



Module-C Unit-3

JAIIB PAPER-1

Indian Economy and Indian Financial System (IE & IFS)



JAIIB IE and IFS Module C Unit 3: Banking Laws – Reserve Bank of India Act, 1934 & Banking Regulation Act, 1949

Part – I Reserve Bank of India (RBI) Act, 1934

Background Of Enactment

The genesis of the RBI Act started in 1926, when the Royal Commission on Indian Currency and Finance suggested the estd. of a central bank for India

- **1927:** a bill to set up a central bank was placed in the Legislative Assembly. However, it was later withdrawn
- **1933:** A White Paper on Indian Constitutional Reforms suggested the setting up of a Reserve Bank and a new bill was presented in the Legislative Assembly After 1 year, the Bill was passed with the Governor General's consent.
- **1st April, 1935:** RBI was set up and it commenced business as India's central bank - as a private bank with a paid-up capital of Rs 5 crores
- When established, the RBI functioned as the central bank, both for undivided India and British Colony of Burma (now known as Myanmar).
- **1942:** RBI ceased to be the central bank for Burma, after Burma was separated from British run-state of India.
- After the partition of India and independence, RBI operated as the central bank for the newly formed Pakistan also and it was only the next
- **1948:** RBI ceased to supervise the banking system in Pakistan, which was thereafter taken over by State Bank of Pakistan, which is the central banker in that country.
- **1 Jan 1949:** Government of India nationalized RBI, under the Reserve Bank (Transfer of Public Ownership) Act, 1948, and all its shares were transferred to the Central Government.

Objective And Structure Of The RBI Act 1934

The preamble of the RBI Act describes the following:

- It is an Act to constitute a Reserve Bank of India, in order to regulate the issue of Bank notes and the keeping of reserves, with a view to securing monetary stability in the country and generally to operate the currency and credit system of the country to its advantage.
- It is also in order to have a modern monetary policy framework to meet the challenges of an increasingly complex economy.
- Primary objective of the monetary policy: maintain price stability with objective of growth

The RBI Act is divided into five chapters which are:

Chapter I – Preliminary

Chapter II – Incorporation, Capital, Management and Business

Chapter III – Central Banking Functions

- Chapter III A – Collection and Furnishing of Credit Information
- Chapter III B – Provisions Relating to Non-Banking Finance Companies
- Chapter III C – Prohibition of Acceptance of deposits by Unincorporated Bodies
- Chapter III D – Regulation of Transactions in Derivatives, Money Market Instruments, Securities, etc.
- Chapter III E – Joint Mechanism
- Chapter III F – Monetary Policy

Chapter IV – General Provisions

Chapter V – Penalties

In addition to the above chapters, the Act also has two schedules, Schedules I and II.

Chapter I - Preliminary

- **Section 1** – This Act will be called the Reserve Bank of India Act and will be valid for the whole of India.
- **Section 2** – Definitions – section 2(e) – a “scheduled bank” means a bank included in the Second Schedule of the Act.

Chapter II- Incorporation Capital, Management and Business

- **Section 3** – Establishment and incorporation of the RBI A bank to be called the Reserve Bank of India shall be constituted for the purposes of taking over the management of the currency from the Central Government and of carrying on the business of banking, in accordance with the provisions of the Act. The Bank shall be a body corporate by the name of the Reserve Bank of India, having perpetual succession and a common seal.
- **Section 4** – Capital of RBI The capital of the Bank shall be Rs 5 crores. This is the paid-up capital of RBI and it may be noted that, as per the Annual Report of RBI as on 31st March 2022, the total capital reserves of RBI stood at Rs 6,741 crores.

Sections 7 and 8 – Management and Central Board

Section 7: The general superintendence and direction of the affairs and business of the Bank are entrusted to a Central Board of

However, the Board has to abide by any directions that may be given by the Central Government after consultation with the Governor of the Bank.

The Central Board shall consist of :

- Governor,

- Not more than 4 Deputy Governors, to be appointed by the Central Government and other directors to be nominated by the Central Government, **as under:**

i) 4 directors to be nominated by Central Government, one each from the Local Boards constituted under Section 9 of the Act.

ii) 10 directors to be nominated by Central Government from various fields.

iii) 2 Government officials to be nominated by the Central Government (**amendment 2012**)

iv) The Governor and Deputy Governors are whole time officials of the Bank.

v) A term fixed by the Central Government at the time of appointment, not exceeding 5 years and are eligible for reappointment.

