

RETURNS, INSPECTION, WINDING UP & ACQUISITION

ANNUAL ACCOUNTS AND BALANCE SHEET (Sec 29 of BR Act)

- The **balance sheet and profit and loss account, has to be prepared at the end of each calendar year or on expiry of the 12 months period**, ending with any other date which the Central Government may notify in the official gazette in this behalf, as on the last working day of the year or the period., as the case may be.
- **As per Schedule III** of BR Act (Form A for Balance sheet and Form B for P&L Account).
- The **forms specified in the third schedule of the Banking Regulation Act may be modified by the Central Government** from time to time by notification in the official gazette.

Signing Authority: The balance sheet and profit and loss account of a **banking company incorporated in India** has to be signed by the **manager or principal officer** of the company and **at least 3 directors** if there are more than three directors and by all directors if there are not more than three directors.

In the case of foreign banks, the manager or the agent of its principal office in India can sign.

Publication of Accounts and Balance Sheet: The accounts and balance sheet must be made published in a newspaper within a period of 6 months from the end of the period to which the account and balance sheet relate.

Submission to Reserve Bank (Section 31 of BR Act): Every banking company has to **submit 3 copies of its balance sheet and profit and loss account** to the Reserve Bank within 3 months from the end of the period

to which they relate. This period may be extended by the Reserve Bank by a further period not exceeding 3 months.

Furnishing of Accounts and Balance Sheet to Registrar (Section 32): It provides that if any banking company has furnished the accounts and balance sheet in accordance with the provisions of Sec 31 of BR Act.

Display of Balance Sheet and Accounts by companies incorporated outside India (Section 33 of BR Act): Foreign banks operating in India have to display in a conspicuous place, in their principal office a copy of the last audited balance sheet and profit and loss account.

AUDIT AND AUDITORS (Section 30 of BR Act)

The balance sheet and profit and loss account of a banking company have to be audited by a person duly qualified under any law for the time being to be an auditor of companies.

Special Audit: If Reserve Bank is of the opinion that special audit is necessary in the public interest or in the interest of the banking company or its depositors, Reserve Bank is **empowered to order a special audit** of the accounts of any banking company.

- The **RBI may appoint** a duly qualified auditor for this purpose **or may direct the auditor** of the banking company himself to conduct such a special audit.
- The **Reserve Bank's directions are binding on the auditor** of the banking company and the auditor has to make a report of such an audit to the Reserve Bank and also give a copy thereof to the banking company.
- The **expenses in relation to the special audit** have to be borne by the banking company.

MONTHLY RETURNS (Section 27 of BR Act): Every month, a banking company has to submit to the Reserve Bank a return under Section 27 of the BR Act, showing its assets and liabilities in India as at the close of business on the last Friday of the previous month.

- Such **a return has to be submitted before the close of the month** succeeding to which it relates.
- **RBI may also call for information** every half year regarding investments of a banking company or the classification of its advances in respect of industry, commerce or agriculture.

Return of Assets in India (Section 25 of BR Act): A banking company has to submit to Reserve Bank under Section 25(1) of the Banking Regulation Act, a quarterly return regarding its assets in India.

- The **return has to be submitted within one month of the end of the quarter.** The return has to be filed in the form specified in the Rule 14A of the Banking Regulation (Companies) Rules.

Return of Unclaimed Deposits (Section 26 of the BR Act), a banking company has to file within thirty days of the close of each calendar year a return on unclaimed deposits (not operated for ten years).

Preservation of Records (Section 45Y BR Act): The Central Government is empowered to make rules specifying the periods of preservation of books, accounts and other documents by banks and the periods of preservation of different instruments paid by banks.

The Reserve Bank may, having regard to the factors specified in Section 35A(1) of the BR Act, direct any bank by an order in writing for preserving any books, accounts or registers for a longer period than the period specified under the rules.

Return of Paid Instruments (Section 45Z): A bank is authorised to return paid instruments to their customers even before the end of the period of preservation specified under the Act.

INSPECTION AND SCRUTINY (Sec 35 BR Act)

- RBI itself or on being directed by the central govt is empowered to conduct an inspection of any banking company.
- After inspection of the books and accounts of the banking company, a copy of the inspection report has to be given to the banking company.
- The inspecting team may also require the bank to furnish any statements or information relating to the affairs of the banking company within the time specified by them.

