

**JOINT/SELECT COMMITTEE
REPORTS OF LEGISLATIVE
ASSEMBLY -1947**

The Banking Companies Bill

I. List of Reports of Select Committees
presented to the Legislative Assembly
of the Indian Legislature in 1947.

S.No.	Short title of the Bill.	Date of presen- tation.	Date of publica- tion.
1.	The Indian Navy (Discipline) (Amendment) Bill.	3.2.1947.	15.2.1947
2.	The Motor Vehicles (Amendment) Bill.	3.2.1947.	15.2.1947
3.	The Motor Vehicles (Second Amendment) Bill.	3.2.1947.	15.2.1947
4.	The Foreign Exchange Regulation Bill.	3.2.1947.	15.2.1947
5.	The Industrial Disputes Bill.	3.2.1947.	15.2.1947
6.	The Railways (Transport of Goods) Bill.	17.2.1947.	1.3.1947
7.	The Banking Companies Bill.	17.2.1947.	1.3.1947
8.	The Indian Trade Unions (Amendment) Bill.	26.2.1947.	5.4.1947
9.	The Insurance (Second Amendment) Bill.	5.3.1947.	15.3.1947
10.	The Delhi and Ajmer-Merwara Rent Control Bill.	12.3.1947.	22.3.1947
11.	The Imports and Exports (Control) Bill.	12.3.1947.	22.3.1947
12.	The Income-tax and Excess Profits Tax (Amendment) Bill.	19.3.1947.	29.3.1947
13.	The Business Profits Tax Bill.	19.3.1947.	29.3.1947
14.	The Rubber (Production and Marketing) Bill.	1.4.1947.	12.4.1947
15.	The Control of Shipping Bill.	1.4.1947.	12.4.1947
16.	The Capital Issues (Continuance of Control) Bill.	7.4.1947.	12.4.1947

S.No.	Short title of the Bill.	Date of presenta- tion.	Date of publica- tion.
17.	The Taxation on Income (Investigation Commission) Bill.	7. 4.1947.	19. 4.19

II. List of Reports of Select Committees
Presented to the ~~Legis~~ Constituent
Assembly of India (Legislative) in
1947.

1. The Delhi and Ajmer-Merwara
Rent Control (Amendment) Bill. 1. 12.1947. 13.12.19
2. The Delhi Premises (Requisi-
tion and Eviction) Bill. 1.12.1947. 13.12.19
3. The Extra-Provincial Juris-
diction Bill. 6.12.1947. 13.12.19

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LEGISLATIVE ASSEMBLY

REPORT OF THE SELECT COMMITTEE ON THE BANKING COMPANIES BILL, 1946

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, and have now the honour to submit this our Report, with the Bill as amended by us annexed thereto.

At our earlier meetings we examined seventeen witnesses and we wish to express our thanks to these gentlemen for the help they have given to us.

Before discussing the details of the Bill we would observe that as the Bill is drawn it is applicable only to banking companies and we are advised that there were constitutional reasons against extending its provisions, as we would have liked, to partnerships or even individuals carrying on banking business. We desire to suggest that the question should be further examined with a view to introducing subsequent legislation extending so far as possible the provisions of this Bill to other banking concerns.

Upon the changes proposed by us which are not formal or consequential we comment below.

Clause 4.—We think that the Reserve Bank's emergency power to suspend provisions of the Bill should be limited to thirty days and that Government's power to extend the period of suspension should not exceed one year.

Clause 5.—We have given earnest consideration to the definition of "banking" and while we appreciate the difficulties to which the present definition in the Indian Companies Act, 1913, has given rise, we feel that the brief definition in the Bill is not altogether satisfactory. We have, therefore, after studying the definitions given by Halsbury and other authorities, elaborated the definition to include the acceptance of time deposits, while our *new clause 8* prohibits companies other than banking companies from engaging in business of the nature specified in the Bill's original definition.

Clause 6.—The extent to which banking companies can hold shares in other companies is provided for later in the Bill and in consequence we omit item (j) from sub-clause (1). On the other hand, we consider that it should be shown more specifically that the providing of safe deposit vaults and carrying out clearing and forwarding business on behalf of customers are legitimate activities of banking companies.

