

R.M.M. Law College, Saharsa

Pt. Lecturer- KESHAV KUMAR SHRIVASTAVA

L.L.B Part- 1st

Subject- Banking Law

Paper- 8th

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Topic- What is Banking Law. Under what circumstances central government takes over the banking company.

Banking Law

Banking law is the broad term for laws that govern how banks and other financial institutions conduct business. Banks must comply with a myriad of federal, state and even local regulations. Lawyers perform a wide variety of functions that relate to creating, following and enforcing regulations.

Multiple federal agencies oversee banking regulations. A bank or other financial institution might fall under regulations of the Federal Deposit Insurance Corporation (FDIC), the Federal Reserve System or the Office of the Comptroller of the Currency (OCC). Banks must know what federal and state regulations they must comply with.

Circumstances central government takes over the banking company.

(1) If, upon receipt of a report from the Reserve Bank, the Central Government is satisfied that a banking company:

(a) has, on more than one occasion, failed to comply with the directions given to it in writing under section 21 or section 35A, in so far as such directions relate to banking policy, or

(b) is being managed in a manner detrimental to the interests of its depositors, and that-

(i) in the interests of the depositors of such banking company, or

(ii) in the interest of banking policy, or

(iii) for the better provision of credit generally or of credit to any particular section of the community or in any particular area, it is necessary to acquire the undertaking of such banking company, the Central Government may, after such consultation with the Reserve Bank as it thinks fit, by notified order, acquire the undertaking of such company [hereinafter referred to as the acquired bank) with effect from such date as may be specified in this behalf by the Central Government (hereinafter referred to as the appointed day):

PROVIDED that no undertaking of any banking company shall be so acquired unless such banking company has been given a reasonable opportunity of showing cause against the proposed action.

Explanation : In this Part:

(a) "notified order" means an order published in the Official Gazette;

(b) "undertaking", in relation to a banking company incorporated outside India , means the undertaking of the company in India .

(2) Subject to the other provisions contained in this part, on the appointed day, the undertaking of the acquired bank and all the assets and liabilities of the acquired bank shall stand transferred to, and vest in, the Central Government.

(3) The undertaking of the acquired bank and its assets and liabilities shall be deemed to include all rights, powers, authorities and privileges and all property whether movable or immovable, including, in particular, cash balances, reserve funds, investments, deposits and all other interests and rights in, or arising out of, such property as may be in the possession of, or held, by the acquired bank immediately before the appointed day and all books, accounts and documents relating thereto, and shall also be deemed to include all debts, liabilities and obligations, of whatever kind, then existing of the acquired bank.

(4) Notwithstanding anything contained in sub-section (2), the Central Government may, if it is satisfied that the undertaking of the acquired bank and its assets and liabilities should, instead of vesting in the Central Government, or continuing to so vest, vest in a company established under any scheme made under this part or in any corporation (hereinafter in this Part and in the Fifth Schedule referred to as the transferee bank) that government may, by order, direct that the said undertaking, including the assets, and liabilities thereof, shall vest in the transferee bank either on the publication of the notified order or on such other date as may be specified in this behalf by the Central Government.

(5) Where the undertaking of the acquired bank and the assets and liabilities thereof vest in the transferee bank under sub-section (4), the transferee bank, shall, on and from the date of such vesting, be deemed to have become the transferee of the acquired bank and all the rights and

liabilities in relation to the acquired bank shall, on and from the date of such vesting, be deemed to have been the rights and liabilities of the transferee bank.

(6) Unless otherwise expressly provided by or under this Part, all contracts, deeds, bonds, agreements, powers of attorney, grants of legal representation and other instruments of whatever nature subsisting or having effect immediately before the appointed day and to which the acquired bank is a party or which are in favor of the acquired bank shall be of as full force and effect against or in favor of the Central Government, or as the case may be, of the transferee bank and may be enforced or acted upon as fully and effectually as if in the place of the acquired bank the Central Government or the transferee bank had been party thereto or as if they had been issued in favor of the Central Government or the transferee bank, as the case may be.

(7) If, on the appointed day, any suit, appeal or other proceeding of whatever nature is pending by or against the acquired bank, the same shall not abate, be discontinued or be, in any way, prejudicially affected by reason of the transfer of the undertaking of the acquired bank or of anything contained in this Part, but the suit, appeal or other proceeding may be continued, prosecuted and enforced by or against the Central Government or the transferee bank, as the case may be.

The End