

## **BANKING REGULATION ACT, 1949**

**10 of 1949**

**[10th March, 1949]**

### CONTENTS

#### **PART 1 :- PRELIMINARY**

1. Short title, extent and commencement
2. Application of other laws not barred
3. Act to apply to co-operative societies in certain cases
4. Power to suspend operation of Act
5. Interpretation
- 5A. Act to override memorandum, articles, etc

#### **PART 2 :- BUSINESS OF BANKING COMPANIES**

6. Forms of business in which banking companies may engage
7. Use of words "bank", "banker", "banking" or "banking company."
8. Prohibition of trading
9. Disposal of non-banking assets
10. Prohibition of employment of employment agents and restrictions on certain forms of employment
- 10A. Board of directors to include persons with professional or other experience
- 10B. Banking company to be managed by whole-time chairman
- 10BB. Power of Reserve Bank to appoint 15[Chairman of the Board of Directors appointed on a whole-time basis or a Managing Director] of a banking company
- 10C. Chairman and certain directors not to be required to hold qualification shares
- 10D. Provisions of sections 10A and 10B to override all other laws, contracts, etc
11. Requirement as to minimum paid-up capital and reserves
12. Regulation of paid-up capital, subscribed capital and authorised capital and voting rights of shareholders
- 12A. Election of new directors
13. Restriction on commission, brokerage, discount, etc., on sale of shares
14. Prohibition of charge on unpaid capital
- 14A. Prohibition of floating charge on assets
15. Restrictions as to payment of dividend
16. Prohibition of common directors
17. Reserve Fund

18. Cash reserve
19. Restriction on nature of subsidiary companies
20. Restrictions on loans and advances
- 20A. Restrictions on power to remit debts
21. Power of Reserve Bank to control advances by banking companies
- 21A. Rates of interest charged by banking companies not to be subject to scrutiny by courts
22. Licensing of banking company
23. Restrictions on opening of new. and transfer of existing, places of business
24. Maintenance of a percentage of assets
25. Assets in India
26. Return of unclaimed deposits
27. Monthly returns 114 power to call for other returns and information
28. Power to publish information
29. Accounts and balance sheet
30. Audit
31. Submission of returns
32. Copies of balance sheets and accounts to be sent to Registrar
33. Display of audited balance sheet by companies incorporated outside India
34. Accounting provisions of this Act not retrospective
- 34A. Production of documents of confidential nature
35. Inspection
- 35A. Power of the Reserve Bank to give directions
- 35B. Amendment of provisions relating to appointments of managing directors, etc., to be subject to previous approval of the Reserve Bank
36. Further powers and functions of Reserve Bank
- 36A. Certain provisions of the Act not to apply to certain banking companies

## **PART 2A :- CONTROL OVER MANAGEMENT**

- 36AA. Power of Reserve Bank to remove managerial and other persons from office
- 36AB. Power of Reserve Bank to appoint additional directors
- 36AC. Part IIA to override other laws

## **PART 2B :- PROHIBITION OF CERTAIN ACTIVITIES IN RELATION TO BANKING COMPANIES**

- 36AD. Punishment for certain activities in relation to banking companies

## **PART 2C :- ACQUISITION OF THE UNDERTAKINGS OF BANKING COMPANIES IN CERTAIN CASES**

- 36AE. Power of Central Government to acquire undertakings of

banking companies in certain cases

36AF. Power of the Central Government to make scheme.-

36AG. Compensation to be given to shareholders of the acquired bank

36AH. Constitution of the Tribunal

36AI. Tribunal to have powers of a civil Court

36AJ. Procedure of the Tribunal

### **PART 3 :- SUSPENSION OF BUSINESS AND WINDING UP OF BANKING COMPANIES**

36B. High Court defined

37. Suspension of business

38. Winding up by High Court

38A. Court liquidator

39. Reserve Bank to be official liquidator

39A. Application of Companies Act to liquidators

40. Stay of proceedings

41. Preliminary report by official liquidator

41A. Notice to preferential claimants and secured and unsecured creditors

42. Power to dispense with meeting of creditors, etc

43. Booked depositors credits to be deemed proved

43A. Preferential payments to depositors

44. Powers of High Court in voluntary winding up

44A. Procedure for amalgamation of banking companies

44B. Restriction on compromise or arrangement between banking company and creditors

45. Power of Reserve Bank to apply to Central Government for suspension of business of a banking company and to prepare scheme of reconstitution or amalgamation

### **PART 3A :- SPECIAL PROVISIONS FOR SPEEDY DISPOSAL OF WINDING UP PROCEEDINGS**

45A. Part III-A to override other laws

45B. Power of High Court to decide all claims in respect of banking companies

45C. Transfer of pending proceedings

45D. Settlement of list of debtors

45E. Special provisions to make calls on contributories

45F. Documents of banking to be evidence

45G. Public examination of directors and auditors

45H. Special provisions for assessing damages against delinquent directors, etc

45I. Duty of directors and officers of banking company to assist in the realisation of property

45J. Special provisions for punishing offences in relation to banking companies being wound up

45K. Power of High Court to enforce scheme of arrangements etc

- 45L. Public examination of directors and auditors, etc., in respect of a banking company under schemes of arrangement
- 45M. Special provisions for banking companies working under schemes of arrangement at the commencement of the Amendment Act
- 45N. Appeals
- 45O. Special period of limitation
- 45P. Reserve Bank to tender advice in winding up proceedings
- 45Q. Power to inspect
- 45R. Power to call for returns and information
- 45S. Chief Presidency Magistrate and District Magistrate to assist official liquidator in taking charge of property of banking company being wound up
- 45T. Enforcement of orders and decisions of High Court
- 45U. Power of High Court to make rules
- 45V. References to directors, etc., shall be construed as including references to past directors, etc
- 45W. Part II not to apply to banking companies being wound up
- 45X. Validation of certain proceedings

### **PART 3B :- PROVISIONS RELATING TO CERTAIN OPERATIONS OF BANKING COMPANIES**

- 45Y. Power of Central Government to make rules for the preservation of records
- 45Z. Return of paid instruments to customers
- 45ZA. Nomination for payment of depositors money
- 45ZB. Notice of claims of other persons regarding deposits not receivable
- 45ZC. Nomination for return of articles kept in safe custody with a banking company
- 45ZD. Notice of claims of other persons regarding articles not receivable
- 45ZE. Release of contents of safety lockers
- 45ZF. Notice of claims of other persons regarding safety lockers not receivable

### **PART 4 :- MISCELLANEOUS**

46. Penalties
- 46A. Chairman, director, etc., to be public servants for the purposes of Chapter LX of the Indian Penal Code
47. Cognizance of offences
- 47A. Power of Reserve Bank to impose penalty
48. Application of fines
49. Special provisions for private banking companies
- 49A. Restriction on acceptance of deposits withdrawable by cheque
- 49B. Change of name by a banking company
- 49C. Alteration of memorandum of a banking company
50. Certain claims for compensation barred
51. Application of certain provisions to the State Bank of India and

other notified banks

52. Power of Central Government to make rules

53. Power to exempt in certain cases

54. Protection of action taken under Act

55. Amendment of Act II of 1934

55A. Power to remove difficulties

**PART 5 :- APPLICATION OF THE ACT TO CO-OPERATIVE BANKS**

56. Act to apply to co-operative societies subject to modifications

**SCHEDULE 1 :- SCHEDULE**

**SCHEDULE 2 :- THE SCHEDULE**

**SCHEDULE 3 :- THE SCHEDULE**

**SCHEDULE 4 :- THE SCHEDULE**

**SCHEDULE 5 :- THE SCHEDULE**

**SCHEDULE 6 :- THE SCHEDULE**

**BANKING REGULATION ACT, 1949**

**10 of 1949**

**[10th March, 1949]**

"The provisions of law relating to banking companies at present form a subsidiary portion of the general law applicable to companies and are contained in Part XA of the Indian Companies Act, 1913. These provisions, which were first introduced in 1936, and which have undergone two subsequent modifications, have proved inadequate and difficult to administer. Moreover while the primary objective of Companies Law is to safeguard the interests of the stock-holder, that of banking legislation should be the protection of the interests of the depositor. It has therefore been felt for some time that separate legislation was necessary for the regulation of banking in India. This need has become the more insistent on account of the considerable development that has taken place in recent years in banking, especially the rapid growth of banking resources and of the number of banks and branches. Regard must also be had to the fact that the banking system is likely in the post-war period to be more vulnerable by reason of the great expansion, both quantitatively and relatively, that has taken place in demand deposits, as compared with time deposits, during the war years. The enactment of a separate comprehensive

measure has in consequence now become imperative. 2. With this object in view, a Bill to amend the law relating to Banking Companies was introduced in the Legislative Assembly in November, 1944 and was subsequently circulated for eliciting public opinion through the Provincial Governments, In the ensuing Budget Session of the Assembly the Bill was referred to a Select Committee which was due to meet in October, 1945. but it lapsed before its consideration by the Committee. A fresh Bill with certain modifications which suggested themselves on consideration of the opinions and criticisms received on the 1944 Bill was introduced in the Legislative Assembly in March 1946 and was referred to a Select Committee in April 1946. The report of the Select Committee was presented to the Assembly on the 17th February 1947. As it was the original intention of the Government that the Bill should be taken up for disposal by the Constituent Assembly (Legislative) in the form in which it emerged from the Select Committee and that the changes necessitated in the Bill as a result of the passing of the Indian Independence Act, 1947, and other developments should be moved in the House as separate amendments, a motion for the continuation of that Bill was adopted on the 17th November 1947. In view however of a fairly large number of amendments, Government considered that the passage of the measure would be facilitated if the Bill as reported upon by the Select Committee were withdrawn and a fresh Bill incorporating all the amendments were introduced and referred to a Select Committee. The Bill was accordingly withdrawn on the 30th January 1948. The present Bill is the result of long and detailed consideration, by expert Committees, the Reserve Bank, the public including the representatives of banks, the Government and the Legislature. The main features of the Bill are as follows:- (i) A comprehensive definition of 'banking' so as to bring within the scope of the legislation all institutions which receive deposits, repayable on demand or otherwise, for lending or investment: (ii) Prohibiting non-banking companies from accepting deposits repayable on demand: (iii) Prohibition of trading with a view to eliminating non-banking risks. (iv) Prescription of minimum capital standards: (v) Limiting the payment of dividends; (vi) Inclusion in the scope of the legislation of banks incorporated or registered outside the Provinces of India: (vii) Introduction of a comprehensive system of licensing of banks and their branches: (viii) Prescription of a special form of balance sheet and conferring of powers on the Reserve Bank to call for periodical returns. (ix) Inspection of the books and

accounts of a bank by the Reserve Bank: (x) Empowering the Central Government to take action against banks conducting their affairs in a manner detrimental to the interests of the depositors; (xi) Provision for bringing the Reserve Bank of India into closer touch with banking companies: (xii) Provision of an expeditious procedure for liquidation. (xiii) Bringing the Imperial Bank of India, within the purview of some of the provisions of the Bill: (xiv) Widening the powers of the Reserve Bank of India so as to enable it to come to the aid of banking companies in times of emergency: (xv) Provision for the extension of the Act to acceding States. Brief explanatory notes on the several clauses are given in the annexed notes on clauses." Gaz. of Ind. 1948. Pt. V. page 311. Act 20 of 1950.-The Banking Companies (Amendment) Ordinance. 1949. was promulgated on 19-9-1949. This Act now incorporates the provisions contained therein in the Banking Companies Act. 1949 as a permanent basis, in addition. this Act also amends the said Act for the following purposes :- (a) to incorporate special provisions for facilitating quick amalgamations between banking companies: (b) to empower the Reserve Bank to control opening of branches by Indian banks in foreign countries: (c) to provide a meaning of the terms "assets in India" for the purpose of section 25.-Gaz. of Ind.. 24-12-1949. Pt. V. p:501. Act 52 of 1953.- The Banking Companies Act. 1949 (X of 1949) was passed to ensure proper administration of the banking companies in India. The liquidation of banks, however, continued to be governed by the provisions of the Indian Companies Act, 1913. Experience of the liquidation of a large number of banks that failed during the post-war and post-partition period disclosed that the procedure for the liquidation of joint stock companies was totally inadequate for the liquidation of banking companies in a manner satisfactory to the depositors. A bank has a far larger number of debtors than a joint stock company of a comparable size, and the necessity to pursue legal proceedings against each debtor, quite frequently in different courts, involves considerable expenditure and immense delay. In order to remove such difficulties. the Banking Companies Act was amended in 1950. The law thus amended, however, did not go far enough and complaints continued to be received about the distress of the depositors. A committee was. therefore, appointed in July, 1950 to examine the difficulties and defects in the existing liquidation procedure and to recommend changes in law. procedure and machinery, in order to facilitate the speedy disposal of proceedings in liquidation. The Committee submitted its report in December.

1952 and the report disclosed that 321 banks were under liquidation under the various courts dating from 1926. with outside liabilities of about Rs. 30 crores and that the procedure for winding up of banking companies is cumbersome, prolonged and expensive. The Committee has recommended certain administrative as well as legislative measures for simplifying the procedure and expediting the proceedings. The Reserve Bank, the State Governments and the various High Courts were consulted on the recommendations of the Committee and the present Bill is based on the recommendations of the Committee and the suggestions of the authorities consulted. The recommendations of the Committee requiring administrative action are being implemented. It was the intention of the Government to give effect to the recommendations requiring legislation simultaneously, but on account of the pre-occupation of Parliament with other urgent legislative measures during the last session, it was not found possible to have the Bill enacted during that session. Meanwhile, certain data recently collected about 82 banks in liquidation in West Bengal showed that while the expenses of liquidation amounted to Rs. 39-81 lakhs, the moneys returned to the depositors totalled to only Rs. 17.64 lakhs of which Rs. 15.61 lakhs were paid by one single bank. The publication of the Committee's report has evoked hopes in the minds of a large number of distressed depositors that implementation would soon follow and numerous requests were being received urging immediate action. It was also not possible to implement some of the administrative measures without an amendment of the Act. As the circumstances required immediate action, an Ordinance was promulgated on the 24th October, 1953. The Banking Companies (Amendment) Ordinance, 1953 (4 of 1953). The present Bill seeks to replace the Ordinance by an Act of Parliament and the notes on clauses appended to the Bill explain the provisions thereof.-Gaz. of Ind., 16-11-1953. Pt. II. S. 2. Ext., p. 945. Act 95 of 1956.- Experience has shown that the existing provisions in the Banking Companies Act, 1949, are not adequate to prevent certain undesirable tendencies in the administration of banking companies which might affect the soundness of the companies or not be in the public interest or in the interests of the depositors. The present Bill, therefore, seeks to amend the Act so as to tighten up control over banking companies in the following directions : (i) to check the payment of excessive remuneration to bank employees on a consideration of all relevant factors; (ii) to make the existing restrictions on exercise of voting rights in the

hands of individual shareholders applicable to banks which are now exempt from such restrictions, namely, those established before the 15th January, 1937: and to empower the Reserve Bank to direct the election of fresh directors on the basis of the restricted voting rights: (iii) to prohibit appointment as director of one who is director of other companies which together can exercise voting rights in excess of 20 per cent of voting rights in a banking company: (iv) to enable the Reserve Bank to obtain statements and information over a wider range than hitherto for the performance of the functions under the Act; (v) to enable the Reserve Bank to give directions to banking companies in relation to matters of policy or administration affecting the public interest, and to make failure to observe such directions liable to specified penalties; (vi) to render appointments of managing directors, managers or the chief executive officers by whatever name called of banking companies and the terms of their appointments subject to the prior approval of the Reserve Bank; (vii) to enable the Reserve Bank to depute an observer or observers for purpose of observing and reporting on the conduct of affairs of a banking company; (viii) to include the chairman, director, auditor, liquidator and other employees of banking companies within the definition of "public servants" for the purpose of Chapter IX of Indian Penal Code, 1860 and Prevention of Corruption Act, 1947, so that action can be taken in cases where illegal gratifications are taken by them.

2. Opportunity has also been taken in this Bill to clarify- (a) that the payment of bonus to bank employees does not amount to employment on the basis of a commission or a share of profits which is prohibited under clause (b) of sub-section (1) of S.10 of the Banking Companies Act, 1956; and (b) that restrictions imposed by clause (c) of sub-section (1) of S.10 of the Banking Companies Act, 1956 on persons appointed to manage banking companies are not applicable to directors other than managing directors.

3. The Bill also provides for references contained in the Banking Companies Act to the Indian Companies Act, 1913, being substituted by references to the relevant sections of the Companies Act, 1956.-Gaz.of Ind., 7-12-1956, Pt. U.S. 2, Ext., p. 1072. Act 33 of 1959.- The Banking Companies Act, 1949, came into force on the 16th March, 1949, and although it was amended in December, 1956, with a view to extending the powers of supervision and control exercisable by the Reserve Bank, the question of further amending the Act, in order to remove minor omissions or ambiguities in the meaning of certain sections was left over for

consideration at a later stage. It is now proposed, in the light of the experience gained in regard to the administration of the Act, to introduce some amendments, mostly of a non-controversial nature, in order to facilitate the application and enforcement of the Act. Opportunity has also been taken to clarify the position regarding the application of the Act to banking companies which have been prohibited from accepting fresh deposits and are in consequence not functioning normally. -Gaz. of Ind., 23-2-1959, Pt. II, S. 2, Ext., p. 173. Act 23 of 1960.- The interpretation of the provisions of the Banking Companies Act, 1949, relating to certain special reserves maintained by banks has not been quite clear and the question of clarifying the intention has been under consideration for some time.

2. As credit institutions dealing primarily with depositors' monies, banks have to make certain special provisions against emergencies or unforeseen contingencies as a matter of financial prudence. The legal position in the United Kingdom and certain other countries is that banks have been specifically exempted by law from disclosing information relating to these provisions. In India the form of the balance-sheet and the profit and loss account prescribed for banks by the Banking Companies Act ensures that such provisions need not be disclosed. But a doubt has been felt whether notwithstanding this, any Tribunal or other authority could compel banking companies to disclose information relating to these reserves and provisions. As such reserves and provisions are for emergencies and unforeseen contingencies. it is not in the public interest or in the interests of the banking system of the country to disclose these particulars. It is accordingly proposed to insert a new section in the Banking Companies Act to make it clear that information, which according to the law is not required to be published in the balance-sheet or profit and loss accounts of a banking company, need not be disclosed to the various authorities under the Industrial Disputes Act. Although the secrecy of the special or inner reserves is thus proposed to be maintained, the various authorities constituted under the Industrial Disputes Act are being specifically empowered to call for reports from the Reserve Bank of India, as an expert authority, regarding the amount of such reserves which may be taken into account for the purposes of the proceedings under that Act.- Gaz.. of India, 4-8-1960, Pt. II, S. 2, Ext.. p. 417. Act 37 of 1960.- The procedure now prescribed under the Banking Companies Act, 1949 read with the Companies Act, 1956 for the liquidation of banking companies is somewhat elaborate, and in the absence of any provisions in the

law indicating the time-schedule according to which certain payments may be made to the depositors, a great deal of hardship is caused to such depositors, who have to wait for considerably long periods for realising the sums due to them. It is proposed, in order to facilitate the expeditious payment of certain minimum amounts in such cases, that the procedure relating to the liquidation of banking companies should be suitably modified. 2. S.43A of the Banking Companies Act, 1956 now provides for the payment of a sum of Rs. 100 in the case of each savings bank depositor as a preferential claim from out of the assets which are available for distribution among the creditors of a banking company generally. In view of the rise in prices since the relevant provision was first incorporated in the Act, it is considered desirable that this minimum payment should be increased to Rs, 250. It is also proposed that after this payment has been made, the depositors other than those with savings bank accounts should be paid an amount equal to fifty per cent of their deposits or Rs. 250 whichever may be less, as a further preferential payment. 3. The opportunity provided by these amendments has also been utilised to simplify the provisions of the law relating to the grant of moratorium in respect of banking companies which may be experiencing difficulties and to facilitate the formulation and implementation of schemes of reconstruction or amalgamation in respect of such companies.- Gaz. of Ind., 3-9-1960, Pt. II, S. 2, Ext., p. 677. Act 7 of 1961.- The Banking Companies Act, 1949, was amended in 1960 in order to facilitate the grant of expeditious relief in the case of banking companies which may be taken into liquidation and the reconstruction or amalgamation of other banking companies, wherever this may be considered necessary or desirable. The question of transferring the assets and liabilities of certain banking companies to other institutions, which may be in a better position to serve the interests of the depositors, has since been under consideration, but certain practical difficulties have been encountered in bringing into force or implementing the schemes which have been formulated for this purpose. In order to eliminate these difficulties and to clarify the legal position beyond any doubt, the Banking Companies (Amendment) Ordinance was issued early in February, 1961, substantially amplifying the provisions of S.45 of the Banking Companies Act, 1956.. The present Bill is intended to replace the Ordinance.- Gaz. of Ind., 21-2-1961, Pt. U.S. 2, Ext., p. 43. Act 37 of 1962.- The provisions in the Banking Companies Act relating to the minimum paid-up capital and reserves of the commercial banks

and the amounts which such banks are required to maintain in the form of cash or bank balances or in the form of liquid assets which can be readily utilised for meeting any current obligations are somewhat out of date. In view of the changes which have taken place since March 1949, when the provisions relating to the minimum paid-up capital were brought into force, and the very great increase in the deposits and working funds of the commercial banking system in recent years, it is considered desirable that the paid-up capital and reserves, the cash and bank balances, and the overall liquid assets of the commercial banks should be increased. The Bill seeks to amend the relevant provisions of the Act in a suitable manner for these purposes and is intended to strengthen the financial position of the commercial banks generally and to increase the protection which is available to the depositors. The opportunity provided by the amendment of the Act for these purposes has also been utilised to make a few clarificatory changes in some of the other provisions of the Act. The scope and object of the amendments proposed are explained in detail in the notes on the various clauses of the Bill.- Gaz. of Ind., 24-8-1962, Pt. II, S. 2, Expt., p. 712.

PART 1  
PRELIMINARY

**1. Short title, extent and commencement :-**

(1) This Act<sup>1</sup> may be called The Banking <sup>2</sup>[Regulation] Act, 1949.

<sup>3</sup>[(2) It extends to the whole of India <sup>4</sup>[\* \* \* ]. ]

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint<sup>5</sup> in this behalf.

This Act has been extended to the new Provinces and merged States by [the Merged States Laws) Act. 1949 f59 of 1949). S. 3(l-l-1950) and to the Union Territories (Now States) of Manipur and Tripura by the Union Territories (Laws) Act. 1950 (30 of 1950), S. 3 (16-4-1950). This Act is applied to, and shall be in force in the French Establishments See the French Establishments (Application of Laws) Order, 1954, Para 3. This Act has now been extended to the Union Territories of-

(1) Goa, Daman and Diu, by Regn. 11 of 1963 (with effect from 1-6-1964): Goa is now a State See Act 18 of 1987

(2) Dadra and Nagar Haveli, by Regn. 6 of 1963 (with effect from 1-7.1965),

(3) Laccadive, Minicoy and Amindivi Islands (Now known as Lakshadweep Islands) by Regn. 8 of 1965 (1-10-1967). -Act enforced on 15-12-1987 in Sikkim-See SO 1080(E) of 1987 Gaz. of Ind..II-12-1987.Pt.II.S.3(ii).Ext..p.2 (No. 624).

1. In this Act. for the words "Agricultural Refinance Corporation", wherever they occur, substitute the words "National Bank"- See the National Bank for Agriculture and Rural Development Act (61 of 1981 ).S.61. 2nd Sch., Pt. III (1-5-1982).

2. Substituted for the word "Companies" by the Banking Laws (Application to Co-operative Societies) Act..1965 (23 of 1965), S.11 (1-3-1966).

3. Substituted by the Banking Companies (Amendment) Act, 1950 (20 of 1950), S. 2 (18-3-1950).

4. The words "except the State of Jammu and Kashmir" omitted by the Jammu and Kashmir (Extension of Laws) Act. 1956 (62 of 1956), S. 2 and Schedule (1-1 -1956).

5. The date so appointed is 16-3-1949-See Gaz. of Ind., 10-3-1949. Pt 1. page 326

## **2. Application of other laws not barred :-**

The provisions of this Act shall be in addition to. and not, save as hereinafter expressly provided, in derogation of the <sup>1</sup> [Companies Act, 1956], and any other law for the time being in force.

1. Substituted for the words 'Indian Companies Act. 1913' by the Banking Companies (Amendment) Act. 1956 (95 of 1956). S. 14 and Schedule (14-1-1957).

## **3. Act to apply to co-operative societies in certain cases :-**

Nothing in this Act shall apply to-

(a) a primary agricultural credit society;

(b) a co-operative land mortgage bank; and

(c) any other co-operative society, except in the manner and to the extent specified in Pan V.]

## **4. Power to suspend operation of Act :-**

(1) The Central Government, if on a representation made by the Reserve Bank in this behalf it is satisfied that it is expedient so to do. may by notification in the Official Gazette suspend for such period, not exceeding sixty days as may be specified in the notification, the operation of all or any of the provisions of this Act, either generally or in the relation to any specified banking company.

(2) In a case of special emergency, the Governor of the Reserve Bank, or in his absence a Deputy Governor of the Reserve Bank nominated by him in this behalf may, by order in writing, exercise the powers of the Central Government under sub-section (1) so however that the period of suspension shall not exceed thirty days, and where the Governor or the Deputy Governor, as the case may be, does so, he shall report the matter to the Central Government forthwith, and the order shall, as soon as may be, be published in the Gazette of India.

(3) The Central Government may, by notification in the Official Gazette, extend from time to time the period of any suspension ordered under sub-section (1) or sub-section (2) for such period, not exceeding sixty days at any one time, as it thinks fit so however that the total period does not exceed one year.

(4) A copy of any notification issued under sub-section (3) shall be laid on the table of <sup>1</sup> [Parliament] as soon as may be after it is issued.

"The object underlying this clause is that in cases of genuine emergency, e.g., a general run on all banks or a run on some banks in particular area. Government should have power to suspend the operation of the Act after considering the recommendation of the Reserve Bank. The suspension of clause 23 (now S. 24), will, for instance, enable the Reserve Bank to give an advance to tide over a banking crisis against liquid assets maintained by banks under that clause."-S.O.R.]

1. Substituted for the words "the Dominion Legislature" by A.1..0. 1950.

## **5. Interpretation :-**

<sup>1</sup>[[\*] In this Act,] unless there is anything repugnant in the subject or context,-

<sup>2</sup>[(a) "approved securities" means-

(i) securities in which a trustee may invest money under clause (a), clause (b), clause (bb), clause (c) or clause (d) of S.20 of the Indian Trusts Act, 1882;

(ii) such of the securities authorised by Central Government under clause (f) of S.20 of the Indian Trusts Act, 1882, as may be prescribed;]

(b) "banking" means the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on

demand or otherwise, and withdrawable by cheque, draft, order or otherwise;

(c) "banking company" means any company which transacts the business of banking <sup>3</sup>[in India];

**4**[(ca) "banking policy" means any policy which is specified from time to time by the Reserve Bank in the interest of the Banking system or in the interest of monetary stability or sound economic growth having due regard to the interests of the depositors, the volume of deposits and other resources of the bank and the need for equitable allocation and the. efficient use of these deposits and resources;]

**5**[(cc) "branch or branch offices", in relation to a banking company, means any branch or branch office, whether called a pay office or sub-pay office or by any other name, at which deposits are received, cheques cashed or monies lent, and for the purpose of section 35 includes any place of business where any other form of business referred to in sub-section (1) of section 6 is transacted;]

**6**[(d) "company" means any company as defined in S. 3 of the Companies Act, 1956; and includes a foreign company within the meaning of S. 591 of that Act.]

**7**[(da) "corresponding new bank", means a corresponding new bank constituted under S.3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, or under S.3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980;]

**8**[(e) \* \* \*]

(f) "demand liabilities" means liabilities which must be met on demand and "time liabilities" means liabilities which are not demand liabilities:

**9**[(ff) "Deposit Insurance Corporation" means the Deposit Insurance Corporation established under S. 3 of the Deposit Insurance Corporation Act. 1961.]

**10**[(ffa) "Development Bank" means the Industrial Development Bank of India established under Section 3 of the Industrial Development Bank of India Act, 1964 :

(ffb) "Exim Bank" means the Export-Import Bank of India established under S.3 of Export-Import Bank of India Act. 1981:]

**11**[(ffc) "Reconstruction Bank" means the Industrial Reconstruction Bank of India established under Section 3 of the Industrial Reconstruction Bank of India Act, 1984 ;]

**12**[(ffd) "National Housing Bank "means the National Housing Bank established under Section 3 of the National Housing Bank Act, 1987 :]

(g) "gold" includes gold in the form of coin, whether legal tender or not or in the form of bullion or ingot, whether refined or not;

**13**(gg) "Managing agent" includes--

(i) Secretaries and treasurers:

(ii) where the managing agent is a company any director of such company and any member thereof who holds substantial interest in such company,

(iii) where the managing agent is a firm, any partner of such firm.]

**14**['(h) "managing director", in relation to a banking company means a director who, by virtue of an agreement with the banking company or of a resolution passed by the banking company in general meeting or by its Board of Directors or by virtue of its memorandum or articles of association, is entrusted with the management of the whole, or substantially the whole of the affairs of the company and includes a director occupying the position of a managing director, by whatever name called:'] **15**[Provided that the managing director shall exercise his powers subject to the superintendence, control and direction of the Board of Directors.]

**16**[(ha) "National Bank" means the National Bank for Agriculture and Rural Development established under S.3 of the National Bank for Agricultural and Rural Development Act. 1981:]

**17**[(i) \* \* \* ]

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

**18**[(ja) "regional rural bank" means a regional rural bank established under S.3 of the Regional Rural Banks Act. 1976;]

**19**[(k) \* \* \* ]

**20**(l) "Reserve Bank" means the Reserve Bank of India constituted under S.3 of the Reserve Bank of India. Act. 1934;]

**21**[(m) \* \* \* ]

(n) "secured loan or advance" means a loan or advance made on the security of assets the market value of which is not at any time less than the amount of such loan or advance: and "unsecured loan or advance" means a loan or advance not so secured.

**22**[(na) "small-scale industrial concern" means an industrial concern in which the investment in plant and machinery is not in excess of seven and a half lakhs of rupees or such higher amount not exceeding twenty lakhs of rupees, as the Central Government may, by notification in the Official Gazette, specify in this behalf, having regard to the trends in industrial development and other relevant factors;

**23**[(nb) "Sponsor Bank" has the meaning assigned to it in the Regional Rural Banks Act. 1975;

(nc) "State Bank of India" means the State Bank of India constituted under S.3 of the State Bank of India Act. 1955:]

**23**[(nd)] "subsidiary bank" has the meaning assigned to it in the State Bank of India (Subsidiary Banks) Act. 1959:

**23**[(ne)] "substantial interests".-

(i) in relation to a company means the holding of a beneficial interest by an individual or his spouse or minor child, whether singly or taken together, in the shares thereof, the amount paid-up on which exceeds five lakhs of rupees or ten per cent of the paid-up capital of the company, whichever is less;

(ii) in relation to a firm. means the beneficial interest held therein by an individual or his spouse or minor child, whether singly or taken together, which represents more than ten per cent of the total capital subscribed by all the partners of the said firm.]

**26**[(o) all other words and expressions used herein but not defined and defined in the Companies Act. 1956 shall have the meanings respectively assigned to them in that Act.]

Clause (b)- "The present definition of banking in S. 277F of the Indian Companies Act gives rise to administrative difficulties, particularly in respect of the "principal business" in determining whether a company comes within its scope. The new definition is intended to connect banking definitely with the acceptance of deposits from the public for the purpose of lending or investment and to bring within its ambit all the banks which accept demand or time deposits"- S.O.R. Clause (c)- "The mere acceptance of deposits by companies like textile mills, etc., for the purpose of financing their own business should not be regarded as "banking" within the meaning of this Act, and although we are given to understand that this would be so even under the existing definition of "banking" we have thought it advisable to make the legal position clear by adding an Explanation to this effect in the definition of "banking company".-S. C. R. Clause (h)- "In the definition of "managing agent" we have added the words "or by virtue of (he memorandum or articles of association relating thereto", as it is possible that a person may be entitled to the management of the affairs of a banking company under its memorandum or articles of association."-S. C. R.]

1. Substituted for the brackets, figure and words "(1 ) In this Act" by the Banking Laws (Miscellaneous Provisions) Act, 1963 (55 of 1963), S. 5 (1-2-1964).
2. Substituted by the Banking Laws (Amendment) Act (1 of 1984), S. 13(a) (15-2-1984).
3. Substituted for "in any State" by the Banking Companies (Amendment) Act 1950 (20 of 1950), S. 3 (18-3-1950).
4. Inserted by the Banking Laws (Amendment) Act, 1968 (58 of 1968), S. 2 (1-2-1969).
5. Inserted by Banking Companies (Amendment) Act, 1959 (33 of 1959), S. 2(i) (1-10-1959).
6. Substituted by the Banking Companies (Amendment) Act (33 of 1959). S. 2(ii) (1-10-1959).
7. Inserted by the Banking Laws (Amendment) Act (1 of 1984), S. 13(b) (15-2-1984).
8. Clause (e) was omitted by the Banking Companies (Amendment) Act. 1953 (52 of 1953). S. 2 (30-12-1953).
9. Inserted by the Deposit Insurance Corporation Act. 1961 (47 of 1961). S. 51 and Sch. II. Pt. II (1-1-1962).
10. Inserted by the Banking Laws (Amendment) Act. (1 of 1984). S. 13(c) (15-2-1984).
11. Inserted by the Industrial Reconstruction Bank of India Act (62 of 1984). S.71. Third Schedule Pt. III (20-3-1985).
12. Inserted by the National Housing Bank Act (53 of 1987). S. 56. Second Schedule Pt. II (9-7-1988).
13. Inserted by the Banking Laws (Amendment) Act. (55 of 1968). S, 2(ii) (1-2-1969).
14. Cl. (h) substituted by the Banking Companies (Amendment)

Act. 1959(33 of 1959), S. 2 (iii) (1-10-1959).

