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Banking Companies Ordinance (LVII of 1962)**THE BANKING COMPANIES ORDINANCE, 1962****¹ORDINANCE No. LVII OF 1962**

[7th June, 1962]

An Ordinance to consolidate and amend the law relating to banking companies

WHEREAS it is expedient to consolidate and amend the law relating to banking companies;

NOW, THEREFORE, in pursuance of the Proclamation of the seventh day of October, 1958, and in exercise of all powers enabling him in that behalf, the President is pleased to make and promulgate the following Ordinance :—

Part I
PRELIMINARY

1. Short title, extent and commencement.—(1) This Ordinance may be called the Banking Companies Ordinance, 1962.

(2) It extends to the whole of Pakistan.

(3) It shall come into force at once.

2. Application of other laws not barred. The provisions of this Ordinance shall be in addition to, and not, save as hereinafter expressly provided, in derogation of, the Companies Act, 1913 (VII of 1913), and any other law for the time being in force.

3. [Limited application of Ordinance to Co-operative Banks.] Omitted by the Establishment of the Federal Banks for Cooperatives and Regulation of Cooperative Banking Act, 1977 (IX of 1977) s.48 (w.e.f. 9-10-1976).

*** 2[3A. Limited application of Ordinance to certain financial institutions.**—(1) The provisions of sections 6, **3**[13], 25, 25A, 25AA, 29, 31, 32, 33, 40, 41, 41A, 41B, 41C, 41D, 42, **4**[47, 48], 49, 51, 58, 83, 84 and 94 of this Ordinance shall, with such modification as the State Bank may determine from time to time in relation to activities which have implications for the monetary or credit policies of the State Bank, apply to the Pakistan industrial credit and investment corporation, the National Development Finance Corporation, the Bankers Equity Limited, the Pak-Libya Holding Company Limited, the Pakistan Kuwait Investment Company Limited, the Saudi-Pak Industrial and Agricultural Investment Company Limited, Pak-Oman Investment Company (Pvt) Limited, and such other companies, corporations or institutions or class of companies, corporations or institutions, as the Federal Government may from time to time, by notification in the official Gazette, specify in this behalf.”

^{*}HBFC is declared as Financial Institution for application of provision of section 3A of this Banking Company Ordinance, 1962, vide SRO 14(KE)/2005.

¹The Ordinance and the rules, notification and orders made thereunder, as in force in N.W.F.P. before the 15th July, 1975, have been applied to the Districts of Chitral, Dir, Swat and Malakand Protected Areas of the N.W.F.P. by Regulation No. III of 1975, s.2 and the Sch.

The Ordinance and the rules, notifications and orders made thereunder, have been applied to the whole of the Federally Administered Tribal Areas or to the parts of those Areas to which they do not already apply, by Regulation No. I of 1975, s.2 and the Sch.

²Subs. by Act.XIV of 1997,s.2.

³Ins. by Ord. 48 of 2000,s.2.

⁴Ins. by Ord.47 of 01, s.2.

(2) All notifications issued by the Federal Government which are inconsistent with the provisions of sub-section (1) including such notifications in respect of the National Development Leasing Corporations, Leasing Companies and Modaraba Companies shall stand rescinded with immediate effect.].

4. Power to suspend operation of Ordinance.—(1) The ¹[Federal Government], if on a representation made by the State Bank in this behalf is satisfied that it is expedient so to do, may by notification in the Official Gazette suspend for such

period, not exceeding sixty days, as may be specified in the notification, the operation of all or any of the provisions of this Ordinance, either generally or in relation to any specified banking company.

(2) The ¹[Federal Government] may, by notification in the official Gazette, extend from time to time, the period of any suspension under sub-section (1) for such period or periods, not exceeding sixty days at any one time, as it thinks fit so however that the total period does not exceed one year.

(3) A copy of any notification issued under this section shall be laid on the table of the Central Legislature—

- (i) if it is in session, within three days of the issue of the notification; and
- (ii) if it is not in session, as soon as it meets after the issue of the notification.

5. Definitions. In this Ordinance, unless there is anything repugnant in the subject or context,—

²**(a)** “approved securities” means the ³[* * *] securities in which a trustee may invest money under clause (a), clause (b), clause (bb), clause (c) or clause (d) of section 20 of the Trust Act, 1882 (II of 1882), and for the purpose of—

- (i) sub-section ⁴[(2)] of section 13, includes such other securities as the Federal Government may, by notification in the official Gazette, declare to be approved securities for the purpose of that subsection; and
- (ii) sub-section (1) of section 29, includes such types of Pakistan rupee obligations of the Federal Government of a Provincial Government of a Corporation wholly owned or controlled, directly or indirectly, by the Federal Government or a Provincial Government and guaranteed

¹Subs. by Act 30 of 1972, s.23 (w.e.f. 13-10-1972), for “Central Government”.

²Subs. by the Banking Companies (Third Amdt.) Ordinance, 1980 (58 of 1980), s.2, for cl.(a), which was previously amended by various enactments.

³Omitted by Ord. III of 2002, sec. 3.

⁴Subs. by Ord. 48 of 2000, s. 3.

by the Federal Government as the Federal Government may, by notification in the official Gazette, declare, to the extent determined from time to time, to be approved securities for the purpose of that sub-section;]

(b) “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;

(c) “banking company” means any company which transacts the business of banking in Pakistan ¹[and includes their branches and subsidiaries functioning outside Pakistan of banking companies incorporated in Pakistan;]

Explanation.— 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 within the meaning of this clause;

(d) “branch” or “branch office”, in relation to a banking company, means any branch or branch office, whether called a pay office or sub-pay office or by any other name, at which deposits are received, cheques cashed or moneys lent, and for the purposes of section 40 includes any place of business where any other form of business referred to in sub-section (1) of section 7 is transacted;

²**[(dd)** “creditor” includes persons from whom deposits have been received on the basis of participation in profit and loss and a banking company or financial institution from which financial accommodation or facility has been received on the basis of participation in profit and loss, mark-up in price, hire-purchase, lease, or otherwise;]

(e) “company” means any company which may be wound up under the Companies Act, 1913 (VII of 1913) ¹[and includes a branch of a foreign banking company doing banking business in Pakistan under a licence issued by the State Bank in this behalf;]

³**[(ee)** “debtor” includes a person to whom or a banking company or financial institution to which, finance as defined in the Banking Tribunals Ordinance 1984, has been provided;]

- (f) “demand liabilities” means liabilities which must be met on demand, and “time liabilities” means liabilities which are not demand liabilities;
- ⁴[(ff) “family members” in relation to a person means his spouse, dependent lineal ascendants and descendants and dependent brothers and sisters;]
- ¹[(ffa) “foreign banking company” means a banking company, not incorporated in Pakistan, which has a branch or branches doing banking business in Pakistan under a licence issued by State Bank in this behalf;]

¹Added and ins. by Act IV of 07, s. 4 (w.e.f. 1-7-07).

²New cl. (dd) ins. by the Banking Companies (Third Amdt.) Ordinance, 1980 (58 of 1980), s. 2.

³Subs. by the Banking and Financial Services (Amendment of Law) Ordinance, 1984 (57 of 1984), s. 2 and sch., for cl. (ee), which was previously ins. by Ord. No. 58 of 1980, s. 2.

⁴Cl. (ff) ins. by the Banking Companies (Amdt.) Act, 1972 (30 of 1972), s. 3 (w.e.f. 13-10-1972).

- (g) “gold” includes gold in the form of coin, whether legal tender or not, or in the form of bullion or ingot, whether refined or not;
- ¹[(gg) “loans, advances, and credit” includes “finance” as defined in the Banking Tribunals Ordinance, 1984;]
- (h) “managing director”, in relation to a banking company, means a director who, by virtue of an agreement with the banking company or of a resolution passed by the banking company in general meeting or by its Board of Directors or, by virtue of its memorandum or articles of association, is entrusted with the management of the whole, or substantially the whole of the affairs of the company, and includes a director occupying the position of a managing director, by whatever name called;
- (i) “prescribed” means prescribed by rules made under this Ordinance;
- (j) “private company” has the same meaning as in the Companies Act, 1913 (VII of 1913);
- (k) “registrar” has the same meaning as in the Companies Act, 1913 (VII of 1913);
- (l) “scheduled bank” has the same meaning as in the State Bank of Pakistan Act, 1956 (XXXIII of 1956);
- (m) “secured loan or advance” means 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, and “unsecured loan or advance” means a loan or advance not so secured, or that part of it which is not so secured;
- ²[(mm) “securities” includes securities as defined in the Capital Issues (Continuance of Control) Act, 1947 (XXIX of 1947);]
- (n) “State Bank” means the State Bank of Pakistan [;]³

¹Subs. by the Banking and Financial Services (Amdt.) of Law Ordinance 1984 (57 of 1984), s.2 and Sch., for cl. (gg), which was previously ins. by Ordinance 58 of 1980, s.2.

²New Cl. (mm) ins. by the Banking companies (Third Amdt.) Ordinance 1980 (58 of 1980) s.2.

³Subs. by the Banking Companies (Amdt.) Act, 1972 (30 of 1972), s.3, for the full-stop (w.e.f. 13-10-1972).

- ¹[(o) “substantial interest” in an undertaking shall be deemed to be possessed by a person if he or any of his family members is the owner, director or officer of or has control over the undertaking or if he or any of his family members holds shares carrying not less than twenty per cent of the voting power in such undertaking;
- Explanation.— For the purpose of this clause,—
- (i) “control” , in relation to an undertaking, means the power to exercise a controlling influence over the management or the policies of the undertaking, and, in relation to shares, means the power to exercise a controlling influence over the voting power attached to such shares;
- (ii) “person” includes a Hindu undivided family, a firm, an association or body of individuals, whether incorporated or not, a company and every other juridical person; and
- (iii) “undertaking” means any concern, institution, establishment or enterprise engaged in the production, supply or distribution of goods, or in the provision or control of any services relating to the provision of

board, lodging, transport, entertainment or amusement, or of facilities in connection with the supply of electrical or other energy, or to the purveying of news, insurance or investment.].

6. Ordinance to override memorandum, articles, etc. Save as other wise expressly provided in this Ordinance,-

- (a) the provisions of this Ordinance shall have effect notwithstanding anything to the contrary contained in the memorandum or articles of a banking company, or in any agreement executed by it, or in any resolution passed by the banking company in general meeting or by its Board of Directors, whether the same be registered, executed or passed, as the case may be, before or after the commencement of this Ordinance; and
- (b) any provision contained in the memorandum, articles, agreement or resolution aforesaid shall, to the extent to which it is repugnant to the provisions of this Ordinance, become or be void, as the case may be.

¹Cl. (o) added *ibid.*,

Part II

BUSINESS OF BANKING COMPANIES

7. Forms of business in which Banking companies may engage.—(1) In addition to the business of banking, a banking company may engage in 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; the drawing, making, accepting, discounting, buying, selling, collecting and dealing in bills of exchange, hoondees, promissory notes, coupons, drafts, bills of lading, railway receipts, warrants, debentures, certificates, scrips ¹[participation term certificates, term finance certificates, musharika certificates, modaraba certificates and such other instruments as may be approved by the State Bank] and other instruments, and securities whether transferable or negotiable or not; the granting and issuing of letters of credit, traveller's cheques and circular notes; the buying, selling and dealing in bullion species; 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 ¹[participation term certificates, term finance certificates, musharika certificates, modaraba certificates and such other instruments as may be approved by the State Bank] and investment of all kinds; the purchasing and selling of bonds, scrips or other forms of securities ¹[participation term certificates, term finance certificates, musharika certificates, modaraba certificates and such other instruments as may be approved by the State Bank] on behalf of constituents or others, the negotiating of loans 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;
- ¹[(aa) the providing of finance as defined in the Banking Tribunals Ordinance, 1984].
- (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 treasurer of a company;

¹Ins. by the Banking and Financial Services (Amendment of Laws) Ordinance, 1984 (57 of 1984), s. 2 and sch.,

¹[(bb) acting as “modaraba company” under the provisions of the Modaraba Companies and Modaraba (Floatation and Control) Ordinance, 1980 (XXXI of 1980);]

- (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, Government, municipal or other loans or of shares, stock, debentures, 2[debenture stock or other securities] 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;
- ³[(ee) purchase or acquisition in the normal course of its banking business of any property, including commodities, patents, designs, trade-marks and copyrights with or without buy-back arrangements by the seller, or for sale in the form of hire-purchase or on deferred payment basis with mark-up or for leasing or licensing or for rent-sharing or for any other mode of financing].
- (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 trust;
- (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 pensions and allowances and making payments towards insurance; subscribing to or guaranteeing moneys for charitable or benevolent objects or for any exhibition or for any public, general or useful object;

¹New Clause (bb) inserted by the Banking Companies (Third Amendment) Ordinance, 1980 (58 of 1980), s.3.

²Sub. *ibid.*, for "or debenture stock".

