

HOUSE OF THE PEOPLE

THE BANKING COMPANIES (AMENDMENT) BILL, 1949

(REPORT OF THE SELECT COMMITTEE)



**PARLIAMENT SECRETARIAT
NEW DELHI.**

Feb, 1950

List of Reports of Select Committees presented
to Parliament in 1950.

S.No.	Short title of the Bill.	Date of presen- tation.	Date of publicat- ion.
1.	The Industrial Disputes (Appellate Tribunal) Bill, 1949.	10.2.50	25.2.50
2.	The Mines Bill, 1949.	10.2.50	25.2.50
3.	The Industries (Development and Control) Bill, 1949.	10.2.50	25.2.50
4.	The Banking Companies (Amendment) Bill, 1949.	16.2.50	25.2.50
5.	The Army Bill, 1949.	21.3.50	1.4.50
6.	The Air Force Bill, 1949.	21.3.50	1.4.50
7.	The Insurance (Amendment) Bill, 1949.	24.3.50	1.4.50
8.	The Finance Bill, 1950.	27.3.50	1.4.50
9.	The Road Transport Corporations Bill, 1949.	15.11.50	18.11.50
10.	The Labour Relations Bill, 1950.	1.12.50	16.12.50
11.	The Trade Unions Bill, 1950.	1.12.50	16.12.50
12.	The Reserve Bank of India (Amendment) Bill, 1950.	13.12.50	23.12.50

THE BANKING COMPANIES (AMENDMENT) BILL, 1949.

REPORT OF SELECT COMMITTEE

We, the undersigned, members of the Select Committee, to which the Bill to amend the Banking Companies Act, 1949, was referred, have considered the Bill and have now the honour to submit this our Report with the Bill as amended by us annexed thereto.

Clauses 1 to 5.—Amendments of a formal nature have been made in these clauses.

Clause 6.—This clause has now become unnecessary and has been omitted, the remaining clauses being renumbered accordingly.

Clause 8 (old clause 9).—In our opinion, amalgamation would be difficult if a scheme in respect thereof has to receive the support of a majority of shareholders representing two-thirds in value of the paid-up capital of each of the banking companies concerned, and we have, therefore, recast this clause in conformity with the language employed in section 158 of the Indian Companies Act, 1913. In order to ensure that the scheme of amalgamation is arrived at after proper notice, we have modified sub-clause (2), so that full publicity is given to notices calling for meetings.

In our opinion, the value of the shares of dissenting shareholders should be fixed with the least possible delay and that it should be done by the Reserve Bank when sanctioning the scheme. To leave this matter to be settled by negotiations in the first instance might lead to undesirable consequences in certain cases.

We are also of opinion that a provision on the lines of section 158A(2) of the Indian Companies Act, 1913, should be inserted in the Bill providing for the automatic transfer of all properties and liabilities of the amalgamated banking company to the transferee company. Otherwise, a scheme of amalgamation, although sanctioned, may be unnecessarily delayed pending settlement of minor details.

Clause 10 (old clause 11).—We have added two new clauses, namely, 45G and 45H, on the lines of sections 246 and 199 of the Indian Companies Act, 1913, providing for the making of rules by High Courts for the purpose of regulating proceedings before them and for the enforcement of orders passed by them.

2. The Bill was published in Part V of the *Gazette of India*, dated the 24th December, 1949.

3. We think that the Bill has not been so altered as to require circulation, and we recommend that it be passed as now amended.

JOHN MATTHAI.
B. L. SONDHI.
T. A. RAMALINGAM CHETTIAR.
M. THIRUMALA RAO.
P. D. HIMATSINGKA.
JASPAT ROY KAPOOR.
S. M. GHOSE.
U. N. BARMAN.
U. SRINIVASA MALLAYYA.
M. ANANTHASAYANAM AYYANGAR.

NEW DELHI;
The 16th February, 1950.

THE BANKING COMPANIES (AMENDMENT) BILL, 1949.

[AS AMENDED BY THE SELECT COMMITTEE.]

(Words side-lined or under-lined indicate the amendments suggested by the Committee; asterisks indicate omissions.)

▲ BILL

to amend the Banking Companies Act, 1949.

* * * * *

Be it enacted by Parliament as follows:—

1. Short title.—This Act may be called the Banking Companies (Amendment) Act, 1950.

2. Amendment of section 1, Act X of 1949.—In the Banking Companies Act, 1949 (hereinafter referred to as the said Act), for sub-section (2) of section 1, the following shall be substituted, namely:—

“(2) It extends to the whole of India except the State of Jammu and Kashmir”.

3. Substitution of “Outside India” for “elsewhere than in a State of India”, etc., in certain sections of Act X of 1949.—In the said Act, wherever an expression mentioned in the first column of the Table hereinunder printed occurs, * * * unless that expression is expressly directed to be otherwise amended in this Act, there shall be substituted therefor the expression set opposite to it in the second column of that Table.

TABLE.

1	2
in a State of India in any State of India in the States of India	} in India.
elsewhere than in a State of India outside the States of India	} outside India.

4. Amendment of section 3, Act X of 1949.—In section 3 of the said Act, for the word “State”, the word “part” shall be substituted.