15. Proviso to Cl,(h) added by Banking Laws(Amendment) Act, 1968 (58 of 1968). S.2(iii) (1-2-1969).

16. Inserted by the National Bank for Agricultural and Rural Development Act (61 of 1981), S. 61. Secibd Sch.,Pt. II (1-5-1982)

17. Omitted by the Banking Companies(Amendment) Act (33 of 1959), S. 2(iii) (1-10-1959).

18. Inserted by the National Bank for Agriculture and Rural Development Act (61 of 1981) S. 61, Second Sch.,Pt. II (1-5-1982),

19. Omitted by the Banking Companies(Amendment) Act (33 of 1959). S. 2(iii) (1-10-1959).

20. Substitute by the Banking Laws (Amendment) Act (1 of 1984) S. 13(d) (15-2-1984).

21. Omitted by the Banking Laws (Amendment) Act (33 of 1959). S. 2(iii)(1-10-1959),

22. Clauses (na). (nb) and (nc) inserted by the Banking Laws (Amendment) Act (58 of 1968) S. 2(iii) (1-2-1969).

23. Clauses (nb) and (nc) relettered as Cls.(nd) and (ne) respectively and before Cl. (nd) as so relettered Cls. (nb) and (nc) inserted, the Banking Laws (Amendment) Act (58 of 1968) S.2(iii) (1-2-1969) (1 of 1984) S. 13(e) (15-2-1984).

26. Inserted by the Banking Companies(Amendment) Act (33 of 1959) S. 2 (v) (1-10-1959)

27. Sub-section (2) ] was omitted by A. I. O., 1950.

#### **5A. Act to override memorandum, articles, etc :-**

Save as otherwise expressly provided in this Act,-

(a) the provisions of this Act shall have effect notwithstanding anything to the contrary contained in the memorandum or articles of a banking company or in any agreement executed by it or in any resolution passed by the banking company in general meeting or by its Board of directors, whether the same be registered, executed or passed, as the case may be, before or after the commencement of the Banking Companies (Amendment) Act, 1959; and

(b) any provision contained in the memorandum, articles, agreement or resolution aforesaid shall, to the extent to which it is repugnant to the provisions of this Act, become or be void. as the case may be.]

#### PART 2

#### BUSINESS OF BANKING COMPANIES

#### **6. Forms of business in which banking companies may engage :-**

(1) In addition to the business of banking, a banking company may engage in any one or more of the following forms of business, namely:-

(a) the borrowing, raising, or taking up of money; the lending or advancing of money either upon or without security; the drawing, making, accepting discounting, buying, selling, collecting and dealing in bills of exchange, hundees, promissory notes, coupons, drafts, bills of lading, railway receipts, warrants, debentures, certificates, scrips and other instruments and securities whether transferable or negotiable or not; the granting and issuing of letters of credit, traveller's cheques and circular notes; the buying, selling and dealing in bullion and species; the buying and selling of foreign exchange including foreign bank notes; the acquiring holding, issuing on commission, underwriting and dealing in stocks, funds, shares, debentures, debenture stock, bonds, obligations, securities and investments of all kinds; the purchasing and selling of bonds, scrips or other forms of securities on behalf of constituents or others, the negotiating of loans and advances; the receiving of all kinds of bonds, scrips or valuables on deposit or for safe custody or otherwise; the providing of safe deposit vaults; the collecting and transmitting of money and securities;

(b) acting as agents for any Government or local authority or any other person or persons; the carrying on of agency business of any description including the clearing and forwarding of goods, giving of receipts and discharges and otherwise acting as an attorney on behalf of customers, but excluding the business of a <sup>1</sup>[managing agent or secretary and treasurer] of a company;

(c) contracting for public and private loans and negotiating and issuing the same;

(d) the effecting, insuring, guaranteeing, underwriting, participating in managing and carrying out of any issue, public or private, of State, municipal or other loans or of shares, stock, debentures, or debenture stock of any company, corporation or association and the lending of money for the purpose of any such issue;

(e) carrying on and transacting every kind of guarantee and indemnity business;

(f) managing, selling and realising any property which may come

into the possession of the company in satisfaction or part satisfaction of any of its claims;

(g) acquiring and holding and generally dealing with any property or any right, title or interest in any such property which may form the security or part of the security for any loans or advances or which may be connected with any such security;

(h) undertaking and executing trusts;

(i) undertaking the administration of estates as executor, trustee or otherwise;

(j) establishing and supporting or aiding in the establishment and support of associations, institutions, funds, trusts and conveniences calculated to benefit employees or ex- employees of the company or the dependants or connections of such persons; granting pensions and allowances and making payments towards insurance; subscribing to or guaranteeing moneys for charitable or benevolent objects or for any exhibition or for any public, general or useful object;

(k) the acquisition; construction, maintenance and alteration of any building or works necessary or convenient for the purposes of the company;

(l) selling, improving, managing, developing, exchanging, leasing mortgaging disposing of or turning into account or otherwise dealing with all or any part of the property and rights of the company;

(m) acquiring and undertaking the whole or any part of the business of any person or company, when such business is of a nature enumerated or described in this sub-section:

(n) doing all such other things as are incidental or conducive to the promotion or advancement of the business of the company:

(o) any other form of business which the Central Government may by notification<sup>2</sup> in the Official Gazette, specify as a form of business in which it is lawful for a banking company to engage.

(2) No banking company shall engage in any form of business other than those referred to in sub-section (1).

1. For non-application of the section to any Co-operative Bank, as to sale or purchase of judicial or non-judicial stamp, see S. 0,

2633.-Gaz. of Ind.. 27-7.1968. Pt. II. S. 3(ii). p. 2506.

2. Substituted by the Banking Laws (Amendment) Act (1 of 1984). S, 15 (15-2-1984).

**7. Use of words "bank", "banker", "banking" or "banking company." :-**

(1) No company other than a banking company shall use as part of its name <sup>1</sup> [or in connection with its business] any of the words 'bank', 'banker' or 'banking' and no company shall carry on the business of banking in India unless it uses as part of its name at least one of such words.

(2) No firm, individual or group of individuals shall for the purpose of carrying on any business, use as part of its name any of the words 'bank', 'banking' or 'banking company'.

(3) Nothing in this section shall apply to

(a) a subsidiary of a banking company formed for one or more of the purposes mentioned in sub-section (1) of section 19 . whose name indicates that it is a subsidiary of that banking company:

(b) any association of banks formed for the protection of their mutual interests and registered under S.25 of the Companies Act. 1956.]

1. Substituted by the Banking Laws (Amendment) Act (1 of 1984). S, 15 (15-2-1984).

**8. Prohibition of trading :-**

Notwithstanding anything contained in section 6 or in any contract, no banking company shall directly or indirectly deal in the buying or selling or bartering of goods, except in connection with the realisation of security given to or held by it, or engage in any trade, or buy, sell or barter goods (or others otherwise than in connection with bills of exchange received for collection or negotiation or with such of its business as is referred to in clause (i) of sub-section ( 1 ) of section 6 : <sup>B</sup> [Provided that this section shall not apply to any such business as business as is specified in pursuance of clause (o) of sub-section (1) of section 6 .) Section 8- "This is intended to prohibit a bank from engaging directly or indirectly in trading activities and undertaking trading risks in addition to ordinary banking risks. Certain bank have been found to engage in such activities under the guise of agency business," S.O.R.]

[b] Substituted by the Banking Laws (Amendment) Act (1 of

1984). S, 15 (15-2-1984).

**9. Disposal of non-banking assets :-**

Notwithstanding anything contained in section 6 , no banking company shall hold any immovable able property howsoever acquired except such as is required for its own use, for any period exceeding seven years from the acquisition thereof or from the commencement of this Act. whichever is later or any extension of such period as in this section provided, and such property shall he disposed of within such period or extended period, as the case may be: Provided that the banking company may. within the period of seven years as aforesaid, deal or trade in any such property tor the purpose ol facilitating the disposal thereof: Provided further that the Reserve Bank may in any particular case extend the aforesaid period of seven years by such period not exceeding five years where it is satisfied that siuch extension would be in the interests of the depositors of the banking company.

**10. Prohibition ol employ ment of employment agcets and restrictions on certain forms of employment :-**

(1) No banking company-

(a) shall employ or be managed by managing agent; or

(b) shall employ or continue the employment of any person-

(i) who is. or at any time has been. adjudicated insolvent, or has suspended payment or has compounded with his creditors, or who is. or has been, convicted by a Criminal Court of an offence involving moral turpitude; or

(ii) whose remuneration or part of whose remunerartion takes the form of commission or of a share in the profits of the company.

<sup>1</sup>[Provided that nothing contained in this sub-clause shall apply to the payment by a banking company of

(a) any bonus, in pursuance of a settlement or award arrived at or made under any law relating to industrial disputes or in accordance with any scheme framed by such banking company or in accordance with the usual practice prevailing in banking business;

(b) any commission to any broker (including guarantee broker), cashier-contractor, clearing and forwarding agent, auctioneer or any other person, employed by the banking company under a contract otherwise than as a regular member of the staff of the company;

or]

(iii) whose remuneration is, in the opinion of the Reserve Bank, excessive; or

(c) shall be managed by any person-

**1**[(i) who is a director of any other company not being-

(a) a subsidiary of the banking company, or

(b) a company registered under Section 25 of the Companies Act, 1956 :

(ii) who is engaged in any other business or vocation; or

(iii) **3**[whose term of office as a person managing the company is] for a period exceeding five years at any one time:

**4**[Provided that the term of office of any such person may be renewed or extended by further periods not exceeding five years on each occasion subject to the condition that such renewal or extension shall not be sanctioned earlier than two years from the date on which it is to come into force: Provided also that where the term of office of such person is for an indefinite period such term, unless it otherwise comes to an end earlier, shall come to an end immediately on the expiry of five years from the date of his appointment or on the expiry of three months from the date of commencement of S.8 of the Banking Laws (Miscellaneous Provisions) Act, 1963, whichever is later:] Provided further that nothing in this clause shall apply to a director, other than the managing director, of a banking company by reason only of his being such director.

(2) In forming its opinion under sub-clause (iii) of clause (b) of sub-section (1), the Reserve Bank may have regard among other matters to the following:-

(i) the financial condition and history of the banking company, its size and area of operation, its resources, the volume of its business, and the trend of its earning capacity;

(ii) the number of its branches or offices:

(iii) the qualifications, age and experience of the person concerned;

(iv) the remuneration paid to other persons employed by the banking company or to any person occupying a similar position in any other banking company similarly situated; and

(v) the interests of its depositors.

**5**[(3) [\* \* \* \* \*]]

(4) [\* \* \* \* \*]]

(5) [\*\*\*\*\*]]

**6** [(6) Any decision or order of the Reserve Bank made under this section shall be final for all purposes.]

1. Proviso to sub-clause (ii) of clause (b) and sub-clause (i) of clause (c) of sub-section (1) substituted by the Banking Companies (Amendment) Act, 1959 (33 of 1959), S. 6(a) (1-10-1959).

3. Substituted for the words "who has a contract with the company for its management" by the Banking Laws (Miscellaneous Provisions) Act, 1963 (55 of 1963), S. g(a) (1-2-1964).

4. Substituted for the original proviso, the Banking Laws (Miscellaneous Provisions) Act, 1963 (55 of 1963), S. g(a) (1-2-1964).

5. Sub-sections (3), (4) and (5), as substituted by Act 33 of 1959, S. 6, omitted, the Banking Laws (Miscellaneous Provisions) Act, 1963 (55 of 1963), S. g(a) (1-2-1964).

6. Sub-section (6) was substituted along with sub-sections (3), (4) and (5) for the original sub-section (1) by the Banking Companies (Amendment) Act, 1959 (33 of 1959), S. 6 (b) (1-10-1959).

**10A. Board of directors to include persons with professional or other experience :-**

(1) Notwithstanding anything contained in any other law for the time being in force, every banking company-

(a) in existence on the commencement of S.3 of the Banking Laws (Amendment) Act,1968, or

(b) which comes into existence thereafter, shall comply with the requirements of this section,

(2) Not less than fifty-one percent of the total number of members of the Board of directors of a banking company shall consist of persons, who-

(a) shall have special knowledge or practical experience in respect of one or more of the following matters, namely:-

(i) accountancy,

(ii) agriculture and rural economy,

(iii) banking,

(iv) co-operation,

(v) economics,

(vi) finance,

(vii) law,

(viii) small-scale industry,

(ix) any other matter the special knowledge of and practical experience in, which would, in the opinion of the Reserve Bank, be useful to the banking company;

(b) shall not-

(1) have substantial interest in, or be connected with whether as employee, manager or managing agent,-

(i) any company, not being a company registered under S.25 of the Companies Act. 1956, or

(ii) any firm, which carries on any trade.commerce or industry and which, in either case. is not a small-scale industrial concern, or

(2) be proprietors of any trading, commercial or industrial concern, not being a small-icale industrial concern.

**1** [(2A) Notwithstanding anything to the contrary contained in the Companies Act, 1956, or in any other law for the time being in force.

(i) no director of a banking company, other than its chairman or whole-time director, by whatever name called, shall hold office continuously for a period exceeding eight years;

(ii) a chairman or other whole-time director of a banking company who has been removed from office as such chairman, or whole-time director, as the case may be. under the provisions of this Act shall also cease to be a director of the banking company and shall also not be eligible to be appointed as adirector of such banking company, whether by election or co-option or otherwise, for a period of four years from the date of his ceasing to be the chairman or whole time diractor as the case may be.] .

(3) If, in respect of any banking company, the requirements as laid

down in sub-section (2) are not fulfilled at any time. the Board of directors of such banking company shall reconstitute such Board so as to ensure that the said requirements are fulfilled.

(4) If, for the purpose of reconstituting the Board under sub-section (3), it is necessary to retire any director or directors, the Board may, by lots drawn in such manner as may be prescribed, decide which director or directors shall cease to hold office and such decision shall be binding on every director of the Board.

(5) Where the Reserve Bank is of opinion that the composition of the Board of directors of a banking company is such that it does not fulfil the requirements of ( sub-section (2), it may, after giving to such banking company a reasonable opportunity of being heard, by an order in writing, direct the banking company to so reconstitute its Board of directors as to ensure that the said requirements are fulfilled and. if within two months from the date of receipt of that order, the banking company does not comply with the directions made by the Reserve Bank, that Bank may, after determining, by lots drawn in such manner as may be prescribed the person who ought to be removed from the membership of the Board of directors, remove such person from the office of the director of such banking company and with a view to complying with the provision of sub-section (2) appoint a suitable person as a member of the Board of directors, in the place of the person so removed whereupon the person so appointed shall be deemed to have been duly elected by the banking company as its director.

(6) Every appointment, removal or reconstitution duly made. and every election, duly held, under this section shall be final and shall not be called into question in any Court.

(7) Every director elected or. as the case may be. appointed under this section shall hold office until the date up to which his predecessor would have held office, if the election had not been held, or. as the case may be. the appointment had not been made.

(8) No act or proceeding of the Board of directors of a banking company shall be invalid by reason only of any defect in the composition thereof or on the ground that it is subsequently discovered that any of its members did not fulfil the requirements of this section.]

1. Inserted by the Banking Laws (Amendment) Act I of 1984).S.1-6(15-2-1984).

**10B. Banking company to be managed by whole-time chairman :-**

**1**(1) Notwithstanding anything contained in any law for the time being in force or in any contract to the contrary, every banking company in existence on the commencement of the Banking Regulation (Amendment) Act, 1994, or which comes into existence thereafter shall have one of its directors, who may be appointed on a whole-time or a part-time basis, as Chairman of its Board of Directors, and where he is appointed on a whole-time basis, as Chairman of its Board of Directors, he shall be entrusted with the management of the whole of the affairs of the banking company : Provided that the Chairman shall exercise his powers subject to the superintendence, control and direction of the Board of Directors.

(1A) Where a Chairman is appointed on a part-time basis,-

(i) such appointment shall be with the previous approval of the Reserve Bank and be subject to such conditions as the Reserve Bank may specify while giving such approval;

(ii) the management of the whole of the affairs of such banking company shall be entrusted to a Managing Director who shall exercise his powers subject to the superintendence, control and direction of the Board of Directors." ;]

(2) **2**[Every Chairman of the Board of Directors who is appointed on a whole-time basis and every Managing Director]of a banking company shall be in the whole-time employment of such company and shall hold office for such period, not exceeding five years, as the Board of directors may fix, but shall, subject to the provisions of this section, be eligible for re-election or reappointment: Provided that nothing in this sub-section shall be construed as prohibiting a chairman from being a director of a subsidiary of the banking company or a director of a company registered under S.25 of the Companies Act. 1956.

(3) Every person holding office on the commencement of S.3 of the Banking Laws (Amendment) Act. 1968. as managing director of a banking company shall -

(a) if there is a chairman of its Board of directors, vacate office on such commencement, or

(b) if there is no chairman of its Board of directors, vacate office on

the date on which the chairman of its Board of directors is elected or appointed in accordance with the provisions of this section.

(4)<sup>3</sup>[Every Chairman who is appointed on a whole-time basis and every Managing Director of a banking company appointed under sub-section (1-A)] shall be a person who has special knowledge and practical experience of--

(a) the working of a banking company or of the State Bank of India or any subsidiary bank or a financial institution, or

(b) financial, economic or business administration : Provided that a person shall be disqualified for being a <sup>4</sup>[Chairman who is appointed on a whole-time basis or a Managing Director], if he--

(a) is a director of any company other than a company referred to in the proviso to sub-section (2). or

(b) is a partner of any firm which carries on any trade, business or industry, or

(c) has substantial interest in any other company or firm. or

(d) is a director, manager, managing agent or proprietor of any trading, commercial or industrial concern, or

(e) is engaged in any other business or vocation.

(5)<sup>5</sup>[A Chairman of Board of Directors appointed on a whole-time basis or a Managing Director] of a banking company may by writing under his hand addressed to the company, resign his office<sup>6</sup>[\*\*\*]

<sup>7</sup>[(5A)<sup>8</sup>[A Chairman of Board of Directors appointed on a whole-time basis or a Managing Director] whose term of office has come to an end, either by reason of his resignation or by reason of expiry of the period of his office, shall, subject to the approval of the Reserve Bank, continue in office until his successor assumes office.]

(6) Without prejudice to the provisions of section 36AA, where the Reserve Bank is of opinion that any person who is, or has been elected to be, the <sup>9</sup>[Chairman of the Board of Directors who is appointed on a whole-time basis or the Managing Director] of a banking company is not a fit and proper person to hold such office, it may, after giving to such person and to the banking company a reasonable opportunity of being heard by order in writing, require the banking company to elect or appoint any other person as the

**10**[Chairman of the Board of Directors who is appointed on a whole-time basis or the Managing Director]and if, within a period of two months from the date of receipt of such order, the banking company fails to elect or appoint a suitable person as the chairman of its Board of directors, the Reserve Bank may, by order, remove the first-mentioned person from the office of the chairman of the Board of directors of the banking company and appoint a suitable person in his place whereupon the person so appointed shall be deemed to have been duly elected or appointed, as the case may be, as the chairman of the Board of directors of such banking company and any person elected or **11**[appointed as Chairman on a whole-time basis or Managing Director]under this sub-section shall hold office for the residue of the period of office of the person in whose place he has been so elected or appointed.

(7) The banking company and any person against whom an order of removal is made under sub-section (6), may, within thirty days from the date of communication to it or to him of the order, prefer an appeal to the Central Government and the decision of the Central Government thereon, and subject thereto, the order made by the Reserve Bank under sub-section (6), shall be final and shall not be called into question in any Court.

(8) Notwithstanding anything contained in this section, the Reserve Bank may, if in its opinion it is necessary in the public interest so to do, permit **12**[the Chairman of the Board of Directors who is appointed on a whole-time basis or the Managing Director]to underlake such part-time honorary work as is not likely to interfere with his duties as **13**[such Chairman or Managing Director].

(9) Notwithstanding anything contained in this section, where a person **14**[appointed on a whole-time basis, as Chairman of the Board of Directors or Managing Director]dies or resigns or is by infirmity or otherwise rendered incapable of carrying out his duties or is absent on leave or otherwise in circumstances not involving the vacation of his office, the banking company may, with the approval of the Reserve Bank, make suitable arrangements for carrying out the **15** [duties of Chairman or Managing Director]for a total period not exceeding four months.]

1. Substituted for " (1) Notwithstanding anything contained in any law for the time being in force or in any contract to the contrary, every banking company in existence on the commencement of section 3 of the Banking Laws (Amendment) Act. 1968. or which

conies into existence thereafter b [shall have one of its directors as chairman of its Board of directors] who shall be entrusted with the management of the whole of the affairs of the banking company : Provided that the chairman shall exercise his powers subject to the superintendence, control and direction of the board of directors : Provided further that nothing in this sub-section shall apply to a banking company in existence on the commencement of the said section for a period of three months from such commencement, ", vide The Banking Regulation (Amendment) Act, 1994 (20 Of 1994), Dt. March 22, 1994 Published in Received the assent of (he President on March 22, 1994

2. Substituted for "Every chauman of the Board of directors ", vide The Banking Regulation (Amendment) Act, 1994 (20 Of1994), Dt. March 22, 1994 Published in Received the assent of (he President on March 22, 1994

3. Substituted for " Every charman of the Board of directors of a banking company ", vide The Banking Regulation (Amendment) Act, 1994 (20 Of 1994), Dt. March 22, 1994 Published in Received the assent of (he President on March 22, 1994

4. Substituted for "chairman", vide The Banking Regulation (Amendment) Act, 1994 (20 Of 1994), Dt. March 22,1994 Published in Received the assent of (he President on March 22, 1994

5. Substituted for " A chairman of the Board of directors ", vide The Banking Regulation (Amendment) Act, 1994 (20 Of1994), Dt. March 22, 1994 Published in Received the assent of (he President on March 22, 1994

6. Words "but shall continue in office until his successor assumes office", omitted, the Banking Laws (Amendment) Act(1 of 1984), S. 17(15-2-1984).

7. Inserted, the Banking Laws (Amendment) Act(1 of 1984), S. 17(15-2-1984).

8. Substituted for " A chairman of the Board ol directors ", vide The Banking Regulation (Amendment) Act, 1994 (20 Of1994), Dt. March 22, 1994 Published in Received the assent of (he President on March 22, 1994

9. Substituted for "Chairman of the Board of directors ", vide The Banking Regulation (Amendment) Act, 1994 (20 Of1994), Dt. March 22, 1994 Published in Received the assent of (he President on March 22, 1994

10. Substituted for "chairman of its Board of directors ", vide The Banking Regulation (Amendment) Act, 1994 (20 Of1994), Dt. March 22, 1994 Published in Received the assent of (he President on March 22, 1994

11. Substituted for "appointed as chairman ", vide The Banking Regulation (Amendment) Act, 1994 (20 Of 1994), Dt. March 22, 1994 Published in Received the assent of (he President on March 22, 1994

12. Substituted for "the chairman ", vide The Banking Regulation (Amendment) Act, 1994 (20 Of 1994), Dt. March 22,1994

Published in Received the assent of (he President on March 22, 1994

13. Substituted for "such chairman", vide The Banking Regulation (Amendment) Act, 1994 (20 Of 1994), Dt. March 22, 1994  
Published in Received the assent of (he President on March 22, 1994

14. Substituted for "appointed as a chairman ", vide The Banking Regulation (Amendment) Act, 1994 (20 Of 1994), Dt. March 22, 1994  
Published in Received the assent of (he President on March 22, 1994

15. Substituted for " duties of chairman ", vide The Banking Regulation (Amendment) Act, 1994 (20 Of 1994), Dt. March 22, 1994  
Published in Received the assent of (he President on March 22, 1994

**10BB. Power of Reserve Bank to appoint 15[Chairman of the Board of Directors appointed on a whole-time basis or a Managing Director] of a banking company :-**

(1) Where the office of the chairman of a banking company is vacant, the Reserve Bank may, if it is of opinion that the continuation of such vacancy is likely to adversely affect the interests of the banking company, appoint a person eligible under sub-section (4) of section 10B to be so appointed, to be the chairman of the banking company and where the person so appointed is not a director of such banking company, he shall, so long as he holds the office of the chairman, deemed to be a director of the banking company.

(2) The chairman so appointed by the Reserve Bank shall be in the whole-time employment of the banking company and shall hold office for such period not exceeding three years, as the Reserve Bank may specify but shall, subject to other provisions of this Act. be eligible for reappointment.

(3) The chairman so appointed by the Reserve Bank shall draw from the banking company such pay and allowances as the Reserve Bank may determine and may be removed from office only by the Reserve Bank.

(4) Save as otherwise provided in this section, the provisions of section 10-B shall, as far as may be, apply to the chairman appointed by the Reserve Bank under sub-section (1) as they apply to a chairman appointed by the banking company.]

**10C. Chairman and certain directors not to be required to hold qualification shares :-**

<sup>1</sup> [A Chairman of the Board of Directors who is appointed on a whole-time basis or a Managing Director]of a banking company (by whomsoever appointed) and a director of a banking company (appointed by the Reserve Bank under section 10A ) shall not be required to hold qualification shares in the banking company.]

1. Substituted for " A chairman ", vide The Banking Regulation (Amendment) Act, 1994 (20 Of 1994), Dt. March 22,1994 Published in Received the assent of (he President on March 22, 1994

**10D. Provisions of sections 10A and 10B to override all other laws, contracts, etc :-**

Any appointment or removal of a <sup>1</sup>[Director, Chairman of the Board of Directors who is appointed on a whole-time basis or Managing Director]in pursuance of section 10A or section 10B <sup>2</sup> [or section 10BB ] shall have effect and any such person shall not be entitled to claim any compensation for the loss or termination of office, notwithstanding anything contained in any law or in any contract, memorandum or articles of association.]

1. Substituted for "director or chairman ", vide The Banking Regulation (Amendment) Act, 1994 (20 Of 1994), Dt. March 22, 1994 Published in Received the assent of (he President on March 22, 1994

2. Inserted by the Banking Laws (Amendment) Act (1 of 1984) S. 20 (15-2-1984).

**11. Requirement as to minimum paid-up capital and reserves :-**

(1) Notwithstanding anything contained in Section 149 of the Companies Act, 1956 , no banking company in existence on the commencement of this Act shall, after the expiry of three years from such commencement or of such further period not exceeding one year as the Reserve Bank, having regard to the interests of the depositors of the company, may think fit in any particular case to allow, carry on business <sup>1</sup>[in India], and no other banking company shall, after the commencement of this Act, commence or carry on business <sup>1</sup>[in India], <sup>3</sup>[unless it complies with such of the requirements of this section as are applicable to it.]

<sup>4</sup>[(2) In the case of a banking company incorporated outside India-

(a) the aggregate value of its paid-up capital and reserves shall not be less than fifteen lakhs of rupees and if it has a place or places of

business in the city of Bombay or Calcutta or both, twenty lakhs of rupees; and

**5**[(b) the banking company shall deposit and keep deposited with the Reserve Bank, either in cash or in the form of unencumbered approved securities; or partly in cash and partly in the form of such securities:-

(i) an amount which shall not be less than the minimum required by clause (a); and

(ii) as soon as may be after the expiration of each **6**[\* \* \*] year, an amount calculated at twenty per cent of its profit for that year in respect of all business transacted through its branches in India, as disclosed in the profit and loss account prepared with reference to that year under section 29 ;]

(a) any securities so deposited by cash or by any other unencumbered approved securities or partly by cash and partly by other such securities, so however, that the total amount deposited is not affected;

(b) any cash so deposited by unencumbered approved securities of an equal value;]

**4**[(2A) Notwithstanding anything contained in sub-section (2), the Central Government may, on the recommendation of the Reserve Bank, and having regard to the adequacy of the amounts already deposited and kept deposited by a banking company under sub-section (2), in relation to its deposit liabilities in India, declare by order in writing that the provisions of sub-clause (ii) of clause (b) of sub-section (2) shall not apply to such banking company for such period as may be specified in the order;]

(3) In the case of any banking company to which the provisions of sub-section (2) do not apply, the aggregate value of its paid-up capital and reserves shall not be less than-

(i) if it has places of business in more than one [State], five lakhs of rupees, and if any such place or places of business is or are situated in the City of Bombay or Calcutta or both ten lakhs of rupees:

(ii) if it has all its places of business in one [State] none of which is situated in the City of Bombay or Calcutta, one lakh rupees in

respect of its principal place of business, plus ten thousand rupees in respect of each of its other places of business situated in the same district in which it has its principal place of business, plus twenty-five thousand rupees in respect of each place of business situated elsewhere in the [State] otherwise than in the same district:

**8**[Provided further that in the case of every Banking Company to which this clause applies and which commences banking business for the first time after the commencement of the Banking Companies (Amendment) Act. 1962 the value of the paid-up capital shall not be less than five lakhs of rupees.]

(iii) if it has all its places of business in one [State], one or more of which is or are situated in the City of Bombay or Calcutta, Five lakhs of rupees plus twenty-five thousand rupees in respect of each place of business situated outside the City of Bombay or Calcutta, as the case may be;

(4) Any amount deposited and kept deposited with the Reserve Bank under [\* \* \*] sub-section (2) by any banking company incorporated <sup>9</sup>[outside India] shall, in the event of the company ceasing for any reason to carry on banking business <sup>10</sup>[in India], be an asset of the company on which the claims of all the creditors of the company <sup>8</sup>[in India] shall be the first charge.

**12** [(5) For the purposes of this section.-

(a) "place of business" means any office, sub-office, sub-pay office and any place of business at which deposits are received, cheques cashed or monyes lent;

(b) "value" means the real or exchangeable value, and not the nominal value which may be shown in the books of the banking company concerned.]

(6) If any dispute arises in computing the aggregate value of the paid-up capital and reserve of any banking company, a determination thereof by the Reserve Bank shall be final for the purposes of this section.

1. Substituted for the words "in any State" by the Banking Companies (Amendment) Act. 1950 (20 of 1950), S. 3(18-3-1950).

3. Substituted for the words "unless it has paid-up capital and reserves of such aggregate value as is hereinafter required by the

section", by the Banking Companies (Amendment) Act. 1959 (33 of 1959). S. 7 (1-10-1959)

4. Sub-section (2) substituted for the original sub-section by the Banking Companies (Amendment) Act. 1959 (33 of 1959). S. 7 (ii) (1-10-1959).

5. Para. 1 of clause (b) of sub-section (2) substituted and sub-section (2A) inserted by the Banking Companies (Amendment) Act. 1962 (36 of 1962). Section 2 (i) and (ii) (16-9-1962).

6. Word "calendar" omitted by the Banking. Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act (66 of 1988). S. 7. (30-12-1988).

8. Proviso added by the Banking Companies (Amendment) Act, 1962 (36 of 1962), S. 2 (iii) (16-9-1962).

9. Substituted for the words "elsewhere than in a State" the Banking Companies (Amendment) Act. 1959 (33 of 1959). S. 7 (1-10-1959).

10. Substituted for the words "in the States" by the Banking Companies (Amendment) Act (20 of 1950), S. 3 (18-3-1950).

12. Substituted for the original sub-section (5). the Banking Companies (Amendment) Act. 1959 (33 of 1959), S. 7(iii), (1-10-1959), S. 7 (iv).

## **12. Regulation of paid-up capital, subscribed capital and authorised capital and voting rights of shareholders :-**

(1) No banking company shall carry on business in India, unless it satisfies the following conditions, namely : --

(i) that the subscribed capital of the company is not less than one-half of the authorised capital, and the paid-up capital is not less than one-half of the subscribed capital, and that, if the capital is increased, it complies with the conditions prescribed in this clause within such period not exceeding two years as the Reserve Bank may allow:

(ii) that the capital of the company consists of ordinary shares only or of ordinary shares or equity shares and such preferential shares as may have been issued prior to the 1st day of July, 1944.

(2) No person holding shares in a banking company shall, in respect of any shares held by him. exercise voting rights <sup>1</sup>[on poll] <sup>2</sup>[on excess of <sup>3</sup> [ten per cent].] of the total voting rights of all the shareholders of the banking company.

(3) Notwithstanding anything contained in any law for the time being in force or in any contract or instrument no suit or other proceeding shall be maintained against any person registered as the holder of a share in a banking company on the ground that the

title to the said share vests in a person other than the registered holder; Provided that nothing contained in this sub-section shall bar a suit or other proceedings--

(a) by a transferee of the share on the ground that he has obtained from the registered holder a transfer of the share in accordance with any law relating to such transfer; or

(b) on behalf of a minor or a lunatic on the ground that the registered holder holds the share on behalf of the minor or lunatic.