³Subs. by the Banking and Financial Services (Amdt. of Law) Ordinance 1984, (57 of 1984) s. 2 and Sch., for cl. (ee), which was previously ins. by Ordinance No. 58 of 1980, s. 3.

- (k) the acquisition, construction, maintenance and alteration of any building or works necessary or convenient for the purposes 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) acquiring and undertaking the whole or any part of the business of any person or company, when such business is of a nature enumerated or described in this sub-section;
- (n) 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 ¹[State Bank by circular], specify as a form of business in which it is lawful for a banking company to engage.

(2) No banking company shall engage in any form of business other than those referred to in sub-section (1).

8. Use of the word "Bank" or any of its derivatives. ²[Every company] carrying on the business of banking in Pakistan shall use the word "bank", or any of its derivatives as part of its name and no company other than a banking company shall use in its name any word calculated to indicate that it is a banking company:

Provided that nothing in this section shall apply to-

- (a) subsidiary of a banking company formed for one or more of the purposes mentioned in sub-section (1) of section 23 whose name indicates that it is a subsidiary of that banking company; and
- (b) any association of banks formed for the protection of their mutual interests and registered under section 24 of the Companies Ordinance 1984 [:]³

⁴[Provided further that the ⁵[State Bank] may, subject to such conditions, if any, as it may deem fit, by notification in the Official Gazette, authorise a company ⁶* * not being a banking company, to use in its name the word

“bank” or any of its derivatives.].

¹Subs. by Act IV of 2007, s. 4 (w.e.f. 1-7-07).

²Subs. by the Federal Laws (Revision and Declaration) Ordinance, 1981 (27 of 1981), s. 3 and Sch. II, for certain words.

³Subs. by the Banking Companies (Amdt.) Act, 1975 (65 of 1975), s.2 (w.e.f. 29-8-1975), for full-stop.

⁴Added *ibid*.

⁵Subs. by Act XIV of 1997, s. 3.

⁶The words “wholly or partly owned or controlled by it or by the State Bank: omitted by the Finance Act, 1990 (7 of 1990), s. 4A which was previously amended by Ord. 35 of 1979, s. 2.

¹[9. Prohibition of trading. Except as authorised under section 7, no banking company shall directly or indirectly deal in the buying or selling or bartering of goods 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.

Explanation.—For the purpose of this section, “goods” means every kind of movable property, other than actionable claims, stocks, shares, money, bullion and specie, and all instruments referred to in clause (a) of sub-section (1) of section 7.]

10. Disposal of non-banking assets. Notwithstanding anything contained in section 7, no banking company shall ²[except as may be permitted by the State Bank from time to time or as is required by for its own use, hold any immovable property howsoever acquired], for any period exceeding seven years from the acquisition thereof or from the commencement of this Ordinance, 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:

Provided that the Banking company may, within the period of seven years as aforesaid, deal or trade in any such property for the purpose of facilitating the disposal thereof:

Provided further that the State Bank may in any particular case extend the aforesaid period of seven years by such period not exceeding five years where it is satisfied that such extension would be in the interests of the depositors of the banking company.

Explanation. For the purpose of this section property, a substantial portion of which is in use by banking company for its own genuine requirements shall be deemed to be property for its own use.

11. Prohibition of employment of managing agents and restrictions on certain forms of employment.—(1) No banking company—

(a) shall employ or be managed by a managing agent; or

(b) shall employ or continue the employment of any person—

(i) 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

(ii) whose remuneration or part of whose remuneration takes the form of commission of a share in the profits of the company:

Provided that nothing contained in sub-clause (ii) shall apply to the payment by a banking company of—

¹Subs. by the Banking Companies (Third Amdt.) Ordinance, 1980 (58 of 1980), s. 4, for section 9.

²Subs. by the Banking and Financial Services (Amendment of Laws) Ordinance, 1984 (57 of 1984), s. 2 and sch., for certain words.

(a) any bonus in pursuance of a settlement or award arrived at or made under any law relating to industrial disputes or in accordance with any scheme framed by such banking company or in accordance with the usual practice prevailing in banking business; or

(b) any commission to any broker (including guarantee broker), cashier-contractor, clearing and forwarding agent, auctioneer or any other person, employed by the banking company under a contract otherwise than as a regular member of the staff of the company; or

(c) shall be managed by any person—

- (i) who is a director of any other company not being a subsidiary company of the banking company or a company registered under section 26 of the Companies Act, 1913 except with the previous approval of the State Bank; or
- (ii) who is engaged in any other business or vocation; or
- (iii) who has a contract with the company for its management for a period exceeding five years at any one time:

Provide that any contract with the company for its management may be renewed or extended for a further period not exceeding five years at a time if and so often as the directors so decide:

Provided further that nothing in this clause shall apply to a director, other than the managing director, of a banking company by reason only of his being such director.

(2) Where a person holding the office of a chairman of director or manager or chief executive officer (by whatever name called) of a banking company is, or has been found by any tribunal or other authority (other than a criminal court) to have contravened the provision of any law and the State Bank is satisfied that the contravention is of such a nature that the association of such person with the banking company is or will be detrimental to the interests of the banking company or its depositors or otherwise undesirable, the State Bank may make an order that that person shall cease to hold the office with effect from such date as may be specified therein and thereupon, that office shall, with effect from the said date, become vacant.

(3) Any order made under sub-section (2) in respect of any person may also provide that he shall not, without the previous permission of the State Bank in writing, in any way, directly or indirectly, be concerned with, or take part in the management of, the banking company or any other banking company for such period not exceeding five years as may be specified in the order.

(4) No order under sub-section (2) shall be made in respect of any person unless he has been given an opportunity of making a representation to the State Bank against the proposed order:

Provided that it shall not be necessary to give any such opportunity if, in the opinion of the State Bank, any delay would be detrimental to the interests of the banking company or its depositors.

(5) Any decision or order of the State Bank made under this section shall be final for all purposes.

12. Restrictions on removal of records and documents. No banking company shall remove from Pakistan to a place outside Pakistan, any of its records and documents relating to its business at its branches, whether they are functioning or not, without the prior permission in writing of the State Bank.

Explanation.— In this section the term “records” means ledgers, day-books, cash books, accounts books and all other books used in the business of a banking company and the term “documents” means vouchers, cheques, bills, pay orders, securities for advances and any other documents supporting entries in the books of, or claims by or against, a banking company.

¹[13. Requirement as to minimum paid-up capital and reserves.—(1) Subject to sub-section (2) no banking company shall—

- (a) commence business unless it has a minimum paid-up capital as may be determined by the State Bank; or
- (b) carry on business unless the aggregate of its capital and unencumbered general reserves is of such minimum value within such period as may be determined and notified by the State Bank from time to time for banking companies in general or for a banking company in particular.

(2) No banking company incorporated outside Pakistan shall be deemed to have complied with the provisions of sub-section (1) unless it deposits, and keeps deposits, with the State Bank an amount by transfer of funds from outside Pakistan or in the form of assets acquired out of remittable profits made by it from deposits in Pakistan which is not less than what is required to be maintained under sub-section (1), in any one or more of the following forms, namely:—

- (i) interest-free deposit in cash in Pakistan rupees;
- (ii) interest-free deposit in a freely convertible approved foreign exchange within the meaning of the State Bank of Pakistan Act, 1956 (XXXIII of 1956), specified by the State Bank in respect of such banking company; and
- (iii) deposit of un-encumbered approved securities.

¹Subs. by Ord. 48 of 2008, s. 4.

(iii) deposit of un encumbered approved securities.

(3) Without prejudice to the provisions of section 83, the State Bank may, by order in writing, require any banking company which has failed to comply with the provisions of clause (b) of sub-section (1) within the period determined and notified under that clause to deposit with the State Bank such amount not exceeding the amount by which the aggregate value of the capital and unencumbered general reserves of such banking company falls short of the minimum amount of the aggregate of the capital and unencumbered general reserves required to be maintained by such banking company pursuant to clause (b) of sub-section (1) on such terms and conditions as the State Bank may determine and every banking company which is so required shall be bound to comply with the order.

(4) Any amount deposited and kept deposited with the State Bank under sub-section (2) by any banking company incorporated outside Pakistan shall, in the event of the banking company ceasing for any reason to carry on banking business in Pakistan, be an asset of the banking company on which the claims of all the creditors of the banking company in Pakistan shall be the first charge.

(5) If any dispute arises in computing the aggregate value of the capital and unencumbered general reserves of any banking company, a determination thereof by the State Bank shall be final.

Explanation.- For the purposes of this section, (a) the expression “value” means the real or exchangeable value or, if the real or exchangeable value exceeds the nominal value, the nominal value; and (b) the expression “capital and unencumbered general reserves” means paid-up capital and such other items as may be notified in this regard by the State Bank from time to time.]

14. Regulation of paid-up capital, subscribed capital and authorized capital and voting rights of share-holders.

—(1) No banking company incorporated in Pakistan shall carry on business in Pakistan unless it satisfies the following conditions, namely:-

- (i) that the subscribed capital of the company is not less than one half of the authorized capital and the paid-up capital is not less than one half of the subscribed capital and that if the capital is increased it complies with the conditions prescribed in this clause within such period not exceeding two years as the State Bank may allow;
- (ii) that the capital of the company consists of ordinary shares ¹[and perpetual non-cumulative preference shares] only;
- (iii) that, subject to the provisions contained in clause (iv), the voting rights of any one shareholder are strictly proportionate to the contribution made by him to the paid-up capital of the company;

¹Ins. by Act IV of 2007, s. 4 (w.e.f. 1-7-07).

(iv) that the voting rights of any one shareholder, except those of the ¹[Federal Government] or a Provincial Government, do not exceed five per cent of the total voting rights of all the shareholders.

(2) Notwithstanding anything contained in any law for the time being in force or in any contract or instrument no suit or other proceeding shall be maintained against any person registered as the holder of a share in a banking company on the ground that the title to the said share vests in a person other than the registered holder:

Provided that nothing contained in this sub-section shall bar a suit or other proceeding—

- (a) by a transferee of the share on the ground that he has obtained from the registered holder a transfer of the share in accordance with any law relating to such transfer; or
- (b) on behalf of a minor or a lunatic on the ground that the registered holder holds the share on behalf of the minor or lunatic.

(3) Every chairman, managing director or chief executive officer by whatever name called of a banking company shall furnish to the State Bank through that banking company 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 State Bank may, by order, require and in such form and at such time as may be specified in the order.

²[(4) The State Bank, if satisfied, may require any banking company, by an order in writing stating reasons, to increase its paid up capital by such amount and within such period as may be specified in the order and the State Bank shall exercise the power reasonably, fairly and justly.

(5) Notwithstanding any provision contained in any other law for the time being in force,

- (a) if the State Bank has determined that a person is holding or is a beneficial owner of five percent or more shares of a banking company without prior approval of the State Bank or a person that acquired shareholding with prior approval of the State Bank subsequently fails to meet the fit and proper test as the State Bank may, by an order in writing stating reasons, require such person to reduce, divest or transfer to a fit and proper person, his shareholding in the banking company within such reasonable period and in such manner as may be specified in the order;

¹Subs. by the Banking Companies (Amdt.) Act, 1972 (30 of 1972), s. 23 (w.e.f. 13-10-1972), for "Central Government".

²Added by Act VII of 2011, s. 2.

- (b) where a person holding five percent or more shares of a banking company is or is likely to be detrimental to the interest of the banking company or its depositors, the State Bank may, by an order in writing stating reasons, require such person to divest his shareholding to a fit and proper person. The State Bank shall exercise the power reasonably, fairly and justly; and

- (c) no order under clause (a) or clause (b) shall be made unless the person concerned has been given reasonable opportunity of making a representation to the State Bank against the proposed order;

If the State Bank is of opinion that any delay would be detrimental to the public interest or the interest of the banking company or its depositors, the State Bank may, at the time of giving the opportunity aforesaid or at any time thereafter and pending the consideration of the representation aforesaid, if any, may make an appropriate interim order, and conduct the proceedings in a reasonably expeditious manner.

The interim order may include prohibition of-

- (i) transfer of, or the carrying out of the agreement or arrangement to transfer such shares;
 - (ii) the exercise of voting rights in respect of such shares;
 - (iii) the payment of cash or stock dividends in respect of such shares; and
 - (iv) the issue of further shares to the concerned shareholder;
- (d) Where direction given under clause (a) or clause (b) is not complied with, the State Bank may dispose of such shares either through stock exchange or public auction. The sale proceeds of such shares, after deduction of any expenses incurred by the State Bank, shall be paid to the respective shareholders within a period of three months. If necessary, the State Bank may require
 - (i) issuance of duplicate shares in place of the original shares; and
 - (ii) the Central Depository Company to make appropriate changes in their records; and
 - (e) any person aggrieved by the decision of the State Bank under clauses (a), (b) and (d), may prefer appeal to the Central Board of Directors of the State Bank but pending decision of the proceedings, the shareholder shall not derive any benefit including dividends, right shares, voting rights, etc. from his shareholding without express permission of the Central Board.