5. Amendment of section 5, Act X of 1949.—In section 5 of the said Act, after clause (g) of sub-section (1), the following clause shall be inserted, namely:—

“(gg) ‘India’ means the * * States to which this Act extends;”.

* * * * *

6. Amendment of section 23, Act X of 1949.—In section 23 of the said Act, for the words “No banking company shall open a new place of business or change, otherwise than within the same city, town or village, the location of

an existing place of business without obtaining the prior permission in writing of the Reserve Bank", the following words shall be substituted, namely:—

"No banking company shall open a new place of business in any part of India or change, otherwise than within the same city, town or village, the location of an existing place of business situated in any part of India, and 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 without first obtaining the prior permission in writing of the Reserve Bank:—".

7. Amendment of section 25, Act X of 1949.—In section 25 of the said Act, for cause (a) of sub-section (3), the following clause shall be substituted, namely:—

"(a) "assets in India" shall be deemed to include export bills drawn in, and import bills drawn on and payable in, India and expressed in such currencies as the Reserve Bank may from time to time approve in this behalf and also such securities as the Reserve Bank may approve in this behalf, notwithstanding that all or any of the said bills or securities are held outside India:—".

8. Insertion of new section 44A in Act X of 1949.—After section 44 of the said Act, the following section shall be inserted, namely:—

"44A. Procedure for amalgamation of banking companies.—(1) Notwithstanding anything contained in any law for the time being in force, 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.

(2) Notice of every such meeting as is referred to in sub-section (1) shall be given to every shareholder of each of the banking companies concerned in accordance with the relevant articles of association, indicating the time, place and object of the meeting, and shall also be published at least once a week for three consecutive weeks in not less than two newspapers which circulate in the locality or localities where the registered offices of the banking companies concerned are situated, one of such newspapers being in a language commonly understood in the locality or localities.

(3) Any shareholder, who has voted against the scheme of amalgamation at the meeting or has given notice in writing at or prior to the meeting to the company concerned or to the presiding officer of the meeting that he dissent from the scheme of amalgamation, shall be entitled, in the event of the scheme being sanctioned by the Reserve Bank, to claim from the banking company concerned, in respect of the shares held by him in that company, their * * * value as determined by the Reserve Bank and the decision of the Reserve Bank * * * * as to the value of the shares to be paid to the dissenting shareholder shall be final for all purposes.

(4) If the scheme of amalgamation is approved by the requisite majority of shareholders in accordance with the provisions of this section, 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 concerned and also on all the shareholders thereof.

(5) Where a scheme of amalgamation is sanctioned by the Reserve Bank under the provisions of this section, the Reserve Bank shall transmit a copy of the order sanctioning the scheme to the registrar before whom the banking companies concerned have been registered, and the registrar shall, on receipt of any such order, strike off the name of the company (hereinafter in this section referred to as the amalgamated banking company) which by reason of the amalgamation will cease to function.

(6) On the sanctioning of a scheme of amalgamation by the Reserve Bank, the property of the amalgamated banking company shall, by virtue of the order of sanction, be transferred to and vest in, and the liabilities of the said company shall, by virtue of the said order be 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, subject in all cases to the terms of the order sanctioning the scheme."

9. Substitution of new section for section 45, Act X of 1949.—For section 45 of the said Act, the following section shall be substituted, namely:—

"45. *Restriction on compromise or arrangement between banking company and creditors.*—Notwithstanding anything contained in any law for the time being in force, no court shall sanction a compromise or arrangement between a banking company and its creditors or any class of them or between such company and its members or any class of them unless the compromise or arrangement is certified by the Reserve Bank as not being detrimental to the interests of the depositors of such company."

10. Insertion of new Part IIIA in Act X of 1949.—In the said Act, after Part III, the following shall be inserted as Part IIIA, namely:—

"PART IIIA

SPECIAL PROVISIONS FOR SPEEDY DISPOSAL OF WINDING UP PROCEEDINGS

45A. Court defined.—In this Part and in Part III, "Court" means the High Court exercising jurisdiction in the place where the registered office of the banking company which is being wound up is situated or, in the case of a banking company incorporated outside India which is being wound up, where its principal place of business is situated, and notwithstanding anything to the contrary contained in the Indian Companies Act, 1913 (VII of 1913), or in any notification, order or direction issued thereunder or in any other law for the time being in force, no other court shall have jurisdiction to entertain any matter relating to or arising out of the winding up of a banking company.

45B. Power of Court to decide all claims by or against banking companies.—(1) Notwithstanding anything to the contrary contained in the Indian Companies Act, 1913 (VII of 1913), or in any other law for the time being in force, the Court shall have full power to decide all claims made by or against any banking company (including claims by or against any of its branches in India) and all questions of priorities and all other questions whatsoever, whether of law or fact, which may relate to or arise in the course of the winding up of the banking company coming within the cognisance of the Court.

(2) There shall be a right of appeal from every order or decision made under this section which, so far as regards the Court expressing it, conclusively determines the rights of the parties with respect to any matter in controversy, and the Court may make rules prescribing the manner in which and the conditions subject to which any such appeal may be filed and heard.