(4) Every chairman, managing director or chief executive officer by whatever name called of a banking company shall furnish to the Reserve Bank through that banking company returns containing full particulars of the extent and value of his holding of shares, whether directly or indirectly, in the banking company and of any change in the extent of such holding or any variation in the rights attaching thereto and such other information relating to those shares as the Reserve Bank may, by order, require and in such form and at such time as may be specified in the order.]

1. Inserted by the Banking Companies (Amendment) Act, 1959 (33 of 1959), S. 8 (1-10-1959).

2. Substituted for the words "in excess of five per cent" by the Banking Laws (Miscellaneous Provisions) Act, 1963 (55 of 1963), S. 12(1-2-1964).

3. Substituted for "one per cent", vide The Banking Regulation (Amendment) Act, 1994 (20 Of 1994), Dt. March 22, 1994 Published in Received the assent of (he President on March 22, 1994

### **12A. Election of new directors :-**

(1) The Reserve Bank may, by order, require any banking company to call a general meeting of the share-holders of the company within such time, not less than two months from the date of order, as may be specified in the order or within such further time as the Reserve Bank may allow in this behalf, to elect in accordance with the voting rights permissible under this Act fresh directors, and the banking company shall be bound to comply with the order.

(2) Every director elected under sub-section (1) shall hold office until the date up to which his predecessor would have held office, if the election had not been held.

(3) Any election duly held under this section shall not be called in question in any Court.]

**13. Restriction on commission, brokerage, discount, etc., on sale of shares :-**

Notwithstanding anything to the contrary contained in s.76 of the Companies Act, 1956 , Section 79 of the Companies Act, 1956 , no banking company shall pay out directly or indirectly by way of commission, brokerage, discount or remuneration in any form in respect of any shares issued by it, any amount exceeding in the aggregate two and one-half per cent of the paid-up value of the said shares.

**14. Prohibition of charge on unpaid capital :-**

No banking company shall create any charge upon any unpaid capital of the company, and any such charge shall be invalid.

**14A. Prohibition of floating charge on assets :-**

(1) Notwithstanding anything contained in section 6 . no banking company shall create a floating charge on the undertaking or any property of 'the company or any part thereof, unless the creation of such floating charge is certified in writing by the Reserve Bank as not being detrimental to the interests of the depositors of such company.

(2) Any such charge created without obtaining the certificate of the Reserve Bank shall be invalid.

(3) Any banking company aggrieved by the refusal of a certificate under sub-section (1) may, within ninety days from the date on which such refusal is communicated to it. appeal to the Central Government.

(4) The decision of the Central Government where an appeal has been preferred to it under sub-section (3) or of the Reserve Bank where no such appeal has been preferred shall be final.]

**15. Restrictions as to payment of dividend :-**

<sup>1</sup>[(1)] No banking company shall pay any dividend on its shares until all its capitalised expenses (including preliminary expenses, organisation expenses, share-selling commission, brokerage, amounts of losses incurred and any other item of expenditure not represented by tangible assets) have been completely written off.

<sup>1</sup> [(2) Notwithstanding anything to the contrary contained in sub-section (1) or in the Companies Act, 1956, a banking company may

pay dividends on its shares without writing off-

(i) the depreciation, if any, in the value of its investments in approved securities in any case where such depreciation has not actually been capitalised or otherwise accounted for as a loss;

(ii) the depreciation, if any, in the value of its investments in shares, debentures or bonds (other than approved securities) in any case where adequate provision for such depreciation has been made to the satisfaction of the auditor of the banking company;

(iii) the bad debts, if any, in any case where adequate provision for such debts has been made to the satisfaction of the auditor of the banking company.]

1. Original Section 15 renumbered as sub-s.(1) and sub-s.(2) inserted thereafter by the Banking Laws (Amendment) Act, 1959 (33 of 1959), Section 10 (1-10-1959).

#### **16. Prohibition of common directors :-**

**1**(1) No banking company incorporated in India shall have as a director in its Board of Directors any person who is a director of any other banking company.

(1A) No banking company referred to in sub-section (1) shall have in its Board of Directors more than three directors who are directors of companies which among themselves are entitled to exercise voting rights in excess of twenty per cent of the total voting rights of all the shareholders of that banking company."]

(2) If immediately before the commencement of the Banking Companies (Amendment) Act, 1956, any person holding office as a director of a banking company is also a director of companies which among themselves are entitled to exercise voting rights in excess of twenty per cent. of the total voting rights of all the shareholders of the banking company, he shall, within such period from such commencement as the Reserve Bank may specify in this behalf-

(a) either resign his office as a director of the banking company; or

(b) choose such number of companies as among themselves are not entitled to exercise voting rights in excess of twenty per cent. of the total voting rights of all the shareholders of the banking company as companies in which he wishes to continue to hold the office of a director and resign his office as a director in the other companies.]

**2** [(3) Nothing in sub-section (1) shall apply to, or in relation to any director appointed by the Reserve Bank.]

1. Substituted for " (1) No banking company incorporated in India shall have as a director any person who is a director- (i) of any other banking company; or (ii) of companies which among themselves are entitled to exercise voting rights in excess of twenty per cent of the total voting rights of all the shareholders of the banking company. ", vide The Banking Regulation (Amendment) Act, 1994 (20 Of 1994), Dt. March 22, 1994 Published in Received the assent of (he President on March 22, 1994

2. Sub-section (3) inserted by the Banking Laws (Amendment) Act, 1968 (58 of 1968), S. 4 (1-2-1969).

### **17. Reserve Fund :-**

(1) Every banking company incorporated in India shall create a reserve fund and <sup>1</sup>[\* \* \*] shall out of the balance of profit of each year as disclosed in the profit and loss account prepared under section 29 and before any dividend is declared, transfer to the reserve fund a sum equivalent to not less than twenty per cent. of such profit.

**2** [(1A) Notwithstanding anything contained in sub-section (1), the Central Government may, on the recommendation of the Reserve Bank and having regard to the adequacy of the paid-up capital and reserves of a banking company in relation to its deposit liabilities declare by order in writing that the provisions of sub-section (1) shall not apply to the banking company for such period as may be specified in the order: Provided that no such order shall be made unless, at the time it is made, the amount in the reserve fund under sub-section (1), together with the amount in the share premium account is not less than the paid-up capital of the banking company.]

(2) Where a banking company appropriates any sum or sums from the reserve fund or the share premium account, it shall, within twenty-one days from the date of such appropriation, report the fact to the Reserve Bank, explaining the circumstances relating to such appropriation: Provided that the Reserve Bank may, in any particular case, extend the said period of twenty-one days by such period as it thinks fit or condone any delay in the making of such report.]

1. Words "unless the amount in such fund together with the amount in the share premium account is not less than its paid up

capital" omitted by the Banking Companies (Amendment) Act, 1962 (36 of 1962), S. 3(16-9-1962).

2. Inserted, the Banking Companies (Amendment) Act, 1962 (36 of 1962), S. 3(16-9-1962), S. 3 (16-9-1962).

### **18. Cash reserve :-**

(1) Every banking company, not being a scheduled bank, shall maintain in India by way of cash reserve with itself or by way of balance in a current account with the Reserve Bank or by way of net balance in current accounts or in one or more of the aforesaid ways, a sum equivalent to at least three per cent. of the total of its demand and time liabilities in India as on the last Friday of the second preceding fortnight and shall submit to the Reserve Bank before the twentieth day of every month a return showing the amount so held on alternate Fridays during a month with particulars of its demand and time liabilities in India on such Fridays or if any such Friday is a public holiday under the Negotiable Instruments Act, 1881, at the close of business on the preceding working day.

(2) The Reserve Bank may, for the purposes of this section and section 24 , specify from time to time, with reference to any transaction or class of transactions, that such transaction or transactions shall be regarded as liability in India of E banking company and, if any question arises as to whether any transaction or class of transactions shall be regarded for the purposes of this section and section 24 as liability in India of a banking company, the decision of the Reserve Bank thereon shall be final.]

### **19. Restriction on nature of subsidiary companies :-**

**108**[(1) A banking company shall not form any subsidiary company except a subsidiary company formed for one or more of the following purposes, namely :-

(a) the undertaking of any business which, under clauses (a) to (o) of sub-section (1) of section 6 , is permissible for a banking company to undertake, or

(b) with the previous permission in writing of the Reserve Bank, the carrying on of the business of banking exclusively outside India, or

(c) the undertaking of such other business, which the Reserve Bank may, with the prior approval of the Central Government, consider to be conducive to the spread of banking in India or to be

otherwise useful or necessary in the public interest.

(2) Save as provided in sub-section (1), no banking company shall hold shares in any company, whether as pledgee, mortgagee or absolute owner, of an amount exceeding thirty per cent. of the paid-up share capital of that company or thirty per cent. of its own paid-up share capital and reserves, whichever is less: Provided that any banking company which is on the date of the commencement of this Act holding any shares in contravention of the provisions of this sub-section shall not be liable to any penalty therefor if it reports the matter without delay to the Reserve Bank and if it brings its holding of shares into conformity with the said provisions within such period, not exceeding two years, as the Reserve Bank may think fit to allow.

(3) Save as provided in sub-section (1) and notwithstanding anything contained in sub-section (2), a banking company shall not after the expiry of one year from the date of the commencement of this Act, hold shares, whether as pledgee, mortgagee or absolute owner, in any company in the management of which any managing director or manager of the banking company is in any manner concerned or interested.

**109** (4)"(4) Nothing contained in this section shall apply to the credit information disclosed under the Credit Information Companies (Regulation) Act, 2005."

[a] Substituted by the Banking Laws (Amendment) Act (I of 1984), S. 22 (15-2-1984).

In the BANKING REGULATION ACT, 1949, (10 of 1949), In the section 19, sub section (4) shall be inserted as follows :- "(4) Nothing contained in this section shall apply to the credit information disclosed under the Credit Information Companies (Regulation) Act, 2005." by the Credit Information Companies (Regulation) Act, 2005."

## **20. Restrictions on loans and advances :-**

(1) Notwithstanding anything to the contrary contained in Section 77 of the Companies Act, 1956 , no banking company shall,-

(a) grant any loans or advances on the security of its own shares, or

(b) enter into any commitment for granting any loan or advance to or on behalf of-

(i) any of its directors,

(ii) any firm in which any of its directors is interested as partner, manager, employee or guarantor, or

(iii) any company (not being a subsidiary of the banking company or a company registered under Section 25 of the Companies Act, 1956 , or a Government company) of which any of the directors of the banking company is a director, managing agent, manager, employee or guarantor or in which <sup>1</sup> [or the subsidiary or the holding company of which] he holds substantial interest, or

(iv) any individual in respect of whom any of its directors is a partner or guarantor.

(2) Where any loan or advance granted by a banking company is such that a commitment for granting it could not have been made if clause (b) of sub-section (1) had been in force on the date on which the loan or advance was made, or is granted by a banking company after the commencement of section 5 of the Banking Laws (Amendment) Act, 1968, but in pursuance of a commitment entered into before such commencement, steps shall be taken to recover the amount due to the banking company on account of the loan or advance together with interest, if any, due thereon within the period stipulated at the time of the grant of the loan or advance, or where no such period has been stipulated, before the expiry of one year from the commencement of the said section 5 : Provided that the Reserve Bank may, in any case, on an application in writing made to it by the banking company in this behalf, extend the period for the recovery of the loan or advance until such date, not being a date beyond the period of three years from the commencement of the said section 5 , and subject to such terms and conditions, as the Reserve Bank may deem fit: Provided further that this sub-section shall not apply if and when the director concerned vacates the office of the director of the banking company, whether by death, retirement, resignation or otherwise.

(3) No loan or advance, referred to in sub-section (2), or any part thereof shall be remitted without the previous approval of the Reserve Bank, and any remission without such approval shall be void and of no effect.

(4) Where any loan or advance referred to in sub-section (2), payable by any person, has not been repaid to the banking

company within the period specified in that sub-section, then, such person shall, if he is a director of such banking company on the date of the expiry of the said period, be deemed to have vacated his office as such on the said date.

(5) If any question arises whether any transaction is a loan or advance for the purposes of this section, it shall be referred to the Reserve Bank, whose decision thereon shall be final.]

1. Inserted by the Banking Laws (Amendment) Act (1 of 1984), S. 23 (15-2-1984).

### **20A. Restrictions on power to remit debts :-**

(1) Notwithstanding anything to the contrary contained in Section 293 of the Companies Act, 1956 , a banking company shall not, except with the prior approval of the Reserve Bank, remit in whole or in part any debt due to it by-

(a) any of its directors, or

(b) any firm or company in which any of its directors is interested as director, partner, managing agent or guarantor, or

(c) any individual if any of its directors is his partner or guarantor.

(2) Any remission made in contravention of the provisions of sub-section (1) shall be void and of no effect,]

### **21. Power of Reserve Bank to control advances by banking companies :-**

(1) Where the Reserve Bank is satisfied that it is necessary or expedient in the public interest <sup>1</sup>[or in the interests of depositors] <sup>2</sup>[or banking policy] so to do, it may determine the policy in relation to advances to be followed by banking companies generally or by any banking company in particular and when the policy has been so determined, all banking companies or the banking company concerned, as the case may be, shall be bound to follow the policy as so determined.

(2) Without prejudice to the generality of the power vested in the Reserve Bank under sub-section (1), the Reserve bank may give directions to banking companies, either generally or to any banking company or group of banking companies in particular, <sup>3</sup>[as to-

(a) the purposes for which advances may or may not be made,

(b) the margins to be maintained in respect of secured advances,

(c) the maximum amount of advances or other financial accommodation which, having regard to the paid-up capital, reserves and deposits of a banking company and other relevant considerations, may be made by that banking company to any one company, firm, association of persons or individual,

(d) the maximum amount up to which, having regard to the considerations referred to in clause (e), guarantees may be given by a banking company on behalf of any one company, firm, association of persons or individual, and

(e) the rate of interest and other terms and conditions on which advances or other financial accommodation may be made or guarantees may be given;]

**3** [(3) Every banking company shall be bound to comply with any directions given to it under this section.]

1. Inserted by the banking Laws (Miscellaneous Provisions) Act, 1963 (55 of 1963), S. 13 (1-2-1964).

2. Inserted by the Banking (Amendment) Act, 1968 (58 of 1968), S. 6 (1-2-1969).

3. Words beginning with "as to the purposes" and ending with "directions as so given" in sub-section (2) substituted and sub-section (3) inserted by Act (55 of 1964),

### **21A. Rates of interest charged by banking companies not to be subject(to scrutiny by courts :-**

Notwithstanding anything contained in the Usurious Loans Act, 1918, or any other law relating to indebtedness in force in any State, a transaction between a banking company and its debtor shall not be reopened by any court on the ground that the rate of interest charged by the banking company in respect of such transaction is excessive.]

### **22. Licensing of banking company :-**

**1**[(1) Save as hereinafter provided, no company shall carry on banking business in India unless it holds a licence issued in that behalf by the Reserve Bank and any such licence may be issued subject to such conditions as the Reserve Bank may think fit to impose.]

(2) Every banking company in existence on the commencement of this Act, before the expiry of six months from such commencement,

and every other company before commencing banking business <sup>2</sup>[in India], shall apply in writing to the Reserve Bank for a licence under this section: Provided that in the case of a banking company in existence on the commencement of this Act, nothing in sub-section (1) shall be deemed to prohibit the company from carrying on banking business until it is granted a licence in pursuance of <sup>1</sup>[this section] or is by notice in writing informed by the Reserve Bank that a licence cannot be granted to it: Provided further that the Reserve Bank shall not give a notice as aforesaid to a banking company in existence on the commencement of this Act before the expiry of the three years referred to in sub-section (1) of Section 11 or of such further period as the Reserve Bank may under that sub-section think fit to allow.

(3) Before granting any licence under this section, the Reserve Bank may require to be satisfied by an inspection of the books of the company or otherwise that [x x x x] the following conditions are fulfilled, namely:-

<sup>4</sup>[(a) that the company is or will be in a position to pay its present or future depositors in full as their claims accrue;

(b) that the affairs of the company are not being, or are not likely to be conducted in a manner detrimental to the interests of its present or future depositors;]

<sup>5</sup>[(c) that the general character of the proposed management of the company will not be prejudicial to the public interest or the interest of its depositors;

(d) that the company has adequate capital structure and earning prospects;

(e) that the public interest will be served by the grant of a licence to the company to carry on banking business in India;

(f) that having regard to the banking facilities available in the proposed principal area of operations of the company, the potential scope for expansion of banks already in existence in the area and other relevant factors the grant of the licence would not be prejudicial to the operation and consolidation of the banking system consistent with monetary stability and economic growth;

(g) any other condition, the fulfilment of which would, in the opinion of the Reserve Bank, be necessary to ensure that the

carrying on of banking business in India by the company will not be prejudicial to the public interest or the interests of the depositors;]

**6**[(3A) Before granting any licence under this section to a company incorporated outside India, the Reserve Bank may require to be satisfied by an inspection of the books of the company or otherwise that the conditions specified in sub-section (3) are fulfilled and that the carrying on of banking business by such company in India will be in the public interest and that the Government or law of the country in which it is incorporated does not discriminate in any way against banking companies registered in India and that the company complies with all the provisions of this Act applicable to banking companies incorporated outside India.]

**3**[(4) The Reserve Bank may cancel a licence granted to a banking company under this section-

- (i) if the company ceases to carry on banking business in India; or
- (ii) if the company at any time fails to comply with any of the conditions imposed upon it under sub-section (1); or
- (iii) if at any time, any of the conditions referred to in sub-section (3) **5** and sub-section (3A)] is not fulfilled:

(5) Any banking company aggrieved by the decision of the Reserve Bank cancelling a licence under this section may, within thirty days from the date on which such decision is communicated to it, appeal to the Central Government.

(6) The decision of the Central Government where an appeal has been preferred to it under sub-section (5) or of the Reserve Bank where no such appeal has been preferred shall be final.]

1. Sub-section (1) and the words "sub's. (2)" in the first proviso to sub-s. (2) substituted by the Banking Companies (Amendment) Act (33 of 1959), S. 13 (1-10-1959).

2. Substituted for the words "in a State" the Banking Companies (Amendment) Act (33 of 1959), S. 13 (1-10-1959) (20 of 1950), S. 3 (18-3-1950).

4. Substituted for Cls. (a) and (b) of sub-s. (3) and sub-ss. (4) and (5), the Banking Companies (Amendment) Act (33 of 1959), S. 13 (1-10-1959) (33 of 1959), S. 13 (1-10-1959).

5. Substituted, the Banking Laws (Amendment) Act (1 of 1984), S. 22 (15-2-1984).

6. Inserted, the Banking Laws (Amendment) Act (1 of 1984), S. 22 (15-2-1984).

**23. Restrictions on opening of new. and transfer of existing, places of business :-**

(1) Without obtaining the prior permission of the Reserve Bank-

(a) no banking company shall open a new place of business in India or change otherwise than within the same city, town or village, the location of an existing place of business situated in India; and

(b) no banking company incorporated in India shall open a new place of business outside India or change, otherwise than within the same city, town or village in any country or area outside India, the location of an existing place of business situated in that country or area:

(2) Before granting any permission under this section, the Reserve Bank may require to be satisfied by an inspection under section 35 or otherwise as to the financial condition and history of the company, the general character of its management, the adequacy of its capital structure and earning prospects and that public interest will be served by the opening or, as the case may be, change of location, of the place of business.

(3) The Reserve Bank may grant permission under sub-section (1) subject to such condition as it may think fit to impose either generally or with reference to any particular case.

(4) Where, in the opinion of the Reserve Bank, a banking company has, at any time, failed to comply with any of the conditions imposed on it under this section, the Reserve Bank may, by order in writing and after affording reasonable opportunity to the banking company for showing cause against the action proposed to be taken against it, revoke any permission granted under this section.

**1** [(4A) Any regional rural bank requiring the permission of the Reserve Bank under this section shall forward its application to the Reserve Bank through the National Bank which shall give its comments on the merits of the application and send it to the Reserve Bank: Provided that the regional rural bank shall also send an advance copy of the application directly to the Reserve Bank.]

(5) For the purposes of this section "place of business" includes any sub-office, pay office, sub-pay office and any place of business at which deposits are received, cheques cashed or moneys lent.]

1. Inserted by the National Bank for Agriculture and Rural

Development Act (61 of 1981), S. 61, Second Sch., Pt. II (1-5-1982).

**24. Maintenance of a percentage of assets :-**

**123**(1)[\*\*\*]

**124**[(2)[\*\*\*]

**125**"(2A) A scheduled bank, in addition to the average daily balance which it is, or may be, required to maintain under section 42 of the Reserve Bank of India Act, 1934 (2 of 1934) and every other banking company, in addition to the cash reserve which it is required to maintain under section 18, shall maintain in India, assets, the value of which shall not be less than such percentage not exceeding forty per cent, of the total of its demand and time liabilities in India is on the last Friday of the second preceding fortnight as the Reserve Bank may, by notification in the Official Gazette, specify from time to time and such assets shall to maintained, in such form and manner, as may be specified in such notification";

**126**[(2B) The Reserve Bank may, by notification in the Official Gazette, vary the percentage referred to in sub-section (2A) in respect of a Regional Rural Bank **127**(x x x x x] ]

**128** [(3) For the purpose of ensuring compliance with the provisions of this section, every banking company shall, not later than twenty days after the end of the month to which it relates, furnish to the Reserve Bank in the prescribed form and manner a monthly return showing particulars of its assets maintained in accordance with this section, and its demand and time liabilities in India at the close of business on cash alternate Friday during the month, or if any such Friday is a public holiday, at the close of business on the preceding working day: Provided that every Regional Rural Bank shall also:furnish a copy of the said return to the National Bank.

(4)

(a) If on any alternative Friday or, if such Friday is a public holiday, on the preceding working day, the amount maintained by a banking company at the close of business on that day falls below the minimum prescribed by or under clause (a) of sub-section (2A), such banking company shall be liable to pay to the Reserve Bank in

respect of that day's default, penal interest for that day at the rate of three per cent per annum above the bank rate on the amount by which the amount actually maintained falls short of the prescribed minimum on that day; and

(b) if the default occurs again on the next succeeding alternate Friday, or, if such Friday is a public holiday, on the preceding working day, and continues on succeeding alternate Friday or preceding working day, as the case may be, the rate of penal interest shall be increased to a rate of five per cent per annum above the bank rate on each such shortfall in respect of that alternate Friday and each succeeding alternate .Friday or preceding working-day, if such Friday is a public holiday, on which the default continues.

(5)

(a) Without prejudice to the provisions of sub-section (3), the Reserve Bank may require a banking company, to furnish to it a return in. form and manner specified by showing. particulars of its assets maintained in accordance with this section and its demand and time liabilities in India, as at the close of business on each day of a month; and

(b) without prejudice to the provisions of sub-section (4), on the failure of a banking company to maintain as on any day the amount so required to be maintained by or under clause (a) of sub-section (2A) the Reserve Bank may in respect of such default, require the banking company to pay penal interest for that day as provided in clause (a) of sub-section (4) and if the default continues on the next succeeding working day, the penal interest maybe increased as provided in clause (b) of sub-section (4) for the concerned days.

(6)

(a) The penalty payable under sub-section (4) and sub-section (5) shall be paid within a period of fourteen days from the date on which a notice issued by the Reserve Bank demanding payment of the same is served on the banking company and in the event of failure of the banking company to pay the same within such period, the penalty may be levied by a direction of the principal civil court having jurisdiction in the area where an office of the defaulting banking company is situated, such direction to be made only upon an application made by the Reserve Bank in this behalf to the

court; and

(b) when the court makes a direction under clause(a), it shall issue a certificate specifying the sum payable by the banking company and every such certificate shall be enforceable in the same manner as if it were a decree made by the court in a suit.

(7) When under the provisions of clause (b) of sub-section (4) penal interest at the increased rate of five per cent above the bank rate has become payable by a banking company, if thereafter the amount required to be maintained on the next succeeding alternate Friday, or if such Friday is a public holiday, the next preceding working day, is still below the prescribed minimum, every director, manager or secretary of the banking company, who is knowingly and wilfully a party to the default shall be punishable with fine which may extend to five hundred rupees and with a further fine which may extend to five hundred rupees for each subsequent alternate Friday or the preceding working day, as the case may be, on which the default continues.

(8) Notwithstanding anything contained in this section, if the Reserve Bank is satisfied, on an application in writing by the defaulting banking company, that the banking company had sufficient cause of its failure to comply with the provisions of clause (a) of sub-section (2A), the Reserve Bank may not demand the payment of the penal interest.

In the Banking Regulation Act, 1949, In section 24, sub-sections (1) shall be omitted as follows :- "(1) After the expiry of two years from the commencement of this Act, every banking company shall maintain [in India] in cash, gold or unencumbered approved securities, valued at a price not exceeding the current market price, an amount which shall not at the close of business on any day be less than twenty per cent of the total of its [demand and time liabilities] [in India]." by the "Banking Regulation (Amendment) Act, 2007".

In the Banking Regulation Act, 1949, In section 24, sub-sections (2) shall be omitted as follows :- "[ (2) In computing the amount for the purposes of sub-section (1), the deposit required under sub-section (2) of section 11 to be made with the Reserve Bank by a banking company incorporated outside India and any balances, maintained in India by a banking company in current account with the Reserve Bank or the State Bank of India or with any other bank which may be notified in this behalf by the Central Government including in the case of a scheduled bank the balance required under Section 42 of the Reserve bank of India Act, 1934, to be so maintained shall be deemed to be cash maintained in India;]" by

the "Banking Regulation (Amendment) Act, 2007".

In the Banking Regulation Act, 1949, In section 24, for sub-section (2A), shall be substituted, in place of :- "[2A)(a) Notwithstanding anything contained in sub-section (1) or in sub-section (2), after the expiry of two years from the commencement of the Banking Companies (Amendment) Act, 1962,- (i) a scheduled bank, in addition to the average daily balance which it is, or may be, required to maintain under Section 42 of the Reserve Bank of India Act, 1934, and (ii) every other banking company, in addition to the cash reserve which it is required to maintain under section 18 [shall maintain in India,- (A) in cash, or (B) in gold valued at a price not exceeding the current market price or in unencumbered approved securities valued at a price determined in accordance with such one or more of, or combination of, the following methods of valuation, namely, valuation with reference to cost price, market price, book value or face value, as may be specified by the Reserve Bank from time to time, an amount which shall not, at the close of business on any day, be less than twenty-five per cent or such other percentage not exceeding forty per cent as the Reserve Bank may, from time to time, by notification in the Official Gazette, specify, of the total of its demand and time liabilities in India,as on the last Friday of the second preceding fortnight;] [(b) in computing the amount for the purpose of clause (a),- (i) the deposit required under sub-section (2) of section 11 to be made with the Reserve Bank by a banking company incorporated outside India; (ii) any cash or balances maintained in India by a banking company other than a scheduled bank with itself or with the Reserve Bank or by way of net balance in current account in excess of the aggregate of the cash or balance or net balance required to be maintained under section 18; (iii) any balances maintained by a scheduled bank with the Reserve Bank in excess of the balance required to be maintained by it under Section 42 of the Reserve Bank of India Act, 1934; (iv) the net balance in current account maintained in India by a scheduled bank; (v) any balances maintained by a Regional Rural Bank in call or fixed deposit with its Sponsor Bank, shall be deemed to be cash maintained in India.]" by the "Banking Regulation (Amendment) Act, 2007".

[I] Inserted by the Regional Rural Banks Act(21 of 1976), S. 33 (4) (w.r.e.f. 26-9-1975).

[h] Words "established under section 3 of the Regional Rural Banks Act, 1976" omitted, the Banking Laws (Amendment) Act (1 of 1984),S. 26 (29-3-1985).

[F] Substituted, the Banking Laws (Amendment) Act (1 of 1984),S. 26 (29-3-1985).

## **25. Assets in India :-**

**1**[(1) The assets in India of every banking company at the close of business on the last Friday of every quarter or, if that Friday is a public holiday under the Negotiable Instruments Act, 1881, at the

close of the business on the preceding working day, shall not be less than seventy-five per cent of its demand and time liabilities in India.

(2) Every banking company shall, within one month from the end of every quarter, submit to the Reserve Bank a return in the prescribed form and manner of the assets and liabilities referred to in sub-section (1) as at the close of business on the last Friday of the previous quarter, or, if that Friday is a public holiday under the Negotiable Instruments Act, 1881, at the close of business on the preceding working day.] <sup>2</sup>[Provided that every regional rural bank shall also furnish a copy of the said return to the National Bank.]

(3) For the purposes of this section,-

<sup>3</sup>[(a) "assets in India" shall be deemed to include export bills drawn in and import bills drawn on and payable in India and expressed in such currencies as the Reserve Bank may from time to time approve in this behalf and also such securities as the Reserve Bank may approve in this behalf, notwithstanding that all or any of the said bills or securities are held outside India;]

<sup>4</sup>[(b) liabilities in India shall not include the paid-up capital or the reserves or any credit balance in the profit or loss account of the banking company;]

<sup>4</sup> [(c)] "quarter" means the period of three months ending on the last day of March, June, September or December.

1. Substituted for original sub-sections (1) and (2) by the Banking Companies (Amendment) Act, 1959 (33 of 1959), S. 16 (1-10-1959).

2. Inserted by the National Bank for Agriculture and Rural Development Act (61 of 1981) S. 61, Second Sch., Pt. II (1-5-1982).

3. Substituted for the original clause (a) by the Banking Companies (Amendment) Act (20 of 1950), S. 7 (1-3-50).

4. Clause (b) renumbered as Cl. (c) and new Cl. (b) inserted, the Banking Companies (Amendment) Act, 1959 (33 of 1959), S. 16 (1-10-1959).

## **26. Return of unclaimed deposits :-**

Every banking company shall, within thirty days after the close of each calendar year, submit a return in the prescribed form and manner to the Reserve Bank as at the end of such calendar year of all accounts <sup>1</sup>[in India] which have not been operated upon for ten

years <sup>2</sup>[\* \* \* \* \*]: Provided that in the case money deposited for a fixed period the said term of ten years shall be reckoned from the date of the expiry of such fixed period. <sup>3</sup> [Provided further that every regional rural bank shall also furnish a copy of the said return to the National Bank.]

1. Substituted for the words "in the States" by the Banking Companies (Amendment Act, 1950 (20 of 1950), S. 3 (18-3-1950).
2. Words "giving particulars of the deposits standing to the credit of each such account" were omitted by the Banking Laws (Miscellaneous Provisions) Act, 1963 (55 of 1963), S. 14 (1-2-1964).
3. Inserted by the National Bank for Agriculture and Rural Development Act (61 of 1981), S.61, Second Sch., Pt. II (1-5-1982).

## **27. Monthly returns 114 power to call for other returns and information :-**

(1) Every banking company shall, before the close of the month succeeding that to which it relates, submit to the Reserve Bank a return in the prescribed form and manner showing its assets and liabilities <sup>1</sup>[in India] as at the close of business on the last Friday of every month or if that Friday is a public holiday under the Negotiable Instruments Act, 1881, at the close of business on the preceding working day.

<sup>2</sup>[(2) The Reserve Bank: may at any time direct a banking company to furnish it within such time may be specified by the Reserve Bank, with such statements and information relating to the business or affairs of the banking Company (including any business or affairs with which such banking company is concerned) as the Reserve Bank may consider necessary or expedient to obtain for the purposes of this Act, and without prejudice to the generality of the foregoing power may call for information every half-year regarding <sup>3</sup>[the investments of a banking company and the classification of its advances in respect of industry, commerce and agriculture.]

<sup>4</sup> [(3) Every regional rural bank shall submit a copy of the return which it submits to the Reserve Bank under sub-section (1) also to the National Bank and the powers exercisable by the Reserve Bank under sub-section (2) may also be exercised by the National Bank in relation to regional rural banks.]

1. Substituted for "in the States" by the Banking Companies (Amendment) Act, 1950 (20 of 1950), S. 3 (18-3-1950).
2. Substituted for old sub-section (2) by the Banking Companies (Amendment) Act, 1956 (95 of 1956), S.6 (14-1-1957).
3. Substituted for "the classification of advances and investments of banking companies in respect of industry, commerce and agriculture" by the Banking Companies (Amendment) Act, 1959 (33 of 1959), S.17 (1-10-1959).
4. Inserted by the National Bank for Agriculture and Rural Development Act (61 of 1981), S. 61, Second Sch., Pt. II (1-5-1982).

**28. Power to publish information :-**

The Reserve Bank or the National Bank, or both, if they consider it in the public interest so to do, may publish, any information obtained by them under this Act in such consolidated form as they think fit.]

**29. Accounts and balance sheet :-**

(1) At the expiration of each calendar year <sup>1</sup>[or at the expiration of a period of twelve months ending with such date as the Central Government may, by notification in the Official Gazette, specify in this behalf] every banking company incorporated <sup>2</sup>[in India], in respect of all business transacted by it, and every banking company incorporated <sup>3</sup>[outside India], in respect of all business transacted through its branches <sup>4</sup>[in India], shall prepare with reference to <sup>5</sup>[that year or period, as the case may be,] a balance sheet and profit and loss account as on the last working day of <sup>6</sup>[that year or the period, as the case may be,] in the Forms set out in the Third Schedule or as near thereto as circumstances admit: <sup>7</sup>[Provided that with a view to facilitating the transition from one period of accounting to another period of accounting under this sub-section, the Central Government may, by order published in the Official Gazette, make such provisions as it considers necessary or expedient for the preparation of, or for other matters relating to, the balance-sheet or profit and loss account in" respect of the concerned year or period, as the case may be.]

