

BANKING LAW-1

B.COM LLB (HONS) SEM-7

THE BANKING REGULATION ACT, 1949



Preamble of regulatory Act

- An Act to consolidate and amend the law relating to banking.
- Where as it is expedient to consolidate and amend the law relating to banking .

Introduction

- ❖ The Banking companies act, presently known as banking regulation act was enacted owing to safeguard the interest of depositors, control abuse of power by some bank personnel controlling the banks in particular and to the interest of Indian economy in general.
- ❖ The Banking Regulation Act was passed as the Banking Companies Act 1949 and came into force i.e. 16.3.49. Subsequently it was changed to Banking Regulations Act 1949.
- ❖ However, it should be remembered that this act does not supersede the provision of companies act or any other law for the time being in force in respect of banking business.

Definition of banks

In India, the definition of the business of banking has been given in the Banking Regulation Act, (BR Act), 1949. According to Section 5(c) of the BR Act, 'a banking company is a company which transacts the business of banking in India.' Further, Section 5(b) of the BR Act defines banking as, '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.'

This definition points to the three primary activities of a commercial bank which distinguish it from the other financial institutions. These are: (i) maintaining deposit accounts including current accounts, (ii) issue and pay cheques, and (iii) collect cheques for the bank's customer

Applicability of the Banking Regulation Act, 1949

This Act applies to following categories of Banks:

1. Nationalized Banks
2. Non-Nationalized Banks Cooperative Banks

Applicability against other laws

- Provisions of the Banking regulation Act, 1949 are not in substitution of other laws applicable, unless otherwise expressly said (Section 2 sub 56(b))
- Act is not applicable to
 1. Primary Agricultural Society
 2. Co-operative Land Mortgage Bank
 3. Any other co-operative society except as provided by Sec. 56(Section 3)

Use of words bank, banker, banking or banking company

- ▶ (1) No company other than a banking company shall use as part of its name 15[or, in connection with its business] any of the words bank, banker or banking and no company shall carry on the business of banking in India unless it uses as part of its name at least one of such words.
- ▶ (2) No firm, individual or group of individuals shall, for the purpose of carrying on any business, use as part of its or his name any of the words bank, banking or banking company.

- ▶ (3) Nothing in this section shall apply to-
- ▶ (a) a subsidiary of a banking company formed for one or more of the purposes mentioned in sub-section (1) of section 19, whose name indicates that it is a subsidiary of that banking company;
- ▶ (b) any association of banks formed for the protection of their mutual interests and registered under section 25 of the Companies Act, 1956

Business of banking Companies

Section 6(1) and 6(2)

- Borrowing, raising or taking of money
- Giving advance
- Bills business
- L/C , Bank Guarantee, Indemnity
- Foreign exchange
- Providing safe deposit vaults

Some of the functions of the bank

- Collecting and transmitting money,
- Managing, selling and realizing any property that may come into the possession of the bank in satisfaction or part satisfaction of any of its dues,
- Acquiring, holding and dealing with any property or any right, title or interest in any such property that may form the security or part of the security for any loans or advances or which may be connected with such security,
- Undertaking and executing trusts.

- Acquiring, constructing, maintaining and altering of any building for the purpose of the bank.
- Acquiring and undertaking the whole or part of the business of any person or bank / company if its nature of business is as per the allowed business for the bank.
- Doing all such other things as are incidental or conducive to the promotion or advancement of the business of the bank.
- Any other business the Central Govt. may by notification specify as a allowed business.
- Banks are prohibited to do any other business.

Restrictions on loans and advances

- ❖ (1) Notwithstanding anything to the contrary contained in section 77 of the Companies Act, 1956 (1 of 1956), banking company shall;
 - (a) grant any loans or advances on the security of its own shares, or
 - (b) enter into any commitment for granting any loan or advance to or on behalf of
 - (I) any of its directors,
 - (ii) any firm in which any of its directors is interested as partner, manager, employee or guarantor, or

- (iii) any company [not being a subsidiary of the banking company or a company registered under section 25 of the Companies Act, 1956 (1 of 1956), or a Government company] of which 61 [or the subsidiary or the holding company of which] any of the directors of the banking company is a director, managing agent, manager, employee or guarantor or in which he holds substantial interest, or
- (iv) any individual in respect of whom any of its directors is a partner or guarantor.

Licensing of banking companies

- (1) Save as hereinafter provided, no company shall carry on banking business in India unless it holds a licence issued in that behalf by the Reserve Bank and any such licence may be issued subject of such conditions as the Reserve Bank may think fit to impose.]
- (2) Every banking company in existence on the commencement of this Act, before the expiry of six months from such commencement, and every other company before commencing banking business, shall apply in writing to the Reserve Bank for a licence under this section.

- ▶ The above Sections of the Banking Regulation Act deal with the accounts and audit. Every banking company, incorporated in India, at the end of a financial year expiring after a period of 12 months as the Central Government may by notification in the Official Gazette specify, must prepare a Balance Sheet and a Profit and Loss Account as on the last working day of that year, or, according to the Third Schedule, or, as circumstances permit.
- ▶ At the same time, every banking company, which is incorporated outside India, is required to prepare a Balance Sheet and also a Profit and Loss Account relating to its branch in India also. We know that Form A of the Third Schedule deals with form of Balance Sheet and Form B of the Third Schedule deals with form of Profit and Loss Account.

- It is interesting to note that a revised set of forms have been prescribed for Balance Sheet and Profit and Loss Account of the banking company and RBI has also issued guidelines to follow the revised forms with effect from 31st March 1992.
- According to Sec. 30 of the Banking Regulation Act, the Balance Sheet and Profit and Loss Account should be prepared according to Sec. 29, and the same must be audited by a qualified person known as auditor. Every banking company must take previous permission from RBI before appointing, reappointing or removing any auditor. RBI can also order special audit for public interest of depositors.
- Moreover, every banking company must furnish their copies of accounts and Balance Sheet prepared according to Sec. 29 along with the auditor's report to the RBI and also the Registers of companies within three months from the end of the accounting period.

BALANCE SHEET

- ▶ Sec.29 of the banking regulation act 1949 requires that every banking company has to prepare a balance sheet and profit and loss a/c. as on the last day of every financial year in the prescribed forms.

RBI control on Top Management of Bank

1. Meeting of shareholder
2. Appointment of a chairman or other officials
3. Power to remove Chairman or Direction of Officer
4. Appointment of New Chairman
5. Power to appoint additional Directors

The power of the RBI under the Banking Regulation Act 1949

1. Power to issue license for new banks and grant permission for starting new branches
2. Power to determine the credit policy to be followed by banks
3. Power of inspection
4. Power to issue direction
5. Power to control management

6. Power to advise bank
7. Power to assist in proposals for amalgamation
8. Power to receive and scrutinize the returns
9. Power to grant moratorium
10. Power to grant liquidator

Thank you