Section 8(1)(d):

- The Government official nominated hold office, at the pleasure of the Government.
- The directors nominated from the Local Board shall continue during their membership of the Local Boards.
- The other directors shall hold office for 4 years and thereafter until their successors are nominated.

Section 9

Deals with details of the Local Boards and Members of the Local Boards.

- A Local Boards are specified in the 1st Schedule of the Act and shall consist of 5 members, to be appointed by the Central Government.
- These members will represent, as far as possible, territorial and economic interests and the interests of co-operative and indigenous banks.
- **Tenure:** 4 years and can be re-appointed for a maximum of 2 terms totalling 8 years.

Section 11 – Removal from Office

- The Central Government may remove, from office, the Governor, a Deputy Governor or any other Director or any member of a Local Board.

Section 13 –

- Meetings of the Central Board Meetings of the Central Board shall be convened by the Governor at least six times in each year and at least once in each quarter.
- The Governor, or if for any reason, he is unable to attend, the Deputy Governor authorised by the Governor to vote for him, shall preside at meetings of the Central Board, and, in the event of an equality of votes, shall have a second or casting vote.

Section 17 –

Business Permitted to be Conducted by RBI The business that can be undertaken by RBI includes the following:

- Acceptance of deposit without interest from Central/State governments, Banks, local authorities and any other person/institutions,
- Purchase/sell foreign exchange, securities, rediscount the bills/promissory notes, grant loans to banks, etc.
- Accepting of money as deposits, repayable with interest, from banks or any other person under the Standing Deposit Facility Scheme, as approved by the Central Board, from time to time, for the purposes of liquidity management

Section 18A –

- Validity of a Loan Not to be Questioned Notwithstanding anything to the contrary contained in any other law for the time being in force, the validity of any loan or advance granted by RBI, in pursuance of the provisions of the RBI Act shall not be called in question, merely on the ground of non-compliance with the requirements of such other law, or of any resolution, contract, memorandum, articles of association or other instrument:
- Provided that nothing in this clause shall render valid any loan or advance obtained by any company or co-operative society, where such company or co-operative society is not empowered by its memorandum to obtain loans or advances.

Section 19 –

Business that RBI cannot Transact In terms of the Act, the following business may not be transacted by RBI:

- Engage in trade or otherwise have a direct interest in any commercial, industrial, or other undertaking;
- Purchase the shares of any banking company or of any other company, or grant loans upon the security of any such shares;
- Advance money on mortgage of, or otherwise on the security of, immovable property or documents of title relating thereto, or become the owner of immovable property, except so far as is necessary for its own business premises and residences for its officers and employees;
- Make loans or advances;
- Draw or accept bills payable otherwise than on demand, and
- Allow interest on deposits or current accounts.

Chapter III – Central Banking Functions

- **Section 20** – Banker to the Central Government The Bank shall undertake to accept monies for account of the Central Government and to make payments up to the amount standing to the credit of its accounts, and to carry out its exchange,

remittance and other banking operations, including the management of the public debt of the Union.

