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THE BANKING COMPANIES ACT

(ACT NO. X OF 1949)

WITH

EXHAUSTIVE COMMENTARIES

&

CASE LAW

BY

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Indian Constitution etc

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Preface

The general sections of the Indian Companies Act 7 of 1913 have not been found sufficient to cater to the needs of special classes of companies like banking companies, insurance companies, etc and legislation in respect of these classes of companies has become inevitable. The ball was set rolling in 1938 by the Indian Legislature by enacting the Insurance Act of 1938. The turn of banking companies has come next with the enactment of the Banking Companies Act 10 of 1949 which came into force on 16th March 1949. It certainly cannot be said that the Indian Legislature was in a hurry in placing this law on the statute book. Its genesis can be traced to the Banking Bill of 1944 which after passing through various vicissitudes became law in 1949. It is a deliberate piece of legislation by the Dominion Parliament.

The keynote of any sound banking legislation should be the protection of the depositor from the oppressive tactics which his bankers might be tempted to employ against him. The paramount duty of the State is to step in between the depositor and the bank, reconcile their conflicting interests and hold the scales even between them. While the bank is permitted to put to all legitimate uses the money placed in its charge by the depositor, it is not allowed to play ducks and drakes with it. Sound business is permissible but not speculation. This object has been achieved in various countries like the United States, United Kingdom, Canada, etc by the device of having a Central Banking Organisation charged with the duty of seeing that the banks in the country conduct their business along sound financial lines. The problem as to the exact amount of power which should be vested in the Central Bank in order that it may function effectively and efficiently is a very delicate one. Countries like the United States have adopted the method of moral persuasion as opposed to legal coercion to achieve this end. The United Kingdom on the other hand does not seem to have much faith in this conscientious approach to this problem and has placed all banks under the tutelage of the Bank of England. Our Act of 1949 has gone farther than the Bank of England Act of 1946 in this respect and

placed Indian banks under a greater degree of subordination to and dependence on the Reserve Bank of India. The onerous burden thus placed on the Reserve Bank by the Legislature testifies to the enormous confidence which the latter has apparently in the former.

The Object of this work is to present an analytical, comparative and critical study of the provisions of the Act. All the relevant documents and literature are to be found in the appendices. Since the provisions of the Indian Companies Act 1913 also apply to banking companies in so far as they are not inconsistent with the Banking Companies Act 1949, some reference to the caselaw decided under the former enactment has also become inevitable. The caselaw has been brought down to 1st June 1949.

The author will consider his labours sufficiently recompensed if banking companies, lawyers and others find a solution for their problems within the pages of this work.

Alagesan Street
Tambaram
July, 1949

THE AUTHOR

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Errata

P. 2 line 9 from bottom last word read 'legislation'
P. 2 line 7 from bottom after 'making' add 'banking'
P. 3 line 6 for 'dividens' read 'dividends'
P. 3 line 13 after 'Seleot' add 'Committee'. Add also see Appendix I
P. 3. line 20 for 'alteaion' read 'alteration'
P. 3 line 5 from bottom for 'of' read 'or'
P. 7 line 7 from bottom for 'thogt' read 'though'
P. 8 line 21 after 'Cunliffe J' add 'in'
P. 8 line 24 after 'page 9' add fullstop
P. 9 line 14 from bottom after 'only' add 'be'
P. 11 line 10 for Co' read 'Go'
P. 11 line 6 from bottom read 'in bars. It includes'
P. 12 line 3 for 'on' read 'no'
P. 12 line 10 for 'Cibson' read 'Gibson'
P. 12 line 15 from bottom last word read 'benefit'
P. 19 end of second para add 'See Appendix G, p. 196 post'
P. 21 line 5 from bottom read 'fiduciaries'
P. 21 line 3 from bottom read 'required'
P. 26 line 6 for 'forty' read 'thirty'
P. 30 line 15 from bottom after 'befall' add 'See Eastern Economist dated 18th February 1949 pp. 263 & 264
P. 30 line 12 from bottom read 'detrimental'
P. 31 line 11 for 'of Act' read 'Act of'
P. 32 end of first para add 'See Eastern Economist 24th September 1948 p. 538
P. 36 line 2 from bottom read 'giltedgeds'
P. 37 line 8 read 'giltedged'
P. 37 line 18 after 'etc' add 'and'
P. 37 line 19 delete 'and'
P. 38 line 17 for 'practices' read 'practice'
P. 39 line 4 from bottom after 'of' add 'the'
P. 39 last line read 'complying'
P. 40 line 9 after 'made' and 'of'

P. 42 line 4 before 'High' add 'Bombay'
P. 43 line 17 after 'of' add 'the'
P. 43 line 23 read 'attached'
P. 43 line 4 from bottom for 'Columns' read 'Column'
P. 44 line 5 after 'of' add 'payment of'
P. 44 line 13 last word read 'distinguishing'
P. 46 line 14 for 'director' read 'directors'
P. 46 line 20 for (iv) read (ii)
P. 46 line 10 from bottom for 'a' read 'an'
P. 46 line 2 from bottom delete 'a'
P. 47 line 5 from bottom for '121' read '131'
P. 47 line 3 from bottom after 'meeting' add 'a'
P. 51 line 18 read 'includes'
P. 51 line 3 from bottom after 'as' add 'are'
P. 57 line 17 for 'ar' read 'as'
P. 58 line 1 for 'judges' read 'judge'
P. 58 line 5 from bottom after 'that' add 'it'
P. 59 line 10 for 'MR' read 'Mr'
P. 59 line 8 from bottom after 'that' add 'the'
P. 59 line 3 from bottom for 'was' read 'is' and for 'had' 'has'
P. 60 line 3 for 'of' read 'on'
P. 60 line 15 last word read 'ground'
P. 60 line 11 from bottom read 'shareholders'
P. 64 line 3 from bottom read 'statement'
P. 64 line 3 from bottom for 'Lord' read 'Lort'
P. 65 line 14 transpose '57' to word 'Emperor'
P. 66 line 5 omit 'the'
P. 66 line 17 from bottom read 'fulfilment'
P. 66 line 12 from bottom read 'straightforward'
P. 66 line 7 from bottom read 'following'
P. 66 line 6 from bottom before 'Privy' add 'judgment of the'
P. 67 line 2 read 'balancesheet'
P. 67 line 5 read 'detection'
P. 67 line 16 after 'Menon' add 'J'
P. 67 line 16 after '175' add '='
P. 68 line 1 read 'modifications'
P. 68 line 14 after last word add 'is'
P. 71 at the end of notes to S. 53 add 'See Appendix G, p. 196 post'
P. 71 line 9 from bottom, add marginal note to S. 54 as follows:
'Protection of Action taken under Act'
P. 72 line 1 read 'checks'

P. 72 last line read 'prepared'
P. 81 line 6 for 'India' read the 'Central'
P. 97 omit lines 19 to 22
P. 98 line 9 after 'in' add 'the'
P. 98 line 21 after 'by' add 'amending s. 31 suitably and'
P. 157 line 6 after 'De Souza' add 'v'
P. 157 line 11 read 'ordinance'
P. 157 line 17 from bottom omit '='
P. 157 line 7 from bottom read 'discharge'
P. 159 line 14 read 'exchanged'
P. 159 line 22 read 'Ordinance'
P. 166 line 7 read 'very'
P. 166 line 6 from bottom after 'of' add 'the'
P. 182 for 'Transfer of' read 'Transfer to' in heading
Pages 269 to 273 for page heading substitute 'Repealed Sections 277-F to 277-N of Indian Companies Act.
P. 277 for page heading substitute 'Appendix NN-Comparative Table' and add heading 'Appendix NN-before 'Comparative Table of Corresponding Sections etc'.
P. 281 1st column for 'filled' read 'filed'

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The Banking Companies Act, 1949.

An act to consolidate and amend the law relating to banking companies.

WHEREAS it is expedient to consolidate and amend the law relating to banking companies; It is hereby enacted as follows —

PART I.

PRELIMINARY.

1. *Short title, extent and commencement.*—(1) This Act may be called the Banking Companies Act, 1949.

(2) It extends to all the Provinces of India, and also to every Acceding State to the extent to which the Dominion Legislature has power to make laws for that State as respects banking.

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

Notes:—

Preamble :

Prof. K. T. Shah a member of the Select Committee which considered the Banking Companies Bill (text of the Report of the Select Committee is given in the Appendix) in his dissenting minute which he appended to the Report questions the claim made in the preamble to the Act that it is a consolidating Act, because a number of banking organisations like private banks, exchange banks co-operative banks, the Reserve Bank etc. are outside the scope of the Act. Prof. K. T. Shah also opines that there is no constitutional objection to including private banks also within the scope of the Act. If necessary Prof. Shah wants the Dominion Legislature sitting as the Constituent Assembly to amend the legislative lists so as to include money lending in the Dominion list. It is submitted that even without amending the legislative lists it would be quite

competent for the Dominion Legislature to include private banks within the purview of the present Act after the Privy Council decision of *Prafulla Kumar Mukherjea* V. *Bank of Commerce Ltd. Khulna*[1] holding that provided the pith and substance of the legislation is with respect to matters in the Dominion list it is not *ultra vires* merely because it encroaches whether substantially or incidentally upon items in the provincial list. No question of repugnancy can arise because in cases covered by s. 107 of the Government of India Act 1935. The Dominion law always prevails over a provincial law when the former conflicts with the latter. It is interesting to compare our preamble with the preamble to the Canadian Banking Act, 1934, which runs as follows: "Whereas it is desirable to establish a Central Bank in Canada to regulate credit and currency in the best interests of the economic life of the nation to control and protect the external value of the national monetary unit and to mitigate by its influence fluctuations in the general level of production, trade, prices, and employment so far as may be possible within the scope of monetary action, and generally to promote the economic and financial welfare of the Dominion—"

History of the Act :

The law applicable to banking companies has its origin in the Indian Companies Amendment Act of 1936 which introduced a new part X-A (sections 277-F to 277-N.). This new Part X--A was introduced to give effect to the recommendations of the Central Banking Enquiry Committee. This law was found to be inadequate especially having regard to the considerable development that has taken place in recent years in banking especially the rapid growth of banking resources and of the number of banks and branches. Regard must also be had to the fact that in the post-war period the banking system is likely to be more vulnerable by reason of the great expansion both quantitatively and relatively that has taken place in demand deposits as compared with time deposits during the war years. The enactment of separate comprehensive banking legilsation became therefore imperative. The primary object of safeguarding the interests of depositors cannot be achieved by making law a mere appendage of company law which is more concerned with protecting the interests of the stockholder. It was against this background that the Banking Companies Bill No 26 of 1944 was introduced into the Central Legislative Assembly in November 1944. The Bill was circulated for eliciting public opinion and then referred to a Select Committee but before it could be considered by it it lapsed. A fresh bill was introduced

(1). AIR (1947) PC. 60.

in March 1946, and referred to a Select Committee in April 1946, whose Report was presented on 17-2-47. Because of the large number of amendments that had been received the Bill was withdrawn and a fresh Bill No. 27 of 1948 was introduced on 30-1-48 which has become law.

Select Committee Changes:

The original clause prohibited payment of dividens in excess of nine percent of the paid up capital by banks started after 1-1-48. This was deleted by the Committee. Another important change effected by the committee relates to the investments which a banking company can make against the shares of other business concerns. The committee has restricted such investments in respect of the shares of any one company to forty percent of its issued share capital as against twenty percent proposed in the original bill. The text of the Report of the Select is given in the the Appendix.

Interpretation:

It is hazardous to refer to Ss. 277-F to 277-N of the Indian Companies Act to ascertain what the Legislature meant to enact in their room and stead if the words of the Banking Companies Act 1949 are capable of being interpreted without such foreign aid.[2] If words have received authoritative interpretation and are repeated without alteraion it may be presumed the legislature has adopted that interpretation.[3] Where a limited interpretation has been put upon repealed provisions and words have been enlarged it is a legitimate inference that the enlargement was intended by the legislature.[4]

Sub-S (2): Since the idea is that the Dominion Legislature should have power to legislate as regards acceding states in respect of all matters covered by lists 1 and 3 of the Government of India Act 1935, the 7th Schedule. The Banking Companies Act 1949 will apply in toto to all these states. As regards states which have become centrally administered areas like Kutch states of Himachalapradesh, the Dominion Legislature will have to extend the application of the Act to these areas. The Act will also have to be applied to states which have merged in adjoining provinces like Kolhapur and Baroda to give two examples.

Sub-S (*3*) : The act has come into force from 16th March 1949.

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(2). Bradlaugh V. Clarke (1883) 8 App. Cas. 354.

(3). Mansell V. Queen (1857) 8 E. & E. 54, 73.

(4). Hurlbatt V. Barnett & Co. (1893) 1 QB 77, 78, 79, (CA) (Per Lord Esher MR).

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 Indian Companies Act, 1913 (VII of 1913), and any other law for the time being in force.

'Save as hereinafter expressly provided' : See ss. 11, 13, 20, 29 (3) 32, 35, 39, 40, 41, 42, 43, 44, 45, 49.

3. *Act not to apply to co-operative banks.*—Nothing in this Act shall apply to a co-operative bank registered under the Co-operative Societies Act, 1912 (II of 1912), or any other law for the time being in force in any Province of India, relating to co-operative societies.

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, 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 he 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 the Dominion Legislature as soon as may be after it is issued.

Notes:

This section deals with the suspension of the operation of the Act while S. 53 deals with exemption from the provisions of the Act. In the case of the former the Act does not at all apply for the time during which it is suspended while in the case of the latter only the company or companies (as the case may be) are relieved of the consequences of he contravention of the relevant provisions of the Act in respect of which exemption is granted (which therefore remain in full force). Suspension can be done for periods of 2 months at a time up to a maximum of 1 year. For exemption there is no maximum period. The Governor and the Deputy Governor of the Reserve Bank can suspend the operation of the Act for 30 days. They are not given power to grant exemptions under S. 53. The period of suspension can be extended under S. 4. But under S. 53 the period for which exemption is granted cannot be extended. A notification extending the period of suspension has to be laid on the table of the Dominion Legislature. There is no necessity for laying notifications under S. 53 on the table of the Dominion Legislature.

5. *Interpretation.*—(1) In this Act, unless there is anything repugnant in the subject or context,—

(*a*) 'approved securities' means 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 Trusts Act, 1882 (II of 1882), and such securities of, or fully guaranteed by, Acceding States as the Reserve Bank may be authorised to purchase under clause (8) of section 17 of the Reserve Bank of India Act, 1934 (II of 1934);

(*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 in any Province of 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;

(*d*) "company" means any company which may be wound up under the Indian Companies Act. 1913 (VII of 1913);

(*e*) "Court" means the Court having jurisdiction under the Indian Companies Act; 1913;

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

(*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;

(*h*) "managing agent" means a person, firm or company entitled to the management of the whole affairs of a banking company by virtue of an agreement with company or by virtue of the memorandum or articles of association relating thereto, and under the control and direction of the directors except to the extent, if any, otherwise provided for in the agreement, memorandum or articles of association, and includes any person firm or company occupying such position by whatever name called;

Explanation:—If a person occupying the position of managing agent calls himself manager or managing director, he shall nevertheless be deemed to be a managing agent for the purposes of this Act;

(*i*) "private company" has the same meaning as in the Indian Companies Act, 1913;

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

(*k*) "registrar" has the same meaning as in . . .the Indian Companies Act, 1913;

(*l*) "Reserve Bank" means the Reserve Bank of India;

(*m*) "scheduled bank" means a bank for the time being included in the Second Schedule to the Reserve Bank of India Act. 1934: *and*

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

(2) In the application of this Act to Acceding States all references to the Provinces of India shall be construed as including references to the Acceding States to which this Act extends.

Notes:

Sub-S (1) *Clause* (*b*) : The word 'bank' is derived from the German 'bank' *via* Italian '*banca*' and French '*banque*'. The original meaning of the word shelf or bench was extended in Italian to that of the bench or table of a moneychanger, whence the meaning 'moneychanger's place of business' whence the common presentday meanings of the word. Hart defines a bank thus:

'A banker of bank is a person carrying on the business of receiving monies and collecting drafts for customers subject to the obligation of honouring cheques drawn on him by the customers to the extent of the amounts available in their current accounts.'

A banker if he acts as such need not keep open shop.[5] A stockbroker and notary public who receives money from some of his customers and pays it out again and occasionally discounts drafts and who does not hold himself out as a banker nor is considered as such is not a banker.[6] A large mercantile house trading in cotton and opium which does not receive money on deposit to any great extent and does not advance money on security is not a bank thougt it might have done a small amount of banking business.[7] A Government treasury is not a bank though local boards deposit money in it and issue orders for payment out which are respected by the treasury the element of making profit out of the business being absent.[8] A Nattukottai Chetti though primarily a money lender is also a banker.[9] Transactions with a Nattukottai Chetti, if evidence of the terms are not available will be presumed to be on the basis of

(5). Exparte Wilson 1 Atk 218.

(6). Stafford v Henry 12 Ir Eq R 400.

(7). New Fleming Spinning & Weaving Co v Kessowji, 9 Bom. 373, 411; Ratanlal v Vrijbhukhan, 17 Bom 684.

(8). Rangaswami v Sankaralingam 43 Mad 816.

(9). Kadiresan v Ramanathan (1927) MWN 118, 120.; Annamalai v Annamalai 10 LW 67.

relationship of banker and customer.[10] When a person gives money to a banker it is always a question of fact whether such giving of money amounts to merely a loan or a deposit.[11] It is interesting to compare the definition of banking contained in the present Act with that contained in the original bill of No. 26 of 1944. From the definition in that bill 3 clauses have been omitted in the present definition, namely clause (f) dealing with the promotion or financing of any business undertaking or industry, clause (g) dealing with the acquisition of any property immoveable or moveable and clause (1) dealing with acquisition of shares in any other company having objects similar to those of the company.

Sub-S (*1*) *Clause* (*d*) : This clause has not been well drafted and gives a wrong impression about the intention of the Legislature. During the debates on the Bill in the Legislature, Prof. K. T. Shah and others have naturally and pardonably assumed that the Act does not apply to exchange banks which are incorporated outside India but which carry on business in India. They have overlooked the ambiguous definition contained in clause (d) which leads us nowhere and leaves us guessing as to what the Legislature meant by clothing this clause in such language. Part 9 of the Indian Companies Act deals with companies which can be wound up as unregistered companies and S. 270 gives a list of such companies. Cunliffe J *In the matter of the Indian Companies Act*[12] and Ragnekar J in *In re Strauss Ltd.*[13] have taken the view that even foreign companies consisting of less than seven members can be wound up as unregistered associations under part 9 Page CJ in *VERM Chettyar Firm* V *Hormuzji*[14] has taken the opposite view, that a foreign company can be wound up underpart 9 only if it consists of more than seven nembers. Having regard to the above decisions one can only opine that Prof. Shah is (see Report of Select Committee, dissenting minute para 19) labouring under a misapprehension when he thinks that the Act is not applicable to foreign banking companies like exchange banks. That it was the intention of the Legislature to exclude such banks from the operation of the Act is irrelevant because the language employed in clause (d) is not consistent with such an intention. The matter is further

(10). Murugappa v Ramanathan AIR (1935) Mad 734: Gulab Rai v Sandhi 15 Lah 242.

(11). Advocate General of Bengal v Kristo Kamini, 31 Cal 519; Balabux v Inder, 15 Pat. 709.

(12). AIR (1930) Rang 337=8 Rang 409=127 IC 736.

(13). AIR (1937) Bom. 15=38 Bom LR 1080

(14). AIR (1931) Rang 77=8 Rang 658=131 IC 497.

complicated by the fact that while some sections like Ss 8,10,12,20, 23, 39 (to mention only a few examples) are general, other sections like 11, 16 and 17, specially make a distinction between Indian and foreign companies and enact different sets of provisions for each of them. Two interpretations are possible (1) The Act is inapplicable to foreign companies except in the special cases of s. 11 (2) and s. 22 (3) (c) which sections only apply to them. Other sections like 8, 10, 12, 23, 39 do not apply to them (2) The Act applies also to foreign companies and Ss. 11 and 22 contain some additional provisions which are applicable only to foreign companies. When next the amendment of the Act is taken up this ambiguity should be resolved one way or the other, either by defining a company as one registered under the Indian Companies Act or an existing company, or alternatively as including a company incorporated by the law of a foreign country. The Lahore High Court in the recent case of *In re Indian Companies Act*[15] has construed the analogous phrase'company liable to be wound up' occurring in s. 153 (6) of the Indian Companies Act. Cornelius J in the above case took the view that the meaning of the expression'liable to be woundup' could not be widened so as to embrace every company whatever its nature for the windingup of which provision is contained in the Companies Act. The learned judge dissented from the view taken by Venkatarama Rao J in *In re Travancore National & Quilon Bank Ltd*[16] that an unregistered company is included within the meaning of the expression ' company ' as used in s. 153. To quote Cornelius J: ' The expression ' liable ' in a legal context importing sanctions can only understood to mean a state of being exposed or contingently subject to such sanctions. To take a simple example from criminal law, the mere fact that a punishment is prescribed for a particular offence does not render every person subject to the jurisdiction of the criminal court liable to such punishment; it is also necessary that in relation to such person the elements of the offence for which such punishment has been prescribed should be duly satisfied. ' Cornelius J lays emphasis on s. 276 which lays down that an unregistered company shall not except in the event of its being wound up be deemed to be a company under this Act and then only to the extent provided by this part ' and is inclined to take the view that s. 153 applies only to such companies as satisfy the condition of being wound up. But having regard to the decision of *Rudow v Great British Mutual Life Assurance Society*[17]. Cornelius J was incli-

(15). AIR (1949) Lah. 48.

(16). AIR (1939) Mad 319.

(17). (1881) 44 LT 6=17 ChD 600, 612 (CA).

ned to apply s. 153 to unregistered companies even at a stage prior to the actual making of a winding up order, provided an order for such winding up is in the process of being made. With great respect it is submitted that the reasoning behind the above decision is quite open to criticism. It lays too much stress on s. 276 which comes at the tailend of part 9 at the expense of the opening section of the parts. s. 270. S. 270 is very wide in its terms and includes all unregistered companies within the term 'company' for the purposes of that part. Hence all these companies automatically come under s. 153 as companies liable to be woundup. To paraphrase 'liable to be wound up' as 'actually woundup' is not to give effect to the intention of the legislature. If the phrase 'company liable to be wound up' in s. 153(6) means only companies in the process of being wound up it would lead to this anomaly that even in the case of companies registered in India there can be no scheme or arrangement between the company and its creditors except when the company is in the process of being wound up, which interpretation runs contrary to the intention of the legislature which is to afford the facility of the machinery of that section as an alternative to windingup. S. 276 affords no help at all as regards this problem for it postulates a truism, namely that an unregistered company is not a company under the Companies Act unless it is in the process of being wound up, a proposition with which no body can quarrel andwhich does not conflict with s. 270 which avowedly purports to deal only with companies which are not companies under the Companies Act. The Lahore decision is directly attributable to the awkward draftsmanship behind the Indian Companies Act which should be remedied when next the revision of the Act is taken on hand. The direct effect of the above Lahore decision would be to make the Banking Companies Act applicable also to foreign companies in the process of being woundup. (This is on the assumption that View 2 above is correct. If View 1 is correct then subclause (d) itself is a slip). Compare with s. 5 (a) of the Banking Companies Control Act 22 of 1948 (Pakistan) which specifically makes that Act applicable to any body of persons incorporated by or under any law in force in any place outside the provinces of Pakistan and carrying on the business of a banking company in any province of Pakistan or in any acceding state. S. 5 (d) includes the capital of the federation in the term 'provinces' except for the purposes of s. 1 (2). Supposing a banking company consisting of more than 10 persons is not registered under the Companies Act and violates s. 22 of the Banking Companies Act. If it is charged for the same can it set up the defence that it is not a company? The Lahore High Court in *Sri Gopalji* v *Commissioner of Incometax*[18] *has* held that it cannot

(18). AIR (1931) Lah 376.

since it would be unjust to allow the company to take advantage of its own wrong. In that case Jailal J held that even an unregistered company consisting of more than 20 persons is liable to be taxed under s. 3 of the Indian Incometax Act 1922.

Sub-S (*1*) *Clause* (*c*): 'Court' means the High Court having jurisdiction in the place at which the registered office of the company is situate. But the Central Government may by notification in the official Gazette and subject to such restrictions and conditions as it thinks fit, empower any District Court to exercise all or any of the powers conferred upon the High Court. By Co No. 654 (Development) dated 20-2-47 the Governor of Madras has empowered all district courts within the province of Madras to exercise the jurisdiction conferred on the 'Court' by Ss. 76, 120, 124, 125, 137, 154, 244-B, and 249-A of the Indian Companies Act. See also Government of India (Department of Commerce) Notification dated 26-3-38. 'High Court' has been defined by the General Clauses Act as the highest court of appeal. In the case of a company whose registered office is at Beawar in Ajmer-Merwara the Court having jurisdiction under the Companies Act is the Chief Commissioner because he is the highest court of appeal.[19] Both the original and appellate sides of the High Court have jurisdiction to deal with company matters.[20]

Sub-S (*1*) (g): 'Gold' does not always mean pure gold but merely what in common parlance is called gold.

'Coin' is metallic money authorised to be issued from the mints of the State and those of the foreign countries current in the country. 'Coin' is metal for the time being used as money and stamped and issued by the authority of some State or Sovereign Power in order to be so used. 'Money' is the genus and 'coin' is the specie. The former may be made of metal or paper the latter is always made of metal and struck according to a process called coining.

'Bullion' is uncoined gold or silver in the mass which is smelted and not perfectly refined or refined but in barst includes gold and silver both coined and uncoined, reckoned by the weight and also foreign uncurrent coin 'Our coin is bullion in foreign dominions.'

'Ingots' or billets of steel are the steel bars taken from the moulds of a steel manufactory the words being applied to a finished product as it is ready for shipping.

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(19). In the matter of Kekri Press Co Ltd, AIR (1926) All 649=48 All 709=24 ALJ 768=96 IC 753.

(20). Jagadishpur Tea Co v Messrs Macleod & Co AIR (1925) Cal 606=29 CWN 404=86 IC 910.

Sub-S (1) Clause (h): This definition follows closely the definition of 'managing agent' contained in s. 2 (1) (9-A) of the Indian Companies Act with the following differences: (i) In the Companies Act there is on reference to the memorandum or articles of association (ii) the Companies Act Explanation contains no reference to a managing director. A person entrusted with only a part of the business of a company is not a manager e.g the manager of the local branch of a bank having many branches.[21] There was some doubt on this point which was resolved by the 1936 Amendment to the Companies Act and the definition contained here follows closely the 1936 amendment. See also *Gibson v Barton.*[22]

Sub-S (1) *Clause (i)* : Private company is defined by s. 2 (1) (13) of the Indian Companies Act as a company which by its articles (a) restricts the right to transfer its shares if any and (b) limits the number of its members to 50 not including persons who are in the employment of the company, and (c) prohibits any invitation to the public to subscribe for the shares, if any, or the debentures of the company : provided that when two or more persons hold one or more shares of a company jointly they shall for the purposes of this definition be treated as a single member. Under the English Companies Act, 1948, s. 28, a private company cannot be formed without share capital. Under the Indian law there can be private companies without share capital. S. 154 of the Indian Companies Act lays down the procedure for converting a private company into a public company and corresponds to s. 30 of the English Companies Act 1948. It has been held by the Patna High Court in *Inre Radiant Chemical Co* [23] that the section does not bar the conversion of a public company into a private company by suitable alteration of articles. See *Halsbury* Vol. 5. p. 133. S 32 deals with the balancesheet to be filed by a private banking company, while s. 49 withdraws the special privileges granted to private companies by the Companies Act if such companies happen to be private banking companies.

PART II.

Business of Banking Companies.

6. *Forms of business in which banking companies may engage*:—(1) In addition to the business of banking, a banking

(21). Basantlal v Emperor (1917) 43 IC 791=19 CrLJ 215=47 PR Cr (1917).

(22). (1875) 10 QB 329=32 LT 396.

(23). (1943) 13 Comp Cas 186.

company may engage in any one or more of the following forms of business, namely:—

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

(*b*) acting as agents for any Government or local authority or any other person or persons; the carrying on of agency business of ony description, including the clearing and forwarding of goods, giving of receipts and discharges and otherwise acting as an attorney on behalf of customers, but excluding the business of a managing agent 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 of 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 of the dependents or connections of such persons; granting pensions and allowances and making payments towards insurance; subscribing to or guaranteeing moneys for charitable or benevolent objects or for any exhibition or for any public, general or useful object;

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

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

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

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

(*o*) any other form of business which the Central Government may, by notification 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).

7. *Use of words "bank", "banker", "banking".*—After the expiry of two years from the commencement of this Act, no company, other than a banking company shall use as part of its name, any of the words "bank", "banker" or "banking" and no company shall carry on the business of banking in any Province of India, unless it uses as part of its name at least one of such names:

Provided that nothing in this section shall apply to any association of banks formed for the protection of their mutual interests and registered under section 26 of the Indian Companies Act, 1913 (VII of 1913).

8. *Prohibition of trading.*—Notwithstanding anything contained in section 6 or in any contract, no banking company shall directly or indirectly deal in the buying or selling or bartering of goods, except in connection with the realisation of security given to or held by it, or engage in any trade, or buy or 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:

Provided that this section shall not apply to any such business as aforesaid which was in the course of being transacted on the commencement of this Act, so however, that the said business shall be completed before the expiry of one year from such commencement. * * *

Explanation.—For the purposes of this section, "goods" means every kind of movable property, other than actionable claims, stocks, shares, money, bullion, and specie, and all

instruments referred to in clause (*a*) of sub-section (1) of section 6

Notes :

Explanation: *'Goods'* : The definition in the Indian Sale of Goods Act 1930, s. 2 (7) is wider and includes stocks and shares and bullion in the term "goods". In this respect the present definition follows the English Sale of Goods Act 1893 under which stocks and shares are not goods. The definition in the English Act is inclusive while the definition under the Indian Sale of Goods Act and under the present Act is exhaustive. A sale of emblements before severance is a sale of goods under s. 62 (1) of the English Sale of Goods Act. Unsevered fixtures form part of the free hold.[24]. 'Actionable claim' is defined by s. 3 of the Transfer of Property Act 1882 as a claim to any debt other than a debt secured by a mortgage of immovable property or by hypothecation or pledge of moveable property not in the possession either actual or constructive of the claimant which the civil courts recognise as affording grounds for relief whether such debt or beneficial interest be existent, accruing, conditional or contingent. The chief examples of actionable claims are, claims for arrears of rent benifit of executory contract for the purchase of goods, the right to get by division a piece of land reserved by donor for his own use in a deed of gift the possession of which is with the donee, and a share in a partnership. Decree is moveable property. [25] Current money is not 'goods' but a Jubilee £ 5 gold piece brought as a curiosity is 'goods'.[26] It is doubtful whether a ship is 'goods'. A ship is not like an ordinary chattel. It does not pass by delivery nor does possession of it prove title to it. There is no market overt for ships.[27] Still the provisions of the Sale of Goods Act may apply to ships. It is doubtful whether cattle will come within the description of 'goods.' It is also doubtful whether gas, water, and electricity are included in the term 'goods'.[28] The New York Regulations, article 5, defines 'tangible personal property' as including furniture, clothing, machinery, livestock. Illinois Regulations, article 15, taxes sale of electricity which is considered 'tangible personal property.' The Madras

(24). Lee v Risdon, 7 Taunt 188.

(25). Vithaldas v Jagjivan (1939) 41 Bom LR 33.

(26). Moss v Hancock (1899) 2 QR 111.

(27). Per Turner LJ in Hooper v Gumm (1867) 2 Ch App 282 (290).

(28). See Chalmers Sale of Goods Act 11th ed. p. 160; Rash Behari Shaw v Emperor AIR (1939) Cal. 753=41 CWN 225.

General Sales Tax Act 9 of 1939 s. 2 (c), excludes stocks and shares from the definition of 'goods'. The same Act includes money in the definition of 'goods'

9. Disposal of non-banking assets.—Notwithstanding anything contained in sections 6 and 8, 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 campany 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.

No banking company can hold immovable property beyond 16-3-56 or if the time is extended by the Reserve Bank beyond 16-3-61. A banking company can hold immovable property for its own use.

10. *Prohibition of employment of managing agents and restrictions on certain form of employment.*—(1) No banking company—

(*a*) shall employ or be managed by a managing agent, or

(*b*) shall employ 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; or

(iii) whose remuneration is according to the normal standards prevailing in banking business on a scale disproportionate to the resources of the company, or

(*c*) shall be managed by any person—

(i) who is a director of any other company, not being a subsidiary company of the banking company; or

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

(iii) who has a contract with the company for its management for a period exceeding five years at any one time.

Provided that the said period of five years shall, in relation to contracts subsisting on the 1st day of July, 1944, be computed from that date:

Provided further that any contract with the company for its management may be renewed or extended for a further period not exceeding five years at a time if and so often as the directors so decide.

(2) If any question arises in any particular case whether remuneration is according to the normal standards prevailing in banking business, on a scale disproportionate to the resources of the company for the purpose of sub-clause (iii) of clause (*b*) of sub-section (1) the decision of the Reserve Bank thereon shall be final for all purposes.

Notes:

Sub–S (*1*) *Clause* (*c*) (*iii*): If a contract subsisting on 1–7–44 provides for management beyond 1–7–49, the person holding such contract cannot be employed by the banking company after 16–3–49. S. 50 bars the right to compensation of person aggrieved by action taken under s. 10.

Wholetime Work: During the debate in Parliament on this section much heat was generated. The provision that a banking company cannot be managed by a person who is engaged in any other business or vocation came in for much criticism at the hands of members. Mr. Rohinikumar Choudhury objecting to these provisions recalled that in Provinces like Assam and Bengal lawyers and doctors had very successfully managed banking concerns. The provision would act as a check on the growth of new banks. If they adopted this provision they would very soon be forced

to have Parliamentary Secretaries managing all banks, for they were the men without any vocation and not engaged in any business. Mr. Kuladhar Chaliha and Mr. Ramnarain Singh also took a similar line. Mr. N. G. Ranga supporting the provision urged that henceforth in this country if anyone wanted to run a bank he must be a wholetime worker. Doctors or lawyers who were public spirited and wanted to help their fellowmen could if they so chose engage themselves in promoting co-operative credit societies or banks. But when jointstock banks were started with large capital subscribed by the middle class population, the persons who managed such institutions should certainly devote all their attention to managing his money and to nothing else.

Sub-S (*1*) *Clause* (*b*) : The Finance Minister Dr. John Matthai gave an assurance to Mr. Mohanlal Gautam that suitable action would be taken to avoid undue hardship being caused to persons from Pakistan who had come to India. Construed literally the clause would also apply to such persons who might have suspended payment in their banks or compounded with their creditors because of their being uprooted from their homes.

11. *Recruitment as to minimum paid-up capital and reserves*:—(1) Notwithstanding anything contained in section 103 of the Indian Companies Act, 1913 (VII of 1913), 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 in any Province of India, and no other banking company shall, after the commencement of this Act, commence or carry on business in any Province of India, unless it has paid-up capital and reserves of such aggregate value as is hereinafter required by this section.

(2) In the case of a banking company incorporated elsewhere than in a Province of India, 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 :

Provided that no such banking company shall be deemed to have complied with the provisions of this sub-section, unless

it deposits and keeps deposited with the Reserve Bank an amount not less than the minimum required by this sub-section, either in cash or in unencumbered approved securities or partly in cash and partly in such securities.

(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 Province, five lakhs of rupees, and if any such place or places of business is or are situated in the City of Bombay or Calcutta or both, ten lakhs of rupees;

(ii) if it has all its places of business in one Province 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 Province 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;

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

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 in a Province 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 Province as such principal place of business.

(4) Any amount deposited and kept deposited with the Reserve Bank under the proviso to sub-section (2) by any banking company incorporated elsewhere than in a Province of India shall, in the event of the company ceasing for any reason to carry on banking business in the Provinces of India, be an asset of the company on which the claims of all the creditors of the company in the Provinces of India shall be a first charge.

(5) For the purposes of this section "value" means the real or exchangeable value, and not the nominal value which may be shown in the books of the 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.

Notes :

Comparative Law : It is proposed to compare the requirements as to minimum capital contained in the section with the corresponding provisions contained in the laws of other important countries. *Canada* : Every bank in Canada has to be chartered by the Parliament at Ottawa and must have a minimum capital of 5,00000 dollars onehalf of which must be paid in before opening. *Chile*: Where the bank is situated in a city with a population of over 100000, the capital must be not less than 5 million *pesos*. In other cases the capital must be not less than 1 million *pesos*. The capital and reserves must be not less than 25 percent of the deposits. The reserve must be at least 25 percent of the paidup capital. 20 percent at least of the value of fixed deposits must be kept in cash as guarantee of those deposits. *Mexico*: By the law of 28-6-32 as amended by laws of 30-8-33 and 30-8-34 foreign banks cannot accept savings accounts, act as fiduciarries or perform certain other specified operations. They must purchase a prescribed number of shares in the Banco de Mexico and deposit therein a certain part of their requird reserves. *Denmark*: By the law of 1930 ordinary banks must have a minimum capital of 3,00000 Danish *kronor* and 50 percent of it must be paid before business is started. Stock capital

must be paid in full within one year after establishment of the bank. The bank must maintain a minimum cash balance amounting in value to one third of its deposits. *Sweden*: Each bank must have a capital of not less than one million *kronor*. The King can grant exemption from this provision. In the case of savings bank the minimum capital must be at least 10000 *kronor*. The king grants licence for operating banks which lasts for 10 years and there are special provisions dealing with bank failures.

Sub-S (*1*) Time is given to existing companies up to 16—3—52 for complying with the requirements of the section. This period may be extended by the Reserve Bank up to 16-3-53.

Sub-S (*2*): The minimum requirement as to capital in respect of foreign companies is 15 lakhs if they have no place of business in Bombay or Calcutta and 20 lakhs in other cases.

Sub S (*3*) *Clause* (*i*): This clause deals with banking companies having interprovincial connections. They should have a capital of 5 lakhs and if they have a place of business in Bombay or Calcutta 10 lakhs.

Clause (*ii*): This clause deals with banking companies confined to one Province having no place of business in Bombay or Calcutta. Such a company should have a capital of 1 lakh for its principal place of business plus 10 thousand in respect of each place of business situated in the district where the principal place of business is located, plus 25 thousand in respect of each place of business situated elsewhere. The maximum amount of capital fixed under the clause is 5 lakhs and if a company has only one place of business 50 thousand is enough.

Clause (*iii*): This clause deals with companies confined to one Province and having a place of business in Bombay or Calcutta. They should have capital of 5 lakhs plus 25 thousand in respect of each place of business situated outside Bombay or Calcutta. Suppose the principal place of business of a company is situated in Kundapur in South Kanara District of the Madras Province, and the company has a place of business in Bombay Province within 25 miles of Kundapur. Clause (ii) or (iii) and not clause (i) would apply to such a case. This is made clear by the Explanation to sub-section (3).

12. Regulation of paid-up capital, subscribed capital and authorized capital, and voting rights of shareholders.—No banking company shall carry on business in any Province of India, unless it satisfies the following conditions, namely :—

(i) that the subscribed capital of the company is not less than one half of the authorized 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 and such preference shares as may have been issued prior to the 1st day of July 1944;

(iii) that, subject to the provisions contained in clause (iv) hereof, the voting rights of any one shareholder, whether a preference shareholder or an ordinary shareholder, are strictly proportionate to the contribution made by him to the paid-up capital of the company;

(iv) that the voting rights of any one shareholder do not exceed five per cent of the total voting rights of all the shareholders:

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

If a banking company incorporated after 15-1-37 has preference shares issued prior to 1-7-44, it must convert them into ordinary shares. Otherwise it violates the section and cannot carry on business.

13. *Restriction on commission, brokerage, discount, etc. on sale of shares.*—Notwithstanding anything to the contrary contained in sections 105 and 105A of the Indian Companies Act, 1913 (VII of 1913), 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 and charge upon any unpaid capital of the company, and any such charge shall be invalid.

Notes:

It should be noted that the section deals only with unpaid capital and does not touch uncalled capital. Only a charge of the unpaid portion of the calledup capital is prohibited. A mortgage of uncalled capital

has been held to be valid where the articles give the power and there is nothing in the memorandum to the contrary[29]. The power to mortgage uncalled capital must be conferred by precise terms. 'To raise money in various modes' or 'To raise money in such other manner as the company may determine'[30] is enough. But a power to 'borrow on the property of the company'[31] does not confer authority to create a charge on the uncalled capital.

15. *Restrictions as to payment of dividend*.—No banking company shall pay any dividend on its shares until all its capitalized expenses (including preliminary expenses, organization 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.

16. *Prohibition of common directors*.—No banking company incorporated in a Province of India shall have as a director any person who is a director of another banking company.

17. *Reserve fund*.—Every banking company incorporated in a Province of India shall maintain a reserve fund, and shall, out of the net profits of each year and before any dividend is declared, transfer a sum equivalent to not less than twenty per cent of such profits to the reserve fund until the amount of the said fund is equal to the paid-up capital.

Explanation.—For the purposes of this section, the expression "net profits" shall have the meaning assigned to it in subsection (3) of section 87C of the Indian Companies Act, 1913 (VII of 1913).

18. *Cash reserve*.—Every banking company not being a scheduled bank shall maintain by way of cash reserve in cash with itself, or in an account opened with the Reserve Bank, or partly in cash with itself and partly in such account, a sum

(29). Per Jessel MR in Re Phoenix Bessemer Co, 44 LJ Ch 683; Re Pyle Works 44 ChD 534; Newton v Debentureholders of Anglo Australian Etc Co (1895) AC 244; Stanley's case 4 De G J & S 407 takes the opposite view namely that a power to borrow does not include a right to mortgage or charge uncalled capital.

(30). Jackson v Rainford (1896) 2 Ch 349.

(31). Irvine v Union Bank of Australia 2 App. Cas 366.

equivalent to at least two per cent of its time liabilities and five per cent of its demand liabilities and shall file with the Reserve Bank before the fifteenth day of every month three copies of a statement of the amount so held on the Friday of each week of the preceding month with particulars of its time and demand liabilities on each Friday.

Notes :

Any legal fixation of minimum cash reserve is open to the inherent objection that it tends to freeze the cash and thus frustrates the very purpose it is intended to serve and that while in normal and safe conditions the reserve is really unnecessary it will be quite useless and inadequate during a crisis which it is its purpose to serve, even though the law might be suspended during a crisis. Thus regulation of the character and distribution of the assets becomes the more important mode of securing liquidity. Under the Canadian Bank Act 1934, chartered banks must maintain a reserve of 5 percent against all deposits within Canada. The reserve consists of a deposit in the Bank of Canada and of notes of that bank held by the chartered bank. The Central bank pays no interest on such deposits. No distinction is made by the Canadian Act between time and demand deposits. Under the American law, Federal reserve notes cannot be counted as legal reserve by member banks. The language of s. 18 of our Act seems to support the Amercian point of view. The Central Bank of Canada must maintain a reserve of gold coin and bullion to the amount of 25 percent against both its outstanding notes and deposit liabilities. Additional reserve may be made up of silver bullion and foreign exchange. Under the United States Code, Title 12, Article 462, member banks if not situated in a reserve or central reserve city must maintain a balance of 7 percent of demand deposits and 3 percent of time deposits. If situated in a reserve city the percentages are 10 and 3, and if situated in a central reserve city the percentages are 13 and 3. The Board of Governors can by an affirmative vote of not less than 4 change the requirements as to the balance which the member banks must keep in the Reserve Bank.

19. *Restriction on nature of subsidiary companies.*—(1) A banking company shall not form any subsidiary company except a subsidiary company formed for one or more of the following purposes, namely, the undertaking and executing of trusts, the undertaking of the administration of estates as executor, trustee or otherwise, the providing of safe deposit vaults or

with the previous permission in writing of the Reserve Bank, such other purposes as are incidental to the business of banking.

(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 forty per cent of its own paid-up share capital and reserves, whichever is less:

Provided that any banking company which is on the date of the commencement of this Act holding any shares in contravention of the provisions of this sub-section shall not be liable to any penalty therefor if it reports the matter without delay to the Reserve Bank and if it brings its holding of shares into conformity with the said provisions within such period, not exceeding two years, as the Reserve Bank may think fit to allow.

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

Notes:

The following extract from the *Eastern Economist*[32] on the merits and demerits of chain and group banking will serve to clarify the nature of the evil which the section is intended to remedy. 'We cannot without risk depart from the principle of deposit banking and permit any close integration of industry and trade with banks at least for some years yet. While mixed banking is to be avoided it needs to be differentiated from subsidiary or group banking, a line of development prohibited by the clause. It should be open to a bank to start subsidiary companies not only for purposes incidental to the business of banking but for banking itself. Big banks could form and encourage their subsidiaries for the spread of banking...In the United States chain banking and group banking are prevalent. In chain banking one individual or group of individuals hold the major interest of the stock of newly

(32). Dated 9th May 1947.

started banks through ownership and service contracts, whereas in group banking independently incorporated banks are controlled by a corporation or holding company. Very often the controlling corporation is a nonbanking corporation and in several cases such control by a banking company is barred. In fact the holding of bank stocks by other banks is regulated in most states. But leadership of a chain of banks by an apex bank is not in effect eliminated. The rapid rise of group banking after 1926 led to several Congressional investigations and to the provisions of the 1933 Banking Act for the regulation of group banking. These provisions require holding company affiliates to obtain permits before voting the stock of member banks within their control. The Board of Governors of the Federal Reserve System in acting on the application consider their financial condition insist upon conditions such as acquiring by the affiliate of cerain reserves of marketable securities bearing a ratio to all the bank stocks controlled, periodical examination of banks etc.....The system of group banking could be given a trial in India under proper and adequate safe guards. It is however hardly necessary to emphasise the dangers of unguarded illregulated developments with the possibility of their interlocking and enveloping the entire system in disaster. The concentration of financial power which such a development will denote is also quite obvious.'

It is difficult to detect any advantages possessed by the group or chain system which are not possessed by the branch system. It is true that most chain and group banking systems have grown up in the states in U. S. A. which have prohibited branch banking. The Marine Midland system of New York no doubt was formed for this reason. Soon after limited branchbanking privileges were extended to New York State in 1934, this group system did away with several of its units and made branches of them. In group systems supervision is very difficult as the holding company which controls the operating units is not subject to the same supervision as the units themselves. The group type of banking of course makes the double liability feature of bank stock practically meaningless. Chain banking has been very unsuccessful in the United States and the number of chains has declined drastically since 1925.

Sub-S (*1*) The only exceptional cases where a banking company can hold more than 30 percent of the paidup capital of another company or an amount more than 40 percent of its own share capital in the form of capital of another company are those mentioned in this sub-sec tion.

Sub-S (*3*) This subsection prohibits a banking company from holding shares in another company in the management of which any managing director or manager of the banking company is concerned or interested

even within the limits permitted by sub-s (2).

See also notes to s. 23 post.

20. *Restrictions on loans and advances.*—(1) Notwithstanding anything to the contrary contained in section 54A of the Indian Companies Act, 1913 (VII of 1913), no banking company shall make any loans or advances on the security of its own shares, or grant unsecured loans or advances to any of its directors or to firms or private companies in which it or any of its directors is interested as partner or managing agent or to any individuals, firms or private companies in cases where any of the directors is a guarantor.

(2) Every banking company shall, before the close of the month succeeding that to which the return relates, submit to the Reserve Bank a return in the prescribed form and manner showing all unsecured loans and advances granted by it to companies * * * in which it or any of its directors is interested as director or managing agent or guarantor.

(3) If on examination of any return submitted under sub-section (2) it appears to the Reserve Bank that any loans or advances referred to in that sub section are being granted to the detriment of the interests of the depositors of the banking company, the Reserve Bank may, by order in writing, prohibit the banking company from granting any such further loans or advances or impose such restrictions on the grant thereof as it thinks fit, and may by like order direct the banking company to secure the repayment of any such loan or advance within such time as may be specified in the order.

Notes:—

Sub-S (1): The section does not prohibit the grant of unsecured loans by a banking company to a private company in which also one of its directors is a director.

Sub-S (2): While sub-s (1) applies to firms and private companies, sub-s (2) applies to public companies and private companies in which any of the directors of the banking company is interested as director.

Sub-S (3): A loan already made cannot be invalidated. Only further loans can be prohibited or controlled. As regards loans already granted the only power given to the Reserve Bank is the power to direct the banking company to secure its repayment within a specified period.

This section can be usefully compared with the Pakistan Banking Comapanies Control Act 22 of 1948, s. 7. While s. 7 (2) of the Paksitan Act applies to private companies, s. 20 of the Indian Act applies also to public companies.

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 so to do, it may determine the policy in relation to advances to be followed by banking companies generally or by any banking company in particular, and when the policy has been so determined, all banking companies or the banking company concerned, as the case may be, shall be bound to follow the policy as so determined.

(2) Without prejudice to the generality of the power vested in the Reserve Bank under sub-section (1), the Reserve Bank may give directions to banking companies, either generally or to any banking company or group of banking companies in particular, as to the purposes for which advances may or may not be made, the margins to be maintained in respect of secured advances and the rates of interest to be charged on advances, and each banking company shall be bound to comply with any directions as so given.

Notes :

This section corresponds to s. 6 of the Pakistan Banking Companies Control Act 22 of 1948.

The wide and all embracing powers given by this section to the Reserve Bank to formulate credit policies and compel their adoption by banking concerns have evoked much criticism. The '*Eastern Economist*' is against giving such a *carte blanche* to the Reserve Bank especially when it will take many years for the Bank to recruit the staff necessary for carrying out the complicated and onerous functions imposed upon it by the Act. The paper ascribes these powers of detailed-even ubiquitous-control over the banking system vested in the Reserve Bank to the recent bank failures. The section creates a financial GHQ which unlike its military counterpart will not only plan strategy but also direct operations in the field. It was a responsibility which might not weigh on the old Lady of Threadneedle Street. But the Reserve Bank was by no means an old lady-just 15 years old—possibly sure of its ability as young

things usually are, but not yet very sure of its experience in a difficult world. There was no mature Central Banking system in this country which only awaited the word of the legislature to take control of and manage the entire banking system. It was very difficult suddenly to find the supermen who were to plan banking strategy. In the higher strata of policy making inadequacy of personnel-qualitatively or quantitatively-may well be dangerous for here the policies as evolved by an individual or a few individuals are to take the place of the individual decisions of bankers all over the country, which means that the adverse effects of any errors of judgment that may occur are consequently increased. It is seriously to be considered whether the Banking Bill has not gone too far in the matter of the blanket powers and functions which it proposes to assign to the Reserve Bank. The bill had the avowed object of protecting the interests of depositors but this was not necessarily synonymous with distrusting all banking managements thoroughly, imposing every conceivable restriction on their discretion, rights and functions, and setting up a Cereberus which was the Reserve Bank-to police them. S. 21 which was unjust, unreasonable and superfluous would not provide the atmosphere in which commercial banking would thrive. In their casual consideration of this crucial clause the Select Committee has overlooked the vital fact that it is simply not possible-even were it desirable for the Reserve Bank to pull down the existing banking structure and build a new.....

We must confess that is difficult to be enthusiastic about a bill which is drawn from widely different strands of thought and the best that can be said of it is that it may be accepted lest even worse confusion should befall. 'S. 21 went far beyond the terms of Ss. 5 and 9 (1) (b) of the Banking Companies Control Ordinance 1948 which it was intended to replace. Under the ordinance if it was not proved that the bank was conducting its affairs in a manner which was dertimental to the interests of depositors, the inquisitorial powers given to the Reserve Bank by those sections referred to above-namely to impose on the banking company the policy regarding advances framed by the Reserve Bank, and to direct banking companies to take or not to take any action relating to banking did not come into play. The present s. 21 had gone beyond the ordinance in this respect. There was under the Bill interference with the bank's policy regarding advances even though it was not proved that the interests of depositors were in jeopardy. This innovation should be supported on some rational basis. No doubt there was precedent in the banking laws of other countries for the present provision but the point to be considered was should those provisions be followed here having

regard to the nascent state of the banking system of this country which has yet to develop. The Commonwealth of Australia Banking Act (before nationalisation) s. 27 authorised the Commonwealth Bank if it was satisfied about the public interest to determine the policy to be followed in relation to advances. Under the recent Guatemalan law the superintendent of banks can present to banks suggestions or recommendations which he deems advisable. As against the above measures of a drastic type were the other set of laws which believed in moral persuasion as opposed to legal compulsion as a means of credit control. After 1-11-47 control of credit policy in the USA rested on nothing firmer than a directive on general principles issued in November 1947. S. 4 of the Federal Reserve of Act USA also was an example of this type of law which laid stress on moral persuasion and not legal compulsion as a means of credit control. Under that section each federal reserve bank must keep itself informed of the general character and amount of the loans and investments of its member banks with a view to ascertaining whether undue use is being made of credit facilities for the speculative carrying on trading in securities, real estate or commodities, or for any other purpose inconsistent with the maintenance of sound credit conditions: and in determining whether to grant or refuse advances the federal reserve banks are required to give consideration to this information. The Bank of England Act, 1946, s. 4 also is on similar lines. The Bank of England is authorised by that section to ask information from bankers or to make recommendations to them and on being required by the Treasury to issue directions. But the Treasury is required to consult the banker concerned before any directions are given. The Bank and the Treasury are debarred from making any recommendations or giving any directions with regard to any particular customer. The recommendations or directions are privileged from public scrutiny at the discretion of the Treasury under the Official Secrets Act. No doubt the Emergency Banking Law of USA of 9-3-33 prohibited member banks of the Federal Reserve System from transacting any business except to such extent and subject to such regulations, limitations and restrictions as might be prescribed by the Secretary to the Treasury with the approval of the President, but this was an emergency provision and the normal provisions of the Federal Reserve Act require the federal reserve banks not to discriminate between applicants for funds. As the Governor of the Reserve Bank had told the Government extension of bank credit indiscriminately was not one of the causes of inflation. Control of credit was understandible in a mature and welldeveloped economy where the forms of credit and of advances are standardised but not in a country

where banking has still to develop. Having regard to the fact there were 787 banks in prepartition India, it would be difficult for the Reserve Bank to be in detailed control of individual credit dealings. 'We cannot be blind to the danger that a nationalised Reserve Bank acting under the directions of the Finance Ministry can give academic and illconsidered—because based on incomplete data regarding the credit dealings of hundreds of banking companies—directions. The primary need in banking reform is protection of the depositor. The new Banking Act when it becomes law will contain stringent provisions to ensure this general result. We think it will be advisable for Government not to go further with and not to interfere in greater detail; if s. 35 (1) of the Banking Bill now before the country has to be expanded we would recommend for consideration the less rigorous language of s. 4 of the Federal Reserve Act.'

22. *Licensing of banking companies.*—(1) Save as hereinafter provided, no company shall carry on banking business in any Province of India unless it holds a licence granted by the Reserve Bank in such behalf.

(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 in any Province of 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 subsection (1) shall be deemed to prohibit the company from carrying on banking business until it is granted a licence in pursuance of sub-section (2) or is by notice in writing informed by the Reserve Bank that a licence cannot be granted to it.

Provided further that the Reserve Bank shall not give a notice as aforesaid to a banking company in existence on the commencement of this Act before the expiry of the three years referred to in sub-section (1) of section 11 or of such further period as the Reserve Bank may under that sub-section think fit to allow.

(3) Before granting any licence under this section, the Reserve Bank may require to be satisfied by an inspection of

the books of the company or otherwise that all or any of the following conditions are fulfilled, namely:—

(*a*) that the company is in a position to pay its depositors in full as their claims accrue;

(*b*) that the affairs of the company are not being conducted to the detriment of the interests of its depositors;

(*c*) in the case of a company incorporated elsewhere than in a Province of India that the Government or law of the country in which it is incorporated does not discriminate in any way against banking companies registered in a Province of India and that the company complies with all the provisions of this Act, applicable to banking companies incorporated outside the Provinces of India.

(4) The Reserve Bank may—

(*a*) cancel any licence granted under this section where any of the conditions set out in sub-section (3) on the fulfilment of which it required to be satisfied when granting the licence ceases to be fulfilled, or if the company ceases to carry on banking business * * in the Provinces of India or goes into liquidation.

(*b*) at any time after granting a licence under this section require that any of the said conditions on the fulfilment of which it did not require to be satisfied when granting the licence shall be fulfilled to its satisfaction within such time as it may specify, and if the condition is not so fulfilled, cancel the licence.

(5) Any banking company aggrieved by the cancellation of its licence under sub-section (4) may appeal to the Central Government, and the decision of the Central Government on such appeal shall be final.

Notes:

Sub-S (2): Existing banking companies have to apply before 16-9-49 for licence to the Reserve Bank. Even if an existing banking company is not given a licence it can carry on business till 16-3 52, or till 16-3-53 if extension is granted by the Reserve Bank. This is the effect of the second proviso to the sub-section.

Sub-S (3) (c): This clause imposes certain conditions to be fulfilled by foreign banking companies. They are (i) Reciprocal treatment should be accorded by the law of the country of origin of the foreign banking company to companies registered in India (ii) The foreign company should comply with the all the provisions of the Act. See ss. 11 (2), 29, 30, 33.

23. *Restrictions on opening of new, and transfer of existing, places of business.*—No banking company shall open a new place of business or change, otherwise than within the same city, town or village, the location of an existing place of business without obtaining the prior permission in writing of the Reserve Bank; and before giving any such permission 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.

Provided that nothing in this 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, conference or *mela.*

Explanation.—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.

Notes :

The controversy over the comparative merits of unit and branch banking is an ancient one. The following are the advantages claimed for branch banking by its protagonists: (1) Cheap remittance facilities are available to branch banks and this facility in the case of unit banks with correspondent system is more costly and inconvenient. (2) Spreading of risks geographically is possible in the case of branch banks. Branch banks can claim the advantage of putting eggs in different baskets. (3) Benefits of the principle of division of labour are assured to the

branch banks. Their employees can look after the broader problems of bank management like that of distribution of assets, rules relating to collateral securities and recruitment of staff. The one great advantage claimed for unit banking is direct personal knowledge of local businessmen, their qualifications for business, and thier needs, which knowledge branch banks do not have. In India the unit banks are largely represented by the nonscheduled banks, indigenous bankers and co-operative banks. It is not true to say that the unit banks of India are eminently suited to finance agriculture and smallscale industries in rural areas. A large part of the commercial crops like cotton and jute is financed by big banks. In India there is wide disparity in regional finances and only branch banks which pool resources in richer areas can supply the necessary finance in rural areas for carrying on economic activities. The need of India is development of branch banking on healthy lines. Indiscriminate opening of branches especially during periods of cheap money conditions would when depression sets in, or money becomes tight, make the working of the branches uneconomical resulting in their closure and ultimate weakening of the parent bank. The section is intended to make provision against such a contingency. The Canadian banking system is too impersonal. Local branch managers must constantly refer all applications for loans above a small amount to the head office.

The section contemplates two things: opening a new place of business and changing the venue of an existing place of business to a place outside the city, town, or village in which it was previously located. The opening of new places of business temporarily for a period not exceeding one month is permitted only on occasions of exhibitions, conferences or *melas*. Under article 521 of the US Code Title 12 the Board of Governors can permit a federal reserve bank to establish branch banks within the federal reserve district in which it is located. The board of directors should be not more than 7 nor less than 3. Majority of one are appointed by the federal reserve bank of the district and of the Federal Reserve System. They hold office during the pleasure of the Board of Governors who can require any federal reserve bank to discontinue any branch.

24. *Maintenance of a percentage of assets.*—(1) After the expiry of two years from the commencement of this Act, every banking company shall maintain in cash, gold or unencumbered approved securities, valued at a price not exceeding the current market price, an amount which shall not at the close of business on any day be less than twenty per cent of the total of its time and demand liabilities in the Provinces of India.

Explanation—For the purposes of this section, liabilities shall not include the paid-up capital or the reserves or any credit balance in the profit and loss account of the company or the amount of any loan taken from the Reserve Bank.

(2) In computing the amount for the purposes of sub-section (1), the deposit required under the proviso to sub-section (2) of section 11 to be made with the Reserve Bank by a banking company incorporated elsewhere than in a Province of India and any balance maintained by a banking company with the Reserve Bank or its agent or both, including in the case of a scheduled bank the balance required under sub-section (1) of section 42 of the Reserve Bank of India Act, 1934 (11 of 1934), to be so maintained, shall be deemed to be cash maintained.

(3) For the purpose of ensuring compliance with the provisions of this section, every banking company shall, not later than fifteen days after the end of the month to which it relates, furnish to the Reserve Bank in the prescribed form and manner a monthly return showing particulars of its assets maintained in accordance with this section, and its time and demand liabilities at the close of business on each Friday during the month, or if any Friday is a public holiday under the Negotiable Instruments Act, 1881 (XVI of 1881), at the close of business on the preceding working day.

Notes:

The percentage fixed in the 1944 Bill was 25 and this was reduced to 20 percent afterwards. The *Eastern Economist*[33] commented as follows on this reduction: 'The lower specification should be a welcome relief to smaller banking institutions which urged a modification of this provision. The scheduled banks have during and since the War kept something like 50 percent of their assets in the form of giltedgeds and the proposed percentage will call for no new immediate upward adjustment excepting perhaps for some of the smaller banks. The only question is whether when the banking system embarks on financing a higher level of activity and trade by means of loans and advances and finds the necessity for switching over from the giltedgeds to commercial bills and advances, the compulsory investment of 20 percent, in approved

(33). Dated 9th May 1947.

securities will prove to be an inhibition. Having regard to the wide margin still open and to the fact that liquid assets are also necessary such an apprehension would seem to be without basis. As to whether this by itself is adequate assurance of liquid or nondepreciable assets it will very much depend on (i) whether the banking system will as a whole be confronted with the choice of selling their approved securities and (ii) whether and how far the Central Bank and the Government will give support to the maintenance of giledged values. In this again such fears may be ruled out by normal standards. In order to give protection to depositors in British India in relation to banks incorporated outside British India, the latter banks are required to keep 75 percent of assets in British India as against their British Indian liabilities.' S. 8 of the Pakistan Banking Companies Control Act 22 of 1948 gives only a time of three months to comply with the provisions of the section. The Indian Act is more liberal and gives a time of two years. While s. 11 deals with minimum paidup capital and reserves and s. 18 deals with cash reserve, this section deals with maintenance of percentage of assets in cash gold etc. S. 25 deals with maintenance of a percentage and of assets in the Provinces of India

25. *Assets in the Provinces of India.*—(1) The assets in the Provinces of India of every banking company at the close of the last working day of every quarter shall not be less than seventy-five per cent of its demand and time liabilites therein.

(2) Every banking company shall, within one month from the end of every quarter, submit to the Reserve Bank a return in the prescribed form and manner of the assets and liabilities referred to in sub-section (1) as at the close of the last working day of the previous quarter.

(3) For the purposes of this section,—

(*a*) "assets" shall be deemed to include such promissory notes, bills of exchange and securities as the Reserve Bank is, under the Reserve Bank of India Act, 1934 (II of 1934), empowered to purchase, discount or make advances against, and export bills drawn in, and import bills drawn on, and payable in India and expressed in such currencies as the Reserve Bank may from time to time approve in this behalf;

(*b*) "quarter" means the period of three months ending on the last day of March, June, September or December.

Notes:

This section may be compared with the Pakistan Banking Companies Control Act 22 of 1948, s. 9. Under the Pakistan Act the percentage of time and demand liabilities which the banking companies have to maintain as assets in the Provinces shall be such percentage not exceeding 75 percent as the State Bank may from time to time prescribe. In India the percentage is a fixed one, namely 75 percent. The necessity for the Pakistan Act is explained as follows in the statement of objects and reasons: 'A large proportion of the assets of banks operating in Pakistan are held mainly in the form of balances with their head offices the majority of which are situated in India or in the form of Government of India securities. Out of 34 scheduled banks with total deposits of Rs 107.33 crores, 25 scheduled banks with deposits amounting to Rs 48.25 crores have their head offices in India and 7 exchange banks with deposits amounting to Rs 29.1 crores have their head offices elsewhere. This means 72 percent of the deposits received by scheduled banks operating in Pakistan are held by Non-Pakistan banks. This is hardly satisfactory as the normal practices is that banks operating in a country are required to hold substantial parts of deposits in the form of assets in that country. The Bill seeks to remedy the situation in which banks hold the majority of their assets outside Pakistan and follows closely the lines of the Banking Companies Control Ordinance issued by the Government of India.'

26. *Return of unclaimed deposits.*—Every banking company shall within thirty days after the close of each calendar year, submit a return in the prescribed form and manner to the Reserve Bank as at the end of such calendar year of all accounts in the Provinces of India which have not been operated upon for ten years, giving particulars of the deposits standing to the credit of each such account:

Provided that in the case of money deposited for a fixed period the said term of ten years shall be reckoned from the date of the expiry of such fixed poriod.

27. *Monthly returns and power to call for other returns and information.*—(1) Every banking company shall before the close of the month succeeding that to which it relates submit to the Reserve Bank a return in the prescribed form and manner showing its assets and liabilities in the Provinces

of India as at the close of business on the last Friday of every month or if that Friday is a public holiday under the Negotiable Instruments Act, 1881 (XVI of 1881), at the close of business on the preceding working day.

(2) The Reserve Bank may, by notice in writing, require a banking company at any time to furnish it within the time specified therein or such further time as the Reserve Bank may allow, with statements and information relating to the business of such banking company, and without prejudice to the generality of the foregoing power, may call for information every half-year regarding the classification of advances and investments of banking companies in respect of industry, commerce and agriculture.

