KERALA CO-OPERATIVE LAND MORTGAGE BANKS ACT, 1960

No. 1 OF 1960

Enacted by the President in the Tenth Year of the Republic of India.

An Act to facilitate the working of co-operative land mortgage banks in the State of Kerala.

In exercise of the powers conferred by section 3 of the Kerala State Legislature (Delegation of Powers) Act, 1959, the President is pleased to enact as follows:— 50 of 1959.

CHAPTER I

PRELIMINARY

Short title, extent and commencement.

1. (*1*) This Act may be called the Kerala Co-operative Land Mortgage Banks Act, 1960.

(*2*) It extends to the whole of the State of Kerala.

(*3*) It shall come into force on such date as the Government may, by notification in the Gazette, appoint.

Definitions.

2. In this Act, unless the context otherwise requires,—

(*a*) "Board" means the Board of Directors of the Central Land Mortgage Bank;

(*b*) "Central Mortgage Bank" means the Kerala Co-operative Central Land Mortgage Bank, Limited;

(c) "Committee", in relation to a primary mortgage bank, means the Board of Directors or Board of Management or the Panchayat or the Committee of management or the governing body to whom the management of its affairs is entrusted ;

(d) "co-operative society" means a co-operative society registered or deemed to be registered under the Travancore-Cochin Co-operative Societies Act, 1951 or the Madras Co-operative Societies Act, 1932;

(e) "Malabar" means the Malabar district referred to in sub-section (2) of section 5 of the States Reorganisation Act, 1956; 37 of 1956.

(f) "notified order" means an order notified in the Gazette;

(g) "prescribed" means prescribed by rules made by the Government under this Act;

(h) "primary mortgage bank" means a co-operative land mortgage bank registered or deemed to be registered under the Travancore-Cochin Co-operative Societies Act, 1951, or the Madras Co-operative Societies Act, 1932, and admitted as a member of the Central Mortgage Bank;

(i) "Registrar" means the person appointed by the Government to be the Registrar of Co-operative Societies for the State;

(j) "State" means the State of Kerala;

(k) "Trustee" means the Trustee referred to in section 5.

Admission of land mortgage banks registered under the Madras Co-operative Societies Act, 1932, as members of the Central Mortgage Bank.

3. Notwithstanding anything contained in the Travancore-Cochin Co-operative Societies Act, 1951, it shall be lawful for the Central Land Mortgage Bank, to admit as its member a co-operative land mortgage bank registered or deemed to be registered under the Madras Co-operative Societies Act, 1932; and any such admission made before the commencement of this Act shall be deemed to have been lawfully made.

CHAPTER II

DEBENTURES

Issue of debentures by the Board.

4. (1) (a) With the previous sanction of the Trustee, the Board may issue debentures of one or more denominations for such period as it may deem expedient on the security of the mortgages taken by the Central Mortgage Bank and its other assets and mortgages transferred or deemed under the provisions of section 23 to have been transferred by the primary mortgage banks to the Central Mortgage Bank.

(b) Such debentures may contain a term fixing a period not exceeding twenty years from the date of issue during which they

shall be irredeemable or reserving to the Board the right to call in, at any time, any of the debentures in advance of the date fixed for redemption after giving to the debenture-holder concerned not less than three months' notice in writing.

(2) The total amount due on the debentures issued by the Board and outstanding, at any time, shall not exceed the aggregate of the amounts due on the mortgages and other assets referred to in clause (a) of sub-section (1) and the amounts paid thereunder and remaining in the hands of the Board or of the Trustee at such time.

Appointment of Trustee and his powers and functions.

5. (1) The Registrar, or where the Government appoint any other person in this behalf, such person, shall be the Trustee for the purpose of securing the fulfilment of the obligations of the Central Mortgage Bank to the holders of debentures issued by the Board. The mortgages executed in favour of the Central Mortgage Bank and other mortgages and assets transferred or deemed under the provisions of section 23 to have been transferred to the Central Mortgage Bank shall vest in the Trustee from the date of execution or transfer. The holders of the debentures shall have a floating charge on all such mortgages and assets, on the amounts paid under such mortgages and remaining in the hands of the Board or the Trustee and on the other properties of the Central Mortgage Bank. The powers and functions of the Trustee shall be governed by the instrument of trust executed between the Bank and the Trustee as modified from time to time by mutual agreement between the Board and the Trustee.

(2) The Trustee appointed under sub-section (1) shall be a corporation sole by the name of the Trustee for the debentures and as such shall have perpetual succession and a common seal and in his corporate name shall sue and be sued.

Guarantee by Government on principal of and interest on debentures issued under section 4.

6. (1) The principal of and the interest on the debentures issued under section 4 to such maximum amount as may be fixed by the Government and subject to such conditions as they may think fit to impose, shall, subject to the provisions of sub-section (3), carry the guarantee of the Government.

(2) The Government may, after consulting the State Legislative Assembly, increase the maximum amount of any guarantee given by them.

(3) The Government may, after consulting the Board and the Trustee,—

(a) by notification in the Gazette, and

(b) by notice for not less than 14 days in such of the principal newspapers in the State and in other States in India, as the Government may select in this behalf,

discontinue any guarantee given by them or restrict the maximum amount thereof or modify the conditions subject to which it is given, with effect from a specified date, not being earlier than six months from the date of publication of the notification in the Gazette.

In cases where the maximum amount of the guarantee is to be restricted or the conditions subject to which the guarantee is given are to be modified, the notification and notice aforesaid shall set forth, with sufficient clearness, the scope and effect of the restriction or modification.

Explanation.—The withdrawal, restriction or modification of any guarantee under this sub-section shall not affect, in any way, the guarantee carried by any debentures issued prior to the date on which such withdrawal, restriction or modification takes effect.

Power of Board to make regulations.

7. The Board may, subject to the approval of the Trustee, make regulations not inconsistent with the provisions of this Chapter,—

(*i*) for fixing the period of debentures and the rate of interest payable thereon;

(*ii*) for calling in debentures after giving notice to debenture-holders;

(*iii*) for the issue of new debentures in place of debentures damaged or destroyed;

(*iv*) for converting one class of debentures into another class of debentures bearing a different rate of interest; and

(*v*) generally for carrying out the provisions of this Chapter.

CHAPTER III

DISTRAINT AND SALE OF PRODUCE

Distraint when to be made.

8. (*1*) If any instalment payable under a mortgage executed in favour of the Central Mortgage Bank or a primary mortgage bank or any part of such instalment has remained unpaid for more than one month from the date on which it fell due, the Board or the Committee may, in addition to any other remedy available to them, apply to the Registrar or to any other person appointed by the Government under section 3 of the Travancore-Cochin Co-operative Societies Act, 1951, or under section 3 of the Madras Co-operative Societies Act, 1932, to assist the Registrar, for the recovery of such instalment or part by distraint and sale of the produce of the mortgaged land including the standing crops thereon. On receipt of such application the Registrar or such other person may, notwithstanding anything contained in the Transfer of Property Act, 1882, take such action as is necessary to distrain and sell such produce : 4 of 1882.

