

JAIIB MADE SIMPLE

LEGAL & REGULATORY ASPECTS OF BANKING

(JAIIB PAPER -3)

**Version 2.0
(FOR MAY- JUNE 2016 EXAM.)**

**(A Very useful book for Day to Day Banking and all
Knowledge Based Examinations)**

COMPILED BY

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Preface

Dear Friends,

Banking/Financial sector in our country is witnessing a sea change & banker's business has become more complex & difficult in this driven era of knowledge & technology. There are mass retirements happening due to super annuation & many new recruits are joining the Bank. More than 40% staff strength is newly recruited in last three to four years. An official working in the Banking sector has to keep pace with Updated knowledge, skills & attitude, as the same is required everywhere. There is need to issue a comprehensive book covering all the aspects so that new recruits get updated very fast without referring many voluminous books.

This book titled “ JAIIB MADE SIMPLE ” has many unique features to its credit & consists of all topics/syllabus required for JAIIB examination with clear concept & simple language with latest changes during 2015-16 (upto 31.12.2015 as per IIBF/ JAIIB exams. requirement) also included. This Book is divided into four Modules namely A,B,C & D & Practice Test Papers / Test Yourself based on latest IIBF syllabus for JAIIB examination.

The Book also covers the full syllabus (latest) of JAIIB examination and also recalled questions (one line approach & MCQ (based on IIBF examination Pattern) will be helpful to all aspirants who are taking up JAIIB examination

During preparation of this book, I have received tremendous support from many friends & colleagues especially my wife Mrs Renu, who is also a banker, my son Master Ritwiz Aryan & our clerk Mr Sanjeev V Karamchandani. Special thanks to Sri B P Desai Sir (Our Ex. AGM & now Faculty on Contract at RSTC, Mumbai) for vetting & compilation of this book.

As any work will have scope for some improvement, I shall be grateful if any feedback is provided for improvement in contents of the book.

I wish you all the best for the written test & hope the study material will help in achieving the goal.

Place : Mumbai

Date : 16.05.2016

SANJAY KUMAR TRIVEDY
Divisional Manager, Government Link Cell, Nagpur

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ABOUT JAIIB EXAMINATION

OBJECTIVE: JAIIB aims at providing required level of basic knowledge in banking and financial services, banking technology, customer relations, basic accountancy and legal aspects necessary for carrying out day to day banking operations.

MEDIUM OF EXAMINATION : Either in Hindi or English

Cut-off Date of Guidelines / Important Developments for Examinations

In respect of the exams to be conducted by the Institute during May / June of a calendar year, instructions / guidelines issued by the regulator(s) and important developments in banking and finance up to 31st December of the previous year will only be considered for the purpose of inclusion in the question papers. In respect of the exams to be conducted by the Institute during November / December of a calendar year, instructions / guidelines issued by the regulator(s) and important developments in banking and finance up to 30 June of that year will only be considered for the purpose of inclusion in the question papers.

Reference: IIBF Monthly Magazine : VISION.

PATTERN OF EXAMINATION : Each Question Paper will contain approximately 120 objective type multiple choice questions, carrying 100 marks including questions based on case study / case lets. The Institute may, however, vary the number of questions to be asked for a subject. There will NOT be negative marking for wrong answers.

TYPES OF QUESTIONS

120 Objective Type Multiple Choice Questions - carrying 100 marks – 120 minutes and question will be based on Knowledge Testing, Conceptual Grasp, Analytical / Logical Exposition, Problem Solving & Case Analysis.

Type of Questions – Basically four types of Multiple Choice Questions asked in Exam of Which Type – A : Concept based Straight Questions (70-71 QUES - 0.5 MARKS EACH) ; Type – B : Problems & Solutions (20-25 QUES - 1.0 MARKS EACH); Type – C : Applied theory based Questions (10-15 QUES - 2.0 MARKS EACH) ; Type – D : Case Study & Case-lets based Questions (10-15 QUES - 2.0 MARKS EACH)

QUESTIONS MODELS : TYPES OF QUESTIONS

Type – A : MULTIPLE CHOICE – QUESTIONS & ANSWERS

The Best Method for assessing working capital limit used by the bank for seasonal Industries is :

1. Operating Cycle Method, 2. Projected Networking Method, 3. Projected Turn over Method & 4. Cash Budget Method

Type – B : MULTIPLE CHOICE – PROBLEMS & SOLUTIONS

Mr. Ram Kumar is having overdraft account with Canara bank upto Rs.100,000. The present Debit Balance in the account was Rs. 80550.00. The bank has received attachment order from Income tax deptt. For Rs. 16,200.00. What can the bank do in this situation ?

- Unless the bank is a debtor, there can be no attachment and an unutilized overdraft account does not render the bank a debtor (but creditor) & hence can not attach.

Type – C : MULTIPLE CHOICE – APPLIED THEORY – QUES. & ANS

Financial Institution wish to have the money lent by them repaid in time. Secured advances sanctioned by banks possess what kind of security ?

- Secured Advances have impersonal security i.e. Tangible Security

Type –D : MULTIPLE CHOICE – CASE STUDIES & CASE LETS (PROBLEMS & SOLUTIONS)

Economic development of a country to a large extent depends upon Agril. & Industrial sectors.

Development of agril. Depends upon irrigation facilities while industrial development on availability of power, good transport and fast communication facilities. All these are called infrastructure. Read the caselet & explain which industries constitute infrastructure ?

- Energy, Transport & Communication
- Irrigation, construction of bridges & dams over Rivers & stable govt. at Centre.
- Availability of Funds for PMEGP , SJSRY & Indira Awas Yojana

DURATION OF EXAMINATION: The duration of the examination will be of 2 hours.

JAIIB EXAMINATION – May 2016
(Last date for applying for examination : 15.03.2016)

ONLINE MODE		
Examination DATE	TIME	SUBJECTS
15.05.2016 Sunday	ONLINE - Will be given in the admit Letter	Principles & Practices of Banking
22.05.2016 Sunday	ONLINE - Will be given in the admit Letter	Accounting & Finance for Bankers
29.05.2016 Sunday	ONLINE - Will be given in the admit Letter	Legal & Regulatory Aspects of Banking
Last Date for receipt of Change of Centre Requests at the respective Zonal Offices for the JAIIB Examination scheduled for May 2016 : 31.03.2016		

(Examination fee Inclusive Service Tax @14.50% wef 15.11.2015 - Eligible for Members Only)

Sr. No.	Name of the Exam	Attempts	Fee (Rs)
1	JAIIB	First Block of 2 attempts	2748
		Second Block of 2 attempts	2748

PERIODICITY AND EXAMINATION CENTRES ; The examination will be conducted normally twice a year in May / June and November / December on Sundays.

Pass : Minimum marks for pass in every subject - 50 out of 100 marks.

Candidate securing at least 45 marks in each subject with an aggregate of 50% marks in all subjects of JAIIB examination in a single attempt will also be declared as having passed JAIIB Examination. Candidates will be allowed to retain credits for the subject/s they have passed in one attempt till the expiry of the time limit for passing the examination as mentioned below.

TIME LIMIT FOR PASSING THE EXAMINATION

Candidates will be required to pass JAIIB examination within a time limit of 2 years (i.e. 4 consecutive attempts). Initially a candidate will have to pay examination fee for a block of one year i.e. for two attempts. In case a candidate is not able to pass JAIIB examination within 1st block of 2 attempts, he / she can appear for a further period of 1 year (2nd block) i.e. 2 attempts on payment of requisite fee. Candidates who have exhausted the first block of 2 attempts, should necessarily submit the examination application form for the next attempt, without any gap. If they do not submit the examination form immediately after exhausting the first block, the examination conducted will be counted as attempts of the second block for the purpose of time limit for passing.

Candidates not able to pass JAIIB examination within the stipulated time period of two years are required to re-enroll themselves afresh by submitting fresh Examination Application Form. Such candidates will not be granted credit/s for subject/s passed, if any, earlier. Attempts will be counted from the date of application irrespective of whether a candidate appears at any examination or otherwise.

“CLASS OF PASS” CRITERIA

The Institute will consider the FIRST PHYSICAL ATTEMPT of the candidate at the examination as first attempt for awarding class. In other words, the candidate should not have attempted any of the subject/s pertaining to the concerned examination any time in the past and has to pass all the subjects as per the passing criteria and secure prescribed marks for awarding class. Candidate re-enrolling for the examination after exhausting all permissible attempts as per the time limit rule will not be considered for awarding class. First Class : 60% or more marks in aggregate and pass in all the subjects in the FIRST PHYSICAL ATTEMPT.

First Class with Distinction : 70% or more marks in aggregate and 60 or more marks in each subject in the FIRST PHYSICAL ATTEMPT. Candidate who have been granted exemption in the subject/s will be given "Pass Class" only.

Module: A

Regulations and Compliance

Syllabus

- 1) Legal Framework of Regulation of Banks** - Business of Banking; Constitution of Banks; RBI Act, 1934; Banking Regulation Act, 1949; Role of RBI; Govt. as a Regulator of Banks; Control over Cooperative Banks; Regulation by other Authorities.
- 2) Control Over Organization of Banks** - Licensing of Banking Companies; Branch Licensing; Paid up Capital and Reserves; Shareholding in Banking Companies; Subsidiaries of Banking Companies; Board of Directors; Chairman of Banking Company; Appointment of Additional Directors; Restrictions on Employment; Control over Management; Corporate Governance; Directors and Corporate Governance.
- 3) Regulation of Banking Business** - Power of RBI to Issue Directions; Acceptance of Deposits; Nomination; Loans and Advances; Regulation of Interest Rate; Regulation of Payment Systems; Internet Banking Guidelines Regulation of Money Market Instruments; Banking Ombudsman; Reserve Funds; Maintenance of CRR, SLR; Assets in India.
- 4) Returns Inspection, Winding up, Mergers & Acquisitions** - Annual Accounts & Balance Sheet; Audit & Auditors; Submission of Returns; Preservation of Records and Return of Paid Instruments; Inspection and Scrutiny; Board for Financial Supervision; Acquisition of Undertakings; Amalgamation of Banks; Winding up of Banks; Penalties for offences.
- 5) Public Sector Banks and Cooperative Banks** - SBI and its Subsidiaries; Regional Rural Banks; Nationalized Banks; Application of BR Act to Public Sector Banks; Disinvestment of Shares by Govt.; Cooperative Banks
- 6) Financial Sector Legislative Reforms** - Need, Approach for Financial Sector Legislative Reforms; Important Reforms
- 7) Recent Legislative Changes in RBI Act** - Recent Legislative Changes in RBI Act, Need thereof
- 8) Financial Sector Development Council** - Role and Functions of Financial Sector Development Council

LEGAL FRAMEWORK OF REGULATION OF BANKS

What is banking : (Section 5-b of Banking Regulation Act 1949) Banking means the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise, and withdrawable by cheque, draft, order or otherwise. As per Section 7, no firm, individual or group of individuals and no company other than a banking company shall use, as part of its name or, in connection with its business, any of the words "bank", "banker" or "banking" and no company shall carry on the business of banking in India unless it uses as part of its name, at least one of such words.

What is a banking Company : (Section 5-c BR Act) It means any company which transacts the business of banking in India. 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 as such manufacturer or trader, shall not be deemed to transact the business of banking.

Corresponding new bank : (Section 5-da BR Act): It means a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, or under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980.

Demand liabilities : (Section 5-f BR Act) : The liabilities which must be met on demand, and "time liabilities" means liabilities which are not demand liabilities;

Secured loan or advances : (Section 5-n BR Act) A loan or advance made on the security of assets the market value of which is not at any time less than the amount of such loan or advance. Unsecured loan or advance means a loan or advance not so secured;

Business Of Banking Companies (Section 6 — BR Act)

No banking company shall engage in any form of business other than those referred to as business of banking and 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; and drawing, making, accepting, discounting, buying, selling, collecting and dealing in bills of exchange, hundies, promissory notes, coupons, drafts, bill 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 loan 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 any government or local authority or any other person or persons; the carrying on of agency business of any description including the clearing and forwarding of goods, giving of receipts and discharges and otherwise acting as an attorney on behalf of customers, but excluding the business of a Managing Agent or Secretary and Treasurer of a company;
- (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 any property 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 or any right, title or interest in any such property which may form the security or 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 pension and allowances and making payments towards insurance; subscribing to or guaranteeing moneys for charitable or benevolent object 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 purpose 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) 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. Prohibition of business (Section 8 — BR Act)

No banking company shall directly or indirectly deal in the buying or selling or bartering of goods, except in connection with the realization of security given to or held by it, or engage in any trade, or buy, sell or barter goods for others otherwise than in connection with bills of exchange received for collection or negotiation or with such of its business. For this purposes, "goods" means every kind of movable property, other than actionable claims, stock, shares, money, bullion and specie and all instruments.

Non-banking assets (Section 9)

No banking company can hold any immovable property howsoever acquired, except such as is required for its own use, for any period exceeding 7 years from the acquisition thereof or from the commencement of this Act, whichever is later or any extension of such period as in this section provided, and such property shall be disposed of within such period or extended period, as the case may be:

The banking company may, within the period of 7 years as aforesaid, deal or trade in any such property for the purpose of facilitating the disposal thereof:

Reserve Bank may in any particular case extend the aforesaid period of 7 years by such period not exceeding 5 years where it is satisfied that such extension would be in the interests of the depositors of the banking company.

BOARD OF DIRECTORS

Composition of Board of Directors (Section 10A)

Not less than 51% of the total number of members of the Board of Directors of a banking company shall consist of persons, who shall have special knowledge or practical experience in respect of one or more, namely, accountancy, agriculture and rural economy, banking, co-operation, economics, finance, law, small-scale industry, any other matter the special knowledge of, and practical experience, which would, in the opinion of the Reserve Bank, be useful to the banking company:

Out of the aforesaid number of Directors, not less than 2 shall be persons having special knowledge or practical experience in respect of agriculture and rural economy, co-operation or small-scale industry;

Term of director : No Director of a banking company, other than its Chairman or whole-time Director, by whatever name called, shall hold office continuously for a period exceeding 8 years. A Chairman or other whole-time Director of a banking company who has been removed from office as such Chairman, or whole-time Director shall also not be eligible to be appointed as a Director of such banking company, whether by election or co-option or otherwise, for a period of 4 years from the date of his ceasing to be the Chairman or whole-time Director.

If, in respect of any banking company, the above requirements are not fulfilled at any time, the Board of Directors of such banking company shall re-constitute such Board so as to ensure that the said requirements are fulfilled.

RBI's role in case of Board of Directors : Where the Reserve Bank is of opinion that the composition of the Board of Directors of a banking company is such that it does not fulfil the above requirements, it may, after giving a reasonable opportunity, direct the banking company to re-constitute its Board of Directors to ensure that the requirements are fulfilled and, if within 2 months from the date of receipt of that order, the banking company does not comply with the directions, remove such person from the office of the Director and appoint a suitable person as a member of the Board of Directors in the place of the person so removed. Every Director elected or, as the case may be, appointed under this section shall hold office until the date up to which his predecessor would have held office, if the election had not been held.

Whole-time Chairman (Section 10B)

Every banking company shall have one of its Directors, who may be appointed on a whole-time or a part-time basis as Chairman of its Board of Directors. Where he is appointed on a whole-time basis as Chairman of its Board of Directors, he shall be entrusted with the management of the whole of the affairs of the banking company:

Where a Chairman is appointed on a part-time basis such appointment shall be with the previous approval of the Reserve Bank and be subject to such conditions as the Reserve Bank may specify while giving such approval:

Terms of office of Chairman : Every Chairman of the Board of Directors and Managing Director shall be in the whole-time employment and shall hold office for maximum period of not exceeding five years, but shall subject to the provision of this section, be eligible for reelection or re-appointment.

Power of-Reserve Bank to appoint Chairman of a banking company (Section 10 BB)

Where the office of the Chairman or the Managing Director is vacant, the Reserve Bank may, appoint a person eligible to be the Chairman of the Board of Directors or a Managing Director. Where the person so appointed is not a director of such banking company, he shall, so long as he holds the office of the Chairman of the Board of Directors appointed on a whole-time basis or a Managing Director, be deemed to be a Director of the banking company. The Chairman and Managing Director so appointed by the Reserve Bank shall be in the whole-time employment of the banking company and shall hold office for such period not exceeding *three years*, as the Reserve Bank may specify, but shall, be eligible for reappointment.

Chairman, certain Directors & qualification shares (Section 10C)

A Chairman of the Board of Directors who is appointed on a whole-time basis or a Managing Director of a banking company (by whomsoever appointed) and a director of a banking company (appointed by the Reserve Bank under section LOA) shall not be required to hold qualification shares in the banking company.

Election of new Directors (Section 12A)

- (1) The Reserve Bank may, by order, require any banking company to call a general meeting of the shareholders of the company within such time, not less than 2 months from the date of the order, as may be specified in the order or within such further time as the Reserve Bank may allow in this behalf, to elect fresh Directors, and the banking company shall be bound to comply with the order.
- (2) Every Director elected as above shall hold office until the date up to which his predecessor would have held office, if the election had not been held.

Prohibition of common Directors (Section 16)

No banking company incorporated in India shall have as a Director in its Board of Directors any person who is a Director of any other banking company. Further such banking company shall not have Directors more than 3 Directors who are Directors of companies which among themselves are entitled to exercise voting rights in excess of 20% of the total voting rights of all the shareholders of that banking company. Nothing shall apply to, or in relation to, any Director appointed by the Reserve Bank.

Restrictions on certain forms of employment (Section 10)

No banking company shall employ or be managed by a Managing Agent; or shall employ or continue the employment of any person who is, or at any time has been, adjudicated insolvent, or has suspended payment or has compounded, with his creditors, or who, is or has been, convicted by a criminal court of an offence involving moral turpitude; or whose remuneration or part of whose remuneration takes the form of commission or of a share in the profits of the company, whose remuneration is, in the opinion of the Reserve Bank, excessive;

MINIMUM PAID-UP CAPITAL AND RESERVES (Section 11)

No banking company in existence on the commencement of this Act, shall, after the expiry of 3 years from such commencement or of such further period not exceeding one year as the Reserve Bank, having regard to the interests of the depositors of the company, may think fit in any particular case to allow, carry on business in India, and no other banking company shall, after the commencement of this Act, commence or carry on business in India, unless it complies with such of the requirements of this section as are applicable to it.

Capital of Banking company incorporated outside India (Foreign Banks)

- (a) the aggregate value of its paid-up capital and reserves shall not be less than Rs.15 lac and if it has a place or places of business in the city of Bombay or Calcutta or both, Rs.20 lac; and
- (b) the banking company shall deposit and keep deposited with the Reserve Bank either in cash **or** in the form of unencumbered approved securities, or partly in cash and partly in the form of such securities an amount which shall not be less than the minimum required by clause (a); and an amount calculated at 20% of its profit for that year in respect of all business transacted through its branches in India, as disclosed in the profit and loss account. It can at any time replace any securities so deposited by cash or by any other unencumbered approved securities or partly by cash and partly by other such securities, so however, that the total amount deposited is not affected; **OR** any cash so deposited by unencumbered approved securities of an equal value.

Central Government 'May, on the recommendation of the Reserve Bank, and having regard to the adequacy of the amounts already deposited and kept deposited by a banking company, in relation to

its deposit liabilities in India declare by order in writing that the above provisions shall not apply to such banking company for such period as may be specified in the order.

Other Banking Companies (Indian Banks)

For other banks, the aggregate value of its paid-up capital and reserves shall not be less than -

- (i) if it has places of business in more than one State, Rs.5 lac, and if any such place or places of business is or are situated in the city of Bombay or Calcutta or both, Rs.10 lac;
- (ii) if it has all its places of business in one State none of which is situated in the city of Bombay or Calcutta, Rs.1 lac in respect of its principal place of business, plus Rs.10000 in respect of each of its other places of business, situated in the same district in which it has its principal place of business, plus Rs.20000 in respect of each place of business situated elsewhere in the State otherwise than in the same district:

No banking company to which this applies shall be required to have paid-up capital and reserves exceeding an aggregate value of five lakhs of rupees. FURTHER no banking company to which this clause applies and which has only one place of business, shall be required to have paid-up capital and reserves exceeding an aggregate value of Rs.50000: In case of every banking company to which this clause applies and which commences banking business for the first time after the commencement of the Banking Companies (Amendment) Act, 1962 (36 of 1962), the value of its paid-up capital shall not be less than Rs.5 lac

- (iii) if it has all its places of business in one State, or more of which is or are situated in the city of Bombay or Calcutta, Rs.5 lac , plus Rs.25000 in respect of each place of business situated outside the city of Bombay or Calcutta, as the case may be:

No banking company to which this clause applies shall be required to have paid-up capital and reserves exceeding an aggregate value of Rs.10 lac.

Regulation of paid-up, subscribed and authorised capital and voting rights of shareholders (Section 12)

- (1) No banking company shall carry on business in India, unless it satisfies that the subscribed capital of the company is not less than one-half of the authorised capital and the paid-up capital is not less than one-half of the subscribed capital. Further, that the capital of the company consists of ordinary shares only or of ordinary shares or equity shares and such preferential shares as may have been issued prior to theist day of July, 1944:
- (2) No person holding shares in a banking company shall, in respect of any shares held by him, exercise voting rights in excess of 10% of the total voting rights of all the shareholders of the banking company.

SUMMARY OF MINIMUM PAID UP CAPITAL

Foreign Bank	Indian Banks	Indian Banks	Indian Banks	Indian Banks
Aggregate of paid up capital and reserves: Normal= 15 lac If branch in Mumbai or Kolkata = 20 lac + 20% of profit of that year to be deposited with RBI	Business in more than one State Normal = 5 lac Business place in Mumbai or Kolkata = Rs.10 lac In aggregate max: Rs.5 lac	Business in one State and no place of business in Mumbai or Kolkata Normal = 1 lac + For each place of business in same district =10000 In aggregate max: Rs.5 lac If one place of business max Rs.50000	Business in one State and no place of business in Mumbai or Kolkata Normal = 1 lac + For each place of business in other district =25000 In aggregate max: Rs.5 lac if one place of business max Rs.50000	Business in one State and place of business in Mumbai or Kolkata Normal = 5 We + For each place of business =25000 In aggregate max: Rs.10 lac

Return : Every Chairman, Managing Director or Chief Executive Officer by whatever name called of a banking company shall furnish to the Reserve Bank returns containing full particulars of the extent and value of his holding of shares, whether directly or indirectly, in the banking company and of any change in the extent of such holding or any variation in the rights attaching thereto and such other information relating to those shares as the Reserve Bank may, by order, require

Restriction on nature of subsidiary companies (Section 19)

A banking company shall not form any subsidiary company except for undertaking of any business which, under clause (a) to (o) of sub-section (1) of section 6, is permissible for a banking company to undertake, or with RBI permission, the carrying on of the business of banking exclusively outside India, or 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.

Shareholding in other companies {Section 19(2)} No banking company shall hold shares in any company, whether as pledgee, mortgagee or absolute owner, of an amount exceeding 30% of the paid-up share capital of that company or 30% of its own paid-up share capital and reserves, whichever is less. Further a banking company shall not, hold shares, whether as pledge, 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.

CONTROL OVER MANAGEMENT

Power of Reserve Bank to remove managerial and other persons from office (Section 36AA)

Where the Reserve Bank is satisfied that it is necessary so to do, the Reserve Bank may, for reasons to be recorded in writing, by order, remove from office, with effect from such date as may be specified in the order, any Chairman, Director, Chief Executive Officer (by whatever name called) or other officer or employee of the banking company. Such person, within 30 days from the date of communication to him of the order, prefer an appeal to the Central Government. The decision of the Central Government on such appeal, and subject thereto, the order made by the Reserve Bank, shall be final and shall not be called into question in any court. Where an order has been made for removal, the Reserve Bank may, by order in writing, appoint a suitable person in place of the Chairman or Director or Chief Executive Officer or other officer or employee who has been removed from his office, with effect from such date as may be specified in the order.

Any person appointed as Chairman, Director or Chief Executive Officer or other officer or employee under this section, shall hold office during the pleasure of the Reserve Bank and subject thereto for a period not exceeding 3 years or such further periods not exceeding three years at a time as the Reserve Bank may specify;

Power of Reserve Bank to appoint additional Directors (Section 36AB)

If the Reserve Bank is of opinion that in the interest of banking policy or in the public interest or in the interests of the banking company or its depositors it is necessary so to do, it may, from time to time by order in writing, appoint, with effect from such date as may be specified in the order, one or more persons to hold office as additional Directors of the banking company.

Any person appointed as additional Director in pursuance of this section shall hold office during the pleasure of the Reserve Bank and subject thereto for a period not exceeding 3 years or such further periods not exceeding 3 years at a time as the Reserve Bank may specify and shall not be required to hold qualification-shares in the banking company.

BANK LICENCING Licensing of banking companies (Section 22)

No company shall carry on banking business in India unless it holds a licence issued in that behalf by the Reserve Bank and any such licence may be issued subject to such conditions as the Reserve Bank may think fit to impose.

Before granting any licence, the Reserve Bank may require to be satisfied by an inspection of the books of the company or otherwise that the following conditions are fulfilled, namely:-

- (a) that the company is or will be in a position to pay its present or future depositors in full as their claims accrue;
- (b) that the affairs of the company are not being, or are not likely to be, conducted in a manner detrimental to the interests of its present or future depositors;]
- (c) that the general character of the: proposed management of the company will not be prejudicial to the public interest of its present or future depositors;

- (d) that the company has adequate capital structure and earning prospects;
- (e) that the public interest will be served by the grant of a licence to the company to carry on banking business in India;
- (f) that having regard to the banking facilities available in the proposed principal area of operations of the company, the potential scope for expansion of banks already in existence in the area and other relevant factors the grant of the licence would not be prejudicial to the operation and consolidation of the banking system consistent with monetary stability and economic growth;
- (9) any other condition, the fulfillment of which would, in the opinion of the Reserve Bank, be necessary to ensure that the carrying on of banking business in India by the company will not be prejudicial to the public interest or the interests of the depositors.]

Further, before granting any licence to a company *incorporated outside India*, the Reserve Bank may require to be satisfied by an inspection of the books of the company or otherwise that the conditions specified above are fulfilled and that the carrying on of banking business by such company in India will be in the public interest and that the government or law of the country in which it is incorporated does not discriminate in any way against banking companies registered in India and that the company complies with all the provisions of this Act applicable to banking companies incorporated outside India.

Cancellation of licences: The Reserve Bank may cancel a licence granted to a banking company under this section:

- (a) if the company ceases to carry on banking business in India; or
- (b) if the company at any time fails to comply with any of the conditions imposed upon it; or
- (c) if at any time, any of the conditions referred to above is not fulfilled:

Before cancelling a licence on the ground that the banking company has failed to comply with or has failed to fulfil any of the conditions referred to therein, the Reserve Bank, unless it is of opinion that the delay will be prejudicial to the interests of the company's depositors or the public, shall grant to the company on such terms as it may specify, and opportunity of taking the necessary steps for complying with or fulfilling such condition.

Appeal: Any banking company aggrieved by the decision of the Reserve Bank cancelling a licence under this section may, within 30 days from the date on which such decision is communicated to it, appeal to the Central Government. The decision of the Central Government where an appeal has been preferred to it or of the Reserve Bank where no such appeal has been preferred shall be final.

Restrictions on opening of new, and transfer of existing, places of business (Section 23) **Without obtaining the prior permissions of the Reserve Bank:**

1. no banking company shall open a new place of business (i.e. sub-office, pay office, sub-pay office and any place of business at which deposits are received, cheques cashed or moneys lent) in India or
2. change otherwise than within the same city, town or village, the location of an existing place of business situated in India; and
3. no banking company incorporated in India shall open a new place of business outside India or change, otherwise than within the same city, town or village in any country or area outside India, the location of an existing place of business situated in that country or area:

Exception : The above condition would not 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, a conference or a mela or any other like occasion.

Withdrawal of permission for branch : Where, in the opinion of the Reserve Bank, a banking company has, at any time, failed to comply with any of the conditions imposed on it under this section, the Reserve Bank may, by order in writing and after affording reasonable opportunity to the banking company for showing cause against the action proposed to be taken against it, revoke any permission granted under this section.

Branches by RRBs : Any Regional Rural Bank requiring the permission of the Reserve Bank under this section shall forward its application to the Reserve Bank through the National Bank which shall give its comments on the merits of the application and send it to the Reserve Bank. Regional Rural Bank shall also send an advance copy of the application directly to the Reserve Bank.

Reserve Bank of India Act, 1934

Reserve Bank of India Act, 1934 extends to the whole of India. It was 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 this Act. RBI is a body corporate by the name of the Reserve Bank of India, having perpetual succession and a common seal.

Capital of the Bank : The capital of the bank shall be five crores of rupees.

Offices, branches and agencies : The Bank shall as soon as may be, establish offices in Bombay, Calcutta, Delhi and Madras and may establish branches or agencies in any other place in India or, with the previous sanction of the Central Government elsewhere.

Management : The Central Government may from time to time give such directions to the Bank as it may, after consultation with the Governor of the Bank, consider necessary in the public interests. The general superintendence and direction of the affairs and business of the Bank are entrusted to a Central Board of Directors which may exercise all powers and do all acts and things which may be exercised or done by the Bank.

The Governor and in his absence the Deputy Governor nominated by him in his behalf, shall also have powers of general superintendence and direction of the affairs and the business of the Bank, and may exercise all powers and do all acts and things which may be exercised or done by the Bank.

Composition of the Central Board, and term of office of directors

The Central Board shall consist of the, a Governor and not more than four Deputy Governors to be appointed by the Central Government, four Directors to be nominated by the Central Government, one from each of the four Local Boards; ten Directors to be nominated by the Central Government; and one Government official to be nominated by the Central Government.

The Governor and a Deputy Governor shall hold office for such term not exceeding 5 years as the Central Government may fix when appointing them, and shall be eligible for re-appointment. A Director shall hold office for a period of four years and thereafter until his successor shall have been nominated.

Local Boards, their constitution and functions

A Local Board shall be constituted for each of the four areas specified in Schedule I and shall consist of five members to be appointed by the Central Government to represent, as far as possible, territorial and economic interests and the interests of co-operative and indigenous banks. The members of the Local Board shall elect from amongst themselves one person to be the Chairman of the Board. Every member of a Local Board shall hold office for a term of four years and thereafter until his successor shall have been appointed and shall be eligible for re-appointment.

Business which the Bank may transact (Section 17)

The Bank shall be authorised to carry on and transact the several kinds of business hereinafter specified, namely:-

- (1) the accepting of money on deposit without interest from, and the collection of money for, the Central Government, the State Governments, local authorities, banks and any other persons;
- (2) (a) the purchase, sale and rediscount of bills of exchange and promissory notes, drawn on and payable in India and arising out of bona fide commercial or trade transactions bearing two or more good signatures, one of which shall be that of a scheduled bank or a State cooperative bank or any financial institution, which is predominantly engaged in the acceptance or discounting of bills of exchange and promissory notes and which .is.. approved by the Bank in this behalf and maturing-
 - (i) in the case of bills of exchange and promissory notes arising out of any such transaction relating to the export of goods from India, within one hundred and eighty days, and (ii) in any other case, within ninety days, from the date of such purchase or rediscount exclusive of days of grace;
 - (b) the purchase, sale and rediscount of bills of exchange and promissory notes, drawn and payable in India and bearing two or more good signatures, one of which shall be that of a scheduled bank or a State cooperative bank or any financial institution, which is predominantly engaged in the acceptance or discounting of bills of exchange and promissory notes and which is approved by the Bank in this behalf and drawn or issued for the purpose of financing agricultural operations or the marketing of crops, and maturing within fifteen months from the date of such purchase or rediscount, exclusive of days of grace;
 - (bb) the purchase, sale and rediscount of bills of exchange and promissory notes drawn and payable in India and bearing two or more good signatures, one of which shall be that of a State co-operative bank or a State financial corporation or any financial institution, which is predominantly engaged in the acceptance or discounting of bills of exchange and promissory notes and which is approved by the Bank in this behalf, and drawn or issued for the purpose of financing the production or marketing activities of cottage and small scale industries approved by the Bank and

maturing within twelve months from the date of such purchase or rediscount, exclusive of days of grace, provided that the payment of the principal and interest of such bills of exchange or promissory notes is fully guaranteed by the State Government; (c) the purchase, sale and rediscount of bills of exchange and promissory notes drawn and payable in India and bearing the signature of a scheduled bank, and issued or drawn for the purpose of holding or trading in securities of the Central Government or a State Government, and maturing within ninety days from the date of such purchase or rediscount, exclusive of days of grace;

(3) (a) the purchase from and sale to scheduled banks of foreign exchange;
(b) the purchase, sale and rediscount of bills of exchange (including treasury bills) drawn in or on any place in any country outside India which is a member of the International Monetary Fund and maturing,- (i) in the case of bills of exchange arising out of any bona fide transaction relating to the export of goods from India, within one hundred and eighty days, and (ii) in any other case, within ninety days, from the date of such purchase or rediscount:

(11) acting as agent for the Central Government or any State Government or any local authority or the Industrial Finance -Corporation of India or any other body corporate which is established or constituted by or under any other law or the government of any such country outside India or any such person or authority as may be approved in this behalf by the Central Government in the transaction or any of the following kinds of business, namely:-

- (a) the purchase and sale of gold or silver or foreign exchange;
- (b) the purchase, sale, transfer and custody of bills of exchange, securities or shares in any company;
- (c) the collection of the proceeds, whether principal, interest or dividends, of any securities or shares;
- (d) the remittance of such proceeds, at the risk of the principal, by bills of exchange payable either in India or elsewhere;
- (e) the management of public debt;
- (f) the issue and management of bonds and debentures;

Business which the bank may not transact (Section 19) ; The bank may not-

(1) engage in trade or otherwise have a direct interest in any commercial, industrial, or other undertaking except such interest as it may in any way acquire in the course of the satisfaction of any of its claims:

PROVIDED that all such interests shall be disposed of at the earliest possible moment;

(2) 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 servants;

- (3) make loans or advances;
- (4) draw or accept bills payable otherwise than on demand;
- (5) allow interest on deposits or current amounts.

CENTRAL BANKING FUNCTIONS

Obligation to transact government business (Section 20)

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 account, and to carry out its exchange, remittance and other banking operations, including the management of the public debt of the Union.

Right to transact government business in India (Section 21)

Central Government shall entrust the Bank, on such conditions as may be agreed upon, with all its money, remittance, exchange and banking transactions in India, and, in particular, shall deposit free of interest **all** its cash balances with the Bank. Nothing shall prevent the Central Government from carrying on money transactions at places where the Bank has no branches or agencies, and the Central Government may hold at such places such balances as it may require.

Bank to transact government business of States on agreement (Section 21A)

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 of, and the issue of any new loans by, that State.

Right to issue bank notes (Section 22)

RBI shall have the sole right to issue bank notes in India, and may, for a period which shall be fixed by

the Central Government on the recommendation of the Central Board, issue currency notes of the Government of India supplied to it by the Central Government, and the provisions of this Act applicable to bank notes shall, unless a contrary intention appears, apply to all currency notes of the Government of India issued either by the Central Government or by the Bank in like manner as if such currency notes were bank notes, and references in this Act to bank notes shall be construed accordingly.

Denominations of notes (Section 24) Bank notes shall be of the denominational values 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 in this behalf. The Central Government may, on the recommendation of the Central Board, direct the non-issue or the discontinuance of issue of bank notes of such denominational values as it may specify in this behalf.

Legal tender character of notes (Section 26)

Every bank note shall be legal tender at any place in India in payment or on account for the amount expressed therein, and shall be guaranteed by the Central Government. On recommendation of the Central Board, the Central Government may, declare that, any series of bank notes of any denomination shall cease to be legal tender save at such office or agency of the Bank and to such extent as may be specified in the notification.

Recovery of notes lost, stolen, Mutilated or imperfect (Section 28)

No person shall of right be entitled to recover from the Central Government or the Bank, the value of any lost, stolen, mutilated or imperfect currency note of the Government of India or bank note. RBI with the previous sanction of the Central Government, may prescribe the circumstances in and the conditions and limitations subject to which the value of such currency notes or bank notes may be refunded as of grace.

Bank exempt from stamp duty on bank notes (Section 29)

The Bank shall not be liable to the payment of any stamp duty under the Indian Stamp Act, 1899 (2 of 1899), in respect of bank notes issued by it.

Issue of demand bills and notes (Section 31)

No person in India other than the Bank, or, as expressly authorised by this Act the Central Government shall draw, accept, make or issue any bill of exchange, hundi, promissory note or engagement for the payment of money payable to bearer on demand, or borrow, owe or take up any sum or sums of money on the bills, hundis or notes payable to *bearer on demand* of any such person:

Cheques or drafts, including hundis, payable to bearer on demand or otherwise may be drawn on a person's account with a banker, shroff or agent. Notwithstanding anything contained in the Negotiable Instrument Act, 1881 (26 of 1881), no person in India other than the Bank or, as expressly authorised by this Act, the Central Government shall make or issue any promissory note expressed to be payable to the bearer of the instrument.

Assets of the issue department (Section 33) : The assets of the issue department shall consist of gold coin, gold bullion, foreign securities, rupee coin and rupee securities to such aggregate amount as is not less than the total of the liabilities of the issue department. The aggregate value of the gold coin, gold bullion and foreign securities held as assets *and* the aggregate value of the gold coin and gold bullion so held shall not at any time be less than Rs.200 cr and Rs.115 cr, respectively.

Transactions in foreign exchange (Section 40)

RBI shall sell to or buy from any authorised person who makes a demand in that behalf at its office in Bombay, Calcutta, Delhi or Madras or at such of its branches as the Central Government may, by order, determine, 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. No person shall be entitled to demand to buy or sell foreign exchange of a value less than two lakhs of rupees.

Cash reserves of scheduled banks to be kept with the Bank (Section 42)

Every bank included in Scheduled II shall maintain with the Bank an average daily balance the amount of which shall not be less than three per cent of the total of the demand and time liabilities in India of such bank. RBI may, by notification in the Gazette of India, increase the said rate to such higher rate as may be specified in the notification so however that the rate shall not be more than twenty per cent of the total of the demand and time liabilities.

For the purposes of this section liabilities shall not include-

- (i) the paid-up capital or the reserves or any credit balance in the profit *and* loss account of the bank;

- (ii) the amount of any loan taken from the bank or from the Development Bank or from the Exim Bank or from the Reconstruction Bank or from the National Housing Bank or from the National Bank or from the Small Industries Bank;
- (iii) in the case of a State co-operative bank, also any loan taken by such bank from a State Government or from the National Co-operative Development Corporation established under the National Co-operative Development Corporation Act, 1962 (26 of 1962) and any deposit of money with such bank representing the reserve fund or any part thereof maintained with it by any co-operative society within its area of operation;
- (iv) in the case of a State co-operative bank, which has granted an advance against any balance maintained with it, such balance to the extent of the amount outstanding in respect of such advance;
- (v) in the case of a Regional Rural Bank, also any loan taken by such bank from its Sponsor Bank;

COLLECTION AND FURNISHING OF CREDIT INFORMATION

Collection of credit information (Section 45B) : RBI may collect, in such manner as it may think fit, credit information from banking companies; and furnish such information to any banking company in accordance with the provisions of section 45D.

Power to call for returns containing credit information (Section 45C)

- (1) For the purpose of enabling the bank to discharge its functions under this chapter, it may at any time direct any banking company to submit to it such statements relating to such credit information and in such form and within such time as may be specified by the Bank from time to time.
- (2) A banking company shall, notwithstanding anything to the contrary contained in any law for time being in force or in any instrument regulating the constitution thereof or in any agreement executed by it, relating to the secrecy of its dealings with its constituents, be bound to comply with any direction issued under sub-section (1).

REGULATION OF BANKING BUSINESS RESERVE FUND (Section 17)

Banks in India are to create a reserve fund out of the balance of profit of each year, before any dividend is declared by transfer to the reserve fund, not less than 20% of such profit. Central Government on the recommendation of the Reserve Bank (after ascertaining adequacy of the paid-up, capital and reserves in relation to its deposit liabilities), allow a bank that these provisions shall not apply. In that case the *amount in the reserve fund* together with the amount in the *share premium account* should not be less than the *paid-up capital* of the banking company.

Appropriate from reserve fund : Where a banking company appropriates any sum from the reserve fund or the share premium account, it shall, within 21 days from the date of such appropriation, report the fact, to the Reserve Bank, explaining the circumstances leading to such appropriation. Reserve Bank may extend the period of 21 days by such period as it thinks fit or condone any delay in the making the report.

Cash reserve for Non-scheduled banks (Section 18) Every banking company, *not being a scheduled bank*, shall maintain in India, by way of cash reserve *with itself* OR by way of *balance in a current account with the Reserve Bank* OR by way of *net balance in current accounts* or in one or more of the aforesaid ways, minimum 3% of the *total of its demand and time liabilities in India* as on the *last Friday of the second preceding fortnight*.

Submission of return : Bank shall submit to the Reserve Bank, before the 20th day of every month, a return showing the amount so held on *alternate Fridays* during a month with particulars of its demand and time liabilities in India on such Friday. If any such Friday is a public holiday under the Negotiable Instruments Act, 1881, then; at the close of business on the preceding working day.

Maintenance of a percentage of assets (Statutory Liquidity Ratio) (Section 24)

A scheduled bank, in addition to the average daily balance which it is, or may be, required to maintain under section 42 of the Reserve Bank of India Act, 1934 (i.e. CRR), shall maintain in India an amount which shall not, at the close of business on any day, be less than 25% or such other percentage not exceeding 40% as the Reserve Bank may, from time to time, by notification in the Official Gazette, specify, of the total of its demand and time liabilities in India, as on the last Friday of the second preceding fortnight. RBI can change the stipulation of SLR (within 25% and 40%).

Components of SLR. The *following assets are included*:

Cash would include:

- (i) the deposit required under section 11 to be made with RBI by a banking company incorporated outside India;
- (ii) any cash or balances maintained in India by a

banking company other than a scheduled bank with itself or with the RBI or by way of net balance in current account in excess of the cash or balance or net balance required to be maintained under section 18;

- (iii) any balance maintained by a scheduled bank with the Reserve Bank *in excess* for the balance required to be maintained by it under section 42 of the Reserve Bank of India Act, 1934 (i.e. CRR)
- (iv) the net balance in current accounts maintained in India by a scheduled bank;
- (v) any balance maintained by a Regional Rural Bank in call or fixed deposit with its sponsor bank,

Others would include:

Gold valued at a price not exceeding the current market price or

Unencumbered approved securities valued with reference to cost price, market price, book value or face value, as may be specified by the Reserve Bank from time to time,

Classification of demand/time liabilities Demand and time liabilities for SLR purpose are same as in case of CRR. When it is to be maintained ?

SLR is to be maintained as at the close of business on every day i.e. on daily basis based on the DTLs as obtaining on the last Friday of the 2nd preceding Fortnight.

Penalties

If a bank fails to maintain the required amount of SLR, it shall be liable to pay to RBI *in respect of that default*, the penal interest for that day at the rate of 3 per cent per annum above the bank rate on the shortfall and if the default continues on the next succeeding working day, the penal interest may be increased to a rate of 5 percent per annum above Bank Rate for concerned days of default on shortfall. The penalty shall be paid *within a period of fourteen days* from the date on which a notice issued by the Reserve Bank demanding payment of the same is served. In the event of failure to pay the same within such period, the penalty may be levied by a direction of the civil court only upon an application made by the Reserve Bank in this behalf to the court;

Further if after payment of penalty, the amount required to be maintained is still below, the prescribed minimum, every Director, Manager or Secretary of the banking company, who is knowingly and wilfully a party to the default, shall be punishable with fine which may extend to Rs.500 and with a further fine which may extend to Rs.500 for each subsequent alternate Friday or the preceding working day, as the case may be, on which the default continues.

Return in Form VIII : A return in form VIII showing the amounts of SLR held on alternate Fridays during immediate preceding month with particulars of their DTL in India held on such Fridays is to be submitted to RBI before 20th day of every month. In addition, a statement as annexure to form VIII giving daily position of (a) value of securities held for the purpose of compliance with SLR and (b) the excess cash balances maintained by them with RBI is to be submitted.

CASH RESERVE RATIO

CRR refers to the ratio of bank's cash reserve balances with RBI with reference to the bank's net demand and time liabilities to ensure the liquidity and solvency of the scheduled banks.

Extent of CRR

Under RBI Act 1934 (Section 42 (1)) all scheduled banks are required to keep certain minimum cash reserves with RBI. There is no minimum or maximum percentage as per the Act and RBI is empowered to vary CRR as per its discretion. It is to be maintained at fortnightly average basis (*Saturday to following Friday- 14 days*) on reporting Friday (*advised by RBI ...to, .banks at the commence of the year*). On a daily basis it should be minimum 70% of the average balance wef Dec 28, 2002. Wef January 12, 2002, RRBs also to maintain same CRR as applicable for SCBs.

Demand liabilities

mean Current deposits, Demand liabilities portion of saving fund deposits, margins held against LC/LG, Balances in overdue FD, cash certificate and RD, Outstanding TTs, MTs and DDs, Unclaimed deposits, Credit balances in CC accounts and Deposits held as security for advances which are payable on demand.

Time liabilities mean Fixed deposits, cash certificate, cumulative and RDs, time liabilities portion of saving bank deposits, staff security deposits, margins against LC not payable on demand, deposit held as securities for advances and India Dev Bonds.

Other demand and time liabilities include interest accrued on deposits, bills payable, unpaid dividends, sundries account balances, participation certificates issued to other banks, net credit balance in branch adjustment account, margin held on bills purchased or discounted.

Liabilities not to be included for DTL / NDTL computation

- a. Paid up capital, reserves, any credit balance in the Profit & Loss Account, amount availed of as refinance from RBI, and apex institutions like Exim Bank, OBI, NABARD, NHB, SIDBI etc.
- b. Provision for income tax in excess of actual estimated liabilities.

- c. Amount received from DICGC pending adjustments thereof.
- d. Amount received from ECGC by invoking the guarantee.
- e. Amount received from insurance company on ad-hoc settlement of claims pending Judgment of the Court.
- f. Amount received from the Court Receiver.

Interest payment : RBI does not pay any interest on cash balance kept with RBI.

Penalties. The interest payable is reduced by an amount calculated at the rate of 25 % p.a. on the amount of shortfall. In a situation where shortfall exceeds the level at which no interest becomes payable on eligible balances held by a bank on net basis i.e. (after interest deduction on the amount of CRR shortfall) the penal interest under subsection (3) of Section 42 of the RBI Act, 1934 is made applicable.

Fortnightly return in Form 'A'

Under section 42 (2) of RBI Act, 1934, SCBs are to submit to RBI a provisional return in Form 'A' within 7 days and final Form 'A' within 20 days from expiry of the relevant fortnight.

CRR & SLR AT A GLANCE

	CRR	SLR
In terms of which Act	Sec 42 (1) RBI Act 1934	Sec 24 (2-a) Banking Regulation Act 1949
Min & Max	RBI discretion	RBI discretion -40%
Present	4%	21.50%
Kept as	Cash balance with RBI	Cash in Hand, gold and investment in approved securities
Basis	As % of NDTL At fortnightly average basis	As % of NDTLs. On daily basis on NDTL on last Friday of 2 nd preceding fortnight.
Interest	Nil	As per investment made in different securities.
Penalty	Intt. Payable reduced by an amount calculated at 25% p.a. on amount of shortfall.	Penal intt. for the day on which not maintained at 3% p.a. above bank rate. For next day 5%.
Return to .RBI	Form A (fortnightly)	Form VIII (20 th of every month)

Assets in India (Section 25)

The assets in India of every banking company at the close of business on the last Friday of every quarter shall not be less than 75% of its *demand and time liabilities in India*.

Return of such assets : Every banking company

shall, *within one month* from the end of every quarter, submit to the Reserve Bank a return of the assets and liabilities as at the close of business on the last Friday of the previous quarter, or, if that Friday is a public holiday, at the close of business on the preceding working day.

Unclaimed deposits (Section 26) : Every banking company shall, *within 30 days* after the close of each *calendar year*, submit a return to the Reserve Bank as at the end of such calendar year of all accounts in India which have *not been operated upon for ten years*. In the case of money *deposited for a fixed period* the said term of ten years shall be reckoned from the date of the expiry of such fixed period.

Preservation of records (Section 45Y)

The Central Government may, after consultation with the Reserve Bank and by notification in the Official Gazette, make rules specifying the periods for which a banking company shall preserve its books, accounts and other documents; and a banking company shall preserve and keep with itself different instruments paid by it.

Return of paid instruments (Section 45Z) Where a banking company **is** required by its customer to return to him a paid instrument before the expiry of the period specified by rules made under section 45Y, the banking company shall not return the instrument except after making and keeping in its possession a true copy of all relevant parts of such instrument. The banking company shall be entitled to recover from the customer the cost of making such copies of the instrument.

NOMINATION : Nomination came into force by a notification dated 29th March 1985 as per new Sections 45Z A to 45Z F of the Banking Regulations Act, 1949 with following revisions

Particulars	Acceptance of nomination	Notice of claim of other persons is not receivable i.e. payment to nominee only.
Deposits	Section 45 ZA	Section 45 ZB
Safe custody	Section 45 ZC	Section 45 ZD
Lockers	Section 45 ZE	Section 45 ZF

DEPOSIT ACCOUNTS

Types of account - Nomination is available only for deposit accounts in *individual capacity irrespective of their nomenclature*. It is not available for representative capacity accounts including partnership, trust, limited company, club etc. or loan accounts.

Proprietorship accounts - Available if the sole proprietor is an individual.

Joint accounts - Available for joint account of individuals.

Minor accounts — Nomination by guardian in account operated by guardian.

Pension accounts: This nomination facility is distinct from the Pension (Nomination) Rules 1983. Nomination under Pension will not be valid for the deposit accounts for which a separate nomination will have to be taken. **Non-Resident accounts** - Available in respect of both residents as well as non-residents.

Time for nomination - At any time during which the deposit is held with the bank including for old accounts.

Renewal of deposits - Continues on renewal of term deposit unless cancelled or changed.

Who can be nominee - Nominee has to be an individual only including a minor or NRI. A firm, club, company, trust, etc., cannot act as nominee.

How to nominate - By getting form DA-I signed from the depositor (witnessed by two, in case of illiterate). **Minor as nominee** - A third person is appointed to act on behalf of the minor for receiving money, who may be anybody. After attaining majority, the minor himself can receive the money.

Status of nominee - The nominee is treated as **an Trustee** for receiving money after death. He is not the owner. He is duty-bound to pass on the money to the legal heir. So the legal heir can claim money from the nominee but the bank, on payment to nominee, is fully discharged. Premature payment to the nominee before due date is a valid discharge to bank in case of deceased account. By granting loan to the nominee before maturity of deposits against deposit, bank does not get valid discharge.

Variation recancellation in nomination - Nomination can be changed any number of times. In case of a deposit held in name of more than one depositor, the cancellation (form No. DA2) or variation (form No. DA3) will be valid only if signed by all. This is applicable to deposits having instructions Either or Survivor.

More than one accounts - Separate nomination for each term deposit having separate account opening form should be taken.

Change in style of accounts — Where the changes in the style of account is made due to addition/deletion etc., the nomination stands cancelled.

Procedure on death of depositor - On death of a person, if *6 months lapse* and no person turns up, the bank has to inform the nominee about nomination in case of deposit accounts. This information is to be given within three months in case of locker account.

Safe custody : Nomination is available where articles are held in single name (not available for joint name) of individual accounts. Only one person can be appointed to receive the articles. Separate nomination form is to be obtained for each lodgement.

Safe deposit lockers : There could be more than one nominee in case of joint locker accounts (one for each holder). Contents are deliverable to nominee along with the surviving joint hirer in case of joint hirer.

Other issues in nomination — Nomination facility is obligatory for banks.

Mentioning of number, date and registration of nomination is obligatory, but mentioning the name of nominee is optional.

Summary of Nomination Provisions

Type of a/c	Nature of a/c	No. of Nominees
Deposit	Single/joint	One only
Safe custody	Only single	One only

Lockers	Single / Joint ; E or S	One only / One only
Lockers		
Lockers	Joint- F or S	One only
Lockers	Joint operation	More than one (as per IBA Max 2)

Nomination Forms

Account	Registration	Cancellation	Variation
DEPOSIT	DA-1	DA-2	DA-3
SAFE CUSTODY	SC-1	SC-2	SC-3
LOCKERS	SL-1 OR SL1A JOINT	SL-2	SL-3 OR SL3A JOINT

Restrictions on loans and advances (Section 20)

No banking company shall grant any loans or advances on the security of its own shares, or enter into any commitment for granting any loan or advance to or on behalf of-

- any of its Directors,
- any firm in which any of its Directors is interested as Partner, Manager, Employee or Guarantor, or
- any company of which any of the Directors of the banking company is a Director, Managing Agent, Manager, Employee or Guarantor or in which he holds substantial interest, or
- any individual in respect of whom any of its Directors is a partner or guarantor.

Non-repayment of loan by the director : Where any loan or advance payable by any person, has not been repaid to the banking company within the period specified in that sub-section, then, such person shall, if he is a Director of such banking company on the date of the expiry of the said period, be deemed to have vacated his office as such on the said date.

Restrictions on power to remit debts (Section 20A)

A banking company shall not, except with the prior approval of the Reserve Bank, remit in whole or in part any debt due to it by any of its Directors, or any firm or company in which any of its Directors is interested as Director, Partner, Managing Agent or Guarantor, or any individual if any of its Directors, is his Partner or Guarantor. Any remission made in contravention of the above shall be void and of no affect.

Restriction on commission, brokerage, discount, etc., on sale of shares (Section 13)

No banking company shall pay out *directly or indirectly* by way of commission, brokerage, discount or remuneration in any form in respect of any shares issued by it, any amount exceeding in the aggregate 2.5% of the *paid-up value of the said shares*. Prohibition of charge on unpaid capital (Section 14) No banking company shall create any charge upon any unpaid capital of the company, and any such charge shall be invalid. Further, no banking company shall create a floating charge on the undertaking or any property of the company or any part thereof, unless the creation of such floating charge is certified in writing by the Reserve Bank as not being detrimental to the interests of the depositors of such company. Any such charge created without obtaining the certificate of the Reserve Bank shall be invalid.

Any banking company aggrieved by the refusal of certificate may, within *90 days from the date* on which such refusal is communicated to it, appeal to the Central Government. The decision of the Central Government where an appeal has been preferred or of the Reserve Bank where no such appeal has been preferred shall be final. Restrictions as to payment of dividend (Section 15) No banking company shall pay any dividend on its shares until all its capitalised expenses (including preliminary expenses, organisation expenses, share Gelling commission, brokerage, amounts of losses incurred and any other item of expenditure not represented by tangible assets) have been completely written off.

CONTROL OVER ADVANCES

Powers of Reserve Bank to control advances by banking companies (Section 21)

Reserve Bank, in the public interest or in the interests of depositors or banking policy, may determine the policy in relation to advances to be followed by banking companies generally or by any banking company in particular, and when the policy has been so determined, all banking companies shall be bound to follow the policy. Reserve Bank may give directions to banking companies, either generally or to any banking company or group of banking companies in particulars, with regard to

- the purposes for which advances may or may not be made;
- the margins to be maintained in respect of secured advances;
- the maximum amount of advances or other

financial accommodation which, having regard to the paid-up capital, reserves and deposits of a banking company and other relevant considerations, may be made by that banking company to any one company, firm, association to persons or individual;

- (d) the maximum amount up to which, guarantees may be given (having regard to the considerations referred to in clause (c)), by a banking company on behalf of any one company, firm, association of persons or individual; and the rate of interest and other terms and conditions on which advances or other financial accommodation may be made or guarantees may be given.

Rate of interest & scrutiny by courts (Section 21A) A transaction between a banking company and its debtor shall not be reopened by any court on the ground that the rate of interest charged by the banking company in respect of such transaction is excessive.

DIFFERENT KINDS OF BANKS AND THEIR REGULATION

Banks in India fall in 3 categories that include:

1. Banks being body corporates constituted under special Acts the Parliament such as SBI
2. Banks being companies registered under Companies Act 1956 or a foreign company such as UTI Bank Limited
3. Banks registered as Cooperative Societies under Central or State Act

Public Sector Banks: These banks include:

- (a) **Nationalised Bank** : Constituted under Banking Companies (Acquisition and Transfer of Undertakings) Act 1970 or Banking Companies (Acquisition and Transfer of Undertakings) Act 1980, which were taken over by Central Govt. in 1969 (14 banks) and in 1980 (6 banks). There are 19 such banks (New Bank of India merged with PNB) - -
- (b) **State Bank group banks** : Constituted under SBI Act 1955 and State Bank (Subsidiary Banks) Act 1959. There are 6 such banks including SBI.
- (c) **RRBs** : Constituted under Regional Rural Banks Act 1976. There are 196 banks as on Sept 30, 2005. The no. of such banks came down subsequent to Sept 30, 2005 as a result of merger of few banks with other RRBs.

Banking Companies : The banks constituted under section 3 of Companies Act 1956 and foreign company as per Section 591 of Companies Act, are the private banks which are governed by various provision of Companies Act as far as their constitution is concerned. But for their banking business, RBI Act and Banking Regulation Act is applicable.

Cooperative Banks: Constituted as Cooperative Societies registered under Central Act (in case of Multistate cooperative Banks) and State Acts (in case of single state banks). Banking Laws (Application to Cooperative Societies) Act 1965 extended certain provisions of Banking Regulation Act and RBI Act to cooperative banks. After Supreme Court judgement of 2004 in case of Apex Coop Bank (that multi-state coop societies cannot be licensed as coop banks), Banking Regulation (Amendment) and Misc. Provision Act 2004 was passed to permit licensing of multi-state cooperative banks. Under the provisions of the Act, a multi-state cooperative bank means a multi-state cooperative society.

FUNCTIONS OF RESERVE BANK OF INDIA (RBI) RBI established on April 1, 1935 under RBI Act 1934 (on the recommendations of John Hilton Young Commission 1926 — called Royal Commission on Indian Currency and Finance), is the central bank of the country and was *nationalised* w.e.f. Jan 01, 1949. Prior to its existence, Imperial Bank of India from SBI was conducting the Central Bank's functions. Originally it was a shareholders' bank which was taken over by the Central Govt. under Reserve Bank (Transfer of Public Ownership) Act 1948 (paid up capital Rs.5 cr). RBI's central office is in Mumbai.

2 RBI is managed by a Central Board of Directors. It has four local boards at Mumbai, Delhi, Calcutta and Chennai. It has one Governor, provision for 4 Dy. Governors and 15 other directors.

3 It performs following functions:

a Issuance of currency : U/s 22 of RBI Act 1934, RBI has the sole agency/authority in India to issue currency notes (*called bank notes*) under signatures of Governor, except for one rupee note or coins (which is issued by the Central Govt. - signed by Finance Secretary). (more details available on Indian currency in the later part of this Chapter).

Issue Deptt is responsible for issue of fresh notes against security which consists of gold coins, bullion, rupee coins foreign securities, eligible promissory notes and other approved securities (aggregate value of gold and foreign exchange reserves *should not be less than Rs.200 crore* out of which, gold (coins and bullion) should not be less than Rs.115 crore) (Sec 33). The Banking

Department undertakes all banking activities and holds stock of currency, which is distributed with the help of currency chests spread all over the country.

b Banker to the Govt

U/s 20 for (Central Govt) and u/s 21-A (for State Govt), Central Bank transacts govt. business and manages public debt. Where it does not have office, SBI or any other public sector bank is appointed its Agent for this purposes. It advises Govt. on all monetary matters and also provides Ways & Means advances (Section 17(5)).

c Bankers' bank

It keeps deposits of commercial banks and acts as lender of last resort by providing financial assistance in various ways. Section 17 (2) and (3) enable banks to approach RBI for rediscounting, refinance etc. It provides **export refinance** to the extent of 15% of outstanding export credit eligible for refinance as at the end of 2nd preceding fortnight (wef May 05, 2001) and also **Liquidity Adjustment Facility** wef June 05, 2000 (details provided in the Ist Chapter).

d Controller of Banks

Every bank which wants to conduct banking business in India has to obtain licence from RBI. RBI also acts as controller of banks by including the banks in India in 2nd Schedule of the Act (such banks which are incorporated under Companies Act or under any other law in force in India or outside including State Coop Banks and which are included in 2nd Schedule of RBI Act 1934 are called scheduled banks). It grants licences to carry on banking business. It issues directions, carries inspection (on-site as well as off-site) and exercises management control.

e Controller of credit

U/s 21 and 35A, RBI can fix interest rates (*including Bank Rate*) and also exercise selective credit controls in order to control inflation and money supply for ensuring growth of the economy & ensuring price stability. Various methods such as change in cash reserve ratio, stipulation of margin on securities, directed credit guidelines etc. are used for this purpose. These are also called quantitative and qualitative methods. It also carries sale and purchase of securities which are known as open market operations.

f: **Statutory Reserves** Banks also maintain certain %age of their assets in liquid/cash form under SLR/CRR requirements (details of given in the Chapter Credit Opn).

g: **Collection of information** RBI collects credit information (U/s 45-C) information on borrowers enjoying credit limits up to Rs.10 lac on secured basis and Rs.5. lac on unsecured basis) and can share this information with other banks (Sec 45-0). Besides, RBI obtains information on suit-filed accounts and BSR returns.

h. **Maintenance of external value** : RBI is responsible also for maintaining external value of Indian currency as well as the internal value. Foreign exchange reserves are held by RBI and it has wide powers to regulate foreign exchange transactions under Foreign Exchange Management Act (FEMA).

i. **Other functions include** acting as promoter of financial institutions, as policy maker, collection and publication of data etc. Instruments of monetary control used by RBI are variable CRR and SLR, bank rate, open market operations, refinance policy changes, selective credit control and moral suasion.

BOARD FOR FINANCIAL SUPERVISION

BFS came into existence under RBI's (US) Regulations 1994 u/s 58 of RBI Act, wef Nov. 16, 1994 with RBI Governor being its ex-officio Chairman. Narasimham Committee had recommended formation of BFS which has jurisdiction over banks/banking companies. It exercises powers of supervision and inspection under RBI Act and Banking Regulation Act. It is assisted by Deptt. of Supervision in RBI.

Its functions include empanelment and selection of Statutory Auditors for banks and exercise integrated supervision over commercial banks, FIs and NBFCs and other para-banking financial institutions. The supervision is both the on-site (through inspection) and off-site (through DSB returns). DSB returns were introduced wef April 01, 1996, which are submitted on a quarterly basis.

GOVT. ROLE AS REGULATOR OF BANKS

Banks are not directly regulated by Govt. but under RBI Act and Banking Regulation Act, Central Govt. has been conferred vast powers. Details of some of them are as under:

- Entire share capital of RBI is held by Central Govt. It can appoint and remove the members of Central Board of RBI. It also appoints Governor RBI.
- Central Govt. can issue directions to RBI and indirectly influence the decision making.

- Central Govt. is appellate authority in a no. of cases, concerning RBI powers with regard to banks such as removal of managerial personnel, cancellation of banking licence etc.
- Central Govt. can suspend the operation of Banking Regulation Act and can give exemption from any provisions of Banking Regulation Act, on RBI's recommendations.
- Central Govt. notifies the forms of banking business u/s 6(1)(o).
- Central Govt. has the authority under Section 45Y to make rules regarding preservation of records and Section 52 regarding making of rules under of Banking Regulation Act.
- Central Govt. approves formation of subsidiary for certain business u/s 19 of B R Act.
- Central Govt. issues notification regarding purpose of maintenance of assets u/s 24(2) and with regard to accounts and balance sheet u/s 29.
- Central Govt. can issue direction to RBI for inspection of Banks u/s 35 of B R Act
- U/s 36 AE of B R Act, the Central Govt. can acquire undertakings of banks.
- It can also suspend the business and amalgamation of banks u/s 45 of B R Act.

SUMMARY OF RBI ROLE AS REGULATOR OF BANKS

Banks are directly regulated by RBI mainly under Banking Regulation Act. Besides there are few provisions in RBI Act (CRR) under which RBI exercises regulatory control over banks. Summary of some of them are-as under:

- RBI has the authority to give licence to the banks (u/s 22 of B R Act), without which no banks can undertaking banking functions.
- RBI can also cancel the licence subject to fulfillment of certain requirements.
- RBI can appoint and remove certain personnel and Directors including Chairman and Managing Director.
- RBI can regulate the business of banks that include deposits, advances etc.
- RBI can give directions to Banks u/s 35 A of B R Act
- RBI can conduct inspection of banks u/s 35 of B R Act.
- RBI can conduct scrutiny and also order audit and special audit under B R Act.
- RBI can collect credit information and also disseminate the collected information.
- RBI can initiate the process of moratorium, amalgamation and winding up
- RBI can impose penalties under certain circumstances.

RETURNS, INSPECTION AND WINDING-UP

ANNUAL ACCOUNTS - Accounts and balance-sheet (Section 29)

On expiration of each calendar years or at the expiration of a period of 12 months ending with such date as the Central Government may specify (at present being March 31 every year wef March 1989), every banking company shall prepare a balance-sheet and profit and loss account as on the last working day of the year or the period, in the Forms set out in the Third Schedule (it is Form A for balance sheet and Form B for profit and loss account) or as near thereto as circumstances admit. Central Government after giving not less than 3 months' notice, may from time to time, amend the Forms.

Who is to sign the balance sheet : The balance-sheet and profit and loss account shall be signed, in the case of a banking company *incorporated in 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 in the case of a banking company *incorporated outside India* by the Manager or Agent of the principal office of the company in India.

Audit of accounts (Section 30)

The balance-sheet and profit and loss account prepared in accordance with section 29 shall be audited by a person duly qualified under any law for the time being in force to be an Auditor of companies. Every banking company shall, before appointing, reappointing or removing any Auditor or Auditors, obtain the *previous approval* of the Reserve Bank.

Special audit : Where the Reserve Bank is of opinion that it is necessary so to do, it may direct that the special audit of the banking company's accounts, for any such *transaction or class of transactions* or for such *period or periods*, shall be conducted. It may appoint a person duly qualified, to be an Auditor of companies or direct the Auditor of the banking company himself to conduct such special audit. The Auditor shall comply with such directions and make a report of such audit to the

Reserve Bank and forward a copy thereof to the company.

Submission of annual accounts (balance sheet and profit and loss account (Section 31)

The accounts and balance-sheet 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. Reserve Bank may in any case extend the said period of 3 months by a further period not exceeding 3 months. Copies of balance-sheets and accounts to Registrar of Companies (Section 32)

Where a banking company in any year furnished its accounts and balance-sheet in accordance with the provisions of section 31, it shall *at the same time* send to the RoC, 3 copies of such accounts and balance-sheet and of the Auditor's report.

Display of audited balance-sheet by companies incorporated outside India (Foreign Banks) (Sec 33) Every banking company, incorporated *outside India* shall, not later than the *first Monday in August* of any year in which it carries on business, display in a conspicuous place in its principal office and in every branch office in India a copy of its last audited balance-sheet and profit and loss account prepared under section 29. It shall keep the copy so displayed until replaced by a copy of the subsequent balance-sheet and profit and loss account.

Monthly returns and powers to call for other returns and information (Section 27)

Statement of Assets and liabilities : Every banking company shall, before the close of the month succeeding that to which it relates, submit to the Reserve Bank a return showing its assets and liabilities in India as at the close of business on the last Friday of every month or if that Friday is a public holiday, at the close of business on the preceding working day. Statement of Investments and classification of advances : Reserve Bank may direct a banking company to furnish it within such time as may be specified by the Reserve Bank, information every half-year regarding the investments of a banking company and the classification of its advances in respect of industry, commerce and agriculture.

Power to publish information (Section 28) : Reserve Bank or the NABARD, or both, may publish any information obtained by them under this Act in such consolidated form as they think fit.

INSPECTION OF BANKS (Section 35) : Reserve Bank by itself or on being directed by the Central Government can, conduct *an inspection* by its officers, of any banking company and books and accounts. Reserve Bank shall supply to the banking company, a copy of its report on such inspection. Reserve Bank, may also conduct a *scrutiny* by its officers, of the affairs of any banking company and its books and accounts. A copy of the report of the scrutiny shall be furnished to the banking company if the banking company makes a request OR if any adverse action is contemplated against the banking company on the basis of the scrutiny.

Duty to make available books and accounts : It shall be the duty of the banking company to produce to the officer making an inspection or a scrutiny, all such books, accounts and other documents and to furnish him with any statements and information relating to the affairs of the banking company as the said officer may require.

Inspection on direction of Central Govt.: Reserve Bank shall, if it has been directed by the Central Government to conduct an inspection shall report to the Central Government in relation to inspection or scrutiny made. Central Government, if it is of opinion after considering the report that, the affairs of the company are being conducted to the detriment of the interests of its depositors, may, after giving such opportunity to the banking company to make a representation by order in writing-

- (a) prohibit the banking company from receiving fresh deposits;
- (b) direct the Reserve Bank to apply under section 38 for the winding up of the banking company:

Power of the Reserve Bank to give directions (Section 35 A)

Where the Reserve Bank is satisfied that it is necessary to issue direction (to banking companies generally or to any banking company in particular):

- in the public interest or
- in the interest of banking policy; OR
- to prevent the affairs of any banking company being conducted in a manner detrimental to the interests of the depositor OR
- in a manner prejudicial to the interests of the banking company; OR
- to secure the proper management of any banking company generally;

it may issue directions and the banking company shall be bound to comply with such directions.

Reserve Bank may modify or cancel any direction issued, and impose conditions subject to which

the modification or cancellation shall have effect.

RBI has issued directives relating to Ombudsman, Know Your Customer (KYC) and clean note policy, under these provisions.

Further powers and functions of Reserve Bank (Section 36)

- (a) Reserve Bank may caution or prohibit banking companies generally or any banking company in particular against entering into any particular transaction or class of transactions, and generally give advice to any banking company;
- (b) Reserve Bank may on a request by the companies concerned and subject to the provisions of section 44A, assist, as intermediary or otherwise, in proposals for the amalgamation of such banking companies;
- (c) Reserve Bank may give assistance to any banking company by means of the grant of a loan or advance under section 18 of the Reserve Bank of India Act, 1934.
- (d) Reserve Bank may require the banking company to call a meeting of its Directors for the purpose, of considering any matter relating to or arising out of the affairs of the banking company, or require an officer of the banking company to discuss any such matter with an officer of the Reserve Bank.
- (e) Reserve Bank may depute one or more of its officers to watch the proceedings at any meeting of the Board of Directors of the banking company or of any committee or of any other body constituted by it; require the banking company to give an opportunity to the officers so deputed to be heard at such meetings and also require such officers to send a report of such proceedings to the Reserve Bank;
- (f) Reserve Bank may require the Board of Directors of the banking company or any committee or any other body constituted by it to give in writing to any officer specified by the Reserve Bank in this behalf at his usual address all notices of, and other communications relating to, any meeting of the Board, committee or other body constituted by it;
- (g) Reserve Bank may appoint one or more of its officers to observe the manner in which the affairs of the banking company or of its officers or branches are being conducted and make a report thereon;
- (h) Reserve Bank may require the banking company to make, within such time as may be specified in the order, such changes in the management as the Reserve Bank may consider necessary

ACQUISITION, AMALGAMATION & LIQUIDATION Power of Central Government to acquire banking undertakings (Section 36 AE)

If, upon receipt of a report from the Reserve Bank, the Central Government is satisfied that a banking company has, on more than one occasion, failed to comply with the directions given to it in writing under section 21 or section 35A, or is being managed in a manner detrimental to the interests of its depositors and it is necessary to acquire such banking company, the Central Government may, after consultation with the Reserve Bank, acquire the undertaking of such company with effect from such date as may be specified in this behalf by the Central Government.

Such acquiring shall be after banking company has been given a reasonable opportunity of showing cause against the proposed action.

Power of the Central Government to make scheme (Section 36 AF)

The Central Government may, after consultation with the Reserve Bank, make a scheme in relation to any acquired bank. The scheme may provide for the following matters namely:-

- (a) the corporation, or the company incorporated for the purpose, to which the undertaking including the property, assets and liabilities of the acquired bank may be transferred, and the capital, constitution, name and office thereof;
- (b) the constitution of the first board of management (by whatever name called) of the transferee bank, and all such matters in connection therewith or incidental thereto as the Central Government may consider to be necessary or expedient;
- (c) the continuance of the services of all the employees of the acquired bank (excepting such of them as, not being workmen within the meaning of the Industrial Disputes Act, 1947 (14 of 1947), are specifically mentioned in the scheme) in the Central Government or in the transferee bank, as the case may be, on the same terms and conditions so far as may be, as are specified in clause (i) and (j) of sub-section (5) of section 45;
- (d) the continuance of the right of any person who, on the appointed day, is entitled to or is in receipt of, a pension or other superannuation or compassionate allowance or benefit, from the acquired bank or any provident, pension or other fund or any authority administering such fund, to be paid by, and to receive from the Central Government or the transferee bank, as the case may be, or

any provident, pension or other fund or any authority administering such fund, the same pension, allowance or benefit so long as he observes the conditions on which the pension, allowance or benefit was granted, and if any question arises whether he has so observed such conditions, the question shall be determined by the Central Government and the decision of the Central Government thereon shall be final;

- (e) the manner of payment of the compensation payable in accordance with the provisions of this Part to the shareholders of the acquired bank, or where the acquired bank is a banking company incorporated outside India, to the acquired bank in full satisfaction of their, or as the case may be, its, claims;
- (f) the provision, if any, for completing the effectual transfer to the Central Government or the transferee bank of any asset or any liability which forms part of the undertaking of the acquired bank in any country outside India;
- (g) such incidental, consequential and supplemental matters as may be necessary to secure that the transfer of the business, property, assets and liabilities of the acquired bank to the Central Government or transferee bank, as the case may be, is effectual and complete.

The Central Government may, after consultation with the Reserve Bank, add to, amend or vary any scheme made - under this section. Every scheme, shall be published in the Official Gazette.

Compensation to be given to shareholders of the acquired bank (Section 36 AG)

Every person who, is registered as a holder of shares, shall be given by the Central Government, or the transferee bank, such compensation as is determined in accordance with the principles contained in the Fifth Schedule. If the amount of compensation offered is not acceptable to any person to whom the compensation is payable, such person may, before such date as may be notified by the Central Government in the Official Gazette, request the Central Government in writing, to have the matter referred to the Tribunal.

Constitution of the Tribunal (Section 36 AH)

- (1) The Central Government may, constitute a Tribunal which shall consist of a Chairman and two other members.
- (2) The Chairman shall be a person who is, or has been, a Judge of a High Court or of the Supreme Court, and, of the two other members, one shall be a person, who, in the opinion of the Central Government, has had experience of commercial banking and the other shall be a person who is a chartered accountant within the meaning of the Chartered Accountants' Act, 1949.
- (3) The Tribunal may, choose one or more persons having special knowledge or experience of any relevant matter to assist it in the determination of such compensation.

Powers of the Tribunal : (Section 36A1) : The Tribunal shall have the powers of a civil court, while trying a suit, under the Code of Civil Procedure, 1908 in respect of summoning and enforcing the attendance of any person and examining him on oath; requiring the discovery and production of documents; receiving evidence on affidavits; issuing commissions for the examination of witnesses or documents.

SUSPENSION OF BUSINESS AND WINDING UP OF BANKING COMPANIES

Suspension of business (Section 37) The High Court may on the *application of a banking company* which is temporarily unable to meet its obligations, make an order (a copy of which it shall forward to the Reserve Bank staying the commencement or continuance of all actions and proceedings against the company for a fixed period of time, and may from time to time extend the period. The total period of moratorium shall not exceed 6 months.

Application shall be maintainable only when 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.

Role of RBI : Where the Reserve Bank is satisfied that the affairs of a banking company, in respect of which an order has been made by High Court, are being conducted in manner detrimental to the interests of the depositors, may make an application to the High Court for the winding up of the company. Where any such application is made, the High Court shall not make any order extending the period.

Winding up by High Court (Section 38) High Court shall order the winding up of a banking company if the banking company is unable to pay its debts; or if an application for its winding up has been made by the Reserve Bank under section 37 or this section. Reserve Bank may make an

application under this section for the winding up of a banking company:

(a) if the banking company-

- (i) has failed to comply with the requirements specified in section 11; or
- (ii) has by reason of the provisions of section 22 become disentitled to carry on banking business in India; or
- (iii) has been prohibited from receiving fresh deposits by an order section 35 or section 42 of the Reserve Bank of India, Act, 1934 or
- (iv) having failed to comply with any requirement of this Act other than the requirements laid down in section 11, has continued such failure, or, has continued contravention beyond specified period

(b) if in the opinion of the Reserve Bank-

- (i) a compromise or arrangement sanctioned by a court in respect of the banking company cannot be worked satisfactorily with or without modifications; or
- (ii) the returns, statements or information furnished to it under or in pursuance of the provisions of this Act disclose that the banking company is unable to pay its debts; or
- (iii) the continuance of the banking company is prejudicial to the interest of its depositors.

When a banking company is deemed to be unable to pay its debts

A banking company shall be deemed to be unable to pay its debts

- if it has refused to meet any lawful demand made at any of its offices or branches within 2 working days if such demand is made at a place where there is an office, branch or agency of the Reserve Bank, or
- within 5 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.

Court liquidator (Section 38A)

There shall be attached to every High Court a court liquidator to be appointed by the Central Government for the purpose of conducting all proceedings for the winding up of banking companies and performing such other duties in reference thereto as the High Court may impose.

Reserve Bank as official liquidator (Section 39)

Where in any proceeding for the winding up by the High Court of a banking company, an application is made by the Reserve Bank, the Reserve Bank, the State Bank of India or any other bank notified by the Central Government or any individual shall be appointed as the official liquidator of the banking company and the liquidator, functioning in such proceeding shall vacate office upon such appointment.

Application of Companies Act to liquidators (se 39A) All the provisions of the Companies Act, 1956, relating to a liquidator, in so far as they are not inconsistent with this Act, shall apply to or in relation to a liquidator appointed under section 38A or Section 39.

Stay of proceedings (Section 40) : High Court shall make an order staying the proceedings of winding up where it is satisfied that an arrangement has been made whereby the company can pay its depositors in full as their claims accrue.

Preferential payments to depositors (Section 43A)

- within 3 months from the date of the winding up order, the preferential payments shall be made by the official liquidator or adequate provision for such payments shall be made by him u/s 530 of Companies Act
- after preferential payments, depositors of saving bank account up to Rs.250
- then other depositors up to Rs.250 (maximum amount to be paid to one person when he is saving bank & other deposit account holder with balance up to Rs.250, would be Rs.250).
- the balance would be utilized to pay to general creditors
- then to the due amount to other depositors.

Where full payment cannot be made, every depositor would be paid on a pro rata basis.

Deposits covered with DICGC insurance cover are not covered under these rules.

Voluntary winding up (Section 44) : No banking company 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. High Court, may, make an order that the voluntary winding up shall continue, but subject to the supervision of the court.

Amalgamation of banking companies (Section 44A) No banking company shall be amalgamated with another banking company, unless a scheme containing the terms of such amalgamation has been placed in draft, before the shareholders of each banking company separately, and approved by the resolution passed by a majority in number *representing two-thirds in value of the shareholders* of each company, present either in person or by proxy at a meeting called for the purpose.

If the scheme is approved, it shall be submitted to the Reserve Bank for sanction. If sanctioned by the

Reserve Bank it will be binding on the banking companies concerned and also on all the shareholders thereof. Any shareholder, who has voted against the scheme or has given notice that he dissents from the scheme, he shall be entitled, to claim from the banking company concerned their value as determined by the Reserve Bank when sanctioning the scheme.

Sanction of scheme : On the sanctioning of a scheme by the Reserve Bank, the property of the amalgamated banking company shall, be transferred to and the liabilities of the company shall become the liabilities of the banking company.

Where a scheme is sanctioned by the Reserve Bank, it may, direct that the amalgamated banking company will cease to function, shall stand dissolved wef a particular date.

Restriction on compromise or arrangement between banking company and creditors (Section 44B) No High Court shall sanction a compromise or arrangement between a banking company and its creditors and its members only when the compromise or arrangement unless the compromise or arrangement or modification, is certified by the Reserve Bank in writing as not being incapable of being worked and as not being detrimental to the interests of the depositors of such banking company.

Power of Reserve Bank to apply to Central Government for suspension of business by a banking company and to prepare scheme of reconstitution or amalgamation (Section 45): Where it appears to the Reserve Bank that there is good reason so to do, it may apply to the Central Government for an order of moratorium in respect of a banking company. The Central Government may make an order of moratorium for a fixed period of time and may extend the period. Maximum total period of moratorium *shall not exceed six months*. The banking company shall not during the period of moratorium make any payment to any depositors or discharge any liabilities or obligations to any other creditors. During the period of moratorium, if the Reserve Bank is satisfied it may prepare a scheme for the reconstruction of the banking company, or for the amalgamation of the banking company with any other banking institution. Status of the employees: The scheme, inter alia, provide for the continuance of the services of all the employees of the banking company in the transferee bank at the same remuneration and on the same terms and conditions of service, which they were getting or, as the case may be, by which they were being governed, immediately before the date of the order of moratorium:

PENALTIES (Section 46) : False statement : Whoever in any return, balance- sheet or other document or on any information required or furnished under this Act, *wilfully* makes a statement, which is false in any or wilfully omits to make a material statement, shall be punishable with imprisonment for a term which may extend to 3 years and shall also be liable to fine.

Failure to produce books : If any person fails to produce any book, account or other documents or to furnish any statement or information which is his duty to produce or furnish, or to answer any question relating to the business of a banking company which he is asked by an officer making inspection or scrutiny under that section, he shall be punishable with fine which may extend to Rs.250 in respect of each offence, and if he persists in such refusal, to further fine which may extend to Rs.100 for every day during which the offence continues.