Notes :

This section can be compared with s. 10 (2) of the Pakistan Banking Companies Control Act 22 of 1948. Under the Pakistan Act banking companies have to submit to the State Bank a halfyearly statement regarding classification of investments and advances without any requisition from the State Bank. Under the Indian Act, s. 27 (2), the Reserve Bank may by notice in writing call for such statements and then only there is an obligation cast upon the the banking company to comply with such requisition. S. 27 (2) corresponds to s. 11 (1) (e) of the Pakistan Act.

English Law : The English Companies Act 1948 (11 & 12 Geo VI, c. 38) lays some special obligations on banking companies in the matter of furnishing certain information relating to the activities of such company. See Form G Third Schedule Indian Companies Act. S. 433 of the English Act runs as follows: '(1) Every company being a limited banking company or an insurance company or a deposit provident or benefit society shall before it commences business and also on the first Monday in February and the first Tuesday in August in every year during which it carries on business make a statement in the form set out in the 13th Schedule to this Act or as, near thereto as circumstances admit. (2) A copy of the statement shall be put up in a conspicuous place in the registered office of the company and in every branch office or place where the business of company is carried on (3), Every member and every creditor of the company shall be entitled to a copy of the statement on the payment of a sum not exceeding sixpence. (4) If default is made in comlying with the section the company and every officer of the company

who is in default shall be liable to a default fine. (5) For the purposes of this Act a company which carries on the business of insurance in common with any other business or businesses shall be deemed to be an insurance company.....(6), ...13th Schedule to the English Companies Act 1948: Form of Statement to be published by Banking etc Companies: The share capital of the company is.....divided into...shares of... each. (If the company has no share capital the portion of the statement relating to capital and shares must be omitted). The number of shares issued is.....Calls to the amount of.....pounds per share have been made which the sum of..... pounds has been received. The liabilities of the company on the first day of January (or July) were—Debts owing to sundry persons by the company On judgment £ On specialty £ On notes or bills £ On simple contracts £ On estimated liabiltites £

The assets of the company on that day were—Government securities stating them. Bills of Exchange and promissory notes £ Cash at the bankers £ Other securities £

28. *Power to publish information.*—The Reserve Bank, if it considers it in the public interest so to do, may publish any information obtained by it under section 27 in such consolidated form as it thinks fit.

Notes :

This section corresponds to s. 12 of the Pakistan Banking Companies Control Act 22 of 1948. Under our Act the information has to be published in a consolidated form while under the Pakistan Act it has to be published in such form as the State Bank may think fit.

29. *Accounts and balance-sheet.*—(1) At the expiration of each calendar year, every banking company incorporated in a Province of India, in respect of all business transacted by it, and every banking company incorporated outside the Provinces of India, in respect of all business transacted through its branches in the Provinces of India, shall prepare with reference to that year a balance-sheet and profit and loss account as on the last working day of the year in the Forms set out in the Third Schedule or as near thereto as circumstances admit:

Provided that in the case of a banking company incorporated outside the Provinces of India, the profits and loss account may be prepared as on a date not earlier than two months before the last working day of the year.

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

(*a*) in the case of a banking company incorporated in a Province of India, by the manager or the principal officer of the company and where there are more than three directors of the company, by at least three of those directors, or where there are not more than three directors, by all the directors, and

(*b*) in the case of a banking company incorporated outside the Provinces of India, by the manager or agent of the principal office of the company in the Provinces of India.

(3) Notwithstanding that the balance-sheet of a banking company is under sub-section (1) required to be prepared in a form other than the form marked F in the Third Schedule to the Indian Companies Act, 1913 (VII of 1913), the requirements of that Act relating to the balance-sheet and profit and loss account of a company shall, in so far as they are not inconsistent with this Act, apply to the balance-sheet or profit and loss account, as the case may be, of a banking company.

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

Notes:

This section deals with the form in which the balancesheet of a banking company has to be filed. S. 46 punishes any person who in a balancesheet makes a statement which is false in any material particular knowing it to be false or wilfully omits to make a material statement. The requirements of the Indian Companies Act relating to balance-sheet and profit and loss account have to be followed by banking companies in so far as they are not inconsistent with this Act.

Disclosure of Bad and Doubtful Debts by Banking Company in Balance Sheet: This topic has had an interesting history and the law has swayed many times backwards and forwards and it is to be hoped that it has taken a stationary position as regards banking companies by virtue of the enactment of the Third Schedule to the Banking Companies Act 1949. The earliest statute of India the act of 1882, made no

distinction between banking and other companies. Under the Companies Act of 1913 the burden imposed on banking companies was slightly heavier. They had to distinguish between debts considered good and debts considered doubtful. The High Court in the case of *Shamdasani v Pockhanwala*[34] suggested amendment of Form F, Third Schedule, Companies Act, and the Governor General responded by his Notification dated 31st March 1927 under which banks had to show in their balancesheet only bad debts other than those for which provision had been made to the satisfaction of the auditors. The Amending Act of 1936 restored the law to the 1882 position treating banking and other companies alike but on 16th January 1937 the Central Government issued another Notification the effect of which was to restore to banking companies the privileged position which they enjoyed under the 1927 Notification. A Full Bench of the Bombay High Court in *Shamdasani v Central Bank of India*[35] held that the notification of 1937 was invalid because in the words of Lokur J 'to differentiate between one class of companies and another would be amending s. 132 and the power of legislating was not conferred upon the Central Government by s. 151 Companies Act. 'In the words of Beaumont CJ' In my opinion the Central Government has no power under s. 151 to alter Form F in such a way as to differentiate between companies because it involves in substance an alteration of s. 132 of the Act. The legal position has been regularised now by the enactment by the Central Legislature of the Indian Companies Amendment Act 30 of 1943, which received the Governor General's assent on 27th Novemeber 1943. This Act has made the necessary changes in the Third Schedule, Form F, itself and the privileged position which banking companies enjoyed under the 1927 notification has been confirmed and placed beyond the possibility of legal attack. The position is the same under Form A Third Schedule to the Banking Companies Act 1949. In England a practice has arisen whereby only banking companies are allowed the privilege of concealing their bad and doubtful debts and their secret reserves. [36]

Items in Balancesheet: Deposits:

Suppose a company has a deposit of Rs 3 lakhs and it has made a loan of Rs 50000. How is the deposit to be shown in the balancesheet? Should a deduction be made from the total deposit by subtracting the amount of the loan? Should the deposits be shown as Rs 3 lakhs or as Rs 2½ lakhs? The Calcutta High Court has held that the actual deposits

(34). AIR (1927) Bom 414=29 Bom LR 722.

(35). AIR (1944) Bom 107=46 Bom LR 70 (FB).

(36). See the Observations of Buckly J in *Newton* v *Birmingham Small Arms Co* (1906) 2 Ch 378 (387).

should be shown without subtracting the amounts of loans. Cunliffe J observed in *Superintendent and Remembrancer of Legal Affairs Bengal v Akhila Bandu Guha* [37] : It is quite obvious that a loan and a deposit are items differing completely in form from the balancesheet point of view. Strictly speaking they ought to appear on different sides for one is an asset and the other a liability. Consolidating the two and presenting them as one item to the readers to my mind is a striking case of nondisclosure amounting to a suppression of the truth.....A balancesheet need not be, in fact it must not be, a mere inventory. It is supposed to be a pictorial representation of the trading position of the company easily appreciated not by ignorant people but by persons who are reasonably able to understand commercial expressions and commercial conditions.

Sub-S (*3*): Requirements of Companies Act relating to Balancesheet etc in so far as they are not inconsistent with Banking Companies Act apply to banking companies :

The effect of this sub-section is to make ss. 131, 131-A, 132-A, 135 & 136 of Companies Act applicable to banking companies, because these sections are not inconsistent with the present Act. S. 131 obliges the directors at some date not later than eighteen months after the incorporation of the company and subsequently once at least in every calendar year to lay before the company in general meeting the balancesheet and profit and loss account. The balancesheet has to be audited and the auditor's report has to be attached to it and read before the company in general meeting. The balancesheet together with the auditor's report has to be sent to members 14 days before the general meeting and must be open to inspection by members. The directors under s. 131-A have to attach to the balancesheet their report relating to the state of the company's affairs, the amount which they recommend to be paid by way of dividend etc. S. 135 gives members of a company the right to be furnished with copies of the balancesheet at a charge not exceeding six annas for every hundred words. Banking companies by s. 136 have to publish twice yearly in February and August statements in the form marked G in the Third Schedule. By s. 132-A the balancesheet is to include particulars also as to subsidiary companies.

Interest on Bad Debts: Whether can be shown in Profit Columns:

There has been divergence of judicial opinion on this point. In *Official Liquidators of Karachi Bank v Directors of Karachi Bank* [38] the Sind Court held that it was not permissible to show interest on

(37). AIR (1936) Cal 680=40 CWN 1341.

(38). AIR (1932) Sind 4=25 SLR 297=IR (1931) Sind 145=143 IC 993.

bad debts as profit. But in another Sind case *Official Liquidators v Shewaram*[39] *Mehta* JC took the opposite view, and held that what the company considered bad and doubtful need not necessarily be irretrievable. The proper ascertainment of profits in the case of companies is of great importance only in order to avoid possibility of dividend wholly or partially out of capital which is strictly forbidden. If that is guarded against the showing of the proift on paper may not be so vitally misstating the position of the bank after all.

Regulation 107: Table A, Companies Act: How far applicable to Banking Companies: Regulation 107 of Table A requires some additional matters to be mentioned in the profit and loss account such as the amount of gross income distinguishing the several sources from which it has been derived, and the amount of gross expenditure distinguihsing the expenses of the establishment, salaries and other like matters. If the particulars required by that regulation are not given in the profit and loss account of a banking company which complies in all other respects with the Third Schedule to the Banking Companies Act, can it be said that s. 29 (1) is contravened so as to attract the penal provisions of s. 46 (4) ? Perhaps not for the Third Schedule to the 1949 Act is selfcontained and there is no reference to Regulation 107 in it. The breach of the Regulation cannot be visited with penal consequences. This view derives support from the observations of Rajadhyaksha & Lokur JJ in *Shamdasani v Central Bank of India.*[4]

Sub-S-(*4*) : Will the sub-section be complied with if only the alterations in the Forms of the Third schedule are published without the altered Forms themselves being published ? This point occasioned much controversy under the old s. 151 of the Companies Act before its amendment in 1943. The old law required the altered form to be published and in *Shamdasani v Central Bank of India*[40] the section was interpreted literally and it was held that only the altered form should be published and it was no good publishing only the alterations and saying it was just as good or even better. It might be that if the altered form is published without distinguishing the alterations in coloured ink or by some other distinctive form, it would be very difficult to find out what the alterations are, but what the section requires is publication of the altered form and not the alterations. The Act 30 of 1943 has now made the position clear and it is now enough if the alterations alone are published. The language

(39). AIR (1933) Sind 12=26 SLR 211=IR (1932) Sind 163=146 IC 31=33 Cr LJ 891=(1933) Cr C 36 (2).

(40). AIR (1944) Bom 107=46 Bom LR 70 (FB).

of sub-s (4) of the present section can be interpreted as lending support to the view of the Bombay High Court in the *Shamdasani case* and as running contrary to Act 30 of 1943.

30. *Audit*—(1) The balance-sheet and profit and loss account prepared in accordance with section 29 shall be audited.—

(*a*) in the case of a banking company incorporated in a Province of India, by a person duly qualified under any law for the time being in force to be an auditor of companies;

(*b*) in the case of a banking company incorporated outside the Provinces of India, either by such an auditor as aforesaid, or by a person duly qualified to be an auditor under the law of the country in which the company is incorporated.

(2) The Auditor shall have the powers of exercise the functions vested in and discharge the duties and be subject to the liabilities and penalties imposed on, auditors of companies by section 145 of the Indian Companies Act, 1913 (VII of 1913).

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

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

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

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

(*d*) whether the profit and loss account shows a true balance of profit and loss for the period covered by such account;

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

Notes:

Sub-S-(1) Clause (b) : Under the English companies Act 1948, s. 161, a person shall be qualified for being appointed as auditor only if he is a

member of a body of accountants established in the United Kingdom and recognised by the Board of Trade, or he is authorised by the Board of Trade to be so appointed because he has similar qualifications obtained outside the United Kingdom or because he has obtained adequate knowledge and experience in the course of his employment by a member of a body of recognised accountants, or because he has before 6-8-47 practised as an accountant in the United Kingdom. This sub-section does not apply to an exempt private company which is defined by s. 129 as one which satisfies the following conditions:-(i) The conditions in the 7th schedule must he satisfied as to the persons interested in the company's shares and debentures (ii) Number of persons holding debentures in the company is not more than 50 (joint holders being treated as a single person) (iii) No body corporate is a director of the company and neither the company nor any of its director is party or privy to any arrangement where by the policy of the company is capable of being determined by persons other than the directors, members and debentureholders or trustees for debentureholders. None of the followni persons shall be qualified for appointment as the auditor of a company (i) Officer or servant of the company (ii) Person who is a partner of or in the employment of an officer or servant of the company (iii) A body corporate. (iv) does not apply to an exempt private company. A person shall also not be qualified for appointment as auditor of a company if he is by virtue of the foregoing provisions disqualified for appointment as auditor of any other body corporate which is that company's subsidiary or holding company, or a subsidiary of that company's holding company or would be so disqualified if the body corporate were a company. Scottish firms are qualfied for appointment as auditors only if all the partners are qualified for appointment as auditor. A body corporate acting as auditor is liable to a fine not exceeding One Hundred Pounds. Under the Indian Companies Act, s. 144 (5) (ii) a partner of a director or officer of a private company cannot be appointed as auditor. Under the English Act 1948 such a person can be appointed as a auditor if the company is an exempt private company.

Sub-S-(*3*): The auditor has got wider powers in auditing the accounts of banking companies. He can point attention in his report to *ultra vires* transactions indulged in by the company and indicate whether the returns received from the branch offices of the company have been adequate for the purposes of his audit. Clause (c) of sub-s (3) corresponds to article 2 of the 9th schedule to the English Companies Act 1948. Clause (d) corresponds to a article 3 (2) (b) of the 9th schedule to the English Companies Act 1948.

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

Provided that the Reserve Bank may in any case extend the said period of three months for the furnishing of such returns by a further period not exceeding three months.

32. *Copies of balance-sheets and accounts to be sent to registrar.*—(1) Where a banking company in any year furnishes its balance-sheet and accounts in accordance with the provisions of section 31 it may, or when it is a private company, * * * shall, at the same time send to the registrar three copies of such balance-sheet and account and of the auditor's report, and where such copies are so sent, it shall not be necessary for the company to file copies of the balance-sheet and accounts with the registrar as required by sub-section (1) of section 134 of the Indian Companies Act, 1913 (VII of 1913), and such copies so sent shall be chargeable with the same fees and shall be dealt with in all respects as if they were filed in accordance with that section.

(2) When, in pursuance of sub-section (2) of section 27, the Reserve Bank requires any additional statement or information in connexion with the balance-sheet and accounts furnished under section 31, the banking company shall, when supplying such statement or information, send a copy thereof to the registrar.

Notes :

A tough problem arises as to the combined effect of ss. 76 (1), and 131 (1) of the Indian Companies Act taken with (in the case of banking companies) s. 134 (1) of the Indian Companies Act or s. 32 (1) of the Banking Companies Act 1949. S. 76 deals with the holding of a general meeting at least once in every calendar year while s. 121 makes it obligatory on the part of the directors to lay before the annual general meeting copy of the balancesheet. Only after these two processes comes the last link in the chain of obligations, namely sending three copies of the balancesheet etc. to the Registrar. Suppose the directors of a bank-

ing company have failed to hold a general meeting for one whole calendar year and have not placed the balancesheet before any meeting thus violating ss. 76 and 131. Can they be convicted under s. 134 of the Companies Act or s. 32 of the Banking Companies Act? Is it open to the accused to plead in answer to a charge under s. 134 his prior default in respect of the calling of the prescribed general meeting and placing before such meeting a duly prepared and audited balancesheet? Teunon & Richardson JJ in *Debendra Nath v Registrar of Joint Stock Companies*[41] took the view that it was not open to the accused charged under s. 134 to plead his prior default. They relied on the English decision of *Park v Lawton.*[42] Lodge J in *Bhagirath v Emperor* AIR (1948) Cal 43 also took a similar view.

Pandrang Row J took the opposite view in *NVL Narasimha Rao & Others Inre.*[43] According to this learned judge, s. 134 clearly contemplated the sending of the balancesheet after it had been placed before the company in general meeting and where there was no such placing of the balancesheet before the general meeting the offence under s. 134 could not possibly have been committed. Chagla CJ & Gajendragadkar J in the recent case of *Emperor v Pioneer Clay & Industrial Works Ltd*[44] have approved of the view of Pandrang Row J. Chagla ACJ observed thus:...'When we turn to *Park v Lawton*[45] we find that it is based on s. 36 of the English Act which in its scheme and terms is entirely different from the section with which we are concerned. That section is a composite section which lays down various requirements which are to be complied with by the company under its first four subclauses, and subclause (5) is the penal sub-section which penalises the failure to comply with any of the requirements contained in any of the four preceding sub-sections. As I have pointed out, the scheme of our Act is entirely different. We have various stages which have to be gone through before we reach the stage of a copy of the balancesheet and the profit and loss account being filed with the Registrar, and the failure to reach any one of the stages within the time prescribed is made penal by the Act. In our opinion the English decision relied on by the Calcutta High Court does not help us to construe the plain language of s. 134. With respect therefore, we do not agree with the view taken by the Calcutta

(41). AIR (1917) Cal 1=41 IC 307=18 CR LJ 787.

(42). (1911) 1 KB 588=80 LJKB 396=104 LT 184.

(43). AIR (1937) Mad 341=45 LW 242=169 IC 100.

(44). AIR (1948) Bom 357=50 Bom LR 156=2 DLR 36.

(45). (1911) 1 KB 588=80 LJKB 396=104 LT 184.

High Court. This is not a case where an accused person relies on his default and pleads his innocence. What he says is I may have committed an offence but the offence that I have committed is not the one with which I am charged. On the facts proved by the prosecution an offence is not disclosed under s. 134 (4). A different offence might have been committed either under s. 76(2) or under s. 133 (3). Under the circumstances we agree with the view taken by the learned Additional Stipendiary Magistrate and we are of opinion that the accused are not guilty of the offence with which they are charged.'

33. *Display of audited balance-sheet by companies incorporated outside the Provinces of India.*—Every banking company incorporated outside the Provinces of India, shall, not later than the first Monday in August of any year in which it carries on business, display in a conspicuous place in its principal office and in every branch office in the Provinces of India a copy of its last audited balance-sheet and profit and loss account prepared under section 29, and shall keep the copy so displayed until replaced by a copy of the subsequent balance-sheet and profit and loss account so prepared, and every such banking company shall display in like manner copies of its complete audited balance-sheet and profit and loss account relating to its banking business as soon as they are available and shall keep the copies so displayed until copies of such subsequent accounts are available.

34. Accounting provisions of this Act not retrospective.—Nothing in this Act shall apply to the preparation of accounts by a banking company and the audit and submission thereof in respect of any accounting year which has expired prior to the commencement of this Act, and notwithstanding the other provisions of this Act, such accounts shall be prepared, audited and submitted in accordance with the law in force immediately before the commencement of this Act.

Notes :

Ss. 29 to 33 do not apply to the accounting year 1st January to 31st December 1949. The old law applies to that period.

35. *Inspection.*—(1) Notwithstanding anything to the contrary contained in section 138 of the Indian Companies Act, 1913

(VII of 1913), the Reserve Bank at any time may, and on being directed so to do by the Central Government shall, cause an inspection to be made by one or more of its officers of any banking company and its books and accounts; and the Reserve Bank shall supply to the banking company a copy of its report on such inspection.

(2) It shall be the duty of every director or other officer of the banking company to produce to any officer making an inspection under sub-section (1) all such books, accounts and other documents in his custody or power and to furnish him with any statements and information relating to the affairs of the banking company as the said officer may require of him within such time as the said officer may specify.

(3) Any person making an inspection under sub-section (1) may examine on oath any director or other officer of the banking company in relation to its business, and may administer an oath accordingly.

(4) The Reserve Bank shall, if it has been directed by the Central Government to cause an inspection to be made, and may, in any other case, report to the Central Government on any inspection made under this section, and the Central Government, if it is of opinion after considering the report that the affairs of the banking company are being conducted to the detriment of the interets of its depositors, may, after giving such opportunity to the banking company to make a representation in connexion with the reports as, in the opinion of the Central Government, seems reasonable, by order in writing—

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

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

Provided that the Central Government may defer, for such period as it may think fit, the passing of an order under this sub-section, or cancel or modify any such order, upon such terms and conditions as it may think fit to impose.

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

Notes :

The provisions of this section as to inspection can be usefully compared with the corresponding provisions of the United States Code dealing with the inspection of member and reserve banks of the Federal Reserve System. (An outline of the Federal Reserve System is given in the notes to the Reserve Bank of India Act, *post*). Under the US Code, Title 12, Article 481, the Comptroller of Currency with the approval of the Secretary of the Treasury can appoint examiners to examine member banks at least twice in each calendar year and oftener if considered necessary. Examination of state banks by state authorities may be accepted by the Board of Governors of the Federal Reserve System. The examiner can administer oaths and examine officers and agents under oath. The examiner has to make a full and detailed report to the Comptroller of Currency. Examination of national banks includees examination of the affairs of their affiliates. The Comptroller of Currency can publish the report of the examiner if the bank within 120 days after notification of recommendations or suggestions of the Comptroller based on such examination, does not comply with the same to his satisfaction. The remuneration of chief, assistant and reviewing examiners, are paid from assessments on banks. Under article 482, the salaries of examiners are fixed by the Comptroller of Currency and reported to Congress. The expenses of the examination provided in article 481 are assessed upon the banks examined in proportion to the various banks. All national banks exercising fiduciary powers shall be assessed for examinations of such fiduciary powers and the fee shall be in proportion to the amount of individual trust assets under administration and the total bonds and or notes outstanding under corporate bond and or note issues for which the banks are acting, as trustees upon the dates of examination. Article 483 lays down that federal reserve banks with the approval of the federal agent or the Board of Governors of the Federal Reserve System may provide for special examination of member banks within their district. The expenses are in the discretion of the Board of Governors and are assessed upon the banks examined. Under article 484 no bank shall be subject to visitorial powers other than such as authorised by law or vested in courts of justice. Article 485 lays down that the Board of Governors of the Federal Reserve System at least once shall order examination of each

federal reserve bank and upon joint application of 10 member banks the Board of Governors shall order special examination and report on the condition of any Federal Reserve Bank.

36. *Further power and functions of Reserve Bank*:—(1) The Reserve Bank may—

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

(*b*) on a request by the companies concerned and subject to the provisions of section 45, assist as intermediary or otherwise, in proposals for the amalgamation of such banking companies;

(*c*) give assistance to any banking company by means of the grant of a loan or advance to it under clause (3) of section 18 of the Reserve Bank of India Act, 1934 (II of 1934);

(*d*) during the course, or after the completion, of any inspection of a banking company under section 35, by order in writing, require the company—

(i) to call a meeting of its directors for the purpose of considering any matter arising in the course of or out of such inspection or of meeting an officer of the Reserve Bank to discuss any such matter;

(ii) to make, within such time as may be specified in the order, such changes in its management as the Reserve Bank may consider necessary in consequence of the state of affairs disclosed during or by the inspection.

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

(3) The Reserve Bank may appoint such staff at such places as it considers necessary for the scrutiny of the returns,

statements and information furnished by banking companies under this Act, and generally to ensure the efficient performance of its functions under this Act.

Notes :

There are slight differences between s. 11 of the Pakistan Banking Companies Control Act 22 of 1948 and the the present section. Under s. 11 (1) (b) of the Pakistan Act the State Bank may require Banking Companies to take or refrain from taking such action as it thinks fit. There is no corresponding provision in the Indian Act. There is no provision in the Pakistan Act corresponding to s. 36 (1) (c) of the Indian Act. There is also slight difference between the phraseology of s. 36 (1) (d) of the Indian Act and s. 11 (1) (d) of the Pakistan Act. An order under s. 36 (1) (d) of the Pakistan Act contemplates completion of the inspection before an order under the section can be made. S. 36 (1) (d) (ii) reads ' in consequence of the state of affairs disclosed during or by inspection. ' While the language of s. 11 (1) (d) is ' in consequence of inspection ' This section traverses highly controversial and debatable ground and lays down rules which might not at all be liked by banking concerns. It gives the Reserve Bank wide powers of intervention in the activities of banks. Great care should be taken in applying the section as otherwise irreparable injury might be done to clients or banks by a capricious exercise of the powers conferred by it. If it becoms known that the Reserve Bank has taken action against a particular bank there may be panic among the clients and depositors of that particular bank though it is absolutely unjustified. The vesting of the discretion in such matters in the executive authority and making it final by shutting out an appeal to the Courts is a provision of doubtful value. It is also debatable whether the advantages to be gained from clothing the exeuctive authority with such inquisitorial powers more than counterbalance the inconveniences and annoyance which may arise as a result of the consequent uncertainty not only among banks but among clients as well.

PART III.

SUSPENSION OF BUSINESS AND WINDING UP OF BANKING COMPANIES.

37. Suspension of business:—(1) The 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 in all.

(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 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 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 ond proper in the circumstances.

Notes:

Sub-S (*2*): The Court may grant the relief provisionally and then call for a report from the Reserve Bank. If the report is unfavourable the Court may cancel the relief already granted. As the Allahahbad High Court has laid down in *Benares Bank Ltd*[46] it was never the intention of the legislature in enacting s. 277-N of the Indian Companies Act (which has been reenacted as the present section) that a company in an insolvent position should be allowed to continue its operations under the protection of the Court. The section is not intended to prevent customers of an insolvent company from seeking legal remedies against the company to which they would otherwise have been entitled. The following recent case where s. 277-N of the Indian Companies Act (on which the present section is based) was interpreted may also be usefully noted.[47] S. 277-N of the Companies Act itself makes it plain that an order for *moratorium* can be made only in the case of a banking company which is temporarily unable to meet its obligations. It must be established to the satisfaction of the court that the difficulties can be got over. The section is not intended to refer to cases where the bank requires a long period within which to pay up its creditors and where the situation is such that the bank in order to meet its creditors will have to realise most if not all of its assets. The section provides that the application is not

(46). (1939) ALJ 1009 = ILR (1939) All 938 = AIR (1939) All J26.

(47). Inre *Bank of Calcutta Ltd* 53 CWN 124 (*Per Clough J*)

maintainable unless accompanied by the report of the Registrar. The object of obtaining the report is that the Registrar should examine and inform the Court of the financial position of the company. The court must have before it the result of an independent examination and a report such as will satisfy it that the company's difficulties are temporary only and such as will be overcome if sometime is given. (The present section is practically couched in the same language as that employed in s. 277-N of the Companies Act which has been repealed, with this difference that under the repealed section the application for *moratorium* had to be accompanied by the report of the Registrar and now it has to be accompanied by a report of the Reserve Bank).

38. Winding up by Court.—(1) Without prejudice to the provisions contained in section 162 or section 271 of the Indian Companies Act, 1913 (VII of 1913), and without prejudice to its powers under section 37, the Court shall order the winding up of a banking company if it is unable to pay its debts and the Court shall also order the winding up of a banking company if the Reserve Bank applies in this behalf to the Court.

(2) The Reserve Bank may make an application under this section only if it is directed so to do by order under clause (*b*) of sub-section (4) of section 35 or if the banking company has failed to comply within due time with the demand contained in a notice under sub-section (5) of section 46.

(3) Without prejudice to the provisions contained in section 163 of the Indian Companies Act, 1913 (VII of 1913), a banking company shall be deemed to be unable to pay its debts if it has refused to meet any lawful demand for payment 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.

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

Notes:—

Sub-S (2): If the Central Government directs the Reserve Bank to apply for windingup the company or if the banking company fails to

comply with the provisions of ss. 24 and 25 even after being required by notice served on it by the Reserve Bank to do so, the Reserve Bank may apply to the Court for the windingup of the banking company.

Sub-S (3): *'Refused to meet any lawful Demand for Payment': Meaning*: There is plenty of authority for the view that the nonpayment by a company of a debt about which there is dispute and which the company honestly thinks it is not bound to pay will not bring the company within the description of a company which 'is unable to pay its debts.' Courts will never allow creditors to invoke the assistance of the Companies Act for the payment of their debts.[48] Were the law otherwise all sorts of fictitious and blackmailing actions might be raised against a company and payment extorted from it under threats of shattering its credit and impeding its operations by applying to the court for a windingup order.[49] The court will never allow a petitioner to bring the pressure of insolvency proceedings to bear upon the company in order to make it pay cheaply and expeditiously a heavy debt which it desires to dispute in the civil courts and be a party to one of the worst abuses to which the windingup sections of the Companies Act could be perverted.[50] If the debt is *bonafide* contested and there is no evidence other than noncompliance with the statutory notice to show that the company is insolvent and the company denies its insolvency the windingup petition should be dismissed.[51] Two recent and interesting cases which forcibly illustrate the above topic, one Indian and the other English, may be noticed. The Indian case is the case of *Coimbatore Transport Ltd v Governor General in Council* [52] decided by the Madras High Court. In that case the Coimbatore Transport Ltd was liable to pay over Rs 3,00,000 in respect of incometax, supertax, and excessprofit tax for the years 1941-42 and 1942-1943. The Incometax officer, Special Circle Coimbatore, filed a petition for windingup the company. Clark J found that the company was unable to pay its debts and after making a windingup order directed that it should be stayed for a week. If during the week security in the shape of

(48). P*R Doraiswami Iyer* v *Comibatore ES N Ltd*. AIR (1929) Mad 265 = 106 IC 423.

(49). Mr Kennedy District Judge in *Tulshidas Lallubhai* v *Bharatkhand Cotton Mills* (1915) 39 Bom. 47 = 16 Bom LR 692 (in the lower court).

(50). Beaman J in 39 Bom 47 (on appeal).

(51). *Inre London & Paris Banking Corporation* (1875) 19 Eq 444. See also *Company* v *Rameshwar* AIR (1929) Cal 1004 = 23 CWN 844 and *Tikam Chand* v *HarishChandra* AIR (1929) Lah 651 = ILR 10 Lah 80 = 11 LLJ 239 = 117 IC 78.

(52). AIR (1949) Mad 73.

Government paper for the amount of taxes due was deposited in Court, then the application was ordered to be dismissed with no order as to costs. Otherwise the windingup order was to stand. The company refused to furnish the security and appealed against the windingup order. Rajamannar OCJ & Satyanarayana Rao J dismissed the appeal with costs. Rajamannar OCJ distinguished the case from one where the payment of a debt was disputed 'According to the law and this is not disputed by Dr John the Incometax authorities are entitled to recover the amount assessed by them though an appeal or reference is pending in respect of the assessment and the amount could be recovered by coercive process. This is not therefore a case where the petitioner had to establish his claim in a court of law before he could proceed to recover the amount due. This is also not a case in which the only ground of insolvency alleged is noncompliance with the statutory notice under s 163 (1) of the Act. We have found that it has been established that the company is unable to pay its debts, 'Rajamannar OCJ also distinguished *Bowes v Hope Life Insurance & Guarantee Co* [53] ar a case based on the special circumstances of that case which were not present here. In *Bowes's case* the petition for windingup was ordered to stand over on the company undertaking to file a bill to impeach the judgment on which the petition was based. The court was not satisfied with the genuineness or validity of the debt on which the windingup petition was based. Rajamannar OCJ indicated that if the company was willing to furnish security to the satisfaction of the court for the amount of the taxes due, the court might be disposed to postpone the operation of the windingup order till the validity of the assessments was finally determined. But the company found it impossible to furnish any such security and the court held that that there was no ground on which it could postpone the windingup proceedings. The English case is that of *Re Welsh Brick Industries Ltd.*[54] In that case the petitioner issued on 18-2-46 a writ in the King's Bench Division for the recovery of certain sums advanced by him to the company and on 9-4-46 he presented in the county court a petition for the windingup of the company on the ground that it was unable to pay its debts. On a summons for judgment under RSC, Order 14, in the King's Bench action the registrar made an order on 26-4-46 giving the company unconditional leave to defend. When the petition came on for hearing the county court judge found on the evidence before him that the debt was owing and that the company could not pay its debts and he made a windingup order. The company appealed from the order.

(53). (1866) 11 HLC 389 = 35 LJ Ch 574.

(54). (1946) 2 All ER 197.

It was contended that the judges should have dismissed the petition because the order of the registrar giving unconditional leave to defend the action for repayment of the debt was itself conclusive of the fact that there was a *bonafide* dispute and windingup proceedings were not the appropriate procedure for dealing with disputed debts. The Court of Appeal (Lord Greene MR. Morton & Tucker LJJ) dismissed the appeal. Lord Green MR in his judgment quoted the following passage bearing on the topic from *Buckley Companies Acts* (11th ed. pp. 356-357) with approval: 'A windingup petition is not a legitimate means of seeking to enforce payment of a debt which is *bonafide* disputed by the company. A petition presented ostensibly for a windingup order but really to exercise pressure will be dismissed and under circumstances may be stigmatised as a scandalous abuse of the process of the court. Some years ago petitions founded on disputed debts were directed to stand over till the debt was established by action. If however there was no reason to believe that the debt if established would not be paid, the petition was dismissed. The modern practice has been to dismiss the petitions. But of course if the debt is not disputed on some substantial ground the court may decide it on the petition and make the order. 'Lord Greene MR went on to observe further thus:' I cannot accept the proposition that merely because unconditional leave to defend is given that of itself must be taken as establishing that there is a *bonafide* dispute or that there is some substantial ground of defence. The fact that such an order is made is no doubt a matter which the windingup court will take into consideration and to which the windingup court will in due course pay respect but I cannot regard it as in any way precluding a windingup judge from going into the matter himself on the evidence before him and considering whether or not the dispute is a *bonafide* dispute or putting it in another way whether or not there is some substantial ground for defending the action. An order of course can be made under RSC, Order 14, giving unconditional leave to defend on grounds which fall far short of the establishment of a substantial ground of defence to the satisfaction of the registrar or the master as the case may be. He may find that there is a keen dispute between the parties and he may find that on the facts before him it would not be proper or just to treat that issue as one which he is capable of deciding-whether it is *bona fide* or not-and he may accordingly say: 'The facts alleged are quite consistent with it being *bona fide* dispute; I need not go so far as to find that is a *bona fide* dispute, but I think that there ought to be leave to defend. ' Accordingly in the windingup court it seems to me that it must be competent for the judge in spite of the fact that unconditional leave to defend has been granted to go into the evidence which is in fact before

him.....But looking at the evidence which was before him I am bound to say that in the present case so far from differing from the view which he quite clearly took that this debt was owing, I find it difficult to see on what ground he could have found the contrary; in other words, not merely am I unable to say that there was no evidence before him on which he could find as he did, but I find it difficult to see what evidence there was before him which would have justified him in finding the contrary. The affidavit upon which unconditional leave to defend was obtained was not put before him. 'Lord Greene MR proceeded to deal with the case of the company as set out by MR Marshall the secretary and director of the company which was that the petitioner was one of the promoters and it was arranged that he should finance the company until it took over some specified property and became selfsupporting. The implication was that the petitioner was to finance the company by way of an advance and the company's obligation to repay was to be deferred to some future date. Dismissing this plea as worthless the Master of the Rolls observed: 'If there was any substance in the argument that the company was entitled to some time or indulgence before it was to be called upon to pay and there were documents to that effect, it would have been the easiest thing for him (Marshall) to produce them—It was in my opinion competent for him (the county court judge) to consider that issue and to examine the question of whether or not a debt was owing. He did examine the question whether a debt was owing and in doing so he must have considered the question as to whether on the evidence before him there was any kind of substance in the defence put forward. He must have held that there was no substance in it and I am not surprised that he did so. Dealing with the alternative ground for the appeal namely that the petitioner had failed to establish that the company was unable to pay its debts the Master of the Rolls observed: 'The inability to pay debts or ability to pay debts is a question of fact for the judge and there was ample evidence in my opinion on which he could find that the company was unable to pay its debts. Counsel for the company was impressed by the difficulties in which he found himself on that matter and he very properly conceded that judge had found that the company was insolvent and that he (counsel) could not contend that there was no evidence upon which he could so find. That matter therefore disappears from the case. In the result the appeal fails and must be dismissed.' The giving of the leave to defend merely means that in the opinion of the registrar there was a fair probability that the company had a *bonafide* defence. It cannot operate as a bar to the county court judge finding that there was no *bonafide* dispute as to the debt at all. The

refinements introduced into this branch of the law by the *Coimbatore Transport company case*[52] and the *Welsh Brick Industries case*[54] may be summed up thus: Refusal to pay incometax assessment of the part of an assessee who has appealed to the Incometax Tribunal from the assessment will render the assessee company liable to be wound up on the ground of its inability to pay its debts. The Court in the Madras case has practically held that monies which the subject owes to the Crown whether it be incometax as in the Madras case (or possibly land revenue to which also a similar principle should apply logically, or even customs dues) cannot be called disputed debts though the subject contests his liability to pay those sums before the proper tribunals which may not be courts of law. With respect it is submitted that the distinction between claims which have to be established before courts of law and those which have to be established before administrative tribunals is somewhat artificial. If a debt which is contested before a court of law on a substantial grond is a disputed debt precluding the making up of a windingup order Government dues which are challenged before administrative tribunals come equally within the classification of disputed debts. The other ground on which the Madras judgment was based, namely that the trial judge had found from other independent evidence that the company was unable to pay its debts and that the appellate court found no valid reason for interfering with his finding, is unexceptionable. The *Welsh Brick case*[54] has loaded the dice, if one might say so with respect, slightly in favour of creditors as against companies. Companies in order to ward off windingup orders have now to prove not only that they *bonadfide* dispute the debt which is alleged to be owing from them, but also that they have substantial grounds to back up such defence. This is a gloss on the previous law for which there is no authority save that of *Buckley* which is quoted in the judgment of the Master of the Rolls. The phrase 'refused to meet any lawful demand for payment' in s. 38 is very wide and would include demands by creditors,, depositors, sharholders, and even by strangers, for example a person who holds a cheque drawn on the bank. The refusal must be unconditional. If it is conditional a banking company will perhaps not come within the mischief of the section. For example suppose a person having a fixed deposit in a bank dies before it matures. The bank may refuse payment of the amount due under it to his heir unless he produces satisfactory evidence that he is the heir of the deceased. The bank's refusal to pay except under the above conditions will not render it liable to be proceeded against under sub-s (3). A banking company's inability to pay its debts can be proved in three ways; (i) By noncompliance with the statutory notice given under s. 163 (1) (i) of the Companies Act; (ii) By its refusal

to meet any lawful demand for payment within two days etc provided the Reserve Bank certifies that it is unable to pay its debts (iii) By other evidence under s. 163 (1) (iii).

39 *Reserve Bank to be official liquidator.*—Notwithstanding anything contained in section 175 of the Indian Companies Act, 1913 (VII of 1913), where in any proceeding for the winding up by the Court of a banking company, an application is made by the Reserve Bank in this behalf, the Reserve Bank shall be appointed as the official liquidator of the banking company in such proceeding.

Notes:

The Canadian Bankers' Association is a semiofficial regulatory body. If a bank is found to be insolvent the association may place a curator in charge of its affairs to restore it to solvency or to liquidate it. This section can be compared with s. 13 of the Pakistan Banking Companies Control Act 22 of 1948.

40. *Stay of proceedings.*—Notwithstanding anything to the contrary contained in section 173 of the Indian Companies Act, 1913 (VII of 1913), the Court shall not make any order staying the proceedings in relation to the winding up of a banking campany, unless the Court is satisfied that an arrangement has been made whereby the company can pay its depositors in full as their claims accrue.

41. *Report of liquidator.*—Notwithstanding anything to the contrary contained in section 177B of the Indian Companies Act, 1913 (VII of 1913), where a winding up order is made in respect of a banking company, the official liquidator shall submit a preliminary report to the Court within two months from the date of the order giving the information required by that section so far as it is available to him, to enable the Court to order the payment of a preliminary dividend if sufficient assets are available.

42. *Power to dispense with meetings of creditors, etc.*—Notwithstanding anything to the contrary contained in sections 178A and 183 of the Indian Companies Act, 1913 (VII of 1913), the Court may in the proceedings for winding up a banking

company dispense with any meetings of creditors or contributories or with the appointment of a committee of inspection 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.*—Notwithstanding anything to the contrary contained in section 191 of the Indian Companies Act, 1913 (VII of 1913), the Court shall presume that the amounts shown in the books of a banking company as standing to the credit of depositors are proved without requiring further proof from the depositors concerned unless the official liquidator shows that there is reason for doubting any particular entry.

44. *Restriction on voluntary winding up.*—Notwithstanding anything to the contrary contained in section 203 of the Indian Companies Act, 1913 (VII of 1913), no banking company which holds a licence granted under section 22 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, and without prejudice to the provisions contained in sections 218 and 220 of that Act, the Court shall, on the application of the Reserve Bank, order the winding up of the company by the Court if at any stage during the voluntary winding up proceedings the company is not able to meet such debts as they accrue.

Notes:

This section does not apply to existing banking companies which have applied for licence and have not been served with a notice under proviso 2 to s. 22 (2).

45. *Restriction on amalgamation etc.*—Notwithstanding anything contained in any law for the time being in force,—

(*a*) no Court shall sanction a compromise or arrangement between a banking company and its creditors or any class of them or between such company and its members or any class of them, unless the compromise or arrangement is certified by the Reserve Bank as not being detrimental to the interests of the depositors of such company, and

(*b*) no banking company shall enter into any agreement or arrangement for, or be a party to, any scheme for the amalgamation of such company with any other banking company without the previous sanction in writing of the Reserve Bank.

Notes :

Compare with s. 14 of the Pakistan Banking Companies Control Act 22 of 1948.

PART IV.

MISCELLANEOUS.

46. *Penalties*—(1) Whoever in any return, balance-sheet or other document required by or under or for the purposes of any provision of this Act, wilfully makes a statement which is false in any material particular, knowing it to be false, or wilfully omits to make a material statement, shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.

(2) If any person fails to produce any book, account or other document or to furnish any statement or information which under sub-section (2) of section 35 it is his duty to produce or furnish or to answer any question relating to the business of a banking company which he is asked by an officer making an inspection under that section, he shall be punishable with a fine which may extend to five hundred rupees in respect of each offence, and if he persists in such refusal, to a further fine which may extend to fifty rupees for every day during which the offence continues.

(3) If any deposits are received by a banking company in contravention of an order under clause (*a*) of sub-section (4) of section 35, every director or other officer of the banking company, unless he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent it, shall be deemed to be guilty of such contravention and shall be punishable with a fine which may extend to twice the amount of the deposits so received.

(4) If any other provision of this Act is contravened, or if any default is made in complying with any requirement of this Act or of any order made thereunder, every director and other officer of the banking company who is knowingly a party to the contravention or default shall be punishable with a fine not exceeding five hundred rupees, and where the contravention or default is a continuing one with a futher fine not exceeding fifty rupees for every day during which it continues.

(5) Without prejudice to the provisions of sub-section. (4), if any banking company fails to comply with the provisions of section 24 or section 25, the Reserve Bank shall by notice in writing make a demand on the banking company to comply with the said provisions within thirty days from the receipt of the notice, and if the banking company fails so to do, the Reserve Bank may apply under section 38 for the winding up of the banking company.

Notes:—

Sub-S (1): This section can be compared usefully with s. 282 of the Indian Companies Act and s. 15 of the Pakistan Banking Companies Control Act 22 of 1948. S. 282 refers to 'return, report, certificiate, balancesheet or other document' while the present section refers to return balancesheet or other document. In the present section wilfully omitting to make a material statement is also punishable which is not the case under s. 282. There is no provision in the Pakistan Act corresponding to sub clauses (2) and (3) of s. 46 of the Indian Act. S. 15 (4) of the Pakistan Act differs considerably from s. 46 (5). Under the Pakistan Act the State Bank can by notice in writing call on a banking company to comply with the requirements of the Act or with any rules made under the Act. Under the s. 46 (5) the Reserve Bank can only enforce compliance only with the provisions of ss. 24 and 25.

'*Wilfully making a statment false in any material particular*': *Meaning of*: *In Baidyanath Biswas v Emperor*[55] after the company had begun to earn revenue, current expenditure had been debited to organisation expenses when it ought to have been debited in revenue accounts in the balancesheet. Lord Williams & Jack JJ held there was a wilful false statement and that it was not necessary that the statement should be such as to deceive anyone, or that it should be dishonestly

(55). AIR (1935) Cal. 741=159 IC 523=37 Cr LJ 115.

made. This section corresponds with s. 84 of the Larceny Act (24 & 25 Vict. c. 98) under which it is an offence for a manager, director etc to 'make, circulate etc any written statement which he shall know to be false in any material particular with intent to deceive or defraud any member, shareholder etc.' In *Kylsant's case* [56] the prospectus contained the true statement namely that in every year between 1921 and 1927 the company had paid dividends. In fact during these years the company had incurred trading losses and was able to pay dividend only by the introduction into the accounts of non-recurring items such as the payment of excessprofits duty, adjustment of incometax reserves etc. No disclosure was made of the trading losses. Held the prospectus was false because if the facts had been revealed no man of sense would have put his money into the scheme. A halftruth is no better than a downright falsehood. In *SM Bose v Emperor* [57] in November 1919 the accused sent to the registrar the prospectus, memorandum and articles of a proposed company and from these it appeared that five persons had consented to become directors and had undertaken to take a certain number of shares. The accused on 10-9-20 filed a declaration with the registrar stating that every director had paid the necessary sum with the object of inducing the registrar to grant permission to the company to commence business. Two of the directors had done nothing towards fulfilling the undertaking and the accused was held guilty under s. 282 and it was held to be no defence to urge that in law the two directors who had failed to carry out their undertaking had ceased to be directors and that therefore the declaration filed by the accused could not refer to them. *Pulin Chandra v Emperor* [58] was a peculiar case. In that case a firm B of which A was a member took over the managing agency of a company from another firm *D*. *A* had lent to the company various sums of money and in respect of those advances an agreement had been entered between the company, the then managing agents, and *A* by which company undertook to execute in favour of *A* a mortgage within a certain period. A clause provided that if the company failed or neglected to apply for or to secure the sanction of the Local Government to create a mortgage within the time stipulated the mortgagee would be entitled to call for immediate repayment of the whole amount. In fact however no application was made to the Government for sanction nor was any mortgage ever executed. In 1944 a balancesheet was published which contained an entry to the foll-

(56). *R* v *Kylsant* (*Lord*) (1932) 1 KB 442.

(57). AIR (1924) All 314=46 All 218=22 ALJ 83=77 IC 826.

(58). AIR (1948) Cal 190.

owing effect: 'Loans secured on the first mortgage of all the properties and undertakings Rs. 73000.' A was prosecuted under s. 282 Companies Act for making a false statement. Holding that *mensrea* was a necessary element of the offence under s. 282, Chakravarti J observed: 'There was an agreement to the mortgage dated 1-1-39 and although that document gave the mortgagee an option to call for the immediate payment of the entire sum if the company did not obtain the sanction of the Government within the time stipulated, it did not make it binding on him to do so. It appears that he could yet insist on the execution of the mortgage. The loan here seems to be of an intermediate variety which could not properly and correctly be described either as a secured or an unsecured loan. It was therefore a case in which it was wholly impossible to conform strictly to Form F set out in the Companies Act. In this state of facts the question we have to ask ourselves is, can it be said that the statement contained in the balancesheet was false and known to be false? In our opinion on the special facts of the case the answer must be in the negative...Be that as it may it appears that the language used by s. 282 itself does import an element of *mensrea* when it speaks of the relevant statement being known to be false...Having regard to the somewhat anomalous character of the loan which was not secured by any formal deed of mortgage but which was yet entitled to come to be so secured if the mortgagee insisted on the fulfillment of the agreement, it appears to us that the appellant cannot be said to have known the description to be false.

Reference may be made in this connection to the draft statement supplied by his office to the auditors in which he stated in quite a correct and straghtforward manner that the loan was unsecured and that it had been advanced as over the two agreements. If on that information the auditors described the loan in the balancesheet as 'secured' and the appellant signed that document he accepted a description which was hardly more inapproppriate than the description 'unsecured' would have been'. The learned judge also quoted the follwoing passage from the Privy Council in *Srinivas Mall v Emperor*:[59] 'Unless a statute by itself or by necessary implication rules out *mensrea* as a constituent part of a crime a person should not be found guilty of an offence against the criminal law unless he has got a guilty mind.' Chakravarti J disapproved of the observations of Cunliffe J in *Superintendent & Remembrancer of Legal Affairs Bengal v Akhila Bandhu*,[60] where Cunliffe J held that

(59). 51 CWN 900 = AIR (1947) PC 135 = 26 Pat 460.

(60). 40 CWN 134 = AIR (1936) Cal 680 = ILR (1937) 1 Cal 328 = 166 IC 163 = 38 CrLJ 151.

mensrea was irrelevant for an offence under s. 132 Companies Act.

Unless there are false statements in the balance-sheets of material particulars wilfully made by the auditor and the directors knowing them to be false they cannot be held guilty of an offence under S. 282 of the Companies Act. The duty of an auditor is verification and not direction. An auditor has nothing to do with the prudence or imprudence of making loans with or without security. He must of course take care that he does not bring into the balance-sheet at a face value a debt that is not a good one.

One cannot attribute any wilful negligence or dishonesty to directors who are men of position and responsibility if they depend upon and trust the permanent officials and the managing director of the company so far as working of the company is concerned in signing the balance-sheets. Unless the prosecution shows malafide or want of good faith on the part of the directors or auditors they cannot be held to be criminally liable. (Govinda Menon) *Natesan. In re.* (1949) M. W. N. 175-(1949) 1 M. L. J. 438.

Prosecution by a Private Complainant: Whether Valid:

This topic has given rise to much controversy and there are two sets of decisions one upholding the validity of prosecutions by private individuals and the other holding the other way. *Emperor v Vishwanath* is an example of the former class.[61] Similarly in *Surendra v Kalipada*[62] Henderson & Akram JJ refused to draw any inference from the absence in the Indian Act of a provision corresponding to s. 368 of the English Companies Act 1929. '*At any rate in the absence of any* specific provision in the Act itself we cannot infer from the mere omission of a similar provision in the Indian Act that the intention of the legislature was to bar private prosecutions. '*Ganpat Rai v Emperor*[63] illustrates the opposite point of view. In this recent case Marten J of the Lahore High Court has held that the Regulation of 1910 issued by the Punjab Government under s. 220 Companies Act which vests power to institute prosecutions in the registrar is valid even after the Adaptation of Indian Laws Order 1937 was passed. A prosecution under s. 282 Companies Act against an officer of the company by a private individual who has no status in the

(61). AIR (1942) Sind 9.

(62). AIR (1940) Cal 232.

(63). AIR (1948) Lah 30; see also *Aushtosh Ganguli* v *Watson* AIR (1927) Cal 149, *Kuppuswami* v *Emperor* AIR (1923) Mad 339 and *Emperor* v *Mahomed* AIR (1933) Sind 325 taking a similar view.

company is invalid. The modifications brought about in existing Indian laws by the Government of India (Adaptation of Indian Laws) Order 1937 do not render invalid any regulation etc duly made or issued before the commencement of that order and any regulation so made or issued can only be revoked by the competent authority. The regulation in question has never been revoked either by the Central or Provincial Government. Therefore the Regulation is in full force. Marten J distinguished the Madras ruling of *Muthu Veeran Chettiar v Mottayan Chettiar.*[64] The Madras regulation did not restrict the power to institute prosecutions under the Act. It merely laid down that when it was found necessary to enforce the penal provisions of the Act against any company the registrar shall request the Government solicitor if the registered office of the company in default is situated at Madras, or in other cases the magistrate of the district in which the registered office of the company situated to take the necessary steps. Marten J referred with approval to the Punjab case of *Emperor v Shivdas*[65] where it was held that where by any law or regulation a certain person only is authorised to complain about a particular offence, the proceedings of a magistrate based on a complaint relating to that offence made by any unauthorised person are *ultra vires* and liable to be set aside on revision. 'The Privy Council has held in *Nazir Ahmed v Emperor*[66] that it is a wellrecognised rule of construction that where a power is given to do a certain thing in a certain way that thing must be done in that way or not at all; other means of performance are necessarily forbidden.' 'In my view therefore the complaint by Sobhan Singh a private individual with no official status in the company against that company or its officers is invalid. S. 47 of the Act seems to follow the wording of the Punjab Regulation & would appear to bar priviate prosecutions.

Sub-S (*4*): *'Officer': Who is:*

The Act contains no definition of 'officer' but the definition given in s. 2 (1) (11) of the Companies Act is a guide and may be followed. 'Officer' includes any director, managing agent, manager or secretary but save in ss. 235, 236 and 237, does not include an auditor. A managing agent is also an officer. Bankers of a company are not officers.[67] A

(64). AIR (1942) Mad 283 = 202 IC 28.

(65). 11 Cr LJ 577 = 8 IC 190.

(66). 17 Lah 629 = AIR (1936) PC 253 = 63 IA 372 = 163 IC 881.

(67). *Imperial Land Co of Marseilles* (1870) LR 10 Eq 298.

solicitor if salaried is an officer.[68] An auditor is not an officer of the company.[69] The statutory definition has overruled the previous view taken in *Connell v Himalaya Bank*[70] that an auditor is an officer. Brokers are not officers.[71].

Trial by High Court of Offences in first Instance: Validity of: The High court cannot as a court of first instance try persons who have been guilty of offences through violating provisions of the Companies Act. S. 297 Criminal Procedure Code does not apply and a High Court can try in the first instance an offence under the Act only when the case is committed to the High Court under s. 194 (1) Criminal Procedure Code or transferred under s. 526 of the Criminal Procedure Code.[72]

47. *Cognizance of offences.*—No Court shall take cognizance of any offence punishable under section 46 except upon complaint in writing made by an officer of the Reserve Bank generally or specially authorised in writing in this behalf by the Reserve Bank, and no Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any such offence.

Notes :

This section appears to bar prosecution of offences under the Act on the initiative of complaints by private individuals.

48. *Application of fines.*—A Court imposing any fine under this Act may direct that the whole or any part thereof shall be applied in or towards payment of the costs of the proceedings, or in or towards the rewarding of the person on whose information the fine is recovered.

49. *Special provisions for private banking companies.*—The exemptions, whether express or implied, in favour of a private

(68). *Re Liberator Permanent Benefit Building Society* (1894) 71 LT 406.

(69). *L Hudson* v *Official Liquidator DehraDun Mussoorie Tramway Co* AIR (1929) All 826 = 121 IC 693 = (1930) ALJ 500.

(70). (1895) 18 All 127.

(71). *Thiruvenkata* v *Velu* AIR (1938) Mad 154 = ILR (1938) Mad 192 = (1937). 2 MLJ 820.

(72). *Harischandra* v *Kavindra* AIR (1936) All 730 = ILR (1937) All 220 = (1936) ALJ 1105 = 166 IC 53.

company in sections 17, 77, 83B, 86H, 91B, and 91D and sub-section (5) of section 144 of the Indian Companies Act, 1913 (VII of 1913), shall not operate in favour of a private company which is a banking company.

50. *Certain claims for compensation barred.*—No person shall have any right whether in contract or otherwise to any compensation for any loss incurred by reason of the operation of any of the provisions contained in sections 10 and 16 or by reason of the compliance by a banking company with any order given to it under sub-clause (*ii*) of clause (*d*) of sub-section (1) of section 36.

Notes:

Compare with s. 11(2) of the Pakistan Banking Companies Control Act 22 of 1948.

51. *Application of certain provisions to the Imperial Bank of India.*—Without prejudice to the provisions of the Imperial Bank of India Act, 1920 (XLVII of 1920), the provisions of sections 10, 13 to 17, 19 to 21, 23 to 31, 34 to 48, 50 and 52 shall also apply, so far as may be, to and in relation to the Imperial Bank of India as they apply to and in relation to other banking companies.

52. *Power of Central Government to make rules.*—(1) The Central Government may, after consultation with the Reserve Bank, make rules to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of this Act and all such rules shall be published in the official Gazette.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for the details to be included in the returns required by this Act and the manner in which such returns shall be submitted.

(3) All rules made under this section shall be subject to the condition of previous publication, and the date to be specified under clause (3) of section 23 of the General Clauses Act, 1897 (X of 1897), shall not be less than six months from the date on which the draft to the proposed rules was published:

Provided that in respect of the first occasion on which rules are made under this section, the provisions of this sub-section shall not apply.

53. *Power to exempt in certain cases.*—The Central Government may, on the recommendation of the Reserve Bank, declare by notification in the official Gazette that any or all of the provisions of this Act shall not apply to any banking company or to any class of banking companies either generally or for such period as may be specified.

Notes :

Under a notification issued on 16-3-49 the Government of India have on the recommendation of the Reserve Bank granted certain exemptions from the provisions of the Banking Companies Act 1949 for a period of six months. 11 banking companies are exempted during this period from the provisions of ss. 10(1) (c) (i) and (ii) and 16, which debar a banking company from having any director who is a director of any other banking company and from being managed by a person who is a director of any other company or is engaged in any other business or vocation. Twelve banking companies which are members of the Displaced Banks' Association have in addition been exempted during this period from the provisions of s. 10(1) (b) (i) in so far as these prohibit the employment of a person who at any time has been adjudicated insolvent or has suspended payment or has compounded with his creditors and also from the provisions of s. 25 which requires a banking company to keep assets in India equal to at least 75 percent of its time and demand liabilities in India. These exemptions have been allowed to enable the banks sufficient time to make the necessary adjustments for complying with the prescribed requirements and also to mitigate the hardships of the displaced banks.

54. (1) No suit or other legal proceedings shall be against the Central Government, the Resrve Bank or any officer for anything which is in good faith done or intended to be done in pursuance of this Act.

(2) Save as otherwise expressly provided by or under this Act no Suit or other legal proceedings shall be brought against the Central Government, the Reserve Bank or any officer for any damage caused or likely to be caused by anything in good faith done or intended to be done in pursuance of this Act.

Notes :

This section can be compared with article 501 of the United States Code, Title 12. Under that article the federal reserve or member bank is under a liability to certify checks when the amount of the deposit is adequate. In the case of federal reserve banks the penalties for disobedience are laid down in s. 248(h), in the case of nonmember banks the penalties are imposed by s. 192 under which proceedings are instituted by the Comptroller of Currency and in the case of other banks the penalties are those prescribed by s. 338. Article 502 of the US Code Title 12, provides that shareholders of the Federal Reserve Bank shall be individually respsonsible rateably and equally for all contracts, debts and engagements of such bank to the extent of the amount of their subscriptions. Article 503 provides that if directors or officers of a member bank knowingly violate or permit any of the agents, officers, or directors of a member bank to violate the provisions of ss. 375, 376, 593, 594, 595, every director and officer participating in or assenting to such violation shall be liable in his personal and individual capacity for all damages which the member bank, its shareholders, or any other person have sustained in consequence of such violation. S. 54 conferring immunity on officials of the Reserve Bank etc was inserted at the last stage when the bill was in Parliament at the instance of the Finance Minister and its inclusion had not been recommended by the Select Committee. It came in for severe criticism at the hands of members. Mr B Das stated that although the Reserve Bank had been nationalised he could not agree that every official of the Reserve Bank worked sincerely for the good of the country. He questioned the wisdom of giving them such wide immunity for their actions. As Pandit Kunzru put it, it was not enough for either Sir Homi Modi or the Finance Minister to say that as the bill was of a drastic nature such a clause was necessary, if the bill was to be properly worked and that the officials of the Reserve Bank should be given immunity. The Finance Minister should tell the House the special reasons which had compelled him to bring forward such an amendment at the last stage. It was not the custom even of the previous regime even when drastic measures were considered by the legislature to confer immunity in advance on the officials who might be concerned with the administration of such laws. Usually it had been the plea that such a provision was necessary only during a war or a rebellion or in emergencies. But today the National Government was asking for such powers even when the situation was normal. Pandit Kunzru added that they could not allow the liberties of the people in any respect to be completely at the mercy of any class of functionaries. They were not prepaped

to revise their ideas of liberty and rights of the people, to grant every kind of power to the present Government simply because it calls itself national. If they had a democratic legislature its object must be to control the activities of the executive. They could not have a democratic legislature with an autocratic executive. Mr. Sidhwa supporting the new clause was surprised at the opposition to the clause especially when there were similar provisions in other statutes like the Damodar Valley Act. Unless such a provision was made in the Bill the bill would be meaningless. He cited the case of a bank at Ajmer now in liquidation which had filed a suit against the Reserve Bank and the Government of India. Popular criticism on the otherhand had been voiced against the Government for not taking action a gainst the bank earlier in the interest of the depositors. Dr. John Matthai the Finance Minister observed that for some time when the Bill was being considered by the Select Committee he himself was in doubt whether it was right or necessary to have a provision of the kind. However reports had been reaching him particularly with reference to the working of the Banking Ordinance that people were contemplating bringing suits on frivolous grounds against the officers who had taken action in pursuance of the Ordinance. He had therefore decided that if the House was going to place heavy responsibilities on the officers it was necessary that they should be protected. Otherwise the officers would not rather do anything which would lead to embarrassing consequences. He appreciated the apprehension that an officer who was a wrongdoer might escape. On the otherhand it was necessary that officers who were earnest and honest must receive certain amount of protection while dischargingtheir duties. If that protection was not given it would mean that they were not only treating them unfarily but were nullifying the provisions of the Act. Unless provisions of the kind were made the executive would be rendered completely impotent. In view of the widespread apprehension that a provision of this kind may in its actual working result in serious abuse he should like to give the House an assurance that he would carefully watch the working of this particular provision in the light of the discussion that had taken place in the House. If he found that in the actual working consequences arose of the kind suggested he would be prepared to reexamine the matter.

Sub-S (*2*): This sub-section refers to acts done by officers etc which cause damage while sub-s (1) refers to acts done in good faith by officers which do not cause damage. In the case of the former kind, of acts suits are barred 'save as otherwise expressly provided by the Act.' In the case of the latter kind of acts suits are absolutely barred.

55. *Amendment of Act II of* 1934.—The Reserve Bank of

India Act, 1934 (II of 1934), shall be amended in the manner specified in the fourth column of the First Schedule and the amendments to section 18 thereof as specified in the said Schedule shall be deemed to have had effect on and from the 20th day of September, 1947.

56. *Repeals.*—(1) The enactments mentioned in the third column of the Second Schedule shall be repealed to the extent specified in the fourth column thereof.

(2) Notwithstanding the repeal by this Act of any Ordinance mentioned in the Second Schedule, anything done or any action taken, in the exercise of any power confirred by any Ordinance so repealed, shall for all purposes be deemed to have been done or taken in the exercise of powers conferred by this Act as if this Act had been in force on the day such thing was done or such action was taken.

THE FIRST SCHEDULE.

(See Section 54)

AMENDMENTS.

Year.	*No.*	*Short title.*	*Amendments.*
(1)	(2)	(3)	(4)
1934	II	The Reserve Bank of India Act, 1934.	(1) In section 17. to clause (15A), the following shall be added, namely;— "and under the Banking Companies Act, 1949".
			(2) (*a*) Section 18 shall be renumbered as sub-section (*1*) of that section and in sub-section (*1*), as so renumbered,—
			(*i*) in clause (3), after the words "of that section", the following words shall be added,

Year.	*No.*	*Short title.*	*Amendments.*
(1)	(2)	(3)	(4)
1934 *cont.*	II *cont.*	The Reserve Bank of India Act, 1934–*cont.*	namely:—"or, when the loan or advance is made to a banking company, as defined in the Banking Companies Act, 1949, against such other form of security as the Bank may consider sufficient"; (*ii*) for the words "under this section", wherever they occur, the words "under this sub-section" shall be substituted; (*b*) After sub-section (*1*) as so renumbered, the following sub-section shall be inserted namely:– "(*2*) Where a banking company to which a loan or advance has been made under the provisions of clause (3) of sub-section (*1*) is wound up, any sums due to the Bank in respect of such loan or advance, shall, subject only to the claims, if any, of any other banking company in respect of any prior loan or advance made by such banking company against any security, be a first charge on the assets of the banking company." (*3*) In section 42, for sub-

Year.	*No.*	*Short title.*	*Amendments.*
(1)	(2)	(3)	(4)
1934 *cont.*	II *cont.*	The Reserve Bank of India Act, 1934-*cont.*	section section (*6*) the following sub-shall be substituted, namely :—

"(*6*) The Bank shall, save as hereinafter provided, by notification in the Gazette of India,—

(*a*) direct the inclusion in the Second Schedule of any bank not already so included which carries on the business of banking in any Province of India and which—

(*i*) has a paid-up capital and reserves of an aggregate value of not less than five lakhs of rupees, and

(*ii*) satisfies the Bank that its affairs are not being conducted in a manner detrimental to the interests of its depositors, and

(*iii*) is a company as defined in clause (*2*) of section 2 of the Indian Companies Act, 1913 (VII of 1913), or a corporation or a company incorporated by or under any law

Year	*No.*	*Short title.*	*Amendments.*
(1)	(2)	(3)	(4)
1934 *cont.*	II *cont.*	The Reserve Bank of India Act, 1934-*cont.*	in force in any place outside the Provinces of India; (*b*) direct the exclusion from that Schedule of any scheduled bank,— (*i*) the aggregate value of whose paid-up capital and reserves becomes at any time less than five lakhs of rupees, or (*ii*) which is, in the opinion of the Bank after making an inspection under section 35 of the Banking Companies Act, 1949, conducting its affairs to the detriment of the interests of its depositors, or (*iii*) which goes into liquidation or otherwise ceases to carry on banking business: Provided that the Bank may on application of the scheduled bank concerned and subject to such conditions if any, as it may impose, defer the making of a direction under sub-

Year.	*No.*	*Short title.*	*Amendments.*
(1)	(2)	(3)	(4)
1934 *cont*	II *cont*	The Reserve Bank of India Act. 1934-*cont.*	clause (*i*) or sub-clause (*ii*) of clause (*b*) for such period as the Bank considers reasonable to give the scheduled bank an opportunity of increasing the aggregate value of its paid-up capital and reserves to not less than five lakhs of rupees or, as the case may be, of removing the defects in the conduct of its affairs ; (*c*) alter the description in that Schedule whenever any scheduled bank changes its name. *Explanation.*—In this sub-section the expression "value" means the real or exchangeable value and not the nominal value which may be shown in the books of the bank concerned; and if any dispute arises in computing the aggregate value of the paid-up capital and reserves of a bank, a determination thereof by the Bank shall be final for the purposes of this sub-section."