Provided that no distraint shall be made after the expiry of twelve months from the date on which the instalment fell due.

(2) The distress shall not be excessive; the value of the property distrained shall be, as nearly as possible, equal to the amount due and the expenses of the distraint and the costs of the sale.

Distraint how to be effected.

9. (1) Before or at the time when a distraint is made under section 8, the distrainer shall serve or cause to be served upon the defaulter a written demand specifying the amount for which the distraint is made.

(2) The demand shall be dated and signed by the distrainer and shall be served upon the defaulter by delivering a copy to him or to some adult male member of his family at his usual place of abode or to his authorised agent, or when such service cannot be effected, by affixing a copy of the demand on some conspicuous part of his abode and of the mortgaged land.

Sale of property distrained.

10. (1) If, within fifteen days from the date of service of the demand referred to in section 9, the defaulter does not pay the amount for which the distraint was effected, the distrainer may sell in auction the distrained property or such part thereof as may in his opinion be necessary to satisfy the demand together with the expenses of the distraint and the costs of the sale.

(2) From the proceeds of such sale, a deduction shall be made at such rate as may be fixed by the Government from time to time on account of the costs of the sale.

(3) From the balance shall be deducted the expenses incurred by the distrainer on account of the distraint.

(4) The remainder, if any, shall be applied to the discharge of the amount for which the distraint was made.

(5) The surplus, if any, shall be delivered to the person whose property has been sold and he shall be given a receipt for the amount discharged from the proceeds of the sale.

Power of Government to make rules.

11. The Government may make rules not inconsistent with the provisions of this Chapter,—

(*i*) for the manner of effecting distraint;

(*ii*) for the custody, preservation and sale of the distrained property;

(*iii*) for the investigation of claims by persons other than the defaulter to any right or interest in the distrained property and for the postponement of the sale pending such investigation;

(*iv*) for the immediate sale of perishable articles;

(*v*) for fixing the rates of deduction on account of the costs of sale of distrained properties; and

(*vi*) generally for the purpose of carrying out the provisions of this Chapter.

CHAPTER IV

POWER OF SALE

Power of sale when to be exercised.

12. (*1*) Notwithstanding anything contained in the Transfer of Property Act, 1882, where a power of sale without the intervention of the court is expressly conferred on the Central Mortgage Bank, or a primary mortgage bank, by the mortgage deed, the Board, or the Committee of such primary mortgage bank, or any person authorised by the Board or such Committee, as the case may be, shall, in case of default of payment of the mortgage money or any part thereof, have power, in addition to any other remedy available to them, to bring the mortgaged property to sale without the intervention of the court. 4 of 1882.

(*2*) No such power shall be exercised unless—

(*a*) the Board or such Committee has given an opportunity to the mortgagor or mortgagors to show cause why the property may not be sold without the intervention of court;

(*b*) notice in writing requiring payment of such mortgage money or part thereof has been served upon—

(*i*) the mortgagor or each of the mortgagors;

(*ii*) any person who has any interest in or charge upon the property mortgaged or in or upon the right to redeem the same;

(*iii*) any surety for the payment of the mortgage debt or any part thereof; and

(*iv*) any creditor of the mortgagor, who has in a suit for the administration of his estate obtained a decree for sale of the mortgaged property; and

(*c*) default has been made in payment of such mortgage money or part thereof for three months after such service :

Provided that the obligation to give such notice under sub-clauses (*ii*) and (*iv*) of clause (*b*) shall be confined to cases where the Board or the Committee has notice of such claims:

Provided further that where a mortgage has been executed by the members of a Marumakkathayam, Tarwad or Nambudri, Illom or Aliyasantana family, it shall be necessary to send notice under this sub-section only to the three seniormost members thereof.

Application for sale and manner of sale.

13. (*1*) For exercising the power of sale conferred by section 12, the Board or the Committee or any other person duly authorised by the Board or such Committee, as the case may be, may apply to the sale officer appointed in that behalf under section 21 to sell the mortgaged property or any part thereof and such officer shall, after giving notice in writing to all the persons referred to in section 12, sell such property in the manner prescribed.

(*2*) The sale shall be by public auction and shall be held in the village where the mortgaged property is situate or at the nearest place of public resort if the sale officer is of opinion that the property is likely to sell to better advantage there.

Application to set aside sale on deposit and confirmation of sale in default or on dismissal of such application.

14. (*1*) When a mortgaged property has been sold under this Chapter, the mortgagor or any person having a right or interest therein affected by the sale, may, at any time within thirty days from the date of sale, apply to the Board or the Committee of the primary mortgage bank concerned, as the case may be, to have the sale set aside on his depositing at the office of the concerned bank—

(*a*) for payment to the Central Mortgage Bank or the primary mortgage bank, as the case may be, the amount specified in the proclamation of sale together with subsequent interest and the costs, if any, incurred by the bank in bringing the property to sale; and

(*b*) for payment to the purchaser a sum equal to five per cent. of the purchase money.

(*2*) If such deposit is made, the Board or the Committee, as the case may be, may in its discretion, make an order setting aside the sale.

(*3*) Where no application is made under sub-section (*1*) or where such application is made and disallowed, the Board or the Committee, as the case may be, shall apply to the Registrar or any other officer empowered by the Government in this regard to make an order confirming the sale and, on the Registrar or such officer confirming the sale, it shall become absolute and the property shall be deemed to have vested in the purchaser from the time when the property is sold.

Distribution of sale proceeds.

15. (*1*) The proceeds of every sale under this Chapter shall be applied by the sale officer, *first,* in payment of all costs, charges and expenses properly incurred by him as incidental to the sale or any attempted sale; *secondly,* in payment of all interest due on account of the mortgage in consequence whereof the mortgaged property was sold; *thirdly,* in payment of the principal money due on account of the mortgage; and *lastly,* the residue, if any, shall be paid to the person proving himself interested in the property sold or, if there are more such persons than one, then to such persons, according to their respective interests therein or upon their joint receipt.

(*2*) (*a*) Any person dissatisfied with the decision of the sale officer in regard to the distribution of such residue may, within thirty days of the communication to him of such decision, institute a suit in a court to establish the right he claims.

(*b*) The sale officer shall not distribute such residue until thirty days have elapsed from the communication of his decision to all the persons concerned, or, if a suit has been instituted within the said period of thirty days by any such person and due notice thereof is given to him before the payment, until the suit is disposed of or otherwise than in accordance with the decision of the court thereon.

(*3*) Any deficit occurring after the sale of the mortgaged land may also be recovered in the manner provided in this Chapter from any other assets of the mortgagor.

Explanation.—In this section and in section 17 "court" means the civil court having jurisdiction to entertain a suit to enforce the mortgage and within the limits of whose jurisdiction the property sold is situate.

Certificate to purchaser.

16. Where a sale of mortgaged property has become absolute, the sale officer shall grant a certificate specifying the property sold and the name of the person who at the time of the sale is declared to be the purchaser. Such certificate shall bear the date on which the sale became absolute.

Delivery of property to purchaser.