Clause 7.—We see no reason why the saving in favour of existing banks contained in the proviso to sub-clause (1) should be limited to such of them as are scheduled banks.

Clause 8 (new).—The reason for this insertion is given in our comments on *clause 5*.

Clause 9 (old clause 8).—We feel that this clause as drafted was liable to be misconstrued so as to rule out some of the legitimate activities of banking companies and we propose some clarifying insertions.

Clause 11 (old clause 10).—We consider that in the best interests of banking a company's staff should give its whole time to the company and should not otherwise engage in business. In itemising the disqualifications set out in this clause we accordingly add two more. We feel too that in the case of companies incorporated in India extensions of managerial contracts should be subject to confirmation by a general meeting of shareholders. We also consider that, as the Reserve Bank's

more in touch with banking matters, it is better qualified than the Courts to decide upon the question of disproportionate remuneration and accordingly we add a sub-clause making the Reserve Bank the arbiter of this matter.

Clause 12 (old clause 11).—We have introduced a slightly more elaborate but, we think, more workable basis for minimum capital requirements. Except that we retain the five lakhs addition in respect of places of business in Bombay and Calcutta contained in the Bill, we give up the basis of population, and replace it by one dependent on the territorial range of a company's activities, introducing the "region" (to be coterminus with the Reserve Bank's share register areas) above the provinces. But we allow latitude in respect of branches outside the region or province so long as they are within twenty-five miles of the company's principal place of business. We also retain the one lakh minimum but make one exception (fifty thousand rupees) in favour of the small business which operates with only a single office. Should such a business desire to open even one branch, it must at once more than double this exceptional minimum. We extend by one year the time given to existing companies to bring their capital up to minimum requirements.

As a means of fostering reciprocal arrangements with the Indian States, we propose not to require banking companies incorporated in those States to keep the equivalent of their minimum capital requirements deposited with the Reserve Bank. We amend sub-clause (2) accordingly and also make an addition to that sub-clause to make it clear that in the event of a company to which the sub-clause applies ceasing to do business in British India the claims of its creditors in British India shall be a first charge on the amount deposited by the company with the Reserve Bank.

It is clearly undesirable that the affairs of a banking company should be allowed to fall under the control of a small cabal, and to prevent this we propose an addition to sub-clause (3) limiting the voting rights of any one shareholder to one-tenth of the total voting rights.

Clause 15 is new and is designed to prevent a banking company from declaring dividends before it has written off initial capital expenses.

Clause 16 is also new. Its purpose is to debar a banking company incorporated in India from taking on its Board a person who is the Director of another banking company.

Clause 17 (old clause 14).—We think that the obligation to build up and maintain a reserve fund equal to paid-up capital should apply to all banking companies incorporated in India whether scheduled banks or not.

Clause 18 (old clause 15).—Under section 42 (1) of the Reserve Bank of India Act, 1934, scheduled banks are obliged to maintain with the Reserve Bank cash reserves not less than two per cent. of time liabilities and five per cent. of demand liabilities. We consider that this two per cent. should apply in the case of other banking companies and amend the reference to one and a half per cent. contained in this clause accordingly.

Clause 19 (old clause 16).—In sub-clause (1) we consider that it shall be made explicit that a banking company may form a subsidiary company for the purpose of providing safe deposit vaults. On the other hand, we consider the expression "other purposes incidental to the business of banking" to be too open and vague, and propose that the permission of the Reserve Bank should be sought before a subsidiary company is formed for any purpose other than those expressly stated in the sub-clause: the Reserve Bank will then be able to decide whether the purpose is properly "incidental to the business of banking".

Sub-clause (2) as drafted was open to more than one construction and we have for this reason redrafted it. Moreover, we see no reason why the exemption in favour of old shareholders conferred by the proviso to section 277M (2) of the

Indian Companies Act, 1913, should be perpetuated or why the operation of this sub-clause should be deferred for a year. We therefore propose that the provision should take immediate effect on the commencement of the Act, empowering the Reserve Bank on application to allow time not exceeding two years to companies to bring their shareholding into compliance with this provision. We also exempt from penalty purely inadvertent and temporary breaches of this provision. We further consider that a banking company should be barred from taking up shares in another company in the management of which its own managerial staff is interested and we add a sub-clause accordingly.

