

Banking Regulation Act 1949

Discuss the powers of RBI under Banking Regulation Act, 1949 regarding licensing of banks. (2004)

Discuss the powers of RBI under Banking Regulation Act, 1949 to apply to Central Government for suspension of business by a Banking Company and to prepare a scheme of reconstitution or amalgamation. What could be the reasons for RBI to exercise these powers in respect of a Banking Company? (2006)

Discuss the powers of RBI under Banking Regulation Act, 1949 regarding merger and amalgamation of banks. (2009)

QUESTION: Discuss the powers of RBI under Banking Regulation Act, 1949 regarding licensing of banks. (2004)

ANSWER: The licensing of banks is covered under **Section 22** of Banking Regulation Act, 1949. The provisions of this section are stated below.

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 of such conditions as the Reserve Bank may think fit to impose.

Before granting any licence under this section, the Reserve Banking 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 or the interest of its 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;

Foreign Banks

Before granting any licence under this section 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.

QUESTION: Discuss the powers of RBI under Banking Regulation Act, 1949 to apply to Central Government for suspension of business by a Banking Company and to prepare a scheme of reconstitution or amalgamation. What could be the reasons for RBI to exercise these powers in respect of a Banking Company? **(2006)**

ANSWER: Section 45 of Banking Regulation Act, 1949 deals with the 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. The provisions of this section are stated below.

Where it appears to the Reserve Bank that there is good reason so to do, the Reserve Bank may apply to the Central Government for an order of moratorium in respect of a banking company.

The Central Government, after considering the application made by the Reserve Bank may make an order of moratorium staying the commencement or continuance of all actions and proceedings against the company for a fixed period of time on such terms and conditions as it thinks fit and proper and may from time to time extend the period so however that the total period of moratorium shall not exceed **six months**.

Except for directions given by the Central Government, 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 that—

- (a) in the public interest; or
- (b) in the interests of the depositors; or
- (c) in order to secure the proper management of the banking company; or
- (d) in the interests of the banking system of the country as a whole,

it is necessary so to do, the Reserve Bank may prepare a scheme—

- (i) for the reconstruction of the banking company, or
- (ii) for the amalgamation of the banking company with any other banking institution ("the transferee bank").

The scheme aforesaid may contain provisions for:

- i) the constitution, name and registered office, the capital, assets, powers, rights, interests, authorities and privileges, the liabilities, duties and obligations of the banking company on its reconstruction or as the case may be, of the transferee bank;
- ii) in the case of amalgamation of the banking company, the transfer to the transferee bank of the business, properties, assets and liabilities of the banking company on such terms and conditions as may be specified in the scheme
- iii) any change in the Board of directors, or the appointment of a new Board of directors, of the banking company on its reconstruction or, as the case may be, of the transferee bank
- iv) the alteration of the memorandum and articles of association of the banking company on its reconstruction or, as the case may be, of the transferee bank for the purpose of altering the capital thereof or for such other purposes as may be necessary to give effect to the reconstruction or amalgamation;
- v) the reduction of the interest or rights which the members, depositors and other creditors have in or against the banking company before its reconstruction or amalgamation to such extent as the Reserve Bank considers necessary in the public interest or in the interest of the members, depositors and other creditors or for the maintenance of the business of the banking company
- vi) the payment in cash or otherwise to depositors and other creditors in full satisfaction of their claim

QUESTION: Discuss the powers of RBI under Banking Regulation Act, 1949 regarding merger and amalgamation of banks. (2009)

ANSWER: Section 44 A of Banking Regulation Act, 1949 deals with the **procedure for amalgamation of banking companies**. The provisions of this section are stated below.

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 of the banking companies concerned separately, and approved by a resolution passed by a majority in number representing two-thirds in value of the shareholders of each of the said companies, present either in person or by proxy at a meeting called for the purpose.

If the scheme of amalgamation is approved by the requisite majority of shareholders it shall be submitted to the Reserve Bank for sanction and shall, if sanctioned by the Reserve Bank by an order in writing passed in this behalf, be binding on the banking companies and on all the shareholders.

On the sanctioning of a scheme of amalgamation by the Reserve Bank, the property of the amalgamated banking company shall, be transferred to and vest in, and the liabilities of the said company shall, transferred to, and become the liabilities of, the banking company which under the scheme of amalgamation is to acquire the business of the amalgamated banking company.

Where a scheme of amalgamation is sanctioned by the Reserve Bank, the Reserve Bank may, by a further order in writing, direct that on such date as may be specified the banking company (the amalgamated banking company) which by reason of the amalgamation will cease to function, shall stand dissolved.

This section shall affect the power of the Central Government to provide for the amalgamation of two or more banking companies under section 396 of the Companies Act, 1956, **provided that no such power shall be exercised by the Central Government except after consultation with the Reserve Bank.**

Prepared by Mr. Pushkal Pandey for RBI Officers. September 2012.