Acceptance of deposits : If any deposits are received by a banking company in contravention of an order under section 35, 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. Contravention of provisions of the Act : If any other provision of this Act is contravened or if any default is made in complying with any requirement of this Act or of any order, rule or direction made or condition imposed there-under, such person shall be punishable with fine which may extend to Rs.50000 or twice the amount involved in such contravention or default where such amount is quantifiable, whichever is more, and where a contravention or default is a continuing one, with a further fine which may extend to Rs.2500 *for every day*, during which the contravention or default continues.

Power to exempt in certain cases (Section 53) : The Central Government may, on the recommendation of the Reserve Bank, that any or all of the provisions of this Act shall not apply to any banking company or institution or to any class of banking companies either generally or for such period as may be specified.

CORPORATE GOVERNANCE : Corporate Governance is a dynamic concept. It involves promotion of corporate fairness, transparency and accountability in the interest of shareholders, employees, customers and other stakeholders. First major study on Corporate Governance was done by Cadbury Committee in 1992. It can be seen as the way in which boards oversee the running of a company by its managers, and how board members are in turn accountable to shareholders and the company and it

has implications for company behaviour towards employees, shareholders, customers, banks and other stakeholders. It also plays a role in ensuring integrity and efficiency of financial markets.

OECD Principles of Corporate Governance, 2004

1. Ensuring the basis for an effective corporate governance framework: The corporate governance framework should promote transparent and efficient markets, be consistent with the rule of law and clearly articulate the division of responsibilities among different supervisory, regulatory and enforcement authorities.
2. The rights of shareholders and key ownership functions: The corporate governance framework should protect and facilitate the exercise of shareholders' rights.
3. The equitable treatment of shareholders: The corporate governance framework should ensure the equitable treatment of all shareholders, including minority and foreign shareholders. All shareholders should have the opportunity to obtain effective redress for violation of their rights.
4. The role of stakeholders in corporate governance: The corporate governance framework should recognise the rights of stakeholders established by law or through mutual agreements and encourage active co-operation between corporations and stakeholders in creating wealth, jobs, and the sustainability of financially sound enterprises.
Disclosure and transparency: The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, performance, ownership, and governance of the company.
- 6_ The responsibilities of the board: The corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board, and the board's accountability to the company and the shareholders.

Corporate Governance and Banks : The Basel Committee on Banking Supervision has issued guidelines in 2006 for promoting the sound practices of Corporate Governance by banks. These guidelines highlight importance of :

1. Role of Board of Directors and Senior Management
2. Effective Management of Conflict of interest
3. Role of internal and external auditors
4. Governing in a transparent manner
5. Role of supervisors in promoting sound corporate governance practices.

Reserve Bank's Approach Committees set up include —A.S. Ganguly Committee in Nov 2001, Advisory Group on corporate governance headed by R.I-1, Patil in March 2001, Advisory group on banking supervision headed by M S Verma in Jan 2003. RBI guidelines on ownership and governance in private sector banks released on Feb 28, 2005 provide as under: Shareholding

1. The RBI guidelines on acknowledgement for acquisition or transfer of shares issued on February 3, 2004 will be applicable for any acquisition of shares of 5 per cent and above of the paid up capital of the private sector bank.
2. In the interest of diversified ownership of banks, the objective will be to ensure that no single entity or group of related entities has shareholding or control, directly or indirectly, in any bank in excess of 10 per cent of the paid up capital of the private sector bank. Any higher level of acquisition will be with the prior approval of RBI and in accordance with the guidelines of February 3, 2004 for grant of acknowledgement for acquisition of shares.
3. Where ownership is that of a corporate entity, the objective will be to ensure that no single individual/entity has ownership and control in excess of 10 per cent of that entity. Where the ownership is that of a financial entity the objective will be to ensure that it is a well established regulated entity, widely held, publicly listed and enjoys good standing in the financial community.
4. Banks (including foreign banks having branch presence in India)/FIs should not acquire any fresh stake in a bank's equity shares, if by such acquisition, the investing bank's/FI's holding exceeds 5 per cent of the investee bank's equity capital as indicated in RBI circular dated July 6, 2004.
5. As per existing policy, large industrial houses will be allowed to acquire, by way of strategic investment, shares not exceeding 10 per cent of the paid up capital of the bank subject to RBI's prior approval. Furthermore, such a limitation will also be considered if appropriate, in regard to important shareholders with other commercial affiliations.
6. In case of restructuring of problem/weak banks or in the interest of consolidation in the banking sector, RBI may permit a higher level of shareholding, including by a bank.

Directors and Corporate Governance

1. The Board of Directors should ensure that the responsibilities of directors are well defined and the banks should arrange need-based training for the directors in this regard. While the respective entities should perform the roles envisaged for them, private sector banks will be required to ensure that the directors on their Boards representing specific sectors as provided under the B.R. Act, are indeed representatives of those sectors in a demonstrable fashion, they fulfil the criteria under corporate governance norms provided by the Ganguly Committee and they also fulfil the criteria applicable for determining 'fit and proper' status of Important Shareholders (i.e., shareholding of 5 per cent and above).-as laid down in RBI Circular dated June 25, 2004.
2. As a matter of desirable practice, not more than one member of a family or a close relative (as defined under Section 6 of the Companies Act, 1956) or an associate (partner, employee, director, etc.) should be on the Board of a bank.
3. Guidelines have been provided in respect of 'Fit and Proper' criteria for directors of banks by RBI circular dated June 25, 2004 in accordance with the recommendations of the Ganguly Committee on Corporate Governance. For this purpose a declaration and undertaking is required to be obtained from the proposed / existing directors.
4. Being a Director, the CEO should satisfy the requirements of the 'fit and proper' criteria applicable for directors. In addition, RBI may apply any additional requirements for the Chairman and CEO. The banks will be required to provide all information that may be required while making an application to RBI for approval of appointment of Chairman/CEO.

For public sector banks, principles of corporate governance have been recognized by Banking Companies (Acquisition and Transfer of Undertakings) Act and as per Act, the shareholder directors should be a person having 'fit and proper' status.

PUBLIC SECTOR BANKS AND CO-OPERATIVE BANKS

Introduction: The Public Sector Banks, namely State Bank of India and its subsidiaries, Nationalised Banks, Regional Rural Banks are established by special statutes and these statutes provide the powers, functions and management of these Banks and the BR Act* is applicable to them in a limited way. Co-operative Banks are created and governed by laws relating to co-operative societies, if they operate in one state only, the state act and in different states, Central act applies. BR Act* is applicable in a Modified manner.

SBI and its Subsidiaries: SBI was formed in 1955 by the 5131 act taking over imperial Bank and carry on the business. It is a body corporate with perpetual succession and common seal. Majority of shares are held by Govt of India, no other share holder other than GOI can exercise voting right above ten percent. SBI has its central office at Mumbai and local head office at Mumbai, Kolkata, Chennai and other places. The powers are vested with Central Board. Central Govt gives directions on matters of policy after consultation with RBI Governor and SBI chairman.

Board: Consists of Chairman, Vice Chairman not more than two MDs appointed by Central Govt, Presidents of Local Boards and other Directors. Chairman and MDs are appointed for a period of 5 years. Local Boards are set up at each place where there is a local head office to exercise all powers and perform functions and duties of the Bank.

Business of SBI: SBI act as an agent of Reserve Bank for transacting Govt business and other business entrusted to it by RBI. The State Bank may transact the work through its subsidiaries or as an agent approved by Reserve Bank.

Accounts and Audit: SBI has to close its accounts and prepare Balance Sheet and P & L account as on 31st March every year and should be submitted to RBI.

Subsidiary Banks: The Subsidiary Banks of the State Bank of India were established by different statutes. Every subsidiary Bank is a body corporate with perpetual succession and common seal. The majority of the issued Share Capital of the Subsidiary Banks is held by SBI. The shares of the subsidiary Banks are freely transferable. However, the SBI is not entitled to transfer the shares if such transfer would result in reducing its share holding to less than 50% of the issued capital.

Management: Vests in its board of directors, Board consists of Chairman, MD and other Directors. SBI appoints the MD with approval of RBI.

Business: A subsidiary Bank has to act as an agent of SBI. A subsidiary Bank has also to act as an agent of RBI to transact Govt business and other works entrusted by RBI. A subsidiary Bank shall also

transact the business of general banking as well. SBI is empowered under Sec.47 to inspect the subsidiary Banks.

Regional Rural Banks (RRBs): RRBs are public sector institutions, regionally based, rural oriented and engaged in commercial Banking. They were first formed by an ordinance in 1975 and later ordinance was and attitude of the existing public sector Banks were not fully conducive to meet the credit needs of the replaced by RRB act 1976. The formation of RRBs was the result of the growing realisation that the ethos rural people. The object of setting up of RRBs is to development of agriculture, trade, commerce, industry and other productive activities in rural areas.

Sponsor Bank: is a Bank by which an RRB is sponsored and it holds 35% of the issued capital of RRB while the central Govt holds 50% and the state Govt holds the remaining 15% of the issued capital. Every RRB is a body corporate with perpetual succession and common seal with power to acquire hold or dispose of property. Generally an RRB is allotted a compact area of operation comprising a few districts with homogeneous agro-climatic conditions and rural clientele. These Banks may accept all types of deposits from public and engage in the business of Banking.

Management: Consists of chairman appointed by Sponsor Bank. The power vests in the board of directors.

Business: All Banking business as per BR Act*. However the main thrust of the business would be granting of loans and advances to small and marginal farmers in rural areas.

Nationalised Banks: 14 Private Banks were nationalised in 1969 another 6 Banks in 1980. The Bank nationalization act 1970 transferred the undertakings of the existing private Banks to the corresponding new Banks called as Nationalised Banks. Originally the entire paid up capital of the Nationalised Banks were held by Central Govt. Some of these Banks have recently made public issues of shares but central Govt still holds the majority of shares of not less than 51%. Every Nationalised Bank is a body corporate having perpetual succession and common seal and power to acquire, hold and dispose of property and enter into contracts. They can carry all Banking business; they also act as agents of Reserve Bank.

Management: vests in the Board of Directors. The Central Govt issues directions to the Bank in the discharge of its functions on matters of policy.

Directors: are nominated by the Central Govt or elected from the share holders. RBI may appoint one or more additional directors on the board.

Accounts and audit: close its accounts as on 31st March every year. Balance sheet and **P&L** account to be audited and the audited balance sheet to be submitted to RBI.

Module: B

Legal aspects of Banking Operations

Syllabus

- 1) Different Types of Borrowers - Types of Borrowers; Limited Liability Partnership**
- 2) Types of Credit Facilities - Cash Credit, Overdraft, Demand Loans, Term Loans, Bill Finance**
- 3) Secured and Unsecured Loans, Registration of Firms and Incorporation of Companies - Definition of Secured and Unsecured loans; Need for Secured Loans; Registration of Firms; Consequences of Non-registration of Firms; Incorporation of a Company**
- 4) Indemnities - Definition of Contract of Indemnity; Features of Indemnity Contract & Guarantee; Scope and Application of Indemnity Contracts to Banks; Obligations of a Banker; Precaution & Rights of an Indemnity Holder**
- 5) Bank Guarantees - Definition and Types of Bank Guarantees; Banker's Duty to Honor Guarantee; Precautions to be taken for Issuance of Bank Guarantee; Precautions to be taken for Payment under Bank Guarantee; Invocation & Enforcement.**
- 6) Letters of Credit - General Considerations of Letters of credit; Parties to a Letter of credit; Types of Letters of credit; Documents under a Letter of credit; UCPDC 600; Banks obligation for payment of Letter of credit.**
- 7) Deferred Payment Guarantees - Purpose of DPGs; Methods of Payment**
- 8) Laws Relating to Bill Finance - Class of Bills and Laws Governing Bills; Classification of Bills; Categories of Bill Finance; Bill Finance and Legal Position of Banker**
- 9) Various Types of Securities - Types of Securities; Escrow Arrangements; Trust and Retention Arrangements.**
- 10) Laws Relating to Securities and Modes of Charging – I - Mortgage; Types of Mortgage; Enforcement of Mortgages**
- 11) Laws Relating to Securities and Modes of Charging – II - Lien; Pledge; Hypothecation; etc.**
- 12) Registration and Satisfaction of Charges - Definition of Charge; Procedure for Registration of Charge; Effect of Non-registration of Charges; Provisions of Law relating to Registration of Charges**
- 13) Case Laws on Responsibility of Paying Bank - Negotiable Instruments Act and Paying Banks; Liability of Paying Banker; Payment in due course; Payment in Good Faith; Whether Payment under Mistake Recoverable**
- 14) Case Laws on Responsibility of Collecting Bank - Statutory protection to Collecting Bank; Duties of Collecting Bank**

LEGAL ASPECTS OF BANKING OPERATIONS

DIFFERENT TYPES OF BORROWERS

The bank grants loans and advances to different types of borrowers, individuals, partnership firms, HUF, companies and other Corporates.

Individual: An individual borrower is one of the constituents of a bank. When banks lend to an individual, the banker should see whether he has the capacity to contract.

A minor is not competent to contract. Therefore, if a banker lends money to a minor, then the same cannot be recovered, if the minor fails to repay.

Exceptions: if a bank lends money to a minor to meet the expenses for purchasing necessities of life, the bank can recover the money from the estate of the minor. Likewise banks should not lend money to individuals not of sound mind, persons declared as insolvent under the insolvency law.

Partnership firm: A partnership is the relation between persons who have agreed to share the profits of a business, carried on by all or any of them acting for all. The relationship between the partners is governed by partnership deed.

Registration of partnership firm: Though registration of partnership firm is not mandatory, it is prudent on the bank's part to those firms which are registered. The acts of a partner shall be binding on the firm if they are done in the usual business of the partnership and were done as a partner, i.e., on behalf of the firm and not solely on his behalf.

Business of Partnership firm: The rights and duties of the partners are determined by the deed of partnership, like opening of bank accounts, borrowing powers, signing cheques etc. Generally the managing partner may be doing the business on behalf of the firm as per the partnership deed.

Transaction in immovable property: A banker taking a mortgage security of firm's immovable property should ensure that the partner creating the charge has the authority to do so, if not, all the partners have to jointly create the mortgage.

Insolvency of the firm: The banker on receiving notice of insolvency of the firm must immediately stop any further transactions in the account irrespective of whether it is in debit or credit. If one of the partners become insolvent, and in case the account is in debit, then further transactions in the account should be stopped so that the rule in Clayton's case does not apply (i.e., the first credit will go to wipe off the first debit)

Death of the partner: Since the death of a partner dissolves the partnership firm, banks should stop further transactions in a running account like Cash Credit, Overdraft to crystallize the liability of the deceased partner and make his estate liable for its dues. Banks allow transactions in a separate account so that the business of the firm is not adversely affected.

Hindu Undivided Family (HUF) is creation of Customary Law among Hindus. A joint Hindu Family consists of male members from a common male ancestor together with their mothers, wives, widows and unmarried daughters bound together. It is purely a creature of law and cannot be created by an act of parties.

In a joint Hindu Family, the senior most male member of the family is entitled to manage the family properties. He is called 'Manager' or 'Karta' of the joint family. The Karta looks after the whole business; the position of Karta comes to a person by birth and not by the consent of the other Co-parceners. The Karta has unlimited powers to manage or sell the property, account for the income for the benefit of the family. The application to open an account must be signed by all the members, and all adult members should be made jointly and severally liable for any borrowings, if the account gets overdrawn.

Companies: A Company is a juristic person created by law, having a perpetual succession and common seal distinct from its members. As per the Companies Act, 1956 all companies are to be registered. An association of more than ten persons in the case of banking business and more than twenty in case of other business shall be registered under the companies act. If not registered, it will be illegal.

For forming a Company two important documents called 'Memorandum of Association' and 'Articles of Association' (AOA) are necessary.

MOA: It is the charter of the company. It enables the shareholders, creditors to know permitted range of business. MOA contains, name of the company, registered office of the company, objects of the company, liability of its members and share capital and its division.

AOA: Rules and regulations governing the internal management of the company, define powers of the officers, number of directors, borrowing powers of the company, Board of Directors, officers of the company and other details.

Private Company: A private company is one which has following provisions in its AOA

- a) Restrictions on the right to transfer its shares

- b) Limitation on number of members to 200.
- c) Prohibition as to participation by general public in its capital requirements

Public Company: is one which is not a private company,

- a) Shares are freely transferable
- b) No restriction on number of members
- c) Public can participate in its share capital.

Limited Company: Liability of the members is limited to their contribution of capital.

Unlimited Company: Liability of members is not limited.

Govt. Company: Central Government or State Government or both have more than 51% of the share capital.

Statutory Corporations: are formed by an Act of Parliament Eg., SBI formed under the SBI Act 1955, Nationalized Banks are established under the Banking Companies Act, 1970. Likewise, clubs, Societies, Co-op societies, Trusts, Wakf Board etc. are formed under various acts of State or Central Government

(For additional study please go through Module – B of Jaiib Paper First pp 68 – 73)

TYPES OF CREDIT FACILITIES

Lending is the principal activity of a Bank. Banks are offering various credit facilities to its clientele. These credit facilities are classified into: a) Fund based credit facilities; b) Non fund based credit facilities.

Fund based credit facilities: Involve the outflow of funds, ie. direct money is going out, lending out to the customers like:- a) Cash Credit/ Overdraft; b) Term Loans/ Working Capital; c) Bill Finance

Non fund based credit facilities: In this, the bank's funds are not directly lent to the customers:- a) Bank Guarantee ,b) Letter of Credit, c) Acceptance Facility

Rule in Clayton's case: The Cash Credit/ Overdraft account is a running account. Whenever the customer withdraws money, the account being debited and whenever he remits to his account, the account being credited. Under the law, each item of debit is a separate loan and each credit as a repayment of the earliest debits. This aspect was enunciated in a case called the "Clayton's case". In that case, the Court held that the first sum of money paid into the account, is deemed to repay the first item recorded on the debit side of the account. In another words, "the first credit will go to wipe of the first debit".

Bank not to terminate OD facilities without notice: Once a bank grants an Overdraft facility, then there is a contract between the bank and the customer that it is not to be cancelled unilaterally.

Term Loan/ Demand Loan: Are granted to customers to meet the capital expenditure needs of the business. Term loans are granted in one lump sum and are allowed to be repaid over a period in installments as per the repayment schedule.

Demand loans are those which are repayable on demand through a repayment schedule as agreed upon by the Bank. Term loans are further classified into :- 1. Short term loans, 2. Medium term loans ;3. Long term loans. Short term loans — repayable within one year , Medium term loans — repayable within one to seven years , Long time loans — repayable above seven year

The limitation period for filing a suit in case of term loans is 3 years from the date of default of a particular installment. In the case of demand loan the time limit is 3 years from the date of default.

Bill Finance: Bill Financing is conducted through discounting of Bills of Exchange drawn by the borrower on the customers of borrower. Bill Financing is classified into 3 categories :- a Bill discounting and bill purchase; b. Drawee bill acceptance, c Bills Co-acceptance

In all these cases, Bank undertakes an obligation. The first two are fund based and the third is a non fund based facility.

Non fund based facility: NFBF do not involve an immediate outflow of funds. The banker undertakes a risk to pay the amounts on happening of a contingency. They are :-

- a) Guarantee
- b) Letter of Credit
- c) Underwriting and Guarantee

a) Guarantee: In the event of the principal debtor defaults, the bank undertakes to make the payment

b) Letter of credit: the banker undertakes to pay on presentation of documents of title to goods subject to terms of LC.

c) Underwriting and Credit Guarantee: Now this facility is on the decline.

Other Credit Facilities: Many banks are extending Housing loans, Car loans and other Consumer loans. These are called consumer credit which contributes significantly to increase the profit of banks.

SECURED AND UNSECURED LOANS

Secured Loans: These loans are given by a banker not merely based on his confidence on the borrower's future financial strength, but based on his net worth. The Banker accepts securities such as LIC bond, fixed deposit receipts, shares, mortgage of land and building etc.

Unsecured Loans: The loans which are given without any tangible security or assets but merely on the strength of the integrity or the "credit worthiness" of the borrower. In other words credit worthiness is the confidence of a Banker on the future solvency of a person. They are also called clean loans.

Why secured loans: The recovery of the loan is mostly depended on the economic success of the borrower. Success or failure of an economic activity depends on various macro and micro economic factors. The banker cannot predict success or failure of the activity. So the bank asks for further security in the form of charge on property of the borrower. This charge acts as a cushion to absorb the shocks of economic failure of the borrower, and the bank can sell the properties and recover the money.

Registration of firms: It is in the interest of the partners to get their partnership firm registered. For registration, the prescribed application along with all details such as name of firm, principal place of business, names and addresses of partners etc. to be sent to Registrar of firms remitting the prescribed fees. The registration of firm is optional and not compulsory. So a mere non-registration would not affect in carrying on business. The Partnership Act contemplates the registration of firms, not the partnership deed. For making any alterations in the name of firm, shifting of place of business etc, for that also application in the prescribed format to be sent to the Registrar. The Registrar has power to make any rectification entry in the Register of firms in conformity with the documents relating to that firm already filed with him.

Effect of non-registration: Sec 69 of Indian Partnership Act, 1932 sets out the effect of non-registration.

Suits by Partners in between themselves: If the firm is not registered the partners can not file a suit against any other partner or against the firm in the event of any problem arises.

Suit by the firm against third parties: The firm cannot file a suit against any third parties to settle any claim or recovering any dues from third parties.

Filing of suit by third parties against the firm: Whether the firm is registered or not, third parties are not restricted from filing suit against the firm or any other partner(s). That is, even if the firm is not registered, third parties have no bar in filing suit against the firm. It is not the look out of third parties whether the firm is registered or not. But for the firm, if it want to file a suit against the partners or against Third parties it is mandatory that the firm should be a registered one. In other words, it is in the interest of the firm or its partners to have the firm registered. This is the most important part to be reckoned with.

Incorporation of a Company

Company: A company is an artificial person, since it is created by law. It is clothed with many of the rights, liabilities, powers and duties prescribed by law. Among the two important characteristics of a company, one is its separate individuality and the other is perpetuity within the limits prescribed by law. It can do all acts as a natural person may do.

A company has a 'corporate personality' separate from all the members who have formed it unlike a partnership firm. Because of this, a company incurs all the liabilities and possesses all rights of a natural person subject to the registration of law.

The main characteristics of a company are summed up as under:-

a) Company is a voluntary association of persons who have come together to carry on some business for profit.

b) It has a perpetual existence and though members may come and members may go, the company continues forever. Change in its members or in their identity does not affect the legal existence or its identity. Only law can dissolve it, since it is a creation of law.

The shares of joint stock companies are freely transferable unlike a private limited company. As a corporate person, a company is entitled to own and hold property in its own name. A company being a body corporate can sue and be sued in its own name. In brief, the most striking features of a company are its distinct legal personality, the easy transferability of its shares, and the limited liability of its members.

Name of company: A company is known by its name. So before registration, the Registrar of Companies will see whether there is any company identical with or too nearly resembles the name of an existing company. conclusive evidence that everything is in order as regards registration and that the company has come.

Certificate of Incorporation: The certificate of incorporation issued by the Registrar of Companies is into existence.

Certificate of commencement of business: Private Companies and a company having no share capital can start the business activity after the obtention of certificate of incorporation. But for a Public Company, another certificate called Certificate of Commencement of Business is to be obtained from the Registrar of Companies. (ROC) but now changed as per company act 2013 and now all company has to file compliance certificate.

REGISTRATION AND SATISFACTION OF CHARGES

What is a charge: the word 'charge' is used to mean any form of security or debt. Sec 125(4) of the Companies Act, 1956 provides the following charges of a Company are to be registered with Registrar of Companies:-

- a) A charge for the purpose of security debentures, b) A charge on uncalled Capital of the Company, c) A charge on immovable property ; d) A charge on book debts e) Charge on asset in or outside India

Fixed charge: Also called 'specific charge'. It extends over a specific property of the company. It gives right to the creditor to sell the property and claim the proceeds towards the dues payable by the Company.

Floating charge: Means a charge that is general and not specific.

- a) Floats over the present and future property of the Company, and it do not attach any specific property.
- b) On happening of an event or contingency, crystallizes as a fixed charge. A floating charge is an equitable charge which does not attach on any specific property but covers the whole of the company's property.

Effect of floating charge becoming fixed charge: When a floating charge becomes fixed charge, it constitutes a charge upon all the property or assets then belonging to the company.

Registration of charge: All the charge created by the Company shall be filed with the ROC within 30 days of its creation. It can be extended by Registrar of Company for another 270 days.

The registration, modification and satisfaction of charge are to be filed in form No CHG – 1& CHG-4 in MOC21. Recently Government of India has introduced electronic filing of returns.

Effect of non-registration: If the charge created is not registered with ROC, the charge would not be valid against the liquidator and any other creditor of the Company in the event of winding up of the company, as against the company itself. So long as the company does not go into liquidation, the mortgage or charge is good and may be enforced.

Sec 142 empowers ROC to impose penalty on the Company if it fails to comply with the provisions relating to registration of charge.

Sec 144 provides that any creditor or member of company can inspect the books relating to charges created by the Company and it is the duty of the Company to keep the register of charges open to inspection.

INDEMNITIES

Indemnity: The word indemnity means "to save from loss". The loss could be either due to the act of the party giving the indemnity or due to the act of a third party. Sec. 124 & 125 of Indian Contracts Act deals with the laws of indemnity. A contract of indemnity is a contingent contract, i.e. its performance is made dependent upon the happening or non happening of some event.

Sec 124 defines: A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person is called a contract of indemnity.

The person giving the promise is called the 'indemnifier' and the person to whom the promise is made is called the 'indemnified' or the indemnity holder.

A contract of indemnity though similar to a contract of guarantee differs on various counts.

INDEMNITY : 1) Two parties — Indemnifier & the indemnified ; 2) Risk is contingent ; 3) Indemnifiers liability is primary; Only one contract between two parties , 5) Purpose is for the reimbursement of a loss

GUARANTEE

Three parties — debtor, creditor & surety Liability is subsisting. Surety's liability is secondary
Three contract : 1. Debtor and creditor 2. Creditor and Surety, 3. Surety and debtor
Guarantee is for the security of the creditor

Scope of indemnity in banks: Customers when they have lost demand draft, traveler's cheque etc. approach the bank for duplicate. They are required to give an indemnity before issuance of duplicate DD. In some cases over and above the indemnity, banks will ask for surety especially when the amount is huge. Indemnity bonds are insisted while issuing duplicate FDR's, settling death claims etc.

In the indemnity taken by the bank, the customer undertakes to protect the bank from any loss or damage and for costs incurred. These indemnities are stamped as an agreement, and if they are witnessed, they would be treated as indemnity bond being liable for payment of ad valorem stamp duty.

Rights of an indemnity holder when sued: The indemnity holder can recover all damages, all costs, and all sums he may have paid under the terms of any compromise of any such suit, provided he has to prove that he has not acted beyond the scope of this authority and he did not contravene the specific directions of the promisor.

BAILMENT

As per Section 148 of Indian Contract Act 1872, bailment is the delivery of goods by one person to another for some purpose. When the purpose is accomplished, the goods are returned or otherwise disposed of according to the directions of the person delivering them. The person delivering the goods is called the "**bailor**". The person to whom they are delivered is called the "bailee".

Further, if a person already in possession of the goods of another person to hold them as a bailee, he thereby becomes the bailee, and the owner becomes the bailor of such goods, although they may not have been delivered by way of bailment.

Faults in goods (Section 150) : The bailor is bound to disclose to the bailee, the faults in the bailed goods, of which the bailor is aware, and which materially interfere with the use of them, or expose the bailee to extraordinary risk. If he does not make such disclosure, he is responsible for damage arising to the bailee directly from such faults. For instance, A lends a horse, which he knows to be vicious, to B and does not disclose the fact that the horse is vicious. The horse runs away. B is thrown and injured, A is responsible to B for damage sustained. Similarly, A hires a carriage of B which is unsafe, though B is not aware of it. If A is injured, B is responsible to A for the injury.

Duties of the bailee (Section 151) : Bailee is bound to take as much care of the goods, as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quantity and value as the goods bailed.

Termination of bailment by bailee's act inconsistent with conditions (Section 153) : A contract of bailment is voidable at the option of the bailor, if the bailee does any act, inconsistent with the conditions of the bailment. For instance, A lets to B, for hire, a horse of his own riding B drives the horse in his carriage. This is, at the option of A, a termination of the bailment.

Liability of bailee making unauthorised use of goods bailed (Section 154): If the bailee makes any use of the goods bailed which is not according to the conditions of the bailment, he is liable to make compensation to the bailor for any damage arising to the goods from or during such use of them. For instance, A lends a horse to B for his own riding only. B allows C, a member of his family, to ride the horse. C rides with care, but the horse accidentally falls and is injured. B is liable to make compensation to A for the injury done to the horse.

Repayment of expenses (Section 158): Where the goods are to be kept or to be carried, or to have work done upon them by the bailee for the bailor, and the bailee is to receive no remuneration, the bailors shall repay to the bailee the necessary expenses incurred by him for the purpose of the bailment.

Expiration of time or accomplishment of purpose (Section 160): It is the duty of the bailee to return, or deliver according to the bailor's directions, the goods bailed, without demand, as soon as the time for which they were bailed has expired, or the purpose for which they were bailed has been accomplished.

When goods are not returned (Section 161): If by the fault of the bailee, the goods are not returned, delivered or tendered at the proper time, he is responsible to the bailor for any loss, destruction or deterioration of the goods from that time.

Defective title of the Bailor (Section 164): The bailor is responsible to the bailee for any loss which the bailee may sustain by reason that the bailor was not entitled to make the bailment, or to receive back the goods, or to give directions, respecting them.

Right of third person claiming goods (Section 167): If a person, other than the bailor, claims goods bailed, he may apply to the court to stop delivery of the goods to the bailor, and to decide the title to the goods.

When finder of thing commonly on sale may sell it (Section 169): When a thing which is commonly the subject of sale is lost, if the owner cannot with reasonable diligence be found, or if he refuses upon demand, to pay the charges of the finder, the finder may sell it-

- (1) when the thing is in danger of perishing or of losing the greater part of its value, or
- (2) when the lawful charges of the finder, in respect of the thing found, amount to two-thirds of its value.

PLEDGE

U/s 172 of Indian Contracts Act, *pledge is bailment or delivery of goods as security for payment of a debt or performance of a promise*. It may be remembered that only goods (movable assets excluding actionable claims (Sec 2(7) of Sales of Goods Act) can be pledged. The bailor in this case is called the "pawnor or pledger". The bailee is called "pawnee or pledgee". *Pledge is different from bailment*. **Bailment** is delivery of goods by one person to another for some purpose while the *purpose in pledge* is performance of a specific promise or security for a debt. The pledgee can sell the goods pledged after giving notice to the pledger while in bailment the goods can be retained or bailor can be sued for charges.

Who can pledge ?

The owner of goods, the agent of the owner, the joint owner with the consent of other co-owner and a person having limited interest in the goods (to the extent of his interest), can pledge the securities.

Pledge by mercantile agent : U/s 178, where a mercantile agent is, with the consent of the owner, in possession of goods or the documents of title to goods, any pledge made by him, when acting in the ordinary course of business of a mercantile agent, **shall** be as valid as if he were expressly authorised by the owner of the goods to make the same; provided that the pawnee acts in good faith and has not at the time of the pledge notice that the pawnor has no authority to pledge.

Pledge by person in possession under voidable contract : **When** the pawnor has obtained possession of other goods pledged by him under a contract voidable, but the contract has not been rescinded at the time of the pledge, the pawnee acquires a good title to the goods, provided he acts in good faith and without notice of the pawnor's defect of title.

Pledge where pawnor has only a limited interest : As per Section 179, where person pledges goods in which he has only a limited interest, the pledge is valid to the extent of that interest.

Rights of pledgee

The pledgee gets the rights of a bailee which include:

Right to retain (Section 173) : **The pawnee** may retain the goods pledged, not only for payment of the debt or the performance of the promise, but for the interests of the debt, and all necessary expenses incurred by him *in* respect of the possession or for the preservation of the goods pledged.

U/s 174, the pawnee shall not (in the absence of a contract to that effect), retain the goods pledged for any debt or promise of other than the debt or promise for which they are pledged.

Right as to extraordinary expenses incurred : U/s 175, the pawnee is entitled to receive from the pawnor extraordinary expenses incurred by him for the preservation of the goods pledged.

Right where pawnor makes default : As per Section 175, if the pawnor makes default in payment of the debt, or performance, at the stipulated time, the pawnee may:

- bring a suit against the pawnor upon the debt or promise and retain the goods pledged as a collateral security; or
- he may sell the thing pledged, on giving the pawnor reasonable notice of the sale.
- If the proceeds of such sale are less than the amount due in respect of the debt or promise, the pawnor is still liable to pay the balance. If the proceeds of the sale are greater than the amount so due, the pawnee shall pay over the surplus to the pawnor.

Law of limitation : **The rights of** pledgee are not limited by Law of Limitation.

Banker's right and other dues : **Bank's right of pledge** prevails over any other dues including Govt. dues (Supreme Court State of Bihar vs Bank of Bihar)"except workers' wages.

Duties of the pledgee

a to return the goods (along with accretion to goods if any) once the money is paid back by the pledger.

b to take that much care of the goods, which he would have been taking, had the goods belonged to him.

HYPOTHECATION/PLEDGE - DISTINCTION

	Hypothecation	Pledge
Defined in	SRFAESI Act 2002 (Sec 2 n)	Indian Contract Act 1872 (Section 172)

Definition	Charge on movable property in favour of secured creditor without delivery of possession	Bailment of goods as security for payment of a debt or performance of promise
Parties: -Borrower - Bank	Hypothecator Hypothecatee	Pledger/pawnor Pledgee/pawnee
Nature of securities	Movable assets such as stocks, machinery, vehicles	Goods (consisting of movable assets as in case of hypothecation) Legal fixed charge
Nature of charge	Equitable charge	
Ownership	Borrower	Borrower
Possession	Borrower (in .trust for bank).. – Bank cannot take possession without consent of the borrower. On taking possession bank gets rights of pledgee and can sell the assets without intervention of court.	Possession with bank till repayment of the loan. Bank has to preserve the goods carefully and return the same, if loan is repaid.
Delivery of goods	Borrower to deliver The securities if demanded by the bank	Possession can Be actual or constructive.
Right of sale	Available through court only. Under SARFAESI Act, sale is possible after possession.	Available by giving notice, through public auction.
Registration of charge with ROC	U/s 77 of Companies Act 2013	No registration required
Limitation	3 years	Not applicable
General lien	Not available	Available u/s 171 of Indian Contract Act.
Obligations	Borrower's duty is to keep the securities in good condition and Handover the same to bank when demanded	Bank's duty is to keep the goods in proper condition and return back, when loan is fully repaid.

AGENCY & AGENTS : As per Section 182, an "agent" is a person employed to do any act for another person, while dealings with third persons. The person (who employs and agent) for whom such act is done, or represented, is called the "principal". As per Section 185 no consideration is necessary to create an agency. Who may employ agent (Section 183) : Any person who is of the age of majority and who is of sound mind, may employ an agent.

Who may be an agent (Section 184) : As between the. principal and third persons, any person may become an agent. If the agent is to be liable to the principal, he should of the age of majority and sound mind.

Agent's authority (Section 186) : The authority of an agent may be express or implied.

Express authority : An authority is said to be express when it is given by words spoken or written.

Implied authority: An authority is said to be implied when it is to be inferred from the circumstances of the case; and things spoken or written, or the ordinary course of dealing, may be accounted circumstances of the case.

For example A owns a shop in Serampur, living himself in Calcutta, and visiting the shop occasionally. The shop is managed by B, and he is in the habit of ordering goods from C in the name of A for the purposes of the shop, and of paying for them out of A's funds with A's knowledge. B has an implied authority from A to order goods from C in the name of A for the purpose of the shop.

Extent of authority (Section 188) : An agent, having an authority to do an act, has authority to do every lawful thing which is necessary in order to do such act. An agent having an authority to carry on a business, has authority to do every lawful thing necessary for the purpose, or usually done in the course, of conducting such business.

For instance, A is employed by B, residing in London, to recover at Bombay a debt due to B. A may adopt

any legal process necessary for the purpose of recovering the debt, and may give a valid discharge for the same.

Authority in an emergency (Section 189) : An agent has authority, in an emergency, **to** do all such acts for the purpose of protecting his principal from loss and would be done by a person of ordinary prudence, in his own case, under similar circumstances.

For example, A consigns goods to be at Calcutta, with direction to send them immediately to C, at Cuttack. may sell the goods at Calcutta, if they will not bear the journey to Cuttack without spoiling.

Delegation by the agent (Section 190): An agent cannot lawfully employ another person to perform acts which he has undertaken to perform personally, *unless by the ordinary custom of trade a sub-agent must, be employed.*

Sub-agent : A "sub-agent" is a person employed by, and acting under the control of, the original agent in the business of the agency.

Sub-agent appointed without authority (Section 193) : Where an agent, without having authority to do so, has appointed a person to act as a sub-agent, the agent is responsible for his acts both to the principal and to third person. The principal is not responsible for the acts of the person so employed, nor is that person responsible to the principal.

Acts without his authority and effect of ratification : U/s 196, where acts are done by one person on behalf of another, but without his knowledge or authority, he may elect to ratify or to disown such acts. If he ratifies them, the same effects will follow as if they had been performed by his authority. Ratification may be express or may be implied in the conduct of the person on whose behalf the acts are done. Further, as per Section 199, a person ratifying any unauthorised act done on his behalf, ratifies the whole of the transaction.

Termination of agency : U/s 201 an agency is terminated by the principal revoking his authority, or by the agent renouncing the business of the agency; or by the business of the agency being completed; or by either the principal or agent dying or becoming of unsound mind; or by the principal being adjudicated an insolvent.

Where agency cannot be terminated : U/s 202 where the agent has himself an interest in the property which forms the subject-matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest.

For example, A consigns 1,000 bales of cotton to B, who has made advances to him on such cotton, and desires B to sell the cotton, and to repay himself out of the price the amount of his own advances. A cannot revoke this authority, nor is it terminated by his insanity or death.

Revocation where authority has been partly exercised : As per Section 204, the principal cannot revoke the authority given to his agent after the authority has been partly exercised, liability of principal arise from acts already done in the agency.

For example A authorises B to buy 1,000 bales of cotton on account of A, and to pay for it out of A's money remaining in B's hands. B buys 1,000 bales of cotton in A's name. A can not revoke B's authority to pay for the cotton.

Termination of sub-agent's authority : As per Section 210, the termination of the authority of an agent automatically terminates the authority of *all sub-agents appointed by the agent.*

Agent's duty in conducting principal's business : As per Section 211, an agent is bound- to conduct the business of his principal according to the directions given by the principal. In the absence of any such directions, it is to be conducted according to the customs which prevails in doing business of the same kind at the place where the agent conducts such business. When the agent acts otherwise, he must make good the loss to his principal and if any profit accrues, he must account for it.

Agent dealing on his own account, in business of agency without principal's consent : If an agent deals on his own account in the business of the agency, without first obtaining the consent of his principal and acquainting him with all material circumstances which have come to his own knowledge on the subject, u/s 215, the principal may repudiate the transaction. Further u/s 216, where an agent, without the knowledge of his principal, deals in the business of the agency on his own account instead of on account to his principal, the principal is entitled to claim from the agent any benefit which may have resulted to him from the transaction.

Remuneration for business misconducted : As per Section 220, an agent who is guilty of misconduct in the business of the agency, is not entitled to any remuneration in respect of that part of the business which he has misconducted.

Agent to be indemnified against consequences of acts done in good faith : U/s 223, where the agent does the act in good faith, the employer is liable to indemnify the agent against the consequences of that act. For example, A, a decree-holder and entitled to execution of B's goods requires the officer of the court to seize certain goods, representing them to be the goods of B. The officer seizes the goods, and is sued by C, the true owner of the goods. A is liable to indemnify the officer for the sum which he is compelled to pay to C, in consequence of obeying A's directions.

Enforcement and consequences of agent's contract with 3rd parties: As per Section 226, the contracts entered into through an agent, and obligations arising from acts done by an agent, may be

enforced in the same manner, and will have the same legal consequences as if the contracts had been entered into the acts done by the principal in person.

When agent exceeds authority : U/s 227, when an agent does more than he is authorised to do, and when the part of what he does, is within his authority and can be separated from the part which is beyond his authority, the principal is bound for that portion what he does within his authority.

Effect, on agreement, of misrepresentation or fraud by agent : As per Section 238, the misrepresentation made or fraud committed, by agent have the same effect on agreements made by such agents as if such frauds had been committed by the principals.

For example, A, being B's agent for the sale of goods, induces C to buy them by a misrepresentation, which he was not authorised by B to make. The contract is voidable, as between B and C, at the option of C.

HYPOTHECATION

As per Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 (Sec 2 (n)), hypothecation has been defined as 'a charge in or upon any movable property, existing or future, created by a borrower in favour of a secured creditor without delivery of possession of the movable property to such creditor, as security for financial assistance and includes floating charge and crystallization of such charge into fixed on movable property'. A cash credit account like an overdraft account, is a running account but with a fixed drawing limit within the sanctioned limit. Drawing limit is fixed periodically, on the basis of value of the security. In such advances the ownership as well as possession of the security remains with the borrower. A cash credit account is very convenient for the borrowers.

Advantages

a the customer can deposit and withdraw money as per his convenience unlike a demand loan account, where money can be withdrawn only once.

b being a running account, documents are obtained only once, unlike a demand loan where on adjustment of the account, fresh documents have to be taken if the loan is to be raised again.

c interest in the account is charged on the actual debit balance on day to day basis and is debited on a quarterly basis which becomes payable immediately. Banks are also entitled to charge commitment charge for unutilized amount of cash credit limits.

Securities : Cash credit accounts may be against hypothecation of stocks of raw material, stock in process or finished goods or stores, spares etc.

These loans are sanctioned by the banks generally to those customer who are actually involved in some economic activity of a continuous basis, such as traders, manufacturers etc.

Stock statement and margins

The borrowers are required to submit to the bank a statement of stocks and other securities charged to the bank on pre-fixed intervals, say fortnightly or monthly.

The banks maintain **margin** on the security which differs from case to case depending upon the nature of security and other considerations.

Documents

In order to secure themselves, the banks obtain cash credit agreement which create charge on the goods and other securities against which the loans are granted.

Renewals

Cash credit limits are sanctioned by the banks for a period of one year where after it can be extended for further period also on review.

Precautions

a firm is not enjoying similar facilities with other banks on the security of same goods.

b borrower enjoys facilities from one bank only and an undertaking in writing should be obtained from him.

c bank name board should be displayed where the securities are located stating that bank has charge over such goods.

d recurring inspection should be conducted by the bank to see that the level of goods being maintained is same as the one declared by the borrower and as per his books.

e borrower should submit a stock statement periodically,

f such stocks should be insured for fire and other risks. Legal aspects in Hypothecation

Possession & sale : Hypothecation is an equitable charge, where the borrower keeps the possession of the security on behalf of the creditor. If the borrower fails to return the advance against the hypothecation of securities, the bank can take possession of the securities with consent of the borrower and becomes a pledgee. On becoming pledgee, the bank get all the rights of a pledge including right to sell without intervention of the court. Under Securitisation Act, the bank also has got the right to sell the hypothecated securities without intervention of the court, subject to compliance of certain legal formalities.

MORTGAGE : What is a mortgage :As per section 58 of Transfer of Property Act 1882, mortgage is transfer of interest in specific immovable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt or the performance of an

engagement which may give rise to pecuniary liability.

Interest in the property & possession : The mortgagor only parts with the interest in the property and not the ownership. Mortgage is not merely a contract but it is conveyance of interest in the mortgaged property. As regards the possession, except for usufructuary mortgage, the possession remains with the mortgagor. immovable property (IP) : As per Sec 3 of General Clauses Act, IP includes land, benefit arising out of land and things attached, permanently fastened to earth. Mortgagor and Mortgagee :The transferor is called a mortgagor and the transferee a mortgagee.

Mortgage money and Mortgage deed : The principal money and the interest of which payment is secured are called the mortgage money and instrument, if any, by which the transfer is affected, is called the mortgage deed.

Essential features of mortgages

a Mortgages can be created to cover general balances, *existing payment as well as future loans or advances*.

b Relationship : there must be a creditor and debtor relationship (or contract of guarantee) between the bank and the mortgagor at the time of deposit.

c Future debt : actual existence of the debit is not necessary. Even an application for debt and its acceptance establishes this relationship.

d Effective date : a registered mortgage (and equitable mortgage) becomes effective from date of mortgage (Section 47 & 48 of Indian Registration Act).

e Enhanced limits : To cover the enhanced bank limits, a supplemental registration deed is required because the mortgage already does not cover the enhanced amount.

f Repayment of loan : On repayment of debt, the mortgage does not remain valid.

KINDS OF MORTGAGES There are six forms/kinds of mortgages:

a: Simple mortgage - Sec 58(b):

When mortgagor without delivering the possession, binds himself personally to pay the mortgage money and agrees that in the event of his failure to pay the mortgage money, the mortgagee shall have a right to cause the property to be sold. Features are:

- Mortgagee has no power to sell the property without court intervention.
- Mortgagee has no right to get any payments out of the rents and produce of the mortgage property.
- Mortgagee is not put in possession of the property.
- Registration of the mortgage is compulsory.
- Mortgagor is personally liable also.

b: Mortgage by conditional sale : Sec 58(e) : In this, the mortgagor ostensibly sells the mortgaged property on conditions that on default of payment of the mortgage money, the sale shall become *absolute* or on such payment being made, the sale shall become *void* or the buyer shall transfer the property to the seller.

Features are:

- Sale is ostensible and not real.
- If money remains unpaid as per agreement, the sale becomes absolute. The mortgagee by applying to court can get decree in his favour where after the mortgagor loses the right of redemption.
- Mortgagee can sue for foreclosure.
- No personal liability for repayment of the loan.

c: Usufructuary mortgage : Sec 58 (d) - Where the mortgagor delivers the possession and authorises the mortgagee to retain possession until payment of the mortgage money and to receive the rents and profits accruing from property or any part of such property to appropriate the same in lieu of interest or the mortgage money. Features are:

- Mortgagee in actual legal possession of the property, till dues are repaid.
- Mortgagee has the right to receive rents and profits accruing from the property.
- No personal liability of the mortgagor.
- No time limit specified
- Sale is not allowed.

d: English mortgage : Sec 58(e) - Where the mortgagor binds himself to repay the mortgage money on a certain date and transfer the mortgaged property absolutely to the mortgagee, but subject to the condition that mortgagee will re-transfer the property to the mortgagor upon payment of the mortgage money, as agreed. Important features are:

- Personal liability to pay on a specified date
- Absolute transfer of property to the mortgagee, subject to re-conveying (re-transfer) the property if the debt is repaid.

e: Equitable mortgage: (U/s 58 (f) Where the mortgagor delivers (at notified places) to the mortgagee, the documents of title to immovable property with intention to create a security thereon to secure a loan. The transaction is not to be reduced to writing. In case of non-payment, the mortgagee can sue for sale but he cannot foreclose the mortgaged property. According to Section 58 (f) of Transfer of Property Act 1882, where a person delivers to a creditor or his agent documents of title to immovable property, with the intent to create a security thereon, the transaction is called a mortgage by deposit of title deed.

However the Act makes the provisions of this Section applicable only to Bombay, Calcutta, Madras and such other towns as may be notified by the State Govts by notification in the Official Gazette. Important features are:

- Deposit can be made at Calcutta, Bombay and Madras or at places notified by State govt. only.
- This territorial restriction does not affect the location of the property i.e. property can be located anywhere.
- There should be deposit of title deed (preferably original) of the property with intention to secure a debt. *U/s 96, the provisions which apply to a simple mortgage shall, so far as may be, apply to a mortgage by deposit of title-deeds.*

f: Anomalous mortgage:

A mortgage which is not of any of the above five kinds, is called an anomalous mortgage (Sec 58(g)). U/s 98, in the case of an anomalous mortgage the rights and liabilities of the parties shall be determined by their contract as evidenced in the mortgage-deed, and, so far as such contract does not extend by local usage.

Duplicate title documents

Where an original title deed in equitable mortgage is not available, a true copy certified by the Sub-registrar can be deposited where it is proved that original is either not in existence or has been lost. A public notice of creation of mortgage is also desirable in such circumstances.

Registration of mortgage

According to Section 59 of Transfer of Property Act 1882, where the principal money secured is Rs.100 or more, a mortgage, other than a mortgage by deposit of title deeds can be effected only by a registered instrument signed by the mortgagor and attested by at least two witnesses. In case the instrument is not duly attested and registered, the mortgage will be void. U/s 23 of Indian Registration Act 1908, such document is to be presented within 4 months from date of execution, for registration to Sub-Registrar of Assurances. Further **in case of a company**, separate registration of mortgage is required u/s 125 of Companies Act, within 30 days.

Enhancement of existing limits

The mortgagors would be required to execute mortgage deeds for the amount over and above the amount of limit before enhancement. In case of equitable mortgage, entry is made in the title-deed register for the enhanced portion of the limit, by following the precautions as specified above.

Second mortgage

A mortgagor after giving 1st mortgage, can create 2nd and even subsequent mortgage on the same property. *The mortgage will rank in priority according to dates of their creation.*

Summary of Rights under Mortgages

Particulars	Simple	Conditional Sale	Usufructuary	English	Equitable
Possession with	M	M	B		M
Ownership	M	M	M	B	M
Right to sell without court permission	No	No	No	Yes	No
Personal Liability of mortgagee	Yes	No	No	Yes	Yes
Mortgagee's right To get income of IP	No	No	Yes	No	No
Right to sue for sale of IP	Yes	No	No	Yes	Yes
Registration with Sub-registrar	Yes	Yes	Yes	Yes	No
How created	MD	MD	MD	MD	Oral
Right of foreclosure	No	Available	No	No	No

(M= Mortgager B=Bank MD = Mortgage deed i.e. a written document *Right of possession becomes available to the mortgagee due to transfer of ownership from mortgagor to mortgagee)

RIGHT OF FORECLOSURE (Sec 67) : On default by the mortgagor, the mortgagee in certain types of mortgages, has right to obtain a decree (before decree has been made or money has been paid) from a court to the effect that the former be debarred for ever to get back the mortgage property. Such a right is called the Right of Foreclosure. A suit for foreclosure must be filed within 30 years from date of mortgage

money becomes dues.

RIGHT OF REDEMPTION (Sec 60): On liquidation of the debt, the mortgagor has the right to get back (redeem) the document relating to mortgaged property, where possession has been given, to get back the possession and where title has been transferred, to get retransferred. This right is known as right of redemption, which can be exercised at any time before the decree for sale or foreclosure has been passed by the court.

MARSHALLING : U/s 81 of TPA, if owner of one or more IPs mortgages to one person and then mortgages one or more of them to another, the subsequent mortgagee is entitled to have prior mortgage debt satisfied out of the IPs not mortgaged to him (without prejudice to right of prior mortgagee).

Limitation : Limitation period for mortgage is 12 years from date mortgage money becoming due. For right of foreclosure and right of redemption it is 30 years.

TRANSFER OF PROPERTY ACT, 1882 : The Transfer of Property Act, 1882 came into force on the first day of July, 1882.

Transfer of property (Sec 5): An act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself and one or more other living persons; and "to transfer property" is to perform such act. As per Section 7, every person competent to contract and entitled to transferable property, or authorised to dispose of transferable property not his own, is competent to transfer such property either wholly or in part, and either absolutely or conditionally, in the circumstances, to the extent and in the manner, allowed and prescribed by any law for the time being in force. Further as per Section 9, a transfer of property may be made without writing in every case in which a writing is not expressly required by law.

Conditional transfer (Sec 25) : An interest created on a transfer of property and dependent upon a condition fails if the fulfilment of the condition is impossible, or is forbidden by law, or is of such a nature that, if permitted, it would defeat the provisions of any law, or is fraudulent, or involves or implies injury to the person or property of another, or the court regards it as immoral or opposed to public policy. For example A gives Rs. 500 to B on condition that he shall marry As daughter C. At the date of the transfer C was dead. The transfer is void.

Transfer by ostensible Owner (Sec 41) : Where, with the consent, express or implied, of the persons interested in immovable property, a person is the ostensible owner of such property and transfers the same for consideration, the transfer shall not be voidable on the ground that the transferor was not authorised to make it. The transferee, after taking reasonable care to ascertain that the transferor had power to make the transfer, has acted in good faith.

Registration of mortgage : (Section 59): Where the principal money secured is Rs.100 or upwards, a mortgage other than a mortgage by deposit of title deeds can be effected only by a registered instrument signed by the mortgagor and attested by at least two witnesses. Where the principal money secured is less than Rs.100, a mortgage may be effected either by a registered instrument signed and attested as aforesaid or (except in the case of a simple mortgage) by delivery of the property.

Right of mortgagor to redeem (Sec 60): At any time after the principal money has become due, the mortgagor has a right, on payment or tender, at a proper time and place, of the mortgage-money, to require the mortgagee (a) to deliver to the mortgagor the mortgage-deed and all documents relating to the mortgaged property which are in the possession or power of the mortgagee, (b) where the mortgagee is in possession of the mortgaged property, to deliver possession thereof to the mortgagor, and (c) at the cost of the mortgagor either to re-transfer the mortgaged property to him or to such third person as he may direct, or to execute and (where the mortgage has been effected by a registered instrument) to have registered an acknowledgement in writing that any right in derogation of his interest transferred to the mortgagee has been extinguished. The right conferred by this section has not been extinguished by the act of the parties or by decree of a court.

Further u/s 61, a mortgagor who has executed two or more mortgages in favour of the same mortgagee shall, in the absence of a contract to the contrary, when the principal money of any two or more of the mortgages has become due, be entitled to redeem any one such mortgage separately, or any two or more of such mortgages together.

Obligation to transfer to third party instead of re-transference to mortgagor (Sec 60A)

Mortgagor on payment of the debt, may require the mortgagee, instead of re-transferring the property, to assign the mortgage debt and transfer the mortgaged property to such third person as the mortgagor may direct; and the mortgagee shall be bound to assign and transfer accordingly. The provisions of this section do not apply in the case of a mortgagee who is or has been in possession.

Right to inspection and production of documents (Sec 60B)

A mortgagor, as long as his right of redemption subsists, shall be entitled at all reasonable times, at his request and at his own cost, and on payment of the mortgagee's cost and expenses in this behalf, to inspect and make copies or abstracts of, or extracts from, documents of title relating to the mortgaged property which are in the custody or power of the mortgagee.

Accession to mortgaged property (Sec 63) : Where mortgaged property in possession of the

mortgagee has, during the continuance of the mortgage, received any accession, the mortgagor, upon redemption shall, in the absence of a contract to the contrary, be entitled as against the mortgagee to such accession. Further, where mortgaged property in possession of the mortgagee has, during the continuance of the mortgage, been improved, the mortgagor, upon redemption, shall, in the absence of a contract to the contrary, be entitled to the improvement; and the mortgagor shall not, be liable to pay the cost thereof.

Renewal of mortgaged lease (Sec 64): Where mortgaged property is a lease, and the mortgagee obtains a renewal of the lease, the mortgagor, upon redemption, shall, in the absence of a contract by him to the contrary, have the benefit of the *new* lease.

Waste by mortgagor in possession (Sec 66) : A mortgagor in possession of the mortgaged property is not liable to the mortgagee for allowing the property to deteriorate; but he must not commit any act which is destructive or permanently injurious thereto, if the security is insufficient or will be rendered insufficient by such act.

Right of mortgagee to foreclosure or sale (Sec 67) : In the absence of a contract to the contrary, the mortgagee has, at any time after the mortgage-money has become due to him, and before a decree has been made for the redemption of the mortgaged property, or the mortgage-money has been paid or deposited as hereinafter provided, a right to obtain from the court a decree that the mortgagor shall be absolutely debarred of his right to redeem the property, or a decree that the property be sold. A suit to obtain a decree that a mortgagor shall be absolutely debarred of his right to redeem the mortgaged property is called a suit for foreclosure.

Mortgagee when bound to bring one suit on several mortgages (Sec 67A): A mortgagee who holds two or more mortgages executed by the same mortgagor in respect of each of which he has a right to obtain the same kind of decree under section 67, and who sues to obtain such decree on any one of the mortgages, shall, in the absence of a contract to the contrary, be bound to sue on all the mortgages in respect of which the mortgage-money has become due.

Right to sue for mortgage-money (Sec 68): The mortgagee has a right to sue for the mortgage-money in the following cases and no others, namely,-

- (a) where the mortgagor binds himself to repay the same;
- (b) where, by any cause other than the wrongful act or default of the mortgagor or mortgagee, the mortgaged property is wholly or partially destroyed or the security is rendered insufficient within the meaning of section 66, and the mortgagee has given the mortgagor a reasonable opportunity of providing further security enough to render the whole security sufficient, and the mortgagor has failed to do so;

where the mortgagee is deprived of the whole or part of his security by or in consequence of the wrongful act or default of the mortgagor;

- (c) where, the mortgagee being entitled to possession of the mortgaged property, the mortgagor fails to deliver the same to him, or to secure the possession thereof to him without disturbance by the mortgagor or any person claiming under a title superior to that of the mortgagor: Liabilities of mortgagee in possession (Sec 76) :

When, during the continuance of the mortgage, the mortgagee takes possession of the mortgaged property,

- (a) he must manage the property as a person of ordinary prudence would manage it if it were his own;
- (b) he must try his best endeavours to collect the rents and profits thereof;
- (c) he must, in the absence of a contract to the contrary, out of the income of the property, pay the government revenue, all other charges of a public nature and all rent accruing due in respect thereof during such possession, and any arrears of rent in default of payment of which the property may be summarily sold;
- (d) he must in the absence of a contract to the contrary, make such necessary repairs of the property as he can pay for out of the rents and profits thereof after deducting from such rents and profits the payments mentioned in clause (c) and the interest on the principal money;
- (e) he must not commit any act which is destructive or permanently injurious to the property;
- (f) where he has insured the whole or any part of the property against loss or damage by fire, he must, in case of such loss or damage, apply any money which he actually receives under the policy or so much thereof as may be necessary, in reinstating the property, or, if the mortgagor so directs, in reduction or discharge of the mortgage-money;
- (g) he must keep clear, full and accurate accounts of all sums received and spent by him as mortgagee, and, at any time during the continuance of the mortgage, give the mortgagor, at his request and cost, true copies of such accounts and of the vouchers by which they are supported;
- (h) his receipts from the mortgaged property, or, where such property is personally occupied by him, a fair occupation-rent in respect thereof, shall, after deducting the expenses properly incurred for the management of the property and the collection of rents and profits and the other expenses mentioned in clauses (c) and (d), and interest thereon, be debited against him in reduction of the amount (if any) from time to time due to him on account of interest and, so far as such receipts exceed any interest due, in reduction or discharge of the mortgage-money; the surplus, if any, shall be paid to the mortgagor;
- (i) when the mortgagor tenders, or deposits in the manner hereinafter provided, the amount for the time being due on the mortgage, the mortgagee must, notwithstanding the provisions in the other clauses of this section, account for his receipts from the

mortgaged property from the date of the tender or from the earliest time when he could take such amount out of court, as the case may be, and shall not be entitled to deduct any amount therefrom on account of any expenses incurred after such date or time in connection with the mortgaged property.

Loss occasioned by his default- If the mortgagee fails to perform any of the duties imposed upon him by this section, he may, when accounts are taken in pursuance of a decree made under this Chapter, be debited with the loss, if any, occasioned by such failure.

Postponement of prior mortgagee (Sec 78) : Where, through the fraud, misrepresentation or gross neglect of prior mortgagee, another person has been induced to advance money on the security of the mortgaged property, the prior mortgagee shall be postponed to the subsequent mortgagee.

Mortgage to secure uncertain amount when maximum is expressed (Sec 79) : If a mortgage made to secure future advances, the performance of an engagement or the balance of a running account, expresses the maximum to be secured thereby, a subsequent mortgage of the same property shall, if made with notice of the prior mortgage, be postponed to the prior mortgage in respect of all advances or debits not exceeding the maximum, though made or allowed with notice of the subsequent mortgage.

Contribution to mortgage-debt (Sec 82) : Where property subject to a mortgage belongs to two or more persons having distinct and separate rights of ownership therein, the different shares in or parts of such property owned by such persons are, in the absence of a contract to the contrary, liable to contribute rateably to the debt secured by the mortgage, and, for the purpose of determining the rate at which each such share or part shall contribute, the value thereof shall be deemed to be its value at the date of the mortgage after deduction of the amount of any other mortgage or charge to which it may have been subject on that date.

Where, of two properties belonging to the same owner, one is mortgaged to secure one debt and then both are mortgaged to secure another debt, and the former debt is paid out of the former property, each property is, in the absence of a contract to the contrary, liable to contribute rateably to the latter debt after deducting the amount of former debt from the value of the property out of which it has been paid.

Power to deposit in court money due on mortgage (Sec 83): At any time after the principal money payable in respect of any mortgage has become due and before a suit for redemption of the mortgaged property is barred, the mortgagor, or any other person entitled to institute such suit, may deposit, in any court in which he might have instituted such suit, to the account of the mortgagee, the amount remaining due on the mortgage.

Right to money deposited by mortgagor- The court shall thereupon cause written notice of the deposit to be served on the mortgagee, and the mortgagee may, on presenting a petition (verified in manner prescribed by law for the verification of plaints) stating the amount then due on the mortgage, and his willingness to accept the money so deposited in full discharge of such amount, and on depositing in the same court the mortgage-deed

and all documents in his possession or power relating to the mortgaged property, apply for and receive the money, and the mortgage-deed, and all such other documents so deposited shall be delivered to the mortgagor or such other person as aforesaid

Persons who may sue for redemption (Sec 91) : Besides the mortgagor, any of the following persons may redeem, or institute a suit for redemption of, the mortgaged property, namely,-

- (a) any person (other than the mortgagee of the interest sought to be redeemed) who has any interest in, or charge upon, the property mortgaged or in or upon the right to redeem the same;
- (b) any surety for the payment of the mortgage-debt or any part thereof; or
- (c) any creditor of the mortgagor who has in a suit for the administration of his estate obtained a decree for sale of the mortgaged property.

Subrogation (Sec 92) : Any of the persons referred to in section 91 (other than the mortgagor) and any co-mortgagor shall, on redeeming property subject to the mortgage, have, so far as regards redemption.

foreclosure or sale of such property, the same rights as the mortgagee whose mortgage he redeems may have against the mortgagor or any other mortgagee. The right conferred by this section is called the right of subrogation, and a person acquiring the same is said to be subrogated to the rights of the mortgagee whose mortgage he redeems. A person who has advanced to a mortgagor money with which the mortgage has been redeemed shall be subrogated to the rights of the mortgagee whose mortgage has been redeemed, if the mortgagor has by a registered instrument agreed that such persons shall be so subrogated..

Lease of immovable property (Sec 105): A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms. The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent.

Rights and liabilities of lessor and lessee (Sec 108) ;

(A) Rights and liabilities of the lessor : The lessor is bound to disclose to the lessee any material

defect in the property, with reference to its intended use, of which the former is and the latter is not aware, and which the latter could not with ordinary care discover;

- (a) the lessor is bound on the lessee's request to put him in possession of the property;
- (b) the lessor shall be deemed to contract with the lessee that, if the latter pays the rent reserved by the lease and performs the contracts binding on the lessee, he may hold the property during the time limited by the lease without interruption.

(B) Rights and liabilities of the lessee

(c) If during the continuance of the lease any accession is made to the property, such accession (subject to the law relating to alluvion for the time being in force) shall be deemed to be comprised in the lease;

(d) if by fire, tempest or flood, or violence of an army or of a mob, or other irresistible force, any material part of the property be wholly destroyed or rendered substantially and permanently unfit for the purposes for which it was let, the

(e) lease shall, at the option of the lessee, be void. If the inquiry be occasioned by the wrongful act or default of the lessee, he shall be entitled to avail himself of the benefit of this provision;

(f) if the lessor neglects to make, within a reasonable time after notice, any repairs which he is bound to make to the property, the lessee may make the same himself, and deduct the expense of such repairs with interest from the rent, or otherwise recover it from the lessor;

(g) if the lessor neglects to make any payment which he is bound to make, and which, if not made by him, is recoverable from the lessee or against the property, the lessee may make such payment himself, and deduct it with interest from the rent, or otherwise recover it from the lessor;

(h) the lessee may even after the determination of the lease remove, at any time whilst he is in possession of the property leased but not afterwards all things which he has attached to the earth; provided he leaves the property in the state in which he received it;

Duration of lease for a year: Where the time so limited is a year or a number of years, in the absence of an express agreement to the contrary, the lease shall last during the whole anniversary of the day from which such time commences.

TRANSFERS OF ACTIONABLE CLAIMS

Actionable claim : Actionable claim means a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property, or to any beneficial interest in movable property not in the possession, either actual or constructive, of the claimant, which the civil courts recognise as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent;

Transfer of actionable claim (Sec 130): The transfer shall be effected only by the execution of an instrument in writing signed by the transferor or his duly authorized agent, shall be complete and effectual upon the execution of such instruments, and thereupon all the rights and remedies of the transferor, whether by way of damages or otherwise, shall vest in the transferee, whether such notice of the transfer as is hereinafter provided be given or not. Accordingly, the transferee may sue or institute proceedings for the same in his own name without obtaining the transferor's consent to such suit or proceeding and without making him a party thereto.

For example, A effects a policy on his own life with an insurance company and assigns it to a bank for securing the payment of an existing or future debt. If A dies, the bank is entitled to receive the amount of the policy and to sue on it without the concurrence of A's executor, subject to the proviso in sub-section (1) of section 130 and to provisions of section 132.

Notice to be in writing, signed (Sec 131) : Every notice of transfer of an actionable claim shall be in writing, signed by the transferor or his agent duly authorised in this behalf, or, in case the transferor refuses to sign, by the transferee or his agent, and shall state the name and address of the transferee.

Liability of transferee of actionable claim (Sec 132) : The transferee of an actionable claim shall take it subject to all the liabilities and equities and to which the transferor was subject in respect thereof at the date of the transfer.

LAWS RELATING TO BILL FINANCE

BILL OF EXCHANGE (Section 5)

A bill of Exchange (BOE) is an instrument (a) in writing, (b) containing an unconditional order, (c) signed by the maker, (d) directing a certain person to pay (e) a certain sum of money only (f) to, or to the order of, a certain person or to the bearer of the instrument.

Parties to a BOE: U/s 7

Drawer: The person who orders to pay (say seller of goods). He is the creditor. (It can be a minor also without any personal liability)

Drawee: Who is directed to pay (say a buyer of goods). He is the debtor. A minor cannot be drawee as he cannot incur liability.

Acceptor: The drawee becomes acceptor on acceptance of BOE for payment.

Payee: Who is authorised to obtain the payment.

Lost Bill of exchange : Where a bill is just, the drawer is under obligation (Sec 45A) to issue a duplicate bill.

Types of Bills Of Exchange : The bills are of following kinds:

- a inland bills and foreign bills; b time bills and demand bills; c trade bills and accommodation bills
- d clean bills and documentary bills. Inland bills (Instruments) (Section 11)

A BoE drawn or made in India and made payable in or drawn upon any persons resident in India, is an inland instrument. (Explanation: (1) It should be drawn in India. (2) If it is payable in India, it can be paid by a resident or a foreigner. If it is payable abroad, it should be paid by a resident in India).

Foreign bills : As per Section 12 of NI Act, any bill which is not an inland bi 1 is a foreign bill.

Examples of Inland and Foreign Bills

Drawn in	Payable	Type
New Delhi	In Mumbai by Ram Lal a resident or by John Major, a foreigner	Inland
New Delhi	In London, by Ramesh Kumar, a resident Indian	Inland
New Delhi	In London, by John Major, a foreigner	Foreign
London	In Delhi, by Ashok a resident India	Foreign

Accommodation bills : It is not a genuine trade bill. It is drawn to accommodate a known party without actual sale of goods. Such bill drawn by seller and accepted by another person purporting to be buyer, it becomes an accommodation bill. This is also called kite-flying.

Demand/Usance Bills of Exchange Demand Bills is payable on demand. The Usance Bills is payable in future on a pre-decided date. The demand bills are purchased and usance bills are discounted. While the demand bills are normally secured, the usance bills become unsecured as the documents are handed over to the drawee on acceptance.

Bill of exchange in sets : When the bills are in sets, (i.e first, second or third copy) as in case of foreign trade transactions, the stamp duty is paid only on one part and only one part is required to be accepted.

Hundi : Hundies are bills of exchange generally written in vernacular and governed by local usage and practices. These may be Darshani Hundi (similar to demand bills payable at sight), Miadi Hundi (similar to usance bills), Namyog Hundis (similar to order instruments) and **Khokha** (which has been paid and cancelled).

Acceptance : The acceptance of a bills means signing by the drawer of a bill, on face with or without the words accepted and delivery thereof or giving notice of signing, to the holder of the bill.

There are 2 types of acceptances i.e. general acceptance and qualified acceptance. In cages of several drawees not being partners, each of them can accept it for himself but not others without their authority (Sec 34).

Presentation for acceptance : As per Section 61, a usance bill payable after sight and bills payable on a fixed date (and not demand bills) require to be presented to drawee for acceptance to make him liable and also for calculation of due date.

Usance promissory notes are also required to be presented for determining the due date. Presentation for acceptance need not be done where the drawee is not competent, he cannot be found with reasonable search, he is dead or is insolvent or acceptance is refused.

Reasonable time

The presentation should be within a reasonable period from receipt. The non-presentation discharges the drawer and all endorsers. While calculating the reasonable time, public holidays are to be excluded.

Time period for acceptance :

As per Section 83, a drawee is allowed 48 hours exclusive of public holidays, to decide whether to accept or to reject. Where the acceptance is not conveyed in such time, it is treated as dishonoured for non-acceptance.

Days of grace

Under Section 22, every usance promissory note or bill of exchange is to be allowed 3 days *after*-the day on which it is expressed to be payable. For instruments payable in *instalments*, the days of grace are to be allowed for each instalment. Where grace period is stated as 'grace period not given', no grace days are to be allowed. Where the due date is already given by the drawer, no grace period to

be given. In case of Commercial Paper or Certificate of Deposit (which are usance promissory notes), due date is already given. Hence no grace period is added. Where days of grace are stated to be more, these are restricted to 3 only.

Due date calculation

Due date is calculated to get payment both for usance bills and promissory notes and not for demand bills or demand promissory notes.

Important - Due date can be from date of bill or from date of acceptance, depending upon what is stated on the bill. When not to be calculated from date of the bill, it is to be calculated from date of acceptance. The expression after sight means, after acceptance. (Sec 21).

Rules of due date calculation

A. Payable after so many months: (Sec 23) Becomes payable on the corresponding date of the month, after the stated number of months. For example, in case of a bill dated 21.11.02 payable 3 months after date, 3 months shall complete on 21.02.03 i.e. the same date of the corresponding month. But it will be on 3rd day i.e. 24.02.03.

B. Payable after so many months, where month has no corresponding date:

If the month has no corresponding date, the period shall be held to terminate on the last day of such month. For example, for a bill of exchange dated 22.01.03 accepted on 31.01.03 payable one month after the date of acceptance, the one month shall be held to terminate on 28.02.03 (as there is no date corresponding to the 31st day (i.e. date of acceptance) in the month of February 2003) and the maturity date will be 3rd March 2003, after adding 3 days of...grace.

C. Payable after so many days (Sec 24) In calculating the date of maturity of a bill or note payable so many days after date or sight or presentment or acceptance, the day of that date is excluded. For example, if a bill dated 21.08.03 is payable 6 days after date, for calculating 6 days, the date 21st is excluded and 22nd August is counted as the 1st day, thus 6 days terminate on 27.08.03 and the bill will be at maturity on 3rd day from 27.08.03 i.e. 30.08.03 (Section 24).

When maturity date is a public holiday

As per Section 25 such instrument shall be payable on the next preceding business day (i.e. the previous business day).

Declaration of Public Holiday : U/s 25 of NI Act, 1881, the public holiday includes Sunday and any other day declared by the Central Govt. by notification in the Official Gazette (power delegated to State Governments on 8 June, 1957). When Central Govt. itself notifies a day as "public holiday" there is no need for banks to wait for the State Government notification.

Examples of Due date calculation

Date of bill	Presented on	Accepted On	Payment Terms	Due date
26.12.07	26.12.07	28.12.07	2 months after presentation	Mar 03, 2008
26.02.08	27.02.08	28.02.08	3 months after acceptance	May 31, 2008
20.12.07	21.12.07	23.12.07	1 months after presentation	Jan 25, 2008++
26.12.07	26.12.07	28.12.07	45 days after presentation	Feb 14, 2008
26.02.08	27.02.08	28.02.08	30 days after acceptance	Apr 01, 2008

++ due date shifted to next preceding business day due to Jan 26, being a public holiday.

Interest Payment on BOE or PN

When ROI is specified, it shall be charged at specified rate (sec 79) on principal amount due from date of instrument to date of payment. If interest is mentioned to be payable but rate is not mentioned, interest @ 18% p.a. shall be calculated (sec 80).

Presentment for payment

It is compulsory for all cheques, demand drafts, PNs & BOE.

Liability on the usance bill of exchange

U/s 32, a drawee becomes liable on a bill of exchange only when he accepts it for payment. The drawer is primarily liable before acceptance. After acceptance his liability is secondary liability

Dishonour of Bill of Exchange

A bill of exchange is said to be dishonoured either by non-acceptance (when drawee defaults in acceptance) or by non-payment (when the acceptor/drawee makes default in payment). Similarly where

the drawee is incompetent to contract or acceptance is qualified, the bill is said to be dishonoured (Section 91 & 92).

Notice of dishonor : When a bill is dishonoured, the holder thereof must give notice that the instrument has been so dishonoured to all parties whom the holder seeks to make jointly liable thereon.

It is not necessary to give notice to the maker of the dishonoured promissory note, or the drawee or acceptor of the dishonoured bill of exchange or cheque (Section 93).

Noting of Bills of Exchange (Section 99) Noting is a process of creating legal evidence of dishonour through the Notary Public. As per Section 99, where a bill or promissory note is dishonoured by non-acceptance or nonpayment, the holder should get such fact noted on the bill or a paper enclosed to the bill, by a Notary Public (generally an Advocate appointed by the State Govt. under Notary Public Act). Noting should provide date of and reasons for dishonour. Where noting has taken place for an inland bill, there is no need to send another notice of dishonour to the drawee, to make him liable.

Protesting (Section 100)

After noting the bill could also be got protested. Protest is a certificate from a Notary Public containing facts of the dishonour. Protest is considered an authentic and satisfactory evidence of dishonour. *Protesting is compulsory for foreign bill where the law of the place requires it to be protested.* Drawee in case of need. A drawee in case of need is a person to whom the holder can look forward in the event of the dishonour of instrument.

Acceptor for honour : After noting/protesting, any person who accepts for honour of the drawer/endorsees).

Stamp duty on bills : The advalorem stamp duty is payable on usance **bill** (i.e. as per amount and usance period). Following usance bills are exempted from payment of stamp duty (a) with usance period up to 90 days, where bank is a party to the bill since 1989 (b) export bills 2004. On demand bills the stamp duty is exempted.

Payment of interest by banks for delays in collection of bills ; The lodger's bank should pay interest to the lodger for the delayed period in respect of collection of bills at the rate of 2% p.a. above the rate of interest payable on balances of Savings Bank accounts. The delayed period should be reckoned after making allowance for normal transit period based upon a time frame of 2 days each for (i) Despatch of bills; (ii) Presentation of bills of drawees (iii) Remittance of proceeds to the lodger's bank (iv) Crediting the proceeds to drawer's account

Post-Sale Finance or Trade Finance While companies can use the Cash Credit and Demand Loan facilities to finance their requirements over the entire working capital cycle from purchase of raw materials to recovery of sale proceeds from debtors, for financing the post sale requirements, for financing credit sales, more efficient facilities are available. They are more efficient because repayment can be monitored better and as a result of the lower risk involved, the rate of interest could be lower for the customer.

Cheque Purchase Cheques issued by purchaser of goods have to be sent for clearing or collection and this entails delay of one to several days in getting the funds. Banks agree to lend the amount of the cheque as soon as the cheque is deposited and the advance is recovered when the cheques are realised. At the time of giving the advance itself the bank will recover their interest for the estimated time it will take for the cheque to be realized, say for 7 days. If it takes longer, additional interest is recovered from the proceeds of the cheque. Normally, interest is not refunded if the cheque is realized earlier than estimated. In case the cheque is returned unpaid, the amount is recovered from the customer. This facility is called cheque purchase.

Nowadays, Cheque Purchase facility is given as part of the Cash Management Services. Under CMS, the bank may agree to credit the amounts of cheques deposited by the customer, even before they are collected. This is equivalent to cheque purchase.

Bill Purchase Banks also give advance against Documentary Bills for Collection and recover the amount when the drawee pays the amount. (Please see the chapter on Bills Collection Service for details of the various documents to be submitted to the bank and their importance.)

In the case of a demand bill the date on which it will be paid is uncertain. The drawee may pay the bill as soon as it is presented to him or he may take a few days to do so. Hence, as in the case of cheque purchase, interest for the estimated time for realization of the bill, say for 15 days, is recovered at the time of purchase. Additional interest is recovered or excess interest refunded on realization of the bill according to the actual number of days taken to realize the bill. In case of dishonour of the bill, the amount is recovered from the customer.

Bill Discount : In the case of a Usance Bill, the date of payment is certain as it becomes payable after a certain number of days after it is accepted or from the date of the bill. Hence the able to calculate the exact amount of interest due on the bill and recover it upfront. Interest recovered at the time of advance is called "discount". When money is against a usance bill for collection, it is called Bill Discounting. In the case of bills purchase also interest is recovered at the time of advance. However, it is only an estimated amount and not the exact amount due. Hence it is called commission and not discount.

Bills Discounting and Purchase less risky than CC facility for the following reasons:—

Self-Liquidating - Bills will be repaid when the buyer pays the bills on the due date

Easy to monitor - If the bill is not paid on the due date it will be known immediately and the bank can speedily taken further action for recovery of the advance

More secure - The goods covered by demand bills can be taken delivery of by the buyer only after paying the bill. Hence, if the bill is not repaid the bank can take delivery of the goods and sell it to recover the advance. In the case of a usance bill, the bank can proceed against the seller and the buyer for recover. Further, since a bill is a negotiable instrument, on filing a suit, consideration need not be proved.

The risk involved in Bill financing are, the seller (borrower) submitting bogus LR or RR and the buyer taking delivery of the goods in connivance with the transport operator, without payment of the bill. Risk of the borrower defrauding the bank is no greater than in the case of cash credit. In fact, frauds in bill finance are likely to surface earlier. To guard against buyers taking delivery fraudulently, banks have to ensure that L are issued by reputed transport operators who are on the approved list of IBA (Indian Banks Association).

BANK GUARANTEES

During the course of business, banks are often required to furnish guarantees on behalf of their own customers in lieu of their obligations, performance or other requirements. A bank guarantee is a guarantee given by a bank to a 3rd party to pay him a certain amount on behalf the applicant, in case the applicant fails to fulfill his commitment, towards the said 3rd party.

Parties in a bank guarantee : The person on whose the guarantee is issued is called applicant and in whose favour it is issued, is called beneficiary.

Basis of issue of a bank guarantee : A bank guarantee is issued on the basis of an underlying transaction or contract between the applicant and the beneficiary.

Section 126 of Indian Contract Act, 1872, defines guarantees as a contract to perform the promise or discharge the liability of a third person in case of his default.

Types of guarantees

Financial Guarantees: These are direct credit substitutes wherein a bank, irrevocably undertakes to guarantee the repayment of a contractual financial obligation. Financial guarantees essentially carry the same credit risk as a direct extension of credit i.e., the risk of loss is directly linked to the creditworthiness of the counterparty against whom a potential claim is acquired.

An indicative list of financial guarantees:

- a. Guarantees for credit facilities;
- b. Guarantees in lieu of repayment of financial - securities;
- c. Guarantees in lieu of margin requirements of exchanges;
- d. Guarantees for mobilisation advance, advance money before the commencement of a project and for money to be received in various stages of Project implementation;
- e. Guarantees towards revenue dues, taxes, duties, levies etc. in favour of Tax/ Customs / Port / Excise Authorities and for disputed liabilities for litigation pending at courts;
- f. Credit Enhancements;
- g. Liquidity facilities for securitisation transactions;
- h. Acceptances (including endorsements with the character of acceptance);
- i. Deferred payment guarantees.

Performance Guarantees: These are transaction-related contingencies that involve an irrevocable undertaking to pay a third party, in the event the counterparty fails to fulfill or perform a contractual non-financial obligation. An indicative list of such guarantees is as under:

- a. Bid bonds;
- b. Performance bonds and export performance guarantees;
- c. Guarantees in lieu of security deposits / earnest money deposits (MAD) for participating in tenders;
- d. Retention money guarantees;

Warranties, indemnities and standby letters of credit related to particular transaction.

Banker's obligation to honour the guarantee:

A bank guarantee is an independent contract separate from the underlying transaction, in spite of the fact that the guarantee is issued on the basis of such underlying transaction or contract. Hence bank remains liable on the guarantee in terms of the conditions of the guarantee in the following situations:

- Where the applicant fails to meet the obligation under the contract and the beneficiary sends the notice of invocation.
- Where the bank is unable to recover the due amount from the applicant, for any reasons.
- Where the company for which the guarantee was given has been liquidated or is in the process of liquidation.

