

18. The Banking Regulation Act, 1949

Definitions (Sec. 5)

- **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 or order or otherwise.
- **Banking Company:** means any company which transacts the business of banking in India
- **Demand Liabilities:** means liabilities which must be met on demand, and 'time liabilities' means liabilities which are not demand liabilities.
- **Managing Director:** in relation to a banking company, means a director who, by virtue of agreement with the banking company or of a resolution passed by the banking company in general meeting or by its BOD or, by virtue of its memorandum or AOA, is entrusted with the management of the whole, or substantially the whole of the affairs of the company, and includes a Director occupying the position of a MD, by whatever name called.
- **Secured Loan or advances:** means a loan or advance made on the security of assets the market value of which is not any time less than the amount of such loan or advance; and 'unsecured loan and advance' means a loan or advance which is not secured.
- **Small-scale industries concern:** means an industrial concern in which the investment in P & M is not in excess of Rs. 7.5 Lakh or such higher amount, not exceeding Rs. 20 Lakh, as the CG may, by notification in the official gazette, specify in this behalf, having regard to the trends in industrial development and other relevant factors.
- **Substantial Interest:**
 - ✓ In relation to a company, means the holding of a beneficial interest by an individual or his spouse or minor child, whether singly or taken together in the share thereof, the amount paid-up on which exceeds Rs. 5 lakh or 10% of the paid-up capital of the company. WEL
 - ✓ In relation to a firm – 10% of the total capital subscribed by all its partners.

Use of words "Bank", "Banker", "banking" or "Banking company" (Sec. 7)

- No company/Firm other than a banking company shall use as part of its name or, in connection with its business any of the words disclose above.
- Nothing in this section shall apply to any association of banks formed for the protection of their mutual interests and registered under section 25 of the companies act, 1956.

Disposal of Non-Banking assets (Sec. 9)

- Mandatory disposal within 7 years
 - ✓ Notwithstanding anything contained in sec. 6, no banking company shall hold any immovable property whatsoever acquired, except such as is required for its own use, for any period exceeding 7 years from the acquisition thereof 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.
- Extension of period by RBI
 - ✓ However, the RBI may in any particular case extend the aforesaid period of 7 years by such period not exceeding 5 years where it is satisfied that such extension would be in interest of the depositor of bank.

BOD to include persons with professional or other experience (Sec. 10A)

- 51% or more directors to be specified in certain specified areas [Section 10A(2)]
Such person who has special knowledge or practical experience in respect of one or more of the following matters namely,
 - ✓ Agricultural and rural economy,
 - ✓ Co-operation,
 - ✓ Small-scale industry,
 - ✓ Accountancy,
 - ✓ Banking,
 - ✓ Economics,
 - ✓ Finance,
 - ✓ Law
 - ✓ Any other matter which would, in the opinion of RBI, is useful to banking company.
- Minimum 2 directors shall be persons having special knowledge or practical experience in respect of agriculture and rural economy, co-operation or SSI.
- If, in respect of any banking company, the requirements, as laid down in sub-section 2, are not fulfilled at any time, the BOD of such banking company shall re-constitute such board so as to ensure that the said requirements are fulfilled.
- If, for the purpose of re-constituting the board under s/s (3), it is necessary to retire any director or directors, the board may, by lots drawn in such manner as may be prescribed, decide which director or directors shall cease to hold office and such decision shall be binding on every director of the board.

Reserve fund (Sec. 17)

- Every banking company (BC) incorporated in India shall create a reserve fund and shall, out of the balance of profit of each year, as per P & L statement before any dividend is declared, transfer to reserve fund a sum equivalent to 20% of such profit.
- Exemption from above section can be given by CG on recommendation of RBI.
- Provided that no such order for exemption shall be made unless, at the time it is made, the amount in the reserve fund, together with the amount in share premium account is not less than the paid-up capital of banking company.