17. (*1*) Where the mortgaged property sold is in the occupancy of the mortgagor or of some person on his behalf or of some person claiming under a title, other than a lease, created by the mortgagor subsequent to the mortgage in favour of the Central Mortgage Bank or primary mortgage bank, as the case may be, and a certificate in respect thereof has been granted under section 16, the court shall, on the application of the purchaser, order delivery to be made by putting such purchaser or any person whom he may appoint to receive delivery on his behalf, in possession of the property.

(2) Where the property sold is in the occupancy of a tenant or other person entitled to occupy the same and a certificate in respect thereof has been granted under section 16, the court shall, on the application of the purchaser, and after giving notice to such tenant or other person, order delivery to be made by affixing a copy of the certificate of sale in some conspicuous place on the property and proclaiming to the occupant by beat of drum or other customary mode at some convenient place that the interest of the mortgagor has been transferred to the purchaser.

5 of 1908. (3) The provisions of rules 97 to 103 of Order XXI of the First Schedule to the Code of Civil Procedure, 1908, shall, *mutatis mutandis*, apply to the cases dealt with in sub-sections (1) and (2).

Right of Central Mortgage Bank or primary mortgage bank to purchase the mortgaged property at sale.

18. It shall be competent to the Central Mortgage Bank or a primary mortgage bank to purchase the mortgaged property sold under this Chapter, but the property so purchased shall be disposed of by such bank by sale within such period as may be fixed by the Trustee.

Appointment of receiver and his powers.

19. (1) The Board may on its own motion or on the application of any branch of the Central Mortgage Bank or the Committee of a primary mortgage bank under circumstances in which the power of sale conferred by section 12 may be exercised, appoint in writing a receiver of the produce and income of the mortgaged property or any part thereof and such receiver shall be entitled either to take possession of the property or collect its produce and income, as the case may be, to retain out of any money realised by him, his expenses of management including his remuneration, if any, as may be fixed by the Board, and to apply the balance in accordance with the provisions of sub-section (3) of section 69-A of the Transfer of 4 of 1882 Property Act, 1882.

(2) A receiver appointed under sub-section (1) may, for sufficient cause and on application made by the mortgagor, be removed by the Board.

(3) A vacancy in the office of the receiver may be filled up by the Board.

(4) Nothing in this section shall empower the Board to appoint a receiver where the mortgaged property is already in the possession of a receiver appointed by a civil court; but the Board or the Committee of a primary mortgage bank, as the case may be, may, through the Secretary of the Central Mortgage Bank or the primary mortgage bank, as the case may be, petition to such court to direct the receiver of such court to apply any part or the whole of the surplus remaining in his hands after meeting the expenses of his

management to the discharge of the mortgage amount or part thereof, as the case may be.

Title of purchaser not to be impeached on the ground of irregularity, etc.

20. When a sale has been made in the professed exercise of a power of sale under section 12 and has been confirmed under sub-section (*3*) of section 14, the title of the purchaser shall not be impeachable on the ground that no case had arisen to authorise the sale or that due notice was not given or that the power was otherwise improperly or irregularly exercised, but any person damnified by an unauthorised or improper or irregular exercise of the power shall have his remedy in damages against the Central Mortgage Bank or the concerned primary mortgage bank, as the case may be.

Appointment of sale officer.

21. The Registrar may appoint sale officers for the purpose of conducting sales under this Chapter.

Power of Government to make rules.

22. The Government may make rules not inconsistent with this Chapter—

(*1*) for the due proclamation and conduct of the sale;

(*2*) for the recovery of the expenses of proclamation and sale;

(*3*) for the deposit of the purchase money;

(*4*) for the re-sale of the property, if the purchase money is not deposited;

(*5*) for the registration of claims in respect of properties mortgaged to the Central Mortgage Bank or a primary mortgage bank; and

(*6*) generally for carrying out the provisions of this Chapter.

CHAPTER V

MISCELLANEOUS

Mortgages executed in favour of mortgage bank, etc., to stand vested in Central Mortgage Bank.

23. The mortgages executed in favour of, and all other assets transferred to a primary mortgage bank by the members thereof shall, with effect from the date of such execution or transfer, be deemed to have been transferred by such primary mortgage bank to the Central Mortgage Bank.

Powers of mortgage bank in case the mortgaged property is insufficient.

24. Where any property mortgaged to the Central Mortgage Bank or a primary mortgage bank is rendered insufficient and the mortgagor, having been given a reasonable opportunity by the Board or the Committee of the primary mortgage bank of providing further security enough to render the whole security sufficient or of

repaying such portion of the loan as may be determined by the Board or the Committee, has failed to provide such security or to repay such portion of the loan, the whole of the loan shall be deemed to fall due at once and the Board or the Committee, as the case may be, shall be entitled to take action against the mortgagor under section 8 or section 12 for the recovery thereof.

Explanation.—A security is insufficient within the meaning of this section unless the value of the mortgaged property exceeds the amount for the time being due on the mortgage by such proportion as may be specified in the bye-laws of the Central Mortgage Bank or the concerned primary mortgage bank, as the case may be.

Power of Board or of Trustee to direct distraint and sale of produce and the sale of mortgaged property, etc.

25. (*1*) The Board or the Trustee may direct the Committee of a primary mortgage bank to take action against a defaulter under section 8, section 12, or section 24 and if the Committee neglects or fails to do so, the Board or the Trustee may take such action.

(*2*) (*a*) Where such action is taken by the Board, the provisions of this Act and of any rules or regulations made thereunder shall apply in respect thereto as if all references to the primary mortgage bank and to its Committee in the said provisions were references to the Central Mortgage Bank and the Board, respectively.

(*b*) Where such action is taken by the Trustee, the provisions of this Act and of any rules or regulations made thereunder shall apply in respect thereto as if all references to the primary mortgage bank or to its Committee in the said provisions were references to the Trustee.

Bank's right to improvements effected by lessee.

26. Notwithstanding anything contained in the Kerala Compensation for Tenants Improvements Act, 1958, the improvements, if any, made subsequent to the date of the mortgage by a lessee of property mortgaged to the Central Mortgage Bank or a primary mortgage bank, as the case may be, shall be treated as accession to the mortgaged property and shall be available to such Bank for the realisation of the mortgaged amounts.

Mortgage not to be questioned on insolvency of mortgagor

27. Notwithstanding anything contained in the Insolvency Act, 1955, a mortgage executed in favour of the Central Mortgage Bank or a primary mortgage bank, as the case may be, shall not be called in question on the ground that it was not executed in good faith for valuable consideration or on the ground that it was executed in order to give such mortgage bank a preference over the other creditors of the mortgagor.

Priority of mortgage over certain claims of the Government.

28. (1) A mortgage executed in favour of the Central Mortgage Bank or a primary mortgage bank, as the case may be, after the commencement of this Act, shall have priority over any claim of the Government arising from a loan under the Land Improvement Loans Act, 1883, or the Agriculturists, Loans Act, 1884, or the Cochin Agricultural Improvement Loans Act, IV of 1093, or the Travancore Land Improvements and Agricultural Loans Act (Travancore Act IX of 1094), granted after the execution of the mortgage. 19 of 1883. 12 of 1884.