(2) The balance sheet and profit and loss account shall be signed-

(a) in the case of a banking company incorporated <sup>2</sup>[in India], by the manager or the principal officer of the company and where there are more than three directors of the company, by at least three of those directors, or where there are not more than three

directors, by all the directors, and

(b) in the case of a banking company incorporated <sup>3</sup>[outside India] by the manager or agent of the principal office of the company <sup>4</sup>[in India].

(3) Notwithstanding that the balance sheet of a banking company is under sub-section (1) required to be prepared in a form other than the form <sup>11</sup>[set out in Part I of Schedule VI to the Companies Act, 1956], the requirements of that Act relating to the balance sheet and profit and loss account of a company shall, in so far as they are not inconsistent with this Act, apply to the balance sheet or profit and loss account, as the case may be, of a banking company.

**12** [(3A) Notwithstanding anything to the contrary contained in sub-section (3) of Section 210 of the Companies Act, 1956, the period to which the profit and loss account relates shall, in the case of a banking company, be the period ending with the last working day of the year immediately preceding the year in which the annual general meeting is held.]

(4) The Central Government, after giving not less than three months notice of its intention so to do by a notification in the Official Gazette, may from time to time by a like notification amend the Forms set out in the Third Schedule.

1. Inserted by the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act (66 of 1988), S. 8 (30-12-1988).

2. Substituted for the words "in a State" by the Banking Companies (Amendment) Act, 1950 (20 of 1950), S. 3 (8-3-1950).

3. Substituted for the words "outside the States", the Banking Companies (Amendment) Act, 1950 (20 of 1950), S. 3 (8-3-1950).

4. Substituted for the words "in the States", the Banking Companies (Amendment) Act, 1950 (20 of 1950), S. 3 (8-3-1950).

5. 31st day of March in each year specified as the date for the purposes of S. 29(1)-See Gaz. of India, 30-12-1988, Pt. II-S 3(ii), Ext., p. 1 (No. 687).

6. Substituted for the words "that year" the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act (66 of 1988), S. 8(30-12-1988).

7. Proviso substituted, the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act(66 of 1988), S. 8(30-12-1988).

11. Substituted for the words "marked F in the Third Schedule to the Indian Companies Act, 1913 (VII of 1913)" Act (95 of 1956), S.

14 and Schedule (14-1-1957).

12. Inserted by the Banking Laws (Amendment) Act (1 of 1984), S. 27 (15-2-1984).

### **30. Audit :-**

**1**[(1) The balance sheet and profit and loss account prepared in accordance with section 29 shall be audited by a person duly qualified under any law for the time being in force to be an auditor of companies.]

**1**[(1A) Notwithstanding anything contained in any law for the time being in force or in any contract to the contrary, every banking company shall, before appointing, reappointing or removing any auditor or auditors, obtain the previous approval of the Reserve Bank.

(1B) Without prejudice to anything contained in the Companies Act, 1956, or any other law for the time being in force, where the Reserve Bank is of opinion that it is necessary in the public interest or in the interest of the banking company or its depositors so to do, **3**[it may at any time by order direct that a special audit of the banking company's accounts, for any such transaction or class of transactions or for such period or periods as may be specified in the order, shall be conducted and may by the same or a different order either appoint a person duly qualified under any law for the time being in force to be an auditor of companies or direct the auditor of the banking company himself to conduct such special audit], and the auditor shall comply with such directions and make a report of such audit to the Reserve Bank and forward a copy thereof to the company.

(1C) The expenses of, or incidental to, **4**[the special audit] specified in the order made by the Reserve Bank shall be borne by the banking company.]

(2) The Auditor shall have the powers of, exercise the functions vested in, and discharge the duties and be subject to the liabilities and penalties imposed on, auditors of companies by Section 227 of the Companies Act, 1956 **5**[and auditors, if any, appointed by the law establishing, constituting or forming the banking company concerned].

(3) In addition to the matters which under the aforesaid Act the auditor is required to state in his report, he shall, in the case of a

banking company incorporated <sup>6</sup>[in India], state in his report,-

(a) whether or not the information and explanations required by him have been found to be satisfactory;

(b) whether or not the transactions of the company which have come to his notice have been within the powers of the company;

(c) whether or not the returns received from branch offices of the company have been found adequate for the purposes of his audit;

(d) whether the profit and loss account shows a true balance <sup>7</sup> [of profit or loss] for the period covered by such account;

(e) any other matter which he considers should be brought to the notice of the shareholders of the company.

1. Sub-section (l) substituted and sub-sections (1A), (1B) and (1C) inserted by the Banking Laws (Amendment) Act, 1968 (58 of 1968), S. 8 (1-2-1969).

3. Substituted for the words "it may direct the auditor of the banking company to audit the accounts of the banking company in relation to any transaction or class of transactions specified in the order" by the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act (66 of 1988), S. 9 (30-12-1988).

4. Substituted for the words "the audit of the transaction or class of transactions", the banking company to audit the accounts of the banking company in relation to any transaction or class of transactions specified in the order" by the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act (66 of 1988), S. 9 (30-12-1988).

5. Inserted, the banking company to audit the accounts of the banking company in relation to any transaction or class of transactions specified in the order" by the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act (66 of 1988), S. 9 (30-12-1988).

6. Substituted for the words "in a State" by the Banking Companies Act, 1950 (20 of 1950), S.3 (18-3-1950).

7. Substituted for the words "profit and loss" by the Banking Laws (Miscellaneous Provisions) Act, 1963 (55 of 1963), S. 15 (1-2-1964).

### **31. Submission of returns :-**

The accounts and balance sheet referred to in section 29 together with the auditor's report shall be published in the prescribed manner and. three copies thereof shall be furnished as returns to the Reserve Bank within three months from the end of the period to which they refer: Provided that the Reserve Bank in any case

extend the said period of three months for the furnishing of such returns by a further period not exceeding three months. <sup>1</sup> [Provided further that a regional rural bank shall furnish such returns also to the National Bank.]

1. Inserted by the' National Bank for Agriculture and Rural Development Act (61 of 1981). S. 61. Second Sch., Part II (1-5-1982).

### **32. Copies of balance sheets and accounts to be sent to Registrar :-**

<sup>1</sup> [(1) Where a banking company in any year furnishes its accounts and balance sheet in accordance with the provisions of section 31 it shall at the same time send to the Registrar three copies of such accounts and balance sheet and of the auditor's report, and where such copies are so sent. it shall not be necessary to file with the Registrar, in the case of a public company, copies of the accounts and balance sheet and of the auditor's report, and in the case of a private company, copies of the balance sheets and of the auditor's report as required by sub-section (1) of S.220 of the Companies Act. 1956: and the copies so sent shall be chargeable with the same fee and shall be dealt with in all respects as if they were filed in accordance with that section.]

(2) When in pursuance of sub-section (2) of section 27 the Reserve Bank requires any additional statement or information in connection with the balance sheet and accounts furnished. under section 3 ], the banking company shall, when supplying such statement or information, send a copy thereof to the Registrar.

1. Substituted by the Banking Companies (Amendment) Act. 1959 (33 of 1959) S. 19 ( 1-10-1959).

### **33. Display of audited balance sheet by companies incorporated outside India :-**

Every banking company incorporated <sup>1</sup>[outside India] shall, not later than the first Monday in August of any year in which it carries on business, display in a conspicuous place in its principal office and in every branch office <sup>2</sup> [in India] a copy of its last audited balance sheet and profit and loss account prepared under section 29 and shall keep the copy so displayed until replaced by a copy of the subsequent balance sheet and profit and loss account so prepared, and every such banking company shall display in like manner copies afits complete audited balance sheet and profit and loss

account relating to its banking business as soon as they are available, and shall keep the copies so displayed until copies of such subsequent accounts are available.

1. Substituted for the words "outside the States" by the Banking Companies (Amendment) Act. 1950 (20 of 1950). S.3 (18-3-1950).
2. Substituted for the words "in the States", the Banking Companies (Amendment) Act. 1950 (20 of 1950). S.3 (18-3-1950).

**34. Accounting provisions of this Act not retrospective :-**

Nothing in this Act shall apply to the preparation of accounts by a banking company and the audit and submission thereof in respect of any accounting year which has expired prior to the commencement of this Act. and notwithstanding the other provisions of this Act, such accounts shall be prepared, audited and submitted in accordance with the law in force immediately before the commencement of this Act.

**34A. Production of documents of confidential nature :-**

(1) Notwithstanding anything contained in Section 11 of the Industrial Disputes Act, 1947 , or any other law for the time being in force, no banking company shall, in any proceeding under the said Act or in any appeal or other proceeding arising therefrom or connected therewith, be compelled by any authority before which such proceeding is pending to produce, or give inspection of, any of its books of account or other document or furnish or disclose any statement or information, when the banking company claims that such document, statement or information is of a confidential nature and that the production or inspection of such document or the furnishing or disclosure of such statement or information would involve disclosure of information relating to-

(a) any reserves not shown as such in its published balance sheet;  
or

(b) any particulars not shown therein in respect of provisions made for bad and doubtful debts and other usual or necessary provisions.

(2) If. in any such proceeding in relation to any banking company other than the Reserve Bank of India, any question arises as to whether any amount out of the reserves or provisions referred to in sub-section (1) should be taken into account by the authority before which such proceeding is pending, the authority may, if it so thinks fit, refer the question to the Reserve Bank and the Reserve Bank shall, after taking into account principles of sound banking and all

relevant circumstances concerning the banking company, furnish to the authority a certificate stating that the authority shall not take into account any amount as such reserves and provisions of the banking company or may take them into account only to the extent of the amount specified by it in the certificate, and the certificate of the Reserve Bank or such question shall be final and shall not be called in question in any such proceeding.

<sup>1</sup>[(3) For the purposes of this section "banking company" includes the Reserve Bank. the Development Bank. the Exim Bank<sup>2</sup>[the Reconstruction Bank]<sup>3</sup> [the National Housing Bank] the National Bank, the State Bank of India, a corresponding new bank, a regional rural bank and a subsidiary bank.]

1. Sub-section (3) substituted by the Banking Laws (Amendment) Act (1 of 1984), S. 28 ( 15-2-1984).

2. Inserted by the Industrial Reconstruction Bank of India Act (62 of 1984). S. 71. Third Sch.. Pt. OIII (20-3-1985).

3. Inserted by the National Housing Bank Act(5.1 of 1987). S. 56, Second Sch.. Pt. II (9-7-1988).

### **35. Inspection :-**

(1) Notwithstanding anything to the contrary contained in Section 235 of the Companies Act, 1956 , the Reserve Bank at any time may, and on being directed so to do by the Central Government shall, cause an inspection to be made by one or more of its officers of any banking company and its books and accounts; and the Reserve Bank shall supply to the banking company a copy of its report on such' inspection.

<sup>1</sup>[(1A)

(a) Notwithstanding anything to the contrary contained in any law for the time being in force and without prejudice to the provisions of sub-section (1), the Reserve Bank, at any time. may also cause a scrutiny to be made by any one or more of its officers, of the affairs of any banking company and its books and accounts; and

(b) a copy of the report of the scrutiny shall be furnished to the banking company if the banking company makes a request for the same or if any adverse action is contemplated against the banking company on the basis of the scrutiny.]

(2) It shall be the duty of every director or other officer<sup>2</sup>[or employee] of the banking company to produce to any officer

making an inspection under sub-section (1) <sup>3</sup>[or a scrutiny under sub-section (1A)] all such books, accounts and other documents in his custody or power and to furnish him with any statements and information relating to the affairs of the banking company as the said officer may require of him within such time as the said officer may specify.

(3) Any person making an inspection under sub-section (1) <sup>3</sup>[or a scrutiny under sub-s. (1A)] may examine on oath any director or other officer <sup>2</sup>[or employee] of the banking company in relation to its business, and may administer an oath accordingly.

(4) The Reserve Bank shall, if it has been directed by the Central Government to cause an inspection to be made, and may, in any other case, report to the Central Government on any inspection <sup>3</sup>[or scrutiny] made under this section, and the Central Government, if it is of opinion after considering the report that the affairs of the banking company are being conducted to the detriment of the interests of its depositors, may, after giving such opportunity to the banking company to make a representation in connection with the report as, in the opinion of the Central Government, seems reasonable, by order in writing-

(a) prohibit the banking company from receiving fresh deposits;

(b) direct the Reserve Bank to apply under section 38 for the winding up of the banking company:

(5) The Central Government may, after giving reasonable notice to the banking company, publish the report submitted by the Reserve Bank or such portion thereof as may appear necessary.

<sup>7</sup> [(6) The powers exercisable by the Reserve Bank under this section in relation to regional rural banks may (without prejudice to the exercise of such powers by the Reserve Bank in relation to any regional rural bank whenever it considers necessary so to do) be exercised by the National Bank in relation to the regional rural banks, and accordingly, sub-sections (1) to (5) shall apply in relation to regional rural banks as if every reference therein to the Reserve bank included also a reference to the National Bank.]

1. Inserted and deemed to have always been so inserted by the Banking Laws (Amendment) Act (1 of 1984). S. 29(i).

2. Inserted by the Banking Laws (Miscellaneous Provisions) Act. 1963 (58 of 1963). S. 17(1-2-1964).

3. Inserted .S.29(ii)(iii)(iv) the Banking Laws (Amendment) Act (1 of 1984). S. 29(i)(15-2-1984).

7. Inserted by the National Bank for Agriculture and Rural Development Act (61 of 1981). S. 61. Second Sch., Pt. II (1-5-1982).

### **35A. Power of the Reserve Bank to give directions :-**

(1) Where the Reserve Bank is satisfied that-

(a) in the <sup>1</sup>[public interest:] or

<sup>2</sup> [(aa) in the interest of banking policy; or]

(b) to prevent the affairs of any banking company being conducted in a manner detrimental to the interests of the depositors or in a manner prejudicial to the interests of the banking Company: or

(c) to secure the proper management of any banking company generally: it is necessary to issue directions to banking companies generally or to any banking company in particular, it may from time to time, issue such directions as it deems fit, and the banking companies or the banking company, as the case may be, shall be bound to comply with such directions.

(2) The Reserve Bank may, on representation made to it or on its own motion, modify or cancel any direction issued under subsection (1 ), and in so modifying or cancelling any direction may impose such conditions as it thinks fit, subject to which the modification or cancellation shall have effect.]

1. Substituted for the words "national interest by the Banking Companies (Amendment) Act. 1961 (7 of 1961).S.2 (24-3-1961).

2. Inserted by the Banking Laws (Amendment) Act. 196K(58 of 1968). S. 10 (1-2-1969).

### **35B. Amendment of provisions relating to appointments of managing directors, etc., to be subject to previous approval of the Reserve Bank :-**

(1) In the case of a banking company-

(a) no amendment of any provision relating to <sup>1</sup>[the maximum permissible number of directors or] the <sup>2</sup>[appointment or reappointment or termination of appointment or remuneration of a chairman, a] <sup>3</sup>[managing director or any other director, whole time or otherwise] or of a manager or a chief executive officer, by whatever name called, whether that provision can be contained in

the company's memorandum or articles of association. or in an agreement entered into by it, or in any resolution passed by the company in general meeting or by its Board of Directors shall have effect unless approved by the Reserve Bank:

<sup>4</sup>[(b) no appointment or reappointment or termination of appointment of a chairman, a managing or whole-time director, manager or chief executive officer by whatever name called, shall have effect unless such appointment, reappointment or termination of appointment is made with the previous approval of the Reserve Bank.]

(2) Nothing contained in <sup>5</sup>[section 268 and section 269. the proviso to sub-section (3) of section 309, section 310 and section 31 the proviso to section 387 and section 388] (in so far as section 388 makes the <sup>6</sup>[provisions of section 269 section 310] and section 31 apply in relation to the manager of a company) of the Companies Act, 1956. shall <sup>3</sup>[apply to any matter in respect of which the approval of the Reserve bank has to be obtained under sub-section (1).]

<sup>1</sup>[(2A) Nothing contained in Section 198 of the Companies Act, 1956 shall apply to a banking company and the provisions of sub-section (1) of section 309 and of section 387 of the Act shall, insofar as they are applicable to a banking company, have effect as if no reference had been made in the said provisions to section 198 of that Act.]

(3) No act done by a person <sup>9</sup>[as chairman or a managing or whole-time director] or a director not liable to retire by rotation or a manager or a chief executive officer by whatever name called, shall be deemed to be invalid on the ground that it is subsequently discovered that his <sup>10</sup>[appointment or reappointment] had not taken effect by reason of any of the provisions of this Act: but nothing in this sub-section shall be construed as rendering valid any act done by such person after his <sup>8</sup> [appointment or reappointment] has been shown to the banking company not to have had effect.]

1. Inserted by the Banking Laws (Amendment) Act (1 of 1984). S. 30 (15-2-1984).

2. Substituted for the words "appointment or reappointment or remuneration of a Banking Laws (Amendment) Act 1958 (58 of 1968). S.11 (1-2-1969).

3. Substituted for the words "managing or whole-time director or of a director not liable to retire by rotation" by the Banking Companies (Amendment) Act, 1959 (33 of 1959). S. 21 (1-10-1959).
4. Clause (b) of sub-section (1) substituted the Banking Laws (Amendment) Act (1 of 1984). S. 29(i).
5. Substituted for the figures and word "268.269. 310 and 311 .388" by the Banking Companies (Amendment) Act, 1962 (36 of 1963).
6. Substituted for the words and figures "provisions of S. 310". the Banking Laws (Amendment) Act (1 of 1984). S. 30 (15-2-1984).
9. Substituted for the words "as a managing or whole-time director", the Banking Laws (Amendment) Act (1 of 1984). S. 29(i).
10. Substituted for the word "appointment", the Banking Laws (Amendment) Act (1 of 1984). S. 29(i).

### **36. Further powers and functions of Reserve Bank :-**

(1) The Reserve Bank may-

(a) caution or prohibit banking companies generally or any banking company in particular against entering into any particular transaction or class of transactions, and generally give advice to any banking company:

(b) on a request by the companies concerned and subject to the provisions of <sup>1</sup>[ section 44A ] assist, as intermediary or otherwise, in proposals for the amalgamation of such banking companies:

(c) give assistance to any banking company by means of the grant of a loan or advance to it under clause (3) of sub-section (1) of S.18 of the Reserve Bank of India Act. 1934:

<sup>2</sup>[(d) <sup>3</sup>[at any time, if it is satisfied that in the public interest or in the interest of banking policy or for preventing the affairs of the banking company being conducted in a manner detrimental to the interests of the banking company or its depositors, it is necessary so to do] by order in writing and on such terms and conditions as may be specified therein-

(i) require the banking company to call a meeting of its directors for the purpose of considering any matter relating to or arising out of the affairs of the banking company, or require an officer of the banking company to discuss any such matter with an officer of the Reserve Bank;

(ii) depute one or more of its officers to watch the proceedings at any meeting of the Board of Directors of the banking company or of

any committee or of any other body constituted by it: require the banking company to give an opportunity to the officers so deputed to be heard at such meetings and also require such officers to send a report of such proceedings to the Reserve Bank;

(iii) require the Board of Directors of the banking company or any committee or any other body constituted by it to give in writing to any officer specified by the Reserve Bank in this behalf at his usual address all notices of, and other communications relating to, any meeting of the Board, committee or other body constituted by it;

(iv) appoint one or more of its officers to observe the manner in which the affairs of the banking company or of its officers or branches are being conducted and make a report thereon:

(v) require the banking company to make, within such time as may be specified in the order, such changes in the management as the Reserve Bank may consider necessary <sup>4</sup> [\* \* \* \*].]

(2) The Reserve Bank shall make an annual report to the Central Government on the trend and progress of banking in the country, with particular reference to its activities under clause (2) of S.17 of the Reserve Bank of India Act. 1934, including in such report its suggestions, if any. for the strengthening of banking business throughout the country.

(3) The Reserve Bank may appoint such staff at such places as it considers necessary for the scrutiny of the returns, statements and information furnished by banking companies under this Act. and generally to ensure the efficient performance of its functions under this Act.

1. Substituted for the figure "45" by the Banking Companies (Amendment) Act. 1959 (.13 of 1959), S.22 (1-10-1959).

2. Substituted by the Banking Companies (Amendment) Act. 1956 (95 of 1956). S. 8 (14-1-1957).

3. Substituted for the words "during the course or after the completion of any inspection of a banking company under S. 35" by the Banking Companies (Amendment) Act. 1968 (58 of 1968). S. 12 (1-2-1969).

4. Words "in consequence of the state of affairs disclosed during or by the inspection" were omitted, the Banking Companies (Amendment) Act. 1968 (58 of 1968). S. 12 (1-2-1969).

**36A. Certain provisions of the Act not to apply to certain banking companies :-**

(1) The provisions of section 11 , sub-section (1)of section 12 ,and section 17 , section 18 , section 24 and section 25 shall not apply to a banking company-

(a) which, whether before or after the commencement of the Banking Companies (Amendment) Act. 1959, has been refused a licence under section 22 , or prohibited from accepting fresh deposits by a compromise, arrangement or scheme sanctioned by a court or by any order made in any proceeding relating to such compromise, arrangement or scheme, or prohibited from accepting deposits by virtue of any alteration made in its memorandum; or

(b) whose licence has been cancelled under section 22 , whether before or after the commencement of the Banking Companies (Amendment) Act, 1959.

(2) Where the Reserve Bank is satisfied that any such banking company as is referred to in sub-section ( 1 ) has repaid, or has made adequate provision for repaying all deposits accepted by the banking company, either in full or to the maximum extent possible, the Reserve Bank may, by notice published in the Official Gazette, notify that the banking company has ceased to be a banking company within the meaning of this Act. and thereupon all the provisions of this Act applicable to such banking company shall cease to apply to it, except as respects things done or omitted to be done before such notice.]

#### PART 2A

#### CONTROL OVER MANAGEMENT

### **36AA. Power of Reserve Bank to remove managerial and other persons from office :-**

(1) Where the Reserve Bank is satisfied that in the public interest or for preventing the affairs of a banking company being conducted in a manner detrimental to the interests of the depositors or for securing the proper management of any banking company it is necessary so to do, the Reserve Bank may. for reasons to be recorded in writing, by order, remove from office, with effect from such date as may be specified in the order [any chairman, director,] chief executive officer (by whatever name called) or other officer or employee of the banking company.

(2) No order under sub-section ( 1 ) shall be made [unless the chairman or director] or chief executive officer or other officer or

employee concerned has been given a reasonable opportunity of making a representation to the Reserve Bank against the proposed order: Provided that if, in the opinion of the Reserve Bank, any delay would be detrimental to the interests of the banking company or its depositors, the Reserve Bank may, at the time of giving the opportunity aforesaid or at any time thereafter, by order direct that, ending the consideration of the representation aforesaid, if any, [the chairman or, as the case may be, director or chief executive officer] or other officer or employee, shall not, with effect from the date of such order-

(a) [act as such chairman or director] or chief executive officer or other officer or employee of the banking company;

(b) in any way, whether directly or indirectly, be concerned with, or take part in the management of, the banking company.

(3)

(a) Any person against whom an order of removal has been made under sub-section (1) may, within thirty days from the date of communication to him of the order, prefer an appeal to the Central Government.

(b) The decision of the Central Government on such appeal, and subject thereto, the order made by the Reserve Bank under sub-section (1), shall be final and shall not be called into question in any court.

(4) Where any order is made in respect of [a chairman, director] or chief executive officer or other officer or employee of a banking company under sub-section (1), he shall cease to be [a chairman, or as the case may be, a director,] chief executive officer or other officer or employee of the banking company and shall not, in anyway, whether directly or indirectly, be concerned with, or take part in the management of, any banking company for such period not exceeding five years as may be specified in the order.

(5) If any person in respect of whom an order is made by the Reserve Bank under sub-section (1) or under the proviso to sub-section (2) contravenes the provisions of this section, he shall be punishable with fine which may extend to two hundred and fifty rupees for each day during which such contravention continues.

(6) Where an order under sub-section (1) has been made the

Reserve Bank may, by order in writing, appoint a suitable person in place of [the chairman or director] or chief executive officer or other officer or employee who has been removed from his office under that sub-section, with effect from such date as may be specified in the order.

(7) Any person appointed as [chairman, director or chief executive officer] or other officer or employee under this section, shall-

(a) hold office during the pleasure of the Reserve Bank and subject thereto for a period not exceeding three years or such further periods not exceeding three years at a time as the Reserve bank may specify;

(b) not incur any obligation or liability by reason only of his being [a chairman, director or chief executive officer] or other officer or employee or for anything done or omitted to be done in good faith in the execution of the duties of his office or in relation thereto.

(8) Notwithstanding anything contained in any law or in any contract, memorandum or articles of association, on the removal of a person from office under this section, that person shall not be entitled to claim any compensation for the loss or termination of office.]

### **36AB. Power of Reserve Bank to appoint additional directors**

:-

(1) If the Reserve Bank is of [opinion what in the interests of banking policy or in the public interest or] in the interests of the banking company or its depositors it is necessary so to do, it may, from time to time by order in writing, appoint, with effect from such date as may be specified in the order, one or more persons to hold office as additional directors of the banking company: [x x x]

(2) Any person appointed as additional director in pursuance of this section-

(a) shall hold office during the pleasure of the Reserve Bank and subject thereto for a period not exceeding three years or such further periods not exceeding three years at a time as the Reserve Bank may specify:

(b) shall not incur any obligation or liability by reason only of his being a director or for anything done or omitted to be done in good faith in the execution of the duties of his office or in relation

thereto: and

(c) shall not be required to hold qualification-shares in the banking company.

(3) For the purpose of reckoning any proportion of the total number of directors of the banking company, any additional director appointed under this section shall not be taken into account.]

**36AC. Part IIA to override other laws :-**

Any appointment or removal of a director, chief executive officer or other officer or employee in pursuance of section 36AA or section 36AB shall have effect notwithstanding anything to the contrary contained in the Companies Act, 1956, or any other law for the time being in force or in any contract or any other instrument.]

PART 2B

PROHIBITION OF CERTAIN ACTIVITIES IN RELATION TO BANKING COMPANIES

**36AD. Punishment for certain activities in relation to banking companies :-**

(1) No person shall

(a) obstruct any person from lawfully entering or leaving any office or place of business of a banking company or from carrying on any business there, or

(b) hold, within the office or place of business of any banking company, any demonstration which is violent or which prevents, or is calculated to prevent, the transaction of normal business by the banking company, or

(c) act in any manner calculated to undermine the confidence of the depositors in the banking company.

(2) Whoever contravenes any provision of sub-section (1) without any reasonable excuse shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

<sup>1</sup>[(3) For the purposes of this section "banking company" includes the Reserve Bank, the Development Bank, the Exim Bank,<sup>2</sup>[the Reconstruction Bank] <sup>3</sup> [the National Housing Bank] the National Bank, the State Bank of India, a corresponding new bank, a Regional Rural Bank and a subsidiary bank.]]

1. Substituted for sub-section (3) by the Banking Laws (Amendment) Act (1 of 1984), S. 32 (15-2-1984).
2. Inserted by the Industrial Reconstruction Bank of India Act (62 of 1984). S. 71. Third Sch.. Pt. III (20-3-1985).
3. Inserted by the National Housing Bank Act (53 of 1987). S. 56. Second Sch.. Pt. II (9-7-1988).

PART 2C

ACQUISITION OF THE UNDERTAKINGS OF BANKING COMPANIES IN CERTAIN CASES

**36AE. Power of Central Government to acquire undertakings of banking companies in certain cases :-**

(1) If, upon receipt of a report from the Reserve Bank, the Central Government is satisfied that a banking company

(a) has, on more than one occasion, failed to comply with the directions given to it in writing under section 21 or section 35A . in so far as such directions relate to banking policy, or

(b) is being managed in a manner detrimental to the interests of its depositors.- and that

(i) in the interests of the depositors of such banking company, or

(ii) in the interests of banking policy, or

(iii) for the better provision of credit generally or of credit to any particular section of the community or in any particular area.

(2) Subject to the other provisions contained in this Part, on the appointed day. the undertaking of the acquired bank and all the assets and liabilities of the acquired bank shall stand transferred to and vest in. the Central Government.

(3) The undertaking of the acquired bank and its assets and liabilities shall be deemed to include all rights, powers, authorities and privileges and all property, whether movable or immovable. including, in particular, cash balances, reserve funds, investments, deposits and all other interests and rights in. or arising out of. such property as may be in the possession of. or held by. the acquired bank immediately before the appointed day and all books, accounts and documents relating thereto, and shall also be deemed to include all debts, liabilities and obligations, of whatever kind, then existing of the acquired bank.

(4) Notwithstanding anything contained in sub-section (2), the

Central Government may, if it is satisfied that the undertaking of the acquired bank and its assets and liabilities should, instead of vesting in the Central Government, or continuing to so vest, vest in a company established under any scheme made under this Part or in any corporation (hereinafter in this Part and in the Fifth Schedule referred to as the transferee bank) that Government may, by order, direct that the said undertaking including the assets and liabilities thereof, shall vest in the transferee bank either on the publication of the notified order or on such other date as may be specified in this behalf by the Central Government.

(5) Where the undertaking of the acquired bank and the assets and liabilities thereof vest in the transferee bank under sub-section (4), the transferee bank shall, on and from the date of such vesting, be deemed to have become the transferee of the acquired bank and all the rights and all liabilities in relation to the acquired bank shall, on and from the date of such vesting, be deemed to have been the rights and liabilities of the transferee bank.

(6) Unless otherwise expressly provided by or under this Part, all contracts, deeds, bonds, agreements, powers of attorney, grants of legal representation and other instruments of whatever nature subsisting or having effect immediately before the appointed day and to which the acquired bank is a party or which are in favour of the acquired bank shall be of as full force and effect against or in favour of the Central Government, or as the case may be, of the transferee bank, and may be enforced or acted upon as fully and effectually as if in the place of the acquired bank the Central Government or the transferee bank had been a party thereto or as if they had been issued in favour of the Central Government or the transferee bank, as the Case may be.

(7) If, on the appointed day, any suit, appeal or other proceeding of whatever nature is pending by or against the acquired bank, the same shall not abate, be discontinued or be, in any way, prejudicially affected by reason of the transfer of the undertaking of the acquired bank or of anything contained in this Part, but the suit, appeal or other proceeding may be continued, prosecuted and enforced by or against the Central Government or the transferee bank, as the case may be.]

**36AF. Power of the Central Government to make scheme.-**

:-

(1) The Central Government may, after consultation with the Reserve Bank, make a scheme for carrying out the purposes of this Part in relation to any acquired bank.

(2) In particular, and without prejudice to the generality of the foregoing power, the said scheme may provide for all or any of the following matters, namely:-

(a) the corporation or the company incorporated for the purpose, to which the undertaking including the property, assets and liabilities of the acquired bank may be transferred, and the capital, constitution, name and office thereof;

(b) the constitution of the first Board of management (by whatever name called) of the transferee bank, and all such matters in connection therewith or incidental thereto as the Central Government may consider to be necessary or expedient;

(c) the continuance of the services of all the employees of the acquired bank (excepting such of them as, not being workmen within the meaning of the Industrial Disputes Act, 1947, are specifically mentioned in the scheme) in the Central Government or in the transferee bank, as the case may be, on the same terms and conditions so far as may be, as are specified in clauses (i) and (j) of sub-section (5) of section 45 ;

(d) the continuance of the right of any person who, on the appointed day, is entitled to or is in receipt of a pension or other superannuation or compassionate allowance or benefit from the acquired bank or any provident, pension or other fund or any authority administering such fund, to be paid by and to receive from, the Central Government or the transferee bank, as the case may be, or any provident, pension or other fund or any authority administering such fund, the same pension, allowance or benefit so long as he observes the conditions on which the pension, allowance or benefit was granted, and if any question arises whether he has so observed such conditions, the question shall be determined by the Central Government and the decision of the Central Government thereon shall be final:

(e) the manner of payment of the compensation payable in accordance with the provisions of this Part to the shareholders of the acquired bank, or where the acquired bank is a banking company incorporated outside India, to the acquired bank in full satisfaction of their or as the case may be, its claims:

(f) the provision, if any, for completing the effectual transfer to the Central Government or the transferee bank of any asset or any liability which forms part of the undertaking of the acquired bank in any country outside India:

(g) such incidental, consequential and supplemental matters as may be necessary to secure that the transfer of the business, property assets and liabilities of the acquired bank to the Central Government or transferee bank. as the case may be, is effectual and complete.

(3) The Central Government may, after consultation with the Reserve Bank, by notification in the Official Gazette, add to, amend or vary any scheme made under this section.

(4) Every scheme made under this section shall be published in the Official Gazette.

(5) Copies of every scheme made under this section shall be laid before each House of Parliament as soon as may be after it is made.

(6) The provisions of this part and of any scheme made thereunder shall have effect notwithstanding anything to the contrary contained in any other provisions of this Act or in any other law or any agreement, award or other instrument for the time being in force.

(7) Every scheme made under this section shall be binding on the Central Government or, as the case may be, on the transferee bank and also on all members, creditors, depositors and employees of the acquired bank and of the transferee bank and on any other person having any right, liability, power or function in relation to, or in connection with, the acquired bank or the transferee bank, as the case may be.]

