

# **BANKING REGULATION ACT, 1949**

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[Act no. 10 of Year 1949, dated 10th. March, 1949]

*An Act to consolidate and amend the law relating to banking <sup>1</sup>[\*\*\*]*

WHEREAS it is expedient to consolidate and amend the law relating to banking <sup>1</sup>[\*\*\*];

It is hereby enacted as follows: -

## **PART 1 :- PRELIMINARY**

## **1. Short title, extent and commencement**

(1) This Act 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<sup>5</sup> as the Central Government may, by notification in the Official Gazette, appoint in this behalf.

## **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>6</sup>[Companies Act, 1956 (1 of 1956)], and any other law for the time being in force.

## **<sup>7</sup>[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 Part 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 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>8</sup>[Parliament] as soon as may be after it is issued.

## **5. Interpretation**

<sup>9</sup>[In this Act], unless there is anything repugnant in the subject or context,-

<sup>10</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 section 20 of the Indian Trust Act, 1882 (2 of 1882);

(ii) such of the securities authorised by the Central Government under clause (f) of section 20 of the Indian Trust Act, 1882 (2 of 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>11</sup>[in India];

*Explanation:* Any company which is engaged in the manufacture of goods or carries on any trade and which accepts deposits of money from the public merely for the purpose of financing its business as such manufacturer or trader shall not be deemed to transact the business of banking within the meaning of this clause;

<sup>12</sup>[(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;]

<sup>13</sup>[(CC) "branch" or "branch office", 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 moneys lent, and for the purposes 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;]

<sup>14</sup>[(d) "company" means any company as defined in section 3 of the Companies Act, 1956 (1 of 1956); and includes a foreign company within the meaning of section 591 of that Act;]

<sup>15</sup>[(da) "corresponding new bank" means a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970), or under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980);]

(e) <sup>16</sup>[\* \* \*]

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

<sup>17</sup>[(ff) "Deposit Insurance Corporation" means the Deposit Insurance Corporation established under section 3 of the Deposit Insurance Corporation Act, 1961 (47 of 1961);]

<sup>15</sup>[(ffa) "Development Bank" means the Industrial Development Bank of India established under section 3 of the Industrial Development Bank of India Act, 1964 (18 of 1964);

(ffb) "Exim Bank" means Export-Import Bank of India established under section 3 of the Export-Import Bank of India Act, 1981 (28 of 1981);]

<sup>18</sup>[(ffc) "Reconstruction Bank" means the Industrial Reconstruction Bank of India established under section 3 of the Industrial Reconstruction Bank of India Act, 1984 (62 of 1984);]

<sup>19</sup>[(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;

<sup>12</sup>[(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;]

<sup>14</sup>[(h) "managing director", in relation to a banking company, means a Director who, by virtue of 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:]

<sup>20</sup>[PROVIDED that the Managing Director shall exercise his powers subject to the superintendence, control and direction of the Board of Directors;]

<sup>21</sup>[(ha) "National Bank" means the National Bank for Agriculture and Rural Development established under section 3 of the National Bank for Agriculture and Rural Development Act, 1981 (61 of 1981);]

(i) <sup>22</sup>[\* \* \* 1

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

<sup>21</sup>[(ja) "regional rural bank" means a regional rural bank established under section 3 of the Regional Rural Banks Act, 1976 (21 of 1976);]

(k) <sup>23</sup>[\* \* \* ]

<sup>10</sup>[(l) "Reserve Bank" means the Reserve Bank of India constituted under section 3 of the Reserve Bank of India Act, 1934 (2 of 1934);]

(m) <sup>24</sup>[\* \* \* ]

(n) "secured loan or advances" 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;

<sup>27</sup>[(ni) "Small Industries Bank" means the Small Industries Development Bank of India established under s. 3 of the Small Industries Development Bank of India Act, 1989;]

<sup>12</sup>[(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 lakh 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;]

<sup>15</sup>[(nb) "Sponsor Bank" has the meaning assigned to it in the Regional Rural Banks Act, 1976 (21 of 1976);

(nc) "State Bank of India" means the State Bank of India constituted under section 3 of the State Bank of India Act, 1955 (23 of 1955);]

<sup>26</sup>[(nd)] "subsidiary bank" has the meaning assigned to it in the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959);

<sup>27</sup>[(ne)] "substantial interest:-

(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;

<sup>28</sup>[(o) all other words and expressions used herein but not defined and defined in the Companies Act, 1956 (1 of 1956), shall have the meanings respectively assigned to them in that Act.]