(2) Notwithstanding any enactment or rule of law, a mortgage executed in favour of the Central Mortgage Bank or a primary mortgage bank, as the case may be, shall take precedence over any attachment or oral mortgage over the properties, where after publication of a notice in the prescribed form, such claim or interest has not been notified to such Bank within the time prescribed in the said notice.

(3) The Government may make rules prescribing the form of the notice under this section and the manner of its publication.

Right of mortgage bank to pay prior debts of mortgagor.

29. Where a mortgage is executed in favour of the Central Mortgage Bank or a primary mortgage bank, as the case may be, for payment of prior debts of the mortgagor, such Bank may, notwithstanding the provisions of sections 83 and 84 of the Transfer of Property Act, 1882, by notice in writing, require any person to whom any such debt is due to receive payment of such debt or part thereof from the Bank at its registered office within such period as may be specified in the notice. If any such person fails to receive such notice or such payment, such debt or part thereof, as the case may be, shall cease to carry interest from the expiration of the period specified in the notice, except in cases where such person proves to the satisfaction of the Board or the Committee of the primary mortgage bank, as the case may be, that the failure to receive notice or payment was due to causes beyond his control: 4 of 1882.

Provided that where there is a dispute as regards the amount of any such debt, the person to whom such debt is due shall be bound to receive payment of the amount offered by the Bank towards the debt, but such receipt shall not prejudice the right, if any, of such person to recover the balance claimed by him.

Power to summon witnesses and requisition documents.

30. (1) Subject to such restrictions, limitations and conditions as may be prescribed, the Registrar and officers subordinate to the Registrar who are authorised by him in this behalf by general or special order in writing, and such other officials engaged in the relief

of rural indebtedness or officers of co-operative banks which are registered or deemed to be registered under the Travancore-Cochin Co-operative Societies Act, 1951 or the Madras Co-operative Societies Act, 1932, as the Government may, by notification in the Gazette, authorise in this behalf, shall have the same powers as are vested in a court under the Code of Civil Procedure, 1908, when trying a suit, 5 of 1908. in respect of the following matters, namely:—

(*a*) enforcing the attendance of any person and examining him on oath or affirmation;

(*b*) compelling the production of documents; and

(*c*) issuing commissions for the examination of witnesses.

(*2*) Any of the officers authorised by or under sub-section (*1*) may require any person present before him to furnish any information or to produce any document then and there in his possession or power, relevant to the inquiry.

(*3*) Any officer before whom any document is produced under sub-section (*1*) or sub-section (*2*) shall have power to take, or to authorise the taking of, such copies of the document or of any entries therein as such officer or person may consider necessary. Copies so taken shall, when certified in such manner as may be prescribed, be admissible in evidence for any purpose in the same manner and to the same extent as the original document or the entries therein, as the case may be.

(*4*) (*a*) Any person who wilfully or without reasonable excuse disobeys any summons, requisition or order issued under sub-section (*1*) or sub-section (*2*), shall be punishable with fine which may extend to fifty rupees, and in the case of a continuing disobedience with an additional fine which may extend to five rupees for every day during which such disobedience continues after conviction for the last such disobedience.

(*b*) No court inferior to that of a Magistrate of the first class shall try any offence under clause (*a*).

(*c*) Every offence under clause (*a*) shall, for the purposes of the Code of Criminal Procedure, 1898, be deemed to be non-cognizable. 5 of 1898.

(*d*) No prosecution shall be instituted under clause (*a*) without the previous sanction—

(*i*) of the Registrar in case the summons, requisition or order alleged to have been disobeyed was issued by the Registrar or any person subordinate to him or by any officer of a co-operative bank; and

(*ii*) of the Collector of the district in other cases.

Such sanction shall not be given without giving the party concerned an opportunity to be heard.

(5) The Government shall have power to make rules for giving effect to the provisions of this section.

Registration of documents executed on behalf of the Central Mortgage Bank or of a primary mortgage bank.

31. (1) Notwithstanding anything contained in the Indian Registration Act, 1908, it shall not be necessary for any Director, Secretary or other officer of the Central Mortgage Bank or of a primary mortgage bank to appear in person or by agent at any registration office in any proceedings connected with the registration of any instrument executed by him in his official capacity or to sign as provided in section 58 of that Act. 16 of 1908.

(2) Where any instrument is so executed, the registering officer to whom such instrument is presented for registration may, if he thinks fit, refer to such Director, Secretary or officer for information respecting the same, and, on being satisfied of the execution thereof, shall register the instrument.

Power of mortgage bank to receive moneys and grant valid discharges notwithstanding assignment of mortgage deeds to the Central Mortgage Bank.

32. Notwithstanding that a mortgage executed in favour of a primary mortgage bank has been transferred, or is deemed under the provisions of section 23 to have been transferred, to the Central Mortgage Bank—

(a) all moneys due under the mortgage shall, in the absence of any specific direction to the contrary issued by the Board or the Trustee and communicated to the mortgagor, be payable to the primary mortgage bank and such payment shall be as valid as if the mortgage had not been so transferred; and

(b) the primary mortgage bank shall, in the absence of any specific direction to the contrary issued by the Board or the Trustee and communicated to the primary mortgage bank be entitled to sue on the mortgage or take any other proceedings for the recovery of the moneys due under the mortgage.

Special provisions for mortgages, executed by managers of joint Hindu families, karnavans of Marumakkathayam, Tarwads or Tavazhis or of Nambudri, Illoms, etc.

33. (1) Where a mortgage executed in favour of the Central Mortgage Bank or a primary mortgage bank, either before or after the commencement of this Act, is called in question on the ground that it was executed by the manager of a joint Hindu family or the karnavan of a Marumakkathayam, tarwad or tavazhi or of a Nambudri, Illom, or the manager of a Thiyya or Ezhava family, or the ejaman or ejamanathi of an Aliyasantana family, for a purpose not binding on the members thereof, whether majors or minors, the burden of proving the same shall, notwithstanding any law to the contrary, be on the party raising it.

(2) A mortgage executed in favour of the Central Mortgage Bank or a primary mortgage bank by the manager of a joint Hindu family or the karnavan of a Marumakkathayam, tarwad or tavazhi or of a Nambudri, Illom or the manager of a Thiyya or Ezhava family or the ejaman or ejamanathi of an Aliyasantana family shall be binding on the members thereof, whether majors or minors, if the loan secured by the mortgage was granted for any of the following purposes, namely:—

(*a*) the improvement of agricultural land or of the methods of cultivation; and

(*b*) the purchase of land.

Special provisions for mortgages by tenants.