THE SECOND SCHEDULE.

(*See* Section 55)

REPEALS

Year.	*No.*	*Short title.*	*Extent of repeal.*
(1)	(2)	(3)	(4)
1913	VII	The Indian Companies Act, 1913.	The whole of Part XA.
1946	XXVII	The Banking Companies (Restriction of Branches) Act, 1946.	The whole.
1946	IV	The Banking Companies (Inspection) Ordinance, 1946.	The whole.
1948	XXV	The Banking Companies (Control) Ordinance, 1948.	The whole.

THE THIRD SCHEDULE.

(*See* Section 29)

FORM A

FORM OF BALANCE-SHEET

CAPITAL AND LIABILITIES	Rs. A. P.	Rs. A. P.	PROPERTY AND ASSETS	Rs. A. P.	Rs. A. P.
CAPITAL (*a*)—			CASH :		
Authorised Capital ..... Shares of Rs..... each.....			In hand and with Reserve Bank (including foreign currency notes) . .		
Issued Capital..... Shares of Rs. .....each.....			Balances with other Banks (showing whether		

FORM A—*cont.*

CAPITAL AND LIABILITIES	Rs.	A.	P.	PROPERTY AND ASSETS	Rs.	A.	P.
				on deposit or current account):			
Subscribed Capital .....Shares of Rs.....each				(*i*) in the Provinces of India.			
				(*ii*) outside the Provinces of India			
Amount called up at Rs.....per share.....				MONEY AT CALL AND SHORT NOTICE			
Less calls unpaid.				BILLS DISCOUNTED AND PURCHASED (*e*)			
				(Other than Treasury Bills of the Central and Provincial Governments):			
Add forfeited shares.....				(*i*) Payable in any Province of India			
				(*ii*) Payable outside the Provinces of India.			
RESERVE FUND (*b*)—							
DEPOSITS AND OTHER ACCOUNTS:							
Fixed Deposits..				INVESTMENTS (stating mode of valuation, *e.g.*, cost or market value) (*f*)			
Savings Bank Deposits				(*i*) Government of India and Trus-			
Current Accounts and Contingency (unadjusted)							

FORM A—*cont.*

CAPITAL AND LIABILITIES	Rs. A. P.	Rs. A. P.	PROPERTY AND ASSETS	Rs. A. P.	Rs. A. P.
accounts.....			tee securities including Treasury Bills of Government of India and Provincial Governments ..		
Borrowings from other Banks, Agents, etc.:			(*ii*) Shares (classifying into preference, ordinary, deferred and other classes of shares and showing separately shares fully paid up and partly paid up) ..		
(*i*) in the Provinces of India.			(*iii*) Debentures or Bonds ..		
(*ii*) outside the Provinces of India.			(*iv*) Other investments (to be classified under proper heads)..		
Particulars :			(*v*) Gold		
(*i*) Secured (stating the nature of security)			LOANS, ADVANCES, CASH CREDITS AND OVERDRAFTS (other than bad and doubtful debts for which provision has been made to the satisfaction of the auditors):		
(*ii*) Unsecured...					
Bills payable ...					
Bills for collection being bills receivable as *per contra:*					

FORM A—*cont.*

CAPITAL AND LIABILITIES	Rs. A. P.	Rs. A. P.	PROPERTY AND ASSETS	Rs. A. P.	Rs. A. P.
			Particulars—*cont.*		
(*i*) payable in any Province of India.....			(*i*) in the Provinces of India.		
(*ii*) payable outside the Provinces of India.			(*ii*) outside the Provinces of India ..		
Other Liabilities (to be specified) (c)			Particulars : (*i*) Debts considered good in respect of which the bank is fully secured ..		
Acceptances, endorsements and other obligations *per contra.*			(*ii*) Debts considered good for which the bank holds no other security than the debtors personal security ..		
			(*iii*) Debts considered good, secured by the personal liabilities of one or more parties in addition to the personal security of the debtors.		
PROFIT AND LOSS :			(*iv*) Debts considered doubtful		

FORM A—*cont.*

CAPITAL AND LIABILITIES		PROPERTY AND ASSETS	
RS. A. P.	RS A. P.	RS. A. P.	RS. A. P.
		Particulars—*cont.*	
		or bad not provided for ..	
Less appropriation thereof		(*v*) Debts due by directors or officers of the bank or any of them either severally or jointly with any other persons.	
CONTINGENT LIABILITIES (*d*)		(*vi*) Debts due by companies or firms in which the directors of the bank are interested as directors, partners or managing agents or, in the case of private companies, as members	
		(*vii*) Maximum total amount of loans, including temporary advances made at any time during the year to directors or	

FORM A—*cont.*

CAPITAL AND LIABILITIES		PROPERTY AND ASSETS	
RS. A. P.	RS. A. P.	RS. A. P	RS. A. P.
		Particulars—*cont.*	
		managers or officers of the company ...	
		(*viii*) Maximum total amount of loans, including temporary advances granted during the year to the companies or firms in which the directors of the bank are interested as directors, partners or managing agents or, in the case of private companies, as members.	
		(*ix*) Due from banks.	
		Bills for collection being bills receivable as *per contra*.	
		(*i*) payable in any Province of India.	
		(*ii*) payable outside the Provinces of India	

FORM A—*cont.*

CAPITAL AND LIABILITIES			PROPERTY AND ASSETS		
	RS. A. P.	RS. A. P.		RS. A. P.	RS. A. P.
			Particulars—*cont.*		
			Acceptances, endorsements and other obligations *per contra.*		
			Premises less depreciation (*g*).		
			Furniture and fixtures less depreciation (*g*).		
			Other assets, including silver (to be specified) (*h*)		
			Non-banking assets acquired in satisfaction of claims (stating mode of valuation) (*i*)		
			PROFIT AND LOSS		
TOTAL...			TOTAL...		

*References to the Provinces of India shall be construed as including references to the Acceding States to which the Banking Companies Act, 1949 for the time being extends.

NOTES.

(*a*) *Capital*:—

(i) The various classes of capital, if any, should be distinguished.

(ii) Shares issued as fully paid-up pursuant to any contract

without payments being received in cash should be stated separately.

(iii) Where circumstances permit, issued and subscribed capital and amount called up may be shown as one item, e. g., Issued and Subscribed Capital
Shares of Rs. paid up.

(iv) In the case of banking companies incorporated outside the Provinces of India, the amount of deposit kept with the Reserve Bank of India under sub-section (2) of section 11 of the Banking Companies Act, 1949, should be shown under this head the amount however should not be extended to the outer column.

(*b*) The reserve fund maintained under section 17 of the said Act should be shown separately.

(*c*) Under this heading are to be included such items as the following, to be shown under separate heading suitably described: pension or insurance funds, unclaimed dividends, advance payments and unexpired discounts, liabilities to subsidiary companies and any other liabilities.

(*d*) These should be classified under the following categories:—

(i) Claims against the banking company not acknowledged as debts.

(ii) Money for which the bank is contingently liable showing separately the amount of any guarantee given by the banking company on behalf of directors or officers.

(iii) Arrears of cumulative preference dividends.

(iv) Liability on Bills of Exchange rediscounted.

(v) Liability on account of outstanding Forward Exchange Contracts.

(*e*) Particulars as under "Loans, Advances, Cash Credits and Overdrafts" are to be shown under this heading.

(*f*) Where the value of the investments shown in the outer column of the balance-sheet is higher than the market value, the market value shall be shown separately in brackets.

(*g*) Bank premises wholly or partly occupied for the purposes of business should be shown against "Premises less depreciation." In the case of fixed capital expenditure, the original cost, and additions thereto and deductions therefrom during the year should be stated, as also the total depreciation written off. Where sums have been written off on a reduction of capital or revaluation of assets, every balance-sheet after the first balance-sheet subsequent to the reduction or revaluation should show the reduced figures with the date and amount of the reduction made. Furniture, fixtures and other assets which have been completely written off need not be shown in the balance-sheet.

(*h*) Under this heading may be included such items as the following, which must be shown under headings suitably described: preliminary, formation and organisation expenses, development expenditure, commission and brokerage on shares, interest accrued on investments but not collected, investments in shares of subsidiary companies and any other assets.

(*i*) Value shown shall in no case exceed market value.

FORM B.

FORM OF PROFIT AND LOSS ACCOUNT.

Profit and Loss Account for the year ended December

EXPENDITURE.	INCOME (LESS PROVISION MADE DURING THE YEAR FOR BAD AND DOUBTFUL DEBTS).
Interest paid on deposits	Interest and Discount ..
Salaries and Allowances (showing separately salaries and allowances to managing director or manager).	Commission, Exchange and Brokerage .. ..
	Rents .. .. ..
	Transfer from contingencies account,

EXPENDITURE		INCOME (LESS PROVISION MADE DURING THE YEAR FOR BAD AND DOUBTFUL DEBTS).	
Directors' fees and allowances.		Profit made on sale of investments, gold and silver, land, premises and other assets	
Local Committee members' Fees and allowances.			
Provident Fund		Profits made on revaluation of investments, gold and silver, land, premises and other assets.	
Rent, Taxes, Insurance, Lighting, etc.			
Law Charges			
Postage, Telegrams and Stamps.		Income from non-banking assets, and profit from sale of or dealing with such assets.	
Auditors' fees			
Depreciation on Banks' property.			
Repairs to Banks' property.			
Stationery, Printing, Advertisement, etc.			
Loss from sale of or dealing with non-banking assets.			
Other Expenditure ..		Other receipts	
Balance of Profit ..		Loss (if any)	
Total ..		Total ..	

Appendix A

The Imperial Bank of India Act (XLVII of 1920)

(19th Septr. 1920)

An act to constitute and Imperial Bank of India and for other purposes.

Whereas it is expedient to constitute an Imperial Bank of India and to transfer to the Bank so constituted the undertaking of each of the Presidency Banks and to dissolve those Banks and to make provision for the regulation and management of the Imperial Bank of India; It is hereby enacted as follows :—

1. (1) This Act may be called The Imperial Bank of India Act, 1920.

Short title and commencement.

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

2. In this Act, unless there is anything repugnant in the subject or context,–

Definition.

(a) " Appointed day" means such day as the Central Government may appoint for the commencement of this Act;

(b) " The Bank of Bengal", the " Bank of Madras " and " The Bank of Bombay " mean, respectively, those banks as constituted by the Presidency Banks Act, 1876.

(c) " dividend " includes bonus;

(d) " General meeting " means the annual meeting of the shareholders of the Bank;

(e) " goods " includes also bullion, wares and merchandise;

(f) " local meeting " means the annual meeting of the shareholders whose names are registered in a branch register;

(g) " meeting " includes an adjourned holding of a meeting;

(h) " prescribed " means prescribed by bye-laws made under this Act;

(i) " Presidency Banks " means the Bank of Bengal, the Bank of Madras and the Bank of Bombay as constituted by the Presidency Banks Act, 1876, and a " Presidency Bank " means any one of these Banks :

((ii) " Secretary " and " Deputy Secretary " mean, respectively a Secretary and Treasurer and a Deputy Secretary and treasurer of the Bank).

(j) " special local meeting " means a meeting of the shareholders whose names are registered in a branch register, convened for the transaction of some particular business specified on the notice convening the meeting;

(k) " Special local resolution " means a resolution passed at a special local meeting;

(l) " special meeting " means a meeting of the shareholders convened for the transaction of some particular business specified in the notice convening the meeting; and

(m) " special resolution " means a resolution passed at a special meeting.

CHAPTER 1.

Establishment and Incorporation of the Imperial Bank of India.

3. (1) A Bank to be called the Imperial Bank of India and in this Act referred to as " the Bank " shall be constituted for the purpose of taking over the undertakings of The Presidency Banks and to carry on the business of banking in accordance with the provisions of this Act.

Establishment of the Imperial Bank.

(2) Every person who, immediately before the appointed day, was registered as a shareholder or as a holder of stock in any of the Presidency Banks, together with such other persons as may from time to time become shareholders in the Bank in accordance with the provisions of this Act, shall, as long as they are shareholders in the Bank, constitute a body corporate with perpetual succession and a common seal under the name of the Imperial Bank of India and shall sue and be sued in that name.

(3) Subject to the provisions of this Act, the capital of the Bank shall consist of one hundred and twelve millions and five hundred thousand rupees divided into shares of five hundred rupees each.

(4) The liability of the shareholders of the Bank shall be limited to the amount not fully paid up on their shares

CHAPTER II.

Transfer of the Undertakings or Presidency Banks to the Imperial Bank.

4. (1) Subject to the provisions of this Act, as from the appointed day, the undertakings of each the Presidency Banks shall be transferred to and shall vest in the Bank.

Transfer of assets and liabilities.

(2) The undertaking of a Presidency Bank shall be deemed to include all rights, powers, authorities and privileges and all property, moveable and immoveable, including cash balances, reserve funds, investments and all other interests and rights in or arising out of such property as may be in the possession of the 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 that Bank.

(3) If, on the appointed day, any suit, appeal or legal proceeding of whatever nature is pending by or against any Presidency Bank, the same shall not abate, be discontinued or be in any way prejudicially affected by reason of the transfer to the Bank of the undertaking of such Presidency Bank or of anything in this Act, but the suit, appeal or proceeding may be continued, prosecuted and enforced by or against the Bank.

(4) All contracts, deeds, bonds, agreements and other instruments of whatever nature subsisting or having effect immediately before the appointed day and to which any Presidency Bank is a party shall be of as full force and effect against or in favour of the Bank, as the case may be, and

may be enforced as fully and effectively as if instead of the Presidency Bank the Bank had beed a party thereto.

Terms of transfer as regards shareholders in the Presidency Banks.

5. (1) The name of every person who immediately before the appointed day was registered as a shareholder in any of the Presidency Banks shall be registered in accordance with the Provisions of this act hereinafter appearing as holding the same number of shares in the Bank as stood in his name in the register of such Presidency Bank:

Provided that for the purposes of this section two half-shares standing in the name of any such person in the register of any Presidency Bank shall be taken as the equivalent of one share, and odd half-shares shall be dealt with as hereinafter provided.

(2) The name of every person who immediately before the appointed day was registered as a holder of stock in any of the Presidency Banks shall be registered in accordance with the provisions of this Act hereinafter appearing as holding one share in the Bank for every Rupees five hundred of stock of which he was the registered holder in such Presidency Bank, and odd amounts of stock not amounting to Rupees five hundred shall be dealt with as hereinafter provided.

(3) The Bank shall issue fractional certificates to the holders of odd half-shares and of odd amounts of stock, not amounting to Rupees five hundred, certifying, as the case may be, that the holder is entitled to one-half of one fully paid share or such fraction of a share as the odd amount of stock is of Rupees five hundred.

(4) Holders of fractional certificates shall, if resident in India, within three months and, in any other case, within six months from the date of the certificate either—

(i) surrender their fractional certificates with other similar fractional certificates representing in all one fully paid share, in which case the surrender shall be entitled to be registered as a shareholder and to have a fresh certificate for a fully paid share in the Bank issued to him and be entitled to an allot-

ment of new shares in the same way as if he had been the holder of one fully paid share, or

(ii) at their option surrender the fractional certificates to the Bank, in which case the Bank shall be entitled to sell the shares represented by the fractions so surrendered from time to time in such manner as the Bank deems expedient, and the aggregate net sale proceeds realised by such sale or sales shall be divided proportionately and paid by the Bank to the holders of fractional certificates for whose account the shares may have been so sold.

(5) Every shareholder of the Bank whose name has been registered in accordance with the provisions of this section shall be entitled, in respect of every share of which he is so registered as the holder, to an allotment to himself or to his nominee (provided that such nominee is approved by the Bank) of two shares in the Bank with the sum of rupees onehundred and twenty-five credited as paid up on payment in respect of each share in the case of a former shareholder or stock holder of the Bank of Bengal or the Bank of Bombay, of Rupees one hundred and twenty-five, and of the Bank of Madras of Rupees two hundred and twenty-five.

(6) The Bank shall cause notice to be published in the Official Gazette and in two daily papers in each Presidency and shall also send by post to every person whose name immediately before the appointed day was entered in the register of shareholders or shareholders of any of the Presidency Banks, a notice giving particulars of the terms hereinbefore set out as to the allotment of new shares and the surrender of fractional certificates, and as to the manner and form in which application for the allotment of new shares and the surrender of fractional certificates is to be made.

(7) If within a period of three months from the date of publication in the Official Gazette of the notice referred to in sub-section (6), any holder has not made an application for the allotment of new shares to which he is entitled, the Bank may offer such shares for public subscription and allot them to any person applying therefor:

Provided that the Bank in the case of shareholders whose addresses are out of British India may, either generally or in any particular instance, fix an extended period for the admission of applications, but in no case shall that period be later than six months from the date of the publication of the notice in the Official Gazette.

Existing Officers and servants of Presidency Banks and existing Provident Funds.

6. (1) Subject to the provisions of this Act, every officer and servant employed immediately before the appointed day by a Presidency Bank shall, from the appointed day become an officer or servant of the Bank, and shall hold his office or service therein by the same tenure and upon the same terms and conditions and with the same rights and privileges as to pension or gratuity as he would have held the same under the Presidency Bank if this Act had not been passed.

(2) Any person who, on the appointed day, has been, granted or is in receipt of a pension or other superannuation or compassionate allowance from a Presidency Bank shall be entitled to be paid by, and to receive from, the Bank the same pension or allowance so long as he observes the conditions on which the pension or allowance was granted. Any question whether he has so observed such conditions shall, in case of any difference arising, be determined by the Central Government.

(3) For the directors and officers of the Banks of Bombay and Madras who are at the commencement of this Act the respective trustees of the following funds, that is to say,–

(a) the Bank of Bombay officers' Pension and Guarantee Fund, and

(b) the Bank of Madras Pension and gratuity Fund, and the Bank or Madras officers' Provident and Mutual Guarantee Fund,

there shall be substituted as trustees of those funds, respectively, the members for the time being and the corresponding officers of the Local Boards of the Bank at Bombay and Madras; and if any doubt arises as to who are the correspon-

ding officers to the offers who are trustees at the commencement of this Act, the decision of the Central Board shall be final.

Dissolution of Presidency Banks.

7. As from the appointed day the Presidency Banks shall be dissolved, and thereafter no person shall make, assert or take any claims, demands or proceedings against any of the said Banks or against a director or officer thereof, in his capacity as such director or officer, except in so far as may be necessary for enforcing the provisions of this Act.

CHAPTER III.

Business of the Bank.

Business which Bank may transact.

8. Subject to the provisions of this Act, the business which the Bank is authorised to carry on and transact shall be the several kinds of businsss specified in schedule I subject to the limitations therein mentioned.

9. (Business of London office) Rep. by the Imperial Bank of India (Amendment) Act (III of 1934) S. 3.

Bank may do Government business.

10. (l) It shall also be lawful for the Bank under any agreement with the (Reserve Bank of India)—

(i) to pay, receive, collect and remit money, bullion and securities (as agent for the Reserve Bank of India) on behalf of (any) Governnent.

(ii) to undertake and transact any other business which, (the Reserve Bank of India) may from time to time entrust to the Bank.

Acquisition of business premises.

11. For the purpose of providing buildings and places in and at which to carry on and manage the business of the Bank and proper residence for its officers and servants the Bank may—

(a) acquire any interest in immoveable property; and

(b) sell, buy, re-sell, exchange, let, furnish, repair, insure against fire and other risks or deal with all or any part of the

same as it may consider most conducive to the interest of the Bank.

Establishment of branches & agencies.

12. Subject to the provisions of this Act, the Bank may–

(a) maintain, as branches or agencies of the Bank, any branches or agencies of the Presidency Banks which were in existence immediately before the appointed day, and may establish branches or agencies at such places, (whether in India or elsewhere) as it deems advantageous for the interests of the Bank, and

(b) discontinue any Branch or agency maintained or established under this section.

Power of the Bank to take over business of certain other Banks and for that purpose to increase its capital.

13. (1) With the sanction of the Central Government, the Bank may enter into negotiations for and purchase and take over the business, including the capital, assets and liabilities, of any Banking Company carrying on business in India (or elsewhere) of which the capital is divided into shares, and may pay the consideration for such purchase either in cash or by the allotment of shares in the capital of the Bank, or partly in one and partly in the other of these ways, and (subject to the provisions of this Act relating to the increase of capital) for the purpose of any such allotment of shares, increase the capital of the Bank by the issue of such number of shares as may be determined on by the Bank.

(2) Any business so purchased shall after the purchase be carried on by the Bank subject to the provisions of this Act.

Power of Bank to grant loans to certain other Banks.

(13-A. Notwithstanding anything contained in schedule I, the Bank may either alone or conjointly with other persons, for the purpose of averting the winding up of any company having a share capital which is expressed in rupees in its memorandum of association or of any Society registered under the Co-operative Societies Act 1912 (or any other

law for the time being in force in British India) (or British Burma) relating to co-operative Societies) or, where any such company or society is being wound up, of facilitating the winding up, advance or lend money to or open a cash-credit in favour of, such company, or society or the liquidators thereof, as the case may be, for any period upon the security of all or any of the assets whatsoever of such company or society).

CHAPTER IV.

Shares.

Nature of shares. 14. (1) The shares of the Bank shall be moveable property.

(2) Each share in the Bank shall be distinguished by its appropriate number.

Notes:

In the debate in Parliament on the Banking Companies Bill severe attacks were made on the working of the Imperial Bank by members who pleaded for its early nationalisation. Mr. B Das criticised the Imperial Bank which through its nonIndian officers had helped both in the past and now to fleece the country's wealth. It was public enemy number one. He would continue to hold this view until the Imperial Bank was nationalised and its officers totally Indianised. He did not want fifth columnists and Quislings to continue to work in the Imperial Bank It was unfortunate that today every district and subdistrict treasury had to put in its money into the coffers of this bank. Mr. TA Ramalingam Chettiar said that much evidence had been placed before the Banking Enquiry Committee on the vagaries of the Imperial Bank of India about the way in which the bank was financing the industries and commercial corporations in India on the one hand and the way they were financing European companies on the other. European companies were given crores of rupees without any security while Indianowned textile mills with large blocked capital would not be given even working capital It was not at all surprising that on every side there was a demand for the nationalisation of the Imperial Bank. Replying to the debate Dr. Matthai the Finance Minister said that in the matter of nationalisation of the Imperial Bank he was in the hands of the House. As far as his personal observations and examination went he had some doubts in his mind as to whether the management of commercial banks was a suita-

ble sphere for nationalisation. In the matter of commerical banks the daytoday operations and activities of the concerns depended very largely on the sort of personal contacts and relationship that is built up between themselves and their customers, a kind of activity which required in the first place a certain elasticity in mental outlook. But the question had been raised particularly in regard to the Imperial Bank of India. " I must say that I am not satisfied myself with the organisation and the working of the Imperial Bank under the present setup. What I would like to do in light of the criticisms to which I have listened is to see whether without nationalising the Imperial Bank of India it is not possible for us to secure the object which the members have in mind, by undertaking a suitable revision of the Imperial Bank of India Act. What I want to do is to take in hand immediately the question of examining the provisions of the Imperial Bank of India Act in the light of the actual experience of the working of it and in the light of many points which had been raised in the course of the discussion and to see whether by revising the Act we cannot put the Imperial Bank on a basis which would enable it to render the fullest possible service in the most suitable manner." A suggestion which the Author would respectfully make is that the object which the Finance Minister has in view can be achieved by constituting an advisory council charged with the duty of supervising the lending activities of the Bank which formed the major point of attack by members of Parliament. The Council can be given instructions to see that in the making of loans by the Bank no discrimination is practised in favour of non-nationals of the Dominion of India at the expense of nationals.

Certificate of shares.

15. A certificate under the common or official seal of the Bank specifying the shares held by any shareholder shall be *prima facie* evidence of the title of the shareholder to the shares therein specified.

Principal register of shareholders.

16. The Bank shall keep in one or more books a register of its shareholders (in this Act referred to as the principal register), and shall enter therein the following particulars so far as they may be available:—

(i) the addresses and occupations, if any, of the shareholders and a statement of the shares held by each share-

holder, distinguishing each share by its number, and of the amount paid on the shares of each shareholder;

(ii) the date on which each person is so entered as a shareholder; and

(iii) the date on which any person ceased to be a shareholder.

Branch Registers.

17. (1) The Bank shall cause to be kept at the local head offices of the Bank in Calcutta, Madras and Bombay branch registers which shall be deemed to be part of the principal register, any may do so at any other local head office which may hereafter be established under this Act.

(2) There shall be entered in the Branch register to be kept in Calcutta the name of every person who having been registered as a shareholder or stockholder in the Bank of Bengal is entitled under the provisions of section 5 to be registered as a shareholder in the Bank, with the same particulars appended thereto as required in the case of the principal register, and the same provision shall apply mutatis mutandis to the branch registers to be kept in Madras and Bombay.

(3) Any shareholder may apply to the Bank to have his name transferred from one branch register to another in respect of either the whole or any part of the shares standing in his name, and the Bank shall, subject to such condition as may be prescribed, cause the registers to be amended accordingly.

(4) Subject to the provisions of sub-section (3) no transaction with respect to any share registered in one branch register shall be registered in any other branch register.

Trusts not to be entered on the register.

18. No notice of any trust, express, implied or constructive, shall be entered on the principal or any branch register or be receivable by the Bank.

Power to close Register.

19. The Bank may close the principal register or any branch register for any time or times, not exceeding in the whole thirty days in each year.

Inspection of register of shareholders.

20. (1) The principal register or shareholders shall be kept at such placcs as the Bank, by notification in the Official Gazette may appoint and, except when closed under the provisions of this Act, that register or any branch register shall during business hours (subject to such reasonable restrictions as the Bank may impose, so that not less than two hours in each day be allowed for inspection) be open to the inspection of any shareholder gratis.

(2) Any shareholder may require a copy of any such register, or any part thereof, on prepayment therefor at the rate of six annas for every hundred words or fractional part thereof requires to be copies.

(3) A copy of the principal register of shareholders shall be complied within 30 days after the date of the first ordinary general meeting in each year and shall be filed forthwith with the officer performing the duty of registration of companies under the Indian Companies Act 1913).

CONTRACTS.

Form of Contracts.

21. (1) Contracts on behalf of the Bank may be made as follows:–

(i) any contract, which if made between private persons, would be by law required to be in writing, signed by the parties to be charged therewith, may be made on behalf of the Bank, in writing signed by any person acting under its authority, express or implied, and may in the same manner be varied or discharged;

(ii) any contract which, if made between private persons, would by law be valid although made by parol only and not reduced to writing, may be made by parol on behalf of the Bank by any person acting under its authority, express or implied, and may in the same manner be varied or discharged.

(2) All contracts made according to the provisions of this section shall be effected in law, and shall bind the Bank and all other parties thereto and their legal representatives.

REGULATIONS OF BANK.

Regulations of the Bank.

22. The provisions contained in schedule II shall be the regulations of the Bank in regard to the matters to which they relate.

CHAPTER V.

Management.

Officers of the Bank.

23. The Bank shall have local head office in Calcutta, Madras and Bombay and at such other places in British India (or British Burma) as the Bank may determine.

Offices of the Bank.

24. The general superintendence of the affairs and business of the Bank shall be entrusted to a Central Board of (Directors) (hereinafter in this Act referred to as the "Central Board"), who may exercise all powers and do all such acts and things as may be exercised or done by the Bank and are not by this Act expressly directed or required to be done by the Bank in general meeting.

Local Boards.

25. Local Boards shall be established at Calcutta, Madras and Bambay, and may be established at such other places in British India (or British Burma) as the Central Board may determine.

Powers of the Local Board.

26. Without prejudice to the powers conferred by Section 24, the Local Boards established at Calcutta, Madras and Bombay shall have power generally to transact all the usual business of the Bank, and shall have power to as regards entries in the branch registers, respectively kept at those places, to examine or refuse to approve transferees of shares and to give certificates of shares.

Local Boards at Calcutta Madras and Bombay.

27. The several persons who were, immediately before the appointed day, respectively the directors of the

Constitution of first Local Boards.

Presidency Banks shall constitute the first Local Boards of the Bank at Culcutta, Madras and Bombay respectively, and the persons who were then President, Vice-president and Secretary, respectively, of the said Banks shall fill the same offices in the respective Local Boards until they vacate office in accordance with the provisions of this Act.

CENTRAL BOARD.

Constitution of Central Board.

28. (1) The Central Board shall consist of the following Directors, namely:—

(i) the presidents and vice-presidents of the Local Boards established by this Act;

(ii) one person to be elected from among themselves by the members of each Local Board established by this Act;

(iii) a Managing Director who shall be appointed by the Central Board for a period not exceeding five years on such terms as the Central Board may direct, and may be continued in his appointment by the Central Board for such further periods not exceeding five years in each case as the Central Board thinks fit;

(iv) such number of persons not exceeding two and not being (Officers of the Crown) as may be nominated by the Central Government. Such persons shall hold office for one year but may be re-nominated;

(v) a Deputy Managing Director who shall be appointed by the Central Board;

(vi) the Secretaries of the Local Boards established by this Act; and

(vii) if any Local Board is hereafter established by this Act, such number of persons to represent it as the Central Board may prescribe.

(2) The Directors specified in clauses (v) and (vi) of sub-section (1) shall be at liberty to attend all meetings of the Central

Board and to take part in its deliberations, but shall not be entitled to vote on any question arising at any meeting:

Provided that the Deputy Managing Director shall be entitled to vote in the absence of the Managing Director.

(3) The Central Government shall nominate an (officer of the Crown) to attend the meetings of the Central Board, and such Officer shall be entitled to attend all meetings of the Central Board and to take part in its deliberations but shall not be entitled to vote on any question arising at any meeting.

Constitution of other Local Boards.

29. (1) Where the Central Board establishes any additional local head office of the Bank in British India (or British Burma) a Local Board shall be constituted to manage the local business of the Bank.

(2) The number of the members of any such Local Board shall be such number, not less than three, as may be prescribed and shall be appointed in such manner as may be prescribed.

30. (Power to remove difficulties). Rep. by the Imperial Bank of India (Amendment) Act (III of 1934) S. 13.

CHAPTER VI.

Miscellaneous.

Power of Central Board to make bye-laws.

31. (1) The Central Board shall, with the previous approval of the Central Government make bye-laws consistent with the Act regulating the following matters, namely:

(a) the maximum amounts which may be advanced, or lent to, for which bills may be discounted for, any individual or partnership, without the security mentioned in sub-clauses (i) to (iv) of clause (a) of Part I of Schedule I, the conditions under which advances may be made on the said security and the extent of the same to which accounts may be overdrawn without security;

(b) the conditions subject to which alone advances may be made to (Directors), members of Local Boards, or officers of

the Bank, or the relatives of such (Directors), members or officers, or to companies, firms or individuals with which or with whom such (Directors), members, officers or relatives are connected as partners, directors, managers, servatns, share-holders or otherwise.

Provided that the bye-laws shall provide that no advance without security shall be made to any officer of the Bank without the specific sanction of the Local Board under which he is serving.

(c) the particulars to be contained in (the annual and half-yearly balance sheets); and

(d) any matter which by this Act is directed to be prescribed.

(2) The Central Board may, with the previous approval of the Central Government make bye-laws consistent with this Act regulating the following matters or any of them, namely:-

(a) the keeping of the register and branch registers of share-holders;

(b) the distribution of business amongst the (Directors) and their remuneration, if any;

(c) the distribution of business amongst the members of a Local Board and their remuneration, if any;

(d) the delegation of any powers of the Central Board or of a Local Board to committees consisting of (Directors) or members, as the case may be;

(e) the procedure to be followed at the meetings of the Central or Local Boards or of any committees thereof;

(f) the first appointment and the appointment of members of a Local Board established under this Act;

(g) the powers of Local Boards established by or under this Act;

(h) the localities in and with respect to which such Local Boards shall exercise their powers;

(i) the books and accounts to be kept at the local head offices of the Bank;

(j) the renewal of certificates of shares which have been worn out or lost;

(k) the conduct and defence of legal proceedings and the manner of signing pleadings;

(l) the constitution and management of pension and provident funds for the officers and servants of the Bank;

(m) all matters which are by the Act permitted to be prescribed; and

(n) generally the conduct of the business of the Bank.

32. (1) The references in Sections 188, 189 and 289 of the Indian Companies Act, 1913, and references in any other enactment to the Presidency Banks or any of them shall be deemed to references to the Bank.

References to Presidency Banks.

(2) Where by any instrument power is given to invest in, to hold or to exercise any rights in regard to shares or stock in a Presidency Bank, then that power may be exercised as if the same power were given by such instrument in regard to shares in the Bank.

(3) A power of attorney in favour of a Presidency Bank or in favour of a Presidency Bank and its officers shall be deemed, as the case may be, to be a power of attorney in favour of the Bank or of the Bank and and its officers.

33. (Amendment of S. 11 (3) of Act VII of 1913) Rep. by the Repealing and Amending Act (XX of 1937) S. 3 and Sch: II.

34. (Repeals) Rep. by the Repealing Act (XII of 1927.)

SCHEDULE I.

(See item 8)

Part I.

Business which the Bank is authorised to carry on and transact.

The Bank is authorised to carry on and transact the several kinds of business hereinafter specified, namely:—

(a) the advancing and lending money, and opening cash-credits upon the security of—

(i) Stocks, funds and securities (other than immovable property) in which a trustee is authorised to invest trust money by any Act of Parliament or by any (Indian or Burma Law) any securities of a (Provincial Government, the Government of Burma) or the Government of Ceylon (and shares of the Reserve Bank of India).

(ii) such securities issued by State-aided railways as having been notified by the Central Government under Sec. 36 of the Presidency Banks Act, 1876, or may be notified by (it) under this Act in that behalf;

(iii) debentures or other securities for money issued under the authority of any Act of a legislature established in British India (or British Burma), by, or on behalf of a district board (or a municipal board or commitee, or, with the sanction of the Central Government debentures or other securities for money issued under the authority of a Prince or a Prince or Chief of any State in India)

(iii-a) subject to such directions as may be issued by the Central Board, debentures of companies with limited liability, whether registered in India or elsewhere);

(iv) goods which, or the documents of title to which, are deposited with, or assigned to, the Bank as security for such advances, loans or credits;

(iv-a) goods which are hypothecated to the Bank as security for such advances, loans or credits, if so authorised by special directions of the Central Board);

(v) accepted bills of exchange and promissory notes endorsed by the payees and joint and several promissory notes of two or more persons or firms unconnected with each other in general partnership; and

(vi) Fully paid shares (* *) of companies with limited liability or immoveable property or documents of title relating thereto as collateral security only where the original security is one of those specified in sub-clause (i) to (iv) (subject to such directions as may be issued by the Central Board) where the original security is of the kind specified in sub-clause (v);

(Provided that any advances or loans which, under the law for time being in force, any of the following Governments or authorities, that is to say, the Secretary of State, any Government in British India, the Federal Railway authority, the Government of Burma or the Burma Railway Board, may lawfully accept from the Bank may, if the Central Board think fit, be made without any specific security).

(b) the selling or realisation of the proceeds of sale of any such promissory notes, debentures, stock receipts, bonds, annuities, stock, shares, securities or goods which, or the documents of title to which, have been deposited with, or (pledged, hypothecated, assigned or transferred to) the Bank as security for such advances, loans or credits or which are held by the Bank or over which the Bank is entitled to any lien or charge in respect of any such loan or advance or credit or any debt or claim of the Bank, and which have not been redeemed in due time in accordance with the terms and conditions (if any) of such deposit (pledge, hypothecation, assignment or transfer);

(c) the advancing and lending money to Courts of Wards upon the security of estates in their charge or under their superintendence, and the realisation of such advances or loans or any interest due thereon, provided that no such advance or loan shall be made without the previous sanction of the Provincial Government concerned, and that the period for which any such advance or loan is made shall not exceed, (nine months in the case of advances or loans relating to the financing of seasonal agricultural operations or six months in other cases);

(d) the drawing accepting, discounting, buying and selling of bills of exchange and other negotiable securities;

(e) the investing of the funds of the Bank upon any of

the securities specified in sub-clauses (i) to (iii) of clause (a) and converting the same into money which required; and altering, converting and transporting such investments for or into others of the investments above specified;

(f) the making, issuing and circulating of bank-postbills and letters of credit (* *) to order, or otherwise than to the bearer on demand;

(g) the buying and selling of gold and silver whether coined or uncoined;

(h) the receiving of deposits and keeping cash accounts on such terms as may be agreed on;

(i) the acceptance of the charge of plate, jewels, titledeeds or other valuable goods on such terms as may be agreed on;

(j) the selling and realising of all property, whether moveable or immoveable, which may in any way come into the possession of the Bank in satisfaction or part-satisfaction of any of its claims, (and the acquisition and holding of, and generally the dealing with, any right, title or interest) in any property, moveable or immoveable, which may be the Bank's security for any loan or advance or may be connected with any such security);

(k) the transacting of pecuniary agency business on commission and the entering into of contracts of indemnity, suretyship or guarantee with specific security or otherwise);

(l) (the administration of estates for any purpose, whether as an executor, trustee or otherwise) and the acting as agent on commission in the transaction of the following kinds of business, namely:—

(i) the buying, selling, transferring and taking charge of any securities or any shares in any public company;

(ii) the receiving of proceeds, whether principal, interest or dividends, of any securities or share;

(iii) the remittance of such proceeds (* *) by public or private bills of exchange, payable either in India or elsewhere;

(m) the drawing of bills of exchange and the granting of letters of credit payable out of India;

(n) the buying (* *) of bills of exchange payable out of India at any usance not exceeding (nine months in the case of bills relating to the financing of seasonal, agricultural operations or six months in other cases);

(o) the borrowing of money (* *) for the purposes of the Bank's business, and the giving of security for money so borrowed by pledging assets or otherwise;

(p) the subsidizing from time to time of the pension funds of the Presidency Banks; and

(q) generally, the doing of all such matters and things as may be incidental, or subsidiary to the transacting of the various kinds of business (including foreign exchange business) hereinbefore specified.

Part II.

Business which the Bank is not authorised to carry out or transact.

The Bank shall not transact any kind of Banking business other than those specified in Part I and in particular—

(1) It shall not make any loan or advance--

(a) for a longer period than six months (except as provided in cl. (x) and Cl. (n) of Part I), or

(b) upon the security of stock or shares of the Bank, or

(c) save in the case of the estates in clause (c) of Part I, upon mortgage or in any other manner upon the security of any immoveable property, or the documents of title relating thereto.

(2) The Bank shall not (except upon a security of the kind specified in sub-clauses (i) to (iv) of clause (a) of Part I) discount bills for any individual or partnership firm for an amount exceeding in the whole at any one time such sum as may be prescribed or lend or advance in any way to any individual or partnership firm an amount exceeding in the whole at any one time such sum as pay men so prescribed;

(3) The Bank shall not discount or buy, or advance and lend, or open cash-credits on the security of any negotiable

instrument of any individuals or partnership firm payable in the town or at the place where it is presented for discount, which does not carry on it the several responsibilities of atleast two persons or firms unconnected with each other in general partnership.

(4) The Bank shall not discount or buy, or advance and lend, or open cash credits on the security of any negotiable security (not being a security in which a trustee may invest trust money under Section 20 the Indian Trusts Act 1882) (or the corresponding provisions for the time being in force in Burma) having at the date of the proposed transaction a longer period to run that (nine months if a bill drawn for the purpose of financing seasonal agricultural operations and six months in other cases) or, if drawn after sight, drawn for a longer period that (nine months if a bill drawn for the purpose of financing seasonal agricultural operations and six months in other cases).

Provided that nothing in this Part shall be deemed to prevent the Bank from allowing any person who keeps an account with the Bank to overdraw such account, without security, to such extent as may be prescribed.

SCHEDULE II.

Regulations of the Bank.

(See Section 22).

1. Share Certificates.-Every person whose name is entered as a shareholder in the register of shareholders shall, without payment, be entitled to a certificate under the common seal of the Bank (or if the certificate relates to shares registered in a branch register under the official seal of the Bank) specifying the share or shares held by him and the amount paid up thereon: Provided that, in respect of a share or shares held jointly by several persons, the Bank shall not be bound to issue more than one certificate, and delivery of a certificate for a share to one of several joint-holders shall be sufficient delivery to all.

Lien.

2. Bank's lien on shares—The Bank shall have a lien on every share (not being a fully paid share) for all moneys

(whether presently payable or not) called or payable at a fixed time in respect of that share, and the Bank shall also have a lien on all shares standing registered in the name of a single person for all moneys presently payable by him or his estate to the Bank. The Bank's lien, if any, on a share shall also extend to all dividends payable thereon.

3. Power to sell for default;—The Bank may sell in such manner, as it thinks fit, any share on which it has a lien, but no sale shall be made unless some sum in respect of which the lien exists is presently payable, nor until the expiration of fourteen days after a notice in writing, stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the share, or to the person entitled by reason of his death or insolvency to the share.

4. Disposal of proceeds of sales.—The proceeds of the sale shall be applied in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue shall (subject to a like lien for sums not presently payable as existed upon the shares prior to the sale) be paid to the person entitled to the shares at the date of sale. The purchaser shall be registered as the holder of the shares, and he shall not be bound to see to the application of the purchase money nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.

Calls on shares.

5. Calls.—The Bank may, from time to time, make calls upon the shareholders in respect of any moneys unpaid on their shares, provided that no call shall exceed one-fourth of the nominal amount of the share, or be payable at less than two months from the last calls; and each shareholder shall (subject to receiving at least two months notice specifying the time or times of payments) pay to the Bank at the time or times so specified the amount called on his shares.

6. Liability of joint-holders.—The joint-holders of a share

shall be jointly and severally liable to pay all calls in respect thereof.

7. Liability to pay interest on unpaid calls.—If a sum called in respect of a share is not paid before or on the day appointed for payment thereof, the person from whom the sum is due shall pay interest upon the sum at the rate of ten per cent, per annum from the day appointed for the payment thereof to the time of the actual payment, but the Central Board shall be at liberty to waive payment of that interest wholly or in part.

Transfer and transmission of shares.

8. Execution of transfers.—The instrument of transfer of any share in the Bank shall be executed both by the transferor or transferee, and the transferor shall be deemed to remain holder of the share until the name of the transferee is entered in the register of shareholders in respect thereof.

9. Form of transfers.—Shares in the Bank shall be transferred in the following Form, or in any usual or common form which (Bank) shall approve:—

I, A. B., of in consideration of the sum of Rupees paid to me by C. D. of

(hereinafter called " the said transferee ") do hereby transfer to the said transferee the share (or shares) numbered in the Imperial Bank of India to hold unto the said transferee, his executors, administrators and assigns, subject to the several conditions on which I held the same at the time of the execution thereof, and I, the said transferee, do hereby agree to take the said share (or shares) subject to the conditions aforesaid.

As witness our hand the day of

Witness in the signature of, etc.

10. Power to decline to register transfers.—The Bank may decline to register any transfer of shares, not being fully paid shares, to a person of whom it does not approve and may also decline to register any transfer of shares on which the Bank has a lien (or any transfer of shares to any person who is a

minor or has been found by a Court of competent jurisdiction to be of unsound mind or to or in the name of any firm). The Bank may also suspend the registration of transfers for any period during which it has under the provision of this Act directed that the registers shall be closed.

The Bank may decline to recognise any instrument of transfer unless—

(a) a fee not exceeding two rupees is paid to the Bank in respect thereof; and

(b) the instrument of transfer is accompanied by the certificate of the shares to which it relates, and such other evidence as the bank may reasonably require to show the right of the transferor to make the transfer.

Deceased shareholders.

(11) The executors or administrators of a deceased sole, holder of a share the holder of a Succession certificate issued under part X of the Indian Succession Act 1925, in respect of the share, and the person in whose favour a valid instrument of transfer of the share was executed by the deceased holder during his lifetime, shall be the only persons, who may be recognised by the Bank as having any title to the share. In the case of a share registered in the names of two or more holders, the survivors or survivor, and, on the death of the last survivor, his executors or administrators or any person who is the holder of a succession certificate in respect of such survivor's interest in the share, and a person in whose favour a valid instrument of transfer of the share was executed by such survivor, during his lifetime, shall be the only person who may be recognised by the Bank as having any title to the share).

12. Death or insolvency of shareholders.–Any person becoming entitled to a share in consequence of the death or insolvency of shareholders (or in consequence of a transfer by a deceased shareholder during his lifetime) shall, upon such evidence being produced as may be required by the Bank, have the right (subject to the provisions of Regulation 10), either to

be registered as a shareholder in respect of the share or instead of being registered himself to make such transfer of the share as the deceased or insolvent person could have made (* *).

13. Rights of persons acquiring shares on death or, insolvency of shareholders.—Any person becoming entitled to a share in consequence of the death or insolvency of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share, except that he shall not, before being registered as a shareholder in respect of the share, be entitled in respect of it, to exercise any right conferred on a shareholder in relation to meetings of the Bank.

Forfeiture of shares.

14. Failure to pay call.—If a shareholder fails to pay any call or instalment of a call on the day appointed for payment thereof, the Central Board may, at any time thereafter during such time as any part of such call or instrument remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued.

15. Form of Notice.—The notice shall name a further day (not earlier than the expiration of fourteen days from the date of the notice) on or before which the payment required by the notice is to be made, and shall state that, in the event of non-payment at or before the time appointed, the shares in respect of which the call was made will be liable to be forfeited.

16. Forfeiture of shares.—If the requirements of any such notice as aforesaid are not complied with, any share in respect of which the notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the Central Board to that effect.

17. Disposal of forfeited shares.—A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the Central Board thinks fit, and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the Central Board thinks fit.

18. Liability of shareholders after forfeiture.—A person whose shares have been forfeited shall cease to be a shareholder in respect of the forfeited shares, but shall, notwithstanding, remain liable to pay to the Bank all moneys which, at the date of forfeiture, were presently payable by him to the Bank in respect of the shares, but his liability shall cease if and when the Bank receives payment in full of the nominal amount of the shares.

19. Power to increase or reduce capital.—The shareholders of the Bank may, by special resolution (* *) increase or (and with the previous sanction of the Central Government) reduce the capital of the Bank;

Provided that on such special resolution shall be deemed to have been passed, unless at least one-third in number of the shareholders, holding at least one half of the paid-up capital of the Bank for the time being, be present in person or by proxy, and the majority of such shareholders have voted either by show of hands or by poll, as the case may be, in favour of the said resolution.

20) Procedure on resolution to increase capital.—When any such special resolution to increase the capital has been passed, the Central Board may, subject to the provisions of this Act and to the special directions (if any) given in reference thereto by the meeting at which such resolution has been passed—

(a) make such orders as it thinks fit for the opening of subscriptions by the shareholders towards such increase of capital;

(b) allow to such shareholders such period to fill up the subscriptions as it thinks fit;

(c) direct the manner in which the shareholders shall subscribe and pay into the Bank the proportions or new capital which they may respectively desire to subscribe; and

(d) make such orders as it thinks fit for the disposal and allotment of the amount of new capital that may not be subscribed for and paid up in the manner aforesaid.

21. New Shares.—Any new shares shall be subject to the same provision with reference to the payment of calls, lien, transfer, transmission, forfeiture and otherwise as the shares in the original capital.

22. Procedure on resolution to reduce capital.—When any such special resolution to reduce the capital has been passed the Central Board may (subject as aforesaid) determine the manner in which the reduction shall be carried into effect.

Meetings of shareholders.

23. (1) Annual General Meeting.—On the first Monday of the month of August in every year, or as soon after such day as is convenient, a general meeting shall be held at such time and as such town where there is local head office of the Bank as shall from time to time be prescribed by the Central Board, at which meeting the Central Board shall submit to the shareholders a (balance sheet) of the Bank made up to the preceding thirtieth day of June:

Provided that such general meeting shall not be held on two consecutive occasions at any one town in which there is a local head office of the Bank.

(2) A notice convening such meeting, signed by (the Managing Director or Deputy Managing Director) shall be published in the Official Gazette and in such manner as the Central Board may direct at least fifteen days before the meeting is held.

24. (1) The Central Board shall convene a special meeting on the requisition of any three Directors or of not less than one hundred shareholders holding shares whether fully paid up or otherwise of the aggregate amount of not less than five thousand rupees, upon which all calls or other sums due have been paid, if such requisition is signed by the requisitions and addressed to the Managing Director or Deputy Managing Director and contains a statement of the object of the proposed meeting

Special meetings.

(2) The requisition may consist of several documents in like form, each signed by one or more of the requisitions.

(3) Six days' previous notice of any such meeting shall be given by the Central Board under the hand of not less than three Directors, and such notice shall state the purpose for which the meeting is convened and the time and place of such meeting, and shall be advertised in the Official Gazette and in not less than three daily newspapers, of which one shall be a newspaper published in the vernacular :

Provided that not less than three months' notice shall be given of any special meeting held for the purpose of increasing or reducing the capital of the Bank.

(4) The place of such meeting shall be the place where the head office of the Bank is situated at the time of the meeting.

(5) If the Central Board does not proceed within 21 days from the date of deposit of the requisition referred to in sub-sections (1) and (2) to cause a meeting to be called, the requisitions, or a majority of them in value, may themselves call the meeting, but in either case any meeting so called shall be held within three months from the date of deposit of the requisition).

25. (1) Quorum.—No business shall be transacted at any meeting, whether general or special, unless a quorum of two hundred shareholders, in person or by proxy, is present at the commencement of such business.

(2) If within one hour from the time appointed for the meeting, a quorum is not present, the meeting, if convened by shareholders not being (Directors) shall be dissolved: in any other case, it shall stand adjourned to the same day in the following week at the same time and place, and if at such adjourned meeting a quorum is not present, the shareholders who are present shall be a quorum.

26. (1) Decision by majority of votes.—Save as is otherwise provided in this Act in regard to resolutions for the increase or reduction of capital or for the removal of a (Director) every election and every matter submitted to a meeting, whether general or special, shall be decided by a majority of votes.

(2) No shareholder shall be allowed to vote at any such meeting in respect of any share acquired by transfer, unless such transfer shall have been completed and registered at least three months before the time of such meeting.

(3) No shareholder shall be entitled to vote at any meeting in respect of any shares held by him alone or jointly, whilst any call due from him alone or jointly remains unpaid.

27. Power to declare resolution carried by show of hands.—Save as otherwise provided in this schedule a declaration by the chairman of any meeting, that a resolution has been carried or rejected thereat upon a show of hands, shall be conclusive, and an entry to that effect in the book of proceedings of the Bank shall be sufficient evidence of that fact, without proof of the number or proportion of the votes recorded in favour of, or against, such resolutions, unless, immediately on such declaration, a poll be demanded in writing by ten shareholders present and entitled to vote at such meeting.

28. Poll to be taken, if duly demanded.—If a poll be duly demanded, it shall be taken either at once or at such time and place and, save as otherwise provided in this Act, either by open votes or by ballot, as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll, was demanded.

29. Proceedings and resolutions at meetings to be binding.—The proceedings at any meeting and all resolutions and decisions of such meeting shall be valid and binding on the Bank so far as such proceedings, resolutions and decisions are consistent with the provisions of this Act.

Votes of Members.

30. Votes.—On a show of hands every shareholder present in person shall have one vote. On a poll every shareholder shall have one vote for every four shares of which he is the holder.

31. Votes of joint-holders.—In the case of joint-holders the vote of the senior who tenders a vote, whether in person or

proxy, shall be accepted to the exclusion of the votes of the other joint-holders; and for this purpose seniority shall be determined by the order in which the names stand in the register of shareholders.

32. Votes on behalf of lunatics and minors.—A shareholder of unsound mind, or in respect of whom an order has been made by any Court having jurisdiction in lunacy, may vote, whether on a show of hands, or on a poll by his committee or other legal guardian, and a shareholder who is a minor may similarly vote by his guardian and any such committee or guardian may, on a poll vote by proxy.

33. Shareholders in default.—No shareholder shall be entitled to vote at any general meeting unless all calls or other sums presently payable by him in respect of shares in the Bank have been paid.

34. Poll.—On a poll votes may be given either personally or by proxy.

35. Form of proxies.—The instrument appointing a proxy shall be in writing under the hand of the appointer or of his attorney duly authorised in writing. No person shall act as a proxy unless he is entitled on his own behalf to be present and vote at the meeting at which he acts as a proxy, or he has been appointed to act at that meeting as proxy for a corporation.

36. Deposit of proxies.—The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed, or a notarially certified copy of that power of authority (or, in the case of a power of attorney previously deposited and registered with any local head office, a certificate of the secretary of such local head office as to such deposit and registration), shall be deposited at the head office of the Bank in the place where the meeting is to be held not less than ninety-six hours before the time for holding the meeting at which the person named in the instrument proposes to vote, and in default the instrument of proxy shall not be treated as valid.

Local Meeting.

37. Annual Local meeting.—A general meeting of the shareholders on a branch register shall be held once in every year at the local head office of the Bank at which the branch register is kept. It shall be held on such date as the Central Board may direct.

38. Procedure at Local meeting.—The foregoing provisions of this Schedule as to the convening of general and special meetings and procedure at meetings shall, so far as may be, apply to local and special local meetings of the shareholders on a branch register :

Provided that references in the said provisions to shareholders shall be deemed to be references to shareholders on the Branch register, and references to (Directors, the Managing Director or Deputy Managing Director) and the Official Gazette shall be deemed to be references, respectively, to the members of the Local Board, secretaries and to the local Official Gazette:

Provided, further that ten or more shareholders holding shares to the aggregate amount of fifty thousand rupees may convene a special local meeting and that the number of shareholders to constitute a quorum and to demand a poll in the case of a local meeting shall be, respectively, twenty and five.

Qualifications and disqualifications of (Directors) and others.

39. (1) Qualifications and disqualifications of Directors and the members of Local Board.—No person shall be qualified to serve as a (Director) or as a member of a Local Board who is not a holder in his own right of unencumbered shares of the Bank, to the nominal amount of ten thousand rupees at the least :

Provided that this provision shall not apply in the case of a person who is an officer of the Bank or is nominated (* *) by the Central Government.

(2) No person shall be qualified to serve as a Director or

as a member of a Local Board—

If he holds the office of director, provisional director promoter, agent or manager of any joint-stock bank established or having a branch or agency in British India (or British Burma) or advertised as about to be established or to have a branch or agency in British India (or British Burma):

Provided that this disqualification shall not apply to any person being a director of a jointstock bank, who may be nominated as a (Director under the provision of clause (iii) of sub-section (l) of of Section 28; or

if he is a salaried officer of (The Crown) not specially authorised by this Act or by the Central Government to serve as a member;

(and the Office of a Director) or a member of the Local Board shall be vacated—

if the person holding it resigns his office or died;

if he accepts or holds any other office of profit under the bank;

if he becomes insolvent or bankrupt, or compounds with his creditors;

if he is declared lunatic, or becomes of unsound mind;

if he is absent from the Central Board or the Local Board, as the case may be, for more than six consecutive months; or if he ceases to hold in his own right the amount of shares required to qualify him for the office.

(3) No two persons who are partners of the same mercantile firm; or are directors of the same private company, or one of whom is the general agent of, or holds a power of procuration from the other, or from a mercantile firm of which the other is a partner, shall be eligible or qualified to serve as members of the Central Board or (of the same Local Board) at the same time.

Removal of (Directors) and member of the Local Boards.

40. Removal of Directors.—The shareholders may, by a

special resolution passed by a majority of the votes of shareholders holding the aggregate not less than one half of the capital, remove any (Directors other than a Director nominated by the Central Government) before the expiration of his period of office, and appoint, in his stead, a qualified person, who shall in all respects stand in his place.

41. Removal of member of Local Board.—The shareholders on a branch register may by a special resolution passed by the votes of shareholders holding in the aggregate not less than one-half of the capital on the branch register; remove any member of the Local Board before the expiration of his period of office, and appoint, in his stead, a qualified person who shall in all respects stand in his place.

Meetings of the Central Board.

42. (1) Meetings of Central Board.—Meetings of the Central Board shall be convened not less than once in every (four) months by (the Managing Director or Deputy Managing Director) and a meeting of the Central Board shall be held once at least in every year (at each of the local head offices established at Calcutta, Bombay and Madras :

Provided that not less than four meetings shall be convened by the Managing Director or Deputy Managing Director in every year).

(2) Any Local Board may require (the Managing Director or Deputy Managing Director) to convene a meeting of the Central Board at any time and (the Managing Director or Deputy Managing Director) shall forthwith convene a meeting accordingly

(3) Four (Directors) entitled to vote shall form a quorum for the transaction of business.

(4) At each meeting of the Central Board, the (Directors) present shall elect from among themselves a chairman for such meeting, who, if he is entitled to vote, shall have a second or casting vote in all cases of an equal division of votes.

Local Boards.

43. (1) Term of office and number of members of Local Boards.—At the first general local meeting after the commencement of this Act, and at the annual general local meeting thereafter, the two members of the Local Board who have been longest in the office as members thereof shall go out of office. The vacancies shall be filled by election at a general or special local meeting.

(2) Any member so retiring may be re-elected, and if any question arises as to which of the members who have been the same time in office shall retire, the question shall be decided by the Local Board by ballot.

(3) Subject to any bye-laws which may be prescribed, the number of members of any Local Board may be varied by a special local resolution.

(4) Three of the members of the Local Board shall form a quorum for the transaction of business.

(5) Meetings of a Local Board shall be convened by the President, Vice-president, or in their absence, the senior member of the Board, whenever he thinks fit.

44. (1) President, Vice-president and Chairman. (1) At the first meeting of the Local Board which takes place after the first meeting of the Central Board in each year, the Local Board shall elect from among its members a president and a vice-president and the elected director referred to in clause (ii) of sub-section (1) of Section 28. They shall continue in their respective offices until the first meeting of the Local Board after the first meeting of the Central Board in the following year, and, whenever the office of the president or vice-president or of such elected Director becomes vacant, the Local Board shall at its next meeting elect a successor who shall hold offices for the unexpired portion of the period for which his predecessor was appointed).

(2) The president or, in his absence, the vice-president shall

be chairman of all meetings of the Local Board (at all general or special meetings held in the town where the Local Board is established) and at all general or special local meetings) :

Provided that, if both the president and vice-president be absent at any meeting, the persons present at such meeting shall elect a chairman from among (the member of the local board present).

(3) The chairman shall have a second or casting vote in all cases of an equal division of votes.

45. (1) Vacancies.—Any vacancy occurring on a Local Board by the death, resignation or disqualification of any member shall be filled up by the remaining members who shall co-opt a duly qualified person to fill the vacancy.

(2) Any member so appointed shall be considered to have held office from the date on which the member in whose place he is appointed was elected or, when such member was appointed under this clause, from the date on which his mediate or immediate predecessor was elected, as the case may be.

General provisions as to Central & Local Boards.

46. Proceedings of Boards not invalidated by vacancies.—No act or proceeding of the Central Board shall be invalidated merely by reason of the existence of a vacancy or vacancies among its (Directors) or members.

47. Acts of members of Boards valid notwithstanding subsequent discovery of disqualification.—All acts done by any person acting in good faith as a (Director) or as a member of Local Board shall be as valid as if he was a member of the Central or Local Board, as the case may be, notwithstanding it be afterwards discovered that there was some defect in his appointment or qualification.

48. (1) Indemnity Members of Boards.—Every (Director) and every member of a Local Board shall be indemnified by the Bank against all losses and expenses incurred by him in or about the discharge of his duties except such as happen from his own wilful act or default.

(2) A (Director) shall not nor shall be a member of a Local Board be responsible for any other (Director) or member of for any office or servant of the Bank or for any loss or expense happening to the Bank by the insufficiency or deficiency of value of, or title to, any property or security acquired or taken on behalf of the Bank, or by the insolvency, bankruptcy or wrongful act of any customer or debtor of the Bank, or by anything done in the execution of the duties of his office or in relation thereto, or otherwise than for his own wilful act or default.

The Seals.

49. (1) Common seal.—The common seal of the Bank shall not be affixed to any instrument except in the presence of atleast three (Directors) including (the Managing Director or Deputy Managing Director) who shall sign their names to the instrument in token of their presence, and such signing shall be independent of the signing of any person who may sign the instrument as a witness. Unless so signed as aforesaid, such instrument shall be of no validity.

(2) The Bank shall have for use by the Local Boards at Calcutta, Madras and Bombay, and may have for the use of other Local Boards established under this Act, official seals which shall be fascimilies of the common seal of the Bank with the addition of the name of the local head office where it is to be used.

(3) The official seal shall be affixed to the certificates issued in respect of any shares entered in the branch registers kept at those places and may be used for such other purposes as may be prescribed.

(4) An instrument to which an official seal is duly affixed shall bind the Bank as if it has been sealed with the common seal of the Bank.

(5) An official seal shall not be affixed to any instrument except in the presence of at least two members of the Local Board and the Secretary (or Deputy Secretary) who shall sign their names to the instrument in token of their presence, and such signing shall be independent of the signing of any person

who may sign the instrument as a witness. Uness so signed as aforesaid such instrument shall be of no validity.

Officers of the Bank.

50. Appointment, salaries, suspension and removal of officers.—The Central Board and subject to the provisions of this Act, the Local Boards shall have power—

(a) to appoint such officers and servants as may be necessary to conduct the business of the Bank.

(b) to grant salaries, pensions and other emoluments to such officers and servants, (and to grant gratuities or other financial assistance, either temporary or permanent, to widows, children and other dependents of deceased officers or servants ; and

(c) to suspend or remove any officer or servant of the Bank.

51. Accounts, Receipts and Documents of Bank by whom to be signed.-The managing (Director and Deputy Managing Dirccter) the secretaries and such other (employees) of the Bank as the Central Board may authorise in this behalf by notification in the Official Gazette are hereby severally empowered for and on behalf of the Bank, to endorse and transfer promissory notes, stock receipts, stock debentures, shares, securities and documents of title to goods, standing in the name of, or held by, the Bank and to draw, accept and endorse bills of exchange, bank post-bills and letters of credit in the current and authorised business of the Bank to sign all other accounts, receipts and documents connected with such business (and to execute proxies to vote at meetings on behalf of shareholders from whom the Bank holds general powers of attorney).

52. Officers forbidden to engage in other commercial business.—No Managing (Director) secretary, Inspector, Manager or accountant in the service of the Bank and, without the previous sanction of the Board, no Khazanchi cashier or shroff, in the service of the Bank and no agent, at any branch or agency of the Bank shall, engage in any other banking or commercial business, either on his own account or as agent for the sale or purchase of Government or other securities.

53. Security from Officers.—Every person appointed to hold or act in any one or more of the said offices, and every other officer from whom the Central Board may think fit to require it, shall give security to the Bank for the faithful discharge of his duty to the satisfaction of the Central Board in such amount and in such manner as it thinks proper. The security to be given as aforesaid by the person holding or acting in the office of secretary shall not be in a less amount than fifty thousand rupees.

Accounts and dividends.

54. (1) Books to be balanced twice a year.—The Central Board shall cause the books of the Bank to be balanced on every thirty-first day of December and every thirtieth day of June.

(2) A statement of the balance at every such period, signed by a majority of the (Directors) shall be forthwith sent to the Central Government.

(3) The statement of the balance shall contain the particulars and shall be in the form required by section 132 of the Indian Companies Act, 1913, and the provisions of that Section and of section 136 of the same Act, shall apply to the Bank in like manner as they apply to a banking company).

55. (1) Dividends to be determined half-yearly.—An account of the profits of the Bank during the previous half-year shall be taken on or immediately after every thirty-first day of December and every thirtieth day of June, and a dividend shall be made as soon as thereafter as conveniently may be and the amount of such dividend shall be determined by the Central Board.

(2) No unpaid dividend shall bear interest as against the Bank.

56. Transfer to Reserve.—Central Board may, before declaring any dividend, set aside out of the profits of the Bank such sums as it thinks proper as a reserve or reserves which shall at the discretion of the Central Board, be applicable for meeting contingencies, or for equalizing dividends, or for any other purpose to which the profits of the Bank may be properly applied, and pending such application may, at the like discretion, either be employed in the business of the Bank or be invested in any of the securities specified in sub-clause (i) of

clause (a) of part I of Schedule I.

57. Joint-holders.—If several persons are registered as joint-holders of any share, any one of them may give effectual receipts for any dividends payable on the share.

Audit.

58. (1) Auditors. - Three auditors shall be elected and their remuneration fixed at the annual general meeting. The auditors may be shareholders, but no (Director) or member of a Local Board or other officer of the Bank shall be eligible during his continuance in office. Any auditor shall be eligible on quitting office for re-election.