(2) <sup>29</sup>[\* \* \*]

## <sup>28</sup>[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 (33 of 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 II :- BUSINESS OF BANKING COMPANIES**

### **6. Form and 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; and drawing, making, accepting, discounting, buying, selling, collecting and dealing in bills of exchange, hundies, promissory notes, coupons, drafts, bill 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, travellers' 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 loan 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>30</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 dependents or connections of such persons; granting pension and allowances and making payments towards insurance; subscribing to or guaranteeing moneys for charitable or benevolent object 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 purpose 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) 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 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).

## <sup>9</sup>[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>15</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 or his 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 section 25 of the Companies Act, 1956 (1 of 1956).]

## **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 realization of security given to or held by it, or engage in any trade, or buy, sell or barter goods for 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>10</sup>[PROVIDED that this section shall not apply to any such business as is specified in pursuance of clause (o) of sub-section (1) of section 6.]

Explanation: For the purposes of this section, "goods" means every kind of movable property, other than actionable claims, stock, shares, money, bullion and specie and all instruments referred to in clause (a) of sub-section (1) of section 6.

## **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 where it is satisfied that such extension would be in the interests of the depositors of the banking company.

## **<sup>31</sup>[10. Prohibition of employment of Managing Agents and restrictions on certain forms of employment**

(1) No banking company-

(a) shall employ or be managed by a 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 remuneration takes the form of commission or of a share in the profits of the company:

<sup>14</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-

<sup>14</sup>[(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 (1 of 1956):

PROVIDED that the prohibition in this sub-clause shall not apply in respect of any such Director for a temporary period not exceeding three months or such further period not exceeding nine months as the Reserve Bank may allow; or]

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

(iii) <sup>9</sup>[whose term of office as a person managing the company is] for a period exceeding five years at any one time:

<sup>32</sup>[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 section 8 of the Banking Laws (Miscellaneous Provisions) Act, 1963 (55 of 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.

Explanation : For the purpose of sub-clause (iii) of clause (b), the expression "remuneration ", in relation to a persons employed or continued in employment, shall include salary, fees and perquisites but shall not

include any allowances or other amounts paid to him for the purpose of reimbursing him in respect of the expenses actually incurred by him in the performance of his duties.

(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.

(3) <sup>33</sup>[\*\*\*]

(4) <sup>33</sup>[\*\*\*]

(5) <sup>33</sup>[\*\*\*]

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

### <sup>34</sup>[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 section 3 of the Banking Laws (Amendment) Act, 1968, or

(b) which comes into existence thereafter,

shall comply with the requirements of this section:

PROVIDED that nothing contained in this sub-section shall apply to a banking company referred to in clause (a) for a period of three months from such commencement.

(2) Not less than fifty-one per cent 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, which would, in the opinion of the Reserve Bank, be useful to the banking company:

PROVIDED that out of the aforesaid number of Directors, not less than two shall be persons having special knowledge or practical experience in respect of agriculture and rural economy, co-operation or small-scale industry; and

(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 section 25 of the Companies Act, 1956 (1 of 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-scale industrial concern.

<sup>15</sup>[(2A) Notwithstanding anything to the contrary contained in the Companies Act, 1956 (1 of 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 a Director 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 Director, 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 re-constitute such Board so as to ensure that the said requirements are fulfilled.

(4) If, for the purpose of re-constituting 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 re-constitute 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 provisions 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 Director 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.

## **10B. Banking company to be managed by whole-time Chairman**

<sup>35</sup>[(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) <sup>35</sup>[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 to 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 provision of this section, be eligible for re-election or re-appointment:

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 section 25 of the Companies Act, 1956 (1 of 1956).