34. Where a tenant mortgages his holding in favour of a primary mortgage bank, the following provisions shall apply so long as the mortgage subsists, notwithstanding anything to the contrary contained in any law relating to tenancy or in any custom or contract—

(*i*) both before and after granting the loan secured by the mortgage, the primary mortgage bank shall give notice in writing to the landlord of the tenant, and if such landlord is himself the tenant of another landlord, also to that landlord, and likewise to every superior landlord from whom interest in the holding is derived, up to and including the landowner;

(*ii*) every landlord to whom notice is given under clause (*i*) shall give not less than fifteen days' notice in writing to the primary mortgage bank before instituting a suit for bringing the holding of his tenant (whether such tenant be the mortgagor or a superior landlord) to sale for default in payment of rent or michavaram or jenmikaram or for evicting such tenant from the holding;

(*iii*) the tenant who has mortgaged the holding to the primary mortgage bank shall not, except with the previous permission of the Bank, surrender his holding or any part thereof to his landlord or deal with it in any other manner, and no such transaction entered into by the tenant without such permission shall affect in any way the interest of the Bank in the holding;

(*iv*) in a suit for eviction instituted against the tenant who has mortgaged the holding to the primary mortgage bank, the Bank shall, on application to the court in which the suit is instituted, be entitled to be paid out of the amount of compensation, if any, deposited in court under section 5 of the Kerala

Compensation for Tenants Improvements Act, 1958, the moneys due to the Bank under the mortgage;

(*v*) if, on the expiry of the tenancy of the tenant who has mortgaged the holding to the primary mortgage bank, the tenant does not renew the tenancy, the Bank shall be entitled to obtain a renewal of the tenancy on behalf of the tenant and any renewal fee paid by the Bank shall be added to the principal money due under the mortgage;

(*vi*) if the tenant who has mortgaged the holding to the primary mortgage bank makes default in the payment of any rent or michavaram or jenmikaram due to his landlord or the Government, as the case may be, the Bank shall be entitled to pay the same to the landlord or the Government and the amount so paid shall be added to the principal money due under the mortgage.

Explanation.—In so far as the rent or michavaram is payable in kind, the primary mortgage bank shall have the right to pay the value thereof calculated at the rate or rates notified by the Government from time to time in the Gazette;

(*vii*) where the primary mortgage bank pays any renewal fee, rent, michavaram or jenmikaram under clause (*v*) or clause (*vi*), it shall be entitled to regard the whole of the mortgage money as having become payable and, after giving a reasonable opportunity to the tenant to repay the whole of the said money or such portion thereof as may be determined by the Bank, to bring the holding to sale under the provisions of Chapter IV of this Act.

Proof of documents or entries in documents.

35. The Central Mortgage Bank or any primary mortgage bank may grant copies of any document obtained and kept by it in the course of its business or of any entries in such document; and any copy so granted shall, when certified in such manner as may be prescribed, be admissible in evidence for any purpose in the same manner and to the same extent as the original document, or the entries therein, as the case may be.

Chapters III and IV to apply to loans advanced by mortgage banks from funds not borrowed from the Central Mortgage Bank.

36. The provisions of Chapters III and IV shall apply also to loans advanced by primary mortgage banks from funds which have not been borrowed from the Central Mortgage Bank and loans taken over by the Central Mortgage Bank from the Travancore Credit Bank.

Service of notice under the Act.

37. Whenever under the provisions of this Act, notice is required to be given to any person in writing, it shall be sufficient to send such notice by registered post.

Sections 102, 103 and rules under section 104 of the Transfer of Property Act, 1882, to apply to such notices.

4 of 1882.

38. The provisions of sections 102 and 103 of the Transfer of Property Act, 1882, and of any rules made by the High Court under section 104 of that Act, for carrying out the purposes of the said sections, shall apply, so far as may be, in respect of all notices to be served under this Act.

Officers of the Bank not to bid at sales.

39. At any sale of movable or immovable property held under the provisions of this Act in order to recover any money due to the Central Mortgage Bank or any primary mortgage bank, no Director, Secretary or other officer of the Central Mortgage Bank or such primary mortgage bank, as the case may be (except on behalf of the bank of which he is a Director, Secretary or other officer), and no sale officer or other person having any duty to perform in connection with such sale, shall either directly or indirectly bid for or acquire or attempt to acquire any interest in such property.

Delegation of powers by Board.

40. The Board may, if it thinks fit, delegate all or any of its powers under sections 12, 19 and 25 to any executive committee constituted by it and consisting of two or more of its members.

Starting of branch banks.

41. The Board may, from time to time, with the previous sanction of the Registrar, start branches of the Central Mortgage Bank at such convenient centres as may be decided upon and carry on operations through them.

Powers of Board to make regulations.

42. Notwithstanding anything contained in the Travancore-Cochin Co-operative Societies Act, 1951, or the Madras Co-operative Societies Act, 1932 or the rules made under the said Acts, the Board shall have general power of supervision over the primary mortgage banks and may make regulations not inconsistent with this Act or the rules made thereunder—

(*a*) for the inspection of the account books and proceedings of primary mortgage banks;

(*b*) for the submission of returns and reports by primary mortgage banks in respect of their transactions;

(*c*) for the periodical settlement of accounts between primary mortgage banks and the Central Mortgage Bank and for the payment of the amounts recovered by primary mortgage banks on mortgages transferred, or deemed under the provisions of section 23 to have been transferred, to the Central Mortgage Bank;

(*d*) prescribing the form in which applications to primary mortgage banks for loans should be made and for the valuation of the properties offered as security for such loans;

(*e*) for the investment of moneys realised from the mortgagors; and

(*f*) generally for the purpose of safeguarding the interests of the parties concerned and for carrying out the purposes of this Act.

Certain rights and liabilities of the Cochin Co-operative Land Mortgage Bank to continue in that Bank.

43. Notwithstanding anything contained in this Act, all assets, rights and liabilities of the Cochin Co-operative Land Mortgage Bank, Limited, subsisting at the commencement of this Act shall continue to be the assets, rights and liabilities of the said Bank and the provisions of the Cochin Co-operative Land Mortgage Bank Act, XXV of 1111, shall apply with respect to such assets, rights and liabilities.

Repeals.

44. The Madras Co-operative Land Mortgage Banks Act, 1934, as in force in Malabar and, subject to the provisions of section 43, the Cochin-Co-operative Land Mortgage Bank Act, XXV of 1111, are hereby repealed.

RAJENDRA PRASAD,
President.

G. R. RAJAGOPAUL, Secy.

Reasons for the enactment

The law to facilitate the working of co-operative land mortgage banks in the Malabar area of the State is contained in the Madras Co-operative Land Mortgage Banks Act, 1934. The Cochin Co-operative Land Mortgage Bank, which is functioning in the Cochin area of the State, is governed by the Cochin Co-operative Land Mortgage Bank Act, XXV of 1111. In the Travancore area of the State there was no co-operative agency in respect of long-term credit. The Travancore Credit Bank, a joint-stock bank governed by the Travancore Credit Bank Act, IV of 1113, which was functioning in that area is now under liquidation and a bank called the Kerala Co-operative Central Land Mortgage Bank was registered for serving the long-term credit requirements of the whole of the State of Kerala. The intention is that the Kerala Co-operative Central Land Mortgage Bank should be the central financing agency and the land mortgage banks in Malabar as well as the Cochin Co-operative Land Mortgage Bank should be primary mortgage banks.