(2) The first auditors of the Bank may be appointed by the Central Board before the annual general meeting and if so appointed shall hold office only until the first annual general meeting. All auditors elected under this clause shall severally be and continue to act as auditors until the first general meeting after their respective elections :

Provided that, if any casual vacancy occurs in the office of any auditor elected under this section (the vacancy may be filled by the Central Board).

59. Government auditors.–Without prejudice to anything contained in the foregoing provisions, the Central Government may appoint such auditors as it thinks fit to examine and report upon the accounts of the Bank.

60. (1) Rights and duties of auditors.—Every auditor shall be supplied with a copy of the half-yearly balance sheet, and it shall be his duty to examine the same, with the accounts and vouchers relating thereto. Every auditor shall have a list delivered to him of all books kept by the Bank, and shall at all reasonable time have access to the books, accounts and other documents of the Bank, and may, at the expense of the Bank if appointed by it and at the expense of the Central Government if appointed by it, employ accountants or other persons to assist him in investigating such accounts, and may, in relation to such accounts, examine any (Director) or any member of the Local Board, or and officer of the Bank.

(2) The auditors shall make a report to the shareholders or to the Central Government, as the case may be, upon the annual balance-sheet and accounts and in every such report they shall state whether, in their opinion, the balance-sheet is full and fair balance-sheet containing the prescribed particulars and properly drawn up so as to exhibit a true and correct view of the state of the Bank's affairs, and in case they have called for any explanation or information from the Central Board, whether it has been given and whether it is satisfactory. Any such report made to the shareholders shall be read with the report of the Central Board at the annual general meeting.

Liquidation.

60-A. Notwithstanding anything contained in this Act or in Section 271 of the Indian Companies Act 1913, if the shareholders of the Bank pass a special resolution that the Bank be wound up voluntarily under the provisions of the Indian Companies Act 1913, the Bank shall be wound up in accordance with the provisions of that Act with regard to the voluntary winding up of a company.

Provided that, for the purposes of this section, no such special resolution shall be deemed to have been passed, unless at least one-third of the shareholders holding at least one-half of the paid up capital of the Bank for the time being be present in person or by proxy and a majority poll by open voting in favour of the said resolution and such resolution is thereafter confirmed by a majority of the shareholders at a subsequent special meeting held at an interval of not less than two months or more than three months from the date of the meeting at which the resolution was first passed.

Notices.

61. (1) Service.—A notice may be given by the Bank to any shareholder either personally or by sending it by post to him to his registered address or (if he has no registered address in British India (or British Burma) to the address, if any, within British India (or British Burma) supplied by him to the Bank for the giving of notices to him.

(2) Where a notice is sent by post, service of the notice

shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

Absence of registered address.

62. A shareholder who has registered address in India (or Burma) and has not supplied to the Bank an address for the giving of notice to him shall not be entitled to any notice, notwithstanding anything contained in this Act.

63. Notice of joint-holders.—A notice may be given by the Bank to joint-holders of a share by giving the notice to the joint-holder named first in the register in respect of the share.

64. Notice to legal representative.—Any notice given in accordance with the foregoing provisions shall be deemed to have been duly given notwithstanding that the shareholder be then deceased and whether or not the Bank had notice of his decease, and shall in that event, deemed to be a notice to his legal representative.

65. Service of Notice on Bank.—A notice may be served on the Bank by leaving it at, or sending it by post to, any local head office of the Bank.

(N. B. The following S. 41 of the Act, the Amending Act III of 1834 is to be read along with this Act).

Temporary Saving of existing Central Board.

41. Notwithstanding any amendment made in the said Act by this Act (III of 1934) in regard to the manner in which the Central Board shall be constituted the Central Board existing at the commencement of this Act, shall, until it has been re-established in accordance with the said Act as amended by this Act, continue to transact business and shall have all the powers of the Central Board under the said Act as so amended.

Appendix B

THE RESERVE BANK OF INDIA ACT, 1934.

ACT No. II OF 1934.

[*6th March, 1934*]

An Act to constitute a Reserve Bank of India.

WHEREAS it is expedient to constitute a Reserve Bank for India to regulate the issue of Bank notes and the keeping of reserves with a view to securing monetary stability in India and generally to operate the currency and credit system of the country to its advantage;

AND WHEREAS in the present disorganisation of the monetary systems of the world it is not possible to determine what will be suitable as a permanent basis for the Indian monetary system;

BUT WHEREAS it is expedient to make temporary provision on the basis of the existing monetary system, and to leave the question of the monetary standard best suited to India to be considered when the international monetary position has become sufficiently clear and stable to make it possible to frame permanent measures;

It is hereby enacted as follows:—

CHAPTER I

PRELIMINARY.

1. Short title, extent and commencement.—(1) This Act may be called the Reserve Bank of India Act, 1934.

(2) It extends to the whole of British India, including the Sonthal Parganas.

(3) This section shall come into force at once, and the remaining provisions of this Act shall come into force on such date or dates as the Central Government may, by notification in the Gazette of India, appoint.

2. Definitions.—In this Act, unless there is anything repugnant in the subject or context,—

(*a*) "the Bank" means the Reserve Bank of India constituted by this Act;

(*b*) "the Central Board" means the Central Board of Directors of the Bank;

(*bb*) "foreign exchange" has the same meaning as in the Foreign Exchange Regulation Act, 1947;

(*c*) "provincial co-operative bank" means the principal society in a Province which is registered or deemed to be registered under the Co-operative Societies Act, 1912 (II of 1912) or any other law for the time being in force in British India relating to co-operative societies and the primary object of which is the financing of the other societies in the Province which are or are deemed to be so registered:

Provided that in addition to such principal society in a Province ,or where there is no such principal society in a Province the Provincial Government may declare any central co-operative society in that Province to be a provincial co-operative bank within the meaning of this definition;

(*d*) "rupee coin" means rupees which are legal tender in British India under the provisions of the Indian Coinage Act, 1906 (III of 1906);

(*e*) "scheduled bank" means a bank included in the Second Schedule.

CHAPTER II.

INCORPORATION, CAPITAL, MANAGEMENT AND BUSINESS.

3. Establishment and incorporation of Reserve Bank.

(1) A bank to be called the Reserve Bank of India shall be constituted for the purposes of taking over the management of the currency from the Central Government and of carrying on the business of banking in accordance with the provisions of this Act.

(2) The Bank shall be a body corporate by the name of the Reserve Bank of India, having perpetual succession and a common seal, and shall by the said name sue and be sued.

4. Capital of the Bank—The capital of the Bank shall be five crores of rupees.

NOTES :

The following short account of the United States Federal Reserve System which bears some analogy to our central banking system will be found useful for appreciating the status and functions of the Reserve Bank of India. There are twelve federal reserve districts with a federal reserve bank in each".[1] The districts are: Boston, New York, Philadelphia, Cleveland, Richmond, Atlanta, Chicago, St. Louis, Kansas City, Dallas and San Francisco. The Preamble to the Federal Reserve Act runs as follows :—'To provide for the establishment of federal reserve banks, to furnish an elastic currency, to afford means of rediscounting commercial paper, to establish a more effective supervision of banking in the United States, and for other purposes'. The following bodies are engaged in administering the federal reserve system: Board of Governors, Federal Open Market Committee, 12 federal reserve banks and their 24 branches, and the Federal Advisory Council. The members of the federal reserve system are all national banks and such state banks and discount companies which have been admitted to membership of the federal reserve system by the Board of Governors. The main differences between the American system and our system can be summarised thus ; (i) The stock of the Federal Reserve Banks is owned in America by the member banks. In India until 1948 it was owned by private individuals and from 1948 it is owned by the State. (ii) The Board of Governors under the American system is a wholly appointed body while our Central Body is partly elective and partly appointed. (iii) The federal reserve banks corresponding to our Local

(1) 38 U. S. Statute 251, U. S. Code Title 12

boards have a mixed directorate partly appointed and partly elected, and in the latter class some are representatives of member banks and others are representatives of industry, commerce or agriculture. There is no representation in our Local Boards for representatives of commerce or industry. Our Local Boards are also partly elected and partly appointed.

Capital of the American Federal Reserve Banks:

The capital stock of the American federal reserve Banks is owned by member banks and may not be transferred or hypothecated. Every national bank in the United States subscribes to the capital stock of the reserve bank of its district an amount equal to 6 percent of the subscribing bank's paidup capital and surplus. State banks and trust companies which are admitted to membership must subscribe a similar amount. One half of the subscription is fully paid ; the other half is subject to call by the Board of Governors. No call for payment of the remainder had been made.

Canadian Central Bank :

The capital of the Bank of Canada is 5,000000 dollars. It is privately owned. Only British subjects residing in Canada can own shares. The maximum number of shares which a single person can hold is 50. Directors, employees, officers etc. of chartered banks cannot become shareholders.

S. 5.—Omitted

6. Offices, branches and agencies.—The Bank shall, as soon as may be, establish offices in Bombay, Calcutta, Delhi and Madras and a branch in London, and may establish branches or agencies in any other place in India...or, with the previous sanction of the Central Government, elsewhere.

7. Management—(1) The Central Government may from time to time give such directions to the Bank as it may, after consultation with the Governor of the Bank, consider necessary in the public interest.

(2) Subject to any such directions, the general superintendence and direction of the affairs and business of the Bank shall be entrusted to a central Board of Directors which may exercise all powers and do all acts and things which may be exercised or done by the Bank.

(3) Save as otherwise provided in regulations made by the Central Board, the Governor shall have full powers to transact all the business of the Bank which may be transacted by the Central Board.

8. Composition of the Central Board, and term of office of Directors.—(1) The Central Board shall consist of the following directors, namely :-

(*a*) a Governor and two Deputy Governors to be appointed by the Central Government ;

(*b*) four Directors to be nominated by the Central Government, one from each of the four Local Boards as constituted by Section 9 ;

(*c*) six Directors to be nominated by the Central Government ; and

(*d*) one Government official to be nominated by the Central Government ;

(2) The Governor and Deputy Governors shall devote their whole time to the affairs of the Bank, and shall receive such salaries and allowances as may be determined by the Central Board, with the approval of the Central Government.

(3) A Deputy Governor and the Director nominated under clause (*d*) of sub-section (1) may attend any meeting of the Central Board and take part in its deliberations but shall not be entitled to vote :

Provided that when the Governor is absent a Deputy Governor authorized by him in this behalf in writing may vote for him.

(4) The Governor and a Deputy Governor shall hold office for such term not exceeding five years as the Central Government may fix when appointing them, and shall be eligible for re-appointment.

A Director nominated under clause (*c*) of sub-section (1) shall, subject to the provisions of sub-section (6), hold office for a period of four years.

A Director nominated under clause (*d*) of sub-section (1) shall hold office during the pleasure of the Central Government.

(5) No act or proceeding of the Board shall be questioned on the ground merely of the existence of any vacancy in, or any defect in the constitution of, the Board.

(6) Out of the six Directors first nominated under clause (*c*) of sub-section (1), two shall retire at the end of one year, two at the end of two years and the last two at the end of three years, the Directors so to retire being determined by lot.

(7) A retiring Director shall be eligible for renomination.

NOTES :

Board of Governors under the American Federal Reserve System :

The Board consists of 7 members appointed by the President of the U.S.A by and with the advice and consent of the Senate. The appointments are made so as to ensure fair representation of financial, agricultural, industrial, and commercial interests and geographical divisions of the country. No two members can be from the same federal reserve district. The Board can change the requirements concerning reserves to be maintained by member banks against deposits. It exerts influence over the credit conditions and supervises federal reserve banks and member banks. For the purpose of preventing excessive use of credit for the purchase or carrying of securities, the Board is authorised to regulate the amount of credit that may be initially extended and subsequently maintained on any security (with certain exceptions) registered on a national securities exchange. The Board is authorised to make examinations of federal reserve banks, to require statements and reports from such banks, to supervise the issue and retirement of federal reserve notes, to require the establishment or discontinuance of branches of federal reserve banks, and to exercise supervision over all relationships and transactions of those banks with foreign banks and bankers. The Board of Governors reviews and follows the examination and supervisory activities of the federal reserve banks with a view to furthering coordination of policies and practices. The Board has jurisdiction over the admission of state banks and trust companies to membership in the federal reserve system. The terms of membership of such banks and the establishment of out of town branches by such banks are also within the Board's jurisdiction. It has power to examine member banks and the affiliates of member

banks and it receives condition reports from them. It limits by regulation the rate of interest which may be paid by member banks on their time and savings bank deposits. It has authority to remove officers and directors of a member bank for continued violations of the law or unsafe or unsound practices in conducting the business of such bank and it may in its discretion suspend memberbanks from the use of credit facilities of the federal reserve system for making undue use of bank credit for speculative purposes or for any other purpose inconsistent with the maintenance of sound credit conditions. The Board approves applications of national banks for authority to act in a fiduciary capacity ; it may grant authority to national banks to establish branches in foreign countries or dependencies or insular possessions of the United States or to invest in the stock of banks or corporations engaged in international or foreign banking and it supervises the organisation and activities of corporations organised under federal law to engage in international or foreign banking. The Board is authorised in its discretion to issue voting permits to holding company affiliates of member banks entitling them to vote the stock of such banks at any or all meetings of shareholders. It may issue general regulations permitting interlocking relationships in certain circumstances between member banks and organisations dealing in securities or under the Clayton Antitrust Act.[1] The Board operates the Interdistrict Settlement Fund. Balances due by and from federal reserve banks are settled in Washington through telephonic transfer of funds without physical shipments of currency. To meet the expenses the Board makes semi-annual assessments upon reserve banks in proportion to their capital stock and surplus.

Recent Amendment to the Federal Reserve Act of America :

This amendment passed in 1947 permits any memberbank of the federal reserve system to buy or sell in open market or in deals with the Treasury Government guaranteed securities of value not more than 5000000000 dollars at any one time.

9. Local Boards, their constitution and functions.-(1) A Local Board shall be constituted for each of the four areas specified in the first schedule and shall consist of five members to be appointed by the Central Government to represent, as far as possible, territorial and economic interests and the interests of co-operation and indigenous banks.

(2) The members of the Local Board shall elect from amongst themselves one person to be the chairman of the Board.

(1) 15 U. S. Code 19,21 38 Stat. 730

(3) The members of the Local Board shall hold office for a term of four years and shall be eligible for reappointment.

(4) A Local Board shall advise the Central Board on such matters as may be generally or specifically referred to it and shall perform such duties as the Central Board may delegate to it.

NOTES :

Constitution of Directorate of Federal Reserve Banks :

There are 9 directors. 3 Class A directors represent stockholding memberbanks. 3 Class B directors must be engaged in the district in commerce, agriculture or some other industrial pursuit and must not be officers or directors or employees of any bank. 3 Class C directors may not be officers, directors or employees of any bank. The 6 directors belonging to classes A and B are elected by memberbanks and the 3 Class C directors are appointed by the Board of Governors. Each director holds office for 3 years and the periods are so arranged that one director of each class retires each year. One class C director is designated Chairman of the Reserve Bank and Federal Reserve Agent and in the latter capacity he maintains a local office of the Board of Governors. Another Class C director is appointed by the Board of Governors as deputy chairman. Each Reserve Bank has a chief executive officer, and a president who are appointed for 5 year terms by the Board of directors with the approval of the Board of Governors.

Functions of Federal Reserve Banks :

Reserve Banks are authorised to discount for their member banks notes, drafts, bills of exchange and bill acceptances of short maturities arising out of commercial, industrial and agricultural transactions and short term paper secured by the obligations of the United States. Reserve Banks may make advances to their member banks upon their federal reserve notes for periods not exceeding 90 days upon security of direct obligations of the United States or paper eligible for discount or purchases, and of certain other securities for periods not exceeding 15 days. They may also make advances to member banks upon security satisfactory to the reserve bank concerned for periods not exceeding 4 months at rate of interest at least ½ to 1 percent higher than that applicable to discounts and advances of kinds mentioned above. In certain exceptional circumstances and under certain prescribed conditions they make advances to groups of memberbanks. (See s. 17(4) and s. 18 (1) (3) of the Reserve Bank of India Act, 1934). Under an amendment to

the Federal Reserve Act approved on 19-6-34 reserve banks may grant credit accommodation to furnish working capital for established industrial or commercial businessess for periods not exceeding 5 years either through the medium of financing institutions or in exceptional circumstances directly to such businessess and may make commitments with respect to granting of such accommodations. Subject to regulations of the Board of Governors reserve banks may make advances to individuals, partnerships and corporations for periods not exceeding 90 days upon their promissory notes. In unusal and exceptional circumstances when authority has been granted by at least 5 members of the Board of Governors, reserve banks may also discount for individuals, partnerships, and corporations under certain prescribed conditions. notes, drafts and bills of exchange of kinds and maturities made eligible for discount by memberbanks. The reserve banks issue federal reserve notes which constitute the bulk of the money in circulation. These notes are obligations of the United States and are a prior lien upon the assets of the issuing federal reserve bank with the federal reserve agent of collateral securities consisting of gold paper discounted or purchased by the bank and direct obligations of the United States. Reserve banks are empowered to act as clearing houses and as collecting agents for member banks, and under certain conditions for non-member banks in collection of cheques and other instruments. They are authorised to act as depositaries and fiscal agents of the United States and to exercise other banking functions specified in the Federal Reserve Act. They perform a number of important functions in connection with the issue and redemption of U. S. Government securities

Other Organs under the Federal Reserve System :

Open Market Committee :

The Open Market Committee consists of the Board of Governors plus 5 representatives of Reserve Banks elected annually by the board of directors of certain specified reserve banks. No reserve bank may engage or decline to engage in open market operations except in accordance with the direction of and regulations adopted by, the Committee. Open market operations consist in the purchase and sale in the open market of obligations of the United States, certain other securities, bills of exchange, and bankers' acceptances of the kinds and maturities eligible for discount by the reserve bank.

Federal Advisory Council :

The Council acts in an advisory capacity and confers with the Board of Governors on general business conditions and making recommendations concerning matters within the Board's jurisdiction. 12 members are from each federal reserve district selected annually by the board of directors

of the reserve bank of that district. The Council meets at Washington at least 4 times a year and oftener if called by the Board of Governors.

Federal Deposit Insurance Corporation :[1]

The functions of the Corporation are :—(i) To insure deposits of all banks which are entitled to the benefit of insurance under the law (ii) To pay off deposits of insured banks closed without adequate provision having been made to pay claims of depositors (iii) To act as receiver for suspended national banks and to prevent the continuance of unsafe and unsound banking practices. The corporation can also make loans to or purchase assets from insured banks. The Corporation has three directors two of whom are appointed by the President of the United States by and with the advice and consent of the Senate for a 6 year term, and the third director is the Comptroller of Currency. One of the appointive members is the chairman. Not more than two members shall belong to the same political party The principle office of the Corporation is located at Washington and the district offices are located in Boston, New York, Columbia, Richmond, Atlanta, St. Louis, Madison, Chicago, St. Paul, Kansas City, Dallas, and San Francisco. The capital of the corporation consists of 150000000 dollars subscribed by the Treasury and an amount equal to ½ of the surplus on 1-1-33 subscribed by each federal reserve bank. Total amount of capital on 31-12-47 was 159299556 dollars. Provision has been made for the retirement of all stock except 82604000 dollars. Nonmembers of the federal reserve system may become insured upon application to and examination by the Corporation approval by the board of directors. Upon the closing of the bank the claim of each insured depositor is paid upon assignment to the Corporation by him of rights to dividens and recoveries on account. Depositors in 159 hazordous insured banks have been given full protection, and uninterrupted bank service when with financial aid from the Corporation in the form of loans or purchases of assets these banks have been merged with solvent insured banks. Out of the 14234 banks and trust companies operating in U.S.A. on 31-12-37, 13403 were insured and of these 6920 belonged to the federal reserve system and 6483 made application. In addition 1941153 mutual savings banks were insured Banks which are not members of the federal reserve system are examined periodically. Member banks are examined with the written consent of the Comptroller of currency and state banks with the written consent of the Board of Governors.

10. Disqualifications of Directors and members of Local Boards.—(1) No person may be a Director or a member of a Local Board who

(1) Banking Act 1933 (16-6-33) as amended by Act of 1934, 1935, 1936, 1938, 1939, 1942, 1943, & 1947.

(*a*) is a salaried government official or a salaried official of a State in India...or

(*b*) is, or at any time has been, adjudicated an insolvent, or has suspended payment or has compounded with his creditors, or

(*c*) is found lunatic or becomes of unsound mind, or

(*d*) is an officer or employee of any bank, or

(*e*) is a Director of any bank, other than a bank which is a society registered or deemed to be registered under the Co-operative Societies Act, 1912 (II of 1912), or any other law for the time being in force in British India relating to co-operative societies.

(2) No two persons who are partners of the same mercantile firm, or are Directors of the same private company, or one of whom is the general agent of or holds a power of procuration from the other, or from a mercantile firm of which the other is a partner, may be Directors or members of the same Local Board at the same time.

(3) Nothing in clause (*a*), clause (*d*) or clause (*e*) of sub-section (1) shall apply to the Governor, or to a Deputy Governor or to the Director nominated under clause (*d*) of sub-section (1) of section 8

11. Removal from and vacation of office.—(1) The Central Government may remove from office the Governor, or a Deputy Governor or other Director :

(2) A Director nominated under clause (b) or clause (c) of sub-section (1) of section 8 shall cease to hold office if without leave from the Central Board be absent, himself from three consecutive meetings of the Board convened under sub-section (1) of section 13 ;

(3) The Central Government shall remove from office any Director, and the Central Board shall remove from office any

member of a Local Board, if such Director or member becomes subject to any of the disqualifications specified in sub-section (1) or sub-section (2) of section 10.

(4) A Director or member of a Local Board removed or ceasing to hold office under the foregoing sub-sections shall not be eligible for re-appointment either as Director or as member of a Local Board until the expiry of the term for which his appointment was made.

(5) The nomination as Director or member of a Local Board of any person who is a member of the Central Legislature, a Provincial Legislature, or the Coorg Legislative Council shall be void, unless, within two months of the date of his nomination he ceases to be such member, and, if any Director or member of a Local Board is elected or nominated as a member of any such Legislature or Council he shall cease to be a Director or member of the Local Board as from the date of such election or nomination, as the case may be.

(6) A Director may resign his office to the Central Government, and a member of a Local Board may resign his office to the Central Board, and on the acceptance of the resignation the office shall become vacant.

12. Casual vacancies and absences.—(1) If the Governor or a Deputy Governor by infirmity or otherwise is rendered incapable of executing his duties or is absent on leave or otherwise in circumstances not involving the vacation of his appointment, the Central Government may, after consideration of the recommendations made by the Central Board in this behalf, appoint another person to officiate for him, and such person may, notwithstanding anything contained in clause (*d*) of sub-section (1) of section 10, be an officer of the Bank.

(2) Where any casual vacancy in the office of any member of a Local Board occurs the Central Board may nominate thereto any person recommended by the other members of the Local Board.

(3) Where any casual vacancy occurs in the office of a Director other than the vacancies provided for in sub-section (1) the vacancy shall be filled, by the Central Government.

(5) A person nominated under this section to fill a casual vacancy shall, hold office for the unexpired portion of the term of his predecessor.

13. Meetings of the Central Board.—(1) Meetings of the Central Board shall be convened by the Governor at least six times in each year and at least once in each quarter.

(2) Any three Directors may require the Governor to convene a meeting of the Central Board at any time and the Governor shall forthwith convene a meeting accordingly.

(3) The Governor, or in his absence the Deputy Governor authorized bu the Governor u der the proviso to sub-section (3) of section 8 to vote for him, shall preside at meetings of the Central Board, and, in the event of an equality of votes, shall have a second or casting vote.

14. Omitted.

15. Omitted.

16. Omitted.

17. Business which the Bank may transact.—The Bank shall be authorized to carry on and transact the several kinds of business hereinafter specified, namely :—

(1) the accepting of money on deposit without interest from, and the collection of money for the Central Government, the Provincial Governments, States in India, local authorities, banks and any other persons ;

(2) (*a*) the purchase, sale and rediscount of bills of exchange and promissory notes, drawn on and payable in India and arising out of *bona fide* commercial or trade transactions bearing two or more good signatures, one of which shall be that of a scheduled

bank and maturing within ninety days from the date of such purchase or rediscount, exclusive of days of grace;

(*b*) the purchase, sale and rediscount of bills of exchange and promissory notes, drawn and payable in India and bearing two or more good signatures, one of which shall be that of a scheduled bank, or a provincial Co-operative bank and drawn and or issued for the purpose of financing seasonal agricultural operations or the marketing of crops, and maturing within nine months from the date of such purchase or rediscount, exclusive of days of grace;

(*c*) the purchase, sale and rediscount of bills of exchange and promissory notes drawn and payable in India and bearing the signature of a scheduled bank and issued or drawn for the purpose of holding or trading in securities of the Central Government, or a Provincial Government, or such securities of States in India as may be specified in this behalf by the Central Government on the recommendation of the Central Board, and maturing within ninety days from the date of such purchase or rediscount, exclusive of days of grace;

(3) (*a*) the purchase from and sale to scheduled banks of foreign exchange in amounts of not less than the equivalent of one lakh of rupees;

(*b*) the purchase, sale and rediscount of bills of exchange (including treasury bills) drawn in or on any place in any country outside India which is a member of International Monetary Fund and maturing within ninety days from the date of purchase, provided that no such purchase, sale or rediscount shall be made in India except with a scheduled bank;

4 the making to States in India, local authorities, scheduled banks, provincial co-operative banks

and the principal currency authority of Ceylon of loans and advances, repayble on demand or on the expiry or fixed periods not exceeding ninety days, against the security of—

(*a*) stocks, funds and securities (other than immovable property) in which a trustee is authorized to invest trust money by any Act of Parliament or by any law for the time being in force in British India;

(*b*) gold or silver or documents of title to the same;

(*c*) such bills of exchange and promissory notes as are eligible for purchase or rediscount by the Bank:

(*d*) promissory notes of any scheduled bank or provincial co-operative bank, supported by documents of title to goods which have been transferred, assigned, or pledged to any such bank as security for a cash credit or overdraft granted for *bona fide* commercial or trade transactions, or for the purpose of financing seasonal agricultural operations or the marketing of crops;

(5) the making to the Central Government and Provincial Governments of advances repayable in each case not later than three months from the date of the making of the advance;

(6) the issue of demand drafts made payable at its own offices or agencies and the making, issue and circulation of bank post bills;

(7) the purchase and sale of Government securities of the United Kingdom maturing within ten years from the date of such purchase;

(8) the purchase and sale of securities of the Central Government or a Provincial Government of any maturity or of such securities of a local authority

or such Indian States as may be specified in this behalf by the Central Government on the recommendation of the Central Board ;

Provided that securities fully guaranteed as to principal and interest by any such Government, authority or State shall be deemed for the purposes of this clause to be securities of such Government, authority or State :

Provided further that the amount of such securities held at any time in the Banking Department shall be so regulated that—

(*a*) the total value of such securities shall not exceed the aggregate amount of the share capital of the Bank, the Reserve Fund and three-fifths of the liabilities of the Banking Department in respect of deposits ;

(*b*) the value of such securities maturing after one year shall not exceed the aggregate amount of the share capital of the Bank, the Reserve Fund and two-fifths of the liabilities of the Banking Department in respect of deposits; and

(*c*) the value of such securities maturing after ten year shall not exceed the aggregate amount of the share capital of the Bank and the Reserve Fund and one-fifth of the liabilities of the Banking Department in respect of deposits ;

(9) the custody of monies, securities and other articles of value, and the collection of the proceeds, whether principal, interest or dividends, of any such securities;

(10) the sale and realisation of all property, whether movable or immovable, which may in any way come into the possession of the Bank in satisfaction, or part satisfaction, of any of its claims;

(11) the acting as agent for the Central Government or any Provincial Government, or any local authority or any Indian State in the transaction of any of the following kinds of business, namely :—

(*a*) the purchase, and sale of gold or silver or foreign exchange ;

(*b*) the purchase, sale, transfer and custody of bills of exchange, securities or shares in any company ;

(*c*) the collection of the proceeds, whether principal, interest or dividends, of any securities or shares ;

(*d*) the remittance of such proceeds, at the risk of the principal, by bills of exchange payable either in India or elsewhere ;

(*e*) the management of public debt ;

(12) the purchase and sale of gold coin and bullion and foreign exchange ;

(12A) the purchase and sale of securities issued by the Government of any country outside India and expressed to be payable in a foreign currency, being in the case of purchase by the Bank, securities maturing within a period of ten years from the date of purchase ;

(13) the opening of an account with or the making of any agency agreement with, and the acting as agent or correspondent of, a bank incorporated in any country outside India or the principal currency authority of any country under the law for the time being in force in that country or any international bank formed by such principal currency authorities, and the investing of the funds of the Bank in the shares of any such international bank ;

(14) the borrowing of money for a period not exceeding one month for the purposes of the business of the

bank, and the giving of security for money so borrowed;

Provided that no money shall be borrowed under this clause from any person in India other than a scheduled bank or from any person outside India other than a bank which is the principal currency authority of any country under the law for the time being in force in that country:

Provided further that the total amount of such borrowings from persons in India shall not at any time exceed the amount of the share capital of the Bank;

(15) the making and issue of bank notes subject to the provisions of this Act;

(15A) the performance of the functions of the Bank under the International Monetary Fund and Bank Ordinance, 1945 (XLVII of 1945), and under the Banking Companies Act, 1949.

(16) generally, the doing of all such matters and things as may be incidental to or consequential upon the exercise of its powers or the discharge of its duties under this Act.

Notes—

Sub-s (4) : See notes to s. 9 *ante*.

18 (1) Power of direct discount—When, in the opinion of the Central Board, a special occasion has arisen making it necessary or expedient that action should be taken under this section for the purposes of regulating credit in the interest of Indian trade, commerce, industry and agriculture, the Bank may, notwithstanding any limitation contained in sub-clauses (*a*) and (*b*) of clause (2) or sub-clause (*a*) or (*b*) of clause (3) or clause (4) of section 17,—

(1) purchase, sell or discount any of the bills of exchange or promissory notes specified in sub-clause (*a*) or (*b*)

of clause (2) or sub-clause (*b*) of clause (3) of that section though such bill or promissory note does not bear the signature of a scheduled bank or a provincial co-operative bank ; or

(2) purchase or sell foregin exchange in amounts of not less than the equivalent of one lakh rupees ; or

(3) make loans or advances repayable on demand or on the expiry of fixed periods not exceeding ninety days against the various forms of security specified in clause (4) of that section or when the loan or advance is made to a banking company as defined in the Banking Companies Act, 1949 against such other forms of security as the bank may consider sufficient.

(4) Where a banking company to which a loan or advance has been made under the provisions of clause (3) of sub-section (1) is wound up any sums due to the bank in respect of such loan or advance shall subject only to the claims if any other banking company in respect of any prior, loan or advance made by such banking company against any security, be a first charge on the banking company.

Notes—

Sub-section (1) (3) : See notes to s. 9 *ante*.

19. Business which the Bank may not transact.—Save as otherwise provided in sections 17, 18 and 45 the Bank may not—

(1) engage in trade or otherwise have a direct interest in any commercial, industrial or other undertaking except such interest as it may in any way acquire in the course of the satisfaction of any of its claims : provided that all such interests shall be disposed of at the earliest possible moment ;

(2) purchase its own shares or the shares of any other

bank or of any company, or grant loans upon the security of any such shares ;

(3) advance money on mortgage of, or otherwise on the security of, immovable property or documents of title relating thereto, or become the owner of immovable property, except so far as is necessary for its own business premises and residences for its officers and servants ;

(4) make loans or advances ;

(5) draw or accept bills payable otherwise than on demand ;

(6) allow interest on deposits or current accounts.

CHAPTER III.

CENTRAL BANKING FUNCTIONS

20. Obligation of the Bank to transact Government business.—The Bank shall undertake to accept monies for account of the Secretary of State, the Central Government, the Provincial Governments and such States in India as may be approved of and notified by the Central Government in the Gazette of India, and to make payments up to the amount standing to the credit of their accounts respectively, and to carry out their exchange, remittance and other banking operations including the management of the public debt.

21. Bank to have the right to transact Government business in India.—(1) The Central Government and the Provincial Government shall entrust the Bank, on such conditions as may be agreed upon, with all their money, remittance, exchange and banking transactions in India, and in particular, shall deposit free of interest all their cash balances with the Bank ;

Provided that nothing in this sub-section shall prevent the Central Government or any Provincial Government from carry-

ing on money transactions at places where the Bank has no branches or agencies, and the Central Government and the Provincial Governments may hold at such places such balances as they may require.

(2) The Central Government and each Provincial Government shall entrust the Bank, on such conditions as may be agreed upon, with the management of the public debt and with the issue of any new loans.

(3) In the event of any failure to reach agreement on the conditions referred to in this section the Central Government shall decide what the conditions shall be.

(4) Any agreement made under this section to which the Central Government or any Provincial Government is a party shall be laid, as soon as may be after it is made, before the Central Legislature and in the case of a Provincial Government before the Provincial Legislature also

22. Right to issue bank notes.—(1) The Bank shall have the sole right to issue bank notes in British India, and may, for a period which shall be fixed by the Central Government on the recommendation of the Central Board, issue currency notes of the Government of India, supplied to it by the Central Government, and the provisions of this Act applicable to bank notes shall, unless a contrary intention appears, apply to all currency notes of the Government of India issued either by the Central Government or by the Bank in like manner as if such currency notes were bank notes, and references in this Act to bank notes shall be construed accordingly.

(2) On and from the date on which this Chapter comes into force the Central Government shall not issue any currency notes.

23. Issue Department.—(1) The issue of bank notes shall be conducted by the bank in an Issue Department which shall be separated and kept wholly distinct from the Banking

Department, and the assets of the Issue Department shall not be subject to any liability other than the liabilities of the Issue Department as hereinafter defined in section 34.

(2) The Issue Department shall not issue bank notes to the Banking Department or to any other person except in exchange for other bank notes or for such coin, bullion or securities as are permitted by this Act to form part of the Reserve.

24. Denominations of notes.—Bank notes shall be of the denominational values of two rupees, five rupees, ten rupees, fifty rupees, one hundred rupees, five hundred rupees, one thousand rupees and ten thousand rupees, unless otherwise directed by the Central Government on the recommendation of the Central Board.

25. Form of bank notes.—The design, form and material of bank notes shall be such as may be approved by the Central Government after consideration of the recommendations made by the Central Board.

26. Legal tender character of notes.—(1) Subject to the provisions of sub-section (2), every bank note shall be legal tender at any place in British India in payment or on account for the amount expressed therein, and shall be guaranteed by the Central Government.

(2) On recommendation of the Central Board the Central Government may, by notification in the Gazette of India, declare that, with effect from such date as may be specified in the notification, any series of bank notes of any denomination shall cease to be legal tender save at an office or agency of the Bank.

27. Re issue of notes.—The Bank shall not re-issue bank notes which are torn, defaced or excessively spoiled.

28. Recovery of notes lost, stolen, mutilated or imperfect.—Notwithstanding anything contained in any enact-

ment or rule of law to the contrary, no person shall of right be entitled to recover from the Central Government or the Bank, the value of any lost, stolen, mutilated or imperfect currency note of the Government of India, or bank note :

Provided that the Bank may, with the previous sanction of the Central Government prescribe the circumstances in and the conditions and limitations subject to which the value of such currency notes or bank notes may be refunded as of grace and the rules made under this proviso shall be laid on the table of the Central Legislature.

Notes:

Before a note can be described as a "mutilated notes" it is an essential condition that a portion of the note should be missing and if that condition is not fulfilled the note cannot be regarded as a mutilated note. Further if the two halves of a note are placed before a Currency officer when both halves are identifiable as parts of one note, S-28 of the Reserve Bank of India Act does not apply to such a case and the claim thereon should be allowed.1

See also Note Refund Rules. Rule 2(e). Webster's Dictionary defines 'mutilate' as 'to cut off a limb or an essential part of the body' In 40 Am. Rep...it is said ; : : 'Mutilate means something less than total destruction. Mere mutilation of a will would not not of itself take from a will all legal force. A mutilation however which takes from the instrument an element essential to its validity would have the effect to revoke it.' *Tomlins Law Dictionary* defines 'mutilation' as 'depriving a man of any member etc.' The word is also sometimes used in the sense of revocation.

29. Bank exempt from stamp duty on bank notes.—The bank shall not be liable to the payment of any stamp duty under the Indian Stamp Act, 1899 (II of 1899), in respect of bank notes issued by it.

30. Powers of Central Government to supersede Central Board.—(1) If in the opinion of the Central Govern-

(1) Radhakrishnan V The Reserve Bank of India ILR (1944) All 635 = 219 IC 134=18 RA 49=(1945) Comp. Cas. 65=(1944) ALW 602 (2) = (1944) OWN (HC) 283 (2) = (1945) ALG 5=(1944) AWR (HC) 262=(1944) OA (HC) 262=AR (1945) All 29 (Dari. Sinha J. J.)

ment the Bank fails to carry out any of the obligations imposed on it by or under this Act the Central Government may, by notification in the Gazette of India, declare the Central Board to be superseded, and thereafter the general superintendence and direction of the affairs of the Bank shall be entrusted to such agency as the Central Government may determine, and such agency may exercise the powers and do all acts and things which may be exercised or done by the Central Board under this act.

(2) When action is taken under this section the Central Government shall cause a full report of the circumstances leading to such action and of the action taken to be laid before the Central Legislature at the earliest possible opportunity and in any case within three months from the issue of the notification superseding the Board.

31. Issue of demand bills and notes.—(1) No person in British India other than the Bank or, as expressly authorized by this Act, the Central Goverment shall draw, accept, make or issue any bill of exchange, hundi, promissory note or engagement for the payment of money payable to bearer on demand, or borrow, owe or take up any sum or sums of money on the bills, hundis or notes payable to bearer on demand of any such person :

Provided that cheques or drafts, including hundis, payable to bearer on demand or otherwise may be drawn on a person's account with a banker, shroff or agent.

(2) Notwithstanding anything contained in the Negotiable Instruments Act, 1881 (XXVI of 1881), no person in British India other than the Bank or, as expressly authorised by this Act, the Central Government shall make or issue any promissory note expressed to be payable to the bearer of the instrument.

32 Penalty--(1) Any person contravening the provisions

of section 31 shall be punishable with fine which may extend to the amount of the bill, hundi, note or engagement in respect whereof the offence is committed.

(2) No prosecution under this section shall be instituted except on complaint made by the Bank.

33. Assets of the Issue Department.—(1) The assets of the Issue Department shall consist of gold coin, gold bullion, foreign securities, rupee coin and rupee securities to such aggregate amount as is not less than the total of the liabilities of the Issue Department as hereinafter defined.

(2) Of the total amount of the assets, not less than two-fifths shall consist of gold coin, gold bullion or foreign securities:

Provided that the amount of gold coin and gold bullion shall not at any time be less than forty crores of rupees in value.

(3) The remainder of the assets shall be held in rupee coin, Government of India rupee securities of any maturity and such bills of exchange and promissory notes payable in British India as are eligible for purchase by the Bank under sub-clause (*a*) or sub-clause (*b*) of clause (2) of section 17 or under (1) section 18:

(4) For the purposes of this section, gold coin and gold bullion shall be valued at 8·47512 grains of fine gold per rupee, rupee coin shall be valued at its face value, and securities shall be valued at the market rate for the time being obtaining.

(5) Of the gold coin and gold bullion held as assets, not less than seventeen-twentieths shall be held in British India, and all gold coin and gold bullion held as assets shall be held in the custody of the Bank or its agencies:

Provided that gold belonging to the Bank which is in any other bank or in any mint or treasury or in transit may be reckoned as part of the assets.

(6) For the purposes of this section the securities which may be held as part of the assets shall be securities of the following kinds payable in the currency of any foreign country

which is a member of the International Monetary Fund, namely:—

(a) Balances at the credit of the Issue Department with the bank which is the principal currency authority of that foreign country, or, if there is no such bank, with any bank incorporated in that foreign country;

(b) bills of exchange bearing two or more good signatures and drawn on and payable at any place in that foreign country and having a maturity not exceeding ninety days; and

(c) Government securities of that foreign country maturing within five years.

34. Liabilities of the Issue Department.—(1) The liabilities of the Issue Department shall be an amount equal to the total of the amount of the currency notes of the Government of India and bank notes for the time being in circulation.

(2) For the purposes of this section, any currency note of the Government of India or bank note which has not been presented for payment within forty years from the 1st day of April following the date of its issue shall be deemed not to be in circulation, and the value thereof shall, notwithstanding anything contained in sub-section (2) of section 23, be paid by the Issue Department to the Central Government or the Banking Department, as the case may be; but any such note, if subsequently presented for payment, shall be paid by the Banking Department, and any such payment in the case of a currency note of the Government of India shall be debited to the Central Government.

S. 35 Omitted.

36. Method of dealing with fluctuations in rupee coin assets.—(1) After the close of any financial year in which the minimum amount of rupee coin held in the assets, as shown in any of the weekly accounts of the Issue Department for that year prescribed under sub-section (1) of section 53 is greater than fifty crores of rupees or one-sixth of the total amount of the assets as shown in that account, whichever may be the greater, the Bank may deliver to the Central Government rupee

coin up to the amount of such excess but not without that Government's consent exceeding five crores of rupees, against payment of legal tender value in the form of bank notes, gold or securities :

Provided that if the Bank so desires and if the amount of gold coin, gold bullion and sterling securities in the assets does not at that time exceed one-half of the total assets, a proportion not exceeding two-fifths of such payment shall be in gold coin, gold bullion or such sterling securities as may be held as part of the assets under sub-section (6) of section 33.

(2) After the close of any financial year in which the maximum amount of rupee coin held in the assets, as so shown, is less than fifty crores of rupees or one-sixth of the total amount of the assets, as so shown, whichever may be the greater, the Central Government shall deliver to the Bank rupee coin up to the amount of such deficiency, but not without its consent exceeding five crores of rupees, against payment of legal tender value.

(3) At the close of any week in which the amount of rupee coin held in the assets, as shown in the weekly accounts of the Issue Department for that week, is less than fifty crores of rupees or one—sixth of the total amount of the assets as so shown, whichever may be the greater, the Central Government may with the consent of the Bank, deliver to the Bank rupee coin up to the amount of such deficiency against payment of legal tender value.

37. Suspension of assets requirements.—(1) Notwithstanding anything contained in the foregoing provisions, the Bank may, with the previous sanction of the Central Government for periods not exceeding thirty days in the first instance, which may, with the like sanction, be extended from time to time by periods not exceeding fifteen days, hold as assets gold coin, gold bullion or sterling securities of less aggregate amount than that required by sub-section (2) of section 33 and, whilst the holding is so reduced, the proviso to that sub-section shall cease to be operative :

Provided that the gold coin and gold bullion held as such

assets shall not be reduced below the amount specified in the proviso to sub-section (2) of section 33 so long as any sterling securities remain held as such assets.

(2) In respect of any period during which the holding of gold coin, gold bullion and sterling securities is reduced under sub-section (1), the Bank shall pay to the Central Government a tax upon the amount by which such holding is reduced below the minimum prescribed by sub-section (2) of section 33; and such tax shall be payable at the bank rate for the time being in force, with an addition of one per cent. per annum when such holding exceeds thirty-two and a half per cent. of the total amount of the assets and of a further one and a half per cent. per annum in respect of every further decrease of two and a half per cent. or part of such decrease:

Provided that the tax shall not in any event be payable at a rate less than six per cent. per annum.

38. Obligations of Government and the Bank in respect of rupee coin.—The Central Government shall undertake not to re-issue any rupee coin delivered under section 36 nor to put into circulation any rupees, except through the Bank; and the Bank shall undertake not to dispose of rupee coin otherwise than for the purposes of circulation or by delivery to the Central Government under that section.

39. Obligation to supply different forms of currency.—(1) The Bank shall issue rupee coin on demand in exchange for bank notes and currency notes of the Government of India, and shall issue currency notes or bank notes on demand in exchange for coin which is legal tender under the Indian Coinage Act, 1906 (III of 1906).

(2) The Bank shall, in exchange for currency notes or bank notes of two rupees or upwards, supply currency notes or bank notes of lower value or other coins which are legal tender under the Indian Coinage Act, 1906 (III of 1906), in such quantities as may, in the opinion of the Bank, be required for circulation; and the Central Government shall supply such coins to the Bank on demand. If the Central Government at any time

fails to supply such coins, the Bank shall be released from its obligations to supply them to the public.

Notes:

The scope of s. 39 was recently considered by the Bombay High Court (Stone CJ & Lokur J on an appeal from the decision of Kania J) in the case of *J. M. De Souza Reserve Bank of India*[1]. That section deals with the issue of rupee coins on demand in exchange for bank notes and the supply of currency notes of lower denomination or other coins which are legal tender, in exchange for currency notes of five rupees or upwards. This section was amended by the High Denomination Bank Notes (Demonetisation) Ordinance 3 of 1946. S. 6 of that ordinance ran as follows: '(1) Notwithstanding anything to the contrary contained in the Reserve Bank of India Act, 2 of 1934, any high denomination bank note held by a person other than a bank or Government treasury, shall after the 12th January 1946 be exchanged only on tender of the note for exchange by the owner thereof in the manner provided in this section.....' The other subsections of s. 6 required a declaration in a certain form regarding the mode of acquisition etc before such high denomination notes could be accepted and exchanged by the Reserve Bank S. 9 ran thus:– 'No suit, prosecution or other legal proceeding, shall lie against any person for any thing done, or in good faith intended to be done, under this ordinance. 'The petitioner Mr. J. M. De Souza presented a Rs. = 1000 note to the Reserve Bank with a demand for payment after the passing of the ordinance and on the demand being refused filed a petition for compelling the Reserve Bank by *mandamus* to discharge and satisfy the unconditional promise to pay to the petitioner the sum Rs. 1000 contained in the particular bank note without imposing any condition on the petitioner. Kania J dimissed the petition and Stone CJ & Lokur J dismissed Mr. De Souza's appeal. The argument of Mr. Munshi for the petitioner was that s. 39 dealt only with the exchange of bank notes for coins or notes of other denominations, but not with the liability to pay undertaken at the time of the issue of the notes. There was no provision in the Act regarding the discharge of that liability and therefore the argument was that there was an implied obligation to discharge it. The payment promised in a bank note must be made by means of some legal tender which may be coin or notes of other denomination. The liability to pay may be discharged also by some account in the bank. One form of money may be exchanged for another form of money but after a bank note has ceased to be legal tender payment of

1 AIR (1946) Bom 570

money for it would either be a sale or a satisfaction of the obligation to pay but not an exchange. This argument was rejected by Lokur J who remarked:' 'It must be remembered that the obligation does not arise out of contract but out of statutory provisions. As soon as a bank note is issued it becomes a legal tender and must be accepted by the public as such. There is no offer and acceptance which are the foundation of a contract. The only obligation on the bank is to exchange it for rupee coin or bank notes of other denomination and there can be no other implied obligation to pay as contended by Mr. Munshi. Had it been so in the case of the loss of a bank note, the owner could have proved the contract by independent evidence and recovered the amount of the note from the bank. But s. 28 of the Act expressly provides that no person shall of right be entitled to recover from the Central Government or the bank the value of any note lost, stolen, mutilated, or imperfect currency note of the Government of India or bank note. S. 39 is intended both to impose an obligation on the Reserve Bank and also to guard it against a demand for an excessive quantity of rupee coin or bank notes of any particular denomination. Thus it completely provides for the claim which the owner or holder of a banknote can make against the bank and the manner in which the bank can discharge its liability under the note.' Lokur J also rejected another argument of Mr. Munshi based on the words 'presented for payment' and 'shall be paid' which occur in s. 34. (2) from which Mr. Munshi wanted to draw the inference that the Act made a distinction between 'payment' and 'exchange'. Lokur J further observed: 'Even if it be assumed that there is such an implied obligation to pay apart from the provisions of s. 39, then that obligation arises out of the contents of the bank note itself and cannot be enforced by *mandamus* under s. 45 of the Specific Relief Act. The proper remedy to enforce it is a suit against the bank. It is not necessary to express an opinion as to whether such a suit can be successfully maintained. Mr. Munshi argues that as the right to issue bank notes with a promise to pay is given by s. 22 of the Reserve Bank of India Act, the implied obligation to fulfil that promise also flows from that very section and is therefore a statutory liability. But the Act having provided for the mode of discharging the liability, another implied liability, if any, cannot be said to be arising out of the statute itself. Under proviso (b) to s. 45 of the Specific Relief Act no writ of *mandamus* can be issued against the bank requiring it to do any act unless that act is under any law for the time being clearly incumbent upon it to do. The expression 'clearly incumbent' is very significant. If one mode of doing a thing is provided by law, then any other mode of doing it cannot be regarded as 'clearly incumbent.' The facts in

Inre Tarabai[1] on which reliance was placed were different.....That case has no application where an implied contractual liability as distinct from statutory liability is sought to be enforced. Hence this is not a fit case for the issue of a writ of *mandamus* and I agree that the appeal should be dismissed with costs. 'Stone CJ took the view that the implied obligation to pay, even if one assumed for the moment that it existed, was also part and parcel of the Act and was also abrogated by the ordinance. To quote Stone CJ's words: 'In my opinion the word 'exchange' is a word of wider import than the word 'pay'. Actually on tender of the note with a demand for payment the bank does effect an exchange since it retains the tendered note against the coin or the notes of lower denominations. I think the words in clause 6 of the Ordinance 'be exchanged only on tender of the note for exchange' are relevant. They raise the question, exchange for what ? The words must mean 'to be exchanged in satisfaction for the promise to pay.' If there be an express statutory obligation there is no room for any implied obligation arising by virtue of the statutory powers and duties of the bank. But even if this case could be grounded on implied obligation there in my judgement a fatal objection to the petitioner's case, since in my opinion, an implied obligation arising by virtue of a statute cannot be divorced from the statute itself and treated as something standing dehors the Act. It is part and parcel of the statute itself. So that in this case clause 6 of the Ordinnace abrogates such an implied obligation in the same way as it abrogates an express one. The words of the ordinance are 'notwithstanding anything to the contrary contained in the Reserve Bank of India Act' and an implied obligation to pay arising by virtue of the Act is in my opinion something contained in the Act. To hold otherwise would be to give a too narrow construction to the words used.'

40. Transactions in foreign exchange.—The Bank shall sell to or buy from any authorised person who makes a demand in that behalf at its office in Bombay, Calcutta, Delhi or Madras, foreign exchange at such rates of exchange and on such conditions as the Central Government may from time to time by general or special order determine, having regard so far as rates of exchange are concerned to its obligations to the International Monetary Fund:

Provided that no person shall be entitled to demand to buy or sell foreign exchange of a value less than two lakhs of rupees.

(1) 7 Bom LR 161

Explanation.—In this section "authorised person" means a person who is entitled by or under the Foreign Exchange Regulation Act, 1947, to buy, or as the case may be, sell, the foreign exchange to which his demand relates.

S. 41 Omitted.

42. Cash reserves of scheduled banks to be kept with the Bank.—(1) Every bank included in the Second Schedule shall maintain with the Bank a balance the amount of which shall not at the close of business on any day be less than five per cent. of the demand liabilities and two per cent. of the time liabilities of such bank in India as shown in the return referred to in sub-section (2).

Explanation.—For the purposes of this section liabilities shall not include the paid-up capital or the reserves, or any credit balance in the profit and loss account of the bank or the amount of any loan taken from the Reserve Bank.

(2) Every scheduled bank shall send to the Central Government and to the Bank a return signed by two responsible officers of such bank showing—

(*a*) the amounts of its demand and time liabilities, respectively, in India,

(*b*) the total amount held in India in currency notes of the Government of India and bank notes,

(*c*) the amounts held in India in rupee coin and subsidiary coin, respectively,

(*d*) the amounts of advances made and of bills discounted in India, respectively,

(*e*) the balance held at the Bank,

at the close of business on each Friday, or if Friday is a public holiday under the Negotiable Instruments Act, 1881 (XXVI of 1881), at the close of business on the preceding working day; and such return shall be sent not later than two working days after the date to which it relates :

Provided that where the Bank is satisfied that the furnishing of a weekly return under this sub-section is impracticable in the case of any scheduled bank by reason of the geographical

position of the bank and its branches, the Bank may require such bank to furnish in lieu of a weekly return a monthly return to be dispatched not later than fourteen days after the end of the month to which it relates giving the details specified in this sub-section in respect of such bank at the close of business for the month.

(3) If at the close of business on any day before the day fixed for the next return, the balance held at the Bank by any scheduled bank is below the minimum prescribed in sub-section (1) such scheduled bank shall be liable to pay to the Bank in respect of each such day penal interest at a rate three per cent. above the bank rate on the amount by which the balance with the Bank falls short of the prescribed minimum, and if on the day fixed for the next return such balance is still below the prescribed minimum as disclosed by this return, the rates of penal interest shall be increased to a rate five per cent. above the bank rate in respect of that day and each subsequent day on which the balance held at the Bank at the close of business on that day is below the prescribed minimum.

(3A) when under the provisions of sub-section (3) penal interest at the increased rate of five per cent. above the bank rate has become payable by a scheduled bank, if thereafter on the day fixed for the next return the balance held at the Bank is still below the prescribed minimum as disclosed by this return —

(*a*) every director and any managing agent, manager or secretary of the scheduled bank, who is knowingly and wilfully a party to the default, shall be punishable with fine which may extend to five hundred rupees and with a further fine which may extend to five hundred rupees for each subsequent day on which the default continues, and

(*b*) the Bank may prohibit the scheduled bank from receiving after the said day any fresh deposit,

and, if default is made by the scheduled bank in complying with the prohibition referred to in clause (*b*), every director

and officer of the scheduled bank who is knowingly and wilfully a party to such default or who through negligence or otherwise contributes to such default shall in respect of each such default be punishable with fine which may extend to five hundred rupees and with a further fine which may extend to five hundred rupees for each day after the first on which a deposit received in contravention of such prohibition is retained by the scheduled bank.

Explanation.—In this sub-section "officer" includes a managing agent, manager, secretary, branch manager, and branch secretary.

(4) Any scheduled bank failing to comply with the provisions of sub-section (2) shall be liable to pay to the Central Government or to the Bank, as the case may be, or to each, a penalty of one hundred rupees for each day during which the failure continues.

(5) The penalties imposed by sub-section (3) and (4) shall be payable on demand made by the Bank, and, in the event of a refusal by the defaulting bank to pay on such demand, may be levied by a direction of the principal Civil Court having jurisdiction in the area where an office of the defaulting bank is situated, such direction to be made only upon application made in this behalf to the Court by the Central Government in the case of a failure to make a return under sub-section (2) to the Central Government or by the Bank with the previous sanction of the Central Government in other cases.

(6) The Bank shall, save as hereinafter provided, by notification in the Gazette of India,—

(*a*) direct the inclusion in the Second Schedule of any bank not already so included which carries on the business of banking in any Province of India and which—

(*i*) has a paid-up capital and reserves of an aggregate value of not less than five lakhs of rupees, and

(*ii*) satisfies the Bank that its affairs are not being condu-

cted in a manner detrimental to the interests of its depositors, and

(*iii*) is a company as defined in clause (2) of section 2 of the Indian Companies Act, 1913 (VII of 1913), or a corporation or a company incorporated by or under any law in force in any place outside the Provinces of India:

(*b*) direct the exclusion from that Schedule of any scheduled bank,—

(*i*) the aggregate value of whose paid-up capital and reserves become at any time less than five lakhs of rupees, or

(*ii*) which is, in the opinion of the Bank after making an inspection under section 35 of the Banking Companies Act, 1949, conducting its affairs to the detriment of the interests of its depositors, or

(*iii*) which goes into liquidation or otherwise ceases to carry on banking business:

Provided that the Bank may on application of the scheduled bank concerned and subject to such conditions if any, as it may impose, defer the making of a direction under subclause (*i*) or subclause (*ii*) of clause (*b*) for such period as the Bank considers reasonable to give the scheduled bank an opportunity of increasing the aggregate value of its paid-up capital and reserves to not less than five lakhs of rupees or, as the case may be, of removing the defects in the conduct of its affairs ;

(c) alter the description in that Schedule whenever any scheduled bank changes its name.

Explanation.—In this sub-section the expression "value" means the real or exchangeable value and not the nominal value which may be shown in the books of the bank concerned; and if any dispute arises in computing the aggregate value of the paid-up capital and reserves of a bank, a determination thereof by the Bank shall be final for the purposes of this sub-section.

Notes:

Each federal reserve bank under the American Federal Reserve System is required to maintain gold reserves of not less than 25 percent against its deposits and federal reserve notes in actual circulation.

43. Publication of consolidated statement by the Bank.—The Bank shall compile and shall cause to be published each week a consolidated statement showing the aggregate of the amounts under each clause of sub-section (2) of section 42 exhibited in the returns received from scheduled banks under that section.

44. Power to require from co-operative banks:—The Bank may require any provincial co-operative bank which it has any transactions under section 17 to furnish the return referred to in sub-section (2) of section 42, and if it does so he provisions of sub-sections (4) and (5) of section 42 shall apply so far as may be to such co-operative bank as if it were a scheduled bank.

45. Agreement with the Imperial Bank.—(1) The Bank shall enter into an agreement with the Imperial Bank of India which shall be subject to the approval of the Central Government and shall be expressed to come into force on the date on which this Chapter comes into force and to remain in force for fifteen years and thereafter until terminated after five years notice on either side, and shall further contain the provisions set forth in the Third Schedule:

Provided that the agreement shall be conditional on the maintenance of a sound financial position by the Imperial Bank and that if, in the opinion of the Central Board, the Imperial Bank has failed either to fulfil the conditions of the agreement or to maintain a sound financial position, the Central Board shall make a recommendation to the Central Government and the Central Government, after making such further inquiry as it thinks fit, may issue instructions to the Imperial Bank with reference either to the agreement or to any matter which in its opinion involves the security of the Government monies or the assets of the Issue Department in the custody of the Impe-

rial Bank, and in the event of the Imperial Bank disregarding such instructions may declare the agreement to be terminated.

(2) The agreement referred to in sub-section (1) shall, as soon as may be after it is made, be laid before the Central Legislature.

(3) As from the commencement of Part III of the Government of India Act, 1935 (26 Geo. 5, c. 2), references in the said agreement to the Governor-General in Council in relation to his general banking business his accounts, and sums due to or from him, and references to Government in relation to receipts and disbursements dealt with on account of Government shall be construed as including references to the Provincial Governments.

CHAPTER IV.

General Provisions.

46. Contribution by Central Government to the Reserve Fund.—The Government shall transfer to the Bank rupee securities of the value of five crores of rupees to be allocated by the Bank to the Reserve fund.

47. Allocation of surplus profits.—After making provision for bad and doubtful debts, depreciation in assets, contributions to staff and superannuation funds and such other contingencies as are usually provided for by bankers, the balance of the profits shall be paid to the Central Government.

Notes:

Under the American Federal Reserve System after expenses member banks are entitled to an annual dividend of 6 percent on the paidup capital stock which is cumulative. After the payment of dividend the balance is added to the surplus of the reserve banks. Reserve banks are exempt from federal, state, and local taxation except taxation upon real estate. In case of liquidation or dissolution of a reserve bank surplus remaining after payment of debts, dividends etc becomes the property of the United States Government. In India if the Reserve Bank is liquidated the surplus assets are by s. 57 divided between the Central Government and the shareholders, the former taking 75 percent and the latter 25 percent.

Achivements of the Reserve Bank:

As Mr. DS Savkar observes in his book *'Banking and Finance in Bombay'* p. 6 in commenting on the measure of success achieved by the Reserve Bank 'Assessed impartially in the 12 years of its existence the bank has succeeded in a considerable measure in coordinating the bulk of banking resources in India and in ironing out wide movement of credit. Indeed but for the impact of war finance in its every early years of buildingup its success in these directions would have been more complete. The number of scheduled banks has gradually increased from 50 in 1935 to 96 in 1947. Through them it has regulated credit according to the requirements of trade and industry. It has also provided cheap remittance facilities and established clearing houses to expedite settlement of inter bank claims. The latter in particular has helped to align interest rates in the principal urban areas. In addition it has like other central banks rendered a useful service to the Government in raising necessary finance at progressively cheaper rates. Above all, its solicitude for public interest has become increasingly apparent in the sponsoring of the Banking Companies and the Industrial Finance Corporation Bills and through stricter standards applied to issue of bank capital and bank inspections. Dr. RN Poduval in his article on the Reserve Bank gives[7] us a glimpse of the other side of the medal and holds the Reserve Bank responsible though not in the first degree for the inflation of the war and postwar years. 'One cannot help feeling that in the matter of inflation the Reserve Bank of India either passively co-operated with the Government or was a helpless subordinate carrying out the dictates of a foreign Government....The manner in which the purchases of the Allied Governments in India were financed and the way in which India was made to bear the real burden of the war out of all proportion to her capacity to do so brought about the suffering of the people. In this the Reserve Bank of India was at least a passive spectator. It did not fulfil the fundamental objective of the framers of the Reserve Bank of India Act enshrined in the preamble, namely, the securing of monetary stability within the country.' Dr. Poduval does not share in the enthusiasm manifested over the nationalisation of the Reserve Bank. His view is nationalisation makes no difference and the relationship between the Government and the Bank is not fundamentally changed thereby. The independence of Central Bank is largely a myth since the Governors were appointed by the Government and the nationalisation of the Bank of England in 1946 did not raise a flutter even in Conservative ranks. Dr. Poduval opines that there was no real reason why the Old Lady of Threadneedle Street should have been taken over by a young Government.

(7) Business Week Annual Number 1949. pp. 18 & 19.

48. Exemption of Bank from income-tax and super-tax and provision for deduction at source of income-tax on dividends.—(1) Notwithstanding anything contained in the Indian Income-tax Act, 1922 (XI of 1922), or any other enactment for the time being in force relating to income-tax or super-tax, the Bank shall not be liable to pay income-tax or super-tax on any of its income, profits or gains :

49. Publication of bank rate.—The Bank shall make public from time to time the standard rate at which it is prepared to buy or re-discount bills of exchange or other commercial paper eligible for purchase under this Act.

50. Auditors.—(1) Not less than two auditors shall be appointed, and their remuneration fixed, by the Central Government.

(2) The auditors shall hold office for such term not exceeding one year as the Central Government may fix while appointing them, and shall be eligible for re-appointment.

51. Appointment of special auditors by Government.—Without prejudice to anything contained in section 50, the Central Government may at any time appoint the Auditor General to examine and report upon the accounts of the Bank.

52. Powers and duties of auditors.—(1) Every auditor shall be supplied with a copy of the annual balance-sheet, and it shall be his duty to examine the same, together with the accounts and vouchers relating thereto; and every auditor shall have a list delivered to him of all books kept by the Bank, and shall at all reasonable times have access to the books, accounts and other documents of the Bank, and may, at the expense of the Bank, if appointed by it or at the expense of the Central Government if appointed by that Government, employ accountants or other persons to assist him in investigating such accounts, and may, in relation to such accounts, examine any Director or officer of the Bank.

(2) The auditors shall make a report to the Central Government upon the annual balance-sheet and accounts, and in every such report they shall state whether, in their opinion, the bala-

nce-sheet is a full and fair balance-sheet containing all necessary particulars and properly drawn up so as to exhibit a true and correct view of the state of the Bank's affairs, and, in case they have called for any explanation or information from the Central Board, whether it has been given and whether it is satisfactory.

53. **Returns.**—(1) The Bank shall prepare and transmit to the Central Government a weekly account of the Issue Department and of the Banking Department in such form as the Central Government may, by notification in the Gazette of India, prescribe. The Central Government shall cause these accounts to be published weekly in the Gazette of India.

(2) The Bank shall also, within two months from the date on which the annual accounts of the Bank are closed, transmit to the Central Government a copy of the annual accounts signed by the Governor, the Deputy Governors and the Chief Accounting Officer of the Bank, and certified by the auditors, together with a report by the Central Board on the working of the Bank throughout the year, and the Central Government shall cause such accounts and report to be published in the Gazette of India.

54. **Agricultural Credit Department.**—The Bank shal create a special Agricultural Credit Department the functions of which shall be—

(*a*) to maintain an expert staff to study all questions of agricultural credit and be available for consultation by the Central Government, Provincial Governments, provincial co-operative banks, and other banking organisations.

(*b*) to co-ordinate the operations of the Bank in connection with agricultural credit and its relations with provincial co-operative banks and any other banks or organisations engaged in the business of agricultural credit.

S. 55 Omitted.

S. 56 Omitted.

57. **Liquidation of the Bank.**—(1) Nothing in the Indian Companies Act, 1913 (VII of 1913), shall apply to the Bank, and

the Bank shall not be placed in liquidation save by order of the Central Government and in such manner as it may direct.

Provided that the total amount payable to any shareholder under this section shall not exceed the paid-up value of the shares held by him by more than one per cent. for each year after the commencement of this Act subject to a maximum of twenty-five per cent.

58 Power of the Central Board to make regulations.— (1) The Central Board may, with the previous sanction of the Central Government, make regulations consistent with this Act to provide for all matters for which provision is necessary or convenient for the purpose of giving effect to the provisions of this Act

(2) In particular and without prejudice to the generality of the foregoing provision, such regulations may provide for all or any of the following matters, namely :—

(*a*) the manner in which the business of the Central Board shall be transacted, and the procedure to be followed at meetings thereof :

(*b*) the conduct of business of Local Boards and the delegation to such Boards of powers and functions ;

(*c*) the delegation of powers and functions of the Central Board to the Governor, or to Deputy Governors, Directors or officers of the Bank ;

(*d*) the formation of Committees of the Central Board, the delegation of powers and functions of the Central Board to such Committees, and the conduct of business in such Committees ;

(*e*) the constitution and management of staff and superannuation funds for the officers and servants of the Bank ;

(*f*) the manner and form in which contracts binding on the Bank may be executed ;

(*g*) the provision of an official seal of the Bank and the manner and effect of its use ;

(*h*) the manner and form in which the balance-sheet of the

Bank shall be drawn up, and in which the accounts shall be maintained;

(*i*) the remuneration of Directors of the Bank;

(*j*) the relations of the scheduled banks with the Bank and the returns to be submitted by the scheduled banks to the Bank;

(*k*) the regulation of clearing-houses for the scheduled banks;

(*l*) the circumstances in which, and the conditions and limitations subject to which, the value of any lost, stolen, mutilated or imperfect currency note of the Government of India or bank note may be refunded; and

(*m*) generally, for the efficient conduct of the business of the Bank.