(3) Every person holding office on the commencement of section 3 of the Banking Laws (Amendment) Act, 1968 (58 of 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>35</sup>[Every Chairman who is appointed on a whole-time basis and every Managing Director of a banking company appointed under sub-section (1A)] 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>35</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, Partner or Proprietor of any trading, commercial or industrial concern, or

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

(5) <sup>35</sup>[A Chairman of the 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>36</sup>[\* \* \*].

<sup>37</sup>[(5A) <sup>35</sup>[A Chairman of the 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 this 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>35</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 <sup>35</sup>[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 <sup>35</sup>[Chairman of the Board of Directors who is appointed on a whole-time basis or the Managing Director], the Reserve Bank may, by order, remove the first-mentioned person from the office, of the <sup>35</sup>[Chairman of the Board of Directors who is appointed on a whole-time basis or a Managing Director] 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 <sup>35</sup>[Chairman of the Board of Directors who is appointed on a whole-time basis or the Managing Director] of

such banking company and any person elected or appointed as Chairman under this sub-section shall hold office for the residue of the period 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 the <sup>35</sup>[Chairman of the Board of Directors who is appointed on a whole-time basis or a Managing Director] to undertake such part-time honorary work as is not likely to interfere with his duties as <sup>35</sup>[such Chairman or Managing Director.]

(9) Notwithstanding anything contained in this section, where a person <sup>35</sup>[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 other wise 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 <sup>35</sup>[duties of Chairman or Managing Director] for a total period not exceeding four months.

### **<sup>15</sup>[10BB. Power of Reserve Bank to appoint Chairman of a banking company**

(1) Where the office of the <sup>35</sup>[Chairman of the Board of Directors appointed on a whole-time basis or the Managing Director] 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 <sup>35</sup>[Chairman of the Board of Directors appointed on a whole-time basis or a Managing Director 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 <sup>35</sup>[Chairman of the Board of Directors appointed on a whole-time basis or a Managing Director], be deemed to be a Director of the banking company.

(2) The <sup>35</sup>[Chairman of the Board of Directors appointed on a whole-time basis or a Managing Director] 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 re-appointment.

(3) The <sup>35</sup>[Chairman of the Board of Directors who is appointed on a whole-time basis or a Managing Director] 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 10B shall, as far as may be, apply to the <sup>35</sup>[Chairman of the Board of Directors appointed on a whole-time basis or a Managing Director] appointed by the Reserve Bank under sub-section (1) as they apply to a <sup>35</sup>[Chairman of the Board of Directors appointed on a whole-time basis or the Managing Director] appointed by the banking company.]

### **<sup>10</sup>[10C. Chairman and certain Directors not to be required to hold qualification shares**

<sup>35</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.]

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

Any appointment or removal of a <sup>35</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>10</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 or associations

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

(1) Notwithstanding anything contained in <sup>38</sup>[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>11</sup>[in India], and no other banking company shall, after the commencement of this Act, commence or carry on business <sup>11</sup>[in India], <sup>14</sup>[unless it complies with such of the requirements of this section as are applicable to it.]

<sup>14</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

(b) <sup>39</sup>[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 <sup>40</sup>[\*\*\*] 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:]

PROVIDED that any such banking company may at any time replace-

(i) 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;

(ii) any cash so deposited by unencumbered approved securities of an equal value.]

<sup>41</sup>[(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 lakh 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 of 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:

PROVIDED that no banking company to which this clause applies shall be required to have paid-up capital and reserves exceeding an aggregate value of five lakhs of rupees:

PROVIDED FURTHER that no banking company to which this clause applies and which has only one place of business, shall be required to have paid-up capital and reserves exceeding an aggregate value of fifty thousand rupees:

<sup>41</sup>[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 (36 of 1962), the value of its paid-up capital shall not be less than five lakhs of rupees;]

(iii) if it has all its places of business in one State, 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:

PROVIDED that no banking company to which this clause applies shall be required to have paid-up capital and reserves exceeding an aggregate value of ten lakhs of rupees.

Explanation: For the purposes of this sub-section, a place of business situated <sup>42</sup>[in a State] other than that in which the principal place of business of the banking company is situated shall, if it is not more than twenty-five miles distant from such principal place of business, be deemed to be situated within the same State as such principal place of business.