Clause 20 (old clause 17).—It has been represented to us that desirable as this clause may be, the provisions in the latter half of the clause will seriously interfere with established practices. We feel however that the only relaxation we are justified in proposing is not to render unlawful the grant of unsecured loans to *public* companies in which the banking company or any of its directors is concerned. To compensate for this relaxation, we insert provision requiring returns to be given of such loans and giving the Reserve Bank powers to put a stop to the practice where it is undesirable and to require the banking company to call in such loans.

Clause 21 (old clause 18).—We consider that all banking companies should be required to take out licences and see no reason for exempting existing companies for as long as five years. Under our redraft of the early part of this clause every new company before it starts business and every existing company within six months from the commencement of the Act must apply for a licence. Existing companies may carry on until the Reserve Bank grants or refuses to grant a licence, and we propose that the Reserve Bank shall not refuse a licence to banking companies given time by *clause 12* to build up their capital until that time has expired.

We feel that a banking company should have a right of appeal against the cancellation of its licence and we insert a sub-clause accordingly.

Clause 22.—We take to a separate clause the provisions contained in sub-clause (6) of the old clause 18 regarding the opening and transfer of branches. Our draft follows the recent Banking Companies (Restriction of Branches) Act, 1946 (which this Bill will repeal), though we include an exemption in favour of temporary branches opened to cater for the needs of conferences, exhibitions and *melas*.

Clause 23 (old clause 19).—We consider that the figure of twenty-five per cent. may without detriment to banking soundness be reduced to twenty.

Clause 28 (old clause 24). We add a proviso to enable companies incorporated outside British India to draw up their profit and loss account as on any date in the last two months of the year.

Clause 29 (old clause 25).—We consider that in the interests of sound banking the auditors should examine certain points of detail additional to those set out in the Indian Companies Act and we add a sub-clause accordingly.

Clause 32 (old clause 28).—We think it desirable that companies incorporated elsewhere than in British India should also display complete accounts of their banking business in every part of the world.

Clause 34 (old clause 30).—It has been represented to us that a dangerous loss of public confidence might ensue if, as under the existing clause, inspection was authorised only when the banking company's affairs were suspected to be unsound. We therefore recast sub-clause (1) to give the Reserve Bank free discretion to inspect a banking company at any time so that the public may have no ground for drawing any pessimistic inference from the fact that a bank has been inspected. We also consider that the Reserve Bank should employ only its own officers to make these

inspections and that a copy of the Reserve Bank's report on an inspection should in all cases be sent to the company. We also recast sub-clause (4) to make it clear that Government may give the bank an opportunity of being heard before it takes further action under that sub-clause and may also defer such action for a time in suitable cases to enable the banking company to put its affairs in order.

Clause 35 is new. We consider that side by side with the regulation of banking which the Bill provides the Reserve Bank should be brought into closer contact with banking companies. While many clauses of this Bill give new powers to the Reserve Bank, it was found necessary by us to have a clause which empowers the Reserve Bank with a view to enable them to have full information about the working of banks and have the authority to be able to render timely and adequate help when necessary. In this clause we set out further duties and functions of the Reserve Bank in its relations with banking concerns and require it to establish its staff in centres convenient for the exercise of the wide powers of supervision conferred on the Reserve Bank under this Bill. We also consider that the Bill should provide for an annual review by the Reserve Bank on the progress of banking throughout the country.

Clause 37 (old clause 32).—The splitting of sub-clause (1) into two sub-clauses is formal and is intended to clear up some ambiguity in the existing sub-clause. In new sub-clause (3) we make an addition requiring a certificate from the Reserve Bank of the inability of a banking company to pay its debts: our object is to rule out frivolous or misconceived applications for winding up.

Clause 44 (old clause 39).—As drafted sub-clause (2) would, we consider, rule out most proposals for amalgamation. We have no doubt that a sufficient and proper condition of amalgamation should be that the Reserve Bank is satisfied that the joint concern after amalgamation will be able to meet all the obligations of the previously separate concerns.

Clause 45 (old clause 40).—We think that a wilful *suppressio veri* which may be misleading as a false statement should also be punished.

Clause 46 (old clause 41).—The redraft merely supplies the omission of an usual procedural provision.