- **Section 21A** – Banker to State Governments based on Agreement The RBI may, by agreement with the Government of any State, undertake all its money, remittance, exchange and banking transactions in India, including in particular, the deposit, free of interest, of all its cash balances with the Bank; and the management of the public debt and issue of loans by that State.
- **Section 22** – Right to issue Bank (Currency) Notes The RBI shall have the sole right to issue bank notes in India and, from the date of implementation of this Section, The Central Government will cease to issue any currency notes.
- **Section 24** – Denomination of Currency Notes The currency notes shall be of the denominations of two rupees, five rupees, ten rupees, twenty rupees, fifty rupees, one hundred rupees, five hundred rupees, one thousand rupees, five thousand rupees and ten thousand rupees or of such other denominational values, not exceeding ten thousand rupees, as the Central Government may, on the recommendation of the Central Board, specify. The Central Government may, on the recommendation of the Central Board of RBI, direct the non-issue or the discontinuance of issue of currency notes of such denominations, as it may specify in this behalf.
- **Section 26** – Legal Tender Character of Currency Notes Every bank note shall be legal tender at any place in India, in payment for the amount expressed therein and shall be guaranteed by the Central Government. On recommendation of the Central Board of RBI, the Central Government may declare that, with effect from such date as may be specified, any series of bank notes of any denomination shall cease to be legal tender, except at such office of the RBI and to such extent, as may be specified in the notification.
- **Section 27** – Re-issue of Notes not to be Done The RBI shall not re-issue bank notes which are torn, defaced or excessively soiled.
- **Section 28** – Recovery of lost, stolen, mutilated or imperfect Notes No person shall, as a matter of right, be entitled to recover from the Central Government or the RBI, the value of any lost, stolen, mutilated or imperfect currency note of the Government of India or bank note. However, the RBI may, with the previous sanction of the Central Government, prescribe the circumstances subject to which, the value of such currency notes may be refunded.
- **Section 29** – Currency Notes Exempted from Stamp Duty The RBI shall not be liable to the payment of any stamp duty under the Indian Stamp Act, 1899, in respect of bank notes issued by it.
- **Section 30** – Powers of the Central Government to Supersede the Central Board of RBI If in the opinion of the Central Government, the RBI fails to carry out any of the obligations imposed on it by or under this Act, the Central Government may, by notification in the Gazette of India, declare the Central Board to be superseded. Thereafter, the general superintendence and direction of the affairs of the RBI shall be entrusted to such agency as the Central Government may determine, and such agency may exercise the powers and take all action as may have been exercised by the Central Board of RBI, under the Act.

- **Section 33** – Assets of the Issue Department The assets of the Issue Department shall consist of gold coin, gold bullion, foreign securities, rupee coins and rupee securities to such aggregate amount as is not less than the total of the liabilities of the Issue Department.
- **Section 34** – Liabilities of the Issue Department The liabilities of the Issue Department shall be an amount equal to the total of the amount of the currency notes of the Government of India and bank notes, in circulation.
- **Section 40** – Transaction in Foreign Exchange The RBI shall sell to or buy from any Authorised Person, foreign exchange at such rates of exchange and on such conditions as the Central Government may from time to time by general or special order determine, having regard so far as rates of exchange are concerned to its obligations to the International Monetary Fund. This is provided that no person shall be entitled to demand to buy or sell foreign exchange of a **value less than Rs 2 lakhs**.
- **Section 42** – Scheduled Banks to Keep Cash Reserves with RBI (Cash Reserve Ratio – CRR) Every bank included in the 2nd Schedule of the Act shall maintain with RBI, an average daily balance - the amount of which shall not be less than such percentage of the total of the demand and time liabilities (DTL) in India of such bank, as the RBI may from time to time, having regard to the needs of securing the monetary stability in the country, notify in the Gazette of India. The operative provision of the Act necessitates banks to maintain their CRR funds with the RBI. The RBI can decide on the percentage of DTL, at which, CRR should be maintained and there is no mention of minimum or maximum percentage, in the Act.

Chapter III – A Collection and Furnishing of Credit Information

Sections 45A to 45 G

It includes any information related to-

- The amount or nature of loan or advances and other credit facilities that are given by the banking companies to their borrowers,
- The nature of security given by the borrowers for such credit facilities,
- The guarantee granted by the banking company to its customers,
- The antecedents, means, credit worthiness and history of financial transaction to the borrowers,
- Any such information that the RBI may consider to be relevant.

Power of RBI to collect credit information

- It can be collected in such a manner as the RBI thinks fit.
- It may direct any bank to submit to it the statements related to such credit information.

All banking companies are bound to comply with the regulations of the Reserve Bank of India.

Procedure for granting credit information to banking companies

- On request of a banking company, the RBI shall furnish the applicant with that credit information related to the matters stated in the application. However, the information so furnished will not disclose the names of banking companies who have submitted such application to the RBI.
- It is at the discretion of the RBI to levy fees for furnishing credit information and that amount would not exceed to Rs 25.

Disclosure of information prohibited

Any credit information contained in any statement should be kept confidential and should not be published or disclosed except for the purpose of this Chapter.

Those exceptions are-

- Disclosure made by any banking company with the prior permission of the RBI.
- If the bank thinks fit, it may publish the credit information for benefit of public interest.
- The disclosure or publication can be done, as per the practice and usage customary among bankers or permitted by any other law.
- It can be done under the Credit Information Companies (Regulation) Act, 2005.