Explanation.- The expression "beneficial ownership" shall include the explanation given in section 224 of the Companies Ordinance, 1984 (XLVII of 1984).]

15. Election of new directors.—(1) The State 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 two months from the date of the order, as may be

specified therein or within such further time as the State Bank may allow in this behalf, to elect in accordance with the voting rights permissible under this Ordinance fresh directors, and the banking company shall be bound to comply with the order.

(2) Every director elected under sub-section (1) shall hold office until the date up to which his predecessor would have held office, if the election had not been held.

(3) Any election duly held under this section shall not be called in question in any court.

¹[15A. Appointment of director by the State Bank. Notwithstanding anything contained in the Companies Ordinance, 1913 (VII of 1913), or in the memorandum or articles of association of any banking company, the State Bank may appoint not more than one person to be a director of a banking company, whether or not he holds any qualification shares.

15B. Restriction on term of office of directors.—(1) A director of a banking company, not being its chief executive, by whatever name called, or a director nominated under section 15A, shall not hold office for more than six consecutive years.

Explanation.—In computing the period of six consecutive years for the purpose of this sub-section, any break of less than three years in the continuity of office shall be disregarded.

(2) A director of a banking company vacating office in pursuance of sub-section (1) shall not be eligible for re-election as a director of that banking company unless a period of three years has elapsed since the date on which he so vacated his office:

Provided that a director who has to so vacate his office may continue in his office for a period of not more than six months from the commencement of the Banking Companies (Amendment) Act, 1972, or until a new director is elected or co-opted in his place, whichever is earlier.

15C. Vacation of Office. A director of a banking company shall vacate his office if in relation to the banking company he has failed to pay any advance or loan or any instalment thereof or interest thereon or any amount due on any guarantee, or to do or perform any act agreed to or undertaken in writing to be done or performed by him, and such failure continues for a period of one month after notice in writing has been served on him by the banking company calling upon him to make the payment or to do or perform the act.]

¹Section 15A, 15B and 15C inserted by the Banking Companies (Amendment) Act, 1972 (Act No. XXX of 1972), s. 5 (w.e.f. 13-10-1972).

16. Restriction on commission, brokerage, discount etc., on sale of shares. Notwithstanding anything to the contrary in sections 105 and 105A of the Companies Act, 1913 (VII of 1913), 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 two and one-half per cent of the paid-up value of the said shares.

17. Prohibition of charge on unpaid capital. No banking company shall create any charge upon any unpaid capital of the company and any such charge, if created, shall be invalid.

18. Prohibition of floating charge on assets.—(1) Notwithstanding anything contained in section 7 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 State Bank as not being detrimental to the interests of the depositors of such company.

(2) Any such charge created without obtaining the certificate of the State Bank shall be invalid.

(3) Any banking company aggrieved by the refusal of a certificate under sub-section (1) may, within ninety days from the date on which such refusal is communicated to it, appeal to the ¹[Federal Government].

(4) The decision of the ¹[Federal Government] where an appeal has been preferred to it under sub-section (3) or of the State Bank where no such appeal has been preferred shall be final.

19. Restrictions as to payment of dividend.—(1) No banking company shall pay any dividend on its shares until all its capitalised expenses (including preliminary expenses, organisation expenses, share-selling commission, brokerage, amounts of losses incurred and any other item of expenditure not represented by tangible assets) have been completely written off.

(2) Notwithstanding anything to the contrary contained in sub-section (1) or in the Companies Ordinance, 1913 (VII of 1913), a banking company may pay dividends on its shares without writing off—

- (i) the depreciation, if any, in the value of its investments in approved securities in any case where such depreciation has not actually been capitalised or otherwise accounted for as a loss;
- (ii) the depreciation, if any, in the value of its investments in shares, debentures or bonds (other than approved securities) in any case where adequate provision for such depreciation has been made to the satisfaction of the auditor of the banking company;
- (iii) the bad debts, if any, in any case where adequate provision for such debts has been made to the satisfaction of the auditor of the banking company.

¹Subs. by the Banking Companies (Amdt.) Act, 1972 (30 of 1972), s.23 (w.e.f. 13-10-1972), for "Central Government".

¹[(3) Notwithstanding anything in sub-section (1) or in the Companies Ordinance, 1984 (XLVII of 1984), if a banking company meets the minimum capital requirement and capital adequacy ratio as specified by State Bank from time to time, and has also accounted for the portion of capitalized expenses, goodwill, etc., for the year to the satisfaction of the auditor of the banking company, it shall also be eligible for payment of dividend out of profits of the banking company for the said year.]

²[(4) If the State Bank is satisfied that conditions are not favourable for such payment, or the financial position of a banking company so warrants, it may, by order in writing stating reasons, restrict or prohibit any banking company from paying dividends to its shareholders for such period as may be specified in the order and the State Bank shall exercise the power reasonably, fairly and justly.

(5) No order shall be made unless the banking company concerned has been given an opportunity of making a representation to the State Bank and where the State Bank is of the opinion that any delay would be detrimental to the public interest or the interest of the banking company or its depositors, the State Bank may, at the time of giving the opportunity aforesaid or at any time thereafter and pending the consideration of the representation aforesaid, if any, make an appropriate interim order."]

20. Prohibition of common directors.—(1) Except with the permission of the State Bank, no banking company incorporated in Pakistan shall have as a director any person who is a director—

- (i) of any other banking company; or
- (ii) of companies which among themselves are entitled to exercise voting rights in excess of twenty per cent of the total voting rights of all the shareholders of the banking company.

³(1A) No banking company incorporated in Pakistan shall have as a director any person who is—

- ⁴[(a) a Federal Minister, a Minister of State or a Provincial Minister; or]
- (b) a person in the service of Pakistan who is not appointed or nominated by Government as a director by virtue of his office.]

(2) If immediately before the commencement of this Ordinance any person holding office as a director of a banking company is also a director of companies which among themselves are entitled to exercise voting rights in excess of twenty per cent of the total voting rights of all the shareholders of the banking company he shall, within such period from such commencement as the State Bank may specify in this behalf—

¹Added by Act IV of 07, s.4 (w.ef. 1-7-07).

²Added by Act VII of 2011, s.3.

³sub-section (1A) inserted by the Banking Companies (Amendment) Act, 1972 (Act No. XXX of 1972), s.6 (w.e.f. 13-10-1971).

⁴Subs. by F.A.O., 1975, Art. 2 & Sch. (w.e.f. 14-8-1973), for cl. (a).

- (a) either resign his office as a director of the banking company; or
- (b) choose such number of companies as among themselves are not entitled to exercise voting rights in excess of twenty per cent of the total voting rights of all the shareholders of the banking company as companies in which he wishes to continue to hold the office of a director and resign his office as a director in the other companies.

¹[21. Reserve Fund.]—(1) Every banking company incorporated in Pakistan shall create a reserve fund to which shall be credited—

- (a) if the amount in such fund together with the amount in the share premium account is less than the paid-up capital of the banking company, a sum equivalent to not less than twenty per cent of the balance of profit of each year as disclosed in the profit and loss account prepared under section 34 and before any dividend is declared; and
- (b) if the amount in such fund together with the amount in the share premium account is equal to or exceeds the paid-up capital of the banking company, a sum equivalent to not less than ten per cent of the balance of profit disclosed as aforesaid and before any dividend is declared.]

(2) Where a banking company appropriates any sum or sums from the reserve fund or the share premium account, it shall, within twenty-one days from the date of such appropriation, report the fact to the State Bank explaining the circumstances relating to such appropriation:

Provided that the State Bank may, in any particular case, extend the said period of twenty-one days by such period as it thinks fit or condone any delay in the making of such report.

22. Cash reserve. Every banking company, not being a schedule bank, shall maintain by way of cash reserve in cash with itself, or in current account opened with the State Bank or its agent or partly in cash with itself and partly in such account or accounts a sum equivalent to at least two per cent of its time liabilities in Pakistan and five per cent of its demand liabilities in Pakistan and shall submit to the State Bank before the fifteenth day of every month a return showing the amount so held on ²[Friday] of each week of the preceding month with particulars of its time and demand liabilities in Pakistan on each such ²[Thursday] or if any such ²[Thursday] is a public holiday under the Negotiable Instruments Act, 1881 (XXVI of 1881), at the close of business on the preceding working day.

3* * * * *

23. Restriction on the nature of subsidiary companies.—(1) A banking company shall not form any subsidiary company except a subsidiary company formed for one or more of the following purposes, namely:—

¹Subs. by Act 30 of 1972, s. 7, for sub-section (1).

²Subs. and shall be deemed to have been so subs. by the Banking Companies (amdt.) Ordinance, 1978 (3 of 1978), s. 3, for "Friday" (w.e.f. 1-7-1977).

³Explanation omitted by the Banking Companies (Amdt.) Ordinance, 1984 (34 of 1984), s. 3, which was previously amended by Ord. No. 17 of 1981, s. 2.

(a) the undertaking and executing of trusts,

¹[(aa) the carrying on of banking business strictly in conformity with the Injunctions of Islam as laid down in the Holy Quran and Sunnah;.]

(b) the undertaking of the administration of estates as executor, trustee or otherwise,

²[(bb) the carrying on of business of modaraba under the provisions of the Modaraba Companies and Modaraba (Floatation and Control) Ordinance 1980 (XXXI of 1980).]

(c) the providing of safe deposit vaults,

(d) with the previous permission in writing of the State Bank, the carrying on of the business of banking exclusively outside Pakistan; ³*

⁴[(dd) the conduct of any form of business permitted by section 7; or]

(e) such other purposes as are incidental to the business of banking.

(2) Save as provided in sub-section (1), no banking company shall hold shares in any company whether as pledgee, mortgagee or absolute owner, of an amount exceeding thirty per cent of the paid-up share capital of that company or thirty per cent of its own paid-up share capital and reserves, whichever is less:

Provided that any banking company which is on the date of commencement of this Ordinance holding any shares in contravention of the provisions of this sub-section shall not be liable to any penalty therefor if it reports the matter without delay, to the State Bank and if it brings its holding of shares into conformity with the said provisions within such period, not exceeding two years, as the State Bank may think fit to allow.

(3) Save as provided in sub-section (1) and notwithstanding anything contained in sub-section (2), a banking company shall not, after the expiry of one year from the date of commencement of this Ordinance hold shares, whether as pledgee, 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.

¹Ins. by Ord. III of 2002, s. 4.

²New clause (bb) inserted by the Banking Companies (Third Amendment) Ordinance, 1980 (Ord. 58 of 1980), s.5.

³The word "or" omitted by the Banking and Financial Services (Amendment of Laws) Ordinance, 1984 (Ordinance No. 57 of 1984), s. 2 and Sch.,

⁴New cl. (dd) ins. *ibid*.

¹[24. Restrictions on loans and advances.—(1) No banking company shall—

- (a)** make any loans or advances against the security of its own shares; or
- (b)** grant unsecured loans or advances to, or make loans and advances on the guarantee of,—
 - (i)** any of its directors;
 - (ii)** any of the family members of any of its directors;
 - (iii)** any firm or private company in which the banking company or any of the persons referred to in sub-clause (i) or sub-clause (ii) is interested as director, proprietor or partner; or
 - (iv)** any public limited company in which the banking company or any of the persons as aforesaid is substantially interested.

(2) No banking company shall make loans or advances to any of its directors or to individuals, firms or companies in which it or any of its directors is interested as partner, director or guarantor, as the case may be, without the approval of the majority of the directors of that banking company, excluding the director concerned.]

²[25. Power of State Bank to control advances by Banking Companies.—(1) Whenever the State Bank is satisfied that it is necessary or expedient in the public interest so to do, it 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 or the banking company concerned, as the case may be, shall be bound to follow the policy as so determined.

³[(2) Without prejudice to the generality of the power conferred by sub-section (1), the State Bank may give directions to banking companies either generally or to any banking company or group of banking companies in particular,—

- (a)** as to the credit ceilings to be maintained, credit targets to be achieved for different purposes, sectors and regions, the purposes for which advances may or may not be made, the margins to be maintained in respect of advances, the rates of interest, charges or mark-up to be applied on advances and the maximum or minimum profit sharing ratios; and
- (b)** prohibiting the giving of loans, advances and credit to any borrower or group of borrowers on the basis of interest, either for a specific purpose or for any purpose whatsoever; and each banking company shall be bound to comply with any direction so given.]

¹Subs. by the Banking Companies (Amdt.) Act, 1972 (30 of 1972), s. 8 (w.e.f. 13-10-1972), for the original section 24.

²Subs. by the Banking Companies (Amdt.) Ordinance, 1971 (7 of 1971), s. 2 (w.e.f. 15-03-1971), for the original section 25.

³Subs. by the Banking Companies (Third Amdt.) Ordinance, 1980 (58 of 1980), s. 6, for sub-section (2), which was previously amended by Act No. 30 of 1972, s. 9 (w.e.f. 13-10-1972), for certain words.