**36AG. Compensation to be given to shareholders of the acquired bank :-**

(1) Every person who, immediately before the appointed day, is registered as a holder of shares in the acquired bank or, where the acquired bank is a banking company incorporated outside India, the acquired bank, shall be given by the Central Government, or the transferee bank, as the case may be, such compensation in respect of the transfer of the undertaking of the acquired bank as is

determined in accordance with the principles contained in the Fifth Schedule.

(2) Nothing contained in sub-section (1) shall affect the rights inter se between the holder of any share in the acquired bank and any other person who may have any interest in such shares and such other person shall be entitled to enforce his interest against the compensation awarded to the holder of such share, but not against the Central Government, or the transferee bank.

(3) The amount of compensation to be given in accordance with the principles contained in the Fifth Schedule shall be determined in the first instance by the Central Government, or the transferee bank, as the case may be, in consultation with the Reserve Bank, and shall be offered by it to all those to whom compensation is payable under sub-section (1) in full satisfaction thereof.

(4) If the amount of compensation offered in terms of sub-section (3) is not acceptable to any person to whom the compensation is payable, such person may, before such date as may be notified by the Central Government in the Official Gazette, request the Central Government in writing, to have the matter referred to the Tribunal constituted under section 36AH.

(5) If, before the date notified under sub-section (4), the Central Government receives requests, in terms of that sub-section, from not less than one-fourth in number of the share-holders holding not less than one-fourth in value of the paid-up share capital of the acquired bank, or, where the acquired bank is a banking company incorporated outside India, from the acquired bank, the Central Government shall have the matter referred to the Tribunal for decision.

(6) If, before the date notified under sub-section (4), the Central Government does not receive requests as provided in that sub-section, the amount of compensation offered under sub-section (3), and where a reference has been made to the Tribunal, the amount determined by it, shall be the compensation payable under sub-section (1) and shall be final and binding on all parties concerned.]

### **36AH. Constitution of the Tribunal :-**

(1) The Central Government may, for the purpose of this part, constitute a Tribunal which shall consist of a Chairman and two other members.

(2) The Chairman shall be a person who is, or has been a Judge of a High Court or of the Supreme Court, and of the two other members, one shall be a person, who, in the opinion of the Central Government, has had experience of commercial banking and the other shall be a person who is a chartered accountant within the meaning of the Chartered Accountants' Act, 1949.

(3) If, for any reason, a vacancy occurs in the office of the Chairman or any other member of the Tribunal, the Central Government may fill the vacancy by appointing another person thereto in accordance with the provisions of sub-section (2), and any proceeding may be continued before the Tribunal, so constituted, from the stage at which the vacancy occurred.

(4) The Tribunal may, for the purpose of determining any compensation payable under this part, choose one or more persons having special knowledge or experience of any relevant matter to assist it in the determination of such compensation.]

**36AI. Tribunal to have powers of a civil Court :-**

(1) The Tribunal shall have the powers of a civil Court, while trying a suit, under the Code of Civil Procedure, 1908, in respect of the following matters, namely:

(a) summoning and enforcing the attendance of any person and examining him on oath:

(b) requiring the discovery and production of documents:

(c) receiving evidence on affidavits:

(d) issuing commissions for the examination of witnesses or documents.

(2) Notwithstanding anything contained in sub-section (1), or in any other law for the time being in force, the Tribunal shall not compel the Central Government or the Reserve Bank,-

(a) to produce any books of account or other documents which the Central Government, or the Reserve Bank, claims to be of a confidential nature;

(b) to make any such books or documents part of the record of the proceedings before the Tribunal; or

(c) to give inspection of any such books or documents to any party

before it or to any other person.]

**36AJ. Procedure of the Tribunal :-**

(1) The Tribunal shall have power to regulate its own procedure.

(2) The Tribunal may hold the whole or any part of its inquiry in camera.

(3) Any clerical or arithmetical error in any order of the Tribunal or any error arising therein from any accidental slip or omission may, at any time, be corrected by the Tribunal either of its own motion or on the application of any of the parties.]

PART 3

SUSPENSION OF BUSINESS AND WINDING UP OF BANKING COMPANIES

**36B. High Court defined :-**

]. - In this Part and in Part IIIA, "High Court", in relation to a banking company, means the High Court exercising jurisdiction in the place where the registered office of the banking company is situated or, in the case of a banking company incorporated outside India, where its principal place of business in India is situated.]

**37. Suspension of business :-**

(1) The <sup>1</sup>[High Court] may on the application of a banking company which is temporarily unable to meet its obligations make an order (a copy of which it shall cause to be forwarded to the Reserve Bank) staying the commencement or continuance of all actions and proceedings against the company for a fixed period of time on such terms and conditions as it shall think fit and proper, and may from time to time extend the period so however that the total period of moratorium shall not exceed six months.

(2) No such application shall be maintainable unless it is accompanied by a report of the Reserve Bank indicating that in the opinion of the Reserve Bank the banking company will be able to pay its debts if the application is granted : Provided that the <sup>1</sup>[High Court] may, for sufficient reasons, grant relief under this section even if the application is not accompanied by such report, and where such relief is granted, the <sup>1</sup>[High Court] shall call for a report from the Reserve Bank on the affairs of the banking company, on receipt of which it may either rescind any order already passed or pass such further orders thereon as may be just and proper in the circumstances.

**4** [(3) When an application is made under sub-section (1). the High Court may appoint, a special officer who shall forthwith take into his custody or under his control all the assets, books, documents, effects and actionable claims to which the banking company is or appears to be entitled and shall also exercise such other powers as the High Court may deem fit to confer on him, having regard to the interests of the depositors of the banking company.]

**5** [(4) Where the Reserve Bank is satisfied that the affairs of a banking company in respect of which an order under sub-section ( 1 ) has been made, are being conducted in a manner detrimental to the interests of the depositors, it may make an application to the High Court for the winding up of the company, and where any such application is made, the High Court shall not make any order extending the period for which the commencement or continuance of all actions and proceedings against the company were stayed under that sub-section.]

1. Inserted by the Banking Companies (Second Amendment) Act, 1960 (37 of 1960), S. 6 (19-9-1960).

4. Sub-sections (4) to (15) substituted for sub-sections (4) to (9) by the Banking Companies (Amendment) Act, 1961 (7 of 1961), S. 4 (b) (24-3-1961).

5. Inserted by the Banking Laws (Miscellaneous Provisions) Act, 1963 (55 of 1963), S. 21 (1-2-1964),

### **38. Winding up by High Court :-**

(1) Notwithstanding anything contained in Section 391 of the Companies Act, 1956 Section 392 of the Companies Act, 1956 Section 443 of the Companies Act, 1956 Section 583 of the Companies Act, 1956 , but without prejudice to its powers under sub-section (1) of section 37 of this Act, the High Court shall order the winding up of a banking company-

(a) if the banking company is unable to pay its debts: or

(b) if an application for its winding up has been made by the Reserve Bank under section 37 or this section.

(2) The Reserve Bank shall make an application under this section for the winding up of a banking company if it is directed so to do by an order under clause (b) of sub-section (4) of section 35.

(3) The Reserve Bank may make an application under this section for the winding up of a banking company-

(a) if the banking company-

(i) has failed to comply with the requirements specified in section 11 : or

(ii) has by reason of the provisions of section 22 become disentitled to carry on banking business in India: or

(iii) has been prohibited from receiving fresh deposits by an order under clause (a) of sub-section (4) of section 35 or under clause (b) of sub-section (3A) of Section 42 of the Reserve Bank of India Act, 1934 : or

(iv) having failed to comply with any requirement of this Act other than the requirements laid down in section 11 , has continued such failure, or, having contravened any provision of this Act has continued such contravention beyond such period or periods as may be specified in that behalf by the Reserve Bank from time to time, after notice in writing of such failure or contravention has been conveyed to the banking company: or

(b) if in the opinion of the Reserve Bank-

(i) a compromise or arrangement sanctioned by a court in respect of the banking company cannot be worked satisfactorily with or without modifications; or

(ii) the returns, statements or information furnished to it under or in pursuance of the provisions of this Act disclose that the banking company is unable to pay its debts; or

(iii) the continuance of the banking company is prejudicial to the interests of its depositors.

(4) Without prejudice to the provisions contained in Section 434 of the Companies Act, 1956 , a banking company shall be deemed to be unable to pay its debts if it has refused to meet any lawful demand made at any of its offices or branches within two working days. if such demand is made at a place where there is an office, branch or agency of the Reserve Bank, or within five working days. if such demand is made elsewhere, and if the Reserve Bank certifies in writing that the banking company is unable to pay its debts.

(5) A copy of every application made by the Reserve Bank under sub-section (1) shall be sent by the Reserve Bank to the registrar.]

### **38A. Court liquidator :-**

(1) There shall be attached to every High Court a Court liquidator to be appointed by the Central Government for the purpose of conducting all proceedings for the winding up of banking companies and performing such other duties in reference thereto as the High Court may impose.

**1**[(2) \* \* \*

(3) \* \* \*]

(4) Where having regard to the number of banking companies wound up and other circumstances of the case, the Central Government is of opinion that it is not necessary or expedient to attach for the time being a Court liquidator to a High Court, it may, from time to time, by notification<sup>2</sup> in the Official Gazette, direct that this section shall not have effect in relation to that High Court.]

1. Inserted by the Banking Companies (Second Amendment) Act, 1960 (37 of 1960), S. 6 (19-9-1960).

2. Inserted by the Banking Laws (Miscellaneous Provisions) Act, 1963 (55 of 1963), S. 21 (1-2-1964),

### **39. Reserve Bank to be official liquidator :-**

**1**[(1) Notwithstanding anything contained <sup>2</sup>[in Section 38A of this Act or] <sup>3</sup>[in <sup>4</sup>[section 488 or section 449] of the Companies Act, 1956] where in any proceeding, for the winding up by the <sup>5</sup>[High Court] of a banking company, an application is made by the Reserve Bank in this behalf, <sup>6</sup> <sup>7</sup>[the Reserve Bank, the State Bank of India or any other bank] <sup>8</sup>[(notified by the Central Government in this behalf or any individual, as stated in such application)] shall be appointed as the official liquidator, of the banking company in such proceeding and the liquidator, if any, functioning in such proceeding shall vacate office upon such appointment.]

**1** [(2) Subject to such directions as may be made by the High Court, the remuneration of the official liquidator appointed under this section, the cost and expenses of his establishment and the cost and expenses of the winding up shall be met out of the assets of the banking company which is being wound up, and notwithstanding anything to the contrary contained in any other law for the time being in force, no fees shall be payable to the

Central Government, out of the assets of the banking company.]

1. Inserted, the Banking Laws (Amendment) Act (1 of 1984), S. 34 (15-2-1984).
2. Inserted by the Banking Companies (Second Amendment) Act, 1960 (37 of 1960), S. 6 (19-9-1960).
3. Substituted for the words "as are applicable" by the Banking Laws (Amendment) Act (1 of 1984), S. 34 (15-2-1984).
4. Sub-sections (4) to (15) substituted for sub-sections (4) to (9) by the Banking Companies (Amendment) Act, 1961 (7 of 1961), S. 4 (b) (24-3-1961).
5. Inserted by the Banking Laws (Miscellaneous Provisions) Act, 1963 (55 of 1963), S. 21 (1-2-1964),
6. Substituted for the words "any agreement" by the Banking Companies (Amendment) Act (7 of 1961), S. 4 (a), (j) (24-3-1961).
7. Substituted for the words "the banking company", S. 4 (a) (ii), the Banking Companies (Amendment) Act, 1953 (52 of 1953), S. 9 (30-12-1953). S. 9.
8. Substituted for the words "the doubt or difference shall be referred", the Banking Laws (Amendment) Act (1 of 1984), S. 34 (15-2-1984).

### **39A. Application of Companies Act to liquidators :-**

(1) All the provisions of the Companies Act, 1956, relating to a liquidator, in so far as they are not inconsistent with this Act, shall apply to or in relation to a liquidator appointed under section 38A or section 39 .

(2) Any reference to the "official liquidator" in this Part and Part IIIA shall be construed as including a reference to any liquidator of banking company.]

### **40. Stay of proceedings :-**

Notwithstanding anything to the contrary contained in <sup>1</sup>[ Section 466 of the Companies Act, 1956 )], the <sup>2</sup>[High Court] shall not make any order staying the proceedings in relation to the winding up of a banking company, unless the <sup>2</sup> [High Court] is satisfied that an arrangement has been made whereby the company can pay its depositors in full as their claims accrue.

1. Inserted by the Banking Companies (Second Amendment) Act, 1960 (37 of 1960), S. 6 (19-9-1960).
2. Sub-sections (4) to (15) substituted for sub-sections (4) to (9) by the Banking Companies (Amendment) Act, 1961 (7 of 1961), S. 4 (b) (24-3-1961).

### **41. Preliminary report by official liquidator :-**

Notwithstanding anything to the contrary contained in Section 455 of the Companies Act, 1956 , where a winding-up order has been made in respect of a banking company, whether before or after the commencement of the Banking Companies (Second Amendment) Act, 1960, the official liquidator shall submit a preliminary report to the High Court within two months from the date of the winding-up order or where the winding-up order has been made before such commencement, within two months from such commencement, giving the information required by that section so far as it is available to him and also stating the amount of assets of the banking company in cash which are in his custody or under his control on the date of the report and the amount of its assets which are likely to be collected in cash before the expiry of that period of two months in order that such assets maybe applied speedily towards the making of preferential payments under Section 530 of the Companies Act, 1956 , and in the discharge, as far as possible, of the liabilities and obligations of the banking company to its depositors and other creditors in accordance with the provisions hereinafter contained; and the official liquidator shall make for the purposes aforesaid every endeavour to collect in cash as much of the assets of the banking company as practicable.]

**41A. Notice to preferential claimants and secured and unsecured creditors :-**

(1) Within fifteen days from the date of the winding-up order of a banking company or where the winding-up order has been made before the commencement of the Banking Companies (Second Amendment) Act, 1960 within one month from such commencement, the official liquidator shall, for the purpose of making an estimate of the debts and liabilities of the banking company (other than its liabilities and obligations to its depositors), by notice served in such manner as the Reserve Bank may direct, call upon-

(a) every claimant entitled to preferential payment under S.530 of the Companies Act 1956, and

(b) every secured and every unsecured creditor, to send to the official liquidator within one month from the date of the service of the notice a statement of the amount claimed by him.

(2) Every notice under sub-section ( 1 ) sent to a claimant having a claim under Section 530 of the Companies Act, 1956 , shall state

that if a statement of the claim is not sent to the official liquidator before the expiry of the period of one month from the date of the service, the claim shall not be treated as a claim entitled to be paid under Section 530 of the Companies Act, 1956 , in priority to all other debts but shall be treated as an ordinary debt due by the banking company.

(3) Every notice under sub-section ( 1 ) sent to a secured creditor shall require him to value his security before the expiry of the period of one month from the date of the service of the notice and shall state that if a statement of the claim together with the valuation of the security is not sent to the official liquidator before the expiry of the said period, then, the official liquidator shall himself value the security and such valuation shall be binding on the creditor.

(4) If a claimant fails to comply with the notice sent to him under sub-section (1), his claim will not be entitled to be paid under Section 530 of the Companies Act, 1956 , in priority to all other debts but shall be treated as an ordinary debt due by the banking company; and if. a secured creditor fails to comply with the notice sent to him under sub-section (1), the official liquidator shall himself value the security and such valuation shall be binding on the creditor.]

#### **42. Power to dispense with meeting of creditors, etc :-**

Notwithstanding anything to the contrary contained in [<sup>1</sup>[section 460] of the Companies Act, 1956], the <sup>2</sup>[High Court] may in the proceedings for winding up a banking company, dispense with any meetings of creditors or contributories <sup>3</sup> [\* \* \*] if it considers that no object will be secured thereby sufficient to justify the delay and expense.

1. Inserted by the Banking Companies (Second Amendment) Act, 1960 (37 of 1960), S. 6 (19-9-1960).

2. Inserted by the Banking Laws (Miscellaneous Provisions) Act, 1963 (55 of 1963), S. 21 (1-2-1964),

3. Sub-sections (4) to (15) substituted for sub-sections (4) to (9) by the Banking Companies (Amendment) Act, 1961 (7 of 1961), S. 4 (b) (24-3-1961).

#### **43. Booked depositors credits to be deemed proved :-**

In any proceeding for winding up of a banking company, every depositor of the banking company shall be deemed to have filed his claim for the amount shown in the books of the banking company

as standing to his credit and, notwithstanding anything to the contrary contained in <sup>1</sup> [S.474 of the Companies Act, 1956], the High Court shall presume such claims to have been proved, unless the official liquidator shows that there is reason for doubting its correctness].

1. Sub-sections (4) to (15) substituted for sub-sections (4) to (9) by the Banking Companies (Amendment) Act, 1961 (7 of 1961), S. 4 (b) (24-3-1961).

**43A. Preferential payments to depositors :-**

(1). In every proceeding for winding up of a banking company where a winding-up order has been made, whether before or after, the commencement of the Banking Companies (Second Amendment) Act, 1960, within three months from the date of the winding-up order or where the winding-up order has been made before such commencement within three months therefrom, the preferential payments referred to in Section 530 of the Companies Act, 1956, in respect of which statements of claims have been sent within one month from the date of the service of the notice referred to in section 41 A, shall be made by the official liquidator or adequate provision for such payments shall be made by him.

(2) After the preferential payment as aforesaid have been made or adequate provision has been made in respect thereof, there shall be paid within the aforesaid period of three months-

(a) in the first place, to every depositor in the savings bank account of the banking company a sum of two hundred and fifty rupees or the balance at his credit, whichever is less; and thereafter.

(b) in the next place, to every other depositor of the banking company a sum of two hundred and fifty rupees or the balance at his credit, whichever is less,

(3) Where within the aforesaid period of three months full payment cannot be made of the amounts required to be paid under clause (a) or clause (b) of sub-section (2) with the assets in cash, the official liquidator shall pay within that period to every depositor under clause (a) or, as the case may be, clause (b) of that sub-section on a pro rata basis so much of the amount due to the depositor under that clause as the official liquidator is able to pay with those assets; and shall pay the rest of amount to every such depositor as and when sufficient assets are collected by the official

liquidator in cash.

(4) After payments have been made first to depositors in the savings bank account and then to the other depositors in accordance with the foregoing provisions, the remaining assets of the banking company available for payment to general creditors shall be utilised for payment on a pro rata basis of the debts of the general creditors and of the further sums, if any, due to the depositors; and after making adequate provision for payment on a pro rata basis as aforesaid of the debts of the general creditors, the official liquidator shall, as and when the assets of company are collected in cash, make payment on a pro rata basis as aforesaid, of the further sums, if any, which may remain due to the depositors referred to in clause (a) and clause (b) of sub-section (2).

(5) In order to enable the official liquidator to have in his custody or under his control in cash as much of the assets of the banking company as possible, the securities given to every secured creditor may be redeemed by the official liquidator-

(a) where the amount due to the creditor is more than the value of the securities as assessed by him or, as the case maybe, as assessed by the official liquidator, on payment of such value; and

(b) where the amount due to the creditor is equal to or less than the value of the securities as so assessed, on payment of the amount due:

(6) When any claimant, creditor or depositor to whom any payment is to be made in accordance with the <sup>1</sup>[the provisions of this section] cannot be found or is not readily traceable, adequate provision shall be made by the official liquidator for such payment.

(7) For the purposes of this section, the payments specified in each of the following clauses shall be treated as payments of a different class, namely:-

(a) payments to preferential claimants under Section 530 of the Companies Act, 1956 ;

(b) payments under clause (a) of sub-section (2) to the depositors in the savings bank account;

(c) payments under clause (b) of sub-section (2) to the other depositors;

(d) payments to the general creditors and payments to the depositors in addition to those specified in clause (a) and clause (b) of sub-section (2).

(8) The payments of each different class specified in sub-section (7) shall rank equally among themselves and be paid in full unless the assets are insufficient to meet them, in which case they shall abate in equal proportion.]

**1** [(9) Nothing contained in sub-sections (2), (3), (4), (7) and (8) shall apply to a banking company in respect of the depositors of which the Deposit Insurance Corporation is liable under S.16 of the Deposit Insurance Corporation Act, 1961.

(10) After preferential payments referred to in sub-section (1) have been made or adequate provision has been made in respect thereof, the remaining assets of the banking company referred to in sub-section (9) available for payment to general creditors shall be utilised for payment on pro rata basis of the debts of the general creditors and of the sums due to the depositors. Provided where any amount in respect of any deposit is to be paid by the liquidator to the Deposit Insurance Corporation under section 21 of the Deposit Insurance Corporation Act, 1961, only the balance, if any, left after making the said payment shall be payable to the depositor.]

1. Sub-sections (4) to (15) substituted for sub-sections (4) to (9) by the Banking Companies (Amendment) Act, 1961 (7 of 1961), S. 4 (b) (24-3-1961).

#### **44. Powers of High Court in voluntary winding up :-**

(1) Notwithstanding anything to the contrary contained in S.484 of the Companies Act, 1956. no banking company may be voluntarily wound up unless the Reserve Bank certifies in writing that the company is able to pay in full all its debts to its creditors as they accrue.

(2) The High Court may, in any case where a banking company is being wound up voluntarily, make an order that the voluntary winding up shall continue, but subject to the supervision of the Court.

( 3 ) Without prejudice to the provisions contained in S.441 of the Companies Act, 1956 , Section 521 of the Companies Act, 1956 . the High Court may of its own motion and shall on the application

of the Reserve Bank. order the winding up of a banking company by the High Court in any of the following cases, namely:-

(a) where the banking company is being wound up voluntarily and at any stage during the voluntary winding-up proceedings, the company is not able to meet its debts as they accrue; or

(b) Where the banking company is being wound up voluntarily or is being wound up subject to the supervision of the Court and the High Court is satisfied that the voluntary winding up or winding up subject to the supervision of the Court cannot be continued without detriment to the interests of the depositors.]

**44A. Procedure for amalgamation of banking companies :-**

(1) Notwithstanding anything contained in any law for the time being in force, no banking company shall be amalgamated with another banking company, unless a scheme containing the terms of such amalgamation has been placed in draft before the shareholders of each of the banking companies concerned separately, and approved by a resolution passed by a majority in number representing two-third in value of the shareholders of each of the said companies, present either in person or by proxy at a meeting called for the purpose.

(2) Notice of every such meeting as is referred to in sub-section (1) shall be given to every shareholder of each of the banking companies concerned in accordance with the relevant articles of association, indicating the time, place and object of the meeting, and shall also be published at least once a week for three consecutive weeks in not less than two newspapers which circulate in the locality or localities where the registered offices of the banking companies concerned are situated, one of such newspapers being in a language commonly understood in the locality or localities.

(3) Any shareholder, who has voted against the scheme of amalgamation at the meeting or has given notice in writing at or prior to the meeting to the company concerned or to the presiding officer of the meeting that he dissents from the scheme of amalgamation, shall be entitled in the event of the scheme being sanctioned by the Reserve Bank, to claim from the banking company concerned, in respect of the shares held by him in that company, their value as determined by the Reserve Bank when sanctioning the scheme and such determination by the Reserve

Bank as to the value of the shares to be paid to the dissenting shareholders shall be final for all purposes.

(4) If the scheme of amalgamation is approved by the requisite majority of shareholders in accordance with the provisions of this section, it shall be submitted to the Reserve Bank for sanction and shall, if sanctioned by the Reserve Bank by an order in writing passed in this behalf, be binding on the banking companies concerned and also on all the shareholders thereof.

**1**[(5) \* \* \*]

(6) On the sanctioning of a scheme of amalgamation by the Reserve Bank, the property of the amalgamated banking company shall, by virtue of the order of sanction, be transferred to and vest in, and the liabilities of the said company shall, by virtue of the said order, be transferred to, and become the liabilities of, the banking company which under the scheme of amalgamation is to acquire the business of the amalgamated banking company, subject in all cases to **2**[the provisions of the scheme as sanctioned.]

**3**[(6A) Where a scheme of amalgamation is sanctioned by the Reserve Bank under the provisions of this section, the Reserve Bank may, by a further order in writing, direct that on such date as may be specified therein the banking company (hereinafter in this section referred to as 'the amalgamated banking company') which by reason of the amalgamation will cease to function, shall stand dissolved and any such direction shall take effect notwithstanding anything to the contrary contained in any other law.

(6B) Where the Reserve Bank directs a dissolution of the amalgamated banking company, it shall transmit a copy of the order directing such dissolution to the Registrar before whom the banking company has been registered and on receipt of such order the Registrar shall strike off the name of the company.

(6C) An order under sub-section (4), whether made before or after the commencement of S.19 of the Banking Laws (Miscellaneous Provisions) Act, 1963, shall be conclusive evidence that all the requirements of this section relating to amalgamation have been complied with, and a copy of the said order certified in writing by an officer of the Reserve Bank to be a true copy of such order and a copy of the scheme certified in the like manner to be a true copy thereof shall, in all legal proceedings (whether in appeal or

otherwise and whether instituted before or after the commencement of the said section 19 ), be admitted as evidence to the same extent as the original order and the original scheme.]

<sup>4</sup>[(7) Nothing in the foregoing provisions of this section shall affect the power of the Central Government to provide for the amalgamation of two or more banking companies <sup>5</sup> [\* \* \*] under Section 396 of the Companies Act, 1956 : Provided that no such power shall be exercised by the Central Government except after consultation with the Reserve Bank.]

1. Substituted for the words "any agreement" by the Banking Companies (Amendment) Act (7 of 1961), S. 4 (a), (j) (24-3-1961).

2. Substituted for the words "the banking company", S. 4 (a) (ii), the Banking Companies (Amendment) Act, 1953 (52 of 1953), S. 9 (30-12-1953). S. 9.

3. Substituted for the words "as are applicable" by the Banking Laws (Amendment) Act (1 of 1984), S. 34 (15-2-1984).

4. Sub-sections (4) to (15) substituted for sub-sections (4) to (9) by the Banking Companies (Amendment) Act, 1961 (7 of 1961), S. 4 (b) (24-3-1961).

5. Inserted by the Banking Laws (Miscellaneous Provisions) Act, 1963 (55 of 1963), S. 21 (1-2-1964),

#### **44B. Restriction on compromise or arrangement between banking company and creditors :-**

]. .-

<sup>1</sup>[(1) Notwithstanding anything contained in any law for the time being in force, no <sup>2</sup>[High Court] shall sanction a compromise or arrangement between a banking company and its creditors or any class of them or between such company and its members or any class of them <sup>3</sup>[or sanction any modification in any such compromise or arrangement unless the compromise or arrangement or modification, as the case may be,] is certified by the Reserve Bank <sup>4</sup>[in writing as not being incapable of being worked and as not being detrimental to the interests of the depositors of such banking company].]

<sup>5</sup>[(2) Where an application under <sup>6</sup> [ Section 391 of the Companies Act, 1956 ], is made in respect of a banking company, the High Court may direct the Reserve Bank to make an inquiry in relation to the affairs of the banking company and the conduct of its directors and when such a direction is given, the Reserve Bank shall make

such inquiry and submit its report to the High Court.]

1. Sub-sections (4) to (15) substituted for sub-sections (4) to (9) by the Banking Companies (Amendment) Act, 1961 (7 of 1961), S. 4 (b) (24-3-1961).
2. Inserted by the Banking Laws (Miscellaneous Provisions) Act, 1963 (55 of 1963), S. 21 (1-2-1964),
3. Substituted for the words "the doubt or difference shall be referred", the Banking Laws (Amendment) Act (1 of 1984), S. 34 (15-2-1984).
4. Substituted for the words "any agreement" by the Banking Companies (Amendment) Act (7 of 1961), S. 4 (a), (j) (24-3-1961).
5. Substituted for the words "the banking company", S. 4 (a) (ii), the Banking Companies (Amendment) Act, 1953 (52 of 1953), S. 9 (30-12-1953). S. 9.
6. Substituted for the words "as are applicable" by the Banking Laws (Amendment) Act (1 of 1984), S. 34 (15-2-1984).

**45. Power of Reserve Bank to apply to Central Government for suspension of business of a banking company and to prepare scheme of reconstitution or amalgamation :-**

(1) Notwithstanding anything contained in the foregoing provisions of this Part or in any other law or <sup>1</sup>[any agreement or other instrument] for the time being in force, where it appears to the Reserve Bank that there is good reason so to do, the Reserve Bank may apply to the Central Government for an order of moratorium in respect of <sup>2</sup>[a banking company.]

(2) The Central Government, after considering the application made by the Reserve Bank under sub-section (1). may make an order of moratorium staying the commencement or continuance of all actions and proceedings against the company for a fixed period of time on such terms and conditions as it thinks fit and proper and may from time to time extend the period so however that the total period of moratorium shall not exceed six months.

(3) Except as otherwise provided by any directions given by the Central Government in the order made by it under sub-section (2) or at any time thereafter, the banking company shall not, during the period of moratorium, make any payment to any depositors or discharge any liabilities or obligations to any other creditors.

<sup>3</sup>[(4) During the period of moratorium, if the Reserve Bank is satisfied that-

(a) in the public interest: or

(b) in the interests of the depositors: or

(c) in order to secure the proper management of the banking company; or

(d) in the interests of the banking system of the country as a whole,- it is necessary so to do, the Reserve Bank may prepare a scheme-

(i) for the reconstruction of the banking company, or

(ii) for the amalgamation of the banking company with any other banking institution (in this section referred to as "the transferee bank").

(5) The scheme aforesaid may contain provisions for all or any of the following matters, namely:-

(a) the constitution, name and registered office, the capital, assets, powers, rights, interests, authorities and privileges, the liabilities, duties and obligations of the banking company on its reconstruction or, as the case may be, of the transferee bank;

(b) in the case of amalgamation of the banking company, the transfer to the transferee bank of the business, properties, assets and liabilities of the banking company on such terms and conditions as may be specified in the scheme;

(c) any change in the Board of Directors, or the appointment of a new Board of Directors, of the banking company on its reconstruction or, as the case may be, of the transferee bank and the authority by whom, the manner in which, and the other terms and conditions on which, such change or appointment shall be made and in the case of appointment of a new Board of Directors or of any director, the period for which such appointment shall be made;

(d) the alteration of the memorandum and articles of association of the banking company on its reconstruction or, as the case may be, of the transferee bank for the purpose of altering the capital thereof or for such other purposes as may be necessary to give effect to the reconstruction or amalgamation;

(e) Subject to the provisions of the scheme, the continuation by or against the banking company on its reconstruction or, as the case

may be, the transferee bank, of any actions or proceedings pending against the banking company immediately before the date of the order of moratorium;

(f) the reduction of the interest or rights which the members, depositors and other creditors have in or against the banking company before its reconstruction or amalgamation to such extent as the Reserve Bank considers necessary in the public interest or in the interests of the members, depositors and other creditors or for the maintenance of the business of the banking company;

(g) the payment in cash or otherwise to depositors and other creditors in full satisfaction of their claim-

(i) in respect of their interest or rights in or against the banking company before its reconstruction or amalgamation; or

(ii) where their interest or rights aforesaid in or against the banking company has or have been reduced under clause (f) in respect of such interest or rights as so reduced;

(h) the allotment to the members of the banking company for shares held by them therein before its reconstruction or amalgamation (whether their interest in such shares has been reduced under Cl. (f) or not), of shares in the banking company on its reconstruction or, as the case may be, in the transferee bank and where any members claim payment in cash and net allotment of shares, or where it is not possible to allot shares to any members, the payment in cash to those members in full satisfaction of their claim-

(i) in respect of their interest in shares in the banking company before its reconstruction or amalgamation; or

(ii) where such interest has been reduced under clause (f), in respect of their interest in shares as so reduced;

(i) the continuance of the services of all the employees of the banking company (excepting such of them as not being workmen within the meaning of the Industrial Disputes Act, 1947, are specifically mentioned in the scheme) in the banking company itself on its reconstruction or, as the case may be, in the transferee bank at the same remuneration and on the same terms and conditions of service, which they were getting or, as the case may be, by which they were being governed, immediately before the date of the

order of moratorium: Provided that the scheme shall contain a provision that-

(i) the banking company shall pay or grant not later than the expiry of the period of three years from the date on which the scheme is sanctioned by the Central Government to the said employees the same remuneration and the same terms and conditions of service <sup>4</sup>[as are, at the time of such payment or grant, applicable] to employees of corresponding rank or status of a comparable banking company to be determined for this purpose by the Reserve Bank (whose determination in this respect shall be final);

(ii) the transferee bank shall pay or grant not later than the expiry of the aforesaid period of three years, to the said employees the same remuneration and the same terms and conditions of service <sup>4</sup>[as are, at the time of such payment or grant, applicable] to the other employees of corresponding rank or status of the transferee bank subject to the qualifications and experience of the said employees being the same as or equivalent to those of such other employees of the transferee bank:

<sup>6</sup>[the doubt or difference shall be referred, before the expiry of a period of three years from the date of the payment or grant mentioned in that clause] to the Reserve Bank whose decision thereon shall be final:

(j) notwithstanding anything contained in clause (i) where any of the employees of the banking company not being workmen within the meaning of the Industrial Disputes Act, 1947, are specifically mentioned in the scheme under clause (i), or where any employees of the banking company have by notice in writing given to the banking company or, as the case may be, the transferee bank at any time before the expiry of one month next following the date on which the scheme is sanctioned by the Central Government, intimated their intention of not becoming employees of the banking company on its reconstruction or, as the case may be, of the transferee bank, the payment of such employees of compensation, if any, to which they are entitled under the Industrial Disputes Act, 1947, and such pension, gratuity, provident fund and other retirement benefits ordinarily admissible to them under the rules or authorisations of the banking company immediately before the date of the order of moratorium;

(k) any other terms and conditions for the reconstruction or amalgamation of the banking company;

(l) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out.

