

# BANKING REGULATIONS ACT , 1949.

- The Banking Regulation Act, 1949, empowers the Reserve Bank of India, to regulate banking activities in India. Since its enforcement in 1949, Banking Regulation Act was suitably amended a number of times to insert new provisions and to amend the existing ones to suit the needs of changing circumstances and to plug the loopholes in the main legislation
- The Banking Regulation Act, 1949 defines a banking company as a company which transacts the business of banking in India (Sec 5-c).
- Acc to Sec 5 (b) , "banking" means the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise, and withdrawal by cheque, draft, order or other wise;
- Section 49 A of the Act prohibits any institution other than a banking company to accept deposit of money from public withdrawable by cheque. Thus, the combination of the functions of acceptance of public deposits and withdrawable of money cheque by any institution cannot be performed without approval of Reserve Bank.

- The essential feature of banking business is that the banker does not refund the money on his own accord, even if the period for which it was deposited expires. The depositor must make a demand for the same. The Act also specifies that the withdrawal should be effected through an order, cheque, draft or otherwise. It implies that the demand should be made in a proper manner and through an instrument in writing and not merely by verbal order or a telephonic message.
- Section 7 of the Act, makes it essential for every company carrying on the business of banking in India to use as part of its name at least one of the words - bank, banker, banking or banking company. It also prohibits any other company, or firm, individual or group of individuals, from using any of these words as part of its/his name.
- Under Section 6 of the Act, the following businesses may be undertaken by a banking company :
  - ✓ Borrowing, raising or taking money and lending of advancing money, discounting of bills, granting letter of credit, traveller's cheques, buying and selling of bullion and species, buying and selling of foreign exchange, providing safe deposit vaults, collection and transmitting money and securities, underwriting and dealing in shares, debentures, bonds and investments of all kinds

- ✓ Act as an agent of the government, local authority a person and can carry on agency business.
- ✓ It may contract for public and private loans and negotiate and issue the same
- ✓ It may insure, guarantee, underwrite, participate in managing and carrying out of any issue of state, municipal or other loans or of shares, debentures and may lend money for the purpose of any such issue.
- ✓ It may carry on and transact every kind of guarantee and indemnity business.
- ✓ It may manage, sell and realise any property which may come into its possession in satisfaction of its claims.
- ✓ It may acquire and 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.
- ✓ It may undertake and execute trusts and undertake the administration of estates as executor, trustee or otherwise
- ✓ It may acquire, construct and maintain any building for its own purpose.
- ✓ It may sell, improve, manage, develop, exchange, lease, mortgage, dispose of or turn into account or otherwise deal with all or any part of the property and rights of the company

- Business Prohibited for a Banking Company:
- Section 8 of the Banking Regulation Act, 1949, prohibits a banking company from engaging directly or indirectly in trading activities and undertaking trading risks. However, a banking company is permitted to deal in buying or selling or bartering of goods or engage in any trade or buy, sell or barter goods for others in order to:
  - ✓ realise the securities given to it or held by it for a loan, if need arises for realisation of the amount lent.
  - ✓ in connection with the bills of exchange received from collection or negotiation and undertaking the administration of estates as executor, trustee, etc.

For the purpose of this section, goods, means every kind of movable property, other than actionable claims, stocks, shares, money, bullion and species and all other instruments

- Sec 19, of the Banking Regulation Act, (Amended in 1983 provides that a banking company is permitted to form a subsidiary company for any one or more of the following purposes:
  - (i) For undertaking of any business permitted for a banking
  - (ii) For carrying on the business of banking exclusively outside India (with previous permission of the Reserve Bank),
  - (iii) For undertaking of such other business which, in the opinion of the Reserve Bank would be conducive to the spread of banking in India or to be otherwise useful or necessary in the public interest
- The business carried on by such subsidiary company shall not be deemed to be the business of the banking company for the purpose of sec 8.

- MINIMUM PAID UP CAPITAL AND RESERVES:
- Sec 11 contains provisions to ensure adequacy minimum paid up capital and reserves. Adequacy of capital essential for the soundness of a banking company. The Banking Companies (Amendment) Act, 1962, raised the minimum amount of the value of paid up capital to 5 lakhs for any Indian Bank commencing business after the commencement of that Act.
- The term 'value' means the real or exchangeable value and not the nominal value which may be shown in the books of the banking company. The real or exchangeable value of capital and reserves is computed by estimating the realisable value of all the assets and deducting therefrom the amounts of outside liabilities. Section 12 also provides that the subscribed capital of a banking company should not be less than one half of its authorised capital and the paid up capital should not be less than one-half of the subscribed capital

- (1) INDIAN BANKS: A banking company incorporated in India, should have the minimum aggregate value of its paid up capital and reserves as prescribed in the Act:
  - (i) If it has places of business in more than one state – Rs.5 Lakhs
  - (ii) If any such place of business is situated in Mumbai or Kolkata or both- Rs. 10 Lakhs
  - (iii) If it has all its places of business in one state, none of which is situated in the city of Mumbai or Kolkata:
    - ✓ (a) In respect of its principal place of business, - Rs 1 Lakhs Plus
    - ✓ (b) In respect of each of its other places of business situated in the district of principal business,- Rs 10,000 Plus
    - ✓ (c) In respect of each place of business situated elsewhere in the state outside the same district,- Rs 25,000
  - ✓ Subject to a total of, - 5 Lakhs

- (iv) If it has only one place of business, - Rs 50,000
- (v) If it has all its places of business in one state, one or more of which is, or are situated in the city of Mumbai or Kolkata, - Rs 5 lakhs Plus
- In respect of each place of business situated outside the city Mumbai or Kolkata, -Rs 25,000.
- Subject to a total of , - Rs 10 Lakhs
- The above requirements apply to those banks which were established before 1962. The Banking Companies (Amendment Act, 1962, raised the minimum amount of the value of the paid up capital to 5 lakhs for any Indian Bank commencing businesses after that Act.

- (2) FOREIGN BANKS:

- In case of a banking company incorporated outside India, the aggregate value of its paid up capital and reserves shall not be less than 15 lakhs, and if it has a place of business in the city of Mumbai or Kolkata, or both, 20 lakhs.
- The banking company incorporated outside India is also required to deposit with the Reserve Bank either in cash, or in the form of unencumbered approved securities, or in both, an amount equal to the minimum amount specified above.
- The Act also requires a foreign banking company to deposit with the Reserve Bank at the end of each calendar year an amount equal to 20% of the profit for that year in respect of all businesses transacted through its branches in India.

- The Central Government may on the recommendation of the Reserve Bank exempt any foreign banking company from making deposit of the above-mentioned part of its profit with the Reserve Bank for a period specified in the order.
- Such exemption will be granted if the amount deposited by the banking company is considered adequate in relation to its deposit liabilities.
- The aforesaid amounts deposited by foreign banks with the Reserve Bank shall be an asset of the company, on which the claims of all the creditors of the company in India shall be a first charge in case the company ceases to carry on banking business in India