(3) Copies of all regulations made under this section shall be available to the public on payment.

Notes:

When servant who is entitled to an inquiry under R. 22 (iii) of the Reserve Bank of India is afforded an inquiry it must not be wholly illusory. If he submits an explanation with regard to the charges made against him the Bank cannot take any action till they are satisfied that a charge (or charges) is proved; it is not enough that is merely made. The framing of charges is not an enquiry and if it is proved, they must be satisfied that the act or omission which forms the basis of the charge (or acts or omissions which form the basis of the charges) justify them in taking disciplinary action. And he must know exactly what is the nature of his offence and what is considered proved at the time when such action is taken. The fact that he does not desire to answer charges in person, but puts in a written statement, does not absolve the employer from paying regard to the elementary rules of justice and fairplay. Since a right of appeal is clearly given against dismissal of employee of Reserve Bank there must be satisfactory evidence upon which an appellate authority can act.[1]

59 to 61. [*Amendment of Act III of 1906. Repeals. Amendment of section 11, Act VII of 1913.*] *Rep. by the Repealing and Amending Act, 1937 (XX of 1937), s. 3. and Sch. II.*

(1) Reserve Bank of India V Elias 185 I C 339 = 12 R R 262 = Air (1939) Rang 357 (Roberts CJ & Spargo J).

THE FIRST SCHEDULE.

(See Section 9.)

1. THE WESTERN AREA shall consist of the Province of Bombay, the Central Provinces and Berar, Hyderabad, Baroda, Kutch, the United State of Kathiawar (Saurashtra), Kolhapur, the United State of Gwalior, Indore and Malwa (Madhya Bharat), Bhopal, the Acceding States administered by the Government of Bombay and the Acceding States administered by the Government of Central Provinces and Berar.

2. THE EASTERN AREA shall consist of West Bengal, Bihar, Orissa, Assam, the Andaman and Nicobar Islands, Manipur, Cooch Behar, Tripura, Mayurbhanj, the United States of Vindhya Pradesh, the Khasi States, the Acceding States administered by the Government of Bihar and the Acceding States administered by the Government of Orissa.

3. THE NORTHERN AREA shall consist of the United Provinces, East Punjab, Delhi, Ajmere-Merwara, Panth Piploda, Kashmir, Himachal Pradesh, Patiala and the East Punjab States Union, Bilaspur, Tehri-Garhwal, Rampur, Benares, the United States of Rajasthan, the United States of Matsya, Jaisalmer, Jodhpur, Bikaner, Jaipur and the Acceding States administered by the Government of East Punjab.

4. THE SOUTHERN AREA shall consist of the Province of Madras, Coorg, Mysore, Cochin, Travancore, Sandhur and the Acceding States administered by the Government of Madras.

THE SECOND SCHEDULE.

[See section 42 and section 2 (e).]

Scheduled Banks.

Ajodhia Bank, Fyzabad.
Allahabad Bank.
American Express Company Incorporated.
Banco Nacional Ultramarino.
Bank of Baroda.

Bank of Behar.
Bank of Hindustan, Madras.
Bank of India, Bombay,
Bengal Central Bank.
Canara Bank.
Central Bank of India.
Chartered Bank of India, Australia and China.
Comptoir National d' Escompte de Paris.
Eastern Bank.
Grindlay and Company.
Hongkong and Shanghai Banking Corporation.
Imperial Bank of India.
Indian Bank, Madras.
Industrial Bank of Western India, Ahmedabad.
Karnani Industrial Bank.
Lloyds Bank.
Mercantile Bank of India.
National Bank of India.
National City Bank of New York.
Nederlandsche Indische Handels-bank.
Nederlandsche Handel-Maatschappij.
Nedungadi Bank, Calicut.
Oudh Commercial Bank.
Punjab and Sind Bank, Amritsar.
Punjab Co-operative Bank, Amritsar.
Punjab National Bank, Lahore.
Union Bank of India, Bombay.
Quilon Bank, Quilon, South India.
Nadar Bank, Tuticorin.
Comilla Union Bank, Comilla.
Indo-Commercial Bank, Mayavaram.
Comilla Banking Corporation, Comilla.
Canara Banking Corporation, Udipi.
Canara Industrial and Banking Syndicate, Udipi.
Indian Overseas Bank, Madras.
Mahaluxmi Bank, Chittagong.
Nath Bank, Calcutta.

Palai Central Bank, Palai.
Calcutta National Bank, Calcutta.
Devakaran Nanjee Banking Company, Bombay.
Jwala Bank Ltd., Agra.
New Citizen Bank of India, Bombay.
Pioneer Bank Comilla.
New Standard Bank, Comilla.
Calcutta Commercial Bank, Calcutta.
Noakhali Union Bank, Calcutta.
United Industrial Bank, Calcutta.
Dinajpore Bank, Dinajpore.
Laxmi Bank, Akola.
Bank of China, Calcutta.
Bank of Communications, Calcutta.
National Savings Bank, Ltd., Bombay.
United Commercial Bank, Ltd., Calcutta.
Hind Bank, Ltd., Calcutta.
Traders Bank, Ltd. Lahore.
New Bank of India, Ltd., Lahore.
Exchange Bank of India and Africa, Ltd., Bombay.
Universal Bank of India, Ltd., Daimianagar.
Associated Banking Corporation of India, Bombay.
Bank of Jaipur, Jaipur.
National Bank of Lahore, Lahore.
Narang Bank of India, Lahore.
Hindustan Commercial, Bank, Cawnpore.
Oriental Bank of Commerce, Lahore.
Bank of Mysore, Bangalore.
Discount Bank of India, Bombay.
Andhra Bank, Masulipatam.
Bank of Commerce, Calcutta.
Hooghly Bank, Calcutta.
Bank of Nagpur, Ltd., Wardha.
Hindustan Mercantile Bank, Calcutta.
Gadodia Bank, Bombay.
Prabhat Bank, Lahore.
Pratap Bank, New Delhi.
Indo-Mercantile Bank, Cochin.

Bareilly Corporation Bank, Bareilly.
Bank of Maharashtra, Poona.
Tripura Modern Bank, Agartala.
Kumbakonam Bank, Ltd., Kumbakonam.
United Sind-Punjab Bank, Ltd., Karachi.
Bank of Bikaner, Ltd., Bikaner.
Jodhpur Commercial Bank, Ltd., Jodhpur.
South India Bank, Ltd., Tinnevelly.
Bank of Assam, Ltd., Shillong.
Tanjore Permanent Fund, Ltd., Tanjore.
Southern Bank, Ltd., Calcutta
Travancore Bank, Ltd., Trivandrum Taluk.
Australasia Bank, Ltd,, Lahore.
New Standard Bank, Comilla.
South Indian Bank, Ltd., Trichur.
Lakshmi Commercial Bank., Rawalpindi.
Bharatha Lakshmi Bank, Ltd., Masulipatam.
Bankers Union Ltd., Calcutta.
Presidency Industrial Bank, Ltd , Poona City.
United Sind-Punjab Bank, Ltd.
Travancore Forward Bank, Ltd., Kottayam.
Bank of Poona.
Hyderabad State Bank.
Mercantile Bank of Hyderabad.
Vysya Bank.

THE THIRD SCHEDULE.

[See section 15.]

Provisions to be contained in the agreement between the Reserve Bank of India and the Imperial Bank of India.

1. The Imperial Bank of India shall be the sole agent of the Reserve Bank of India at all places in British India where there is a branch of the Imperial Bank of India which was in existence at the commencement of the Reserve Bank of India Act, 1934, and there is no branch of the Banking Department of the Reserve Bank of India.

2. In consideration of the performance at the places referred to in clause 1 by the Imperial Bank of India on behalf of the Reserve Bank of India of the functions which the Imperial

Bank of India was performing on behalf of the Central Government before the coming into force of the Reserve Bank of India Act, 1934, the Reserve Bank of India shall pay to the Imperial Bank of India as remuneration a sum which shall be for the first ten years during which this agreement is in force a commission calculated at one-sixteenth of one per cent. on the first 250 crores and one thirty-second of one per cent. on the remainder of the total of the receipts and disbursements dealt with annually on account of Government by the Imperial Bank of India on behalf of the Reserve Bank of India. At the close of the said ten years the remuneration to be paid by the Reserve Bank of India to the Imperial Bank of India for the performance of these functions shall be revised and the remuneration for the ensuing five years shall be determined on the basis of the actual cost to the Imperial Bank of India, as ascertained by expert accounting investigation, of performing the said functions. The remuneration so determined shall thereafter be subject to revision in like manner at the end of each period of five years so long as this agreement remains in force. If any dispute arises between the Reserve Bank of India and the Imperial Bank of India as to the amount of the said remuneration the matter shall be referred for final decision to the Central Government who may require from the Imperial Bank such information and may order such accounting investigation as it thinks fit.

3. In consideration of the maintenance by the Imperial Bank of India of branches not less in number than those existing at the commencement of the Reserve Bank of India Act, 1934, the Reserve Bank of India shall, until the expiry of fifteen years from the coming into force of this agreement, make to the Imperial Bank of India the following payments, namely:—

(*a*) during the first five years of the agreement—nine lakhs of rupees per annum;

(*b*) during the next five years of the agreement—six lakhs of rupees per annum; and

(*c*) during the next five years of the agreement—four lakhs of rupees per annum

4. The Imperial Bank of India shall not without the approval of the Reserve Bank of India open any branch in substitution for a branch existing at the time this agreement comes into force,

Appendix C

The Reserve Bank of India (Note Refund) Rules, 1935.

(Gazette of India, part II dated 16th March 1935, pp. 253-255)

(In exercise of the power conferred by the proviso to s. 28 of the Reserve Bank of India Act 2 of 1934 the Central Board of Directors of the Reserve Bank of India by virtue of the power conferred by s. 7 of the said Act and with the previous sanction of the Governor General in Council makes the following rules prescribing the circumstances in and the conditions and limitations subject to which the value of any lost, stolen, mutilated or imperfect currency note of the Government of India or bank note may be refunded as of grace:-)

1. Short Title: These rules may be called the Reserve Bank of India (Note Refund) Rules 1935.

2. Definitions:-In these rules unless there is anything repugnant in the subject or context:--

(a) 'altered note' means a note in which an alteration has been made in the number, date, signature, or value or in any other respect;

(b) 'the Bank' means the Reserve Bank of India constituted by the Reserve Bank of India Act 1934;

(c) 'halfnote' means a half of a note which has been divided vertically through or near the centre;

(d) 'mismatched note' means an imperfect note formed by joining a halfnote of one note to halfnote of another note;

(e) 'mutilated note' means a note of which a portion is missing: Provided that the portion presented is clearly more than a halfnote and that if the portion presented consists of parts of a note joined together each part of such portion is identifiable as part of the same note;

(f) 'note' means a note of the Reserve Bank of India including a currency note of the Government of India issued whether by the Governor General in Council or by the bank;

(g) 'number' includes the letters of the series to which the note belongs;

(h) 'obliterated note' means a note not being a mutilated or altered note of which a portion has become or has been rendered undecipherable;

(i) 'office of issue' means the office of the Issue Deparment of the

Bank at Bombay, Calcutta, Madras, or Rangoon, or the branch of the Issue Department of the Bank at Cawnpore, Karachi, or Lahore;

(j) 'prescribed officer' means the officer in charge of an office of issue.

3. Presentation of Claims: (1) A claim in respect of a note of which the denomination does not exceed ten ruppes may be presented at any office of issue and may be dealt with by the prescribed officer at any such office. (2) A claim in respect of a note of which the denomination exceeds ten rupees shall be presented to the prescribed officer in charge of the office of Issue to which such note appears to belong and such prescribed officer shall alone be authorised to entertain it. (3) When a claim has been presented to a prescribed officer who is not authorised to entertain it under subrule (2) such officer shall return the note to the presenter and refer him to the officer to whom it should be presented under subrule (2).

4. Timelimit to Claims: If it appears to the prescribed officer authorised to entertain the claim that any claim was not made by the claimant within 12 months of the time when it might first have been made by him the prescribed officer shall not entertain the claim.

5. Value Limit to Claims: (1) No claim in respect of a note alleged to have been lost, stolen, or wholly destroyed or of which the portion presented is neither a halfnote nor a mutilated note shall be entertained unless the denomination of the note exceeds ten rupees. (2) No claim in respect of a halfnote or a mismatched note shall be entertained unless such halfnote or one of the halfnotes comprising the mismatched note is part of a note of which the denomination exceeds ten rupees.

6. Enquiry into Claims: (1) Where any claim is made under these rules the prescribed officer authorised to entertain the claim shall hold an enquiry unless the claim relates to a note alleged to have been stolen in which case he may reject the claim without holding any enquiry. (2) If in the course of the enquiry referred to in subrule (1) the claimant fails without reasonable cause in the opinion of the prescribed officer to furnish witnin three months any information called for by the prescribed officer, prescribed officer may reject the claim.

7. Rejection of Claim concerning Halfnote: A claim for the value of a halfnote shall be rejected unless the number of the note is identified by the prescribed officer on the halfnote and the halfnote is entire and has not been divded and rejoined.

8. Rejection of Claim concerning Mutilated Note of less than Ten Rupees: (1) A claim for the value of a mutilated note of a denomination not exceeding ten rupees shall be rejected unless in the opinion of the prescribed officer the portion presented clearly forms part of a genuine note and the missing portion is too small to be used in support of any other claim under these rules.

9. Rejection of claim concerning mutilated note of more than Ten Rupees:- (1) A claim for the value of a mutilated note of a denomination exceeding ten rupees shall be rejected unless the number of the note on examination is identified with certainty by the prescribed officer as one of not more than six numbers. Provided that if the number of the note though not capable of such identification is declared by the claimant the claim shall be dealt with under Rules 13 and 15 as the claim to the value of a wholly destroyed note: Provided further that when the claimant is unable to declare the number if the prescribed officer is of opinion that the number may be identified with certainty within a reasonable period he may permit the claimant to leave the note in deposit with a view to future identification. (2) When a claim is rejected under subrule (1) the note shall be stamped by the prescribed officer and returned to the claimant. (3) If a mutilated note of a denomination exceeding ten rupees has been identified with certainty by the prescribed officer as one of not more than six numbers he may order the claim to be paid at once.

10. Deposit of Mutilated Notes: (1) The prescribed officer shall enter the particulars of any mutilated note placed in deposit under the second proviso to subrule (1) of rule 9 in a register to be maintained in this behalf and shall give a receipt to the claimant for such note. (2) Where the number of a note so placed in deposit is not identified within a period of three years to the extent specified in subrule (1) of Rule 9 the claim shall be rejected and the note shall be stamped and returned to the claimant, or if the claimant cannot be found shall be destroyed.

11. Disposal of Claims concerning Halfnotes: (1) A claim for half the value of a note of which a halfnote only is presented by the claimant shall be dealt with as follows:-(a) If a counterclaim for the full value of the note has not been received at the office of issue before the presentation of the claim or within a period of fourteen working days thereafter, half the value of the note may be paid to the claimant on the expiration of such period. (b) If the full value of the note has already been paid on a claim under rule 14, the claim shall be rejected. (c) If a counterclaim for the full value of the note has been received before

the presentation of the claim or is received before payment of half the value of the note is made under clause (a), the prescribed officer may order that one claimant be paid forthwith the full value of the note or that one or both claimants be paid forthwith half the value of the note or that both claims be rejected. (2) Claims in respect of a mismatched note shall be deemed to be separate claims in respect of each halfnote thereof and shall be dealt with as provided in subrule (1).

12. Obliterated and Altered Notes: A claim in respect of an obliterated or altered note or halfnote shall be rejected unless the prescribed officer is satisfied as to the identity of such note or halfnote and that the note or halfnote has not been fraudulently altered so as to appear to be a of a higher denomination.

13. Method of presenting certain Claims: (1) A claim for the full value of a note—(a) when a halfnote only is presented by the claimant or (b) when the note is alleged to have been lost or wholly destroyed or when the portion of the note presented is neither a halfnote nor a mutilated note shall be accompanied by a signed statement (or if the prescribed officer so requires an affidavit) asserting that the claimant was the last lawful holder of the entire note and detailing the circumstances attending the loss or destruction of the missing halfnote or note as the case may be, and by a statement obtained from the police or postal authorities of the result of the enquiry, if any, held by them. (2) The prescribed officer shall consider the statements furnished and the affidavit, if any, and shall make such further enquiry, if any, as he may consider necessary.

14. Disposal of Claims under rule 13 (1) (a): (1) When a claim is made under clause (a) of subrule (1) of Rule 13 and a counterclaim has been presented in respect of the counterpart of the halfnote (a) if the full value of the note has been paid the claim shall be rejected; (b) if half the value of the note has been paid the prescribed officer may order half of the value of the note to be paid to the claimant forthwith; (c) if the counterclaim is pending the prescribed officer may order that one claimant be paid forthwith the full value of the note or that each claimant be paid forthwith half the value of the note or that both claims be rejected. (2) When a claim is made under clause (a) of subrule (1) of Rule 13 and the counterpart of the half note has not been presented—(a) if the prescribed officer is not satisfied that the counterpart of the half note has been lost or destroyed in such circumstances that there is no probability of its being presented at some future date he may order payment of half the value of the note forthwith: (b) if he is so

satisfied and is also satisfied that the claimant was the last lawful holder of the whole note he shall cause to be published in the Gazette of India and in three successive issues of the local offical Gazette a notification setting forth the particulars of the note of which one halfnote is alleged to have been lost or destroyed and the name of the claimant and calling upon any person having any claim in respect of such note to submit the claim forthwith; (c) if on the expiration of two years from the date of the first publication under clause (b) the counterpart of the halfnote has not been presented he may invest in Government securities or deposit in the Post Office Savings Bank an amount equivalent to the full value of the note; (d) if on the expiration of a period which shall be determined by him but which unless the Central Board otherwise directs shall not be less than five years, from the date of the first publication referred to in clause (b) the counterpart of the halfnote has not been presented he shall deliver the securities or deposit referred to in clause (c) with any interest which has in the meantime accumulated thereon to the claimant, or if the claimant is dead to his legal representative on such claimant or representative executing a bond with or without sureties in the form set forth in schedule I or schedule II; (e) if before the expiration of such period the counterpart is presented with a claim for the full value or for half the value of the note the proceedings under clauses (b), (c) and (d) shall be cancelled and the two claims shall be dealt with under subrule (1).

15. Disposal of Claims under Rule 13 (1) (b). Where a claim is made under clause (b) of subrule (1) of Rule 13...(a) if prescribed officer is not satisfied that the note or the unpresented portion of the note has been wholly destroyed or lost in such circumstances that there is no probability of its being presented at some future date he shall reject the claim; (b) if he is so satisfied and is also satisfied that the claimant was the last lawful holder of the note he shall cause to be published in the Gazette of India and in three successive issues of the local official Gazette a notification setting forth the particulars of the note alleged to have been lost or destoryed and the name of the claimant and calling upon any person having any claim in respect of such note to submit the claim forthwith; (c) if on the expiration of two years from the date of the first publication under clause (b) the note has not been presented he may invest in Government securities or deposit in the Post Office Savings Bank an amount equivalent to the value of the note; (d) if on the expiration of a period which shall be determined by him but which unless the Central Board otherwise directs shall be not less than five years from the first publication referred to in clause (b)

the note has not been presented and no subsequent claim in respect thereto has been substantiated he shall deliver the securities or deposit referred to in clause (c) with any interest which has in the meantime accumulated thereon to the claimant or if the claimant is dead to his legal representative on such claimant or representative executing a bond with or without sureties in the form set forth in schedule III or schedule IV; (e) if before the expiration of such period a subsequent claim in respect of the note is substantiated the securities or deposit referred to in clause (d) shall be delivered in the manner provided in that clause to the person making such subsequent claim or if such person is dead to his legal representative; (f) if before the expiration of such period the note alleged to have been lost or destroyed is produced by the claimant or any other person the proceedings under this rule in respect of such note shall be cancelled.

16. Bonds: Printed forms to be supplied by the bank shall be used in the execution of any bond required in pursuance of clause (d) of Rule 14 or clause (d) of Rule 15, and the value of the stamp on any such bond shall be recovered from the person executing the bond.

17. Return of Notes by Bank: Save as otherwise provided in Rule 9 and Rule 10 any note presented in prosecution of a claim shall be retained by the bank whatever be the decision on the claim.

18. Procedure when Payee is Untraced: Where as the result of a claim under these rules the value or the part of the value of a note is payable to a claimant and such claimant or if he is dead his legal representative cannot be found or fails within a period of three months from the communication to him of the decision to take steps to receive payment the amount payable shall be paid by the Issue Department of the Bank in the case of a currency note of the Government of India to the Governor General in Council and in the case of a bank note to the Banking-Department of the Bank.

OSBORNE A SMITH
GOVERNOR

Appendix D

The Reserve Bank (Transfer of Public Ownership) Act 1948.

(Received the assent of the Governor-General on the 23rd September 1948, Published in the Gazette of India, Extraordinary, dated the 23rd September 1948)

Act XLVV of 1948

An act to bring the share capital of the Reserve Bank of India into public ownership and to make consequential amendments in the Reserve Bank of India Act 1934.

Whereas it is expedient to bring the share capital of the Reserve Bank of India into public ownership, to make provisions with respect to the relations between the Central Government and the Bank and to make consequential amendments in the Reserve Bank of India Act, 1934 (II of 1934).

It is hereby enacted as follows.—

Short title. 1. (1) This Act may be called The Reserve Bank (Transfer to public ownership) Act, 1948.

Definitions. 2. In this Act,—

(a) "appointed day" means such day as the Central Government may, by notification in the official Gazette, appoint.

(b) "Bank" means the Reserve Bank of India Act 1934, (II of 1934).

Transfer of Bank shares. 3. (1) On the appointed day-

(a) all shares in the capital of the Bank shall by virtue of this Act be deemed to be transferred free of all trusts, liabilities and encumbrances to the Central Government; and

(2) as full compensation therefor, the Central Government shall issue to every person who, immediately before the appointed day, is registered as the holder of any such shares, an amount calculated at the rate of one hundred and eighteen rupees and ten annas per share, in promissory notes of the Central Government bearing interest at the rate of three per centum per annum repayable at par on such date as may be specified in this behalf by the Central Government:

Provided that where the amount so calculated is not an exact multiple of one hundred rupees the amount in excess of the nearest lower multiple of one hundred rupees shall be paid by cheque drawn on the Bank:

Provided further that in respect of any share obtained at par from the Central Government by any Director of the Bank in pursuance of sub-section (8) of Section 4 of the principal Act as in force immediately before the appointed day, the said amount shall be calculated at the rate of one hundred rupees per share.

(2) Notwithstanding the transfer of shares effected by this section any shareholder who, immediately before the appointed day, is entitled to payment of dividend on the shares held by him shall be entitled to receive from the Bank-

(a) all dividends accruing due on his shares in respect of the year ending on the 30th day of June, 1948, or any preceding year remaining unpaid on the appointed date;

(b) dividends calculated at the rate of four rupees per annum per share, in respect of the period from the 1st day of July 1948, to the appointed day

Vacation of office by existing office bearers.

4. On the appointed day any person who immediately before that day was holding office as a Director of the Central Board otherwise than as Governor or Deputy Governor or as a member of the Local Board of the Bank shall vacate his office, and the Central Board and the Local Boards of the Bank shall theerafter be constituted in the manner prescribed by Sections 8 and 9 of the Principal Act as amended by this Act.

Interim arrangements.

5. Pending the Constitution of the Central Board under Section 8 of the Principal Act as amended by this Act, the Governor of the Bank, or in his absence a Deputy Governor of the Bank duly nominated by him in this behalf, may, subject to such restrictions and conditions as may from time to time be imposed by the Central Government exercise all powers, and do all acts and things which may be exercised or done by the Bank.

Rule-making power.

6. (1) The Central Government, by notification in the official Gazette make rules for the purpose of giving effect to the objects of this Act.

(2) In particular and without prejudice to the generallity of the foregoing power, such rules may provide-

(a) for the manner in which and the authority by which compensation shall be paid under Section 3: and

(b) for the determination of persons to whom compensation is so payable.

7. As from the appointed day, the Reserve Bank of India Act, 1934 (II of Amendments to Act II of (1934), shall be amended in the manner directed in the Schedule to this Act.

THE SCHEDULE

(See Section 7.)

Amendments to the Reserve Bank of India Act, 1934.

Section 2–In clause (d) omit "silver".

Chapter II-In the hearing for "SHARE CAPITAL" substitute "CAPITAL".

For Section 4, substitute the following namely:—

"4. Capital of the Bank–The capital of Bank shall be five crores of rupees."

Omit section 5.

For Section 7, substitute the following namely:–

"7. Management – (1) The Central Government may from time to time give such directions to the Bank as it may, after consultation with the Governor of the Bank, consider necessary in the public interest.

(2) Subject to any such directions, the general superintendence and direction of the affairs and business of the Bank shall be entrusted to a Central Board of Directors which may exercise all powers and do all acts and things which may be exercised or done by the Bank.

(3) Save as otherwise provided in regulations made by the Central Board, the Governor shall have full powers to transact all the business of the Bank which may be transacted by the Central Board."

Section 8.

(i) for sub-section (1) substitute the following namely:–

"(1) The Central Board shall consist of the following Directors, namely:-

(a) a Governor and two deputy Governors to be appointed by the Central Government;

(b) four Directors to be nominated by the Central Government, one from each of the four Local Boards as constituted by Section 9;

(c) six Directors to be nominated by the Central Government; and

(d) one Government official to be nominated by the Central Government";

(ii) for the second paragraph of sub-section (4) substitute the following namely:-

"A Director nominated under clause (c) of sub-section (1) shall, subject to the provisions of sub-section (6), hold office for a period of four years.';

(iii) after sub-section (5), the following sub-sections shall be added namely:-

"(6) Out of the six Directors first nominated under clause (c) of subsection (1), two shall retire at the end of one year, two at the end of two years and the last two at the end of three years, the Directors so to retire being determined by lot.

(7) A retiring Director shall be eligible for renomination."

For section 9 substitute, the following namely:-

"9. Local Boards, their constitution and functions.—

(1) A Local Board shall be constituted for each of the four areas specified in first schedule and shall consist of five members to be appointed by the Central Government to represent, as far as possible, territorial and economic interests and the interests of co-operation and indigenous banks.

(2) Members of the Local Board shall elect from amongst themselves one person to be the chairman of the Board.

(3) The members of the Local Board shall hold office for a term of four years and shall be eligible for reappointment.

(4) A Local Board shall advise the Central Board on such matters as may be generally referred to and shall perform such duties as the Central Board may delegate to it".

Section 11—

(i) in sub-section (1) for "nominated or elected" substitute "other" and omit the proviso;

(ii) for sub-section (2) substitute the following namely:-

"(2) A Director nominated under clause (b) or clause (c) of subsection (1) of section 8 shall cease to hold office if without leave from the Central Board be absent, himself from three consecutive meetings of the Board convened under sub-section (1) of section 13";

(iii) in sub-section (5) the words "appointment" and "or election" in two places shall be omitted.

Section 12:-

(i) omit sub-section (2);

(ii) in sub-section (3), omit the words "otherwise than by the occurrence of the vacancy in the office of a Director elected by the Local Board," and the word "Qualified" and for the "elected" substitute the word "other."

(iii) in sub-section (4), for the words commencing with "in the case of a nominated Director" and ending with the words "for the election of members of a Local Board" substitute the words "by the Central Government;

(iv) in sub-section (5), omit "or elected" and "subject to the proviso contained in sub-section (4)."

Omit Sections 14, 15 and 16

In clause (3) of section 17,-

(i) in sub-clause (a), for the word "sterling" substitute the words "foreign exchange";

(ii) in sub-clause (b) for the words "the United Kingdom" substitute the words "any country outside India which is a member of the International Monetary Fund".

(iii) omit sub-clause (c).

Section 18:-

(i) In the first paragraph, omit the words "or, where the powers and functions of the Central Board under this section have been delegated to a committee of the Central Board or to the Governor, in the opinion of such committee or of the Governor, as the case may be".;

(ii) in clause (2) for the word "sterling" substitute the words "foreign exchange"; and

(iii) omit the proviso.

Section 24:- After the words "denominational values of" insert the words "two rupees".

Section 33:-

(i) In sub-sections (1) and (2) for the words "sterling securities" substitute the words "foreign securities";

(ii) for sub-section (6), substitute the following namely:

" (6) for the purposes of this section, the foreign securities which may be held as part of the assets shall be securities of the following kinds payable in the currency of any foreign country which is a member of the International Monetary Fund, namely:–

(a) Balances at the credit of the Issue Department with the bank which is the principal currency authority of that foreign country, or, if there is no such bank, with any bank incorporated in that foreign country;

(b) bills of exchange bearing two or more good signatures and drawn on and payable at any place in that foreign country and having a maturity not exceeding ninety days; and

(c) Government securities of that foreign country maturing within five years "

Omit Section 35.

Section 39 – In sub-section (2) for the word " five " substitute the word "two".

For Section 47, substitute the following, namely:–

" 47. Allocation of surplus profits. - After making provision for bad and doubtful debts, depreciation in assets, contributions to staff and superannuation funds and such other contingencies as are usually provided for bankers, the balance of the profits shall be paid to the Central Government."

Section 48. – Omit the proviso to sub-section (1) and omit sub-section (2).

For Section 50 substitute the following namely:-

"50. Auditors – (1) Not less than two auditors shall be appointed, and their remuneration fixed, by the Central Government.

(2) The auditors shall hold office for such term not exceeding one year as the Central Government may fix while appointing them, and shall be eligible for re-appointment."

Section 51 – Omit the words " or such auditors as it thinks fit."

Section 51 – In sub-section (2), omit the words "to the shareholders or " "as the case may be" and "any such report made to the shareholders shall be read, together with the report of the Central Board, at the annual general meeting."

Section 53 – Omit sub-section (3).

Omit Sections 55 and 56.

Section 57 – Omit sub-section (2).

Section 58 – In sub-section (2)' omit clauses (a) to (e) inclusive.

For the first schedule institute the following, namely:–

THE FIRST SCHEDULE.

(See Section 9).

1. THE WESTERN AREA shall consist of the Province of Bombay, the Central Provinces and Berar, Hyderabad, Baroda, Kutch, the United State of Kathiawar (Saurashtra), Kolhapur, the United States of Gwalior, Indore and Malwa (Madhya Bharat), Bhopal, the Acceding States administered by the Government of Bombay and the Acceding States administered by the Government of Central Provinces and Berar.

2. THE EASTERN AREA shall consist of West Bengal, Bihar, Orissa, Assam, the Andaman and Nicobar Islands, Manipur, Cooch Behar, Tripura, Mayurbhanj, the United States of Vindhya Pradesh, the Khasi States, the Acceding States administered by the Government of Orissa.

3. THE NORTHERN AREA shall consist of the United Provinces, East Punjab, Delhi, Ajmere-Merwara, Panth Piploda, Kashmir, Himachal Pradesh, Patiala and the East Punjab States Union, Bilaspur, Tehri-Garhwal, Rampur, Benares, the United States of Rajasthan, the United States of Matsya, Jaisalmer, Jodhpur, Bikaner, Jaipur and the Acceding States administered by the Government of East Punjab.

4. THE SOUTHERN AREA shall consist of the Province of Madras, Coorg, Mysore, Cochin, Travancore, Sandhur and the Acceding States administered by the Government of Madras."

Omit the Fourth Schedule.

Appendix E

RESERVE BANK (TRANSFER TO PUBLIC OWNERSHIP) RULES 1948.

Notification No. F. 3 (44) F. I. 48 dated the 19th Oct. 1948.

Introduction:-In exercise of the powers conferred by Section 6 of the Reserve Bank (Transfer of Public Ownership) Act, 1948 (LXII of 1948), the Central Government is pleased to make the following rules namely:-

1. Short title. - These rules, may be called the Reserve Bank (Transfer to Public Ownership) rules 1948.

2. Definitions:- In these rules, unless there, is anything repugnant in the subject or context,—

(i) "the Act" means the Reserve Bank (Transfer to Public Ownership) Act, 1948.

(ii) "Reserve Bank" means the Reserve Bank of India as constituted by the Reserve Bank of India Act, 1934;

(iii) "form" means a form as prescribed by these rules.

3. Authority by which compensation shall be paid—The authority which shall pay the compensation referred to in Section 3 of the Act on behalf of the Act Central Government shall be the Reserve Bank.

4. Manner in which claims for compensation shall be made-(i) Every shareholder whose name stands registered on any of the Share Registers of the Reserve Bank, or any person who is entitled to claim compensation under these rules in respect of shares standing in the name of the deceased person, shall apply in the appropriate Form to the Office of the Reserve Bank where the share in respect of which compensation is claimed stands registered.

(ii) The share certificate and other documents or proofs may be forwarded to the Office of the Reserve Bank concerned by registered post or through a bank or a recognised broker having a place of business in the town where the claim is to be made.

5. Determination of the title of persons to whom compensation shall be payable- (i) Share standing in the name of a deceased shareholder-- The executors or administrators of a deceased person who was a shareholder of the Bank and in whose name the share stands registered immediately before the appointed day, or the holder of a succession

certificate issued under Part X of the Indian Succession Act, 1925, in respect of such share shall be the only person who may be recognised by the Reserve Bank as having any title to claim compensation for such share. In the case of a share registered in the name of two or more holders, the survivor, his executors or administrators, or any person who is the holder of a succession certificate in respect of such share, shall be the only person who may be recognised by the Reserve Bank as having any title to claim compensation for such share. The Reserve Bank shall not be bound to recognise such executors or administrators unless they shall have obtained probate or letters of administration or other legal representation as the case may be, from a duly constituted Court in India, having effect at the place where the Register in which the deceased was registered as a shareholder is situate;

Provided that the Reserve Bank may in its absolute discretion, dispense with the production of a succession certificate, letters of administration or such other legal representation, upon such terms as to indemnify or otherwise as it may think fit.

FORM OF APPLICATION FOR COMPENSATION

(See Rule 4)

The Manager,
Reserve Bank of India

Dated.....

Dear Sir,

Claim for compensation in respect of Reserve Bank of India shares.

I/We.....hereby state that..... shares of the Reserve Bank of India Nos.....stand registered in the Bank's Share Register at.....in my name/our names. I/We surrender herewith the relative share certificate / certificates and documents and proofs entitling me/us to claim compensation in respect of the shares in question. I/We request that the amount of compensation due in respect of the above shares and payable under Section 3 of the Reserve Bank (Transfer to Public Ownership) Act, 1948, may be paid to me/us as I am/We are the shareholder/shareholders of the Bank and, therefore, entitled to claim compensation in respect thereof.

II. (a) I/We hereby authorise the Reserve Bank of India, to deliver the securities and a cheque, if any, due to me/us by way of compensation to*.....

*State the name of Banker or recognised Broker or one of the joint shareholders.

OR

(b) Send the cheque, if any, and the securities

uncut to.....at my/our risk by registered and insured post.

Yours faithfully,

Signature of Shreholder
Signature of Shareholders.
Address.

Witness:
Address:
Occupation.

N. B.– The executant's attention is invited to the instructions printed below. Please strike off unnecessary words.

*Name and full postal residential address.

INSTRUCTIONS.

1. All shareholders must sign the form in accordance with the specimen furnished to the Bank.

Where several persons hold the shares jointly the form must be signed by all of them.

3 Ladies' signatures in vernacular and all signatures of by Mark or thumb impression should be verified by a Justice of the Peace, preferably one whose signature is known to the Bank or by Magistrate under the Seal of his court.

4. Any alteration and/or addition in the application must be initialled by the applicant/s.

FORM OF APPLICATION FOR COMPENSATION.

(See Rule 4)

The Manager
Reserve Bank of India.

Dated.....

Dear Sir,

Claim for compensation in respect of Reserve Bank of India shares

I/We *.....being the survivor/s of the late.....state that the Reserve Bank of India

* Name in full.

shares Nos.**.....stand registered in the Bank's Share Register at.....in the name of ***.....I/We surrender herewith the relative share certificate/certificates and documents and proofs entitling me/us to claim compensation in respect of the shares in question. I/We request that the amount of compensation due in respect of the above shares and payable under Section 3 of the Reserve Bank (Transfer to Public Ownership) Act, 1948, may be paid to me/us as I am/We are survivor/s of the deceased shareholder and, therefore, entitled to claim compensation in respect thereof.

II. (a) I/We hereby authorise the Reserve Bank of India, to deliver the securities and a cheque, if any, due to me/us by way of compensation ****.....

OR

(b) Send the cheque, if any, and the securities uncut to *****..... at my/our risk by registered and insured post.

Yours faithfully,

Signature of shareholder/s
Address.

** Name in full as states in the Share Certificate.

*** Name of the Banker or regd. broker.

**** Name and full postal residential address.

***** ——— Do ———

Witness:

Address:

Occupation:

N. B. Please strike off unnecessary words.

INSTRUCTIONS.

1. All shareholders must sign the form in accordance with the specimen furnished to the Bank.

Where several persons hold the shares jointly the form must be signed by all of them.

3. Ladies' signatures in vernacular and all signatures by mark or thumb impression should be verified by a Justice of the Peace, preferably one whose signature is known to the Bank or by a Magistrate under the Seal of his Court.

4. Any alteration and/or addition in application must be initiated by the applicant/s.

FORM OF APPLICATION FOR COMPENSATION.

(See Rule 4)

The Manager,
Reserve Bank of India.

—— Dated.....,

Dear Sir,

Claim for compensation in respect of Reserve Bank of India shares.

I/We *.....being the..... ..to the estate of the late.....hereby state that the Reserve Bank of India shares Nos ....stand registered in the Bank's share Register at.....in the name of **..... since deceased. I/We surrender herewith the relative share certificate /certificates and documents and proofs entitling me/us to claim compensation in respect of the shares in question. I/We request that the amount of compensation due in respect of the above shares and payable under Section 3 of the Reserve Bank (Transfer to Public Ownership) Act, 1948, may be paid to me/us as I am/We are the.....of the deceased shareholder and, therefore entitled to claim compensation in respect thereof.

II. (a) I/We hereby authorise the Reserve Bank of India, to deliver the securities and/a cheque, if any, due to me by way of compensation to *.....

OR

(b) Send the cheque, if any, and the securities uncut to **..... .....at my/our risk by registered and insured post.

Yours faithfully,

Signature.
Address.

* Name in full.

** Name in full as stated in the Share Register.

Signature attested.

By Magistrate or Justice
of the Peace.

Seal.

N. B. Please strike off unnecessary words.

INSTRUCTIONS.

1. All shareholders must sign the form in accordance with the specimen furnished to the Bank.

2. Where several persons hold the shares jointly the form must be signed by all of them.

3. Ladies' signatures in vernacular and all signatures by mark or thumb impression should be verified by a Justice of the Peace, preferably one whose signature is known to the Bank or by a Magistrate under the Seal of his Court.

4. Any alteration and/or addition in the application must be initialled by the applicant/s.

Appendix F

Indian Independence (Adaptation of Central Acts and Ordinances) Order, 1948.

Preamble:- For "British India" substitute "India".

Section 1-In sub-section (2), omit, " British Baluchistan and"

Section 2-In clause (1), for "British India" substitute "the Province"

Section 4I—n clause (c) of sub-section (3), for the words "British India" at both places where they occur substitute "a Province of India", and in sub-section (5) for the words from "two elected members" to "respective Houses", substitute "three persons elected from among themselves by the members of the Central Legislature",

Section 11-In sub-section (5) for "Federal" substitute "Central" and omit "the Indian Legislature".

Section 17-In clause (1), omit "the Secretary of State" and "the Federal Railway Authority"; in clause (5) omit "the Federal Railway Authority"; and in clause (11) omit "the Secretary of State".

Section 28-Omit "of both Houses".

Section 45-In sub-section (3), omit "and the Federal Railway Authority".

The first Schedule-in paragraph I, for "the Bombay Presidency, including Sind" substitute "the Province of Bombay", omit "Khairpur", and after "Deccan States" insert "and until 30th day of June 1948, the Province of Sind and State of Khairpur in Pakistan"; in paragraph II for "the Bengal Presidency, Bihar and Orissa"; substitute West Bengal, Bihar, Orissa", and after "Khasi States" insert "and until 30th day of June, 1948, the Province of East Bengal in Pakistan"; and in paragraph III, for "the Punjab", substitute "East Punjab"; omit "the North-West Frontier Province" and "Baluchistan", for " the Punjab States, excluding Khairpur" substitute "East Punjab States" and for "Khanidhana" substitute "and Khaniadhana, and until the 30th day of June, 1948, the North-West Frontier Province and Baluchistan and the States of Bhawalpur"

Appendix G

Notification Relating to Commencement of Banking Companies Act, 1949.

No. F. 4 (46)—F. 1/49 dated the 10th March 1949.

In pursuance of sub-section (3) of Section 1 of the Banking Companies Act, 1949, (X of 1949), the Central Government is pleased to appoint the 16th day of March, 1949, as the date on which the said Act shall come into force.

Notification under Sec. 53 Banking Companies Act, 1949.

No. F. 5—(46)—F. 1/49 dated the 16th March 1949.

In exercise of the powers conferred by Section 53 of the Banking Companies Act, 1949, (X of 1949) and on the recommendation of the Reserve Bank of India, the Central Government is pleased—(1) to declare that for a period of 6 months with effect from the 19th March, 1949, (the date of coming into force of the said Act), the provisions of Sections 10 (1) (c) (i) and (II) and 16 of the said Act shall not apply to any banking company, and

(2) to declare that for the same period with effect from the same date–

(i) the provisions of Section 10 (1) (b) (i) of the said Act, so far as these provisions relate to the employment of any person who is or at any time has been adjudicated insolvent, or has compounded with his creditors, and

(ii) the provisions of Section 25 of the said Act, shall not apply to the under-noted banking companies, viz:–

(1) New Bank of India, Ltd.
(2) Traders' Bank Ltd.
(3) Lakshmi Commercial Bank Ltd.
(4) Punjab and Kashmir Bank Ltd.
(5) Prabhat Bank Ltd.
(6) Chawla Bank Ltd.
(7) Punjab Commerce Bank Ltd.
(8) Frontier Bank Ltd.
(9) First National Bank Ltd.
(10) Commercial Bank of India Ltd.
(11) National Bank of Sialkot Ltd.
(12) Colony Bank Ltd.

Appendix H

Banking Companies (Control) Act, 1948 (Pakistan)

Act No. XXII of 1948.

An act to provide for the control of banking companies by the State Bank of Pakistan.

Whereas it is expedient to provide for control of banking companies by the State Bank of Pakistan;

It is hereby enacted as follows:-

1 Short title, extent and commencement - (1) This Act may be called the Banking Companies (Control) Act, 1948.

(2) It extends to all the Provinces and to the Capital of the Federation, and to every Acceding State to the extent to which the Central Legislature has power to make laws for that State as regards Banking.

(3) It shall come into force at once.

2. Act not to apply to Co-operative banks-Nothing in this Act shall apply to a Co-operative Bank registered under the Co-operative Societies Act, 1912, or any other law for the time being in force in any Province relating to Co-operative Societies.

3. Power to exempt Banks- The State Bank may with the previous approval of Central Government exempt any banking company from all or any of the provisions of this Act or any rule made thereunder subject to such terms and conditions as it may consider proper.

4. Application of other laws not barred- The provisions of this Act shall be in addition to, and not, save otherwise 'expressly provided herein', in derogation of the Indian Companies Act, 1913, and any other law for the time being in force applicable to banking companies.

5. Definitions.- In this Act,-

(a) "banking company" means a company as defined in Section 277 F of the Indian Companies Act, 1913 and includes the Imperial Bank of India and any body of persons incorporated by or under any law in force in any place outside the Provinces and carrying on the business of a banking company in any Province or any Acceding State;

(b) "Court" means the Court having jurisdiction under the Indian Companies Act, 1913;

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

(d) "the Provinces" means the Provinces of Pakistan, and except in sub-section (2) of Section I includes the Capital of the Federation;

(e) "State Bank" means the State Bank of Pakistan;

(f) "Secured loan or advance" means a loan or advance made on the security of assets the market value of which is not at any time less than the amount of such loan or advance;

(g) "Unsecured loan or advance" means a loan or advance not so secured;

(h) "Approved securities" means securities in which a trustee may invest money under clauses (a), (bb), (c) or (d) of Section 20 of the Indian Trusts Act, 1882;

(i) "Scheduled Bank" means a bank included in the Second schedule to the State Bank of Pakistan Order, 1948;

(j) "Demand liabilities" means liabilities which a bank is required to meet on demand; and

"time liabilities" means liabilities which are not demand liabilities;

(k) "Gold" includes gold in the form of coin, whether legal tender or not, in the form of bullion or in ingot whether refined or not.

6. Power of State Bank to control advances by Banking Companies:-

(1) Whenever the State Bank is satisfied that is necessary or expedient in the public interests 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 State Bank under sub-section (1), the State Bank may give directions to banking companies either generally or to any banking company or any group of banking companies in particular as to the purposes for which advances may or may not be made, the margins to be maintained in respect of secured advances and the rates of interest to be charged on advances, each banking company shall be bound to comply with any directions as so given.

7. Restrictions on loans and advances. (1) Notwithstanding anything to the contrary contained in Sec. 54A of the Indian Companies Act,

1913, no banking company shall make any loans or advances on the security of its own shares or grant unsecured loans to any of its directors or to firms or private companies in which it or any of its directors is interested as partner, director or managing agent or to any individuals, firms or private companies in cases where any of the directors is a guarantor.

(2) Every banking company shall before the close of the month succeeding that to which the return relates, submit to the State Bank a return in the prescribed form and manner, showing particulars of all unsecured loans and advances granted by it to companies, other than private companies, in which it or any of its directors is interested as director or managing agent or guarantor.

(3) If on examination of any return submitted under sub-section (2) it appears to the State Bank that any loans or advances referred to in that sub-section have been granted to the detriment of the interests of the depositors of the banking company, the State Bank may, by order in writing, prohibit the banking company from granting any further such loans or advances or impose such restrictions on the grant thereof as it thinks fit, and may, by like order, direct the banking company to secure the repayment of any such loans or advances within such time as may be specified in the order.

8. Maintenance of Liquid Assets:- (1) After the expiry of three months from the commencement of this Act, every banking company shall maintain within the Provinces in cash, gold or unencumbered approved securities valued at a price not exceeding the current market price, an amount which shall not at the close of business on any day be less than twenty per cent. of the total of its time and demand liabilities within the Provinces.

Explanation:-For the purposes of this Section, liabilities shall be deemed not to include the paid-up capital or the reserve or any credit balance in the profit and loss account of the company or the amount of any loan taken from the State Bank.

(2) In computing the amount provided for in sub-section (1) any balance maintained by a banking company with the State Bank, including, in the case of a scheduled bank; the balance required to be so maintained under sub-clause (1) of clause 26 of the State Bank of Pakistan Order, 1948, shall be deemed to be cash maintained.

(3) Every banking company shall, not later than fifteen days after the end of the month to which the return relates, furnish to the State

Bank a monthly return in the prescribed form and manner showing particulars of the company's assets maintained in accordance with this section and its time and demand liabilities in the Provinces at the close of business on every Friday, or if any Friday is a public holiday under the Negotiable Instruments Act, 1881, at the close of business on the preceding working day.

9. **Assets in the Provinces.**–(1) At the close of the last working day of every quarter the assets in the Provinces of every banking company shall not be less in value than an amount representing such percentage of its time and demand liabilities within the Provinces as may be prescribed by the State Bank from time to time provided that the percentage so prescribed shall not exceed seventy-five per cent.

(2) Every banking company shall, within one month of the end of every quarter, submit to the State Bank, a return in the prescribed form and manner of particulars of such assets and liabilities as they stood at the close of the last working day of the previous quarter.

(3) For the purposes of this Section, the expression "assets" shall be deemed to include such Promissory notes, Bills of Exchange and Securities as the State Bank is under the State Bank of Pakistan Order, 1948, empowered to purchase, discount or make advances against and export bills drawn in Pakistan and expressed in such currencies as the State Bank may from time to time approve in this behalf, but shall not include such loans and advances as in the opinion of the State Bank cannot properly be regarded as assets.

(4) In this clause "quarter" means period of three months ending on the 1st day of March, June, September or December as the case may be.

10. **Submission on of monthly Returns and information.**

(1) Every Banking company, shall before the close of the month succeeding that to which the return relates, submit to the State Bank a return in the prescribed form and manner showing particulars of its assets and liabilities in the Provinces as they stood at the close of the business on the last Friday of the Month to which the return relates, or if that Friday is a public holiday under the Negotiable Instruments Act, 1881, at the close of business on the preceding working day.

(2) Every Banking company shall, also submit to the State Bank information every half year regarding the classification of the advances and investments of such banking company in respect of industry, commerce and agriculture, if the State Bank so desires.

11. General Powers and functions of the State Bank.

(1) The State Bank may – (a) caution or prohibit banking companies generally or any banking company in particular against entering into any transaction or class of transactions ;

(b) require banking companies generally, or any banking company in particular, to refrain from taking such action as it may specify in relation to any matter relating to the business of such banking company or companies, or to take such action in relation thereto as the State Bank thinks fit ;

(c) on a request from the banking companies concerned and subject to the provisions of Section 14, assist, as intermediary or otherwise, in proposals for the amalgamation of banking companies ;

(d) after a banking company has been inspected under Section 3 of the Banking Companies (Instruction) Ordinance, 1946, by order in writing require the company –

(1) to call a meeting of its directors to consider matters arising out of such inspection or to meet an officer of the State Bank to discuss such matters, und

(2) to make, within such time as may be specified in the order, such changes in its management as the State Bank may consider necessary in consequence of the inspection; and

(e) by notice in writing require any banking company at any time to furnish it, within such time and in such manner as may be specified in the notice with any statement or information relating to the business of such banking company.

(2) No right to compensation, in contract or otherwise, shall arise in respect of any loss incurred by reason only of the compliance by banking company with any order given to it under sub-clause (ii) of sub-section (i).

12. Power to publish information. – The State Bank, if it considers it in the public interest so to do, may publish any information obtained by it under Section 9 or Section 11 in such form as it thinks fit.

13. State Bank to be Official Liquidator.–Notwithstanding anything contained in Section 175 of the Indian Companies Act, 1913, where in any proceeding for the winding up of a banking company by the court an application is made by the State Bank in this behalf, the the State Bank shall be appointed official liquidator of the banking company in that proceeding.

14. Restriction on amalgamation. – Notwithstanding anything contained in any law for the time being in force–

(a) No court shall entertain an application for sanctioning a compromise or arrangement between a banking company and its creditors or any class of them, or between such company and its members or any class of them, unless the application made in respect thereof is accompanied by report of the State Bank certifying that the compromise or arrangement is not detrimental to the interest of the depositors of the company, and

(b) No banking company shall enter into any agreement or arrangement for, or be a party to, any scheme for the amalgamation of such Company with any other banking company without the previous sanction in writing of the State Bank.

15. Penalties. – (1) Whoever in any return, statement or other information required by or under this Act, wilfully makes a statement which is false in any material particular knowing it to be false, or wilfully omits to make a material statement, shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.

(2) If any other provision of this Act is contravened, or if any default is made in complying with any requirement of this Act or any rules made under this Act or an order made thereunder, every Director and other officer of the banking company who is knowingly a party to the contravention or default shall be punishable with fine which may extend to Rs. 500/–, and where the contravention of default is a continuing one, with a further fine which may extend to Rs. 50/– for every day during which it continues.

(3) Without prejudice to the provisions contained in sub-section (2), where a banking company has made default in complying with any requirement of this Act or any rule made under this Act or any order made thereunder, the State Bank shall, by notice in writing, make a demand on the banking company to comply with the said requirement within thirty days from the receipt of the notice, and, if the banking company fails to do so, the State Bank may apply to the Court for an order directing the winding up of such banking company; and where such application is made, the Court shall make an order accordingly.

16. Cognizance of offences. – No court shall take cognizance of any offence punishable under Section 15 except upon a complaint in writing made by an officer of the State Bank generally or specially

authorised in writing in this behalf by the State Bank, and no court inferior to that of a Magistrate of the First Class shall try any such offence.

17. Power to make rules. - (1) The Central Government may, by notification in the official Gazette, make rules for carrying into effect the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for the form and manner in which returns of unsecured loans and advances under sub-section (2) of Section 7, returns of assets and liabilities under sub-section (3) of Section 8, and returns of assets and liabilities in the Provinces under sub-section (2) of Section 9, may be submitted.

18. Amendment., of the Banking Companies (Inspection), Ordinance, 1946.-In the banking companies (Inspection Ordinance, 1946,- (1) in Section 2, for clause (a) the following clause shall be substituted, viz., -

" (a) " Banking company " means a banking company ss defined in Section 5 of the Banking Companies (Control) Act, 1948; " and (2) in Section 5 for thr proviso to sub-section (1), the following proviso shall be substituted, viz:-

" Provided that the Central Government may defer for such period as it thinks fit the passing of an order under this sub-section or cancel or suspend or modify any such order upon such terms and conditions as it thinks fit to impose. "

Appendix I

Report of the Select Committee on the Banking Companies Bill 1948.

The following Report of the Select Committee to which the Bill to consolidate and amend the law relating to Banking Companies, was presented to the Constituent Assembly of India (Legislative) on the 1st February 1949:-

We the undersigned, members of the Select Committee to which the Bill to consolidate and amend the law relating to banking companies was referred, have considered the Bill, the evidence tendered by the delegation of the Indian Banks Association, headed by Sir Homi Mody, and the papers* noted in the margin, and have now the honour to submit this our Report, with the Bill as amended by us annexed hereto.

* Memorandum containing the views of the delegation of Indian Banks Association.

We considered the possibility of extending the scope of the Bill to cover partnerships or individuals carrying on banking business but found the same constitutional objections as were present before the previous Select Committee.

Upon the charges proposed by us which are not formal or consequential we note below.

Clause 1—Most of the Acceding States have acceded to the Dominion in respect of all matters in Lists I and III in the Seventh Schedule to the Government of India Act, 1935, and we have therefore revised this clause in accordance with the formula now adopted so as to make the Act applicable, to the extent to which it can be made applicable, to all such Acceding States.

Clause 4:—We think that copies of notifications issued by the Central Government under sub-clause (3) should be laid on the table of the Dominion Legislature so that it may have an opportunity to consider any extensions granted under this clause.

Clause 5.—The mere acceptance of deposits by companies, like textile mills, etc; for the purpose of financing their own businesses should not be regarded as "banking" within the meaning of this Act, and although we are given to understand that this would be even under the existing definition of "banking", we have thought it adivisable to make the legal

position clear by adding an *Explanation* to this effect in the definition of "banking company".

In the definition of "managing agent" we have added the words "or by virtue of the memorandum or articles of association relating thereto", as it is possible that a person may be entitled to the management of the affairs of a banking company under its memorandum or articles of association.

We have recast item (o) as a separate sub-clause.

Clause 6.—We have made one or two slight drafting changes, and have omitted the "words wheresoever incorporated", in sub-clause (2) as well as in various other clauses where they are superfluous.

Clause 7.—We see no reason why existing banks should be exempted from having to use as part of their name, one of the words "bank", "banker" or "banking", if they actually carry on the business of banking. We have, therefore, omitted the proviso to sub-clause (1) and, incidentally, have recast the whole of this clause so as to bring out the prohibitions contained therein more prominently.

(*Old Clause* 8).—It has been pointed out to us that this clause will have the effect of prohibiting banking companies from allowing to companies any kind of demand advances by whatever name called, whether loan, overdraft or cash credit, and this obviously was not the intention of the previous Select Committee which inserted this provision. Further, it seems to be unnecessary to include in a Bill for the regulation of banking companies, a prohibition as respects demand deposits on companies which to the knowledge of the lender are not banking companies and of the nature of the business of which he is aware. We have therefore omitted this clause.

Clause 8 (*old Clause* 9).—The first day of January 1948 was the date on which the Bill was expected previously to come into force. We have now substituted for that date the formula "the date of commencemnt of this Act".

Clause 9 (*old Clause* 10).—The use of the words "being assets in respect of which it is not lawful under the said sections for the company to transact business" is not appropriate in view of the business which banks are allowed to transact. We have therefore recast this clause so as to specify clearly what transactions bank are prohibited from carrying on.

Clause 10 (*old Clause* 11).—It has been represented to us that the prohibition of the employment by a banking company of any person

who is engaged in any other business or vocation would prevent banking companies from employing part-time employees, like legal advisers and so on, which the framers of the Bill did not intend. We also think that a person who has been adjudicated insolvent or has been convicted of any offence involving moral turpitude should not be employed by any banking company. We also think that the requirement as to the renewal or extension for a further period of contracts of management being subject to the approval of shareholders should be omitted because we fear that the continuity of policy and the integrity of administration of banking companies may thereby be adversely affected.

We have recast the whole of this clause in the light of the above.

Clause 11 (*old clause* 12).—As this clause was somewhat involved, we have redrafted it without making any changes of substance. It now appears as two separate clauses.

Clause 15.—In our opinion, the question of limitation of dividends should be considered with reference to companies generally and it is not desirable to make a separate provision for banking companies alone on this matter in anticipation of any general decision that may be arrived at. At present the subject-matter of limitation of dividends is regulated by an Ordinance. We have therefore omitted sub-clause (2).

Clause 17.—The words "net profits" have been defined in section 87C of the Indian Companies Act, 1913, and we have therefore substituted this expression for the expression "declared profits" which has not been defined.

Clause 19.—We think that the reduction as respects the holding of shares in any company by a banking company from 40 per cent. as provided in the Indian Companies Act, 1913, to 20 per cent. which was made to prevent banking companies from acquiring control over non-banking companies, would in effect unduly interfere with the legitimate business of banks and might also introduce an element of uncertainty in the credit arrangements of banks with investors and stock brokers. The majority of us are therefore of the opinion that the percentage should be restored to 40.

Clause 20.—It has been represented to us that the prohibition in respect of which unsecured loans made to private company and director of which is also a director of the banking company advancing the loan would have the effect of compelling the private company to divert all its business to other quarters, and this, in our opinion is certainly not desirable. On the other hand, we think that the prohibition should apply to any individ-

uals, firms or private companies in cases where any of the directors of the banking company is a guarantor.

Clause 21 is new. We think it desirable that the Reserve Bank should be given powers to give directions to banks in regard to their lending policies so that, where necessary, credit facilities may be controlled with a view to checking speculation or rising prices.

Clause 22 (*old Clause* 21).—As a matter of drafting we have recast sub-clauses (1) and (2).

Clause 24 (*old Clause* 23).—We have redrafted sub-clause (1), and in sub-clause (2) we have added the words "or its agent" so that balances maintained with any agent of the Reserve Bank may also be regarded as part of the liquid assets.

Clause 25 (*old Clause* 24).—We have made some small drafting amendments, and in the definition of "assets" we have included import bills drawn on and payable in India.

Clause 36 (*old Clause* 35).—We have redrafted sub-clause (1). In item (d) we have made it clear that the Reserve Bank may, if it so desires, take the action prescribed in this item even during the course of an inspection.

Clause 37 (*old Clause* 36).—We think that where the Court acts *suo motto* under the proviso to sub-clause (2) it should be required to call for a report from the Reserve Bank on receipt of which any order already passed may either be rescinded or modified.

Clause 39 (*old Clause* 38).—In our opinion it would be impracticable, at the present moment, for the Reserve Bank to undertake the liquidation of all banking companies ordered to be wound up. We have no doubt that the Reserve Bank would be willing to undertake the liquidation of banking companies in cases where large public funds are involved. We think that it should be left to the Reserve Bank to apply in suitable cases for being appointed as official liquidator in winding up proceedings. This clause has been redrafted accordingly.

Clause 45 (*old Clause* 44).—We have slightly modified sub-cause (a) as we think that the certificate of the Reserve Bank should be a pre-requisite for the actual sanctioning of the compromise or arrangement and not for the entertainment by the Court of an application in that behalf.

(*Old Clause* 50).—This provision is no longer necessary as almost all Acceding States have acceded to the Dominion in respect of banking and clause 1 (2) has already made the necessary provision in this behalf.

Clause 52.—In our opinion the Bill should be brought into force as early as possible and therefore the condition of previous publication should not apply in respect of the first occasion on which rules are made. This clause has been modified accordingly.

Clause 53.—This is a provision which we have added as a matter of caution. It is possible that exemptions may be needed in the case of industrial finance corporations, land mortgage banks, housing societies, and other like institutions which obtain deposits from the public. This provision would also enable temporary relief to be given in cases of emergency.

Clauses 54 *and* 55.—We have transferred all provisions relating to amendments and repeals to the First and Second Schedules.

2 The Bill was published in the *Gazette of India*, Part V, dated the 3rd April 1948.

3. We think that the Bill has not been so altered as to require circulation under Rule 49 (3) of Rules of Procedure and Conduct of Business, and we recommend that it be passed as now amended.

B. R. AMBEDKAR.
JOHN MATTHAI.
* T. T. KRISHAMACHARI.
* K. T. SHAH.
B. L. SONDHI.
U. SRINIVASA MALLAYYA.
T. A. RAMALINGAM CHETTIAR.
JASPAT ROY KAPOOR.
PRABHU DAYAL HIMATSINGKA.
ARUN CHANDRA GUHA.
T. CHANNIAH.
G. DURGABAI.
* M. ANANTHASAYANAM AYYANGAR
DHARAM PRAKASH.
B. PATTABHI SITARAMAYYA.
K. CHALIHA.

NEW DELHI,
The 1st February 1949.

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*Subject to a minute & dissent.

Minutes of Dissent

I

Clause 6 (*j*).—(1) In clause 6 (j) amongst the several forms of business in which banking companies might be permitted to engage, enumerated therein, is included "subscribing to or guaranteeing moneys for charitable or benevolent objects or for any exhibition or for any public or useful object." This in my opinion is outside the scope of normal banking business and in any case the guaranteeing part of it is a risk that a banking company ought not to undertake.

Clause 12.—(2) The new clause 12 is sought to be applied only to banking companies incorporated after the 15th day of January 1937. In so far as the requirements in regard to capital structure of banking companies I see no serious objection to the proviso to this clause limiting the application of this clause to institutions which are less than twelve years old. My objection to this limitation is in regard to the application of sub-clause (iv) only to the younger institutions. Concentration of shares in the hands of a few persons is not an evil that is peculiar to banking companies which have been incorporated after January 1937. It exists in an equal degree in the older companies. This fact was admitted by the leader of the Bankers' Deputation though such an admission was made on a question put to him in connection with a different provision in the Bill. In my opinion the degree of concentration permitted even in regard to the younger institutions is very high as I consider that the voting rights of any one share-holder should not exceed 2½ per cent. of the total voting rights of all the share-holders, and this restriction must be made applicable to all banking companies irrespective of their age. If it is the intention of the Legislature to allow a few persons to continue to control the working of banking companies this legislation may well be dropped.

Clause 15.—(3) In regard to the omitting of sub-clause (2) of clause 15, I am unable to agree to the views expressed by the majority of the Committee. I emphatically disagree with the view that the question of limitation of dividends should be considered with reference to companies generally and that it is undesirable to make a separate provision in regard to banking companies. Such a view, in my opinion, runs counter to the whole scheme of the Bill. I am for limitation of dividends being made applicable to all banking companies old and new alike. With a measure of the nature of the Bill coming into operation the risks involved in

investment in the shares of banking companies would be considerably minimised and a limitation of the dividend payable on the shares of banking companies would cause no injury to investors in such shares. The argument that there is now in existence an Ordinance limiting dividends payable by all types of companies is beside the point as I do not believe it is the intention of Government to make this Ordinance a permanent feature.

Clause 19 (2).—(4) The action of the Select Committee in restoring the position as it now obtains in the Indian Companies Act in the matter of a company holding as owner pledgee, etc, over 40 per cent. of the shares of any company, etc., is in my view unwise. I feel that the limit of 20 per cent. provided in the Bill was itself very high and no reasonable grounds have been advanced before the Committee to justify this change.

Even though I have appended my signature to the majority report I am of the opinion that the Committee has done little or nothing to improve the Bill and have thereby lost a valuable opportunity of helping to place on the Statute-book a measure which would ensure the strengthening of the credit and monetary structure in the country.

T. T. KRISHNAMACHARI.

NEW DELHI,
The 1st February 1949.

II

I want the retention of the clause relating to the limitation of dividends. The accounts of foreign banks also should be audited by a registered accountant or an auditor of India. I am opposed to any power being given to the Government to exempt any banks from the provisions of this Act as is provided for in clause 53.

M. ANANTHASAYANAM AYYANGAR.

NEW DELHI,
The 1st February 1949.

III

1. I regret I cannot sign the majority Report of the Select Committee on this Bill, as my differences are fundamental. They affect the basis as well as structure of the proposed legislation; and so cannot be reconsiled by verbal changes in the several clauses of the Bill. The principle accepted by the House, when it appointed the Select Committee, was that the law relating to banks and banking be consolidated; and not that the principles underlying the several provisions of this Bill be accepted. This note is, accordingly relevant and appropriate.