Clause 48 is new. The Indian Companies Act exempts private companies from several of its provisions. Some of these we consider should be made applicable to private companies which carry on banking business.

Clause 49 is also new. Operation of the provisions mentioned in the clause may result in an individual losing a perhaps lucrative appointment, and we think it desirable to make it clear that he will have no right of action on that account.

Clause 50 too is new. The constitution of the Imperial Bank of India is regulated by a separate Act, but we consider that in respect of certain matters not covered by that Act the provisions of this Act should also apply to the Imperial Bank.

Clause 53 is another new clause. It proposes a further amendment of the Reserve Bank of India Act, 1934, to enable the Reserve Bank under certain circumstances to come to the aid of a banking company by means of a loan secured to the Reserve Bank's satisfaction by forms of security other than those at present permitted under that Act.

The Schedule.—We have proposed a number of additions to the forms of balance-sheet and profit and loss account. Our objects in so doing have been to remove latent ambiguities in one or two places, but generally to ensure that the forms convey a true picture of the state of the banking company's affairs.

2. The Bill was published in the *Gazette of India*, Part V, dated the 23rd March, 1946.

3. We think that the Bill has not been so altered as to require re-publication and we recommend that it be passed as now amended.

J. N. MANDAL.
LIAQUAT ALI KHAN.
COWASJEE JEEFANGIR.
K. G. AMBEGAONKAR.
R. NATH.
*C. P. LAWSON.
*LESLIE GWILT.
MOHD. YAMIN KHAN.
H. A. S. H. E. SAIT.
M. M. KILEEDAR.
MANU SUBEDAR.
*MOHANLAL SAHSENA.
*M. A. AYYANGAR.
*P. B. GOLE.
*SASANKA SEKHAR SANYAL.
*SATYA NARAYAN SINHA.
MANGAL SINGH.

NEW DELHI;
The 17th February, 1947.

MINUTES OF DISSENT

I

While sympathising with the intentions which have induced the Select Committee to introduce the new sub-section 12 (3) (d), we feel bound to point out that this provision as drafted is unlikely to achieve their object. There are a number of methods by which a holding in excess of 10 per cent. of the share capital can be divided up so as to ensure the exercise of voting power in proportion with the full holding. Such methods will most certainly be adopted by those who wish to misuse their voting powers while the honest holder of shares in excess of 10 per cent. is deprived of voting rights in proportion with his holding. For these and other reasons we must oppose this sub-section which contravenes a well-established principle without any compensating advantage.

We also reserve the right to oppose or propose amendments in respect of other new provisions which after further examination appear to be undesirable.

C. P. LAWSON.

LESLIE GWILT.

NEW DELHI ;
The 17th February, 1947.

*Subject to a Minute of Dissent.

II

We desire to add that as the transactions of a bank depends largely on the volume of deposits it receives, a statutory maximum shall be fixed for the dividend at 9 per cent. for all banks at least the banks coming into existence from 1st January 1947. The savings should be utilised to increase the rate of interest on deposits and to reduce the rate of interest on loans given by banks. We would like a provision being made, fixing the maximum bearing rate at not more than 3 per cent. over the discount rate of the Reserve Bank.

As policy-holders are given place in the directorate of a Life Insurance Co., we would like to make some similar provision for representation of depositors on the directorate of a bank.

Some practical difficulties were pointed out in carrying out the above suggestion but they can be overcome. We understand, that in the 'Articles of Association' of some banks, provision has been made for having depositors' directors and also in Madras there is a provision for having depositors' directors in the Co-operative Banks. We still hope that the Assembly would accept our suggestion and incorporate it in the Bill, which is principally designed to safeguard the interests of the depositors.

We also suggest that a statutory limit to salary or remuneration may be fixed for manager, managing director, or other employees of a bank. It was suggested that the maximum may tend to become the minimum in practice. But as the Reserve Bank, has been given power to decide if any remuneration is disproportionate to the resources of a bank, the maximum will not be allowed to be reached in all companies.

Lastly, we wish to add that all banks should be nationalised at an early date and that as a first step, the Reserve Bank and the Imperial Bank may be made State banks.

MOHANLAL SAKSENA.
SATYA NARAYAN SINHA.