2. It was considered necessary to enact a uniform law to facilitate the working of the Central Mortgage Bank and the primary mortgage banks. A Bill was accordingly prepared and introduced in the Kerala Legislative Assembly but it could not be proceeded with further. As it has become necessary for the Central Land Mortgage Bank to issue debentures at a very early date, the measure has to be enacted as a President's Act.

3. The Committee constituted under the proviso to sub-section (2) of section 3 of the Kerala State Legislature (Delegation of Powers) Act, 1959 (50 of 1959), has approved the enactment of this measure.

HARI SHARMA,
Addl. Secy. to the Government of India,
Ministry of Home Affairs.

THE KERALA WAREHOUSES ACT, 1960

No. 2 OF 1960

Enacted by the President in the Tenth Year of the Republic of India.

An Act to provide for the regulation and licensing of warehouses in the State of Kerala.

In exercise of the powers conferred by section 3 of the Kerala 50 of 1959. State Legislature (Delegation of Powers) Act, 1959, the President is pleased to enact as follows:—

CHAPTER I

PRELIMINARY

Short title, extent and commencement.

1. (1) This Act may be called the Kerala Warehouses Act, 1960.

(2) It extends to the whole of the State of Kerala.

(3) It shall come into force on such date as the Government may, by notification in the Gazette, appoint.

Definitions.

2. In this Act, unless the context otherwise requires,—

(a) "co-operative society" means a society registered or deemed to be registered under the Travancore-Cochin Co-operative Societies Act, 1951, or the Madras Co-operative Societies Act, 1932, which is engaged in any of the activities specified in sub-section (1) of section 9 of the Agricultural Produce (Development and Warehousing) Corporations Act, 1956; 28 of 1956.

(b) "depositor" means a person who tenders his goods to the warehouseman for storing in his warehouse, and includes

any person who lawfully holds the receipt issued by the warehouseman in respect of such goods and derives title thereto by a proper endorsement or transfer thereof to him by the depositor or the depositor's lawful transferee;

(*c*) "goods" means any of the articles specified in the Schedule;

(*d*) "licensed warehouse" means a warehouse licensed under this Act;

(*e*) "prescribed" means prescribed by rules made under this Act;

(*f*) "prescribed authority" means, in relation to any provision of this Act, the authority prescribed to carry out such provision;

(*g*) "receipt" means a receipt in the prescribed form issued by a warehouseman to a person depositing goods in the warehouse;

(*h*) "rules" means rules made by the Government under this Act;

(*i*) "warehouse" means any building, structure or other protected enclosure which is or may be used for the purpose of storing goods on behalf of depositors, but does not include cloak rooms attached to hotels, railway stations, the premises of other public carriers, and the like;

(*j*) "warehouseman" means a person who has obtained a licence under this Act in respect of his warehouse.

CHAPTER II

LICENSING OF WAREHOUSES

Warehouseman.

3. No person shall carry on the business of a warehouseman except under a licence granted under this Act and in accordance with such terms and conditions as may, from time to time, be prescribed.

Grant of licence.

4. (*1*) Application for a licence shall be made in the prescribed form to the prescribed authority.

(*2*) The prescribed authority may, on receiving such application and on payment of such fees as may be prescribed, grant a licence.

Conditions for licence.

5. Before granting a licence, the prescribed authority shall satisfy itself—

(*a*) that the warehouse is suitable for proper storage of the class or classes of goods in respect of which the licence has been applied for;

(*b*) that the applicant is competent to conduct such a warehouse;

(*c*) that the applicant has paid the fee prescribed for the licence and has also furnished the prescribed security, if any, provided that where the applicant is a corporation established under the Agricultural Produce (Development and Warehousing) Corporations Act, 1956, no security need be furnished; and

28 of 1956.

(*d*) that there is no other cause or reason for which the applicant is, in the opinion of the prescribed authority, disqualified.

Term and renewal of licence.

6. Every licence granted under section 4 shall be valid for the prescribed period, and may, on application and payment of the prescribed fee, be renewed from time to time by the prescribed authority and for the prescribed period, provided the other conditions referred to in section 5 continue to be fulfilled.

Notice of refusal to grant or renew licence.

7. If the prescribed authority refuses to grant or renew a licence under the foregoing provisions, it shall record its reasons for such refusal in writing and forward a copy of its order to the applicant.

Suspension or cancellation of licence.

8. (*1*) Every licence granted under section 4 or renewed under section 6 may be suspended or cancelled by the prescribed authority—

(*i*) if in its opinion the licensee—

(*a*) has applied to be adjudicated, or been adjudicated, an insolvent; or

(*b*) has parted, in whole or in part, with his control over the warehouse; or

(*c*) has ceased to conduct such warehouse; or

(*d*) has made unreasonable charges for the services rendered by him; or

(*e*) has in any other manner become incompetent to conduct such warehouse; or

(*f*) has contravened, or failed to comply with, any of the terms and conditions of the licence or any of the provisions of this Act or the rules; or

(*ii*) on any other prescribed ground.

(2) If a licence is suspended or cancelled, the prescribed authority shall make an entry to that effect in the licence.

(3) Whenever a licence is suspended or cancelled under this section, it shall be competent for the prescribed authority to order also a forfeiture of the security, if any, furnished by the warehouseman.

Notice before suspension or cancellation of licence.

9. (1) Before issuing an order of suspension, cancellation or forfeiture of security under section 8, the prescribed authority shall give notice to the warehouseman stating the grounds on which it is proposed to do so and calling upon him to show cause why such action should not be taken.

(2) After considering the explanation, if any, of the warehouseman, the prescribed authority may pass such orders as it deems just.

(3) Notwithstanding anything contained in sub-sections (1) and (2), the prescribed authority may, if it is satisfied that it is necessary in the public interest to take immediate action, without giving the notice referred to in sub-section (1) and considering the explanation of the warehouseman, suspend a licence pending decision as to the action to be taken under sub-sections (1) and (2).

Return of licence.

10. When a licence expires, or is suspended or cancelled, the warehouseman shall cease to work as such and shall return the licence to the prescribed authority, who shall give reasonable time to the warehouseman to enable him to wind up the business.

Duplicate licence.

11. (1) Where a licence granted to a warehouseman is lost, destroyed or torn or defaced or otherwise becomes illegible, the prescribed authority shall issue a duplicate licence in the manner prescribed on the application of the warehouseman and on payment of the prescribed fee.

(2) When a duplicate licence is issued, it shall be clearly stamped "Duplicate" and shall be marked with the date of issue of the duplicate and that of the original from the record of the office issuing the licence.

CHAPTER III

DUTIES OF A WAREHOUSEMAN

Reasonable care of the goods deposited.

12. Every warehouseman shall take such care of the goods deposited with him as a man of ordinary prudence would take of his own goods under similar circumstances and conditions.

Precautions against damage or injury to goods.

13. (*1*) Every warehouseman shall keep his warehouse clean and free from damp, take all necessary precautions against rats and other pests, and fulfil such other conditions as may be prescribed.