Expiry of guarantees

On expiry of the validity period of guarantee, a registered acknowledgement due notice should be sent to the beneficiary advising that the liability of the bank under the guarantee has been discharged and no claim from the beneficiary on the basis of the guarantee has been received by the bank. This should be followed to get back the guarantee bond or a discharge letter from the beneficiary.

Invocation

The amount claimed under the guarantee should be immediately paid to the beneficiary if invocation is in accordance with the terms and conditions of the guarantee. Withholding payment merely at the instance of the customer should not be done as it results in nonfulfillment of the obligation undertaken by the bank and also affects bank's image. If the amount of demand as a result of payment by the bank to beneficiary is not paid by the customer within a reasonable period, the recovery process is to be initiated.

Limitation clause :

In a letter of guarantee, the extent of monetary liability and the period of validity should be specific. The limitation clause is inserted in the letter of guarantee for this purpose.

Limitation period in a guarantee

Section 28 of the Indian Contract Act 1872 pertaining to limitation clause of the guarantee has been amended wef 08.01.97. Due to this amendment, even when the period of liability is specified in the guarantee, the beneficiary can enforce his remedies till the limitation period is alive i.e. 30 years where the beneficiary is Govt. and 3 years in other cases from the stipulated expiry date / invocation, whichever is earlier.

RBI INSTRUCTIONS ON BANK GUARANTEES

Tenure- No bank guarantee should normally have a maturity of more than 10 years.

Unsecured guarantees: The restriction of 20% on unsecured guarantees has been withdrawn (wef 17.6.2004) by RBI and banks' boards have been given the freedom to fix their own policies on their unsecured exposures.

Precautions for averting frauds: Banks should refrain from issuing guarantees on behalf of customers who do not enjoy credit facilities with them.

Ghosh committee recommendations: Banks should implement the following recommendations:

- i. In order to prevent unaccounted issue of guarantees, as well as fake guarantees, as suggested by IBA, bank guarantees should be issued in serially numbered security forms.
- ii. Banks should, while forwarding guarantees, caution the beneficiaries that they should, verify the genuineness of the guarantee with the issuing bank.

Internal control systems: Bank guarantees issued for Rs.50,000/- and above should be signed by two officials jointly.

Guarantees on behalf of share and stock brokers/ commodity brokers: Banks may issue guarantees in favour of stock exchanges in lieu of security deposit and also in lieu of margin requirements. Banks to obtain a minimum margin of 50% (including 25% cash margin) while issuing such guarantees. This margin condition also applies to guarantees issued by banks on behalf of commodity brokers in favour of the national level commodity exchanges, viz., National Commodity & Derivatives Exchange (NCDEX), Multi Commodity Exchange Of India Limited (MCX) and National Multi-Commodity Exchange Of India Limited (NMCEIL), in lieu of margin requirements

Restrictions on guarantees of inter-company deposits/loans: Banks should not execute guarantees covering inter-company deposits/loans thereby guaranteeing refund of deposits/loans accepted by NBFC/firms from other NBFC/firms.

Restriction on guarantees for placement of funds with NBFCs : Guarantees should not be issued for the purpose of indirectly enabling the placement of deposits with NBFCs. Inter-institutional guarantees: Banks may Issue guarantees favouring other banks/ FIs/ lending agencies for loans extended by the latter. The guaranteeing bank should assume a funded exposure of at least 10% of the exposure guaranteed.

Infrastructure projects: Banks can issue guarantees favouring other lending agencies, in respect of

infrastructure projects alone, subject to the conditions that the bank issuing the guarantee takes a funded share in the project at least to the extent of 5 percent of the project cost and undertakes normal credit appraisal, monitoring and follow-up of the project.

Payment of invoked guarantees: Where guarantees are invoked, payment should be made to the beneficiaries without delay and demur,

The Supreme Court had observed (U.P. Co-operative Federation Private Ltd. versus Singh Consultants and Engineers Private Ltd. (1988 IC SSC 174)] that the commitments of the banks must be honoured, free from interference by the courts. In exceptional cases such as fraud or any case where irretrievable injustice would be done if bank guarantee is allowed to be encashed, the court should interfere'.

Bank Guarantee beyond 10 years : In terms of RBI circular date July 1, 2008 on Guarantees and Co-acceptances, no bank guarantee should normally have a maturity of more than 10 years. In view of the changed scenario of the banking industry where banks extend long term loans for periods longer than 10 years for various projects, RBI decided (April 22, 2009) to allow banks to issue guarantees for periods beyond 10 years under a policy approved by their Board of Directors

Important Provisions in Indian Contract Act relating to Guarantors

Section	Provision in Summary Form
126	Guarantee is a contract to perform the promise or discharge the liability of a 3rd person in case of his default
127	Consideration— anything done or promised made for the benefit of the principal debtor
128	Surety's liability is co-extensive with that of the principal debtor
129	Continuing guarantee is one which extends to a series of transactions. It can be revoked as to future transactions by notice to the creditor (Section 130)
133	Any variance made in the terms of the contract, without surety's consent, shall discharge the surety for transactions subsequent to the variance.
134	Surety is discharged by any contract by which principal debtor is released by the creditor.
137	Refusal of the creditor to sue principal debtor or enforce any other remedy against him, does not discharge the surety
136	Release of one co-surety by the creditor, does not discharge the others
140	On payment of the guaranteed debt by the surety, he is invested with all the rights which the creditor had against the principal debtor. Surety will have benefit of every Security which creditor has against the principal debtor (right of subrogation).
146	Co-sureties either jointly or severally ,are liable between themselves, to pay each an equal share of the whole debt, if it remains unpaid by the principal debtor. Co-sureties bound in different sums are liable to pay equally within the limits of their respective obligations permit.

DEFERRED PAYMENT GUARANTEE

This is a guarantee for a payment which has been deferred or postponed. In case of purchase of capital goods like machinery, the necessity to issue deferred payment guarantee arises. In such guarantees, the banks are undertaking to pay the instalments due under the deferred payment schedule. Unlike all other LGs here the payment will have to be made by the banks on the accepted due dates and thereafter the instalment is recovered from the party.

Advance payment under DPG: The terms of payment for the purpose of such guarantee, are normally advance payment of 10-15% of the price of the capital goods and payment of another 10-15% on receipt of the goods/documents. The balance amount, along with interest, is payable in instalments spread over a period of 1-7 years, which is secured by the deferred payment guarantee.

Appraisal for DPG: The appraisal of a proposal involving issue of deferred payment guarantee has to be undertaken as it is done in case of a term loan to see the long term viability of the operations, since the payment is to be made out of the future cash generation from the activity.

Payment Mechanism under DPG: As regards the payment mechanism, normally the sellers draw usance bills of exchange which are accepted by the buyer and counter-accepted by the buyer's bank (bank giving the guarantee). These bills are discounted by the seller with his bank and on due date the seller's bank presents the bills for payment, which the issue bank pays to the debit of buyer's account. Where the buyer's account does not permit such debit, bank has to pay the due amount and initiate steps to recover the payment from the buyer.

Security : Banks secure such guarantees by having charge on the assets purchased and also counter guarantee of the buyers.

LETTER OF CREDIT

A letter of credit is a commercial instrument of assured payment and widely used by the business community for its various advantages. In an LC, a bank undertakes to make payment to a seller on production of documents stipulated in the credit.

Parties to LCs

- a: **Applicant**- The buyer / importer of the goods (generally borrower of the issuing bank). The applicant has to make payment if documents as per LC are delivered, whether the goods are as per contract between the buyer and beneficiary or not.
- b: **Issuing bank** - Importer's or buyer's bank who lends its name or credit. It is liable for payment once the documents under LC are received by it from nominated (negotiating) bank, irrespective of the fact whether it is able to recover the payment from applicant or not. It gets 5 banking days to check the documents.
- c: **Advising bank** - Issuing bank's branch (or correspondent in exporter's country) to whom the letter of credit is sent for onward transmission to the seller or beneficiary, after authentication of genuineness of the credit. Where it is unable to verify the authenticity, it can seek instructions from the opening bank or can advise the LC to beneficiary, without any liability on its part. This bank has no obligation to negotiate the documents.
- d. **Beneficiary** - The party to whom the credit is addressed i.e. seller or supplier or exporter. It gets payment against documents as per LC from the nominated bank within validity period for negotiation, maximum 21 days from date of shipment.
- e: **Negotiating bank** - The bank to whom the beneficiary presents the documents for negotiation. It claims payment from the reimbursing bank or opening bank and gets 5 banking days to check the documents.
- f: **Reimbursing bank**- 3rd bank which repays, settles or funds the negotiating bank at the request of its principal, the issuing bank.
- g: **Confirming bank** - The bank adding confirmation to the credit, which undertakes the responsibility of payment by the issuing bank and on his failure to pay. The confirmation is added on request of the opening bank.

TYPES OF LETTERS OF CREDITS

DA (Usance) or DP LCs: DA LCs are those, where the payment is to be made on the maturity date in terms of the credit. The documents of title to goods are delivered to applicant merely on acceptance of documents for payment. He makes the payment on due date. To that extent these are unsecured.

DP LCs are those where the payment is made against documents on presentation.

Irrevocable & Revocable LCs: An irrevocable LC is one, which can be cancelled or amended with consent of beneficiary, applicant bank and confirming bank, if any.

A revocable credit is one that can be cancelled or amended at any time without the prior knowledge of the beneficiary. If the negotiating bank makes a payment to the seller prior to receiving notice of cancellation or amendment, the issuing bank must honour the liability. If nothing is stated, the LC is irrevocable.

With or without recourse LCs: Where the beneficiary holds himself liable to the holder

Of the bill if dishonoured, it is considered

with-recourse LC. Where he does not hold himself liable, the credit is said to be without-recourse.

As per RBI directive (Jan 23, 2003), banks should not open such LCs. Under LC, the Banks can negotiate bills bearing the 'without recourse' clause.

A restricted LC is one wherein a specified bank is designated to pay, accept or negotiate.

payment will be made. The confirming bank's liability is similar to the issuing bank. The confirming bank has to negotiate documents if tendered by the beneficiary.

Transferable LCs: It is an LC, where the beneficiary is entitled to transfer the LC, in whole or in part, to the 2nd beneficiary/s (supplier of beneficiary). The 2nd beneficiary, however, cannot transfer it further, but can transfer the unused portion, back to the original beneficiary. It is transferable only once.

A back to back credit is the 2nd LC opened by the original beneficiary in favour of the 1st beneficiary who is his local supplier. He tenders the original LC to the bank in his country as a cover for opening the 2nd LC. The terms of such credit would be identical except that the price may be lower and validity earlier.

A red clause credit also referred to a packing or anticipatory credit, has a clause permitting the correspondent bank in the exporter's country to grant advance to beneficiary at issuing bank's responsibility. These advances are adjusted from proceeds of the bills negotiated.

A green clause LC permits the advances for storage of goods in a warehouse in addition to pre-shipment advance. It is an extension of the red clause LC.

Standby credits is similar to performance bond or guarantee, but issued in the form of LC. The beneficiary can submit his claim by means of a draft accompanied by the requisite documentary evidence of performance, as stipulated in the credit.

Documentary Credits:

When LC specifies that the bills drawn under LC must - accompany documents of title to goods such as RRs or MIRs or Bills of lading etc. it is termed as Documentary Credit. If any such documents are not called, the credit is said to be Clean Credit.

Revolving Credits:

These LCs provide that the amount of drawings made there under would be reinstated and made available to the beneficiary again and again for further drawings during the currency of credit provided the applicant makes the payment of documents earlier negotiated. At times, an overall turnover cap is also stipulated.

Instalment Credit:

It is a letter of credit for the full value of goods but requires shipments of specific quantities of goods within nominated period and allows for part-shipment. In case any one instalment of shipment is missed, credit will not be available for that and subsequent instalment unless LC permits it.

DOCUMENTS UNDER LETTER OF CREDIT

Liability of an opening bank in a letter of credit arises, when the beneficiary delivers the documents strictly drawn as per terms of the letter of credit. These documents include the following:

Bill of exchange: This is the basic document which requires to be discharged by making the payment. It is defined u/s 5 of NI Act. The right to draw this document is available to beneficiary and the amount, tenor etc. has to be in terms of the credit.

Invoice : This document provides relevant details of the sale transaction, which is made in the name of the applicant, by the beneficiary. The details regarding, quantity, price, specification etc. should be same as mentioned in the letter of credit.

Transport documents: It evidences the despatch of the goods by the beneficiary, by handing over the goods to the agent of the applicant, which may be a ship, railways or a transport operator, who issues documents such as such as bill of lading, railway receipt, transport receipt. Other documents could be Airway Bill or Postal or courier receipt.

Insurance : The despatched goods are required to be insured for transit. Insurance policy or insurance certificate should be signed by the company or underwriter or their agent. Amount, kinds of risk etc. should be same as mentioned in the letter of credit.

Other documents: The letter of credit may also specify other documents to be presented along with the above documents which may include certificate of origin, certificate from health authorities etc.

UNIFORM CUSTOMS AND PRACTICES FOR DOCUMENTARY CREDITS (UCPDC-600)

Uniform Customs and Practices for Documentary Credits - 600 (referred to as UCP-600), prepared by ICC, Paris (by revising the UCPDC-500), has been implemented wef July 01, 2007. It is 6th revision of the Rules since first promulgation in 1933. The new document has 39 Articles (against 49 of UCPDC-500) with supplement for Electronic • Presentation covering 12 eArticles. UCPDC-600, shall be applicable to LCs that expressly indicate that these are subject to UCPDC-600.

ARTICLES OF UCPDC-600

Article-I : UCPDC-600 apply to any LC when its text expressly indicates that it is subject to these rules. The rules are binding on all parties thereto unless expressly modified or excluded by the credit.

Article-3 Interpretations:

A **credit is irrevocable** even if there is no indication to that effect.

On or about — Such expression will be interpreted as a stipulation that an event is to occur during a period of 5 calendar days before until 5 calendar days after the specified date, both start and end dates included.

The words '**to**', '**until**', '**from**' and '**between**' when used to determine a period of shipment include the date mentioned and the words '**before**' and '**after**' exclude the date mentioned.

The words '**from**' and '**after**' when used to determine a maturity date exclude the date mentioned.

The terms '**first half**' and '**second half**' of a month shall be construed respectively as the 1st to the 15th and the 16th to the last day of the month, all dates inclusive.

The terms '**beginning**', '**middle**' and '**end**' of a month shall be construed respectively as the 1st to

10th, the 11th to the 20th and the 21st to the last day of the month, all dates inclusive.

Branches in different countries are considered to be separate banks.

The **date of issuance** of the transport documents will be deemed to date of despatch, taking in charge or shipped on board and the date of shipment. If the transport document indicates, by stamp or notation, a date of despatch taking in charge or shipped on board, this date will be deemed to the date of shipment.

Trans-shipment means unloading from one means of conveyance and reloading to another means of conveyance (whether or not in different modes of transport) during the carriage, 'from the place of dispatch taking in charge or shipment to the place of final destination stated in the credit.

A clean transport documents is one bearing no clause of notation expressly declaring a defective condition of the goods or their packaging.

If there is no indication in the credit about **insurance coverage**, amount of insurance coverage must be at least 110% of CIF or CIP value of the goods.

Documents v. Goods: Banks deal with documents and not with goods, services or performance to which documents relate (Article-5)

Advising of Credits and Amendments: A credit and any amendment may be advised to a beneficiary through an advising bank. An advising bank advises the credit and any amendment without any undertaking to negotiate. By advising the credit, the advising bank signifies that it has satisfied itself as to the apparent authenticity of the credit and the advice accurately reflects the terms and conditions of the credit or amendment received.

Amendment: A credit can neither be amended nor cancelled without the agreement of the issuing bank, the confirming bank and the beneficiary. Partial acceptance is not allowed and will be deemed to be notification of rejection of the amendment.

Standard for Examination of Documents (Art-14)

A nominated bank and issuing bank shall each have a maximum of **5 banking days** following the day of presentation to determine if documents are in order.

A presentation must be made by or on behalf of the beneficiary not later than **21 calendar days** after the date of shipment as described in these rules, but in any event not later than the expiry date of the credit.

(c) A document may be dated prior to the issuance date of the credit, but must not be dated later than its date of presentation.

Tolerance in Credit Amount, Quantity and Unit Prices (Article-30):

The words "about" or "approx" used in connection with the amount of LC or the quantity or the unit price stated in the LC are to be construed as allowing a tolerance not to exceed 10% more or 10% less than the amount, the quantity or the unit price to which they refer.

A maximum tolerance of 5% more or 5% less than the quantity of the goods is allowed, where the credit does not state quantity in terms of a stipulated no. of packing units or individual items and the total amount of the drawings does not exceed the amount of LC.

Even when partial shipments are not allowed, a tolerance not to exceed 5% less than the amount of the credit is allowed, provided that the quantity of the goods, if stated in the credit, is shipped in full and a unit price, if stated in the credit, is not reduced or that sub-article 30 (b) is not applicable.

DEFINITIONS USED IN UCPDC-600

Advising Bank : The bank that advises the credit at the request of issuing bank.

Applicant : The party on whose request the credit is issued.

Banking day : A day when bank is regularly open at the place at which an act, subject to UCPDC rules, is to be performed.

Beneficiary : The party in whose favour a credit is issued.

Complying presentation : A presentation that is in accordance with the terms and conditions of the credit, the applicable provisions of UCPDC rules and international standard banking practices.

Confirmation : A definite undertaking of the confirming bank, in addition to that of the issuing bank, to honour or negotiate a complying presentation.

Confirming bank : The bank that adds its confirmation to a credit upon the issuing bank's authorization or request.

Credit (or LC) : Any arrangement, however named or described, that is irrevocable and thereby constitutes a definite undertaking of the issuing bank to honour a complying presentation.

Honour : (a) to pay at sight if the credit is available by sight payment. (b) to incur a deferred payment undertaking and pay at maturity if the credit is available by deferred payment (c) to accept a bill of exchange (draft) drawn by the beneficiary and pay at maturity if the credit is available by acceptance.

Issuing bank : Bank issuing LC at request of an applicant or on its own behalf.

Negotiation Purchase by the nominated bank of drafts (drawn on a bank other than the nominated bank) and/or documents under a complying presentation, by advancing or agreeing to advance funds to the beneficiary on or before banking day on which reimbursement is due to the nominated bank.

Nominated bank : The bank with which the credit is available or any bank in case of a credit available with any bank.

Presentation : Either the delivery of documents under a credit to the issuing bank or nominated bank or the documents so delivered.

Presenter : A beneficiary, bank or other party that makes a presentation.

Discounting of Bills by Banks under LC As per extant guidelines of RBI (Master Cir dated July 02, 2010) the banks are required to purchase / discount / negotiate bills under Letter of Credit (LC) only in respect of genuine commercial and trade transactions of their borrower constituents who have been sanctioned regular credit facilities by the banks. RBI has reviewed the above instructions (Aug 03, 2007) and decided as under:

In cases where negotiation of bills drawn under LC is restricted to a particular bank, and the beneficiary of the LC is not a constituent of that bank, the bank concerned may negotiate such an LC, subject to the condition that the proceeds will be remitted to the regular banker of the beneficiary. However, the prohibition regarding negotiation of unrestricted LCs of non-constituents will continue to be in force. The banks may negotiate bills drawn under LCs, on 'with recourse' or 'without recourse' basis, as per their discretion and based on their perception about the credit worthiness of the LC issuing bank. However, the restriction on purchase/discount of other bills (the bills drawn otherwise than under LC) on 'without recourse' basis will continue to be in force.

Case Laws on Responsibility of Paying Bank

The negotiable instruments Act 1881 lays down the rules relating to payment of customers cheque and various subsections deal with the protection available to the paying Banker.

When customer deposits money with the bank, the customer is creditor and bank is a debtor. Therefore whenever the customer demands back the money, the bank has the duty to pay back the money, in default of such payment, must compensate the drawer for any loss or damage. The bank has to honour the cheque provided, the cheque is properly drawn, duly signed by the maker and there should be "properly available fund" in his account. The funds may not be available to pay the cheque if:-

- a) the banker has exercised his right of set off for amounts due from the customer or
- b) there is an attachment order from court, Income Tax officer or any other lawful authority restraining the bank from paying the money.

Protection to paying banker: to claim protection under **N.I.** Act, the criteria are, it should be a "payment in due course". In case bank refuses payment wrongfully, then the bank is liable only to the drawer and not to endorsee or holder.

Payment in due course: Sec. 10 of **N.I.** Act. says payment in due course means payment according to the apparent tenor of the instrument in good faith and without negligence to any person in possession thereof under circumstances which does not afford a reasonable ground for believing that he is not entitled to receive payment of the amount therein mentioned. Sec 85 conditions to be satisfied for being a payment in due course.

- a) accordance with the apparent tenor of the instrument , b) in good faith
- c) Without negligence, d) To the person in possession of the instrument
- e) The banker should not have any reasons to "disbelieve" the integrity/honesty of the possessor, i.e. no reasons to think that he is not entitled to receive the payment.

Sec. 85 of the N.I Act provides protection to the paying banker.

1) An order cheque if endorsed by or on behalf of the payee, the banker is discharged by payment in due course

2) Once a bearer cheque, always a bearer cheque. The banker is discharged if in a bearer cheque, payment is made to the bearer, notwithstanding any endorsement. Sec. 89 of N.I Act states the effect of making payment on which alteration is not apparent, the banker is discharged.

Signature of the drawer is forged: When the customer's signature on the cheque is forged, there is no mandate to the bank to pay. As such a banker is not entitled to debit the customer's account on such forged cheque. A cheque in which drawer's signature is forged, that is not at all a cheque. It is nullify, avoid instrument.

servant or agent, i.e. payment must be made in due course. Sec. 89 of the **N.I** Act gives protection to the paying banker of a cheque which has been materially altered but does not appear to have been so altered, if payment was made according to the apparent tenor at the time of payment and otherwise in due course. In one case, the court was held the view that bank cannot be held guilty if on visual examination no sign of forgery or tampering with the writings on the cheque could be detected. But this cannot be taken as a general rule. Each situation or case has to be scrutinized on individual merit, and the bank cannot be fully absolved from the liability of negligence.

Payment by bank under mistake whether recoverable

The question whether a bank paying a forged cheque can recover the same from the payee. On different occasions, several courts have expressed different opinion. There are instances where the signature as well as other writings on the cheque was forged. The forgery was so perfect that it was not possible even for a trained eye to detect it. One court held the view that, so long as the status quo is maintained and the payee has not change

PROTECTION TO BANKERS

85-1 Paying banker protected by payment in due course of **order cheque** that bears **regular endorsement**.

Genuineness of endorsement is not to be ensured by the paying bank.

85-2 Protection to paying banker in case of a **bearer cheque**. Endorsement on a bearer cheque to be ignored.

85-A Protection to paying banker in case of **Bank drafts**.

89 Protection to paying bank for **materially altered instrument**.

128 Protection for payment in due course of **crossed cheques**

131 Protection to **collecting bank** for crossed cheques subject to compliance of conditions

131-A Protection to collecting bank for crossed bank drafts. If his position to his detriment, he must repay the money back to the payer.

CASE LAWS ON RESPONSIBILITY OF COLLECTING BANK

Collecting banker: The bank (agent) who collects the cheque and credits to his customer's account (Principal). Sec.131 of the N.I Act provides certain protection to the collecting banker. A banker, who has, in good faith and without negligence, received payment for a customer of a cheque crossed generally or specially to himself shall not, in case the title to the cheque proves defective, incur any liability to the true owner of the cheque by reason only of having received such payment. The protection under Sec. 131 is conditional, he (Bank) has to satisfy certain conditions: - The collecting banker should have acted in good faith. He should have acted without negligence, He should receive payment for a customer, The cheque should be crossed generally or specially to himself. The bank should not have been negligent; the bank will have to prove that it has taken all precautions that would be required of a prudent banker in collection of a cheque.

Opening of account: The bank should open an account of a new customer only after the new account holder has been properly introduced. Besides introduction, photograph, sufficient documentary proof for constitution and address to be obtained under the applicable KYC norms.

Proper introduction: The practice of banks in India is to obtain introduction from the existing account holders. The bank has to obtain references from the known persons of the locality. As per KYC norms, the bank has to obtain copy of passport, PAN card, voters ID card, Ration card, Electricity bill, telephone bill, Copy of Bank pass book with photo of any bank where the customer maintains account etc.etc:

General crossing and special crossing: Before accepting a cheque for collection, the bank should ensure that the cheque is either crossed generally or specially crossed to the collecting bank itself. If the cheque is crossed to another bank, then such cheque should not be accepted for collection. Similarly a cheque meant for collection and credit to a particular account should not be collected and credited to another account. Cheques favouring a firm or a limited company should not be credited to the personal account of the MD's, Directors or Partners. It will amount to negligence on the part of the collecting banker and will lose protection under 131.

Status of the customer's account: The collecting banker is required to take into account the status of the customer and the various transactions taking place in his account to observe the standard of living conditions of the customer. If a man of small means and small income tenders cheques for huge amounts, Naturally the banker should make discreet enquiries as to the source of income, and the banker should desist from handling such cheques. It may lead to negligence or conversion.

Cheques payable to third parties: The collecting bank has to make necessary enquiries before any third party cheques are collected on behalf of its customer. As per the practice prevalent in India, as far as possible, banks should not collect third party cheques.

Non — negotiable crossing: In certain cheques we can see the wording "non - negotiable", especially some cheques drawn by LIC. Non — negotiable crossing is only an indication to the collecting banker and it has nothing to do with the paying banker. Non negotiable crossing does not restrict the transferability of cheques, but the only thing is that the transferee will not get a better title than what the transferor had. In other words, if it is a stolen or forged cheque, the transferee or the "holder in due course" will also get a defective title.

((For additional study please go through Module – B of Jaiib Paper)

Module: C

Banking Related Laws

Syllabus

- 1) **Recovery of Debts due to Banks and Financial Institutions Act, 1993(DRT Act)** - Objective of the Act, Constitution of Tribunal, Procedure to be followed, Enforcement process
- 2) **Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act (SARFAESI)** - Constitutional Validity; Definitions; Regulation & Reconstruction; Enforcement of Security Interest; Central Registry; Offences & Penalties; Miscellaneous Provisions
- 3) **Banking Ombudsmen Scheme** - Purpose; Extent; Definitions; Establishment; Powers; Procedure for Redressal Grievance
- 4) **Bankers Books Evidence Act, 1891** - Applicability; Definition; Important Provisions
- 5) **The Legal Services Authorities Act, 1987** - Lok Adalats- Organisation; Jurisdiction; Disposal of Cases; Awards
- 6) **The Consumer Protection Act, 1986 and CERSAI** - Preamble, Extent & Definitions; Consumer Protection Councils; Consumer Disputes Redressal Agencies; Objectives and important provisions of Central Registry of Securitisation Asset Reconstruction and Security Interest of India
- 7) **The Law of Limitation** - Definition; Computation of Limitation; Important Provisions in schedule to the Limitation Act
- 8) **Tax Laws** - Income Tax; Fringe Benefit Tax; Banking Cash Transaction Tax; Service Tax
- 9) **Negotiable Instruments Act, 1881** - Applicability; Definition; Important Provisions
- 10) **Payment & Settlements Systems Act, 2007** - Applicability; Definition; Important Provisions

BANKING RELATED LAWS

BANKERS' BOOK EVIDENCE ACT 1891

The Bankers' Books Evidence Act, 1891 extends to the whole of India except the State of Jammu and Kashmir.

Bankers' books include : Bankers' books include ledgers, day-books, cash-books, account-books and all other books used in the ordinary business of a bank whether kept in the written form or as printouts of data stored in a floppy, disc, tape or any other form of electromagnetic data storage device.

Certified copy: Certified copy means when the books of a bank,-

(a) **If maintained in written form, a copy of** any entry

in such books together with a certificate written at the foot of such copy that it is a true copy of such entry, that such entry is contained in one of the ordinary books of the bank and was made in the usual and ordinary course of business and that such books is still in the custody of the bank, and where the copy was obtained by mechanical or other process which in itself ensured the accuracy of the copy, a further certificate to that effect, but where the book from which such copy was prepared has been destroyed in the usual course of the bank's business after the date on which the copy has been so prepared, a further certificate to that effect, each such certificate being dated and subscribed by the principal accountant or manager of the bank with his name and official title; and

(b) **If consists of printouts of data** stored in a floppy, disc, tape or any other electro-magnetic data storage device, a printout of such entry or a copy of such printout together with such statements certified in accordance with the provisions of section 2A.

Conditions in the printout (2A)

A printout of entry or a copy of printout shall be accompanied by the following, namely :-

(a) a certificate to the effect that it is a printout of such entry or a copy of such printout by the principal accountant or branch manager ; and

(b) a certificate by a person in-charge of computer system containing a brief descriptions of the computer system and the particulars of-

(A) the safeguards adopted by system to ensure that data is entered or any other operation performed only by authorised persons;

(B) the safeguards adopted to prevent and detect unauthorised change of data;

(C) the safeguards available to retrieve data that is lost due to systemic failure or any other reasons;

(D) the manner in which data is transferred from the system to removable media like floppies, discs, tapes or other electro-magnetic data storage devices; the mode of verification in order to ensure that data has been accurately transferred to such removable media;

(E) the mode of identification of such data storage devices;

(F) the arrangements for the storage and custody of such storage devices;

(G) the safeguards to prevent and detect any tampering with the system; and

(H) any other factor which will vouch for the integrity and accuracy of the system.

(c) a further certificate from the person in-charge of the computer system to the effect that to the best of his knowledge and behalf, such computer system operated properly at the material time, he was provided with all the relevant data and the printout in question represents correctly, or is appropriately derived from, the relevant data.]

Power to extend provisions of Act (Sec 3) The State Government may, from time to time, by notification in the Official Gazette, extend the provisions of this Act to the books of any partnership or individual carrying on the business of bankers within the territories under its administration, and keeping a set of not less than three ordinary account books, namely, a cash book, a day-book or jogrhal, and a ledger, and may in like manner rescind any such notification.

Mode of proof of entries in bankers' books (Sec 4) A certified copy of any entry in a banker's books shall in all legal proceedings be received as prima facie evidence of the existence of such entry, and shall be admitted as evidence of the matters, transactions and accounts therein recorded in every case where, and to the same extent as, the original entry itself is now by law admissible, but not further or otherwise.

Case in which officer of bank not compellable to produce books (Sec 5) : No officer of a bank shall in any legal proceeding to which the bank is not a party be compellable to produce any banker's book the contents of which can be proved under this Act, or to appear as a witness to prove the matters, transactions and accounts therein recorded, unless by order of the Court or a Judge made for

special cause.

Inspection of books by order of Court or Judge

- (1) On the application of any party to a legal proceeding the Court or a Judge may order that such party be at liberty to inspect and take copies of any entries in a banker's book for any of the purposes of such proceeding, or may order the bank to prepare and produce, within a time to be specified in the order, certified copies of all such entries accompanied by a further certificate that no other entries are to be found in the books of the bank relevant to the matters in issue in such proceeding, and such further certificate shall be dated and subscribed in manner hereinbefore directed in reference to certified copies.

An order under this or the preceding section may be made either with or without summoning the bank, and shall be served on the bank three clear days (exclusive of bank holidays) before the same is to be obeyed, unless the Court or Judge shall otherwise direct.

- (3) The bank may at any time before the time limited for obedience to any such order as aforesaid either offer to produce their books at the trial or give notice of their intention to show cause against such order, and thereupon the same shall not be enforced without further order.

Costs (Sec 7)

- (1) The costs of any application to the Court or a Judge under or for the purposes of this Act and the costs of anything done or to be done under and order of the Court or a Judge made under or for the purposes of this Act shall be in the discretion of the Court or Judge, who may further order such costs or any part thereof to be paid to any party by the bank if they have been incurred in consequence of any fault or improper delay on the part of the bank.
- (2) Any order made under this section for the payment of costs to or by a bank may be enforced as if the bank were a party to the proceeding.
- (3) Any order under this section awarding costs may, on application to any Court of Civil Judicature designated in the order, be executed by such Court as if the order were a decree for money passed by itself

Provided that nothing in this sub-section shall be construed to derogate from any power which the Court or Judge making the order may possess for the enforcement of its or his directions with respect to the payment of costs.

Order of court to be construed to be order made by specified officer (Sec 8)

In the application of sections 5, 6 and 7 to any investigation or inquiry, the order of a court or a Judge referred to in the said sections shall be construed as referring to an order made by an officer of a rank not lower than the rank of a Superintendent of Police as may be specified in this behalf by the appropriate Government.

BANKING OMBUDSMAN SCHEME 2006

RBI notified the Banking Ombudsman Scheme 2006 (on Dec 26, 2005), in partial modification of its Banking Ombudsman Scheme 2002 to enlarge the extent and scope of the authority and functions of the Ombudsman, u/s 35A of Banking Regulation Act, 1949. The scheme that comes into force wef Jan 01, 2006 covers all commercial banks, regional rural banks and scheduled primary co-operative banks.

Objective: To facilitate the resolution of complaints relating to Banking services through conciliation and mediation between the bank and the aggrieved parties OR by passing an Award.

Who can be Ombudsman : CGM/GM —RBI (not exceeding 3 years at a time). Cost borne by RBI.

Who can file a Complaint : A person himself /his authorised representative (other than an advocate) can file the complaint on paper OR through electronic media (entail) OR forwarded by RBI or Central Govt. (For Credit card jurisdiction with reference to Ombudsman having jurisdiction over the billing address of the card holder).

Conditions: Complaints can be made when:

- a: the complaint was made to the bank and bank had rejected it OR no reply was received within a period of one month OR the complainant is not satisfied with the reply given by the bank;
- b: period of more than one year has not lapsed after receipt of bank reply.
- c: the complaint is not for issues already settled/dealt with Ombudsman OR for which proceedings before court, tribunal or arbitrator or any other forum is pending or a decree or Award or order has been passed;
- d: the complaint is within limitation period under Indian Limitation Act 1963.

Rejection of Complaint by Ombudsman Ombudsman can reject a complaint where it is frivolous, vexatious, beyond jurisdiction of Ombudsman etc. Customer can appeal against grounds of rejection

to Appellate Authority within 30 days of receipt of communication regarding rejection.

Process of redressal of grievance

By sending copy of the complaint to the bank and endeavour shall be made for a settlement by agreement through conciliation or mediation. The proceedings shall be summary in nature.

Award by the Ombudsman : Where a complaint is not settled by agreement within a **period of one month** from the date of receipt of the complaint, Ombudsman may pass an Award or reject the complaint, on the basis of evidence, the principles of banking law and practice, directions and guidelines issued by RBI.

Amount of award : Award shall specify the amount, to be paid by bank as compensation, not more than actual loss suffered as direct consequence of act of omission or commission of the bank OR Rs.10 lac, whichever is lower. A copy of the Award shall be sent to the complainant and the bank.

Effect of award : Award shall be binding on a bank only if the complainant sends acceptance of in **full and final** settlement, within 15 days from the date of receipt of the Award. Ombudsman may extend this period up to 15 days.

Implementation: Customer is to send acceptance of the award within 30 days of date of receipt of the award. Bank is to implement the award within one month from the date of receipt of the acceptance from the complainant and intimate compliance to the Banking Ombudsman.

Rejection of complaint : Rejection can be at any stage if it appears to be frivolous, vexatious, mala fide; OR without sufficient cause; OR not pursued by the complainant with diligence; OR there is no loss or damage or inconvenience caused to the complainant; or is beyond the pecuniary jurisdiction of Ombudsman. Appeal : The customer file an appeal Appellate Authority (Dy. Governor RBI) within 30 days of the date of receipt of the Award (could be extended by 30 days by Appellate Authority). For bank 30 days period begins from date of receipt of customer's acceptance.. The appeal by banks should be filed with sanction of the CMD /ED / CEO. The Appellate Authority may dismiss/allow the appeal; OR set aside the Award; OR remand the matter to Ombudsman for fresh disposal or modify the Award or pass any order as it may deem fit. Display of **salient features of the scheme** : The banks shall prominently display in all offices/branches of the bank and the name/address of Ombudsman. The banks shall appoint Nodal Officers at their RO/ZO and inform the the Ombudsman, who shall represent the bank/furnish information to the Ombudsman.

Ground of complaint : A complaint may relate to following aspects including loans and advances alleging deficiency in banking or other services:

- a non-payment or inordinate delay in the payment or collection of cheques, drafts, bills etc.;
- b non-acceptance of small denomination notes tendered for any purpose, and for charging of commission in respect thereof;
- c non-acceptance, without sufficient cause, of coins tendered and for charging of commission in respect thereof;
- d non-payment or delay in payment of, inward remittances ;
- e failure or delay to issue of drafts, pay orders or bankers' cheques; f non-adherence to prescribed working hours ;
- g failure to honour guarantee or letter of credit commitments ;
- h failure/dealy to provide a banking facility (other than loans) promised in writing by a bank or its direct selling agents;
- i delays, non-credit of proceeds to parties' accounts, non-payment of deposit or non-observance of RBI directives, applicable to rate of interest on deposits in any savings, current or other a/c
- j delays in receipt of export proceeds, handling of export bills, collection of bills etc., for exporters provided the said complaints pertain to the bank's operations in India;
- k complaints from NRIs having a/c in India for their remittances from abroad, deposits and other bank related matters;
- l refusal to open deposit a/c without any valid reason for refusal;
- m levying of charges without adequate prior notice to the customer;
- n non-adherence by the bank or its subsidiaries to the instructions of RBI on ATM/Debit card operations or credit card operations: non-disbursement or delay in disbursement of pension (to the extent the grievance can be attributed to the action on the part of the bank concerned, but not with regard to its employees);
- p refusal to accept or delay in accepting payment towards taxes, as required by Reserve Bank/Government;
- q refusal to issue or delay in issuing, or failure to service or delay in servicing or redemption of Government securities;

r forced closure of deposit a/c without due notice/sufficient reason;
s refusal to close or delay in closing the accounts;
t non-adherence to fair practices code as adopted by the bank;

Complaints pertaining to loans and advances

a non-observance of RBI Directives on interest rates;
b delays in sanction, disbursement or non-observance of time schedule for disposal of loan applications;
c non-acceptance of application without furnishing valid reasons
d non-observance of any other direction of RBI.

Non-implementation of award: Customer Service Committee of the Board -

Banks have been advised by RBI to ensure that the Awards of the Banking Ombudsmen are implemented immediately and with active involvement of Top Management. *With a view to enhancing the effectiveness of the Customer Service Committee*, banks have been advised by RBI to place all the awards before the Customer Service Committee to enable them to address issues of systemic deficiencies existing in banks, if any, brought out by the awards. Further, banks are to place all the awards remaining unimplemented for *more than 3 months*, before the Customer Service Committee to enable the Customer Service Committee to report to the Board such delays in implementation without valid reasons and for initiating necessary remedial action.

CONSUMER PROTECTION ACT (COPRA)

The Act was initially enacted during 1986 and implemented wef April 15, 1987 to enable the consumers to enforce rights as consumer through a simple legal procedure (not applicable in J&K). A comprehensive amendment (The Consumer Protection (Amendment) Act 2002) has been passed on Dec 17, 2002 (implemented wef March '15, 2003, the World Consumer Rights Day): The major provisions of the amended Act are as under:

Who is a consumer ? A person who buys goods or hires services for consideration for his/her use (and not for resale) is a consumer. Any user of such goods and services, with the permission of the buyer, is also a consumer.

Coverage : All goods and services including banking, insurance, transport, processing, electricity, physicians etc. in private, public and cooperative sector, are covered under the Act. All banking services are covered due to their being essential services)

Who can file a complaint - A consumer individually or jointly, any voluntary consumer organisation, central or state Govt.

Limitation period : Two years from the date of cause of action.

Pecuniary (financial) jurisdiction of different authorities is as under:

Distt Forum (Distt.Judge)*	Up to Rs. 20 lac (prey. up to Rs. 5 lac)
State Commission (High Court Judge)*	Up to Rs. 100 lac (prey up to Rs. 20 lac)
National Commission (Supreme Court Judge)*	Above Rs.100 lac (Prey above Rs. 20 lac)

*Powers of President of the forum equal to

Time limits for disposal - Endeavour is made to decide the complaint within the following time frame:

- A: Admissibility of the complaint from date of receipt of the complaint : within 21 days.
- B: Decision on complaint: Without analysis or testing of commodities : 3 months
- C With analysis or testing of commodities : 5 months

Requirement to file a complaint : A written complaint in duplicate, with name and address of the complainant and opposite party, facts of the complaint, copies of supporting documents and relief sought, is enough. No court fee is charged. Engaging- a - lawyer is not compulsory. Consumer or any one can represent his case. To protect his rights, a consumer should obtain proper receipt/cash memo for purchase made and guarantee/warranty card duly stamped and signed by the seller, wherever applicable.

Relief : Relief includes removal of defect from goods, removal of deficiencies in services, replacement by new goods free from defect, refund of price/charges, award of compensation for loss of injury suffered, discontinuance/non-repetition of unfair and restrictive trade practices, prohibition of sale of

goods of hazardous nature and providing for adequate cost to party.

Penalty for frivolous nature or for non-compliance of orders : Imprisonment for not less than one month and up to three years or fine not less than Rs. 2000 and up to Rs. 10000 or both.

Appeals - No appeal by a person (required to pay any amount in terms of order of Distt forum) shall be entertained by State Commission unless the appellant has deposited 50% of that amount or Rs. 25000, whichever is less. In case of appeal in National Commission against an order of State Commission the amount to be deposited should be 50% of that amount or Rs. 35000, whichever is less. In case of appeal in Supreme Court against an order of National Commission the amount to be deposited should be 50% of that amount or Rs. 50000, whichever is less. The period for appeal is limited to 30 days.

Certain other important aspects

- **Objective of CPA enactment** : Better protection of the interests of the consumers.
- **Who is a consumer** : A person who buys goods or hires and services, for payment / consideration.
- **What are various councils under the Act** : Central Consumer Protection Council, known as Central Council. One at each State level called State Council and another at District level called District Council.
- **Who can be president of Distt. Forum and what is composition** : Person qualified to be Distt. Judge is the President. There are two members, one of them being a woman.
- **Where the complaint can be made** : Within local limits of the Distt. Forum where the opposite party resides, carries on business or cause of action has arisen.
- **Whether transfer of a complaint once admitted is allowed** : It is permitted by National Commission.
- **What is composition of State Commission** : President, who is or has been Judge of High Court and two members, one of whom to be a woman.. Age criteria for the President is 5 years or till age of 67 years, whichever is earlier.
- **In how much period, the appeal can be disposed off** : Within 90 days of its admission.
- **What is composition of National Commission** : President, who is or has been Judge of Supreme Court and four members, one of whom to be a woman.
- **Who makes appointments at Distt forum, State Commission and National Commission** : State Govt., State Govt. and Central Govt. respectively.
- **Can a complaint be entertained after the expiry of limitation period** : At the discretion of Distt. Forum, State Commission or National Commission, if sufficient cause is shown for delay.

If a **persons fails to comply with the order, what are powers of the consumer courts** : Property of the person not complying with the order, can be attached. On request of the person entitled to the amount, the consumer court issues a certificate to the Distt. Collector. Distt. Collector recovers the amount as arrears of land revenue.

DEBT RECOVERY TRIBUNALS (DRT)

RECOVERY OF DEBTS DUE TO BANKS AND FINANCIAL INSTITUTIONS ACT, 1993

This Act extends to the whole of India except the State of Jammu and Kashmir and came into force on the 24th day of June, 1993.

Where applicable : Where the amount of debt due to any bank or financial institution or to a consortium of banks or financial institutions is Rs. 10 lakh or above or such other amount, being not less than Rs.1 lakh, as the Central Government may, by notification, specify.

Debt : debt means any liability (inclusive of interest) which is claimed as due from any person by a bank or a financial institution or by a consortium of banks or financial institutions during the course of any business activity undertaken by the bank or the financial institution or the consortium under any law for the time being in force, in cash or otherwise, whether secured or unsecured, or assigned, or whether payable under a decree or order of any civil court or any arbitration award or otherwise or under a mortgage. It should be legally recoverable on, the date of the application.

Presiding Officer of DRT: A person shall be qualified for appointment as the Presiding Officer of a Tribunal (called President) if he is, or has been, or is qualified to be, a District Judge. He shall hold office for a term of 5 years from the date on which he enters upon his office or until he attains the

age of 62 years, whichever is earlier. **Presiding officer of Appellate Tribunal (DRAT):** An Appellate Tribunal shall consist of one person only (Chairperson) to be appointed, by the Central Government. He shall hold office for a term of 5 years from the date on which he enters upon his office or until he attains the age of 65 years. Whichever is earlier.

A person shall be qualified for appointment as the Chairperson of an Appellate Tribunal if he :

- (a) is, or has been, or is qualified to be, a Judge of a High Court; or
- (b) has been a member of the Indian Legal Service and has held a post in Grade I of that service for at least three years; or
- (c) has held office as the Presiding Officer of a Tribunal for at least *three* years.

Resignation : The Presiding Officer of a Tribunal or the Chairperson of an Appellate Tribunal may resign his office. Unless permitted by the Central Government to relinquish his office sooner, he shall continue to hold office until **the** expiry of 3 months from the date of receipt of such notice or until a person duly appointed as his successor **enters** upon his office or until the expiry of his term of office, *whichever is the earliest*.

Removal : The Presiding Officer of a Tribunal or the Chairperson of an Appellate Tribunal shall not be removed from his office except by an order made by the Central Government on the ground of proved misbehaviour or incapacity after inquiry,

- (a) in the case of the Presiding Officer of a Tribunal made by a Judge of a High Court;
- (b) in the case of the Chairperson of an Appellate Tribunal, made by a Judge of the Supreme Court, in which the Presiding Officer of a Tribunal or the Chairperson of an Appellate Tribunal the Presiding Officer concerned has been informed of the charges against him and given a reasonable opportunity of being heard in respect of these charges.

JURISDICTION, POWERS AND AUTHORITY OF TRIBUNALS

Jurisdiction, powers and authority of Tribunals Section 17

- (1) DRT shall exercise, on and from the appointed day, the jurisdiction, powers and authority to entertain and decide applications from the banks and financial institutions for recovery of debts due to such banks and financial institutions.
- (2) DRAT shall exercise, on and from the appointed day, the jurisdiction, powers and authority to entertain appeals against any order made, or deemed to have been made, by a Tribunal under this Act.

Power of Chairperson of Appellate Tribunal (Section 17A) The Chairperson of DRAT shall exercise general power of superintendence and control over the Tribunals under his jurisdiction including the power of appraising the work and recording the annual confidential reports of Presiding Officers of DRTs.

Transfer of cases from one DRT to another : The Chairperson of an Appellate Tribunal having jurisdiction over the Tribunals may, on the application of any of the parties or on his own motion after notice to the parties, and after hearing them, transfer any case from one Tribunal for disposal to any other Tribunal.

Jurisdiction of other courts over eligible cases : (Sec 18) On and from the appointed day, no court or other authority shall have, or be entitled to exercise, any jurisdiction, powers or authority (except the Supreme Court, and a High Court exercising jurisdiction under Articles 226 and 227 of the Constitution) in relation to the matters specified in section 17.

PROCEDURE OF TRIBUNALS

Where the application to be made : (19-1) Where a bank or a financial institution has to recover any debt from any person, it may make an application to the Tribunal within the local limits of whose jurisdiction-

- (a) the defendant, or each of the defendants where there are more than one, at the time of making the application, actually and voluntarily resides, or carries on business, or personally works for gain; or
- (b) any of the defendants, where there are more than one, at the time of making the application, actually and voluntarily resides, or carries on business, or personally works for gain; or
- (c) the cause of action, wholly or in part, arises.

Joining the proceedings by other banks/FIs: (19-2) Where a bank or a financial institution, which has to recover its debt from any person, has filed an application to the Tribunal under sub-section (1) and against the same person another bank or financial institution also has a claim to recover its debt, then, the later bank or financial institution may join the applicant bank or financial institution at any stage of the proceedings, before the final order is passed, by making an

application to that Tribunal.

Issue of summons: On receipt of the application as above, DRT shall issue summons requiring the defendant to show cause within 30 days of the service of summons as to why the relief prayed for should not be granted.

Written statement by the defendant: Defendant shall, at or before the first hearing or within such time as the Tribunal may permit, present a written statement of his defence.

Claim by defendant : Where the defendant claims to set-off against the applicant's demand any ascertained sum of money legally recoverable by him from such applicant, the defendant may, at the first hearing of the application, but not *afterwards* unless permitted by the Tribunal, present a written statement containing the particulars of the debt sought to be set-off.

Effect of claim by defendant: The written statement shall have the same effect as a plaint in a cross-suit so as to enable the Tribunal to pass a final order in respect both of the original claim and of the set-off.

Counter claim by defendant : A defendant in an application may, in addition to his right of pleading a setoff as above, set up, by way of counter-claim against the claim of the applicant, any right or claim in respect of a cause of action accruing to the defendant against the applicant either before or after the filing of the application but before the defendant has delivered his defence or before the time limited for delivering his defence has expired, whether such counter-claim is in the nature of a claim for damages or not.

Effect of counter claim by defendant: A counterclaim shall have the same effect as a cross-suit so as to enable the Tribunal to pass a final order on the same application, both on the original claim and on the counter-claim.

Answer to counter-claim by applicant bank/FIs: The applicant shall be at liberty to file a written statement in answer to the counter-claim of the defendant within such period as may be fixed by the Tribunal.

Exclusion of counter claim from the main suit: Where the defendant sets up a counter-claim and the applicant contends that the claim thereby raised ought not to be disposed of by way of counter-claim but in an independent action, the applicant may, at any time before issues are settled in relation to the counter-claim, apply to the Tribunal for an order that such counter-claim may be excluded, the Tribunal may, on the hearing of such application make such order, as it thinks fit.

interim Order by -DRT: The Tribunal may make an interim order (whether by way of injunction or stay or attachment) against the defendant to debar him from transferring, alienating or otherwise dealing with, or disposing of, any property and assets belonging to him without the prior permission of the Tribunal.

Furnishing of other securities by the defendant: Where, at any stage of the proceedings, the Tribunal is satisfied, by affidavit or otherwise, that the defendant, with intent to obstruct or delay or frustrate the execution of any order for the recovery of debt that may be passed against him,

- (i) is about to dispose of the whole or any part of his property; or
- (ii) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Tribunal or
- (iii) is likely to cause any damage or mischief to the property or affect its value by misuse or creating third party interest, the Tribunal may direct the defendant, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the Tribunal, when required, the said property or the value of the same, or such portion thereof as may be sufficient to satisfy the certificate for the recovery of debt, or to appear and show cause why he should not furnish security.

Attachment by DRT on failure of defendant: Where the defendant fails to show cause why he should not furnish security, or fails to furnish the security required, within the time fixed by the Tribunal, the Tribunal may order the attachment of the whole or such portion of the properties claimed by the applicant as the properties secured in his favour or otherwise owned by the defendant as appears sufficient to satisfy any certificate for the recovery of debt.

Further the applicant shall, unless the Tribunal otherwise directs, specify the property required to be attached and the estimated value thereof. The Tribunal may also in the order direct the conditional attachment of the whole or any portion of the property. If an order of attachment is made without complying with the provisions of above requirement, such attachment shall be void.

Disobedience of order of DRT: In the case of disobedience of an order made by the Tribunal or breach of any of the terms on which the order was made, the Tribunal may order the properties of the person guilty of such disobedience or breach, to be attached and may also order such person to be detained in the civil prison for a term not exceeding three months, unless in the meantime the Tribunal

directs his release.

Appointment of receiver etc: Where it appears to the Tribunal to be just and convenient, the Tribunal may, by order -

- (a) appoint a receiver of any property, whether before or after grant of certificate for recovery of debt;
 - (b) remove any person from the possession or custody of the property;
 - (c) commit the same to the possession, custody or management of the receiver;
 - (d) confer upon the receiver all such powers, as to bringing and defending suits in the courts or filing and defending applications before the Tribunal and for the realization, management, protection, preservation and improvement of the property, the collection of the rents and Profits thereof,
 - (e) the application and disposal of such rents and profits, and the execution of documents as the owner himself has, or such of those powers as the Tribunal thinks fit; and appoint a Commissioner for preparation of an inventory of the properties of the defendant or for the sale thereof.
- (f) Where a certificate of recovery is issued against a company registered under the Companies Act, 1956, the Tribunal may order the safe proceeds of such company to be distributed among its secured creditors in accordance with the provisions of section 529A of the Companies Act, 1956 and to pay the surplus, if any, to the company.
- (g) The Tribunal may, after giving the applicant and the defendant an opportunity of being heard, pass such interim or final order, including the order for payment of interest from the date on or before which payment of the amount is found due up to the date of realisation or actual payment, on the application as it thinks fit to meet the ends of justice.

Copy to applicant and defendant: The Tribunal shall send a copy of every order passed by it to the applicant and the defendant. **Certificate of recovery:** The Presiding Officer shall issue a certificate under his signature on the basis of the order of the Tribunal to the Recovery Officer for recovery of the amount of debt specified in the certificate.

Copy of order to other DRTs: Where the Tribunal, which has issued a certificate of recovery, is satisfied that the property is situated within the focal limits of the jurisdiction of two or more Tribunals, it may send the copies of the certificate of recovery for execution to such other Tribunals where the property is situated. In case where the Tribunal to which the certificate of recovery is sent for execution finds that it has no jurisdiction to comply with the certificate of recovery, it shall return the same to the Tribunal which has issued it.

Time limit for decision : The application made to the Tribunal shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the application finally within 180 days from the date of receipt of the application.

Appeal to the Appellate Tribunal (Section 20)

Any person aggrieved by an order made, or deemed to have been made, by a Tribunal under this Act, may prefer an appeal to an Appellate Tribunal having jurisdiction in the matter. No appeal shall lie to the Appellate Tribunal from an order made by a Tribunal with the *consent of the parties*.

Period of appeal : Every appeal shall be filed within a period of 45 days *from the date on which a copy of the order made, or deemed to have been made, by the Tribunal is received by him* and it shall be in such form and be accompanied by such fee as may be prescribed. DRAT may entertain an appeal after the expiry of the said period of forty five days if it is satisfied that there was sufficient cause for not filing it, within that period.

Powers of DRAT: On receipt of an appeal, the Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against. DRAT shall send a copy of every order made by it to the parties to the appeal and to the concerned Tribunal.

Time limit for decision : The appeal filed before the Appellate Tribunal shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within 6 months from the date of receipt of the appeal.

Deposit of amount of debt due, on filing appeal (Section 21) : Where an appeal is preferred by any person from whom the amount of financial debt is due to a bank or a financial institution or a consortium of banks or financial institutions, such appeal shall not be entertained by the Appellate Tribunal unless such person has *deposited with the Appellate Tribunal 75% of the amount of debt so due from him as determined by the Tribunal under section 19*. DRAT may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this section.

Procedure and powers of the Tribunal and the Appellate Tribunal (Sec 22)

DRT/DRAT shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice. The Tribunal and the Appellate Tribunal shall have powers to regulate their own procedure including the places at which they shall have their sittings.

DRT/DRAT shall have, for the purposes of discharging their functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely,-

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) issuing commissions for the examination of witnesses or documents;
- (e) reviewing its decisions;
- (f) dismissing an application for default or deciding it ex parte;
- (g) setting aside any order of dismissal of any application for default or any order passed by it ex parte;
- (h) any other matter which may be prescribed.

Status of proceeding at DRT/DRAT : Any proceeding before the Tribunal or the Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196 of the Indian Penal Code, and the Tribunal or the Appellate Tribunal shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

Engagement of advocates etc (Section 23)

- (1) A bank or a financial institution making an application to a Tribunal or an appeal to an Appellate Tribunal may authorise one or more legal practitioners or any of its officers to act as Presenting Officers and every person so authorised by it may present its case before the Tribunal or the Appellate Tribunal.
- (2) The defendant may either appear in person or authorise one or more legal practitioners or any of his or its officers to present his or its case before the Tribunal or the Appellate Tribunal.

Limitation (Sec 24) : The provisions of the Limitation Act, 1963, shall, as far as may be, apply to an application made to a Tribunal.

RECOVERY OF DEBT DETERMINED BY TRIBUNAL

Modes of recovery of debts (Sec 25)

The Recovery Officer shall, on receipt of the copy of the certificate, proceed to recover the amount of debt specified in the certificate by one or more of the following modes, namely,-

- (a) attachment and sale of the movable or immovable property of the defendant;
- (b) arrest of the defendant and his detention in prison;
- (c) appointing a receiver for the management of the movable or immovable properties of the defendant.

Validity of certificate and amendment thereof (Sec 26)

- (1) It shall not be open to the defendant to dispute before the Recovery Officer the correctness of the amount specified in the certificate, and no objection to the certificate on any other ground shall also be entertained by the Recovery Officer.
- (2) The Presiding Officer shall have power to withdraw or cancel the certificate or correct any clerical or arithmetical mistake in the certificate by sending an intimation to the Recovery Officer.

Stay of proceedings under certificate and amendment or withdrawal thereof (Sec 27) :

- (1) Presiding Officer may grant time for the payment of the amount, and thereupon the Recovery Officer shall stay the proceedings until the expiry of the time so granted.
- (2) Presiding Officer shall keep the Recovery Officer informed of any amount paid or time granted for payment, subsequent to the issue of such certificate to the Recovery Officer.
- (3) Where the order giving rise to a demand of amount for recovery of debt has been modified in appeal and, as a consequence thereof the demand is reduced, the Presiding Officer shall stay the recovery of such part of the amount of the certificate as pertains to the said reduction for the

period for which the appeal remains pending.

Where a certificate for the recovery of debt has been received by the Recovery Officer and subsequently the amount of the outstanding demands is reduced or enhanced as a result of an appeal, the Presiding Officer shall, when the order which was the subject-matter of such appeal has become final and conclusive, amend the certificate or withdraw it, as the case may be.

Other modes of recovery (Sec 28)

(1) Where a certificate has been issued to the Recovery Officer, the Recovery Officer may, without prejudice to the modes of recovery specified in section 25, recover the amount of debt by any one or more of the modes provided under this section.

(2) If any amount is due from any person to the defendant, the Recovery Officer may require such person to deduct, from the said amount, the amount of debt due from the defendant under this Act and such person shall comply with any such requisition and shall pay the sum so deducted to the credit of the Recovery Officer: Nothing in this sub-section shall apply to any part of the amount exempt from attachment in execution of a decree of a civil court under section 60 of the Code of Civil Procedure, 1908 (5 of 1908).

3 (i) The Recovery Officer may, at any time or from time to time, by notice in writing, require any person from whom money is due or may become due to the defendant or to any person who holds or may subsequently hold money for or on account of the defendant, to pay to the Recovery Officer either forthwith upon the money becoming due or being held or within the time specified in the notice (not being before the money becomes due or is held), so much of the money as is sufficient to pay the amount of debt due from the defendant or the whole of the money when it is equal to or less than that amount.

(ii) A notice under this sub-section may be issued to any person who holds or may subsequently hold any money for or on account of the defendant jointly with any other person and for the purposes of this sub-section the shares of the joint holders in such amount shall be presumed, until the contrary is proved, to be equal.

(iii) A copy of the notice shall be forwarded to the defendant at his last address known to the Recovery Officer and in the case of a joint account to all the joint holders at their last addresses known to the Recovery Officer.

(iv) Save as otherwise provided in this sub-section, every person to whom a notice is issued under this sub-section shall be bound to comply with such notice, and, in particular, where any such notice is issued to a post office, bank, financial institution, or an insurer, it shall not be necessary for any pass book, deposit receipt, policy or any other document to be produced for the purpose of any entry, endorsement or the like to be made before the payment is made notwithstanding any rule, practice or requirement to the contrary.

(v) Any claim respecting any property in relation to which a notice under this sub-section has been issued arising after the date of the notice shall be void as against any demand contained in the notice.

(vi) Where a person to whom a notice under this sub-section is sent objects to it by a statement on oath that the sum demanded or the part thereof is not due to the defendant or that he does not hold any money for or on account of the defendant, then, nothing contained in this sub-section shall be deemed to require such person to pay any such sum or part thereof, as the case may be, but if it is discovered that such statement was false in any material particular, such person shall be personally liable to the Recovery Officer to the extent of his own liability to the defendant on the date of the notice, or to the extent of the defendant's liability for any sum due under this Act, whichever is less.

(vii) The Recovery Officer may, at any time or from time to time, amend or revoke any notice under this sub-section or extend the time for making any payment in pursuance of such notice.

(viii) The Recovery Officer shall grant a receipt for any amount paid in compliance with a notice issued under this sub-section, and the person so paying shall be fully discharged from his liability to the defendant to the extent of the amount so paid.

(ix) Any person discharging any liability to the defendant after the receipt of a notice under this sub-section shall be personally liable to the Recovery Officer to the extent of his own liability to the defendant so discharged or to the extent of the defendant's liability for any debt due under this Act, whichever is less.

(x) If the person to whom a notice under this subsection is sent fails to make payment in pursuance thereof to the Recovery Officer, he shall be deemed to be a defendant in default in respect of the amount specified in the notice and further proceedings may be taken against him for the realisation of the amount as if it were a debt due from him, in the manner provided

in sections 25, 26 and 27 and the notice shall have the same effect as an attachment of a debt by the Recovery Officer in exercise of his powers under section 25.

- (3) The Recovery Officer may apply to the court in whose custody there is money belonging to the defendant for payment to him of the entire amount of such money, or if it is more than the amount of debt due, an amount sufficient to discharge the amount of debt so due.
- (4A) The Recovery Officer may, by order, at any stage of the execution of the certificate of recovery, require any person, and in case of a company, any of its officers against whom or which the certificate of recovery is issued, to declare on affidavit the particulars of his or its assets.
- (5) The Recovery Officer may recover any amount of debt due from the defendant by distraint and sale of his movable property in the manner laid down in the Third Schedule to the Income Tax Act, 1961.

Application of certain provisions of Income Tax Act (Sec 29)

The provisions of the Second and Third Schedules to the Income Tax Act, 1961, and the Income Tax (Certificate Proceedings) Rules, 1962, as in force from time to time shall, as far as possible, apply with necessary modifications as if the said provisions and the rules referred to the amount of debt due under this Act instead of to the Income Tax Act: Any reference under the said provisions and the rules to the "assessee" shall be construed as a reference to the *defendant* under this Act.

Appeal against the order of Recovery Officer (Sec 30)

- (1) Any person aggrieved by an order of the Recovery Officer made under- this Act may, within 30 days from the date on which a copy of the order is issued to him, prefer an appeal to the Tribunal.
- (2) On receipt of an appeal, the Tribunal may, after giving an opportunity to the appellant to be heard, and after making such enquiry as it deems fit, confirm, modify or set aside the order made by the Recovery Officer in exercise of his powers under sections 25 to 28 (both inclusive).)

MISCELLANEOUS Transfer of pending cases (Sec 31)

(1) Every suit or other proceeding pending before any court immediately before the date of establishment of a Tribunal under this Act, being a suit or proceeding the cause of action whereon it is based is such that it would have been, if it had arisen after such establishment, within the jurisdiction of such Tribunal, shall stand transferred on that date to such Tribunal. Nothing in this sub-section shall apply to any appeal pending as aforesaid before any court.

(2) Where any suit or other proceeding stands transferred from any court to a Tribunal under subsection (1):

(a) the court shall, as soon as may be after such transfer, forward the records of such suit or other proceeding to the Tribunal; and

(b) the Tribunal may, on receipt of such records, proceed to deal with such suit or other proceeding, so far as may be, in the same manner as in the case of an application made under section 19 from the stage which was reached before such transfer or from any earlier stage as the Tribunal may deem fit.

Power of Tribunal to issue certificate of recovery in case of decree or order (Sec 31A)

- (1) Where a decree or order was passed by any court before the commencement of the Recovery of Debts Due to Banks and Financial Institutions (Amendment) Act, 2000 and has not yet been executed, then, the decree-holder may apply to the Tribunal to pass an order for recovery of the amount.
- (2) On receipt of an application under sub-section (1), the Tribunal may issue a certificate for recovery to a Recovery Officer.
- (3) On receipt of a certificate under sub-section (2), the Recovery Officer shall proceed to recover the amount as if it was a certificate in respect of a debt recoverable under this Act.

Overriding effect of the Act(Sec 34)

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

THE SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS & ENFORCEMENT OF SECURITY INTEREST (SARFAESI) ACT, 2002

The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, extends to the whole of India. It shall be deemed to have come into force on the 21st day of

June, 2002.

Asset reconstruction means acquisition by any securitisation company or reconstruction company of any right or interest of any bank or financial institution in any financial assistance for the purpose of realisation of such financial assistance;

Borrower means any person who has been granted financial assistance by any bank or financial institution or who has given any guarantee or created any mortgage or pledge as security for the financial assistance granted by any bank or financial institution and includes a person who becomes borrower of a securitisation company or reconstruction company consequent upon acquisition by it of any rights or interest of any bank or financial institution in relation to such financial assistance;

Default means non-payment of any principal debt or interest thereon or any other amount payable by a borrower to any secured creditor consequent upon which the account of such borrower is classified as non-performing asset in the books of account of the secured creditor in accordance with the directions or guidelines issued by the Reserve Bank;

Financial asset means debt or receivables and includes

- (i) a claim to any debt or receivables or part thereof, whether secured or unsecured; or
- (ii) any debt or receivables secured by, mortgage of, or charge on, immovable property; or a mortgage, charge, hypothecation or pledge of movable property; or
- (iii) any right or interest in the security, whether full or part underlying such debt or receivables; or any beneficial interest in property, whether movable or immovable, or in such debt, receivables, whether such interest is existing, future, accruing, conditional or contingent; or
- (iv) any financial assistance;

Hypothecation means a charge in or upon any movable property, existing or future, created by a borrower in favour of a secured creditor without delivery of possession of the movable property to such creditor, as a security for financial assistance and includes floating charge and crystallization of such charge into fixed charge on movable property;

Non-performing asset means an asset or account of a borrower, which has been classified by a bank or financial institution as sub-standard, doubtful or loss asset, in accordance with the directions or under guidelines relating to asset classifications issued by the Reserve Bank;

Obligor means a person liable to the originator, whether under a contract or otherwise, to pay a financial asset or to discharge any obligation in respect of a financial asset, whether existing, future, conditional or contingent and includes the borrower;

Originator means the owner of a financial asset which is acquired by a securitisation company or reconstruction company for the purpose of securitisation or asset reconstruction;

Property means-

- (i) immovable property;
- (ii) movable property;
- (iii) any debt or any right to receive payment of money, whether secured or unsecured;
- (iv) receivables, whether existing or future;
- (v) intangible assets, being know-how, patent, copyright, trade mark, licence, franchise or any other business or commercial right of similar nature;

Qualified institutional buyer means a financial institution, insurance company, bank, state financial corporation, state industrial development corporation, trustee or any asset management company making investment on behalf of mutual fund or provident fund or gratuity fund or pension fund or a foreign institutional investor registered under the Securities and Exchange Board of India Act, 1992 (15 of 1992) or regulations made there-under, or any other body corporate as may be specified by the Board;

Reconstruction company means a company formed and registered under the Companies Act, 1956 (1 of 1956) for the purpose of asset reconstruction;

Securitisation means acquisition of financial assets by any securitisation company or reconstruction company from any originator, whether by raising of funds by such securitisation company or reconstruction company from qualified institutional buyers by issue of security receipts representing undivided interest in such financial assets or otherwise; **Securitisation company** means any company formed and registered under the Companies Act, 1956 (1 of 1956) for the purpose of securitisation;

Secured creditor means any bank or financial institution or any consortium or group of banks or financial institutions and includes-

- (i) debenture trustee appointed by any bank or financial institution; or
- (ii) securitisation company or reconstruction company; or
- (iii) any other trustee holding securities on behalf of a bank or financial institution, in whose favour security interest is created for due repayment by any borrower of any financial assistance;

Security interest means right, title and interest of any kind whatsoever upon property, created in favour of any secured creditor and includes any mortgage, charge, hypothecation, assignment other than those specified in section 31;

Security receipt means a receipt or other security, issued by a securitisation company or reconstruction company to any qualified institutional buyer pursuant to a scheme, evidencing the purchase or interest in the financial asset involved in securitisation; acquisition by the holder thereof, of an undivided right, title or Sponsor means any person holding not less than ten per cent. of the paid-up equity capital of a securitisation company or reconstruction company;

REGULATION OF SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS

Securitisation & Reconstruction Companies : No securitisation company or reconstruction company shall commence or carry on the business of securitisation or asset reconstruction without obtaining a certificate of registration granted *under* this section; and having the owned fund of not less than Rs.2 cr or such other amount not exceeding 15% of total financial assets acquired or to be acquired by the securitisation company or reconstruction company, as the Reserve Bank may, by notification, specify. Reserve Bank may, by notification, specify different amounts of owned fund for different class or classes of securitisation companies or reconstruction companies.

Existing companies : A securitisation company or reconstruction company, existing on the commencement of this Act, shall make an application for registration to the Reserve Bank before the expiry of six months from such commencement and notwithstanding anything contained in this sub-section may continue to carry on the business of securitisation or asset reconstruction until a certificate of registration is granted to it or, as the case may be, rejection of application for registration is communicated it.

Registration with RBI : Every securitisation company or reconstruction company *shall* make an application for registration to the Reserve Bank in such form and manner as it may specify.

Process to be followed at RBI : Reserve Bank may, for the purpose of considering the application for registration of a securitisation company or reconstruction company to commence or carry on the business of securitisation or asset reconstruction, as the case may be, require to be satisfied, by an inspection of records or books of such securitisation company or reconstruction company, or otherwise, that the following conditions are fulfilled, namely:-

- (a) that the securitisation company or reconstruction company has not incurred losses in any of the three preceding financial years;
- (b) that such securitisation company or reconstruction company has made adequate arrangements for realisation of the financial assets acquired for the purpose of securitisation or asset reconstruction and shall be able to pay periodical returns and redeem on respective due dates on the investments made in the company by the qualified institutional buyers or other persons;
- (c) that the directors of securitisation company or reconstruction company have adequate professional experience in matters related to finance, securitisation and reconstruction;
- (d) that the board of directors of such securitisation company or reconstruction company does not consist of more than half of its total number of directors who are either nominees of any sponsor or associated in any manner with the sponsor or any of its subsidiaries;
- (e) that any of its directors has not been convicted of any offence involving moral turpitude;
- (f) that a sponsor, is not a holding company of the securitisation company or reconstruction company, as the case may be, or, does not otherwise hold any controlling interest in such securitisation company or reconstruction company;
- (g) that securitisation company or reconstruction company has complied with or is in a position to comply with prudential norms specified by the Reserve Bank. (4) The Reserve Bank may, after being satisfied that the conditions specified in subsection (3) are fulfilled, grant a certificate of registration to the securitisation company or the reconstruction company to commence or carry on business of securitisation or asset reconstruction, subject to such conditions, which it may consider, fit to impose.

Rejection of application by RBI : Reserve Bank may reject the application made if it is satisfied that the conditions are not fulfilled. Before rejecting the application, the applicant shall be given a reasonable opportunity of being heard.

Change in management/location : Every securitisation company or reconstruction company, shall obtain prior approval of the Reserve Bank for any substantial change in its management or change of location of its registered office or change in its name. The decision of the Reserve Bank, whether the change in management of a securitisation company or a reconstruction company is a substantial change in its management or not, shall be final.

Cancellation of certificate of registration: Reserve Bank may cancel a certificate of registration

- granted to a securitisation company or a reconstruction company, if such company-
- (a) ceases to carry on the business of securitisation or asset reconstruction; or
 - (b) ceases to receive or hold any investment from a qualified institutional buyer; or
 - (c) has failed to comply with any conditions subject to which the certificate of registration has been granted to it; or
 - (d) at any time fails to fulfill any of the conditions referred to in clauses (a) to (g) of sub-section (3) of section 3; or
 - (e) fails to-
 - (i) comply with any direction issued by the Reserve Bank under the provisions of this Act; or
 - (ii) maintain accounts in accordance with the requirements of any law or any direction or order issued by the Reserve Bank under the provisions of this Act; or
 - (iii) submit or offer for inspection its books of account or other relevant documents when so demanded by the Reserve Bank;
 - (iv) obtain prior approval of the Reserve Bank required under sub-section (6) of section 3:

Appeal for cancellation of registration : A securitisation company or reconstruction company aggrieved by the order of rejection of application for registration or cancellation of certificate of registration may prefer an appeal, within a period of thirty days from the date on which such order of rejection or cancellation is communicated to it, to the Central Government. Before rejecting an appeal such company shall be given a reasonable opportunity of being heard.

Circumstances when such companies would continue despite cancellation : A securitisation company or reconstruction company, which is holding investments of qualified institutional buyers and whose application for grant of certificate of registration has been rejected or certificate of registration has been cancelled shall, notwithstanding such rejection or cancellation be deemed to be a securitisation company or reconstruction company until it repays the entire investments held by it (together with interest, if any) within such period as the Reserve Bank may direct.

Acquisition of rights or interest in financial assets: A securitisation company or reconstruction company may acquire financial assets of any bank or financial institution-

- (a) by issuing a debenture or bond or any other security in the nature of debenture, for consideration agreed upon between such company and the bank or financial institution, incorporating therein such terms and conditions as may be agreed upon between them;
- (b) by entering into an agreement with such bank or financial institution for the transfer of such financial assets to such company on such terms and conditions as may be agreed upon between them.

Status of company on asset acquisition : If the bank or financial institution is a lender in relation to any financial assets acquired under sub-section (1) by the securitisation company or the reconstruction company, such securitisation company or reconstruction company shall, on such acquisition, be deemed to be the lender and all the rights of such bank or financial institution shall vest in such company in relation to such financial assets.

States of covenants prior to purchase : All contracts, deeds, bonds, agreements, powers-of-attorney, grants of legal representation, permissions, approvals, consents or no-objections under any law or otherwise and other instruments of whatever nature which relate to the said financial asset and which are subsisting or having effect immediately before the acquisition of financial asset and to which the concerned bank or financial institution is a party or which are in favour of such bank or financial institution shall, after the acquisition of the financial assets, be of as full force and effect against or in favour of the securitisation company or reconstruction company, as the case may be, and may be enforced or acted upon as fully and effectually as if, in the place of the said bank or financial institution, securitisation company or reconstruction company, as the case may be, had been a party thereto or as if they had been issued in favour of securitisation company or reconstruction company, as the case may be.

Notice to obligor and discharge of obligation of such obligor: The bank or financial institution may, if it considers appropriate, give a notice of acquisition of financial assets by any securitisation company or reconstruction company, to the concerned obligor and any other concerned person and to the concerned registering authority (including Registrar of Companies) in whose jurisdiction the mortgage, charge, hypothecation, assignment or other interest created on the financial assets had been registered.

Obligation of obligor : Where a notice of acquisition of financial asset under sub-section (1) is given by a bank or financial institution, the obligor, on receipt of such notice, shall make payment to the concerned securitisation company or reconstruction company, as the case may be, and payment made to

such company in discharge of any of the obligations in relation to the financial asset specified in the notice shall be a full discharge to the obligor making the payment from all liability in respect of such payment.

issue of security receipts : A securitisation company or reconstruction company, may, after acquisition of any financial asset offer security receipts to qualified institutional buyers (other than by offer to public) for subscription in accordance with the provisions of those Acts.

Raising of funds by ARC : A securitisation company or reconstruction company may raise funds from the qualified institutional buyers by formulating schemes for acquiring financial assets and shall keep and maintain separate and distinct accounts in respect of each such scheme for every financial asset acquired out of investments made by a qualified institutional buyer and ensure that realisations of such financial asset is held and applied towards redemption of investments and payment of returns assured on such investments under the relevant scheme.

Rights of Qualified Institutional buyers : In the event of non-realisation of financial assets, the qualified institutional buyers of a securitisation company or reconstruction company, holding security receipts of not less than 75% of the total value of the security receipts issued by such company, shall be entitled to call a meeting of all the qualified institutional buyers and every resolution passed in such meeting shall be binding on the company. These buyers shall, at a meeting follow the same procedure, as nearly as possible as is followed at meetings of the board of directors of the securitisation company or reconstruction company; as the case may be.

Exemption from registration of Security Receipt: A security receipt issued by the securitisation company or reconstruction company, as the case may be, and not creating, declaring, assigning, limiting or extinguishing any right, title or interest, to or in immovable property except in so far as it entitles the holder of the security receipt to an undivided interest afforded by a registered instrument; or any transfer of security receipts, shall not require compulsory registration.

Measures for assets reconstruction: A securitisation company or reconstruction company may, for the purposes of asset reconstruction, having regard to the guidelines framed by the Reserve Bank in this behalf, provide for any one or more of the following measures, namely:-

- (a) the proper management of the business of the borrower, by change in, or take over of, the management of the business of the borrower;
- (b) the sale or lease of a part or whole of the business of the borrower;
- (c) rescheduling of payment of debts payable by the borrower;
- (d) enforcement of security interest in accordance with the provisions of this Act;
- (e) settlement of dues payable by the borrower;
- (f) taking possession of secured assets in accordance with the provisions of this Act.

Other functions of securitisation company or reconstruction company: A securitisation company or reconstruction company may:

- (a) act as an agent for any bank or financial institution for the purpose of recovering their dues from the borrower on payment of such fees or charges as may be mutually agreed upon between the parties;
- (b) act as a manager referred to in clause (c) of subsection (4) of section 13 on such fee as may be mutually agreed upon between the parties;
- (c) act as receiver if appointed by any court or tribunal: Provided that no securitisation company or reconstruction company shall act as a manager if acting as such gives rise to any pecuniary liability. However, no securitisation company or reconstruction company granted a certificate of registration shall commence or carry on, without prior approval of the Reserve Bank, any business other than that of securitisation or asset reconstruction:

Resolution of disputes: Where any dispute relating to securitisation or reconstruction or non-payment of any amount due including interest arises amongst any of the parties, namely, the bank, or financial institution, or securitisation company or reconstruction company or qualified institutional buyer, such dispute shall be settled by conciliation or arbitration as provided in the Arbitration and Conciliation Act, 1996 (26 of 1996), as if the parties to the dispute have consented in writing for determination of such dispute by conciliation or arbitration and the provisions of that Act shall apply accordingly.

ENFORCEMENT OF SECURITY INTEREST Notwithstanding the provisions in Section 69 or section 69A of the Transfer of Property Act, 1882 (4 of 1882), any security interest created in favour of any secured creditor (charge created) may be enforced (security may be sold), without the intervention of the court or tribunal, by such creditor in accordance with the provisions of this Act.

Issue of notice for payment of dues: Where any borrower, who is under a liability to a secured

creditor under a security agreement, makes any default in repayment of secured debt or any instalment thereof, and his account in respect of such debt is classified by the secured creditor as non-performing asset, the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor within 60 days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under this Act.

Contents of the notice : The notice shall give details of the amount payable by the borrower and the secured assets intended to be enforced by the secured creditor in the event of non-payment of secured debts by the borrower.

Failure of the borrower : In case the borrower fails to discharge his liability in full within the stipulated period, the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely:-

- a) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realizing the secured asset;
- (b) take over the management of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale and realise the secured asset; appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor;
- (c) require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt.

if borrower makes the payment : Any payment made by any person to the secured creditor shall give such person a valid discharge as if he has made payment to the borrower.

Effect of possession by the secured creditor : Any transfer of secured asset after taking possession thereof or take over of management, by the secured creditor or by the manager on behalf of the secured creditor shall vest in the transferee all rights in, or in relation to, the secured asset transferred as if the transfer had been made by the owner of such secured asset.

Costs and charges : Where any action has been taken against a borrower under the above provisions, all costs, charges and expenses which, in the opinion of the secured creditor, have been properly incurred by him or any expenses incidental thereto, shall be recoverable from the borrower and the money which is received by the secured creditor shall, in the absence of any contract to the contrary, be held by him in trust, to be applied, firstly, in payment of such costs, charges and expenses and secondly, the dues of the secured creditor and the residue of the money so received shall be paid to the person entitled thereto in accordance with his rights and interests.

Payment of dues after possession but before sale : If the dues of the secured creditor together with all costs, charges and expenses incurred by him are tendered to the secured creditor at any time before the date fixed for sale or transfer, the secured asset shall not be sold or transferred by the secured creditor, and no further step shall be taken by him for transfer or sale of that secured asset.

Sale of assets in case of consortium : In the case of financing of a financial asset by more than one secured creditors or joint financing of a financial asset by secured creditors, no secured creditor shall be entitled to exercise any or all of the rights conferred on him unless exercise of such right is agreed upon by the secured creditors representing not less than 60% in value of the amount outstanding as on a record date and such action shall be binding on all the secured creditors. In the case of a company in liquidation, the amount realised from the sale of secured assets shall be distributed in accordance with the provisions of section 529A of the Companies Act, 1956 (1 of 1956):

Companies in liquidation : In case of companies in liquidation, the liquidator shall intimate the secured creditor, the workmen's dues in accordance with the provisions of section 529A of the Companies Act, 1956 (1 of 1956) and in case such workmen's dues cannot be ascertained, the liquidator shall intimate the estimated amount of workmen's dues under that section to the secured creditor and in such case the secured creditor may retain the sale proceeds of the secured assets after depositing the amount of such *estimate dues* with the liquidator:

Dues of Workmen: In case the secured creditor deposits the estimated amount of workmen's dues, such creditor shall be liable to pay the balance of the workmen's dues or entitled to receive the excess amount, if any, deposited by the secured creditor with the liquidator. The secured creditor shall furnish an undertaking to the liquidator to pay the balance of the workmen's dues, if any.