(4) Any amount deposited and kept deposited with the Reserve Bank under <sup>43</sup>[\*subsection (2) by any banking company incorporated <sup>44</sup>[outside India] shall, in the event of the company ceasing for any reason to carry on banking business <sup>11</sup> [in India], be an asset of the company on which the claims of all the creditors of the company <sup>11</sup>[in India] shall be a first charge.

<sup>14</sup>[(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 moneys 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 reserves of any banking company, a determination thereof by the Reserve Bank shall be final for the purposes of this section.

## <sup>31</sup>[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:

PROVIDED that nothing contained in this sub-section shall apply to any banking company incorporated before the 15th day of January, 1937.

(2) No person holding shares in a banking company shall, in respect of any shares held by him, exercise voting rights <sup>28</sup>[on poll] <sup>45</sup>[in excess of <sup>46</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 proceeding-

(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 shares 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.]

#### <sup>47</sup>[12A. Election of new Directors

(1) The Reserve Bank may, by order, require any banking company to call a general meeting of the shareholders of the company within such time, not less than two months from the date of the 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 <sup>48</sup>[sections 76 and 79 of the Companies Act, 1956 (1 of 1956)]1, 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.

#### **<sup>28</sup>[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 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>49</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>28</sup>[(2) Notwithstanding anything to the contrary contained in sub-section (1) or in the Companies Act, 1956 (1 of 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.]

#### **<sup>31</sup>[16. Prohibition of common Directors**

<sup>35</sup>[(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 share-holders of that banking company.

(2) If immediately before commencement of the Banking Companies (Amendment) Act, 1956 (95 of 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.]

<sup>12</sup>[(3) Nothing in sub-section (1) shall apply to, or in relation to, any Director appointed by the Reserve Bank.]

## <sup>14</sup>[17. Reserve Fund

(1) Every banking company incorporated in India shall create a reserve fund and <sup>50</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.

<sup>41</sup>[(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 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.

## <sup>51</sup>[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 Friday or if any such Friday is a public holiday under the Negotiable Instruments Act, 1881 (26 of 1881), at the close of business on the preceding working day.

Explanation : In this section, and in section 24-

(a) "liabilities in India" shall not include-

(i) the paid-up capital or the reserves or any credit balance in the profit and loss account of the banking company,

(ii) any advance taken from the Reserve Bank or from the Development Bank or from the Exim Bank <sup>52</sup>[or from the Reconstruction Bank] <sup>19</sup>[or from the National Housing Bank] or from the National Bank <sup>82</sup>[or from the Small Industries Bank] by the banking company;

(iii) in the case of a Regional Rural Bank, also any loan taken by such bank from its sponsor bank;

(b) "fortnight" shall mean the period from Saturday to the second following Friday, both days inclusive;

(c) "net balance in current accounts" shall, in relation to a banking company, mean the excess, if any, of the aggregate of the credit balance in current account maintained by that banking company with the State Bank of India or a subsidiary bank or a corresponding new bank over the aggregate of the credit balances in current account held by the said banks with such banking company;

(d) for the purpose of computation of liabilities, the aggregate of the liabilities of banking company to the State Bank of India, a subsidiary bank, a corresponding new bank, a Regional Rural Bank, another banking company, a co-operative bank or any other financial institution notified by the Central Government in this behalf, shall be reduced by the aggregate of the liabilities of all such banks and institutions to the banking company;

(e) the expression "Co-operative Bank" shall have the meaning assigned to it in clause (cci) of section 56.

(2) The Reserve Bank may, for the purpose 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 banking company and, if any question arises as to whether any transaction or class of transaction 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**

<sup>10</sup>[(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 clause (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.

*Explanation:* For the purpose of section 8, a banking company shall not be deemed, by reason of its forming or having a subsidiary company, to be engaged indirectly, in the business carried on by such subsidiary company.]

(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 under 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 pledge, 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.

### <sup>53</sup>[20. Restrictions on loans and advances

(1) Notwithstanding anything to the contrary contained in section 77 of the Companies Act, 1956 (1 of 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 (1 of 1956), or a government company, of which <sup>15</sup>[or the subsidiary or the holding company of which] any of the Directors of the banking company is a Director, Managing Agent, Manager, Employee or Guarantor or in 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 (58 of 1968), but in pursuance of a commitment entered into before such commencement, steps shall be taken to recover the amounts 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.