(*2*) No warehouseman shall accept goods for deposit which are likely to cause damage to other goods which are, or may be, deposited, in the warehouse.

Preservation of identity of goods.

14. Every warehouseman shall keep the goods of one depositor separate from the goods of other depositors and from other goods of the same depositor for which a separate receipt has been issued, in such a manner as to permit at all times of the identification and delivery of the goods deposited:

Provided that where standardised and graded goods are stored in a warehouse, then, subject to any agreement between the warehouseman and a depositor, the same variety of goods belonging to different depositors may be pooled together and each depositor shall be entitled only to his portion of the goods according to weight or quantity, as the case may be, as shown in his receipt.

Warehouseman to allow facilities for the depositor to inspect.

15. Every warehouseman shall allow necessary facilities for the depositor to inspect and satisfy himself that his goods are properly cared for.

Goods deteriorating in warehouse and their disposal.

16. (*1*) Whenever goods deposited in a warehouse deteriorate, or are about to deteriorate from causes beyond the control of the warehouseman, he shall forthwith give notice of such deterioration by registered post to the depositor, requiring him to take delivery of the goods immediately, after surrendering the receipt duly discharged and paying all charges due to the warehouseman.

Explanation.—Loss of weight or bulk by shrinkage or dryage or gain of weight or bulk by absorption of moisture shall be deemed to amount to deterioration within the meaning of this sub-section if the loss or gain exceeds such limits as may be prescribed.

(*2*) If the depositor does not, within a reasonable time, comply with a notice given to him under sub-section (*1*), the warehouseman may cause the goods to be removed from the warehouse and sold by public auction at the cost and risk of the depositor.

(*3*) Any person having an interest in any goods deposited in a warehouse or in the receipt for such goods may inform the warehouseman in writing of the fact and nature of his interest and the warehouseman shall keep a record thereof; and if such person requests in writing that intimation be given to him regarding the condition of the goods and agrees to pay the charges for giving such intimation, the warehouseman shall give him intimation accordingly.

Delivery of goods.

17. (*1*) Every warehouseman, in the absence of reasonable excuse, shall, without unnecessary delay, deliver the goods deposited in his warehouse to the depositor on demand made by him and on surrender of the receipt duly discharged and on payment of all charges due to the warehouseman.

(*2*) Subject to any agreement between the warehouseman and the depositor, the depositor may take partial delivery of the goods deposited in a warehouse.

Liability of warehouseman for shortage or excess in goods stored.

18. (*1*) If there is any excess in the goods stored in a warehouse by absorption of moisture or other causes, the warehouseman shall not be entitled thereto.

(*2*) If there is any shortage in the goods stored in a warehouse by dryage or other causes, beyond the control of the warehouseman, the warehouseman shall not be responsible therefor.

(*3*) In the event of a dispute arising as to whether such shortage or excess is due to dryage or absorption of moisture or is due to other causes beyond the control of the warehouseman, the matter shall be determined by arbitration.

Insurance of goods in warehouses.

19. (*1*) Every warehouseman shall insure the goods stored in his warehouse against such risks and in such manner as may be prescribed:

Provided that a depositor may at his own cost insure his goods against other risks.

(*2*) Every warehouseman shall be entitled to recover from the depositor, at the rate prescribed, the charges for insurance in respect of the depositor's goods before delivery thereof.

Discrimination prohibited.

20. No warehouseman shall, in the conduct of his business, discriminate between persons desiring to avail themselves of the facilities of his warehouse:

Provided that the warehouseman shall show such preference to co-operative societies in the State of Kerala and allow them such concessional rates as may be prescribed.

Warehouseman not to deal in or lend against goods in warehouse.

21. Notwithstanding anything contained in any other law, no warehouseman other than a co-operative society, shall, either on its own account or that of others, deal in, or lend money on, goods received by him for deposit in his warehouse.

Accounts, etc., to be maintained.

22. A warehouseman shall maintain accounts, books and records in such form and manner as may be prescribed.

CHAPTER IV

INSPECTION AND GRADING OF GOODS

Inspection.

23. The prescribed authority may, at any time during business hours, inspect or examine or cause to be inspected or examined, any licensed warehouse, its machinery and equipment, goods deposited therein, and the accounts, books and records relating thereto, for the purpose of satisfying itself that the requirements of this Act and the rules are being complied with.

Weighers, samplers and graders to obtain licences.

24. (*1*) The prescribed authority may, on application made in the prescribed manner and on payment of the prescribed fee, issue licences to persons possessing the prescribed qualifications, entitling them to act as weighers, samplers, or graders of any goods, deposited or to be deposited in a licensed warehouse, and to issue certificates as to the weight, bulk, quality or grade of the goods which they have examined.

(*2*) Any certificate so issued shall, subject to the provisions of section 25 and to any order passed on a complaint preferred by either of them to the Board of Arbitrators, be binding on the warehouseman and the depositor, as to the weight, bulk, quality or grade of the goods so certified.

(*3*) Any complaint against weighers, samplers, graders or warehousemen relating to weight, quality or grade of the goods deposited in the warehouse shall be determined by arbitration.

(*4*) No person who is not licensed under this section shall act or hold himself out as a weigher, sampler or grader.

Provisions regarding such licences.

25. (*1*) Every licence granted to a weigher, sampler, or grader under section 24 shall be valid for the prescribed period and may, on application, and payment of the prescribed fee, be renewed from time to time for the prescribed period by the prescribed authority.

(*2*) The prescribed authority may cancel any such licence, after communicating to the licensee the grounds on which it is proposed to take action and giving him a reasonable opportunity of showing cause against it.

(*3*) Notwithstanding anything contained in sub-section (*2*), the prescribed authority may, at any time, suspend any such licence without such notice pending any action under the said sub-section.

(*4*) The holder of any such licence shall, on the expiry thereof or the receipt of an order suspending or cancelling it, return the licence to the prescribed authority.

Facilities to be given for weighing goods, etc.

26. Every warehouseman shall provide facilities for weighing, sampling and grading any goods deposited in his warehouse.

CHAPTER V

WAREHOUSE RECEIPTS

Receipt to be issued.

27. For the goods deposited in his warehouse by each depositor, the warehouseman shall issue a receipt which shall contain full particulars of the goods and shall be in the prescribed form.

Receipts for deposits in warehouses.

28. The receipt issued by a warehouseman shall, unless it is otherwise specified thereon, be transferable by endorsement and shall entitle the lawful holder thereof to receive the goods specified in it on the same terms and conditions as the original depositor.

Duplicate receipt.

29. If a receipt is lost, destroyed or damaged, the warehouseman shall, on application by the depositor and on payment by him of the prescribed fee, issue a duplicate receipt on such conditions as he may think fit to impose, being conditions included in rules prescribed for the purpose.

CHAPTER VI

MISCELLANEOUS

Appeals against certain orders of prescribed authority.

30. (*1*) An appeal against any order of the prescribed authority refusing to grant or renew a licence or suspending or cancelling any licence or forfeiting the security, if any, furnished by a warehouseman shall be made to such authority and within such time as may be prescribed.