POWERS OF THE GOVERNMENT

A ***copy of the report of inspection must be sent to the Central Government*** in all cases where inspections have been conducted as directed by the Central Government.

In other cases, it is optional for the Reserve Bank to send copies of inspection to the Government,

On consideration of the report, if the Central Government is of the opinion that the affairs of a banking company are being conducted to the detriment of the interests of the depositors, the Government may:

- a) **Prohibit** the banking company from receiving fresh deposits.
 - b) **Direct the Reserve Bank to apply for winding up** of the banking company under Section 38 of the BR Act.
- Before taking such action, **the Government has to give an opportunity to the banking company** to make a representation in respect of the report.

- The **Central Government is authorised to defer the passing of such an order or to cancel or modify** such an order subject to any terms and conditions imposed by it.
- It is also open to the **Central Government to publish an inspection report or a portion** there of after giving the banking company a reasonable notice.

SCRUTINY: Reserve Bank is also empowered to conduct a scrutiny of the affairs and the books and accounts of any banking company under the sub-Section (1A) of Section 35 of the Banking Regulation Act.

- One or more officers of the Reserve Bank may conduct such a scrutiny.
- A **copy of the report has to be furnished to the banking company**, if it makes a request for the same or if adverse action is contemplated against the banking company (otherwise not mandatory).
- The **powers of the Reserve Bank** to call for books, accounts and documents or statements and information as for examination of any director or officer of the banking company on oath extend to scrutiny as well.

BOARD FOR FINANCIAL SUPERVISION (BFS)

The Board for Financial Supervision (Board) is a committee established **under Regulation 4 of the Reserve Bank of India Regulations, 1994.**

These regulations **were framed by the Reserve Bank under Section 58 of the Reserve Bank of India Act, 1934** with the previous sanction of the Central Government.

The Board has jurisdiction over the banking companies, Nationalised banks, State Bank.



COMPOSITION OF THE BOARD:

- Governor of the Reserve Bank of India is the **chairman** of the board.
- one of the deputy Governors shall be nominated as the **full-time vice chairman**.
- 4 directors from the central board of the Reserve Bank nominated as **members**

Functions and Powers:

- It performs the functions and exercises *the powers of supervision and inspection* under the Reserve Bank of India Act and the Banking Regulation Act, in relation to different sectors of the financial system, including banking companies.
- It also performs any other *function as may be notified by the central board of the Reserve Bank*.
- The board is *assisted by the department of supervision in the Reserve Bank and may also draw personnel from outside*.

Meetings of the Board: The board meets at least once in a month.

ACQUISITION OF UNDERTAKINGS (Sec 36AE BR Act)

If on receipt of a report from the Reserve Bank, the Government is satisfied that it is necessary to acquire any undertaking on certain grounds, Central Government can acquire the **undertakings (means the entire organisation)** of banking companies in certain cases as mentioned in Section 36AE of the Banking Regulation Act.

Before passing the order, the Central Government may make such consultation with the Reserve Bank as it thinks fit.



- Banking company has ***failed on more than one occasion to comply with the Reserve Bank's directions*** under Section 21 or 35A of the Banking Regulation Act.
- Banking company is ***managed in a manner detrimental*** to the interests of depositors
- Where it is necessary to acquire its undertaking ***in the interests of depositors or in the interests of banking policy*** or for better provision of credit

POWER OF CENTRAL GOVT TO MAKE SCHEME (SEC 36AF BR ACT)

- The Central Government is empowered to make a **scheme for any acquired bank**. Such a scheme is framed **in consultation with the Reserve Bank**.
- The scheme **may provide for all matters** relating to property, assets, liabilities, board of management, service of employees and their terms and conditions, payment of compensation to shareholders of acquired bank and other matters.

Compensation to shareholders (Section 36AG BR Act): The amount of compensation to shareholders of an acquired bank will be determined as provided in the fifth schedule to the Act, after consultation with the Reserve Bank.

AMALGAMATION OF BANKS (Sec 44A BR Act)

Voluntary Amalgamation: A banking company may be amalgamated with another banking company.