Chapter III-B - Provisions Relating to operations of Non-Banking Institutions Receiving Deposits and Financial Institutions

This Chapter deals with various aspects of Non-Banking Financial Companies (NBFCs). A non-banking financial company has been defined **vide clause (b) of Section 45-1 of Chapter IIIB of the Reserve Bank of India Act, 1934, as**

- A financial institution, which is a company;
- A non-banking institution, which is a company and which has as its principal business the receiving of deposits, under any scheme or arrangement or in any other manner or lending in any manner;
- Such other non-banking institutions or class of such institutions, as the bank may with the previous approval of the central government and by notification in the official gazette, specify.

In terms of Section 45-IA of the RBI Act, a non-banking financial company can commence or carry on the business of non-banking financial institution subject to

- Obtaining a certificate of registration from the Bank (RBI), and
- having the net owned fund of twenty-five lakh rupees or such other amount, not exceeding hundred crore rupees, as the Bank may, by notification in the Official Gazette, specify (amended 2019). Provided that the Bank may notify different amounts of net owned fund for different categories of non-banking financial companies

Some of the other sub-sections of section 45, relating to functioning and supervision of NBFCs are tabulated here.

| Section | Particulars |
|---------|---|
| 45 IB | Maintenance of percentage of assets |
| 45 IC | Reserve Funds |
| 45 J | RBI to regulate or prohibit issue of prospectus or advertisement soliciting deposits of money |
| 45 L | Power of the bank to call for information from financial institutions and to give directions |
| 45 M | Duty of non-banking institutions to furnish statements, etc., required by RBI |
| 45 MA | Power and Duty of Auditors |

| Section | Particulars |
|---------|---|
| 45 MC | Power of Bank to file winding up petition |
| 45 N | Inspection |

Chapter III-C - Prohibition of Acceptance of deposits by Unincorporated Bodies

Section 45S

No person, being an individual or a firm or an unincorporated association of individual shall accept any deposit if his or its business wholly or partly includes any of the activities specified in clause (c) of section 45I.

Chapter III - D - Regulation of Transactions in Derivatives, Money Market Instruments, Securities, etc.

Section 45U

- This section covers definitions of a large number of market instruments. In terms of these, A “Derivative” means an instrument, to be settled at a future date, whose value is derived from change in interest rate, foreign exchange rate, credit rating or credit index, price of securities (also called “**underlying**”), or a combination of more than one of them and includes interest rate swaps, forward rate agreements, foreign currency swaps, foreign currency-rupee swaps, foreign currency options, foreign currency-rupee options or such other instruments as may be specified by the Bank from time to time.
- “Securities” means securities of the Central Government or a State Government or such securities of a local authority as may be specified in this behalf by the Central Government and, for the purposes of “**repo**” or “**reverse repo**”, include corporate bonds and debentures. This Chapter provides power to RBI to regulate derivative and money market transactions as also the power to call for information, as may be deemed fit.

Chapter III - E -

- Joint Mechanism This chapter covers those matters over which, in addition to RBI, other regulators like SEBI and IRDAI have jurisdiction.

Section 45Y

- In cases of hybrid or composite instruments, having a component of money market investment or securities market instrument or a component of insurance or any other instrument and falls within the jurisdiction of the RBI or SEBI or IRDA or PFRDA, if there is a difference of opinion, such difference of opinion shall be referred to a Joint Committee consisting of representatives from the Government, RBI, SEBI, IRDA and PFRDA.

Chapter III- F –

- Monetary Policy These comprise of sub-sections of section 45Z up to 45ZO. In this chapter, various aspects of the Monetary Policy and the Monetary Policy Committee (MPC) have been elaborated.

These include aspects such as:

- Objective of the MPC,
- Constitution of the MPC,
- Terms and conditions of appointment of the MPC members,
- Information for MPC members, and
- Periodicity of the MPC meetings and publication of the decision of the MPC and their deliberations.