Cash Reserve (Sec. 18)

- Time limit and amount [sec. 18(1)]
 - ✓ 3% of the total of its demand and time liabilities as on the last Friday of the second preceding fortnight
 - ✓ Submit to RBI before the 20th day of every month
 - ✓ If such day (i.e., Friday) is public holiday then at the close of business on the preceding working day.
- *Fortnight* shall mean the period from Saturday to the second following Friday, both days inclusive.

Power of Reserve Bank to control advances by banking company (Sec. 21)

- Formulation of policy by reserve Bank in relation to advance [section 21(1)]
- Directions [section 21(2)]
 - ✓ The purpose for which advance may or may not be made;
 - ✓ The margins in respect of secured advances;
 - ✓ The maximum amount of advance or other financial accommodation which having regard to the paid-up capital, reserves and deposits of a BC and other relevant consideration may be made by that banking company to any one company, firm, AOP or individual;
 - ✓ The maximum amount up to which, having regard to the considerations referred to above clause, guarantees may be given by a BC on behalf of any one company, firm, AOP of persons or individual; and
 - ✓ The rate of interest and other terms and conditions on which advances or other financial accommodation may be made or guarantees may be given.
- Every banking company shall be bound to comply with any directions given to it under this section.

Accounts and Balance sheet (Sect. 29)

- Form – last working day of Accounting year in third schedules
- Signing – more than 3 directors of the company
- Schedule VI not applicable

Audit (Section 30)

- Audit by an auditor of companies
- Notwithstanding anything contained in any law, for appointment, re-appointment, removal previous approval of RBI is necessary.
- RBI can direct for special audit if its in public interest
- Expenses for special audit are borne by BC.
- Additional disclosure required in audit report
 - ✓ Whether or not the information and explanation required by him have been found to be satisfactory;
 - ✓ Whether or nor the transactions of the company which have come to his notice have been within the powers of the company.
 - ✓ Whether or not the returns received from branch offices of the company have been found adequate for the purpose of the audit.
 - ✓ Whether the profit and loss account shows a true balance of profit or loss for the period covered by such account.
 - ✓ Any other manner which he considers should be brought to the notice of the shareholders of the company.

Submission of returns (Sec. 31)

- In 3 copies within 3 months from the end of the period for which they refer
- RBI may extend such period by 3 months more.

Inspection (Sec. 35)

- Notwithstanding anything contained in any law, the RBI at any time may, and on being directed so to do by the CG, shall cause an inspection to be made by one or more of its officers of any BC and its BOA and the RBI shall supply to the BC a copy of its report in such inspection.
- It shall be duty of every director, officer or employee to furnish detail which is required for such inspection.
- Any person making an inspection may examine on oath any director or other officer or employee of the BC.

Amendments of provision relating to appointments of MD, etc., to be subject to previous approval of the reserve bank (sec 35B)

Further powers and function of reserve bank (Sec. 36)

1. Powers to prohibit, caution or advice the BC [Sec. 36(1)]
 - a. Prohibit any BC to enter in particular transaction or class of transactions
 - b. On a request by companies, assist in the amalgamation process
 - c. Give assistance in grant of loan or advance;
 - d. By order in writing, and on such terms and conditions as may be specified therein-
 - ✓ Require the BC to call a meeting of directors for the purpose of considering any matter relating to the affairs of the banking company, or
 - ✓ Require an officer of the BC to discuss any matter relating to the affairs of the BC with an officer of the RBI.
 - ✓ Depute one or more persons to watch the proceedings of the bank.
 - ✓ Appoint one or more person to observe the manner in which BC are working
 - ✓ Make order for change in management within prescribed time.
2. The RBI shall make an annual report to CG about the banking business in all the country.
3. The RBI can appoint such staff at such places as it considers necessary for the scrutiny of the returns, statements and information furnished by BCs.