(6)

(a) A copy of the scheme prepared by the Reserve Banks shall be sent in draft to the banking company and also to the transferee bank and any other banking company concerned in the amalgamation, for suggestions and objections, if any, within such period as the Reserve Bank may specify for this purpose.

(b) the Reserve Bank may make such modifications, if any, in the draft scheme as it may consider necessary in the light of the suggestions and objections received from the banking company and also from the transferee bank, and any other banking company concerned in the amalgamation and from any members, depositors or other creditors of each of those companies and the transferee bank,

(7) The scheme shall thereafter be placed before the Central Government for its sanction and the Central Government may sanction the scheme without any modification or with such modifications as it may consider necessary; and the scheme as sanctioned by the Central Government shall come into force on such date<sup>7</sup> as the Central Government may specify in this behalf: Provided that different dates may be specified for different provisions of the scheme.

<sup>2</sup>[(7A) The sanction accorded by the Central Government under sub-section (7), whether before or after the commencement of S.21 of the Banking Laws (Miscellaneous Provisions) Act. 1963. shall be conclusive evidence that all the requirements of this section relating to reconstruction, or as the case may be, amalgamation have been complied with and a copy of the sanctioned scheme certified in writing by an officer of the central Government to be a true copy thereof shall, in all legal proceedings (whether in appeal or otherwise and whether instituted before or after the commencement of the said section 21 ), be admitted as evidence to the same extent as the original scheme.]

(8) On and from the date of the coming into operation of the

scheme or any provision thereof the scheme or such provision shall be binding on the banking company or, as the case may be, on the transferee bank and any other banking company concerned in the amalgamation and also on all the members, depositors and other creditors and employees of each of those companies and of the transferee bank, and on any other person having any right or liability in relation to any of those companies or the transferee bank [including the trustees or other persons managing, or connected in any other manner with any provident fund or other fund maintained by any of those companies or the transferee bank.]

(9) <sup>9</sup>[On and from the date of the coming into operation of, or as the case may be, the date specified in this behalf in, the scheme] the properties and assets of the banking company shall, by virtue of and to the extent provided in the scheme, stand transferred to, and vest in, and the liabilities of the banking company shall, by virtue of and to the extent provided in the scheme, stand transferred to, and become the liabilities of, the transferee bank.

(10) If any difficulty arises in giving effect to the provisions of the scheme, the Central Government may by order do anything not inconsistent with such provisions which appears to it necessary or expedient for the purpose of removing the difficulty.

(11) Copies of the scheme or of any order made under sub-section (10) shall be laid before both Houses of Parliament, as soon as may be, after the scheme has been sanctioned by the Central Government, or, as the case may be, the order has been made.

(12) Where the scheme is a scheme for amalgamation of the banking company, any business acquired by the transferee bank under the scheme or under any provision thereof shall, after the coming into operation of the scheme or such provision, be carried on by the transferee bank in accordance with the law governing the transferee bank, subject to such modifications in that law or such exemptions of the transferee bank from the operation of any provisions thereof as the Central Government on the recommendation of the Reserve Bank may, by notification in the Official Gazette, make for the purpose of giving full effect to the scheme : Provided that no such modification or exemption shall be made so as to have effect for a period of more than seven years from the date of the acquisition of such business.

(13) Nothing in this section shall be deemed to prevent the

amalgamation with a banking institution by a single scheme of several banking companies in respect of each of which an order of moratorium has, been made under this section.

(14) The provisions of this section and of any scheme made under it shall have effect notwithstanding anything to the contrary contained in any other provisions of this Act or in any other law or any agreement, award or other instrument for the time being in force.

(15) In this section, "banking institution" means any banking company and includes the State Bank of India or <sup>10</sup> [a subsidiary bank or a corresponding new bank].]

1. Substituted for the words "any agreement" by the Banking Companies (Amendment) Act (7 of 1961), S. 4 (a), (j) (24-3-1961).

2. Inserted by the Banking Laws (Miscellaneous Provisions) Act, 1963 (55 of 1963), S. 21 (1-2-1964),

3. Sub-sections (4) to (15) substituted for sub-sections (4) to (9) by the Banking Companies (Amendment) Act, 1961 (7 of 1961), S. 4 (b) (24-3-1961).

4. Substituted for the words "as are applicable" by the Banking Laws (Amendment) Act (1 of 1984), S. 34 (15-2-1984).

6. Substituted for the words "the doubt or difference shall be referred", the Banking Laws (Amendment) Act (1 of 1984), S. 34 (15-2-1984).

7. (i) 30-7-1985 as the prescribed date in relation to the scheme for the amalgamation of Miraj State Bank Limited, Miraj with Union Bank of India - see Gaz. of India, 29-7-1985, Pt. II-S.3(ii), Ext., P. 1 (No. 365). [ii] 13-5-1988 as the prescribed date in relation to the scheme for the amalgamation of the Traders Bank Limited, New Delhi with Bank of Baroda -see Gaz. of India. 12-5-1988, Pt. II-S. 3(ii), Ext. Pp. 1,6 (See GSR's 480 (E)88 and 481(E)/88.

9. Substituted for the words "on and from such date as may be specified by the Central Government in this behalf", the Banking Laws (Amendment) Act (1 of 1984), S. 34 (15-2-1984).

10. Substituted for the words and figures "any other banking institution notified by the Central Government under section 51", the Banking Laws (Amendment) Act (1 of 1984), S. 34 (15-2-1984).

#### PART 3A

#### SPECIAL PROVISIONS FOR SPEEDY DISPOSAL OF WINDING UP PROCEEDINGS

#### **45A. Part III-A to override other laws :-**

The provisions of this Part and the rules made thereunder shall have effect notwithstanding anything inconsistent therewith contained in the [Companies Act, 1956,] or the Code of Civil

Procedure, 1908, or the [Code of Criminal procedure, 1973], or any other law for the time being in force or any instrument having effect by virtue of any such law; but the Provisions of any such law or instrument in so far as the same are not varied by, or inconsistent with, the provisions of this Part or rules made thereunder shall apply to all proceedings under this Part.

**45B. Power of High Court to decide all claims in respect of banking companies :-**

The High Court shall, save as otherwise expressly provided in section 45-C, have exclusive jurisdiction to entertain and decide any claim made by or against a banking company which is being wound up (including claims by or against any of its branches in India) or any application made under <sup>1</sup> [ Section 39 of the Companies Act, 1956 ] by or in respect of a banking company of any question of priorities or any other question whatsoever, whether of law or fact, which may relate to or arise in the course of the winding up of a banking company, whether such claim or question has arisen or arises or such application has been made or is made before or after the date of the order for the winding up of the banking company or before or after the commencement of the Banking Companies (Amendment) Act, 1953.

1. Substituted by the Banking Companies (Amendment) Act (95 of 1956), S. 14 and Schedule 14-1-1957).

**45C. Transfer of pending proceedings :-**

(1) Where a winding up order is made or has been made in respect of a banking company, no suit or other legal proceeding, whether civil or criminal, in respect of which the High Court has jurisdiction under this Act and which is pending in any other Court immediately before the commencement of the Banking Companies (Amendment) Act, 1953, or the date of the order for the winding up of the banking company, whichever is later, shall be proceeded with except in the manner hereinafter provided.

(2) The official liquidator shall, within three months from the date of the winding up order or the commencement of the Banking Companies (Amendment) Act, 1953, whichever is later, or such further time as the High Court may allow, submit to the High Court a report containing a list of all such pending proceedings together with particulars thereof,

(3) on receipt of a report under sub-section (2), the High Court

may, if it so thinks fit, give the parties concerned an opportunity to show cause why the proceedings should not be transferred to itself and after making an inquiry in such manner as may be provided by rules made under section 45U it shall make such order as it deems fit transferring to itself all or such of the pending proceedings as may be specified in the order and such proceedings shall thereafter be disposed of by the High Court.

(4) If any proceeding pending in a Court is not so transferred to the High Court under sub-section (3), such proceeding shall be continued in the Court in which the proceeding was pending.

(5) Nothing in this section shall apply to any proceeding pending in appeal before the Supreme Court or a High Court.

**45D. Settlement of list of debtors :-**

(1) Notwithstanding anything to the contrary contained in any law for the time being in force, the High Court may settle in the manner hereinafter provided a list of debtors of a banking company which is being wound up.

(2) Subject to any rules that may be made under section 52 . the official liquidator shall, within six months from the date of the winding up order or the commencement of the Banking Companies (Amendment) Act. 1953. whichever is later from time to time, file to the High Court lists of debtors containing such particulars as are specified in the Fourth Schedule: Provided that such lists may, with the leave of the High Court, be filed after the expiry of the said period of six months.

(3) On receipt of any list under sub-section (2). the High Court shall, wherever necessary, cause notices to be issued on all persons affected and after making an inquiry in such manner as may be provided by rules made under section 45U . it shall make an order settling the list of debtors:: Provided that nothing in this section shall debar the High Court from settling any such list in part against such of the persons whose debts have been settled without settling the debts of all ill. persons placed on the list.

(4) At the time of the settlement of any such list. the High Court shall pass an order for the payment of the amount due by each debtor and make such further orders as may be necessary in respect of the relief claimed, including reliefs against any guarantor or in respect of the realisation of any security.

(5) Every such order shall subject to the provisions for appeal be final and binding for all purposes as between the banking company on the one hand and the person against whom the order is passed and all persons claiming through or under him on the other hand. and shall be deemed to be a decree in a suit.

(6) In respect of every such order, the High Court shall issue a certificate specifying clearly the reliefs granted and the names and descriptions of the parties against whom such reliefs have been granted, the amount of costs awarded and by whom. and out of what funds and in what proportions, such costs are to be paid: and every such certificate shall be deemed to be a certified copy of the decree for all purposes including execution.

(7) At the time of settling the list of debtors or at any other time prior or subsequent thereto. the High Court shall have power to pass any order in respect of a debtor on the application of the official liquidator for the realisation, management, protection, preservation or sale of any property given as security to the banking company and to give such powers to the official liquidator to carry out the aforesaid directions as the High Court thinks fit.

(8) The High Court shall have power to sanction a compromise in respect of any debt and to order the payment of any debt by instalments.

(9) In any case in which any such list is settled ex parte as against any person, such person may, within thirty days from the date of the order settling the list, apply to the High Court for an order to vary such list, so far as it concerns him, and if the High Court is satisfied that he was prevented by any sufficient cause from appearing on the date fixed for the settlement of such list and that he has a good defence to the claim of the banking company on merits, the High Court may vary the list and pass such orders in relation thereto as it thinks fit: Provided that the High Court may, if it so thinks fit. entertain the application after the expiry of the said period of thirty days.

(10) Nothing in this section shall-

(a) apply to a debt which has been secured by a mortgage of immovable property, if a third party has any interest in such immovable property: or

(b) prejudice the rights of the official liquidator to recover any debt due to a banking company under any other law for the time being in force.

**45E. Special provisions to make calls on contributories :-**

Notwithstanding that the list of the contributories has not been settled under <sup>1</sup>[ Section 467 of the Companies Act, 1956 ]. the High Court may, if it appears to it necessary or expedient so to do, at any time after making a winding up order, make a call on and order payment thereof by any contributory under sub-section (1) of <sup>1</sup> [ Section 470 of the Companies Act, 1956 ]. if such contributory has been placed on the list of contributories by the official liquidator and has not appeared to dispute his liability.

1. Substituted by the Banking Companies (Amendment) Act (95 of 1956), S. 14 and Schedule 14-1-1957).

**45F. Documents of banking to be evidence :-**

(1) Entries in the books of account or other documents of a banking company which is being wound up shall be admitted in evidence in all <sup>1</sup> [legal proceedings] and all such entries may be proved either by the production of the books of account or other documents of the banking company containing such entries or by the production of a copy of the entries, certified by the official liquidator under his signature and stating that it is a true copy of the original entries and that such original entries are contained in the books of account or other documents of the banking company in his possession.

(2) Notwithstanding anything to the contrary contained in the Indian Evidence Act, 1872, all such entries in the books of account or other documents of a banking company shall, as against the directors, [officers and other employees] of the banking company in respect of which the winding up order has been made [\* \* \* \* \*] be prima facie evidence of the truth of all matters purporting to be therein recorded.

1. Substituted by the Banking Companies (Amendment) Act (95 of 1956), S. 14 and Schedule 14-1-1957).

**45G. Public examination of directors and auditors :-**

(1) Where an order has been made for the winding up of a banking company, the official liquidator shall submit a report whether in his opinion any loss has been caused to the banking company since its formation by any act or omission (whether or not a fraud has been

committed by such act or omission) of any person in the promotion or formation of the banking company or of any director or auditor of the banking company.

(2) If, on consideration of the report submitted under sub-section (1), the High Court is of opinion that any person who has taken part in the promotion or formation of the banking company or has been a director or an auditor of the banking company should be publicly examined, it shall hold a public sitting on a date to be appointed for that purpose and direct that such person, director or auditor shall attend thereat and shall be publicly examined as to the promotion or formation or the conduct of the business of the banking company, or as to his conduct and dealings, in so far as they relate to the affairs of the banking company: Provided that no such person shall be publicly examined unless he has been given an opportunity to show cause why he should not be so examined.

(3) The official liquidator shall take part in the examination and for that purpose may, if specially authorised by the High Court in that behalf, employ such legal assistance as may be sanctioned by the High Court.

(4) Any creditor or contributory may also take part in the examination either personally or by any person entitled to appear before the High Court.

(5) The High Court may put such questions to the person examined as it thinks fit.

(6) The person examined shall be examined on oath and shall answer all such questions as the High Court may put or allow to be put to him.

(7) A person ordered to be examined under this section may, at his own cost, employ any person entitled to appear before the High Court who shall be at liberty to put to him such questions as the High Court may deem just for the purpose of enabling him to explain or qualify any answer given by him: Provided that if he is, in the opinion of the High Court, exculpated from any charges made or suggested against him the High Court may allow him such costs in its discretion as it may deem fit.

(8) Notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined and may thereafter be used in evidence against him in any

proceeding, civil or criminal, and shall be open to the inspection of any creditor or contributory at all reasonable times.

(9) Where on such examination, the High Court is of opinion (whether a fraud has been committed or not)-

(a) that a person, who has been a director of the banking company, is not fit to be a director of a company, or

(b) that a person who has been an auditor of the banking company or a partner of a firm acting as such auditor, is not fit to act as an auditor of a company or to be a partner of a firm acting as such auditor.

["Section 45G.- In the case of a banking company, the depositors, whose money are liable to be squandered, have no voice in the appointment of directors. Since the failure of a bank is mostly due to mismanagement and misdeeds on the part of the directors, it is reasonable that the delinquent directors and the auditors should be made answerable for defaults and be liable to penalties."-S.O.R.

#### **45H. Special provisions for assessing damages against delinquent directors, etc :-**

(1) Where an application is made to the High Court under '[section 543 of the Companies Act, 1956]', against any promoter, director, manager, liquidator or officer of a banking company for repayment or restoration of any money or property and the applicant makes out a *prima facie* case against such person, the High Court shall make an order against such person to repay and restore the money or property unless he proves that he is not liable to make the repayment or restoration either wholly or in part: Provided that where such an order is made jointly against two or more such persons, they shall be jointly and severally liable to make the repayment or restoration of the money or property.

(2) Where an application is made to the High Court under <sup>1</sup> [Section 543 of the Companies Act, 1956 ], and the High Court has reason to believe that a property belongs to any promoter, director, manager, liquidator or officer of the banking company, whether the property stands in the name of such person or any other person as an ostensible owner, then the High Court may, at any time, whether before or after making an order under sub-section (1), direct the attachment of such property, or such portion thereof, as it thinks fit and the property so attached shall remain subject to attachment unless the ostensible owner can prove to the

satisfaction of the High Court that he is the real owner and the provisions of the Code of Civil Procedure, 1908, relating to attachment of property shall, as far as may be apply to such attachment.

"Section 45H.- The practical difficulty of establishing a claim and ensuring its satisfaction under S.235 of the Indian Companies Act is considerable. This provision is intended to lessen such difficulty. The High Court has also been given powers to attach at any time any property which, in the opinion of the High Court, belongs to any promoter, director or officer of the banking company, though such property may stand in the name of a benamidar of such a person."-S.O.R.

1. Substituted by the Banking Companies (Amendment) Act (95 of 1956), S. 14 and Schedule 14-1-1957).

**45I. Duty of directors and officers of banking company to assist in the realisation of property :-**

Every director or other officer of a banking company which is being wound up shall give such assistance to the official liquidator as he may reasonably require in connection with the realisation and distribution of the property of the banking company.

**45J. Special provisions for punishing offences in relation to banking companies being wound up :-**

(1) The High Court may, if it thinks fit, take cognizance of and try in a summary way any offence alleged to have been committed by any person who has taken part in the promotion or formation of the banking company which is being wound up or by any director, manager or officer thereof: Provided that the offence is one punishable under this Act or under <sup>1</sup>[the Companies Act, 1956.]

(2) When trying any such offence as aforesaid, the High Court may also try any other offence not referred to in sub-section (1) which is an offence with which the accused may, under the <sup>2</sup>[Code of Criminal Procedure, 1973], be charged at the same trial.

(3) In any case tried summarily under sub-section (1), the High Court -

(a) need not summon any witness, if it is satisfied that the evidence of such witness will not be material;

(b) shall not be bound to adjourn a trial for any purpose unless such adjournment is, in the opinion of the High Court, necessary in the interests of justice:

(c) shall, before passing any sentence, record judgment embodying the substance of the evidence and also the particulars specified in section 263 of the <sup>2</sup>[Code of Criminal Procedure, 1973], so far as that section, may be applicable', and nothing contained in sub-section (2) of section 262 of the <sup>2</sup>[Code of Criminal Procedure, 1973], shall apply to any such trial.

(4) All offences in relation to winding up alleged to have been committed by any person specified in sub-section (1) which are punishable under this Act or under <sup>1</sup>[the Companies Act, 1956], and which are not tried in a summary way under sub-section (1) shall, notwithstanding anything to the contrary contained in that Act or the <sup>2</sup>[Code of Criminal Procedure, 1973], or in any other law for the time being in force, be taken cognizance of and tried by a Judge of the High Court other than the Judge for the time being dealing with the proceedings for the winding up of the banking company.

(5) Notwithstanding anything to the contrary contained in the <sup>2</sup>[Code of Criminal Procedure, 1973], the High Court may take cognizance of any offence under this section without the accused being committed to it for trial <sup>8</sup> [\*].

1. Substituted for the words 'Companies Act, 1913' by the Banking Companies (Amendment) Act (95 of 1956), S. 14 and Sch. (14-1-1957).

2. Substituted for the words and figures "Code of Criminal Procedure, 1898" by the Banking Laws (Amendment) Act (1 of 1984). S..15 (15-2-1984).

8. Words "and all such trials shall be without the aid of a jury", omitted, the Banking Laws (Amendment) Act (1 of 1984). S..15 (15-2-1984).

#### **45K. Power of High Court to enforce scheme of arrangements etc :-**

Omitted by the Banking Companies (Amendment) Act, 1959 (33 of 1959), section 31 (1-10-1959)].

#### **45L. Public examination of directors and auditors, etc., in respect of a banking company under schemes of arrangement :-**

(1) Where an application for sanctioning a compromise or arrangement in respect of a banking company is made under <sup>1</sup>[Section 391 of the Companies Act, 1956 ], or where such sanction

has been given and the High Court is of opinion, whether on a report of the Reserve Bank or otherwise, that any person who has taken part in the promotion or formation of the banking company or has been a director or auditor of the banking company should be publicly examined, it may direct such examination of such person and the provisions of section 45G shall, as far as may be, apply to the banking company as they apply to a banking company which is being wound up.

(2) Where a compromise or arrangement is sanctioned under <sup>1</sup>[Section 391 of the Companies Act, 1956 ], in respect of a banking company, the provisions of <sup>1</sup>[section 543] of the said Act and of section 45 H of this Act shall, as far as may be, apply-to the banking company as they apply to a banking company which is being wound up as if the order sanctioning the compromise or arrangement were an order for the winding up of the banking company.

<sup>1</sup>[[<sup>5a</sup>(3) Where a scheme of reconstruction or amalgamation of a banking company] or its amalgamation with another banking company has been sanctioned by the Central Government under section 45 and the Central Government is of opinion that any person who has taken part in the promotion or formation of the banking company or has been a director or auditor of the banking company should be publicly examined, that Government may apply to the High Court for the examination of such person and if on such examination the High Court finds (whether a fraud has been committed or not) that that person is not fit to be a director of a company or to act as an auditor of a company or to be a partner of a firm acting as such auditors, the Central Government shall make an order that that person shall not, without the leave of the Central Government, be a director of, or in any way, whether directly or indirectly, be concerned or take part in the management of any company, or as the case maybe, act as an auditor of, or be a partner of a firm acting as auditors of, any company for such period not exceeding five years as may be specified in the order.

(4) Where <sup>2</sup> [a scheme of reconstruction or amalgamation of a banking company] has been sanctioned by the Central Government under section 45, the provisions of Section 543 of the Companies Act, 1956 , and of section 45H of this Act shall, as far as may be, apply to the banking company as they apply to a banking company which is being wound up as if the order sanctioning the scheme of

reconstruction or amalgamation as the case may be, were an order for the winding-up of the banking company; and any reference in the said section 543 to the application of the official liquidator shall be construed as reference to the application of the Central Government].

1. Substituted for the words "section 153 of the Indian Companies Act, 1913 (VII of 1913)" in sub-secs. ( 1 ) and (2) and the words "S. 235 of the said Act" in sub-sec. (2), by the Banking Companies (Amendment) Act, 1956 (95 of 1956). S. 14 and Sch.(w.e.f. 14-1-1957).

5. Substituted for the words "a scheme of reconstruction of a banking company or its amalgamation with another banking company" by the Banking Companies (Amendment) Act, 1961 (7 of 1961), S. 5 (24-3-1961).

**45M. Special provisions for banking companies working under schemes of arrangement at the commencement of the Amendment Act :-**

Where any compromise or arrangement sanctioned in respect of a banking company under <sup>1</sup> [section 391 of the Companies Act, 1956], is being worked at the commencement of the Banking Companies (Amendment) Act, 1953, the High Court may, if it so thinks fit on the application of such banking company,-

(a) excuse any delay in carrying out any of the provisions of the compromise or arrangement; or

(b) allow the banking company to settle the list of its debtors in accordance with the provisions of section 45D and in such a case, the provisions of the said section shall, as far as, may be, apply to the banking company as they apply to a banking company which is being wound up as if the order sanctioning the compromise or arrangement were an order for the winding up of the banking company.

1. Substituted for the word "S.153 of the Indian Companies Act, 1913 (VII of 1913)" by the Banking Companies (Amendment) Act (95 of 1956). S. 14 and Sch-(14-1-1957).

**45N. Appeals :-**

( 1 ) An appeal shall lie from any order or decision of the High Court in a civil proceeding under this Act when the amount or value of the subject-matter of the claim exceeds five thousand rupees.

(2) The High Court may by rules provide for an appeal against any

order made under section 45J and the conditions subject to which any such appeal would lie.

(3) Subject to the provisions of sub-section (1) and sub-section (2) and notwithstanding anything contained in any other law for the time being in force, every order or decision of the High Court shall be final and binding for all purposes as between the banking company on the one hand, and all persons who are parties thereto and all persons claiming through or under them or any of them, on the other hand.

**45O. Special period of limitation :-**

(1) Notwithstanding anything to the contrary contained in Indian Limitation Act, 1908 or in any other law for the time being in force, in computing the period of limitation prescribed for a suit or application by a banking company which is being wound up, the period commencing from the date of the presentation of the petition for the winding up of the banking company shall be excluded.

(2) Notwithstanding anything to the contrary contained in the Indian Limitation Act, 1908 or <sup>1</sup>[section 543 of the Companies Act, 1956] or in any other law for the time being in force, there shall be no period of limitation for the recovery of arrears of calls from any director of a banking company which is being wound up or for the enforcement by the banking company against any of its directors of any claim based on a contract, express or implied; and in respect of all other claims by the banking company against its directors, the period of limitation shall be twelve years from the date of the accrual of such claims <sup>2</sup> [or five years from the date of the first appointment of the first liquidator, whichever is longer].

(3) The provisions of this section, in so far as they relate to banking companies being wound up, shall also apply to a banking company in respect of which a petition for the winding up has been presented before the commencement of the Banking Companies (Amendment) Act, 1953.

"Section 45-O.- This section deals with the question of limitation. In any suit or application by a banking company which is being wound up, limitation should cease to run from the date of the presentation of the petition for winding up. It is also necessary to provide that there should be no limitation in the case of claims of a banking company arising ex contractu against the directors. In all

other claims of a the banking company against directors, the period of limitation should be twelve years. This section has been given retrospective effect," - S.O.R.]

1. Substituted for the words "S. 235 of the Indian Companies Act, 1913 (VII of 1913)" by the Banking Companies(Amendment) Act (95 of 1956), S. 14 and Sch. (14-1-1957).

2. Inserted, Indian Companies Act, 1913 (VII of 1913)" by the Banking Companies (Amendment) Act (95 of 1956), S. 14 and Sch. (14-1-1957), (33 of 1959), S. 32(1-10-1959).

**45P. Reserve Bank to tender advice in winding up proceedings :-**

Where in any proceeding for the winding up of a banking company in which any person other than the Reserve Bank has been appointed as the official liquidator and the High Court has directed the official liquidator to obtain the advice of the Reserve Bank on any matter (which it is hereby empowered to do), it shall be lawful for the Reserve Bank to examine the record of any such proceeding and tender such advice on the matter as it may think fit.

**45Q. Power to inspect :-**

(1) The Reserve Bank shall, on being directed so to do by the Central Government or by the High Court, cause an inspection to be made by one or more of its officers of a banking company, which is being wound up and its books and accounts.

(2) On such inspection, the Reserve Bank shall submit its report to the Central Government and the High Court.

(3) If the Central Government, on consideration of the report of the Reserve Bank, is of opinion that there has been a substantial irregularity in the winding up proceedings, it may bring such irregularity to the notice of the High Court for such action as the High Court may think fit.

(4) On receipt of the report of the Reserve Bank under sub-section (2) or on any irregularity being brought to its notice by the Central Government under sub-section (3), the High Court may, if it deems fit, after giving notice to and hearing the Central Government in regard to the report, give such directions as it may consider necessary.

**45R. Power to call for returns and information :-**

The Reserve Bank may, at any time by a notice in writing, require the liquidator of a banking company to furnish it, within such time

as may be specified in the notice or such further time as the Reserve Bank may allow, any statement or information relating to or connected with the winding up of the banking company; and it shall be the duty of every liquidator to comply with such requirements.

**45S. Chief Presidency Magistrate and District Magistrate to assist official liquidator in taking charge of property of banking company being wound up :-**

(1) For the purpose of enabling the official liquidator or the special officer appointed under sub-section (3) of section 37 to take into his custody or under his control all property, effects and actionable claims to which a banking company. <sup>1</sup>[\* \* \*] is or appears to be entitled, the official liquidator or the special officer, as the case may be, may request in writing the <sup>2</sup>[Chief Metropolitan Magistrate or the Chief Judicial Magistrate], within whose jurisdiction any property, books of account or other documents of such banking company may be situate or be found, to take possession thereof, and the <sup>2</sup>[Chief Metropolitan Magistrate or the Chief Judicial Magistrate], as the case may be, shall, on such request being made to him,

<sup>4</sup>[(a) take possession of such property, books of accounts or other documents, and

(b) forward them to the official liquidator or the special officer.]

<sup>5</sup>[(2) Where any such property and effects are in the possession of the <sup>2</sup>[Chief Metropolitan Magistrate or the Chief Judicial Magistrate], as the case may be, such Magistrate shall, on request in writing being made to him by the official liquidator or the special officer referred to in sub-section (1), sell such property and effects and forward the net proceeds of the sale to the official liquidator or the special officer: Provided that such sale shall, as far as practicable, be effected by public auction.

(3) For the purpose of securing compliance with the provisions of sub-section (1), the <sup>2</sup>[Chief Metropolitan Magistrate or the Chief Judicial Magistrate] may take or cause to be taken such steps and use or cause to be used such force as may, in his opinion, be necessary.

(4) No act of the <sup>2</sup> [Chief Metropolitan Magistrate or the Chief

Judicial Magistrate] done in pursuance of this section shall be called in question in any Court or before any authority.]

1. Words "which had been ordered to be wound up", omitted by the Banking Laws (Miscellaneous Provisioni) Act, 1963(55 of 1963). S. 23 (1-2-1964).
2. Substituted for the words "Chief Presidency Magistrate or the District Magistrate" by the Banking Laws (Amendment)Act (1 of 1984), S. 36 (15-2-1984).
4. Substituted for the words beginning with "take possession of such property" and ending with "special officer" the Banking Laws (Miscellaneous Provisioni) Act, 1963 (55 of 1963). S. 23(1-2-1964).
5. Substituted for original sub-section (2), the Banking Laws (Miscellaneous Provisioni) Act, 1963 (55 of 1963). S.23 (1-2-1964).

#### **45T. Enforcement of orders and decisions of High Court :-**

(1) All orders made in any civil proceeding by a High Court may be enforced in the same manner in which decrees of such Court made in any suit pending therein may be enforced.

(2) Notwithstanding anything to the contrary contained in the Code of Civil Procedure, 1908, a liquidator may apply for the execution of a decree by a Court other than the one which made it on production of a certificate granted under sub-section (6) of section 45D and on his certifying to such other Court in writing the amount remaining due or relief remaining unenforced under the decree.

(3) Without prejudice to the provisions of sub-section (1) or sub-section (2), any amount found due to the banking company by an order or decision of the High Court may, with the leave of the High Court, be recovered <sup>1</sup>[by the liquidator in the same manner as an arrear of land revenue and for the purpose of such recovery the liquidator may forward to the Collector within whose jurisdiction the property of the person against whom any order or decision of the High Court has been made is situate, a certificate under his signature specifying the amount so due and the person by whom it is payable;]

<sup>2</sup> [(4) On receipt of a certificate under sub-section (3), the Collector shall proceed to recover from such person the amount specified therein as if it were an arrear of land revenue: Provided that without prejudice to any other powers of the Collector, he shall, for the purposes of recovering the said amount, have all the

powers, which, under the Code of Civil Procedure, 1908, a civil Court has for the purpose of the recovery of an amount due under a decree.]

1. Substituted for the words "in the same manner as an arrear of land revenue" by the Banking Laws (Miscellaneous Provisions) Act, 1963 (55 of 1963), S. 24 (1-2-1964).

2. Inserted, the Banking Laws (Miscellaneous Provisions) Act, 1963 (55 of 1963), S. 24 (1-2-1964).

**45U. Power of High Court to make rules :-**

The High Court may make rules consistent with this Act and the rules made under section 52 prescribing -

(a) the manner in which inquiries and proceedings under Part III or Part IIIA may be held:

(b) the offences which may be tried summarily;

(c) the authority to which, and the conditions subject to which, appeals may be preferred and the manner in which such appeals may be filed and heard;

(d) any other matter for which provision has to be made for enabling the High Court to effectively exercise its functions under this Act.

**45V. References to directors, etc., shall be construed as including references to past directors, etc :-**

For the removal of doubts it is hereby declared that any reference in this Part to a director, manager, liquidator, officer or auditor of a banking company shall be construed as including a reference to any past or present director, manager, liquidator, officer or auditor of the banking company.

**45W. Part II not to apply to banking companies being wound up :-**

Nothing contained in Part II shall apply to a banking company which is being wound up.

**45X. Validation of certain proceedings :-**

Notwithstanding anything contained in section 45B or any other provision of this Part or in section 11 of the Banking Companies (Amendment) Act, 1950, no proceeding held, judgment delivered or decree or order made before the commencement of the Banking Companies (Amendment) Act, 1953, by any Court other than the High Court in respect of any matter over which the High Court has

jurisdiction under this Act shall be invalid or be deemed ever to have been invalid merely by reason of the fact that such proceeding, judgment, decree or order was held, delivered or made by a Court other than the High Court.

PART 3B

PROVISIONS RELATING TO CERTAIN OPERATIONS OF BANKING COMPANIES

**45Y. Power of Central Government to make rules for the preservation of records :-**

The Central Government may, after consultation with the Reserve Bank and by notification in the Official Gazette, make rules<sup>1</sup> specifying the periods for which-

(a) a banking company shall preserve its books, accounts and other documents; and

(b) a banking company shall preserve and keep with itself different instruments paid by it.

1. Substituted for the word 'required' by the Banking Companies (Amendment) Act, 1956 (95 of 1956), S. 9 (14-1-1957).

**45Z. Return of paid instruments to customers :-**

(1) Where a banking company is required by its customer to return to him a paid instrument before the expiry of the period specified by rules made under section 45Y , the banking company shall not return the instrument except after making and keeping in its possession a true copy of all relevant parts of such instrument, such copy being made by a mechanical or other process which in itself ensures the accuracy of the copy.

(2) The banking company shall be entitled to recover from customer the cost of making such copies of the instrument.