Chapter IV – General Provisions

- **Section 48** – Exemption of RBI from Income Tax and Super Tax Notwithstanding anything contained in the Income-Tax Act, 1961, or any other enactment for the time being in force, relating to income-tax or super-tax, the RBI shall not be liable to pay income-tax or supertax on any of its income, profits or gains.
- **Section 49** – Publication of the Bank Rate The RBI shall make public, from time to time, the standard rate at which, it is prepared to buy or rediscount bills of exchange or other commercial paper eligible for purchase, under this Act.
- **Section 59** – Liquidation of RBI Nothing in the Companies Act, shall apply to the RBI, and RBI shall not be placed in liquidation except by order of the Central Government and in such manner as it may direct.

Chapter V – Penalties

This Chapter deals with various types of penalties which may be levied on any person or entity that breaches the provisions of the Act. These include providing wrong information, failure to produce the required books and records, disclosure of any confidential information, etc. Penalties for such breaches can extend from monetary fines to up to **three years in prison**.

Schedules To The RBI Act, 1934

There are two schedules to the Act, viz., Schedule one and Schedule two. Whereas Schedule one, gives details of the organisation of the country into four different

territories for the purpose of RBI's operations, Schedule Two, contains the names of the different Banks, which RBI has approved to operate as Scheduled Banks.

The territories as demarcated in Schedule One are as follows:

- The Western Area shall consist of the States of Goa, Gujarat, Madhya Pradesh and Maharashtra and the Union Territories of Dadra and Nagar Haveli and Daman and Diu.
- The Eastern Area shall consist of the States of Arunachal Pradesh, Assam, Bihar, Manipur, Meghalaya, Mizoram, Nagaland, Orissa, Sikkim, Tripura and West Bengal and the Union Territories of Andaman and Nicobar Islands.
- The Northern Area shall consist of the States of Jammu & Kashmir, Punjab, Haryana, Himachal Pradesh, Rajasthan and Uttar Pradesh and Union Territories of Chandigarh, and Delhi.
- The Southern Area shall consist of the States of Andhra Pradesh, Karnataka, Tamil Nadu and Kerala and the Union Territories of Pondicherry and Lakshadweep.

Part – II Banking Regulation Act (BR Act), 1949

Background And Structure Of The Act

The law relating to banking in India today is the outcome of gradual process of evolution before 1949. The Indian Companies Act 1913, contained special provisions relating to banking companies, which were inadequate and were subsequently incorporated in the comprehensive legislation, passed in the year 1949, under the name of Banking Companies Act. This Act was later renamed as the Banking Regulation Act, 1949, and suitably amended a number of times, to insert new provisions and to amend the existing ones, in order to suit the needs of the changing circumstances. The original Act has 56 sections contained in five parts and five schedules.

Salient features of the Act include the following:

- A comprehensive definition of banking so as to bring within the scope of the legislation all institutions which receive deposits, repayable on demand or otherwise for lending or investment.
- Prohibition of non-banking companies, from accepting deposits repayable on demand.
- Prohibition of trading to eliminate non-banking risks.
- Prescription of minimum capital standards.
- Limiting the payments of dividends.
- Inclusion the scope of legislation of banks, registered outside the provinces of India.
- Introduction of comprehensive system of licensing of banks and their branches.
 - Prescription of a special form of balance sheet and conferring of powers on the RBI, to call for periodical returns.
- Inspection of books and accounts of a bank, by Reserve Bank.

- Empowering the central government to take action against banks conducting their affairs in a manner detrimental to the interests of the depositors.
- Provision for bringing the Reserve Bank of India into closer touch with banking companies.
- Provision of an expeditious procedure for liquidation.
- Widening the powers of the Reserve Bank of India so as to enable it to come to the support of banking companies in times of emergencies.

Part – I (Sections 1 To 5)

Title, extent and commencement

According to Section 1, the Act is called the Banking Regulation Act, 1949. It extends to the whole of India and it came into force on 16th March, 1949. ***The Act applies to certain types of Cooperative Societies, but not the following:***

- Primary agricultural credit society, and
- Co-operative land mortgage bank

Definition of Banking

According to Section 5(b),

“**banking**” means the accepting of deposits of money from the public for the purpose of lending or investment, repayable on demand or otherwise and withdrawable by cheque, draft, order or otherwise. It may be noted that “banking” does not include other commercial activities carried on by a banking company.

Section 5(c)

“**banking company**” means any company which transacts the business of banking in India.