Where liability is not discharged fully : Where dues of the secured creditor are not fully satisfied with the sale proceeds of the secured assets, the secured creditor may file an application in the form and manner as may be prescribed to the Debts Recovery Tribunal having jurisdiction or a competent court, as the case may be, for recovery of the balance amount from the borrower. Secured creditor shall be

entitled to proceed against the guarantors or sell the pledged assets without first taking any of the measures in relation to the secured assets under this Act.

Who shall exercise the rights of secured creditor: (Sec 12): The rights may be exercised by officers authorised in this behalf in such manner as may be prescribed (Chief Manager in a Public Sector Bank has been prescribed by the Govt.).

Restrictions on the borrower to deal with the assets : No borrower shall, after receipt of notice, transfer by way of sale, lease or otherwise (other than in the ordinary course of his business) any of his secured assets referred to in the notice, without prior written consent of the secured creditor.

Possession of assets : Role of Chief Metropolitan Magistrate or District Magistrate : Where the possession of any secured assets is required to be taken by the secured creditor or if any of the secured assets is required to be sold or transferred by the secured creditor under the provisions of this Act, the secured creditor may, for the purpose of taking possession or control of any such secured assets, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset or other documents relating thereto may be situated or found, to take possession thereof. Chief Metropolitan Magistrate or as the case may be, the District Magistrate shall, on such request being made to him-

(a) take possession of such asset and documents relating thereto; and (b) forward such asset and documents to the secured creditor. For the purpose of securing compliance with the above, the Chief Metropolitan Magistrate or the District Magistrate may take or cause to be taken such steps and use, or cause to be used, such force, as may, in his opinion, be necessary. Manner and effect of take over of management: When the management of business of a borrower is taken over by a secured creditor, the secured creditor may, by publishing a notice in a newspaper published in English language and in a newspaper published in an Indian language in circulation in the place where the principal office of the borrower is situated, appoint as many persons as it thinks fit-

(b) in a case in which the borrower is a company as defined in the Companies Act, 1956 (1 of 1956), to be the directors of that borrower *in* accordance with the provisions of that Act; or in any other case, to be the

(i) Administrator of the business of the borrower. On publication of a notice as above:

(a) in any case where the borrower is a company as defined in the Companies Act, 1956 (1 of 1956),

(b) all persons holding office as directors of the company and in any other case, *all* persons holding any office having power of superintendence, direction and control of the business of the borrower immediately before the publication of the notice under sub-section (1), shall be deemed to have vacated their offices as such;

(c) any contract of management between the borrower and any director or manager thereof holding office as such immediately before publication of the notice under sub-section (1), shall be deemed to be terminated;

(d) the directors or the administrators appointed under this section shall take such steps as may be necessary to take into their custody or under their control all the property, effects and actionable claims to which the business of the borrower is, or appears to be, entitled and all the property and effects of the business of the borrower shall be deemed to be in the custody of the directors or administrators, as the case may be, as from the date of the publication of the notice;

(e) the directors appointed under this section shall, for all purposes, be the directors of the company of the borrower and such directors or as the case may be, the administrators appointed under this section, shall alone be entitled to exercise all the powers of the directors or as the case may be, of the persons exercising powers of superintendence, direction and control, of the business of the borrower whether such powers are derived from the memorandum or articles of association of the company of the borrower or from any other source whatsoever.

(i) Position after management takeover : Where the management of the business of a borrower, being a company as defined in the Companies Act, 1956, is taken over by the secured creditor, then, notwithstanding anything contained such borrower, in the said Act or in the memorandum or articles of association of it shall not be lawful for the shareholders of such company or any other person to nominate or appoint any person to be a director of the company;

(ii) no resolution passed at any meeting of the shareholders of such company shall be given effect to unless approved by the secured creditor;

(iii) no proceeding for the winding up of such company or for the appointment of a receiver in respect thereof shall lie in any court, except with the consent of the secured creditor.

Restoration of management : Where the management of the business of a borrower had been taken over by the secured creditor, the secured creditor shall, on realisation of his debt in full, restore the management of the business of the borrower to him.

Compensation to directors for loss of office: No managing director or any other director or a manager or any person in charge of management of the business of the borrower shall be entitled to any compensation for the loss of office or for the premature termination under this Act of any contract of management entered into by him with the borrower.

BIFR cases — The cases already referred to BIFR can be called back if the majority of the lenders (75% in terms of value) agree for that.

Amount Ceiling — Loans with outstanding up to Rs.1 lac will not be covered under the provisions. Similarly, the security interest created in agriculture land and in those cases where the borrower has already paid 80% of the total dues to secured creditor, are also excluded from the purview.

Receipt of notice by the borrower : If, on receipt of the notice from the creditor, the borrower makes any representation or raises any objection, the secured creditor shall consider such representation or objection. If the secured creditor comes to the conclusion that representation or objection is not acceptable or tenable, he shall communicate within 15 days of receipt of such representation or objection, the reasons for nonacceptance of the representation or objection to the borrower.

Application by the borrower to DRT against possession: The borrower may make an application along with such fee as may be prescribed, to DRT, without deposit of any amount.

Action by DRT : On receipt of an application from the borrower. DRT shall consider whether any of the measures taken by the secured creditor for enforcement of security are in accordance with the provisions of this Act and fee rules made thereunder. If, DRT comes to the conclusion that any of the measures taken by the secured creditor are not in accordance with the provisions of the Act, it may by, order, declare the recourse to any one or more measures taken by the secured assets as invalid and restore the possession of the secured assets to the borrower.

If, DRT declares the recourse taken by a secured creditor is in accordance with the provisions of this Act and the rules made there-under, then, notwithstanding anything contained in any other law for the time being in force, the secured creditor shall be entitled to take recourse to one or more of the measures to recover his secured debt.

Appeal to DRAT and deposit of amount before appeal: No appeal shall be entertained by Appellate Tribunal unless the borrower has deposited with Appellate Tribunal 50% of the amount of debt due from him. *as claimed by the secured creditors* or determined by the DRT, whichever is less. The Appellate Tribunal may reduce the amount to not less than 25% of debt.

(An earlier provision Borrowers aggrieved by any action of a lender shall be able to approach DRTs but by depositing 75% of dues up front before appeal has been dispensed with by Supreme Court in its judgement dated April 09, 2004 while up-holding the constitutional validity of the Act)

Summary of Time Periods in SARFAESI Act

Notice before possession	60 days
Reply to objection by borrower	15 days
Borrower can approach DRT against possession notice	45 days
Appeal to DRAT against decision of DRT	30 days
Notice before sale	30 days
Period of balance payment 75% by the buyer of assets	15 days

Important Section in SARFAESI Act

60 days notice before possession	Sec 13 (2)
Assistance by Chief Metropolitan Magistrate or Distt. Magistrate in taking possession	Sec 14
Application to DRT against possession notice issued by the bank	Sec 17
Appeal against DRT to DRAT by depositing 50% amount	Sec 18

SALE OF CHARGED SECURITIES

Ministry of Finance notified (during Sept 2002) the rules for taking possession and subsequent sale of assets of defaulters called Securities Interest (Enforcement) Rules, 2002. Under these rules:

- lenders have been permitted to dispose off the assets that have been taken possession of, both through private treaty and public auction.

- **Possession :** Prior to _the_, sale of any immovable secured asset, an authorised officer of the lender would have to take possession of the same by service of a 60 days possession notice
- **Sale -** Sale by way of public tenders or through public auction has to be backed by public notices in two newspapers.
- **Minimum notice period :** A minimum 30 days' notice to be given to the owner after taking the possession by the authorised officer and the eventual sale of both movable and immovable properties.
- **Designated Official -** The authorised officer has to be an officer equivalent to a Chief Manager of a PSB or such person specified by the Board of the lenders. The Board can also appoint a manager who would manage the secured assets taken possession of by the lenders.
- **Reserve price -** Both for the movable and immovable assets the lenders would have to make proper valuation, prior to sale. The reserve price would have to be arrived at only after the valuation exercise:
- **Valuation of securities-** In case of movable secured assets, authorized officer will simply obtain an estimated value, for immovable property valuation to be obtained from a valuer approved by the lenders' Board of Directors.
- **Offer price -** In case where a price higher than the reserve price cannot be obtained, the asset can be disposed off at a lower price with the consent of both the borrower and lender except where the assets could have natural decay or where the cost of possession might exceed the value of sale. Sale will be confirmed after deposit of 25% by the highest bidder. Balance within 15 days of confirmation of sale.

Right to appeal (Sec 17) Any person (including borrower), aggrieved by any of the measures taken by the secured creditor or his authorised officer, may prefer an appeal to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measure had been taken.

(2) Where an appeal is preferred by a borrower, such appeal shall not be entertained by the Debts Recovery Tribunal unless the borrower has deposited with the Debts Recovery Tribunal seventy-five per cent. of the amount claimed in the notice referred to in sub-section of section 13:

Provided that the Debts Recovery Tribunal may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this section.

Save (3) provided in this Act, the Debts Recovery Tribunal shall, as far as may be, dispose of the appeal in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and rules made thereunder.

Appeal to Appellate Tribunal (Sec 18): Any person aggrieved, by any order made by the Debts Recovery Tribunal under section 17, may prefer an appeal to the Appellate Tribunal within 30 days from the date of receipt of the order of Debts Recovery Tribunal. The Appellate Tribunal shall, as far as may be, dispose of the appeal in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and rules made there under.

Right of borrower to receive compensation and costs in certain cases: If the Debts Recovery Tribunal or the Appellate Tribunal, as the case may be, on an appeal filed under section 17 or section 18 holds the possession of secured assets by the secure creditor as wrongful and directs the secured creditor to return such secured assets to the concerned borrower, such borrower shall be entitled to payment of such compensation and costs as may be determined by such Tribunal or Appellate Tribunal.

Central Registry of Securitisation Asset Reconstruction and Security Interest of India (CERSAI)

Central Registry of Securitisation Assets Reconstruction & Security Interest of India Govt. of India established the Central Registry of Securitisation Asset Reconstruction and Security Interest of India (CERSAI), a Govt. Company, U/S 25 of Companies Act, 1956 on Mar 31, 2011. It operates/maintains Central Registry functions as per SARFAESI Act 2002 under the superintendence and direction of Central Registrar. The majority shareholding (51%) is with Central Govt., Public Sector Banks and National Housing Bank.

Central Government may, set up a registry to be known as the *Central Registry* with its own seal for the purposes of registration of transaction of securitization and reconstruction of financial assets and creation of security interest under this Act. Central Government may define the territorial limits within which an office of the Central Registry may exercise its functions. The provisions of this Act pertaining to the Central Registry shall be in addition to any of the provisions contained in the Registration Act, 1908 (16 of 1908), the Companies Act, 1956 (1 of 1956), the Merchant Shipping Act, 1958 (44 of 1958), the Patents Act, 1970 (39 of 1970), the Motor Vehicles Act, 1988 (49 of 1988), and the Designs

Act, 2000 (16 of 2000) or any other law requiring registration of charges and shall not affect the priority of charges or validity thereof under those Acts or laws.

Central Registrar (Sec 21): Central Government may appoint a person for the purpose of registration of transactions relating to securitisation, reconstruction of financial assets and security interest created over properties, to be known as the Central Registrar. Central Government may appoint such other officers under the superintendence and direction of the Central Registrar.

Register of securitisation, reconstruction and security interest transactions (Sec 22) : A record called the Central Register shall be kept at the Head Office of the Central Registry (wholly or partly in computer, floppies, diskettes or in any other electronic form) for entering the particulars of the transactions relating to securitisation of financial assets; reconstruction of financial assets; and creation of security interest.

Filing of transactions of securitisation, reconstruction and creation of security interest (Sec 23)

The particulars of every transaction of securitisation, asset reconstruction or creation of security interest shall be filed, with the Central Registrar on payment of prescribed fee, within 30 days after the date of such transaction or creation of security, by the securitisation company or reconstruction company or the secured creditor, as the case may be. Central Registrar may allow the filing of the particulars of such transaction or creation of security within 30 days next following the expiry of the said period of 30 days on payment of additional fees not exceeding 10 times the amount of such fee.

Modification of security interest registered under this Act (Sec 24) : Whenever the terms or conditions, or the extent or operation of any security interest registered under this Chapter are or is reconstruction company or the secured creditors, as the case may be, to send to the Central Registrar, the particulars of such modification, and the provisions of this Chapter as to registration of a security interest shall apply to such modification modified, it shall be the duty of the securitisation company or the of such security interest.

Securitisation company or reconstruction company or secured creditors to report satisfaction of security interest (Sec 25): The securitisation/reconstruction company or the secured creditors, shall give intimation to the Central Registrar of the payment or satisfaction in full within 30 days from the date of such payment or satisfaction. The Central Registrar shall, send a notice to the securitization /reconstruction company or the secured creditors calling to show cause within a time not exceeding *fourteen days* as to why payment or satisfaction should not be recorded as intimated to the Central Registrar. If no cause is shown, the Central Registrar shall order that a memorandum of satisfaction shall be entered in the Central Register.

Right to inspect particulars of securitisation, reconstruction and security interest transactions

(Sec 26): The particulars of securitisation or reconstruction or security interest entered in the Central register of such transactions kept under section 22 shall be open during the business hours for inspection by any person on payment of such fees as may be prescribed. The Central Register maintained in electronic form, shall also be open during the business hours for the inspection of any person through electronic media on payment of such fees as may be prescribed.

OFFENCES AND PENALTIES

Penalties (Sec 27): If a default is made in filing under section 23, the particulars of every transaction of any securitisation or asset reconstruction or security interest created by a securitisation company or reconstruction company or secured creditors; or in sending under section 24, the particulars of the modification referred to in that section; or in giving intimation under section 25, every company and every officer of the company or the secured creditors and every officer of the secured creditor who is in default, shall be punishable with fine which may extend to Rs.5000 for every day during which the default continues.

Penalties for non-compliance of direction of Reserve Bank (Sec 28): If any securitisation company or reconstruction company fails to comply with any direction issued by the Reserve Bank under section 12, such company and every officer of the company who is in default, shall be punishable with fine which may extend to Rs.5 lac and in the case of a continuing offence, with an additional fine which may extend to Rs.10000 for every day during which the default continues.

Offences (Sec 29): If any person contravenes or attempts to contravene or abets the contravention of the provisions of this Act or of any rules made there under, he shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both. No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

MISCELLANEOUS : What kind of loans are not covered (Sec 31): Provisions of this Act not to apply in case of:

(a) a lien on any goods, money or security.

- (b) a pledge of movables;
- (c) creation of any security in any aircraft;
- (d) creation of security interest *in* any vessel;
- (e) any conditional sale, hire-purchase or lease or any other contract in which no security interest has been created;
- (f) any rights of unpaid seller under section 47 of the Sale of Goods Act, 1930 (3 of 1930);
- (g) any properties not liable to attachment or sale under Section 60 of the Code of Civil Procedure, 1908;
- (h) any security interest for securing repayment of any financial asset not exceeding Rs.1 lac;
- (i) any security interest created in agricultural land;
- (j) any case in which the amount due is less than 20% of the principal amount and interest thereon.

Civil court not to have jurisdiction (Sec 34): No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

Limitation (Sec 36): No secured creditor shall be entitled to take all or any of the measures section 13, unless his claim in respect of the financial asset is made within the period of limitation prescribed under the Limitation Act, 1963.

Power of Central Government to make rules (Sec 38): The Central Government may make rules for carrying out the provisions of this Act. Such rules may provide for all or any of the following matters, namely:-

- (a) the form and manner in which an application may be filed under section 13;
- (b) manner in which the rights of a secured creditor may be exercised by one or more of his officers under section 13;
- (c) the safeguards subject to which the records may be kept under section 22;
- (d) manner in which particulars of transaction of securitisation shall be filed under sec 23 and fee for filing such transaction;
- (e) the fee for inspecting particulars of transactions kept u/s 22 and entered in Central Register section 26;
- (f) the fee for inspecting the Central Register maintained in electronic form under section 26;

Type of transactions - It registers transactions relating to security interest over property and transactions of securitization and asset reconstruction. With registration of these transactions, a public data base is created about encumbrances created on properties to secure loans and advances given by banks/FIs, as also transactions of securitization or asset reconstruction undertaken under provisions of the SARFAESI Act.

The following transactions are not covered : (1) Securitization or asset reconstruction done outside the provisions of the SARFAESI Act ; or (2) Security interest created in favour of any lender not included in the definition, of bank or, FI as per SARFAESI Act. Who is covered : The secured creditors notified under the SARFAESI Act are to file the details mandatorily which include: (1) Banks (2) Financial Institutions (3) Debenture trustees appointed by any Bank or FIs (4) Securitization Company or Reconstruction Company (5) Any other trustee holding securities on behalf of a bank or FI. Others, not notified can also file their records. Time limit for filing details for registration:

- (a) Within 30 days of date of transaction.
- (b) For delay up to next 30 days, permission of Central Registrar and there after, permission of Central Govt. is required.

The right to enforce security U/S 13 of SARFAESI Act is not linked to the registration with the Central Registry and such enforcement can be done even if there is no registration with the Central Registry. The registration under SARFAESI Act is additional and does not affect the requirement of registration under Companies Act or Indian Registration Act. Search of records: The records maintained by the Central Registry are available for search by any lender or any other person, by paying fee of Rs.50. Forms:

Act or Indian Registration Act. Search of records: The records maintained by the Central Registry are available for search by any lender or any other person, by paying fee of Rs.50. Forms:

Form- 1 : For registration and modification

Form- 2 : For satisfaction

Form- 3 : For registration and modification of Securitization/Reconstruction transactions

Form-4: For satisfaction of Securitization/Reconstruction transactions

FEE

Within days of transaction	Up to Rs.5 lac	Above Rs.5 lac
1 st - 30 th day	Rs.250	Rs.500
Additional fee for delay:		
After date of transaction	Up to Rs.5 lac	Above Rs.5 lac
31 st - 40 th day	Rs.500	Rs.1000
41 st - 50 th day	Rs.1200	Rs.2500
51 st - 60 th day	Rs.2500	Rs.5000

LOK ADALAT

Lok Adalt is similar to a civil court which can be organized by the State Authority, the Distt. Authority, the Supreme Court • Legal Service Committee or High Court Legal Services Committee, at such intervals. and places as deemed appropriate. The Lok Adalts are created under Legal Services Authority Act 1987.

Jurisdiction and types of case : A Lok Adalt has jurisdiction to determine and arrive at a compromise or settlement between the parties to the dispute. It deals with the cases where (a) the parties to the dispute agree to refer the issue to Lok Adalt; (b) one of the parties approaches the Lok Malt and Lok Adalt is satisfied that there are chances of settlement. In such case, the Adalt issues notice to the other party; (c) in the opinion of the Lok Adalt, the cognizance of the dispute can be taken. Cases that cannot be taken up: The offences, which are compoundable under any Law, cannot be brought within the purview of the Lok Adalt. This implies that the Lok Adalt has no authority of its own, to pass judgements.

Awards of Lok Adalt: Their awards are in the form of consent decrees. NO appeal lies against such Awards which is binding on all parties. procedure and powers: Civil Procedure Code is applicable which means the Lok Adalt can send summons, take evidence on oath, initiate ex-parte proceedings, and determine court procedures. Where compromise is not reached: The case shall be returned back to the court from which the reference was received for continuing with the case, there.

RBI GUIDELINES ON LOK ADALTS

To make increasing use of the forum of Lok Adalats to settle banking disputes involving smaller amounts, RBI during April 2001 advised banks and financial institutions to follow the following guidelines for implementation:

1. Amount - Cases involving an amount up to Rs.20 lakh (R131 enhanced it from Rs.5 lac, Aug 03, 2004) may be referred to Lok Adalats.
2. Borrowers : All NPA accounts (other than time barred), both suit filed and non-suit filed, which are in "doubtful" and "loss" category. No cut off date is suggested since Lok Adalat is an on-going process.
3. Settlement Formula : It would be flexible with following essential parameters:
 - a A decree should be sought from the Lok Adalat for the principal amount and interest claimed in the suit, and after full payment of decree amount, a discharge certificate should be issued by the bank / financial institution.
 - b Repayment period to be within 1-3 years.
 - c The negotiated agreement should contain a default clause. If borrower does not pay due amount regularly, within the repayment period, entire debt will fall due for payment & bank may initiate legal proceedings.
 - d The representing Officers should have sufficient powers to accept the compromises worked out within bank policy framework and should respond pro-actively to the suggestion of the Presiding Officer of the Lok Adalat.

DRT LOK ADALATS

Banks can take up matters where outstanding exceed the ceiling of Rs.20 lac, with Lok Adalats organised by the Debt Recovery Tribunals / Debt Recovery Appellate Tribunals.

Supreme Court suggestion :Supreme Court has suggested that personal loan cases up to Rs.10 lac should preferably settled through Lok Adalats.

Organisational arrangements

The individual banks and financial institutions should be more pro-active and should take the responsibility of organising Lok Adalats. The institutions should get in touch with State / District / Taluk level Legal Services Authorities for organising Lok Adalats. The banks should report the progress to RBI, at quarterly intervals within one month from the quarters ending March, June, September and December. RBI

LIMITATION ACT 1963

Definition: "Period of limitation" means the period of limitation prescribed for any suit, appeal or application by the Schedule, and "prescribed period" means the period of limitation computed in accordance with the provisions of this Act.

Limitation and its computation: As per Section 3 of the Act, every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed although limitation has not been set up as a defence. For the purposes of this Act, a suit is instituted, when the plaint is presented to the proper officer. Any claim by way of a set off or a counter claim, shall be treated as a separate suit and shall be deemed to have been instituted- (i) in the case of a set off, on the same date as the suit in which the set off is pleaded; (ii) in the case of a counter claim, on the date on which the counter claim is made in court.

Computation of period of limitation:

1. When the prescribed limitation period expires on a day when the court is closed, the suit, appeal or application may be instituted, preferred or made on the day when the court re-opens.
2. Any appeal or any application, other than an application other than execution petitions may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.
3. In computing the period of limitation for any suit or application for the execution of a decree, the institution or execution of which has been stayed by injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded.
4. In computing the period of limitation for any suit of which notice has been given, or for which the previous consent or sanction of the Government or any other authority is required, in accordance with the requirements of any law for the time being in force, the period of such notice or, as the case may be, the time required for obtaining such consent or sanction shall be excluded.
arranged by DRT, cases involving amount of more than Rs 20 lakh can also be filed
1. In order to make a definite impact on reduction of NPAs, the scheme may include all NPA accounts, both suit filed and non-suit filed accounts, which are in "doubtful" and "loss" category, with outstanding balance up to Rs.20 lakh. No cut off date is suggested since Lok Adalat is an on-going process.
2. Repayment should be preferably by down payment and within a maximum period of 'lto 3 years.
3. Civil Procedure Code is applicable and they are civil courts for this purpose.
4. Filing a case with Lok Adalat does not extend limitation period.
5. . In computing the period of limitation for any suit the time during which the defendant has been absent from India and from the territories outside India under the administration of the Central Government, shall be excluded.
6. **Extension of Limitation Period:** Period of limitation can be extended by Acknowledgement of debt or part payment. In both cases, limitation period will start from the date of Acknowledgement or part payment. The acknowledgment or part payment should be by the borrower himself or his agent specifically authorized for this purpose; Acknowledgement or part payment should be before the expiry of limitation period. Once the limitation expires it can not be extended by part payment or acknowledgement of debt; The stamped acknowledgement of debt by the borrower before the expiry of documents does not automatically extend the period of limitation against the guarantor. Similarly, the acknowledgement of debt signed by the principal debtor and a surety does not bind another surety who has not joined in signing the acknowledgement / revival letter of debt; An admission of debt in the balance sheet filed by a firm before the I.T. Authority also extends the period of limitation from the date of (signing) the balance sheet. Such an acknowledgement does not require to be stamped. The balance sheet constitutes sufficient acknowledgement of debt in writing; in case limitation expires in a particular case, the liability can be revived by obtaining fresh promise to pay the outstanding debt. As per section 25 (3) of Indian Contract Ac, a time barred debt is a valid consideration. Limitation period of various documents is given below:

Description	Period of Limitation
Temporary Overdraft without DPN	3 years from date of loan
Demand Loan	3 years from the date of loan

Demand Promissory Note	3 years from date of DPN
Bill of exchange payable on demand	3 years from date of Bill.
Usance bill of exchange or promissory note	3 years from the due date of the bill or promissory note
Term Loans payable by instalments where creditor has no right to recall the advance for the reason of default	3 years from due date of each instalment
Mortgage	12 years from the due date of the loan
Right of foreclosure by the mortgagee	30 years from the date when money became due
Right of redemption	30 years from the date when the right to recover accrues.
For the balance due on a mutual, open and current account like cash credit	3 years from close of the financial year in which last item entered in the account is admitted or proved
Any suit by State/Central Government	30 years from the date when limitation would start
Money deposited payable on	3 years from date of demand

demand like SB , Current A/c	
Appeal to be filed to High Court against the judgement of Lower Court.	90 days from the date of decree
Appeal to be filed to other courts on the decree at Lower Court	30 days from the date of decree
Execution of Decree	12 years from the date of decree
Recovery of loss caused by fraud	3 years from the date of detection of fraud

TAX LAWS

TAX DEDUCTED AT SOURCE

Interest on deposits with banks:

- a) No tax is deducted at source on interest payable on saving bank deposits.
- b) TDS on interest on deposits will be deducted only if the interest paid or payable credited or to be credited in a financial year exceeds Rs.10,000.
- c) Rate of TDS : 10%
- d) Interest paid on NRE, FCNR accounts is exempt from income tax and therefore no deduction of tax at source.
- e) Submission of Form No.15G/15H : No deduction shall be made in the case of individual who is resident in India who furnishes a declaration in writing in duplicate in the prescribed form 15G (in.. the case of other than senior citizens) or on 15H in the case of senior citizens and satisfy the following conditions: (a) Depositor is a person other than a company or Firm. (b) Tax on the estimated income of the depositor for the financial year will be NIL. (c) The amount of interest on securities, dividends, Interest other than interest on securities, payment in respect of deposits under National Savings Scheme and income in respect of units credited or paid during the previous year does not exceed the maximum amount, which is not chargeable to income-tax. Condition at (c) is not applicable, if the depositor is a resident individual whose age is 65 years or more at any time during the financial year.
- f) In cases where the deductee who furnishes Form No. 15G or 15H but does not provide PAN, TDS will be deductible @ 20% w.e.f 01.04.2010.
- g) Declaration obtained on Form 15G or 15 H is to be obtained at the beginning of the every financial year or before the deduction of Tax at source. The declaration will remain valid only for one Assessment year. One copy of form 15G/15H is to be delivered by the branch/office to the

Income Tax Office on or before the seventh day of the succeeding month. In case the Forms are dispatched through post or courier or through any other medium, the same should reach the Assessing Officer latest by seventh day of succeeding month.

In case of joint account, and in the absence of any information to the contrary, both the persons can be treated as payees for the purposes of TDS. In such cases, the interest on a joint account may be aggregated with the interest on deposits in the individual account that has higher interest income.

- i) Where the depositor submits certificate from the Income Tax Assessing Officer for deducting tax at a lower rate or for not deducting tax at all, then, the bank will act as per the certificate issued by the Assessing Officer. The certificate is valid only for the person named therein and will remain valid for A.Y. so specified in certificate.

- j) Quarterly Return: As per amendment made in section 194 A (3) (1), the quarterly return u/s 206A shall have to be furnished if the payment of interest to a resident does not exceed Rs. 10,000/- where the payer is a banking company or a co-operative society .

2. Payment to Resident Contractors:

- a) The deduction will be made only where the amount of any sum credited or paid or likely to be credited or paid to the account of, or to, the contractor or sub-contractor exceeds Rs.30,000/- or more in a single payment or Rs.75,000/- in the aggregate during the financial year.
- b) Rate of TDS: 1% if the payment is to an individual or a **HUF** and 2% for payment to others. TDS is not deductible if contractor is engaged in transport business if PAN is furnished.

3. Brokerage/Commission other than Insurance Commission

- a) Tax will be deducted at source if the amount credited or paid or likely to be credited or paid exceeds Rs.5,000/- in a financial year. (b) Rate of TDS: 10%

4. Rent:

- a) Tax will be deducted at source if the amount of rent credited/paid during the financial year exceeds Rs.180000.
- b) Rate of TDS:(i)Rent of Plant or machinery or equipment: 2%; (ii) Rent of land, building furniture or fittings: 10%
- c) If there are a number of payees each having definite and ascertainable share in the property, the limit of Rs.1,80,000/- will apply to each of the payee/co-owner separately.
- d) The Tax Deducted at source under this section shall be required to be made on the amount of rent paid/payable without including service tax.

5. Fees for professional or technical services 'or Royalty:

- a) Tax will be deducted at source if the payment in a Financial year is more than Rs 30,000.
- b) Rate of Tax: 10%
- c) If a consolidated bill is given by a professional/ consultant for his fees as well as out of pocket expenditure, then the entire amount is subject to TDS. If a separate bill is given for reimbursement of out of pocket expenditure, then reimbursement of expenditure is not subject to tax deduction.

6. Interest Payments Made To Non-Residents Tax will be deducted at source on interest on deposits irrespective of type of account and amount of interest.

- a) Rates of TDS: (i) if the recipient is a non resident non corporate person:.. 30% plus education cess 2% and secondary and higher education cess 1% i.e. total TDS at the rate of 30.90%. No surcharge to be charged (ii) If the recipient is a non domestic company: 40% plus education cess @ 2% and secondary and higher education cess @1%. Further surcharge will be charged at 2.5% if aggregate payment or credit exceeds Rs 1 crore. (Total TDS will be 41.20% or 42.23%)

7. Time Limit For Depositing of TDS, Issuing TDS Cert. and Filing of Quarterly Return:

- a) Tax deducted should be deposited within one week from the last day of the month in which tax is deducted.
- b) However, if interest or amount of rent or commission or payment to contractor is credited to the account of the payee during March then TDS can be deposited upto 30th April.
- c) The statement of TDS should be sent on form 24 Q in the case of salaries, on form 26 Q in all other payments to residents and on form 27Q for all payments to non residents.
- d) The statement of TDS should be sent within 15 days from the end of quarter i.e. 15th July, 15th October, 15th January. In the case of last quarter of financial year, the return can be sent within 45 days i.e. by 15th May.
- e) The TDS certificate except in the case of salary should be issued in form No. 16A within 15 days from the due date of the quarterly statement. In the case of TDS on salary, the same should be issued on Form No. 16 and 12BA by 31st May immediately following the financial year in which the income was paid and tax deducted.
- f) Quarterly TDS return should be submitted in electronic form. Form No.27A is to be furnished in

paper form by deductor along with the e-TDS Return. It is a summary of e-TDS Returns which contains control totals of amount paid and income tax deducted at source. A separate form No. 27A is to be furnished for each e-TDS Return i.e. one each for Form Nos.24Q, 26Q and 27Q.

8. Consequence of failure to deduct and pay Sec. 201: As per section 201 of the Income Tax Act, if a person who is required to deduct tax at source does not deduct the same or after deducting fails to pay the tax, then, such person shall be deemed to be an assessee in default in respect of such tax and shall be liable to pay simple interest at the rate of 18% per annum w.e.f. financial year 2010-11 on the amount of such tax from the date on which such tax was deductible to the date on which such tax is actually paid. Further, such person shall be liable to pay, by way of penalty, a sum equal to the amount of tax which such person failed to deduct or pay as aforesaid.

9. Failure to comply with provisions regarding TAN: If the person required to deduct tax at source, fails to apply for TAN or after allotment of such number fails to quote such number wherever required then he shall be liable for penalty of a sum which may extend to Rs.10,000/-.

10. Failure to issue certificate, or submit return, statement, etc. : If any person fails to furnish in due time annual return for tax deducted; or furnish certificate of tax deducted at source; or furnish in due time quarterly statement of TDS deposited, then, he shall be liable for penalty which shall be Rs.100 for every day during which the failure continues subject to a maximum of the amount of tax deductible.

11. Prosecution under section 276B: If a person fails to pay to the credit of the Central Government, the tax deducted at source by him, then he shall be punishable with rigorous imprisonment for a sum which shall not be less than three months but which may extend to seven years and with fine.

12. TDS on payment of Interest on Non Resident (Ordinary) Account: India has entered into Double Taxation Avoidance Agreement (DTAA) with many countries, in order to grant relief in the tax payable on the same income in both the countries (i.e. the country of residence of the non-resident as well as India). As per Section 90 of the Income Tax Act, the tax should be deducted at the rate provided in the Finance Act of the relevant year or the rate provided in the DTAA with that country, whichever is more beneficial to the assessee.

ANNUAL INFORMATION RETURN

AIR is a mechanism through which the Income Tax Deptt is looking to ensure automatic flow of information on the material financial transactions entered into by the tax payers with other persons. The information is to be utilized by the Revenue Deptt for widening/ deepening of tax base. CBDT has specified 7 categories of persons who are required to file AIR with the Income Tax Deptt, which include:

- Banks — on cash deposits aggregating to Rs.10 lac or more in a year in any savings accounts of a persons
- Companies, banks or institutions issuing credit cards — payments made by any person against bills raised in respect of a credit card issued to that persons, aggregating to Rs.2 lac or more in a year
- Mutual Funds — receipt of an amount of Rs.2 lac or more for acquiring units of that fund.
- Companies for shares - transactions where company has received from any person an amount of Rs.1 lac or more for acquiring shares issued by the company.
- Companies or institutions for bonds — receipt of an amount of Rs.5 lac or more for acquiring bonds or debentures issued by the company or institution. Sub-registrar — purchase or sale, by any person, of immovable property valued at Rs.30 lac or more.
- RBI — receipt of an amount aggregating to Rs.5 lac or more in a year for bonds issued by RBI.

DEDUCTION OF TAX AT SOURCE

Interest on Term Deposits (Sec-194A) Deposits on which tax to be deducted: Fixed deposit /Time Deposit including Recurring Deposit. (RD w.e.f. 1.6.15).

Amount on which to be deducted: Interest paid/ credited or likely to be paid /credited to the customer or interest payable account or suspense account etc. during the financial year from all his term deposits accounts in a bank (including a cooperative bank), should be taken for reckoning the cut of limit of Rs 10,000, w.e.f. 01.06.2015. Non-resident a/c: Interest on NRE, and FCNR accounts is exempt from TDS. For NRO a/c, TDS applicable for all interest payments in all accounts. (if funds are in the form of inward remittance from abroad, deduction would be 20% instead of normal 30% + 10% surcharge). Joint Accounts & minor's account: Interest would be accounted in the hands of first named joint holder. In the absence of any information to the contrary, aggregate the interest of a joint account with the interest on deposit in the individual account who has higher interest income. In case of accounts in the name of minors, the deduction to be made in the name of parents / guardians.

TDS at lower rates : If a depositor submits certificate from the Income Tax Assessing Officer for deducting tax at a lower rate or for not deducting tax at all, then, the bank will act as per the certificate

issued by the Assessing Officer. Issue of TDS certificate : Banks are to issue TDS certificate within one month from the end of the quarter in which credit is given or the amount is paid.

Where deduction is not to be made

1. Where the aggregate amount of interest during the financial year does not exceed Rs.10000/-.
2. Where interest is credited or paid to any banking company, co-op society engaged in banking business, public financial institutions, LIC, UTI, a company or a co-operative society carrying on the business of insurance.
3. Where interest is credited or paid in respect of deposits (other than time deposits) with a banking company or (interest to non-members) with a cooperative society engaged in carrying on business of banking.
4. Where interest is credited/paid for deposits (by non-members) with a primary agricultural credit society or co-operative land mortgage bank or cooperative land development bank.

Submission of Form No.15G/15H

Under section 197A (i) of the Income Tax Act, no deduction shall be made in the case of an individual who is resident in India and furnishes a declaration in writing in duplicate, in the prescribed form i.e. 15G (15H for senior citizens of 60 years and above) and satisfied the following conditions:

1. Depositor is other than a company or Firm.
 2. Tax on the estimated income of the depositor of the financial year will be NIL.
 3. The amount of interest on securities, dividends, Interest other than interest on securities, payment in respect of deposits under National Savings Scheme and income in respect of units credited or paid during the previous year does not exceed the maximum amount, which is not chargeable to income-tax. This condition is not applicable, if the depositor is a resident individual whose age is 60 years or more at any time during the financial year, in such case he will have to submit form 15H in duplicate to the bank. Action Points for receiving Form 15G/15H
- (a) Declaration is valid for one financial year.
 - (b) Form to be delivered to Income Tax Office on or before the 7th day of the succeeding month.

Payments To Contractors (Section-194C) Where the bank is paying any sum to a resident contractor, at the time of payment/credit of such sum to the contractor, bank should deduct tax. The deduction will be made where the amount of any sum credited or paid or likely to be credited or paid to the account of, or to, the contractor or sub-contractor exceeds Rs. 20,000/- (Rs.30000 wef 1.7.10) or more in a single payment or Rs.50000/- (Rs.75000 wef 1.7.10) in the aggregate during the financial year .

No TDS is to be deducted where Contractor or sub-contractor brings an appropriate certificate for non-deduction of tax from the Assessing Officer. Further, no deduction of tax is to be made at source in case of payment to Government, RBI, Corporation established under Central Act whose income is exempt from income tax or from a mutual fund specified u/s. 10(23D) of the InCome Tax Act.

Rent (Section 194 I)

No tax is deductible if the amount of rent credited/paid during the financial year does not exceed Rs.180000/- (Rs.120000 up to 30.06.2010).

If there are a number of payees each having definite and ascertainable share in the property, the limit of Rs. 1,80,000/- will apply to each of the payee /co-owner separately.

No deduction of tax is to be made at source in case of payment to Government. No tax is to be deducted at source in case of local authorities and statutory authorities referred to Section 10(20A)/10(20) subject to submission of Tax Exemption Certificate by the said authorities.

Payment For Professional Or Technical Services (Section-194))

Where the Bank is paying to a resident any sum exceeding Rs. 30,000/- (Rs.20000 up to 30.06.10) in a Financial Year by way of fee for professional services, or fee for technical services, bank shall, at the time of credit of such sum to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount as specified in the table given above of such sum as income-tax on income comprised therein.

Penalties — Income Tax & Service Tax

- Failure to ensure payment of FDR of Rs.20000 or above, not in cash : penalty equal to sum of the payment (Sec 271E, IT Act)
- Failure to furnish Annual Information Return : penalty of Rs.100 for each day during which the failure continues (Sec 271FA , IT Act)
- Failure to furnish return of income : penalty of Rs.5000 (Sec 271F , IT Act)

Non-deduction of TDS on interest on deposits, by a bank w.e.f. 1.7.12: Bank shall be assessee in default in respect of that amount, pay from date TDS was Form 26QAA used for quarterly return on non-TDS

accounts to be submitted by July 31, Oct 31, Jan 31 and June 30.

TDS RATES FOR VARIOUS TAXES

Nature of Transaction	Rate
Interest on Term Deposits:	
Individual, HUF, AOP	10%
Partnership	10%
Domestic Companies	10%
Payment of Rent:	
Individual, HUF, AOP	10%
Partnership	10%
Domestic Companies	10%
Payment to contractor (other than advertisement):	
Individual, HUF, AOP up to Rs.10 lac or for partnership	1%
Partnership	2%
Companies	2%
Payment of Brokerage and Professional fee	
Individual, HUF, AOP	10%
Partnership	10%
Companies	10%

- 1) TDS at 20% to be deducted if the deductee does not provide PAN to the deductor.(u/s 206AA)
- 2) Surcharge on tax is not deductible/collectible at source in case of resident individual/ HUF /Firm/ AOP / BOI/Domestic Company for payments other than salary.
- 3) Surcharge @12% on TOS is applicable on payment made to non- resident other than company, if payment is in excess of Rs.1 cr.
- 4) Education Cess is not deductible/collectible at source for resident Individual/HUF/Firm/ AOP/ BOI/ Domestic Company for payment other than salary.
For a company other than domestic company, surcharge of 2% to be levied when taxable income is above Rs.1 cr to Rs.10 and 5%, when above Rs.10 cr.
Education Cess @ 2% plus secondary & Higher Education Cess @ 1% is deductible in case of non-residents and foreign company.
- 5) Advance tax is payable if the tax liability is Rs.10000 or more from 2009-10.

Income Tax Rates for FY 2015-16

Type of Assessee and amount	No Tax up to	Upto 5 lac ++	Above 5 lac to 10 lac	Above 10 lac
Normal	250000	10%	20%	30%
Women	250000	10%	20%	30%
Senior Citizen Aged above 60 years	300000	10%	20%	30%
Very Senior citizens(80 Years and above)	500000	-	20%	30%

++ to get tax credit of Rs.2000.

Corporate Tax rates 2015-16 — Partnership 30%, Domestic Company 30%, Foreign company 40%. Surcharge on domestic company 5% and other companies 2%, if income > Rs.1 cr.

SERVICE TAX

The provisions relating to Service Tax were brought into force with effect from 1st July 1994. These extend to whole of India except the state of Jammu & Kashmir. The tax is payable on all services except the services in negative list. Service Tax & Banking Services. Service tax is payable on a no. of banking services such as processing charges, commission on different services, charges.

Important Features : Administered by Central Board of Excise & Customs, being indirect tax.

Responsibility of payment of tax is that of service provider. Service provider to issue invoice within 14 days of providing the service.

Small Service provider with turnover up to Rs.10 lac exempted. But registration (form ST-1) is required if turnover exceeds Rs.9 lac.

Rate of tax is 14% for 2015-16 (earlier 12% + education cess and higher & secondary education cess)

Tax to be paid on quarterly basis by individuals, proprietors, partnerships and on monthly basis by others. It to be deposited by 5th (6th in case of electronic payments) of the next month.

Return HY on Form ST 3 to be sent by 25th of the next month after close of HY.

ROI for delayed payment : 1st 6 m = 18%, next 6 m 24%, more than 12 months = 30%. deductible to actual date of deduction @ 1% p.m. For delayed deposit of TDS up to actual date of deposit @ 1.5% p.m.

- Imprisonment for failure to deduct tax — U/s 276 (B) :
3 months to 7 years. Penalty equal to amount of tax not deducted.
- Delay in filing TDS return (Section 234E) — Late fee w.e.f. 1/12 Rs.200 per day max = TDS amount.
Section 271-H : If information is not submitted within one year or incorrect information is given, min Rs.10000 and max Rs.1 lac.
- Non compliance of provision of PAN = Rs.10000
- Delay in deposit of service tax — Intt 13% pa penalty @ 200 per day or 2% per month of tax liability, whichever higher. Maximum it could be up to amount of service tax.
- Delay in filing service tax return — late fee up to Rs.20000 (delay up to 15 days — Rs.500. Delay >15d to 30d — Rs.1000. >30 d — Rs.1000 plus Rs.100 per day)

CASH CEILINGS FOR IMPORTANT TRANSACTIONS

Transaction	Ceiling
Payment of FDR including interest for in cash	LessThan RS.20000
Issue of demand drafts and TTs/MTs	lessthan RS.50000
Payment of demand draft ++ DD of Rs,20000 can be issued crossed as account payee.	Lessthan Rs.20000++
Issue of foreign currency in cash	up to RS.50000
Maintenance of records of large cash transactions	Rs.10 lac and above
Payment of interest in cash	LessThan Rs.10000
PAN / GIR quoting for term deposit	Above RS.50000
PAN quoting for deposit of cash with a banking company	50000 OR above

TEST YOUR SELF

- 01 Deduction of tax at source provisions for payments other than salaries are covered under section of ___ Act: a Section 192 of Income Tax Act, b Section 194 of Income Tax Act
c Section 192 of Finance Act 1994, d Section 194 of Finance Act 1994
- 02 On payment to contractors, TDS is to be deducted when the amount of total payment in a financial year: a is Rs.50000 or more , b is more than Rs.50000
c is Rs.75000 or more, d is more than Rs.75000
- 03 TDS rate on payment to contractors is: a 1% for all payments, b 1% for payment to individuals and 2% for payment to others , c 2% for all payments
d 2% for payment to individuals and 1% for payment to others
- 04 On rent payment, TDS is to be deducted when the amount of total payment in a financial year: a is Rs.180000 or more , b is more than Rs.180000
c is Rs.120000 or more, d is more than Rs.120000
- 05 TDS rate on rent payment is: a 10% for all payments, b 10% for payment to individuals and 20% for payment to others, c 20% for all payments
d 20% for payment to individuals and 10% for payment to others
- 06 On payment of professional fee, TDS is to be deducted when the amount of total payment in a financial year: a is Rs.20000 or more, b is more than Rs.20000
c is Rs.30000 or more, d is more than Rs.30000
- 07 TDS rate on professional fee payment is: a 10% for all payments , b 10% for payment to individuals and 20% for payment to others , c 20% for all payments
d 20% for payment to individuals and 10% for payment to others
- 08 On payment of brokerage, TDS is to be deducted when the amount of total payment in a financial year: a is Rs.5000 or more , b is more than Rs.5000 c is Rs.2500 or more
d is more than Rs.2500
- 09 TDS rate on brokerage payment is: a 10% for all payments, b 10% for payment to individuals

- and 20% for payment to others , c 20% for all payments d 20% for payment to individuals and 10% for payment to others
- 10 If PAN details are not provided, the TDS rate is: a 10% in all cases , b 20% in cases c 20% in all cases with less than 20% TDS rate, d 20% in those cases where the rate is 1.0%
- 11 In which of the following deposit accounts, the interest payment is subject to TDS:
a if interest on FD/RD payment exceeds Rs.10000 in a financial year
b any amount of interest payment, if it is an NRO account
c any amount of interest payment, on NRO saving bank account d all the above
- 12 If a citizen of 62 years, wants exemption from deduction of tax at sources, he is required to submit: a Form No.24 b Form No.15-H, c Form No.15 G d Form No.26
- 13 Form 15-G is required to be submitted by for claiming exemption from deduction of tax at source: a a person aged below 60, b a person aged below 65 c a person aged up to 60 d a person aged below 55
- 14 Which of the following statement regarding, Form No.15-G or 15-H, is not correct:
a these are to be required to be obtained for each financial year afresh, b it can be submitted by individuals only, c it is to be sent to Income Tax Department, d within a period of 7 days from its receipt e none of the above
- 15 If X has a term deposit account with the bank which is subject to TDS provisions and X does not provide PAN details, the rate of TDS shall be: a 10% b 15% c 20% d 25%
- 16 Tax deducted at source is to be deposited by the bank within: a 7 days from the close of the month in which deduction is made, b 7 days from the date on which deduction is made, c 30 days from the close of the month in which deduction is made, d 30 days from the date on which deduction is made
17. For the month of March, the TDS is required to be deposited latest by:
a April 7 b April 15, c April 30 d May 31
- 18 The quarterly return on Form 26Q, of TDS is to be submitted: a within 15 days, but for March by May 15, b within 15 days, but for March by May 31 c within 30 days, but for March by May 15 , d within 30 days, but for March by May 31
19. What is the penalty for delay in furnishing of TDS return: a Rs.50 per day, b Rs.200 per day, c Rs.500 per day maximum Rs.1000, d. Rs.1000 per day maximum Rs.1000
20. As per Section 269-1 of Income Tax, the cash payment of FDR can be made for an amount:
a up to Rs.20000 excluding interest, b up to Rs.20000 including interest , c less than Rs.20000 excluding interest, d less than Rs.20000 including interest
21. If cash payment of FDR is made for the amount above the prescribed limit the: a penalty can be up to 100% of the payment made, b. penalty can be up to 50% of the payment made, c penalty can be up to 10% of the payment made, d there is no penalty
- 22 Service Tax is payable by a specified service provider, if the amount of annual turnover is: a above Rs.10 lac, b above Rs.15 lac, c above Rs.20 lac, d above Rs.25 lac
23. Rate of service tax, presently is a 5% b 10% , c 12% d 15%
- 24 Service tax is to be deposited electronically on a mandatory basis, if the amount is ____ in a FY:
a Rs.100 lac and above; b Rs.50 lac and above c Rs.25 lac and above, d Rs.10 lac and above
- 25 Which of the following statement regarding deposit of Service Tax is not correct: a service tax is to be deposited by 5th of next month b in case of electronic deposit, the service tax is to be deposited by 6th of next month, c service tax for the month of March is to be deposited within the month of March itself, d none of the above
- 26 Which of the following statement regarding Service Tax is not correct: a statement is a half yearly statement , b statement is to be sent by 25th Oct and 25th April c statement is to be sent on Form No. ST2, d none of the above
- 27 A depositor has interest income of above Rs.10000 though he does not have any taxable income. Can he be allowed non-deduction of tax at source: a no, He has to seek refund by filing a return b Yes, by obtaining an appropriate declaration on form No.15F & 15 H c Yes, by obtaining a declaration on form No.] 5G if age is below 60 years d Yes, by obtaining a declaration on form No.15H if age is 60 years and above , e c and d above
- 28 Which of the following is correct with regard to penalties: a for non-deduction of TDS on interest on deposits the bank shall be assessee in default in respect of that amount. b Imprisonment in failure to pay tax 3 months to 7 years. c Delay in filing TDS return — Rs.100 per day, d all the above

- 29 Which among the following is not correct for penalties: a. If a person fails to ensure payment of FDR of Rs.20000 or above, not in cash : penalty equal to sum of the payment , b Failure to furnish Annual Information Return : penalty of Rs.100 for each day during which the failure continues, c If a person fails to furnish return of income : penalty of Rs.10000, d none of the above
- 30 For deduction of tax at source the interest payment ceiling of Rs.10000, is: a Banking system-wise, b Bank as a whole – wise, c Branch-wise, d None of the above
- 31 Payment of interest on fixed deposit, in cash, above Rs.10000 is restricted as per provisions of: a Reserve Bank of India , b Banking Regulation Act Income Tax Act
d Practice being followed by banks
- 32 Under Section 269-T of Income Tax Act, which of the following term deposit would be paid in cash on maturity: a FD of Rs.19600 and interest Rs.2500, b FD of Rs.20000 and interest of Rs.2700
c FD of Rs.17000 and interest of Rs.2500, d FD of Rs.20000 and interest of Rs.3000,e all the above
- 33 What is the prescribed time period for deposit of income tax deducted on salary:
a within the month during which deducted , b within one week of close of the month during which deducted , c within one week of date of deduction of tax
d immediately on deduction in case of online payment e c and d
- 34 TDS certificate is to be issued in cases other than salary within on form No.
a Within one month from deduction on form No.1 6 A
b Within one week from deduction on Form No.16
c Within one month from close of the quarter on Form no. 16A
d Within one month from deduction on Form No.16 or 16 AA
- 35 Which of the following is not correct with regard to TDS provisions:
a Section 192 – salary, b Section 194 A — Interest payments other than interest on securities ,
c Section 194-C — Payment to contractor or sub-contractor , d Section 194-D — insurance commission,
e Section 194-D — Payment of brokerage

Answers : Test your self

01	b	02	d	03	b	04	b	05	a
06	d	07	a	08	b	09	a	10	c
	d	12	b	13	a	14	c	15	c
16	a	17	c	18	a	19	b	20	d
21	a	22	a	23	c	24	d	25	d
26	c	27	e	28	d	29	c	30	c
31	c	32	c	33	b	34	c	35	e

PERMANENT ACCOUNT NUMBER

The Central Board of Direct Taxes (CBDT) made it mandatory to quote PAN or General Index Number (GIR) on specified transactions (specified as per Rule 114B) with a view to ensure voluntary compliance of the income tax procedures. The quoting PAN became mandatory with effect from 01.11.1998.

What is PAN : A PAN is a 10 character alphanumeric number allotted by the Income Tax Deptt, to a tax payer who is eligible to file the income tax return. First 3 characters are Alphabetic series. 4th is status of PAN holder. 5th is the 1st character of PAN holder's name. Next 4 are special sequential numbers and the last one is alphabetic check.

Who must have a PAN? (1) All existing assesses or taxpayers or persons who are required to furnish a return of income, even on behalf of others, (ii) Any person, who intends to enter into financial transaction where quoting PAN is mandatory (details given below). The Assessing Officer may allot PAN to any person either on his own or on a specific request from such person.

Transactions where quoting PAN is mandatory As per Rule 114B, it is compulsory to quote PAN in all documents pertaining to financial transactions notified from time-to-time by CBDT, which include the following:

- (a) sale or purchase of any immovable property valued at Rs.5 lac or more;
- (b) sale or purchase of a motor vehicle or vehicle, which requires registration by a registering authority (excluding two wheeled vehicles);
- a time deposit, exceeding Rs.50000, with a banking company to which the Banking Regulation Act, 1949 applies;
- (c) a deposit, above Rs.50000, in any account with Post Office Savings Bank;
- (d) a contract of a value exceeding Rs.100000 for sale or purchase of securities as defined in section 2 of the Securities Contracts (Regulation) Act, 1956;
- (0 opening an account not being a time-deposit referred to in clause (c) with a banking company to which the Banking Regulation Act, 1949 applies;

- (g) application for installation of a telephone/cellular telephone connection;
- (h) payment to hotels/restaurants for bills above Rs.20000 at any one time;
- (i) payment in cash for purchase of bank drafts or pay orders or bankers cheques from a banking company to which the Banking Regulation Act, 1949 applies for an amount aggregating Rs.50000 or more during any one day;
- (j) deposit in cash aggregating Rs.50000 or more, with a banking company to which the Banking Regulation Act, 1949 applies during any one day;
- (k) cash payment for foreign travel, exceeding Rs.25000 at any one time.
- (l) making an application to any banking company to which BR Act, 1949 applies or to any other company or institution, for issue of a credit card;**
- (m) payment of Rs.50000 or more to a Mutual Fund for purchase of its units;
- (n) payment of Rs.50000 or more to a company for acquiring its shares;
- (o) payment of Rs.50000 or more to a co/institution for debentures or bonds;
- (p) payment of Rs.50000 or more to RBI, for acquiring bonds issued by it :

From 1 January 2005 it is mandatory to quote PAN on challans for any payments due to Income Tax Department.

Responsibility to obtain PAN : It is statutory responsibility of a person receiving document relating to economic or financial transactions notified by the CBDT to ensure that PAN has been duly quoted in the document.

Minor's bank account: Where a person, opening an account as per clause (c) and (f) above, is a minor not having any income chargeable to income-tax, he shall quote the permanent account number of his father or mother or guardian.

Persons without PAN/GIR - Persons who were not allotted the PAN are to make a declaration in form No.60 giving their in, the particulars of such transaction. Persons with agricultural income and those who are not in receipt of any income chargeable to tax, have to make a declaration in Form No. 61.

Non-residents who enter into any of the above transactions are required to furnish a copy of their passport.

Exemptions - PAN is not needed if the payment is via crossed cheque.

Penalty for non-compliance : Rs.500 to Rs.10000 u/s 272A of Income Tax Act 1961.

TEST YOURSELF : PERMANENT ACCOUNT NUMBERS (PAN)

1 The quoting of PAN has been introduced to ensure:

- a that bank accounts are opened by the customers by following proper procedures only.
- b that bank accounts provide information about tax revenue
- c that more people are brought under tax net and voluntary compliance of tax procedures is ensured
- d all the above.

2 Quoting of PAN is mandatory in respect of following transactions:

- a sale or purchase of any immovable property valued at Rs.5 lac or more
- b a time deposit exceeding Rs.50000 with a banking company.
- c A deposit exceeding Rs.50000 in any account with a post office saving bank
- d Opening an account with a banking company to which Banking Regulation Act 1949 applies
- e all the above

3 Persons who are not allotted PAN are to make declaration: a on form No.60, b on form No.61

c on form No.60-A, d on form No.60-B

4 Non-residents who enter into any of the prescribed transactions are required to furnish:

a form No.60 ,b copy of visa, c copy of pass-port, d form no.61

5 The declarations or copies of documents are to be submitted to: a a registering officer

b any manager or officer of banking company, c post master,

d stock brokers/sub-broker/share transfer agent e all the above

Answer : 1 c 2 e 3 a 4 c 5 e

NEGOTIABLE INSTRUMENTS ACT 1881

Definition of NI: U/s 13, NI means and includes promissory note (PN), bill of exchange (BOE) and cheque. Information Technology act. Has also been made applicable to NI act and thus electronic Cheques & digital signatures statutory recognition. IT act will not apply to bill of exchange & promissory note & thus these two can not be electronic means. In India, the Negotiable Instruments Act was passed during 1881 which

came into force wef March 01, 1882. It has 147 sections and 17 Chapters (Section 138 to 142 were added in 1988 - wef April 01, 1989 and Section 143 to 147 were added during December 2002, implemented in Feb. 2003). The Act is applicable to entire India.

Categories of Negotiable Instruments 1. As per the NI Act :

1. Promissory note (including certificate of deposit and commercial paper) (2) Bill of Exchange (3) Cheque (4) Demand Draft. 2. U/s 137 of Transfer of Property Act:

The documents of Title to goods are negotiable which include Bill of lading, Railway Receipts, Dock warrant, Warehouse Receipt, GRs approved by IBA, Wharfinger certificate. These are also the document of title to goods under Sale of Goods Act.

1. The Negotiable Instruments Act is applicable in whole of India including Jammu & Kashmir.
2. As per Section 13 of the Act, promissory notes, bills of exchange and cheques are the negotiable instruments.
3. As per practice and usage and as per court decisions, certain instruments' such as Treasury Bills, Certificate of Deposit, Commercial Paper, Govt. Promissory Note are also Negotiable instruments.
4. Some instruments like Railway Receipt, Bill of Lading, Warehouse Receipt etc are also treated as Negotiable instruments as per Section 137 of Transfer of Property Act.
5. The main feature of a negotiable instrument is that it is freely transferable and the title of the transferee will be better than the transferor.

Promissory note: As per Sec 4, PN is in writing, containing unconditional undertaking or promise, signed by the maker, to pay a certain sum of money to or to the order of a certain person or to the bearer thereof. It requires payment of stamp duty and can be demand PN or usance PN. There are 2 parties (maker & payee). Currency/bank notes are excluded from the definition of promissory notes. Writing the words "I owe you Rs 1000" does not constitute PN but "I owe you Rs 1000 payable on demand" constitute PN.

Bill of exchange: As per Sec 5, BoE is an instrument in writing, containing an unconditional order, signed by maker, directing a certain person to pay a certain sum of money only or to the order of a certain person or to the bearer of the instrument. In a Bill of Exchange, the person ordering for payment is called Drawer and the person directed to pay is called Drawee. The beneficiary is called payee.

Cheque is defined in Sec 6 of NI Act. Cheque is a bill of exchange but always payable on demand and drawee is always a banker. It also includes truncated cheque and electronic cheque. A cheque is similar to a bill of exchange. Any bill of exchange which is payable on demand and in which drawee is a banker will be called cheque.

The promissory note or bill of exchange can be payable on demand or after some time. If no time is mentioned then the same will be treated as Demand promissory note or Demand Bill of Exchange.

A negotiable instrument can be payable to bearer or order. If neither bearer nor order is written it is treated as payable to order. If both bearer or order are written it is treated as payable to bearer.

As per Section 31 of RBI Act, no person other than Central Government or Reserve Bank of India or any other person authorized in this behalf can issue bearer promissory notes and demand bills of exchange payable to bearer.

Assignment of Negotiable Instruments Negotiable Instruments can be either negotiated under NI Act or can be assigned under Transfer of Property Act by following the given procedure for assignment.

Instruments payable to bearer by persons other than Central Govt. & RBI RBI Act 1934 (Sec 31) states that in India, person other than RBI or Central Govt. can not draw, accept, make or issue any bill of exchange or promissory note (or demand draft) payable to bearer on demand. Section 31(2) puts a restriction on making a promissory note payable to bearer by a person other than RBI/Central Govt.

PRESUMPTIONS WITH REGARD TO NEGOTIABLE INSTRUMENTS

Section 118 provides certain presumptions as to Nis, until the contrary is proved:

- a: NI was made, drawn, accepted, endorsed and negotiated or transferred for consideration.
- b: It bears the date on which it was made/ drawn
- c: It was accepted within a reasonable time after its date and before maturity.
- d: Transfer of NIs was made before maturity.
- e: Endorsements appearing on NI were made in the order in which they appear thereon.
- f: It was duly stamped and stamp duly cancelled, when the NI stands lost
- g. Holder is holder in due course.

The burden of proof that the instrument is contrary to all/any of the above presumptions, is with the person, who challenges such presumption.

More than one payee : An instrument can be made payable to two or more persons jointly or payable to one of two or one or some of several payees. (Explanation to Section 13 NI Act).

WHAT IS NEGOTIABILITY?

Negotiability means transfer of right in a negotiable instrument to another person so as to constitute him the holder. Elements of Negotiation:

1 Further transfer without any restriction.

2 Transferee getting the instrument for value and in good faith, gets defect-free and absolute title despite any defect in the title of the transferor (called endorser).

Negotiation of Bearer cheque (instruments) is completed by delivery (Sec 47) and that of **Order cheque** by delivery and endorsement (Sec 48).

Inchoate Instruments: As per section 20 of the NI Act, an instrument on which date, payee or amount is not mentioned is called as inchoate or incomplete instrument. Incomplete cheque can be completed by the Holder and the completion so made will not be treated as material alteration.

An instrument without signatures is not treated as an instrument at all.

Ambiguous instruments: As per section 17 of the NI Act, an instrument which can be bill of exchange or promissory note. Holder can treat it either of these.

Presumption: U/s 118 Nis are presumed to be (a) made for consideration, (b) bear date on which they are made. (c) Every holder is a holder in due course.

Holder: defined in section 8 of the NI Act. Holder of a promissory note, bill of exchange or cheque means any person entitled in his own name to the possession thereof and to receive the amount due thereon from parties thereto.

Holder in Due Course: defined in Section 9 of the NI Act. Holder in due course is a person who became possessor of a NI for valuable consideration, in good faith, before becoming due, and without having any reason to believe that the person transferring the instrument was not entitled thereto.

Transfer of a Negotiable Instrument and Endorsement

Transfer of a Negotiable instrument: by assignment (under Transfer of Property Act) or by Negotiation (under NI Act).

Negotiation of a Bearer instruments: A bearer instrument is negotiated by mere delivery and no endorsement is required.

Negotiation of an order instrument: An order instrument can be negotiated by endorsement followed by delivery. It may be noted that legal heirs cannot complete the negotiation of a negotiable instrument with endorsement by the deceased merely by delivery.

Endorsement: Signing of an instrument on the back or face thereof or on a slip of paper annexed thereto for the purpose of negotiation is called endorsement (Section 15). The person who transfers the instrument is called endorser and the person to whom it is transferred is called endorsee.

Blank Endorsement: In a blank endorsement the endorser just signs his name without indicating endorsee. It can be converted into full by writing name of a person above signatures. The effect of an endorsement in blank is that it makes an instrument drawn originally payable to order to bearer instrument for the purpose of negotiation which can be further negotiated by mere delivery.

Endorsement in Full: When, the endorser indicates the name of the endorsee it is called full endorsement.

Sans Recourse Endorsement: An endorsement in which endorser excludes his liability is termed 'sans recourse' or without recourse endorsement. In case of dishonour of instrument, the amount cannot be recovered from such endorser.

Facultative: An endorsement in which endorser waives the notice of dishonour is called Facultative endorsement But this is not applicable to other parties to the instrument.

Restrictive endorsement: An endorsement which restricts further right of negotiation is called as restrictive endorsement. For example if it is written in the endorsement as "Pay to Hari for my use" it is restrictive endorsement.

Conditional Endorsement: When along with endorsement, condition is imposed by endorser. For example, pay to C on completion of studies. Paying bank not to ensure compliance of condition. Condition binds endorser and endorsee only.

Back to Back Endorsement: An endorsement in which the endorser himself becomes endorsee is called as back to back endorsement and in such a case, the endorsee can recover the amount only from parties prior to his own endorsement.

Negotiation Back: When the drawer of a cheque himself becomes endorsee, it is called "Negotiation Back" and this cheque is treated as satisfied.

Partial Endorsement: The endorsement can be made only for full amount but in case part payment has been received and a note to that effect is made on the instrument, then the same can be

endorsed for the balance amount.

Forged Endorsement: When endorsement is made by a person other than Holder by forging signatures of Holder Title does not pass to any person on the basis of such endorsement. A person getting instrument after such endorsement does not become holder.

Regularity of endorsement: Paying bank gets protection u/s 85(1) only when endorsement is regular (may not be genuine).

SUMMARY OF VARIOUS SECTIONS OF NEGOTIABLE INSTRUMENT ACT (Section number given in Bold)

- 01** Indian Paper Currency Act 1871 not to be affected by the provisions of this Act.
- 04** Promissory note defined
- 05** Bill of exchange defined
- 06** Cheque defined (also include electronic cheque and truncated cheque)
- 07** Drawer, drawee in case of need, acceptor, acceptor for honour, payee defined
- 08** Holder defined
- 09** Holder in due course defined.
- 10** Payment in due course : Paying banker's protection if payment is made in due course.
- 11** Inland instruments defined — drawn and made payable in India
- 12** Foreign instruments defined.
- 13** Negotiable instruments defined indirectly
- 14** Negotiation defined.
- 15** Endorsement and endorser defined
- 16** Endorsement in blank and in full and endorsee defined.
- 17** Ambiguous instruments
- 18** Difference in amount in words and figures. Amount in words to be paid
- 20** Inchoate stamped instruments - Holder has implied authority to complete the instrument..
- 21** At sight, on presentment and after sight defined.
- 22** 3 days of grace are allowed on an usance Bill of Exchange/Promissory note. Also maturity defined.
- 23, 24** Calculation of maturity date of BoE/Promissory note after so many months or date
- 25** When a BOE/PN matures on a holiday — due date on the next preceding working day.
- 26** A minor can draw, endorse and deliver and negotiate a negotiable instrument so as to bind all parties except himself.
- 27-28-29:** Status of agent, powers & restrictions, liabilities of agent and legal representative.
- 30** Liability of the drawer to pay where presented, defined.
- 31** Banker's obligation to pay cheque & compensate drawer for wrongful dishonour.
- 32** Liability of maker of note and acceptor of a bill.
- 33** Several drawees of a bill. Not to be considered partners.
- 35** Liability of endorser — to compensate holder for dishonour.
- 36** Liability of prior parties to holder in due course.
- 37** Liability of maker, drawer (of BoE) till accepted and acceptor, is that of a principal.
- 38** Prior party, a principal to subsequent parties.
- 40** Discharge of endorser's liability.
- 41** Liability of acceptor in case of forged endorsement
- 42** Acceptance of bill drawn in fictitious name.
- 43** NI without consideration
- 44 & 45 Partial** absence of consideration, partial failure of money consideration and consideration not consisting of money.
- 45-A** Holder's right to obtain a duplicate of lost bill. Drawer can be compelled to do so.
- 46** Delivery and its status in negotiation.
- 47** Negotiation by delivery — bearer instruments

- 48** Negotiability by endorsement order instrument
- 49** Conversion of blank to full endorsement
- 50** Effect of endorsement — transfer of property in the instrument
- 51** Who can negotiate — sole maker, drawer, payee, endorsee
- 52** Sans recourse endorsement Or conditional endorsement
- 53** Holder deriving title from Holder in due course
- 54** Endorsement in blank
- 55** Conversion of blank endorsement into endorsement in full
- 56** Endorsement for part of the sum due
- 57** Endorsement by a deceased person and delivery by legal heir does not complete negotiation.
- 58** Instrument obtained by unlawful means/consideration — no title passes
- 59** Instrument acquired after dishonour or when overdue. Remedy available on accommodation bill or promissory note.
- 60** Instrument negotiable till payment or satisfaction.
- 61** BoE — presentment for acceptance at acceptor's place
- 62** Presentment of promissory note for sight
- 63** Drawer to be allowed 48 hours to accept
- 64** Presentment for payment essential.
- 65** Presentment for acceptance to be made during the usual business hours.
- 66-77** Presentment of instruments in various situations
- 78** Payment to be made to holder to get discharge.
- 79** Interest rate when specified from date of instrument.
- 80.** If no interest rate mentioned in the Promissory Note interest @ 1B% p.a. is to be paid.
- 82-83** Discharge from liabilities — by cancellation, release & payment and allowing more time than 48 hours to accept
- 84** When cheque not duly presented and drawer damaged thereby.
- 85-1** Paying banker protected by payment in due course of an order cheque which is properly endorsed by the payee or his agent.
- 85-2** Protection to paying banker in case of a bearer cheque.
- 85-A** Protection to paying banker in case of Bank drafts.
- 87** Material alteration renders N,I renders void,
- 88** Acceptor/endorser bound notwithstanding previous alteration.
- 89** Protection to paying banker for materially altered instrument.
- 91** Dishonour by non-acceptance of BoE
- 92** Dishonour by non-payment
- 93** Dishonour — notice by whom and to whom
- 98** When notice of dishonour not necessary
- 99** Noting — must for foreign instruments
- 100** Protest — must for foreign instruments
- 101** Protest — contents, notice, foreign bill
- 105-107** Reasonable time — for presentment, dishonour and transmission of notice
- 108-112** Acceptance for honour and liability of acceptor for honour.
- 113-116** Payment for honour and drawee in case of need
- 117** Rules for compensation for dishonour
- 118-119** Presumptions at to NIs
- 120-122** Estoppel — validity, capacity of payee, signature of payee
- 123** General crossing
- 124** Special crossing
- 125** Who can cross - holder, banker

- 126-127 Payment of cheque crossed generally or specially
- 128 Payment in due course of crossed cheques
- 129 Paying banker liable to the true owner for loss when payment not made in due course.
- 130 'Not Negotiable' crossing — transferee does not get better title than that of transferor.
- 131 Protection to collecting bank for crossed cheques subject to compliance of conditions
- 131-A Protection to collecting bank for crossed bank drafts.
- 134-137 International Law
- 138 Drawer's liability for cheque returned unpaid for insufficient funds
- 139 Unless proved otherwise, it will be presumed that the cheque has been issued for the discharge of a debt/liability.
- 140 The drawer cannot plead that he did not expect the cheque to be dishonoured.
- 141 Offences by companies 1.42 Cognizance of offences
- 143 Power of courts to try cases summarily,
- 144 Code of service of summons
- 145 Evidence of affidavit,
- 146 Bank slip prima facie evidence of certain facts
- 147 Offences to be compoundable

THE PAYMENT AND SETTLEMENT SYSTEMS ACT, 2007

The PSS Act, 2007 came into force with effect from Aug 12, 2008.

Objective : Regulation and supervision of payment systems and designates RBI as authority.

Regulations : Two Regulations have been made by RBI w.e.f. Aug 12, 2008. (1) The Board for Regulation and Supervision of Payment and Settlement Systems Regulation, 2008 (2) Payment and Settlement Systems Regulations, 2008. **Board for Regulation and Supervision of Payment and Settlement System (BPSS),** a Committee of the Central Board of Directors of RBI has been constituted. BPSS exercises powers on behalf of RBI for regulation and supervision. **Licence for operating a payment system:** Only RBI can operate or commence a payment system. Unauthorized operation of a payment system by any person is an offence liable for penal action. **Application fee for authorization:** Rs 10,000. The period for disposal of application by RBI is 6 months from the date of their receipt.

Revocation of authorization : RBI can revoke the authorization, if the system provider contravenes the provisions of Act/Regulations, fails to comply with conditions of authorization. **Appeal:** The aggrieved applicant or aggrieved system provider can appeal to the Central Govt. within 30 days from the date of order conveyed. **Authorisation fees and security deposit :** RBI can collect authorization fees.

Returns and information : RBI can call the returns, documents and other information.

Standards : RBI can prescribe format of payment instructions, size & shape of instructions, manner of funds transfer, criteria for membership etc.

Inspection: RBI can depute an officer to enter premises where a payment system is being operated, inspect any equipment, including any computer system or document.

Issue of directions : RBI is authorized to issue directions to a payment system or system participant and general directions.

Mechanism for settlement of disputes : Where disputes arise between system participant and system provider or between system providers, such disputes are required to be referred to RBI for adjudication. In cases where RBI, in its capacity either as a system participant or system provider, is a party to the dispute, such cases are to be referred to Central Govt. for adjudication.

Consequences of dishonour of electronic fund transfer (section 25) : Dishonour of EFT due to insufficiency of funds in an account, is an offence, punishable with imprisonment (up to 2 years) or with fine (up to double the amount) or both, on similar conditions as in case of dishonour of a cheque under Negotiable Instruments Act 1881.

Penalties or punitive' action : Under the Act, RBI can initiate criminal prosecution and also impose fine for certain contraventions.

Netting and settlement finality : The PSS Act 2007 states that a settlement, will be final and irrevocable as soon as the money, securities, foreign exchange or derivatives or other transactions payable as a result of such settlement is *determined*, whether or not such money, securities or foreign

exchange or other transactions is actually paid.

Electronic Payment Systems

ACCESS CRITERIA FOR PAYMENT SYSTEMS The revised access criteria came into force w.e.f. Oct 01, 2011. There are two sets of access criteria (1) for centralised payment systems (CPS) and (2) for decentralised payment systems (DPS).

Access criteria for CPC : The CPC include Real Time Gross Settlement (RTGS) System, National Electronic Fund Transfer (NEFT) system and National Electronic Clearing Service (NECS). The membership is open to all licensed banks. The access criteria are given below:

a. Minimum CRAR of 9% (latest balance sheet); b Net NPAs below 5% (latest balance sheet); c Minimum net-worth of Rs. 25 crore; and

Criteria for decentralised payment systems DPS include Clearing Houses at MICR centres (including Cheque Truncation System centres) and Electronic Clearing Service (ECS) including the Regional Electronic Clearing Service (RECS). The membership is open to all licensed banks. The access criteria are: a. Minimum CRAR of 9% (latest balance sheet); b. Net NPAs below 5% (latest balance sheet). (On Mar 15, 2012, RBI decided to grant automatic membership to entities which are direct participants of centralised payment systems like RIGS, NEFT & NECS).

Module: D

Commercial Laws with reference to Banking Operations

Syllabus

- 1) **Indian Contract Act, 1872** - Meaning and essentials of contract; Contract of Indemnity & Rights of Indemnity Holder; Contract of Guarantee; Contract of Bailment; Contract of Pledge; Contract of Agency
- 2) **The Sale of Goods Act, 1930** - Features; Sale & Agreement to Sell; Conditions and Warranties; Express & Implied; Rights of Unpaid Seller
- 3) **Indian Partnership Act, 1932** - Definition & Types of Partnerships; Relation of partners to one another & to third Parties; Minor admitted to benefits of partnership; Dissolution of a firm; Effect of non registration; Limited liability partnerships- formation, registration, rights and liabilities of partners
- 4) **Definition and features of a company** - Definition & Features of a Company; Distinction between Company and Partnership
- 5) **The Companies Act, 1956** - Definition, Features & Types of companies; Memorandum and Articles of Association; Doctrine of Ultra Vires, Constructive Notice, Indoor Management; Membership of Company- Acquisition, Cessation, Register, Rights & Duties of Members, Prospectus; Directors; Winding up of Companies
- 6) **Foreign Exchange Management Act, 1999** - Important Terms; Powers of RBI, Regulation and Management; Directorate of Enforcement
- 7) **Transfer of Property Act, 1882** - Sale, Mortgage of Immovable Property; Types of Mortgages; Sale with and without court intervention; Lease of Immovable Property
- 8) **The Right to Information Act, 2005** - Applicability; Definition; Important Provisions
- 9) **Right To Information and Obligation of Public Authorities** - Obligations; Procedure; Disposal; Appeal; Orders; Penalties.
- 10) **The Prevention of Money Laundering Act, 2002** - Obligations; Records to be Maintained; Procedure for Maintaining & Furnishing Information; Maintenance & Verifications of Records of Identity of Clients.
- 11) **Information Technology Act, 2000** - Definitions; Electronic Governance; Certifying Authorities; Digital Signature Certificates; Penalties; Appeal

INDIAN CONTRACT ACT, 1872

In the process of conducting banking business, the customers and banks enter into various kinds of contracts. Law of Contracts in India is guided by various Acts and prominent among them is Indian Contract Act 1872 (ICA 1872).

Contract — As per Section 10 of ICA 1872 all agreements are contracts if they are made by the free consent of the parties, competent to contract, for a lawful consideration and with a lawful object and are not expressly declared to be void". In other words, *all agreements are contract* and a contract has following important elements:

- Parties should be competent to contract
- Contract should be made with free consent
- Consideration should be lawful
- Contract should be for a lawful object
- Contract should not be declared to be void.

Agreement — U/s 2(e) of ICA 1872 an agreement is 'a promise or set of promises, forming consideration for each other". Promise in this case means a proposal from one person. When a proposal is accepted, by another person, it becomes an agreements.

Proposal — As per Section 2(a) 'when a person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other (person) to such act or abstinence, he is said to make a proposal".

Acceptance — As per Section 2 (b), when a proposal is accepted by another person, it becomes a promise. As per Section 7 an acceptance should be made within a reasonable period, it should be absolute and unqualified, should be expressed in usual and reasonable manner or in the manner prescribed by the proposal.

Communication of proposal and acceptance — The acceptance of the proposal should be conveyed to the proposer to make both the parties sure of what the other party intended, as per Section 3. Section 4 defines the requirement as to how the communication is complete. *On completion of communication, an agreement comes into existence.*

Revocation of proposal and acceptance — As per Section 5, a proposal can be revoked at any time before the communication of its acceptance is complete as against the proposer. Similarly the acceptance can be revoked at any time before the communication of acceptance is complete as against the acceptor.

Competence of the parties — Section 11 of the act provides that every person is competent or capable to make a contract if:

1. He is of the age of majority under the law applicable to him and
2. He is of sound mind and 3. He is not disqualified to make a contract by any law applicable to him.

In other words, a minor who has not reached the age of majority, a person who is of not sound mind (idiots and lunatics during the period of lunacy) and who is disqualified by law (undischarged insolvent) or a citizen of declared enemy country, cannot enter into an agreement.

Free consent — As per Section 13, consent means when two or more persons agree upon the same thing in the same sense. A free consent (as per Section 14) means that it is not obtained by (a) coercion, (b) undue influence, (c) fraud, (d) misrepresentation and (e) mistake of the other party (say threat to kill, a religious advice etc.).

Lawful consideration — Consideration as per Section 2(d) means an act when at the desire of the promisor, the promisee does or abstains from doing or promises to do or abstains from doing something. A consideration to be lawful should not, be forbidden by law, does not defeat the provisions of any law, is not fraudulent and is not immoral or opposed to public policy (saying to pay bribe).

Lawful object — It means that the result of the agreement should not be forbidden by the law or violative of the law or fraudulent or immoral or opposed to public policy (say an agreement to murder someone).

Void agreements — ICA 1872 declares the agreements in following conditions, as void:

- Both parties committed a mistake as to a fact essential to the agreement.
- Consideration is not lawful
- Agreement is without consideration.
- Agreement is in restraint of trade, profession or calling of the other.
- Agreement is in restraint of legal proceedings.
- Terms of agreement are uncertain
- Agreement can be void if it is purely betting or wagering.

Discharge of a contract — Discharge of a contract means that the rights and obligations of the respective parties come to an end. Discharge can be the result of: -

- Performance of the contract
- Death of the parties, if the contract is of *personal nature*
- Breach of contract
- Performance being impossible
- Agreement or consent to terminate (including novation i.e. substitution with the consent of the parties, by a new valid contract, before breach of the old contract).
- Operation of law

Different types of contracts — There are two kinds of contracts i.e. General and Special. General contract includes (a) concluded contract, (b) executory contract, (c) contingent contract and (d) quasi contract. Special contracts include (a) contract of guarantee, (b) contract of indemnity, (c) contract of agency, (d) contract of bailment and (e) contract of pledge.

Contingent contract — A contract which is to be performed *subject to some happening*. Section 31 defines such contract as a contract not to do something, if some event, collateral to the contract, does or does not happen (such as a contract of insurance of house).

Quasi Contract — When *law assumes creation of some contract due to circumstances* even though the parties did not make offer or conveyed acceptance. Say supply of necessities to a minor, the cost of which, the supplier can recover from the property of the minor. As per Section 68 to 72, following situations give rise to quasi contracts:

- Claim for necessities supplied to a person incapable of contracting on his account (Section 68)
- Reimbursement to person paying money due by another, in payment of which he is interested (discharge of other's obligation — Section 69).
- Obligation of person enjoying non-gratuitous act (Section 70)
- Finder of lost goods (Section 71)
- Liability of person receiving payment or things under mistake (Section 72)

IMPORTANT TERMS IN THE LAW OF CONTRACTS
Void agreement : The agreement which is not enforceable in law (say for unlawful consideration)

Void ab initio : Which is void from the very beginning, such as agreement with a minor.

Void contract : Contract that becomes unenforceable by law

Voidable contract : A contract that is enforceable at the instance of one party and not the other party (say a contract with a *Parida-Nashin* woman).

Contingent contract : A contract the performance of which is dependent on the happening or non-happening of an event.

Executed contract : A contract where an offer has become a promise on being accepted by the person to whom it is made.

Executory contract : A contract where the offer made by one person is yet to be accepted by the other party to whom it is made.

Coercion : Threat to commit an act forbidden by law

Consideration : Some value received or to be received in exchange of a promise

Contract : An agreement enforceable by law

Invitation to offer : It is different from offer and means calling upon parties to make offer (say tenders, quotations etc.)

Misrepresentation : Untrue statement with or without intention to deceive other person

CONTRACT OF INDEMNITY

As per Section 124 a contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person, is called a contract of indemnity. In such contract one party promises to compensate the other for loss or damage and this loss or damage may be due to act or omission of the promisor or other party. The promisor is called indemnifier and the promisee is called indemnified. A contract of insurance is contract of indemnity. For example X contracts to indemnify Y against the consequences of any proceedings which Z may take against Y in respect of a certain sum of 200 rupees. This is a contract of indemnity.