- For this purpose, ***a scheme has to be prepared, containing the terms of such an amalgamation in a draft*** and placed before the shareholders of the two companies separately.

- The scheme ***has to be approved by a resolution passed by majority of members representing two-thirds in value of the shareholders*** of each company.
- *After the scheme is approved by the majority, the scheme has to be submitted to the RBI for sanction.*
- ***On sanction by Reserve Bank***, the assets and liabilities of the amalgamated company pass to the banking company, with which it is to be amalgamated.

AMALGAMATION BY GOVERNMENT: The Central Government is empowered to order amalgamation of two banking companies. However, such *power has to be exercised only after consultation with the Reserve Bank.*

Moratorium and Amalgamation (section 45 of BR Act): *The Reserve Bank is authorised under Section 45 of the Banking Regulation Act to apply to the Central Government for an order of moratorium in respect of any banking company where it appears to it that there is good reason to do so.*

- After considering the application, the Central Government may pass an order of moratorium.
- This may be on such terms and conditions as the Government thinks fit and prefer to impose. The period of moratorium is extendable from time to time (maximum 6 months).
- ***During the period of moratorium***, the banking company shall not make any payment to depositors or discharge any liabilities or obligations to any other creditors unless otherwise directed by the Central Government in the order of moratorium or at any time thereafter.

SCHEME OF AMALGAMATION

During the period of moratorium, Reserve Bank may prepare a scheme either for reconstruction of the banking company, or for amalgamation of the banking company with any other banking institution. Such a scheme may be prepared if the Reserve Bank is satisfied that it is necessary to do so:

- in the public interest;
- in the interests of the depositors;
- for securing the proper management of the banking company
- in the interest of the banking system of the country as a whole

Sanction of Scheme by Government: A copy of the draft of the scheme prepared by the Reserve Bank has to be sent to the Government and also to the banking company, transferee bank and any other banking company concerned in the amalgamation, for their suggestions and objections, if any.

Effect Of Sanction: On the Central Government sanctioning the scheme, it becomes binding on the banking company, transferee bank and the members, depositors and other creditors, employees and any person having any right or liability in relation to the banking company.

- ***If any difficulty arises*** in implementing the scheme, the Central Government may pass the necessary orders for removing the difficulties.
- ***A single scheme of amalgamation can be made*** in respect of several banking companies under moratorium.
- ***The provision of Section 45 and the scheme sanctioned*** there under shall have overriding effect on other laws, agreements, awards or instruments.

WINDING UP OF BANKS

- ***Suspension of Business and Winding Up (Section 37 of BR Act):*** A banking company which is temporarily unable to meet its obligations may apply to the High Court under Section 37 of the Banking Regulation Act for staying the commencement or continuance of any proceedings against it.
- Such stay will be for a fixed period and subject to any terms and conditions imposed by the High Court as it may think fit.
- *The total period of such moratorium shall not exceed six months.*
- An ***application for moratorium shall be supported by a report of the Reserve Bank*** indicating that the banking company will be able to pay its debts if the application is allowed.
- **On passing of moratorium order** the court may appoint a special officer to take custody and control of the assets, books, etc., of the banking company in the interests of the depositors.

Winding Up by High Court (Section 38 of BR Act)

The High Court shall order the winding up of a banking company in the circumstances mentioned in Section 38 of the Banking Regulation Act.

They are:

- The banking company is unable to pay its debts;
- An application for winding up has been made by the Reserve Bank under Section 37 or Section 38 of the Act.

The Reserve Bank is bound to make an application for winding up under Section 38, if directed by the Central Government on consideration of the report of inspection or scrutiny made by the Reserve Bank at the direction of the Central Government, it is of opinion that the affairs of

the bank are being conducted to the detriment of the interests of the depositors.

It is open to the Reserve Bank to apply for winding up of a banking company in certain other cases as follows:

- ***failure to comply with the requirements of Section 11*** regarding minimum paid-up capital and reserves
- ***bank being not entitled to carry on banking business in India*** under Section 22 of the BR Act by reason of rejection or cancellation of license
- ***prohibition to accept fresh deposits*** under Section 35(4) of the BR Act or Section 42 of the Reserve Bank of India Act
- ***failure to comply with the requirements of the BR Act*** other than Section 11 and continuance of such failure or contravention beyond the period or periods specified.