**45ZA. Nomination for payment of depositors money :-**

(1) Where a deposit is held by a banking company to the credit of one or more persons, the depositor or, as the case may be, all the depositors together, may nominate<sup>1</sup> , in the prescribed manner, one person to whom in the event of the death of the sole depositor or the death of all the depositors, the amount of deposit may be returned by the banking company.

(2) Notwithstanding anything contained in any other law for the time being in force or in any disposition, whether testamentary or

otherwise, in respect of such deposit, where a nomination made in the prescribed manner purports to confer on any person the right to receive the amount of deposit from the banking company, the nominee shall, on the death of the sole depositor or, as the case may be, on the death of all the depositors, become entitled to all the rights of the sole depositor or, as the case may be, of the depositors, in relation to such deposit to the exclusion of all other persons, unless the nomination is varied or cancelled in the prescribed manner.

(3) Where the nominee is a minor, it shall be lawful for the depositor making the nomination to appoint in the prescribed manner any person to receive the amount of deposit in the event of his death during the minority of the nominee.

(4) Payment by a banking company in accordance with the provisions of this section shall constitute a full discharge to the banking company of its liability in respect of the deposit : Provided that nothing contained in this sub-section shall affect the right or claim which any person may have against the person to whom any payment is made under this section.

1. Substituted for the word 'required' by the Banking Companies (Amendment) Act, 1956 (95 of 1956), S. 9 (14-1-1957).

**45ZB. Notice of claims of other persons regarding deposits not receivable :-**

No notice of the claim of any person, other than the person or persons in whose name a deposit is held by a banking company, shall be receivable by the banking company, nor shall the banking company be bound by any such notice even though expressly given to it: Provided that where any decree, order, certificate or other authority from a Court of competent jurisdiction relating to such deposit is produced before a banking company, the banking company shall take due note of such decree, order, certificate or other authority.

**45ZC. Nomination for return of articles kept in safe custody with a banking company :-**

(1) Where any person leaves any article in safe custody with a banking company, such person may nominate, in the prescribed manner, one person to whom in the event of the death of the person leaving the article in safe custody, such article may be returned by the banking company.

(2) Where the nominee is a minor, it shall be lawful for the person making the nomination to appoint in the prescribed manner any person to receive the article deposited in the event of his death during the minority of the nominee.

(3) The banking company shall, before returning any articles under this section to the nominee or the person appointed under subsection (2), prepare, in such manner as may be directed by the Reserve Bank from time to time, an inventory of the said articles which shall be signed by such nominee or person and shall deliver a copy of the inventory so prepared to such nominee or person.

(4) Notwithstanding anything contained in any other law for the time being in force or in disposition, whether testamentary or otherwise, in respect of such article where a nomination made in the prescribed manner purports to confer on any person the right to receive the article from the banking company, the nominee shall, on the death of the person leaving the article in safe custody, become entitled to the return of the article to the exclusion of all other persons, unless the nomination is varied or cancelled in the prescribed manner: Provided that nothing contained in this section shall affect the right or claim which any person may have against the person to whom the article is returned in pursuance of this subsection.

**45ZD. Notice of claims of other persons regarding articles not receivable :-**

No notice of the claim of any person, other than the person or persons in whose name any article is held by a banking company in safe custody, shall be receivable by the banking company, nor shall the banking company be bound by any such notice even though expressly given to it: Provided that where any decree, order, certificate or other authority from a court of competent jurisdiction relating to such article is produced before a banking company, the banking company shall take due note of such decree, order, certificate or other authority.

**45ZE. Release of contents of safety lockers :-**

(1) Where an individual is the sole hirer of a locker from a banking company, whether such locker is located in the safe deposit vault of such banking company or elsewhere, such individual may nominate<sup>1</sup> one person to whom, in the event of the death of such individual, the banking company may give access to the locker and

liberty to remove the contents of the locker.

(2) Where any such locker is hired from a banking company by two or more individuals jointly, and, under the contract of hire, the locker is to be operated under the joint-signatures of two or more of such hirers, such hirers may nominate one or more persons to whom, in the event of the death of such joint hirer or hirers, the banking company may give, jointly with the surviving joint hirer joint hirers, as the case may be, access to the locker and liberty to remove the contents of such locker.

(3) Every nomination under sub-section (1) or sub-section (2) shall be made in the prescribed manner.

(4) The banking company shall, before permitting the removal of the contents of any locker by any nominee or jointly by any nominee and survivors as aforesaid, prepare in such manner as may be directed by the Reserve Bank from time to time. an inventory of the contents of the locker which shall be signed by such nominee or jointly by such nominee and survivors and shall deliver a copy of the inventory so prepared to such nominee or nominee and survivors.

(5) On the removal of the contents of any locker by any nominee or jointly by any nominee and survivors as aforesaid, the liability of the banking company in relation to the contents of the locker shall stand discharged.

(6) No suit, prosecution or other legal proceeding shall lie against a banking company for any damage caused or likely to be caused, for allowing access to any locker, and liberty to remove the contents of such locker, in pursuance of the provisions of sub-section (1) or sub-section (2), as the case may be.

1. Substituted for the word 'required' by the Banking Companies (Amendment) Act, 1956 (95 of 1956), S. 9 (14-1-1957).

**45ZF. Notice of claims of other persons regarding safety lockers not receivable :-**

No notice of the claim of any person, other than hirer or hirers of a locker, shall be receivable by a banking company nor shall the banking company be bound by any such notice even though expressly given to it: Provided that where any decree, order, certificate or other authority from a Court of competent jurisdiction relating to the locker or its contents is produced before the banking

company, the banking company shall take due note of such decree, order, certificate or other authority.]

PART 4

MISCELLANEOUS

**46. Penalties :-**

(1) Whoever in any return, balance-sheet or other document <sup>1</sup> [or in any information required or furnished] by or under or for the purposes of any provision of this Act, wilfully makes a statement which is false in any material particular, knowing it to be false, or wilfully omits to make a material statement, shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.

(2) If any person fails to produce any book, account or other document or to furnish any statement or information which under sub-section (2) of section 35 it is his duty to produce or furnish, or to answer any question relating to the business of a banking company which he is asked by [an officer making an inspection or scrutiny under that section], he shall be punishable with a fine which may extend to [two thousand rupees] in respect of each offence, and if he persists in such refusal, to a further fine which may extend to [one hundred rupees] for every day during which the offence continues.

(3) If any deposits are received by a banking company in contravention of an order under clause (a) of sub-section (4) of section 35 , every director or other officer of the banking company, unless he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent it, shall be deemed to be guilty of such contravention and shall be punishable with a fine which may extend to twice the amount of the deposits so received.

[(4) If any other provision of this Act is contravened or if any default is made in-

(i) complying with any requirement of this Act or of any order, rule or direction made or condition imposed thereunder, or

(ii) carrying out the terms of, or the obligations under, a scheme sanctioned under sub-section (7) of section 45 ,

["fifty thousand rupees or twice the amount involved in such

contravention or default where such amount is quantifiable, whichever is more, and where a contravention or default is a continuing one, with a further fine which may extend to two thousand and five hundred rupees"]for every day

(5) Where a contravention or default has been committed by a company every person who, at the time the contravention or default was committed, was incharge 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 contravention or default 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 provided in this Act if he proves that the contravention or default was committed without his knowledge or that he exercised all due diligence to prevent the contravention or default.

(6) Notwithstanding anything contained in sub-section (5), where a contravention or default has been committed by a company, and it is proved that the same was committed with the consent or connivance of, or is attributable to any gross negligence 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 contravention or default and shall be liable to be proceeded against and punished accordingly.

1. Inserted by the Banking Laws (Amendment) Act, 1968 (58 of 1968), S. 20 (1-2-1969).

**46A. Chairman, director, etc., to be public servants for the purposes of Chapter LX of the Indian Penal Code :-**

Every Chairman who is appointed on a whole-time basis, Managing Director, Director, Auditor], liquidator, manager and any other employee of a banking company shall be deemed to be a public servant for the purposes of Chapter IX of the Indian Penal Code.]

**47. Cognizance of offences :-**

No Court shall take cognizance of any offence punishable under <sup>1</sup> [sub-section (5) of section 36AA or] section 46 except upon complaint in writing made by an officer of the Reserve Bank generally or specially authorised inwriting in this behalf by the Reserve Bank and [no Court other than that of a Metropolitan Magistrate or a Judicial Magistrate of the first class or any Court superior thereto] shall try any such offence.

1. Inserted by the Banking Laws (Amendment) Act, 1968 (58 of 1968), S. 20 (1-2-1969).

**47A. Power of Reserve Bank to impose penalty :-**

(1) Notwithstanding anything contained in section 46 , if a contravention or default of the nature referred to in sub-section (3) or sub-section (4) of section 46 , as the case may be, is made by a banking company, then the Reserve Bank may impose on such banking company-

(a) where the contravention is of the nature, referred to in sub-section (3) of section 46 , a penalty not exceeding twice the amount of the deposits in respect of which such contravention was made;

(b) where the contravention or default is of the nature referred to in sub-section (4) of section 46 , a penalty not exceeding ["five lakh rupees or twice the amount involved in such contravention or default where such amount is quantifiable, whichever is more, and where such contravention or default is a continuing one, a further penalty which may extend to twenty-five thousand rupees":]for every day. after the first, during which the contravention or default continues.

(2) For the purpose of adjudging the penalty under sub-section (1), the Reserve Bank shall serve notice on the banking company requiring it to show cause why the amount specified in the notice should not be imposed and a reasonable opportunity of being heard shall also be given to such banking company.

(4) No complaint shall be filed against any banking company in any Court of law in respect of any contravention or default in respect of which any penalty has been imposed by the Reserve Bank under this section.

(5) Any penalty imposed by the Reserve Bank under this section shall be payable within a period of fourteen days from the date on which notice issued by the Reserve Bank demanding payment of the sum is served on the banking company and in the event of failure of the banking company to pay the sum within such period, may be levied on a direction made by the principal civil Court having jurisdiction in the area where the registered office of the banking company is situated; or, in the case of a banking company incorporated outside India, where its principal place of business in

India is situated: Provided that no such direction shall be made except on an application made to the Court by the Reserve Bank or any officer authorised by that Bank in this behalf.

(6) The Court which makes a direction under sub-section (5) shall issue a certificate specifying the, sum payable by the banking company and every such certificate shall be enforceable in the same manner as if it were a decree made by the Court in a civil suit.

(7) Where any complaint has been filed against any banking company in any Court in respect of the contravention or default of the nature referred to in sub-section (3) or, as the case may be, sub-section (4) of section 46, then, no proceedings for the imposition of any penalty on the banking company shall be taken under this section.]

**48. Application of fines :-**

A Court imposing any fine under this Act may direct that the whole or any part thereof shall be applied in or towards payment of the costs of the proceedings, or in or towards the rewarding of the person on whose information the fine is recovered.

**49. Special provisions for private banking companies :-**

The exemptions, whether express or implied, in favour of a private company in <sup>1</sup> [section 90, section 165, section 182, section 204 and section 225, cls. (a) and (b) of sub-section (1) of section 293 and section 300, [388A] and 416 of the Companies Act, 1956], shall not operate in favour of a private company which is a banking company.

1. Inserted by the Banking Laws (Amendment) Act, 1968 (58 of 1968), S. 20 (1-2-1969).

**49A. Restriction on acceptance of deposits withdrawable by cheque :-**

No person other than a banking company, the Reserve Bank, the State Bank of India or any other [banking institution, firm or other person notified by the Central Government in this behalf on the recommendation of the Reserve Bank] shall accept from the public deposits of money withdrawable by cheque. Provided that nothing contained in this section shall apply to any savings bank scheme run by the Government.

**49B. Change of name by a banking company :-**

Notwithstanding anything contained in Section 21 of the Companies Act, 1956 , the Central Government shall not signify its approval to the change of name of any banking company unless the Reserve Bank certifies in writing that it has no objection to such change.

**49C. Alteration of memorandum of a banking company :-**

Notwithstanding anything contained in the Companies Act, 1956, n o application for the confirmation of the alteration of the memorandum of a banking company shall be maintainable unless the Reserve Bank certifies that there is no objection to such alteration.]

**50. Certain claims for compensation barred :-**

No person shall have any right, whether in contract or otherwise, to any compensation for any loss incurred by reason of the operation of any provisions <sup>1</sup> [contained in section 10 , section 12A , section 16 , section 35A , 35B , [36,43A and 45]or by reason of the compliance by a banking company with any order or direction given to it under this Act.]

1. Inserted by the Banking Laws (Amendment) Act, 1968 (58 of 1968), S. 20 (1-2-1969).

**51. Application of certain provisions to the State Bank of India and other notified banks :-**

[(1)] Without prejudice to the provisions of the State Bank of India Act, 1955, or any other enactment, the provisions of section 10 , section 13 to section 15 , section 17 , [19 to 21-A, 23 to 28,29 [excluding sub-section (3)] [[sub-sections (1B), (1C) and (2) of section 30 , section 31 ] section 34 , section 35 , section 35A , section 36 [excluding clause (d) of sub-section (1)], 45Y to 45-ZF, 46 to 48,] 50,52 and 53 shall also apply, so far as may be, to and in relation to the State Bank of India [or any corresponding new bank or a Regional Rural Bank or any subsidiary bank] as they apply to and in relation to banking companies. [Provided that-

(a) nothing contained in clause (c) of sub-section (1) of section 10 shall apply to the chairman of the State Bank of India or to a [managing director] of any subsidiary bank in so far as the said clause precluded him from being a director of, or holding an office in, any institution approved by the Reserve Bank;

[(b) nothing contained in sub-clause (iii) of clause (b) of sub-section (1) of section 20 shall apply to any bank referred to in sub-

section (1), insofar as the said sub-clause (iii) of clause (b) precludes that bank from entering into any commitment for granting any loan or advance to or on behalf of a company (not being a Government company) in which not less than forty per cent. of the paid-up capital is held whether singly or taken together) by the Central Government or the Reserve Bank or a corporation owned by that bank; and

(c) nothing contained in section 46 or in section 47-A shall apply to,-

(i) an officer of the Central Government or the Reserve Bank, nominated or appointed as director of the State Bank of India or any corresponding new bank or a Regional Rural Bank or any subsidiary bank or a banking company; or

(ii) an officer of the State Bank of India or a corresponding new bank or a Regional Rural Bank or a subsidiary bank nominated or appointed as director of any of the said banks (not being the bank of which he is an officer) or of a banking company.]

[(2) Reference to a banking company in any rule or direction relating to any provision of this Act referred to in sub-section (1) shall, except where such rule or direction provides otherwise, be construed as referring also to the State Bank of India, a corresponding new bank, a Regional Rural Bank and a subsidiary bank.]

[\* \* \* \* \*]

## **52. Power of Central Government to make rules :-**

(1) The Central Government may, after consultation with the Reserve Bank, make rules<sup>1</sup> to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of this Act and all such rules shall be published in the Official Gazette.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for the details to be included in the returns required by this Act and the manner in which such returns shall be submitted [and the form in which the official liquidator may file lists of debtors to the Court having jurisdiction under Part III or Part III-A and the particulars which such lists may contain and any other matter which has to be, or

may be prescribed.]

[(3) \* \* \* \* \*]

[(4) The Central Government may by rules made under this section annul, alter or add to all or any of the provisions of Fourth Schedule.]

[(5) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.]

1. Inserted by the Banking Laws (Amendment) Act, 1968 (58 of 1968), S. 20 (1-2-1969).

**53. Power to exempt in certain cases :-**

**335**(1) The Central Government may, on the recommendation of the Reserve Bank, declare, by notification in the Official Gazette, that any or all of the provisions of this Act shall not apply to any **336**"banking company or Institution or to any class of banking companies **337**[\*\*\*]" either generally or for such period as may be specified.

**338**"(2) **339** "A copy of every notification proposed to be issued under sub-section (1) relating to any banking company or institution or any class, of banking companies or any branch of a banking company or an institution as the case may be, functioning or located in any Special Economic Zone established under the Special Economic Zones Act, 2005 (28 of 2005) shall be laid in draft before each House of Parliament", while it is in session, for a total period thirty days which may be comprised in one session or in two or more successive session and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the

notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses."

In the BANKING REGULATION ACT, 1949, Section 53, shall be renumbered as sub-section (1) by the Special Economic Zones Act, 2005.

In the BANKING REGULATION ACT, 1949, In Section 53, In sub-section (1), for word "banking company or institution or to any class of banking companies", the word "banking company or Institution or to any class of banking companies or any of their branches functioning or located in any Special Economic Zone established under the Special Economic Zones Act, 2005" shall be substituted, by the Special Economic Zones Act, 2005.

In the Banking Regulation Act, 1949 (10 of 1949), In section 53 of the principal Act, in sub-section (1), the words and figures "or any of their branches functioning or located in any Special Economic Zone established under the Special Economic Zones Act, 2005 (28 of 2005)" shall be omitted, by the "Banking Regulation (Amendment) Act, 2007."

In the BANKING REGULATION ACT, 1949, In Section 53, After sub-section (1), the following sub section shall be inserted namely : "  
(2) A copy of every notification proposed to be issued under sub-section (1), shall be laid in draft before each House of Parliament, while it is in session, for a total period thirty days which may be comprised in one session or in two or more successive session and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses." by the Special Economic Zones Act, 2005.

In the Banking Regulation Act, 1949 (10 of 1949), In section 53 of the principal Act, in sub-section (2), in the opening portion, for the words, brackets and figure "A copy of every notification proposed to be issued under sub-section (1), shall be laid in draft before each House of Parliament", the following words, brackets and figures shall be substituted, namely:-- "A copy of every notification proposed to be issued under sub-section (1) relating to any banking company or institution or any class, of banking companies or any branch of a banking company or an institution as the case may be, functioning or located in any Special Economic Zone established under the Special Economic Zones Act, 2005 (28 of 2005) shall be laid in draft before each House of Parliament." by the "Banking Regulation (Amendment) Act, 2007".

#### **54. Protection of action taken under Act :-**

(1) No suit or other legal proceeding shall lie against the Central

Government, the Reserve Bank or any officer for anything which is in good faith done or intended to be done in pursuance of this Act.

(2) Save as otherwise expressly provided by or under this Act, no suit or other legal proceeding shall lie against the Central Government, the Reserve Bank or any officer for any damage caused or likely to be caused by anything in good faith done or intended to be done in pursuance of this Act.

**55. Amendment of Act II of 1934 :-**

The Reserve Bank of India Act, 1934, shall be amended in the manner specified in the fourth column of the First Schedule, and the amendments to section 18 thereof as specified in the said Schedule shall be deemed to have had effect on and from the 20th day of September, 1947.

**55A. Power to remove difficulties :-**

If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, as occasion requires do anything (not inconsistent with the provisions of this Act) which appears to it to be necessary for the purpose of removing the difficulty: Provided that no such power shall be exercised after the expiry of a period of three years from the commencement of section 20 of the Banking Laws (Amendment) Act, 1968.) <sup>1</sup> [\* \* \*]

1. Section 56 pertaining to Repeals - Repealed by the Repealing and Amending Act, 1957 (36 of 1957), S. 2 and Sch. I(17-9-1957).

PART 5

APPLICATION OF THE ACT TO CO-OPERATIVE BANKS

**56. Act to apply to co-operative societies subject to modifications :-**

The provisions of this Act, as in force for the time being, shall apply to, or in relation to, co-operative societies as they apply to; or in relation to, banking companies subject to the following modifications, namely :-

(a) Throughout this Act, unless the context otherwise, requires,-

(i) references to a "banking company" or "the company" or "such company" shall be construed as references to a co-operative bank,

(ii) references to "commencement of this Act" shall be construed as references to commencement of the .Banking Laws (Application to Co-operative Societies) Act, 1965;

(b) in section 2 , the words and figures "the Companies Act, 1956, and" shall be omitted;

(c) in section 5 ,-

**1**[(i) after clause (cc), the following clauses shall be inserted, namely :-

'(cci) "co-operative bank" means a state co-operative bank, a central co-operative bank and a primary co-operative bank;

(ccii) "co-operative credit society" means a co-operative society, the primary object of which is to provide financial accommodation to its members and includes a co-operative land mortgage bank;

(cciii) "director", in relation to a co-operative society, includes a member of any committee or body for the time being vested with the management of the affairs of that society;

(cciv) "primary agricultural credit society" means a co-operative society,-

(1) the primary object or principal business of which is to provide financial accommodation to its members for agricultural purposes or for purposes connected with agricultural activities (including the marketing of crops); and

(2) the bye-laws of which do not permit admission of any other co-operative society as a member: Provided that this sub-clause shall not apply to the admission of a co-operative bank as a member by reason of such co-operative bank subscribing to the share capital of such co-operative society out of funds provided by the State Government for the purposes;

(ccv) "primary co-operative bank" means a co-operative society, other than a primary agricultural credit society,-

(1) the primary object or principal business of which is the transaction of banking business;

(2) the paid-up share capital and reserves of which are not less than one lakh of rupees; and

(3) the bye-laws of which do not permit admission of any other co-operative society as a member: Provided that this sub-clause shall not apply to the admission of a co-operative bank as a member by reason of such co-operative bank subscribing to the share capital of

such co-operative society out of funds provided by the State Government for the purpose;

(ccvi) "primary credit society" means a co-operative society, other than a primary agricultural credit society,

(1) the primary object or principal business of which is the transaction of banking business;

(2) the paid-up share capital and reserves of which are less than one lakh of rupees; and

(3) the bye-laws of which do not permit admission of any other co-operative society as a member: Provided that this sub-clause shall not apply to the admission of a co-operative bank as a member by reason of such co-operative bank subscribing to the share capital of such co-operative society out of funds provided by the State Government for the purpose.

(ccvii) "central co-operative bank", "co-operative society", "primary rural credit society" and "state co-operative bank" shall have the meanings respectively assigned to them in the National Bank for Agriculture and Rural Development Act, 1981 ; '];

**2**[(ii) "Clauses (ff), (h) and (nb) shall be omitted;"]

(d) for S. 5A. the following section shall substituted, namely :- "5A. Act to override bye-laws, etc.-

(1) The provisions of **3**[this Act] shall have effect, notwithstanding anything to the contrary contained in the bye-laws of a co-operative society, or in any agreement executed by it, or in any resolution passed by it in general meeting, or by its Board of Directors or other body entrusted with the management of its affairs, whether the same be registered, executed or passed as the case may be, before or after the commencement of the Banking Laws (Application to Co-operative Societies) Act, 1965.

(2) Any provision contained in the bye-laws, agreement or resolution aforesaid shall, to the extent to which it is repugnant to the provisions of **3**[this Act] become or be void, as the case may be";

(e) in section 6 in sub-sektion (1),-

(i) in clause (b), the words "but excluding the business of a

managing agent or secretary and treasurer of a company" shall be omitted:

(ii) in clause (d), after the word "company", the words "co-operative society" shall be inserted;

(iii) in clause (m), after the word "company", the words "or co-operative society" shall be inserted,

**5**[(f) for section 7 , the following section shall be substituted, namely :- "7. Use of words"bank","banker"or"banking".-

(1) No co-operative society other than a co-operative bank shall use as part of its name or in connection with its business any of the words "bank", "banker" or "banking", and no co-operative society shall carry on the business of banking in India unless it uses as part of its name at least one of such words.

**6**[(fi) in section 8 , for the proviso, the following proviso shall be substituted, namely:- "Provided that this section shall not apply - (a) to any such business as aforesaid which was in the course of being transacted on the commencement of clause (iii) of section 42 of the Banking Laws (Amendment) Act, 1983, so, however, that the said business shall be completed before the expiry of one year from such commencement, or (b) to any business as is specified in pursuance of clause (o) of sub-section ( 1 ) of section 6 ;"; (fii) in section 9 , for the second proviso, the following provisos shall be substituted, namely :- 'Provided further that in the case of a primary credit society which becomes a primary co-operative bank after the commencement of clause (iii) of section 42 of the Banking Laws (Amendment) Act, 1983, the period of seven years shall commence from the day it so becomes a primary co-operative bank; Provided also that the Reserve Bank may, in any particular case. extend the aforesaid period of seven years by such period as it may consider necessary where it is satisfied that such extension would be in the interests of the depositors of the co-operative bank'."]

(g) **7**[ section 10 . section 10A . **8**[ section 10B , section 10BB , section 10C ] and section 10D ] shall be omitted;

(h) for section 11 , the following section shall be substituted, namely :- "11. Requirement as to minimum paid-up capital and reserves.- (1) Notwithstanding any law relating to co-operative societies for the time being in force, no co-operative bank shall commence or carry on the business of banking in India unless the aggregate value of its paid-up capital and reserves is not less than one lakh of rupees: Provided that nothing in this sub-section shall

apply to - (a) any such bank which is carrying on such business at the commencement of the Banking Laws (Application to Co-operative Societies) Act, 1965, for a period of three years from such commencement; or (b) to a primary credit society which becomes a primary co-operative bank after such commencement, for a period of two years from the date it so becomes a primary co-operative bank or for such further period not exceeding one year as the Reserve Bank, having regard to the interests of the depositors of the primary co-operative bank, may think fit in any particular case to allow. (2) For the purposes of this section, "value" means the real or exchangeable value and not the nominal value which may be shown in the books of the co-operative bank concerned. (3) If any dispute arises in computing aggregate value of the paid-up capital and reserves of any such co-operative bank, a determination thereof by the Reserve Bank shall be final for the purposes of this section.";

(i) section 12 , section 12A , section 13 and section 15 to section 17 , shall be omitted;

<sup>9</sup>[(j) for section 18 , the following section shall be substituted namely:- "18. Cash reserve.- (1) Every co-operative bank, not being a State Co-operative Bank for the time being included in the Second Schedule to the Reserve Bank of India Act, 1934 (hereinafter referred to as a "scheduled State Co-operative Bank"), shall maintain in India by way of cash reserve with itself or by way of balance in a current account with the Reserve Bank or the State co-operative bank of the State concerned or by way of net balance in current accounts, or, in the case of a primary co-operative bank, with the central co-operative bank of the district concerned, or in one or more of the aforesaid ways, a sum equivalent to at least three per cent. of the total of its demand and time liabilities in India, as on the last Friday of the second preceding fortnight and shall submit to the Reserve Bank before the fifteenth day of every month a return showing the amount so held on alternate Fridays during a month with particulars of its demand and time liabilities in India on such Friday or if any such Fridays is a public holiday under the Negotiable Instruments Act, 1881, at the close of business on the preceding working day. (2) The Reserve Bank may, for the purposes of this section and section 24 , specify from time to time, with reference to any transaction or class of transactions, that such transaction or transactions shall be regarded as liability in India of a

co-operative bank, and, if any question arises as to whether any transaction or class of transactions shall be regarded for the purposes of this section and section 24, as liability in India of a co-operative bank, the decision of the Reserve Bank thereon shall be final."]

(k) for section 19, the following section shall be substituted, namely:- "19. Restriction on holding shares in other co-operative societies.- No co-operative bank shall hold shares in any other co-operative society except to such extent and subject to such conditions as the Reserve Bank may specify in that behalf: Provided that nothing contained in this section shall apply to- (i) shares acquired through funds provided by the State Government for that purpose: (ii) in the case of a central co-operative bank, the holding of shares in the State co-operative bank to which it is affiliated; (iii) in the case of a primary co-operative bank, the holding of shares in the central co-operative bank to which it is affiliated or in the State co-operative bank of the State in which it is registered: Provided further that where any shares are held by a co-operative bank in contravention of this section at the commencement of the Banking Laws (Application to Co-operative Societies) Act, 1965, the co-operative bank shall without delay report the matter to the Reserve Bank and shall, notwithstanding anything contained in this section, be entitled to hold the shares for such period and on such conditions as the Reserve Bank may specify.";

**10**[1] for S.20 of the principal Act, the following section shall be substituted, namely:- "20. Restrictions on loans and advances.- (1) No co-operative bank shall- (a) make any loans or advances on the security of its own shares, or (b) grant unsecured loans or advances- (i) to any of its directors, or (ii) to firms or private companies in which any of its directors is interested as partner or managing agent or guarantor or to individuals in cases where any of its directors is a guarantor; or (iii) to any company in which the Chairman of the Board of Directors of the co-operative bank (where the appointment of a chairman is for a fixed term) is interested as its managing agent, or where there is no managing agent, as its chairman or managing director: Provided that nothing in clause (b) shall apply to the grant of unsecured loans or advances- (a) made by a co-operative bank- (i) against bills for supplies or services made or rendered to Government or bills of exchange arising out of bona fide commercial or trade transactions, or (ii) in respect whereof trust-receipts are furnished to the co-operative bank, (b) made by

a primary co-operative bank to any of its directors or to any other person within such limits and on such terms and conditions as may be approved by the Reserve Bank in this behalf. (2) Every co-operative bank shall, before the close of the month succeeding that to which the return relates, submit to the Reserve Bank a return in the prescribed form and manner showing all unsecured loans and advances granted by it to companies in cases [other than those in which the co-operative bank is prohibited under sub-section (1) to make unsecured loans and advances] in which any of its directors is interested as director or managing agent or guarantor. (3) If, on examination of any return submitted under sub-section (2), it appears to the Reserve Bank that any loans or advances referred to in that sub-section are being granted to the detriment of the interests of the depositors of the co-operative bank, the Reserve Bank may, by order in writing prohibit the co-operative bank from granting any such further loans or advances or impose such restrictions on the grant thereof as it thinks fit, and may by like order direct the co-operative bank to secure the repayment of such loan or advance within such time as may be specified in the order." :]

**11** [(m) in section 20-A, in sub-section (1),- (i) the words and figures "Notwithstanding anything to the contrary contained in Section 293 of the Companies Act, 1956 ," shall be omitted; (ii) in clause (a), for the words "any of its directors", the words "any of its past or present directors" shall be substituted;]

(n) in section 21 , in sub-section (2), in clauses (c) and (d), for the words "any one company, firm, association of persons or individual", the words "any one party" shall be substituted:

(o) in section 22 , -

(i) for sub-sections (1) and (2), the following sub-sections shall be substituted, namely:-

"(1) Save as hereinafter provided, no co-operative society shall carry on banking business in India unless-

(a) it is a primary credit society, or

(b) it is a co-operative bank and holds a licence issued in that behalf by the Reserve Bank, subject to such conditions, if any, as the Reserve Bank may deem fit to impose: Provided that nothing in this sub-section shall apply to a co-operative society, not being a

primary credit society or a co-operative bank carrying on banking business at the commencement of the Banking Laws (Application to Co-operative Societies) Act, 1965, for a period of one year from such commencement.

**12**[(2) Every co-operative society carrying on business as a co-operative bank at the commencement of the Banking Laws (Application to Co-operative Societies) Act, 1965 shall before the expiry of three months from such commencement, every co-operative bank which comes into existence as a result of the division of any other co-operative society carrying on business as a co-operative bank, or the amalgamation of two or more co-operative societies carrying on banking business shall before the expiry of three months from its so coming into existence, every primary credit society which becomes a primary co-operative bank after such commencement shall before the expiry of three months from the date on which it so becomes a primary co-operative bank and every co-operative society other than a primary credit society shall before commencing banking business in India, apply in writing to the Reserve Bank for a licence under this section: Provided that nothing in clause (b) of sub-section (1) shall be deemed to prohibit-

(i) a co-operative society carrying on business as a co-operative bank at the commencement of the Banking Laws (Application to Co-operative Societies) Act, 1965; or

(ii) a co-operative bank which has come into existence as a result of the division of any other co-operative society carrying on business as a co-operative bank, or the amalgamation of two or more co-operative societies carrying on banking business at the commencement of the Banking Laws (Application to Co-operative Societies) Act, 1965 or at any time thereafter: or

(iii) a primary credit society which becomes a primary co-operative bank after such commencement. from carrying on banking business until it is granted a licence in pursuance of this section or is, by a notice in writing, notified by the Reserve Bank that the licence cannot be granted to it." ]

**13**[(ii) sub-section (3-A) shall be omitted;

(iii) in sub-section (4), in clause (ii), the words, brackets, figures and letter "and sub-section (3-A)" shall be omitted:"]

(p) **14**[in section 23 .-

(i) for sub-section (1). the following sub-section shall be substituted, namely-"]

"(1) Without obtaining the prior permission of the Reserve Bank, no co-operative bank shall open a new place of business or change otherwise than within the same city. town or village, the location of an existing place of business : Provided that nothing in this sub-section shall apply to-

(a) the opening for a period not exceeding one month of a temporary place of business within a city, town or village or the environs thereof within which the co-operative bank already has a place of business, for the purpose of affording banking facilities to the public on the occasion of an exhibition, a conference or a mela or any other like occasion;

(b) the **15**[opening or changing the location of branches] by a central co-operative bank within the area of its operation.";

**16**[(ii) after sub-section (4). the following sub-section shall be inserted, namely: "(4-A) Any co-operative bank other than a primary co-operative bank requiring the permission of the Reserve Bank under this section shall forward its application to the Reserve Bank through the National Bank which shall give its comments on the merits of the application and send it to the Reserve Bank; Provided that the co-operative bank shall also send an advance copy of the application directly to the Reserve Bank."]