(3) If any default is made by a banking company in complying with the policy determined under sub-section (1) or direction given under sub-section (2), every director and other officer of the banking company and every other person who is knowingly a party to such default shall, by order of the State Bank, be liable to a penalty of an amount which may extend to ¹[twenty] thousand rupees and, where the default is a continuing one, of a further amount which may extend to ¹[one thousand] rupees for every day after the first during which the default continues.

²[(4) Without prejudice to the provisions of sub-section (3), the State Bank may, for the purposes of securing implementation of any special credit schemes or monetary policy or observance of credit ceilings by a banking company, by order in writing require banking companies generally, or any banking company in particular, to make special deposits with it for such amount and on such terms and conditions as may be laid down by the State Bank in this behalf.]

(5) The amount deposited with the State Bank under sub-section (4) or any part thereof may, at the discretion of the State Bank, be released by it to the banking company which deposited it as and when the State Bank deems fit either unconditionally or on such terms and subject to such conditions as the State Bank may, by order in writing, determine from time to time.

(6) Any penalty imposed under sub-section (3) shall be payable on demand made by the State Bank and, in the event of refusal or failure by the director, officer or other person concerned to pay on such demand, shall be recoverable as arrear of land revenue.]

³[**25A. Power of the State Bank to collect and furnish credit information.**-(1) Every banking company shall furnish to the State Bank credit information in such manner as the State Bank may specify, and the State Bank may, either of its own motion or at the request of any banking company, make such information available to any banking company on payment of such fee as the State Bank may fix from time to time:

Provided that, while making such information available to a banking company, the State Bank shall not disclose the names of the banking companies which supplied such information to the State Bank:

Provided further that, a banking company which proposes to enter into any financial arrangement which is in excess of the limit laid down in this behalf by the State Bank from time to time shall, before entering into such financial arrangement, obtain credit information on the borrower from the State Bank.

¹Subs. by Act XIV of 1997, s. 4.

²Subs. by the Banking Companies (Amdt.) Act, 1972 (30 of 1972), s. 9 (w.e.f. 13-10-1972), for sub-section (4).

³Ss. 25A and 25B ins. by the Banking Companies (Amdt.) Act, 1972 (30 of 1972), s. 10 (w.e.f. 13-10-1972).

(2) Any credit information furnished by the State Bank to a banking company under sub-section (1) shall be treated as confidential and shall not, except for the purposes of this section or with the prior permission of the State Bank, be published or otherwise disclosed.

(3) No court, tribunal or other authority, including an officer of Government, shall require the State Bank or any banking company to disclose any information furnished to, or supplied by, the State Bank under this section.

Explanation.—For the purpose of this section,–

- (a) “borrower” means any person to whom any credit limit has been sanctioned by any banking company, whether availed of or not, and includes—
 - (i) in the case of a company or corporation, its subsidiaries;
 - (ii) in the case of a Hindu undivided family, any member thereof or any firm in which such member is a partner;
 - (iii) in the case of a firm, any partner thereof or any other firm in which such partner is a partner; and
 - (iv) in the case of an individual, any firm in which such individual is a partner; and
- (b) “credit information” means any information relating to—
 - (i) the amounts and the nature of loans or advances or other credit facilities, including bills purchased or discounted, letters of credit and guarantees, indemnities and other engagements extended by a banking company to any borrower or class of borrowers;
 - (ii) the nature of security taken from any borrower for credit facilities granted to him;
 - (iii) the guarantees, indemnities or other engagements furnished to a banking company by any of its customers; and
 - (iv) operations of accounts in respect of loans, advances and other credit facilities referred to in this clause.]

¹[**25AA. Preparation of special reports.** The State Bank shall prepare, and submit to the Federal Government, a special report every year on cases of write off of loans, mark-up and other dues, or financial relief through rescheduling and restructuring of loans and subsidised loans provided by the banking companies, in which established banking practices or authorised procedures have been departed from with a view to causing wrongful loss to the bank or conferring wrongful gain on any constituent or such departure has caused wrongful loss to the bank or conferred wrongful gain on any constituent. If the matters raised in the report relate to public interest, the Federal Government may submit the report, or such part of it as relates to public interest, to Parliament or to the Standing Committee of a House of Parliament dealing with Finance.].

25B. Recovery of certain dues of banking companies as arrears of land revenue. Loans and advances made by a banking company for agricultural ²[and other] purposes shall be recoverable as an arrear of land revenue as if the banking company were a local authority for the purposes of section 5 of the Revenue Recovery Act, 1890 (I of 1890):

Provided that no sum shall be so recoverable unless the banking company has, by notice in writing, informed the debtor, not less than fifteen days before proceeding to have it so recovered, that he may repay by such instalment as may be fixed in the notice and that action to have the debt recovered as an arrear of land revenue will be taken if he fails to pay any instalment on or before the due date].

26. Power of ³[State Bank] to prohibit acceptance of deposits by banking companies incorporated outside Pakistan. The ³[State Bank] may, by notification in the Official Gazette, order that any banking company or any class of banking companies or ³[any class of] banking companies incorporated outside Pakistan shall from a date to be specified in the notification-

- (1) discontinue to accept any interest bearing deposits or accept such deposits only upon such terms and under such conditions as may be specified in the notification:

Provided that no such notification shall be made earlier than three years after the commencement of this Ordinance and the date specified in the notification shall not be earlier than six months after the date of the notification; or

¹New section 25AA ins. by the Finance Act, 1990 (7 of 1990), s. 4A.

²Ins. by Act XIV of 1997, s. 5.

⁵Subs. by Act XIV of 1997, s. 6.

- (2) discontinue to accept any deposits or accept deposits only upon such terms and under such conditions as may be specified in the notification:

Provided that no such notification shall be made earlier than three years after the commencement of this Ordinance and the date specified in the notification shall not be earlier than one year from the date of the notification.

¹[**26A. Deposits.—**(1) Deposits of money may be accepted by a banking company on the following basis:-

- (i) on participation in profit and loss of the banking company;
- (ii) free of interest or return in any form; and
- (iii) until such time as the Federal Government determines and notifies by publication in the official Gazette, that the domestic operations of the banking companies have become free of interest, effective on interest.

(2) Every banking company receiving deposits on the basis of participation in profit and loss shall maintain separate account in respect thereof as also of investments made, finances provided out of the amount of such deposits, cash reserves and liquid assets maintained there against and all income and expenditure relating thereto.

(3) Deposits received on the basis of participation in profit and loss shall be invested or employed, at the absolute discretion of the banking company, only in transactions or business the return on which does not accrue to the banking company by way of interest.

(4) A person depositing money with a banking company on the basis of participation in profit and loss shall be entitled, subject to such general directions as the State Bank may give from time to time in the interest of monetary stability, to receive periodically such share of the profit of the banking company arising out of such transactions as may be determined by it and, in the event of loss incurred by the banking company, shall be liable to bear proportionate loss.]

¹New section 26A ins. by the Banking Companies (Third Amdt.) Ordinance, 1980 (58 of 1980), s. 7.

¹[(5) Where the State Bank has determined that a banking company,-

- (a) is carrying on its business in a manner detrimental to the interest of its depositors; or
- (b) is materially unable to discharge its financial obligations or continue its operations; or
- (c) has failed to meet prescribed capital requirements or cash and liquidity requirements or provisioning requirements or any condition specified in the licence or any preventive or remedial measure prescribed by the State Bank,

the State Bank, by an order in writing stating reasons, may impose conditions or restrictions on the banking company on accepting deposits from any class of depositors or type of deposits for such period as may be specified in the order and the State Bank shall exercise the power reasonably, fairly and justly.

(6) No order shall be made unless the banking company concerned has been given an opportunity of making a representation to the State Bank and if the State Bank is of the opinion that any delay would be detrimental to the public interest or the interest of the banking company or its depositors, the State Bank may, at the time of giving the opportunity aforesaid or at any time thereafter and pending the consideration of the representation aforesaid, if any, may make an appropriate interim order.].

27. Licensing of banking companies.—²[(1) No individual or association or body of individuals, not being a company, shall carry on banking business in Pakistan and, save as hereinafter provided, no company shall carry on banking business in Pakistan unless it holds a licence issued in that behalf by the State Bank; and any such licence may be issued subject to such conditions as the State Bank may think fit to impose.

(2) Every banking company in existence on the commencement of this Ordinance, before the expiry of six months from such commencement, and every other company before commencing banking business in Pakistan, shall apply in writing to the State Bank for a licence under this section:

Provided that nothing in sub-section (1) shall be deemed to prohibit a banking company in existence on the commencement of this Ordinance from carrying on banking business until it is granted a licence in pursuance of this section or is by notice in writing informed by the State Bank that a licence cannot be granted to it:

Provided further that the State Bank shall not give a notice as aforesaid to a banking company in existence on the commencement of this Ordinance before the expiry of the period of two years in the case of banking companies incorporated in Pakistan and of six months in the case of banking companies incorporated outside Pakistan.³ * * *

¹Added by Act VII of 2011, s. 4.

²Subs. by the Banking Companies (Amdt.) Ordinance, 1979 (56 of 1979), s. 2, for sub-section (1).

³Omitted by Ord. 48 of 2000, s. 5.

(3) Before granting any licence under this section, the State Bank may require to be satisfied by an inspection of the books of the company or otherwise that all or any of 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, in the case of a company incorporated outside Pakistan, the Government or law of the country in which it is incorporated provides the same facilities to banking companies registered in Pakistan as the Government or law of Pakistan grants to banking companies incorporated outside Pakistan and that the company complies with all the provisions of this Ordinance applicable to banking companies incorporated outside Pakistan.

(4) The State Bank may cancel a licence granted to a banking company under this section,—

- (i) if the company ceases to carry on banking business in Pakistan; or
- (ii) if the company at any time fails to comply with any of the conditions imposed upon it under sub-section (1); or

(iii) if at any time, any of the conditions referred to in sub-section (3) ceases to be fulfilled:

Provided that before cancelling a licence under clause (ii) or clause (iii) of this sub-section on the ground that the banking company has failed to comply with or has failed or ceased to fulfil any of the conditions referred to therein, the State 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, an opportunity of taking the necessary steps for complying with or fulfilling such condition.

(5) Any banking company aggrieved by the decision of the State Bank cancelling a licence under this section may, within thirty days from the date on which such decision is communicated to it, ¹[apply for review to the Central Board of the State Bank].

¹[(6) The decision of the State Bank subject to the result of review under sub-section (5), if any, shall be final.]

¹Ins. & Subs. by Act XIV of 1997, ss. 7+8.

¹[**27A. Prohibition of advertising for deposits and collection.** Notwithstanding anything contained in any other law for the time being in force, no company, firm or person, not being a banking company or a corporation or authority established by the Federal Government or a company duly authorised in this behalf by the Controller of Capital Issues or the Corporate Law Authority or the Registrar Cooperative Societies, shall solicit or invite deposits of money from the public through advertisements in the public media or by postal circulars, handbills, displays in public places or by any other means, or collect or receive any deposits of money in pursuance thereof.

Explanation.—For the purposes of this section, “deposits of money” shall be deemed to include money called, invited or collected for the purpose, or declared object, of investment or borrowing in any business carried on, or proposed to be carried on, by the company, firm or person by whom or on whose behalf, such money is called, invited, collected or received irrespective of the nature of the relationship, arrangement or terms offered or provided by such company, firm or person to the person making the investment, deposits of money or payment or of the basis or understanding on which the money is so called, invited, collected or received.]

²[**27B. Disruptive union activities.**—(1) No officer or member of a trade union in a banking company shall use any bank facilities including a car or telephone to promote trade union activities, or carry weapons into bank premises unless so authorized by the management, or carry on trade union activities during office hours, or subject bank officials to physical harassment or abuse and nor shall he be a person who is not an employee of the banking company in question.

(2) Any person violating any of the provisions of sub-section (1) shall be guilty of an offence punishable with imprisonment of either description which may extend to three years, or with fine, or with both.]

28. Restrictions on opening of new, and transfer of existing, places of business.—(1) No banking company shall open a new place of business in any part of Pakistan or change, otherwise than within the same city, town or village the location of an existing place of business situated in any part of Pakistan and no banking company incorporated in Pakistan shall open a new place of business outside Pakistan or change, otherwise than within the same city, town or village in any country or area outside Pakistan, the location of an existing place of business situated in that country or area without first obtaining the prior permission in writing of the State Bank.

(2) Nothing in this section shall 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:

Provided intimation of such opening is given to the State Bank within one week of the date of opening.

¹Subs. by the Finance Act, 1990 (7 of 1990), s. 4A, for section 27A, which was previously ins. by Act 6 of 1987, s. 6.

²Ins. & subs. by Act XIV of 1997, ss. 7+8.

Explanation.—For the purpose of this section—

(a) “place of business” includes any sub-office, pay-office, sub-pay office and any place of business at which deposits are received, cheques, cashed or moneys lent;

(b) “new place of business” includes a place of business which is reopened after being temporarily closed.