OFFICIAL LIQUIDATOR (SECTION 38A BR ACT) provides for a liquidator to be appointed by the Central Government, attached to respective High Court, for conducting the winding up proceedings relating to banking companies.

RESERVE BANK AS LIQUIDATOR (Section 39 BR Act): if the Reserve Bank applies to the Court, the Reserve Bank, State Bank or any other bank notified by the Central Government in this behalf or any individual stated in the application may be appointed as the official liquidator.

The **remuneration of the liquidator and other costs and expenditure** of winding up shall be borne by the banking company.

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



PREFERENTIAL PAYMENT (SECTION 43A BR ACT)

- Within 3 months from the date of winding up order, the preferential payments shall be made by the official liquidator referred to in Section 530 of the Companies Act
- After that, depositors in savings bank account up to Rs 250 and then other depositors up to Rs 250 get priority over all other creditors.
- After making these payments, the balance available will be utilised for payment to general creditors and then for payment of further amounts due to the depositors.
- ***The provision for preferential payment by liquidator will not apply to depositors covered by the DICGC Act.***

VOLUNTARY WINDING UP (Section 44 BR Act): *No voluntary winding up will be permissible unless the Reserve Bank certifies that the bank will not be able to pay in full all its debts as they accrue.*

High Court can order for voluntary winding up of a banking company that it shall continue, subject to the supervision of the Court.

PENALTIES FOR OFFENCES

Penalties under the RBI Act: Chapter V of the Reserve Bank of India Act deals with penalty for violation of the Act.

- Banking companies have to make applications and furnish returns, statements, etc., under different provision of the Act, regulations, orders, directions, etc.
- While doing so, the making of any ***statement which is false*** in any material, knowing it to be false or willfully omitting to make any

material statement, is punishable with imprisonment up to a period of 3 years and a fine.

Failure to produce any books, accounts or other documents or statements, or information which a person is duty bound to make under the Act, or any order, regulation or direction is punishable with fine up to 2,000 for each offence.

For continuing offences, there is a provision for fine of Rs 100 for each day when the offence continues.

Penalties under the BR Act (Section 46 BR Act)

The provisions of the Banking Regulation Act, relating to penalties, are provided in Section 46 thereof.

Accordingly, making wilfully any false statement in any return, balance sheet or other document or information given under the Act is punishable. Similarly, wilful omission to make any material statement is also punishable. In both cases, **punishment is up to three years imprisonment and fine.**

Failure to produce any book, account or other document or to furnish a statement or information that is obligatory to be produced under Section 35(2), during inspection or scrutiny is punishable with fine up to 2,000.

Continuance of the offence is punishable with fine of Rs 100 for every day during which the offence continues.

Acceptance of deposits against an order prohibiting acceptance of deposits under Section 35(4) is punishable with a fine up to twice the amount of deposits accepted.

Any contravention of other provisions of the Act, or any rule, order or direction made or condition imposed, is punishable with fine up to Rs 50,000 or twice the amount involved in the contravention.

In the case of continuing offences, a fine up to Rs 2,500 for each day may be imposed.

SECTION 47 OF BR ACT

Under Section 47, the offences are cognizable only by a metropolitan magistrate, judicial first class or a court superior thereto on a complaint by an officer of the Reserve Bank and in some cases by the National Bank.

Under Section 47A, the Reserve Bank is empowered to impose a penalty for default or contravention. If the Reserve Bank exercises that power, no complaint shall be filed in a Court in respect of the same contravention or default.

Q1. Section 45 Z is relating to nomination facility provided by bank. (true/false)

ANS: False

Q2. Every banking company has to submit _____ copies of its balance sheet and profit and loss account to the Reserve Bank.

ANS: 3, within 3 months from the end of the period to which they relate

Q3. _____ may appoint a duly qualified auditor or may direct the auditor of the banking company himself to conduct a special audit.

ANS: RBI



Q4. Expenses in relation to the special audit have to be borne by the Central govt.(true/false)

ANS: False, banking company

Q5. RBI itself or on being directed by the central govt is empowered to conduct an inspection of any banking company u/s _____ of BR Act.

ANS: Section 35