According to explanation to Section 5, any company which is engaged in the manufacture of goods or carries on any trade and which accepts deposits of money from the public merely for the purpose of financing its business, shall not be deemed to transact the business of banking, and therefore shall not be called a “**banking company**”.

In terms of Section 5(cc), a “branch” or “branch office”, in relation to a banking company, means any branch or branch office, whether called a pay office or sub-pay office or by any other name, at which deposits are received, cheques cashed or moneys lent.

Part – II (Sections 6 To 36AJ)

Business of Banks Section 6 provides a list of various forms of business which a banking company may do in addition to the business of banking. ***These include the following:***

(a)

- Borrowing, raising or taking up of money;

- Lending or advancing of money, either against security or without security;
- Drawing, making, accepting, discounting, buying, selling, collecting and dealing in bills of exchange, hundis, promissory notes, coupons, drafts, bills of lading, railway receipts, warrants, debentures, certificates, scripts and other instruments and securities whether transferable or negotiable or not;
- Granting and issuing of letters of credit, travellers' cheques and currency notes;
- Buying, selling and dealing in bullion and specie (i.e., money in the form of coins, rather than notes);
- Buying and selling of foreign exchange including foreign bank notes;
- Acquiring, holding, issuing on commission, underwriting and dealing in stock, funds, shares, debentures, debenture stock, bonds, obligations, securities and investments of all kinds;
- Purchasing and selling of bonds, scrips and other forms of securities on behalf of constituents or others;
- Negotiating of loans and advances;
- Receiving of all kinds of bonds, scrips or valuables on deposit or for safe custody or otherwise;
- Providing of safe deposit vaults and
- Collecting and transmitting of money and securities

(b) Acting as an agent of the government, local authority or any other person and carrying on agency business

(c) Contracting for public and private loans and negotiating and issuing the same.

(d) Insure, guarantee, underwrite, participate in managing and carrying out any issue of state, municipal or other loans or of shares, stock, debentures or debenture stock of companies and lend money for the purpose of any such issue.

(e) Carry on and transact every kind of guarantee and indemnity business.

(f) Manage, sell and realise any property, which may come into its possession in satisfaction of any of its claims.

(g) Acquire, hold and deal with any property or any right, title or interest in any such property, which may form the security for any loan or advance.

(h) Undertake and execute trusts.

(i) Undertake the administration of estates as executor, trustee or otherwise.

(j) Establish, support and aid associations, institutions, funds, trusts, etc., for the benefit of its present or ex-employees; grant money for charitable purposes.

(k) Acquire, construct and maintain any building for its own purpose.

(l) Sell, improve, manage, develop, exchange, lease, mortgage, dispose of or turn into account or otherwise deal with all or any part of the business of any person or company, when such business is of a nature described in Section 6.

(m) Acquire and undertake the whole or any part of the business of any person or company, when such business is of a nature described in Section 6.

(n) Do all such things which are incidental or conducive to the promotion or advancement of the business of the company.

(o) Do any other business specified by the Central Government, as the lawful business of a banking company. The Central Government has accordingly specified leasing and factoring as permissible businesses for banks.

Note: Section 7 stipulates that every banking company, and no other company, shall use any of words “bank”, “banker”, or “banking” as part of its name. Only then, it can carry on the business of banking in India.

Prohibited functions of Banks

According to Sections 8 and 9, the banks cannot engage themselves in carrying on the following activities:

- No banking company shall directly or indirectly deal in the buying or selling or bartering of goods, or engage in any trade.
- No banking company shall buy or sell, or barter goods for others.
- No banking company shall hold any immovable property howsoever acquired for more than 7 years from the acquisition thereof. However, it can hold any immovable property required for its own use.

Management of a Bank

With regard to the management of a banking company, Section 10 provides as follows:

- A banking company cannot employ or be managed by a managing agent.
- It cannot employ “any person” who has been adjudicated insolvent, or has been convicted by a criminal Court for any act of moral turpitude; who is a director of any other company (other than subsidiary of the banking company or a company registered under **section 25 of the Companies Act, 1956** i.e. “Not For Profit Company” {**section 8 company** under the Companies Act, 2013}; who is engaged in any other business or vocation; whose term of office as a person managing the company is for **more than 5 years at any one time**; whose total remuneration or its part takes the form of commission or of a share in the profits of the company; and whose remuneration is excessive in the opinion of the Reserve Bank of India.
- The board of directors of a banking company shall include **not less than 51%** of its total number of members, persons with professional or other practical experience in the matters such as accountancy, agriculture and rural economy, banking, cooperation, economics, finance, law, small-scale industry, etc.
- Every banking company shall be managed by a whole-time chairman who shall be entrusted with the management of the whole of its affairs. The chairman shall

exercise his powers subject to the superintendence, control, and direction of the board of directors. The chairman shall be one of the directors.