Right of indemnity-holder when sued :

The promisee in a contract of indemnity, acting within the scope of his authority, is entitled to recover from the promisor-

- (1) all damages which he may be compelled to pay in any suit in respect of any matter to which the promise to indemnify applies;
- (2) all costs which he may be compelled to pay in any such suit, if in bringing or defending it, he did not

contravene the orders of the promisor, and acted as it would have been prudent for him to act in the absence of any contract of indemnity, or if the promisor authorised him to bring or defend the suit;
(3) all sums which he may have paid under the terms of any compromise of any such suit, if the compromise was not contrary to the orders of the promisor, and was one which it would have been prudent for the promisee to make in the absence of any contract of indemnity, or if the promisor authorised him to compromise the suit.

CONTRACT OF GUARANTEE

U/s 126, the guarantee is defined as a contract to perform the promise, or discharge the liability, of a third person in case of his default. The person who gives guarantee is called guarantor, on whose behalf the guarantee is given is called principal debtor and in whose favour the guarantee is given called creditor. Sections 126 to 147 of the Indian Contract Act deal with contracts of guarantee. A guarantee may be either oral or written.

Parties : Three parties are involved in guarantees namely the borrower, the bank and the guarantor.

Consideration : The contract of guarantee is the consequence of the agreement between the borrower and the bank. As per section 127 of Indian Contract Act, anything done, or promise made, for the benefit of the principal debtor may be sufficient consideration to the surety for giving the guarantee.

Who can give a guarantee: Persons (individuals, partnership firms, joint stock companies) other than minors, insane or insolvent can give a valid guarantee. In case of a partnership firm guarantee signed by a single partner cannot bind the firm or other partners, if the business of the partnership firm is not to give guarantee. Similarly, in case of guarantee by a company, its Memorandum of Association should clearly express that the company can give guarantee.

Nature of guarantor's liability : U/s 128, the liability of the guarantor is co-extensive with that of the principal debtor. In other words, the guarantor is liable only for what the principal debtor is liable and guarantors' liability cannot be more than that of the principal debtor. In continuing guarantees the liability extends to all transactions within the guaranteed limit and time.

Continuing guarantee (Section 129): A guarantee which extends to a series of transaction, is called, a "continuing guarantee". *For example,* A guarantees payment to B, a tea-dealer, to the amount of Rs.10000, for any tea he may from time to time supply to C. B supplies C with tea to above the value of Rs.10000, and C pays B for it. Afterwards, B supplies C with tea to the value of Rs.20000. C fails to pay. The guarantee given by A was a continuing guarantee, and he is accordingly liable to B to the extent of Rs.10000.

Revocation of continuing guarantee (Section 130): A continuing guarantee may at any time be revoked by the surety, as to future transactions, by notice to the creditor. *For example,* A, in consideration of B's discounting, at A's request, bills of exchange for C, guarantees to B, for twelve months, the due payment of all such bills to the extent of 5,000 rupees. B discounts bills for C to the extent of 2,000 rupees. Afterwards, at the end of three months, A revokes the guarantee. This revocation discharges A from all liability to B for any subsequent discount. But A is liable to B for the 2, 000 rupees, on default of C.

Determination of liability : Liability of the guarantor crystallizes when the principal debtor defaults. The guarantor's liability is also determined by revocation (withdrawal as to future transactions) of guarantee by him or his death, insolvency or lunacy OR death & insolvency of the borrower and change in the constitution of principal debtor, liquidation of a company (change of name by the company is not change in constitution). In order to avoid application of rule in Clayton case, the operations in the account are stopped by the bank.

Surety's death (Section 131) : The death of the surety operates, in the absence of any contract to the contrary, as a revocation of a continuing guarantee, so far as regards future transactions.

Variance in terms of contract (Sec 133) : Any variance made without the surety's consent, in the terms of the contract between the principal debtor and the creditor, discharges the surety as to transactions subsequent to the variance. *For example,* A becomes surety to C for B's conduct as manager in C's bank. Afterwards, B and C contract, without A's consent, that B's salary shall be raised, and that he shall become liable for one-fourth of the losses on overdrafts. B allows a customer to overdraw, and the bank loses a sum of money. A is discharged from his suretyship by the variance made without his consent, and is not liable to make good this loss.

Release or discharge of principal debtor (Section 134) : The surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released, or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor. *For example* A gives a guarantee to C for goods to be supplied by C to B. C supplies goods to B, and afterwards B becomes embarrassed and contracts with his creditors (including C) to assign to them his property in consideration of their releasing him from their demands. Here B is released from his debt by the contracts with C, and A is discharged from his suretyship. Creditor compounding with,

giving time to, or agreeing not to sue, principal debtor (Section 135) : A contract between the creditor and the principal debtor, by which the creditor makes a composition with, or promises to give time to, or not to sue, the principal debtor, discharges the surety, unless the surety assents ' to such contract.

Creditor's refusal to sue the debtor (Section 137) : Mere refusal by the creditor to sue the principal debtor or to enforce any other remedy against him, does not, in the absence of any provision in the guarantee to the contrary, discharge the surety. For instance, B owes to C a debt guaranteed by A. The debt becomes payable. C does not sue B for a year after the debt has become payable. A is not discharged from his suretyship.

Release of one co-surety (Section 138) : Where there are co-sureties, a release by the creditor of one of them does not discharge the others neither does it free the surety so released from his responsibility to the other sureties.

Creditor's act or omission impairing surety's eventual remedy (Section 139) : If the creditor does any act which is inconsistent with the right of the surety, or omits to do any act which his duty to the surety requires him to do, and the eventual remedy of the surety himself against the principal debtor is thereby impaired, the surety is discharged. For example B contracts to build a ship for C for a given sum, to be paid by instalments as the work reaches certain stages. A becomes surety to C for B's due performance of the contract. C, without the knowledge of A, prepays to B the last two instalments. A is discharged by the prepayment.

Rights of surety on payment or performance (Section 140) : Where a guaranteed debt has become due, or default of the principal debtor to perform a guaranteed duty has taken place, the surety upon payment or performance of all that he is liable for, is *invested with all the rights which the creditor had against the principal debtor. This right is called right of subrogation.*

Surety's right to benefit of creditor's securities (Section 141): A surety is entitled to the benefit of every security which the creditor has against the principal debtor at the time when the contract of suretyship entered into, whether the surety knows of the existence of such security or not; and if the creditor loses, or without the consent of the surety, parts with such security, the surety is discharged to the extent of the value of the security. For example C advances to B, his tenant, 2,000 rupees on the guarantee of A. C has also further security for the 2,000 rupees by a mortgage of B's furniture. C, cancels the mortgaged. B becomes insolvent and C sues A on his guarantee. A is discharged from liability to the amount of the value of the furniture.

Guarantee obtained by misrepresentation/concealment is invalid (Section 142 -143): Any guarantee which has been obtained by means of misrepresentation made by the creditor, or with his knowledge and assent, concerning a material part of the transaction, is invalid. Similarly any guarantee which the creditor has obtained by means of keeping silence as to material circumstances, is invalid. For example A engages B as clerk to collect money for him. B fails to account for some of his receipts and A in consequence call upon him to furnish security for his duly accounting. C gives his guarantee for B's duly accounting. A does not acquaint C with B's previous conduct. B afterwards makes default. The guarantee is invalid.

Implied promise to indemnify surety (Section 145) : In every contract of guarantee there is an implied promise by the principal debtor to indemnify the surety, and the surety is entitled to recover from the principal debtor whatever sum he has rightfully paid under the guarantee, but no sums which he has paid wrongfully. For instance B is indebted to C, and A is surety for the debt. C demands payment from A, and on his refusal sues him for the amount. A defends the suit, having reasonable grounds for doing so, but he is compelled to pay the amount of the debt with costs. He can recover from B the amount paid by him for costs, as well as the principal debt.

Co-sureties liable to contribute equally (Section 146): Where two or more persons are co-sureties for the same debt or duty, either jointly or severally, and whether under the same or different contracts, and whether with or without the knowledge of each other, the co-sureties, in the absence of any contract to the contrary, are liable, as between themselves, to pay each an equal share of the whole debt, or of that part of it which remains unpaid by the principal debtor. For example A, B and C are sureties to D for the sum of 3,000 rupees lent to E. E makes default in payment. A, B and C are liable, as between themselves, to pay 1,000 rupees each.

JOINT STOCK COMPANIES

What is a company : A company is a group of persons who have come together or who have contributed money for some common purpose and who have incorporated themselves into a distinct legal entity in the form of a company for that purpose. Supreme Court of India has held in the case of State Trading Corporation of India v/s CTO that a company cannot have the status of a citizen under the

Constitution of India.

Characteristics of the company : A company as an entity has several distinct features which together make it a unique organization. The following are the important characteristics of a company :-

Separate Legal Entity : A company is a separate legal entity. It is different and distinct from its members. It has its own name and its own seal, its assets and liabilities are separate and distinct from those of its members. It is capable of owning property, incurring debt, borrowing money, having a bank account, employing people, entering into contracts and suing and being sued separately.

Liability of members or shareholders: The liability of the members of the company is limited to contribution to the assets of the company up to the face value of shares held by him. A member is liable to pay only the uncalled money due on shares held by him when called upon to pay and nothing more, even if liabilities of the company far exceeds its assets. Once the members have paid all their dues towards the shares held by them in the company, they do not have other liability.

Perpetual Succession : A company does not die or cease to exist unless it is specifically wound up or the task for which it was formed has been completed. Membership of a company may keep on changing from time to time but that does not affect life of the company. Death or insolvency of member does not affect the existence of the company.

Transferability of Shares : Shares in a company are freely transferable, subject to certain conditions. When a member transfers his shares to another person, the transferee steps into the shoes of the transferor and acquires all the rights of the transferor in respect of those shares.

Common Seal : A company is a artificial person and does not have a physical presence. It acts through its Board of Directors for carrying out its activities and entering into various agreements. Such contracts must be under the seal of the company. The common seal is the *official signature* of the company. The name of the company must be engraved on the common seal. Any document not bearing the seal of the company may not be accepted as authentic and may not have any legal force.

Capacity to sue and being sued : A company can sue or be sued in its own name as distinct from its members.

Separate Management : A company is administered and managed by its managerial personnel i.e. the Board of Directors. The shareholders are simply the holders of the shares in the company and need not be necessarily the managers of the company.

Minimum number of members: A public company must have at least 7 members whereas a private company may have only 2 members. If the number of members fall below the statutory minimum and the company carries on its business beyond a period of six months after the number has so fallen, the reduction of number of members below the legal minimum is a ground for the winding up of the company.

TYPES OF COMPANIES

1. Public Company means a company which is not a private company.
2. Private Company means a company which by its Articles of Association: -
 - a. Restricts the right of members to transfer its shares
 - b. Limits the number of its members to 200. In determining this number of 200, employee-members and ex-employee members are not to be considered.
 - c. Prohibits an invitation to the public to subscribe to any shares in or the debentures of the company. If a private company contravenes any of the aforesaid three provisions, it ceases to be private company and loses all the exemptions and privileges which a private company is entitled.

Deemed public limited company : A private company will be treated as a deemed public limited company in any of the following circumstances :-

- 1 .Where at least 25% of the paid up share capital of a private company is held by one or more bodies corporate, the private company shall automatically become the public company on and from the date on which the aforesaid percentage is so held.
- 2.Where the annual average turnover of the private company during the period of three consecutive financial years is not less than Rs 25 crores, the private company shall be, irrespective of its paid up share capital, become a deemed public company.
- 3.Where not less than 25% of the paid up capital of a public company limited is held by the private company, then the private company shall become a public company on and from the date on which the aforesaid percentage is so held.
4. Where a private company accepts deposits after the invitation is made by advertisement or renews deposits from the public (other than from its members or directors or their relatives), such companies shall become public company on and from date such acceptance or renewal is first made.

Limited and Unlimited companies : Companies may be limited or unlimited companies. Company may be limited by shares or limited by guarantee.

Company limited by shares : In this case, the liability of members is limited to the amount of uncalled share capital. No member of company limited by the shares can be called upon to pay more than the face value of shares or so much of it as is remaining unpaid. Members have no liability in case of fully paid up shares.

Company limited by the guarantee : A company limited by guarantee is a registered company having the liability of its members limited by its Memorandum Of Association to such amount as the members may respectively thereby undertake to pay if necessary on liquidation of the company. The liability of the members to pay the guaranteed amount arises only when the company has gone into liquidation and not when it is a going concern. A guarantee company may be a company with share capital or without share capital.

Unlimited Company : The liability of members of an unlimited company is unlimited. Therefore their liability is similar to that of the liability of the partners of a partnership firm.

Companies without the word Limited : Under the Companies Act, 1956, the name of a public limited company must end with the word 'Limited' and the name of a private limited company must end with the word 'Private Limited'. However, under Section 25, the Central Government may allow companies to remove the word "Limited / Private Limited" from the .name if the following conditions are satisfied :-

1. The company is formed for promoting commerce, science, art, religion, charity or other socially useful objects
2. The company does not intend to pay dividend to its members but apply its profits and other income in promotion of its objects.

Holding and Subsidiary companies : A company shall be deemed to be subsidiary of another company if :-

1. That other company controls the composition of its board of directors ; or
2. That other company holds more *than half in face value* of its equity share capital
3. Where the first mentioned company is subsidiary company of any company of which that other's subsidiary e.g. Company B is subsidiary of the Company A and Company C is subsidiary of Company B, therefore Company C is subsidiary of Company A.

The control of the composition of the Board of Directors of the company means that the holding company has the power at its discretion to appoint or remove all or majority of directors of the subsidiary company without consent or concurrence of any other person.

Government Companies: Means any company in which not less than 51% of the paid up share capital is held by the Central Government or any State Government or partly by the Central Government and partly by the one or more State Governments and includes a company which is a subsidiary of a government company. Government Companies are also governed by the provisions of the Companies Act. However, the Central Government may direct that certain provisions of the Companies Act shall not apply or shall apply only with such exceptions, modifications and adaptations as may be specified to such government companies.

Foreign Companies : Means a company incorporated in a country outside India under the law of that other country and has established the place of business in India.

PRIVATE AND PUBLIC COMPANIES

Particulars	Private company	Public company
Minimum members	2	7
Maximum members	200	No ceiling
Minimum directors	2	3
Maximum directors	No ceiling	No ceiling+
Start business on the basis of	Certificate of in-corporation	Certificate of incorporation and Certificate of commencement of business
Transfer of shares	Restrictions	No restriction
Words to be used with Name	'private' limited	'public' limited
Listing of shares	No listing	Listing could be on stock exchange
Minimum paid up capital	Rs.1 lac	Rs.5 lac

+Such companies can appoint any no. of directors but if the no. goes beyond 15, they need to pass a special resolution.

IMPORTANT DOCUMENTS IN RELATION TO A COMPANY

The promoters must make a decision regarding the type of company i.e. a public company or a private company or an unlimited company, etc and accordingly prepare the documents for incorporation of the company. In this connection the Memorandum and Articles of Association (MA & AA) are crucial documents to be prepared.

Memorandum of Association of a company

No company can be registered under the Companies Act, 2013 without the Memorandum Of

Association. The Memorandum Of Association of every company must contain the following clauses :-
Name clause : The name of the company is mentioned in the name clause. A public limited company must end with the word 'Limited' and a private limited company must end with the words 'Private Limited'. The company cannot have a name which in the opinion of the Central Government is undesirable. A name which is identical with or the nearly resembles the name of another company in existence will not be allowed. A company cannot use a name which is prohibited under the Names and Emblems (Prevention of Misuse) Act, 1950 or use a name suggestive of connection to government or State patronage.

Domicile or Registered office clause : The State in which the registered office of company is to be situated is mentioned in this clause. If it is not possible to state the exact location of the registered office, the company must state to provide the exact address either on the day on which commences its business or within 30 days from the date of incorporation of the company, whichever is earlier. Notice in form no 18 must be given to the Registrar of Companies within 30 days of the date of incorporation of the company. Similarly, any change in the registered office must also be intimated in form no 18 to the Registrar of Companies within 30 days. The registered office of the company is the *official address of the company* where the statutory books and records must be normally be kept. Every company must affix or paint its name and address of its registered office on the outside of the every office or place at which its activities are carried on in. The name must be written in one of the local languages and in English.

Objects clause : This clause is the most important clause of the company. It specifies the activities which a company can carry on and which it cannot carry on. The company cannot carry on any activity which is not authorised by its MoA. This clause must specify

ii. Main objects of the company to be pursued by the company on its incorporation Objects

incidental or ancillary to the attainment of the main objects

iii. Other objects of the company not included in (i) and (ii) above.

In case of the companies other than trading corporations whose objects are not confined to one State, the States to whose territories the objects of the company extend must be specified.

Liability clause A declaration that the liability of the members is limited in case of the company limited by the shares or guarantee must be given. The MoA of a company limited by guarantee must also state that each member undertakes to contribute to the assets of the company such amount not exceeding specified amounts as may be required in the event of the liquidation of the company. A declaration that the liability of the members is unlimited in case of the unlimited companies must be given. The effect of this clause is that in a company limited by shares, no member can be called upon to pay more than the uncalled amount on his shares. If his shares are already fully paid up, he has no liability towards the company.

The following are exceptions to the rule of limited liability of members :-

1. If a member agrees in writing to be bound by the alteration of MA / AA requiring him to take more shares or increasing his liability, he shall be liable upto the amount agreed to by him.
2. If every member agrees in writing to re-register the company as an unlimited company and the company is re-registered as such, such members will have unlimited liability.
3. If to the knowledge of a member, the number of shareholders has fallen below the legal minimum, (7 in the case of a public limited company and 2 in case of a private limited company) and the company has carried on business for more than 6 months, while the number is so reduced, the members for the time being constituting the company would be personally liable for the debts of the company contracted during that time.

Capital clause The amount of share capital with which the company is to be registered divided into shares must be specified giving details of the number of shares and types of shares. A company cannot issue share capital greater than the maximum amount of share capital mentioned in this clause without altering the memorandum.

Association clause A declaration by the persons for subscribing to the Memorandum that they desire to form into a company and agree to take the shares placed against their respective name must be given by the promoters.

Articles of Association : The Articles of Association (AA) contain the rules and regulations for internal management of the company.

- The AA is nothing but a contract between the company and its members and also between the members themselves that they shall abide by the rules and regulations of internal management of the company specified in the AA. It specifies the rights and duties of the members and directors. The provisions of the AA must not be in conflict with the provisions of the MA. In case such a conflict arises, the MA will prevail.
- Normally, every company has its own AA. However, if a company does not have its own AA, the model AA specified in Schedule I - Table A will apply. A company may adopt any of the model forms of AA, with or without modifications. The Articles Of Association should be in any of the one

form specified in the tables B,C,D and E of Schedule 1 to the Companies Act, 1956. Form in Table B is applicable in case of companies limited by the shares, form in Table C is applicable to the companies limited by guarantee and not having share capital, form in Table D is applicable to company limited by guarantee and having a share capital whereas form in table E is applicable to unlimited companies. However, *a private company must have its own AoA.*

- The important items covered by the AA include powers, duties, rights and liabilities of Directors, powers, duties, rights and liabilities of members, rules for Meetings of the Company, Dividends, Borrowing powers of the company, Calls on shares, Transfer & transmission of shares, Forfeiture of shares, Voting powers of members, etc
- **Alteration of articles of association** : A company can alter any of the provisions of its AA, subject to provisions of the Companies Act and subject to the conditions contained in the Memorandum of Association of the company. A company, by special resolution at a general meeting of members, alter its articles provided that such alteration does not have the effect of converting a public limited company into a private company unless it has been approved by the Central Government.
- The articles must be printed, divided into paragraphs and numbered consequently and must be signed by each subscriber to the Memorandum of Association who shall add his address, description and occupation in presence of at least one witness who must attest the signature and likewise add his address, description and occupation. The articles of association of the company when registered bind the company and the members thereof to the same extent as if it was signed by the company and by each member.

Certificate of Incorporation : Once all the above documents have been filed and they are found to be in order, the Registrar of Companies will issue Certificate of Incorporation of the Company. This document is the birth certificate of the company and is proof of the existence of the company. Once, this certificate is issued, the company cannot cease its existence unless it is liquidated by order of the Court.

Commencement of Business : A private company or a company having no share capital can commence its business immediately after it has been incorporated. However, other companies can commence their activities only after they have obtained Certificate of Commencement of Business. For

this purpose, the following additional formalities have to be complied with :-

1. If a company has share capital and has issued a prospectus, then :-
 - a. Shares upto the amount of minimum subscription must be allotted
 - b. Every director has paid to the company on each of the shares which he has taken the same amount as the public have paid on such shares
 - c. No money is or may become payable to the applicants of shares or debentures for failure to apply for or to obtain permission to deal in those shares or debentures in any recognised stock exchange.
 - d. A statutory declaration in Form 19 signed by one director or the employee - company secretary or a Company secretary in whole time practice that the above provisions have been complied with Must be filed.
2. If a company has share capital but has not issued a prospectus, then :-
 - a. It must file a statement in lieu of prospectus with the Registrar of Companies
 - b. Every director has paid to the company on each of the shares which he has taken the same amount as the other members have paid on such shares
 - c. A statutory declaration in Form 20 signed by one director or the employee - company secretary or a Company secretary in whole time practice that the above provisions have been complied with must be filedOnce the above provisions have been complied with, the Registrar of Companies grants "Certificate of Commencement of Business" after which the company can commence its activities.

Capital of a Company : Capital refers to the amount invested in the company so that it can carry on its activities. In a company capital refers to "share capital". The capital clause in Memorandum of Association must state the amount of capital with which company is registered giving details of number of shares and the type of shares of the company. A company cannot issue share capital in excess of the limit specified in the Capital clause without altering the capital clause of the MA.

The following different terms are used to denote different aspects of share capital:-

1. **Nominal, authorised or registered capital** means the sum mentioned in the capital clause of Memorandum of Association. It is the maximum amount which the company can raise by issuing the shares and on which the registration fee is paid. This limit cannot be exceeded unless the Memorandum of Association is altered.

2. **Issued capital** means that part of the authorised capital which has been offered for subscription to members and includes shares allotted to members for consideration in kind also.

3. **Subscribed capital** means that part of the issued capital at nominal or face value which has been subscribed or taken up by purchaser of shares in the company and which has been allotted.

4. **Called-up capital** means the total amount of called up capital on the shares issued and subscribed

by the shareholders on capital account. Le if the face value of a share is Rs. 10/- but the company requires only Rs. 2/-at present, it may call only Rs. 2/- now and the balance Rs.8/- at a later date. Rs. 2/- is the called up share capital and Rs. 8/- is the uncalled share capital.

5.Paid-up capital means the total amount of called up share capital which is actually paid to the company by the members.

In India, there is the concept of par value of shares. Par value of shares means the face value of the shares. A share under the Companies act, can either of Rs10 or Rs100 or any other value which may be the fixed by the Memorandum of Association of the company. When the shares are issued at the price which is higher than the par value say, for example Par value is Rs10 and it is issued at Rs15 then Rs5 is the premium amount i.e, Rs10 is the par value of the shares and Rs5 is the premium. Similarly when a share is issued at an amount lower than the par value, say Rs8, in that case Rs2 is discount on shares and Rs10 will be par value.

Types of shares :Shares in the company may be similar i.e they may carry the same rights and liabilities and confer on their holders the same rights, liabilities and duties. There are two types of shares under Indian Company Law :-

1.Equity shares means that part of the share capital of the company which are not preference shares.

2.Preference Shares means shares which fulfill the following 2 conditions. Therefore, a share which does not fulfill both these conditions is an equity share.

- a. It carries Preferential rights in respect of Dividend at fixed amount or at fixed rate i.e. dividend payable is payable on fixed figure or percent and this dividend must be paid before the holders of the equity shares can be paid dividend.
- b. It also carries preferential right in regard to payment of capital on winding up or otherwise. It means the amount paid on preference share must be paid back to preference shareholders before anything is paid to the equity shareholders. In other words, preference share capital has priority both in repayment of dividend as well as capital.

DOCTRINE OF THE ULTRA-VIRES : Any transaction which is outside the scope of the powers specified in the objects clause of the MA and are not reasonable incidentally or necessary to the attainment of objects, is ultra-vires the company and therefore void. No rights and liabilities on the part of the company arise out of such transactions and it is a nullity even if every member agrees to it.

Consequences of an ultra-vires transaction :-

1. The company cannot sue any person for enforcement of any of its rights.
2. No person can sue the company for enforcement of its rights.
3. The directors of the company may be held personally liable to outsiders for an ultra vires However, the doctrine of **ultra-vires** does not apply in the following cases :-
 1. If an act is ultra-vires of powers the directors but intra-vires of company, the company is liable.
 2. If an act is ultra-vires the articles of the company but it is intra-vires of the memorandum, the articles can be altered to rectify the error.
 3. If an act is within the powers of the company but is irregularly done, consent of the shareholders will validate it.
4. Where there is ultra-vires borrowing by the company or it obtains delivery of the property under an ultravires contract, then the third party has no claim against the company on the basis of the loan but he has right to follow his money or property if it exist as it is and obtain an injunction from the Court restraining the company from parting with it provided that he intervenes before the money is spent on- or the identity of the property is lost.
5. The lender of the money to a company under the ultra-vires contract has a right to make director personally liable.

DOCTRINE OF CONSTRUCTIVE NOTICE OF MOA & AOA

MOA and AOA are registered with ROC that can be inspected by any member of the public. Hence while dealing with a company, any person is assumed to have notice of contents of MOA and AOA that is known as constructive notice of MOA and AOA.

The effect of this doctrine is that there is presumption that a person dealing with the company knows the contents and it stops the person from contending that he had no notice of the contents.

The doctrine of constructive notice protects a company from outsiders as the outsiders are presumed to have notice of contents of MOA and AOA.

DOCTRINE OF INDOOR MANAGEMENT

The doctrine of indoor management saves the outsiders from the inside management. The person dealing with a company can presume that the company and its officials understand all the rules and regulations under which the company is to be managed. Hence the outsider is not bound to inquire into regularity of internal functioning of the company. Hence, the outsider would not be affected by any internal irregularity on the part of the company or its officials. This is known as doctrine of indoor management.

DIRECTORS

Minimum number of directors : Every public company (other than a deemed public company) must have at least three directors. Every other company must have at least two directors.

Board of Directors. The directors of a company collectively are referred to as the "Board of directors" or "Board". Only individuals can be appointed as directors. No body corporate, association or firm can be appointed director of a Company.

First directors : In case the first directors are not appointed by the promoters of a company, subscribers of the memorandum who are individuals, shall be deemed to be the directors of the company, until the directors are duly appointed.

Appointment of directors and proportion of those who are to be retire by rotation : Unless articles provide for the retirement of all directors at every annual general meeting, at **least two-thirds** of the total number of directors of a public company, or of a private company which is subsidiary of a public company, must

- (a) retire by rotation
- (b) be appointed by the company in general meeting, except where otherwise provided by the Companies Act. The remaining directors in the case of any such company, and the directors generally in the case of a private company which is not a subsidiary of a public company, must also be appointed by the company in general meeting, unless otherwise provided in any regulations in the articles of the company.

Ascertainment of directors retiring by rotation and filling of vacancies

At every annual general meeting of a public company, or a private company which is a subsidiary of a public company, one-third of the directors liable to retirement by rotation or if their number is not three or a multiple of three, then, the number nearest to one-third, shall retire from office.

The directors to retire by rotation at every annual general meeting shall be those who have been longest in office since their last appointment, but as between persons who became directors on the same day, those who will have to retire is to be determined by lot, unless otherwise agreed to among themselves.

At the annual general meeting at which a director retires as aforesaid the company may fill up the vacancy by appointing the retiring director or some other person thereto. In other words, a retiring director is eligible for re-appointment at the same meeting.

If the place of the retiring director is not so filled up and the meeting has not expressly resolved not to fill the vacancy, the meeting shall stand adjourned till the same day in the next week, at the same time and place, or if that day is a public holiday, till the next succeeding day which is not a public holiday, at the same time and place.

If at the adjourned meeting also, the place of the retiring director is not filled up and that meeting also has not expressly resolved not to fill the vacancy the retiring director shall be deemed to have been re-appointed at the adjourned meeting, unless

- i a resolution for the re-appointment of such director has been put to the meeting and lost
- ii. the retiring director, has by a notice in writing addressed to the company or its Board of directors, expressed his unwillingness to be so re-appointed
- iii. he is not qualified or is disqualified for appointment
- iv. a resolution, whether special or ordinary, is required for his appointment or re-appointment in virtue of any provisions of this Act.

Right of persons other than retiring directors to stand for directorship

A person who is not a retiring director shall, subject to the provisions of this Act, be eligible for appointment to the office of director at any general meeting, if he or some member intending to propose him has, given notice in writing to the company at its registered office of at least 14 days before the meeting, signifying his candidature for the office of director or the intention of such member to propose him as a candidate for that office along with a deposit of rupees five hundred refundable on successful election).

The company must inform its members of such candidature by giving at least 7 days prior notice. Such notice may not be required if the company advertises such candidature at least 7 days before the meeting in at least 2 newspapers circulating in the place where the registered office of the company is situated, one of which must be in English and the other in the regional language.

This provision shall not apply to a private company, unless it is a subsidiary of a public company.

Right of company to increase or reduce the number of directors : A company, at a general meeting may, by ordinary resolution, increase or reduce the number of its directors within the limits fixed in that behalf by its articles.

Increase in number of directors to require Government sanction : In the case of a public company, or a private company which is a subsidiary of a public company, any increase in the

number of its directors, beyond the maximum number of directors permitted by the Articles of the Company as first registered, shall not have any effect unless approved by the Central Government and shall become void if, and in so far as, it is disapproved by that Government. However, where such permissible maximum is 12 or less, no approval of the Central Government is required provided the increase does not increase the number of directors beyond 12.

Additional directors : The Board of directors may appoint additional directors if such power is conferred on it by the articles of the company. Such additional directors shall hold office only up to the date of the next annual general meeting of the company. Provided further that the number of the directors and additional directors together shall not exceed the maximum strength fixed for the Board by the articles.

Filling of casual vacancies among directors : In the case of a public company or a private company which is a subsidiary of a public company, if the office of any director appointed by the company in general meeting is vacated before his term of office will expire in the normal course, the resulting casual vacancy may, in default of and subject to any regulations in the articles of the company, be filled by the Board of directors at a meeting of the Board. Any person so appointed shall hold office only up to the date up to which the director in whose place he is appointed would have held office if it had not been vacated as aforesaid.

Alternate director : The Board of directors of a company may, if so authorised by its articles or by a resolution passed by the company in general meeting, appoint an alternate director to act for a director during his absence for a period of not less than three months from the State in which meetings of the Board are ordinarily held. An alternate director so appointed shall not hold office for a period longer than the period for which the original director hold office and vacate office if and when the original director returns to the State in which meetings of the Board are ordinarily held.

Consent of candidate for directorship to be filled with Registrar : A person shall not act as director of a company unless he has, by himself or by his agent authorised in writing, signed and filed with the Registrar, a consent in writing to act as such director within 30 days of his appointment. This provision shall not apply to a private company unless it is a subsidiary of a public company.

Option to company to adopt proportional representation for the appointment of directors : if the articles of a company provide for the appointment of not less than two-thirds of the total number of the directors of a public company or of a private company which is a subsidiary of a public company, according to the principle of proportional, representation, whether by the single transferable vote or by a system of cumulative voting or otherwise. Such appointments may be made once in every three years and interim casual vacancies being filled by the Board of Directors as Casual Vacancies. This may enable minority shareholders to have a proportional representation on the Board of Directors of the company.

Qualification shares : These are the minimum number of shares a person must own, as provided in the articles of the company, in order to qualify to become a director of the company. Qualification shares must be acquired by a director within 2 months of his appointment. The articles cannot require a director to acquire qualification shares within a shorter period. The face value of the qualification shares cannot exceed Rs.5000, or if the face value of one share is more than five thousand rupees, then the qualification share will be one qualification share.

Every director, not being a technical director or a director appointed, by the Central or a State Government, shall within two months after his appointment file with the company a declaration specifying the qualification shares held by him. If, after the expiry of the said period of two months, any person acts as a director of the company when he does not hold the qualification shares, he shall be punishable with the fine which may extend to Rs.50 for every day between such expiry and the last day on which he acted as a director.

The above provisions do not apply to a company not having a share capital; a private company; a company which was a private company before becoming a public company; or a prospectus issued by or on behalf of a company after the expiry of one year from the date on which the company was entitled to commence business. **Managing Directors :** Managing Director means a person who, by virtue of an agreement with the company or of a resolution passed by the company in a general meeting or by its Board of directors or by virtue of its memorandum or articles of association, is entrusted with substantial powers of management which could not otherwise be exercisable by him and includes a director occupying the position of a managing director, by whatever name called. The power merely to do administrative acts of a routine nature, when so authorised by the Board such as the power to affix the common seal of the company on any document or to draw and endorse any cheque on the account of the company in any bank or to draw and endorse any negotiable instrument or to sign any share certificate or to direct registration of share transfers will not be deemed to be included within substantial powers of management. The managing director must exercise his powers subject to the superintendence, control and direction of the Board.

Disqualifications of directors : A person shall not be capable of being appointed director of a company, if,

- a. he has been found to be of unsound mind by a Court of competent jurisdiction and the finding is in force
- b. he is an un-discharged insolvent
- c. he has applied to be adjudicated as an insolvent and his application is pending d he has been convicted by a Court of any offence

involving moral turpitude and sentenced in respect thereof to imprisonment for not less than six months, and a period of 5 years has not elapsed from the date of expiry of the sentence

d. he has not paid any call in respect of shares of the company held by him, whether alone or jointly with others, and 6 months have elapsed from the last day fixed for the payment of the call

e. an order disqualifying him for appointment as

director has been passed by a court and is in force unless the leave of the court has been obtained for his appointment in pursuance of that section.

The Central Government may, by notification in the Official Gazette, remove :-

i. the disqualification incurred by any person in virtue of clause (d) either generally or in relation to any company or companies specified in the notification; or

ii. the disqualification incurred by any person in virtue of clause (e)

A private company which is not a subsidiary of a public company may, by its articles, provide that a person shall be disqualified for appointment as a director on any grounds in addition to those specified above.

No person to be a director of more than 15 companies : Where a person already holding the office of director in 15 companies is appointed, as a director of any other company, the appointment :-

a. shall not take effect unless such person has, within 15 days thereof, effectively vacated his office as director in any of the companies in which he was already a director; and

b. shall become void immediately on the expiry of the 15 days if he has not, before such expiry effectively vacated his office as director in any of the other companies aforesaid.

In calculating the number of companies of which a person may be a director, the following companies shall be excluded :-

a. a private company which is neither a subsidiary nor a holding company of a public company

b. an unlimited company

c. an association not carrying on business for profit or which prohibits the payment of dividend

d. a company in which such person is only an alternate director, that is to say, a director who is only qualified to act as such during the absence or incapacity of some other director.

Any person who holds office, or acts, as a director of more than 15 companies in contravention of the foregoing provisions shall be punishable with fine which may extend to Rs.5000 in respect of each of those companies after the first 15.

Vacation of office by directors : The office of a director shall become vacant if :-

a. he fails to obtain within the time specified (2 months) or at any time thereafter ceases to hold, the share qualification, if any, required of him by the articles of the company

b. he is found to be of unsound mind by a Court of competent jurisdiction

c. he applies to be adjudicated an insolvent

d. he is adjudged an insolvent

e. he is convicted by a Court of any offence involving moral turpitude and is sentenced in respect thereof to imprisonment for not less than six months

f. he fails to pay any call in respect of shares of the company held by him, whether alone or jointly with others, within six months from the last date fixed for the payment of the call unless the Central Government has, by notification in the Official Gazette removed such disqualification.

g. he absents himself from three consecutive meetings

h. of the Board of directors, or from all meetings of the Board, for a continuous period of three months, whichever is longer, without obtaining leave of absence from the Board he, whether by himself or by any person for his benefit or on his account or any firm in which he is a partner or any private company of which he is a director, accepts a loan, or any guarantee or security for a loan, from the company in contravention of section 295 (without due authorization of the Central Government)

i. he acts in contravention of section 299 (failure to disclose interest in any transaction with the company he becomes disqualified by an order of Court under section 203

j. he is removed by the members by- resolution at a general meeting

k. having been appointed a director by virtue of his holding any office or other employment in the company, he ceases to hold such office or other employment in the company.

The disqualification referred to in clauses (d), (e) and (j) shall not take effect,-

a. for 30 days from the date of the adjudication sentence or order

b. where any appeal or petition is preferred within the 30 days aforesaid against the adjudication, sentence or conviction resulting in the sentence, or order until the expiry of 7 days from the date on which such appeal or petition is disposed of

c. where within the 7 days aforesaid, any further appeal or petition is preferred in respect of the adjudication, sentence, conviction, or order, and the appeal or petition, if allowed, would result in the removal of the disqualification, until such further appeal or petition is disposed of.

If a person functions as a director, knowing that his office has vacated on account of the above provisions, shall be liable to a fine upto Rs. 500/- per day of default.

A private company which is not a subsidiary of a public company may, by its articles, provide, that the office of director shall be vacated on any grounds in addition to those specified in above

Removal of directors : A company may, by ordinary resolution, remove a director (not being a director appointed by the Central Government in pursuance of section 408) before the expiry of his period of office.

A vacancy created by the removal of a director if he had been appointed by the company in general meeting or by the board in on a casual vacancy, be filled by the appointment of another director in his stead by the meeting at which he is removed, provided special notice of the intended appointment has been given.

A director so appointed shall hold office until the date up to which his predecessor would have held office if he had not been removed as aforesaid.

MEMBERS

According to Section 41, member means a person who is:

o subscribers of the memorandum of a company whose name shall be entered as members in its register of members.

- o Every other person who agrees, in writing, to become a member of a company and whose name has been entered as member in its register of members.
- o A person holding equity shares and whose name has been entered as member in its register of members. How a person can become a member :
 - By subscription to MoA
 - By getting shares allotted when company made an offer to issue such shares, including joint membership.
 - By purchase of shares from market and getting them transferred in his name.
 - By getting these shares as legal heirs, as part of the estate of a deceased shareholder.

Who can become a member :

a Any person competent to contract including nonresident person

- A company, being a legal person
- Registered society, having acquired the legal status as a person Who cannot become a member :
- A partnership firm
- Minor, insolvent, insane persons
- Fictitious person (a person making application in a fictitious name is punishable with imprisonment up to 5 years).

When does a person ceases to be a member :

- When he transfers his share in the name of some other person or when he surrenders his shares, if such surrender is allowed.
- When his shares have been forfeited
- When shares are sold in execution of a court decree
- When the rescinds the contract due to misrepresentation in the prospectus
- When he is adjudicated insolvent
- When he expires (in that situation, the shares would be transferred in the name of legal heirs)

Register of members for shares and debentures Every company keeps a register of members that contains details about shareholders. The register is kept at the registered office or at other place in the same town, city or village where the registered office is located.

Closure of register of members

The register can be closed by giving minimum 7 days notice as advertisement. The closure can be maximum for 45 days. At one point of time, the closure could be for maximum of 30 days.

Rights of members

- Priority in new shares issued by the company.
- Right to transfer shares
- Right to receive notice of meetings and voting rights
- Right to receive copies of annual accounts
- Right to inspect the register of members and copies of annual returns
- Right to apply to Company Law Board to call annual general meeting.
- Right to convene extra-ordinary general meeting
- Right to file petition to the High Court to order winding up of the company.
- Right to receive dividends, if declared by the company
- Right to participate in the distribution of asset in case of liquidation of the company. Liability of members
 - If company is limited by shares, to the extent of unpaid amount of the shares.
 - If the company is limited by guarantee, to the extent of guaranteed by the member
 - If it is unlimited company, the liability is to full extent of debts of the company.

PROSPECTUS

A prospectus is any document that is described or is issued as a prospectus and includes any notice, circular, advertisement or other document, inviting deposit from the public or inviting offers from the public for subscription / purchase of shares or debenture of a body corporate. Private companies cannot issued prospectus as these cannot invite deposits nor they can offer shares to the public.

Where prospectus is not required to be issued:

- Where a person has entered into an underwriting agreement to purchase or subscribe the shares.
- Where shares are offered to existing shareholders or debenture holders only
- Where the offer, in all respects is uniform with the previously issued shares and debentures and these are listed on a recognized stock exchange. Important aspects of the prospectus:
- Time of issue : It can be issued only after incorporation of the company.
- Contents : It should contain the information as stipulated u/s 56 and Schedule II of Companies Act
- Date of publication : It must be dated.
- Signatures of director : Each person mentioned as director, must sign it.
- Application form : Every application should be accompanied by a copy of the prospectus.
- Statement by experts : A statement purporting to be made by an expert can be issued only if the company holds written consent of the expert and he has not withdrawn it.
- Registration of the prospectus Before issue, it should be delivered to ROC for registration alongwith other documents.

Wrong statements in the prospectus:

A person induced to buy shares of debentures has following remedies:

- Against the company: To rescind the contract and claim damages.
- Against the persons: The directors or person responsible would can be punished with fine or imprisonment or both.

REGISTRATION, MODIFICATION AND SATISFACTION OF CHARGE

U/s 77 of Companies Act 2013, every charge created by a company on its assets, shall be held void against the *liquidator and any creditor* of, a company *unless* the prescribed particulars of the charge (together with copy of instrument, by which the charge in created) are filed with the Registrar, for registration within 30 days, after date of its creation. In case of charge created outside India, 30 days shall begin on receipt of instrument in India. *Delay in filing details for registration* : The registrar can extend the period by 270 days. Beyond that, Central Govt. permission is required.

Certificate of registration : The Registrar shall give a certificate of registration of any charge registered, stating the amount thereby secured. The certificate is conclusive evidence that requirement of registration has been fulfilled. Who is to file the particulars: It shall be duty of a company to file the particulars of every charge but the registration of any such charge may also be effected on the application of any person interested therein.

Right to inspect copies of instruments : The copies of the instruments creating charges shall be available for inspection to any creditor or member of a company without fee, at their registered office.

Search at the office of ROC: As part of due diligence, a search can be carried out at the office of ROC before granting loan to a company, to ensure that the assets or securities offered, are not already charged to any other party.

Filing particulars of charge

The charge is to be filed electronically by using MCA-21 on the following forms:

New loan (new charge)	CHG-1
Modification of the existing charge	CHG-1
Satisfaction of charge (on loan adjustment)	CHG-4

Priority of charge

It would be determined by the date of execution of documents (where a charge has been re istered), rather than the date of registration.

	Bank-A	Bank-B
Date of Documents	Jan 24, 2014	Feb 14, 2014
Date of Registration of charge	Feb 22, 2014	Feb 18, 2014

Bank A has got the priority.

Other Provisions in summary, of Companies Act 2013

Registered office: A company shall, within 15 days of its incorporation, to have a registered office and furnish its verification to ROC, within 30 days. **Commencement of business:** A company with share capital can commence business or exercise borrowing powers after a declaration is filed with ROC that

the Paid-up capital is not less than Rs. 5 lac (public company) and Rs.1 lac (private company).

Board and Governance

- **Number of directors:** Minimum : Public company -3 Private -2 , OPC-1. Maximum no. of directors : 15 (earlier 12). More can be added by special resolution without approval of Central Govt.
- **Woman director:** At least one woman director shall be on Board.
- **Resident Director:** A company to have min one director who has stayed in India for min 182 days in previous calendar year.
- **Independent Directors:** All listed companies shall have min one-third as independent directors.
- **Board meeting :** At least 7 days' notice is required to be given for a Board meeting. For a Meeting at shorter notice, at least one independent director shall be present at the meeting.

Managerial Remuneration : Maximum limit of 11% (of net profits) has been retained.

Financial Year: Year ending March 31.

Corporate Social Responsibility : A company with net worth of Rs. 500 crore or more, or turnover of Rs. 1000 crore or more or a net profit of Rs. 5 crore or more during any financial year (FY), shall constitute a Corporate Social Responsibility Committee (with 3 or more directors - at least one shall be an independent director). The company should spend in every FY at least 2% of average net profits during 3 immediately preceding FY in pursuance of its CSR policy.

Auditors : A company shall appoint an auditor at AGM to hold office till conclusion of 6th AGM.

The maximum number in which a person may be appointed as auditor is 20 companies.

Penalty for fraud related offences: Imprisonment up to 6 months which may extend to 10 years and fine up to the amount involved which may extend to 3 times the amount involved. In fraud involving public interest, imprisonment shall be min 3 years

National Financial Reporting Authority (NFRA) : Central Govt. can constitute NFRA for matters related to accounting and auditing standards. NFRA have powers similar to a civil court under Code of Civil Procedure, 1908, for trying a suit. NFRA can impose min penalty of Rs.1 lac, which may extend to 5 times in case of individuals; and min Rs.10 lac, which may extend to 10 times of the fees received, in case of firms.

Serious Fraud Investigation Office (SFIO) : Investigation report of SFIO filed with the Court for framing of charges shall be treated as a report filed by a Police Officer. SFIO can make arrest for certain offences, which attract the punishment for fraud. **National Company Law Tribunal and Appellate Tribunal :** The Central Government shall, constitute these Tribunals.

REGISTRATION OF CHARGE (COMPANIES ACT 2013) :

Sec 77 - Duty to register charges : Every company creating a charge within or outside India, on its assets or undertakings, whether tangible or otherwise, and situated in or outside India, is to register the particulars of the charge with Registrar of Companies (ROC) within 30 days of its creation.

ROC may allow the registration within a period of 300 days of such creation. For period beyond 300 days, the company shall seek extension of time. On registration, ROC shall issue a certificate of registration.

Effect of non-registration : Charge created by a company shall not be taken into account by the liquidator or any other creditor, if it is not registered and a certificate of registration is not given by ROC.

Sec 78 - Application for registration of charge: Where a company fails to register within the specified period, the creditor may apply to the Registrar within prescribed period. ROC, within 14 days, after giving notice to the company, allow such registration.

Sec 80 - Notice of charge : If a charge is registered, a person acquiring such assets shall be deemed to have notice of charge from date of registration.

Sec 81 - ROC Register of charges : ROC shall keep a register of charges registered, which shall be open to inspection by any person on payment of fees.

Sec 82 - Satisfaction of charge : A company shall give intimation to ROC of the payment or satisfaction in full, of any charge registered, within a period of 30 days from the date of such payment or satisfaction. ROC shall send a notice to creditor to show cause within such time not exceeding 14 days, as to why payment or satisfaction in full should not be recorded. If no cause is shown, ROC shall enter the satisfaction in register of charges kept by ROC.

Sec 86 - Punishment for contravention : If a company contravenes these provision, the company shall be punishable with fine which shall not be less than Rs.1 lakh but which may extend to Rs.10 lakh. Every officer of the company who is in default, shall be punishable with imprisonment for a period up to 6 months or with fine, not be less than Rs.25000 but which may extend to Rs.1 lakh, or with both.

PARTNERSHIP FIRMS

The law relating to Partnership firms is codified in Indian Partnership Act 1932. U/s 4, "Partnership" is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all. Persons who have entered into partnership with one another are called individually "partners" and collectively a "firm", and the name under which their business is carried on is called the "firm name". As per Section 5, the relation of partnership arises from contract and not from status (say the members of a Hindu undivided family carrying on a family business as such are not partners). To enter into a partnership, there has to be a contract which may be oral or in writing (*called Partnership deed - required to be stamped as per State govt. notification*). Where there is no partnership deed, the rights and liabilities of the partners shall be as per Partnership Act.

Competence of parties to become a partner: Being a legal contract, only persons having legal capacity to contract (minors, insolvents, alien enemy excluded) can enter into a partnership.

No. of partners (Sec 11 of Companies Act)

Banking Business : Max 10, Business other than banking : Max 20, Minor admitted for the benefits not to be counted towards the no. of members. The no. exceeding the above will make the firm an illegal association. Where a firm is a partner in another firm, the individual no. partners will be counted for the purpose of total no. of partners.

No. of partners (Sec 464 of Companies Act 2013)

The no. of partners can be 100. (Section 464 Companies Act 2013. As per Companies Act 1956, the number was max 10 for Banking Business and 20 for other business)

Joint Stock Company can become a partner in a firm and in such cases the banker needs to ensure that they are eligible to become partner.

HUE as partner — HUF cannot enter into a partnership as per Supreme Court judgement of 1998.

Minors admitted to the benefits of partnership : U/s 30,

- (1) A person who is a minor may not be a partner in a firm, but, with the consent of all the partners he may be admitted to the benefits of partnership.
- (2) Such minor has a right to such share of the *property and of the profits* of the firm as may be agreed upon, and he may have access to and inspect and copy any of the accounts of the firm.
- (3) Such minor's share is liable for the acts of the firm, but the minor is not personally liable for any such act.

Minor attaining majority:

- (4) At any time within 6 months of his attaining majority, or of his obtaining knowledge that he had been admitted to the benefits of partnership, *whichever date is later*, such person may give public notice that he has elected to become or that he has elected not to become a partner in the firm, and such notice shall determine his position as regards the firm. If he fails to give such notice, he shall become a partner in the firm on the expiry of the said 6 months.
- (5) Where such person (who was a minor earlier) becomes a partner-
 - (a) He becomes personally liable to third parties for all acts of the firm done since he was admitted to the benefits of partnership, and
 - (b) his share in the property and profits of the firm shall be the share to which he was entitled as a minor.
- (6) Where such person elects not to become a partner,-
 - (a) his rights and liabilities shall continue to be those of a minor under this section up to the date on which he gives public notice,
 - (b) his share shall not be liable for any acts of the firm done after the date of the notice, and

Duties of partners : As per Section 9, the partners are :

- bound to carry on the business of the firm to the greatest common advantage,
- to be just and faithful to each other, and
- to render true accounts and full information of all things affecting the firm to any partner or his legal representative.
- Further, as per Section 10, every partner shall indemnify the firm for any loss caused to it by his fraud in the conduct of the business of the firm.

Conduct of the business of the firm: As per Section 12, subject to contract between the partners,-

- (a) every partner has a right to take part in the conduct of the business; ' • "
- (b) every partner is bound to attend diligently to his duties in the conduct of the business;
- (c) any difference arising as to *ordinary matters* connected with the business may be decided by a majority of the partners, and every partner shall have the right to express his opinion, before the matter is decided, but no change may be made in the nature of the business without the consent of all the partners; and
- (d) every partner has a right to have access to and to inspect and copy any of the books of the firm.

Mutual rights and liabilities (i.e. amongst partners) : U/s 13, subject to contract between the partners,-

- (a) a partner is not entitled to receive remuneration for taking part in the conduct of the business;
- (b) the partners are entitled to share equally the profits earned, and shall contribute equally to the losses sustained by the firm;
- (c) where a partner is entitled to interest on the capital subscribed by him such interest shall be payable only out of profits;
- (d) a partner making, for the purposes of the business, any payment or advance beyond the amount of capital he has agreed to subscribe, is entitled to interest thereon at the rate of 6% per annum;
- (e) the firm shall indemnify a partner in respect of payments made and liabilities incurred by him-
 - (i) in the ordinary and proper conduct of the business, and
 - in doing such act, in an emergency, for the purpose of protecting the firm from loss, as would be done by a person of ordinary prudence, in his own case, under similar circumstances; and
- (f) a partner shall indemnify the firm for any loss caused to it by his wilful neglect in the conduct of the business of the firm.

Relations of Partners To Third Parties As per Section 18, a partner is the agent of the firm for the purpose of the business of the firm.

Powers of partners : U/s 19 (1), the acts of a partner to carry on business of the firm in a usual way, bind the firm and a partner is an agent of the firm for the purpose of business of the firm (called implied authority). In order to bind the firm by his acts, a partner must sign for and on behalf of the firm (and not as an individual). It should be for the usual business of the firm, no restriction should have been imposed by the other partners/partnership deed and the firm should be in existence. *All partners should sign in the event of a firm giving guarantee (unless giving the guarantee is a normal business).*

When implied authority cannot be exercised U/s 19 (2), the implied authority of a partner does not cover the following (in such circumstances, the acts have to be taken by all the partners jointly):

- a submission of a dispute to arbitration,
- b open an account in his own name for the firm's business
- c promise or relinquish claim of the firm
- d withdrawal of suit filed on behalf of the firm.
- e admit any liability in a suit against the firm,
- f acquire immovable property on behalf of firm
- g transfer immovable property belonging to firm
- h enter into a partnership on behalf of the firm.

Authority in an emergency : u/s 21, a partner has authority, in an emergency, to do all such acts for the purpose of protecting the firm from loss as would be done by a person of ordinary prudence, in his own case, acting under similar circumstances, and such acts bind the firm.

Effect of admissions by a partner and notice to a partner : As per Section 23, an admission on representation made by a partner concerning the affairs of the firm is evidence against the firm, if it is made in the ordinary course of business. Further, u/s 24, a notice to a partner, who habitually acts in the business of the firm of any matter relating to the affairs of the firm operates as notice to the firm, except in the case of a fraud on the firm committed by or with the consent of that partner.

Liability of a partner for acts of the firm : U/s 25 every partner is liable, jointly with all the other partners and also severally, for all acts of the firm done while he is a partner. Further as per Section 26, where, by the wrongful act or omission of a partner acting in the ordinary course of the business of a firm, or with the authority of his partners, loss or injury is caused to any third party, or any penalty is incurred, the firm is liable therefor to the same extent as the partner.

As per Section 49, on dissolution of a firm, its assets are first used to pay its debts (and surplus if any, is used for payment of individual debts of the partners). Similarly the partner's assets are first used for his personal liability and if there is surplus, it is used to repay the debt of the firm.

DISSOLUTION OF THE FIRM

Dissolution takes place (a) by mutual agreement amongst the partners to dissolve,

(b) death/insolvency/retirement of a partner, (c) operation of law (i.e. insolvency of all partners but one, business becoming unlawful or dissolution by a competent court) and (d) automatic dissolution (in case of partnership for specific time). By agreement (Section 40) : A firm may be dissolved with the consent of all the partners or in accordance with a contract between the partners.

Compulsory dissolution (Sec 41) : A firm is dissolved by the adjudication of all the partners or of all the partners but one as insolvent, or by the happening of any event which makes it unlawful for the business of the firm to be carried on or for the partners to carry it on in partnership.

Dissolution on the happening of certain contingencies (Sec 42) : Subject to contract between the partners a firm is dissolved-

- (a) if constituted for a fixed term, by the expiry of that term;

- (b) if constituted to carry out one or more adventures or undertakings, by the completion thereof;
- (c) by the death of a partner; and
- (d) by the adjudication of a partner as an insolvent.

Dissolution by notice of partnership at will (Sec 43)

- (1) Where the partnership is at will, the firm may be dissolved by any partner giving notice in writing to all the other partners of his intention to dissolve the firm.
- (2) The firm is dissolved as from the date mentioned in the notice as the date of dissolution or, if no date is so mentioned, as from the date of the communication of the notice.

Dissolution by the court (Sec 44)

At the suit of a partner, the court may dissolve a firm on the grounds such as that a partner has become of unsound mind or permanently incapable of performing his duties as partner or is guilty of conduct which is likely to affect prejudicially the carrying on of the business that the business of the firm cannot be carried on save at a loss etc.

Liability for acts of partners done after dissolution (Sec 45) : Despite the dissolution of a firm, the partners continue to be liable as such to third parties for any act done by any of them which would have been an act of the firm if done before the dissolution, until public notice is given of the dissolution. Further, u/s 47, after the dissolution of a firm the authority of each partner to bind the firm, and the other mutual rights and obligations of the partners continue notwithstanding the dissolution, so far as may be necessary to wind up the affairs of the firm and to complete transactions begun but unfinished at the time of the dissolution, but not otherwise.

Effect of dissolution : On dissolution, a partner's authority to bind other partners ceases. The dissolution brings an end to relationship (of being principal and agent to each other) between partners. All partners remain liable jointly and severally for the debt of the firm outstanding at the time of dissolution, till such debts are discharged. *U/s 47, the authority to bind other partners continues for the purpose of winding up the affairs of the firm.*

Settlement of accounts between partners : As per Section 48, in settling the accounts of a firm after dissolution, the following rules shall, *subject to agreement by the partners*, be observed-

- (a) losses, including deficiencies of capital, shall be paid first out of profits, next out of capital, and, lastly, if necessary, by the partners individually in the proportions in which they were entitled to share profits;
- (b) the assets of the firm, including any sums contributed by the partners to make up deficiencies of capital, shall be applied in the following manner and order-
 - (i) in paying the debts of the firm to third parties;
 - (ii) in paying to each partner rateably what is due to him from the firm for advances as distinguished from capital;
 - (iii) in paying to each partner rateably what is due to him on account of capital; and
 - (iv) the residue, if any, shall be divided among the partners in the proportions in which they were entitled to share profits.

REGISTRATION OF FIRMS : Application for registration : U/s 58, the registration of a firm may be effected at any time by sending by post or delivering to the Registrar of the area in which any place of business of the firm is situated or proposed to be situated, a statement in the prescribed form and accompanied by the prescribed fee, stating (a) the firm name, (b) the place or principal place of business of the firm, (c) the names of any other places where the firm carries on business, (d) the date when each partner joined the firm, (e) the names in full and permanent addresses of the partners, and (f) the duration of the firm.

The statement shall be signed by all the partners, or by their agents specially authorised in this behalf.

Effect of non-registration (Sec 69):

- (1) No suit to enforce a right arising from a contract or conferred by this Act shall be instituted in any court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the register of firms as a partner in the firm.
No suit to enforce a right arising from a contract shall be instituted in any court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the register of firms as partners in the firm.
- (2) The provisions of sub-sections (1) and (2) shall apply also to a claim of set-off or other proceeding to enforce a right arising from a contract, but shall not affect-
 - (a) the enforcement of any right to sue for the dissolution of a firm or for accounts of a dissolved firm, or any right or power to realise the property of a dissolved firm, or
 - (b) the powers of an official assignee, receiver or court under the Presidency-towns Insolvency Act, 1909 (3 of 1909) or the Provincial insolvency Act, 1920 (5 of 1920) to realise the property of an insolvent partner.

BANK ACCOUNTS OF PARTNERSHIP FIRMS

Accounts can be opened by banks by obtaining a copy of the partnership deed (or partnership declaration letter if no deed is available) which indicates formation of partnership, operating powers for

the account and undertaking about any reconstitution of the firm), account opening form and specimen signatures.

a account should be in the name of the firm' and not in the name of the partners and account opening form should be signed by all the partners (except the minor who is admitted for the benefits. Minor or his guardian need not sign the AOF).

b Account opening Form (AOF) should state as to who will operate the account and how it will be operated (jointly or singly).

- Signatures : While operating the account, partners will sign for the firm and not as an individual (Sec. 22).
- Operations : In case the authority is not given to any particular partner/s to operate the account, all partners will jointly operate the account. No operation to be allowed by the partner, in whose favour authority is not available.
- **Withdrawal of Authority** given to partner/s for operation, can be withdrawn by any partner singly, whether he has the authority to operate the account or not. Once this authority is withdrawn, it can be restored only when all of them sign again.
- **3rd party mandate** : Authority to operate the account can be given in favour of a 3rd person, who is not a partner, but it should be given by all partners.
- **Delegation** : A partner cannot delegate the authority given to him for operation of the account.

c Minor partners : particulars of the minor partner, particularly the date of majority, should be properly recorded, as on the said date, a letter will have to be obtained from him that he joins the firm.

d Cheques payable to the firm or endorsed to the firm cannot be credited in the personal account of a partner as that would amount to conversion. But a cheque in the personal name of any partner can be credited to the firm's account.

e: Stop Payment : Any of the partners can stop the payment of a cheque issued by another partner/s.

f In case of death/retirement or insolvency of a partner, operations in the account should be stopped, if the balance is in debit and a fresh account be opened after sanction of fresh limits.

g Cheques signed by insane, insolvent and dead partner should not be paid. U/s 34, an insolvent ceases to be a partner from the date of order of adjudication and firm is not liable for his actions.

Dispute between partners: In case of dispute between partners, one of them may revoke the authority against other partners to operate the account and in such accounts the banker should stop the operations after receiving such letter.

Action on the part of the bank in case of dissolution:

- When the account is in *credit*, the remaining partners can operate the account normally for winding up or alternatively remaining partners should open new account or ask for continuation of the account on the basis of fresh mandate. If they decide to close the account the balance lying in the account can be paid to the remaining partners and the legal heirs of the deceased partner.
- If the account is in *debit*, bank should stop operations (particularly withdrawals) to avoid application of rule in Clayton's Case and to decide/determine deceased partner's liability.
- A cheque issued by the deceased partner, prior to his death, but presented after bank's receiving a notice shall not be paid.
- A cheque issued by an insolvent partner should not be paid as his estate is not liable for any act after date of adjudication as insolvent.

Retirement - When a partner retires, any cheque issued by the retiring partner can be paid from the new account only after obtaining proper letter from all the partners including retiring partner. When the account is in debit and when one partner retires, stop operations to avoid operations of rule in "Clayton's Case" and to ascertain retiring partner's liability. A retiring partner has to give a public notice on retirement to absolve himself of any liability to 3rd parties after his retirement. He continues to be liable for the liabilities of the firm outstanding at the time before his retirement, unless released by the creditors.

Lunacy - In the event of lunacy of one of the partners if the firm does not dissolve, (to be on the safer side) cheques should not be paid signed by insane partner without written consent of all the other partners.

Action by the bank in case of reconstitution of the firm:

On death, insolvency, retirement, expulsion of an existing partner, if the partnership deed provides for continuation of the firm, the firm is said to be reconstituted. Similarly on admission of a new partner, the firm is reconstituted. On reconstitution bank may accept the reconstitution or it may refuse to accept. **Bank's acceptance of reconstitution** discharges the outgoing partner/s. Bank should obtain consent letter (balance confirmation) from remaining partners and guarantors/mortgagers if any, if there is debit balance. Where **bank does not recognise the reconstitution**, bank will initiate the loan recovery proceedings by giving notice to outgoing partners/their legal heirs, other partners, guarantors/mortgagers.

In case of admission of a new partner, he can be made liable u/s 31, only by obtaining an undertaking for liability of the firm in the form of a letter to the bank

Limited Liability Partnership (LLP)

LLP, governed by Limited Liability Partnership Act 2008, was introduced in India w.e.f. Apr 1, 2009. It combines advantages of ease of running a partnership and separate legal entity status and limited liability aspect of a company. **Main Features**

- RoC has jurisdiction over the incorporation of LLP.
- LLP is a legal entity separate from its partners. It can own assets in its name, sue and be sued.
- It has perpetual succession (death of partner does not affect the existence of LLP).
- Partners have the right to manage the business directly (in a company shareholders do not).
- A partner is not liable for another partner's misconduct or negligence, except in certain cases.
- Liability of a partner is limited to the extent of his contribution in the LLP. No exposure of personal assets of the partner, except in cases of fraud.
- Minimum 2 individual Designated Partners should be there. At least one of them should be resident in India. No limit on maximum no. of partners.
- Resident individuals, a company or an LLP can be partners (but not an NBFC).
- The rights and duties, are governed by an agreement between partners. If no agreement is made, the rights & duties as prescribed under Schedule I to the LLP Act shall be applicable.
- LLP shall maintain annual accounts.
- Firms and companies can get themselves converted into LLP.
- 30 days notice is required to be given by a partner to other partners, to resign from LLP.

Limitations:

1. **LLP** cannot raise funds from Public.
2. Any act of the partner without the consent of other, may bind the LLP.
3. No separation of Management from owners

SALE OF GOODS

Sale of Goods Act 1930, extends to the whole of India except the State of Jammu and Kashmir and came into force on the 1st day of July, 1930. **BUYER** means a person who buys or agrees to buy goods; **Delivery** means *voluntary* transfer of possession from one person to another;

Document of title to goods includes bill of lading, dock-warrant, warehouse keeper's certificate, wharfingers' certificate, railway receipt, multimodal transport document, warrant or order for the delivery of goods and any other document used in the ordinary course of business as proof of the possession or control of goods or authorising or purporting to authorise, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented;

Mercantile agent means an agent having authority either to sell goods, or to consign goods for the purposes of sale, or to buy goods, or to raise money on the security of goods (*in the customary course of business as such agent*); **Seller** means a person who sells or agrees to sell goods;

Sale and agreement to sell (Sec 4)

Contract of Sale : A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. There may be a contract of sale between one part-owner and another. A contract of sale may be absolute or conditional. (**Absolute** means where no conditions to be fulfilled by the seller or the purchasers and **conditional** means where the parties agree that the sale shall be final only on fulfillment of certain conditions either before or after the conclusion of the contract of sale).

Sale : Where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale.

Agreement to sell: Where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.

When agreement becomes sale : An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.

How Contract of sale is made (Sec 5) : A contract of sale is made by an *offer* to buy or sell goods for a price and the *acceptance* of such offer. The contract may provide for the immediate delivery of the goods or immediate payment of the price of both, or for the delivery or payment by instalments, or that the delivery or payment or both shall be postponed. A contract of sale may be made in writing or by word of mouth, or partly in writing and partly by word of mouth or may be implied from the conduct of the parties.

Feature of a contract of sale :

1. It is bilateral contract involving two persons, the buyer and seller.
2. Sale is of movable property (stocks, vehicles etc.) and not of immovable property (land and building).
3. There is no particular form for the contract.
4. The contract may be oral or in writing
5. The delivery of goods may be immediate or later on.
6. The payment for the goods may be immediate or later on.

Existing or future goods (Sec 6) : The goods which form the subject of a contract of sale may be either existing goods, owned or possessed by the seller, or future goods. There may be a contract for the sale of goods, the acquisition of which by the seller depends upon a contingency which may or may not happen. Where by in a *contract of sale*, the seller purports to effect a present sale of future goods, the contract operates as an agreement to sell the goods. Goods perishing before making of contract (Sec 7): Where there is a contract for the sale of specific goods, the contract is void if the goods, without the knowledge of the seller have, at the time when the contract was made, perished or become so damaged, as no longer to answer to their description in the contract. Goods perishing before sale but after agreement to sell (Sec 8) : Where there is an agreement to sell specific goods, and subsequently the goods, without any fault on the part of the seller or buyer, perish or become so damaged as no longer to answer to their description in the agreement before the risk passes to the buyer, the agreement is avoided.

Ascertainment of price (Sec 9) : The price in a contract of sale may be fixed by the contract or may be left to be fixed in manner thereby agreed or may be determined by the course of dealing between the parties. Where the price is not determined in accordance with the foregoing provisions, the buyer shall pay the seller a reasonable price. What is a reasonable price is a question of fact dependent on the circumstances of each particular case.

Agreement to sell at valuation (Sec 10)

Where there is an agreement to sell goods on the terms that the price is to be fixed by the valuation of a third party and such third party cannot or does not make such valuation, the agreement is thereby avoided. If the goods or any part thereof have been delivered to, and appropriated by, the buyer, he shall pay a reasonable price therefor. Where such third party is prevented from making the valuation by the fault of the seller or buyer, the party not in fault may maintain a suit for damages against the party in fault.

Sale and agreement to sell - distinction

Sales	Agreement to sell
Parties have already performed their obligation.	Parties are yet to perform their obligation.
Ownership in goods stands transferred to buyer, irrespective of payment whether made or not.	Ownership would pass after fulfilment of the conditions agreed upon between the parties.
Risk will that of the buyer.	Risk is still is with the seller.
If seller does not deliver the goods, buyer can file suit and demand specific performance and delivery of goods.	For non-delivery of goods, the buyer can only claim damages and not delivery
In case of, non-payment by the buyer, the seller can file the suit and demand price. He can also stop the delivery of goods in transit or resell the goods.	The seller can sue for damages only.

CONDITIONS AND WARRANTIES

As per Section 12, a stipulation in a contract of sale with reference to goods may be a condition or a warranty. Whether a stipulation *in a contract of sale* is a condition or a warranty depends in each case on the construction of the contract. A stipulation may actually be a condition, though called a warranty in the contract.

What is a condition : A condition is a stipulation essential to the main purpose of the contract. Its breach gives rise to a right to treat the contract as repudiated. **What is a warranty:** A warranty is a stipulation collateral to the main purpose of the contract. Its breach gives rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated.

When condition to be treated as warranty (Sec 13)

- (1) Where a contract of sale is subject to any condition to be fulfilled by the seller, the buyer may waive the condition or elect to treat the breach of the condition as a breach of warranty and not as a ground for treating the contract as repudiated.
- (2) Where a contract of sale is not severable and the buyer has accepted the goods or part thereof, the breach of any condition to be fulfilled by the seller can only be treated as a breach of warranty and not as a ground for rejecting the goods and treating the contract as repudiated, unless there is a

term of the contract, express or implied, to that effect.

Implied conditions and warranties

Title of the seller (Sec 14) : In a contract of sale there is-

- (a) an implied condition on the part of the seller that, *in the case of a sale*, he has a right to sell the goods. In the case of an agreement to sell, he will have a right to sell the goods at the time when the property is to pass;
- (b) an implied warranty that the buyer shall have and enjoy quiet possession of the goods;
- (c) an implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party not declared or known to the buyer before or at the time when the contract is made.

Sale by description of goods (Sec 15) : Where there is a contract for the sale -of goods by description, there is an implied condition that the goods shall correspond with the description; and, if the sale is by sample, it is sufficient that the bulk of the goods correspond with the sample.

Quality or fitness (Sec 16) : There is no implied warranty or condition as to the quality or fitness for any *particular purpose* of goods supplied under a contract of sale, except as follows:-

- (1) Where the buyer, expressly or by implication, makes known to the seller, the particular purpose for which the goods are required, so as to show that the buyer relies on the seller's skill or judgement, and the goods are of a description which it is in the course of the seller's business to supply, there is an implied condition that the goods shall be reasonably fit for such purpose. In the case of a contract for the sale of a specified article under its patent or other trade name, there is no implied condition as its fitness for any particular purpose.
- (2) Where goods are bought by description from a seller who deals in goods of that description (whether he is the manufacturer or producer or not), there is an implied condition that the goods shall be of merchantable quality. If the buyer has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed.

Sale by sample (Sec 17) : In the case of a contract for sale by sample there is an implied condition-

- (a) that the bulk shall correspond with the sample in quality;
- (b) that the buyer shall have a reasonable opportunity of comparing the bulk with the sample;
- (c) that the goods shall be free from any defect, rendering them unmerchantable, which would not be apparent on reasonable examination of the sample.

EFFECT OF THE CONTRACT AS BETWEEN SELLER AND BUYER

Goods must be ascertained (Sec 18) : Where there is a contract for the sale of unascertained goods, no property in the goods is transferred to the buyer unless and until the goods are ascertained.

Property passes when intended to pass (Sec 19)

(1) Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.

(2) For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case.

(3) Unless a different intention appears, the rules contained in sections 20 to 24 are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer.

Specific goods in a deliverable state (Sec 20)

Where there is an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment of the price or the time of delivery of the goods, or both, is postponed.

Specific goods to be put into a deliverable state (Sec 21)

Where there is a contract for the sale of specific goods and the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property does not pass until such thing is done and the buyer has notice thereof.

Specific goods in a deliverable state, when the seller has to do anything thereto in order to ascertain price (Sec 22)

Where there is a contract for the sale of specific goods in a deliverable state, but the seller is bound to weigh, measure, test or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the property does not pass until such act or thing is done and the buyer has notice thereof.

TRANSFER OF TITLE

Sale by person not the owner (Sec 27): The buyer acquires no better title to the goods than the seller had, unless the owner of the goods is, by his conduct, precluded from denying the seller's authority to sell.

Sale by Mercantile agent : Where a mercantile agent is, *with the consent of the owner*, in possession of the goods or of a document of title to the goods, any sale made by him, when acting in the ordinary course of business of a mercantile agent, shall be as valid as if

he were expressly authorised by the owner of the goods to make the same; provided that the buyer acts in good faith and has not at the time of the contract of sale, notice, that the seller has no authority to sell.

Sale by one of joint owners (Sec 28) : If one of several joint owners of goods *has* the sole possession of them by permission of the co-owners, the property in the goods is transferred to any person who buys them, of such joint owner, in good faith and has not at the time of the contract of sale notice that the seller has no authority to sell.

Sale by person in possession under voidable contract (Sec 29) When the seller of goods has obtained possession thereof under a contract voidable under section 19 or section 19A of the Indian Contract Act, 1872, but the contract has not been rescinded at the time of the sale, the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of the seller's defect of title.

Seller or buyer in possession after sale (Sec 30)

- (1) Where a person, having sold goods is in possession of the goods or of the documents of title to the goods, the delivery or transfer, of the goods or documents of title under any sale, pledge or other disposition thereof to any person receiving the same in good faith and without notice of the previous sale, shall have the same effect as if the person making the delivery or transfer were expressly authorised by the owner of the goods to make the same.
- (2) Where a person, having bought or agreed to buy goods, obtains with the consent of the seller, possession of the goods or the documents of title to the goods, the delivery or transfer by that person or by a mercantile agent acting for him, of the goods or documents of title under any sale, pledge or other disposition thereof to any person receiving the same in good faith and without notice of any lien or other right of the original seller in respect of the goods shall have effect as if such lien or right did not exist.

Doctrine of Caveat Emptor

The person purchasing the goods should take due care/precaution while purchasing the goods. After purchase of the goods, if the goods do not serve his purpose or he makes a bad choice, the seller cannot be blamed for sale of such goods.

RIGHTS OF UNPAID SELLER AGAINST THE GOODS The seller of goods is deemed to be an unpaid seller within the meaning of this Act:

- (a) When the whole of the price has not been paid or tendered;
- (b) When a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it was received has not been fulfilled by reason of the dishonour of the instrument or otherwise.

Rights of an unpaid seller (Sec 46) Notwithstanding that the property in the goods may have passed to the buyer, the unpaid seller of goods, as such, has by implication of law-

- (a) a lien on the goods for the price *while he is in possession of them*;
- (b) in case of the insolvency of the buyer, a right of stopping the goods in transit *after he has parted with the possession* of them;
- (c) a right of re-sale as limited by this Act.

Where the property in goods has not passed to the buyer: The unpaid seller has, in addition to his other remedies, a right of withholding delivery similar to and co-extensive with his rights of lien and

stoppage in transit where the property has passed to the buyer.

Unpaid Seller's lien (Sec 47)

The unpaid seller of goods who is *in possession of them* is entitled to retain possession of them until payment or tender of the price, in the following cases, namely:-

- (a) where the goods have been sold without any stipulation as to credit;
- (b) where the goods have been sold on credit, but the term of credit has expired;
- (c) where the buyer becomes insolvent.

Further, the seller may exercise his right of lien notwithstanding that he is in possession of the goods as agent or bailee for the buyer.

Part delivery (Sec 48)

Where an unpaid seller has made part delivery of the goods, he may exercise his right of lien on the remainder, unless such part delivery has been made under such circumstances as to show an agreement to waive the lien.

Termination of lien (Sec 49)

The unpaid seller of goods loses his lien thereon-

- (a) when he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without *reserving the right* of disposal of the goods;
- (b) when the buyer or his agent lawfully obtains possession of the goods;
- (c) by waiver thereof.

The unpaid seller of goods, having a lien thereon, does not lose his lien by reason only that he has

obtained a decree for the price of the goods.

Right of stoppage in transit (Sec 50)

When the buyer of goods becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them in transit, that is to say, he may resume possession of the goods as long as they are in the course of transit, and may retain them until payment or tender of the price.

Summary of rights of unpaid seller

Right against goods where the property in goods	Right against the buyer personally
<p>Passed to buyer: Lien, stoppage in transit, resale of goods.</p> <p>Not passed to buyer: Withholding of delivery and stoppage in transit.</p>	<ul style="list-style-type: none"> • Suit for price • Suit for damage • Repudiation of contract • Suit for interest

TRANSFER OF PROPERTIES ACT 1882

58 (a)	Mortgage	a) a charge on immovable properties b) as security for a loan or performance c) for an existing or future debt
58 (b)	Simple Mortgage	<ul style="list-style-type: none"> - Personal undertaking to pay - Possession with the Mortgagor - Security personal & Property - Right of Sale — with court intervention
58 (c)	Conditional Mortgage	<ul style="list-style-type: none"> > No personal Obligation ➤ Possession with Mortgagor > Sale or redeem > If in writing requires registration
58 (d)	Usufructuary Mortgage	<ul style="list-style-type: none"> > Possession with Mortgagee ➤ Rents / Profits to mortgagee > No foreclosure by mortgagee > Redeemable within 30 years
58 (e)	English Mortgage	<ul style="list-style-type: none"> > Similar to mortgage by conditional Sale > Possession with mortgagee > acquisition of property without court intervention > Right to sell without court intervention
58 (f)	Equitable Mortgage	<ul style="list-style-type: none"> > Only at specified centres > A oral mortgage without mortgage Deed > mortgage by deposit of title deeds > requires two witnesses > Does not attract Registration & stamp duty but governed by state act > Possession with mortgagor > No right to sell without Court intervention > SARFAESI Act — overrules the above condition
58 (g)	Anamolous Mortgage	<ul style="list-style-type: none"> > Combination of any one or more than one of the types of mortgages or > A mortgage not defined in the earlier types of mortgages are called Anomalous Mortgages
59	Registration of Charges of I.P.	<ul style="list-style-type: none"> > Except Oral / Equitable Mortgages, all Written deeds conveying a charge on Immovable property require Registration (Sec-59)
		<ul style="list-style-type: none"> > <i>Registration Act — Sec-17 requires registration of</i> > Mortgage agreements/ Deeds of IP > Gift Deeds of IP / Sale Deeds / Wills > Lease Deeds exceeding One year of IP > Assignment of IP & Rents

RIGHT TO INFORMATION ACT

Objective: To provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority.

Applicability: It extends to the whole of India except the State of Jammu and Kashmir. The Act came into force on 12th October 2005 and on coming into force of this Act, the Freedom of Information Act 2002, has been repealed.

Definitions:

1. "appropriate Government" means a public authority which is established, constituted, owned, controlled or substantially financed by funds provided directly or indirectly (i) by the Central Government or the Union territory administration, the Central Government; (ii) by the State Government, the State Government;
2. "Central Information Commission" means the Central Information Commission constituted by the central Government.
3. "Central Public Information Officer" means the Central Public Information Officer designated by a public authority and includes a Central Assistant Public Information Officer.
"information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force;
4. "public authority" means any authority or body or institution of self- government established or constituted (a) by or under the Constitution; (b) by any other law made by Parliament; (c) by any other law made by State Legislature; (d) by notification issued or order made by the appropriate Government, and includes any— (i) body owned, controlled or substantially financed; (ii) non-Government organization substantially financed, directly or indirectly by funds provided by the appropriate Government;
5. "right to information" means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to— (i) inspection of work, documents, records (ii) taking notes, extracts or certified copies of documents or records; (iii) taking certified samples of material; (iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device;
6. "State Information Commission" means the State Information Commission constituted by the State Government.

Time for supplying information (Section 7):

The Central Public Information Officer or State Public Information Officer, on receipt of a request under section 6 of the Act shall, provide information as expeditiously as possible, and in any case within thirty days of the receipt of the request or reject the request specifying reasons for the same. However, where the information sought for concerns the life or liberty of a person, the same shall be provided within forty-eight hours of the receipt of the request.

Delay in supplying information (Section 20):

If the Central Public Information Officer refuses to receive an application for information or has not furnished information within the time specified under section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information, the Central Information Commission may impose a penalty of two hundred and fifty rupees each day for period of delay with a maximum of Rs twenty-five thousand rupees.

Section 4: Every public authority shall maintain all its records duly catalogued and indexed in a manner and the form which facilitates the right to information under this Act and ensure that all records that are appropriate to be computerised are, within a reasonable time and subject to availability of resources, computerised and connected through a network all over the country on different systems so that access to such records is facilitated.

Obligations of Public Authorities (Section 5):

1. Every public authority shall, designate the Central Public Information Officers in all administrative

units or offices as may be necessary to provide information to persons requesting for the information under this Act.

2. Every Public Information Officer, shall deal with requests from persons seeking information and render reasonable assistance to the persons seeking such information.
3. A person, who desires to obtain any information under this Act, shall make a request in writing or through electronic means in English or Hindi or in the official language of the area in which the application is being made, accompanying such fee as may be prescribed, to PIO.
4. Where such request cannot be made in writing, the PIO shall render all reasonable assistance to the person making the request orally to reduce the same in writing.
5. An applicant making request for information shall not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him.
6. Where an application is made to a public authority requesting for an information,— (i) which is held by another public authority; or (ii) the subject matter of which is more closely connected with the functions of another public authority, the public authority, to which such application is made, shall transfer the application to such authority within five days from the date of receipt of the application to that other public authority and inform the applicant immediately about such transfer.
7. The Public Information Officer shall supply information as early as possible but within a maximum period of thirty days of the receipt of the request, or reject the request for any of the reasons specified in sections 8 and 9 of the Act However, where the information sought for concerns the life or liberty of a person, the same shall be provided within forty-eight hours of the receipt of the request.
8. If the Public Information Officer fails to give decision on the request for information within the period specified, he shall be deemed to have refused the request.
9. The fee prescribed for information and copies of various records shall be reasonable and no such fee shall be charged from the persons who are of below poverty line as may be determined by the appropriate Government.
10. Where a request has been rejected, the Public Information Officer shall communicate to the person making the request, (i) the reasons for such rejection; (ii) the period within which an appeal against such rejection may be preferred; and (iii) the particulars of the appellate authority.
11. PIO shall supply information in the form in which it is sought unless it would disproportionately divert the resources of the public authority or would be detrimental to the safety or preservation of the record in question.
12. If information sought has been supplied to PIO by a third party and has been treated as confidential by that third party, the PIO shall give notice to such third party within five days from the receipt of the request, and take its representation into consideration. Third party will be given ten days to make such representation. In such cases, the PIO shall, make a decision within forty days after receipt of the request as to whether or not to disclose the information or record or part thereof and give in writing the notice of his decision to the third party.

