

LAW RELATING TO BANKING COMPANIES IN INDIA

Banking business has its own distinctive features as compared to all other trades and business. A banking company deals mainly with the money of large number of depositors, hardly any say in the conduct of the affairs of the company. The problem, therefore, arises to safeguard the interest of the depositors in addition to that if the share holds, necessity of suitable legislation to deal with the distinctive features of the banking business has been universally felt. Banking law connotes those specific provisions of the legislation which are applicable to the banking business and institutions carrying on such business. Banking Regulation Act 1949, is the main piece of central legislation in India embody in such specific provisions relating to the banking business.

The law relating to banking, as we find in India today, is the outcome of the gradual process of evolution, before 1949. The Indian Companies Act, 1913, contained special provisions relating to banking companies which were felt inadequate and were subsequently incorporated in the comprehensive legislation passed in 1949 under the name of Banking Companies Act, 1949. Since its enforcement in 1949, this Act was suitably amended a number of times to insert new provisions and to amend the existing ones to suit the needs of changing circumstances and to plug the most significant amendment of the Act was effected by Banking Laws (Amendment) Act, 1968, which introduced "Social control" on banks by inserting regulatory provisions of far reaching significance.

Banking regulation act is a regulatory body for Banking companies. It provides a number of sections which aim at ensuring better management of banking companies and confers wide powers on the Reserve Bank in this regard.

OTHER BUSINESS PERMITTED FOR A BANKING COMPANY [OTHER FUNCTIONS OF THE BANKS]

The Banking Regulation Act specifies other forms of business a banking company may be engaged in . According to section 6 of the Act, the following business may be undertaken by a Banking company.

a) Various functions which form the bulk of a banks activities are called its main functions:

1. The borrowing, raising or taking of money;
2. The lending or advancing of money either upon security or without security;
3. The drawing, making, accepting, discounting, buying, selling, collecting and dealing in bills of exchange, hundis, promissory notes, coupons, drafts, bill of lading, railway receipts, warrants, debentures, certificates, scripts and other instruments and securities whether transferable or negotiable or not;
4. The granting and issuing of letters of credit, traveler's cheque and circular notes;
5. The buying, selling and dealing in bullion and specie foreign bank notes;
6. The acquiring holding, issuing on commission, underwriting and dealing in stock funds, shares, debentures, stock bonds, obligations, securities and investments of all kinds;
7. The purchasing and selling of bonds, scripts and other forms of securities on behalf of constituents or others
8. The negotiating of loans and advances
9. The receiving of all kinds of bonds, scripts or valuable on deposit or for safe custody or otherwise
10. The providing of safe deposit vaults and
11. The collecting and transmitting of money and securities;

- a) It may act as an agent of the government, local authority or person and can carry on agency business but it cannot be as secretary and treasurer of a company.
- b) It may contract for public and private loans ad negotiate and issue the same.
- c) It may effect, insure, guarantee, underwrite, participate in managing and carrying out of any issue of State, municipal or other loans or of shares, stocks, debentures or debenture stock of companies and may lend money for the purpose of such issue.
- d) It may carry on and transact every kind of guarantee an indemnity business.
- e) It may manage, self and realise any property which may come into its possession in satisfaction of any of its claims.

- f) It may acquire and hold and deal with any property or any right, title or interest in any such property which may form the security for any loan or advance.
- g) It may undertake and execute trusts, and undertake the administration of estates as executors, trustees or otherwise.
- h) It may establish, support and aid associations, institutions funds, trusts, etc., for the benefit of its present or past employees and may grant money for charitable purposes.
- i) It may acquire, construct and maintain any building for its own purpose.
- j) It may sell, improve, manage, develop, exchange, lease mortgage, dispose of or turn into account or otherwise dies with all or any part of the property and rights of the company.
- k) It may acquire and undertake the whole or any part of the business of any person or company, when such business is of nature described in section 6.
- l) It may do all such things which re incidental or conduct to the promotion or advancement of the business of the company or any other business specified by the Central Government as the lawful business of a banking company.

Licensing of Banking companies:

Section 22 contains a comprehensive system of licensing of banks of the reserve Bank. This section makes it essential for every banking company to hold a license issued by the Reserve Bank. The Reserve Bank is required to conduct an inspection of the books of the banking company and issue a license, if it is satisfied that all or any of the following conditions are fulfill.

- 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 not liked to be, conducted in a manner detrimental to the interests of its present or future depositors; and
- c) In case of a foreign bank, 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 the Act applicable to foreign banks.

It is clear from the above that the grant of a license depends upon the maintenance of satisfactory financial position. The provision is intended to ensure the continuance and growth only of banks which are established or are operating on sound lines and to discourage indiscriminate floatation of banking companies. To ascertain the position, the company regarding (a) above, the inspecting officer of the Reserve Bank has to make an estimate of the liquid and other readily realisable assets and also to judge whether the assets are enough to meet the claims of the depositors as and when they arise. An assessment about the whole gamut of operations of the banking company and its organisational set-up is necessary to judge the requirement contained (b) above, the foreign banks have to satisfy an additional condition (c) above, before a license can be granted to them.

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 151[unless the Chairman, 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, pending 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 any way, 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 subsection (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 156[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.

Removal of managerial personnel and other persons [sub-s.(1)]:

This power can be exercised when the Reserve bank is satisfied that so to do is in public interest or for preventing the affairs of the banking company from being conducted in a manner detrimental to the interest of its depositors or for securing proper management of any banking company. The Reserve Bank may after recording its reasons in writing, pass an order removing from office any chairman, director, chief executive officer or other officer or employee. The date of removal has to be specified in the order.