(3) The State Bank may, before giving the permission referred to in sub-section (1) of this section to any banking company, require to be satisfied by an inspection under section 40 or otherwise regarding such aspects of the company's affairs as the State Bank may deem necessary.

29. Maintenance of liquid assets.—(1) Every banking company shall maintain in Pakistan in cash, gold or unencumbered approved securities valued at a price not exceeding the current market price, an amount which shall not at the close of business on any day be less than twenty per cent of the total of its time and demand liabilities in Pakistan [:]¹

²[Provided that the requirements of sub-section (1) as to the maintenance in Pakistan of cash, gold or unencumbered approved securities may from time to time, by notification in the official Gazette, be varied by the ³[Federal Government].

Explanation.—For the purposes of this section, “unencumbered approved securities” of a banking company shall include its approved securities lodged with another institution for an advance or any other credit arrangement to the extent to which such securities have not been drawn against or availed of.

(2) In computing the amount provided for in sub-section (1), any deposit required under ⁴[sub-section (2)] of section 13 to be made with the State Bank by a banking company incorporated outside Pakistan and any balances maintained in Pakistan by a banking company in current account with the State Bank or its agent or both, ⁵[or in profit and loss sharing term deposit account with the State Bank] including in the case of a scheduled bank the balance required to be so maintained under sub-section (1) of section 36 of the State Bank of Pakistan Act, 1956 (XXXIII of 1956), shall be deemed to be cash maintained.

¹Subs. by the Banking Companies (Amdt.) Act, 1965 (7 of 1965), s. 2 (w.e.f. 31-7-1965), for full-stop.

²Added ibid.

³Subs. by the Banking Companies (Amdt.) Act, 1972 (30 of 1972), s. 23 (w.e.f. 13-10-1972), for “Central Government”.

⁴Subs. by Ord. 48 of 2000, s. 6.

⁵Ins. by the Banking Companies (Third Amdt.) Ordinance, 1980 (58 of 1980), s. 8.

(3) Every banking company shall, before the close of the month succeeding the month to which the return relates, furnish to the State Bank a monthly return in the prescribed form and manner showing particulars of the company's assets maintained in accordance with this section and its time and demand liabilities in Pakistan at the close of business on each ¹[Thursday] during the month, or if any ¹[Thursday] is a public holiday under the Negotiable Instruments Act, 1881 (XXVI of 1881), at the close of business on the preceding working day.

²[(4) The cash deposited by a banking company or financial institution under sub-section (1) and by a scheduled bank under the State Bank of Pakistan Act, 1956 (XXXIII of 1956) shall be deemed to be part of the assets of the banking company but shall not be subject to any encumbrance, nor shall it be available for the discharge of any liability of the banking company or financial institution other than the order of liquidation made by the High Court under this Ordinance, nor shall the said cash deposit be available to attachments in execution of any decree or recoverable under order of any authority under any law for the time being in force, except any claim of the State Bank.]

30. Assets in Pakistan.—(1) At the close of business on any day the assets in Pakistan of every banking company shall not be less in value than an amount representing such percentage of its time and demand liabilities in Pakistan as may be prescribed by the State Bank from time to time provided that the percentage so prescribed shall not exceed eighty five per cent.

(2) Every banking company shall, before the close of the month succeeding that to which the return relates, furnish to the State Bank, in the prescribed form and manner a monthly return showing particulars of the company's assets maintained in accordance with this section and its time and demand liabilities in Pakistan at the close of business on every ¹[Thursday] or if any ¹[Thursday] is a public holiday under the Negotiable Instruments Act, 1881 (XXVI of 1881), at the close of business on the preceding working day.

(3) For the purposes of this section—

- (a) "assets in Pakistan" shall be deemed to include export bills drawn in, and import bills drawn on and payable in, Pakistan and expressed in such currencies as the State Bank may from time to time approve in this behalf and also such securities as the State Bank may approve in this behalf notwithstanding that all or any of the said bills or securities are held outside Pakistan, but shall exclude such assets as in the opinion of the State Bank cannot properly be regarded as assets.
- (b) "liabilities in Pakistan" shall not include the paid-up capital or the reserves or any credit balance in the profit and loss account of the banking company.

¹Subs. and shall be deemed to have been so, subs. by the Banking Companies (Amdt.) Ordinance, 1978 (3 of 1978), s. 3, (w.e.f. 1-7-1977), for "Friday".

²Added by Act VII of 2011, s.5.

¹[31. Unclaimed deposits and articles of value.—(1) Where—

- (a) a debt payable in Pakistan currency ²[or any other currency] is owing by a banking company by reason of a deposit, not being a deposit in the name of a minor or a Government or a court of law, at a branch of the banking company ²* * * in respect of which no transaction has taken place and no statement of account has been requested or acknowledged by the creditor during a period of ten years reckoned—
 - (i) in the case of a deposit made for a fixed period, from the day on which the fixed period terminated, and
 - (ii) in the case of any other deposit, from the day on which the last transaction took place or a statement of account was last requested or acknowledged by the creditor, whichever is later; or
- (b) a dividend, bonus, profit or other sum of money whatsoever which has become due on a deposit and remained unpaid or unacknowledged by the creditor for period of ten years reckoned from the date on which the dividend, bonus, profit or other sum of money, as the case may be, became due and payable; or
- (c) a cheque, draft or bill of exchange including an instrument drawn by one branch of the banking company upon another such branch payable in Pakistan currency ²[or any other currency] has been issued, certified or accepted by a banking company at a branch of the banking company ²* * * and no payment has been made in respect thereof for a period of ten years from the date of issue, certification or acceptance; or
- (d) a security share, goods or any valuable article, hereinafter collectively and individually called article, lying in safe custody with a banking company has not been inspected or acknowledged by the person who deposited the article with the banking company for a period of ten years from the day on which it was last inspected or acknowledged by such person;

¹Subs. by the Banking Companies (Amdt.) Act, 1972 (30 of 1972), s. 11 (w.e.f. 13-10-1972), for the original section 31.

²Ins. & Omitted by Ord. III of 2002, s. 5.

the banking company shall give forthwith a three months' notice in writing by registered post acknowledgement due to the creditor or the beneficiary of the cheque, draft or bill of exchange or the person in whose name the article stands in the books of the banking company on his address last made known by him to the banking company, and if on the expiry of the three months' period no acknowledgement or reply is received from the addressee, the banking company shall pay or deliver, as the case may be, to the State Bank an amount equal to the amount owing by the banking company in respect of the debt or to the amount that would be owing if the instrument had been presented for payment, including interest, if any, or the article, in accordance with the terms of the debt or instrument or of the arrangement under which the article is lying in the safe custody of the banking company, and payment or delivery accordingly shall discharge the banking company from all liabilities in respect of the debt or instrument or article, as the case may be.

(2) A notice required to be given by sub-section (1)—

- (a) may, in the case of a firm or a Hindu undivided family, be addressed to any member of the firm or the manager or any adult male member of the family and, in the case of any other association of persons, to the principal

officer thereof;

- (b) may be given to a duly authorised agent of the person to whom it is required to be given or, where he has died, to his legal representative or where he has been declared an insolvent, to his assignee, provided the banking company has had notice of appointment of the agent or of the death or insolvency of the person to whom it is required to be given;
- (c) shall, in the case of joint creditor or more than one beneficiaries of a cheque, draft or bill of exchange or article standing in the names of more than one person, be deemed to be sufficient notice to all such persons if given to any one of them; and
- (d) shall, notwithstanding the fact that it is miscarried or the addressee is dead or insane or has become insolvent or the envelope or wrapper is returned with the postal endorsement "addressee is untraceable" or any other like endorsement, be deemed to have been served on the fifteenth day following the day on which the envelope or wrapper in which it is contained is posted, if it is properly addressed, prepaid and posted, provided the banking company has had no notice of the death, insanity or insolvency of the person to whom it is required to be given.

(3) A certificate in writing under the signature of an employee of the banking company whose duty it is to address, prepay and post letters on behalf of the banking company to the effect that the envelope or wrapper containing a notice required to be given by sub-section (1) was addressed, prepaid and posted shall be conclusive evidence of its having been so addressed, prepaid and posted.

(4) As soon as an amount is paid by a banking company to the State Bank under sub-section (1), it shall cease to bear interest ¹[or rank for a share of profit or loss] notwithstanding anything to the contrary contained in the terms of the debt or instrument or any law for the time being in force.

(5) Where any banking company has paid an amount or delivered an article to the State Bank under sub-section (1), the banking company shall preserve and continue to preserve all signature cards and signing authorities and other documents relating to the debt or instrument or article, as the case may be, until it is informed by the State Bank in writing that they need not be preserved any longer.

(6) Nothing in the Limitation Act, 1908 (IX of 1908), or in any other law for the time being in force shall affect the liability of a banking company toward the State Bank under sub-section (1).

(7) Every banking company shall, within thirty days after the close of each calendar year, submit to the State Bank a return in the prescribed form and manner of all unclaimed amounts and articles remaining unpaid or undelivered, as the case may be, in the books of the banking company, after the expiry of ten years as reckoned under sub-section (1).

(8) The State Bank shall publish in the Gazette of Pakistan and not less than two newspapers once each quarter for a period of one year a list of the amounts and articles received by the State Bank under sub-section (1) and not claimed by any person:

Provided that it shall not be necessary to include in a list so published such amounts and articles of such value as the Federal Government may from time to time determine.

(9) Any banking company which has paid any amount or delivered any article to the State Bank in accordance with sub-section (1) may, within thirty days from the date of such payment or delivery, as the case may be, submit to the State Bank its claim as regards lien, counter-claim or right of set-off in relation to the amount so paid or article so delivered.

(10) Any person who claims to be entitled to any money or article paid or delivered to the State Bank under sub-section (1) may submit his claim to the State Bank.

¹Ins. by the Banking Companies (Third Amdt.) Ordinance, 1980 (58 of 1980), s. 9.

(11) Subject to sub-sections (9), (12) and (14), the State Bank may pass such order on a claim submitted to it under sub-section (9) or sub section (10) as it may deem fit, and, where the State Bank makes any payment or delivers any article

to any person submitting a claim under sub-section (10) a receipt given by him shall be a good discharge to the State Bank.

(12) If any action involving a dispute about the ownership of any amount or article paid or delivered to the State Bank under sub-section (1) is pending in any court before the expiry of one year following the year in which the amount or article is so paid or delivered to the State Bank and the State Bank receives an intimation from the court or otherwise about such dispute, it shall retain the amount or article in the custody and dispose of it in accordance with the decision of the court.

(13) Subject to sub-sections (9), (12) and (14), any amount or article in respect of which no claim is preferred or about the disposal of which no information is received from any person before the expiry of one year following the year in which the amount or article is received by the State Bank shall, on the expiry of the said period of one year, cease to be claimable and shall become the absolute property of and vest—

(a) in the Government of the Province in the territory of which the debt or instrument was payable or, as the case may be, the article was to be delivered, and

(b) in the Federal Government in any other case.

(14) Notwithstanding anything contained in sub-section (1) about the giving of a notice by a banking company to any creditor or beneficiary of any cheque, draft or bill of exchange or the person in whose name any article stands, or in sub-section (8) about the publication by the State Bank of the list of unclaimed amounts or articles, the procedure to be followed and the manner of disposal of debts, instruments and articles in a case where the person concerned is not for the time being residing in Pakistan shall be such as may be determined by the Federal Government from time to time.

(15) Any decision of the State Bank under sub-section (11) about the acceptance, satisfaction or otherwise of the lien right of set-off or counter-claim of a banking company or, as the case may be, the entitlement of any person to any money or article received by the State Bank under sub-section (1) shall be final and shall not, except as provided in sub-section (16), be called in question in any manner by or before any court, tribunal or other authority.

(16) Any person aggrieved by a decision of the State Bank under sub-section (11) may, within one month from the date of the decision, prefer an appeal to such officer of the State Bank superior in rank to the officer by whom the decision appealed against was given as may be authorised in this behalf by the Governor of the State Bank.

(17) For the purpose of adjudicating and determining any claim under sub-section (9) or sub-section (10) or deciding any appeal under sub-section (16), the State Bank shall follow such procedure as may be prescribed and shall have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (Act V of 1908), when trying a suit in respect of the following matters, namely:-

(a) enforcing the attendance of any person and examining him on oath;

(b) compelling the production of documents and materials objects; and

(c) issuing commissions for the examination of witnesses.

(18) Any proceeding before the State Bank under this section shall be deemed to be a “judicial proceeding” within the meaning of section 228 of the Pakistan Penal Code (Act XLV of 1860), and the State Bank shall, for the purposes of any such proceeding, be deemed to be a “Civil Court” within the meaning of section 480 of the Code of Criminal Procedure, 1898 (Act V of 1898).