Fees: As per Right to Information Rules, the application seeking information shall be accompanied by a fees of Rs 10 which may be paid in cash or through Demand draft, banker's cheque or Indian Postal Order.

Information Exempted from Disclosure:

- (a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;
- (b) information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;
- (c) information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;
- (d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;
- (e) information available to a person in his fiduciary relationship.
- (f) information received in confidence from foreign Government;
- (g) information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;

- (h) information which would impede the process of investigation or apprehension or prosecution of offenders;
- (1) cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers;
- 6) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual.

Rejection of request: PIO may reject a request for information where such a request for providing access would involve an infringement of copyright subsisting in a person other than the State. However, where a request is rejected on the ground that it is in relation to information which is exempt from disclosure, then, access may be provided to that part of the record which does not contain any information which is exempt from disclosure under this Act. Where access is granted to a part of the record, the PIO shall give a notice to the applicant, informing— (a) that only part of the record requested, after severance of the record containing information which is exempt from disclosure, is being provided; (b) the reasons for the decision, including any findings on any material question of fact, referring to the material on which those findings were based; (c) the name and designation of the person giving the decision; (d) the details of the fees calculated by him or her and the amount of fee which the applicant is required to deposit; and (e) his or her rights with respect to review of the decision regarding non-disclosure of part of the information, the amount of fee charged or the form of access provided.

Appeal: The Central and State Governments have the powers to constitute a body known as the Central Information Commission or State Information Commission. The Central and State Information Commission have the authority to receive and inquire into a complaint from any person:

1. who has been unable to submit a request to a Central Public Information Officer or because his the Central Assistant Public Information Officer or State Assistant Public information Officer, as the case may be, has refused to accept his or her application for information or appeal under this Act for forwarding the same to the Central Public information Officer or State Public Information Officer or senior officer specified in sub-section (1) of section 19 or the Central Information Commission or the State information Commission, as the case may be;
2. who has been refused access to any information requested under this Act;
3. who has not been given a response to a request for information or access to information within the time limit specified under this Act;
4. who has been required to pay an amount of fee which he or she considers unreasonable;
5. who believes that he or she has been given incomplete, misleading or false information under this Act; and
6. in respect of any other matter relating to requesting or obtaining access to records under this Act.

Any person who, does not receive a decision within the time specified above, or is aggrieved by a decision of the PIO, can prefer an appeal to such officer who is senior in rank to the PIO in each public authority within thirty days from the expiry of such period or from the receipt of such a decision. The appellate authority can condone the delay in filing the appeal if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time. If the appeal is against an order made by a PIO to disclose third party information, the appeal by the concerned third party shall be made within thirty days from the date of the order.

A second appeal against the decision of the Appellate Authority can be made to Central Information Commission within ninety days from the date on which the decision should have been made or was actually received. Central Information Commission may condone the delay in filing the appeal. The appeal to appellate authority or to Central Information Commission shall be disposed of within thirty days of the receipt of the appeal or within such extended period not exceeding a total of forty-five days from the date of filing thereof. The decision of the Central Information Commission or State Information Commission, as the case may be, shall be binding. The Central Information Commission has the power to (a) require the public authority to take any such steps as may be necessary to secure compliance with the provisions of this Act (b) require the public authority to compensate the complainant for any loss or other detriment suffered; (c) impose any of the penalties provided under this Act; (d) reject the application.

Penalties: If the Central information Commission is of the opinion that the PIO, has, without any reasonable cause, refused to receive an application for information or has not furnished information within the time specified or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request, it shall impose a penalty of two hundred and fifty rupees each day till application is received or

information is furnished with a maximum of Twenty-five thousand rupees. However, PIO shall be given a reasonable opportunity of being heard before any penalty is imposed on him.

FOREIGN EXCHANGE MANAGEMENT ACT, 1999

The Foreign Exchange Management Act 1999 (FEMA) was enacted on December 02, 1999 to replace Foreign Exchange Regulation Act (FERA) 1973. The Act came into on June 01, 2000 and extends to the entire country, all branches, offices, agencies outside India - those owned or controlled by a person residing in India.

Objective of FEMA : (i) Facilitating external trade and payments and (ii) for promoting the orderly development and maintenance of foreign exchange market in India. The Foreign Exchange Management Act, 1999, extends to the whole of India. It shall also apply to all branches, offices and agencies outside India owned or controlled by a person resident in India. It came into force w.e.f. June 01, 2000.

Important terms and definitions

Authorised person means an authorised dealer, money changer, off-shore banking unit or any other person being authorised to deal in foreign exchange or foreign securities, by RBI. Currency includes all currency notes, postal notes, postal orders, money orders, cheques, drafts, travellers' cheques, letters of credit, bills of exchange and promissory notes, credit cards or such other similar instruments, as may be notified by the Reserve Bank.

Currency notes means and includes cash in the form of coins and bank notes; **Current account transaction** means a transaction other than a capital account transaction and includes,-

- (i) payments due in connection with foreign trade, other current business, services, and short-term banking and credit facilities in the ordinary course of business,
- (ii) payments due as interest on loans and as net income from investments,
- (iii) remittances for living expenses of parents, spouse and children residing abroad, and
- (iv) expenses in connection with foreign travel, education and medical care of parents, spouse and children;

Foreign exchange from whom : As per Section 5, any person may sell or draw foreign exchange to or from an *authorised person* if such sale or drawal is a current account transaction. Central Government may, in consultation with the Reserve Bank, impose such reasonable restrictions for current account transactions.

Export, with its grammatical variations and cognate expressions means, the taking out of India to a place outside India any goods and provision of services from India to any person outside India; **Foreign currency** means any currency other than Indian currency;

Foreign exchange means foreign currency and includes,-

- (i) deposits, credits and balances payable in any foreign currency,
- (ii) drafts, travellers' cheques, letters of credit or bills of exchange, expressed or drawn in Indian currency but payable in any foreign currency,
- (iii) drafts, travellers cheques, letters of credit or bills of exchange drawn by banks, institutions or persons outside India, but payable in Indian currency; **Foreign security** means any security, in the form of shares, stocks, bonds, debentures, or any other instrument denominated or expressed in foreign currency and includes securities expressed in foreign currency, but where redemption or any form of return such as interest or dividends is payable in Indian currency;

Import, with its grammatical variations and cognate expressions, means bringing into India any goods, or services;

Person resident in India means -

- (I) a person residing in India for more than 182 days during the course of the preceding financial year but does not include-

(A) a person who has gone out of India or who stays outside India, in either case- (a) for or on taking up employment outside India, or (b) for carrying on a business or vocation outside India, or (c) for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period;

(B) a person who has come to stay in India, in either case, otherwise than- (a) for or on taking up employment in India, or (b) for carrying on a business or vocation in India, or (c) for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period;

- (ii) any person or body corporate registered or incorporated in India,
- (iii) an office, branch or agency in India owned or controlled by a person resident outside India,
- (iv) an office, branch or agency outside India owned or controlled by a person resident in India;

Person resident outside India means a person who is not resident in India.

Regulation And Management Of Foreign Exchange Dealing in foreign exchange (Sec 3): No person shall-

- (a) deal in or transfer any foreign exchange or foreign security to any person not being an authorized person;
- (b) make any payment to or for the Credit of any person resident outside India in any manner;
- (c) receive otherwise through an authorised person, any payment by order or on behalf of any person resident outside India in any manner;
- (d) enter into any financial transaction in India as consideration for or in association with acquisition or

creation or transfer of a right to acquire, any asset outside India by any person.

Holding of foreign exchange: No person resident in India shall acquire, hold, own, possess or transfer any foreign exchange, foreign security or any immovable property *situated outside India, unless permitted by RBI.*

Holding of foreign currency by Residents: A person resident in India may hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India if such currency, security or property was acquired, held or owned by such person when he was resident outside India or inherited from a person who was resident outside India.

Holding of foreign currency by non-residents A person resident outside India may hold, own, transfer or invest in Indian currency, security or any immovable property situated in India if such currency, security or property was acquired, held or owned by such person when he was resident in India or inherited from a person who was resident in India.

Capital account transactions A transaction which alters the assets or liabilities, including contingent liabilities, outside India of persons resident in India or assets or liabilities in India of persons resident outside India, is called capital account transaction. As per Section 6 any person may sell or draw foreign exchange to or from an authorised person for a capital account transaction. Reserve Bank may, in consultation with the Central Government, specify :

- (a) any class or classes of capital account transactions which are permissible;
- (b) the limit up to which foreign exchange shall be admissible for such transactions:

Reserve Bank shall not impose any restriction on the drawal of foreign exchange for payments due on account of amortisation of loans or for depreciation of direct investments in the ordinary course of business. transaction. As per Section 6 any person may sell or draw foreign exchange to or from an authorised person for a capital account transaction. Reserve Bank may, in consultation with the Central Government, specify :

- (c) any class or classes of capital account transactions which are permissible;
- (d) the limit up to which foreign exchange shall be admissible for such transactions:

Reserve Bank shall not impose any restriction on the drawal of foreign exchange for payments due on account of amortisation of loans or for depreciation of direct investments in the ordinary course of business

Restriction on capital account transactions Reserve Bank may, by regulations, prohibit, restrict or regulate the following-

- (a) transfer or issue of any foreign security by a person resident in India;
- (b) transfer or issue of any security by a person resident outside India;
- (c) transfer or issue of any security or foreign security by any branch, office or agency in India of a person resident outside India;
- (d) any borrowing or lending in foreign exchange in whatever form or by whatever name called;
- (e) any borrowing or lending in rupees in whatever form or by whatever name called between a person resident in India and a person resident outside India;
- (f) deposits between persons resident in India and persons resident outside India;
- (9) export, import or holding of currency or currency notes;
- (h) transfer of immovable property outside India, other than a lease not exceeding five years, by a person resident in India;
- (i) acquisition or transfer of immovable property in India, other than a lease not exceeding five years, by a person resident outside India;
- (j) giving of a guarantee or surety in respect of any debt, obligation or other liability incurred-
 - (i) by a person resident in India and owed to a person resident outside India; or
 - (ii) by a person resident outside India.

Reserve Bank's powers to issue directions to authorised person (Section 11) : Reserve Bank, may give to the authorised persons, any direction in regard to making of payment or the doing or desist from doing any act relating to foreign exchange or foreign security, direct any authorised person to furnish such information, in such manner, as it deems fit.

Penalty on authorized person : Where any authorised person contravenes any direction given by the Reserve Bank under this Act or fails to file any return as directed by the Reserve Bank, the Reserve Bank may, after giving reasonable opportunity of being heard, impose on the authorised person a penalty which may extend to Rs.10000 and in the case of continuing contravention with for every day during which such contravention continues.

Power of Reserve Bank to inspect authorised person (Sec 12)

Reserve Bank may undertake an inspection of the business of any authorised person for the purpose of verifying the correctness of any statement, information or particulars furnished to the Reserve Bank, obtaining any information or particulars which such authorised person has failed to furnish on being

called upon to do so.

CONTRAVENTION AND PENALTIES : Penalties (Sec 13) : If any person contravenes any provisions of this Act, or contravenes any rule, regulation, notification, direction or order issued in exercise of the powers under this Act, or contravenes any condition subject to which an authorisation is issued by the Reserve Bank, he shall, upon adjudication, be liable to a penalty up to *thrice the sum involved* in such contravention where such amount is quantifiable, or up to Rs.2 lac where the amount is not quantifiable. Such contravention is a continuing one, further penalty which may extend to Rs.5000 for every day after the first day during which the contravention continues.

If any person fails to make full payment of the penalty imposed on him under section 13 within a period of 90 days from the date on which the notice for payment of such penalty is served on him, he shall be liable to civil imprisonment u/s 14.

Power to compound contravention : U/s 15, any contravention under section 13 may, on an application made by the person committing such contravention, be compounded within 180 days from the date of receipt of application by the Director of Enforcement or such other officers of the Directorate of Enforcement and officers of the Reserve Bank as may be authorised in this behalf by the Central Government.

ADJUDICATION AND APPEAL

U/s 16 Central Government may appoint officers of the Central Government, as the Adjudicating Authorities for holding an inquiry. Adjudicating Authority may direct the said person to furnish a bond or guarantee,

- No Adjudicating Authority shall hold an enquiry except upon a complaint in writing made by any officer authorised by a general or special order by the Central Government. Adjudicating Authority shall have the powers of a civil court.
- **All** proceedings before it shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code.
- Adjudicating Authority shall deal with the complaint to dispose of the complaint finally within one year from the date of receipt of the complaint:

Appellate Tribunal (Sec 18): The Central Government shall, establish an Appellate Tribunal to be known as the Appellate Tribunal for Foreign Exchange to hear appeals against the orders of the Adjudicating Authorities and the Special Director (Appeals). Appellate Tribunal shall consist of a Chairperson and such number of Members as the Central Government may deem fit.

Restriction on capital account transactions Reserve Bank may, by regulations, prohibit, restrict or regulate the following-

- (a) transfer or issue of any foreign security by a person resident in India;
- (b) transfer or issue of any security by a person resident outside India;
- (f) transfer or issue of any security or foreign security by any branch, office or agency in India of a person resident outside India;
- (g) any borrowing or lending in foreign exchange in whatever form or by whatever name called;
- (h) any borrowing or lending in rupees in whatever form or by whatever name called between a person resident in India and a person resident outside India;
- (9) deposits between persons resident in India and persons resident outside India;
- (9) export, import or holding of currency or currency notes;
- (k) transfer of immovable property outside India, other than a lease not exceeding five years, by a person resident in India;
- (l) acquisition or transfer of immovable property in India, other than a lease not exceeding five years, by a person resident outside India;
- (m) giving of a guarantee or surety in respect of any debt, obligation or other liability incurred-
 - (iii) by a person resident in India and owed to a person resident outside India; or
 - (iv) by a person resident outside India.

Reserve Bank's powers to issue directions to authorised person (Section 11) : Reserve Bank, may give to the authorised persons, any direction in regard to making of payment or the doing or desist from doing any act relating to foreign exchange or foreign security, direct any authorised person to furnish such information, in such manner, as it deems fit.

Penalty on authorized person : Where any authorised person contravenes any direction given by the Reserve Bank under this Act or fails to file any return as directed by the Reserve Bank, the Reserve Bank may, after giving reasonable opportunity of being heard, impose on the authorised person a penalty which

may extend to Rs.10000 and in the case of continuing contravention with an additional penalty which may extend to Rs.2000. Appeal to High Court (Sec 35) : No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an Adjudicating Authority or the Appellate Tribunal or the Special Director (Appeals) is empowered. Any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within 60 days from the date of communication of the decision or order of the Appellate Tribunal to him on any question of law arising out of such order:

DIRECTORATE OF ENFORCEMENT : U/S 36, Central Government shall establish a Directorate of Enforcement with a Director and other officers. U/s 37, the Director of Enforcement and other officers of Enforcement, not below the rank of an Assistant Director, shall take up for investigation, the contravention referred to in section 13.

Empowering other officers : U/s 38, Central Government may authorise any officer of customs or any Central Excise Officer or any police officer or any other officer of the Central Government or a State Government to exercise such of the powers and discharge such of the duties of the Director of Enforcement or any other officer of Enforcement under this Act. The officers shall exercise the like powers which are conferred on the income-tax authorities under the Income Tax Act, 1961.

Power to make regulations : U/s 47, Reserve Bank may, make regulations to carry out the provisions of this Act and the rules made there-under. Such regulations may provide for :-

- (a) the permissible classes of capital account transactions, the limits of admissibility of foreign exchange for such transactions, and the prohibition, restriction or regulation of certain capital account transactions under section 6;
- (b) the manner and the form in which the declaration is to be furnished under clause (a) of sub-section (1) of section 7;
- (c) the period within which and the manner of repatriation of foreign exchange under section 8;
- (d) the limit up to which any person may possess foreign currency or foreign coins under clause (a) of section 9;
- (e) the class of persons and the limit up to which foreign currency account may be held or operated under clause (b) of section 9;
- (f) the limit up to which foreign exchange acquired may be exempted under clause (d) of section 9;
- (g) the limit up to which foreign exchange acquired may be retained under clause (e) of section 9;
- (h) any other matter which is required to be, or may be, specified.

PREVENTION OF MONEY LAUNDERING ACT

The Prevention of Money Laundering Act, 2002 (PMLA) forms the core of the legal framework put in place by India to combat money laundering. PMLA and the Rules notified there under came into force with effect from July 1, 2005. Director, FIU-IND and Director (Enforcement) have been conferred with exclusive and concurrent powers under relevant sections of the Act to implement the provisions of the Act. The PMLA and rules notified thereunder impose obligation on banking companies, financial institutions and intermediaries to verify identity of clients, maintain records and furnish information to PMLA defines money laundering offence and provides for the freezing, seizure and confiscation of the proceeds of crime.

Applicability: Prevention of Money Laundering Act extends to the whole of India.

Offence of Money-Laundering (Section 3): Money Laundering has not been defined in the Act. However, as per Section 3 of the Act, whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime and projecting it as untainted property shall be guilty of offence of money laundering.

Punishment for Money Laundering (Section 4): Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine which may extend to five lakh rupees. However, if the proceeds of crime involved in money-laundering relates to any offence under the Narcotic Drug and Psychotropic Substances Act, 1985, the maximum punishment could extend to 10 years.

Obligations of Banking Companies, Financial Institutions and Intermediaries of securities market: (Section 12): Every banking company, financial institution and intermediary shall -

- (a) maintain a record of all transactions, the nature and value of which may be prescribed, whether such transactions comprise of a single transaction or a series of transactions integrally connected to each other, and where such series of transactions take place within a month;
 - (b) furnish information of transactions referred to in clause (a) to the Director within such time as may be prescribed;
 - (c) verify and maintain the records of the identity of all its clients, in such a manner as may be prescribed.
- The records of transactions as required under (a) and (b) shall be maintained for a period of ten years from the date of transactions between the clients and the banking company or financial institution or intermediary. The records referred to in clause (c) shall be maintained for a period of ten years from the date of

cessation of transactions between the clients and the banking company or financial institution or intermediary. Accordingly, banks should maintain for at least ten years from the date of transaction between the bank and the client, all necessary records of transactions, both domestic or international, which will permit reconstruction of individual transactions (including the amounts and types of currency involved if any) so as to provide, if necessary, evidence for prosecution of persons involved in criminal activity. Banks should ensure that records pertaining to the identification of the customer and his address (e.g. copies of documents like passports, identity cards, driving licenses, PAN card, utility bills etc.) obtained while opening the account and during the course of business relationship, are properly preserved for at least ten years after the business relationship is ended.

The Director appointed by Central Government, may call for records and may make such inquiry or cause such inquiry to be made, as he thinks fit. If the Director, finds that a banking company, financial institution or an intermediary or any of its officers has failed to comply with the provisions contained in the Act, then, he may, levy a fine on such banking company or financial institution or intermediary which shall not be less than ten thousand rupees but may extend to one lakh rupees for each failure. The banking companies, financial institutions, intermediaries and their officers shall not be liable to any civil proceedings against them for furnishing information,

Records to be maintained (nature and value): Rule 3 of the Prevention of Money-laundering (Maintenance of Records of the Nature and Value of Transactions, the Procedure and Manner of Maintaining and Time for Furnishing Information and Verification and Maintenance of Records of the Identity of the Clients of the Banking Companies, Financial Institutions and Intermediaries) Rules, 2005 lays down following obligations for maintenance of records. Every banking company or financial institution or intermediary, as the case may be, shall maintain the record of all transactions including the record of:

(A) all cash transactions of the value of more than rupees ten lakhs or its equivalent in foreign currency;
(B) all series of cash transactions integrally connected to each other which have been valued below rupees ten lakhs or its equivalent in foreign currency where such series of transactions have taken place within a month and the aggregate value of such transactions exceeds Rupees Ten Lakh;

(BA) all transactions involving receipts by non-profit organisations of value more than rupees ten lakh, or its equivalent in foreign currency;

(C) all cash transactions where forged or counterfeit currency notes or bank notes have been used as genuine or where any forgery of a valuable security or a document has taken place facilitating the transactions;

(D) all suspicious transactions whether or not made in cash and by way of

(i) deposits and credits, withdrawals into or from any accounts in whatsoever name they are referred to in any currency maintained by way of :

(a) cheques including third party cheques, pay orders, demand drafts, cashiers cheques or any other instrument of payment of money including electronic receipts or credits and electronic payments or debits, or

(b) travellers cheques, or

(c) transfer from one account within the same banking company, financial institution and intermediary, as the case may be, including from or to Nostro and Vostro accounts, or

(d) any other mode in whatsoever name it is referred to;

(ii) credits or debits into or from any non-monetary accounts such as d-mat account, security account in any currency maintained by the banking company, financial institution and intermediary, as the case may be;

(iii) money transfer or remittances in favour of own clients or non-clients from India or abroad and to third party beneficiaries in India or abroad including transactions on its own account in any currency by any of the following:-

(a) payment orders, or

(b) cashiers cheques, or

(c) demand drafts, or

(d) telegraphic or wire transfers or electronic remittances or transfers, or

(e) internet transfers, or

(f) Automated Clearing House remittances, or

(g) lock box driven transfers or remittances, or

(h) remittances for credit or loading to electronic cards,

(i) any other mode of money transfer by whatsoever name it is called;

(iv) loans and advances including credit or loan substitutes, investments and contingent liability by way of:

(a) subscription to debt instruments such as commercial paper, certificate of deposits, preferential shares, debentures, securitized participation, interbank participation or any other investments in securities or the like in whatever form and name it is referred to, or

- (b) purchase and negotiation of bills, cheques and other instruments, or
- (c) foreign exchange contracts, currency, interest rate and commodity and any other derivative instrument in whatsoever name it is called, or
- (d) letters of credit, standby letters of credit, guarantees, comfort letters, solvency certificates and any other instrument for settlement and/or credit support;
- (v) collection services in any currency by way of collection of bills, cheques, instruments or any other mode of collection in whatsoever name it is referred to.

Information contained in Records: The records shall contain all necessary information specified by the Regulator to permit reconstruction of individual transaction including* the following information:-

- (a) the nature of the transactions;
- (b) the amount of the transaction and the currency in which it was denominated;
- (c) the date on which the transaction was conducted;
- (d) the parties to the transaction."

Procedure for maintaining information: Every banking company, financial institution and intermediary, as the case may be, shall maintain information in respect of transactions with its client in accordance with the procedure and manner as may be specified by its Regulator including RBI, SERI or IRDA from time to time. Every banking company, financial institution and intermediary is required to evolve an internal mechanism for maintaining transactional details in such form and at such intervals as may be specified by the Reserve Bank of India, or the Securities and Exchange Board of India, or the Insurance Regulatory Development Authority as the case may be, from time to time. It shall be the duty of every banking company, financial institution and intermediary, as the case may be, to observe the procedure and the manner of maintaining information as specified by its Regulator.

Reporting to Financial Intelligence Unit — India: Banks are required to report information relating to cash and suspicious transactions and all transactions involving receipts by non-profit organisations of value more than rupees ten lakh or its equivalent in foreign currency to the Director, Financial Intelligence Unit-India (FIU-IND). The Cash Transaction Report (CTR) for each month should be submitted to FIU-IND by 15th of the succeeding month. All cash transactions, where forged or counterfeit Indian currency notes have been used as genuine should be reported within seven working days from the date of occurrence of such transactions. While filing CTR, details of individual transactions below Rupees Fifty thousand need not be furnished. The Suspicious Transaction Report (STR) should be furnished within 7 days of arriving at a conclusion that any transaction, whether cash or non-cash, or a series of transactions integrally connected are of suspicious nature. Banks should not put any restrictions on operations in the accounts where an STR has been made. Banks and their employees should keep the fact of furnishing of STR strictly confidential. The report of all transactions involving receipts by non- profit organizations of value more than rupees ten lakh or its equivalent in foreign currency should be submitted every month to the Director, FIU-IND by 15th of the succeeding month.

Verification of Records of Identity of Clients

Section 12 of the Prevention of Money Laundering Act, 2002 and rules thereunder require every banking company, financial institution and intermediary to verify and maintain the records of the identity of all its clients, in such manner as may be prescribed. Every banking company, financial institution and intermediary shall at the time of commencement of an account-based relationship, identify its clients, verify their identity and obtain information on the purpose and intended nature of the business relationship. In all other cases, identity should be verified while carrying out (i) transaction of an amount equal to or exceeding rupees fifty thousand, whether conducted as a single transaction or several transactions that appear to be connected, or (ii) any international money transfer operations. If it is not possible to verify the identify at the time of opening the account or executing the transaction, the banking company shall verify the identity of the client within a reasonable time after the account has been opened or the transaction has been executed. Every banking company, financial institution and intermediary, as the case may be, shall determine whether a client is acting on behalf of a beneficial owner , identify the beneficial owner and take all reasonable steps to verify his identity. Beneficial -owner means the natural person who ultimately owns or controls a client and or the person on whose behalf a transaction is being conducted, and includes a person who exercise ultimate effective control over a judicial person... '

Documents needed for verification of various types of clients:

1. **individuals:** (a) One certified copy of an 'officially valid document' containing details of his identity and address One recent photograph and such other documents including in respect of the nature of business and financial status of the client as may be required by the banking company or the financial institution or the intermediary. Photograph need not be submitted by a client who does not have account-based relationship. Officially valid document means the passport, the driving licence, the Permanent Account Number (PAN) Card, the Voter's Identity Card issued by the Election Commission of India or any other document as may be required by the banking company, or financial institution or intermediary. The Narega card and Adhar card issued by UIDAI will also be officially valid documents.

2. Company: Certificate of incorporation; Memorandum and Articles of Association; A resolution from the Board of Directors and power of attorney granted to its managers, officers or employees to transact on its behalf; and an officially valid document in respect of managers, officers or employees holding an attorney to transact on its behalf.
3. Partnership Firm: Registration certificate; Partnership deed; and an officially valid document in respect of the person holding an attorney to transact on its behalf.
4. Trust Documents: Registration certificate; Trust deed; and an officially valid document in respect of the person holding an attorney to transact on its behalf.
5. Association of Persons (ADP) or Body of Individuals (BOI): Resolution of the managing body of such association or body of individuals; Power of attorney granted to him to transact on its behalf; an officially valid document in respect of the person holding an attorney to transact on its behalf; and such information as may be required by the banking company or the financial institution or the intermediary to collectively establish the legal existence of such an association or body of individuals.

INFORMATION TECHNOLOGY ACT (CYBER LAW)

Information Technology Act 2000 or Cyber Law in India is based on Information Technology Act 2000 which extends to whole of India. The Act has been drawn on the lines of Model Law on Electronic Commerce adopted in 1996 by UN Commission on International Trade Law (UNCITRAL). The Act has been amended wef Oct 27, 2009

Background: The General Assembly of the United Nations passed a resolution in 1997 adopting the Model Law on Electronic Commerce adopted by the United Nations Commission on International Trade Law. The said resolution recommends inter alia that all States give favourable consideration to the said Model Law when they enact or revise their laws, in view of the need for uniformity of the law applicable to alternatives to paper-based methods of communication and storage of information. Therefore, it is considered necessary to give effect to the said resolution and to promote efficient delivery of Government services by means of reliable electronic records.

Objective: To provide legal recognition for transactions carried out by means of electronic data interchange and other means of electronic communication, commonly referred to as "electronic commerce", which involve the use of alternatives to paper-based methods of communication and storage of information, to facilitate electronic filing of documents with the Government agencies and further to amend the Indian Penal Code, the Indian Evidence Act, 1872, the Bankers' Books Evidence Act, 1891 and the Reserve Bank of India Act, 1934 and for matters connected therewith or incidental thereto.

The Act was passed by Parliament in May 2000. The Act aims to provide the legal infrastructure for e commerce in India. It shall extend to the whole of India and, it applies also to any offence or contravention thereunder committed outside India by any person.

Definitions: In this Act, unless the context otherwise requires, —

1. "access" with its grammatical variations and cognate expressions means gaining entry into, instructing or communicating with the logical, arithmetical, or memory function resources of a computer, computer system or computer network;
2. "addressee" means a person who is intended by the originator to receive the electronic record but does not include any intermediary;
3. "adjudicating officer" means an adjudicating officer appointed under subsection (1) of section 46;
4. "affixing digital signature" with its grammatical variations and cognate expressions means adoption of any methodology or procedure by a person for the purpose of authenticating an electronic record by means of digital signature;
5. "appropriate Government" means as respects any matter,—(i) Enumerated in List II of the Seventh Schedule to the Constitution; (ii) relating to any State law enacted under List III of the Seventh Schedule to the Constitution, the State Government and in any other case, the Central Government;
6. "asymmetric crypto system" means a system of a secure key pair consisting of a private key for creating a digital signature and a public key to verify the digital signature;
7. "Certifying Authority" means a person who has been granted a licence to issue a Digital Signature Certificate under section 24;
8. "certification practice statement" means a statement issued by a Certifying Authority to specify the practices that the Certifying Authority employs in issuing Digital Signature Certificates;
9. "computer" means any electronic magnetic, optical or other high-speed data processing device or system which performs logical, arithmetic, and memory functions by manipulations of electronic,

- magnetic or optical impulses, and includes all input, output, processing, storage, computer software, or communication facilities which are connected or related to the computer in a computer system or computer network;
10. "computer network" means the interconnection of one or more computers through—(i) the use of satellite, microwave, terrestrial line or other communication media; and (ii) terminals or a complex consisting of two or more interconnected computers whether or not the interconnection is continuously maintained;
 11. "computer resource" means computer, computer system, computer network, data, computer data base or software;
 12. "computer system" means a device or collection of devices, including input and output support devices and excluding calculators which are not programmable and capable of being used in conjunction with external files, which contain computer programmes, electronic instructions, input data and output data, that performs logic, arithmetic, data storage and retrieval, communication control and other functions;
 13. "Controller" means the Controller of Certifying Authorities appointed under sub-section (I) of section 17;
 14. "Cyber Appellate Tribunal" means the Cyber Regulations Appellate Tribunal established under sub-section (1) of section 48;
 15. "data" means a representation of information, knowledge, facts, concepts or instructions which are being prepared or have been prepared in a formalised manner, and is intended to be processed, is being processed or has been processed in a computer system or computer network, and may be in any form (including computer printouts magnetic or optical storage media, punched cards, punched tapes) or stored internally in the memory of the computer;
 16. "digital signature" means authentication of any electronic record by a subscriber by means of an electronic method or procedure in accordance with the provisions of section 3;
 17. "Digital Signature Certificate" means a Digital Signature Certificate issued under subsection (4) of section 35;
 18. "electronic form" with reference to information means any information generated, sent, received or stored in media, magnetic, optical, computer memory, micro film, computer generated micro fiche or similar device;
 19. "Electronic Gazette" means the Official Gazette published in the electronic form;
 20. "electronic record" means data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer generated micro fiche;
 21. "function", in relation to a computer, includes logic, control arithmetical process, deletion, storage and retrieval and communication or telecommunication from or within a computer;
 22. "information" includes data, text, images, sound, voice, codes, computer programmes, software and databases or micro film or computer generated micro fiche;
 23. "intermediary" with respect to any particular electronic message means any person who on behalf of another person receives, stores or transmits that message or provides any service with respect to that message;
 24. "key pair", in an asymmetric crypto system, means a private key and its mathematically related public key, which are so related that the public key can verify a digital signature created by the private key;
 25. "law" includes any Act of Parliament or of a State Legislature, Ordinances promulgated by the President or a Governor, as the case may be. Regulations made by the President under article 240, Bills enacted as President's Act under sub-clause (a) of clause (1) of article 357 of the Constitution and includes rules, regulations, byelaws and orders issued or made thereunder;
 26. "licence" means a licence granted to a Certifying Authority under section 24;
 27. "originator" means a person who sends, generates, stores or transmits any electronic message or causes any electronic message to be sent, generated, stored or transmitted to any other person but does not include an intermediary;
 28. "prescribed" means prescribed by rules made under this Act;
 29. "private key" means the key of a key pair used to create a digital signature;
 30. "public key" means the key of a key pair used to verify a digital signature and listed in the Digital Signature Certificate;
 31. "secure system" means computer hardware, software, and procedure that— (a) are reasonably secure from unauthorised access and misuse; (b) provide a reasonable level of reliability and correct operation; (c) are reasonably suited to performing the intended functions; and (d) adhere to generally accepted security procedures;
 32. "security procedure" means the security procedure prescribed under section 16 by the Central Government;
 33. "subscriber" means a person in whose name the Digital Signature Certificate is issued;
 34. "verify" in relation to a digital signature, electronic record or public key, with its grammatical variations and cognate expressions means to determine whether— (a) the initial electronic record was affixed with the digital signature by the use of private key corresponding to the public key of the subscriber; (b) the initial electronic record is retained intact or has been altered since such electronic record was so affixed with the digital signature.

DIGITAL SIGNATURE:

1. Authentication of electronic records: Any subscriber may authenticate an electronic record by affixing his digital signature.
2. The authentication of the electronic record shall be effected by the use of asymmetric crypto system and hash function which envelop and transform the initial electronic record into another electronic record.

ELECTRONIC GOVERNANCE : Legal recognition of electronic records: Where any law provides that information or any other matter shall be in writing or in the typewritten or printed form, then, such requirement shall be deemed to have been satisfied if such information or matter is— (a) rendered or made available in an electronic form; and (b) accessible so as to be usable for a subsequent reference.

1. Legal recognition of digital signatures: Where any law provides that information or any other matter shall be authenticated by affixing the signature or any document shall be signed or bear the signature of any person such requirement shall be deemed to have been satisfied, if such information or matter is authenticated by means of digital signature.

REGULATION OF CERTIFYING AUTHORITIES

- 1 The Central Government may, appoint a Controller of Certifying Authorities and may also appoint such number of Deputy Controllers and Assistant Controllers as it deems fit.
2. The Controller may perform all or any of the following functions, namely:— (a) exercising supervision over the activities of the Certifying Authorities; (b) certifying public keys of the Certifying Authorities; (c) laying down the standards to be maintained by the Certifying Authorities; (d) specifying the qualifications and experience which employees of the Certifying Authorities should possess; (e) specifying the conditions subject to which the Certifying Authorities shall conduct their business; (g) specifying the form and content of a Digital Signature Certificate and the key.
3. Controller may recognise any foreign Certifying Authority as a Certifying Authority for the purposes of this Act
4. The Controller shall be the repository of all Digital Signature Certificates issued under this Act.

DIGITAL SIGNATURE CERTIFICATES

- 1 Any person may make an application to the Certifying Authority for the issue of a Digital Signature Certificate alongwith fee not exceeding twenty five thousand rupees.
2. No Digital Signature Certificate shall be granted unless the Certifying Authority is satisfied that— (a) the applicant holds the private key corresponding to the public key to be listed in the Digital Signature Certificate: (b) the applicant holds a private key. which is capable of creating a digital signature; (c) the public key to be listed in the certificate can be used to verify a digital signature affixed by the private key held by the applicant.

DUTIES OF SUBSCRIBERS

1. Where any Digital Signature Certificate, the public key of which corresponds to the private key of that subscriber which is to be listed in the Digital Signature Certificate has been accepted by a subscriber, then, the subscriber shall generate the key pair by applying the security procedure.
2. Every subscriber shall exercise reasonable care to retain control of the private key corresponding to the public key listed in his Digital Signature Certificate and take all steps to prevent its disclosure to a person not authorised to affix the digital signature of the subscriber.

PENALTIES AND ADJUDICATION

1. If any person without permission of the owner accesses or secures access to such computer, computer system or computer network; downloads, copies or extracts any data, computer data base or information from such computer, computer system or computer network; introduces any computer contaminant or computer virus into any computer, computer system or computer network; damages any computer, computer system, data, residing in such computer system; disrupts any computer system; denies access to any person authorised to access any computer system by any means he shall be liable to pay damages by way of compensation not exceeding one crore rupees to the person so affected.
- 2_ The Central Government shall, appoint any officer not below the rank of a Director to the Government of India to be an adjudicating officer for holding an inquiry regarding contravention of any provision of the Act,

APPELLATE TRIBUNAL

The Central Government shall, establish one or more appellate tribunals- to be known as the Cyber Regulations Appellate Tribunal. A person shall not be qualified for appointment as the Presiding Officer of a Cyber

Appellate Tribunal unless he (a) is, or has been or is qualified to be, a judge of a High Court; or (b) is or has been a member of the Indian Legal Service and is holding or has held a post in Grade I of that Service for at least three years,

No appeal shall lie to the Cyber Appellate Tribunal from an order made by an adjudicating officer with the consent of the parties.

OFFENCES

1. Tampering with computer source documents: If a person knowingly or intentionally conceals, destroys or alters any computer source code used for a computer system shall be punishable with imprisonment up to three years, or with fine which may extend up to two lakh rupees, or with both.
2. Hacking with computer system: If a person with the intent to cause or knowing that he is likely to cause wrongful loss or damage to the public or any person destroys or deletes or alters any information residing in a computer resource or diminishes its value or utility or affects it injuriously by any means, commits hack. Such person shall be punished with imprisonment up to three years, or with fine which may extend up to two lakh rupees, or with both.
3. Publishing of information which is obscene in electronic form: The person concerned shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with fine which may extend to one lakh rupees and in the event of a second or subsequent conviction with imprisonment of either description for a term which may extend to ten years and also with fine which may extend to two lakh rupees.

TEST YOUR SELF

PRACTICE TEST PAPERS

(BASED ON IIBF TEST PATTERN)

LEGAL & REGULATORY ASPECTS OF BANKING

(JAIIB PAPER - 3)

PRACTICE TEST PAPER NO. 1 (TEST YOUR SELF)

- 01 Bank A issued a bank guarantee on behalf of one of its clients, a public limited company, which later on went into liquidation. The beneficiary demanded the money from the bank but bank asked the liquidator to meet the liability, who went to a court for stay on the payment to be made to the beneficiary.
a the bank will not be liable since company is under liquidation, b as principal debtor is not liable to pay (the company, which has gone into liquidation) bank also not liable as its liability is coexistent
c bank is liable irrespective whether the company has gone in liquidation or not
d bank is liable since company has gone into liquidation and is not able to pay.
- 02 Where the company undertaken certain activity which does not fall within its object clause it is called. The extent of liability of the company for such activity is :
a intra-vires, fully liable, b ultra-vires, no liability, c ultra-vires, company liable, d intra-vires, liability to be determined by RUC.
- 03 Complaint can be made to Banking Ombudsman only in case of the following:
a where bank did not send any reply for a period of at least 2 months, b the issue has looked into by the Ombudsman but customer is not satisfied, c the complaint relates to loan where bank is demanding collateral security of a value higher than the sanctioned amount, d where bank is not complying with the Fair Practice Code for Lenders' Liability
- 04 Under Section of Transfer of Property Act, the mortgage is transfer of to secure a loan which can be existing and loan:-
a 58, immovable property, future, b 58, interest in specific immovable property, future, c 130, movable assets, all, d 130, interest in specific movable property, future
- 05 A certified copy of an entry in a bank's book is received as a prima facie evidence of the existence of such entry, in all legal proceeds under the provisions of:- a Indian Evidence Act, b Civil Procedure code, c Banking Regulation Act, d Bankers' Book Evidence Act
- 06 Regional Rural Banks are:- a cooperative society, b companies created under Companies Act, c body corporates created under a special statute, d public sector undertaking of Central Govt.
- 07 A bank is offered the following securities by a borrower to secure his loan. Which of these will be given preference over the other securities:- a mortgage of a commercial show room valuing 200% of loan amount, b hypothecation of stocks of goods valuing 150% of loan amount, c shares of a reputed company listed on a stock exchange being 200% of loan amount, d life insurance policy issued by LIC of India being 125% of loan amount.
- 08 Which among the following cannot accept deposits from public except relatives u/s 45-S of RBI Act : (a) individuals (b) firms (c) unincorporated association of persons (d) primary credit society, whose principal business is lending or acceptance of deposits:- a a to c all, b a, b and d only, c b, c and d only, d a to d all.
- 09 The major objective of formation of RBI by enacting RBI Act 1934 was to (a) regulate the issue of bank notes (b) keep reserves for securing monetary stability in India (c) to operate the currency and credit system of India (d) to keep control over the capital market and foreign exchange markets:- a a to d all, b b, c and d only, c a, c and d only, d a to c only
- 10 For banking business, the banking Companies are licensed by (a) RBI (b) Company Law Board (c) Registrar of Companies (d) Security and Exchange Board of India:- a a to d all, b only a to c, c only a and d, d only a
- 11 For an Indian bank, as per Sec 11 of B R Act the minimum paid up capital and reserves should be (a) Rs.5 lac if the bank is having business in more than one state (b) Rs.10 lac if business is in more than one State and includes Mumbai or Kolkata or both (c) Rs.2 lac, if place of business is in one State and does not include Mumbai or Kolkata A a to c all correct, b a and b only correct, c b and c only correct, d a and c only correct
- 12 Which of the following instruction has been issued by RBI u/s 35A of B R Act (a) KYC Guidelines (b) Clean Note Policy (c) Fraud Reporting (d) Ombudsman:- a a to d all, b a, b and c only, c a, b and d only, d b, c and d only
- 13 If a borrower has been outside India for some time, for the purpose of calculation of limitation, that period :
a shall be included, b shall be included if bank could not prove his absence, c shall be excluded, d shall be excluded if the bank could prove his absence
- 14 In computing the period of limitation, the day from which such period is to be reckoned shall be:
a excluded, b included, c taken into account, d none of the above
- 15 Bank B sanctioned a term loan to a XYZ repayable in 28 quarterly instalments. The party did not pay few due instalments and bank wants to file suit. Which of the following is most appropriate answer:
a bank can file the suit within 3 years for the entire amount, b bank can file the suit within 3 years for instalments not paid from due date of respective instalment, c bank can file the suit within 3 years for instalments not paid from due date of respective instalment and also the balance amount if the agreement provides for that, d bank can file suit for due amount and for the balance amount bank will have to wait

- 16 RBI issues instructions on rate of interest to banks. The provisions u/s 21A of B R Act relate to:- a maximum interest rate ceiling imposed by RBI, b method for fixing BPLR, c Rate of interest fixed by banks as per RBI guidelines are not subject to scrutiny by courts, d in case of NPA accounts, interest can be debited only when it is recovered.
- 17 The process where the non-liquidated financial assets (say NPAs) are converted into marketable securities i.e. security receipts, is called:- a liquidation of NPAs, b factoring of NPAs, c securitization of NPAs, d reconstruction of NPAs
- 18 RBI can remove the Chairman or Director of a bank under _____ Act against which appeal can be made to Central Govt. within days from date of communication of such order:- a RBI Act, 45 days, b B R Act, 30 days, c B R Act, 45 days, d RBI Act, 30 days
- 19 copies of Balance sheet and profit and loss account prepared by banks, are to submitted to RBI within _____ months. Banking companies are also to submit three copies to _____ a 2 copies, 2 months, SEBI, b 3 copies, 3 months, SEBI, c 3 copies, 3 months, Registrar of Companies, d 2 copies, 3 months, Company Law Board
- 20 Banks are required to obtain licence from RBI for commencing operations due to which of the following reasons:
a to make the provision of Banking Regulation Act applicable, b to prevent indiscriminate formation of banking companies, c to regulate the formation of a banking company, d all the above
- 21 Which of the following rights are available to unpaid seller of goods (a) a lien on goods while he is in possession of goods (b) in case of buyer's insolvency to stop goods in transit if possession parted with by the seller (c) to re-sell the goods:- a a and b only, b b and c only, c a and c only, d all the above
- 22 Which of the following statement is false:- a An acquired bank's undertaking is vested in Central Govt, b RBI or SBI can be appointed liquidator of a banking company, c RBI can prepare a scheme for reconstruction or amalgamation of a bank under moratorium u/s 45 of B R Act, d On winding up of a bank, all depositors as a class get the first preference for payment.
- 23 To get protection for any payment made by the bank, the payment should be in due course. Which among the following element is not essential for compliance of Section 10 of NI Act relating to payment in due course:
a payment to the person in possession of the instrument, b payment as per apparent tenor, c payment in good faith and without negligence, d payment only through clearing
- 24 U/s 10 BB of Banking Regulation Act:- a RBI can appoint an eligible person as Chairman of a banking company, b Central Govt. can appoint an eligible person as Chairman of a banking company c Central Govt. can appoint an eligible person as Director of a banking company, d all the above
- 25 RBI can impose certain fines on banks u/s 46, for failing to comply with requirements of Banking Regulation Act. Which, of the following is not correct:- a making false statements in returns or balance sheet — 3 years imprisonment and fine, b willful omission to make material statement — 3 years imprisonment and fine, c failure to produce books or other documents u/s 35 (2) for inspection fine up to Rs.2 lac d Acceptance of deposit despite RBI's prohibition — fine twice the amount of deposit accepted
- 26 The service provider need not pay service tax if the annual turnover :- a is up to Rs.5 lac, b is up to Rs.8 lac, c is up to Rs.10 lac, d is up to Rs.15 lac
- 27 A contract of indemnity differs from a contract of guarantee (a) there are 2 parties in indemnity and 3 in case of guarantee (b) the liability in case of indemnity is contingent and in case of guarantee it is subsisting (c) in case of indemnity there is only one contract but in case of guarantee there are three contracts:- a a to c all correct, b a and b only are correct, c b and c only correct, d a and c only are correct
- 28 A company is under liquidation and the liquidator sells certain assets within his authority for which payment is received through a cheque. The liquidator obtains the payment across the counter and misappropriates the money. Later on, the next liquidator informs about misappropriation and requests the bank to reverse the entry.
a bank is not liable for this payment obtained by the liquidator, b bank is liable as it should have seen that the liquidator does not misappropriates the amount, c bank is liable as payment should have been collected by opening a bank account because the payment was on behalf of the company d bank is liable as the company has suffered loss due to liquidator's misappropriation
- 29 Usurious Loans Act 1918:- a restricts lending by banks to certain categories of borrowers, b prohibits lending by banking at exorbitant rates, c deals with usufructuary mortgage, d puts a ceiling on maximum rate of interest, that banks can charges
- 30 When ever a bank guarantee expires, the banks insist on return of the guarantee bond or demand a certificate from the beneficiary that there is no liability on the guarantee, despite the fact that the bank incorporate limitation clause restricting the period of liability and period for making claim. Why?
a so that they could release the security obtained by them from the applicant to secure themselves.
b so that they could reverse the entry in their books to avoid maintenance of capital adequacy on the expired guarantee
c so that guarantee is not invoked by the beneficiary within the

- normal limitation period of 3 years instead of limitation period incorporated in the guarantee bond
- d so that the bond is not misused by the applicant for another transaction.
- 31 Section 17 (1) of Banking Regulation Act deals with which aspect of banking:- a transfer of a part of profits to a Statutory Reserve, b submission of information about unclaimed deposits
- c loans by RBI to banks under Repo arrangement, d directions by RBI to banks on dividend payment
- 32 3rd Schedule of Banking Regulation Act is associated with:- a listing of name of a bank to make it scheduled bank, b format for preparing Balance Sheet of a bank, c format for submission of annual statement of assets and liabilities to RBI, d format for applying for obtaining a branch licence.
- 33 Regional Rural Banks have been created under RRB Act 1976 and their capital held is to the extent of % by sponsor bank, A by Central Govt. and % by State Govt:
- a 35, 50, 15, b 33, 34, 33, c 50, 35, 15, d 40, 40, 20
- 34 An agreement between two parties by which one party (the promisor) saves the other (promisee) from the loss caused to one party due to conduct of the promisor or any other person is called:-
- a conversion, b subrogation, c promissory note, d indemnity
- 35 Banks submit a return to RBI relating to maintenance of CRR (a) it is a fortnightly return i.e. on alternative Friday (b) return is submitted within 7 days (c) where alternative Friday is not the last Friday, a special return is to be submitted for that Friday (d) if the alternative Friday is a holiday, return is submitted for the succeeding working day. Which of these is not correct:- a a and d, b b and c, c only b, d only d
- 36 In a bill of exchange (a) holder is the person who is entitled to the possession of the bill (b) holder in due course is the person who is in possession of the instrument for a valuable consideration (c) holder for value, is the bank when a bill is purchased or discounted.
- a a to c all correct, b a and b only are correct, c b and c only are correct, d a and c only are correct
- 37 The appeal against award of which of the following is not allowed:- a D R T , b Consumer court, c Lok Adalt, d High Court
- 38 What is the maximum amount of compensation that Ombudsman can allow, for a case referred to it in respect of credit card:- a Rs.1 lac, b Rs.2 lac, c Rs.6 lac, d Rs.8 lac, e Rs.10 lac
- 39 A bank receives a cheque issued by a society and signed by two authorized office bearers of the society. Later on it is claimed by the society that signatures of one of the authorized signatory are forged.
- a the society continues to be liable as one signature is genuine, b the 2nd signatory is personally liable as his signatures are genuine, c society and the 2nd signatory are liable, d bank is liable for making the payment without proper mandate
- 40 A system of a secure key pair consisting of a private key for creating a digital signature and a public key to verify the digital signature, is called:
- a digital signature, b asymmetric crypto system, c electronic monitoring, d e-commerce
- 41 Popular Bank has issued a bank guarantee on behalf of its customer. The bank has given this guarantee to cover the security deposit which the govt. deptt. has asked for, to cover performance of a contract. The guarantee is a: a legal guarantee, b financial guarantee, c performance guarantee, d performance-cum-financial guarantee
- 42 Which of the following LC does not match its explanation:- a red clause LC — where provision for pre-shipment credit and storage at the port of shipment, b back to back — where another LC is issued on the request of the beneficiary on the strength of original LC transferable credit — where original LC can be transferred by the beneficiary through endorsement. a credit where the negotiation can take place within a limit again and again if the previous bills are paid — revolving LC
- 43 Under Consumer Protection Act (a) Distt. Forum is established by the State Govt. (b) State Commission is established by Central Govt. (c) National Commission is established by Central Govt. and has jurisdiction over entire India. Which of these statements are correct? a a and b, b a and c, c b and c, d a to c all
- 44 Which of the following is a capital account transaction:- a payment of interest on loan taken from a relative outside India, b remittance made outside India for maintenance expenses of parents living abroad, c expenses incurred in connection with education of a child abroad, d purchase of shares by a foreign investor on Indian stock market
- 45 A usance bill of exchange is accepted by the power of attorney holder of the drawee Mr. Sudhir. Subsequently, the said power of attorney is revoked by Mr. Sudhir before the bill falls due for payment. Which of the following is correct ?
- a the bill is deemed to have been accepted on which the principal shall remain liable, b the bill is deemed to have not been accepted, c the drawer can have recourse against the power of attorney holder only, d Sudhir is justified in refusing the payment.
- 46 Within how much period, the negotiating bank is supposed to scrutinise the documents tendered to it by the beneficiary:- a maximum 7 days, b minimum 7 days, c maximum banking days 5 days, d minimum banking days 5 days
- 47 A buyer of goods gets additional period for payment of documents, in a letter of credit, called:

- a demand LC, b irrevocable LC, c Red clause LC, d usance LC
- 48** An equitable mortgage of an immovable property can be created (where it is located / any where) but the place where it is created should be or notified by the Govt.:
- a where it is located, presidency town, notified town, State, b any where, presidency town, notified town, State
- c where it is located, presidency town, notified town, Central, d any where, presidency town, notified town, Central or State.
- 49** Under a contract of guarantee, the liability of the bank for giving a bank guarantee on behalf of its customer, which of the following is correct:
- a the primary liability to pay under the guarantee, is that of the borrower
- b the primary liability to pay under the guarantee, is that of the bank
- c the primary liability to pay under the guarantee, is that of the borrower and secondary liability is of the bank.
- d the primary liability to pay under the guarantee, is that of the borrower and bank.
- 50** Which of the following is called the notifying bank:- a reimbursing bank, b opening bank, c correspondent bank, d advising bank
- 51** If in a partnership firm, a partner makes certain payments or incurs certain liabilities, he can recover it from the firm (a) if it is done in ordinary course of business (b) if it is done in emergency to protect the firm from loss (c) if it done for the firm within or outside the implied authority. Which one is correct:
- a a and b only, b a and c only, c b and c only, d a to c all
- 52** The banks are required to take legal action including filing of suit in a court within the available limitation period under provisions of:- a Limitation Act 1963, b Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002, c Recovery of Debts Due to Banks and Financial Institutions Act 1993, d all the above
- 53** Banking Regulation Act 1949 was enacted with the objective of (a) creating banks in India (b) regulating banking companies (c) regulation of acceptance of deposit from public (d) allowing loans to large companies:
- a atodall, b only a to c, c only a and d, d only a
- 54** ABC has been allowed a temporary overdraft of Rs.30000 regularly by the bank without any formal document for the last about 2 years. The balance in the account is Rs.18900. A cheque of Rs.6000 is presented for payment but bank does not pay. The customer claims damages for wrongful dishonour.
- a the bank can terminate the overdraft facility any time, due to which it is not liable.
- b the bank can terminate the facility after giving notice which bank has not done in this case, hence liable.
- c it is not a deposit account, due to which bank is not liable
- d there is no formal sanction of OD due to which bank is not liable
- 55** There is regular trade between two parties through letter of credit but they want that they may not be required to open a letter of credit again and again. What type of LC is suitable for them:
- a irrevocable LC, b revolving LC, c red clause LC, d confirmed LC
- 56** Which of the following charges in case of a company do not require to be registered u/s 125 of Companies Act:
- a a charge on book debts of the company, b a floating charge on stocks of the company
- c a charge on immovable property of the company, d a charge relating to contingent liabilities of the firm like letter of credit or bank guarantee
- 57** License of a bank is cancelled by RBI on the grounds that (a) the bank ceases to carry on banking business in India (b) the bank at any time failed to comply with the conditions imposed u/s 22 subsection — 1 of B R Act (c) bank did not comply with the conditions stipulated u/s 22 subsection 3 or 3 A of B R Act (d) bank has defaulted to pay back the deposit due to maturity mismatch on some occasion:- a atodall, b a, b and c only, c b, c and d only, d a, c and d only
- 58** In the context of Debt Recovery Tribunal, which of the following statement is correct:-
- a presiding officer of Debt Recovery Appellate Tribunal is called President
- b presiding officer of Debt Recovery Tribunal is appointed for 5 years or till he completes age of 62 years, whichever is earlier
- c presiding officer of Debt Recovery Appellate Tribunal appointed for 5 years or till he reaches the age of 62 years, whichever is earlier
- d presiding officer of Debt Recovery Tribunal is a person who is qualified to be appointed as a High Court Judge.
- 59** A bank can invest in the shares of a company as pledge, mortgagee or absolute owner maximum to the extent of:
- a 30% of the paid up capital of the bank OR 30% of the paid up capital of the company, whichever is lower.
- b 30% of the paid up capital of the bank OR 30% of the paid up capital & reserves of the company, whichever is lower.
- c 30% of the paid up capital & reserves of the bank OR 30% of the

- paid up capital of the company, whichever is lower.
- d 30% of the paid up capital of the bank OR 30% of the paid up capital of the company, whichever is higher.
- 60** The document issued by the securitization company to qualified institutional buyers (QIBs), to represent ownership in the financial assets is called: a debenture, b pass-through certificate, c security receipt, d convertible preference share
- 61** Which of the following documents is called charter of the company:- a Certificate of Commencement of Business, b Certificate of Incorporation, c Articles of Association, d Memorandum of Association
- 62** If a person commits offence under Prevention of Money Laundering Act 2002, he shall be liable for imprisonment upto:- a three years, b five years, c five to 10 years, d three to seven years.
- 63** A bank at the time of sanction, wants that in case of non-payment the loan could be adjusted immediately by realization of securities. Which will be the better security in that case:- a stocks, b life insurance policy, c national saving certificates, d book debts
- 64** On the basis of principal pay as you earn', the tax payer is required to make payment of:- a advance tax, b income tax, c assessed tax, d minimum alternative tax
- 65** Under SARFAESI Act, the period for filing particulars of transactions of securitization, reconstruction or creation of security interest is days. The delay can be condoned by on payment of fee not more than times of the prescribed fee:- a 45 days, Registrar of Companies, 2 times, b 30 days, Central Registrar, 10 times, c 15 days, Central Registrar, 5 times, d 30 days, SEBI, 3 times
- 66** Which of the following tax has been withdrawn with effect from April 01, 2009:- a fringe benefit tax, b banking cash transaction tax, c commodities transactions tax, d securities transaction tax
- 67** Which of the statements is correct in the context of charges:- a hypothecation is defined in Indian Contract Act, b pledge is defined in Transfer of Property Act c in mortgage, interest in specific immovable property is transferred to secure a loan d in pledge the possession is with the borrower and ownership with the bank
- 68** Banks are to maintain records of which of the following transactions as per Prevention of Money Laundering Act 2002:- a all transactions of the value of more than Rs.10 lac or its equivalent in foreign currency, b all cash transactions of the value of more than Rs.10 lac or its equivalent in foreign currency, c all cash transactions of the value of Rs.10 lac above or its equivalent in foreign currency, d all foreign currency transactions of the value Rs.10 lac above
- 69** if a partners becomes insolvent and the account is in debit, the bank stops the payment to avoid: a application of right of set off, b application of rule of subrogation, c application of rule in Clayton case, d application of rule of redemption
- 70** A company obtained a loan of Rs.10 cr from a bank about 75 days earlier but it failed to file the particulars of charge with Registrar of Companies. With whose permission the charge can be registered:- a Company Law Board, b Registrar of Companies, c Financing Bank, d Company's Board of Directors
- 71** Before sale of property after possession, under SARFAESI Act, what type of notice out of the following is required to be given (a) a 30-days notice to the owner of the asset (b) a public notice if the sale is by public auction or inviting of tenders (c) public notice should be published in at least 2 newspapers, one of which should be vernacular (d) a notice to the Registrar of Companies or Registrar of assurances:- a a and b only, b a to c only, c b to d only, d a to d all
- 72** DRT has passed an order and issued recovery certificate for property of the defendant which is located outside the jurisdiction of the DRT: a Recovery officer of the DRT will proceed against the said property, b Recovery officer of the other DRT, to whom this certificate is to be sent, under whose jurisdiction the property falls will proceed with the recovery c Recovery certificate will be sent to the other DRT in whose jurisdiction the property falls, for execution d Recovery certificate will be sent to DRAT for forwarding this the DRT in whose jurisdiction, the property falls
- 73** Authentication of an electronic record by a subscriber by means of an electronic method of procedure in accordance with provisions of Section 3 of Information Technology Act, is called:- a electronic signature, b asymmetric crypto system, c electronic monitoring, d key pair
- 74** Bank-B made a payment of a cheque which later on was found to be materially altered, when the cheque was examined through ultra violet lamp. Bank had exercised due care while making the payment but alteration was not visible. a bank is liable for material alteration b bank is liable as it failed to examine the cheque through advance technology which was available with the bank at the time of payment, c bank is not liable and gets protection u/s 89 of NI Act as the alteration was not visible. d bank is not liable since bank cannot provide ultra-violet lamp at all branches

- 75** Complaint can be made by a customer to Ombudsman when (a) bank rejects customer's complaint (b) bank sends reply and customer is not satisfied (c) customer lodged complaint and bank sends no reply for one month (d) bank asks the customer to refer the matter to Ombudsman. Which of the following options is correct in the above connection:- a a, b, d, b a, b, c, c b, c, d, d a, c, d
- 76** Banks are required to make payment of guaranteed amount once the guarantee is invoked by the beneficiary. There are two exception to this rule (a) case of fraud (b) special equity in favour of debtor (c) when applicant refuses to honour (d) when the beneficiary does not give the reasons for invocation and proof of bank's liability: a only a and b, b only b and c, c only a and c, d only b and d
- 77** Actions of a partner in a Partnership firm are deemed to be actions of the firm (i.e. all partners) provided the action is (which of the following is not true):- a in the usual business of the firm, b in the usual course, c on behalf of the firm as a partner, d within or outside the authority of the partner
- 78** The Distt. Forum under the Consumer Protection Act consists of (a) President (b) president should be qualified to be a Distt. Judge (c) two members (d) one of two members should be a women a a to d all correct, b a and c only correct, e a and b only correct, d b and c only correct
- 79** If a person seeking information is not provided information within the prescribed period (normally 30 days), he can make an appeal :- a within 30 days, b within 50 days, c within 6 months, d within one year
- 80** The person given licence to issue digital signature certificate uts 24 of Information Technology Act is called: a Certifying authority, b DGC Authority, c Digital Signature Controller, d Controller of Certifying Authorities
- 81** Under SARFAESI Act, where the borrower fails to pay in full, after issue of notice for possession of security, which of the following options are not available to the bank:- a take possession of the asset, b take over management of the secured assets, c appoint a person to manage the security asset the possession of which has been taken, d to sell the security without going to the court after possession without giving any notice before safe
- 82** For taking possession of the assets under provisions of SARFAESI Act, the banks can seek help of which of the following agency/institution: a Distt. Magistrate or Chief Metropolitan Magistrate, b Recovery officer of DRT, c Local Police, d CRPF and other central forces
- 83** Under Consumer Protection Act, the consumer can file complaint with a consumer court if the deficiency is not removed by the service provider. The deficiency includes (a) default (b) imperfection (c) shortcoming (d) inadequacy in quality:- a a to d all, b only b to d, c only a, b and d, d only a, c and d
- 84** The presiding officer of DRAT is called , who is appointed by for or until he achieves age of a President, Central Govt., 5 years, 65 years, b President, High Court., 5 years, 62 years, c Chairperson, Central Govt., 3 years, 62 years, d Chairperson, Central Govt., 5 years, 65 years
- 85** Which of the following document in respect of a company is a conclusive proof of existence of a company: A Memorandum of Association, b Articles of Association, c Certificate of Incorporation, d Certificate of Commencement of Business
- 86** When a suit is filed by bank in DRT under RDDB Act, after receipt of the case from applicant, the court issues summons to the borrower within days asking him as to why the relief should not be given to the bank:- a 45 days, b 30 days, c 21 days, d 14 days
- 87** Under Sale of Goods Act, which of the following is not correct:- a goods include share, stocks but not actionable claims, b in an agreement to sell, the ownership is yet to transfer to the buyer, c in case of sale, the risk in goods is with the seller and in case of agreement to sell, it is with the buyer, d a contract of sale of goods is a bilateral contract
- 88** Bank-B allowed a cash credit advance to a party which is guaranteed by G. Such guarantee covering a series of transactions is called: a unlimited liability guarantee, b deferred payment guarantee, c continuing guarantee, d performance guarantee
- 89** The doctrine of Caveat Emptor states that:- a guarantor steps into shoes of creditor when he makes payment of the loan, b the mortgage property can be taken back on payment of mortgage money, c the buyer of goods should be cautious while purchasing the goods, d the bank should never change the terms of a loan without consent of the guarantor.
- 90** (a) if one partner causes damage to a customer of the firm, all partners are liable (b) registration of firm with Registrar of Firm is optional (c) it is compulsory to make a partnership deed as a proof of partnership (d) the authority used by partners as agent of each other is called implied authority. Which of these is correct:- a a to d all b a, b and c only, c a, b and d only d b, c and d only
- 91** A bank has opened new branch in a town where the bank is not already established. In order to comply with KYC norms on introduction which of the following would be in order for the bank to follow, for the first few deposit accounts to be opened by the bank:- a bank will insist on introduction from the local MLA or MP in each case, b bank will open accounts after police verification of the customers, c bank will open the account on the basis of introduction given by local respectable persons of the locality and its verification, d bank will open the first few accounts without any introduction looking into the peculiar circumstances
- 92** Which of the following Act has statutorily recognised the principles of corporate governance:- A Banking Companies (Acquisition and Transfer of Undertakings) Financial Institutional Laws (amendment) Act, b Banking Companies Acquisition and Transfer of Undertakings Act, c Banking Regulation Act, d

Reserve Bank of India Act

93 The shares issued by companies are within the meaning of Sale of Goods Act:- a securities, b goods, c movable assets, d all the above

94 The maximum no. of directors in a public limited company, as per Companies Act 1956, has to be restricted to, which of the following:- a 20, b 15, c 12, d no ceiling. But if no. goes beyond 12, Central Govt permission is required.

95 On securitization of NPA accounts, the security receipts are purchased by specialized institutions such as financial institutions, insurance companies etc. which are called: a Asset Reconstruction Companies, b Pass Through Certificate Buyers, c Qualified Institutional Buyers d Securitisation Companies

96 The 'fit and proper' criteria is used :- a by companies while conducting the shareholders' meeting, b by companies while appointing directors, c by companies while appointing the managing director, d by companies passing resolutions by the Board members

97 If a securitization company fails to comply with RBI guidelines, under SARFAESI Act, who can impose penalties and up to what extent:- a RBI, fine up to Rs.5 lac and if default continues Rs.10000 per day, b SEBI, fine up to Rs.5 lac, c RBI, fine up to Rs.1 lac, d SEBI, fine up to Rs.5 lac and if default continues Rs.10000 per day

98 Which of the following is not suitably matched :- a Section -8 of B R Act : prohibitions for a banking company for trading activities, b Section — 9 of B R Act : holding immovable property for period exceeding 7 years except for its own use, c A banking company can be promoted under a special statute or company registered under Banking Regulation Act, d Authority to specify the activities that can be undertaken by a bank u/s 5 (o) of Banking Regulation Act — Central Govt.

99 RBI can make application to High Court for winding up of a banking company (a) if govt. directs RBI to do so (b) company fails to maintain minimum paid up capital and reserves as per Sec 11 of B R Act (c) RBI has prohibited the bank to accept fresh deposits u/s 35-4 of B R Act (d) bank has fail to remain entitled to carry on banking activities

a a to d all correct, b a, c and d are correct, c b, c and d are correct, d a, b and d are correct

100 Section 45S of RBI Act relates to which of the following:- a prohibits unincorporated associations of persons from accepting deposits from public, b prohibits banks from accepting deposits from public, c allow govt. companies for accepting deposits from public, d restrict the banks to pay counter interest

101 Your client M/s Tushir Exports receives a letter of credit for export of hand-tools to UK. The letter of credit provides for allowing pre-shipment credit on the strength of the letter of credit for shipment of the hand-tools ordered by the importer in UK. Which of the following types of credits, it can be classified:- A revocable letter of credit, b confirmed letter of credit, c back to back credit, d green clause letter of credit, e red clause letter of credit

102 An exporter gets a letter of credit for export of garments to US but the expiry date of the credit falls on January 26, which is a public holiday. In such situation the documents for negotiation can be submitted to the negotiating bank on: A the succeeding working day, b the succeeding business day, c the succeeding banking day D the preceding business day, the preceding banking day

103 Corporate Bank opens a letter of credit in favour of an Exporter in Japan on the request of their import customer Nishikawa Trading Company which is in lieu of a bank guarantee. Such letter of credit is known as:- a back to back letter of credit, b clean letter of credit, c standby letter of credit, d irrevocable transferable letter of credit, e none of the above, as it is called foreign guarantee

104 Your branch has received a letter of credit from an overseas Bank, in favour of M/s Rama Exports which provides for allowing the exporter the advance at pre-shipment stage and also the warehouse facility to the exporter. Which among the following is the classification of this letter of credit? A Transferable letter of Credit, b Stand by letter of credit, c Back to back letter of credit, D Red Clause letter of Credit, e Green Clause letter of credit

105 An export client M/s Shanbeg Exports of your branch receives an export order for export of handcraft items to US under a letter of credit of \$ 30000. It is stated that your bank can issue another credit in favour of local supplier/manufacturer from whom the exporter is to procure the material. Under which of the following categories, such letter of credit can be classified:- A red clause letter of credit, b green clause letter of credit, c stand by letter of credit, d transferable letter of credit, e back to back letter of credit

106 Your branch had sanctioned a pre-shipment credit to an exporter who has sent the goods for shipment but so far he has not handed over the bill of lading, although shipment has taken place few weeks back:- a if it not presented to bank within 7 days of shipment it will become stale, b if it is not negotiated within 10 banking days it cannot be negotiated, c if it is not presented to the bank for negotiation within 21 days of date of shipment, it will become stale, d if it not presented for negotiation within 21 days of date of shipment it will be clausured bill of lading, e none of the above

107 International Bank Limited negotiated documents worth Euro 15000 against a without-recourse irrevocable letter of credit issued by a bank in UK. When the documents were sent to the opening bank in UK, these were returned with the reason that the bill of lading and the insurance certificate attached to the documents are fake. Opening bank also refused to make the payment against these documents, which are otherwise as per terms of the letter of credit. What is the position of International Bank Limited? a Bank has acted negligently by accepting fake documents due to which it cannot recover the money from opening bank, b Bank has the option to recover the money from the seller who has tendered fake documents, c Bank can rightly claim the money from opening bank under UCF³DC

provisions since the bank was to see the regularity of the documents and was not responsible for their being fake d

Bank will have to approach international court, e a and b above

108 State Bank opened a letter of credit on behalf of its customer M/s Devki Lai and Company for purchase of goods for trading purpose. Their managing partner comes to your branch and informs that their booking agent has informed him over phone that the supplier has sent the goods of a different specification, which are substandard also. He makes a request to the bank not to make payment of the documents when received from the negotiating bank:- a the request of the party will be accepted by the bank since the bank has to deal with the party for business.

B bank can accept the request of the party since it is a fraud both on the borrower and also the bank.

c bank cannot accept the request of the party since all the parties deal with documents in letter of credit instead of goods and services

d borrower can be advised to file a suit in a court of law and bring a stay from court.

109 Bank International sanctioned cash credit pledge limit of Rs.40 lac to M/s International Traders Limited. The pledge agreement provided for sale of securities charged to the bank without intervention of a court and without notice of sale to the borrower. On default by the borrower in repayment of the loan, the bank sold the goods pledged to the bank without approaching the court and without issuing a notice to the party. The party challenged the sale and claimed that they would have preferred to pay the dues of the bank than sale of the securities, had the bank given a notice to them: a) the sale is valid as bank has sold the securities in terms of the agreement without any notice, b) the sale is valid as no court intervention is needed in terms of the agreement despite notice not issued, c) the sale is not valid as court intervention has taken place subsequently the sale is not valid as it has been done without issue of a notice to the borrower, e the sale is valid

110 A company is allowed an advance of Rs.30 lac by your branch as a cash credit pledge. While inspecting the branch, the inspecting official observe that the branch has not got the charge registered with Registrar of Companies within the prescribed period of 30 days. How you will rectify this error ? a by obtaining a fresh set of documents, b by making a request to National Company Law Tribunal to condone the delay, c by getting the loan account adjusted, d fresh loan will be allowed in consideration of the previous loan, e there is no need to get the charge registered

111 Your branch in Chandigarh decides to sanction working capital limits to a public limited company and proposes to obtain equitable mortgage of immovable property of the company located in Jaipur. The registration of the mortgage will be required to be done:- a with the Registrar of Companies having jurisdiction over Chandigarh, b with the registrar having jurisdiction over Jaipur if its registered office is in Jaipur, c with both the registrars, d with any of the registrars, e none of the above

112 A mortgage under which the mortgagor undertakes to repay the mortgage money on a fixed date, he also transfers the property to the mortgagee under the condition that on repayment of mortgage money the mortgagee will retransfer the property to the mortgagor, is called:- a) Simple mortgage, b: Usufructuary mortgage, c: English mortgage, d: mortgage by conditional sale, e: None of the above

113 Mr. Vikaram Samanth is sanctioned a loan of Rs.10 lac for purchase of built flat by United Bank under bank's housing finance scheme. Due to failure of the borrower to repay the dues in time, bank filed a suit in a court which decreed the case in favour of the bank. When bank initiated the decree execution the borrower plead that he has only one house which he uses for residence purpose, hence it should not be subject matter of sale:- A the plea of the borrower is not justified since the property is mortgaged and it is primary security for the bank loan, b the borrower's plea is justified as the residential property cannot be subject matter of decree execution if there is only one house, c if the borrower proves that he has only one house, his request would be accepted by the bank, d it is discretion of the court to allow or disallow his request, e none of the above

114 United Bank had granted a loan of Rs.12 lac under its housing finance scheme for construction of a house to Mr. Atul Ghosh, by mortgaging the house. On repayment of the loan the bank had shown its inability to release the mortgage. Under which of the following rights, Mr. Ghosh can force the bank to release the mortgaged property? a right of appropriation, b right of set off, c right of subrogation, d right of foreclosure, e right of redemption

115 An equitable mortgage has been created in favour of bank A on February 01, 2005, which has not been registered, where as a registered mortgage was created in favour of bank B on January 28, 2005 but it was registered on February 11, 2005. Priority would be of:- a bank A because registration of mortgage by bank B took place later than, b bank A because equitable mortgage has always priority, c bank B because, its mortgage is registered, which has priority d bank B because, its mortgage has been created first both the banks have pro-rata charge

116 A partnership firm with three partners, named M/s Durani Brothers opened a current account with Corporate Bank with the operational instruction that 1st two partners will operate the account. The firm received a cheque in its favour and in order to meet the urgent payment requirement, on behalf of M/s Durani Brothers, the 3rd partner endorsed the same in favour of another firm M/s Shivani Cables, from whom the raw material was purchased:- a Shivani Cables will become holder in due course if it is not known to them that the 3rd partner has no authority to endorse, b Shivani Cables will not become holder in due course if they know that only 1st and 2nd partner have authority to operate the bank account, c Shivani Cables's title will remain doubtful in all circumstances, d a and b, e a to c

117 Universal Bank has granted cash credit limit of Rs:10 lac to M/s Kale Traders, a partnership firm. The account is showing a debit balance of Rs.9.50 lac when the notice is received about the insolvency of one of the partners. Which

among the following steps should be initiated by the bank to safeguard its interest? a account should be recalled and party be asked to adjust the account, b operations in the account to be stopped and balance confirmation letter to be obtained from all the partners, c operations in the account to be stopped and notice of demand to be issued on the remaining partners, d notice about the outstanding dues to be sent to the official assignee in whom the estate of the insolvent partner has been vested, e c and d above

118 Your branch maintains a current account in the name of M/s Site Ram Gita Ram & Sons. A new partner, the younger son of Mr. Gita Ram joins the firm and bank gets information about this development. Which among the following actions would be more appropriate to deal with this account:- A operations in the account should be stopped failing which the rule in Clayton case can apply, B account should be closed and new account should be opened observing all formalities

C new partner can be admitted with the approval of the bank only. Hence the firm should be advised to obtained permission from the bank, d bank can obtain new partnership declaration letter and allow operations as per new mandate, e bank can insist on for new partnership deed duly registered with Registrar of firms

119 Two partners of a partnership firm M/s Hyderabad Trading Company with three partners, approaches you to open a current account with initial deposit of Rs.10 lac and promise that the signatures on the account opening, form shall be obtained on the return of 3rd partner from abroad, although the said partner is not to actively engage himself in the business and he will function as a dormant partner. They also do not have any partnership deed in writing.

A the bank will open the account as the 3rd partner is not to operate the account

B the bank will open the account and will not permit any withdrawal till the 3rd partner signs the account opening form

C the account will be opened but cheque book will be given when the 3rd partner returns, D the account will not be opened unless all the partners have signed, E none of the above

120 Capital Bank maintains a current account of M/s Bihari Lal Sham Lai with the same name partners having operating instructions as 'any one can operate'. Mr. Sham Lai informs the bank that due to some dispute amongst the partners, the cheques signed by Mr. Bihari Lal should not be paid as he has acquired the whole share from Mr. Bihari Lal and is shortly introducing another partner. Meanwhile a cheque signed by Mr. Sham Lal is presented for payment. What should the bank do? A The operations in the account will be stopped and the mandate for operation of the account by any one, shall become inoperative, B The operations in the account will be stopped only after receipt of the notice from both of them.

C The cheque signed by Mr. Sham Lal shall be passed since he has acquired the whole share now, D The partners will be advised to sort out the issue quickly and meanwhile the cheques signed by any of them will be honoured.