**17**[(q) in section 24 ,-

(i) in sub-section (1), the words "After the expiry of two years from the commencement of this Act", shall be omitted;

"(2) In computing the amount for the purposes of sub-section (1),-

(a) any balances maintained in India by a co-operative bank in current account with the Reserve Bank or by way of net balance in current accounts, and in the case of a scheduled State Co-operative Bank, also the balance required under Section 42 of the Reserve Bank of India Act, 1934 , to be so maintained;

(b) any balances maintained by a Central Co-operative Bank with the State Co-operative Bank of the State concerned, and

(c) any balances maintained by a primary Co-operative Bank with Central Co-operative Bank of the district concerned or with the State Co-operative Bank of the State concerned, shall be deemed to be cash maintained in India,

Section 42 of the Reserve Bank of India Act, 1934 , and (ii) every other co-operative bank, in addition to the cash reserve which it is required to maintain under section 18 , shall maintain in India, in cash. or in gold valued at a price not exceeding the current market price or in unencumbered approved securities valued at a price determined in accordance with such one or more of, or combination of, the following methods of valuation, namely, valuation with reference to cost price, market price, book value or face value, as may be specified by the Reserve Bank from time to time, an amount which shall not, at the close of business on any day, be less than twenty-five per cent. or such other percentage not exceeding forty per cent as the Reserve Bank may, from time to time. by notification in the Official Gazette, specify, of the total of its demand and time liabilities in India, as on the last Friday of the second preceding fortnight. (b) In computing the amount for the purpose of clause (a), the following shall be deemed to be cash maintained in India, namely:- (i) any balance maintained by a scheduled State co-operative bank with the Reserve Bank in excess of the balance required to be maintained by it under S.42 of the Reserve Bank of India Act. 1934: (ii) any cash or balances maintained in India by a co-operative bank, other than a scheduled State co-operative bank. with itself or with the State co-operative bank of the State concerned, or in current account with the Reserve Bank or by way of net balance in current accounts and. in the case of a primary co-operative bank. also any balances maintained with the central co-operative bank of the district concerned, in excess of the aggregate of the cash or balances required to be maintained under section 18 : (iii) any net balance in current accounts. (iii) in sub-section (3) for the proviso, the following proviso shall be substituted, namely :- "Provided that every co-operative bank other than a primary co-operative bank, shall also furnish within the said period a copy of the said return to the National Bank,": (iv) in sub-section (6). in clause (a), for the words "fourteen days", the words "thirty days" shall be substituted;"

**18** [(qq) after' section 24 , the following section shall be inserted, namely:- "24-A. Power to exempt.- Without prejudice to the provisions of section 53 the Reserve Bank may, by notification in the Official Gazette, declare that, for such period and subject to such conditions as may be specified in such notification the whole or any part of the provisions of section 18 or section 24 , as may be specified therein, shall not apply to any co-operative bank or class of co-operative banks, with reference to all or any of the offices of

such co-operative bank or banks, or with reference to the whole or any part of the assets and liabilities of such co-operative bank or banks."]

(r) Section 25 shall be omitted; <sup>19</sup>[(ri) in the second proviso to section 26 , for the expression "regional rural bank" the expression "co-operative bank, other than a primary co-operative bank" shall be substituted: (rii) in section 27 , for sub-section (3), the following sub-section shall be substituted, namely:- "(3) Every co-operative bank, other than a primary co-operative bank shall submit a copy of the return which it submits to the Reserve Bank, under sub-section (1) also to the National Bank and the powers exercisable by the Reserve, Bank under sub-section (2) may also be exercised by the National Bank in relation to co-operative banks, other than primary co-operative banks," ,]

(s) for section 29 and section 30 , the following section shall be substituted, namely :- "29. Accounts and balance-sheet.- (1) At the expiration of each year ending with the 30th day of June <sup>20</sup>[or at the expiration of a period of twelve months ending with such date as the Central Government may, by notification in the Official Gazette, specify in this behalf], every co-operative bank, in respect of all business transacted by it, shall prepare with reference to that year <sup>21</sup>[or the period] a balance-sheet and profit and loss account as on the last working day of the year <sup>22</sup>[or the period] in the Forms set out in the Third Schedule or as near thereto as circumstances admit. <sup>23</sup>[Provided that with a view to facilitating the transition from one period of accounting to another period of accounting under this sub-section, the Central Government may, by order published in the Official Gazette, make such provisions as it considers necessary or expedient for the preparation of, or for other matters relating to the balance-sheet or profit and loss account in respect of the concerned year or period, as the case may be.] (2) The balance-sheet and profit and loss account shall be signed by the manager or the principal officer of the bank and where there are more than three directors of the bank, by at least three of those directors, or where there are not more than three directors, by all the directors. (3) The Central Government, after giving not less than three months' notice of its intention so to do by a notification in the Official Gazette, may from time to time by a like notification amend the Forms set out in the Third Schedule";

<sup>24</sup>[(t) in section 31 , - (i) for the words "within three months" and

"of three months", the words "within six months" and "of six months" shall, respectively, be substituted; (ii) for the second proviso, the following proviso shall be substituted, namely :- "Provided further that a co-operative bank, other than a primary co-operative bank shall furnish such returns also to the National Bank";]

(u) section 32 to section 34 shall be omitted;

(v) in Section 34A , sub-section (3) shall be omitted;

(w) in Section 35 , - (i) in sub section (I),- (a) for the words and figures "S.235 of the Companies Act, 1956", the words "any law relating to co-operative societies for the time being in force" shall be substituted; <sup>25</sup>[(b)the following proviso shall be inserted at the end, namely:- "Provided that the Reserve Bank may, if it considers it necessary or expedient so to do, cause an inspection to be made of a primary co-operative bank under this sub-section by one or more officers of a State co-operative bank in the State in which such primary co-operative bank is registered." ] (ii) in sub-section (4), clause (b) shall be omitted; <sup>26</sup>[(iii) after sub-section (4), the following sub-section shall be inserted, namely :- "(4A) Without prejudice to the provisions of sub-section (4), the Reserve Bank may, if it considers it necessary or expedient so to do supply a copy of the report on any inspection or scrutiny to the State co-operative bank and the Registrar of co-operative societies of the State in which the bank which has been inspected or whose affairs have been scrutinised is registered." ] <sup>25</sup>[(iv)] in subsection (6), for the expressions "regional rural banks" and "regional rural bank", wherever they occur, the expressions "co-operative banks other than primary co-operative banks" other than a primary co-operative bank" shall respectively be substituted.; <sup>25</sup>[(v)] the Explanation shall be omitted;

(x) in section 35-A in sub-section (1), in clause (c), for the words "any banking company", the words "the banking business of any co-operative bank" shall be substituted;

(y) section 35B , shall be omitted;

<sup>29</sup>[(z) in section 36 in sub-section (1),- (a) clause (b) shall be omitted; (b) for clause (d), the following clause shall be substituted, namely :- "(d) at any time if it is satisfied that for the re-organisation or expansion of co-operative credit on sound lines it

is necessary so to do, by an order in writing and on such terms and conditions as may be specified therein,,- (i) depute one or more of its officers to watch the proceedings at any meeting of the Board of Directors of the co-operative bank or of any other body constituted by it and require the co-operative bank to give an opportunity to the officer so deputed to be heard at such meetings and to offer such advice on such matters as the officer may consider necessary or proper for the reorganisation and expansion of co-operative credit on sound lines, and also require such officer to send a report of such proceedings to the Reserve Bank. (ii) appoint one or more of its officers to observe the manner in which the affairs of the co-operative bank or its offices or branches are being conducted and make a report thereon,]

(za) in section 36A , - (i) for sub-section (1), the following sub-section shall be substituted, namely:- "(1) The provisions of section 11 , section 18 and section 24 shall not apply to a co-operative bank which has been refused a licence under section 22 or whose license has been cancelled under that section or which is or has been prohibited or precluded from accepting deposits by virtue of any order made under this Act or of any alteration made in its bye-laws"; (ii) after sub-section (2), the following sub-section shall be inserted namely:- "(3) Subject to the provisions of sub-sections (1) and (2), co-operative society carrying on business as a primary co-operative bank at the commencement of the Banking Laws (Application to Co-operative Societies) Act, 1965, or a co-operative society which becomes a primary co-operative bank after such commencement shall, notwithstanding that it does not at any time thereafter satisfy the requirements of the definition of primary co-operative bank <sup>30</sup>[in clause (cc) of section 5 ], continue to be a primary co-operative bank within the meaning of this Act, and may, with the approval of the Reserve Bank and subject to such terms and conditions as the Reserve Bank may specify in that behalf, continue to carry on the business of banking.";

**31**(zaa) in section 36-AD, sub-section (3) shall be omitted;']

(zb) Part IIA, [Part IIC,] Part III, except sub-sections (1), (2) and (3) of section 45 ,and Part IIIA except section 45W shall be omitted;

**32**(zc) in section 46 , - (i) in sub-section (4), the word "or" occurring at the end of clause (i) and clause (ii) shall be omitted.

(ii) in clause (a) of the Explanation, after the words "includes a", the words "co-operative society" shall be inserted;]

(zd) in section 47 , the words, brackets, figures and letters "sub-section (5) of section 36AA or" shall be omitted;

(ze) section 49 shall be omitted;

(zf) in section 49A , for the proviso, the following proviso shall be substituted, namely :- "Provided that nothing contained in this section shall apply to- (a) a primary credit society, (b) any other co-operative society accepting such deposits at the commencement of the Banking Laws (Application to Co-operative Societies) Act, 1965, for a period of one year from the date of such commencement; and (c) any savings bank scheme run by the Government.";

(zg) section 49B and section 49C shall be omitted.";

(zh) in section 50 , the figures and letters "10, 12A, 16", "35B, and 43A" shall be omitted;

(zi) Section 51 shall be omitted;

(zj) in section 52 , - (i) in sub-section (2), the words, figures and letter "and the form in which the official liquidator may file lists of debtors to the Court having jurisdiction under Part III or Part IIIA and the particulars which such lists may contain" shall be omitted;

(ii) sub-section (4) shall- be omitted;

**33** [(zji) in section 54 , after the expression "Reserve Bank", wherever it occurs, the expression, "or the National Bank" shall be inserted.']

(zk) for section 55 and the First Schedule, the following section shall be substituted, namely:- "55. Act 18 of 1891 and Act 46 of 1949 to apply in relation to co-operative banks.- (1) The Bankers' Books Evidence Act, 1891 shall apply in relation a co-operative bank as it applies in relation to a bank as defined in Section 2 of that Act. (2) The Banking Companies (Legal Practitioners' Clients' Accounts) Act, 1949 shall apply in relation to a co-operative bank as it applies in relation to a banking company as defined in section 2 of that Act.";

(zl) For the Third Schedule and the Fourth Schedule, the following Schedule shall be substituted, namely:-

1. Substituted for Cl. (c)(i) by the National Bank for Agriculture and Rural Development Act (61 of 1981), S. 61, Second Sch., P. 11(1-5-1982).
2. Substituted for Cl. (c)(ii) by the Banking Laws (Amendment) Act (I of 1984), S. 42(i) (15-2-1984).
3. Substituted for the words "this part" in sub-sections (i) and (ii) by the Banking Laws (Amendment) Act (58 of 1968), S. 2(a) (1-2-1969).
5. Substituted for Cl.(f) by the Banking Laws(Amendment) Act (1 of 1984), S.42(ii)(15-2-1984).
6. Inserted by the Banking Laws (Amendment) Act (1 of 1984), S.42(iii) (15-2-1984).
7. Substituted for the words and figures 'Section 10' by the Banking Laws (Amendment) Act (58 of 1968). S. 21 (c)(1-2-1969).
8. Substituted for the figures and letters "10-B, 10-C", the Banking Laws (Amendment) Act (58 of 1968). S. 21 (c)(1-2-1969) (I of 1984), S.42(iv) (15-2-1984).
9. Substituted for Cl.(J) by the Banking Laws(Amendment) Act (1 of 1984), S.42(v) (29-3-1985).
10. Clause (1) substituted by the Banking Laws (Amendment) Act (58 of 1968) S. 21 (e). (1-2-1969).
11. Substituted for cl. (m) b: by the Banking Laws (Amendment) Act (1 of 1984) S. 42 (vi) (15-2-1984).
12. Substituted by the Banking Laws (Amendment) Act (I of 1984), S.42(vii)(A)(15-2-1984).
13. Substituted for sub-cl. (ii), the Banking Laws (Amendment) Act (58 of 1968). S. 21 (c) (1-2-1969). S. 42 (vii) (B) (15-2-1984).
14. Substituted for the words "in section 23, for sub-section (1), the following sub-section shall be substituted, namely" by the National Bank for Agriculture and Rural Development Act (61 of 1981 ) S. 61, Second Sch., p. II (1-5-1982)
15. Substituted for the words "opening of branches" by the Banking Laws (Amendment) Act (58 of 1968). S. 21(g) (1-2-1969).
16. Substituted for sub-cl.(ii) by the Banking Laws (Amendment) Act (1 of 1984) S. 42 (viii) (15-2-1984).
17. Substituted for d. (q) by the Banking Laws (Amendment) Act (1 of 1984) S. 42 (ix) (29-3-1985).
18. Inserted by the Banking Laws (Amendment) Act (I of 1984), S. 42(x) (15-2-1984).
19. Inserted by the National Bank for Agriculture and Rural Development Act (61 of 1981), S. 61, Second Sch., Pt. II (1-5-1982).
20. Inserted vide THE BANKING REGULATIONS (AMENDMENT) ACT, 1991 (54 Of 1991), Dt. 20th December, 1991 Published in Received the assent of the President on December 20. 1991 and published in the Gazette of India, Extra., Part II. Section 1 [CI[W]][P]
21. Inserted vide THE BANKING REGULATIONS (AMENDMENT) ACT, 1991 (54 Of 1991), Dt. 20th December, 1991 Published in Received the assent of the President on December 20. 1991 and published in

- the Gazette of India, Extra., Part II. Section 1 [CI[W][P]
22. Inserted vide THE BANKING REGULATIONS (AMENDMENT) ACT, 1991 (54 Of 1991), Dt. 20th December, 1991 Published in Received the assent of the President on December 20. 1991 and published in the Gazette of India, Extra., Part II. Section 1 [CI[W][P]
23. Inserted vide THE BANKING REGULATIONS (AMENDMENT) ACT, 1991 (54 Of 1991), Dt. 20th December, 1991 Published in Received the assent of the President on December 20. 1991 and published in the Gazette of India, Extra., Part II. Section 1 [CI[W][P]
24. Substituted for cl. (t) by the National Bank for Agricultural and Rural Development Act (61 of 1981), S. 61, Second Sch. Pt. II-5-1982).
25. Substituted for item (b) by the Banking Laws (Amendment) Act (I of 1984), S. 42(xi) (15-2-1984).
26. Sub-clause (iii) and (iv) re-renumbered as sub-cl. (iv) and (v) and before sub-cl (iv) so re-numbered sub-el, (iii) inserted, the Banking Laws (Amendment) Act (I of 1984), S. 42(xi) (15-2-1984).
29. Substituted for cl. (z) by the Banking Laws (Amendment) Act (1 of 1984), S. 42 (xii) (15-2-1984)
30. Substituted for the words, brackets, letters and figure "in clause (ccc) of section 5" by the Banking Laws (Amendment) Act (1 of 1984) S. 42 (xiii) (15-2-1984).
31. Inserted by the Banking Laws (Amendment) Act (1 of 1984), S. 42 (xiv) (15-2-1984).
32. Substituted for cl. (zc) by the Banking Laws (Amendment) Act (1 of 1984), S. 42 (xv) (15-2-1984).
33. Inserted by the National Bank for Agricultural and Rural Development Act (61 of 1981), S. 61, Second Sch., Pt. II (1-5-1982).

#### SCHEDULE 1

#### SCHEDULE

(See section 29 ) FORM A FORM OF BALANCE SHEET CAPITAL AND LIABILITIES PROPERTY AND ASSETS Rs. P. Rs. P. Rs. P. Rs. P. 1. CAPITAL

1. CASH: (i) Authorised Capital: .....Shares of Rs.....each  
 .....Shares of Rs.....each (ii) Subscribed Capital .....Shares of  
 Rs.....each .....Shares of Rs.....each (iii) Amount called up  
 On....Shares at Rs.....each less calls unpaid ... .. On....Shares at  
 Rs.....each less calls unpaid In hand and with Reserve Bank, [National  
 Bank] State Bank of India, State co-operative bank and central co- perative  
 bank ... .. 2. BALANCES WITH OTHER BANKS: (i) Current deposits  
 ... .. (ii) Savings bank deposits ... .. (iii) fixed deposits ... ..  
 ... 3. MONEY AT CALL AND SHORT NOTICE 4. INVESTMENTS. (i) In Central  
 and State Government securities (at book value) ... .. (1) (2) Of (iii)  
 above, held by Face value Rs. ... .. (a) Individuals ... ..  
 Market value Rs. ... .. (b) Co-operative institutions..... (ii) Other  
 Trustee securities ... .. (c) State Government ... .. (iii) Shares  
 in co-operative institutions other than in item (5) below ... .. [a]  
 Inserted by National Bank for Agriculture and Rural Development Act (61 of  
 1981), S.61 and Sch. II (1-5-1982). (iv) Other investments (to be specified)  
 ... 2. RESERVE FUND AND OTHER RESERVES: (i) Statutory Reserve ... ..  
 ... (ii) Agricultural (Credit Stabilization Fund) (iii) Building Fund ... ..  
 5. INVESTMENTS OUT OF THE (iv) Dividend Equalisation Fund.....

PRINCIPAL/SUBSIDIARY STATE (v) Special Bad Debts Reserve .....  
 PARTNERSHIP FUND: (vi) Bad and Doubtful Debts Reserve In shares of:  
 (vii) Investment Depreciation Reserve (viii) Other Funds and Reserves (to  
 be (i) Central co-operative banks ... .. specified) (ii) Primary agricultural  
 credit societies - ---- (iii) Other societies ... .. ----- 3. PRINCIPAL/  
 SUBSIDIARY STATE 6. ADVANCES' : PARTNERSHIP FUND ACCOUNT: For  
 share capital of: (i) Short-term loans, cash credits, over- (i) Central co-  
 operative banks..... drafts and bills discounted ... .. (ii) Primary  
 agricultural credit societies ... .. Of which secured against: (iii) Other  
 societies ... .. (a) Government and other approved securities 4,  
 DEPOSITS AND OTHER (b) Other tangible securities ACCOUNTS: (i) Fixed  
 deposits\* ... .. Of the advances, amount due from (a) Individuals\*\* ...  
 ... .. individuals (b) Central co-operative banks (c) Other societies ... .. Of  
 the advances, amount overdue... .. (ii) Savings Bank Deposits ..... (a)  
 Individuals\*\* (b) Central co-operative banks Considered bad and doubtful  
 of recovery (c) Other societies ... .. (ii) Medium-term loans ... .. Of  
 which secured against: (iii) Current deposits (a) Individuals\*\* ... .. (a)  
 Governemtn and other approved (b) Centra] co-operative banks securities  
 (c) Other societies (iv) Money at call and short (b) Other tangible securities  
 notice 5. BORROWINGS .Of the advances, amount due from individuals (i)  
 From the Reserve Bank of India; Of the advances, amount of overdue:  
 State/ Central co-operative bank: (a) Short-term loans, cash credits  
 Considered bad and doubtful of and overdrafts ... recovery Of which secured  
 against: (iii) Long-term loans (1) (2) (A) Government and other ap- Of  
 which secured against proved securities ... .. (a) Government and other  
 approved securities (B) Other tangible securities ... (b) Other tangible  
 securities ... .. (b) Medium-term loans of which Of the advances, amount  
 due from secured against: individuals... (A) Government and other ap- Of  
 the advances, amount overdue ... .. proved securities ... .. Considered  
 bad and doubtful of recovery.. (B) Other tangible securities ... (c) Long-  
 term loans Of which secured against: (A) Government and other ap- 7.  
 INTEREST RECEIVABLE proved securities ... .. (B) Other tangible  
 securities ... Of which overdue... (ii) From the State Bank of India  
 Considered bad and doubtful of recovery (a) Short-term loans, cash credits  
 and overdrafts Of which secured against: 8. BILLS RECEIVABLE BEING  
 BILLS (A) Government and other ap- FOR COLLECTION AS per contra ...---  
 proved securities ... .. (B) Other tangible securities ... 9. BRANCH  
 ADJUSTMENTS ... .. -- - --- (b) Medium-term loans ... .. 10. PREMISES  
 LESS DEPRECIATION---- Of which secured against: II. FURNITURE AND  
 FIXTURES LESS DEPRECIATION ... .. ---- (A) Government and other ap-  
 12. OTHER ASSETS (to be specified) ...----- proved securities..... (B)  
 Other tangible securities..... (c) Long-term Loans Of which secured against:  
 13. NON-BANKING ASSETS ACQUIRED IN SATISFACTION (A) Government  
 and other ap- OF CLAIMS (slating mode of valua- proved securities ... ..  
 tion) ... .. ---- (B) Other tangible securities ... 14. PROFIT AND LOSS -.  
 ... .. (iii) From the State Government (a) Short-term loans Of which  
 secured against: (A) Government and other ap- proved securities ... ..  
 (B) Other tangible securities ... (b) Medium-term loans Of which secured  
 against (A) Government and other ap- proved securities ... .. (B) Other  
 tangible securities (c) Long-term loans Of which secured against: (A)  
 Government and other ap- proved securities ... .. (B) Other tangible  
 securities (iv) Loans from other sources (source ----- and security to be  
 specified) 6. BILLS FOR COLLECTION BEING ----- BILLS RECEIVABLE AS  
 per contra 7. BRANCH ADJUSTMENTS ... .. ---- 8. OVERDUE INTEREST  
 RESERVE ...-- (1) (2) 9. INTEREST PAYABLE ... 10. OTHER LIABILITIES (i)  
 Bills payable (ii) Unclaimed dividends ... .. (iii) Suspense (iv) Sundries

11. PROFIT AND LOSS Profit as per last balance sheet ..... Less appropriations ... .. Add profit for the year brought from the Profit and Loss Account ... ..----- TOTAL TOTAL CONTINGENT LIABILITIES (i) Outstanding liabilities for guaran- tees issued (ii) Others TOTAL FORM B FORM OF PROFIT AND LOSS ACCOUNT Profit and loss account for the year ended----- EXPENDITURE INCOME Rs. P. Rs. P. Rs. P. Rs. P 1. Interest on deposits, borrowing, etc.... 1. Interest and discount 2. Salaries and allowances and provident 2. Commission, exchange and brokerage fund 3. Directors' and local committee mem- 3. Subsidies and donations bers' fees and allowances .- . \_ ... 4. Rent, taxes, insurance, lighting, etc. ... 4. Income from non-banking assets and profit from sale of or dealing with such assets 5. Law charges ... .. 5. Other receipts 6. Postage, telegrams and telephone 6, Loss (if any) charges 7. Auditors' fees 8. Depreciation on and repairs to pro- perly (I) (2) 9. Stationery, printing and advertise- ment, etc. 10. Loss from sale of or dealing with non- banking assets 11. Other expenditure 12. Balance of profit TOTAL TOTAL

SCHEDULE 2

THE SCHEDULE

\(See Section 55 ) \ AMENDMENTS

SCHEDULE 3

THE SCHEDULE

(See Section 56 ) REPEALS - [Repealed]

SCHEDULE 4

THE SCHEDULE

(See Section 29 ) [As amended by notification S.R.0.2020 of 22-12-t951 published in Gaz. of India, 1951, PartM-Section?, Page 2155 and S.O. 786(E) of 1971 Published in Gax. of India. 20-12-197}. Pt n-}(u) Ext., f. 2415] FORM A FORM OF BALANCE SHEET CAPITAL AND LIABILITIES PROPERTY AND ASSETS \ \ \ \ \ \Rs. P. Rs. P. Rs. P. Rs. P. 1. CAPITAL (a)- Authorised Capital..... Shares of Rs.....each..... Issued capital.....Shares of Rs.....each..... Subscribed Capital..... Shares of Rs.....each..... Amount called up at Rs..... per share..... Less calls unpaid Add forfeited shares . . . 2. RESERVE FUND AND OTHER RESERVES 3. DEPOSITS AND OTHER ACCOUNTS: [Fixed Deposits (i) from banks 1. Cash: In hand and with Reserve Bank and Imperial Bank (including foreign cur- rency notes) ..... 2. BALANCES WITH OTHER BANKS (SHOWING WHETHER ON DEPOSIT OR CURRENT ACCOUNT): (i) in India. (ii) outside india. 3. MONEY AT CALL AND SHORT NOTICE .... 4. INVESTMENTS (slating mode of valua- tion e.g., cost or market value (0). (i) Securities of the Central and State Governments and other Trustee securi- ties, including Treasury Bills of the Central and Provincial Governments, (ii) Shares (classifying into preference, ordinary, deferred and other classes of shares and showing separately shares fully paid up and partly paid up)..... (1) (2) (ii)from others ..., (iii) Debentures or Bonds Saving Bank Deposits .... (iv) Other investments (to be classified Current Accounts and Contingency under proper heads) ,... Accounts, etc. . . . (v) Gold ..... (i) from banks ..... 5.ADVANCES-(other than bad and (ii) from others ..... doubtful debts for which provision has (a) Substituted by S. 0. 786(E) of 1973 been made to the satisfaction of the --- -- auditors) 4. BORROWINGS FROM OTHER (!) Loans. Cash, Creditis.

BANKING COMPANIES, AGENTS, (i) in India- ETC. : (ii) outside India- (i) in India . . . . (II) Bills discounted and purchased (ex- (ii) outside India . . . . --  
 --- eluding Treasury Bills of the Central Particulars: and State Government)  
 (i) Secured (slating the nature of secu- (i) payable in India- rity) (ii)  
 Unsecured ..... (ii) payable outside India 5. BILLS PAYABLE. 6. BILLS FOR  
 COLLECTION BEING PARTICULARS OF ADVANCES : BILLS RECEIVABLE AS  
 per contra: (i) Debts considered good in respect of (i) payable in India  
 which the banking company is fully (ii) payable outside India secured ..... --  
 ---- (ii) Debts considered good for which the 7. OTHER LIABILITIES'),  
 banking company holds no other secn- 8. ACCEPTANCES, ENDORSE- rity  
 than the debtors' personal security. MENTS AND OTHER OBLIGA- (iii) Debts  
 considered good, secured by the TION'S per contra- personal liabilities of  
 one or more Par- 9. PROFIT AND LOSS: ties in addition to the personal  
 security Profit as per last balance sheet- of the debtors ..... Less  
 appropriations- (iv) Debts considered doubtful or bad, not provided for .....  
 Add profit for the year brought from the (v) Debts due by directors or  
 officers of profit and loss account ----- the banking company or any of them  
 10. CONTINGENT LIABILITIES.(d)..... either severally or jointly with any  
 other persons (vi) Debts due by companies or firms in which the directors  
 of the banking com- pany are interested as directors, part- ners or,  
 managing agents, or in the case of private companies, as members..... (vii)  
 Maximum total amount of advances in- cluding temporary advances made at  
 any time during the year to directors or managers or officers of the banking  
 company or any of them either severally or jointly with any other persons  
 (ff). (viii) Maximum total amount of advances, including temporary  
 advances granted during the years to the companies or firms in which the  
 directors of the banking company are interested as directors, partners or  
 managing agents or, in the case of private companies, as members (ff). (ix)  
 due from banking companies ..... 6. Bills receivable being Bills for  
 collection as per contra. (i) payable in India .... (ii) payable outside India.  
 7. CONSTITUENTS' LIABILITIES FOR ACCEPTANCES, ENDORSE- MENTS AND  
 OTHER OBLIGA- TIONS per contra. 8. PREMISES LESS DEPRECIATION (g)  
 (1) (2) 9. FURNITURE AND FIXTURES LESS DEPRECIATION (g) . . . . 10.  
 OTHER ASSETS, INCLUDING SILVER (to be specified) (h) .... 1 1. NON-  
 BANKING ASSETS ACQUIRED IN SATISFACTION OF CLAIMS (stal- ing mode  
 of valuation)(i) ..... 12. PFOFIT AND LOSS .... TOTAL TOTAL FORM B FORM  
 OF PROFIT AND LOSS ACCOUNT Profit and Loss Account for the year ended  
 [\* \* \* \*] EXPENDITURE INCOME\* (LESS PROVISION MADE DURING THE  
 Interest paid on deposits, borrowings, etc. ... YEAR FOR BAD AND  
 DOUBTFUL DEBTS AND Salaries and allowances and Provident OTHER  
 USUAL OR NECESSARY PROVISIONS) Fund ... Interest and Discount [\* \* \*  
 \* \*] Commission, Exchange and Brokerage Rents Directors' and Local  
 Committee members' fees and Net profit on sale of investments, gold and  
 silver, land, pre- allowances ... mises and other assets (not credited to  
 Reserves or am Rent, Taxes, Insurance, Lighting etc. ... particular Fund or  
 Account) Law Charges ... Net Profits on revaluation of investments gold and  
 silver Postage, Telegrams and Stamps ... land premises and other assets  
 (not credited to Reserves of Auditors' Fees ... any particular Fund or  
 Account) Depreciation on and repairs to the banking company's Income  
 from non-banking assets, and profit from sale of on property ... dealing  
 with.such assets (1) (2) Stationery, Printing, Advertisement, etc. ... Other  
 receipts Loss from sale of or dealing with non-banking assets Loss (if any)  
 Other Expenditure Balance of profits TOTAL TOTAL

**SCHEDULE 5**  
**THE SCHEDULE**

[See Section 45D (2)] LIST OF DEBTORS ( 1 ) The official liquidator shall from time to time submit lists of debtors to the High Court, each list being verified by an affidavit. (2) Every such list shall contain the following particulars :- (a) names and addresses of the debtors, (b) amount of debt due to the banking company by each debtor; (c) rate of interest, if any, and the date up to which such interest has been calculated in the case of each debtor; (d) description of papers, writings and documents, if any, relating to each debt; (e) relief or reliefs claimed against each debtor. (3) (a) In every such list, the official liquidator shall distinguish between the debts for which the banking company holds any security other than a personal security and the debts for which no security or only a personal security is given. (b) In the case of secured debts, particulars of the securities claimed by the banking company, and whenever possible their estimated value; and the names and addresses of person or persons, if any, having an interest in the securities or the right of redemption therein.. (c) In case the debt is guaranteed by any person or persons, the name and address of the guarantor or guarantors with particulars as to the extent to which the debt is guaranteed and description of documents, papers or writing in support of such guarantee. (4) If the debtor is adjudged insolvent either before or after he has been included in any such list. but before such list is settled the name and address of (the assignee or the receiver of his estate, as the case may be, should be stated in. or added to the list. (5) If the original debtor dies either before or after he has been included in any such list, but before such list is settled. there shall be substituted in his place the names and addresses of his legal representatives as far as the official liquidator is able to ascertain.]

## SCHEDULE 6 THE SCHEDULE

PRINCIPLES OF COMPENSATION (See Section 36AG ) 1. The compensation to be given under section 36AG shall be an amount equal to the value of the assets of the acquired bank as on the day immediately before the appointed day computed in accordance with the provisions of Part I of this Schedule less the total amount of liabilities thereof computed in accordance with the provisions of Part II of this Schedule. PART 1 -Assets For the purposes of this Part "assets" means the total of the following:- (a) the amount of cash in hand and with the Reserve Bank and the State Bank of India (including foreign currency notes which shall be converted at the market rate of exchange), (b) the amount of balances with any bank whether on deposit or current account and money at call and short notice, balances held outside India being converted at the market rate of exchange: Provided that any balances which are not realised in full shall be deemed to be debts and valued accordingly: (c) the market value, as on the day immediately before the appointed day, of any securities, shares, debentures, bonds and other investments, held by the bank concerned. (d) the amount of advances (including loans, cash credits, overdrafts, bills purchased and discounted), and other debts, whether secured or unsecured, to the extent to which they are reasonably considered recoverable, having regard to the value of the security, if any. the operations on the account, the reported worth and respectability of the borrower, the prospects of realisation and other relevant considerations; (e) the value of any land or buildings; [x x x] (f) the total amount of the premia paid, in respect of all leasehold properties, reduced in the case of each such premium by an amount which bears to such premium the same proportion as the expired term of the lease in respect of which such premium shall have been paid bears to the total term

of the lease: (g) the written down value as per books, or the realisable value as may be considered reasonable, or nil furniture, fixtures and fittings; (h) the market or realisable value, as may be appropriate, of other assets appearing on the books of the bank. no value being allowed for capitalised expenses, such as share selling commission, organisational expenses and brokerage, losses incurred and similar other items. PART 2.-Liabilities For the purposes of this Part "liabilities" mean the total amount of all outside liabilities existing on the appointed day. and all contingent liabilities which the Central Government or the transferee bank may reasonably be expected to be required to meet out of its own resources on or after the appointed day and where the acquired bank is a banking company incorporated outside India, include the liabilities of the offices and branches in India of the acquired bank in its offices and branches outside India. 2. If the acquired bank is not incorporated in India, the assets or, as the case may be. the liabilities of the bank shall be, for the purposes of Part I and Part II, and subject to the other provisions therein, the assets and liabilities of the offices of the bank situated in India. COMPENSATION PAYABLE TO SHAREHOLDERS 3. Every shareholder of the acquired bank to whom the compensation is payable shall be given such amount as compensation as bears to the total compensation, calculated in accordance with the provisions of paragraph I, the same proportion as the amount of paid-up capital of the shares held by the shareholder bears to the total-paid-up capital of the acquired bank. CERTAIN DIVIDENDS NOT TO BE TAKEN INTO ACCOUNT 4. 'No separate compensation shall be payable for any profits or any dividend in respect of any period immediately preceding the appointed day. for which in the ordinary course, profits would have been transferred or dividend declared after the appointed day.]