M. A. AYYANGAR.

P. B. GOLE.

SASANKA SEKHAR SANYAL.

NEW DELHI ;

The 17th February, 1947.

(AS AMENDED BY THE SELECT COMMITTEE.)

(Words underlined or *sidelined* indicate the amendments suggested by the Committee ; asterisks indicate omissions.)

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, 1947.

(2) It extends to the whole of British India.

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

2. Application of other laws not barred.—The provisions of this Act shall be in addition to, and not, save as hereinafter expressly provided, in derogation of, the 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 British 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 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) “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, Indian 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 of 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 British 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 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 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.

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, hundees, 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 Governments or local authorities or for any other person or persons ; the carrying on of agency business of any description (including the clearing and forwarding of goods on behalf of customers) other than the business of a managing agent of a company including the power to act as attorneys and to give discharges and receipts ;

(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 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 whether incorporated in or outside British India shall engage in any form of business other than those referred to in sub-section (1).

7. Use of words "bank", "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 British 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, 1947.

(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, 1918 (VII of 1918).

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 16 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 or 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, 1947, 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 realisation 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, whether incorporated in or outside British India, 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 conditions for carrying on business. — (1) Notwithstanding anything contained in section 103 of the Indian Companies Act, 1913 (VII of 1913), no banking company, whether incorporated in or outside British India, in existence on the 1st day of January, 1947, 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 in British India, and no other banking company, whether incorporated in or outside British India, shall after the commencement of this Act commence or carry on business in British 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 British 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 region, ten 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 region but not in one province, five lakhs of rupees plus, if it has any place of business in Bombay City or Calcutta five lakhs of rupees;

(iii) 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 principal 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 ;

(iv) 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.—In this sub-section “region” means an area served by a register of shareholders maintained under section 4 of the Reserve Bank of India Act, 1934 (II of 1934), and defined in entries I to IV of the First Schedule to that Act.

Explanation 2.—For the purposes of this sub-section a place of business situated in a region or 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 region or province, as the case may be, as that principal place of business.

Explanation.—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 India or the United Kingdom 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 British India, be an asset of the company on which the claims of all the creditors of the company in British India shall be a first charge.

(3) No banking company, whether incorporated in or outside British India, if incorporated on or after the 15th day of January 1937, shall 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 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 shall 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. Prohibition of premature payment of dividend.—No banking company shall pay any dividend on its shares until all its capitalised expenses (including preliminary expenses, organisation expenses, shareselling 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 India shall have as a director any person who is a director of another banking company.

17. Reserve fund.—Every banking company incorporated in 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.

(3) 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 British 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 British 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 British 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 1947 before the expiry of the three years referred to in sub-section (1) of section 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 British India or the United Kingdom, that the Government or law of the country in which it is incorporated does not discriminate in any way against banking companies registered in British India, and that the company complies with all the provisions of this Act applicable to banking companies incorporated outside British 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 British 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.

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 British 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 * India or the United Kingdom and any balance maintained by a 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 five 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.

24. Assets in British India.—(1) At the close of the last working day of every quarter the assets in British India of every banking company shall not be less than seventy-five per cent. of its time and demand liabilities in British India.

(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 in British India 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 British 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 British 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 require a banking company at any time to furnish it with statements and information relating to its own business, 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 it 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 British India, in respect of all business transacted by it, and every banking company incorporated outside British India,***** in respect of all business transacted through its branches in British 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 British 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 British 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 British India, by the manager or agent of the principal office of the company in British 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.

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 British 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 British 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 British 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 send 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 134 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 to it 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 British India.—Every banking company incorporated outside British India

* * * * * shall, not later than the first Monday in August of any year in which it carries on business in British India, display in a conspicuous place in its principal office and in every branch office in British 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 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.

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 an 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 relating to the affairs of the banking company as the said officer may require of him.

(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 not entering into any particular transaction or class of transaction, and
 (b) rally 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 matters ;

(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. Suspension of business.—(1) The Court may on the application of 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 31, 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

officers 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.—Notwithstanding anything to the contrary contained in section 175 of the Indian Companies Act, 1913 (VII of 1913), the Reserve Bank shall be appointed as the official liquidator in relation to the winding up by 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 contributors 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 208 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. (1) Notwithstanding anything to the contrary in section 153A of the Indian Companies Act, 1913 (VII of 1913), no banking company shall, except with the previous consent in writing of the Reserve Bank, amalgamate or enter into any scheme of arrangement or reconstruction with any other banking company.