ANSWER PRACTICE TEST NO. 1

1	C	2	B	3	D	4	B	5	D	6	C	7	D	8	A	9	D	10	D
11	B	12	C	13	C	14	A	15	C	16	C	17	C	18	B	19	C	20	B
21	D	22	D	23	D	24	A	25	C	26	C	27	A	28	C	29	B	30	C
31	A	32	B	33	A	34	D	35	D	36	A	37	C	38	A	39	D	40	B
41	B	42	A	43	B	44	D	45	A	46	C	47	D	48	B	49	B	50	D
51	A	52	D	53	D	54	B	55	B	56	D	57	B	58	B	59	C	60	C
61	D	62	D	63	B	64	A	65	B	66	B	67	C	68	B	69	C	70	A
71	B	72	C	73	A	74	C	75	B	76	A	77	D	78	A	79	A	80	A
81	D	82	A	83	A	84	D	85	C	86	B	87	C	88	C	89	C	90	C
91	C	92	A	93	B	94	D	95	C	96	B	97	A	98	C	99	A	100	A
101	E	102	E	103	C	104	E	105	E	106	C	107	C	108	C	109	D	110	E
111	B	112	C	113	A	114	E	115	D	116	E	117	E	118	D	119	D	120	A

PRACTICE TEST PAPER NO. 2 (TEST YOUR SELF)

01 Implied authority of the partner, can be used by him in which of the following circumstances:- a withdraw a suit pending in a court, b acquire or transfer immovable property on behalf of he firm, c open bank account on behalf of the firm in his own name, d appoint agent with the consent of the other partners

02 In case of a mortgage suit, for the suit filed in a Civil Court, the decree of mortgage is:- a initial decree and absolute decree, b preliminary decree and final decree, c preliminary decree and absolute decree, d initial decree and final decree

03 In an agreement to sell, the risk of goods is:- a with the buyer, b with the seller, c with buyer

- or seller at their discretion, d with buyer if payment is made and with seller, if payment is not made
04. A power of attorney is given on Jan 1, 2006 by X to Y. Y signed 3 cheques dated as Dec 25, 2005, Jan 12, 2006 and Jan 31, 2006. On Jan 17, 2006 his authority is cancelled by X. Cheques are presented for payment on January 31, 2006:- A cheque dated Dec 25 and Jan 12 shall be paid, b cheque dated Jan 12 and Jan 31 shall be paid, c: cheque dated Dec 25 and Jan 12, shall be returned, d all the cheques would be paid
- 05 Which of the following mortgages, does not require registration with Registrar of Assurances:- a Equitable mortgage, b English Mortgagee, c Usufructuary Mortgage, d Simple Mortgage
- 06 RBI can issue direction to banks u/s 21 and u/s 35A of Banking Regulation Act for (a) Sec 21 in public interest (b) Sec 35A in public interest (c) Sec 21 relating to loans (d) Sec 35A relating to loans. Which of these is correct: a a and b only, b a and c only, c b and c only, d none of the above
- 07 Out of the under noted statements, which is not correct:- a Licence from RBI is essential to open a bank — Sec 22 B R Act, b Every banking company has to use the word bank as part of its name, c No company other than a banking company can use the word bank or banker as part of its name, d A firm, group of individuals can use the words banking company as part of their name or for the purpose of business, by giving a public notice
- 08 The date of documents of a loan is January 25, 2006. The prescribed limitation period is three years. The suit can be filed latest by: a January 25, 2009, b January 24, 2009, c January 26, 2009, d January 27, 2009
- 09 The objective of enacting Banking Regulation Act was to: a regulate banking companies, b creation of banking system, c regulating acceptance of deposits from public, d all the above
- 10 As per Sale of Goods Act, the unpaid seller of goods in possession of the goods, is entitled to retain the possession of the goods until payment of the price is made, in the following cases:- a if the goods have been sold without any stipulation as to credit, b if the goods have been sold on credit, but the term of credit has expired, c if the buyer becomes insolvent, d any of the above
- 11 Who can suspend the operation of banking company and on whose recommendations:- a RBI, on the recommendations of Central Govt, b RBI, on its own, c Central govt. on its own, d Central Govt. on recommendations of RBI
- 12 For specific performance of a contract, what is the limitation period:- a 1 years, b 2 years, c 3 years, d 12 years
- 13 Which of the following statements is correct:- a Public sector banks have been created under a special statute, b banking companies are registered under B R Act, c Subsidiaries of State bank are companies registered under Companies Act, d Accepting deposits for safe custody falls under the definition of banking.
- 14 in which of the following situations, the limitation period is not three years:- a money payable for money lent, b on a promissory note, c on a mortgage, d on arrears of rent
- 15 Trading in shares of a bank at National Stock Exchange, is regulated by:- a Company Law Board, b Security Exchange Board of India, c Controller of Capital Issue, d all the above
- 16 In which of the following cases, the limitation period shall not get extended:- a borrower's agent deposited cash in the account within the limitation period, b borrower acknowledged the liability in its balance sheet within the limitation period, c borrower acknowledged the liability by signing a letter after the limitation period, d in all the above cases
- 17 Section 12 of Banking Regulation Act stipulates that the subscribed capital of a bank cannot be less than % of its authorized capital and paid up capital cannot be less than % of its subscribed capital. a 10%, 50%, b 25%, 25%, c 50%, 50%, d 50%, 10%
- 18 When RBI decides to refuse to grant license for banking business, the refusal should be based on relevant and material matters, (a) the refusal should be based on germane considerations (c) the refusal cannot be assailed (d) courts can intervene in such decision in of situations:- a only a and b is correct, b only b and c is correct, c only c is correct, d only d is not correct
- 19 As per provisions of Income Tax Act 1961, the taxation of income of an assessee is on the basis of (which is not correct):- a his place of source of income, b his residence, c jurisdiction of the income tax authority, d none of the above
- 20 The income of person called, assessee is taxed on the basis of:- a calendar year, b assessment year, c financial year, d any of the above, at the choice of the assessee
- 21 RBI can appoint a new director in a banking company in place of another director. The person so appointed shall continue to be in office:- a for 3 years, b till the date up to which his predecessor would have held office, c till the date up to which RBI issues another order, d till the date, the Board re-appoints him
- 22 Returns relating to shareholding of the Chairman, Mg. Director or Chief Executive Officer of every banking companies are to be sent to (a) RBI (b) SEBI (c) Registrar of Companies:- a a, b and c all, b b and c only, c a and b only, d not b and c

- 23 X purchases a hot water bottle from Z, the retailer. On request of X, Z confirms that the bottle is meant to hold hot water. X is injured when hot water is put in the bottle as bottle is burst. Under Sale of Goods Act, this is a:- a breach of condition, b breach of warranty, c breach of an implied, d breach of an implied warranty
- 24 If a bank fails to maintain CRR as per Section 42 (1) of RBI (a) RBI can charge penal interest of 3% OBR for the first fortnight (b) 5% OBR for the next fortnight (c) if the shortfall persist for 3rd fortnight also every director, manager or secretary of the bank is punishable with fine (d) RBI can impose penalty for non-maintenance or non-reporting which is required to be paid within 30 days from date of demand. A a to d all correct, b a, b and c correct, c a, b and d correct, d a, c and d correct
- 25 Which of the following provisions of B R Act do not match:- a License for opening of branch — Sec 23, b Payment of dividend — Sec 15, c Paid up capital and reserves — Sec 12, d Investment in shares of companies — Sec 19 (2)
- 26 Banks are required to make deduction of tax at source but before they should have / obtain :- a permanent account number (PAN), b tax deduction account number (TAN), c tax identification number, d all the above
- 27 Which of the following is not correct:- a Section 21 of Banking Regulation Act authorizes RBI to issue guidelines on credit by banks, b Section 35-A of B R Act authorizes RBI to issue directives to banks in public interest, c Section 26 of B R Act stipulates submission of loan related statements by bank to RBI, d none of the above
- 28 A borrower has an immovable property and he is not repaying the loan. Bank wants to recover the loan by sale of this property:-
a bank can sell the property without filing suit, after taking possession, under provisions of SARFAESI Act,
b bank can sell the property without filing suit, after taking possession, under provisions of SARFAESI Act if the property is mortgaged to the bank,
c bank can sell the property without filing suit, after taking possession, under provisions of Transfer of Property Act,
d bank can sell the property without filing suit, after taking possession, under provisions of Indian Contract Act.
- 29 Board for Financial Supervision of RBI is (a) a committee established under RBI (BFS) Regulations (b) has jurisdiction over the banking companies, nationalized banks and State banks (c) is established with a view to supervise and inspect bank (d) Board holds meeting every month):- a a to d are correct, b a, b and c are correct, c b, c and d are correct, d a, c and d are correct
- 30 Service tax is to be deposited by banks within: (which one is more appropriate):- a 5 days of close of the month, b 7 days of close of the month, c 5 days of close of the month in case of electronic deposit and 6 days in case of manual deposit, d 6 days of close of the month in case of electronic deposit and 5 days in case of manual deposit
- 31 Which of the following does not match in the context of nomination provisions:- a Nomination in locker — Section 45 ZE to ZF, b Nomination in case of joint safe deposit of articles — only one nomination is allowed, c Nomination in deposit — Insolvent or minor can be nominee, d Nomination in non-resident accounts - Permitted
- 32 RBI can cancel the registration of a Securitization Company, without giving opportunity to such company in certain circumstances. Which one is wrong answer:- a company ceases to carry on business of securitization, b company ceases to hold any investment from qualified institutional buyers, c fails to comply with direction of RBI, d cancellation without giving opportunity cannot be done, as it is illegal.
- 33 Cenvat credit can be availed of in respect of tax paid on :- a certain specified services, b certain specified input services, c all input services, d all services
- 34 Under the Banking Ombudsman scheme of RBI, the Ombudsman follows the procedure laid in the scheme read with provisions of:- a Banking Regulation Act, b Arbitration and Conciliation Act, c RBI Act, d all the above
- 35 If the provisions of Transfer of Property Act and SARFAESI Act relating to an immovable property are different:- a provisions of Transfer of Property Act would prevail, b provisions of SARFAESI Act would prevail, c provisions of Transfer of Property Act or SARFAESI Act would prevail at the discretion of the creditor, d provisions of Transfer of Property Act or SARFAESI Act would prevail at the discretion of the debtor
- 36 Which of the following statement is not correct in relation to a Securitization Company under SARFAESI Act:
a it is a company registered with Registrar of Companies, b it requires registration with Reserve Bank for conducting securitization business, c it can set up separate trusts, for separate securitization transactions, d none of the above
- 37 A normal Lok Adait (other than organized by DRT) can entertain disputes involving:- a up to Rs.20 lac, b up to Rs.15 lac, c up to Rs.10 lac, d up to Rs.5 lac
- 38 Lok Adait is organized by:- a State authority or district authority, b Supreme Court legal

- services committee, c High Court legal services committee, d any of the above
- 39 To ensure that the banks are maintaining SLR, RBI calls for a monthly return from banks, which is to be submitted by banks within of close of the month:- a 7 days, b 10 days, c 15 days, d 20 days
- 40 When a securitization company issues a security receipt that is purchased by qualified institutional buyers:
a it requires registration with Registrar of Companies, b it requires registration with Central Registry
c it requires registration with Registrar of Assurances, d it does not require any registration
- 41 If a case is referred to Lok Adalt and there is no settlement of the case:- a the case shall be dismissed,
b the case shall be decided in due course of time, c the case shall be remitted back to the court that referred the matter to Lok Adalt, d any of the above, at discretion of the Lok Adalt
- 42 Section 43 A of Banking Regulation Act deals with:- a notification of rules for preservation of records,
b rules governing nomination, c voluntary winding up of a banking company, d preferential payments on liquidation of a bank
- 43 The additional directors in a company appointed by the Board of Directors by passing a resolution, can remain in office:- a as per the term fixed in their appointment by the Board, b up to the date of next annual general meeting, c maximum for one year, d maximum for 6 months
- 44 A transaction that results in change in asset or liability position outside India of a person resident in India or position in India of a person resident abroad is called:- a current account transaction, b balance of payment, c capital account transaction, d trade balance
- 45 Disputes arising in cases under SARFAESI Act, can be referred to which of the following:- a Lok Adalt, b Distt. Courts and High Courts, c DRT and-DRAT, d any of the above
- 46 Which of the following is not a current account transaction:- a a transaction which is not capital account transaction, b export and import of goods or services, c expenses incurred in connection with travel abroad, d none of the above
- 47 Popular Bank makes payment to Y, of a bearer crossed cheque across the counter. The cheque is drawn in favour of X. In this case:- a bank is liable to the drawer for a wrongful payment, b being a bearer cheque, bank can make cash payment to any one, c bank is liable to X, the true owner, d bank is liable both to the drawer and the true owner
- 48 Under FEMA 1999, if a question of law is involved, the appeal can be made to:- a Director – Appeals, b Appellate Tribunal, c High Court, d any of the above
- 49 The security interest created under SARFAESI Act requires to be satisfied on payment of full amount. The reporting is required to be done:- a by the securitization company within 30 days of the payment in full, b by the reconstruction company within 30 days of the payment in full, c by the secured creditor within 30 days of the payment in full, d any of the above, as the case may be
- 50 If there is a contravention of provisions of FEMA 1999 by a person and the amount is quantifiable, penalty can be levied:- a up to Rs.2 lac, b up to amount involved in such contravention, c up to two times of amount involved in such contravention, d up to thrice the amount involved in such contravention
- 51 X the director of XYZ Limited has been sanctioned a loan of Rs.10 lac by XYZ Limited. It requires approval of:
a Reserve Bank, b S E B I, c Central Govt, d Registrar of Companies
- 52 Under FEMA 1991, the contraventions can be investigated by:- a director of enforcement only, b deputy director of enforcement only, c assistant director of enforcement only, d any of the above
- 53 Z handed over a blank cheque to Mr. X for payment against certain goods purchased by Z. The value of goods was to be ascertained later on and amount was to be filled accordingly. X however, filled a much higher amount than the value of goods. Bank accordingly made the payment and Z claimed damages from the bank for wrong payment of a higher amount:- a - Z is not liable for this payment, which bank should restore, b Bank is liable for this payment as the cheque was issued originally as a blank cheque, c Bank is not liable for payment as at the time of payment of the cheque, the cheque was complete, d Bank is liable for a cheque where visibly it is completed through two handwritings.
- 54 For obtaining a certificate of commencement of business, a public limited company requires to file, which of the following documents with Registrar of Companies:- a a prospectus, b a statement in lieu of a prospectus, c declaration of statutory compliances, d any of a or b in addition to c
- 55 As per FEMA 1999, an office or branch or an agency in India that is owned and controlled by a person resident outside India, falls under the category of:- a non-resident persons, b persons resident in India, c foreigner, d foreign company
- 56 Which of the following does not match its explanation:- a clean bills — where the bill is not supported by any document of title to goods, b supply bills — where the bill is drawn on the basis of transaction with the Govt. or govt. undertaking, c accommodation bill — a bill which is drawn without any consideration or without any sale or purchase of goods, d foreign bill — a bill which is drawn in India and payable abroad by a resident in India.
- 57 When foreign exchange is brought to India and sold to an authorised person, as per FEMA 1999, it is called:- a repatriation, b repatriation from India, c repatriation to India, d expatriation
- 58 Which of the following group can be a partner in a Limited Liability Partnership:- a resident individual, minor, a

- company, b resident individual, an LLP, a company, c resident individual, an LLP, an HUF, d any individual person, an LLP, a company
- 59 A pledge is bailment of goods to secure a loan. The goods are delivered by the owner to the creditor. These parties as per Section 172 of Indian Contract Act are called:- a bailor and bailee, b bailee and bailor, c pledger and pledgee, d pawner and pawnee
- 60 Right to information available to Indian citizen under RTI Act 2005 does not include the following right:- a inspection of documents or records, b taking notes of documents, c taking certified samples of the material, d none of the above
- 61 The Board of Directors of a company cannot pass a valid resolution unless it is passed in a meeting in respect of which of the following:- a issue of debentures, b invest the funds of the company, c borrow or lend money, d none of the above
- 62 Under RTI Act 2005 the information can be obtained by:- a any person in India including artificial persons, b companies, firms, corporations etc, c Indian citizens, d all the above
- 63 In a limited liability partnership, the rights and obligations of the partners are as per:- a certificate of incorporation, b Schedule II to the LLP Act, c agreement between partners only, d agreement between partners and if there is no such agreement as per Schedule I to the LLP Act
- 64 A trust is governed by (a) Trust Act 1882, if it is a private trust (b) Public Trust Act, if it is a public trust (c) Wakf Act if it is a Muslim trust (d) trustee of a Muslim Trust is called Mutawali:- a a to d are correct, b a, b and c are correct, c a, c and d are correct, d b, c and d are correct
- 65 In pledge the possession of goods is with the creditor (pawnee) which can be (a) actual — where the goods are actually in possession with the creditor (b) symbolic — where the pawnor hands over the control of the goods to the pawnee without actual delivery (c) trust receipt — where the goods are released to the pawnor without payment, by the pawnee on the basis of an undertaking:- a a and c only are correct, b b and c only are correct, c a and c only are correct, d a to c all are correct
- 66 If information does not relate his organisation, the Central Assistant public information officer has to forward the request for information to the concerned public authority with in:- a 5 days, b one week, c 21 days, d 30 days
- 67 Which of the following characteristics of a company is not true:- a liability of the shareholders is to the extent of nominal value of the shares held by them, b a company is a group of shareholders and is not different from them, c company is created through a legal process called incorporation which is completed by issue of Certificate of Incorporation by RoC, d a company, being legal person, has all the rights and obligation to sue or to be sued.
- 68 If a banking company fails to ensure compliance of obligations under Prevention of Money Laundering Act 2002, the Director can impose a fine of:- a Min Rs.10000 and max Rs.1 lac, b Min Rs.50000 and max Rs.2 lac, c Min Rs.50000 and max Rs.5 lac, d Min Rs.10000 and max Rs.10 lac
- 69 Which of the following is more appropriate difference between a deferred payment guarantee and a term loan: a term loan is sanctioned for purchase of fixed assets and DPG for purchase of current assets, b TL is a fund based loan and DPG is semi-fund based loan c In TL funds outlay is immediate but in DPG it is contingent, d In TL appraisal is more detailed compared to appraisal of DPG proposal
- 70 A company may be (a) public company (b) private company (c) company limited by shares (d) company limited by guarantee with or without share capital. Which of these is correct? a a, b and c only, b a, c and d only, c b, c and d only, d a to d all
- 71 If a person commits offence under Prevention of Money Laundering Act 2002, he shall be liable for fine : a up to Rs.10 lac, b up to Rs.5 lac, c up to Rs.2 lac, d up to Rs.1 lac
- 72 For opening account of a company, under Prevention of Money Laundering Act 2002, which of the following documents is not mandatory:- a officially valid document in respect of person to operate the account, b Certificate of incorporation & Resolution from Board of Directors, c Memorandum of Association and Articles of Association, d none of the above.
- 73 If a banking company is found to be not complying with requirement of Prevention of Money Laundering Act 2002, the Director can impose a fine of:- a Rs.10000, b Rs.20000, c Minimum Rs.10000 and maximum Rs.1 lac, d Minimum Rs.10000 and maximum Rs.6 lac
- 74 SARFAESI Act is applicable in case of (a) all securities (b) securities where security interest is created for repayment of the loans (c) all securities except agriculture land (d) all loans except agriculture loans:- a a to d all correct, b a, b and c correct, c b and c correct, d a, c and d are not correct
- 75 When the sellers sell the goods to govt. or public sector undertakings, the transaction is covered through: a bills discounting, b bills purchasing, c supply bills, d documentary bills
- 76 What is the function of the private key, out of the pair of keys used in an electronic signature:- a to create an electronic signature, b to verify an electronic signature, c to create and verify an electronic signature, d all the above
- 77 Director under Prevention of Money Laundering Act 2002 is appointed by:- a Reserve Bank of India, b Financial Intelligence Unit – India, c Govt. of India, d Security and Exchange Board of India

- 78** Which of the following is authorised to prescribe records to be maintained by banks:- a RBI only,
b SEBI only, c RBI and Ministry of Finance, d RBI and SEBI
- 79** In case of a securitization company, when the financial asset is purchased: (which one is not true):- a the company has to formulate a realization plan within 12 months, b account will be standard account during this plan period where after the it will be NPA after 90 days delinquency period, c account will be sub-standard assets max for 12 months, d when the asset is acquired for reconstruction, there is limit of 10 years for such reconstruction
- 80** Under Right to Information Act, the information can be obtained in the form of:- a diskettes or floppies, b tapes and video cassettes or any other electronic mode, c printouts, d any of these
- 81** Which among the following is not correct regarding pecuniary (financial) jurisdiction of Debt Recovery Tribunals:
a under Recovery of Debt due to Banks & Financial Institutions Act 1993 it begins from Rs.10 lac and above
b under SARFAESI Act it starts from above Rs.1 lac, c under Lok Adalt provisions it begins from Rs.10 lac, d none of the above
- 82** If the service provider fails to comply with the order of a Distt. Forum under the Consumer Protection Act, the punishment can be:- a fine up to Rs.10000 and imprisonment up to 3 years, b fine up to Rs.10000 and imprisonment up to 2 years, c fine up to Rs.5000 and imprisonment up to 3 years, d fine up to Rs.1000 and imprisonment up to 1 years
- 83** The expiry date for shipment in a letter of credit is mentioned as 'on and above' Dec 31, 2007:- a the LC is not valid, b the date will be treated as 5 calendar days, before or after, c the date will be treated as 7 calendar days, before or after, d the date will be treated as 10 days, before or after
- 84** Under SARFAESI Act, the Central Register shall register the following types of transactions (which is not correct):
a securitization of financial assets, b reconstruction of financial assets, c creation of security interest, d sale of financial assets
- 85** Under provisions of Right to Information Act, the person requesting for information has to- pay prescribed fee, which can be in the form of (which one if not correct):- a cash against proper receipt, b cheque from the account of the information seeker, c demand draft or bankers' cheque, d Indian postal order
- 86** The constitutional validity of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act was questioned before the Supreme Court in which of the following cases:- a Transcore vs Union of India, b Mardia Chemicals vs Union of India, c Madurai Chemicals vs Union of India, d Marshal Chemicals vs ICICI bank

- 87** Bank-B failed to file an appeal against DRT order to DRAT within the mandatory 45 days period. Which of the following remedy is available:- a bank has no option except to follow the decree passed by DRT, b bank can make a request to DRT to extend the period, which it can consider, c bank can request DRAT explaining the circumstances and if satisfied, DRAT may permit the bank, d bank can request High court which has the authority to permit the bank
- 88** In which of the following mortgages, the possession of the immovable property is delivered to the bank, by the mortgager:- a simple mortgage, b equitable mortgage, c English mortgage, d none of these
- 89** As per Information Technology Act 2000, the penalty for damage to computers, computer systems etc. has been fixed for damages up to by way of compensation to affected person:- a Rs.1 lac, b Rs.10 lac, c Rs.100 lac, d Rs.1000 lac
- 90** The Information Technology Act was introduced in India on the initiative of which of the following:- a Reserve Bank, b Information Technology Ministry, c UN Commission on International Trade Law, d Parliament of India
- 91** Which of the following is not correct with regard to the pecuniary jurisdiction of the consumer courts:- a Distt Forum — claims up to Rs.20 lac, b State Commission — Claims of Rs.20 lac and above less than Rs.100 lac, c National Commission — claims above Rs.100 lac, d none of the above
- 92** Under Right to Information Act, the public information officer can be departmentally proceeded against under certain circumstances, on the recommendations of:- a Reserve Bank, b Public Authority, c Central Information Commission, d Central Govt.
- 93** Mr. Ashok Kumar issues a power of attorney in favour of Mr. Amit Kumar on July 31, 2006 and dies on December 03, 2006. Your branch receives (on Dec 26, 2006) through clearing house, two cheques, one of which is signed by Mr. Ashok Kumar on Nov 25, 2006 and another is signed by Mr. Amit Kumar, on Dec 12, 2006. Which cheques will be paid ?
a Both the cheques will be paid, if there is balance in the account, b Both the cheques will be returned
c Cheque signed by Mr. Ashok Kumar will be paid as the cheque was signed before death, d Cheque signed by Mr. Amit Kumar will be paid, as he is alive
- 94** If appeal is to be made by the liable party to next court, under Consumer Protection Act it can be made within days of by depositing of the amount of decree, with varying maximum amount:- a 15, date of order, 50%, b 30, date of order, 50%, c 30, date of order, 75%, d 30, date of receipt of order, 50%
- 95** Lien of unpaid seller is terminated when:- a the buyer gets possession of the goods, b the seller gets possession of the goods, c the buyer leaves the possession of the good, d none of the above
- 96.** Which of the following is correct statements in the context of acceptance of deposits by banks (a) banks can refuse to accept deposit from undesirable persons (b) for opening an account, introductory reference is not mandatory (c) for opening of an account, identification is essential (d) banks can accept deposit of money only.
a a, b and c only, b b, c and d only, c a, c & d only, d a to d all.
- 97** Under Sale of Goods Act, if the sale is by description of goods, the goods shall correspond with the description. If these do not correspond with the description:
a buyer has to buy the goods, b seller has to supply the goods as per contract, c buyer can rejects the goods and claim back the payment, d any of these
- 98** The period of limitation is usually with reference to:- a the type of security, b the document which entitles the beneficiary to take action in a court of law, c type of loan account, d all the above
- 99** Foreign banks' paid up capital and other funds should be (a) minimum Rs.15 lac in the form of deposit with RBI (b) the amount would be Rs.20 lac if the place of business is Mumbai or Kolkata or both (c) 20% of the profit for each year should be deposited with an Indian bank (d) Central Govt. can relax this condition of its own:
a a to d all correct, b a to e only correct, c a and b only correct, d c and d only correct
- 100.** U/s 9 of Banking Regulation Act, a banking company can hold immovable property other than for its own use for a period of 7 years. But if the banking company fails to do so, RBI may extend this period by years:
a 3 years b 5 years, c 7 years, d any period on merits of the case

- 101** If a shareholder sends a notice of dissent against the merger scheme of a bank, what option he has:
a can claim the value of his shareholding from the bank if scheme is sanctioned by RBI
b the value of shareholding would be as approved by the majority shareholding
c the value of the shareholding would be as approved by RBI, d a to c all, e a and c

102 If a scheme of amalgamation is prepared for a bank, what is true with regard to the aspects relating to employees :- a continuation of the workmen and other staff, b continuation on the same terms and conditions, c within 3 years these employees should be at par with the employees of transferee bank in terms of pay and other conditions, d if there is any dispute regarding rank and status etc. of an

employee, RBI decision would be final, e all the above

103 What options are available to High Court when approached by a bank for temporary moratorium:-

a Request can be considered if RBI's report is there for the relief, b Request can be considered if RBI's report is not there, but High Court is satisfied, c RBI report would be called by High Court if order for moratorium is

given, d If RBI applies for winding up the bank, High Court would not extend the moratorium, e all the above

104 If a bank makes willful omission or makes false statement in any return, balance sheet or other documents, the penalty under the provisions of B R Act, would be:- a he can be fined only, b official making such statement can be imprisoned up to 3 years only, c there can be fine and imprisonment up to 3 years, d there can be either fine or imprisonment, e none of the above

105 A bank official fails to answer the questions relating to business of the banking company during inspection of the bank. What penalty can be imposed:- a he can be fined up to Rs.2000, b It can be fined up to Rs.5000,

c If offence continues the fine could be Rs.100 for each day, d a and c, e b and c

106 Mr. Ravi was granted a loan of Rs.2 lac on the guarantee of Mr. Ravinder on January 01, 2000. The limitation in this case expired due to non obtention of acknowledgement letter from Ravi. On March 31, 2003, Mr. Ravinder signs a letter promising to pay Rs.20000 towards the repayment of loan. What is the remedy available to the bank ?

a the limitation has expired which cannot be revived, b the limitation can be revived only if Ravi also joins him.

the limitation against the guarantor is available, due to which the loan can be recovered, after making the dues recoverable from him by recall, d no action is possible against Ravinder, e loan cannot be recovered from any body

107: A payee of a cheque requests for stop payment of a particular cheque because he has lost it:

The bank will comply with, b The bank will exercise the caution and seek the confirmation from the drawer. In the mean time if the cheque is presented for payment it should be returned with the remarks cheque reported lost, confirmation is awaited, b The bank will ignore the request, c one of the above

108 Your customer Mr. Kishore issues a cheque of Rs.12500 in favour of Mr. Kishan who endorses the cheque in favour of Mr. Kiran who misplaces the cheque. The cheque falls in the hands of Mr. Kanahiya who forges the endorsement of Mr. Kiran and obtains payment from the bank. Mr. Kishore and Mr. Kiran request the bank to reverse the entry, as payment has been made on the basis of a forged endorsement:- a bank is liable on the payment and will reverse the entry, b bank is liable on the payment but will refuse the reversal of the entry, c

bank is not liable as the paying bank is protected against a forged endorsement, d any of the above, e none of the above

109 Mr. Surinder Prakash, Company Secretary of M/s Surya Limited, which are having current account with your branch, comes to you at 4.40 p.m. for encashment of a cheque, issued by his colleague from saving bank account in his name, of Rs.5000. The branch is normally closed by the bank for customer service at 3 p.m. He insists for payment which is very urgently needed by him as he has to proceed the same evening to Kolkata. How will you accommodate the payee? a) the cheque being of small amount can be paid, b) the cheque can be paid as this is not only of small amount but to an employee of a known company, c) the cheque cannot be paid after close of the business hours as that will not be considered a payment in due course, d) the cheque when paid, can be entered in the records of the bank in next day by following the usual procedure, e) none of the above

110. A cheque in favour of Lord Krishna or order is presented for payment:- a) Bank can pay, b) Bank should refuse to pay, c) It can be paid only to drawer or it can be credited to the trust account in the name of Lord Krishna, d) Bank can pay to the presenter, e) None of the above.

111. Your branch maintains a current account of Mr. Bachan Lal for which a minimum balance of Rs.3000 is to be maintained as per terms of the account opening form. The account is showing a balance of Rs.14570 and a cheque is presented for Rs.14570 through clearing. The cheque is returned since the minimum balance condition is not complied with on payment of the cheque. Bachan Lal claims damages from the bank for wrongful dishonour by the bank.

a bank is liable for wrongful dishonour since there was sufficient balance in the account to meet the amount of the cheque

b bank is not liable for the dishonour as the customer has not ensured compliance of the condition of minimum balance, c bank cannot be held liable as with the passing of the cheque, the account will start showing zero balance, d a and c, e none of the above

112 An advocate comes to your branch with a bearer cheque for payment from the account of another customer. He however refuses to sign on the back side of the cheque as the cheque is payable to bearer. How would you handle such situation ? a payment would be made without insisting on the signatures, b payment would be made only after he signs the cheque, c payment would be made by obtaining a separate money receipts duly stamped as per Stamp Act, d drawer will be advised not to issue cheque in favour of an advocate. drawer's instructions shall be sought

113 Mr. Kumar comes to meet the manager of the branch around 2 p.m. and at 10 minutes past 3 p.m. he comes out of manager's cabin and makes a request to you for payment of a cheque issued by another customer of your branch, which you pay. Branch timings are 11 a.m. to 3 p.m. Next morning there is stop payment instruction from the account holder. What is the position of the bank ? a This will be considered a payment in due course and stop payment

will not be accepted, b This will not be considered a payment in due course, hence the stop payment will have to be accepted, c The loss will have to be suffered by the clerk who posted the cheque, d the loss will be suffered by the officer who passed the cheque, e loss will be suffered by the customer

114. A cheque dated Oct 12, 2004 is presented for payment on Oct 27, 2004. It is however observed that the cheque book from which the cheque was issued was issued to the customer on Oct 22, 2004 only. What would the bank do with the cheque? a this is ante dated cheque and would be paid, if otherwise in order b the cheque would be paid, if drawer confirms that he put the date intentionally, c the cheque would be returned, as apparent tenor of the drawer is not clear, d the cheque being post-dated cheque would be returned

the cheque being ante-dated would be returned.

115 Credit Bank, which started functioning in the recent months in a town, opened a saving bank account in the name of Mr. Radhe Krishan without any introduction with cash deposit of Rs.1000. The depositor continued to deposit and withdraw small amounts of money for some time and also deposited a cheque of Rs.65000 drawn in his favour, which the bank collected. The collected money was subsequently withdrawn. After a month or so, the bank receives a notice from one Mr. Radhe Krishan stating that the cheque of Rs.65000 was his property and was stolen by Mr.Radhe Krishan and deposited with the bank. He demands the money from the bank :- a bank has not acted in good faith while collecting the cheque as no

introduction was obtained, b bank account was operated by the account holder for some time satisfactorily due to which bank was not negligent, c bank acted in good faith by allowing collection of cheque after some time, due to which bank is not liable, d bank can ignore the notice received till a court order is received, e b and c

116 A cheque of Rs.15000 issued in favour of M/s Manish Kumar & Sons is deposited by the proprietor of the firm Mr. Manish Kumar in his personal saving bank account, which the collecting bank refuses to collect, to guard itself against conversion, while Manish Kumar insists on that:- a the stand taken by the bank is correct since the cheque belonging to the firm cannot be collected for the account of individual, b the stand taken by Manish Kumar is wrong as it is discretion of the

bank to decide whether to collect or not, c stand taken by the bank is incorrect since in the case of proprietorship, the account of the firm and that of the individual are considered in the same name and same capacity d cheque can be collected only if Manish Kumar provides an indemnity, e none of the above

117 A contractor has received a contract from a multinational company to construct a building according to international standards. The multinational company wants guarantee that the building would be constructed in time and as per specification. What kind of guarantee would be issued by the banks:- a financial guarantee, b performance guarantee, c statutory guarantee, d deferred payment guarantee, e all the above

118 Customs deptt. has issued a notice on D for recovery of some duty which D finds is not lawful. He approaches the court for stay. Court has given stay against this recovery subject to D's furnishing a guarantee to be available during the pendency of the case. What kind of guarantee would be issued by the bank:- A financial guarantee, b performance guarantee, c statutory guarantee, d deferred payment guarantee, e all the above

119 A company has gone in liquidation and the bank has given guarantee on behalf of this company, which has been invoked. What the bank should do:- A since company has gone in liquidation, bank should not pay, b bank should not pay till liquidator gives an undertaking, c bank should make the payment since contract of guarantee is independent, d bank should await court order, e none of the above

120 An exporter M/s Delhi Exports dealing with your branch receives an export order for export of certain spices. As per terms of the contract for sale of which a letter of credit is to be received subsequently, the goods are to be delivered by the exporter to the shipping company without putting the goods on board the ship (i.e. to be kept by the side of the ship).

Which of the following kinds of contract it will be termed? A Free on Board (FOB), b Ex - Quay, c Cost and freight (C&F), d Free alongside the ship (FAS), e Ex-works

ANSWER PRACTICE TEST NO. 2

1	D	2	B	3	B	4	C	5	A	6	C	7	D	8	A	9	A	10	D
11	D	12	D	13	A	14	C	15	B	16	C	17	C	18	D	19	C	20	B
21	B	22	D	23	A	24	B	25	C	26	B	27	C	28	B	29	A	30	D
31	B	32	D	33	B	34	B	35	B	36	D	37	A	38	D	39	D	40	D
41	C	42	D	43	B	44	C	45	C	46	D	47	C	48	C	49	D	50	D
51	C	52	D	53	C	54	D	55	B	56	D	57	C	58	B	59	D	60	D
61	D	62	C	63	D	64	A	65	D	66	A	67	B	68	A	69	C	70	D
71	B	72	D	73	C	74	D	75	C	76	A	77	C	78	D	79	D	80	D
81	C	82	A	83	B	84	D	85	B	86	B	87	A	88	D	89	C	90	C

91	B	92	C	93	B	94	B	95	A	96	C	97	C	98	B	99	C	100	B
101	E	102	E	103	E	104	C	105	D	106	C	107	B	108	C	109	C	110	C
111	A	112	C	113	B	114	A	115	A	116	C	117	B	118	C	119	C	120	D

PRACTICE TEST PAPER NO. 3 (TEST YOUR SELF)

Section 49-A of Banking Regulation Act makes provisions for (a) declaration of bank rate (b) restrictions on the type of business that the banks cannot undertake (c) no person other than a bank is authorized to accept deposits withdrawable by cheque (d) acceptance of deposits by banks. - aa only, b a and c only, c c only, d b only

02 Under Prevention of Money Laundering Act 2002, the banks are required to maintain record of cash transactions of the value of -

a Rs.50000 and above, b Rs.1 lac and above, c Rs.10 lac and above, d Above Rs.10 Lac

03 Banks can undertake permitted business activities u/s 6(1) of B R Regulation such as (a) buying or selling of bullion (b) undertake and execute trusts (c) undertake the administration of estates as executors, trustee (d) providing of safe deposit vaults – a a, b and c only, b b, c and d only, c a, c and d only, d a to d all

04 Where the parties are yet to perform their mutual promises, in respect of sale & purchase of goods, it is called: a sale, b agreement to sell, c intention to sell, d contract of sale

05 Which of the following Statute and constitution of the respective bank does not match:

a Nationalized banks — Banking Companies Act 1969, b State Bank of India — SBI Act 1955
c State Bank Associate Banks — State Bank (Subsidiary Banks) Act, 1955, d RRBs RRB Act 1976

06 For the purpose of Limitation Act, filing of suit include:- a a suit in a court, b appeal against the decree of a court, c applications, d all the above

07 Under provisions of Prevention of Money Laundering Act 2002, who appoints the director for tracking money laundering transactions: a Reserve Bank of India, b Central Bureau of Investigation, c Central Govt, d Each State Govt. concerned

08 Which of the following statement regarding RBI is not correct:- a RBI has the authority to issue license to banks, b Entire capital of RBI is held by Central Govt. & State Governments, c Central Govt. appoints the Governor of RBI, d Central Govt. can issue directions to RBI under RBI Act

09 Central Govt. has certain powers to regulate banks. Which of the following is not such power:- a suspend the operations of Banking Regulation Act, b notification. of other forms of business which the banks may undertake u/s 6 (o) of RBI Act, c Making of rules for various banking operations u/s 52 and 45-Y of B R Act, d Suspension of business and amalgamation of banks

10 Which of the following statements are correct:- a Central Govt. can give direction to RBI, b Banking business of all types is regulated by RBI, c The primary regulator of banks is Central Govt. and RBI, d If a banking license is cancelled, the appeal lies to RBI.

11 A cooperative bank undertakes banking business as (a) a primary cooperative bank (b) central cooperative bank (c) state cooperative bank:- a a, b and c all, b a and b only, c b and c only, d b only.

12 Which of the following Act has been enacted in India on account of initiative of UN Commission on International Trade Law:- a Prevention of Money Laundering Act b Information Technology Act, c Right to Information Act, d none of these

13 If the limitation period is not prescribed in the Limitation Act for a transaction, the limitation period is:- a 3 years, b 12 years, c 30 years, d at discretion of the court

14 in case of residents in India, which of the following income is taxable:- a earned in India only, b earned while outside India only, c earned outside India, while in India only, d all the above

15 For raising capital, a banking company can pay (a) commission (b) brokerage (c) discount (d) remuneration, at the paid up value of the shares:- a a to d all, 2.5%, b a to c only 2.5%, c b to c only 2%, d a and c only 2%

16 .Which of the following Act recognizes the electronic signatures and records equal to physical signatures and records: A Information Technology Act, b Negotiable Instruments Act, c Indian Evidence Act, d all the above

17 Which of the following is not correct with regard to Board of Directors of a bank:- a at least 51% of total no. of directors shall have special knowledge or practical experience in banking related areas, b RBI can remove any director, if the bank does not reconstitute the Board of Director, on RBI's point out, c maximum period for which a director can hold office is 6 years, d If a Chairman or whole-time director is removed from office, he ceases to be director of the bank and is not eligible for further appointment as director for 4 years.

18 The assessment officer can scrutinize the return submitted by the assesses and complete the assessment which is called: a verified assessment, b scrutiny assessment, c verification assessment, d assessment by verification

19 Advance tax is payable in 4 stages by an assessee. It should be paid as under. Which one is not correct:-

- a by June 15 — 15%, b by Sept 15 — 30%, c by Dec 15 — 76%, d by Mar 15 — 100%
- 20** U/s 26 of Banking Regulation Act the banks submit to RBI, a return on _____ basis, within _____ from close of the said period, relating to:- a Half yearly, one month, inoperative deposits, b yearly, 30 days, unclaimed deposits; c yearly, 15 days, inoperative deposits, d HY, 30 days, unclaimed deposits
- 21** Which of the following provisions do not match, in the context of loans by a bank:-
a banks cannot grant loans on the security of their own shares — Sec 20 of B R Act, b banks cannot commit themselves for granting loans on behalf of their directors — Sec 20 of B R Act, c For remitting a loan in the name of a director, RBI permission is required — Sec 20-A of B R Act, d RBI can use selective credit control over banks — Sec 36A B R Act
- 22** Banks maintain cash reserve with RBI u/s 42 of RBI Act, (a) which is called cash reserve ratio (b) it is maintained at minimum of 3% and maximum of 20% of NOTLs (c) no interest is paid by RBI on this amount (d) it is maintained as a fortnightly average balance with RBI:- a a to d all correct, b a, b and c correct, c a, b and d correct, d a, c and d correct
- 23** Under the provisions of Right to Information Act, the Public Authority means any authority established :-
A by or under the Constitution of India, b by any other law made by the Parliament or State legislature, c by notification issued or order made by the appropriate Govt, d any of the above
- 24** Which of the following statements is not correct in connection with balance sheet of a bank:- a for public sector banks it is prepared as per 3rd Schedule of BR Act, b for banking companies i.e. private banks, it is prepared as per Part I of Schedule VI of Companies Act, c it is prepared for the last day of the financial year, d the provisions for preparation of balance sheet are contained in Sec 29 of B R Act.
- 25** Banks submit various returns to RBI under RBI Act or B R Act. Which of the following is not one such return:
a monthly return of liquid assets u/s 24 (3) of B R Act, b quarterly return of NPA advances u/s 42 of RBI Act
c return of unclaimed deposits u/s 26 of B R Act, d fortnightly return on cash reserves u/s 42 of RBI Act
- 26** As regards the inspection of banks (a) RBI has the authority to inspect the branches of banks u/s 35 of B R Act (b) RBI can inspect the branches of banks u/s 35A of B R Act (c) Central Govt. can direct RBI to inspect the banks.
a a and b are correct, b b and c are correct, c a and c are correct, d a to c all correct
- 27** Under Right to Information Act, the information that can be accessed should be held by or under control of:
a govt. authority, b public authority, c public or private authority, d govt. authority, public authority or private authority
- 28** A banking company can be acquired by Central Govt. if one of the following conditions is satisfied (which one is not correct):-
a bank failed on more than one occasion to comply with RBI direction u/s 21 and 35 of B R Act
b bank is being managed in a manner detrimental to interest of depositors, c acquisition is essential for safeguarding interest of the depositors, d acquisition will benefit the shareholders and the govt. both
- 29** In a contract of sale, (a) the seller transfers property in goods to buyer for a price (b) the seller agrees to transfer the property in goods to the buyer for a price (c) when the goods are transferred from seller to the buyer, the contract becomes a sale:- a statements (a) and (c) only are correct, b statements (a) and (b) only are correct, c statement of (b) and (c) are correct, d all statements are correct
- 30** Rate of service tax is: a 14%, b 10%, c 7.5%, d 5%
- 31** When one or more bank is merged with another bank or two or more banks decide to merge to form a new company, it is called:- a merger, b amalgamation, c liquidation, d winding-up
- 32** A bank is under obligation to make payment of cheque issued by its customer u/s 31, if the following conditions are satisfied (which one is not correct):-
a there are sufficient funds in the account, b the funds are properly available for payment of the said cheque, c the signatures of the customer are, as per records of the bank, d cheque should be drawn in one ink, one handwriting and one script.
- 33** If bank refuses payment of the cheque issued by the customer and later on it is wound up, the bank is liable to:
a drawer for any loss, b the payee for any loss, c the holder who becomes a creditor entitled to make a claim, d none of the parties as that would be decided by the liquidator
- 34** The offences that are compoundable under any law, can not be brought within the purview of, which of the following:
a Lok Adalt, b D R T, c Civil Court, d High Court,
- 35** The Transfer of Property Act contains provisions relating to transfer of :- a actionable claims, b movable assets, c goods, d none of the above
- 36** For a bank to get protection against conversion of a cheque (a) the collection should be for customer (b) the collection should be of crossed cheque crossed before falling into the hands of collecting bank (c) the collection should be in good faith (d) the collection, should be without negligence:-
a a to d should be fulfilled, b a to c should be fulfilled, c a, c and d should be fulfilled, d a, b and d should be fulfilled
- 37** Which of the following is a correct statement:-
a protection available to a bank for conversion is as per Sec 10 of NI Act, b protection against conversion for demand draft is as per Sec 131 of NI Act, c Bank get protection for conversion as per Sec 131 in case of cheque and Section 131A for Demand draft, as per Banking Regulation Act, d conversion means unauthorized interference in property of a 3rd party
- 38** Which of the following is the objective of Foreign Exchange Management Act (FEMA) 1999:-
a to conserve foreign exchange, b to manage foreign exchange, c to facilitate external trade and promote orderly development of forex markets in India, d all the above

- 39 Which of the following is not correct in case of contract of indemnity or guarantee:-
 a in indemnity the loss is to be made good as soon as it occurs, b in case of guarantee surety's liability is secondary and principal debtor's liability is primary, c an indemnity is for the reimbursement of loss
 d a guarantee is for bearing the loss caused due to the action of principal debtor or any other party
- 40 A bank guarantee has been issued by the bank in lieu of the customer being required to deposit cash security. Such guarantee is called:- a cash guarantee, b financial guarantee, c performance guarantee, d deferred payment guarantee
- 41 The sale becomes absolute in case of mortgage by conditional sale, when:- a borrower makes payment of the due amount, b borrower fails to make payment of the due amount, when loan is re-structured, d when limitation expires
- 42 In the context of letter of credit, which among the following does not match:- a) the party on whose request the LC is issued is called - beneficiary b) the bank that makes the payment to the beneficiary against documents and claims payment from issuing bank is called — negotiating bank, c bank that has the final liability on the LC if documents are received in order — Issuing bank, d) if a bank gives guarantee on LC for the payment to be made, in case issuing bank fails to pay — confirming bank
- 43 Under FEMA 1999, there is provision of appeal. The first such appeal can be made to:- a Director – Appeals, b Appellate Tribunal, c High Court, d Supreme Court
- 44 A bank issued an LC, which is to expire on June 30 appx. Its expiry date falls on : a 10th July or 20th June, b (+) or (-) 5 calendar days, c (+) or (-) 10 calendar days, d such LC is not valid
- 45 A guarantee which is issued by a bank, guaranteeing the timely payment of installment to the supplier, by the applicant (borrower), for the machinery purchased on a long term credit from the supplier is called:- a standby guarantee, b performance guarantee, c deferred payment guarantee, d statutory guarantee
- 46 Which of the following parties in a bill of exchange do not match:- a maker — the debtor who is to make the payment, b drawer — who makes the bill of exchange and orders the drawee to make payment, c payee — the person who is to obtain payment as per order of the drawer, d drawee- the debtor, liable on the bill to pay.
- 47 A person residing India:- a can own foreign currency or immovable property if it was held when he was resident outside India .. b can transfer foreign currency immovable property if it was held when he was resident outside India, c can invest in foreign currency immovable property if it was held when he was resident outside India, d all the above
- 48 Which of the following statement is not correct in the context of sale of goods? a a contract of sale can be absolute, b a contract of sale can be conditional, c in absolute contract, there are no conditions to be fulfilled by the seller or buyer, d in a conditional contract, the goods are transferred later but the sale takes place beforehand.
- 49 Which of the following documents is a document of title to goods (a) bill of lading (b) warehouse receipt (c) delivery order (d) airway bill:- a a to d all, b a to c only, c a, c and d only, d b, c and d only
- 50 (a) mortgage deed does not require to be witnessed or registered (b) debentures provide voting rights to the holders of the debentures (c) assignee of the life policy can sue in his own name (d) borrowers can pledge the documents of title to goods:- a a to d are correct, b a, b and c are correct, c a, c and d are correct, d b, c and d are correct
- 51 In case of mortgages (a) the limitation period against the mortgagor for personal liability is years (b) against the mortgaged property it is years and (c) for foreclosure it is years:- a 12, 12, 30, b 3, 12, 30, c 12, 12, 12, d 3, 12, 12
- 52 Which of the following is not a capital account transaction:- a an Indian company purchased office space outside India, b Indian Govt. made repayment of instalment of a loan taken from US Govt. c an individual purchased shares on a stock exchange in London, d export of goods made on a deferred payment basis
- 53 In case of creation of equitable mortgage, the property which is to be equitably mortgaged, must be located in: a notified towns only, b Chennai, Mumbai or Kolkata only, c any place, d a or b
- 54 Compared to a public company, a private limited company is at a disadvantage because (a) it can not invite public to subscribe to its shares (b) it has to observe restrictions on transfer of its shares because the no. of members is limited (c) its shares cannot be listed on a stock exchange (d) it cannot obtain loan from a bank.
 a a to d are correct, b a, b and c are correct, c a, c and d are correct, d b, c and d are correct
- 55 Under RTI Act 2005, the information can be accessed under control of a public authority. For this purpose, the public authority means any authority established:- a by or under the Constitution, b by any other law made by the Parliament of India or by the State legislature, c by any notification issued or order made by the appropriate govt, d all the above
- 56 SARFAESI Act 2002 is applicable to housing finance companies whose names are notified by:- a Reserve Bank, b National Housing Bank, c Central Govt, d State Govt. concerned
- 57 An un-registered partnership firm (a) can file suit for enforcement of contracts entered into by it with 3rd parties (b) cannot file suit on its own partners (c) other parties cannot file suit on unregistered firm:- a a to c all correct, b a and c are incorrect, c a and b only are correct, d b and c are correct

- 58 A private company has two shareholders who are directors of the company also. They die in an accident:
 A the company **will** be run by their legal heirs, b the company will invite public to be shareholders who will chose, new directors, c the company will be compulsorily wound up, d the advice of Company Law Board will be sought.
- 59 Under RTI Act 2005, the period for providing information is: a 5 days, b one week, c 21 days, d 30 days
- 60 (a) Certificate of Incorporation is birth certificate of a company (b) Certificate of Incorporation is conclusive evidence of creation of a company (c) on the basis of certificate of incorporation bank can open account without any other introduction (d) certificate of commencement is required both by the public and private companies
 a a to d are correct, b a, b and c are correct, c a, c and d are correct, d b, c and d are correct
- 61 A company can commence its business (a) without obtaining certificate of commencement of business if it is a private company (b) without obtaining certificate of commencement of business if it is a company without any share capital (c) after obtaining certificate of commencement of business u/s 125 if it is a public company. Which of these is correct : a a to c all, b a and b only, c b and c only, d a and c only
 (as per provisions of Companies Act 2013, certificate of commencement of business, is required by all companies)
- 62 Which of the following statements are not true:- a a partnership firm can be registered u/s 58 of Indian Partnership Act, b a company is a legal person created through incorporation, c certificate of commencement of business is conclusive evidence of existence of a company, d where 2 or more person agree to share profits from business, it is called a partnership.
- 63 The lease for a purpose other than for agricultural and manufacturing purposes is deemed to be a lease from and it can be terminated by giving notice:- a) year to year, b) 2 months year to year, c) 3 months month to month, d) 30 days d) month to month, e) 15 days
- 64 Where a company creates charge on its assets and fails to get the charge particulars filed and registered (a) any person interested in the charge can file and get it registered (b) if charge is not filed and registered, the creditor becomes unsecured creditor in the event of liquidation of the company (c) if the charge remains unregistered, the loan become due immediately (d) it is responsibility of the company to file the charge within given time period:- a) a to d all are correct, b) a, c and d are correct, c) a, b and c are correct, d) b, c and d are correct
- 65 SARFAESI Act 2002, is applicable (a) in the entire India including J&K (b) it provides for sale of security without court intervention subject to fulfillment of certain conditions (c) it provides for setting up of Central Registry for registration of securitization transactions (d) it covers all types of loan account:- a a to d all correct, b a, b and c only correct, c a, c and d only correct, d a, b and d only are correct
- 66 As per SARFAESI Act, hypothecation means (a) a charge on movable assets (b) in favour of secured creditor (c) without delivery of- possession (d) giving right to the creditor to sell the assets. Which among these are the essential parts of the definition:- a a to d all, b a, b and c only, c a, b and d only, d b, c and d only
- 67 In Mardia Chemicals vs Union of India and others, the Supreme Court had decided that:- a SARFAESI Act is fully invalid, b condition of deposit of 75% amount by borrower before approaching DRT against possession notice by banks, is invalid, c condition of deposit of 75% amount by borrower before approaching DRAT, against decision of DRT, is invalid, d condition of 60 days notice before possession is correct
- 68 Which of the following facts is not correct so far as a Secutitisation company is concerned:- a it is a company registered under Companies Act, b it has to obtain registration with SEBI for undertaking securitization, c it can set up separate trust for different schemes of securitization, d its minimum paid up capital is Rs.100 cr and net worth at least 15% of the acquired assets
- 69 The Prevention of Money Laundering Act 2002 was enacted with the following objective:- a to prevent money laundering, b to provide for confiscation of property derived from money laundering c to prevent use of banking system for money laundering, d all the above
- 70 Before enforcement of security interest i.e. sale of security, the creditor, to show his intention to take possession, is required to obtain possession of the security by giving:- a a reasonable period notice, b a notice of 15 days, c a notice of 30 days, d a notice of 60 days
- 71 In a lease of immovable property, which of the following does not match:- a the transferor is called the lessor, b the transferee is called the lessee, c the price in a lease is called the lease rental, d none of the above
- 72 Where a company has been financed by a consortium of banks, the decision to take possession and sell the security under SARFAESI Act is to be taken:- a by the banks having 75% share by value on the record date, in the consortium, b by all the major banks financing the company, c by the lead bank in the consortium, d by the banks having 60% share by value on the record date, in the consortium
- 73 As per Prevention of Money Laundering Act 2002, the banks are required to maintain record of specified transaction for a period:- a of 20 years, b of 10 years, c of 5-8 years, d of 5 years
- 4 Under provisions of SARFAESI Act, which of following transactions do not require registration with Central Registry? A securitization, b reconstruction, c creation of security interest, d none of the above
- 75 A customer filed a complaint with the Ombudsman which was rejected. What remedy is available to the customer:
 a The grounds of rejection can not be appealed against by the customer, b customer can only file suit in a court of law c customer can request for review, d grounds of rejections can be appealed against within 30 days.
- 76 Registration of a partnership firm under provisions of Indian Partnership Act 1932 can be:- a with the

Registrar of Firms of the area in which the business of the firm is conducted, b with the Registrar of Firms of the area in which the registered office of firm is located, c with the Registrar of Companies of the area in which the business of the firm is conducted, d with the Registrar of Companies of the area in which the registered office of firm is located

- 77 Recovery of Debt due to Banks & Financial Institutions Act 1993 Section 2(g) provides definition of 'debt', which include (which is not correct):- a any liability inclusive of interest which is secured, b any liability inclusive of interest which is not secured, c any liability payable under a decree or order of a civil court, d any liability recoverable by the bank from its employee who committed a fraud
- 78 Banks are required to maintain records under Prevention of Money Laundering Act 2002 which should contain following information (which is not correct):- a nature of the transaction, b amount of the transaction and the currency, c date on which transacted and the parties to the transaction, d none of the above
- 79 Under provisions of Transfer of Property Act, subject to agreement between parties, a property can be sold without intervention of court, if it located at: a any place, b Chennai, Mumbai and Kolkata only, c Towns notified by the State Govt. only, d b or c
- 80 A suit has been filed by Bank-B in DRT located at place Z. Now the bank wants to transfer this case to another DRT located at place y. Who can permit this transfer:- a High Court, b President of the DRT with consent of President of the other DRT, c Chairperson of DRAT having jurisdiction over both DRTs, d Chairperson of DRAT irrespective of jurisdiction over both DRTs
- 81 Period for DRT decision on the application filed by the bank is:- a it must be decided within 90 days from date of first hearing, b DRT to make effort to dispose off the application within maximum of 180 days from date of receipt of application, c it is binding on DRT to decide the matter within 180 days from date of its receipt, d DRT is not bound to abide by any time limit.
- 82 If any false information is provided to Registrar of Firms in connection with registration of a firm, the penalty is:
a imprisonment up to one month or fine or both, b imprisonment up to 2 months or fine or both,
c imprisonment up to 3 months or fine or both, d imprisonment up to 6 months or fine or both
- 83 Any person aggrieved by the order of Recovery Officer may appeal to within days from:- a President of DRT, 30 days, receipt of copy of order of RO, b President of DRT, 45 days, date of order of RO, c President of DRT, 30 days, date of order of RO, d President of DRT, 15 days, receipt of copy of order of RO
- 84 For the purpose of application of Bankers' Book Evidence Act, the bankers' book include (a) records kept as back up (b) records available as disaster recovery (c) records on micro film (d) records in physical form:- a only d, b only c and d, c only a, c and d, d a to d all,
- 85 Which of the following is correct in the context of Consumer Protection Act:- a) complaint can be filed by the consumer himself as on his behalf no consumer association can file the complaint, b) retailer who buy goods to sell to other consumers can file the complaint, c) the consumer courts are quasi-judicial in nature, d) Consumer Protection Act has been enacted to protect the manufacturers and service providers from the consumers
- 86 Limited Liability Partnerships are regulated under provisions of which of the following Act:- a Indian Partnership Act, b Companies Act, c Indian Contract Act, d none of the given options
- 87 involves promotion of corporate fairness, transparency and accountability in the interest of all stake holders:
a risk management, b corporate risk management, c corporate strategies, d corporate governance
- 88 A contract is valid, if the consideration is lawful when at the desire of the promisor, the promise (a) has done or abstained from doing (b) does or abstains from doing (c) promises to do or abstains from doing something. Which of these is correct:- a a to c all, b a and b only, c b and c only, d c and a only
- 89 In a mortgage suit, the preliminary decree becomes the final decree:- a when the request is made by the bank as creditor, b when the borrower fails to pay the decretal amount, c when the court takes a decision on the basis of its discretion, d when the request comes from the bank and the borrower
- 90 XYZ were allowed certain credit facilities on the guarantee of G. Later on the account was got secured by equitable mortgage of the property. But for certain reasons, the bank released the equitable mortgaged. When the account became difficult of recovery and money was demanded from G also, he took the plea that he stands discharged to the extent the value of mortgage, which has been released by the bank:- a guarantor is not discharged as the mortgage was taken subsequent to the date of guarantee, b guarantors is not discharged as he is liable as long as borrower is liable c guarantor is discharged to the extent of value of equitable mortgage, as bank has put the guarantor to loss, d guarantor is discharged since value of security in the account has come down.
- 91 In a contract of bailment, if the bailee does something inconsistent to the contract, the bailor can: (which is not correct):- a demand the damages suffered: b contract become voidable at the option of the bailor, c demand compensation for any damage, d none of the above
- 92 For actions of a partner in a Limited Liability Partnership:- a all the partners become automatically liable, b the LLP does becomes liable, c other partners do not become liable except in special cases, d none of the given options is correct
- 93 Which of the following right is not available to unpaid seller where the property has passed on the buyer:
a a lien on goods for price while he is in possession of the goods, b in case of insolvency of the buyer, a right of stopping the goods in transit after he has parted with the possession of them, c a right of resale, d none of the above

- 94 Which of the following can be a director of a company :- a X, ABC Limited, ABC Firm, b X, ABC Firm, c X, ABC Limited, d X only
- 95 A stipulation collateral to the main purpose of a contract, under the Sale of Goods Act is called:- a a condition b a warranty, c a guarantee d an undertaking
- 96 What is the minimum and maximum no. of partners in a Limited Liability Partnership:- a minimum 2 and maximum no limit, b minimum 2 and maximum 50, c minimum 2 and maximum 20 d minimum 2 and maximum 10,
- 97 Which among the following is a necessary condition for declaring it a govt. company under the provisions of Companies Act 1956? A it should be fully owned by the Central Govt, b It should be fully owned by the Central and State Govt, c at least 50% of the paid up capital should be owned by the govt, d) at least 51% of the paid up capital should be owned by the govt.
- 98 In a public limited company, maximum and minimum no. of shareholders is:- a) 50 and 10, b) No limit and 7, c) 100 and 2, d) any number at the discretion of the company
- 99 A company has been sanctioned enhanced credit limits by its bank. For modification of charge with the Registrar of Companies, which among the following forms are to be used:- a Form 8 and 10 b Form 8 and 17, c Form 8 d Form 10 and 17
- 100 The copy of memorandum of association and articles of association of a company is kept with office of RoC and can be inspected by any person due to which it is known as:- a doctrine of indoor management, b ultra-vires, c doctrine of constructive notice, d doctrine of outdoor management
101. There is a fixed deposit of Rs. 100000 in the name of Mr. A & B. A is requesting for a loan of Rs. 50000 on the security of the fixed deposit. B (12 years old) is a minor son of A and A is signing as the guardian of the minor. Which one of the following additional document is required?
- Birth Certificate giving the date of birth
 - School certificate that B is a student
 - Declaration by A that the loan will be use for minor's benefit.
- Declaration by the minor himself that he has no objection to the loan taken by the father.
- 102 Mr. Shekhar has approached the bank for an emergency loan of Rs. 50000 immediately. He is offering the following securities. Please select the most appropriate one among them to grant immediate finance:
- Same bank's deposit of Rs. 75000
 - Post Office National Savings Certificates (NSCs) of Rs. 100000
 - Life Insurance Policies of the Face Value Rs. 500000
 - His flat valued at Rs. 2500000
103. Assuming that the bank is going to charge all the securities, which of the following is true?
- In respect of a deposit the bank will have hypothecation.
 - In respect of NSCs the bank will have pledge.
 - In respect of LIC policies the bank will have mortgage
 - In respect of the Flat the bank will have an agreement to mortgage
104. Mr. Shenker has a loan account fully overdue with a balance of Rs.32000 and also a Savings Bank account in the same bank that shows a credit balance of Rs. 60000. He is not responding to the bank's due notices to repay. Which among the following will be the best course available to the bank_
- Contact personally and obtain a cheque drawn on the Savings Account, in favour of the bank.
 - Issue a Vakil Notice and threaten legal action if not paid forthwith.
 - File a suit in the court of law to teach him a lesson
 - Exercise banker's right of set off on the Savings Account balance and close the loan account once for all.
105. In the above case, instead of Shankar having a Savings Account with our bank, he has an account with another bank with a fixed deposit of Rs. 60000 in that bank. The other day when he called on the manager, inadvertently on the manager's table an envelope that contained the FD receipt of the other bank. The bank can
- Exercise its lien on the receipt and get the proceeds to close the loan.
 - Cannot exercise the lien has not come in the normal course of banking business, say for collection
 - Lien cannot be exercised on some other bank's receipt
 - Lien can be exercised only on its own deposits.
106. "A" has an overdue loan with a balance of Rs. 27000. There is also a Recurring Deposit with a balance of Rs. 60000 in the name of Mr. & Mrs. A repayable to Either or Survivor. The Bank can
- exercise the lien
 - cannot exercise the lien because the liability and assets are not in the same right and capacity.
 - 50% of the deposit can be deemed to belong to "A" and the bank can adjust the dues even without the lien.
 - Approach a Court of law and obtain their permission to adjust.
- 107 A jewel loan of Rs. 6000 was granted on the pledge of ornaments valued at Rs. 10000. The borrower could not repay even after three years and so the bank sold the ornaments by public auction. After adjusting the dues there was a surplus of Rs. 2000. The surplus should be treated by the bank as
- Profit to the bank
 - Borrower's property to be handed over with a proper account

- c) An incentive to be given to the bank staff for recovery of loans
d) A credit to some other overdue borrowing account to reduce NPAs
108. Ramesh Lal is a SB Account holder for last several years. He has approached the bank manager with his life policy of the face value of Rs. 100000 with a premium paid of Rs. 10000 to grant him the maximum permissible loan. Select among the following the basis for granting the loan.
- Face value of Rs. 100000
 - Premium paid Rs. 10000
 - Surrender Value of the policy to be ascertained from the Insurance Company
 - Surrender value plus accrued bonus
109. State which of the following is true?
- A bank never grants loans against life policies
 - The mode of charging LIC as a security is assignment
 - The bank will have its name included as a Nominee when a loan is granted against LIP
110. The following business enterprises have approached the bank for 'advances against book debts'. Which one among them is suitable for availing the finance?
- Proprietary concern
 - Partnership firm
 - Hindu Undivided Family
 - limited liability company
111. Rajesh & Co., a partnership firm is dealing in timber. However, they approach the bank, for a loan of Rs. 500000 to acquire gold coins and keep with the bank as a security till the prices will go up and then sell and make profits. They are not in jewellery business but ask for the loan with a profit motive. They feel gold is an extremely good and safe security and the bank can very well sanction without any hesitation. The Manager however is not inclined to sanction and has jotted down the following reasons of which he/she wants to select the most appropriate one and convey. The appropriate reason is
- The bank does not have a night watchman
 - The bank does not deal in gold.
 - The purpose of the advance is unproductive.
 - Only jewellery merchants can avail loans against gold.
112. Mr. Naresh, the Chief Accountant of a Private Limited Company drawing a handsome salary is asking for a loan of Rs. 50000 against the shares of Rs. 125000 of his company. The company has the account with the bank in which there is always substantial balance. He audited balance sheet of the Private Limited Company also reveals that the company is financially very sound. The bank
- Cannot sanction the loan because the shares cannot be sold in the market in the case of an eventuality.
 - Can buy the shares and hold for Reserve purposes.
 - Sanction the loan because the audited statements reveal financial soundness.
 - Obtain Registrar of Companies permission and then sanction the loan
113. A loan of Rs. 10,00,000 was granted to a small scale industrialist against the hypothecation of machinery of Rs. 15,00,000. The industry is closed and the loan is fully overdue. Owing to the change in the technology the machinery has become a junk with a scrap value of Rs. 25000. The bank has issued a notice both to the borrower and the guarantor to repay forthwith. The borrower has no means to repay. When the guarantor is called upon to repay he requests the bank sell the machinery and simultaneously file a suit against the borrower. He says he will definitely repay if the borrower fails to repay. What should the bank do?
- Guarantor's request can be acceded to
 - Guarantor's request can not be acceded to because his/her liability is co-extensive with that of the borrower's and upon his/her default, the Guarantor has to repay.
 - Bank can not recover from Guarantor as the machinery has become junk. It is neither his/her fault nor the borrower's
 - Bank can not recover from the borrower also as the industry has become sick.
114. Mr. A has taken a loan of Rs. 20000 with the joint and several guarantee of Mr. B & Mr. C. There is no other security. The loan has become overdue. The Bank sends recall notice to the guarantors. In reply Mr. B remits Rs. 10000 as his share and Mr. C Rs. 5000 stating that he is unable to pay more. Both Mr. A and C expressed that they are in great financial difficulties. The Bank can
- Try to compel Mr. A to remit at least the balance of Rs. 5000.
 - Ask Mr. B, to remit the balance of Rs. 5000 as the liability is joint and several.
 - Ask Mr. C to raise through some source Rs. 5000 and pay to cover his 50% of the guaranteed amount.
 - Write off the balance of Rs. 5000 as a Loss Asset.
115. Lords & Co. are merchandise traders. They send goods up country by trucks, obtain lorry receipts and on their buyers draw usance bills of 60 days period with Documents to be delivered against Acceptance of the drawers. The bank finances by discounting such bills. In respect of one bill of Rs. 60000 drawn on Sound & Co., Mysore, though accepted and documents delivered, came back dishonoured. The bank demanded payment from Lords & Co. And they came up with the following replies. Which one is acceptable to the bank?
- The bank has committed a mistake in releasing the documents against Acceptance.
 - Bank should re-present the bill again and try to collect the money.

- c) Grant them a week's time to reimburse the amount. They are responsible for repayment.
d) The bank should file a suit against the Acceptor as he/she is in possession of the goods covered by Lorry Receipt.

116. Corporate Bank had granted a term loan of Rs.20 lac to M/s Kawal Society Limited which is not being repaid. The company is not signing the balance confirmation letter despite the fact that it has been sent three times. Bank sends a legal notice for repayment of the loan which shows balance of Rs.27 lac now. Company confronts bank's claim of Rs.27 lac by way of a letter stating that they have already paid Rs.5 lac due to which the amount should be Rs.15 lac only:- a the letter will serve the purpose of acknowledgement letter and extend the limitation period for the entire amount, b the letter could extend the limitation period if it were duly stamped, c the letter is not an acknowledgement it is only a denial of bank's claim, d any of the above

117. Your branch had granted a loan to Mr. Sachin Kumar and Sohan Kumar with joint and several liability clause. On scrutiny of the documents it is found that the limitation of the documents is about to expire, the bank approaches them for signing the balance confirmation letter but at that time, Mr. Sachin Kumar is out of town. Hence the BC letter is signed by Mr. Sohan Kumar alone. Mr. Sachin Kumar returns to the town after the limitation period expires and refuses to sign the balance confirmation:- a limitation is extended against both of them, b limitation is extended against Sohan Kumar, c Absence of Mr. Sachin Kumar from the town will be excluded from the calculation of the limitation period, d all the above, e It is partial acknowledgement and does not bind any of them

118. Your branch had granted an overdraft to Mr. Ravi Kumar G on the basis of demand promissory note on July 12, 2001. Which among the following is the last day for the bank to file a case in a court of law to recover its money, in case Ravi Kumar G is not able to pay the dues? a July 12, 2004, b 1st day of reopen of court after July 12, if the court is closed on July 12, 2004, c July 11, 2004, d a and b above

119. Your branch had allowed an advance on January 12, 1999 to Mr. Suresh Kumar and for that purpose, had obtained the simple mortgage of his commercial property and also secured it by having guarantee of his brother in law Mr. Jyoti Babu. Mr. Suresh Kumar failed to repay the loan despite regular demand notice issued on him during the first year itself. In this process the limitation against him has expired. What remedy is available with the bank for recovery of the dues:- a limitation has expired due to which the loan cannot be recovered, B since the loan cannot be recovered from the borrower the guarantor is also not liable C the loan can be recovered by enforcing the mortgage where the limitation is still available, d bank can proceed against the guarantor by recalling the loan from him and making him liable for payment, e c and d above

120. Your branch had granted certain credit facilities to M/s bulari Enterprises but due to non repayment of the loan by the promoters, the account became non-performing advance and with a view to recover the same, the bank decides to file a suit on January 25, 2004. It was observed that the limitation is expiring on January 26, 2004 and bank is closed on January 27, 2004.

A branch should immediately seek guidance from their Regional Office, B bank can approach the Judicial Officer at his residence on January 25, 2004 itself and try to convince the Judge for filing the suit on January 28, c suit can be filed on Jan 27, 2004 when the court will open after the public holiday on Jan 26, 2004, d bank branch can make a request to the borrower to sign a fresh acknowledgement to extend the limitation period.

ANSWER PRACTICE TEST NO. 3

1	C	2	D	3	D	4	B	5	A	6	A	7	C	8	B	9	B	10	A
11	A	12	B	13	A	14	D	15	A	16	A	17	C	18	B	19	C	20	B
21	D	22	D	23	D	24	B	25	B	26	C	27	B	28	D	29	D	30	A
31	B	32	D	33	C	34	A	35	A	36	C	37	D	38	C	39	D	40	B
41	B	42	A	43	A	44	B	45	C	46	A	47	D	48	D	49	B	50	C
51	B	52	D	53	C	54	B	55	D	56	C	57	B	58	C	59	D	60	B
61	B	62	C	63	D	64	A	65	B	66	B	67	B	68	B	69	D	70	D
71	C	72	D	73	D	74	D	75	D	76	A	77	D	78	D	79	D	80	C
81	B	82	C	83	A	84	D	85	C	86	D	87	D	88	A	89	B	90	A
91	D	92	C	93	D	94	D	95	B	96	A	97	D	98	B	99	C	100	C
101	C	102	A	103	T	104	D	105	B	106	B	107	B	108	D	109	F	110	D
111	C	112	A	113	B	114	B	115	C	116	A	117	A	118	B	119	B	120	C

PRACTICE TEST PAPER NO. 4 (TEST YOUR SELF)

- 01 Which of the following are two essential functions of banks as indicated in Section 5(b) of Banking Regulation Act (a) accept deposits & to lend or invest such deposits (b) accept deposit & undertake non-fund based business (c) accept deposits and undertake remittance business (d) lend & invest and issue letters of credit:- a a and d only, b a and c only, c c only, d a only
- 02 Which of the following group is not included in the term goods, as per Sale of Goods Act:- a shares & stocks, b grass and shares, c actionable claims and stock, d stock and grass
- 03 A suit is deemed to have been instituted (filed) in a court:- a when the court fee has been paid, b when plaint is presented to the proper officer in the court, c when plaint has been acknowledged by the court, d any of the above
- 04 Other than the business specified u/s 6 (1) of Banking Regulation Act, a bank can undertake any other business which can be prescribed / decided by (a) Central Govt. (b) RBI (c) Board of the Bank (d) Ministry of Corporate Affairs. a a and b only, b b and c only, c d only, d a only
- 05 Private Sector banks are regulated by (a) Companies Act 1956 (b) Banking Regulation Act 1949 (c) **RBI** Act 1934 (d) Banking Companies (Acquisition & Transfer of Undertakings) Act 1970:- a a, b and c only, b b, c and d only, c a, c and d only, d atod all
- 06 As per Sale of Goods Act, the goods mean the goods identified and agreed upon, at the time of a contract of sale is made:- a future, b specific, c movable, d immovable
- 07 Time required for obtaining a copy of the order or award shall be excluded while computing the limitation period for a filing review application, b filing revision, c filing an application to set aside the award, d all the above
- 08 Which of the following are regulated by Banking Regulation Act 1949 (a) Public Sector Banks (b) State Bank Group Banks (c) RRBs (d) Coop Land Mortgage Banks a atodall, b a to c only, c a, b and d only, d a, c and d only
- 09 In the context of Cooperative Banks, which of the following statements are correct (a) coop bank operating in one State obtains registration under State Coop Societies Act (b) for Coop banks operating in more than one State, Central Govt. appoints Registrar (c) Coop banks are under purview of B R Act u/s 56 (d) Where Coop bank is registered under DICGC Act, RBI can order its winding up:- a atod all, b a to c only, c a, c and d only, d b and d only
- 10 Which of the following statement is a not correct:- a Coop Bank operating in more than one state is registered under Multi-State Coop Societies Act, b Govt. can exempt a bank from provisions of Banking Regulation Act, on its own, c The company matters relating to a banking company are regulated by an authority under the Companies Act, d Banks undertake trading in shares subject to regulation by SEBI.
- 11 For foreclosure of a mortgage, the limitation period is 12 years from:- a date of loan document, b date of mortgage, c date when the money secured by the mortgage becomes due, d any of the above dates, whichever is earlier
- 12 While issuing a banking license for a foreign banks RBI, in addition to usual consideration takes into account (a) whether the business will be carried by the company in public interest (b) whether the law of the country where the bank originated discriminates against Indian banks (c) whether the company complies with provisions of B R Act, as applicable to foreign companies: a a to c all, b a and b only, c b and c only, d a and c only
- 13 As per Sale of Goods Act, the goods which are to be manufactured by the seller after making of contract of sale:- a future, b specific, c movable, d immovable
- 14 Which of the following statements are not 'correct in connection with shareholding in an Indian bank under provision of BR Act: a there is no ceiling on a person's holding of shares, b no shareholder can exercise voting rights in excess of 10% of total voting' rights, c the provision of 10% ceiling restricts the transfer and registration of such transfer, d the provisions of Companies Act also govern transfer of shares of banking companies.
- 15 Before declaring a dividend a banking company has to reduce from its profits (a) preliminary or share selling expenses (b) organization expenses (c) brokerage and loss incurred (d) bad debts for which adequate provision has been made: a only a to c, b only b to d, c only a and d, d only b and c
- 16 In case of non-resident persons, which of the following income is taxable:- a earned in India only, b earned while outside India only, c earned outside India, while in India only, d all the above
- 17 RBI can appoint Chairman of a bank (a) if the office is lying vacant and not filled immediately (b) if in the opinion of RBI such vacant position is to be against interest of the banking company (c) such appointment shall be maximum for a period of 5 years (d) there is provision for re-appointment after the initial period:- a a to d all correct, b a, b and d are correct, c a, b and c are correct, d b, c and d are correct
- 18 In the context of capital of a bank (a) the authorized capital means the maximum limit of share capital which the bank is authorized to have under its memorandum (b) the amount of share capital which is subscribed and received is called paid up capital (c) the amount of share capital which is issued and paid up is called subscribed capital): a a to c all correct, b a and b only are correct, c a and c only are correct, d b and c

only are correct

19 Under Sale of Goods Act, if the sale is by sample, which of the following implied condition is not correct:- a bulk shall correspond with the sample in the quality, b buyer shall have an opportunity to compare the bulk with the sample, c goods shall be free from any defect, rendering them un- merchantable, which would not be apparent on reasonable examination of the sample, d none of the above

20 Banks are required to deposit the amount of TDS, in the govt. account:- a within one month from date of deduction, b within 7 days from date of deduction, c within 7 days from close of the month, during which deduction is made, d within one month from close of the month, during which deduction is made.

21 RBI cannot give directions to banks for loans and advances in respect of which of the following:- a purpose for which the loan can be allowed, b margin to be maintained for secured advances, c maximum amount of loan that may be sanctioned to one company, firm or association of persons or individual d none of the above

22 As per Sale of Goods Act, the of the seller is terminated when the buyer gets possession of the goods:- a warranty, b condition, c _____ lien, d agreement

23 Banks are required to transfer a part of their profits to a Reserve Fund (a) u/s 17-1 of B R Act (b) the amount to be transfer is 20% of such profits (c) profits for this purpose are after payment of dividend (d) Central Govt. can exempt a bank from such transfer on RBI recommendations. Which of these is correct:- a a to d all, b a, b and c only, c a, b and d only, d b, c and d only

24 Which of the following information regarding return of service tax is correct:- a return is to be submitted on half yearly basis on Form ST-3, b return is to be submitted on quarterly basis on Form ST-5, c return is to be submitted on half yearly for Mar and Dec, d all the above

25 If a security is in possession of a bank, it can be sold by the bank:- a by filing suit under SARFAESI Act, b by giving 60 days notice under provisions of SARFAESI Act, c by giving reasonable time notice under provisions of Indian Contract Act, d either under provisions of SARFAESI Act or Indian Contract Act, at the discretion of the bank

26 Central Govt. can make rules for preservation of records / books u/s _____ of B R Act, RBI can make rules u/s _____ of B R Act and banks can return the paid instruments to customers u/s of _____ B R Act:- a 45Z, 35, 45Y, b 45Y, 35A, 45Z, c 21A, 35A, 51Z, d 21A, 35A, 45Z

27 A banking company can amalgamate with another banking company of its own, called amalgamation. Central Govt. can also order amalgamation of two banking companies u/s 396 of _____ in consultation with a voluntary, RBI Act, SEBI, b voluntary, Companies Act, RBI, c voluntary, RBI Act, RBI d voluntary, Companies Act, SEBI

28 Which of the following provisions of SARFAESI Act were amended in the year 2004 after Mardia Chemicals vs Union of India and others, judgement of Supreme Court:- a Sec 17 (2), relating to issue of possession notice of 60 days, b Sec 13 (2), relating to issue of possession notice of 60 days, c Sec 17 (2), relating to deposit of 75% amount by borrower before approaching DIRT, d Sec '13 (2), relating to deposit of 75% amount by borrower before approaching DRT

29 Under provisions of SBI Act 1955, SBI is managed by (a) Board consisting of Chairman, Vice Chairman, maximum two Mg. Directors etc (b) Chairman and Mg. Director are appointed for a period not exceeding 5 years (c) Local Boards are set up where the bank has Local HO (d) Local Boards consists of Chairman and other elected and nominated members:- a a to d are correct, b a to c only are correct, c b, c and d are correct, d a, c and d are correct

30 A Lok Adalt has jurisdiction :- a to decide a case as per its own judgement, b to determine and arrive at a compromise or settlement, c to decide a case as per its own judgement based on evidence, produced before it, d any of the above

31 Which of the following does not match:- a a corresponding new bank established under Banking Companies (Acquisition and Transfer of Undertakings) Act 1970- State Bank, b a principal coop bank in a distt. — Central Coop Bank, c a coop society, the primary objective of which is to finance its members — coop credit society, d bank which promotes an RRB — sponsor bank

32 Under provisions of SARFAESI Act, the security receipt evidences:- a undivided right or interest of the purchaser, in the security, b independent right or interest of the purchaser, in the security, c exclusive right or interest of the purchaser, in the security, d exclusive right or interest of the seller, in the security

33 A bank has made payment across the counter, of a cheque issued as a crossed cheque and the holder claims damages from the bank. Under such circumstances, the bank is liable:- a to the drawer of the cheque, b to the true owner of the cheque i.e. holder, c to the drawer and also the payee, d all the above

34 A bank makes payment of two cheques on which, later it is found that the signatures of the drawer are forged. The first account is that of a company and the 2nd account is a joint account in which signatures of one of the account holders are real:- a bank is liable for the first cheque and for the half amount in the 2nd case, b bank is liable for both the cheques, c bank is liable for the first cheque and not liable for the 2nd cheque, d bank is not liable for any of the cheque, if payment is in due courses

35 Under FEMA, the term authorised person means:- a authorised dealers, money changers, all banks, b authorised dealers and all banks, c authorised dealers and money changers, d all the above

- 36** Banks can issue notice for enforcement of security interest under SARFAESI Act when:- a there is default by borrower and security is in possession of the bank, b the account is NPA and security is in possession of the bank, c the account is suit filed and security is in possession of the bank, d the account is suit filed and security is in possession of the borrower
- 37** X appointed Y as his agent to operate his account and route business transactions through Y's personal account also. Y misappropriated the proceeds of a cheque in the name of X but deposited by Y in his personal account. X sends notice to the bank for negligence and conversion:- a bank is liable for the conversion as Y has done something that bank should not have apparently, b bank is liable since it is a case of conversion, c bank is not liable because, X had given specific authority to Y to use his personal account also. d bank is not liable because for agent's action, the principal liable.
- 38** Which of the following is not correct with regard to a deferred payment guarantee:- a guarantee is issued normally for purchase of capital assets on long term credit from the supplier, b guarantee is issued in lieu of term loan and appraisal is also done like a term loan, c difference between TL and such guarantee is of outlay of funds, d bank records such guarantees in the balance sheet under the TL in Schedule 9 of bank balance sheet
- 39** Bank X gives a bank guarantee on behalf of one of its customers against some payment to be deposited by the customer in a pending court case. Such guarantee can be classified as (a) financial guarantee (b) performance guarantee (c) deferred payment guarantee (d) statutory guarantee:- a a or d, b only a, c only d, d b or e
- 40** As per FEMA 1999, the term foreign exchange does not include which of the following:- a amount payable in foreign currency, b DD drawn in Indian currency but payable in foreign currency, c DD drawn abroad but payable in Indian currency, d none of the above
- 41** For a securitization company, which of the following condition is applicable for their capital and capital adequacy ratio:- a minimum capital Rs.200 cr and capital adequacy ratio of 15% of the financial assets acquired by the company, b minimum capital Rs.100 cr and capital adequacy ratio of 15% of the financial assets acquired by the company, c minimum capital Rs.100 cr and capital adequacy ratio of 10% of the financial assets acquired by the company, d minimum capital Rs.200 cr and capital adequacy ratio of 10% of the financial assets acquired by the company
- 42** To enable the beneficiary to rely on the authenticity and genuineness of the LC, the letter of credit is received by the beneficiary:- a through advising bank, b directly from the issuing bank, c from negotiating bank, which is to make payment also, d through confirming bank to make sure that payment would be definitely received.
- 43** In an LC the documents are to be negotiated in the beginning of September which means that documents can be presented for negotiation during:- a first week, b first two days, c 1st to 10th of the month, d 1st to 15th of the month
- 44** If there is a contravention of provisions of FEMA 1999 by a person and the amount is not quantifiable, penalty can be levied:- a up to Rs.2 lac, b up to amount involved in such contravention, c up to two times of amount involved in such contravention, d up to thrice the amount involved in such contravention
- 45** A security interest created under SARFAESI Act requiring registration with Central Registry within a period of:- a 15 days, b 30 days, c 45 days, d 60 days
- 46** If a bill of exchange is dishonoured (a) the drawer is liable to the holder (b) drawer's liability is secondary if it is accepted (c) drawer's liability is primary when it has not been accepted (d) drawee is liable whether he accepts the bill or not in all circumstances. Which of these is correct:- a a, b and c only, b a, b and d only, c b, c and d only, d a to d all
- 47** Which of the following types of charges on the following securities does match:- a book debts – assignment, b bank deposits – assignment, c immovable property – mortgage, d national saving certificates - pledge
- 48** (a) an equity share is a share which is not a preference share (b) a preference share is one which gets regular dividend irrespective of profit position and preference in case of liquidation (c) debenture is document by which a company acknowledges its indebtedness (d) trust receipt is a document is an undertaking by the borrower when the goods are released by the bank to the borrower without payment being made by the borrower:- a a to d are correct, b a, b and c are correct, c a, c and d are correct, d b, c and d are correct
- 49** Which of the following statement is correct:- a certificate of incorporation is required by a public company only and not by a private company, b certificate of commencement of business is conclusive proof of existence of a company, c certificate of incorporation is conclusive proof of existence of a company, d certificate of commencement of business is required by a private company only
- 50** The mortgage in which the mortgager transfers the possession to the mortgagee is called mortgage. In such mortgage, (there is) / (there is no), personal liability of the mortgager:- a English, there is, b Mortgage by conditional sale, there is no, c simple mortgage, there is no, d usufructuary mortgage, there is no
- 51** A mortgage when created through an instrument in writing (called mortgage deed) is required to be registered with within months, if the value of mortgage money is Rs. :- a Registrar of Firms, 4 months, 100 or more, b Registrar of Assurances, 4 months, 100 or more, c Registrar of Companies, 3 months, 100 or more, d Registrar of Assurance, 3 months, more than Rs.100
- 52** Which of the following feature of limited liability partnership is not correct as per LLP Act 2008:- a LLP is a

separate legal entity, b LLP is separate from its partners, c LLP has perpetual succession.
Death of partner does not affect the LLP, d none of the above

53 XYZ created equitable mortgage in favour of Bank A on Jan 14, 2007 (not registered), a simple mortgage with Bank B on Jan 28, 2007 (and registered on Mar 12, 2007) and a simple mortgage with Bank C on Feb 10, 2007 (and registered on Feb 28, 2007). The priority of mortgage in this case would be in the following order:- a Bank C, Bank B and Bank A, b Bank B, Bank C and Bank A, c Bank, B, Bank A and Bank C, d Bank a, Bank B and Bank C

54 Under RTI Act 2005, the information can be taken in the form of:- a diskettes or floppies, b tapes or video cassettes, c printouts or in any other electronic form, d all the above

55 In case of hypothecation, which of the following is not a correct statement:- a it is defined as per SARFAESI Act, b the ownership remains with the borrower, c the possession remains with the creditor, d the creditor has the right to demand possession

56 Where forged notes or counterfeit currency has been used as genuine, record of such transactions is required to be maintained if the amount of such transaction is:- a Rs.50000 or above, b Rs.1 lac or above, c Rs.10 lac or above, d all transactions irrespective of amount

57 Which among the following can not be deemed to be a contingent credit facility:- a letter of credit, b bank guarantee, c co-acceptance, d overdraft which is not availed.