(19) No court fee shall be payable for filing, exhibiting or recording any document in, or obtaining any document from, the State Bank in any proceeding under this section.].

32. Half-yearly returns and power to call for other returns and information.-(1) Every banking company shall, before the close of the month succeeding the half-year to which the return relates submit to the State Bank a half-yearly return in the prescribed form and manner showing its assets and liabilities in Pakistan as they stood at the close of business on the thirtieth day of June in the first half and the thirty-first day of December, in the second half of the year.

(2) The State Bank may, at any time, by notice in writing, require banking companies generally, or any banking company in particular to furnish it within the time specified therein or such further time as the State Bank may allow, with any statement or information relating to the business or affairs of such banking company or companies (including any business or affairs with which such banking company or companies is or are concerned) and, without prejudice to the generality of the foregoing power, may call for information, at such intervals as the State Bank may deem necessary, regarding the investments of banking companies and the classification of their advances in respect of industry, commerce and agriculture.

33. Power to publish information. The State Bank, if it considers it in the public interest so to do, may publish any information obtained by it under this Ordinance in such consolidated form as it thinks fit.

¹**[33A. Fidelity and secrecy.—**(1) Subject to sub-section (4), every bank and financial institution shall, except as otherwise required by law, observe the practices and usage customary among bankers and, in particular, shall not divulge any information relating to the affairs of its customers except in circumstances in which it is, in accordance with law, practice and usage customary among bankers, necessary or appropriate for a bank to divulge such information.

(2) Every president, chairman, member of the Board, administrator, auditor, adviser, officer or other employee of any bank and financial institution shall, before entering upon his office, make a declaration of fidelity and secrecy in such form as may be prescribed.

(3) Notwithstanding anything contained in sub-section (1) and (2), every balance sheet and profit and loss account statement prepared by a bank and financial institution shall include statements prepared in such form and manner as the State Bank may specify in respect of written off loans or any other financial relief of five hundred thousand rupees or above allowed to a person as well as the provision, if any, made for bad or doubtful debts.

(4) The State Bank of Pakistan may, if satisfied that it is necessary so to do at the time of holding general elections under any law relating thereto, publish a list of persons to whom any loans, advances or credits were extended by a bank or financial institution, either in their own names or in the names of their spouses or dependents or of their business concerns (if mainly owned and managed by them) which were due and payable and had not been paid back for more than one year from the due date, or whose loans were unjustifiably written off in violation of banking practices, rules or regulations on or after such date as may be determined by the Government:

Provided that before publishing the name of any person in any such list he shall be given prior notice and, if he so requests, an opportunity of hearing.

33B Guidelines by the State Bank. The State Bank may at any time either on the request of any one or more banking companies or the Federal Government or sue motu, lay down general guidelines for facilitating recovery of bad or doubtful loans, advances or finance by giving incentives to borrowers or customers to make repayments within a specified time frame by making adjustments or remissions in relation to interest or mark-up or part of the principal amount in cases in which all full recovery is not possible by reason of inadequacy of security or as part of a general scheme for the rehabilitation of sick units.]

34. Accounts and balance-sheet.—(1) At the expiration of each calendar year every banking company incorporated in Pakistan, in respect of all business transacted by it, and every banking company incorporated outside Pakistan, in respect of all business transacted through its branches in Pakistan, shall prepare with reference to that year a balance sheet and profit and loss account as on the last working day of the year in the forms set out in the Second Schedule or as near thereto as circumstances admit.

¹Ins. by Act XIV of 1997, s.9.

(2) The balance sheet and profit and loss account shall be signed:—

- (a) in the case of a banking company incorporated in Pakistan, 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
- (b) in the case of a banking company incorporated outside Pakistan by the manager or agent of the principal office of the company in Pakistan and by another officer next in seniority to the manager or agent.

(3) Notwithstanding that the balance sheet of a banking company is under sub-section (1) required to be prepared in a form other than the form marked 'F' in the Third Schedule to the Companies Act, 1913 (VII of 1913), the requirements of that Act relating to the balance sheet and profit and loss account of a company shall, in so far as they are not inconsistent with this Ordinance, apply to the balance-sheet or profit and loss account, as the case may be, of a banking company.

¹[(4) The State Bank may, after giving not less than fifteen days notice of its intention so to do, from time to time by a notification in the official Gazette, amend the forms set out in the Second Schedule.]

²[**35. Audit.**—(1) The balance-sheet and profit and loss account prepared in accordance with section 34 shall be audited by a person who is duly qualified, under the Chartered Accountants Ordinance, 1961 (X of 1961), or any other law for the time being in force, to be an auditor of companies and is borne on the panel of auditors maintained by the State Bank for the purposes of audit of banking companies. ³[The State Bank shall classify the panel of auditors, so maintained, in different categories for different banking companies keeping in view the scope and size of such banking companies].

(2) An auditor shall hold office for a period of three years and shall not be removed from office before the expiry of that period except with the prior approval of the State Bank.

(3) ³If the State Bank is not satisfied with the performance of the auditor of a banking company or the auditor has not fulfilled any of the requirements laid down in this section the State Bank, after giving the auditor an opportunity of being heard, may—

- (a) revoke the appointment of external auditors of the banking company;
- (b) downgrade the category of the auditor in the panel of the auditors; and
- (c) remove the auditor from the panel of the auditors for a maximum period of five years.

¹Subs. by the Banking Companies (Third Amdt.) Ordinance, 1980 (58 of 1980), s. 10, for sub-section (4).

²Subs. by the Banking Companies (Amdt.) Act, 1972 (30 of 1972), s. 12 (w.e.f. 13-10-1972), for the original section 35.

³Ins. & re-numbered by Act IV of 07, s. 4 (w.e.f. 1-7-07).

(4) The auditors shall report all the matters of material significance to State Bank and reporting of such information and material shall not constitute breach of confidentiality under any law for the time being in force.]

¹[(5)] The State Bank may, from time to time, lay down guidelines for the audit of banking companies and the auditors shall be bound to follow those guidelines.

¹[(6)] Subject to the provisions of sub-section (3), the auditor shall have the powers of, exercise the functions vested in, and discharge the duties and be subject to the liabilities and penalties imposed on, auditors of companies by section 145 of the Companies Act, 1913 (VII of 1913).

¹[(7)] In addition to the matters which, under the aforesaid Act and the guidelines laid down by the State Bank under sub-section (3), the auditor is required to state in his report, he shall also state—

- (a) whether or not the information and explanations required by him have been found to be satisfactory;
- (b) whether or not the transactions of the banking company which have come to his notice have been within the powers of the banking company;
- (c) whether or not the returns received from branch offices of the banking company have been found adequate for the purposes of his audit;
- (d) whether the profit and loss account shows a true balance of profit and loss for the period covered by such account; and
- (e) any other matter which he considers should be brought to the notice of the shareholders of the banking company.]

36. Submission of returns. The accounts and balance-sheet referred to in section 34 together with the auditor's report as passed in the Annual General Meeting shall be published in the prescribed manner, and three copies thereof shall be furnished as returns to the State Bank within three months of the close of the period to which they relate:

Provided that the State Bank may in special circumstances extend the said period of three months for the furnishing of such returns by a further period not exceeding three months.

37. Copies of Balance Sheets and Accounts to be sent to Registrar. Where a banking company in any year furnishes its balance-sheet and accounts in accordance with the provisions of section 36 it may, or when it is a private company, shall, at the same time send to the registrar three copies of such balance-sheet and accounts and of the auditor's report, and where such copies are so sent, it shall not be necessary for the company to file copies of the balance sheet and accounts with the registrar as required by sub-section (1) of section 134 of the Companies Act, 1913 (VII of 1913), and such

copies so sent shall be chargeable with the same fees and shall be dealt with in all respects as if they were filed in accordance with that section.

¹Ins. & re-numbered by Act IV of 07, s. 4 (w.e.f. 1-7-07).

38. Display of audited balance sheet by banking companies incorporated outside Pakistan. Every banking company incorporated outside Pakistan 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 Pakistan, a copy of its last audited balance sheet and profit and loss account prepared under section 34 and shall keep it so displayed until replaced by a copy of the subsequent balance sheet and profit and loss account so prepared and every such banking company shall in addition display in like manner copies of its complete audited balance sheet and profit and loss account relating to its banking business as soon as they are available and shall keep the copies so displayed until copies of such subsequent accounts are available.

39. Accounting provisions of this Ordinance not retrospective. Nothing in this Ordinance shall apply to the preparation of accounts by a banking company and the audit and submission thereof in respect of any accounting year which has expired prior to the commencement of this Ordinance, and notwithstanding the other provisions of this Ordinance such accounts shall be prepared, audited and submitted in accordance with the law in force immediately before the commencement of this Ordinance.

40 Inspection.—(1) Notwithstanding anything to the contrary contained in section 138 of the Companies Act, 1913 (VII of 1913), the State Bank may, at any time, and, on being directed so to do by the ¹[Federal Government], shall, inspect any banking company and its books and accounts.

(2) The inspection shall be carried out by such officer of the State Bank as the State Bank may direct.

(3) The State Bank shall supply to the banking company a copy of its report on the inspection made under this section.

(4) It shall be the duty of every director or other officer of the banking company ²[or any company or firm or person referred to in section 27A] to produce to any officer, hereafter in this section called the inspecting officer, making an inspection under this section, all such books, accounts and other documents in his custody or power and to furnish him with such statements and information relating to the affairs of the banking company ²[or any company or firm or person referred to in section 27A] and within such time as the inspecting officer may require.

(5) The inspecting officer may examine on oath any director or other officer of the banking company in relation to its business and may administer an oath accordingly.

¹Subs. by the Banking Companies (Amdt.) Act, 1972 (30 of 1972), s. 23 (w.e.f. 13-10-1972), for "Central Government".

²Ins. by the Finance Act, 1990 (7 of 1990), s.4A.

¹[(6) The State Bank shall, if it has been directed by the Federal Government to make an inspection, and, in any other case, may, submit a report to the Federal Government on any inspection made under this section.]

2* * *

Explanation. For the purposes of this section, the expression "banking company" shall include

- (i) in the case of a banking company incorporated outside Pakistan, all its branches in Pakistan; and
- (ii) in the case of a banking company incorporated in Pakistan
 - (a) all its subsidiaries formed for the purpose of carrying on the business of banking exclusively outside Pakistan; and
 - (b) all its branches whether situated in Pakistan or outside Pakistan.

²40A. Responsibility of State Bank.—(1) Without prejudice to the powers conferred on the State Bank under Section 40 and notwithstanding anything contained therein, it shall be the responsibility and duty of the State Bank to systematically

monitor the performance of every banking company so as to ensure that it is complying with the applicable statutory criteria and banking rules and regulations.

(2) In every case in which the management of a banking company is failing to discharge its responsibility in accordance with the applicable statutory criteria and banking rules or regulations, or is failing to protect the interests of depositors, or is advancing loans or finances without due regard for the best interests of the banking company or for reasons other than the merits, it shall be the duty of the State Bank, in addition to taking such remedial steps as may be required in accordance with law, to report the shortcomings and violations on the part of the banking company's management to the Federal Government every quarter, or more frequently, if so deemed necessary, so as to prevent any grave or irreparable loss from being caused to the banking company or its depositors, along with its recommendations and the action, if any, taken by it.]

41. Power of the State Bank to give directions.—(1) Where the State Bank is satisfied that—

- (a) in the public interest; or
- (b) to prevent the affairs of any banking company being conducted in a manner detrimental to the interests of the depositors or in a manner prejudicial to the interests of the banking company; or
- (c) to secure the proper management of any banking company generally;

it is necessary to issue directions to banking companies generally or to any banking company in particular, it may, from time to time, issue such directions as it deems fit, and the banking companies or the banking company, as the case may be, shall be bound to comply with such directions.

³[(2) The State Bank may, from time to time, issue directions, guidelines and instructions with respect to activities and operations of banks and the institutions mentioned in section 3A as may be deemed necessary by it for carrying out purposes of this Ordinance and matters ancillary thereto.]

¹Ins. by Act IV of 07, s. 4 (w.e.f. 1-7-07).

²Omitted & ins. by Act XIV of 1997, ss. 10+11.

³Ins. by Act IV of 07, s.4 (w.e.f. 1-7-07).

¹[(3)] The State Bank may, on representation made to it or on its own motion, modify or cancel any direction issued under sub-section (1), and in so modifying or canceling any direction may impose such conditions as it thinks fit, subject to which the modification or cancellation shall have effect.

²**41A. Power of the State Bank to remove directors or other managerial persons from office.**—(1) where the State Bank is satisfied that—

- (a) the association of any chairman or director or chief executive (by whatever name called) or other officer of a banking company, not being lower in rank than a branch manager, is or is likely to be detrimental to the interests of the banking company or its depositors or otherwise undesirable; or
- (b) in the public interest; or
- (c) to prevent the affairs of a banking company being conducted in a manner detrimental to the interest of its depositors or in a manner prejudicial to the interests of the banking company; or
- (d) to secure the proper management of any banking company;

it is necessary so to do, the State 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 or director or chief executive (by whatever name called) or other officer of the banking company.