Reasonable opportunity of being heard [sub-s.(2)]

Restraint upon acting as officer

Before passing an order of removal, the officer concerned has to be given a reasonable opportunity of making a representation against the proposal order. where the circumstances are such that any delay in carrying out removal would be detrimental to the interests of the banking company, or its depositors, the Reserve Bank may order that pending the consideration of the representation, the person in question will not from the date of the order act as such officer and in any way directly or otherwise, be concerned with or take part in the management of the banking company.

Appeal against order and its finality [sub-s.(3)]

The person against whom an order of removal has been passed may, within 30 days from the date of communication, prefer an appeal to the Central Government. The decision of the Central Government is to be final. Where no appeal has been made the order of the Reserve Bank attains finality.

Disqualification from banking management [sub-s.(4)]

A person who has been removed under this section can be put under restraint in any way, whether directly or otherwise, from being concerned with or take part in the management of any banking company for a period not exceeding 5 years as may be specified in the order.

Penalty for contravention of orders [sub-s.(5)]

Any person acting in contravention of orders made under this section is to be punishable with fine which may extend to Rs 250 for each day during the contravention continues.

Appointment of suitable person[sub-s.(6)]

The position of the person who has been removed under this section can be filled by the Reserve Bank by appointing any suitable person with effect from the date specified in the order. The appointee has to hold office during the pleasure of the Reserve Bank for a period not exceeding 3 years or for a further period not exceeding 3 years at a time as the Reserve Bank may specify. He is not to 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.

No Compensation for removal[sub-s.(8)]

The person removed is not be entitled to any compensation for his removal or for loss or termination of office. This will be so irrespective of any provision in the contract⁶ with him or in the memorandum or article of association of the banking company.

Acquisition of 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 interest 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, it is necessary to acquire the undertaking of such banking company, the Central Government may, after such consultation with the Reserve Bank as it thinks fit, by notified order, acquire the undertaking of such company [hereinafter referred to as the acquired bank) with effect from such date as may be specified in this behalf by the Central Government (hereinafter referred to as the appointed day):

PROVIDED that no undertaking of any banking company shall be so acquired unless such banking company has been given a reasonable opportunity of showing cause against the proposed action.

Explanation : In this Part:

(a) "notified order" means an order published in the Official Gazette;

(b) "undertaking", in relation to a banking company incorporated outside India, means the undertaking of the company in India.

(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 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 favor of the acquired bank shall be of as full force and effect against or in favor 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 party thereto or as if they had been issued in favor 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 (14 of 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 clause (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 subject 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 provision 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 maybe, 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, 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 shareholders 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 (38 of 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 (5 of 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.]

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 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 163[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 163[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.

(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.]

(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 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.]

38. Winding up by High Court

(1) Notwithstanding anything contained in section 391, section 392, section 433 and section 583 of the Companies Act, 1956 (1 of 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 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) or section 42 of the Reserve Bank of India, Act, 1934 (2 of 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 interest of its depositors.

(4) Without prejudice to the provisions contained in section 434 of the Companies Act, 1956 (1 of 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.

(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 in the Official Gazette, direct that this section shall not have effect in relation to that High Court.]

39. Reserve Bank to be official liquidator

(1) Notwithstanding anything contained in section 38A of this Act or in section 448 or section 449 of the Companies Act, 1956 (1 of 1956), where in any proceeding for the winding up by the High Court of a banking company, an application is made by the Reserve Bank in this behalf, the Reserve Bank, the State Bank of India or any other bank 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.

(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.]

40. Stay of proceedings

Notwithstanding anything to the contrary contained in 202[section 466 of the Companies Act, 1956 (1 of 1956)]1, the 203[High Court] shall not make any order

staying the proceedings in relation to the winding up of a banking company, unless the 203[High Court] is satisfied that an arrangement has been made whereby the company can pay its depositors in full as their claims accrue.

41. Preliminary report by official liquidator

Notwithstanding anything to the contrary contained in section 455 of the Companies Act, 1956 (1 of 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 (37 of 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 may be 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 endeavor 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 (37 of 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 section 530 of the Companies Act, 1956 (1 of 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 (1 of 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 (1 of 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 meetings of creditors, etc.

Notwithstanding anything to the contrary contained in 205[section 460] of the Companies Act, 1956 (1 of 1956), the 203[High Court] may, in the proceedings for winding up a banking company, dispense with any meeting of creditors or contributories [* * *] if it considers that no object will be secured thereby sufficient to justify the delay and expense.

43. Booked depositors' credits to be deemed proved

In any proceeding for the 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 208[section 474 of the Companies Act, 1956 (1 of 1956)]¹, the High Court shall presume such claims to have been proved, unless the official liquidator shows that there is reason for doubting its correctness.

44. Power of High Court in voluntary winding up

(1) Notwithstanding anything to the contrary contained in section 484 of the Companies Act, 1956 (1 of 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 sections 441 and 521 of the Companies Act, 1956 (1 of 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 the resolution passed by a majority in number representing two-thirds 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

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 (38 of 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 (5 of 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.]

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 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 163[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 163[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.

(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.]

(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 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.]

38. Winding up by High Court

(1) Notwithstanding anything contained in section 391, section 392, section 433 and section 583 of the Companies Act, 1956 (1 of 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 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) or section 42 of the Reserve Bank of India, Act, 1934
(2 of 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 interest of its depositors.

(4) Without prejudice to the provisions contained in section 434 of the Companies Act, 1956 (1 of 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.

(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 in the Official Gazette, direct that this section shall not have effect in relation to that High Court.]

39. Reserve Bank to be official liquidator

(1) Notwithstanding anything contained in section 38A of this Act or in section 448 or section 449 of the Companies Act, 1956 (1 of 1956), where in any proceeding for the winding up by the High Court of a banking company, an application is made by the Reserve Bank in this behalf, the Reserve Bank, the State Bank of India or any other bank 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.

(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