

Notes on **BANKING REGULATION ACT 1949**



BY

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(Scheduled Bank)

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The Act:-

- Banking Companies Act – 1949 – wef 16.3.1949
- Banking Regulation Act - -1949 – wef 1.3.1966

Structure:-

- **PART I:** PRELIMINARY
- **PART II:** BUSINESS OF BANKING COMPANIES (Sec. 6 to 36 A)
- **PART IIA:** CONTROL OVER MANAGEMENT (Sec. 36 AA to 36 AC)
- **PART IIB:** PROHIBITION OF CERTAIN ACTIVITIES IN RELATION TO BANKING COMPANIES (Sec. 36 AD)
- **PART IIC:** ACQUISITION OF THE UNDERTAKINGS OF BANKING COMPANIES IN CERTAIN CASES (Sec. 36AE to 36 AJ)
- **PART III:** SUSPENSION OF BUSINESS AND WINDING UP OF BANKING COMPANIES (Sec. 36-B to 45)
- **PART IIIA:** SPECIAL PROVISIONS FOR SPEEDY DISPOSAL OF WINDING UP PROCEEDINGS (Sec. 45-A to 45-X)
- **PART IIIB:** PROVISIONS RELATING TO CERTAIN OPERATIONS OF BANKING COMPANIES (Sec. 45-Y to 45-ZF)
- **PART IV:** MISCELLANEOUS (Sec. 46 to 55A)
- **PART V:** Sec. 56 - APPLICATION OF THE ACT TO CO-OPERATIVE BANKS
- **SCHEDULES – 5**

Nos of Sections – 56 (127 total)

DEFINITIONS & EXPLANATIONS

- **5.(1)(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 withdrawal by cheque, draft, order or otherwise;

5.(1).(c) – Banking Company means any company which transacts the business of banking

- **5.(1)(f) –** Demand liabilities are the liabilities which must be met on demand and
- time liabilities means the liabilities which are not demand liabilities
- **6 –** the forms of business in which the banking company 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 specie; the buying and selling of foreign exchange including foreign bank notes; the acquiring, holding, issuing on commission, underwriting and dealing in stock, 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 [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 dependents 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;

- The section prohibits banking company from taking part in trading and speculative activities – (case) Indian Specie Bank – 1914
- 6(1) – A Banking company may be engaged in business like borrowing, lockers, letter of credit, travelers cheque and mortgage
- 7 - Prohibits the use of “Bank”, “banking” or “banking company” to a company other than bank
- 11 (amend 1962) – minimum paid-up capital Rs. 5.00 lac (one state) Rs. 10.00 lac more than in one place and if such place is situated either in Mumbai or Kolkata or both

Sec. 9. Disposal of non-banking assets. —

Notwithstanding anything contained in section 6, no banking company shall hold any immovable 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 be 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 for the purpose of 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

RBI Guidelines:-

The minimum paid up capital for –

- New Private Sector Bank Rs. 100 Crore – Jan 1993
- Local Area Bank Rs. 5.00 crore – August – 1996

Important Provisions:-

- **12.(1)** – The **subscribed capital** of a banking company must not be less than the one half of the authorised capital and
- the **paid-up capital** must not be less than one half of the authorised capital
– Case Poona Bank
- (amend -1994) – maximum voting rights of a share holder is at 10% of the total voting rights

- **Sec.17– Reserve Funds-**

Transfer to its reserve fund a sum equivalent to not less than 20% of its profits irrespective of whether or not its reserves have equalled the paid-up capital

- (wef 31.3.2001, 25% of Net Profit (before appropriations) , after adjustment / provisions towards bonus to staff
- **Sec. 18.1 Cash Reserve Ratio** – Scheduled Banks to maintain at-least 3% (5% amendment 2006) of the demand and time liabilities by way of cash reserves with themselves or by way of a balance in current account with RBI
- **Sec. 24.2 A.B.**, 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 25% to 40% of the total of its demand and time liabilities in India.

Sec.29 Accounts & Balance Sheet

- Sec. 29 – **Every Bank has to publish its Balance Sheet and Profit and Loss account as on 31st March-** As per the formats given in the 3rd Schedule
- The Central Government can amend the format with a minimum period of 3 months notice
- Schedule VI of Companies Act 1956 is not applicable as far as the format is concerned
- **Sec. 30. Audit. —**
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.

Form A – Balance Sheet

- Schedule – 1 – Capital
- Schedule – 2 - Reserves and Surplus
- Schedule – 3 - Deposits
- Schedule – 4 – Borrowings
- Schedule – 5 – Other Liabilities and Provisions
- Schedule – 6 – Cash and Bank Balances with RBI
- Schedule – 7 – Balances with Banks and Money at call and short notice
- Schedule – 8 – Investments
- Schedule – 9 – Advances
- Schedule – 10 – Fixed Assets
- Schedule – 11 – Other Assets
- Schedule – 12 – Contingent Liabilities

Form B – Profit and Loss Account

- Schedule – 13 – Interest Earned
- Schedule – 14 – Other Income
- Schedule – 15 – Interest Expended
- Schedule – 16 – Operating Expenses , Provisions and Contingencies

Sec. 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

Restrictions:-

- **Sec.10. Prohibits banks from holding any immovable property** – except for personal use at-least for a period of 7 years
- **Sec.13.** Restriction on commission, brokerage, discount, etc. on sale of shares
- **Sec.15. Restrictions as to payment of dividend**
- **Sec.19 .** No banking company is permitted to held shares in any company – 30% of its own paid up capital + reserves or 30% of paid up capital of the company which ever is less
- **Sec.20. Restrictions on loans and advances**
 - **A.** Grant any loans are advances against its own shares
 - **B.1.** Any of its directors
 - **B.2.** any firm in which any of its directors is interested as partner, manager, employee or guarantor

Important Sections:-

- 22. Licensing of banking companies
- 22.4. The Reserve Bank may cancel a license granted to a banking company
- 26. Return of unclaimed deposits
- 34.A. Production of documents of confidential nature
- **35. Inspection:-**

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.

36. Further powers and functions of Reserve Banks. —

(1) The Reserve Bank may—

- (a) caution or prohibit to enter 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 provision of section 149[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;
- (d) Prohibit the affairs of the banking company being conducted in a manner detrimental to the interests of the banking company or its depositors
- (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 which 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 offices 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

(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 section 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.

36AD. Punishments 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.**

- 36AE, 36 AF . Power of Central Government to acquire undertakings of banking companies in certain cases
- 36AG. Compensation to be given to shareholders of the acquired bank
- 37. Suspension of business – High Court
- 38. Winding up by High Court
- 43. Booked depositors' credits to be deemed proved

PART IIIB: 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 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.

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 45 Y, 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 the customer the cost of making such copies of the instrument.

Explanation. —In this section, "customer" includes a Government department and a corporation incorporated by or under any law.

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, 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.

452B. 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 though even 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.

452C. Nomination for return of articles kept in safe custody with banking company. —

- (1) Where any person leaves any article in safe custody with a banking company, such person may nominate, in the prescribed manner, on 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 sub-section (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 any 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 sub-section.

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 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 or 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 proceedings 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 subsection (1) or sub-section (2) as the case may be.

45ZF. Notice of claims of oilier 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.

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- 52. Power of Central Government to make rules
- 56. Act to apply to co-operative societies subject to modifications.