(*2*) The decision of such appellate authority shall be final.

Arbitration.

31. Where under this Act any matter is required to be determined by arbitration, the matter shall be determined by a board of arbitrators consisting of three members of whom one each shall be nominated by the two parties concerned and the third by the Government or such other authority as may be empowered in this behalf by the Government. In all other respects, the arbitration shall be subject to the provisions of the Arbitration Act, 1940. 10 of 1940.

No compensation for suspension or cancellation of licence.

32. Where any licence is suspended or cancelled under this Act, the licencee shall not be entitled to any compensation therefor nor shall he be entitled to the refund of any fee paid by him for the licence.

Government may help to start warehouses.

33. The Government may offer any aid to the establishment of warehouses under this Act, by way of grant or lease of land, or of subsidy towards the cost of construction or by guarantee of a reasonable return on the capital invested, or in any other manner, and on such terms and conditions as may appear to the Government suitable in the circumstances of any particular case.

Contracts and agreements inconsistent with Act to be void.

34. Every contract or agreement which is inconsistent with the provisions of this Act, or the rules shall, to the extent of such inconsistency, be void.

Penalty and procedure.

35. Whoever—

(*a*) acts, or holds himself out, as a licensed warehouseman without having obtained a licence under this Act, or

(*b*) knowingly contravenes or fails to comply with any of the provisions or requirements of this Act or the rules,

shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

Offences by companies.

36. (*1*) If the person committing an offence under section 35 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(*2*) Notwithstanding anything contained in sub-section (*1*), where an offence under section 35 has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(*a*) "company" means any body corporate, and includes a firm or other association of individuals; and

(*b*) "director", in relation to a firm, means a partner in the firm.

Power to amend Schedule.

37. (*1*) The Government may, by notification in the Gazette, amend the Schedule by adding any article to, or omitting any article from, the Schedule.

(*2*) All references in this Act to the Schedule shall be construed as referring to such Schedule as for the time being amended in exercise of the powers conferred by sub-section (*1*).

Rules.

38. (1) The Government may, by notification in the Gazette, make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the matters expressly required or allowed by this Act to be prescribed;

(b) the conditions to be inserted in licences to be granted to warehousemen and the form of such licences;

(c) the publication of the grant, suspension or cancellation of licences to warehousemen and of consolidated lists of warehousemen and licensed warehouses;

(d) the charges to be levied by warehousemen for their services;

(e) the books, accounts and records to be maintained by warehousemen;

(f) the conduct of public auctions for the sale of goods deteriorating or about to deteriorate in licensed warehouses and the manner in which the proceeds of such sales shall be accounted for;

(g) the scales of losses and gains of weight or bulk which may be sustained by goods owing to shrinkage or dryage in the one case and owing to absorption of moisture in the other;

(h) the disinfection of licensed warehouses and the disinfestation of goods stored therein;

(i) the manner in which any sum falling due as a result of forfeiture of security may be recovered;

(j) the efficient conduct generally of the business of warehousemen;

(k) the qualifications to be possessed by persons applying for the grant of licences as weighers, samplers or graders; the conditions to be inserted in their licences; the form of the certificates to be issued by them and the grounds for which the licences may be suspended or cancelled;

(l) the establishment and conduct of warehouses by co-operative societies;

(m) the standard weights, measures and gradations of goods to be used in licensed warehouses;

(n) the authority to which and the time within which an appeal under section 30 should be made; and

(o) the manner of giving notices under this Act.

(3) The power to make rules under this section shall be subject to the condition of previous publication.

(4) All rules made under this section shall be laid for not less than seven days before the Legislative Assembly as soon as possible after they are made and shall be subject to such modifications as the Legislative Assembly may make during the session in which they are so laid or the session immediately following.

Power to exempt.

39. The Government may, by notification in the Gazette, for reasons to be recorded, exempt any person or class of persons from all or any of the provisions of this Act.

Act not to apply to certain warehouses

40. Nothing contained in this Act shall apply to any warehouse established or licensed under the provisions of the Sea Customs Act, 1878, the Inland Bonded Warehouses Act, 1896, the Central Excises and Salt Act, 1944 or the rules made thereunder.

8 of 1878.
8 of 1896.
1 of 1944.

Repeals.

41. The Travancore Warehouse Act, 1121, and the Madras Warehouses Act, 1951, as in force in the Malabar district referred to in sub-section (2) of section 5 of the States Reorganisation Act, 1956, are hereby repealed.

37 of 1956.

THE SCHEDULE

[*See* section 2(c)]

GOODS TO WHICH THE ACT APPLIES

(1) (a) Paddy and rice.
(b) Wheat and wheat flour.
(c) Cholam and ragi.
(d) Bengal gram, red gram and black gram and pulses of these grams.
(e) Other food-stuffs such as tapioca.

(2) (a) Oil seeds including ground nut and copra.
(b) Coconuts.

(3) Ground nut oil, lemon grass oil, coconut oil and other vegetable and aromatic oils.

(4) Fibres including cotton, palm fibres and coir and coir products.

(5) Coffee seeds, coffee powder.

(6) Tea, rubber.

(7) Arecanuts and cashewnuts.

(8) (a) Jaggery (Sugar-cane and Palmgur)
(b) Sugar.

(9) Spices and condiments including pepper cardamom, ginger, chillies, turmeric, sezamme, coriander, onions, garlic and tamarind.

(10) Potatoes.

(11) Lemon grass.

(12) Tobacco.

RAJENDRA PRASAD,

President.

G. R. RAJAGOPAUL, Secy.

Reasons for the enactment

The law relating to warehouses in the State of Kerala is contained in the Travancore Warehouse Act, 1121, and the Madras Warehouses Act, 1951. The former Act is in force in the Travancore portion, and the latter in the Malabar portion, of the State. There is no such law in force in the remaining part of the State.

2. It was considered necessary to have a uniform law applicable to the whole State in the place of the existing enactments. A Bill was introduced in the Kerala Legislative Assembly. But since the Legislative Assembly was dissolved by the President's Proclamation dated 31st July, 1959, the Bill could not be proceeded with.

3. The Kerala State Warehousing Corporation came into existence on 20th February, 1959. According to its programme of activities three warehouses are proposed to be set up in the immediate future and another six warehouses before the expiry of the Second Plan period. In the absence of a Warehouses Act, the full benefits arising out of warehousing operations cannot be reaped by the depositors of goods in warehouses. If the warehouse receipt is to be accepted as a valid instrument for the purpose of issuing advances by bankers, special provisions therefor will have to be made. In view of the urgency and importance attached to this programme in the Second Five Year Plan Schemes, it is considered necessary to enact this measure as a President's Act.

4. The Committee constituted under the proviso to sub-section (2) of section 3 of the Kerala State Legislature (Delegation of Powers) Act, 1959 (50 of 1959), has approved the enactment of this measure.

HARI SHARMA,

Addl. Secy. to the Government of India,
Ministry of Home Affairs.

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