2. The Bill is styled to be "A Bill to consolidate and amend the law relating to banking companies." Notwithstanding this title and preamble, considerable sectors of the banking business are left out of the purview of the proposed legislation. The Bill does not pay any attention to the entire system of private banking, including money-lending, which is not conducted by a joint-stock company. This seems to be an arbitrary distinction, and needlessly restricts the scope of the legislation, which cannot therefore, be correctly described as consolidating Bill.

3. There is, I understand, constitutional reason against the inclusion of this sector of banking within the scope of this Bill, which is said to lie within the provincial sphere, and not of the Central Legislature. This objection seems to me invalid, when we set out expressly to enact an integral, comprehensive, organic legislation. Even if constitutional reasons stood in the way, a really "consolidating" measure, applicable to the whole country, may be undertaken by agreement with the component parts of the Union, assuming that the constitution, as it stands, does not allow the Central Legislature to undertake such a measure. If such an agreement between the Units and the Centre is not possible, and I see no justification for such an assumption, it must be remembered that We are, at this moment, making the constitution of Free India; and if at this moment, such snags are discovered while overhauling and consolidating such important legislation, there is no reason why the necessary and appropriate amendments be not introduced in the relevant Articles in the Draft Constitution when they come up for discussion and adoption.

4. If this artificial division is left between private or individual proprietory or partnership banking, and money-lending on the one hand, which is left to be legislated for by the units, while the legislation fo organised, joint-stock banking is entrusted to the Central Legislature, the result would only be an evasion of the law, wherever it aims at effective control, scientific co-ordination and adequate safeguard. We must not permit such loopholes for evading the law to remain, if we perceive them while considering such proposals.

5. The constitutional objection, it may be added, is founded, I understand, only on an opinion of the law officers. It is not a judicial decision which may be taken as binding. The Constituent Assembly, moreover, being a sovereign body, can easily overcome this obstacle, even if it is conceded to be the real reason for thus dividing up the functions of the Legislatures in the country, and creating an unnatural, unwarrantable distinction in the several forms of banking organisation, for purposes of legislation, merely on the ground of a formal difference in organization *i. e.*,

whether a joint-stock company, or a private concern. Besides, there seems nothing to prevent the law making it compulsory for all banking business to be organised as a joint-stock concern, so that the consolidated law should apply uniformly throughout the country.

6. The main purpose of the proposed legislation seems to be to safeguard the interests of the depositors. It is legitimate and proper that those interests be duly and adequately safeguarded. Banking is dealing in other people's money; and it is but right that the interests of the latter be safeguarded. But the Bill does not effectually safeguard those interests, as I read its provisions. The entire management and policy of each banking institution is, under this proposal, left in the hands of the Directors, who represent only the proprietors. The qualifications for being elected or appointed Director of a bank is not any knowledge, understanding or experience of Banking business, but the mere holding of minimum number of shares prescribed as essential for being a candidate to a bank directorship. Even if they are qualified by knowledge and experience they are, primarily, representatives and nominees of shareholders, with whom they have the subconscious sympathy of the class identity of interests.

7. It may also be added that no provision is made in the Bill to see that only those persons shall be placed in responsible posts in a bank, who are properly qualified by knowledge, experience, or training. No room should be left in this great service of public utility or nepotism of my sort. Power should be given to the Reserve Bank to prescribe by rules the qualifications by way of knowledge, experience, or training in the essence as well as routine of banking business, which should be expected of persons to be appointed or elected managers, Branch Inspectors, Accountants or Directors.

8. No other person, body or authority discharges the function of guardian for the depositor's interests. The powers vested in the Reserve Bank, even assuming they are adequate effectually to protect and safeguard the interests of the depositors, will come into operation only when the mischief has already been done. In the day-to-day conduct of the business of banking company, the Reserve Bank, or the Government, or even the Legislature, will have no right to intervene to protect the public, the depositor or even the share-holder. The harm to the interests of the parties concerned, particularly the depositor, is usually done by the negligent, hazardous, or even dishonest management of the company or inefficient conduct of its business. The briefest glance at any case of bank frauds will suffice to establish this proposition.

9. The depositors should, therefore, be given the right to appoint their own directors,—in such number of proportion the Legislature deems proper, if their interests are to be effectively, adequately and permanently safeguarded. Both principle and precedent are in favour of this suggestion. The insurance legislation, for instance has provided a Director to look after the policy holders' interests; and depositors in a bank correspond in a large decree to the policy holders in an Insurance Concern. Even in an ordinary industrial and commercial Company, where borrowed capital formally secured plays an important role in financing the business, a debenture trustee is a Director of such a concern. Following this analogy, I would advocate the election or appointment of some Directors to represent depositors,—whether demand or fixed.

10. The deposit holder, however, is not only party concerned, in the successful operation of a banking business. Success in that business is not to be estimated by the size of the dividend only, or even the Reserve Fund. We must view banking as an integral and important public utility and social service, a part of the aggregate national economy, which has a vital role to play in the material development of the country, its resources and also its potentialities. The Bill, however, shows no conception of this wider viewpoint, these larger, long-range interests, even though it is styled a consolidating measure. If this wider objective is to be fully achieved provision should be made for the appointment of a Director by the Reserve Bank of India, as representing the country, to serve on the Board of Directors of every bank, and so be aware of the policy and business of each such institution, and be in a position to prevent any malpractice before it becomes too late to mend matters. This is all the more desirable and necessary if one takes banking to be a public utility of vital importance in the long-range economic development of the country.

11. In the banking business of to-day, agricultural financing is wholly ignored even though agriculture is the largest single industry, the greatest source of wealth production, the largest field for employment. The Co-operative Credit Society and Land Mortgage Banks, which may be said to be concerned with this business, are specifically excluded from the purview of this measure; while not a mention is made of the industrial finance for which there is no bank in India to-day, apart, of course, from the Statutory Industrial Finance Corporation recently set up by special legislation. Neither the Co-operative Credit Society nor the Land Mortgage really and directly or actively in stimulating agricultural production. And Government sponsored Industrial Finance Corporation,

viewed in the present setting of the banking as a private enterprise ministering to private industry or commerce, is likely to find itself out of harmony with the general economic background. It has in any case to be seen how far it really stimulates new industry being established, or existing ones being expanded. Pending that growth, industrial financing must be a lacuna in our credit organisation; and the "consolidating" (sic) legislation does nothing to fill it. Amendment is, accordingly, necessary to rectify this omission, or restriction or the scope of the proposed legislation.

12. Legislation is not intended only to regulate that which is; it would also stimulate that which should be, and provide for it when it comes into being. The country, its productive resources and potentialities, have suffered grievously in the past for lack of specialised type of banking, agricultural or industrial, for production as well as distribution The fact, however that we have under British influence or model, not developed such types of banking institution does not argue the needlessness of such banks, or of legislation to regulate and control it. The Bill, which purports to "consolidate" all legislation on banking, must be pronounced to be fundamentally defective, if it leaves out of account such an integral necessity of the country's economy. There is no proposal, likely to come before the Legislature in the near future, for establishing, in the same milieu in which other banks work to-day, such specialised type of banking in the country. The plea, therefore, that for that type separate legislation would be brought forward, would be irrelevant, even assuming that such an argument would not prejudice the claim of this legislation to be regarded as "consolidating" the law on the subject.

13. The law on the subject, it may be added in passing, is not contained in its fullness in the Bill under Report. Not only are the various types of specialised banks and their activities regulated by separate legislation *e. g.*, Reserve Bank, Imperial Bank, Co-operative Bank, etc., the very organization of an ordinary commercial bank, to which this Bill mainly relates, and the regulation of its activities, has to be found in other legislation, like the Companies Act or the Negotiable Instruments Act. This also detracts from the claim of the proposed legislation to be consolidating Act.

14. The use of the bank as an active agent in the all-round development of the country, including its trade (both local and international), industry, agriculture, forestry and mining—all facets of production as well as distribution of wealth,—is hardly contemplated in the proposed measure. It must, therefore, be treated as lacking in essential particulars.

Banks must be organised, and their business defined, regulated, controlled and supervised, so that they become an active agent in the promotion of the country's well-being. It is only then that there would be universal need and justification for the several provisions relating to control, supervision, regulation, or restriction of the bank's business from some central authority, like the Reserve Bank, in the collective interest of the community. As these provisions stand to-day, they would require amendment, if this objective is to be attained.

15. The view that banking is a great public utility and an integral social service in a modern national economy, which cannot be left for ever in private hands without serious prejudice to the all-round and maximum possible development of the resources of the country, is likewise conspicuous by its absence from the provisions of this Bill. No clause is inserted to secure an eventual socialisation of this service, Utility or Enterprise in its aggregate, or individually. Far more interests are involved in its sound conduct than those of the proprietors, or depositors, neither of whom have any active interest in the working of a bank. Amendments must, accordingly, be inserted which would facilitate the acquisition by the State of any, or all, banking concerns to be owned and operated as public enterprise in the interests of the country as a whole.

16. No mention is, likewise made of the possibility of developing yet other types of banks, like a municipal bank, which would be a far cheaper device that would more effectively and universally popularise banking habit among the people than any provisions of this measure. Banking is very backward in this country; and so any development that is calculated to encourage its expansion should be welcomed. Clauses in the present Bill, which relate to the form or functions of a bank, and the lines of business it may deal in, will consequently have to be amended, if the service is to be made available to the largest possible number of the people, and if the service itself is to be as wide and full and varied as we can possibly make it.

17. The Bill is, in fact, replete with apprehension or misgivings regarding the extension of branches of banks or foundation of new banks. It seems to consider it dangerous and undesirable that banks should multiply or branchify—even of the standard commercial type. The advent of new banks or increase of branches of existing banks may be a sign of danger from the point of view of depositors, of unsound methods of business; but they are indispensable for the effective develop-

ment of the country's resources. The law should, indeed, see that any unsound practice is prevented rather than branch banking be stopped, or increase in the number of existing bank branches is prevented.

18. There are obvious objections to excessively concentrated banking in a few gigantic companies, with a larger number of branches each. At the same time, I recognise the difficulty of wholly decentralised banking, where in each town or centre of large population and industries would have its own bank or banks. But whether we adpot decentralised system with a large number of independent banks or centralised banking, few in number but each of them with a large number of branches, legislation governing it must see that the banking service is extended as much as possible, and its benefit made available to as large a public as possible, in industry as well as commerce, in production as well as distribution.

19. Because the real, crucial, vital importance of the role of banks in developing national economy of a dynamic society with immense potentialities is not perceived, the Bill is confined only to companies registered in India, to which the Companies Act would apply for purposes of winding up. This would leave out a very considerable sector of Banking Enterprise in the country from the effective control of this legislation, and therefore of the Reserve Bank of India. The so-called Exchange Banks, which operate in India but are registered outside will be, under this Bill, exempt from such control and supervision as would be possible to exercise under the law to make all banks follow a measure of common policy. The harm done by these institutions to India's industry and productive capacity; the obstruction these institutions have always caused to even the political emancipation of this country, and the insistence they had laid on the provision of specific safeguards, in the Government of India Act, 1935, against any discrimination by Government or legislation in favour of indigenous enterprise, must be sufficiently fresh in men's mind to justify, and even necessitate, the provision of special safeguard against the recurrence of mischief these banks are still in a position to do. The law must, accordingly, apply to the institutions registered abroad but operating in India no less fully than to the indigenous banks of every type. In proportion as such indispensable provisions are left out, the proposed legislation must be deemed to be defective.

(20). The functions of a soundly developed and scientifically operating banking system, in devising ways and means to popularise banking, economise currency, stabilise prices, mobilise investable capital or

savings, develop credit, and otherwise maintain the economic system of a dynamic society on an even keel, are also not fully realised in the proposed consolidating Bill. The possibility of the banking system inventing special devices of making payments within the country, free of charge now levied, the introduction of such instruments, methods of technique of payments as the Giro System and the postal cheque and the extension of banking habit to every worker and peasant in the country are still to be fully perceived and given effect to in and by means of such legislation.

K. T. SHAH.

NEW DELHI,
The 1st *February* 1949.

Appendix J

Extract from the Gazette of India, Part V, dated the 3rd April, 1948.

The following Bills were introduced in the Constituent Assembly of India (Legislative) on the 22nd March, 1948:—

A BILL* No. 27 OF 1948

A Bill to consolidate and amend the law relating to banking companies.

WHEREAS it is expedient to consolidate and amend the law relating to banking companies;

It is hereby enacted as follows :—

PART I

PRELIMINARY

1. **Short title, extent and commencement.**—(1) This Act may be called the Banking Companies Act, 1948.

(2) It extends to all the Provinces of India and shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint in this behalf.

(3) The Central Government may, by notification in the official Gazette, extend this Act, with such modifications and from such date as may be specified, to any acceding State for which the Central Legislature has for the time being the power to make laws as respects banking companies.

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 Indian Companies Act, 1913 (VII of 1913), and any other law for the time being in force.

3. **Act not to apply to co-operative banks.**—Nothing in this Act shall apply to a co-operative bank registered under the Co-operative Societies Act, 1912 (II of 1912), or any other law for the time being in force in any Province of India, relating to co-operative societies.

**The Governor General has been pleased to give the previous sanction required by section 153 of the Government of India Act, 1935, as adapted by the India (Provisional Constitution) Order, 1947, to the introduction of the Bill in the Constituent Assembly of India (Legislative).*

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 he 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, and not exceeding one year in the aggregate.

5. Definitions.—In this Act, unless there is anything repugnant in the subject or context,—

(*a*) "approval securities" means 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 Trusts Act, 1882 (II of 1882), and such securities of, or fully guaranteed by, acceding States as the Reserve Bank may be authorised to purchase under clause (8) of section 17 of the Reserve Bank of India Act, 1934 (II of 1934) :

(*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 in any Province of India ;

(*d*) "company" means any company which may be wound up under the Indian Companies Act, 1913 (VII of 1913) ;

(*e*) "Court" means the Court having jurisdiction under the Indian Companies Act, 1913 ;

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

(*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 ;

(*h*) "managing agent" means a person, firm or company entitled to the management of the whole affairs of a company by virtue of an agreement with the company, and under the control and direction of the directors except to the extent, if any, otherwise provided for in the agreement, and includes any person, firm or company occupying such position by whatever name called ;

Explanation.—If a person occupying the position of managing agent calls himself manager or managing director, he shall nevertheless be regarded as managing agent for the purposes of this Act.

(*i*) "private company" has the same meaning as in the Indian Companies Act, 1913 ;

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

(*k*) "registrar" has the same meaning as in clause (*15*) of sub-section (*1*) of section 2 of the Indian Companies Act 1913 ;

(*l*) "Reserve Bank" means the Reserve Bank of India .

(*m*) "scheduled bank" means a bank for the time being included in the Second Schedule to the Reserve Bank of India Act, 1934 ;

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

(o) references to the Provinces of India shall be construed as including reference to the acceding States to which this Act for the time being extends under sub-section (*3*) of section 1.

PART II

Business of Banking Companies

6. Forms of business in which banking companies may engage—

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

(*a*) the borrowing, raising, or taking up of money ; the lending or advancing of money either upon or without security ; the drawing, making, accepting, discounting, buying, selling, collecting and dealing in bills of exchange, hoondees, promissory notes, coupons, drafts, bills of lading,

railway receipts, warrants, debentures, certificates, scrips and other instruments, and securities whether transferable or negotiable or not; the granting and issuing of letters of credit, 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 loans and advances, the receiving of all kinds of bonds, scrips or valuables on deposit, or for safe custody or otherwise; the providing of safe deposit vaults; the collecting and transmitting of money and securities ;

(*b*) acting as agents for any Government or local authority or any other person or persons; the carrying on of agency business of any description including the clearing and forwarding of goods, giving of receipts and discharges and otherwise acting as an attorney on behalf of customers, but excluding the business of a managing agent 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 all property movable and immovable 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 and any right, title or interest in any property movable or immovable which may form part of the security for any loans or advances or which may be connected with any such security ;

(*h*) undertaking and executing trusts ;

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

(*j*) establishing and supporting or aiding in the establishment and

support of associations, institutions, funds, trusts and conveniences calculated to benefit employees or ex-employees of the company or the dependents or connections of such persons; granting pensions and allowances and making payments towards insurance, subscribing to or guaranteeing moneys for charitable or benevolent 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 purposes of the company;

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

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

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

(*o*) any other form of business which the Central Government may, by notification 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 wheresoever incorporated shall engage in any form of business other than those referred to in sub-section (*1*)

7. Use of words "banker", "banking".—(*1*) After the expiry of two years from the commencement of this Act, no company shall carry on the business of banking in any Province of India unless it uses as part of its name at least one of the words "bank", "banker" or "banking":

Provided that nothing in this sub-section shall apply to any banking company in existence on the 1st day of January, 1918.

(2) Every company which uses as part of the name under which it carries on business any of the words "bank", "banker" or "banking" shall, notwithstanding that it may not for any reason be a banking company as defined in clause (c) of section 5, be deemed to be a banking company and be subject to the provisions of this Act as such:

Provided that nothing in this sub-section shall apply to any association of banking companies formed for the protection of their mutual interests and registered under section 26 of the Indian Companies Act, 1913 (VII of 1913).

8. Prohibition of accepting demand deposits.—No company other than a banking company shall accept deposits repayable on demand.

9. Prohibition of trading.—Notwithstanding anything contained in section 6 or in any contract, no banking company shall directly or indirectly deal in the buying or selling or bartering of goods, except in connection with the realisation of security given to or held by it, or engage in any trade, or buy or 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:

Provided that this section shall not apply to any such business as aforesaid which was in the course of being transacted on the 1st day of January, 1948, so however, that the said business shall be completed before the expiry of one year from the commencement of this Act.

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

10. Disposal of non-banking assets.—Notwithstanding anything contained in sections 6 and 9, where any banking company acquires or has acquired any assets in satisfaction of its claims in the course of its banking business, being assets in respect of which it is not lawful under the said sections for the company to transact business, it may, within a period of seven years from the date of its acquisition of such assets or from the commencement of this Act, whichever is later, deal or trade in such assets for the purpose of facilitating the disposal thereof, and shall, before the expiration of the said period dispose of such assets.

Provided that the Reserve Bank may in any particular case extend the said period by such period not exceeding five years as it thinks fit where it is satisfied that such extension would be in the interest of the depositors of the banking company.

11. Prohibition of employment of managing agents and restrictions on certain forms of employment.—(*1*) No banking company wheresoever incorporated shall employ or be managed by a managing agent, or employ or be managed by any person—

(*a*) whose remuneration or part of whose remuneration takes the form of commission or of a share in the profits of the company, or

(*b*) whose remuneration is on a scale disproportionate, according to the normal standards prevailing in banking business, to the resources of the company, or

(c) who is a director of any other company not being a subsidiary company of the banking company, or

(*d*) who is engaged in any other business or vocation, or

(*e*) who has a contract with the company for its management for a period exceeding five years at any one time:

Provided that the said period of five years shall, in relation to contracts subsisting on the 1st day of July, 1944, be computed from that date:

Provided further that any contract with the company for its management may be renewed or extended for a further period not exceeding five years at a time if and so often as the directors decide, subject in the case of a banking company incorporated in India, to such decision being approved by the shareholders in general meeting.

(*2*) If any question arises in any particular case whether remuneration is on a scale disproportionate, according to the normal standards prevailing in banking business, to the resources of the company, the decision of the Reserve Bank thereon shall be final for all purposes.

12. Restrictions on commencement of business and condition for carrying on business.—(*1*) Notwithstanding anything contained in section 103 of the Indian Companies Act, 1913 (VII of 1913), no banking company wheresoever incorporated in existence on the 1st day of January, 1948, shall, after the expiry of three years from the commencement of this Act or of such further period not exceeding one year as the Reserve Bank, having regard to the interest of the depositors of the company, may think fit in any particular case to allow, carry on business, and no other banking company wheresoever corporated shall after the commencement of this Act commence or carry on business in any Province of India, unless it has paid-up capital and reserves of an aggregate value not less than, in the case of a banking company having its principal place of business elsewhere than in a Province of India, fifteen lakhs of rupees *plus*, if it has any place of business in Bombay City or Calcutta or both, five lakhs of rupees, or in any other case,—

(*i*) if it has places of business in more than one Province, five lakhs of rupees *plus*, if it has any place of business in Bombay City or Calcutta or both, five lakhs of rupees;

(*ii*) if it has all its places of business in one province and has no place of business in Bombay City or Calcutta, one lakh of rupees in respect of its principal place of business *plus* 10,000 rupees in respect of each other place of business in the district in which it has its prin-

cipal place of business *plus* 25,000 rupees in respect of each place of business situated elsewhere in the province, so however 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 that a banking company to which this clause applies and which has only one place of business shall not be required to have paid-up capital and reserves exceeding an aggregate value of 50,000 rupees ;

(*iii*) if it has all its places of business in one province and has one or more places of business in Bombay City or Calcutta, five lakhs of rupees *plus* 25,000 rupees in respect of each place of business outside Bombay City or Calcutta, as the case may be so however 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 1.—For the purposes of this sub-section a place of business situated in a province other than that in which the principal place of business of a banking company is situated shall, if it is not more than twenty-five miles distant from that principal place of business, be deemed to be situated within the same province as that principal place of business.

Explanation 2.—In this sub-section and sub-section (*2*), "value" means the real or exchangeable value, and not the nominal value which may be shown in the books of the company concerned.

(*2*) A banking company incorporated elsewhere than in a Province of India shall be deemed to have complied with the provisions of sub-section (*1*) only if it keeps deposited with the Reserve Bank an amount not less than the minimum aggregate value of paid-up capital and reserves required in its case under that sub-section either in cash or in unencumbered approved securities or partly in cash and partly in such securities, and such amount shall, in the event of the company ceasing for any reason to carry on banking business in the Provinces of India, be an asset of the company on which the claims of all the creditors of the company in the Provinces of India shall be a first charge.

(*3*) No banking company wheresoever incorporated, on or after the 15th day of January 1937, shall carry on business in any Province of India unless it satisfies the following conditions, namely:—

(*a*) that the subscribed capital of the company is not less than half the authorised capital, and the paid-up capital is not less than half the

subscribed capital, and, if it increases its capital, complies with the condition within such period, not exceeding two years, as the Reserve Bank may allow, and

(*b*) that the capital of the company consists of ordinary shares only, or ordinary shares and such preference shares as may have been issued before the 1st day of July 1944 only, and

(*c*) that, subject to clause (*d*) the voting rights of all shareholders are strictly proportionate to the contribution made by the shareholder, whether a preference shareholder or an ordinary shareholder, to the paid-up capital of the company, and

(*d*) that the voting rights of any one shareholder do not exceed ten per cent. of the total voting rights of all the shareholders.

(*4*) 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.

13. Restriction on commission, brokerage, discount, etc., on sale of shares.—Notwithstanding anything to the contrary in sections 105 and 105A of the Indian Companies Act, 1913 (VII of 1913), no banking company shall pay out directly or indirectly by way of commission, brokerage, discount or remuneration in any form in respect of any share issued by it, any amount exceeding in the aggregate two and one-half per cent. of the paid-up value of the said share.

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.

15. Restrictions as to payment of dividend. (*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.

(*2*) No banking company incorporated in a Province of India after the 1st January 1948 shall declare or pay any dividend on its shares at a rate exceeding nine per cent. per annum of the amount of the calls paid in respect of such shares.

16. Prohibition of common directors.—No banking company incorporated in a Province of India shall have as a director any person who is a director of another banking company.

17. Reserve fund.—Every banking company incorporated in a Province of India shall maintain a reserve fund, and shall, out of the declared profits of each year and before any dividend is declared, transfer a sum equivalent to not less than twenty per cent. of such profits to the reserve fund until the amount of the said fund is equal to the paid-up capital.

18. Cash reserve.—Every banking company not being a scheduled bank shall maintain by way of cash reserve in cash with itself, or in an account opened with the Reserve Bank, or partly in cash with itself and partly in such account, a sum equivalent to at least two per cent. of its time liabilities and five per cent. of its demand liabilities and shall file with the Reserve Bank before the fifteenth day of every month three copies of a statement of the amount so held on the Friday of each week of the preceding month with particulars of its time and demand liabilities on each such Friday.

19. Restriction on nature of subsidiary companies.—(*1*) A banking company shall not form any subsidiary company except a subsidiary company formed for one or more of the following purposes, namely, the undertaking and executing of trusts, the undertaking of the administration of estates as executor, trustee or otherwise, the providing of safe deposit vaults or, with the previous permission in writing of the Reserve Bank, such other purposes as are incidental to the business of banking.

(*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 twenty per cent. of the paid-up share capital of that company or twenty per cent. of its own paid-up share capital and reserves, whichever is less:

Provided that a banking company shall not be liable for an inadvertent contravention of the provisions of this sub-section if it reports the contravention to the Reserve Bank without delay and if the contravention does not persist for a period exceeding two months:

Provided further that any banking company which is on the date of the commencement of this Act holding any shares in contravention of the provisions of this sub-section shall not be liable to any penalty therefor if it reports the matter without delay to the Reserve Bank and if it brings its holding of shares into conformity with the said provisions within such period, not exceeding two years, as the Reserve Bank may think fit to allow.

(*3*) Save as provided in sub-section (*1*) and notwithstanding anything contained in sub-section (*2*), a banking company shall not, after the

expiry of one year from the date of the commencement of this Act, hold shares, whether as pledgee, mortgagee or absolute owner, in any company in the management of which any managing director or manager of the banking company is in any manner concerned or interested.

20. Restrictions on loans and advances.—(*1*) Notwithstanding anything to the contrary contained in section 54A of the Indian Companies Act, 1913 (VII of 1913), no banking company shall make any loans or advances on the security of its own shares, or grant unsecured loans or advances to its directors or to firms or private companies in which it or any of its directors is interested as partner, director or managing agent.

(*2*) Every banking company shall, before the close of the month succeeding that to which the return relates, submit to the Reserve Bank a return in the prescribed form and manner, showing all unsecured loans and advances granted by it to companies, other than private companies, in which it or any of its directors is interested as director or managing agent.

(*3*) If on examination of the returns submitted under sub-section (*2*) it appears to the Reserve Bank that any loans or advances referred to in that sub-section are being granted to the detriment of the interest of the depositors of the banking company, the Reserve Bank may by order in writing prohibit the banking company from making any such further loans or advances or impose such restrictions on the grant thereof as it thinks fit, and may by like order direct the banking company to secure the repayment of any such loan or advance within such time as may be specified in the order.

21. Licensing of banking companies.—(*1*) Every banking company in existence on the date of the commencement of this Act, before the expiry of six months from the said date and every other company, before commencing banking business in any Province of India, shall apply in writing to the Reserve Bank for a licence under this section.

(*2*) Except that a banking company in existence on the commencement of this Act may continue to carry on banking business in any Province of India until either it is granted a licence under this section or is by notice informed by the Reserve Bank that a licence cannot be granted to it, no company shall commence or carry on banking business in any Province of India unless it holds a licence granted by the Reserve Bank in such behalf:

Provided that the Reserve Bank shall not give a notice as aforesaid to a banking company in existence on the 1st day of January 1948 before the expiry of the three years referred to in sub-section (1) of sect-

ion 12 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 all or any of the following conditions are fulfilled, namely:—

(*a*) that the company is in a position to pay its depositors in full as their claims accrue;

(*b*) that the affairs of the company are not being conducted to the detriment of the interests of its depositors;

(*c*) in the case of a company incorporated elsewhere than in a Province of India that the Government or law of the country in which it is incorporated does not discriminate in any way against banking companies registered in a Province of India, and that the company complies with all the provisions of this Act, applicable to banking companies incorporated outside the Provinces of India.

(*4*) The Reserve Bank may—

(*a*) cancel any licence granted under this section where any of the conditions set out in sub-section (*3*) on the fulfilment of which it required to be satisfied when granting the licence ceases to be fulfilled, or if the company ceases to carry on banking business every where in the Provinces of India or goes into liquidation;

(*b*) at any time after granting a licence under this section require that any of the said conditions on the fulfilment of which it did not require to be satisfied when granting the licence shall be fulfilled to its satisfaction within such time as it may specify, and if the condition is not so fulfilled, cancel the licence.

(*5*) Any banking company aggrieved by the cancellation of its licence under sub-section (*4*) may appeal to Central Government, and the decision of the Central Government on such appeal be final.

22. Restrictions on opening of new, and transfer of existing, places of business.—No banking company shall open a new place of business or change, otherwise than within the same city, town or village, the location of an existing place of business without obtaining the prior permission in writing of the Reserve Bank; and before giving any such permission the Reserve Bank may require to be satisfied by an inspection under section 34 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.

Provided that nothing in this 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, conference or *mela*.

Explanation.—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.

23 Maintenance of a percentage of assets.—(*1*) After the expiry of two years from the commencement of this Act, every banking company shall maintain in cash, gold or unencumbered approved securities valued at a price not exceeding the current market price an amount which shall not at the close of business on any day be less than twenty per cent. of the total of its time and demand liabilities in all the Provinces of India.

Explanation.—For the purposes of this section liabilities shall not include the paid-up capital or the reserves or any credit balance in the profit and loss account of the company or the amount of any loan taken from the Reserve Bank.

(*2*) In computing the amount for the purposes of sub-section (*1*), the deposit required under sub-section (*2*) of section 12 to be made with the Reserve Bank by a banking company incorporated elsewhere than in a Province of India and any balance maintained by company with the Reserve Bank, including in the case of a scheduled bank the balance required under sub-section (*1*) of section 42 of the Reserve Bank of India Act, 1934 (II of 1934), to be so maintained, shall be deemed to be cash maintained.

(*3*) For the purpose of ensuring compliance with the provisions of this section, every banking company shall, not later than fifteen days after the end of the month to which it relates, furnish to the Reserve Bank in the prescribed form and manner a monthly return showing particulars of its assets maintained in accordance with this section, and its time and demand liabilities at the close of business on each Friday during the month, or if any Friday is a public holiday under the Negotiable Instruments, Act, 1881 (XVI of 1881), at the close of businees on the preceding working day.

24. Assets in the Provinces of India.—(*1*) At the close of the last working day of every quarter the assets in all Provinces of India of every banking company shall not be less than seventy-five per cent. of its time and demand liabilities therein.

(2) Every banking company shall, within one month from the end of every quarter, submit to the Reserve Bank a return in the prescribed form and manner of such assets and liabilities as at the close of the last working day of the previous quarter.

(3) For the purposes of this section, assets shall be deemed to include such promissory notes, bills of exchange and securities as the Reserve Bank is under the Reserve Bank of India Act, 1934 (II of 1934), empowered to purchase, discount or make advances against, and export bills drawn in India and expressed in such currencies as the Reserve Bank may from time to time approve in this behalf.

(4) In this section, "quarter" means a period of three months ending on the last day of March, June, September or December.

25. Return of unclaimed deposits.—Every banking company shall, within thirty days after the close of each calendar year, submit a return in the prescribed form and manner to the Reserve Bank as at the end of such calendar year of all accounts in the Provinces of India which have not been operated upon for ten years, giving particulars of the deposits standing to the credit of each such account:

Provided that in the case of moneys deposited for a fixed period the said term of ten years shall be reckoned from the date of the expiry of such fixed period.

26. Monthly returns and power to call for other returns and information.—(1) Every banking company shall before the close of the month succeeding that to which it relates submit to the Reserve Bank a return in the prescribed form and manner showing its assets and liabilities in all the Provinces of India as at the close of business on the last Friday of every month or if that Friday is a public holiday under the Negotiable Instruments Act, 1881 (XVI of 1881), at the close of business on the preceding working day.

(2) The Reserve Bank may by notice in writing require a banking company at any time to furnish it within the time specified therein or such further time as the Reserve Bank may allow, with statements and information relating to business of such banking company, and without prejudice to the generality of the foregoing power, may call for information every half-year regarding the classification of advances and investments of banking companies in respect of industry, commerce and agriculture.

27. Power to publish information.—The Reserve Bank, if it considers in the public interest so to do, may publish any information obtained by it under section 26 in such consolidated form as it thinks fit.

28. Accounts and balance-sheet.—(*1*) At the expiration of each calendar year every banking company incorporated in a Province of India, in respect of all business transacted by it, and every banking company incorporated outside the Provinces of India, in respect of all business transacted through its branches in the Provinces of India, shall prepare with reference to that year a balance-sheet and profit and loss account as on the last working day of the year in the Forms set out in the Schedule or as near thereto as circumstances admit:

Provided that in the case of a banking company incorporated outside the Povinces of India, the profit and loss account may be prepared as on a date not earlier than two months before the last working day of the year.

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

(*a*) in the case of a banking company incorporated in a Province of India, by the manager or the principal officer of the company and where there are more than three directors of the company, by at least three of those directors, or where there are not more than three directors, by all the directors, and

(*b*) in the case of a banking company incorporated outside the Provinces of India by the manager or agent or the principal officer of the company in the Provinces of India.

(*3*) Notwithstanding that the balance-sheet of a banking company is under sub-section (*1*) required to be prepared in a form other than the form marked F in the Third Schedule to the Indian Companies Act, 1913 (VII of 1913), the requirements of that Act relating to the balance-sheet and profit and loss account of a company shall, in so far as they are not inconsistent with this Act, apply to the balance-sheet or profit and loss account, as the case may be, of a banking company.

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

29. Audit.—(1) The balance-sheet and profit and loss account prepared in accordance with section 28 shall be audited—

(*a*) in the case of a banking company incorporated in a Province of India, by an auditor holding a certificate under section 144 of the Indian Companies Act, 1913 (VII of 1913), entitling him to act as an auditor of companies;

(b) in the case of a banking company incorporated outside the Pro-

vinces of India, either by such an auditor as aforesaid, or by a person duly qualified to be an auditor under the law of the country in which the company is incorporated.

(2) The Auditor shall have the powers of, exercise the functions vested in, and discharge the duties and be subject to the liabilities and penalties imposed on, auditors of companies by section 145 of the aforesaid Act.

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

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

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

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

(d) whether the profit and loss account shows a true balance of profit and loss for the period covered by such account;

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

30. Submission of returns.—The accounts and balance-sheet referred to in section 28 together with the auditor's report shall be published in the prescribed manner, and three copies thereof shall be furnished as returns to the Reserve Bank within three months from the end of the period to which they refer:

Provided that the Reserve Bank may in any case extend the said period of three months for the furnishing of such returns by a further period not exceeding three months.

31. Copies of balance-sheets and accounts to be sent to registrar.—(1) Where a banking company in any year furnishes its balance-sheet and accounts in accordance with the provisions of section 30, it may, or when it is a private company as defined in the Indian Companies Act, 1913 (VII of 1913), shall, at the same time tend to the registrar three copies of such balance-sheet and accounts and of the auditor's report, and where such copies are so sent, it shall not be necessary for the company, to file copies of the balance-sheet and accounts with the registrar as required by sub-section (1) of section 131 of the said Act, and such copies so sent shall be chargeable with the same fees and shall

be dealt with in all respects as if they were filed in accordance with that section.

(*2*) When in pursuance of sub-section (*2*) of section 26 the Reserve Bank requires any additional statement or information in connection with the balance-sheet and accounts furnished under section 30, the banking company shall, when supplying such statement or information, send a copy thereof to the registrar.

32. Display of audited balance-sheet by companies incorporated outside the Provinces of India.—Every banking company incorporated outside the Provinces of India, shall, not later than the first Monday in August of any year in which it carries on business, display in a conspicuous place in its principal office and in every branch office in the Provinces of India a copy of its last audited balance-sheet and profit and loss account prepared under section 28, and shall keep the copy so displayed until replaced by a copy of the subsequent balance-sheet and profit and loss account so prepared ; and every such banking company shall display in like manner copies of its complete audited balance-sheet and profit and loss account relating to its banking business as soon as they are available and shall keep the copies so displayed until copies of such subsequent accounts are available.

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

34. Inspection.—(*1*) Notwithstanding anything to the contrary contained in section 138 of the Indian Companies Act, 1913 (VII of 1913), the Reserve Bank at any time may, and on being directed so to do by the Central Government shall, cause an inspection to be made by one or more of its officers of any banking company and its books and accounts; and the Reserve Bank shall supply to the banking company a copy of its report on such inspection.

(*2*) It shall be the duty of every director or other officer of the banking company to produce to any officer making an inspection under sub-section (*1*) all such books, accounts and other documents in his custody or power and to furnish him with any statements and information relating to the affairs of the banking company as the said officer may require of him within such time as the said officer may specify.

(*3*) Any person making an inspection under sub-section (*1*) may examine on oath any director or other officer of the banking company in relation to its business, and may administer an oath accordingly.

(*4*) The Reserve Bank shall, if it has been directed by the Central Government to cause an inspection to be made, and may in any other case, report to the Central Government on any inspection made under this section, and the Central Government, if it is of opinion after considering the report that the affairs of the banking company are being conducted to the detriment of the interest of its depositors, may give the banking company an opportunity of making a representation in connection with the report, and may, whether or not it gives the banking company such opportunity as aforesaid, by order in writing—

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

(*b*) direct the Reserve Bank to apply under section 37 for the winding up of the banking company :

Provided that the Central Government, may defer for a period not exceeding six months the passing of an order under this sub-section, or cancel or modify any such order, upon such terms and conditions as it may think fit to impose.

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

35. Further powers and functions of Reserve Bank.—(*1*) The Reserve Bank may—

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

(*b*) on request of the companies concerned and subject to the provisions of section 44, assist as intermediary or otherwise, in proposals for the amalgamation of banking companies ;

(*c*) give assistance to any banking company by means of the grant of a loan or advance to it under clause (*3*) of section 18 of the Reserve Bank of India Act, 1934 (II of 1934) ;

(*d*) after a banking company has been inspected under section 34, by order in writing require the company,—

(*i*) to call a meeting of its directors for the purpose of considering matters arising out of such inspection or of meeting an officer of the Reserve Bank to discuss such matter ;

(*ii*) to make, within such time as may be specified in the order, such changes in its management as the Reserve Bank may consider necessary in consequence of the state of affairs disclosed by the inspection.

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

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

PART III

Suspension of business and winding up of Banking companies

36. Supension of business.—(*1*) The 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 up to a total period not exceeding six months in all.

(*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 Court may, for sufficient reasons, grant relief under this section even if the application is not accompanied by such report.

37. Winding up by Court.—(*1*) Without prejudice to the provisions contained in section 162 or section 271 of the Indian Companies Act, 1913 (VII of 1913), and without prejudice to its powers under section 36, the Court shall order the winding up of a banking company if it is unable to pay its debts and the Court shall also order the winding up of a banking company if the Reserve Bank applies in this behalf to the Court.

(*2*) The Reserve Bank may make an application under this section only if it is directed so to do by order under clause (*b*) of sub-section (*4*) of section 34 or if the banking company has failed to comply within due time with the demand contained in a notice under sub-section (*5*) of section 45.

(*3*) Without prejudice to the provisions contained in section 163 of the Indian Companies Act, 1913, a banking company shall be deemed to be unable to pay its debts if it has refused to meet any lawful demand for payment 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.

(*4*) A copy of every application by the Reserve Bank under sub-section (*1*) shall be sent by the Reserve Bank to the Registrar.

38. Reserve Bank to be official liquidator.—Notwihstanding anything to the contrary contained in section 178 of the Indian Companies Act, 1913 (VII of 1913), the Reserve Bank shall be appointed as the official liquidator in all proceedings commenced after the expiry of two years from the commencement of this Act for the winding up by the Court of a banking company.

39. Stay of proceedings.—Notwithstanding anything to the contrary contained in section 173 of the Indian Companies Act, 1913 (VII of 1913), the Court shall not make any order staying the proceedings in relation to the winding up of a banking company, unless the Court is satisfied that an arrangement has been made whereby the company can pay its depositors in full as their claims accrue.

40. Report of liquidator.—Notwithstanding anything to the contrary contained in section 177B of the Indian Companies Act, 1913 (VII of 1913), where a winding up order is made in respect of a banking company, the official liquidator shall submit a preliminary report to the Court within two months from the date of the order giving the information required by that section so far as it is available to him, to enable the Court to order the payment of a preliminary dividend if sufficient assets are available.

41. Power to dispense with meetings of creditors, etc.—Notwithstanding anything to the contrary contained in sections 178A and 183 of the Indian Companies Act, 1913 (VII of 1913), the Court may in the proceedings for winding up a banking company dispense with any meetings of creditors or contributories or with the appointment of a committee of inspection if it considers that no object will be secured thereby sufficient to justify the delay and expense.

42. Booked depositors' credits to be deemed proved.—Notwithstanding anything to the contrary contained in section 191 of the

Indian Companies Act, 1913 (VII of 1913), the Court shall presume that the amounts shown in the books of a banking company as standing to the credit of depositors are proved without requiring further proof from the depositors concerned unless the official liquidator shows that there is reason for doubting any particular entry.

43. Restriction on voluntary winding up.—Notwithstanding anything to the contrary contained in section 203 of the Indian Companies Act, 1913 (VII of 1913), no banking company which holds a licence granted under section 21 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, and without prejudice to the provisions contained in sections 218 and 220 of that Act, the Court shall, on the application of the Reserve Bank, order the winding up of the company by the Court if at any stage during the voluntary winding up proceedings the company is not able to meet such debts as they accrue.

44. Restriction on amalgamation, etc.—Notwithstanding anything contained in any law for the time being in force,—

(*a*) no Court shall entertain an application for sanctioning a compromise or arrangement between a banking company and its creditors or any class of them or between such company and its members or any class of them unless the application made in respect thereof is accompanied by a report of the Reserve Bank certifying that such compromise or arrangement is in the interests of the depositors of such company, and

(*b*) no banking company shall enter into any agreement or arrangement for, or be a party to, any scheme for the amalgamation of such company with any other banking company without the previous sanction in writing of the Reserve Bank.

PART IV

Miscellaneous

45. Penalties.—(*1*) Whoever in any return, balance-sheet or other document required by or under or for the purposes of any provision of this Act, wilfully makes a statement false in any material particular, knowing it to be false, or wilfully omits to make a material statement, shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.

(*2*) If any person fails to produce any book, account or other document or to furnish any statement or information which under sub-section (*2*) of section 34 it is his duty to produce or furnish or to answer any question relating to the business of a banking company which he is asked

by an officer making an inspection under that section, he shall be liable to a fine which may extend to five hundred rupees in respect of each offence, and if he persists in such refusal, to a further fine which may extend to fifty rupees for every day during which the offence continues.

(3) If any deposits are received by a banking company in contravention of an order under clause (a) of sub-section (4) of section 34, every director or other officer of the banking company, unless he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent it, shall be deemed to be guilty of such contravention and shall be punishable with a fine which may extend to twice the amount of the deposits so received.

(4) If any other provision of this Act is contravened, or if any default is made in complying with any requirement of or made under this Act, every director and other officer of the banking company who is knowingly a party to the contravention or default shall be punishable with a fine not exceeding five hundred rupees, and where the contravention or default is a continuing one with a further fine not exceeding fifty rupees for every day during which it continues.

(5) Without prejudice to the provisions of sub-section (4), if any banking company fails to comply with the provisions of section 23 or section 24, the Reserve Bank shall by notice in writing make a demand on the banking company to comply with the said provisions within thirty days from the receipt of the notice, and if the banking company fails so to do, the Reserve Bank may apply under section 37 for the winding up of the banking company.

46. Cognizance of offences.—No Court shall take cognizance of any offence punishable under section 45 except upon complaint in writing made by an officer of the Reserve Bank generally or specially authorised in writing in this behalf by the Reserve Bank, and no Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any such offence.

47. Application of fines.—A Court imposing any fine under this Act may direct that the whole or any part thereof shall be applied in or towards payment of the costs of the proceedings, or in or towards the rewarding of the person on whose information the fine is recovered.

48. Special provisions for private banking companies.—The exemptions, whether express or implied, in favour of a private company in sections 17, 77, 83B, 86H, 91B, and 91D, and sub-section (5) of section 144 of the Indian Companies Act, 1913 (VII of 1913), shall not operate in favour of a private company which is a banking company.

49. Certain claims for compensation barred.—No person shall have any right whether in contract or otherwise to any compensation for any loss incurred by reason of the operation of any provision of sections 11 and 16 or by reason of the compliance of a banking company with any order given to it under sub-clause (*ii*) of clause (*d*) of sub-section (*1*) of section 35.

50. Banking companies incorporated in certain acceding States.—The Central Government on being satisfied that any acceding State has enacted a law satisfying the prescribed conditions may, by notification in the official Gazette, declare that this section shall apply to that State; and thereupon a banking company incorporated in that State and carrying on business in any Province of India shall have the same rights and obligations under this Act as if it were incorporated in a Province of India.

51. Application of certain provisions to the Imperial Bank of India.—Without prejudice to the provisions of the Imperial Bank of India Act, 1920 (XLVII of 1920), the provisions of sections 11, 13 to 17, 19, 20, 22 to 30, 33, 34, 36 to 47, 49 and 51 shall so far as may be applied to and in relation to the Imperial Bank of India as they apply to and in relation to other banking companies.

52. Power of Central Government to make rules.—(*1*) The Central Government may, after consultation with the Reserve Bank make rules not inconsistent with this Act to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of this Act.

(*2*) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for the details to be included in the returns required by this Act and the manner in which such returns shall be submitted.

(*3*) All rules made under this section shall be published in the official Gazette and shall be subject to the condition of previous publication, and the date to be specified under clause (*3*) of section 23 of the General Clauses Act, 1897 (X of 1897), shall not be less than six months from the date on which the draft of the proposed rules was published:

Provided that in respect of the first occasion on which rules are made under this section, the provisions of this sub-section shall be construed as if for the words "six months" the words "two months" were substituted.

53. **Amendment of section 17, Act II of 1934.**—In section 17 of the Reserve Bank of India Act, 1934, to clause (15A) the following shall be added, namely:—

"and under the Banking Companies Act, 1948."

54. **Amendment of section 18, Act II of 1934.**—To clause (*3*) of section 18 of the Reserve Bank of India Act, 1934, the following shall be added, namely:—

"or, when the loan or advance is made to a banking company (as defined in the Banking Companies Act, 1948), against such other form of security as the Bank may consider sufficient."

55. **Amendment of section 42, Act II of 1934.**—For sub-section (*6*) of section 42 of the Reserve Bank of India Act, 1934, the following sub-sections shall be substituted, namely:—

"(6) The Bank shall, save as hereinafter provided, by notification in in the *Gazette of India*,—

(*a*) direct the inclusion in the Second Schedule of any bank not already so included which carries on the business of banking in any Province of India and which—

(*i*) has a paid-up capital and reserve of an aggregate value of not less than five lakhs of rupees, and

(*ii*) satisfies the Bank that its affairs are not being conducted in a manner detrimental to the interests of its depositors, and

(*iii*) is a company as defined in clause (*2*) of section 2 of the Indian Company Act, 1913, or a corporation or a company incorporated by or under any law in force in any place outside the Provinces of India ;

(*b*) direct the exclusion from that Schedule of any scheduled bank,—

(*i*) the aggregate value of whose paid-up capital and reserves becomes at any time less than five lakhs of rupees, or

(*ii*) which is, in the opinion of the Bank after making an inspection under section 34 of the Banking Companies Act, 1948, conducting its affairs to the detriment of the interests of its depositors, or

(*iii*) which goes into liquidation or otherwise ceases to carry on banking business:

Provided that the Bank may on application of the scheduled bank concerned and subject to such conditions, if any, as it may impose, defer the making of a direction under sub-clause (*i*) or sub-clause (*ii*) of clause (*b*) for such period as the Bank considers reasonable to give the scheduled bank an opportunity of increasing the aggregate value of its paid-up capital and reserves to not less than five lakhs of rupees or, as the case may be, of removing the defects in the conduct of its affairs ;

(c) alter the description in that Schedule whenever any scheduled bank changes its name.

(7) In sub-section (6) the expression 'value' means the real or exchangeable value and not the nominal value which may be shown in the books of bank concerned; and if any dispute arises in computing the aggregate value of the paid-up capital and reserves of a bank, a determination thereof by the Bank shall be final for the purposes of that sub-section."

56. Repeals.—(1) All the provisions contained in Part XA of the Indian Companies Act, 1913 (VII of 1913), are hereby repealed.

(2) The Banking Companies (Inspection) Ordinance, 1946 (IV of 1946), the Banking Companies (Restriction of Branches) Act, 1946 (XXVII of 1946) and the Reserve Bank of India (Temporary Amendment) Ordinance, 1947 (XIX of 1947) are hereby repealed

THE SCHEDULE

(*See* section 28)

FORM A

FORM OF BALANCE-SHEET*

CAPITAL AND LIABILITIES	Rs. A. P.	Rs. A. P.	PROPERTY AND ASSETS	Rs. A. P.	Rs. A. P.
CAPITAL (*a*)—			CASH :		
Authorised Capital.....Shares of Rs.....each . . .			In hand and with Reserve Bank (including foreign currency notes . . .		
Issued Capital.....Shares of Rs.....each . . .			Balance with other Banks (showing whether on deposit or current account):		
Subscribed Capital.....Shares of Rs.....each . . .			(*i*) in the Provinces of India		
Amount called up at Rs..... per share			(*ii*) outside the Provinces of India		
Less calls unpaid . . .			MONEY AT CALL AND SHORT NOTICE		
Add forfeited shares. . .			BILLS DISCOUNTED (*e*)		
RESERVE FUND (*b*)			(Other than Treasury Bills of the Central and Provincial Governments) . .		
DEPOSITS AND OTHER ACCOUNTS.			(*i*) Payable in any Province of India		

**References to the Provinces of India shall be construed as including reference to the acceding States to which the Banking Companies Act, 1948, for the time being extends.*

CAPITAL AND LIABILITIES	Rs. A. P.	Rs. A. P.
Fixed Deposits		
Savings Bank Deposits . .		
Current Accounts and Contingency (unadjusted) accounts		
Borrowings from other Banks, Agents, etc.		
(*i*) in the Provinces of India .		
(*ii*) outside the Provinces of India		
Particulars :		
(*i*) Secured (stating the nature of security)		
(*ii*) Unsecured		
Bills payable		
Bills for collection being bills receivable as *per contra* :		
(*i*) payable in any Provinces of India.		
(*ii*) payable outside the Provinces of India . . .		
Other Liabilities (to be specified) (c)		

PROPERTY AND ASSETS	Rs. A. P.	Rs. A. P.
(*ii*) Payable outside the Provinces of India .		
INVESTMENTS (stating mode of valuation, *i.e.*, cost or market value) whichever is lower (*f*)		
(*i*) Government of India and Trustee securities including Treasury Bills of Government of India and Provincial Governments		
(*ii*) shares (classifying into preference, ordinary, deferred and other classes of shares and showing separately shares fully paid up and partly paid up) . . .		
(*iii*) Debentures or Bonds .		
(*iv*) Other investments (to be classified under proper heads) . . .		
(*v*) Gold		
LOANS, ADVANCES, CASH CREDITS AND OVERDRAFTS (other than bad and doubtful debts for which provision has been made to the satisfaction of the auditors).		
(*i*) in the Provinces of India		
(*ii*) outside the Provinces of India.		
Particulars:		
(*i*) Debts considered good in respect of which the bank is fully secured .		

CAPITAL AND LIABILITIES	RS. A. P.	RS. A. P.
Acceptances, endorsements and other obligations *per contra*		
PROFIT AND LOSS :		
Balance as per previous Balance-sheet		
Less appropriation thereof .		
Balance brought forward .		
Profit since last Balance sheet		
CONTINGENT LIABILITIES (*d*)		

PROPERTY AND ASSETS	RS. A. P.	RS. A. P.
(*ii*) Debts considered good for which the bank holds no other security than the debtors personal security.		
(*iii*) Debts considered good, secured by the personal liabilities of one of more parties in addition to the personal security of the debtors		
(*iv*) Debts considered doubtful or bad not provided for		
(*v*) Debts due by directors or officers of the bank or any of them either severally or jointly with any other persons . . .		
(*vi*) Debts due by companies or firms in which the directors of the bank are interested as directors, partners or managing agents or, in the case of private companies, as members . . .		
(*vii*) Maximum total amount of loans, including temporary advances made at any time during the year to directors or managers or officers of the company.		
(*viii*) Maximum total amount of loans, including temporary advances granted during the year to the companies or firms in which the directors of the bank are interested as directors, partners		

CAPITAL AND LIABILITIES	Rs. A. P.	Rs. A. P.	PROPERTY AND ASSETS	Rs. A. P.	Rs. A. P.
			or managing agents or, in the case of private companies, as members.		
			(*x*) Due from banks . . Bills for collection being bills receivable as *per contra*.		
			(*i*) payable in any Province of India.		
			(*ii*) payable outside the Provinces of India . . .		
			Acceptances, endorsements and other obligations *per contra*.		
			Premises less depreciation (*g*)		
			Furniture and fixtures less depreciation (*g*)		
			Other assets including silver (to be specified) (*h*)		
			Non-banking assets acquired in satisfaction of claims (stating mode of valuation) (*i*)		
			PROFIT AND LOSS		
TOTAL			TOTAL		

NOTES

(*a*) *Capital*:—

(*i*) The various classes of capital, if any, should be distinguished.

(*ii*) Shares issued as fully paid-up pursuant to any contract without payments being received in cash should be stated separately.

(*iii*). Where circumstances permit, issued and subscribed capital and amount called up may be shown as one item, *e.g.*, Issued and Subscribed Capital.....Shares of Rs.....paid up.

(*iv*) In the case of banking companies incorporated outside India, the amount of deposit kept with the Reserve Bank of India under sub-section (*2*) of section 12 of the Banking Companies Act, 1948, should be shown under this head; the amount however should not be extended to the outer column.

(*b*) The reserve fund maintained by section 1 of the said Act should be shown separately.

(*c*) Under this heading are to be included such items as the following, to be shown under separate heading suitably described: pension of insurance funds, unclaimed dividends, advance payments and unexpired discounts, liabilities to subsidiary companies and any other liabilities.

(*d*) These should be classified under the following categories:—

(*i*) Claims against the banking company not acknowledged as debts,

(*ii*) Money for which the bank is contingently liable showing separately the amount of any guarantee given by the banking company on behalf of directors or officers.

(*iii*) Arrears of cumulative preference dividends.

(*iv*) Liability on Bills of Exchange rediscounted.

(*v*) Liability on account of outstanding Forward Exchange Contracts.

(*e*) Particulars as under "Loans, Advances, Cash Credits and Overdrafts" are to beshown under this heading.

(*f*) Where any other mode of valuation is adopted it shall be clearly stated, and the market value shall be given. Where there is no market value, it is to be clearly so stated.

(*g*) Bank premises wholly or partly occupied for the purposes of business should be shown against "Premises less depreciation." In the case of fixed capital expenditure, the original cost, and additions thereto and deductions therefrom during the year should be stated, as also the total depreciation written off. Where sums have been written off on a reduction of capital or revaluation of assets, every balance-sheet after the first balance-sheet subsequent to the reduction or revaluation should show the reduced figures with the date and amount of the reduction made. Furniture fixtures and other assets which have been completely written off need not be shown in the balance-sheet.

(*h*) Under this heading may be included such items as the following, which must be shown under headings suitably described: preliminary, formation and organisation expenses, development expenditure, commission and brokerage, shares, interest accrued on investments but not collected, investments in shares of subsidiary companies and any other assets.

(*i*) Value shown shall in no case exceed market value

FORM B

FORM OF PROFIT AND LOSS ACCOUNT

Profit and Loss Account for the year ended *December*

EXPENDITURE	INCOME (LESS PROVISION MADE DURING YEAR FOR BAD AND DOUBTFUL DEBTS).
Interest paid on deposits . .	Interest and Discount
Salaries and Allowances (showing separately salaries and allowances to managing director or manager.) . .	Commission, Exchange and Brokerage Rents
Directors' Fees and allowances . .	
Local Committee members' fees and allowances . .	Transfer from contingencies account
Provident Fund . .	
Income-tax, Corporation tax, or provisions therefor Rent, *other* . . Taxes, Insurance, Lighting, etc. . .	Profit made on sale of investments, gold and silver, land, premises and other assets.
Law Charges . .	
Postage, Telegrams Stamps . .	Profits made on revaluation of in-
Auditor's Fees . .	vestments, gold and silver, land, and,
Depreciation and Banks' Property . .	premises and other assets.
Repairs to Banks' Property . .	Income from non-banking assets,
Stationary, Printing, Advertisement, etc. . .	and profit from sale of or dealing with such assets.
Loss from sale of or dealing with non-banking assets . .	
Other Expenditure . .	Other receipts
Balance of Profit . .	Loss (if any)
Total	Total

STATEMENT OF OBJECTS AND REASONS.

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

2. With this object in view, a Bill to amend the law relating to Banking Companies was introduced in the Legislative Assembly in November, 1944 and was subsequently circulated for eliciting public opinion through the Provincial Governments. In the ensuing Budget Session of the Assembly the Bill was referred to a Select Committee which was due to meet in October, 1945, but it lapsed before its consideration by the Committee. A fresh Bill with certain modifications which suggested themselves on consideration of the opinions and criticisms received on the 1944 Bill was introduced in the Legislative Assembly in March 1946 and was referred to a Select Committee in April 1946. The report of the Select Committee was presented to the Assembly on the 17th February 1947. As it was the original intention of the Government that the Bill should be taken up for disposal by the Constituent Assembly (Legislative) in the form in which it emerged from the Select Committee and that the changes necessitated in the Bill as a result of the passing of the Indian Independence Act, 1947, and other developments should be moved in the House as separate amendments, a motion for the continuation of that Bill was adopted on the 17th November 1947. In view however of a fairly large number of amendments, Government considered that the passage of the measure would be facilitated if the Bill as reported upon by the Select Committee were withdrawn and a fresh Bill as incorporating all the amendments were introduced and referred to a Select Co-

mmittee. The Bill was accordingly withdrawn on the 30th January 1948. The present Bill is the result of long and detailed consideration by expert Committees, the Reserve Bank, the public including the representatives of banks, the Government and the Legislature. The main features of the Bill are as follows:—

(i) A comprehensive definition of 'banking' so as to bring within the scope of the legislation all institutions which receive deposits, repayable on demand or otherwise, for lending or investment;

(ii) Prohibiting non-banking companies from accepting deposits repayable on demand;

(iii) Prohibition of trading with a view to eliminating non-banking risks;

(iv) Prescription of minimum capital standards;

(v) Limiting the payment of dividends;

(vi) Inclusion in the scope of the legislation of banks incorporated or registered outside the Provinces of India;

(vii) Introduction of a comprehensive system of licensing of banks and their branches;

(viii) Prescription of a special form of balance sheet and conferring of powers on the Reserve Bank to call for periodical returns;

(ix) Inspection of the books and accounts of a bank by the Reserve Bank;

(x) Empowering the Central Government to take action against banks conducting their affairs in a manner detrimental to the interests of the depositors;

(xi) Provision for bringing the Reserve Bank of India into closer touch with banking companies;

(xii) Provision of an expeditious procedure for liquidation;

(xiii) Bringing the Imperial Bank of India within the purview of some of the provisions of the Bill;

(xiv) Widening the powers of the Reserve Bank of India so as to enable it to come to the aid of banking companies in times of emergency;

(xv) Provision for the extension of the Act to acceding States.

Brief explanatory notes on the several clauses are given in the annexed notes on clauses.

NEW DELHI,
The 12th March 1948. R. K. SHANMUKHAM CHETTY.

NOTES ON CLAUSES

Clause 1 (1).—The Bill is confined to companies carrying on the business of banking. It would be impracticable to include within its scope all institutions and individuals dealing in credit in view of the complex credit structure of the country and the fact that moneylending is an item of provincial legislation.

Clause 2.—Except in matters pertaining to banking it is desirable that the Indian Companies Act should continue to be applicable to banking companies.

Clause 3.—It is unnecessary to include co-operative banks, which are governed by special legislation.

Clause 4.—The object underlying this clause is that in cases of genuine emergency, *e.g.*, a general run on all banks or a run on some bank in a particular area, Government should have power to suspend the operation of the Act after considering the recommendations of the Reserve Bank. The suspension of clause 23 will, for instance, enable the Reserve Bank to give an advance to tide over a banking crisis against liquid assets maintained by banks under that clause.

Clause 5 (b).—The present definition of banking in section 277F of the Indian Companies Act gives rise to administrative difficulties, particularly in respect of the words "principal business" in determining whether a company comes within its scope. The new definition is intended to connect banking definitely with the acceptance of deposits from the public for the purpose of lending or investment and to bring within its ambit all the banks which accept demand or time deposits.

Clause 5 (n).—This defines the terms 'secured loan or advance' and 'unsecured loan or advance'.

Clause 6.—Based on sections 277F and 277G(2) of the Indian Companies Act, 1913.

Clause 7.—Sub-clause (1) is considered necessary for the protection of the interests of the depositors while sub-clause (2) embodies in substance the existing proviso to section 277F of the Indian Companies Act, 1913.

Clause 8.—In order to prevent the use of demand deposits for long term investment or for capital expenditure, non-banking companies have been prohibited from accepting deposits repayable on demand.

Clause 9.—This is intended to prohibit a bank from engaging directly or indirectly in trading activities and undertaking risks in addition

to ordinary banking risks. Certain banks have found to engage in such activities under the guise of agency business.

Clause 10.—It is not intended to prohibit a bank from conducting the management of industrial concerns or other non-banking assets which it may have acquired in satisfaction of its claims, provided that such assets are disposed of within a period of seven years which may be extended up to twelve years by the Reserve Bank.

Clause 11.—This embodies the new section 277HH added to the Indian Companies Act, 1913, by the Indian Companies (Amendment) Act, 1944, supplemented by a provision disallowing the employment of managing agents under some other name, or on a salary disproportionate to the resources of the bank, or of a person who is a director of any other company not being a subsidiary of the banking company or who is engaged in any other business or vocation.

Clause 12.—One of the chief defects of the Indian banking system is the weak and vulnerable capital structure of the vast majority of banks, as evidenced by the fact that during the years 1934—45, no less than 715 banking companies were liquidated or wound up, most of which possessed very poor capital resources. Even the minimum of Rs. 50,000 prescribed by the Indian Companies Act for banks incorporated after the 15th January 1937, is low as compared with many other countries, notwithstanding the lower standard of wealth of India. Another defect in the present banking system is the undue concentration of banking offices in a few cities and towns whereas a very large number of small towns have no banking facilities. Small banks with low capital have also a tendency to open branches in larger towns which have already sufficient banking facilities. Clause 12(1) seeks to remedy these defects. In the case of banking companies incorporated outside India, the provisions as regards capital do not afford any real protection, hence the safeguarding provisions of sub-clause (2).

Sub-clause (3) follows section 277 I(2) of the Indian Companies Act supplemented by a provision that the voting rights of any shareholder shall not exceed 10 per cent. of the total voting rights of all the shareholders. A provision has also been made whereby the Reserve Bank may allow a banking company wishing to raise its capital a period not exceeding two years to comply with the provisions of clause 12(3) (a).

Clause 13.—This seeks to impose a limitation on the commission payable on the issue of shares by a bank.

Clause 14.—This reproduces section 277J of the Indian Companies Act.

Clause 15.—Payment of dividend when capitalized expenses are outstanding is against the canons of sound banking, hence the prohibition. In the interests of depositors and of the general public, it is also desirable to fix a statutory maximum limit to the rate of dividend that can be paid by new banking companies.

Clause 16.—This is intended to prevent interlocking of directorates between banking companies.

Clause 17.—This more or less embodies sub-sections (1) and (2) of section 277K of the Indian Companies Act. Sub-section (3) of that section has been omitted in view of clause 23 of the Bill which provides for a general reserve.

Clause 18.—This follows section 277L(1) of the Indian Companies Act except that the prescribed returns are to be filed with the Reserve Bank and not the Registrar.

Sub-section (2) of section 277L, which defines the terms "demand liabilities" and "time liabilities", has been removed to clause 5 of the Bill.

Clause 19.—This clause is intended to prevent bank from carrying on trading activities by acquiring a controlling interest in non-banking companies. It follows the lines of section 277M of the Indian Companies Act with certain modifications. The limitation on the amount of investment by a banking company in the shares of a non-banking company has been based with reference to the share capital of the banking company as well as of the company whose shares are purchased and the percentage has been reduced to 20 per cent. The words "paid-up share capital" have been substituted for the words "issued share capital" as the latter term is somewhat confusing and is used indiscriminately.

The proviso to section 277M(2) of the Indian Companies Act has been omitted as there is no reason why the exemption made in favour of old share-holdings should be perpetuated. It is also desirable that banking companies may be allowed by the Reserve Bank a period not exceeding two years to bring their share-holding into compliance with the provision and that they should be exempted from penalty in case of purely inadvertent and temporary breaches of the provision.

Clause 20.—Past failures of several banks in India have been due mostly to indiscriminate advances to directors or their concerns. An absolute and unqualified ban on such transactions would, however, result in depriving the banks of the advantage of having on their directorate important and experienced industrial magnates. A check is therefore prescribed on advances to directors and their concerns.

Clause 21.—When the Reserve Bank's original "proposals for an Indian Bank Act" were circulated in 1940, suggestions were received that a system of licensing foreign banks doing business in the Provinces of India should be introduced. The Banking Enquiry Committee had also recommended that banks should be required to take out licences from the Reserve Bank, such licences being granted freely to the existing banks. Clause 21 seeks to introduce a comprehensive system of licensing of banks by the Reserve Bank, the grant of the licence being dependent upon the maintenance of a satisfactory financial condition subject to the further qualification in the case of foreign banks that their country of origin does not discriminate in any manner against banks registered in the provinces of India.

Clause 22.—Based on the provisions of sub-sections (i) and (ii) of section 3 of the Banking Companies (Restriction of Branches) Act, 1946.