- **Section 16 prohibits** common directors and states that a banking company cannot have a person as director, who is a director of any other banking company.

Capital and Reserves

According to Section 11, the aggregate value of a banking company's paid-up capital and reserves shall **not be less than Rs. 5 lakhs**, if the bank has been established after 16th September, 1962. This minimum amount varies according to the number of places of business in one or more states and also with the nature of banks such as Indian banks and foreign banks whose branches are in India.

Section 12 states that the subscribed capital of a banking company **cannot be less than 50%** of the authorised capital, and the paid-up capital cannot be less than 50% of the subscribed capital. Further, the capital of the company shall consist of ordinary shares or equity shares only. A shareholder cannot exercise his/her voting rights on a poll, in excess of 10% of the total voting rights of all the shareholders of the banking company, as laid down in the Companies Act.

Restrictions concerning payment of dividend

Section 15

- No bank shall pay any dividend on its shares until all its capitalised, expenses (including preliminary expenses, organisation expenses, share-selling commission, brokerage, amounts of losses incurred or any other item of expenditure on intangible assets) have been completely written off.

Section 17:

- Every banking company shall create a Reserve Fund (known as Statutory Reserve Fund), and before declaring any dividend, transfer to it at least 20% of its profit each year.
- When the amount in the reserve fund together with the amount in the share premium account equals the paid-up capital, then (and not before that) the Central Government on the recommendation of the Reserve Bank, can allow a banking company not to transfer the **stipulated 20% of profit to the reserve fund**.
- The Reserve Fund cannot be used for any purpose until it is equal to the paid-up capital.
- Where a banking company appropriates (uses) any amount from the Reserve Fund or the share premium account, it shall report the **fact to the Reserve Bank, within 21** days of such appropriation, explaining the circumstances thereof

Section 18 (taking into accounts the amendments of 2012) states:

Every banking company, not being a scheduled bank, shall maintain a Cash reserve with itself or in a current account with the Reserve Bank equal to such percentage of the total of its DTL in India as on the last Friday of the second preceding fortnight as stipulated by the RBI.

Restriction on nature of subsidiary companies**Section 19 :**

A banking company cannot form any subsidiary company. However, it may establish a subsidiary company in the following circumstances:

- To undertake any one or more forms of business permissible for a banking company under Section 6 or
- To carry on the business of banking exclusively outside India. However, before creating a subsidiary company for this purpose, previous permission in writing of the Reserve Bank is necessary; or
- To undertake such other business which the Reserve Bank may, with the prior approval of the Central Government, consider to be conducive to the spread of banking in India or to be otherwise useful or necessary in the public interest.

Restrictions on Loans and Advances**Section 20:**

Deals with restrictions on banks for making certain types of loans.

According to the Section, no banking company shall:

- (a) Grant any loans or advances on the security of its own shares, or-
- (b) Granting any loan or advance to or on behalf of-

- Any of its directors,
- To any firm in which any of its directors is interested as a partner, manager, employee or guarantor, or
- Any company in which a director of the bank is interested as a Director, Managing Agent, Manager, employee or guarantor
- Any individual in respect of whom any of its directors is a partner or guarantor

Power of RBI to Control Advances by Banking Companies**Section 21**

- RBI may direct banks with respect to the purpose of advance, the margins to be maintained, the maximum quantum that can be lent to a single entity and the rate of interest to be charged and banks would be required to adhere to such directions provided by RBI.

Licensing of banking companies

Section 22:

- Before commencing banking business in India, every banking company shall apply in writing to the RBI for a licence and RBI will grant licence

Opening of new branches and transfer of existing branches

Section 23

- Without obtaining the prior permission of the Reserve Bank, a banking company cannot open a new branch.
- It cannot change the location of an existing branch.
- The same restriction applies to opening or transferring branches outside India.
- However, a temporary branch may be opened for a, maximum period of one month for the purpose of affording banking facilities to the public on the occasion of an exhibition, a conference, or a 'mela' or any other similar occasion, if the banking company already has a branch in that city, town, or village.