Powers of Reserve Bank to remove managerial and other person form office (Sec 36AA)

- Where RB is satisfied that in the public interest or for preventing the affairs of a BC being conducted in a manner detriment to the interests of the depositors or for securing the proper management of any banking company it is necessary so to do. The RB, may reasons to be recorded in writing, by order remove from office.
- No order shall be made unless, the person has been given a reasonable opportunity of making a representation to the RB against the proposed order.

Power to appoint additional directors (Sec. 36AB)

- If RB satisfied than it may appoint AD by order in writing, with date from which such order shall be effected.
- Terms and condition of AD
 - ✓ Shall hold office during the pleasure of RB but subject to period not exceeding 3 years or such further period not exceeding 3 years at a time as the RB may specify,

- ✓ Shall not incur any obligation or liability by reason only of his being a director or for any thing done or omitted to be done in good faith in the execution of the duties of his office or in relation thereto; and
- ✓ Shall not be required to hold qualification share in the BC.
- For the purpose of reckoning any proportions of the total number of director of BC, an AD shall not include.

Powers of CG to acquire undertaking of any BCs in certain cases (Sec. 36AE)

- **Conditions**
 - a. Has, on more than one occasion, failed to comply with the directions given to it, in so far as directions relate to banking policy, or
 - b. Is being managed in a manner detrimental to the interests of its depositors, and that-
 - ✓ In the interests of the depositors of such BC, or
 - ✓ In the interest of banking policy, or
 - ✓ For the better provision of credit generally or of credit to any particular section of the community or in any particular area.
- No undertaking of any BC shall be acquired unless such BC has been given a reasonable opportunity of showing cause against the proposed action [36AE(1)]
- Subject to the other provision contained in this part, on the appointed day, the undertaking if the acquired bank and all the assets and liabilities of the acquired bank shall stand transferred to, and vests, in the CG.
- If, on the appointed day, any suit, appeal or other proceedings of whatever nature is pending by or against the acquired bank, the same shall not abate, be discontinued or be, in any way, prejudicially affected by reason of the transfer of the undertaking of the acquired bank or of anything contained in this part, but the suit, appeal or other proceedings may be continued, prosecuted and enforced by or against the CG.

Compensation given to shareholders of the acquired bank (Sec. 36AG)

- To whom
 - ✓ Every person, who is registered as a holder of shares in the acquired bank.
- Amount
 - ✓ As determined in accordance with the principles contained in the fifth schedule.
- The amount of compensation is first determined by CG in consultation with the RB, and shall be offered by it to all those whom such compensation is payable in full satisfaction thereof.
- If the amount of compensation is not acceptable than such person shall inform to the CG in writing, to have the matter referred to the tribunal Constituted under section 36AH.
- If above notice receive within time from not less than 1/4th number of the shareholders holding not less than 1/4th in value of the paid-up share capital of the acquired bank, the CG shall have the matter referred to above to the tribunal for decision.
- If the notice for not satisfaction regarding compensation in prescribed time and prescribed number than all shareholders are bound to accept amount which decided by CG.

Powers to suspend operation of Act (Section 4)

- The CG, if on a representation of RB in this behalf, is satisfied that it is expedient to do, it may be notification in the official gazette, suspend for such period not exceeding 60 days, as may be specified in the notification, the operation of all or any of the provision of the Act.
- The period of 60 days may be extend by CG but not exceed 1 year.

Act to override memorandum, articles etc. (Section 5A)

- Except as otherwise expressly provided in the act, the provisions of the act shall have effect notwithstanding anything contained anything to contrary contained in the memorandum or AOA, or in any agreement executed by it, or in any resolution passed by the banking company in general meeting or BOD meeting, whether the same be registered, executed or passed, as the case may be, before of after the commencement of Banking Regulation act, 1959.
- Except as otherwise expressly provide in this act, any provision contained in the memorandum or AOA, agreement or resolution aforesaid shall, to the extent to which it is repugnant to the provisions of this act, become or be void, as the case may be.