Clause 23.—This clause is an attempt to prescribe by law what has already been recognised as sound banking practice, *viz.*, that a bank should keep a reserve of cash and liquid assets to meet its demand liabilities. One of the worst defects of Indian banking is the propensity of the smaller banks to overtrade at the expense of liquidity and it seems best to insist on all banks maintaining a reasonably large proportion of their cover in the form of cash or trustee securities as defind in the Indian Trusts Act, excluding immovable property. The proportion of 20 par cent is in accordance with the actual practice followed by small banks.

Clause 24.—The failure of a bank incorporated outside the Provinces of India which had the bulk of its deposits from the Provinces but the greater part of the assets outside the Provinces has brought out the necessity of protecting the interests of depositors in Indian Provinces by requiring such banks to maintain a reasonable proportion of their liability in the Provinces of Indian in the form of assets in the Provinces. Export bills are included in such assets with a view to helping Indian exports.

Clause 25.—The intention in prescribing an annual return of deposits which remain unclaimed for 10 years is to enable the Reserve Bank to have the necessary data for consideration of the question whether deposits remaining unclaimed for a prescribed period should be transferred to Government making it responsible for meeting any claim which may be established in future. Similar returns are called for, in the banking legislation of Canada, and it is provided there that after the lapse of a certain period of years the deposits will be paid over to Government.

Clause 26.—The existing return under section 12 of the Reserve Bank Act applies only to scheduled banks and also omits important details like investment. For an adequate control of banking development, it is necessary that the Reserve Bank should have a full picture of the banking situation of the country through periodical returns of assets and liabilities. It is also desirable in order that the Reserve Bank may be able to discharge its responsibilities as the Central Bank of the country that it should be authorised to call for information relating to their business from banks.

Clause 27.—It is desirable to authorise the Reserve Bank to publish in a consolidated form the information obtained by it under clause 26 if it considers such publication in the public interest.

Clause 28.—The Form F, laid down by the Indian Companies Act is meant for companies in general and is not suited to the special requirement of banking companies. Many of the smaller banks publish their balance sheets in different forms and there is no uniformity of presentation. The banks also close their books on different dates making it difficult to have a picture of the banking situation of the country as on a particular date. The Central Banking Inquiry Committee, which considered this question in detail, recommended a separate form for banking companies. As regards banks incorporated outside the Provinces of India, there is no provision in the Companies Act for the publication of separate balance sheets of their Indian business. In forms A and B of the Schedule to the Banking Companies Bill, an attempt has been made to provide a form of balance sheet and profit and loss account specially suitable for banking companies.

Clause 29.—This provides for the audit of the statements prescribed under clause 28.

Clause 30.—At present, some of the banks publish their balance sheets after a considerable period from the date to which they relate so that the position of the banks remains unknown for an unduly long period. The clause remedies this defect

Clause 31.—This is based on section 17 of the Insurance Act, 1938.

Clause 32.—There is no provision in the Indian Companies Act for the publication of balance sheets by banking companies incorporated outside the Provinces of India similar to that contained in section 136 applicable to companies incorporated in the Provinces of India. This clause provides for uniformity of treatment as regards the publication of balance sheets.

Clause 33.—This provides for the period of transition and follows section 17A of the Insurance Act, 1938.

Clause 34.—The opinions received on the Reserve Bank's "Proposals for an Indian Bank Act" circulated in 1940 revealed that public opinion was generally in favour of the inspection of banks by Government of the Reserve Bank. In view of this and in the light of the experience gained by the Reserve Bank in connection with the inspection of banks for the purpose of section 42 (6) of the Reserve Bank Act, provision has been made for the inspection of a bank's books by the Reserve Bank on its own initiative or at the instance of the Central Government. Sub-clause (1) generally follows the lines of section 3 of the Banking Companies (Inspection) Ordinance, 1946 and sub-clauses (2) and (3) make necessary provision for securing that the directors and officers of the bank furnish all information and documents requisite for a proper investigation of its affairs. Sub-Clauses (4) and (5) enumerate the corrective measures which the Central Government may take.

Clause 35.—This clause sets out further duties and functions of the Reserve Bank in its relations with banking concerns and empowers the Reserve Bank to have full information about the working of banks and to have the authority to be able to render timely and adequate help when necessary. A provision has also been made for an annual review by the Reserve Bank on the progress of banking throughout the country.

Clause 36.—This clause is a modification of section 277N of the Indian Companies Act, the period of moratorium having been limited to six months. It is the intention that the report under sub-clause (2) should be submitted by the Reserve Bank.

Clause 37.—The provisions of the Indian Company Act in respect of liquidation do not seem to be suitable for banking companies. A bank's business is conducted on an over-the-counter basis and it is important that current accounts should be withdrawable at any time and drafts etc. should be honoured on presentation, otherwise great business dislocation is likely to result. A provision has, therefore been made under this clause for the winding up of a banking company if it refuses to meet a lawful demand for payment at one of its offices or branches within two working days, if such demand is made at a place where there is an office or branch or agency of the Reserve Bank, or within five working days, elsewhere. The clause also authorises the Reserve Bank to apply for the liquidation of a banking company if it appears from the result of an inspection made under clause 34 that its affairs are being conducted to the detriment of the interests of its depositors.

Clause 38. Experience has shown that the cost of liquidation proceedings under the Indian Companies Act is high. It has, therefore, been provided in this clause that after the expiry of two years from the commencement of the Act the Reserve Bank should be empowered to carry out liquidations so that unnecessary expense and delay in liquidation proceeding may be avoided, and that the assets may be realised as speedily and cheaply as possible in the interests of the creditors.

Clause 39.—This limits the power of the Court to stay proceedings to cases in which it is satisfied that the depositors can be paid in full.

Clause 40.—The period prescribed under section 177B of the Indian Companies Act for the submission of a preliminary report by the official liquidator is too long in the case of a banking company and the clause is intended to remedy this defect.

Clause 41.—In the case of a banking company, rapidity in liquidation is essential if the assets are not to grow cold or to be dissipated. The provisions for calling meetings of creditors to discuss arrangements or to appoint an advisory committee to work with the official liquidator should, therefore, be rescinded in the case of banking companies unless the Court considers that this should be done.

Clause 42.—This simplifies the formalities for depositors proving their debts.

Clause 43.—It has been found that banking companies in a shaky condition take advantage of the voluntary winding up proceedings or manipulate such proceedings to the disadvantage of the depositors who are a scattered body and are unlikely to take concerted action. The clause is intended to prevent such abuses by a banking company which holds a licence granted under clause 21.

Clause 44.—It is intended that Courts should disallow an application proposing a scheme of arrangement or compromise unless the Reserve Bank certifies that such a scheme of arrangement or compromise is in the interests of the depositors of the banking company concerned. The clause is also intended to make amalgamations of banks subject to the approval of the Reserve Bank so as to prevent amalgamations between unsound companies.

Clause 45.—This provides for penalties in the event of non-compliance with the provisions of the Act.

Clause 46.—This is based upon section 278 of the Indian Companies Act.

Clause 47.—This is based upon section 279 of the Indian Companies Act.

Clause 48.—The Indian Companies Act exempts private companies from several of its provisions. Some of these have been made applicable to private banking companies.

Clause 49.—The operation of the provisions contained in clauses 11, 16 and 35(1)(d)(ii) may result in an individual losing a perhaps lucrative appointment. It has, therefore, been made clear that he will have no right of action on that account.

Clause 50.—It is intended that where the Act has been extended to an acceding State under sub-clause (3) of clause I or where any acceding State enacts a law corresponding to this Act, the banks incorporated in such acceding States should be treated on the same basis as those incorporated in any Province of India.

Clause 51.—The constitution of the Imperial Bank of India is regulated by a separate Act. However, in certain matters not covered by that Act the provisions of this Act have been made applicable to Imperial Bank of India.

Clause 52.—This empowers the Central Government to make regulations under the Act after consultation with the Reserve Bank.

Clause 53.—This is a consequential amendment

Clause 54.—This embodies the provisions of section 2 of the Reserve Bank of India (Temporary Amendment) Ordinance, 1947.

Clause 55.—The experience of the working of section 42(6) of the Reserve Bank Act indicates the desirability of amending in the following respects.

(1) The authority to include in or exclude from the second schedule any bank should vest in the Reserve Bank rather than the Central Government, as the former is in the best position, and the latter has no independent means of verifying whether the bank satisfies the requirements of the section.

(2) In view of the increased status and the general impression of soundness created by the inclusion of a bank in the schedule, a further criterion should be added for admission, namely, that the affairs of the bank concerned are not being conducted to the detriment of the interests of its depositors and provision should be made for exclusion from the schedule if the bank ceases to satisfy this condition.

(3) Provision is also necessary for the grant of extension of time to

a bank before its exclusion to enable it to set its affairs in order where it appears that there is a reasonable prospect of an improvement in its affairs during the period.

(4) It is desirable that the Reserve Bank should be authorised to change the description of the schedule whenever any scheduled bank changes its name.

(5) The term 'value' for the purposes of the section should be clearly defined as the real or exchangeable value of the capital and reserve and not the nominal value as shown in the bank's books and provision should also be made for the settlement of any dispute in this regard.

This clause seeks to amend section 42 (6) on these lines.

(*Clause 56.*—Repeals.

Appendix K

The Bank of England Act, 1946

An Act to bring the capital of the Bank of England into public ownership and bring the Bank under the public control, to make provision with respect to the relations between the Treasury, the Bank of England, and other Banks and for purposes connected with the matters aforesaid. (14th February 1946).

Be it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in the present Parliament Assembled, and by the authority of the same as follows:—

1. (1) On the appointed day—

(a) The whole of the existing capital stock of the Bank (hereinafter referred to as "Bank stock") shall, by virtue of this Section, be transferred, free of all trusts, liabilities and encumbrances, to such person as the Treasury may by order nominate, to be held by that person on behalf of the Treasury;

(b) The Treasury shall issue, to the person who immediately before the appointed day is registered in the books of the Bank as the holder of any Bank stock, the equivalent amount of stock created by the Treasury for the purpose (hereinafter referred to as the "Government stock").

(2) The Government stock shall bear interest at the rate of 3% per annum; and the equivalent amount of Government stock shall, in relation to any person, be taken to be such that the sum payable annually by way of interest thereon is equal to the average annual gross dividend declared during the period of 20 years immediately preceding the 31st day of March 1945, upon the amount of Bank's stock of which the person was the registered holder immediately before the appointed day.

(3) The Government stock may be redeemed at par by the Treasury on or at any time after the 5th day of April, 1966, after giving not less than 3 months' notice in the London Gazette of their intention to do so.

(4) After the appointed day, no dividends on Bank stock shall be declared, but in lieu of any such dividends the Bank shall pay to the Treasury, on every 5th day of April and of October, the sum of

£ 873180/- or such less or greater sum as may from time to time be agreed upon between the Treasury and the Bank.

(5) The incidental and supplemental provisions set out in the First Schedule to this Act shall have effect with respect to the Government stock and to the sum payable to the Treasury under the last foregoing sub-section.

Court of Directors of the Bank.

2. (1) On the appointed day all persons who are, immediately before that day, holding office as Governor, Deputy Governor or Director of the Bank shall vacate their office, and on and after that day there shall be a Governor, a Deputy Governor and 16 Directors of the Bank who shall be the Court of Directors.

(2) The Governor, Deputy Governor and other members of the Court of Directors shall be appointed by His Majesty.

(3) The provisions of the Second Schedule to this Act shall have effect as respects the tenure of office, qualifications and employments of members of the court of Directors and meetings of the Court.

Consequential provision as to constitution and powers of the Bank.

3. (1) So much of any Enactment as limits the duration of the Bank as a body corporate shall cease to have effect.

(2) As from the appointed day, every member of the Court of Directors of the Bank shall be a member of the said body corporate, notwithstanding that he holds no Bank stock, and accordingly the members of the said body shall be the members for the time being of that Court together with the person who for the time being holds the Bank stock on behalf of the Treasury.

(3) As from the appointed day His Majesty may revoke all or any of the provisions of the Charters of the Bank except in so far as they incorporate the Bank, and thereafter, subject to the provisions of this Act, the Bank shall be constituted and regulated in accordance with so much of the said charters as remains unrevoked and such other charters as may from time to time be granted by His Majesty and accepted on behalf of the Bank by the Court of Directors.

(4) The enactments set out in the Third Schedule to this Act are hereby repealed as from the appointed day to the extent specified in the third column of that Schedule.

Treasury Directions to the Bank and relations of the Bank with other Banks.

4. (1) The Treasury may from time to time give such directions to the Bank as, after consultation with the Governor of the Bank, they think necessary in the public interest.

(2) Subject to such directions, the affairs of the Bank shall be managed by the Court of Directors in accordance with such provisions, (if any) in that behalf as may be contained in any charter of the Bank for the time being in force and byelaws made thereunder.

(3) The Bank, if they think it necessary in the public interest, may request information from and make recommendations to bankers, and may, if so authorised by the Treasury, issue directions to any banker for the purpose of securing that effect is given to any such request or recommendation—

Provided that:—

(a) No such request or recommendations shall be made with respect to the affair of any particular customer of a banker; and (b) before authorising the issue of any such directions the Treasury shall give the Banker concerned or such person as appears to them to represent him, and opportunity of making representations with respect thereto.

(4) If, at any time before any recommendations or directions are made or given in writing to a banker under the last foregoing sub-section, the Treasury certify that it is necessary in the public interest that the recommendations or directions should be kept secret, and the certificate is transmitted to the banker together with the recommendations or directions, the recommendations or directions shall be deemed for the purpose of Section 2 of the Official Secrets Act, 1911, as amended by any subsequent enactment, to be a document entrusted in confidence to the banker by a person holding office under His Majesty; and the provisions of the Official Secrets Acts, 1911 to 1939, shall apply accordingly.

(5) Save as provided the last foregoing sub-section, nothing in the Official Secrets Acts, 1911 to 1939, shall apply to any request, recommendations or directions made or given to a banker under sub-section 3 of this Section.

(6) In this section expression "banker" means any such person carrying on a banking undertaking as may be declared by the order of the Treasury to be a banker for the purpose of this section.

(7) Any order made under the last foregoing sub-section may be varied or revoked by a subsequent order.

(8) This section shall come into operation on the appointed day.

5. For the purposes of this Act—

Interpretation.

(a) the expression "Bank" means the Bank of England;

(b) The appointed day shall be such day as the Treasury may by order appoint, not being later than three months from the date of the passing of this Act.

6. (Short title) This Act may be cited as The Bank of England Act, 1946.

SCHEDULES.

First Schedule.

Incidental and supplemental provisions as to the Government Stock and sums payable by the Bank to the Treasury.

1. The principle of and interest on the Government Stock and any expenses incurred in connection with the issue or redemption thereof, shall be charged on and issued out of the Consolidated Fund of the United Kingdom or the growing produce thereof (hereafter in the Schedule referred to as "the Consolidated Fund").

2. There shall be paid to the Bank and the Bank of Ireland out of the Consolidated Fund such sums in respect of the management in any financial year of the Government Stock as may be agreed upon between the Treasury and those Banks respectively.

3. The interest on the Government Stock shall be payable on the 5th day of April and the 5th day of October in each year.

4. A full half year's interest on the Government Stock shall be payable on whichever of the dates mentioned in the last foregoing paragraph occurs first after the appointed day, and shall be deemed to have accrued from day to day during the six months preceding that date.

5. The interest on the Government Stock shall be paid out of the permanent annual charge for the National Debt.

6. Section 47 of the Finance Act, 1942 (which empowers the Treasury to make regulations as respect the transfer and registration of stock and registered bonds of the descriptions specified in part I of the 11th Schedule to that Act), and any regulation made thereunder which are in force immediately before the appointed day, shall have effect as if the Government Stock were included among the stocks mentioned in

the said Part I and among the stocks to which the said regulations apply.

7. Where immediately before the appointed day any dead person is registered in the books of the Bank as the holder or one of the joint holders of any Bank stock, any Government stock purporting to be issued to him, or to him, and the other joint holders, shall be deemed to be duly issued to his personal representatives, or to the survivors of the personal representatives of the last survivor of the joint holders, as the case may be; and, in the case of administrators, aswellas in the case of executors, this paragraph shall have effect notwithstanding that there is no grant of representation to them and shall after the appointed day.

8. The Government Stock issued in substitution for any bank stock shall be held in the same rights and on the same trusts and subject to the same powers, privileges, provisions, charges, restrains and liabilities as those in, on or subject to which the bank stock was held immediately before the appointed day, and so as to give effect to and not revoke any deed, will, order, mandate, notice or other instrument or testamentary or other disposition disposing of or affecting the Bank stock, and every such instrument or disposition shall take effect with reference to the whole or a proportionate part, as the case may be, of the substituted Government stock.

9. Trustees, executors and all other holders in any representative or fiduciary capacity of any bank stock may hold, dispose of or otherwise deal with the Government stock issued in substitution therefor in all respects as they might have held, disposed of or otherwise dealt with the Bank Stock.

10. Paragraphs 3, 4 and 5 of the Second Schedule to the National Loans Act, 1939 (which applies certain enactments to securities issued under that Act), shall have effect as if references to securities issued under that Act included references to the Government Stock.

11. The Government stock shall be subject to the provisions of the National Debt Act, 1870, so far as is consistent with the tenor of this Act.

12. The Treasury may for the purpose of providing any sums required by them in order to redeem the Government stock in accordance with Section 1 of this Act, raise money in any manner in which they are authorised to raise money under the National Loans Act 1939, and any securities created and issued to raise money under this paragraph shall be deemed for all purposes to have been created and issued under that Act.

13. The sums paid by the Bank to the Treasury in lieu of dividends on Bank stock shall be paid into the Exchequer, and issued out of the Consolidated Fund at such time as the Treasury may direct, and applied by the Treasury to the payment of any interest which would apart from this paragraph have fallen to be paid out of the permanent annual charge for the National Debt.

11. In charging the profits and gains of the Bank for the purposes of Incometax for any year of assessment, the sum paid by the Bank as aforesaid in that year shall be allowed as a deduction.

Second Schedule

SUPPLEMENTAL PROVISIONS AS TO COURT OF DIRECTORS.

1. The term of Office of the Government and of the Deputy Governor shall be five years.

2. The term of office of the Directors shall be four years, and four of them shall retire each year on tha anniversary of the appointed day,-

Provided that, of the directors appointed to take office on the appointed day, four shall be appointed to hold office until the first anniversary of that day and shall then retire four shall be appointed to hold office until the second anniversary of that day and shall then retire, and four shall be appointed to hold office until the third anniversary of that day and shall then retire.

3. A person who has held the office of Governor, Deputy Governor or Director shall be eligible for reappointment to that office or for appointment to any other of those offices.

4. A person shall be disqualified for holding the office of Governor, Deputy Governor or Director if –

(a) he is a member of the Commons House of Parliament or a Minister of Crown, or a person serving in a Government Department in employment in respect of which remuneration is payable out of moneys provided by Parliament; or

(b) he is an alien within the meaning of the British Nationality and status of Alients Acts, 1914 to 1943; or

(c) he is subject to any disqualification which may be imposed by the charter of the Bank;

and a person shall vacate any such office if he becomes subject to any such disqualification.

5. Where the office of a Director is vacated under the foregoing paragraph, or by death or resignation, a person appointed to fill the vacancy shall hold office until the time when the person in whose place he was appointed would regularly have retired and shall then retire.

6. Not more than four of the Directors may be employed to give their exclusive services to the Bank.

7. The following provisions shall have effect as respects any meeting of the Court of Directors held on or after the appointed day but before a charter making provision for the matters dealt with by this paragraph has been granted and accepted under this Act:-

(a) The meeting may be called by the Governor or Deputy Governor in such manner as he may determine;

(b) A quorum shall consist of not less than 8 directors together with the Governor or deputy Governor;

(c) When a quorum is present the Court may act notwithstanding that a vacancy exists among the members of the Court.

Third Schedule

ENACTMENTS REPEALED

Session and Chapter.	Short title.	Extent of repeal
5 & 6 W & M C. 20.	The Bank of England Act, 1694.	Section 25.
8 & 9 Will. 3 C. 20.	The Bank of England Act, 1696	Sections 30, 32, 45 and 49.
6 Ann C. 30	The Bank of England Act, 1708	Sections 60, 61, 70 and 77.
8 Ann C. 1	The Bank of England Act, 1709.	The whole Act.
3 Geo, I C. 8	The Bank of England Act, 1716	Section 38.
15 Geo. II. C. 13	The Bank of England Act, 1741.	In Sec. 8 the words from "disabled" to "Parliament, or be"
39 & 40 Ge. III. C. 28	The Bank of England Act. 1800	In Sec. 13 the words from "and also subject" to the end of the Section;
		In Sec. 15 the

Session and Chapter.	Short title.	Extent of repeal
		words from "subject to redemption" to "and not otherwise" Sec 16
3 & 4 Will. IV. C. 98.	The Bank of England Act, 1833	In Section 1 the words "for the period" to the end of the Section; In Sec. 14 the words from "subject nevertheless" to the end of the Section.
7 & 8 Vic. C. 32	The Bank Charter Act; 1844.	Section 27 except in so far as it authorises the redemption of the debt due from the public to the Bank of England.
33 & 34 Vic. C. 71.	The National Debt Act; 1870.	Section 72.
55 & 56 Vic. C.48	The Bank Act, 1892.	Sub-section 1 of Section 7.

Appendix L

The Indian Trust Act 11 of 1882.

Sec. 20. Investment of trust money.

Where the trust property consists of money and cannot be applied immediately or at an early date to the purposes of the trust, the trustee is bound (subject to any direction contained in the Instrument of trust) to invest the money of the following securities, and on no other:—

(a) In promissory notes, debentures, stock or other securities of any Provincial Government or of the Central Government, or of the United Kingdom of Great Britain and Ireland—

Provided that securities, both the principle where of and interest whereon shall have been fully and unconditionally guaranteed by any such Government, shall be deemed for the purposes of this clause, to be securities for such Government ;

(b) In bonds, debentures and annuities chargded or secured by the Imperial Parliament on the revenues of India or of the Federation or of any Province.—

Provided that, after the 15th day of February 1916, no money shall be invested in any such annuity unless a sinking fund has been established in connection with such annuity ; but nothing in this proviso shall apply to investments made before the date aforesaid;

(bb) In India, 3½ % stock, India 3% stock, India 2½% stock or any any other capital stock which may at any time hereafter be issued by the Secretary of State for India in Council under the authority of an Act of Parliament and charged on the revenue of India (or which may be issued by the Secretary of State on behalf of the Governor General in Council under the provisions of Part XIII of the Government of India Act, 1935).

(c) In stock or debenture of, or shares in Railway or other companies the interest whereon shall have been guaranteed by the Secretary of state for India in Council or by the Central Government or in the Debentures of the Bombay (Provincial) Co-operative Bank Ltd., the interest whereon shall have been guaranteed by the Secretary of state for India in Council (or the Provincial Government of Bombay).

(d) In debentures or other securities for money issued under the authority of any Act of a Legislature established in British India, by or on behalf of any Municipal body, Port Trust or City Improvement Trust in any Presidency Town, or in Rangoon Town, or by or on behalf of the Trustees of the Port of Karachi.

Appendix M

Repealed Sections 277-F to 277-N of the Indian Companies Act 1913 relating to Banking Companies.

277-F. A 'banking company' means a company which carries on as its principal business the accepting of deposits of money on current account or otherwise, subject to withdrawal by cheque, draft or order, notwithstanding that it engages in addition in any one of the following forms of business namely:-

Definition of banking company.

(1) the borrowing, raising or taking up of money: the lending or advancing of money either upon or without security; the drawing, accepting, discounting, buying, selling, collecting and dealing in bills of exchange, hoondees, promissory notes, coupons, drafts, bills of lading, railway receipts, warrants debentures, certificates, scrips and other instruments, and securities whether transferable or negotiable or not; the granting and issuing of letters of credit, 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 and securities and investments of all kinds; the purchasing and selling of bonds, scrips or other forms of securities on behalf of constituents or others; negotiating of loans and advances; the receiving of all kinds of bonds, scrips or valuables on deposit, or for safe custody or otherwise; the collecting and transmitting of money and securities;

(2) acting as agents for Governments or local authorities or for any other person or persons; the carrying on of agency business of any description other than the business of a managing agent of a company not being a banking company including the power to act as attorneys and to give discharges and receipts;

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

(4) the promoting, effecting, insuring, guaranteeing, underwriting, participating and in managing and carrying out of any issue, public or

private, of State, Municipal or other loans or of share stock, debenture stock of any company, corporation or association and the lending of money for the purpose of any such issue;

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

(6) promoting or financing or assisting in promoting or financing any business undertaking or industry either existing or new and developing or forming the same either through the instrumentality of syndicates or otherwise;

(7) acquisition by purchase, lease, exchange, hire or otherwise of any property immovable and any rights or privileges which the company may think necessary or convenient to acquire or the acquisition of which in the opinion of the company is likely to facilitate the realisation of any securities held by the company or to prevent or diminish any apprehended loss or liabilitiy;

(8) managing, selling and realising all property movable and immovable which may come into the possession of the company in satisfaction or part satisfaction of any of its claims;

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

(10) undertaking any executing trusts;

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

(12) taking or otherwise acquiring and holding shares in any other company having objects similar to those of the company;

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

(14) the acquisition, construction, maintenance and alteration of any

building or work necessary or convenient for the purposes of the company;

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

(16) acquiring and undertaking the whole or any part of the business of any person or company, when such business is of a nature enumerated or described in the section;

(17) doing all such other things as are incidental or conducive to the motion or advancement of the business of the company.

Provided that any company which uses as part of the name under which it carries on at business the word "bank" or "banking" shall be deemed to be a banking company notwithstanding that the acceptance of deposits or money on current account or otherwise subject to withdrawal by cheque, draft or order is not shown to be the principal business of the company.

277-G. Limitation of activities of banking company.

(1) No Company formed after the commencement of the Indian Companies (Amendment) Act 1936, for the purpose of carrying on business as a banking company or which uses as part of the name under which it proposes to carry on business the word 'bank', 'banker' or 'banking' shall be registered under this Act unless the memorandum limits the objects of the company to the carrying on of the business of accepting deposits of money on current account or otherwise subject to withdrawal by cheque, draft or otherwise along with some or all of the forms of business specified in S. 277-F.

(2) No banking company whether incorporated in or outside British India shall after the expiry of two years from the commencement of the said Act carry on any form of business other than those specified in S. 277-F.

Provided that the Governor-General in Council may, by notification in the Gazette of India, specify in addition to the business set forth in clauses (1) to (17) of S. 277-F other forms of business which it may be lawful under this section for a banking company to engage in.

277 H. Banking company not to employ managing agent.

No banking company shall after enquiry of two years from the commencement of the Indian Companies (Amendment) Act, 1936, employ or be managed by a managing agent other than a banking company for the management of the company.

277-HH. No banking company whether incorporated in or outside British India which carries on business in India shall after the expiry of two years from the commencement of the Indian Companies (Amendment) Act, 1944 employ or be managed by a managing agent or any person whose remuneration takes the form of commission or a share in the profits of the company or any person having a contract with the company for its management for a period exceeding five years at any one time.

Prohibition of employment of managing agents and restriction on certain forms of employment.

Provided that the period of five years shall for the purposes of this section be computed from the date on which this section comes into force;

Provided further that any such contract may be renewed or extended for a further period not exceeding five years at a time if and so often as the directors thinks fit.

277-I (1) Notwithstanding anything contained in s. 103 no banking company incorporated under this Act on or after the 15th day of January 1937 shall commence business unless shares have been allotted to an amount sufficient to yield a sum of at least fifty thousand rupees as working capital and unless as a declaration duty verified by an affidavit signed by the directors and manager that such a sum has been received by way of paid up capital has been field with the Registrar.

Restriction on commencement of business and conditions for carrying on business by banking company.

(2) No banking company whether incorporated in or outside British India on or after the 15th day of January 1937 shall after the expiry of two years from the commencement of the Indian Companies (Amendment) Act, 1944 carry on business in British India unless it satisfies the following conditions namely:—

(a) that the subscribed capital of the company is not less than half the authorised capital and the paid up capital is not less than half the subscribed capital; and

(b) that the capital of the company consists of ordinary shares only or ordinary shares and such preferance shares as may have been issued before the commencement of the Indian Companies (Amendment) Act, 1944 only; and

(c) that the voting rights of all shareholders are strictly proportionate to the contribution made by the shareholders to the paid up capital of the company.

277-J. No banking company shall create any charge upon any unpaid capital or the company, and any such charge shall be invalid.

Prohibition of charge on unpaid capital.

277-K. (1) Every banking company shall, after the commencement of the Indian Companies (Amendment) Act, 1936, maintain a reserve fund.

Reserve fund.

(2) Every banking company shall out of the declared profit of each year and before any dividend is declared trsnsfer a sum equivalent to not less than twenty per cent. of such profits to the reserve fund until the amount of the said fund is equal to the paid up capital.

(3) A banking company shall invest the amount standing to the credit of its reserve fund in Government securities or in securities mentioned or referred to in S. 20 of the Indian Trust Act, 1882, or keep deposited in a special account to be opened by the company for the purpose in a scheduled banks as defined in clause (e) of S. (2) of the Reserve Bank of India Act, 1934:

Provided that the provision of the sub-section shall not apply to a banking company incorporated before the commencement of the Indian Companies (Amendment) Act, 1936, till after the expiry of two years from the commencement of the said Act.

277-L. (1) Every banking company shall maintain by way of cash reserve in cash a sum equivalent to at least one and a half per cent. of the time liabilities and fire per cent. of the demand liabilities of such company and shall filo with the registrar before the tenth day of every month a statement of the amount so held on the Friday of each week of the preceding month with particulars of the time and demand liabilities of each such day.

Cash, reserve.

(2) For the purposes of sub-section (1) 'demand liabilities' means liabilities which must be met on demand, and 'time liabilities' means liabilities which are not demand liabilities.

(3) Nothing in this section or in S. 277-K shall apply to a scheduled bank as defined in clause (e) of S. 2 of the Reserve Bank of India Act, 1934.

(4) If default is made in complying with the requirements of S. 277-G, S. 277-H, S. 277-HH, S. 277-J, S. 277-I, S. 277-K or S. 277-M or with the requirements of this section as to the maintenance of a cash reserve, every director or other officer of the company who is knowingly and wilfully a party to the default shall be liable to a fine not exceeding five hundred rupees for every day during which the default continues, and if default is made in complying with the requirements of this section as to the filing of the statement referred to in sub-section (1), to a fine not exceeding one hundred rupees for every day during which the default continues.

277-M. (1) A banking company shall not form or hold shares in any subsidiary company except a subsidiary company of its own formed for the purpose of undertaking and executing trusts, undertaking the administration of estates, as executor, trustee or otherwise and such other purposes set forth in S. 277-F as are incidental to the business of accepting deposits of money on current account or otherwise.

Restriction on nature of subsidiary companies.

(2) Save as provided in subsection (1) a banking company shall not hold any shares in any company whether as pledgee, mortgagee or absolute owner of an amount exceeding forty percent of the issued capital of that company:

Provided that nothing in this subsection shall apply to shares held by a banking company before the commencement of the Indian Companies (Amendment) Act 1936 (XXII of 1936).

277-N. (1) The Court may on the application of a banking company which is temporarily unable to meet its obligations make an order 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 extent the period.

Power of Court to stay proceedings.

(2) No such application shall be maintainable unless accompanied by a report of the registrar;

Provided, however, the Court may, for sufficient reasons, grant interim relief, even if the application is not accompanied by such report.

(3) The registrar shall for the purposes of his report be entitled at the cost of the company to investigate the financial condition of the company and for such purpose to have the books and documents of the company examined by an accountant holding a certificate issued under S. 144.

Appendix N.

The Industrial Disputes (Banking & Insurance Companies) Ordinance 1949

The Government of India have on 2-5-19, promulgated an ordinance providing for the adjudication of Industrial disputes concerning certain banking and insurance companies.

The Ordinance, which extends to all the Provinces of India and comes into force at once, provides for the prohibition of references by Provincial Governments of certain industrial disputes for adjudication, enquiry and settlement.

The Ordinance lays down that "notwithstanding anything contained in any other law it, shall not be competent for a Provincial Government or any officer or authority subordinate to such Government to refer an industrial dispute concerning any banking or insurance company, or any matter relating to such dispute, to any tribunal or authority for adjudication, inquiry or settlement."

It also lays down certain provisions for abatement of proceedings relating to disputes pending before provincial tribunals and the reference of such disputes to tribunals constituted by the Central Government, and the powers of the Central Government to refer disputes in respect of which awards or decisions have been made, for readjudication.

The ordinance provides as follows:

In exercise of the powers conferred by Section 42 of the Government of India Act, 1935 the Governor-General is pleased to make and promulgate an ordinance called the Industrial Disputes (Banking and insurance companies) Ordinance, 1949, to provide for the adjudication of industrial disputes concerning banking and insurance companies having branches or other establishments in more than one Province. The Ordinance extends to all the Provinces of India and shall come into force at once.

In this Ordinance unless there is anything repugnant in the subject or context, the expressions "Award", "Banking company", "Industrial dispute" and "Insurance company" have the meanings respectively assigned to them in Section 2 of the Industrial Disputes Act 1947 (XIV of 1947) as amended by this Ordinance.

In Section 2 of the Industrial Disputes Act, 1947 (hereinafter referred to as the said Act. (1) In sub clause (1) of Clause (a) for the words "a mine oilfield", the words "a banking or an insurance company, a mine, an oilfield" shall be substituted; (2) After Clause (b) the following clause shall be inserted; namely "(b) 'Banking company' means a banking company as defined in Section 5 of the Banking Companies Act, 1949. (X of 1949) having branches or other establishments in more than one province, and includes the Imperial Bank of India"; (3) After Clause (k) the following Clause shall be inserted, namely "(KK) 'Insurance company' means an insurance company as defined in Section 2 of the Insurance Act 1938 (IV of 1938) having branches or other establishments in more than one province."

Bank and Insurance Companies

Notwithstanding anything contained in any other law, it shall not be competent for a Provincial Government or any officer or authority subordinate to such Government to refer an industrial dispute concerning any banking or insurance company, or any matter relating to such dispute, to any tribunal or other authority for adjudication, inquiry or settlement.

Under the Ordinance where any industrial dispute concerning any banking or insurance company, or any matter relating to such dispute has, before the commencement of the Ordinance, been referred by a Provincial Government or any officer or authority subordinate to such Government to any tribunal or other authority for adjudication or settlement, and any proceedings in respect of or arising out of such reference are immediately before such commencement, pending before any tribunal or other authority, then on the date of such commencement such reference shall be deemed to be withdrawn and all such proceedings shall abate.

The Central Government shall, as soon as may be after the commencement of this Ordinance, by order in writing refer under Section 10 of the said Act every industrial dispute to which the provisions of Sub-Section (1) apply to an industrial tribunal constituted under the said Act for adjudication.

Where any award or decision has been made in respect of any industrial dispute concerning any banking or insurance company by any tribunal or other authority constituted or appointed by a Provincial Government, or any officer or authority subordinate to such Government, then the Central Government may, notwithstanding that the said award or decision is in force, by order in writing, refer under Section 10 of the

said Act the dispute or any of the matters in dispute to an industrial tribunal constituted under the said Act for readjudication, and stay the implementation of the award or decision so made or any part of such award or decision until the industrial tribunal to which the dispute or any of the matters in dispute is referred for readjudication has submitted its award, or for such further period as the Central Government may consider necessary.

After the industrial tribunal to which the dispute or any of the matters in dispute has been so referred for readjudication has submitted its award under Sub-Section (1) of Section 15 of the said Act, the Central Government may, by order in writing, declare that the award or decision previously made in respect of such dispute by the tribunal or other authority constituted or appointed by the Provincial Government or any officer or authority subordinate to such Government or such part of that award or decision as may be specified in the order shall cease to be in operation.

Ordinance No. VI of 1949.*

An Ordinance to provide for the adjudication of industrial disputes concerning certain banking and insurance companies.

Whereas an emergency has arisen which makes it necessary to provide for adjudication of industrial disputes concerning banking and insurance companies having branches or other establishments in more than one Province ;

Now, therefore, in exercise of the powers conferred by Section 42 of the Government of India Act, 1935 (26 Geo. 5, c 2), the Governor-General is pleased to make and promulgate the following Ordinance:—

1. *Short title, extent and commencement*—(1) This Ordinance may be called the Industrial Disputes (Banking and Insurance Companies) Ordinance, 1949.

(2) It extends to all the Provinces of India.

(3) It shall come into force at once.

2. *Definitions.*—In this Ordinance, unless there is anything repugnant in the subject or context, the expressions "award"; "banking company", "industrial dispute" and "insurance company" have the

* *Published in the Gazette of India, extraordinary, dated the 30th April 1949.*

meanings respectively assigned to them in Section 2 of the Industrial Disputes Act, 1947 (XIV of 1947), as amended by this Ordinance.

3. Amendment of Section 2, Act XIV of 1947.—In Section 2 of the Industrial Disputes Act, 1947 (hereinafter referred to as the said Act),—

(1) in sub-clause (i) of clause (a), for the words "a mine, oil-field" the words "a banking or an insurance company, a mine, an oil-field " shall be substituted ;

(2) after clause (b), the following clause shall be inserted namely :—

"(bb) ' banking company' means a banking company as defined in Section 5 of the Banking Companies Act, 1949 (X of 1949) having branches or other establishments in more than one Province, and includes the Imperial Bank of India" ;

(3) after clause (k), the following clause shall be inserted namely :—

"(kk) 'insurance company' means an insurance company as defined in Section 2 of the Insurance Act, 1938 (IV of 1938) having branches or other establishments in more than one Province ;"

4. *Prohibition of references by Provincial Governments of certain industrial disputes for adjudication, inquiry or settlement.*—Notwithstanding anything contained in any other law, it shall not be competent for a Provincial Government or any officer or authority subordinate to such Government to refer an industrial dispute concerning any banking or insurance company, or any matter relating to such dispute, to any tribunal or other authority for adjudication, inquiry or settlement.

5. *Abatement of proceedings relating to disputes pending before Provincial tribunals and reference of such disputes to tribunals constituted by the Central Government.*—(1) Where under any law any industrial dispute concerning any banking or insurance company or any matter relating so such dispute has, before the commencement of this Ordinance, been referred by a Provincial Government or any officer or authority subordinate to such Government to any tribunal or other authority for adjudication or settlement and any proceedings in respect of or arising out of such reference were immediately before such commencement pending before any tribunal or other authority, then on the date of such commencement such reference shall be deemed to be withdrawn and all such proceedings shall abate.

(2) The Central Government shall, as soon as may be after the commencement of this Ordinance, by order in writing, refer under Section

10 of the said Act every industrial dispute to which the provisions of sub-section (1) apply to an Industrial Tribunal constituted under the said Act for adjudication.

6. *Powers of Central Government to refer disputes in respect of which awards or decisions have been made for readjudication.*—Where any award or decision has been made in respect of any industrial dispute concerning any banking or insurance company by any tribunal or other authority constituted or appointed by a Provincial Government, or any officer or authority subordinate to such Government, then the Central Government may, notwithstanding that the said award or decision is in force, by order in writing refer under Section 10 of the said Act the dispute or any of the matters in dispute to an Industrial Tribunal constituted under the said Act for re-adjudication and stay the implementation of the award or decision so made or of any part of such award or decision until the Industrial Tribunal to which the dispute or any of the matters in dispute is referred for re-adjudication has submitted its award or for such further period as the Central Government may consider necessary.

(2) After the Industrial Tribunal to which the dispute or any of the matters in dispute has been so referred for re-adjudication has submitted its award under sub-section (1) of Section 15 of the said Act, the Central Government may, by order in writing, declare that the award or decision previously made in respect of such dispute by the tribunal or other authority constituted or appointed by the Provincial Government or any officer or authority subordinate to such Government or such part of that award or decision as may be specified in the order shall cease to be in operation.

COMPARATIVE TABLE OF CORRESPONDING SECTIONS OF 1944 BILL, 1948 BILL & 1949 ACT.

1944 Bill	1948 Bill	1949 Act	1944 Bill	1948 Bill	1949 Act
1	1	1	6 (1) (m)	6 (1) (j)	6 (1) (j)
2	2	2	6 (1) (n)	6 (1) (k)	6 (1) (k)
3	3	3	6 (1) (o)	6 (1) (l)	6 (1) (l)
4 (1)	4 (1)	4 (1)	6 (1) (p)	6 (1) (m)	6 (1) (m)
4 (2)	4 (2)	4 (2)	6 (1) (q)	6 (1) (n)	6 (1) (n)
4 (3)	4 (3)	4 (3)	6 (1) (r)	6 (1) (o)	6 (1) (o)
–	4 (4)	4 (4)	7 (1)		
5 (1) (a)	5 (1) (a)	5 (1) (a)	& (2)	7	7
5 (1) (b)	5 (1) (b)	5 (1) (b)	—	7 Expln	7 Expln
5 (1) (c)	5 (1) (c)	5 (1) (c)	—	9/1st Proviso	9/st 1 Proviso
–	5 (1) (c) Expln.	5 (1) (c) Expln-			
–	5 (1) (d)	5 (1) (d)	10	10(1)	10(1)
5 (1) (d)	5 (1) (e)	5 (1) (e)	—	10(2)	10(2)
5 (1) (e)	5 (1) (f)	5 (1) (f)	11(1)	11(3)	11(3)
–	(g)	(g)	11(3)	11(2)	11(2)
5 (1) (f)	5 (1) (h)	5 (1) (h)	—	11(1)	11(1)
–	(i)	(i)	—	11(4)	11(4)
5 (1) (g)	5 (1) (j)	5 (1) (j)	—	11(5)	11(5)
5 (1) (h)	5 (1) (k)	5 (1) (k)	—	11(6)	11(6)
5 (1) (i)	5 (1) (l)	5 (1) (l)	11 (2)	12	12
5 (1) (j)	5 (1) (m)	5 (1) (m)	—	12 Proviso	12 Proviso
–	5 (1) (n)	5 (1) (n)			
–	5 (2)	5 (2)			
6 (1) (a)	6 (1) (a)	6 (1) (a)			
6 (1) (b)	6 (1) (b)	6 (1) (b)	—	13	13
6 (1) (c)	6 (1) (c)	6 (1) (c)	12	14	14
6 (1) (d)	6 (1) (d)	6 (1) (d)	—	15	15
6 (1) (e)	6 (1) (e)	6 (1) (e)	—	16	16
6 (1) (f)	—	—	13	17	17
6 (1) (g)	—	—	–	17 Expl	17 Expl
6 (1) (h)	6 (1) (f)	6 (1) (f)			
6 (1) (i)	6 (1) (g)	6 (1) (g)	14	18	18
6 (1) (j)	6 (1) (h)	6 (1) (h)	15 (1)	19 (1)	19 (1)
6 (1) (k)	6 (1) (i)	6 (1) (i)	15 (2)	19 (2)	19 (2)
6 (1) (l)	—	—	—	19 (3)	19 (3)

1944 Bill	1948 Bill	1949 Act	1944 Bill	1948 Bill	1949 Act
16	20 (1)	20 (1)	28 (1)	35 (1)	35 (1)
—	20 (2)	20 (2)		to (3)	to (3)
—	20 (3)	20 (3)	28 (2)	35 (4)	35 (4)
—	21	21	28 (3)	35 (5)	35 (5)
17 (1)	22 (1)	22 (1) &	—	36	36
	& 22 (2)	22 (2)	30	37	37
17 (2)	22 (3)	22 (3)	31 (1)	38 (1)	38 (1)
17 (3)	22 (4)	22 (4)		& (2)	& (2)
—	22 (5)	22 (5)	31 (2)	38 (3)	38 (3)
—	23	23	31 (3)	38 (4)	38 (4)
18	24	24	32	39	39
19	25	25	33	40	40
21	26	26	34	41	41
20 (1)	27 (1)	27 (1)	35	42	42
20 (1)	27 (2)	27 (2)	36	43	43
20 (3)	28	28	37	44	44
22 (1)	29 (1)	29 (1)	—	45	45
to (3)	to (3)	to (3)	29	46	46
—	29 (4)	29 (4)	—	47	47
23 (1)	30 (1)	30 (1)	—	48	48
23 (2)	30 (2)	30 (2)	—	49	49
—	30 (3)	30 (3)	—	50	50
24	31	31	—	51	51
25	32 (1)	32 (1)	38	52	52
—	32 (2)	32 (2)	—	53	53
26	33	33	—	—	54
27	34	34	39	54	55
			40	55	56

Appendix O

Documents, Returns, etc. to be filed etc., under the Banking Companies Act, 1949.

Nature of Document	Section	Time allowed
1. Return as to unsecured loans or advances granted to companies in which it or any of its directors is interested	20(2)	To be filled before the close of the succeding month
2. Application to Reserve Bank for licence	22(2)	To be made by existing companies before 16-9-49 and by others before commencing business
3. Particulars of assets maintained in gold, cash, or unencumbered approved securities	24(3)	Not later than 15 days after the end of the month to which it relates
4. Particulars as to assets in the provinces of India	25(2)	Within one month from the end of every quarter
5. Particulars as to unclaimed deposits	26	Within thirty days after the close of each calendar year
6. Particulars as to assets and liabilities in the provinces of India	27(1)	To be filed before the close of the succeding month
7. Balance-sheet and accounts and auditor's report	31	Three copies To be sent to Reserve Bank within three months from end of calendar year
8. Balance-sheet and accounts and auditor's report	32	Three copies to be sent to Registrar

Appendix P

The Industrial Disputes Act XIV of 1947, S.2 (a)

2. (a) 'appropriate Government' means-(i) in relation to any industrial dispute concerning any industry carried on by or under the authority of the central Government by the Federal Railway Authority or by a railway company operating a federal railway or in relation to an industrial dispute concerning a mine, oilfield, or a major port, the Central Government and (ii) in relation to any other industrial dispute the Provincial Government.

Appendix Q

Disputes in Bank and Insurance Firms

PROCEDURE FOR SETTLEMENT

The Industrial Disputes (Banking and Insurance Companies) Ordinance, recently promulgated by the Central Government, appears to have created doubts regarding the agency for dealing with disputes in banks and insurance companies having branches or establishments in more than one province and the validity of existing awards, a number of which have been passed under provincial laws, says a Press Note dated 16-5-49, issued by the Ministry of Labour.

As these disputes have now come within the Central sphere, the Chief Labour Commissioner to the Government of India, the Regional Labour Commissioners and the Consiliation Officers of the Central Government posted at various places are hereafter responsible for dealing with them.

Persons who are concerned with disputes covered by the Ordinance should, therefore approach the Conciliation Officer or the Regional Labour Commissioner having jurisdiction over their area instead of corresponding direct with the Central Government as the latter will only cause delays in disposal.

Though adjudication or allied proceedings pending before a provincial tribunal or other authority abate on the commencement of the Ordinance, the Central Government propose to refer all such disputes to the Central Tribunal which is being constituted. The Government hope that employers will do nothing either by way of retrenchment of staff or otherwise, which they would not have been competent to do but for the abatement of the pending proceedings.

The provision in the Ordinance regarding awards and decisions already passed by tribunals or other competent authorities seems to have been misunderstood. All awards or decisions passed by competent authorities which were in force on the date of commencement of the Ordinance continue to be binding until their implementation is stayed by a specific order of the Central Government. The Ordinance does not automatically have the effect of wiping off all previous awards and decisions. In view of certain complaints received by the Government that there is a tendency to treat existing awards and decisions as null and void, the Central Government wish to utter a warning that persons violating or refusing to implement an existing awards or decision which is binding on them will render themselves liable to prosecution under the law.

Appendix R

The Banking Companies Rules, 1949.

[As amended upto 12th April 1949]

Notification No. F. 4 (55) *F. 1/49 dated the 26th March 1949**

In exercise of the powers conferred by Section 52 of the Banking Companies Act, 1949 (X of 1949), and after consultation with the Reserve Bank, the Central Government is pleased to make the following rules.

1. *Short title and commencement.*— (1) These rules may be called the Banking Companies Rules, 1949.

2. They shall come into force at once.

2. *Interpretation.*—In these rules,

(a) "the Act" means the Banking Companies Act, 1949;

(b) "principal office of the Reserve Bank" means the office of the Reserve Bank to which the returns prescribed under the Act or these rules are required to be submitted.

(c) "principal office of the banking company" means the office of the banking company which will be responsible for the submission of returns prescribed under the Act or these rules;

(d) "quarter" means a period of three months ending on the last day of March, June, September or December of any year; and

(e) "place of business" of a banking company includes any sub-office, pay office, sub-pay office, or any place of business at which deposits are received, cheques cashed or moneys lent.

(2) In the application of these rules to Acceding States all references to the Provinces of India shall be construed as including references to the Acceding States to which the Act extends.

3. *Submission of returns.*—(1) A return prescribed under the Act or these rules shall be submitted in the form prescribed for the purpose or as near thereto as circumstances admit.

(2) Such return shall be submitted in the manner hereinafter provided:—

**Published in the Gazette of India, Part I, Sec I, dated the 26th March 1949.*

(i) By a banking company incorporated in a Province of India, from its registered office to the office of the Reserve Bank situated in the Province in which the banking company has its registered office.

(ii) By the banking company incorporated elsewhere than in a Province of India and having a principal place of business as declared in terms of Section 277 (1) (c) of the Indian Companies Act, from that principal place of business to the office of the Reserve Bank situated in the Province in which the banking company has it principal place of business.

(iii) In any other case, from such office of the banking company to such office of the Reserve Bank as may be specified by the Reserve Bank on an application to be made in this behalf to the Reserve Bank of India, Department of Banking Operations at Bombay.

(iv) Notwithstanding anything contained in clauses (i), (ii) and (iii) the Reserve Bank may, at any time, direct that the returns prescribed under the Act or these rules shall be submitted from any specified office of a banking company to any specified office of the Reserve Bank.

(3) Wherever a return prescribed under the Act or these rules relates to a particular day or date, and where such day or date is not a holiday for all the offices of a banking company, the return shall be prepared on the basis of the figures of that day or date in respect of offices working on that day or date, and the preceding working day's figures in respect of offices where that day or date is a holiday.

(4) A banking company shall, within one month from the commencement of these rules or from the commencement of business, whichever is later, intimate to the principal office of the Reserve Bank, the address of its principal office and shall intimate to that office any change in such address within one month of such change.

4. *List of Officers* —(1) (i) A banking company shall not later than one month from the commencement of these rules or from the commencement of business, whichever is later, send to the principal office of the Reserve Bank a written statement containing a list of

(a) the names, the official designations and specimen signatures of the officers authorised to sign on behalf of the banking company returns required under the Act or these rules and

(b) the names and addresses of the directors of the banking company.

(ii) Any change in the list referred to in clause (i) of this sub-rule shall be intimated to the principal office of the Reserve Bank within one month from the occurrence of such change.

(2) A banking company incorporated outside the Provinces of India, which at the commencement of these rules has place of business in any Province of India, and every such company which after the commencement of these rules establishes such a place of business within any Province of India, shall, within one month from the commencement of these rules or from the establishment of such place of business, as the case may be, furnish to the principal office of the Reserve Bank the full address of the principal place of business declared in terms of Section 277 (1) (e) of the Indian Companies Act and the name and address of one or more persons resident in any Province of India authorised to accept on behalf of the company any notice or order required to be served on the company under the Act or these rules and shall intimate to the principal office of the Reserve Bank any change in such name or address within one month of the occurrence of the change:

Provided that information furnished by a banking company under rule 4 of the Banking Companies (Control) Rules, 1948, shall be deemed to have been furnished under this rule.

5. *Remuneration paid to directors and officers.*—A banking company shall, not later than the 31st January each year, send to the principal office of the Reserve Bank a statement in Form I showing the remuneration paid during the previous calendar year to the directors and officers of the company specified therein.

6. *Deposits.*—(1) The deposits specified in sub-section (2) of Section 11 of the Act shall be maintained at the principal office of the Reserve Bank.

Provided that if company desires to keep either the whole or part of the deposit in sterling securities, such securities will be held at the London office of the Reserve Bank, which shall hold it on behalf of the principal office of the Reserve Bank.

(2) The value of each security deposited under sub-rule (1) shall be estimated at its market rate, ex-dividend.

(3) Deposits in sterling securities shall not be brought on the books of the principal office of the Reserve Bank until that office has received an intimation from the London office of the Reserve Bank and the date on which such deposits are brought on the books of the principal office of the Reserve Bank shall be the date of deposit for the purposes of sub-section (2) of Section 11 of the Act.

(4) Securities shall be duly transferred to the Reserve Bank by the banking company.

(5) Upon receipt of a deposit under sub-rule (1) of on intimation of deposit under sub-rule (3), the principal office of the Reserve Bank shall, as soon as possible, send to the principal office of the banking company a certificate in Form II.

(6) The market value of sterling securities shall be converted at 1s. 6d. to the rupee.

7. *Withdrawals of deposits.*—The principal office of the Reserve Bank shall not be bound to return securities actually deposited, but may substitute therefor new scrip of securities of the same description and amount.

8. *Changes of deposits.*—(1) The London office of the Reserve Bank will permit the withdrawal of sterling securities only under instructions from the principal office of the Reserve Bank.

(2) When the form or amount of deposit is changed by reason of a subsequent deposit or withdrawal, the principal office of the Reserve Bank shall, as soon as possible send to the principal office of the banking company a fresh certificate in Form II.

9. *Maturing of security deposits.*—When a security in deposit matures or when any yield on such a security ceases to accrue, the principal office of the Reserve Bank shall not be bound to inform the banking company; but upon the receipt of a requisition in writing from the banking company, the principal office of the Reserve bank shall, as soon as possible, collect the discharge value and hold the amount in deposit for purposes of sub-section (2) of Section 11 of the Act.

10. *Interest on deposits.*—(1) No interest shall be payable on such deposits.

(2) Interest on sterling securities will on realisation be credited, if so desired, as soon as possible, to an account in London, subject to the usual charges. In other cases such interest will be remitted by the London office to the principal office of the Reserve Bank at the prevailing rate of exchange after deduction of the usual charges.

(3) The principal office of the Reserve Bank shall credit, as soon as possible, the current account of the banking company maintained with it with the interest realised on rupee securities, subject to the usual charges and with the amounts received, if any, from the London office of the Reserve Bank under sub-rule (2).

11. *Licensing of banking companies.*—A company desiring to have a licence under Section 22 of the Act shall apply to the principal office of the Reserve Bank in a form specified below, namely :

(a) in the case of a company incorporated in any Province of India and desiring to commence banking business, in Form V.

(b) in the case of a company incorporated in any Province of India and in existence at the commencement of the Act, in Form VI and

(c) in the case of a company incorporated outside the Province of India and desiring to commence, carry on banking business in any Province of India, in Form VII.

12. *Opening of new places of business.*—An application by a banking company for permission to open a new place of business or change the location of an existing place of business under Section 23 of the Act shall be submitted to the principal office of the Reserve Bank in Form VIII.

13. *List of offices.*—A banking company shall within a period of one month from the close of every quarter, send to the principal office of the Reserve Bank a list in Form IX of all its offices in the Provinces of India at which it was doing business during that quarter.

14. *Publication of approved currencies.*—The Reserve Bank shall, not later than one month from the commencement of these rules, by notification in the Gazette of India, publish for the purpose of section 25 of the Act a list of currencies in which export bills drawn in and import bills drawn on and payable in India may be expressed.

(2) Any alternation in the list referred to in sub-rule (1) shall also be published in the Gazette of india.

(3) An alteration adding a currency to the list shall take effect from the date of publication of the alteration while an alteration omitting a currency from the list shall take effect at the expiry of three months from the date of publication of the alteration.

15. *Manner of publication of accounts and balance sheet.*—The balance sheet and profit and loss account prepared in terms of section 29 of the Act together with the auditor's report shall be published within a period of six months from the end of the period to which they relate in a newspaper which is in circulation at the place where the banking company has its principal office.

16. *Power to exempt in certain cases.*—The Central Government may, on the recommendation of the Reserve Bank, declare by notification in the official Gazette that any or all of the provisions of these rules shall not apply to any banking company or to any class of banking companies either generally or for such period as may be specified.

THE BANKING COMPANIES ACT, 1949.

FORM I (SEE RULE 5)

(SECTION 10)

(To be submitted not later than the 31st January each year)

Name of banking company _____

Name and designation of the officer submitting the return _____

Remuneration* paid to the directors and the first ten highest paid officers of the banking company in the Province of India** during the year ended the 31st December _____

Name	Age	Qualification	Experience	Designation	Remuneration* during the year ended the 31st December 19
1	2	3	4	5	6

Date _____ Signature _____

* Remuneration includes salary, house allowance, dearness allowance, conveyance allowance, local allowance, and all other forms of allowances, bonus, contribution made by employer to provident or pension funds, taxes paid on behalf of officers, etc.

** In the application of this form in relation to Acceding States a reference to the 'Provinces of India' shall be construed as including a reference to the Acceding States to which the Act extends.

THE BANKING COMPANIES ACT, 1949.

FORM II (SEE RULES 6 AND 8)

(SECTION 11)

Reserve Bank of India

No. _____ Place _____

Date _____

Certified that the Reserve Bank of India held on behalf of _____

the undernoted deposits in term of Section 11(2) of the Banking Companies Act, 1949, as at the close of business on _____

	Cash	Approved Securities		Remarks
		Loan	Face Value	
1	2	3	4	5

TOTAL

(In figures and words separately for cash and approved securities)

MANAGER

Note:–The issue of this certificate renders any previous certificate issued by the Reserve Bank null and void.

THE BANKING COMPANIES ACT, 1949.

FORM III.

(SECTION 18).

Name of banking company _____

Name and designation of the officer submitting the return _____

Statement of cash reserve as at the close of business on the following days the month of _____

(To be filed in triplicate with the Reserve Bank before the fifteenth day of the month succeeding that to which the return relates).

(Rounded off to the nearest thousand).

	1st Friday *	2nd Friday *	3rd Friday *	4th Friday *	5th Friday *
A. *Liabilities.*					
1. Demand Liabilities.					
2. Time Liabilities.					
3. Total Demand and Time Liabilities.					
B. *Minimum amount of cash reserve required to be held under section 18 of the Act.*					
1. Five per cent. of A(1)					
2. Two per cent. of A(2).					
3. Total of B(1) and B(2).					
C. *Cash reserve.*					
1. Cash**					
(a) Notes.					
(b) Rupee coin (including one Rupee notes). Subsidiary coin.					
2. Balances with the Reserve Bank.					
3. Total of C(1) and C(2).					

Date _____ Signature _____

*Give dates.

**Cash must not include balances at other banks or any item other than currency notes, rupee coin (including one rupee notes) and subsidiary coin.

THE BANKING COMPANIES ACT, 1949.

FORM IV

(SECTION 20).

Name of the banking company _____

Name and designation of the officer submitting the return _____

Statement for the month of _____ of unsecured loans and advances (including bills purchased and discounted), granted (in the Provinces of India,* to companies in which the banking company or any of its directors is interested as director, managing agent or guarantor.** (To be submitted to the Reserve Bank before the close of the month succeeding that to which the return relates).

A—*Statement of unsecured loans and advances (including bills purchased and discounted) granted to public companies in which the banking company is interested as director, managing agent or guarantor and to private companies in which the banking company is interested as director or guarantor.*

(Rounded off to the nearest thousand).

Name of the company to which the advance has been made	Nature of interest in the company (whether director, managing agent, guarantor etc.)	Date of advance	Date of repayment	Amount outstanding on the last working day of the month	Highest outstanding during the month	Lowest outstanding during the month	Rate of interest	Nature of advance (whether loan, overdraft cash credit, purchase, or discount of bills, etc.)	Remarks
1	2	3	4	5	6	7	8	9	10

Total of column 5 _____

B—*Statement of unsecured loans and advances (including bills purchased and discounted) granted to public companies in which any of the directors of the banking company is interested as director, managing agent or guarantor and to private companies in which any of the directors of the banking company is interested as director.*

(Rounded off to the nearest thousand).

Name of the director of the banking company, who is interested	Name of the company to which the advance has been made	Relation of the director of the banking company (whether director managing agent, guarantor etc.)	Date of advance	Date of repayment	Amount outstanding on the last working day of the month	Highest outstanding during the month	Lowest outstanding during the month	Rate of interest	Nature of advance (whether loan, overdraft, cash credit, purchase or discount of bills etc.)	Remarks.
1	2	3	4	5	6	7	8	9	10	11

Total of column 6 _____

Date _____ Signature _____

*In the application of this form in relation to Acceding States a reference to the "Provinces of India" shall be construed as including a reference to the Acceding States to which the Act extends.

**The Statement should include loans and advances (including bills purchased and discounted) granted during the month or previously and repaid during the month or outstanding on the last working day of the month.

Note:–In case a banking company has no loans or advances to report, the fact may be reported in a letter.

BANKING COMPANIES ACT, 1949.

FORM V (See RULE 11).

(SECTION 22).

Form of application for a licence to commence banking business by a company incorporated in any Province of India and desiring to commence banking business.*

Address.....

Date.....

Department of Banking Operations,

Reserve Bank of India,_____

Application for a licence to commence banking business.

Dear Sir,

We hereby apply for a licence to commence banking business in terms of Section 22 of the Banking Companies Act, 1949. We give below the necessary information in the form prescribed for the purpose.

Yours faithfully,

Signature_____

1. Name of the company.
2. Place of registration of the company.
3. State whether the company is public or private.
4. Date of incorporation.
5. *Previous applications*:
   Give particulars of any application previously made to the Reserve Bank in this connection.
6. *Management.*
   (a) Give names, business and addresses of directors, the amount of shares held by each and the names of the bankers of each of them.
   (b) Give the name of the proposed chief executive officer, his qualifications, experience, age and the proposed remuneration.

7. State detailed reasons for the floatation of the company and give statistical and other data, as under, which may have been collected in respect of the area which the company intends to serve.

(i) The population of area of operation of the proposed place of business.

(ii) The volume and value of agricultural, mineral and industrial production and imports and exports of the area of operation of the proposed place of business as under;

Company	Production		Imports		Exports	
	Volume	Value	Volume	Value	Volume	Value
1	2	3	4	5	6	7

(iii) If there are any schemes for agricultural, mineral or industrial development give details of the same and their probable effects on the volume and value of the present production, imports and exports.

(iv) If the existing banking facilities are considered inadequate, give reasons.

(v) *Prospects* : Give as under an estimate of the minimum business which the company expects to attract at the proposed place of business within 12 months.

I. Deposits	Amount in thousands of rupees	*Rates proposed to be allowed on various types of deposits.*
		Minimum Maximum
II. Advances	Amount in thousands of rupees	*Rates proposed to be charged on various types of advances.*
		Minimum Maximum

8. Forward an up-to-date copy of the Memorandum and Articles of Association and a copy of the prospectus (with certified translations in English if not in that language).

9. State whether the company fulfils the conditions laid down in sub-section (3) of Section 11, and whether it is agreeable to permit the Reserve Bank to satisfy itself by an inspection of the books of the company or otherwise that the prescribed conditions are being fulfilled by the company.

10. Any additional facts which the company may wish to adduce in support of its application.

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* In the application of this form in relation to Acceding States a reference to any "Province of India" shall be construed as including a reference to the Acceding States to which the Act extends.

N. B.—(1) If an application is for commencing banking business at Bombay, Calcutta, Madras, Delhi or Kanpur, the details asked for under item 7 (i), (ii) and (iii) need not be supplied.

(2) If a company is unable or unwilling to supply full details in respect of any of the items, reasons for the omission may be given.

(3) If an application has been submitted to the Reserve Bank in the past, information under items 2, 3, 4, 6, 7, 8, need not be supplied unless there is any change since the last application.

THE BANKING COMPANIES ACT, 1949.

FORM VI (See RULE 11)

(SECTION 22).

Form of application for a licence to carry on banking business by a company incorporated in any Province of India and in existence on the commencement of the* Act.

Address.....

Date.....

Department of Banking Operations,
Reserve Bank of India,

Application for a licence to carry on banking business.

Dear Sir,

We hereby apply for a licence to carry on banking business in terms of Section 22 of the Banking Companies Act, 1949. We give below the necessary information in the form prescribed for the purpose.

Yours faithfully,

Signature.....

1. Name of the banking company.
2. Place of registration of the banking company and of its head office.
3. State whether the banking company is public or private.
4. Date of incorporation.
5. Date of commencement of business.
6. *Previous applications*:
   Give particulars of any application previously made to the Reserve Bank in this connection.
7. *Management*:
   (a) Give names, business and addresses of directors.
   (b) Give name of the chief executive officer, his qualifications, experience, age and the remuneration paid.

8. *Existing Offices*:**

Give the number of offices** in the Provinces of India* and a brief description of the system of supervision and control over the branches.

9. Give details regarding the authorised, subscribed and paid-up capital and reserves of the banking company as on the date of the application.

10. Forward an up-to-date copy of the Memorandum and Articles of Association and copies of the balance sheets together with profit and loss account statements for the last five years (with certified translations in English, if not in that language).

11. State whether the banking company fulfils the conditions laid down in sub-section (3) of Section 22, and whether it is agreeable to permit the Reserve Bank to satisfy itself by an inspection of the books of the company or otherwise that the prescribed conditions are being fulfilled by the company.

12. Any additional facts which the banking company may wish to adduce in support of its application.

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* In the application of this form in relation to Acceding States all references to the "Provinces of India" or "any Provnice of India" shall be construed as including references to the Acceding States to which the Act extends.

** Includes the registered office and all places of business at which deposits are received, cheques cashed or moneys lent.