(2) No order under sub-section (1) shall be made unless the chairman or director or chief executive or other officer has been given a reasonable opportunity of making a representation to the State Bank against the proposed order:

Provided that if, in the opinion of the State Bank, any delay would be detrimental to the public interest or the interest of the banking company or its depositors, the State Bank may, at the time of giving the opportunity aforesaid or at any time thereafter and pending the consideration of the representation aforesaid, if any, by order direct that—

- (i) the chairman or, as the case may be director or chief executive or other officer shall not, with effect from the date of the order,—
 - (a) act as such chairman or director or chief executive or other officer of the banking company; or

- (b) in any way, whether directly or indirectly, be concerned with, or take part in the management of the banking company; and
- (ii) any person authorised by the State Bank in this behalf shall act as such chairman or director or chief executive of the banking company.

¹Re-numbered by Act IV of 07, s. 4 (w.e.f. 1-7-07).

²Ss. 41A, 41B and 41C ins. by the Banking Companies (Amdt.) Act, 1972 (30 of 1972), s. 13 (w.e.f. 13-10-1972).

(3) Where any order under sub-section (1) is made in respect of a chairman or director or chief executive or other officer of a banking company, he shall cease to be a chairman or, as the case may be, a director or chief executive or other officer of the banking company and shall not in any way, whether directly or indirectly, be concerned with, or take part in, the management of the banking company or any other banking company for such period not exceeding three years as may be specified in the order ¹[or for such extended period as may be specified by the Governor, State Bank of Pakistan.]

(4) Any person appointed as chairman or director or chief executive under sub-section (2) shall—

- (a) hold office during the pleasure of the State Bank subject to such conditions as may be specified in the order of his appointment and, subject thereto, for such period, not exceeding three ²[years] as the State Bank may specify ¹[or for such extended period as may be specified by the Governor, State Bank of Pakistan]; and
- (b) not incur any obligation or liability for anything which is done or intended to be done in his capacity as such chairman or director or chief executive.

(5) No person removed from office under sub-section (1) shall be entitled to claim any compensation for the loss or termination of office.

41B. Power of the State Bank to supersede Board of Directors of banking company.—(1) where the State Bank is satisfied that —

- (a) the association of the Board of Directors (by whatever name called) of a banking company is or is likely to be detrimental to the interests of the banking company or its depositors or otherwise undesirable; or
- (b) for all any of the reasons mentioned in sub-section (1) of section 41A;

it is necessary so to do, the State Bank may, for reasons to be recorded in writing, by order, supersede the Board of Directors of a banking company with effect from such date and for such period as may be specified in the order.

(2) The period of supersession specified in an order under sub-section (1) may from time to time be extended by the State Bank so, however, that the total period of supersession does not exceed ²[three] years ¹[or for such extended period as may be specified by the Governor, State Bank of Pakistan.]

(3) All powers and duties of the Board of Directors shall, during the period of supersession, be exercised and performed by such person as the State Bank may from time to time appoint in this behalf.

¹Ins. by Ord. III of 02, s. 6.

²Subs. by Act XIV of 1997, s. 12.

(4) The provisions of sub-sections (2), (3), (4) and (5) of section 41A shall, with the necessary modification, apply to an order made under sub-section (1) or sub-section (3).

41C. Limitations.—(1) No order under section 41A or section 41B shall be made except by the Governor of the State Bank on a report by a standing committee set up by the State Bank for the purpose.

(2) Any person or banking company aggrieved by an order made by the Governor of the State Bank under section 41A or section 41B may make an appeal to the Central Board of Directors of the State Bank whose decision shall be final.

(3) No action taken under section 41A or section 41B or subsection (2) shall be called in question by or before any court, tribunal or other authority.]

¹**[41D. Prosecution of directors, chief executives or other officers.** Notwithstanding anything contained in section 41A, the State Bank may direct prosecution of a director or chief executive by whatever name called or other officer who, in its opinion, has knowingly acted in a manner causing loss of depositor's money or of the income of the banking company.

Explanation.- For the purpose of this section a director or chief executive or other officer shall be deemed to have acted knowingly if he has departed from established banking practices and procedures or circumvented the regulations or related credit restrictions laid down by the State Bank of Pakistan from time to time.]

42. Further powers and functions of the State Bank.—(1) The State Bank may—

- (a) 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) require banking companies generally, or any banking company in particular, to refrain from taking such action as it may specify in relation to any matter relating to the business of such banking company or companies, or to take such action in relation thereto as the State Bank thinks fit;
- (c) on a request from the banking companies concerned and subject to the provisions of section 59 assist as intermediary or otherwise, in proposals for the amalgamation of such banking companies;
- (d) during the course, or after the completion, of any inspection of a banking company under section 40, by order in writing and on such terms and conditions as may be specified therein—

¹Subs. & ins. by Act XIV of 1997, ss. 13+14.

- (i) 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 State Bank;
- (ii) 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 officer so deputed to be heard at such meetings and also require such officers to send a report of such proceedings to the State Bank;
- (iii) 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 State 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;
- (iv) appoint one or more of its officers to observe the manner in which the affairs of the banking company or of its offices or branches are being conducted and make a report thereon;
- (v) require the banking company to make, within such time as may be specified in the order, such changes in the management as the State Bank may consider necessary in consequence of the state of affairs disclosed during or by the inspection;

¹**[(e) without prejudice to the generality of this section or any provision of this Ordinance-**

- (1) if the State Bank is satisfied that one or more of the circumstances exist under which a banking company, —
 - (i) has become or is likely to become insolvent;
 - (ii) has suspended or is likely to suspend payments as these fall due;
 - (iii) has defaulted or is likely to default in making payments to depositors;
 - (iv) is carrying on its business in a manner detrimental to the interests of its depositors, creditors or other stakeholders;

¹Subs. & added by Act VII of 2011, s. 6.

- (v) has contravened any provisions or any restrictions or condition imposed on its licence;
- (vi) has engaged any director, chief executive or an officer of a banking company who is or is likely to be detrimental to the interests of the banking company or its depositors or otherwise undesirable;
- (vii) has created hindrance, delay or obstruction for the State Bank in performance of its supervisory functions;
- (viii) has willfully destroyed, concealed or moved outside of Pakistan all or part of its assets, the administration, operation and books or records;
- (ix) has failed to meet capital adequacy or minimum capital requirements prescribed by the State Bank;
- (x) has defrauded its depositors and creditors;
- (xi) is willfully engaged in or is being used for criminal activities;
- (xii) is part of a financial group which is under liquidation, or in respect of which a custodian, receiver, administrator or liquidator has been appointed;
- (xiii) is a branch or subsidiary of a banking company whose licence to carry on banking business in the country of its origin has been cancelled;
- (xiv) has breached requirements under, any document of commitment to the State Bank; or
- (xv) is otherwise in a situation or circumstance which in the opinion of the State Bank may materially impair the ability of the banking company to make payments, meet its obligations or otherwise continue its operations,

the State Bank may, keeping in view the gravity of the situation and compliance behavior of the banking company, from time to time, invoke any one or more of the following actions, namely: -

- (i) require the banking company to submit a plan of action to redress any discrepancies;
- (ii) require the banking company or Board of Director of the banking company to furnish documents of commitment for compliance with the measures prescribed by the State Bank and to secure the interests of its depositors;

(iii) where the banking company or the Board of Directors fail to provide documents of commitment or fulfill its obligation under the same pursuant to clause (ii), the State Bank may-

- (a) take any action under sections 41A, 41B or section 47; and
- (b) carry out any capital reduction and cancel any portion of shares of the banking company which is depleted or unrepresented by available assets or dilutes the participation of the existing shareholders by issuing shares to such persons and at such consideration as may be determined by the State Bank. Any order passed by the State Bank under this sub-clause shall have effect notwithstanding the provisions contained in sections 96 to 107 of Companies Ordinance, 1984 (XLVII of 1984) or any other law for the time being in force. The State Bank shall exercise the power reasonably, fairly and justly;

(1A) The State Bank shall provide an opportunity of being heard to the banking company or aggrieved person before making the order and if the State Bank is of the opinion that any delay would be detrimental to the public interest or the interest of the banking company or its depositors, the State Bank may, at the time of giving the opportunity aforesaid or at any time thereafter and pending the consideration of the representation aforesaid, if any, make an appropriate interim order. The banking company or the aggrieved person shall have the right to appeal to the Central Board of Directors of the State Bank; and

(1B) Nothing contained in this section shall be read to dilute or affect powers of the State Bank otherwise conferred in the Ordinance.].

(2) The State Bank shall make an annual report to the ¹[Federal Government] on the trend and progress of banking in the country, with particular reference to its activities under sub-section (2) of section 17 of the State Bank of Pakistan Act, 1956 (XXXIII of 1956), including in such report its suggestions, if any, for the strengthening of banking business throughout the country.

¹Subs. by the Banking Companies (Amdt.) Act, 1972 (30 of 1972), s. 23 (w.e.f. 13-10-1972), for "Central Government".

43. Certain provisions of the Ordinance not to apply to certain banking companies.—(1) The provisions of section 13, sub-section (1) of section 14, and sections 21, 22, 29 and 30 shall not apply to a banking company—

- (a) which has been refused a licence under section 27, or prohibited from accepting fresh deposits by a compromise, arrangement or scheme sanctioned by a court or by any order made in any proceeding relating to such compromise, arrangement or scheme, or prohibited from accepting deposits by virtue of any alteration made in its memorandum; or
- (b) whose licence has been cancelled under section 27.

(2) Where the State Bank is satisfied that any such banking company as is referred to in sub-section (1) has repaid, or has made adequate provision for repaying all deposits accepted by the banking company, either in full or to the maximum extent possible, the State Bank may, by notice published in the official Gazette, notify that the banking company has ceased to be a banking company within the meaning of this Ordinance, and thereupon all the provisions of this Ordinance applicable to such banking company shall cease to apply to it, except as respects things done or omitted to be done before such notice.

¹[PART II-A

TRANSACTION OF BANKING BUSINESS ILLEGALLY BY COMPANIES, ETC.

43A. Power to call for certain information, etc. Where it appears to the State Bank that a company ²[firm] or any other person is transacting in any manner or form whatsoever the business, of banking in contravention of sub-section (1) of section 27, ²[or is receiving or has received deposits of money in contravention of section 27A] the State Bank may—

- (a) direct the company, ²[firm] or such other person, or any person who is, or has at any time been, dealing, doing business or associated in any manner with the company, ²[firm] or such other person, to give or furnish to the State Bank, within such time as the State Bank may specify in its requisition, such information, documents or records respecting any business carried on by the company, ²[firm] or such other person as may be within its or his knowledge or in or under its or his possession, custody or control;

¹New part II-A ins. by the Banking Companies (Amdt.) Ordinance, 1979 (56 of 1979), s. 3.

²Ins. by the Finance Act, 1990 (7 of 1990), s. 4A.

- (b) authorise any person to enter and search any premises and seize books, accounts or other documents or records respecting any business carried on by the company, ¹[firm] or such other person as may be in or under the possession, custody or control of the company, ¹[firm] or such other person or a person who is, or has at any time been, dealing, doing business or associated in any manner with the company ¹[firm] or such other person, or any officer or employee of the company, ¹[firm] or such other person or of the person dealing, doing business or associated with the company, ¹[firm] or such other person;
- (c) inspect or examine, or cause to be inspected or examined, the company, ¹[firm] or such other person, or a person who is, or has at any time been, dealing, doing business or associated with it or him as aforesaid, or any officer or employee of the company, ¹[firm] or such other person or of the person dealing, doing business or associated with the company, or such other person, and any of its or his books, accounts or other documents or records referred to in clause (b); and
- (d) exercise, as far as may be applicable, in relation to the company, ¹[firm] or such other person, or any person who is, or has at any time been, dealing, doing business or associated with it or him as aforesaid, the powers conferred on the State Bank by sub-sections (1), (2), (4) and (5) of section 40.

²**43AA. Special provisions.**—(1) Where the State Bank has called for information under section 43A from a company, firm or person and it appears to the State Bank that, in the interest of the persons from whom the deposits of moneys were received, it is necessary that the moneys received and other assets of the company, firm or person, whether held in the name of that company, firm or person or of any other persons, are protected and preserved, the State Bank may, without prejudice to any other action or proceedings which may be taken against such company, firm or person under any other provisions of this Ordinance or any other law for the time being in force, make an order in writing—

- (a) appointing one or more persons as interim receivers authorising him or, as the case may be, each one of them to—
- (i) enter and search any premises and seize books of accounts or other documents or records of such deposits of money; and

¹Ins. by the Finance Act, 1990 (7 of 1990), s. 4A..

²New Section 43AA ins. by the Finance Act, 1990 (7 of 1990), s. 4A.