Explanation : In this section-

(a) "loan or advance" shall not include any transaction which the Reserve Bank may, having regard to the nature of the transaction, the period within which, and the manner and circumstances in which, any amount due on account of the transaction is likely to be realised, the interest of the depositors and other relevant considerations, specify by general or special order as not being a loan or advance for the purpose of this section;

(b) "Director" includes a member of any board or committee in India constituted by a banking company for the purpose of managing, or for the purpose of advising it in regard to the management of, all or any of its affairs.

(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.]

#### **<sup>54</sup>[20A. Restrictions on power to remit debts**

(1) Notwithstanding anything to the contrary contained in section 293 of the Companies Act, 1956 (1 of 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>86</sup>[or in the interests of depositors] <sup>12</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 particulars, <sup>9</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 to persons or individual;

(d) the maximum amount up to which, having regard to the considerations referred to in clause (c), 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.]

<sup>54</sup>[(3) Every banking company shall be bound to comply with any directions given to it under this section.]

## **<sup>15</sup>[21A. Rate of interest charged by banking companies not to be subject to scrutiny by courts**

Notwithstanding anything contained in the Usurious Loans Act, 1918 (10 of 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 companies**

<sup>14</sup>[(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>11</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>55</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 be 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 <sup>56</sup>[\*\*\*] the following conditions are fulfilled, namely:-

<sup>14</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>10</sup>[(c) that the general character of the proposed management of the company will not be prejudicial to the public interest of its present or future 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 fulfillment 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.]

<sup>15</sup>[(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.]

<sup>14</sup>[(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) <sup>15</sup>[and sub-section (3A)] is not fulfilled:

PROVIDED that before cancelling a licence under clause (ii) or clause (iii) of this sub-section on the ground that the banking company has failed to comply with or has failed to fulfil any of the conditions referred to therein, the Reserve Bank, unless it is of opinion that the delay will be prejudicial to the interests of the company's depositors or the public, shall grant to the company on such terms as it may specify, and opportunity of taking the necessary steps for complying with or fulfilling such condition.

(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.]

## <sup>14</sup>[23. Restrictions on opening of new, and transfer of existing, places of business

(1) Without obtaining the prior permissions 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:

PROVIDED that nothing in this sub-section shall apply to 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 banking company 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.

(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 conditions 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.

<sup>57</sup>[(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.]