58 In the context of partnership firms, which of the following is not true:- a partnership are registered with Registrar of Firms and not the partnership deeds, b Registration of Partnership firms is not compulsory. It is optional, c Registered firms have certain advantages over the unregistered firm, d Non-registration of the firm adversely affect the capacity of the partners to carry on the business

59 If a person seeks information from a public authority:- a he has to give reasons for seeking the information, b he has not to give reasons for seeking the information, c if reasons are given, it can help in quick disposal of the request for information, d information can not be provided by the public authority without knowing the reasons for seeking information

60 Under Prevention of Money Laundering Act 2002, which of the following can prescribe the nature of records to be maintained by a bank:- a RBI and State Govt, b Central Govt. and State Govt, c SEBI and RBI, d SEBI and State Govt.

61 If a company does not want to include in its name, the words 'limited', it can do so u/s 25 of Companies Act 1956, after obtaining license from:- a SEBI, b Company Law Board, c Registrar of Company, d Regional Director (as per provisions of Companies Act 2013, the relevant section is 8)

62 A charge which is created by a company on its present or future assets and is not attached to a particular assets is called: a Exclusive charge, b Pari-passu charge, c Floating charge, d fixed charge

63 SARFAESI Act has been declared valid by Supreme Court but it struck down Section of the Act, in the case of vs , which provided for deposit of 75% of the amount due to the bank before approaching DRT:

a 13, Mardia Chemicals vs ICICI Bank Ltd, b 17(2), Mardia Chemicals vs Union of India & others
c 13, Mardia Chemicals vs Union of India & others, d 17, Mardia Chemicals vs Union Bank of India

64 To bring them in tune with the Information Technology Act 1999, which of the following Act has not been amended by IT Act 1999:- a Indian Penal Code 1860, b Indian Evidence Act and Bankers' Book Evidence Act, c RBI Act 1934, d Companies Act 1956

65 Where a person wants to file a case under SARFAESI Act, it will approach and for appeal, it will go to
a Distt Court, High Court, b High Court, Supreme Court, c Debt Recovery Tribunal, Debt
Recovery Appellate Tribunal, d Debt Recovery Tribunal, High Court

66 The term 'security interest' does not include the following, as far as SARFAESI Act is concerned:- a Mortgage, b Hypothecation, c Pledge & lien, d Assignment

67 In the process of securitization of NPA accounts, the qualified institutional buyers are eligible to purchase security receipts issued by the securitisation company. QIB does not include:- a financial institution or insurance company, b banks, mutual funds, c state financial corporations / state industrial development, corporations, d joint stock companies

68 Which of the following has the authority under SARFAESI Act to prescribe income recognition, accounting standards, provisioning norms for Securitisation or Reconstruction Companies:- a RBI, b R o C , c SEBI, d Company Law Board

69 What is the function of the public key out of the pair of keys used in an electronic signature:- a to create an electronic signature, b to verify an electronic signature, c to create and verify an electronic signature, d all the above

70 When sale of security is made by the creditor under SARFAESI Act, the sale proceeds are to be utilized (a) first towards costs incidental to preservation and protection of security (b) dues of the secured creditor (c) surplus to person entitled there to in accordance with the rights and interests:- a a to c all correct, b only a and b correct, c only b and c correct, d only a and e correct

71 in a securitization transaction the following documents are required (a) offer document (b) debenture (c) agreement (d) security receipt (e) discharge certificate by the NPA selling bank:- a only a to d, b only b to d, only c to e a to e all

72 After receipt of notice of possession from the bank, if the borrower transfers, other than in normal course of business,

any of his assets without consent of the bank, what is the punishment under SARFAESI Act:- there is punishment in the form of fine only there is punishment in the form of imprisonment up to 2 years the punishment can be in the form of fine and imprisonment up to 1 year or both there is no provision of any punishment

73 When a request for information is rejected by Public Information Officer under Right to Information Act, he is not required to communicate to the requester:- a the reasons for rejection, b the period within which an appeal can be preferred, c the particulars of appellate authority, d an apology for not providing information

74 As per Rules under Prevention of Money Laundering Act 2002, the banks are not required to obtain which the following documents while opening account of a company:- a Certificate of Incorporation, b Memorandum of Association and Articles of Association, c Board resolution and official valid document in respect of the person operating the account, d none of the above

75 The provisions of SARFAESI Act are applicable in which of the following transactions:- a a lien or pledge on any goods as per Indian Contract Act, b security interest created on agricultural land c loan amount is above Rs.1 lac, d balance amount is less than 20% of the principal amount and interest.

76 Under provisions of Right to Information Act, where the information is supplied by a 3rd party and is treated as confidential by that 3rd party and this information is sought by any person, the Public Information Officer shall give a notice within from date of receipt of such request, to such 3rd party about his intention to disclose the information: a 5 days, b one week, c 10 days, d no such notice is required

77 A complaint that is made to Ombudsman should not relate to issue (a) already settled by Ombudsman (b) pending with a court, (c) already decided by a court (d) where limitation period has expired. Which of the following options is correct:- a a, b, c only, b b, c, d only, c a, c, d only, d a, b, c, d all

78 The presiding officer of DRT is called _____, who is appointed by _____ for _____ or until he achieves age of _____ a President, Central Govt., 5 years, 62 years, b President, High Court., 5 years, 62 years c President, Central Govt., 3 years, 62 years, d Chairperson, Central Govt., 5 years, 62 years

79 When suit is filed by the bank with DRT, DRT summons the defendant requiring him to show cause within days from _____ as to why the relief prayed by the bank, should not be granted:- a 30 days, date of summons, b 45 days, receipt of summons, c 30 days, service of summons, d 45 days, date of summons

80 In which of the following mortgages, the property is transferred by the mortgager absolutely with a condition for retransfer by the mortgagee:- a simple mortgage, b English mortgage, c equitable mortgage, d usufructuary mortgage

81 Where the borrower wants to file an appeal against order of DRT (which is not correct):- a it can do so within 45 days of receipt of order by him, b it can do so by depositing 75% of the amount of order c it can do so by filing an appeal with High Court or DRAT, d it can do so without depositing any amount when permitted by DRAT

82 Which among the following is a correct statement:- a DRT jurisdiction for different banks is with reference to the location of HO of the respective bank, b Appeal against DRT order can made either to DRAT or to High Court c Where a suit has been filed by one bank in DRT, other bank having interest in the case, can join, d DRT is not a civil court due to which it cannot pass interim orders like attachment or injunction

83 Bank B has received a notice from Recovery Officer of DRT attaching the balance lying in current account of XYZ Pvt Ltd. A the bank will ignore the notice as such authority is not vested with Recovery Officer of DRT B the bank will inform the Recovery Officer that his order cannot be complied with as he has no such authority C the bank will follow the order as Recovery Officer can issue such order similar to the one given u/s 226 of Income Tax Act. D the bank will follow the order, because the recovery of due amount of some other bank is involved.

84 When a bank is to send a certified copy of bank records to a court, the bank is to give a certificate that should contain (which is not correct):- a the entry is true copy, b entry is contained in bank books, c entry was made in ordinary course of business, d such record is not in the custody of the bank

85 The lease for an agricultural and manufacturing purposes is deemed to be a lease from year to year and it can be terminated by giving notice:- a 2 months, b 3 months, c 6 months, d 12 months

86 Which of the functions of public and private key match:- a private key verifies the digital signatures and public key creates the digital signature, b public key verifies the digital signatures and private key creates the digital signature, c private key and public key are used to verify the digital signatures, d private key and public key are used to create the digital signatures

87 Distt. Forum is headed by a person who be or has been qualified to be a _____ Judge. The other members of not less than _____ years:- a Distt, 3, 35 years, b Distt, 3, 27 years, c Distt., 2, 35 years, d High Court, 3, 35 years

88 An agreement that cannot be enforceable by law is called: a quasi-agreement, b void agreement, c voidable agreement, d immoral agreement

89 A contract is valid only when there is valid consideration but in case of contract of guarantee, no consideration passes between the bank and the guarantee. The contract is still valid because:- a guarantor has signed the contract with his free will, b guarantor is a major person and contract with a major person is valid, c any thing done for the benefit of the borrower is a sufficient consideration for the guarantor, d guarantor's liability is secondary (as borrower is primarily liable), hence no consideration is required.

- 90** Which of the following is true in the following cases:- a bailor is the person who receives the goods as a security for the loan, b when documents are delivered by a customer for safe custody to the bank and bank takes due care but there is loss to documents, bank is liable to the customer, c if the bailor has knowledge about the defect in the goods due to which bailee suffers loss, the bailor is liable, d bailee can use the goods as he likes and is not liable for damages for such use
- 91** In the execution of mortgage decree, the decree holder can bring the mortgaged properties to sale:-
a without first seeking an order of attachment of court, b after seeking an order of attachment of court
c after obtaining an order from the court, d none of the above
- 92** As a part of corporate governance, the concept of 'fit and proper' relates to which of the following aspects:
a appointment of directors of banks, b management of banks, c to management of banks
d staff of banks
- 93** Under Sale Of Goods Act, the term 'caveat emptor' stands for:- a it is an instruction to the buyer to buy only if he likes, b it is a condition binding the buyer and seller to agree to certain conditions of the sale
c it is a warning for the buyer to be cautious while buying, d it is a right of the seller, whether to sell the goods or not
- 94** X sold certain goods to Y for which he is yet to be paid. As long as the payment is not made by Y, X has (a) lien on the goods for the price of the goods the possession of which is with X (b) if Y becomes insolvent, to stop the goods in transit if X has parted with the possession (c) right of re-sale if goods are in possession of X. Which of these is correct:- a a and b only, b b and c only, c a and c only, d a to c all
- 95** A partnership is a contract with following features (which one is not correct):- a contract can be oral contract also, b contract is to carry any type of business, lawful or otherwise, c business is to be carried to make profits and share profits, d mutual relationship between partners is of agency
- 96** X, the natural guardian of M, the minor, wants to mortgage the property in the name of M to secure a loan for the benefit of the minor:- a the property in the name of M cannot be mortgaged, b the property in the name of M can be mortgaged if the loan is for benefit of the minor, c the property in the name of M can be mortgaged if the loan is for benefit of the minor with permission of court only, d the property in the name of M can be mortgaged if the loan is for benefit of the minor with permission of Registrar of Assurances
- 97** The provisions in respect of enhancing the borrowing powers of the Board of a public limited company or subsidiary of a public limited company, by the shareholders, are given in Section ... of the Companies Act 1956:- a: 125 b: 293, c: 293(1)(d) d: 134
- 98** As per SEBI guidelines, the minimum %age of independent directors out of total, should be , of a company:- a 25%, public company, b 50%, public company, c 50%, listed company, d 25%, listed company
- 99** Your branch is approached by a public limited company to open a current account in their name. For the purpose of opening the account, they submit the Memorandum and Articles of Association and other papers alongwith a resolution passed by the Board of the company in a duly held meeting. It is observed from the Articles of Association that the Board of the company should have five directors for the purpose of business decisions, but the resolution has been passed by 4 directors, as the 5th one is away to UK in connection with a business trip:- a since minimum no. is 3 directors for a public limited company, the account can be opened, b since majority of the directors were present at the meeting, the account should be opened, c bank can obtain another resolution and in the meantime open the account to increase its business, d the resolution in its present form is not a proper resolution due to which account cannot be opened
- 100** Every public limited company must have a managing director or whole time director, where the paid up share capital is:
a above Rs.2 cr b Rs.2 cr and above, c Rs.5 cr and above d Rs.10 cr and above

ANSWER PRACTICE TEST NO. 4

1	D	2	C	3	B	4	D	5	A	6	B	7	D	8	B	9	A	10	B
11	C	12	A	13	A	14	C	15	A	16	A	17	B	18	B	19	D	20	C
21	D	22	C	23	C	24	A	25	C	26	B	27	B	28	C	29	A	30	B
31	A	32	A	33	B	34	B	35	C	36	B	37	C	38	D	39	C	40	D
41	B	42	A	43	C	44	A	45	B	46	A	47	D	48	C	49	C	50	D
51	B	52	D	53	D	54	D	55	C	56	D	57	D	58	D	59	B	60	C
61	D	62	C	63	B	64	D	65	C	66	C	67	D	68	A	69	B	70	A
71	A	72	C	73	D	74	D	75	C	76	A	77	D	78	A	79	C	80	B
81	C	82	C	83	C	84	D	85	C	86	B	87	C	88	B	89	C	90	C
91	A	92	A	93	C	94	D	95	B	96	C	97	C	98	C	99	D	100	c

PRACTICE TEST PAPER NO. 5 (TEST YOUR SELF)

- 01 Acceptance of deposits is regulated by Central Govt. under Companies (Acceptance of Deposit) Rules 1975 in respect of:- a banks, b companies, c non-bank finance companies, d all the above
- 02 Which of the following definition as per Sales of Goods Act is not correctly stated:- a buyer is a person who agrees to buy goods, b seller is a person who sells goods, c voluntary transfer of possession from seller to buyer means delivery, d none of the above
- 03 No company other than a banking company can use the word 'bank' as part of its name. Which of the following is exempted from this requirement (a) a govt. company (b) subsidiary of a bank (c) primary credit society:- a atocall, b a and b only, c b and c only, d a and c only
- 04 As per Limitation Act 1963, if a suit is filed after the expiry period of limitation it shall be:- a entertained at discretion of the court, b if case is genuine, it can be filed as a matter of right, c dismissed by the court, d any of the above
- 05 The Banking Laws (Application to Cooperative Societies) Act 1965, extends certain provisions of (a) Companies Act 1956 (b) Banking Regulation Act (c) RBI Act, to cooperative banking sector:- a atocall, b a and b only, c b and c only, d a and c only
- 06 As per Sale of Goods Act, the seller of goods is deemed to be unpaid seller, when the has not been paid: a interest, b price, c penalty, d damages
- 07 If the court, where the suit is filed is closed on the date of expiry of limitation, the suit:- a can be filed a day before, b suit can not be filed at all, c suit can be filed on first day of re-open of the court, d suit can be filed at discretion of the court
- 08 Under the provisions of Section 22 of RBI Act:- a RBI regulates the banks, b RBI conducts govt. business, c RBI is the sole authority to issue and manage currency in India, d RBI issues note refund rules
- 09 Which of the following statements is not correct:- a Central govt. holds the entire capital of RBI, b Central Govt. appoints governor and other officials of RBI, c Central govt. can issues directions to RBI, d Central govt. appoints the members on RBI board and can remove them
- 10 As per Sale of Goods Act, if there is breach of warranty, which of the following would be true:- a the parties can reject the goods, b the parties can treat the contract as repudiated, c the parties can claim damages, d all the above remedies are available
- 11 Section 6 (1) (0) of Banking Regulation Act deals with which of the following aspects:- a RBI powers to recommend amalgamation of a bank, b Central Govt., authority to notify other forms of business of a banking company, c Central Govt. authority to order merger of a bank, d RBI powers to supercede the management of a bank.
- 12 The company matters of a bank are regulated by (a) SEBI (b) RBI (c) Ministry of Corporate Affairs (d) Authorities under Companies Act a a and d, b a, c and d, c only c, d only d
- 13 The period of 'imitation can be got extended by the creditor, in which of the fol owing situations (which one is more appropriate):- a if the borrower has acknowledged the debt, b if the borrower has acknowledged the debt within the limitation period, c if the borrower has acknowledged the debt even after the limitation period, d if the borrower has acknowledged the debt within or after the limitation period
- 14 X had purchased a 2nd hand car from Z and made the payment. The car is taken in possession by the police as it was a stolen one. As per Sale of Goods Act, this amounts to: - a breach of condition, b breach of warranty, c breach of an implied condition, d breach of an implied warranty
- 15 The banking companies that are allowed to operate in a very limited geographical area, are known as:- a narrow banks, b regional rural banks, c local area banks, d shell banks
- 16 Where licence of a banking company is cancelled, it can make an appeal to:- a Central Govt, b RBI Bank, c High Court in whose jurisdiction, the registered office of the bank falls, d Supreme Court only
- 17 In which of the following cases, the limitation period is 30 years:- a to enforce the payment of money secured by a mortgage or otherwise charged upon immoveable property, b for possession of immovable property, c any suit for which no period of limitation is provided in the schedule to the Limitation Act, d all the above
- 18 For action under SARFAESI Act, the account should be NPA:- a as per discretion of the bank, b as per directions framed by Reserve Bank of India, c as per rules framed by RBI and Central Govt, d as per procedure given under SARFAESI Act
- 19 With a view to ensure that the controlling interest in a banking company does not change hands without the knowledge and approval of RBI:- a the banking companies have to refer the matter to RBI before transfer of any amount of shares from one party to another party, b the banking companies have to refer the matter to RBI & SEBI before transfer of substantial amount of shares from one party to another party, c the banking companies have to refer the matter to RBI before transfer of a stipulated percentage of shares from one party to another party, d the banking companies have to refer the matter to RBI, SEBI and Company Law Board before transfer of a stipulated percentage of

shares from one party to another party

20 Bank has to file a suit on the basis of a promissory note dated Sept 22, 2006. Bank made the demand for payment on Nov 10, 2006. The suit can be filed latest by:- a Nov 09, 2009, b Sept 22, 2009, c Sept 21, 2009, d Nov 10, 2009

21 When a security interest is created in favour of a bank, it requires registration with , under provisions of SARFAESI Act:- a Registrar of Companies, b Debt Recovery Tribunals, c Registrar of Assurances (Sub-registrar), d Central Registry

22 If an official of a bank is removed from office by RBI, he is:- a entitled to compensation for loss of office, b not entitled to compensation for loss of office, even when it is stated in the service contract, c entitled to compensation for loss of office, when it is stated in the service contract, d not entitled to compensation for loss of office, when not stated in the service contract

23 Every person whose total income in a previous year exceeds the maximum amount which is not liable to tax, is required to file his return by due date u/s of Income Tax:- a Section 10, b Section 131, c Section 133, d Section 139

24 When RBI makes borrowing costly for certain purposes or stipulates higher margins for certain type of advances, this is part of:- a credit policy directives, b control over bank advances, c selective credit control, d credit delivery mechanism

25 Which of the following is a function of a securitization company, under provisions of SARFAESI Act:-

a to acquire loans and securities from banks, b to help the banks in recovery of their loans
c to acquire financial assets from the originators, d to help banks to initiate legal action in NPA loans

26 Where a bank has been charging interest rate from a borrower at rates prescribed by RBI, such rates of interest cannot be questioned in a court of law under the provisions of which of the following:-
a RBI directives, b Section 16 Usurious Loans Act, c Section 21 A Banking Regulation Act, d Usurious Loans Act 1918

27 The benefits provided by an employer to its employees attract payment of tax, which is called:- a income tax, b perquisites tax, c fringe benefit tax, d super-benefit tax

28 : The provisions of SARFAESI Act are not applicable in case of a loan account in which the amount due is
a 20% or less of principal amount, b less than 20% of principal amount, c 20% or less of principal amount and interest, d less than 20% of principal amount and interest

29 Name of a bank can be included in the 2nd schedule of RBI Act to make it a scheduled bank if (a) it is state coop bank (b) company defined u/s 3 of Companies Act (c) an institution notified by the Central Govt. in this behalf (d) company incorporated outside India under the foreign law:-
a a to d all, b a to c only, c b to c only, d a, c and d only

30 To fulfill its SLR requirement, a bank, among others, can invest in approved securities, which means the securities:

a u/s 12 of Banking Regulation Act, b u/s 20 of Indian Trust Act, c u/s 18 of Govt. Securities Act, d u/s 343 of Companies Act

31 The Lok Adalt is constituted under provisions of which of the following Act:- a Constitution of Lok Adalt Act, b SARFAESI Act, c Legal Services Authority Act, d Recovery of Debts due to Bank and FI Act

32 In which of the following cases, the SARFAESI Act provisions are applicable:- a creation of security interest in any vessel, b creation of security interest in any aircraft, c creation of security interest in land, d none of the above

33 Which among the following statement is not correct with regard to publication of accounts and balance sheet of a bank:-
a publication has to be in a newspaper in circulation at the place where the principal office of the banking company is located, b publication within 6 months from end of the period to which the account and balance sheet relate, c publication only in a newspaper that is published every day, d publication u/s 31 of B R Act.

34 Who performs the functions and exercises the powers of supervision and inspection of banks under RBI Act and BR Act:- a S E B I , b B F S , c Board of Governors, d Inspection Deptt. of RBI

35 Action under provisions of SARFAESI Act cannot be initiated by which of the following:- a commercial banks, b financial institutions, c regional rural banks, d securitization companies and reconstruction companies

36 Which among the following statement is not correct:- a winding up means closing a company and settling the accounts, b moratorium means a legal authority to a debtor to postpone, payment of dues for a specified time, c amalgamation means breaking a company into two or more parts for betterment of the company, d none of the above

37 Majority of share capital in RBI is held by:- a public, b Central Govt, c RBI, d financial institutions

38 Where a bank is wound up, the holder of a cheque (issued by the customer of bank having sufficient funds), becomes:
a trustee, b beneficiary, c debtor, d creditor

39 Which of the following is not correct regarding FEMA 1999:- a it replaced FERA 1973, b It extends to whole of India, c it applies to branches of banks outside India also, d none of the above

40 Which of the following is not correct in the context of protection to paying bank:- a Section 85-A provides protection for payment of an endorsed cheque, b Section 85-1 provides protection for payment of a bearer endorsed cheque, c Section 89 provides protection for payment of a materially altered cheque, d Section 128 provides protection for payment of a crossed cheque.

41 A bank makes payment of a cheque bearing forged endorsement of the payee. Later on it is found that bank has made payment to a wrong person on the basis of forgery:- a bank is not liable for forgery if it appears to be by the payee, b bank is liable for the forgery, as it is not a cheque or endorsement at all, c bank is not liable for a forged endorsement, where it is regular, d bank is liable for the forged endorsement but not for the forged signatures of the drawer.

42 Which of the following Act, is not related to registration of certain charges or transactions:- a Registration Act 1908 and Companies Act 1956, b Merchant Shipping Act 1958 and Patent Acts 1970, c Design Act 2000 and Motor Vehicles Act 1988, d none of the above

43 Universal Bank made payment of a cheque of large amount which was later on found to be materially altered. The alteration was not visible. But when the cheque was put before ultra-violet lamp, the alteration was visible. The drawer claimed that the bank was negligent for not examining the cheque before the ultra-violet lamp.

a bank not liable as bank is not required to examine each cheque before the ultra violet lamp, b bank is liable to the party as the cheque was of a large amount and bank has not taken adequate precaution, c bank and party are liable on pro-rata basis, d alteration does not give any protection to the bank, hence bank is liable.

44 A person to be treated as resident should be residing in India for , during the preceding financial year, in addition to fulfillment of other conditions:- a 180 days, b more than 180 days, c 182 days, d more than 182 days.

45 X deposited a cheque of Rs.1000 with his bank for collection from another bank. The account is being conducted satisfactorily for 10 months. At the time of deposit of cheque with the collecting bank it was an uncrossed cheque. The collecting bank, by putting its own stamp, collected the cheque. Later on it turned out to be a case of conversion (collection of cheque for a wrong customer): What will be the liability of the bank:- a the bank is not liable as it has collected the cheque for a customer, b the bank is not liable as it has collected a specially crossed cheque, c the bank is liable as the cheque was not crossed at the time of deposit by the customer, d the bank is liable as bank is negligent in not getting the cheque crossed from the customer before receiving the cheque for collection.

46 A signs a contract in which he assures B that if B suffers loss on account of legal action initiated by C in a court against B, A will make good the loss:- a this not a valid contract, b this is a contract of guarantee and a valid contract, c this is a contract of insurance and a valid contract, d this is a contract of indemnity and a valid contract

47 In a contract of indemnity, the person who makes the promise to save a person from loss is called and the person who is entitled to be compensated is called:- a surety, indemnifier, b indemnity holder, indemnifier, c indemnifier, indemnity holder, d indemnity holder, surety

48 Under provisions of Companies Act 1956, it is mandatory to add the word 'limited' or 'private limited' with the name of a company. Which company is exempted from use of these words and with whose permission:- a Section 25 Company with a licence from Ministry of Corporate Affairs, b Section 25 Company with a licence from Regional Director, c Section 25 Company with a licence from Registrar of Companies, d There cannot be any such company (similar provisions are as per Sec 8 of Companies Act 2013)

49 Under FEMA 1999, which of the following is not a person: a an individual or an HUF, b _ a firm or a company, c an association of persons or body of individuals, d none of the above

50 A bank guarantee was issued and the validity period of the guarantee has expired. Bank did not get any claim from the beneficiary within a period of one month, given to the beneficiary, for lodging claim. Later on, after a year, the beneficiary makes a demand on the bank against the guarantee as cause of action had arisen during the validity period:- a the bank is liable on the guarantee within the period specified in the guarantee bond, b bank is not liable now as the claim was not made by the beneficiary during the time, given for lodging the claim, c bank is liable on the guarantee if the claim is made within 3 years from date of cause of action that has arisen during the validity period, d bank is liable on the guarantee if the claim is made within 1 year from date of cause of action that has arisen during the validity period

51 Which of the following authority has the jurisdiction for incorporation of Limited Liability Partnership:- a Registrar of Firms, b Registrar of Companies c Registrar of Limited Liability Partnerships, d Registrar of Assurances

52 Bank only forwards the letter of credit to the beneficiary and has no obligation to make payment against the documents presented by the beneficiary:- a confirming bank, b advising bank, c opening bank, d negotiating bank

53 A bank which is appointed by the opening bank to make payment on behalf of the opening bank, to the negotiating bank when documents are presented on due date, is called:- a reimbursing bank, b confirming bank, c correspondent bank, d opening bank

54 Which of the following is not correct regarding to Right to Information Act 2005:- a R1-1 Act came into force wef Oct 12, 2005, b RTI Act replaced Freedom of Information Act 2002, c RTI Act extends to whole of India including J & K, d Objective of RTI Act is to enable Indian citizens to access, e information under control of public authority

55 In LC, the beneficiary transfers his rights in the letter of credit to 33 parties:- a irrevocable LC, b transferable LC, c green clause LC, d red clause LC

56 The term money laundering has been defined in which of the following Act:- a Criminal Procedure Code, b Companies Act 1956, c Prevention of Money Laundering Act 2002, d none of these

57 The document, in an LC, that gives details of the safe is called:- A bill of exchange, b invoice, c bill of lading, d certificate of origin

58 When supplier of machinery is ready to supply the machinery to the buyer on long term payment basis, on the payment guarantee from the bank, such bank guarantee is called:- a term loan guarantee, b financial guarantee, c performance guarantee, d deferred payment guarantee

59 Under RTI Act 2005, the information does not include, which of the following: a e-Mails, b press releases, c logbooks, d none of the above

60 Which of the following is not true in the context of bills of exchange:- a inland bill is a bill which is drawn in India and payable in India or by some person resident in India, b clean bill is a bill which does not carry any defect, c documentary bill is a bill to which document of title to goods are attached, d demand bills are also called sight bills.

61 A bill of exchange is payable after sight. Its due date shall be calculated with reference to:- a date of bill, b date of presentation, c date of acceptance, d date of sight

62 Under provisions of Information Technology Act, which of the following is the authority is to exercise supervision over the activities of certifying authorities issuing Digital signatures:- a Supervisory of Certifying Authorities, b Controller of Certifying Authorities, c Commissioner of Certifying Authorities, d Director of Certifying Authorities

63 An evidence in writing as a proof of possession or control of goods authorizing to receive the goods is called:- a document of title to goods, b bill of exchange, c invoice, d any of the above

64 A bank releases document of title to the goods to the borrower without payment. To cover such transaction, the banks obtain:- a mortgage deed, b hypothecation fether, c pledge agreement, d trust receipt

65 The definition of money laundering is given in:- a Prevention of Money Laundering Act, b Narcotic Drugs and Psychotropic Substances Act 1985, c Foreign Exchange Management Act, d none of the above

66 The mortgage property is transferred in the name of the bank with the condition that it will be re-transferred on repayment of the loan, in case of mortgage :- a English mortgage, b Usufructuary mortgage, simple mortgage, d anomalous mortgage

67 Which of the mortgage is negatively defined out of the following:- a English mortgage, b Usufructuary mortgage, c simple mortgage, d anomalous mortgage

68 Which of the following Act has been repealed by the Right to Information Act:- a Right to Freedom of Information Act 2001, b Right of Expression of Information Act 1981, c Freedom of Information Act 2002, d Freedom to Speech Act 1976

69 Which of the following statement is not true with regard to a partnership firm:- a registration of firm is optional and not compulsory, b a registered firm is preferred for financing by the banks as it is in a better position to recover its due amount, c bank can file suit only if the firm is registered one, d registration of firm can take place with registrar of firms

70 Banks are to maintain records of all series of cash transactions integrally connected to each other which have been valued below Rs.10 lac where such series of transactions have taken place , as per Prevention of Money Laundering Act 2002:- A on a particular day, b during a particular week, c within a month, d within 10 weeks

71 Which among the following statements do not match:- a a govt. company — where at least 50% shares are held by govt, b holding company — which is holding more than 50% shares of another company, c subsidiary company — a company whose majority shareholding is with another company, d private company — which cannot invite public to subscribe its shares

72 Under Right to Information Act, the responsibility to give information is that of the Public Information Officer designated by:- a Central Govt, b State Govt, c Central Information Commission, d Public Authority concerned

73 Which of the following is not correct in connection with a Muslim Trust:- a it called Wakf, b the trustee is called Mutawali, c it is regulated by Wakf Board, d none of the above

74 A temporary overdraft is allowed by the bank to a partnership firm for quite some time. The cheques issued by the firm are paid to the debit of this overdraft occasionally. A cheque is returned by the bank stating arrangement exceed although there was no debit balance in the overdraft account at the time of returning of the cheque. The bank had not given any prior notice to the customer for not allowing such facility any more. The firm claims damages from the bank

a bank is liable for the damages as it has breached an implied contract without giving a notice to the party, b being temporary overdraft, bank is not under obligation to continue the overdraft for a long period, c party cannot claim any damages, d party could not claim damages as it was a temporary overdraft.

75 Cyber Laws in India are contained in which of the following:- a Cyber Technologies Act 2000, b Information Technology Act 2000, c Information and Cyber Technology Act 2000, d Cyber Law of India

76 Which of the following statement is not correct regarding assignment of actionable claim: a assignment can be in writing only, b sending notice of assignment to the original debtor, before creation, of assignment is a mandatory requirement, c in case of default, the bank can recover the loan from original debtor, d suit *can* be filed by the bank against original debtor without making the transferor of actionable, a party to the suit

77 A charge on the assets of a company that is not fastened/attached to specific assets is called:- a pari-passu charge, b floating charge, c fixed charges, d exclusive charge

78 Section 134 of Companies Act 1956 deals with which of the following aspects:- a registration of charge by the company where its assets are charged to a creditor, b priority of charge if an asset is charged in favour of 2 creditors, c duty of the company to get the charge registered, d maintenance of register of charges at its principal office

79 Which of the following are the objectives of Information Technology Act:- a to provide for legal infrastructure for e-commerce, b to facilitate electronic filing of documents of Govt, c to facilitate amendment to the relevant Laws, d all the above

80 Under provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, transactions of creation of security interest are required to be registered with:- a Registrar of Companies, b Central Registry, c Reserve Bank of India, d S E B I

81 If public company is having paid up capital of Rs.5 cr or more, as per Companies Act 1956, it must have: A minimum 2 directors, b minimum 3 directors, c minimum 4 directors, d minimum 5 directors

82 A right, title or interest of any kind created by a borrower in a security in favour of the secured creditor under provisions of SARFAESI Act is called:- a security receipt, b security interest, c charge on security, d any of the above

83 Under provisions of SARFAESI Act, where the borrower wants to approach DRT against the bank to stop the bank from taking possession of the charged asset it can do so within:- a 7 days b 30 days, c 45 days d 60 days

84 A 60 days notice is given to the owner of assets under SARFAESI Act before taking over the possession:- a u/s 10 (3), b u/s 13 (2), c u/s 14 (4), d u/s 17 (1)

85 A private key and its mathematically related public key which are so related that the public key can verify a digital signature created by the private key, is called:- a digital signature, b asymmetric crypto system, c electronic monitoring, d key pair

86 Where an assets is sold under provisions of SARFAESI Act, the sale certificate issued by the bank is: (a) conveyance of immovable property (b) it requires payment of stamp duty (c) it is only an agreement to sell:- a a and b only b b and c only, c a, b and c all d a and c only

87 In which of the following loans, the eligible security can be sold under provisions of SARFAESI Act:-

a Pledge, b Lien, c Outstanding in the account is up to Rs.1 lac, d agriculture loan

88 A company wants to appoint X, Y and Z as the directors in the same meeting. How many resolutions are required to be passed? a it can be through one resolution, b it can be through one resolution or through separate resolutions

c it can be, as provided in the Articles of Association, d it has to be separate resolution, for each director to be appointed.

89 Under provisions of Right to Information Act, when information is sought by way of inspection of records, the charges are: ' - a Rs.2 for first hour and Rs.5 for each 15 min or part there of, b Rs.2 for first hour and Rs.5 for each 30 min or part there of, c no charge for first hour and Rs.5 for each 15 min or part there of, d no charge for first hour and Rs.5 for each one hour or part there of

90 Which of the following statement is not correct in the context of DRTs:- a a decree of a foreign court cannot be executed by DRT, b within his jurisdiction, the Chairperson of DRAT can transfer a case from one DRT to another DRT, c for the matters that fall under jurisdiction of DRT, the normal civil courts do not have jurisdiction d all the above

91 Which of the following committee is not associated with corporate governance, directly or indirectly: A AS Ganguly Committee, b M S Varma Committee, c R H Patil Committee, d none of the above

92 Which of the following is not within the authority of Recovery Officer of DRT:- a attachment of property, b sale of immovable property, c arrest of defendant and detention in prison, d none of the above

93 Which of the following persons can be appointed director of a company:- a the person found to be of unsound mind by a court, b the person is un-discharged insolvent, c the person convicted by a court of any offence involving moral turpitude and sentenced in respect thereof to imprisonment, d none of the above

94 Which of the following is correct in the context of Consumer Protection Act:- a the Act has been passed to safeguard interest of the manufacturers and service providers, b a voluntary association of consumers can file a complaint on behalf of the consumer, c for the goods purchased for re-sale, the provisions

of the Act are applicable, d all the above

95 If the no. of small shareholders is , they can elect a director from small shareholders:- a 100 or more b 500 or more, c 1000 or more d 5000 or more

96 Under Sale of Goods Act, there is an implied condition that the goods shall correspond with the description, if:- A sale of goods is by sample, b sale of goods is with the help of a 3rd party, c sale of goods is by description, d none of the above

97 An agreement in which a party to the agreement has the option to treat the agreement illegal is called:- A void agreement, b voidable agreement, c illegal agreement, d quasi-legal agreement

98 A contract to perform the promise or discharge the liability of a 3rd party, if the 3rd party defaults, is called, a contract a insurance, b guarantee, c indemnity, d assurance

99 Loan account of Mr. X had been running irregular and Y agrees to guarantee the loan under the impression that account is being conducted satisfactorily. Bank did not provide correct information to Y when Y asked the bank about the status of account:- A Y is not liable on the guarantee as bank kept silence on the material facts, b Y is not liable because guarantee has been obtained for irregular account, c Y is liable since it was up to him to give the guarantee or not, d Since X is liable, Y is liable for the loan being a guarantor.

100 Mortgage can be created to secure (which one is wrong):- a an existing loan, b a loan to be dvanced, c a future debt, d none of these

ANSWER PRACTICE TEST NO. 5

1	B	2	D	3	C	4	C	5	C	6	B	7	C	8	C	9	B	10	C
11	B	12	D	13	B	14	C	15	C	16	A	17	D	18	B	19	C	20	B
21	D	22	B	23	D	24	C	25	C	26	C	27	C	28	D	29	A	30	B
31	C	32	D	33	C	34	B	35	C	36	C	37	D	38	D	39	D	40	A
41	C	42	D	43	A	44	D	45	B	46	D	47	C	48	B	49	D	50	C
51	B	52	B	53	A	54	C	55	B	56	D	57	B	58	D	59	D	60	B
61	C	62	B	63	A	64	D	65	D	66	A	67	D	68	C	69	C	70	C
71	A	72	D	73	D	74	A	75	B	76	B	77	B	78	C	79	D	80	B
81	B	82	B	83	C	84	B	85	D	86	A	87	D	88	D	89	C	90	A
91	D	92	D	93	D	94	B	95	C	96	C	97	B	98	B	99	A	100	D

MEMORY BASED RECALLED QUESTIONS ON JAIIB PAPER -3 (LRAB)

1. MEMORY BASED QUESTIONS ON BANKING LAWS - NI, BR & RBI ACT

1. As per section 26 of the Negotiable Instruments Act, a Minor can draw, endorse, accept a negotiable instrument but he can not : **bind himself**
2. A has granted Irrevocable Power of Attorney in favour of B for one year. After 3 months, A revokes the Power of Attorney. A cheque signed by B is presented for payment_ What will you do? **The cheque will not be paid because POA can be withdrawn before maturity and once it is revoked, no cheque signed by agent can be debited to account of Principal**
3. What is the Doctrine of Ultra Vires in the context of a limited company?: **Any act by the directors beyond the object of the company is considered ultra vires the company and company is not bound by such act.**
4. A minor who was admitted to the benefits of partnership has become major. Within how much period, he has to decide to remain partner in the firm or not?: **within 6 months of attaining majority or 6 months of knowing that he is the partner in the firm whichever is later.**
5. If on a cheque words "Account Payee" is written between two parallel lines or with the name of a bank, then: **the cheque can not be endorsed.**
6. Which type of crossing is required to be done if the drawer wants that in case of endorsement, the title of transferee of the cheque should not be better than the title of the transferor: **Not Negotiable Crossing**
7. In the case of dishonour of a cheque due to insufficient funds, for enforcing rights under section 138 of the Negotiable Instruments Act 1881, the holder should send a notice to the drawer within: **30 days from the date of receipt of notice regarding dishonour of the instrument.**
8. The Limitation period for filing case in case of dishonour of cheque due to insufficient funds is: **1 month from the date of cause of action.**
9. Objectives for which a company has been formed are given in: **Memorandum of Association**
10. Full form of BCBS is **Basel Committee on Banking Supervision.**
11. Direct Impact of increase in CRR is : **Controlling Liquidity**
12. Banks can not issue Demand Draft payable to Bearer as per provisions of : **Section 31 of the RBI Act**
13. Grace Period is allowed in the case of : **Usance Bills and Usance Promissory Notes**
14. Indian Banks are required to maintain minimum Capital Adequacy Ratio of : **9%**
15. In the case of individuals and HUF, tax will be deducted at source if the interest on term deposit in a financial year is : **more than Rs 10,000**
16. If Power of Attorney is executed outside India it should be stamped within: **90 days of its first arrival in India**
17. For its implementation, the complainant should accept the award given by Ombudsman within: **30 days of the receipt of the copy of the award.**
18. When proceeds of cheque are given before clearance of the cheque the banker will be called: **Holder for Value**
19. In the case of Wrongful dishonour of cheque, to whom the bank is liable?: **Drawer**
20. If date on a cheque is prior to the date of its presentation, it is called: **Ante Dated cheque**
21. What is minor's liability in HUF Account: **Minor is not liable**
22. When does the right of nominee starts in respect of a deposit account?: **After death of all depositors**
23. For injecting money in the market which type of transaction is undertaken?: (a) Repo (b) Reverse Repo
24. RBI controls money supply through: **change in CRR**
25. Loan given to a director can be waived: **after permission of RBI.**
26. Under the Ombudsmen scheme, the Bank has to reply to the objection of the complainant within: **one month**
27. A post dated cheque is passed in the account of a customer. But another cheque which was in order was dishonoured due to insufficient funds. What is the liability of the Banker?: **Bank is liable to the drawer for paying post dated cheque as bank is not justified in paying post dated cheque. The bank will be liable to drawer for damages on account of wrongful dishonour of cheque.**
28. Which type of preferential shares are treated as part of Tier I capital of the Bank?: **Perpetual Non Cumulative Preference Shares.**
29. As per RBI guidelines, all banks are required classify business in various business segments with effect from 31-03-2008. The segments are: (a) **Treasury** (b) **Corporate / Wholesale Banking**, (c) **Retail Banking**, (d) **Other Banking Business. The geographical segments are 'domestic' and 'international'.**
30. Customer of your bank asks for cash payment of crossed DD. What would you do? Generally payment only through bank account. However, bank can pay after duly satisfying the genuineness of the draft and payee but bank will continue to **be liable to true owner if recipient is not true owner.**
31. A cheque is presented for payment in which the amount in words and figures is different. Bank should pay which amount?: **amount written in words will be paid.**
32. Whether a Private Limited company can be a partner with Public Limited company to form a Partnership? **Yes**
33. In the context of Nomination, which is correct statement?: **Signatures of nominee not required on nomination form. Nominee's name should be mentioned on FDR if agreed by the customer.**
34. A bearer cheque of Rs.7,000/- was presented. The cashier informed that the cheque can not be passed as the balance is less by Rs.700/-. The tenderer credited the amount of shortfall and the cheque was paid. Customer disputed the transaction. Whether bank is liable?: **Yes. For disclosing balance to third party, bank is liable to**

account holder.

35. When an order passed by Banking Ombudsman is accepted by the complainant, the same should be complied within: 1 month from the date of receipt of acceptance from the complainant.

36. Penalty for delay is per day if information is not furnished within prescribed time under Right to Information Act: Rs. 250 per day with maximum being Rs. 25,000/

37. A crossed DD was paid by cash. What risk is there for the Bank: **Bank will be liable to true owner of the DD if payment made to a person other than true owner (Section 129 of NI Act).**

38. A cheque is written in English and Regional Language. Whether it can be paid?: **Yes. A cheque written in different language can be paid if otherwise in order.**

39. Who cannot become a partner in a firm as per supreme court judgment **HUF**

40. Introducers liability / responsibility in case of an account holder defrauding Bank is : **To assist the Bank in locating the a/c holder - does not have legal liability**

41. Nomination - **Minor can be a nominee.**

42. Inoperative accounts: **2 Years & above not operated.**

43. RTI Act - **party seeking information need not disclose the reasons for which the information sought for.**

44. Counterfeit notes returned after police verification, the **same has to be preserved for 3 years subject to half yearly verification.**

45. Validity period of cheque reduced to 3 months from 1.4.12 as per : **RBI Guidelines under sec 35A of B R Act**

46. Crossed cheque payment across the counter to the authorized Officer of collecting Bank - can be made and there are no violation as per NI Act. 255.

47. The consequence of non registration of Partnership - firm cannot sue others for its dues.

48. Banks are required to implement the award of Ombudsman unless a decision is taken to appeal against the same **within one month from the date of receipt of acceptance of the award by the complainant.**

49. Account holder A & B want to substitute their name with the name of their sons C & D in the account. What should the bank do?: **Substitution of all names is not allowed. At least one of the original account holder should be retained in the account.**

50. When only image of cheque is sent to the paying bank while sending cheque for collection instead of sending the physical cheque, the process is called: **Cheque Truncation**

51. A Cheque partly written in English & partly in regional language is presented for payment What should the bank do?: **May be paid, if otherwise in order and the language other than English is the regional language of the area where the cheque is presented.**

52. An authority has been granted in an account You have received information about the death of the Principal. Today, you receive a cheque signed by the agent which is dated prior to the death of the Principal. What should the bank do? : **Cheque can not be paid as authority of agent comes to end with the death of the Principal.**

53. You are maintaining current account in the name of the Trust. You receive notice of death of one of the trustees. After this notice, a cheque signed by the deceased trustee is presented for payment. What should the bank do?: **Cheque may be paid, if otherwise in order.**

54. As per Consumer Protection Act, the period for filing appeal to State Commission against decision of the District Forum is: **maximum 30 days**

55. Who can not be full fledged partner: **Minor**

56. Can Karta of HUF appoint Agent or delegate the powers to other co-parcener: **Yes, he can do so.**

57. Money deposited after receiving order may be attached in the case of: **attachment order**

58. Original & duplicate draft presented simultaneously for payment: Duplicate should be paid & original should be returned.

59. Company has registered office at Delhi, factory at Kolkata & loan taken at Mumbai. For creating equitable mortgage title deeds can be deposited at: any notified city.

60. Reasons for avoiding advance to Un-Registered Partnership Firm: Firm can not sue against anyone for recovery **of its debts but anyone can sue against the firm.**

61. What is the effect of 'Not Negotiable Crossing?': Transferee does not get better title than the transferor.

62. Payment of cheque can be stopped by: **only Drawer** of the cheque

63. Account payee crossing defined in:-**Not defined any where**

64. What is the current rate of interest paid on CRR?: **NIL**

65. How can be the transferability of Bill of exchange can be restricted? **By making restrictive endorsement**

66. If on a Bill of Exchange, two parallel lines are drawn and not negotiable is written between the lines, what kind of the crossing will be there: **Provisions relating to crossing are not applicable to Bill of Exchange.**

67. Within priority sector, what is the allocation to weaker section?: **25%**

68. Maximum time within which reply must be given under Right to information act? **30 days**

69. What is the status of Nominee? Trustee of **Legal heirs**

70. Safe deposit vault is governed by provisions of: Transfer of **Property act**

71. A cheque signed by agent has been presented after his death for payment. What should the bank do?: **The cheque will be paid if otherwise in order.**

72. Purpose of star series notes: To replace defectively printed notes

73. Customer-bank relationship in locker account: Lessee-Lessor

74. Upto what amount District forum can be approached under Consumer Protection Act?: **Rs.20 Lacs**

75. Appeal against the award of Ombudsman can be made by the bank within: **30 days of receiving**

the acceptance from the complainant.

76. Cheque issued by director of a company and presented after his death will be: Passed if in order
77. What would be the action of central bank in recession?: create liquidity by decreasing CRR and lower the repo rate.
78. Ante dated cheque like cheque dated 15.12.07 is presented for payment on 1.1.08 whereas_ the account was opened on 20.12.07 : Cheque should *be* passed
79. If amount in words and figures differ on a cheque and amount written in words is higher than the amount written in figures, then as per sec.18 of NI Act, which amount should be paid?: amount written in words
80. Nomination facility is not available in the case of : **Trust A/c.**
81. customer service Committee meeting held on : **Monthly basis**
82. A person wants to open a joint account with his wife in such a way that the account can be operated by him only during his lifetime and she should be able to operate the account only after his death. The account has to be opened with the instructions: '**Former or survivor**'.
83. For wrongful dishonour of the cheque the bank is liable to: **the drawer of the cheque**
84. Banks print cheque books having similar particulars. The format of cheque is prescribed by which Act : **Not defined in any Act. It is as per practice. CTS 2010 advised by RBI**
85. Which crossing takes away the feature of assumption of defective free title available to the transferee : **Not negotiable crossing**
86. Who is appointed to tackle public complaints against the public authorities : **Ombudsman**
87. The facility of nomination is not available to Trust account because it is account : **Non-individual** (facility of nomination is available only in the case of individual(s).
88. The true owner of a cheque has been deprived of his right by collection of the cheque for a different person. This is called **Conversion**
89. As per recent RBI/Govt. guidelines, pensioners can open account jointly with: **spouse, to be operated as either or survivor or former or survivor.**
90. While paying a bearer cheque, signatures are obtained on the back side of the cheque. Why ? : **As evidence of payment**
91. Whether Minor can nominate ? **no. On his behalf nomination will be done by a person legally competent to act on his behalf.**
92. Cheque is dated before date of its presentation is called: **Antedated cheque**
93. An endorsement in which endorser excludes his liability is called : **sans recourse**
94. When a company is financed against the security of hypothecation or mortgage of its movable property, the company is required to file particulars of charge with: **Registrar of Companies**
95. Who is called as Holder as per N I Act?: **Who is entitled to possession of th^e instrument in his own name (actual possession is not necessary).**
96. If a cheque is dishonoured due to insufficient funds, then as per section 138 of N I Act, court may award imprisonment up to: **2years**
97. On the face of a cheque, the name of a bank is written without two parallel lines. This will amount to : **special crossing**
98. A/c payee crossing is defined in : **it is not defined in any Act. It is as per practice**
99. Nomination facility for deposit accounts is available under: **45ZA & 45 ZB of the BR act**
100. Maximum amount of deposit which a bank may ask while allowing locker facility to a customer: **Advance rent for 3 years and locker breaking charges**
101. A solicitor has account in his name and in the name of his client. Garnishee order is received in the name of the solicitor. Whether the same will be applicable in the name of client also: No because two accounts are not in the same right and same capacity.
102. Which of the following is not a material alteration? Changing bearer to order
103. A bill issued without consideration is called: Accommodation Bill
104. There is a joint account in the name of A &B. A cheque is drawn by A but the alteration in the amount is authenticated by B. Whether bank can pay the cheque: Yes provided the operation is either or survivor.
105. The term used for conversion or transfer of property derived from a criminal offense for the purpose of concealing, or disguising, the illicit origin of the property is called: Money laundering
106. In which of the following situations bank will not be a holder in due course?: When bank credits the account of the customer after receipt of funds on account of cheque sent for collection
107. The rate at which RBI rediscounts the usance bills of banks is called: Bank Rate
108. In the case of IPO, the company is required to allot shares or make refund within: 30 days of the closure of the issue in case of fixed price public issues; 15 days in case of book built issues and 15 days in case of right issues
112. Bank can charge collection charges of not more than for _outstation cheques of Rs10000 to Rs 1 lac in saving bank: Rs. 100
113. Which of the following cheques can not be paid by the bank? : A cheque on which signatures of drawer have been forged irrespective of the cleverness in forgery and though these appear to be same as that of the drawer.
114. FIU stands for : **Financial Intelligence Unit (India)**
115. Two cheques have been presented to you as paying banker. One is dated prior to opening the account and other is dated prior to issue of cheque book. What will you do as paying banker?: **Both cheques will be paid.**
116. KYC and FIU in India are associated with: **preventing money laundering**
117. Articles of Association mentions: directors' powers
118. Garnishee order is not applicable on: (a)cash received after two hours of receipt of Garnishee order

- (b) amount received for safe custody (c) undrawn balances in cash credit accounts
119. A person having locker has expired. The nominee comes. A sealed cover is found. What will you do ? : It will be delivered to him as part of locker contents without opening the packet.
120. A bill was presented on 10.5.2005 and accepted on 12.5.2005. The bill was due for payment on 29.07.2005 and was returned. The last date for filing suit in this case is : 29.07.2008
121. A listed bank has to prepare and publish balance sheet on quarterly basis as per: SEBI guidelines
122. There are certain instruments defined as negotiable instruments under law and certain instruments used as negotiable instruments as per practice. Which of the following is not a negotiable instrument as per NI Act: Dividend warrant
123. On repayment of debt of a company, satisfaction of charge should be filed with ROC within: 30 days
124. A Trust Deed is silent about loans by the trust. The trustee approaches for a loan. Under these circumstances what should the bank do?: No loan can be raised
125. Which of the following un/under-stamped document can not be revalidated by paying penalty: None of these as all documents can be revalidated. (However, as per question Demand Promissory note cannot be revalidated).
126. A person of 65 years of age can not nominate which of the following persons: Trust
127. The aggregate limit for capital market exposure of a Bank is: 40 % of net worth at the end of previous year
128. A minor approaches for a loan. Which type of loan can be given to him: loan can not be sanctioned other than for necessities.
129. Which of the following does not match in banker/customer relation : Locker facility - Bailee/Bailor
130. Committee on Procedures and Performance Audit of Public Services (CPPAPS) was headed by: **S.S. Tarapore**
131. Customer service code has been mentioned in : **Banking Codes and Standards Board of India.**
132. Cheque received in clearing signed by whom will not be passed out of the following: **signed by a person who has ' been declared insolvent.**
133. Whether a customer can approach Ombudsman without first approaching the Bank : **Approaching the bank first is a pre-condition.**
134. In case a forged note is detected in the cash tendered at bank counter, what should the bank do?: **The Note should be impounded and not returned to the tenderer.**
135. If a guardian is appointed by court, minor will become major at the age of: **18years**
136. A Cheque with forged signatures is presented for payment and is paid. Bank will be liable to: **Customer (Drawer of the cheque)**
137. Protection is available to the collecting banker in case of : **Crossed cheques**
138. Which is not a General Crossing: **Name of a bank written between two parallel lines**
139. If time is not mentioned on a Bill of Exchange, it will be payable: **on demand**
140. In an account of Club with you, cheque has been presented for payment signed by the secretary who has died. What should the bank do?: It will be paid if it not dated subsequent to date of death.
141. Garnishee order is applicable for: credit balance in OD and not for cheque sent for collection.
142. Bank Guarantees are issued as per provisions of : **Indian Contract Act**
143. cheque truncation means: converting physical cheque to electronic image and stopping physical flow of a paper cheque. 660_ Foreign currency paid to taxi driver, shop keeper, can be accepted by: **Authorised persons.**
144. A bank cannot acquire either as owner or as pledgee shares in a company more than: 10 % of *paid* capital of the company or 10% of the paid up capital and reserves of the bank, whichever is lower.
145. For formation of a company, Registrar of Companies will issue : certificate of incorporation
146. Co is in liquidation, funds are at the disposal of : **Liquidator**
147. Guardian appointed by will of the father is called: **testamentary guardian**
148. Which of the following documents does not constitute document of title to goods: **Airway bill**
149. DD can be revalidated within: any time (practice may differ In different banks)
150. Which crossing is a Special Crossing : **Name of Bank is written in the cheque with or without parallel lines**
151. Supervision of banks is done by RBI under which act: **RBI Act / BR Act / Jilani Committee Report / NI Act: Banking Regulation Act**
152. A minor is aged 15 years, who is illiterate. Which type of self operated a/c can be opened -SB/ RD / FD none
153. Which of the following can open SB a/c? **State Electricity Board/ Indian Bank Association/ Municipal corporation: Indian Bank Association.**
154. In a Flying club, the Secretary & Treasurer are authorized to sign. A Cheque is presented for payment across the counter. In between it has been informed that Secretary has died, what you will do? : **Will be paid, if otherwise in order**
155. Revival of limitation for recovery of a time barred loan is possible by: **obtaining fresh promise to pay under provisions of Indian Contract Act.**
- As per Supreme court decision, HUF cannot be a partner because: **HUF is not a natural or legal person**
156. As per Prevention of Money laundering Act, preservation of records relating to closed accounts upto: **5 yr from date of closure of account.**
157. Banks can provide information about the customer to another Bank: **General in nature, without any responsibility**
158. Board of Directors want to borrow money in excess of paid up capital and reserves of the company:

can be done through a resolution passed by shareholders in the general meeting

159. Other than a Bill of exchange or promissory note, the document which was executed abroad is required to be stamped on its arrival in India within: **3 months of its arrival**
160. Administrator is appointed in case of: **to realize assets and pay off liabilities of a person who has died without writing a will.**
161. Under Ombudsman scheme, which type of case not entertained?: advocate **representing the customer**
162. Which of the following is not a valid cheque for payment by the bank-1) different ink & handwriting 2) cheque with prior date 3) cheque with impossible date 4) Mutilated cheque: **Mutilated cheque**
163. The liability of the drawer of bills of exchange is prime till it is not accepted by the drawee after that prime liability becomes of Drawee.
164. Whether Pvt Ltd. Co. can be partner with Partnership Firm: Yes
165. Counterfeit note received at the counter what to be done?: Impound the currency note.
166. No noting on currency note, directions issued by RBI under section 35A of BR Act.
167. Cross cheque can be paid at counter if presented by other bank.
168. Payments of a forged draft. Who will lodge FIR paying or collecting bank: **Paying Bank.**
169. Borrowing powers of board of directors are contained in: Articles of Association
170. Locker can be broken open after notice to the hirer if the same is not operated for: more than three years for medium risk category or one year for a higher risk category, and the locker-hirer does not respond nor operates the locker.
171. If a complainant is not satisfied with the award or his complaint is rejected by the Banking ombudsmen, he can prefer an appeal to Deputy Governor, RBI within: 30 days of the date of receipt of communication regarding award or rejection of the complaint.
172. In case of wrongful dishonour of cheque, bank is liable to: account holder only
173. Who can seek information under Right to Information Act: Any citizen of India can ask for information
174. The Garnishee Order is applicable on the account of a customer when the relationship between banker customer is: Debtor & Creditor.
175. A private limited company with Registered office at Bangalore has raised loan from a branch located at Mumbai. For creating equitable mortgage, title deeds can be deposited at: Mumbai, Kolkatta, Chennai or any other notified place.
176. A cheque is presented for payment in which amount in figures is mentioned as Rs 10,000 whereas the amount in words is mentioned as Rs Ten lakh only. In terms of section 18 of the N I Act, what should the bank do?: The amount written in words should be paid.
177. When a letter is signed by the borrower and based on that letter bank delivers the document of title to goods to the borrower, such letter is called as: Trust Receipt
178. How much charges are charged in addition to normal collection charges and out of pocket expenses for providing instant credit facility for outstation cheques: Nil
179. A limited company has registered office at Chennai whereas loan has been raised from bank branch at Mumbai. The charge will be registered with the ROC at: Chennai
180. A partnership firm conducting business other than the banking business has more than 20 members as partners. Whether this is allowed?: Such association is called illegal association as per Companies Act
181. Under Prevention of Money Laundering Act, banks are required to send cash transaction report in respect of cash deposit or withdrawal of more than Rs 10 lakh in a month from one account within: 15 days from the close of the month.
182. Who is primarily liable on Bill of exchange which has been accepted?: Acceptor (Drawee) of the Bill.
183. A cheque crossed specially to a bank is presented by the same bank to paying bank for cash payment. What should the paying bank do? Bank can make cash payment.
184. Who can make nomination in the deposit account of a minor?: Guardian on behalf of the minor.
185. Who can be a nominee?: Only an individual
186. If a depositor dies, payment to nominee or legal heirs should be made within: 15 days of completion of formalities.
187. What is the relationship between bank and customer if he has left certain goods with the bank by mistake: Bank is trustee and Customer is beneficiary
188. Appeal against the award of the Banking Ombudsman can be made to Deputy Governor, RBI within days of the receipt of copy of award from the Ombudsman: 30 days
189. A cheque was dishonoured despite sufficient balance in the account. The bank will be liable to: Drawer of the cheque and not to the payee.
190. Maximum amount of fine under section 138 of N I Act for dishonour of cheque due to insufficient funds is: twice the amount of cheque.
191. Bearer uncrossed cheque can be paid to whom : To the bearer
192. On, other than a negotiable instrument, what is the time period for payment of stamp duty, if the document is executed outside India : 3 months
193. May I help you counter is to be provided by bank branches other than : Small branches
194. In case of a jointly operated joint account, the nominee can obtain payment, when : none of the account holder is alive
195. A bank branch receives a counterfeit note of Rs.1000, which customer wants back. What the bank should do : Impound the currency note but credit full amount to customer. Receipt not to be issued to depositor.

196. When rate of interest is expressed by adjusting the impact of inflation, this is called : Real rate of Interest
197. Banks can ask for deposit of advance rent on hiring a locker for a period up to : 3 years
198. The crossing on a cheque is required to be cancelled. Who can do so: Drawer

2. MEMORY BASED QUESTIONS ON CUSTOMERS & THEIR ACCOUNTS

01. Relaxation in KYC norms is permitted if the depositor undertakes that the balance outstanding in his account will not be more than _____ and credits in a financial year will not exceed _____. **Rs 50,000; Rs 100,000**
02. Minimum Maturity Period for Certificate of Deposit is : **7 days**
03. Why KYC guidelines have been issued by RBI under section 35 A of the Banking Regulation Act: **To prevent Money Laundering -**
04. If payment of Rs 20000/- is made in cash in case of FDR what is the penalty: **equal to the amount paid**
05. In Senior Citizen Saving Scheme account, who can be joint account holder?: **Spouse**
06. TDS not deposited in time. What is the interest payable?: **Bank to pay the amount with interest @ 1.5% per month simple.**
07. **What is the special feature of Basic banking Account? Account can be opened with nil or very small amount and there are no requirement of minimum balance.**
08. Current balance is Rs.6000/-. A cheque of Rs.18,000/- is presented. Branch passed the cheque by allowing TOD. After few days, fixed deposit of the same party matured and TOD was cleared by crediting the proceeds to CA. Customer disputes the transaction. Whether bank is having right in doing so? : **Normally no without specific request of the party. However, if bank has a specific clause in the account opening form to allow overdraft in such cases and customer has consented to such clause, then temporary overdraft can be allowed and recover the same from the account holder even if there is no specific request from the party.**
09. TDS collected to be deposited with the Income Tax Deptt within: **7th day of succeeding month during which it is collected.**
10. TDS at the rate of 10% is to be deducted at source in case of individuals and HUF,, if the rent payable in a financial year exceeds : **Rs.1,80,000**
11. You are maintaining current account in the name of the Trust. You receive notice of death of one of the trustees. After this notice, a cheque signed by the deceased trustee is presented for payment. What should the bank do?: **Cheque may be paid, if otherwise in order.**
12. Quarterly statement for TDS on salary should be submitted on form 24-Q within: **15days of the close of the quarter**
13. Pensioner account can be opened jointly with? **Spouse as Either of Survivor or Former or Survivor.**
14. Photograph is obtained at the time of opening the a/c. What is the purpose for the same?: **for identification of the prospective customer**
15. Amount that can not be paid in cash in respect of term deposit by the bank as per Income Tax rules: **Rs 20,000 and above.**
16. Interest rate on Saving Bank is fixed by : **Banks themselves w.e.f. 25.10.11**
17. A, having SB a/c with you, deposited Rs.25000. A public Prosecutor sent notice to bank informing that Mr A is involved in forgery and requested not to permit withdrawal in the a/c. In between one cheque of Rs.20000 has been presented for payment. What should be done by the bank?: **Pay the cheque as Public Prosecutor is not authorized to freeze the a/c.**
18. There is an SB a/c in the name of A & B .They have given power of Attorney to 'C' for operation in A/C, The cheque signed by the 'C' is presented in the bank after death of 'B' : **cheque will not be passed**
19. Encashment of FDR with interest - payment can be made in cash if it is less than Rs 20000
20. There is a credit balance in the saving account and there is a overdraft in the current account amounting to Rs 555. Both accounts are in the same name. Bank wants to adjust credit balance of saving bank account towards payment of overdraft. As per which right, bank can do this?: **Right of Set Off.**
21. Maximum amount of deposit under Tax Saver fixed deposit is: **Rs 150,000**
22. The minimum & maximum period of certificate of deposit is : **7 days, 12 months**
23. Call money deposit is part of the _____ sector : **Organised sector**
24. The terms used for hiding money to avoid tax is : **Money laundering**
25. Which of the following forms will be used for allowing exemption to a depositor aged 61 years : **Form 15 H**
26. Missing person treated as having expired if missing for: **7 years**
27. Super senior citizen after: **80 years of age**
28. DD of Rs.50000/- in cash : **not allowed**
29. For the purpose of KYC rules any addition & modification on which recommendation: **Financial Action Task Force**
30. In case of Minor what is wrong? **Minor can make himself liable for his actions.**In case of a Deposits account customer wants the Nomination in his account. What is mentioned on Pass book
31. In case Fixed Deposits account the rate of interest fixed by whom: **Board of Directors of respective bank.**
32. In an account Mr. X Gives irrevocable power of attorney to Y for 1 yr. After 4 Month, X withdraw the irrevocable power of attorney. What is action of the Bank? **Bank will rely the revocable application of the Hence the cheque signed by Y returned.**

33. In case of Deposit Insurance whether it mandatory or not: **It is Mandatory for all banks.**
34. in which type of account where TDS not deduct in fixed Deposits Account: NRE and FCNR(B) only.
35. BC work as : **Bank's Agent**
36. Cash Transaction Report (CTR) should be submitted to FIU within how much period: **15 days of the close of the month.**
37. Which of these rates are periodically reviewed by RBI?: **Repo rate, Bank rate, but not Savings Bank Rate.**
38. Interest rate on Savings accounts: **Not regulated by RBI**
39. As per RBI guidelines, Demand draft of Rs 50,000 and above should be issued against : **by debit to account but not against cash**
40. If pan no not submitted rate of TDS will be: 20%
41. Account is treated as inoperative if there is no operation for : 24 months
42. If a customer makes nomination, the bank is required to register in its books the nomination, and should give acknowledgement to the depositor in writing. The bank should also indicate the fact of nomination on the face of passbook/deposit receipt with the legend (a) Nomination Registered (b) Nomination marked (c) Nomination done (d) Nomination acknowledged: **Nomination Registered**
43. Which of the following facilities are allowed to visually impaired persons who open account with bank – issue of cheque book, ATM card, internet banking: **All of these**
44. What is the main motive of financial inclusion – (a) to give loans to poor persons (b) to issue credit card (c) to provide banking services to distressed persons at affordable cost: **Ans is C**
45. Banks are required to deduct tax at source from interest payable to an individual if the interest credited or to be credited in a financial year is more than Rs 10,000. This is as per provisions of (a) Income Tax Act (b) Goods and Service Tax Act (c) Service Tax Act (d) RBI Act: **Income Tax Act**
46. Tax is not deducted at source in respect of which of the following income – (a) Interest on Bank deposits (b) Rent on land and building (c) Brokerage (d) Dividend paid by listed company: **Dividend paid by listed company** (However Dividend u/s 2(22)(e) is taxable for shareholder and thus TDS rate on such dividend is 10%)
47. Which of the following can be done by a minor?: **A minor may draw, indorse, deliver and negotiate a promissory note, bill of exchange or cheque so as to bind all parties except himself.**
48. What is the responsibility of an introducer in an account opened by a person with a bank – (a) he is legally liable (b) he is morally liable (c) he is bound to trace the account holder: **He is morally liable.**
49. Direct Tax Code will replace which of the following – Income Tax Act, Corporate Tax Act: **Income Tax Act.**
50. As per KYC Guidelines, Records of transactions to be maintained for at least ten years from the date of transaction, instead of _____ from the date of cessation of transactions, and records pertaining to identification of the customer and his address to be preserved for at least ten years after the business relationship is ended: **ten years**
51. What type of activity can be performed by Business Correspondent - (a) processing and submission of applications to banks; (b) disbursement of small value credit, (c) recovery of principal / collection of interest (iv) collection of small value deposits: **All of these**
52. E TDS - 26Q (tax deduction other salaries) to be filed for the month of September, before: **15th October (Statement of TDS to be submitted within 15 days from close of quarter)**
53. A Minor has extended Guarantee to a loan. It can be ratified by whom? **It cannot be ratified by any one.**
54. In Limited Liability Partnership account, who are not eligible for becoming partners: a) HUF b) Minor c) body corporate?: **Ans: a & b**
55. Insurance of deposit is done by DICGC up to: **Rs 1 lac per depositor per bank.**
56. What is the periodicity of review of risk classification of customers?: **Every six months**
57. Which is not a proof of Identity?: **Ration card.**
58. A customer who does not complete all KYC norms, what type of account is opened for him? **No Frill account in which cannot be more than Rs.50000 and credits in the Financial Year cannot be more than Rs.100000.**
59. There were three cash withdrawals of Rs 5.80 lac ,Rs 4.90 lac & 0.25 lacs from an account in a month. Which of these transactions is/are will be reported to Financial Intelligence Unit as part of CTR? **Cash withdrawals of Rs 5.8 lac and Rs 4.9 lac.**
60. Under Prevention of Money Laundering Act, banks are required to preserve records relating to opening the account for how much period?: **10 years from date of closure of account.**
61. As per KYC Norms, banks are required to update record of customer regarding proof of address, and identity etc. of medium risk customers within how many yrs?: **2 year**
62. Which of the following is not the key element of KYC policy a) Customer Acceptance Policy; b) Customer Identification Procedures; c) Monitoring of Transactions; d) Risk Management e) Customer Awareness Policy: **Ans is E i.e. Customer Awareness Policy.**
63. What is the distance criteria for office of Business Correspondent?: **The distance between the place of**

business of a retail outlet/sub-agent of BC and the base branch should ordinarily not exceed 30 kms in rural, semi-urban and urban areas and 5 kms in metropolitan centers.

64. On whose recommendations, KYC norms came into force? (a) Goiporia Committee (b) Ghosh Committee (c) FATF: **Ans is FATF**

65. Under KYC Norms, Documents relating to opening the account like proof of address and identity and photograph should be taken again at what interval? (a) once in 5 years for low risk customer (b) once in 2 years for medium risk customers (c) once in 1 year for high risk customers (d) Both (a) and (b): **Ans is (d)**

66. Record of cash receipt and payment under KYC to be maintained if cash receipt or payment in a single day from one account is more than Rs 10 lakh.

67. Banks should have the responsibility of currency management entrusted to a nodal official of the rank not less than that of a General Manager and will be accountable for the obligations cast upon currency chests by the Reserve Bank.

4. MEMORY BASED QUESTIONS ON LOANS AND ADVANCES

1. Charged created by Bailment of goods to secure payment of a debt is called: **Pledge**
2. Guarantee is defined in: **Indian Contract Act**
3. If on a letter of credit it is not mentioned whether it is revocable or irrevocable, then as UCPDC 600, it will be treated as : **Irrevocable LC**
4. A director of a bank wants to raise loan of Rs 10 lakh from his bank against Life Insurance Policy with surrender value of more than Rs 15 lakh. What will be done?: **Bank can sanction.**
5. In which of the following cases, the document is required to be attested by two witnesses?: (a) Pledge (b) Hypothecation (c) **Mortgage** (d) Lien
6. A document was executed by three partners in different dates. When shall the limitation period start?: **The limitation period will start from the last date i.e. when the document was executed by the last partner.**
7. Loan to a company engaged in construction of projects, which method of financing is to be used: **Cash Budget method.**
8. What is the meaning of Group in Exposure Norms: **Commonality of management**
9. The procedure used for ascertaining Customers Credit worth is called: **Credit Rating**
10. Green field project is related to : **setting up new projects**
11. What is Real Rate of Interest?: **Prevailing interest rate minus inflation rate**
12. The main distinction between Hypothecation and Pledge is on account of : **Possession**
13. In Letter Of Credit importer is called: **Opener of Letter of Credit**
14. Cash Budget method is used for sanctioning working capital limits to : **Seasonal Industries**
15. Bank's charge over LIC Policy is created by: Assignment
16. Guarantee issued by a bank which is still outstanding is shown in the Balance Sheet as: Contingent Liability.
17. Why loan against Partly Paid Shares are not preferred by banks?: Because partly paid shares represent contingent liability. In case company makes demand and the borrower does not pay the amount then the bank will have to pay the amount otherwise share may be forfeited. Moreover it is prohibited by RBI
18. Return on Investment is calculated to ascertain of the unit.: **Profitability**
19. For ascertaining that a firm will be able to generate sufficient profit to repay instalments of term loan, which ratio is computed?: **Debt Service Coverage Ratio**
20. In the Balance Sheet of a bank, Contingent Liabilities are shown as: footnote to the Balance Sheet.
21. Finance for construction of road and port is classified as: Infrastructure Finance.
22. Banks are required to declare their financial results quarterly as per provisions of : **SEBI**
23. Loan was raised from the bank against NSC by Mr. X and noting to this effect was recorded in the issuing Post Office. X dies. The nominee approaches post office for payment of NSC. Who will have priority i.e. bank or nominee?: **Bank will have prior claim against NSC.**
24. Hypothecation can be converted to pledge by: taking possession with the consent of the borrower.
25. What charge to be created for demat shares with bank as security: **Lien**
26. Perpetual bonds and perpetual non cumulative preference shares as part of tier I capital can be up to% of tier I capital: **40%**
27. Provisions on standard Assets are shown under which head in the balance sheet of the Bank?: **Other Liabilities and Provisions on Liabilities side.**
28. For classification of assets in consortium accounts, which of the following is to be considered?: In consortium accounts, each bank will classify the account as per its record of recovery.
29. Who is bound to file particulars of charge with the Registrar of Companies under MCA 21, when a company creates charge of somebody on its movable or immovable property except by way of pledge?: **officials of the company.**
30. Credit of Rs.20,000/- was taken as Rs.2000/- and as a result a cheque was returned in the account for want of funds. Bank has already sent statement of account to the depositor who has acknowledged receipt of the statement of account. Whether bank is liable?: **Yes. Liable to drawer of cheque.**
31. Advance to a company against Trust receipt where document of title goods transferred to bank and goods to be released against payment by the company. Whether a charge is to be registered with the Registrar of Companies under MCA 21?: **Not Required**

32. Under multiple banking system, exchange of information between the banks is to be done for the limits of crores and above and periodicity is : Rs.5 crores and Quarterly
33. If a LC contains a clause "about" regarding the amount and quantity of goods, how much tolerance is permitted?: 10%
34. What is the type of liability for the bank on account of issue of Bank Guarantee?: **Contingent Liability**
35. To arrive at group concern, factors to be looked into are : **commonality of management + effective control.**
36. The limitations of financial statements are : **only quantitative not qualitative.**
37. Hypothecation described under **SARFEASI Act.**
38. Off Balance sheet / On Balance sheet exposure- **if altered the risk will be Credit Risk.**
39. Guarantors Liability: Recall the a/c and cause demand against the borrower and guarantor. Balance in guarantor's SB a/c cannot be appropriated directly.
40. Excess of current liability over current assets means the **firm may face difficulties in meeting its financial obligations in short term.**
41. If documents are to be presented in about July month: these can be presented within 5 days before or 5 days after.
42. Pledge is defined in: Indian Contract Act
43. When limitation will not extend: **Balance Confirmation signed after expiry of limitation period**
45. On maturity of bank guarantee, an intimation is send to customer and if no response received in 30 days, vouchers are reversed. This is done for following reason? **Bank has to maintain capital on Bank Guarantee for the purpose of capital adequacy norms.**
46. Which of the following is not a disadvantage of CC account? Issuance of cheque book
47. In case of revaluation of fixed assets, what percentage of revaluation reserve will be added to Tier II capital of the bank?: 45%
48. When a loan is recovered from guarantor for dues payable by the Principal Debtor, debtor becomes entitled to all rights and remedies which the creditor had against the Principal Debtor. This right of guarantor is called: Right of subrogation.
49. in case of loan against bank deposit charge is created by: **assignment**
50. in case of loan against NSC, charge is created by: **assignment**
51. What is cash loss : **net loss before depreciation (Net loss minus depreciation)**
52. **Why fund flow statement is taken from the borrower?: To know sources from where funds have been raised and how funds have been utilized and to know changes in net working capital position.**
53. Stand by LC is just like : **Financial guarantee** (A guarantee of payment issued by a bank on behalf of a client that is used as "payment of last resort" should the client fail to fulfill a contractual commitment with a third party. Standby letters of credit are created as a sign of good faith in business transactions, and are proof of a buyer's credit quality and repayment abilities)
54. Banks provide term loans and deferred payment guarantee to finance capital assets like plant and machinery. What is the difference between these two: **Outlay of funds.**
55. For the purpose of creation of equitable mortgage, the place for deposit of the title deed is notified by :
56. Number of days allowed to opening bank and negotiating bank to verify that documents are as per terms of LC is: **5 banking days each**
57. In the case of hypothecation : **both possession & ownership is with borrower**
58. If stock statement is not submitted for 3 months from its due date and DP is allowed on the basis of old stock report, then the account will be considered NPA after: **90 days**
59. Limitation period for mortgage : **12 years**
60. Loan is in the name of A&B. Both have signed documents. A signs the Balance Confirmation but B does not. In this case limitation will extend against: **both**
61. What is negative Lien?: A declaration by borrower that he will not sell or create charge of any body on a particular asset without consent of the bank
62. Why banks do not grant loan to a minor?: A minor is not competent to contract Therefore, loan given to a minor can not be recovered.
63. Normally bank can not grant advance to its directors. However, there are certain exemptions to this rule. Thus a bank can grant a loan to its director against the security of: Government securities, life insurance policies or fixed deposit;
64. If on a Letter of Credit, date is mentioned as "end of the month", then as per UCPDC 600, it will mean: **21st to last day of the month.**
65. A minor was given loan. On attaining majority he acknowledges having taken loan and promises to pay. Whether the loan can be recovered? : He can not ratify the contract. Hence recovery not possible.
66. A loan was sanctioned against a vacant land. Subsequently a house was constructed at the site. What security is available now to the bank? : **Both**
67. Preoperative expenses forms part of the following: **Intangible assets**
68. A and B raised a loan jointly and both are liable jointly and severally. When the limitation period is approaching, A acknowledges the debt while B was away from India. Limitation expires before B comes to India and after coming, he denies acknowledging the debt. Bank can proceed for recovery of the loan as per limitation act from: **Both**
69. An L/C is expiring on 10.05.2008. A commotion takes place in the area and bank could not open. Under these circumstances can the LC be negotiated?: The L/C can not be negotiated because expiry date of LC can not be extended if banks are closed for reasons beyond their control.
70. A loan is given by the bank on hypothecation of stock to Mr. A. Bank receives seizure order from

State Govt. What should bank do?: **Bank will first adjust its dues and surplus if any will be shared with the Govt.**

71. 3 partners signed a document on 3 different dates. Limitation period starts from: **Date of last signatures.**
72. Acknowledgement of Debt can be obtained for how many number of times : **No limit**
73. In the case of advance to a limited company for purchase of vehicle, the charge is registered with Regional Transport Authority in addition to registration of charge with Registrar of Companies. Why this is done?: **So that borrower can not sell the vehicle without intimation to the bank**
74. Why banks prefer financing of bills?: **because the advance is self liquidating**
75. Formation of consortium, when essential : When bank touches its exposure ceiling
76. A letter of credit which is issued on request of the beneficiary in favour of his supplier: **Back to Back LC**
77. As per internal policy of certain banks, the net worth of a firm does not include: a. Paid up capital b. Free Reserve c. Share Premium d. Equity received from Foreign Investor : **Revaluation Reserves**
78. A lady who has taken a demand loan against FD come to the branch and wants to add name of her minor son, as joint a/c holder. What you will do?: **Name can be added only after adjustment of the loan.**
79. Guarantee issued by a bank in favour of Custom department that party will fulfill export obligation for availing exemption from custom duty regarding tax. Such guarantee is called: **Financial Guarantee**
80. Particulars of satisfaction of charge by a company are to be filed within: **30 days from date of adjustment of loan.**
81. In a company, the registration of charges is required for: a) loan against FD b) lien on Govt Securities c) assignment of Book Debts d) lien on Shares : **Book Debts**
82. Loan Delivery System is not applicable to: a) Loan to Soft ware industry b) export credit: **export credit**
83. Stamp duty in usance bill of exchange: 0.25 per 1000 / 0.75 per 1000 / 1 per 1000 / none : **It is according to value and time i.e. Advalorem (it is Rs 0.65-per Rs 1000 up to 3 months usance)**
84. Property equitably mortgaged on 08/03/08. A registered mortgaged created on this property, on 05/03/2008 which was got registered on 08/03/2008. Which will have priority: **registered mortgage as it was created earlier.**
85. The Bank did not disclose all material facts regarding loan to the guarantor while obtaining guarantee. Can guarantor escape liability?: **Guarantor cannot escape from his liability as it is not necessary to disclose all the materials facts with regards to the loan.**
86. Banks are required to obtain audited financial papers from non corporate borrowers for granting working capital limit of: **Rs.25 lakh & above**
87. In the case of Hypothecation: neither possession nor ownership come to Bank.
88. Negative lien means: **Undertaking by the borrower not to sell or create charge on a particular property without consent of the Bank.**
89. Recently RBI warned banks against charging: **excessive interest to small borrowers.**
90. Which of the following is correct regarding reverse mortgage?: **The scheme is available to senior citizens only; the property should be self occupied by the owner.**
91. What are the rules relating to advance against Kisan Vikas Petra?: **It can be granted provided KVP is assigned to the bank.**
92. Bailment of goods to secure a debt is called: **pledge.**
93. Deferred payment guarantee issued by a bank is a : **Contingent Liability.**
94. When mortgage is created by a person by deposit of title deed orally, it is called **Equitable mortgage :**
95. For the purpose of creation of equitable mortgage, the place for deposit of the title deed is notified by : **State Govt.**
96. Under SARFAESI Act 2002 the banks give notice for payment of due amount to the borrower / owner of charged assets
97. Action under SARFAESI Act can be taken simultaneously in DRT/Suit filed cases without taking permission from the Competent Court
98. For enforcing right under SARFESAI Act, in the case of consortium advances, consent of which bankers is required?: **consent of 60% bankers by value is required.**
99. Supervisory Review according to which Central Bank of the country is to ensure that proper capital has been provided for risk exposure and maintain proper system for the same is provided under?: **Pillar II of Basel IL**
100. Charge where SARFAESI action can not taken: **Pledge**
101. For taking action under SARFAESI, the outstanding should be: **More than Rs.1.00 lac**
102. Limit for filing suit in DRT: **Rs.10 lacs and above**
103. For acquiring securities charged to the bank under SARFAESI, notice of _____ days is required to be given to the borrower and for sale of securities so acquired notice of _____ days is **60 & 30 days**
104. As per a recent judgement of the Supreme Court, while initiating action under SARFAESI, the position in case of suit filed in DRT would be: **that no permission is required from DRT and action under SARFAESI can be initiated as both the cases can run together.**
105. For taking action under SARFAESI, the outstanding should be: **More than Rs.1.00 lac**
106. In case of SARFAESI Act, before preferring appeal to DRAT, how much amount is to be deposited by the borrower with DRAT?: **50% of the claim amount which can be reduced to 25% by the DRAT. For making application to DRT, no amount is to be deposited.**