N. B.—(1) If a banking company is unable or unwilling to supply full details in respect of any of the items, reasons for the omission may be given.

(2) If an application has been submitted to the Reserve Bank in the past, information under items 2, 3, 4, 5, 7, 8, 9, and 10 need not be supplied unless there is any change since the last application.

THE BANKING COMPANIES ACT, 1949.

FORM VII (See RULE 11)

(SECTION 22).

Form of application for a licence to commence / carry on banking business in Province of India** by a banking company incorporated outside the Province of India.***

Address.....

Date.....

Department of Banking Operations,

Reserve Bank of India.

Application to commence/carry on banking business in any Province of India**.*

Dear Sir,

We hereby apply for a licence to* commence / carry on banking business in terms of Section 22 of the Banking Companies Act, 1949. We give below the necessary information in the form prescribed for the purpose.

Yours faithfully,

Signature.....

1. Name of the banking company.
2. Place of registration of the banking company and of its head office.
3. State whether the banking company is public or private.
4. Date of incorporation.
5. Country or State in which the banking company is incorporated.
6. *Previous applications*:

   Give particulars of any application previously made to the Reserve Bank in this connection.
7. *Management*:

   Give names, business and addresses of directors in the Provinces of India**.

   (b) Give the name of the chief executive officer or the proposed chief executive

officer in Provinces of India**, his qualifications, experience, age, and the remuneration paid or proposed to be paid.

8. (a) *For a banking company already carrying on banking business in any Province of India***: *Existing offices*† :

Give the number of offices† in the Provinces of India** and a brief description of the system of supervision and control over the offices†.

(b) *For a company desiring to commence banking business in any Province of India***:

State detailed reasons for an office† in the Provinces of India** and give statistical and other data, as under, which may have been collected in respect of the area which the company intends to serve.

(i) The population of the area of operation of the proposed place of business.

(ii) The volume and value of agricultural, mineral and industrial production and imports and exports of the area of operation of the proposed place of business as under:

Commodity	Production		Imports		Exports	
	Volume	value	Volume	Value	Volume	Value
1	2	3	4	5	6	7

(iii) If there are any schemes for agricultural, mineral or industrial development give details of the same and their probable effects on the volume and value of the present production, imports and exports.

(iv) If the existing banking facilities are considered inadequate, give reasons.

(v) *Prospects* : Give as under an estimate of the minimum business which the company expects to attract at the proposed place of business within 12 months.

I. Deposits	Amount in thousands of rupees	*Rates proposed to be allowed on various types of deposits* Minimum Maximum
II. Advances	Amount in thousands of rupees	*Rates proposed to be charged on various types of advances* Minimum Maximum
III. Export & Import Bills.	Amount in thousands of rupees	

9. State what arrangements have been made to ensure compliance with the provisions of Section 11(2) of the Act.

10. Forward an up-to-date copy of the Memorandum and Articles of Association and copies of the balance sheets together with profit and loss account statements for the last five years (with certified translations in English if not in that language).

11. State whether the banking company fulfils the conditions laid down in sub-section (3) of Section 22, and whether it is agreeable to permit the Reserve Bank to satisfy itself by an inspection of the books of the company or otherwise that the prescribed conditions are being fulfilled by the company.

12. Any additional facts which the banking company may wish to adduce in support of its application.

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* The portion not applicable to be struck off.

** In the application of this form in relation to Acceding States all references to the "Provinces of India" or any "Province of India" shall be construed as including references to the Acceding States to which the Act extends.

† Includes all places of business at which deposits are received, cheques cashed or moneys lent.

N. B.—(1) If an application is for commencing banking business at Bombay, Calcutta, Delhi, Madras or Kanpur, the details asked for under item (8) (b) (i), (ii) and (iii) need not be supplied.

(2) If a company is unable or unwilling to supply full details in respect of any of the items, reasons for the omission may be given.

(3) If an application has been submitted to the Reserve Bank in the past, information under items 2, 3, 4, 5, 7, 8, and 10 need not be supplied unless there is any change since the last application.

THE BANKING COMPANIES ACT, 1949.

FORM VIII (See RULE 12)

(SECTION 23).

Form of application for permission to open a new place of business or change the location (otherwise than within the same city, town or village) of an existing place of business under Section 23 of the Act.

Address.....

Date.....

Department of Banking Operations,
Reserve Bank of India.

Dear Sir,

We hereby apply for permission to* open a new place of business change the location of an existing place of business in terms of Section 23 of the Banking Companies Act, 1949. We give below the necessary information in the form prescribed for the purpose.

Yours faithfully,

Signature.....

1. Name of the banking company.
2. Place of registration of the banking company and of its head office.
3. State whether the banking company is public or private.
4. Date of incorporation.
5. Date of commencement of business.
6. *Previous applications* : Give particulars of any application previously made to the Reserve Bank in this connection.
7. *Management* : (a) Give names, business and addresses of directors.

   (b) Give the name of the officer-in-charge of the proposed office, his qualifications, experience, age, and remuneration and also particulars about the Local Advisory board or (local directors), if any.

8. *Existing offices* : (a) Give the number of offices in the Provinces of India**. In the case of offices making losses, also give details as in Table 'A'.

(b) In the case of offices which have been in existence for less than three years on the date of application also give details as in Table 'B'.

Proposed office : Give the location of the proposed office.

9. (*a*) *Reasons for the proposed office* : State detailed reasons for the proposed office and give statistical and other data, as under, which may have been collected for the proposed office.

(i) The population of the area of operation of the proposed office.

(ii) The volume and value of agricultural, mineral and indusrial production and imports and exports of the area of operation of the proposed office as under.

Commodity	Production		Imports		Exports	
	Volume	Value	Volume	Value	Volume	Value
1	2	3	4	5	6	7

(iii) If there are any schemes for agricultural, mineral or industrial development give details of the same and their probable effects on the volume and value of the present production, imports and exports.

(iv) If the existing banking facilities are considered inadequate, give reasons.

(v) *Prospects* : Give as under an estimate of the minimum business which the company expects to attract at the proposed office of business within 12 months.

I. Deposits	Amount in thousands of rupees	*Rates proposed to be allowed on various types of deposits.*
		Minimum Maximum
II. Advances	Amount in thousands of rupees	*Rates proposed to be charged on various types of advances.*
		Minimum Maximum

10. *Change of location of an existing office*: Give the exact location of the office which is proposed to be closed and of the place to which it is proposed to shift it, giving particulars of the new location as in No. 9(d).

11. *System of supervision and control over the proposed office* : Give a brief description of the system of supervision and control which will be exercised over the proposed office and the authority of the officials at the proposed office regarding advances (including bills purchased and discounted).

12. *Capital and Reserves* : Give details regarding the authorised, subscribed and paid-up capital and reserves of the banking company as on the date of the application.

13. *Expenditure* : State the amount already spent or proposed to be spent on staff, premises, furniture, stationary, advertising, etc. in connection with the proposed office. Also State the minimum income which the banking company expects to earn at the proposed office in 12 months.

14. Forward an up-to-dete copy of the Memorandum and Articles of Associatiom and copies of balance sheets together with profit and loss account statements for the last five years (with certified translations in English, if not in that language).

15. *Other particulars* : Any additional facts which the banking company may wish to adduce in support of its applications.

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*The portion not applicable to be struck off.

** In the application of this form in relation to Acceding States a reference to the 'Provinces of India' shall be construed as including a reference to the Acceding States to which the Act extends.

N. B.—(1) The words 'office' and 'offices' wherever they occur in this form include a place or places of business at which deposits are received, cheques cashed or moneys lent.

2. Nos. 9 and 9(a).— To be replied to if the application is for opening a new office. If an application is for opening a place of business at Bombay, Calcutta, Delhi, Madras or Kanpur, the details asked for under item 9(a) (i), (ii) and (iii) need not be supplied.

3. No. 10.—To be replied to if the application is for changing the location of an existing place of business,

4. If a banking company is unable or unwilling to supply full details in respect of any of the items reasons for the omission may be given.

5. If an application has been submitted to the Reserve Bank in the past, information under items 2, 3, 4, 5, 7, 8, 11, 12, and 14 need not be supplied unless there is any change since the last application.

6. The information asked for in items 7(b), 9, 9(a), 10 and 13 is to be given separately for each office where the application relates to the opening of or changing the location of more than one office.

Table 'A'

NAME OF THE BANKING COMPANY _____

NUMBER OF EXISTING OFFICES MAKING LOSSES _____

Name of Place	Description *i. e*, whether branch, sub-office, pay-office, sub-pay, office etc.	Date of opening	Amount of loss during the preceding year	Deposits / Advances — As on the date of the last balance sheet		Remarks
1	2	3	4	5	6	7

Table 'B'

Particulars regarding offices which have been in existence for less than three years on the date of application.

Name of Place	Description, *i. e.*, whether branch, sub-office, pay-office sub pay-office, etc.	Date of opening	As on the date of the last balance sheet (Rounded off to the nearest thousand) — Deposits				Advances				Remarks
			Current	Savings	Others	Total	Secured	Unsecured	Doubtful or bad	Total	
1	2	3	4	5	6	7	8	9	10	11	12

THE BANKING COMPANIES ACT, 1949.

FORM IX. (See RULE 13).

(SECTION 23).

To be submitted within one month after the end of quarter to which it relates.

Name of the banking company _____

Name and designation of the officer submitting return _____

(a) Statement of offices* in the Provinces of India** as on the last day of the quarter ended _____

Name of place where the banking company has an office (may be arranged in alphabetical order)	District and Province or State
1	2

(b) Statement of offices* opened in the Provinces of India** during the quarter ended _____

Name of the place	District and province or State	Date of opening the office
1	2	3

(c) Statement of offices* in the Provinces of India** closed during the quarter ended _____

Name of the place	District and province or State	Date of closing the office
1	2	3

Signature _____

Date _____

*Includes the registered office and all places of business at which deposits are received, cheques cashed or moneys lent.

**In the application of this form in relation to Acceding States a reference to the "Provinces of India" shall be construed as including a reference to the Acceding States to which the Act extends.

THE BANKING COMPANIES ACT, 1949.

FORM X.

(SECTION 24).

Name of the banking company____

Name and designation of the officer submitting the return

Statement of demand and time liabilities and cash, gold and unencumbered approved securities for the month of

(To be furnished to the Reserve Bank not later than 15 days after the end of the month to which it relates).

(Rounded off the nearest thousand)

	As at the close of business on				
	1st Friday (a)	2nd Friday (a)	3rd Friday (a)	4th Friday (a)	5th Friday (a)
A. *Liabilities in the Provinces of India**					
1. Demand Liabilities	...	...	...	...	...
2. Time Liabilities	...	...	...	...	...
3. Total Demand and Time Liabilities	...	...	...	...	...
B. *Minimum amount of assets required to be held under section 24 of the Act.* (20 per cent. of A (3))	...	...	...	...	...
C. *Assets*					
1. Cash in hand	...	...	...	...	...
2. Balances with the Reserve Bank	...	...	...	...	...
3. Balances with the agent of the Reserve Bank	...	...	...	...	...
4. Gold (valued at a price not exceeding current market price)	...	...	...	...	...

5.	Unencumbered approved securities (valued at a price not exceeding current market price)	
6.	Deposit with the Reserve Bank under sub-section (2) of Section 11 of the Act	
	(i) Cash	
	(ii) Unencumbered approved securities (valued at a price not exceeding current market price)	
7.	Total of the above assets	

Date..... Signature.....

(a) Give dates (where Friday is a holiday under the Negotiable Instruments Act, 1881 (XVI of 1881), the preceding working day).

* In the application of this form in relation to Acceding States a reference to the "Provinces of India" shall be construed as including a reference to the Acceding States to which the Act extends.

THE BANKING COMPANIES ACT, 1949.

FORM XI.

(SECTION 25).

Name of the banking company _____

Name and designation of the officer submitting the return _____

Statement for the quarter ending _____

Statement of assets and liabilities in the Provinces of India* as at the close of business on the last working day of March, June, September or December.

(To be submitted to the Reserve Bank before the 30th April, 31st July, 31st October and 31st January each year).

(Rounded off to the nearest thousand)

A. *Liabilities in the Provinces of India**:

1. Demand Liabilities _____
2. Time Liabilities _____
3. Total Demand and time Liabilities _____

B. Minimum amount of assets required to be held in the Provinces of India* under Section 25 of the Act (75 per cent. of A (3)) _____

C. *Assets in the Provinces of India**:

1. Cash in hand _____
2. Balances with the Reserve Bank _____
3. Balances with the agent of the Reserve Bank _____
4. Balances with the other banking companies in current account and money at call and short notice _____
5. Inland bills purchased _____
6. Inland bills discounted _____
7. Export bills drawn in India (In approved currencies) _____
8. Import bills drawn on and payable in India (expressed in approved currencies) _____
9. Investments :

(a) Central and Provincial Government securities including treasury Bills

(b) Other securities, shares, debentures etc.

(c) Other Investments

10. Loans, advances, cash credits and overdrafts (excluding those referred to in item 11)

11. Due from banking companies

12. Promissory notes, bills of exchange and securities which the Reserve Bank is empowered to purchase, discount or make advances against (*vide* Section 25(3) of the Act) and not included in any of the above items *e. g.*, securities of foreign Governments which the Reserve Bank is empowered to purchase or make advances against

13. Premises, Furniture, Fixtures and other fixed assets

14. Other assets

Total

Signature

Date

* In the application of this form in relation to Acceding States a reference to the "Provinces of India" shall be construed as including a reference to the Acceding States to which the Act extends.

THE BANKING COMPANIES ACT, 1949.

FORM XII. (SECTION 26).

Name of the banking company———————————————————————————

Name and designation of the officer submitting the return———————————————————————

Return of unclaimed accounts in the Provinces of India* which have not been operated upon for 10 years or more as on the date of the return.

As on 31st December———————————

*(*To be submitted to the Reserve Bank within thirty days after the close of each calendar year*).

	Name of office or branch of the banking company	Name & address of the depositor	Balance outstanding	Nature of account (whether current, savings, fixed, etc.)	Date of last deposit or withdrawal	Reasons, if any, why not operated upon	Remarks.
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
Balance brought forward from the previous return (a).							
Interest allowed, if any, during the year (a)							
Total							
Additions since the date of the last return (b)							
Total							
Withdrawals since the date of the last return (b)							
Total							
Balance as at the close of the year							

Date———————————— Signature———————————

*In the application of this form in relation to Acceding States a reference to the "Provinces of India" shall be construed as including a reference to the Acceding States to which the Act extends.

(a) Only totals may be given under column 3. (b) Particulars to be given under all columns.

N. B.—The particulars required by this form should be given to the extent to which they are available.

THE BANKING COMPANIES ACT, 1949.

FORM XIII.

(SECTION 27).

Name of the banking company _____

Name and designation of the officer submitting the return _____

Statement showing the assets and liabilities in the Provinces of India* as at the close of business on Friday† the _____

(To be submitted to the Reserve Bank before the close of the month succeeding that to which the return relates).

(Rounded off to the nearest thousand).

A *Liabilities in the Provinces of India**

1. Paid-up Capital‡ ——
2. Reserve fund and other reserves ——
3. Demand Deposits and contingency (unadjusted) accounts:
   (a) Demand Deposits from banking companies ——
   (b) Demand Deposits from others and contingency (unadjusted) accounts ——
4. Time Deposits:
   (a) From banking companies ——
   (b) From others ——
5. Due to other banks ——
6. Bills payable ——
7. Branch Adjustments ——
8. Other liabilities§ ——

B. *Assets in the Provinces of India**

1. Cash in hand ——
2. Balances with the Reserve Bank ——
3. Balances with the agent of the Reserve Bank ——
4. Balances with other banking companies in current account ——
5. Money at call and short notice ——
6. Bills purchased ——
7. Bills discounted ——
8. Investments:—
   (1) In Government Securities (including treasury bills)
      (a) Central Government ——
      (b) Provincial Government ——
   (2) Other investments
      (a) Securities of local authorities (*e.g.*, municipalities, port trusts etc. ——
      (b) Shares, debentures, etc. ——
      (c) Others ——
9. Loans, advances, cash credits and overdrafts (excluding due from banks) ——
10. Due from banks ——
11. Premises, furniture, fixtures and other fixed assets. ——

	12. Branch Adjustments. ———
	13. 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.§ ———
	14. Other tangible assets ———
Total ———	Total———

Date _____ Signature _____

*In the application of this form in relation to Acceding States a reference to the "Provinces of India" shall be construed as including a reference to the Acceding States to which the Act extends.

†The last Friday of every month or if that Friday is a public holiday under the Negotiable Instruments Act, 1881 (XVI of 1881), at the close of business on the preceding working day.

‡In the case of banking companies incorporated outside the Provinces of India and Acceding States to which the Act extends, the amount of deposit kept with the Reserve Bank under sub-section (2) of Section 11 of the Act should be shown under this head but excluded from the total.

§The balance of Profit and Loss Account, if any, should be included in item A8 or B13 as the case may be.

Appendix S

Notification under Sec. 25(3) of Banking Companies Act.

No. B. C. A. 1|c 236-49. R. B. dated the 12th April, 1949.

In pursuance of sub-section (3) of section 25 of the Banking Companies Act, 1949 (X of 1949), read with sub-rule (1) of rule 14 of the Banking Companies Rules, 1949, the Reserve Bank of India is pleased to approve the undernoted currencies, as currencies in which export bills drawn in and import bills drawn on and payable in India may be expressed for the purposes of section 25 of the said Act:—

1. Rupee.

2. Sterling.

3. U. S. dollar.

4. Currency of the country of final destination of the goods with the exception of the currencies of the following countries:—

Arabia	Italy
Argentine	Japan
Austria	Palestine
Brazil	Paraguay
Bulgaria	Peru
Chile	Poland
China	Rumania
Egypt and the Anglo-Egyptian Sudan.	Siam
	Spanish Monetary Area
Eritrea	Syria
Ethiopia	Tangier
Finland	Transjordan
Germany	Turkey
Greece	U. S. S. R.
Hungary	Uruguay
Iran	Yugoslavia

Appendix T

CAPITAL ISSUES (EXEMPTION) ORDER, 1949.

Notification No. F. 14 (1) CCI-49 dated the 20th January, 1949.

In exercise of the powers conferred by sub-section (1) of Section 6 of the Capital Issues (Continuance of Control) Act, 1947 (XXIX of 1947), and in supersession of the Exemption Order No. F. 14 (1) ECI-45, dated the 5th December, 1945, and Notifications Nos. F. 14 (1)-ECI 45, dated the 30th August, 1946, and F. 14 (5)-CCI 48-2225, dated the 29th October, 1948, the Central Government is pleased to make the following Order, namely:—

1. This Order may be called the Capital Issues (Exemption) Order, 1949.

2. In this Order, unless there is anything repugnant to the subject or context,—

(a) "Act" means the Capital Issues (Continuance of Control) Act, 1947;

(b) the expressions "banking company", "insurance company" and "provident society" shall have the meanings respectively assigned to them by Section 277F of the Indian Companies Act, 1913, Clause (8) of Section 2 of the Insurance Act, 1938, and sub-section (1) of Section 65 of the Insurance Act, 1938.

×3. The following shall be exempt from all the provisions of Sections 3, 4 and 5 of the Act:—

(a) The issue by a banking company of any shares in consequence of alteration, reduction or reorganisation on the share capital lawfully made or proposed to be made in compliance with sub-section (2) of Section 277-I of the Indian Companies Act, 1913, where the total amount of the existing subscribed capital is not thereby increased.

×S. 3 deals with control over issues of capital, S. 4 with control over prospectuses & other advertisments & S. 5 with purchase & sale of securities.

Appendix U

The Commonwealth of Australia Banking Act XIV of 1945.*

An Act to regulate Banking, to make provision for the Protection of the Currency and of the Public Credit of Commonwealth, and for other purposes.

(Assented to 3rd August. 1945.)

BE it enacted by the King's Most Excellent Majesty, the Senate, and the house of Representatives of the Commonwealth of Australia, as follows:—

PART I.-PRELIMINARY.

Short title. 1. This Act may be cited as the *Banking Act* 1945.

Commencement 2. Except as otherwise provided by this Act, this Act shall commence on a date to be fixed by Proclamation.

Parts 3. This Act is divided into Parts, as follows:-

Part I.—Preliminary.

Part II.—Provisions relating to the carrying on of Banking Business.

Division 1.—Authority to carry on Banking Business.

Division 2.—Protection of Depositors.

Division 3.—Special Accounts.

Division 4.—Mobilization of Foreign Currency.

Division 5.—Advances and Investments.

Part III.—Foreign Exchange.

Part IV.—Gold.

Part V.—Interest Rates.

Part VI.—Statistics.

Part VII.—Miscellaneous.

*The Banking Act 57 of 1947 provides for the taking over by the Commonwealth Bank of the banking business of private banks in Australia on payment of compensation to be determined by a federal Court of Claims.

Definition. 4.—(1) In this Act, unless the contrary intention appears—

"advance" includes loan;

"Australia" includes the Territories of the Commonwealth;

"bank" means a body corporate authorized under Part II. of this Act to carry on banking business in Australia;

"the Commonwealth Bank" means the Commonwealth Bank of Australia.

(2) In this Act, any reference to a Schedule shall be read as a reference to a Schedule to this Act, and any reference to a Form shall be read as a reference to a Form in the Second Schedule.

Application of Act. 5.—(1) Nothing in Part II. or V., or in sections forty-eight to fifty-six (inclusive) of this Act, shall apply with respect to State banking.

(2) The application of this Act shall extend to all the Territories of the Commonwealth.

Part II.—Provisions relating to the carrying on of Banking Business.

Division 1.—Authority to carry on Banking Business.

Persons other than companies not to carry on banking business. 6. Subject to this Act, a person other than a body corporate shall not, at any time after the expiration of six months from the commencement of this Part, carry on any banking business in Australia.

Penalty: One hundred pounds for each day during which the contravention continues.

Banking business not to be carried on without authority. 7. Subject to this Act, a body corporate shall not, at any time after the expiration of six months from the commencement of this Part, carry on any banking business in Australia unless the body corporate is in possession of an authority in writing granted by the Governor-General under this Part to carry on banking business.

Penalty: Five thousand pounds for each day during which the contravention continues.

Authority to carry on banking business. 8.—(1) The Governor-General shall within seven days after the commencement of this Part, grant to each body corporate specified in the First Schedule an authority to carry on banking business in Australia.

(2) A body corporate (not being a body corporate specified in the First Schedule) which desires authority under this Part to carry on banking

business in Australia may apply in writing to the Treasurer for authority accordingly.

(3) Where any such application is made, the Governor-General may grant to that body corporate an authority to carry on banking business in Australia.

(4) An authority under this section granted to a body corporate specified in the First Schedule which was not carrying on banking business in Australia on the twenty-sixth day of November, One thousand nine hundred and forty-one, or to a body corporate not so specified, may be granted unconditionally or subject to such conditions as are specified in the authority.

(5) Where an authority under this section is granted subject to conditions, the Governor-General may, from time to time, vary or revoke any of those conditions or impose additional conditions.

(6) Where an authority under this section is subject to conditions, the body corporate to which the authority is granted shall comply with those conditions.

Penalty: One thousand pounds for each day during which the contravention continues.

(7) Every authority under this section, and every instrument made under sub-section (5) of this section, shall be published in the *Gazette*.

(8) An authority under this section granted to a body corporate not specified in the First Schedule shall declare that the body corporate shall be deemed to be a bank specified in Part I., or, if the body corporate is a savings bank, in Part II., of that Schedule and that Schedule shall thereupon be deemed to be amended by the addition to that Part of the name of that body corporate.

9. Where the Governor-General is satisfied that any body corporate in possession of an authority under this section has ceased to carry on banking business in Australia, the Governor-General may revoke the authority and notice of the revocation shall be published in the *Gazette*.

(10) Where an authority under this section is so revoked, the First Schedule shall thereupon be deemed to be amended by the omission of the name of the name of the body corporate concerned.

9.—(1) An application under this Part by a body corporate, not

Treasurer to be supplied with certain documents.

being a body corporate, specified in the First Schedule, shall be accompanied by a copy of the Act, charter, deed of settlement, memorandum of association and articles of association of the body corporate, or other document by which the body corporate is constituted.

(2) Each body corporate specified in the First Schedule shall, within six months after the commencement of this Part, furnish to the Treasurer a copy of the Act, charter, deed of settlement, memorandum of association and articles of association of the body corporate, or other document by which the body corporate is constituted.

(3) Every copy of an Act, charter, deed of settlement, memorandum of association, articles of association or other document furnished to the Treasurer under either of the last two preceding sub-sections shall be verified by a statutory declaration made by a senior officer of the body corporate concerned.

(4) A bank shall, within three months after the making of any alteration in any document referred to in sub-section (1) or (2) of this section, furnish to the Treasurer particulars in writing (verified by a statutory declaration made by a senior officer of the bank concerned) of the alteration.

Penalty, for any offence against this section: One hundred pounds.

Exemption.

10.—(1) Where any person desires to carry on any banking business in Australia but does not desire to carry on the general business of banking, the Treasurer may, by order published in the *Gazette*, exempt that person from compliance with such of the provisions of this Act as are specified in the order and, so long as the order continues in force, that person shall be exempt from compliance with the provisions so specified.

(2) An order under this section—

(a) may be expressed to apply to a particular person or to the persons included in a class of persons;

(b) may specify the period during which the order shall remain in force; and

(c) may be made subject to such conditions as are specified in the order.

(3) Where any such order is made subject to conditions, any person to whom the order applies shall comply with those conditions.

Penalty: One thousand pounds for each day during which the contravention continues.

Division 2.—Protection of Depositors.

Commonwealth Bank to protect depositors.

11. It shall be the duty of the Commonwealth Bank to exercise its powers and functions under this Division for the protection of the depositors of the several banks.

Supply of information.

12.—(1) The Commonwealth Bank may, by notice in writing, require any bank to supply it, within the time specified in the notice, with such information relating to the financial stability of that bank as is specified in the notice.

(2) The information supplied in compliance with a requirement under the last preceding sub-section shall be verified by a statutory declaration made by a senior officer of the bank concerned.

(3) If a bank fails to comply with any requirement under sub-section (1) of this section, the Commonwealth Bank may appoint an officer of the Commonwealth Bank to investigate the affairs of that bank.

Banks unable to meet obligations

13.—(1) A bank which considers that it is likely to become unable to meet its obligations, or is about to suspend payment, shall forthwith inform the Commonwealth Bank.

(2) Where a bank—

(a) so informs the Commonwealth Bank;

(b) becomes unable to meet its obligations or suspends payment;

or

(c) in the opinion of the Commonwealth Bank, is likely to become unable to meet its obligations or is about to suspend payment,

the Commonwealth Bank may—

(d) appoint an officer of the Commonwealth Bank to investigate the affairs of the bank concerned; and

(e) assume control of and carry on the business of that bank.

(3) Where the Commonwealth Bank has, in pursuance of the last preceding section, or in pursuance of the last preceding sub-section, appointed an officer to investigate the affairs of a bank, that bank shall afford the officer access to its books, accounts and documents and shall give to the officer such information and facilities as he requires to conduct the investigation.

Penalty : One thousand pounds for each day during which the contravention continues.

(4) Where the Commonwealth Bank has, in pursuance of sub-section (2) of this section, assumed control of the business of a bank, that bank shall submit its business to the control of the Commonwealth Bank and shall provide the Commonwealth Bank with such facilities as the Commonwealth Bank requires to carry on the business of that bank.

Penalty : One thousand pounds for each day during which the contravention continues.

(5) Where the Commonwealth Bank has, in pursuance of sub-section (2) of this section, assumed control of the business of a bank, the Commonwealth Bank shall, subject to the next succeeding sub-section, remain in control of and continue to carry on, the business of that bank until such time as—

(a) the deposits with the bank have been repaid or the Commonwealth Bank is satisfied that suitable provision has been made for their repayment; and

(b) in the opinion of the Commonwealth Bank, it is no longer necessary for the Commonwealth Bank to remain in control of the business of the bank.

(6) Upon the application of a bank of whose business the Commonwealth Bank has assumed control in pursuance of sub-section (2) of this section, a Full Court of the High Court constituted by not less than three Justices may, if it is satisfied that it is no longer necessary, for the protection of the depositors of that bank, that the Commonwealth Bank should remain in control of the business of that bank, order that the Commonwealth Bank shall cease to control the business of that bank, as from a date specified in the order.

(7) Where the Commonwealth Bank, in pursuance of this section, assumes control of the business of a bank, or ceases to control the business of a bank, Commonwealth Bank shall notify that fact in the *Gazette*.

Indemnity.

14. The Commonwealth Bank, the Governor and Deputy Governor of the Commonwealth Bank, and any officer of the Commonwealth Bank, shall not be subject to any action, claim, or demand by, or any liability to, any person in respect of anything done or omitted to be done in good faith and without negligence in the exercise, or in connexion with the exercise of the powers conferred on the Commonwealth Bank under this Division.

15.—(1) Except with the authority of the Commonwealth Bank, a bank shall hold assets (other than goodwill) in Australia of a value not less than the total amount of its deposit liabilities in Australia.

Assets to be held by the banks.

Penalty : One thousand pounds for each day during which the contravention continues.

(2) In the event of a bank becoming unable to meet its obligations or suspending payment, the assets of the bank in Australia shall be available to meet that bank's deposit liabilities in Australia in priority to all other liabilities of the bank.

Division 3.—*Special Accounts.*

16. This Division shall commence on a date to be specified by the Treasurer by notice in the *Gazette*.

Commencement.

17. This Division shall not apply to a bank specified in Part II. of the First Schedule.

Application of Division.

18.—(1) On the day on which this Division commences, each bank shall establish with the Commonwealth Bank a Special Account for the purposes of this Division.

Establishment of Special Accounts.

(2) On the day on which any bank (not being a bank carrying on business at the date of commencement of this Division) commences to carry on banking business in Australia, that bank shall establish with the Commonwealth Bank a Special Account for the purposes of this Division.

19. On the day on which this Division commences, there shall, by force of this section, be transferred to the Special Account of each bank established by it under this Division the amount then standing to the credit of that bank's Special Account under the National Security (War-time Banking Control) Regulations.

Transfer of certain moneys to Special Accounts.

20.—(1) Each bank shall, not later than the twenty-eighth day in each month, lodge in the Special Account established by it under this Division such amount (if any) as the Commonwealth Bank, by notice in writing, directs.

Lodgments in Special Accounts.

(2) The amount which any bank is so directed to lodge shall not be such that the amount to the credit of that bank's Special Account, after making the lodgment, exceeds the sum of—

(a) the amount (if any) transferred to that bank's Special Account under the last preceding section; and

(b) the increase (if any) in that bank's assets since the commencement of this Division.

(3) For the purposes of the last preceding sub-section, the increase in any bank's assets since the commencement of this Division means the amount by which the average of its total assets in Australia as at the close of business on each Monday (or such other day as is prescribed) in the month preceding the month in which the lodgment is to be made exceeds the average of its total assets (if any) in Australia as at the close of business on each Monday in the last month before the commencement of this Division.

(4) If any bank fails to comply with the provisions of sub-section (1) of this section, it shall be guilty of an offence, and shall, on conviction, be liable, for each day during which the failure continues, to a fixed penalty at the rate of Eight pounds per centum per annum of the amount which it has failed to lodge as required by sub-section (1) of this section.

(5) In this section, "month" means the period commencing on the first day of any month and ending on the last day of that month.

Withdrawals from Special Accounts.

21.—(1) Except with the consent of the Commonwealth Bank, a bank shall not be entitled to withdraw any sum from the Special Account established by it under this Division.

(2) The grant of consent by the Commonwealth Bank under the last preceding sub-section shall be in the discretion of the Commonwealth Bank, which may withhold consent or grant consent either unconditionally or subject to such conditions as the Commonwealth Bank determines.

(3) Where any consent under sub-section (1) of this section is granted subject to conditions, the bank to which the consent is granted shall comply with those conditions.

Penalty: One thousand pounds for each day during which the contravention continues.

Interest to be paid on Special Accounts.

22. The Commonwealth Bank shall pay interest, at half-yearly intervals, to each bank on the daily balance of that bank's Special Account at a rate, not exceeding Seventeen shillings and sixpence per centum per annum, determined from time to time by the Commonwealth Bank with the approval of the Treasurer.

Division 4.—Mobilization of Foreign Currency.

Transfer of foreign currency of Commonwealth Bank.

23.—(1) The Commonwealth Bank may, from time to time, by notice in writing, require each bank to transfer to the Commonwealth Bank an amount of sterling equivalent to such proportion as is specified in the notice of that bank's excess receipts of foreign currency as at the close of business on a date specified in the notice, not being more than twenty-one days before the date on which the notice is given.

(2) The proportion specified in any notice under the last preceding sub-section shall be the same in respect of each bank.

(3) Where, as at the close of business on a date specified in a notice under sub-section (1) of this section, a bank has not transferred an amount of sterling which it has been required to transfer in pursuance of any previous notice under that sub-section, the excess receipts of foreign currency to which that amount of sterling is equivalent shall not, for the purpose of calculating the amount of sterling required to be transferred in pursuance of the first-mentioned notice, be taken into account as part of the excess receipts of foreign currency of that bank.

(4) Each bank shall comply with the requirements of any notice under sub-section (1) of this section within seven days after the receipt of the notice by the bank or within such further period as is specified by the Commonwealth Bank.

Penalty: One thousand pounds for each day during which the contravention continues.

(5) A bank shall be deemed to have complied with the requirements of any notice under sub-section (1) of this section if it transfers to the Commonwealth Bank an amount of sterling equivalent to the specified proportion of that bank's excess receipts of foreign currency, as shown in that bank's books of account, as at the close of business on the date in question.

(6) Where any bank's assets outside Australia attributable to, or acquired by virtue of, its Australian business include foreign currency which is not freely convertible into sterling, the Commonwealth Bank shall make such adjustment in the amount of sterling required to be transferred by that bank to the Commonwealth Bank under this section as appears to the Commonwealth Bank to be necessary in the circumstances.

Payment for transferred foreign currency.

24. The Commonwealth Bank shall pay to any bank transferring any sterling in compliance with a notice under the last preceding section, such amount in Australian currency as is agreed upon between the Commonwealth Bank and the bank transferring the sterling or, in default of agreement, as is determined in an action for compensation by that bank against the Commonwealth Bank.

Sale of foreign currency by Commonwealth Bank.

25. The Commonwealth Bank may sell foreign currency to a bank—

(a) where the Commonwealth Bank is satisfied that that bank has complied with the provisions of this Division and is likely to suffer a shortage of foreign currency, or

(b) if the Commonwealth Bank considers that, for any other reason, it is desirable to do so.

Interpretation.

26. In this Division—

"excess receipts of foreign currency", in relation to any bank as at any date, means the amount by which the amount of that bank's surplus foreign currency as at that date exceeds the amount of its surplus foreign currency as at the date of commencement of this Division;

"sterling" means currency which is legal tender in the United Kingdom;

"surplus foreign currency", in relation to any bank, means the amount by which the amount of that bank's assets outside Australia attributable to, or acquired by virtue of its Australian business exceeds the amount of its liabilities outside Australia attributable to, or incurred by virtue of, its Australian business.

Division 5.—Advances and Investments.

Advances.

27.—(1) Where the Commonwealth Bank is satisfied that it is necessary or expedient to do so in the public interest, the Commonwealth Bank may determine the policy in relation to advances to be followed by banks and each bank shall follow the policy so determined.

Penalty: One thousand pounds.

(2) Without limiting the generality of the last preceding sub-section, the Commonwealth Bank may give directions as to the classes of purposes for which advances may or may not be made by banks and each bank shall comply with any directions so given.

Penalty : One thousand pounds.

(3) Nothing in this section shall—

(a) authorize the Commonwealth Bank to make any determination or give any direction with repect to an advance made, or proposed to be made, to any particular person; or

(b) affect the validity of any transaction entered into in relation to an advance or affect the right of a bank to recover any advance or enforce any security given in respect of an advance.

Limitation on purchase of securities.

28. A bank specified in part I. of the First Schedule shall not, except with the consent in writing of the Commonwealth Bank, purchase or subscribe to—

(a) securities of the Commonwealth or of a State or of any authority of the Commonwealth or of a State;

(b) securities of any local governing body in Australia; or

(c) securities listed on a Stock Exchange in Australia.

Penalty : One thousand pounds.

Part III.—Foreign Exchange.

Exchange control.

29.—(1) Where the Governor-General is satisfied that it is expedient so to do, for the protection of the currency or of the public credit of the Commonwealth, or in order to conserve, in the national interest, the foreign exchange resources of the Commonwealth, he may make regulations, not inconsistent with this Act, making provision for and in relation to the control of foreign exchange and, in particular, but without limiting the generality of the foregoing, for or in relation to—

(a) the buying, borrowing, selling lending or exchanging of foreign currency, including the fixing rates of exchange;

(b) any dealing or transaction having the effect of a purchase, borrowing, sale, loan or exchange of foreign currency;

(c) the taking or sending out of Australia of gold, Australian currency or foreign currency;

(d) requiring any person who has power to sell, or to procure the sale of, any foreign currency to sell, or procure the sale of,

that foreign currency as prescribed;

(*e*) the taking, sending or transfer of any securities to a place outside Australia, including the transfer of securities from a register in Australia to a register outside Australia;

(f) the prohibition of the importation or exportation of goods unless a licence under the regulations to import or export the goods is in force;

(g) the terms and conditions to which such licences may be subject; and

(h) prescribing penalties not exceeding a fine of Five thousand pounds or imprisonment for a period not exceeding five years for any offence against the regulations made under this section.

(2) In this section—

"Australian currency" includes notes, coins, postal notes, money orders, bills of exchange, promissory notes, drafts, letters of credit and travellers' cheques, payable or expressed in Australian money, and also includes rights, and instruments of title, to Australian money;

"foreign currency" includes notes, coins, postal notes, money orders, bills of exchange, promissory notes, drafts, letters of credit and travellers' cheques, payable or expressed otherwise than in Australian money, and also includes rights, and instruments of title, to money other than Australian money;

"securities" includes shares, stock, bonds, debentures, debenture stock, Treasury Bills, and units or sub-units of a unit trust, and also includes deposit receipt in respect of the deposit of securities and documents of title to securities.

PART IV.—GOLD.

Operation of Part.

30.—(1) This Part shall not be in operation except as provided in this section.

(2) Where the Governor-General is satisfied that it is expedient so to do, for the protection of the currency or of the public credit of the Commonwealth, he may, by Proclamation, declare that this Part, or such of the provisions of this Part as are specified in the Proclamation, shall come into operation, and this Part, or the provisions so specified, shall thereupon come into operation.

(3) Where the Governor-General is satisfied that it is no longer

expedient, for the protection of the currency or of the public credit of the Commonwealth, that this Part, or any of the provisions of this Part, should remain in operation, the Governor-General may, by Proclamation, declare that this Part, or such of the provisions of this Part as are specified in the Proclamation, shall cease to be in operation, and thereupon this Part, or the provisions so specified, shall cease to be in operation.

Transfer of gold out of Australia.

31. A person shall not, except with the consent in writing of the Commonwealth Bank, take or send any gold out of Australia.

Penalty : One thousand pounds or imprisonment for five years.

Delivery of gold.

32.—(1) Subject to this part, every person who has any gold in his possession or under his control, not being—

(a) gold coins the total value of the gold content of which does not exceed the prescribed amount; or

(b) gold lawfully in the possession of that person for the purpose of being worked or used in manufacture for professional or trade purposes,

shall deliver the gold to the Commonwealth Bank, or as prescribed, within one month after the gold comes into his possession or under his control.

Penalty : One thousand pounds or imprisonment for five years.

(2) In addition to any other punishment, a court may, if it thinks fit, order the forfeiture of any gold in respect of which an offence against this section has been committed.

Vesting of gold delivered.

33. All gold delivered in pursuance of the last preceding section shall thereupon vest in the Commonwealth Bank absolutely, free from any mortgage, charge, lien, trust, or other interest in or affecting the gold and the Commonwealth Bank shall pay for the gold, to the person delivering the gold, on behalf of all persons having any interest in the gold, an amount determined in accordance with the next succeeding section and the Commonwealth Bank shall not be under any liability to any other person claiming any interest in the gold.

Payment for gold.

34. The amount to be paid for any gold delivered in pursuanee of section thirty-two of this Act shall be an amount determined in accordance with such price as is fixed and published by the Commonwealth Bank or, at the opinion of the person delivering the gold, such amount

as is determined in an action for compensation against the Commonwealth Bank.

35.—(1) Subject to this Part—

Limitation of sale and purchase of gold.

(a) a person shall not sell or otherwise dispose of gold to any person other than the Commonwealth Bank or a person authorized in writing by the Commonwealth Bank to purchase gold; and

(b) a person, other than the Commonwealth Bank or a person so authorized, shall not buy gold from any person.

(2) A person may buy gold from the Commonwealth Bank or from a person authorized in writing by the Commonwealth Bank to sell gold, and the Commonwealth Bank or a person so authorized may sell gold to any person, for the purpose of its being worked or used in manufacture by the purchaser for professional or trade purposes.

(3) A person authorized by the Commonwealth Bank under this section shall comply with such directions relating to gold as are given to him by the Commonwealth Bank.

Penalty, for any offence against this section : Five hundred pounds or imprisonment for two years.

Limitation on working of gold.

36. A person shall not work or use in manufacture any gold, not being gold lawfully in his possession for the purpose of being worked or used in manufacture for professional or trade purposes.

Penalty: Five hundred pounds or imprisonment for two years.

Application of Part.

37.—(1) This part shall not apply to wrought gold, not being wrought gold worked or manufactured in contravention this Part.

(2) In this section, "wrought gold" means gold and gold alloys which on view have apparently been worked or manufactured for professional or trade purposes and includes the waste products arising from the working or manufacturing of gold and gold alloys for professional or trade purposes.

Exemptions.

38. The Commonwealth Bank may, by instrument in writing, and either wholly or to the extent specified in the instrument, exempt any person from the application of the whole or any of the provisions of this Part and, so long as the exemption continues, that person shall be exempt accordingly.

PART V.—INTEREST RATES.

Control of interest rates.

39.—(1) The Commonwealth Bank may, with the approval of the Treasurer, make regulations—

(a) making provision for and in relation to the control of rates of interest payable to or by banks, or to or by other persons in the course of any banking business carried on by them;

(b) making provision for and in relation to the control of rates of discount chargeable by banks, or by other persons in the course of any banking business carried on by them; and

(c) providing that interest shall not be payable in respect of—

(i) any amount deposited with a bank, or with any other person in the course of any banking business carried on by him, and repayable on demand or after the expiration of a period specified in the regulations; or

(ii) so much of the amount to the credit of a deposit account in a savings bank as exceeds an amount specified in the regulations.

(2) Any person who contravenes or fails to comply with any regulation under this section shall be guilty of an offence punishable—

(a) if the offence is prosecuted summarily—by a fine not exceeding One hundred pounds or imprisonment for a term not exceeding six months; or

(b) if the offence is prosecuted upon indictment—by a fine not exceeding Five thousand pounds or imprisonment for a term not exceeding five years.

PART VI.—STATISTICS.

Balance-sheets and statements to be furnished by banks.

40. Each bank specified in Part I. of the First Schedule shall prepare—

(a) a balance-sheet, in accordance with Form A, as at the close of business on a date in each year prescribed in respect of that bank;

(b) a statement of its profit and loss, in accordance with Form B, in respect of each year ending on that date;

(c) a statement of its income and expenditure in respect of its Australian business, in accordance with Form C, in respect of each year ending on that date;

(d) a statement of liabilities and assets within Australia in accordance with Form D;

(e) a statement of debits to customers' accounts in accordance with Form E;

(f) a statement of its foreign currency position in accordance with Form F;

(g) a statement of loans, advances and bills discounted, classified according to—

(i) the purpose of the loan, advance or discounting;

(ii) the rate of interest or discount chargeable; and

(iii) the industry of the borrower or person for whom the bill is discounted,

in accordance with the prescribed form;

(h) a statement of deposits, classified according to—

(i) the term of the deposit;

(ii) the rate of interest payable;

(iii) the industry of the depositor,

in accordance with the prescribed form; and

(i) such additional statements as are prescribed.

Directions with respect to Forms.

41. Each balance-sheet and statement referred to in the last preceding section shall be prepared in accordance with the directions specified in the balance-sheet or statement, and in accordance with such instructions (not inconsistent with those directions) as are given by the Commonwealth Bank, and copies of the balance-sheet or statement shall be delivered to the Commonwealth Statistician or to the Commonwealth Bank, or to both, in accordance with the directions specified in the balance-sheet or statement.

Variation of Forms.

42. The regulations may provide for the variation of any Form in the Second Schedule, including directions specified therein, but so that no change shall be made in the essential nature of the Form.

Verification of balance-sheets and statements.

43. Every balance-sheet and statement prepared under this Part shall be verified by a statutory declaration made by a senior officer of the bank concerned.

44.—(1) From the balance-sheets in accordance with Form A and

Certain statements to be published in *Gazette*.

the statements of profit and loss in accordance with Form B delivered to the Commonwealth Statistician, the Commonwealth Statistician shall prepare, and shall publish in the *Gazette*, a statement showing, in respect of each bank, the liabilities, assets and profit and loss of that bank.

(2) From the statements of liabilities and assets within Australia in accordance with Form D delivered to the Commonwealth Statistician, the Commonwealth Statistician shall prepare, and shall publish in the *Gazette*, a statement, in respect of each bank, of the average of that bank's liabilities and assets within Australia for each month.

Publication of other statements.

45. From the information contained in the balance-sheets and statements delivered to him in pursuance of this Part, the Commonwealth Statistician shall prepare and publish such other statements as the Treasurer directs, but no such statement shall be in such a form as to disclose the information supplied by any individual bank, except in so far as that information is contained in any balance-sheet or statement referred to in the last preceding section.

Penalty.

46. A bank shall not contravene or fail to comply with any of the provisions of this Part which are applicable to it.

Penalty: Five hundred pounds.

Exemptions.

47. The Treasurer may, by instrument in writing, exempt any bank from the obligation to prepare and deliver any balance-sheet or statement in accordance with a Form in the Second Schedule which is specified in the instrument and, so long as the exemption continues, that bank shall be exempt accordingly.

PART VII.—MISCELLANEOUS.

Banks not to conduct certain business.

48.—(1) Except with the consent in writing of the Treasurer, a bank shall not conduct any banking business for a State or for any authority of a State, including a local governing authority.

Penalty: One thousand pounds.

(2) Any consent of the Treasurer under this section may apply to all such business conducted by any particular bank or at a particular office of a bank, or to the business of any particular State or authority conducted by any particular bank or at a particular office of a bank.

(3) Until a date fixed by the Treasurer by notice published in the *Gazette*, this section, shall apply only in relation to banking business conducted for a State or for an authority of a State, including a local

governing authority, specified by the Treasurer by notice in writing, and, if an office of a bank is specified in the notice, at the office so specified.

Reports by Auditor-General.

49.—(1) The Auditor-General shall investigate periodically the books, accounts and transactions of each bank and shall furnish to the Treasurer and to the Commonwealth Bank such reports upon the affairs of each bank as the Treasurer directs.

(2) The Treasurer may at any time direct the Auditor-General to make an investigation of the books, accounts and transactions of a bank specified by the Treasurer and to furnish the Treasurer and to the Commonwealth Bank such reports upon the affairs of that bank as the Treasurer directs and the Auditor-General shall make an investigation and furnish reports accordingly.

(3) Nothing in this section shall authorize the Auditor-General to furnish a report with respect to the affairs of any individual customer of a bank.

(4) For the purpose of any investigation under this section, a bank shall afford the Auditor-General access to its books, accounts and documents and shall give to the Auditor-General such information and facilities as he requires to conduct the investigation.

Penalty : One thousand pounds for each day during which the contravention continues.

Supply of information.

50.— (1) Every bank shall furnish to the Commonwealth Bank such information in respect of its business as the Commonwealth Bank directs, and every person who carries on any banking business in Australia shall furnish to the Commonwealth Bank such information in connexion with his banking business as the Commonwealth Bank directs.

Penalty : One thousand pounds.

(2) A direction under this section shall not require information to be furnished with respect to the affairs of any individual customer.

Amalgamation &c, requires consent of Treasurer.

51.—(1) Except with the prior consent in writing of the Treasurer, after the receipt by him of a recommendation of the Commonwealth Bank, a bank shall not—

(a) enter into any arrangement or agreement for any sale or disposal of its business by amalgamation or otherwise, or for the carrying on of business in partnership with any other bank; or

(b) effect any reconstruction of the bank.

Penalty: One thousand pounds.

(2) Any such arrangement, agreement or reconstruction, and any such sale or disposal in pursuance of any such arrangement or agreement, entered into without the prior consent of the Treasurer shall be void and of no effect.

Settlement of balances between banks.

52. Each bank specified in part I. of the First Schedule shall settle, by means of cheques drawn on and paid into the Commonwealth Bank, the balances arising, between itself and any other bank so specified, out of any customary general clearance effected in any capital city in Australia.

Penalty: One hundred pounds.

Bank may be directed to comply with Act.

53.—(1) Where any bank is convicted of an offence against this Act or the regulations, a Full Court of the High Court constituted by not less than three Justices may, upon the application of the Attorney—General, by motion, direct compliance by the bank, within a period specified by the Court, with the provisions of this Act or the regulations with which the bank has failed to comply.

(2) In default of compliance by the bank within the specified period with any direction given by the Court in pursuance of the last preceding sub-section, the Court may authorize the Commonwealth Bank to assume control of, and to carry on, the business of that bank.

(3) The provisions of sections thirteen and fourteen of this Act shall, so far as applicable, have effect where the Commonwealth Bank has assumed control of the business of a bank in pursuance of the last preceding sub-section.

(4) Where the Commonwealth Bank has assumed control of the business of a bank in pursuance of sub-section (2) of this section, the Commonwealth Bank shall remain in control of, and shall continue to carry on, the business of that bank until such time as the High Court is satisfied that it is no longer necessary for the Commonwealth Bank to remain in control of the business of that bank and authorizes the Commonwealth Bank to cease to control the business of that bank.

54—(1) A person or body of persons, not being a bank, shall not

Restriction of use of word "bank," &c.

assume or use, in relation to the business, or any part of the business, carried on by that person or body, the word "bank," "banker" or "banking" or any word of a like import.

Penalty: One hundred pounds for each day during which the contravention continues.

(2) Nothing in this section shall be deemed to prohibit the use, by any person or body of persons, of any word in use by that person or body immediately prior to the commencement of this Part—

(a) for a period of six months after the commencement of this Part; or

(b) where the Treasurer, in writing, authorizes the continued use of the word.

Restriction of use of words "savings bank".

55.—(1) A person or body of persons (not being a bank specified in Part II. of the First Schedule) shall not assume or use, in relation to the business, or any part of the business, carried on by that person or body, the words "savings bank" or any words of a like import.

Penalty: One hundred pounds for each day during which the contravention continues.

(2) Nothing in this section shall be deemed to prohibit the use by any person or body of persons, of any words in use by that person or body immediately prior to the commencement of this Part—

(a) for a period of six months after the commencement of the Part; or

(b) where the Treasurer, in writing, authorizes the continued use of the words.

Unclaimed moneys.

56.—(1) Every bank specified in Part I. of the First Schedule, and the Commonwealth Bank, shall, within three months after the thirty-first day of December in each year, deliver to the Treasurer a statement of all unclaimed moneys.

(2) The statement shall set forth the name of each shareholder, depositor or creditor, his last-known address, the amount due, the office or branch of the bank at which the last transaction took place, and the date thereof, and, if the shareholder, depositor or creditor is known to the bank to be dead, the statement shall show the names and addresses of his legal representatives so far as known to the bank.

(3) The total amount shown in the Statement shall be—

(a) paid by the bank to the Treasurer at the time of the delivery of the statement;

(b) credited by the Treasurer to the Trust Fund established by the *Audit Act* 1901–1934;

(c) available during six years after payment to the Treasurer for payment to the persons whom the bank was liable to pay or to the respective administrators, executors or assigns of those persons; and

(d) paid thereafter to the Consolidated Revenue Fund.

(4) After the payment to the Consolidated Revenue Fund of any unclaimed moneys, the Treasurer may pay to any person to whom any amount of such moneys was due by the bank the amount so due.

(5) Upon payment to the Treasurer of any amount as required by this section, the bank shall be held to be discharged from further liability for the amount so paid.

(6) The Consolidated Revenue Fund is hereby appropriated for the purposes of, and to the extent necessary to give effect to, sub-section (4) of this section.

(7) Particulars of every sum not less than Ten pounds included in the statement mentioned in this section shall be published by the Treasurer in the *Gazette*.

(8) A bank shall not contravene or fail to comply with any provision of this section which is applicable to it.

Penalty : One hundred pounds.

(9) For the purposes of this section, "unclaimed moneys" means all principal, interest, dividends, bonuses, profits and sums of money whatsoever which are legally payable by a bank but in respect of which the time within which proceedings may be taken for the recovery thereof has expired, and includes moneys to the credit of an account which has not been operated on, either by deposit or withdrawal for a period of not less than seven years.

Penalties on executive officers.

57. Where any offence against this Act or the regulations has been committed by any body corporate, the chief executive officer in Australia of the body corporate shall be liable to the Penalty provided in respect of that offence, but nothing in this section shall affect the liability of the body corporate.

Treasurer to consent to proceedings for offences.

58. Proceedings for an offence against this Act or the regulations shall not be instituted without the consent in writing of the Treasurer.

Certificate as to certain facts.

59. The production of any certificate purporting to have been given by the Governor or Deputy Governor of the Commonwealth Bank certifying to any matter relating to the failure of any person to comply with any of the provisions of this Act or the regulations shall in all courts be *prima facie* evidence that those matters are as so certified.

Regulations.

60. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for giving effect to this Act and in particular for prescribing penalties not exceeding One hundred pounds for any offence against the regulations.

SCHEDULES.

THE SCHEDULES.

Section 8.

First Schedule.

Part I.

The Ballarat Banking Company Limited.

The Bank of Adelaide.

The Bank of Australasia.

Bank of China.

Bank of New South Wales.

Bank of New Zealand.

The Brisbane Permanent Building and Banking Company Limited.

The Commercial Bank of Australia Limited.

The Commercial Banking Company of Sydney Limited.

Comptoir National d'Escompte de Paris.

The English, Scottish and Australian Bank, Limited.

The National Bank of Australasia Limited.

The Queensland National Bank Limited.

The Union Bank of Australia Limited.

Part II.

The Hobart Savings Bank.

Launceston Bank for Savings.

Section 40. SECOND SCHEDULE.

FORM A.

Banking Act 1945.

BALANCE-SHEET

of the.....as at the close of business on.....

Liabilities.	£ s. d.	*Assets.*	£ s. d.
1. Authorized capital* . .		1. Coin, bullion, notes and cash at bankers §	
2. Issued capital†		2. Money at short call—	
3. Paid-up capital		(a) London	
4. Reserve funds‡—		(b) Elsewhere	
.....		3. Special Account with Commonwealth Bank	
.....		4. Cheques and bills of other banks and balances with and due from other banks	
5. Final dividend proposed . .		5. Treasury bills—	
6. Balance of profit and loss account		(a) Australian Governments;	
7. Total shareholders' funds. .		(b) Other Governments . .	
8. Interminable deposits or deposit stock—		6. Public securities (excluding Treasury bills)¶—	
.....		(a) Australian Government securities; . .	
.....		(b) Other Government securities;	
9. Deposits, bills payable and other liabilities including provisions for contingencies		(c) Local and Semi-Governmental Authorities' securities	
10. Notes in circulation . .		7. Bills receivable and remittances in transit	
11. Balances due to other banks			

*Insert details of shares, including number, denomination, class and total.

† Insert details of shares issued, including number and amount, denomination and class, and amount paid up per share, and set out details of reserved liability (if any).

‡ State if used in the business or how otherwise used.

§ Include as cash at bankers only cash at central banks and London clearing banks but exclude Special Account with Commonwealth Bank.

¶ State basis of valuation, that is, cost price, market price or otherwise.

		8. Loans, advances and bills discounted (after deducting provisions for debts considered bad or doubtful)	
		9. Bank premises, furniture and sites¶—	
		10. All other assetes	
Total		Total	

Directions.

1. Copies of this balance-sheet shall be delivered to the Commonwealth Statistician and to the Commonwealth Bank within six months after the date as at which the balance-sheet is prepared.

2.—(1) If the balance-sheet includes any asset or liability (other than share capital or any reserve fund specifically set out therein) realizable or payable in any currency other than Australian currency, and the value of that asset or liability included in the balance-sheet is not the equivalent in Australian currency (calculated at a rate of exchange current on the date as at which the balance-sheet is prepared) of the value of that asset or liability in that other currency, the balance-sheet shall show what the effect on each relevant item of the balance-sheet would have been if the value of that asset or liability had been converted into Australian currency at such a rate of exchange.

(2) The last preceding sub-paragraph shall not, so long as the Commonwealth Bank sells telegraphic transfers on New Zealand for not less than Ninety-nine pounds, and for not more than One hundred and one pounds, in Australian currency, for each One hundred pounds in New Zealand currency, apply in relation to any asset or liability realizable or payable in New Zealand currency.

FORM B.

Banking Act 1945.

STATEMENT OF PROFIT AND LOSS

of the.....in respect of the year ended.....

	£ s. d.		£ s. d.
1. To Expenses (including Directors' fees £.....)		1. By Discount and interest earned, net exchange, commissions and other items (including transfers from contingencies accounts), after deducting interest paid and accrued on deposits, rebate on bills current at balance date, amounts written off assets and losses on realization of assets and transfers to the credit of contingencies accounts (out of which accounts provisions for all bad and doubtful debts have been made)	
2. To Income, Land and other Taxes			
3. To Balance, being net profit for the year carried down..			
Total		Total	
4. To Transfer to Reserve Funds		2. By Net Balance brought forward	
5. To Amounts written off Bank Premises		3. By Net Profit for the year	
6. To Other Appropriations as follows:—			
7. To Dividends (*):— Interim paid £..... Final proposed payable £.....			
8. To Balance carried forward..			
Total		Total	

FORM B—*continued.*

Rate of dividend for year .. ..

Gross amount of dividends .. ..

Less British taxes payable by bank and recouped from shareholders.....

Net amount of dividends payable to shareholders .. ..

Directions.

1. Copies of this statement shall be delivered to the Commonwealth Statistician and to the Commonwealth Bank within six months after the end of the year to which the statement relates.

2.—(1) If the statement includes any credit earned or debit incurred in any currency other than Australian currency, and the value of that credit or debit included in the statement is not the equivalent in Australian currency (calculated at a rate of exchange current at some date during the year to which the statement relates) of the value of that credit or debit in that other currency, the statement shall show what the effect on each relevant item in the statement would have been if the value of that credit or debit had been converted into Australian currency at a rate of exchange current at some date during the year to which the statement relates.

(2) The last preceding sub-paragraph shall not, so long as the Commonwealth Bank sells telegraphic transfers on New Zealand for not less than Ninety-nine pounds, and for not more than One hundred and one pounds, in Australian currency, for each One hundred pounds in New Zealand currency, apply in relation to any credit earned or debit incurred in New Zealand currency.

FORM C.

Banking Act 1945.

STATEMENT OF INCOME AND EXPENDITURE IN RESPECT OF AUSTRALIAN BUSINESS of the.....in respect of the year ended.....

Expenditure.	£	*Income.*	£
1. Interest on deposits or deposit stock		1. Discount and interest— (a) on advances and bills discounted	
2. Directors' fees, salaries, wages, and allowances...		(b) on Australian Government securities (excluding Treasury Bills) ...	
3. Contributions to Staff Provident Funds and pensions paid by bank...		(c) on Australian Treasury Bills	
4. Maintenance and repairs to premises, and expenditure on furniture and fittings		(d) on Special Account with Commonwealth Bank	
5. Rates of Local and Semi-Governmental Authorities		(e) other	
6. Other expenses of management		2. Profit on overseas exchange transactions	
7. Land pay-roll and other taxes allowable as deductions in ascertaining Commonwealth taxable income		3. Inland exchange	
8. Bad debts and interest written off		4. Net earnings from commission, and charges for keeping current accounts	
9. Depreciation		5. Bad debt recoveries ...	
10. Losses on realization of investments or other assets		6. Interest recoveries ...	
11. All other items... ...		7. Profits on realization or redemption of investments or other assets	
12. Total Expenditure ...		8. Rents	
13. Australian Taxable Income for Commonwealth Purposes		9. All other items	
Total		Total	

FORM C—*continued*

Adjustments.

	£		£
Items of expenditure not allowable for Commonwealth income tax purposes—		Australian taxable income for Commonwealth purposes as above	
		Items of income exempt from Commonwealth taxation—	
Items of assessable income not taken to profit and loss account—			
		Items of expenditure allowable as deductions for taxation purposes but not charged to profit and loss account	
Total profit in respect of Australian business before deduction of Commonwealth income taxes and without allowance for depreciation of premises. .			
Total ..		Total ..	

Directions.

1. Copies of this statement shall be delivered to the Commonwealth Statistician and to the Commonwealth Bank within six months after the end of the year to which the statement relates.

FORM D.

Banking Act 1945.

STATEMENT OF LIABILITIES AND ASSETS WITHIN AUSTRALIA of the _____ as at the close of business on _____

PART I.

Liabilities.	£	*Assets.*	£
1. Interminable Deposits or Deposit Stock		1. Coin and Bullion:—	
2. Deposits not bearing interest:—		(a) Gold;	
(a) Australian Governments;		(b) Other	
(b) Other		2. Australian Notes	
3. Deposits bearing interest:—		3. Cash with Commonwealth Bank	
(a) Australian Governments;		4. Special Account with Commonwealth Bank ..	
(b) Other—		5. Balances with and due from other banks, and notes, cheques and bills of other banks	
(i) Fixed		6. Australian public securities:—	
(ii) Current		(a) Commonwealth and States—	
4. Notes in Circulation ..		(i) Treasury Bills*	
5. Balances due to other banks..		(ii) Other securities*	
6. Bills Payable and all other liabilities to the public (excluding shareholders' funds)		(b) Local and Semi-Governmental Authorities* ..	
		7. Other public securities* ..	
		8. Other securities	
		9. Loans, Advances and Bills discounted:—	
		(a) Australian Government;	
		(b) All other customers	
		10. Bank premises, furniture and sites	
		11. Bills Receivable and all other assets	
Total		Total	

* Amounts redeemable overseas:—

FORM D—*continued*

PART II.

State or Territory	Deposits not bearing interest		Deposits bearing interest			Total Deposits	Loans, Advances and Bill discounted	
	Australian Governments	Other	Australian Governments	Other			Australian Governments	Other
				Current	Fixed			
	£	£	£	£	£	£	£	£
New South Wales								
Victoria								
Queensland ..								
South Australia ..								
Western Australia								
Tasmania								
Australian Capital Territory ..								
Northern Territory								
Papua and New Guinea ..								
Other								
Total ..								

Directions.

1. This statement shall be prepared as at the close of business on Monday in each week.

2. Copies of this statement shall be delivered to the Commonwealth Statistician and to the Commonwealth Bank within fourteen days after the date as at which it is prepared.

3. Any accounts between the head office of the bank and a branch, or between different branches of the bank, shall not be included as liabilities or assets.

4. Contingent liabilities and assets shall not be included.

FORM E.

Banking Act 1945.

STATEMENT OF DEBITS TO CUSTOMERS' ACCOUNTS

within Australia by the..... .....during the week ended..... .....

State or Territory	Metropolitan Area*		Elsewhere	Total
	Australian Governments†	Other		
	£	£	£	£
New South Wales ...				
Victoria				
Queensland ...				
South Australia ...				
Western Australia ...				
Tasmania ...				
Australian Capital Territory				
Northern Territory ...				
Papua and New Guinea				
Other				
Total				

*The "free of exchange" area in capital cities.

†At the bank's city branches only.

Directions.

1. This statement shall be prepared as at the close of business on Monday in each week.

2. Copies of this statement shall be delivered to the Commonwealth Statistician and to the Commonwealth Bank within fourteen days after the date as at which it is prepared.

FORM F.

Banking Act 1945.

STATEMENT OF FOREIGN CURRENCY POSITION

of the _____ as at the close of business on _____

£ Eng.

1. London $\frac{\text{Surplus}}{\text{Deficiency}}$ as per London Office Books, excluding Surplus or Deficiency on New Zealand and Fiji Account

£ Eng.

2. Excess of $\frac{\text{London Remittances over Drawings in transit}}{\text{London Drawings over Remittances in transit}}$ as per Australian Books.

£ Engl

3. Balances (as per Australian Books)—

(a) in New Zealand

(b) in Fiji

(c) in United States of America

(d) in other overseas centres

Total overseas funds held on Australian account other than in London.

Directions.

1. This statement shall be prepared as at the close of business on Monday in each week.

2. Copies of this statement shall be delivered to the Commonwealth Statistician and to the Commonwealth Bank within fourteen days after the date as at which it is prepared.

3. The amounts shown in item 3 shall be converted to English currency at the ruling telegraphic transfer buying rate of exchange.

NOTE:

The Act sought to nationalise all private trading banks, but in August, 1948, the Australian High Court ruled invalid that Section of the Act which authorises the Commonwealth Government to take over the management of private banks by replacing their present Directors. The High Court was unanimous on this Section of the Act, but six judges of the Court gave majority decisions on other Sections of the Act, the most important being that Section 46 of the Act was invalid under Section 92 of the Constitution which was framed in 1900. Section 46 of the Act empowered the Australian Treasurer to order private banks to cease business. Section 92 of the Constitution lays down that trade, commerce, and intercourse between various Australian States shall be absolutely free.

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