## Foot Notes

1 The word "companies" omitted by Act No. 23 of 1965, w.e.f. 1st. March, 1966.

2 Substituted by Act No. 23 of 1965, for the word "Companies" w.e.f. 1st. March, 1966.

3 Substituted by Act No. 20 of 1950, for the previous sub-section (2).

4 The words "except the State of Jammu and Kashmir" omitted by Act No. 62 of 1956.

5 Notified date is 16th. March, 1949 vide Notification No. F. 4 (46)-FI/49 dated the 10th. March, 1949, GOI, 1949.

6 Substituted by Act No. 95 of 1956, for the words and figures "Indian Companies Act, 1913" w.e.f. 14th. January, 1957.

7 The former section substituted by Act No. 23 of 1965, w.e.f. 1st. March, 1966.

8 Substituted by the AO 1950, for the words "the Dominion Legislature".

9 Substituted by Act No. 55 of 1963, w.e.f. 1st. February, 1964.

10 Substituted by Act No. 1 of 1984, w.e.f. 15th. February, 1984.

11 Substituted by Act No. 20 of 1950 for the words "in any State".

12 Inserted by Act No. 58 of 1968, w.e.f. 1st. February, 1969.

13 Inserted by Act No. 33 of 1959, w.e.f. 1st. October, 1959.

14 Substituted by Act No. 33 of 1959, w.e.f. 1st. October, 1959.

15 Inserted by Act No. 1 of 1984, w.e.f. 15th. February, 1984.

16 Clause (e) omitted by Act No. 52 of 1953.

17 Inserted by Act No. 47 of 1961, w.e.f. 1st. January, 1962.

18 Inserted by Act No. 62 of 1984, w.e.f. 20th. March, 1985.

19 Inserted by Act No. 53 of 1987.

20 Added by Act No. 58 of 1968, w.e.f. 1st. February, 1969.

21 Inserted by Act No. 61 of 1981, w.e.f. 12-7-1982.

22 Clause (i) omitted by Act No. 33 of 1959, w.e.f. 1st. October, 1959.

23 Clause (k) omitted by Act No. 33 of 1959, w.e.f. 1st. October, 1959.

24 Clause (m) omitted by Act No. 33 of 1959, w.e.f. 1st. October, 1959.

25 Inserted by Act No. 39 of 1989, w.e.f. 7th. March, 1990.

26 Clause (nb) re-lettered as cl. (nd) by Act No. 1 of 1984, w.e.f. 15th. February, 1984.

27 Clause (nc) re-lettered as cl. (ne) by Act No. 1 of 1984, w.e.f. 15th. February, 1984.

28 Inserted by Act No. 33 of 1959, w.e.f. 1st. October, 1959.

29 Sub-section (2) omitted by the AO, 1950.

- 30 Substituted by Act No. 33 of 1959, for the words "Managing Agent", w.e.f. 1st. October, 1959.
- 31 Substituted by Act No. 95 of 1956 w.e.f. 14th. January, 1957.
- 32 Substituted by Act No. 55 of 1963 for the first proviso, w.e.f. 1st. February, 1964.
- 33 Sub-sections (3), (4) and (5) omitted by Act No. 55 of 1963, w.e.f. 1st. February, 1964.
- 34 Sections 10A to 10D inserted by Act No. 58 of 1968, w.e.f. 1st. February, 1969.
- 35 Substituted by Act No. 20 of 1994, w.e.f. 31st. January, 1994.
- 36 Omitted by Act No. 1 of 1984, w.e.f. 15th. February, 1984.
- 37 Added by Act No. 1 of 1984, w.e.f. 15th. February, 1984.
- 38 Substituted by Act No. 95 of 1956, for the words, brackets and figures"sec. 103 of the Indian Companies Act, 1913 (7 of 1913)", w.e.f. 14th. January, 1957.
- 39 Substituted by Act No. 36 of 1962.
- 40 The word "calendar" omitted by Banking, Pub. Fin. Institutions & Nego. Instru. Laws (Amdt) Act, 1988, w.e.f. 30-12-1988.
- 41 Inserted by Act No. 36 of 1962.
- 42 Substituted by Act No. 62 of 1956, for the words "in India".
- 43 The words "the proviso to" omitted by Act No. 33 of 1959, w.e.f. 1st. October, 1959.
- 44 Substituted by Act No. 20 of 1950, for the words "elsewhere than in a State".
- 45 Substituted by Act No. 55 of 1963, for the words "in excess of five per cent", w.e.f. 1st. February, 1964.
- 46 Amended by Act No. 20 of 1994, w.e.f. 31st. January, 1994.
- 47 Inserted by Act No. 95 of 1956, w.e.f. 14th. January, 1957.
- 48 Substituted by Act No. 95 of 1956 for the words, figures and letter "sections 105 and 105A of the Indian Companies Act, 1913", w.e.f. 14th. January, 1957.
- 49 Section 15 renumbered as sub-section (1) thereof by Act No. 33 of 1959, w.e.f. 1st. October, 1959.
- 50 Certain words omitted by Act No. 36 of 1962.

51 Substituted by Act No. 1 of 1984, w.e.f. 29th. March, 1985.

52 Inserted by Act No. 62 of 1982, w.e.f. 20th. March, 1985.

53 Substituted by Act No. 58 of 1968, w.e.f. 1st. February, 1969.

54 Inserted by Act No. 55 of 1963, w.e.f. 1st. February, 1964.

55 Substituted for the words, brackets and figures "sub-section (2)" by Act No. 33 of 1959, w.e.f. 1st. October, 1959.

56 The words "all or any of" omitted by Act No. 1 of 1984, w.e.f. 15th. February, 1984.

57 Inserted by Act No. 61 of 1981, w.e.f. 1st. May, 1982.