(3) Subject to the provisions of sub-section (2) and notwithstanding anything contained in any other law for the time being in force, every such order or decision shall be final and binding for all purposes as between, on the one hand, the banking company and, on the other hand, all persons who are parties thereto and all persons claiming through or under them or any of them.

45C. Special provisions for punishing offences in relation to companies being wound up.—(1) Notwithstanding anything to the contrary contained in the Indian Companies Act, 1913 (VII of 1913), the Code of Criminal Procedure, 1898 (Act V of 1898), or in any other law for the time being in force, the Court may, if it thinks fit, take cognizance of and try in a summary way any offence alleged to have been committed by any person who has taken part in the formation or promotion of the banking company which is being wound up or any past or present director, manager or officer thereof:

Provided that the offence is one punishable under the Indian Companies Act, 1913 (VII of 1913), with imprisonment for a term which does not exceed two years, or with fine which does not exceed one thousand rupees.

(2) In every case tried summarily under sub-section (1), the Court—

(a) need not summon any witness, if it is satisfied that the evidence of such witness will not be material,

(b) shall not be bound to adjourn a trial for any purpose unless such adjournment is, in the opinion of the Court, necessary in the interests of justice,

(c) shall, before passing sentence, record judgment embodying the substance of the evidence and also the particulars specified in section 268 of the Code of Criminal Procedure, 1898 (Act V of 1898), so far as that section may be applicable,

and nothing contained in sub-section (2) of section 262 of the Code of Criminal Procedure, 1898, shall apply to any such trial.

(3) All offences in relation to winding up alleged to have been committed by any person specified in sub-section (1) which are punishable under the Indian Companies Act, 1913 (VII of 1913), and which are not tried in a summary way under sub-section (1) shall, notwithstanding anything to the contrary contained in that Act or the Code of Criminal Procedure, 1898 (Act V of 1898), or in any other law for the time being in force, be taken cognizance of and tried by a Judge of the Court other than the Judge for the time being dealing with the proceedings for the winding up of the banking company.

(4) Notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1898 (Act V of 1898), the Court shall take cognizance of any offence under this section without the accused being committed to it for trial and all such trials shall be without the aid of a jury.

*45D. Reserve Bank may tender advice in winding up proceedings.—*Where in any proceeding for the winding up of a banking company in which any person other than the Reserve Bank has been appointed as the official liquidator the Court has directed the official liquidator to obtain

the advice of the Reserve Bank on any matter (which it is hereby empowered to do), it shall be lawful for the Reserve Bank to examine the records of any such proceeding and tender such advice on the matter as it may think fit.

45E. District magistrate to assist official liquidator in taking charge of property of banking company being wound up.—(1) For the purpose of enabling the official liquidator to take into his custody or under his control, all property, effects and actionable claims to which a banking company, which has been ordered to be wound up, is or appears to be entitled, the official liquidator may request in writing the district magistrate, within whose jurisdiction any property, books of account or other document of such banking company may be situate or is to be found, to take possession thereof, and the district magistrate shall, on such request being made to him, take possession of such property, books of account or other document and forward them to the official liquidator.

(2) For the purpose of securing compliance with the provisions of sub-section (1), 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.

45F. Special period of limitation.—Notwithstanding anything to the contrary contained in the Indian Limitation Act, 1908 (IX of 1908), or in any other law for the time being in force, in computing the period of limitation prescribed for any suit or application by a banking company, the period of one year immediately preceding the date of the order for the winding up of the banking company shall be excluded.

45G. Power of Court to make rules.—The Court may make rules consistent with this Act concerning the mode of proceedings to be had for the decision of all claims or questions and all other proceedings, whether civil or criminal, which are to be decided pursuant to the provisions of Part III or Part IIIA and concerning all other matters for which provision has to be made for enabling the Court to effectively exercise its functions under the said provisions.

45H. Power of Court to enforce orders.—All orders made in any civil proceeding by a Court exercising jurisdiction under Part III or Part IIIA may be enforced in the same manner in which decrees of such Court made in any suit pending therein may be enforced."

11. Transfer of pending proceedings in winding up to the Court exercising jurisdiction under this Act.—Where any proceeding for the winding up of a banking company or any other proceeding, whether civil or criminal, which has arisen out of or in the course of such winding up, is pending in any court immediately before the commencement of this Act, it shall stand transferred on such commencement to the Court which would have had jurisdiction to entertain such proceeding if this Act had been in force on the date on which the proceeding commenced, and the Court to which the proceeding stands so transferred shall dispose of the proceeding as if this Act and the amendments made thereby were applicable thereto.

12. Repeal of Ordinance XXIII of 1949.—(1) The Banking Companies (Amendment) Ordinance, 1949, is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken in the exercise of any power conferred by or under the said Ordinance shall be deemed to have been done or taken in the exercise of the powers conferred by or under this Act, as if this Act were in force on the day on which such thing was done or action was taken.

PARLIAMENT OF INDIA

Report of the Select Committee on the Banking Companies
(Amendment) Bill, 1949; with the Bill as amended.