Maintenance of Statutory Liquidity Reserve

Section 24:

- Every bank shall maintain a liquid reserve in cash, gold or unencumbered approved **securities at least 25% of** the total of its demand and time liabilities in India.
- In terms of the provisions of this Section, every bank shall maintain a liquid reserve in cash, gold or unencumbered approved **securities not exceeding 40%** of the total of its demand and time liabilities in India.

Return of Unclaimed Deposits

Section 26:

- Every banking company shall, within 30 days after the close of each calendar year, submit a return to the RBI of all accounts [in India] which have not been operated upon for 10 years.

Section 26A,

- RBI shall establish a Fund to be called the "**Depositor Education and Awareness Fund**" and shall credit to the Fund the amount of such accounts which have not been operated upon for a period of **10 years or any deposit** or any amount remaining unclaimed for **more than 10 years - within a period of 3 months from the expiry of the said period of 10 years**

Inspection

- **In terms of Section 35 the RBI**, on its own or on being directed by the Central Government, can cause an inspection of any banking company and its books and accounts. It may also order a scrutiny of the affairs and books and accounts, and the officers of the said banking company shall have to fully cooperate with the order.

Power of RBI to give Directions

Section 35A:

- RBI is satisfied that in public interest or in the interest of banking policy or in order to prevent the affairs of any banking company being conducted in a manner detrimental to itself or to the interests of the depositors or to secure the proper management of any banking

Sections 35AA and Section 35AB

- Give power to the RBI to give directions to banks to initiate insolvency proceedings against specified stressed corporates under the Insolvency and Bankruptcy Code, (IBC), 2016 and also to give directions for initiation of resolution process of stressed assets.
- These Sections were invoked when the RBI commenced its Asset Quality Review (AQR) in Banks, in the year 2015

Supersession of Board of Directors of Banks in Certain Cases

Section 36ACA,

- RBI, in consultation with the Central Government is satisfied that in the public interest or for preventing the affairs of any banking company being conducted in a manner detrimental to the interest of the depositors or itself, the RBI may supersede the Board of Directors of such banking company for a period **not exceeding six months**.
- This supersession can be extended by **RBI up to a total period of 12 months**. On directing supersession as above, the RBI may appoint an Administrator who has experience in law, finance, banking, economics or accountancy to manage the affairs of the Bank.

Part – III B (Sections 45Y TO 45ZF)

Nomination

Nomination in deposit accounts, safe custody accounts and safe deposit locker accounts are covered

- Under **Sections 45ZA, 45ZC and 45ZE**, respectively. Under Section 45ZA, where a deposit is held by a banking company to the credit of one or more persons, the depositor(s) may nominate one person to whom – in the event of the death of the sole depositor(s) – the amount of deposit may be returned by the banking company and, payment by a banking company to the nominee, in accordance

with the provisions of **Section 45ZA**, shall constitute a full discharge to the banking company of its liability in respect of the deposit.

- **Under Section 45ZC**, where any person leaves any article in safe custody with a banking company, such person may nominate one person to whom - in the event of the death of the person leaving the article in safe custody - such article may be returned by the banking company. Under Section 45ZE, where an individual is the sole hirer of a locker from a banking company, such individual may nominate one person to whom - in the event of the death of the such locker hirer - the banking company may give access to the locker and liberty to remove the contents of the locker.

Part – IV (Sections 46 TO 55)

- Restriction on acceptance of deposits withdrawable by cheque **According to Section 49A**, no person other than a bank shall accept deposits of money withdrawable by cheque.

Part – V (Section 56)

- Application of the Act to Cooperative Societies (Amendments of 1965 and 2020) With the introduction of Section 56 in the Banking Regulation Act, 1949, with effect from 1 March, 1966, (Act 23 of 1965) co-operative banks have come under the regulatory purview of RBI.
- While the formation and management of co-operative societies operating in one state only (including those conducting banking business) are under the control of the State Government, licensing and regulation of banking business rests with RBI. Thus, there is a dual control of State Governments and the Reserve Bank over these banks.

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