(1) The Reserve Bank shall not give its consent to any amalgamation or scheme as aforesaid unless it is reasonably satisfied that after the amalgamation scheme is put into operation all the debts of the banking companies concerned can be paid as they fall due.

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 refuses to produce any book, account or other document which under sub-section (2) of section 34 it is his duty to produce, 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 to 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 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. 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 apply to and in relation to the Imperial Bank of India as they apply to and in relation to other banking companies.

51. 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 28 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.

52. 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, 1947.”

53. 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, 1947), against such other form of security as the Bank may consider sufficient :”

54. 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 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 British 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, or a corporation or a company incorporated by or under any law in force in any place outside British 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, 1947 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.

(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 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 that sub-section."

55. 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), and the Banking Companies (Restriction of Branches) Act, 1946 (X XVII of 1946), are hereby repealed.

THE SCHEDULE

(See Section 28)

FORM A

FORM OF BALANCE-SHEET

.....Bank Ltd. .

Balance-sheet as at.....December.....

CAPITAL AND LIABILITIES			PROPERTY & ASSETS		
Rs.	As.	Ps.	Rs.	As.	Ps.
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 on de- posit or current account) (i) in British India (ii) outside British India		
Subscribed Capital.....Shares of Rs. each			MONEY AT CALL AND SHORT NOTICE		
Amount called up at Rs. per share			BILLS DISCOUNTED (c) (Other than Treasury Bills of the Central and Pro- vincial Governments)		
Less calls unpaid			(f) Payable in British India (g) Payable outside British India		
Add forfeited shares			INVESTMENTS (stating mode of valuation, i.e., cost or market value) whichever is lower (b)		
RESERVE FUND (b)			(i) Government of India and Trustee Securities Includ- ing Treasury Bills of Gov- ernment of India and Provincial Governments		
DEPOSITS & OTHER ACCOUNTS:			(ii) shares (classifying into <u>preference, ordinary, deferr- ed and other classes of sha- res and showing separately shares fully paid up and partly paid up)</u>		
Fixed Deposits			(iii) Debentures or Bonds		
Savings Bank Deposits			(iv) Other investments (to be classified under proper heads)		
Current Accounts and con- tingency (unadjusted) ac- counts			(v) Gold		
Borrowings from other Banks, Agents, etc.			LOANS, ADVANCES, CASH CREDITS AND OVERDRAWS (other than bad and doubt- ful debts for which provi- sion has been made to the satisfaction of the auditors)		
(i) in British India					
(ii) outside British India					
Particulars:					
(i) Secured (stating the nature of security)					
(ii) Unsecured					
Bills payable					
Bills for collection being bills receivable as <i>per contra</i>					

(i) payable in British India
(ii) payable outside British India

Other Liabilities (to be specified) (c)

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)

(i) in British India
(ii) outside British India

Particulars :

- (i) Debts considered good in respect of which the bank is fully secured
- (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
- (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 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 British India
(ii) payable outside British 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, 1947 should be shown under this head, the amount however should not be extended to the outer column, section 17 of the said Act should be shown separately.
- (b) The reserve fund maintained by
- (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 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 "Promises 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
Directors' Fees and allowances	Rents
Local Committee members' fees and allowances	Transfer from contingencies account
Provident Fund	Profit made on sale * * of investments, gold and silver, land premises and other assets
Income-tax, Corporation tax, or provisions therefor	Profits made on revaluation of investments, gold and silver, land, premises and other assets
Rent, other Taxes, Insurance, Lighting, etc.	Income from non-banking assets, and profit from sale of or dealing with such assets.
Law Charges	Other receipts
Postages, * Telegrams and Stamps	Loss (if any)
Auditors' Fees	
Depreciation and Bank's Property	
Repairs to Bank's Property	
Stationery, Printing, Advertisement, etc.	
Loss from sale of or dealing with non-banking assets	
Other Expenditure	
Balance of Profit	
TOTAL	TOTAL