- (ii) take in his custody, on behalf of the State Bank, all moneys, cash securities, title deeds, properties, whether moveable or immovable, belonging to such company, firm or person, including those being held on behalf, or in the name, of any director, manager, officer, partner, employee, agent, beneficiary or transferee of such company, firm or person or their dependants;
- (b) directing any bank, financial institution or person to freeze all moneys deposited with it or him on behalf of the company, firm or person or of any director, manager, officer, partner or employee, agent, beneficiary or transferee of such company, firm or person appointed by it under clause (a);
- (c) authorising a person appointed under clause (a) to take all necessary steps and measures for identifying the assets and properties of the company, firm or person and for realisation, protection and preservation thereof;
- (d) restraining any company, firm or person or any director, manager, officer, partner or employee or agent, beneficiary or transferee of such company, firm or person of their dependants or any other person deriving or claiming title through any of them from alienating, transferring, selling, assigning, disposing of or parting with possession of any property, movable or immovable, or deriving any benefit, rent or income therefrom; and
- (e) making such orders for realisation, protection and preservation of deposits of money and other assets and properties of the company, firm or person as it may deem fit.

(2) An order made under sub-section (1) shall, unless it is earlier withdrawn in pursuance of the proviso to sub-section (1) of section 43B, remain in force until possession of the moneys, cash securities, title deeds, properties, books of account, documents or record to which the order relates to taken over by the official liquidator or, as the case may be, the High Court, in pursuance of an order of the High Court under section 43F:

Provided that any order made under sub-section (1) shall not prevent the High Court from determining the right of a person claiming to have acquired the property or assets from the company, firm or person, bonafide and for valuable and adequate consideration which such person shall be required to prove as paid from his own resources.

(3) An order made under sub-section (1) may be served on the Registrar of Joint Stock Companies or such other officer or authority or person as the State Bank may deem proper.

(4) If any person authorised under sub-section (1) requires assistance of the police or any other civil authority in the exercise of his powers or discharge of his functions

thereunder, he may send a requisition to the officer in charge of a police station or to such authority who shall on such requisition render the assistance required.]

43B. Power to make declaration.—(1) Where the State Bank, after making such inquiries as it may deem fit, is of opinion that a company, ¹[firm] or a person referred to in section 43A is transacting in any manner or form whatsoever the business of banking in contravention of sub-section (1) of section 27 ¹[or is receiving or has received deposits of money in contravention of section 27A], the State Bank may, after giving the company, ¹[firm] or such person an opportunity of showing cause against the proposed action being taken, make a declaration to that effect [:]²

³[Provided that, in a case in which the State Bank has made an order under sub-section (1) of section 43AA in respect of a company, firm or person, the State Bank shall make a declaration under this sub-section in respect of such company, firm or person within three months of the making of such order or within such further time, not exceeding three months in the aggregate, as the High Court may allow, or withdraw such order.]

⁴[(2) The State bank shall publish, or cause to be published, a declaration made under sub-section (1) in two newspapers having wide circulation in the area in which the registered office of the company or firm, or the principal office of the person, to which or to whom the declaration relates is situated; and, upon such publication, the company, firm or such person or the chief executive, by whatever name called, or directors, managers, officers, employees or agents of the company or partners, managers, officers, employees or agents of the firm, or such person, or any other person referred to in sub-sections (1), (3) or (4) of section 43D or section 43E, shall not be heard to plead ignorance of the making of the declaration.]

(3) A declaration under sub-section (1) shall, for the purposes of this Part, be conclusive proof of the fact stated therein.

43C. Consequences of a declaration under section 43B.—(1) A company, ¹[firm] or other person in respect of which or whom a declaration has been made under sub-section (1) of section 43B shall, on the publication of such declaration in pursuance of sub-section (2) of that section, cease to function or to transact business and any transaction with such company, ¹[firm] or person, or with any person acting or purporting to act for and on behalf of such company, ¹[firm] or person, on or after the publication of the declaration as aforesaid, shall be void.

¹Ins. by the Finance Act, 1990 (7 of 1990), s. 4A.

²Subs. *ibid.*, for full-stop.

³Proviso added by the Finance Act, 1990 (7 of 1990), s. 4A.

⁴Subs. *ibid.*, for sub-section (2).

(2) The provisions of sub-section (1) and sections 43D, 43E and 43F shall, as far as may be, apply to a company ¹[firm] or undertaking which is an associated undertaking of a company, ¹[firm] or person in respect of which or whom a declaration under sub-section (1) of section 43B is made.

Explanation.—In this sub-section, “undertaking” and “associated undertaking” have the same meaning as in the monopolies and Restrictive Trade Practices (Control and Prevention) Ordinance, 1970 (V of 1970).

43D. Deposit of cash and preservation of assets, etc.—(1) Notwithstanding anything contained in section 43C, where a declaration under sub-section (1) of section 43B has been made in respect of a company, ¹[firm] or other person, every person who has in his possession or custody, or under his control, any moneys, movable properties, shares, securities of any description or title deeds relating to property which belong to the company, ¹[firm] or such other person shall forthwith deposit, or cause to be deposited, such moneys, movable properties, shares, securities and title deeds with any of the banks referred to in the Schedule to the Banks (Nationalization) Act, 1974 (XIX of 1974), or the State Bank or any person authorised by the State Bank in this behalf.

(2) If any person who is required by sub-section (1) to deposit, or to cause to be deposited, any moneys, movable properties, shares, securities or title deeds fails to do so within two days of the publication of the declaration under sub-section (1) of section 43B, any person authorised by the State Bank in this behalf may enter and search any premises and seize such moneys, movable properties, shares, securities or title deeds and deposit, or cause to be deposited, the same in accordance with sub-section(1).

²[(3) Until such time as an official liquidator, official assignee, interim receiver, receiver or official receiver, as the case may be appointed by the Court on an application made under section 43F takes over the possession, custody or control of any books, documents, records and assets of a company, firm or person in respect of which or whom a declaration under sub-section (1) of section 43B has been made, including any actionable claims to which such company, firm or person is, or appears to be, entitled, the chief executive, by whatever name called, and a director, manager, officer, employee and agent of such company, or a partner, manager, officer, employee and agent of such firm or person, and every other person who may have in or under his possession, custody or control such books, documents, records, assets or claims, shall preserve, and aid in preserving, such books, documents, records, assets and claims and shall, without prejudice to any other liability that he may incur, be jointly and severally liable for any loss or damage.]

(4) Every person who is, or becomes, indebted in any manner to a company, ¹[firm] or person in respect of which or whom a declaration under sub-section (1) of section 43B has been made shall, during the period between the date on which such declaration is published and the date on which an order for winding up or, as the case may be, an order of adjudication

is made by the Court, repay the amount of the debt by depositing it in the manner provided for in sub-section (1) and inform the State Bank in writing of his having done so.

¹Ins. by the Finance Act, 1990 (7 of 1990), s. 4A.

²Subs. *ibid.*, for sub-section (3).

(5) In computing the period prescribed by the Limitation Act, 1908 (IX of 1908), for any suit, appeal or application in respect of anything arising from actions which, immediately before the commencement of the Banking Companies (Amendment) Ordinance, 1979, were pending against a company or person in respect of which or whom a declaration under sub-section (1) of section 43B has been made, or in respect of any action to the filing of which the company or person may be entitled, the period commencing on the publication of such declaration and ending on the day on which an order for winding up or, as the case may be, an order of adjudication is made by the Court shall be excluded.

¹[43E. Statement of assets and liabilities to be submitted to State Bank. Within three days of the publication of a declaration under sub-section (1) of section 43B in respect of a company, firm or other person or within such further time as the State Bank may, by order in writing, allow, the chief executive, by whatever name called, and every director, manager, officer, and agent of the company, and every partner of the firm and the manager, officer and agent of the firm or such person, and every other person having a claim or liability against or towards the company, firm or such person shall submit to the State Bank a statement showing the assets and liabilities of the company, firm or such person so far as may be known to him.]

43F. Consequential provisions for winding up, etc.—(1) Where the declaration made under sub-section (1) of section 43B is in respect of a person other than an individual or a company, such person shall, irrespective of the number of members of which it consists, be deemed to be an unregistered company which may be wound up under Part IX of the Companies Act, 1913 (VII of 1913).

(2) Where the person in respect of which a declaration has been made under sub-section (1) of section 43B is a company or an unregistered company, the High Court shall, upon an application made by the State Bank within seven days of the publication of the declaration in pursuance of sub-section (2) of section 43B, or within such further time as the Federal Government may allow, make an order for the winding up of the company or the unregistered company.

(3) The provisions of Part III, other than those of sections 45 to 49 and 59, and Part IV shall, in so far as they relate to winding up of a banking company apply to an application made under sub-section (2) and to the winding up proceedings following such application.

(4) Notwithstanding anything contained in the Provincial Insolvency Act, 1920 (V of 1920), and the Insolvency (Karachi Division) Act (III of 1909), a declaration made under sub-section (1) of section 43B in respect of an individual shall constitute an effective ground for adjudging the individual an insolvent and the court competent to adjudge him an insolvent shall, upon an application made by the State Bank within seven days of the publication of the declaration in pursuance of sub-section (2) of section 43B, or such further time as the Federal Government may allow, pass an order of adjudication against such individual without further

¹Subs. by the Finance Act, 1990 (7 of 1990), s. 4A, for section 43E.

proof and follow thereafter the provisions of the Provincial Insolvency Act, 1920 (V of 1920) or, as the case may be, the Insolvency (Karachi Division) Act 1909 (III of 1909), for the administration and distribution of the property of the insolvent:

Provided that the court shall not have the power to subsequently annul the adjudication or accept any composition or scheme or arrangement.

PART III SUSPENSION OF BUSINESS AND WINDING UP OF BANKING COMPANIES

44. High Court defined. In this Part and in Part IV "High Court", in relation to a banking company, means the High Court exercising jurisdiction in the place where the registered office of the banking company is situated or, in the case of a banking company incorporated outside Pakistan, where its principal place of business in Pakistan is situated.

45. Restriction on stay order.—(1) The High Court may, on the application of a banking company which is temporarily unable to meet its obligations make an order staying for a fixed period on such terms and conditions as it may think fit the commencement or continuance of all proceedings against the company and may from time to time extend the period so however that the total period including the period of any stay order granted under the proviso to sub-section (2), shall not exceed six months.

(2) Except as hereinafter provided no order of stay shall be granted upon such application unless it is accompanied by a report of the State Bank showing that in the opinion of the State Bank the banking company will be able to pay its debts if the application is granted:

Provided that in the case of an application not so accompanied the High Court may, if it thinks fit, grant stay for a period of not more than thirty days in the aggregate, and, if such stay is granted, shall call for a report from the State Bank on the affairs of the banking company, on receipt of which it may either rescind an order already passed or pass such further orders as it may consider just and proper in the circumstances.

(3) The High Court shall forward to the State Bank a copy of every stay order made under this section.

(4) When an application is made under sub-section (1), the High Court may appoint a special officer who shall forthwith take into his custody or under his control all the assets, books, documents, effects and actionable claims to which the banking company is or appears to be entitled and shall also exercise such other powers as the High Court may deem fit to confer on him, having regard to the interests of the depositors of the banking company.

(5) Where the State Bank is satisfied that the affairs of a banking company in respect of which an order under sub-section (1) has been made, are being conducted in a manner detrimental to the interests of the depositors, it may make an application to the High Court for the winding up of the company, and where any such application is made, the High Court shall not make any order extending the period for which the commencement or continuance of all actions and proceedings against the company were stayed under that sub-section.

(6) The special officer appointed by the High Court under sub-section (4) of this section shall continue to hold office until he is removed from office, or until the bank resumes business, or until a liquidator is duly appointed to wind up the business of the bank.

46. Restriction on compromise or arrangement between banking companies and creditors.—(1) Notwithstanding anything contained in any law for the time being in force, no High 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 State 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.

(2) Where an application under section 153 of the Companies Ordinance, 1913 (VII of 1984), is made in respect of a banking company, the High Court may direct the State Bank to make an inquiry in relation to the affairs of the banking company and the conduct of its directors and when such a direction is given, the State Bank shall make such inquiry and submit its report to the High Court.

47. Powers of State Bank to apply to Federal Government for suspension of business by a banking company and to prepare scheme of reconstruction or amalgamation.—(1) Notwithstanding anything contained in the provisions of this Part or in any other law or any agreement or other instrument, for the time being in force, where it appears to the State Bank that there is good reason so to do, the State Bank may apply to the ¹[Federal Government] for an order of moratorium in respect of a banking company.

(2) The ¹[Federal Government], after considering the application made by the State Bank under sub-section (1), may make an order of moratorium staying the commencement or continuance of all action 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.

(3) Except as otherwise provided by any directions given by the ¹[Federal Government] in the order made by it under sub-section (2) or at any time thereafter, 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.

¹Subs. by the Banking Companies (Amdt.) Act, 1972 (30 of 1972), s. 23 (w.e.f. 13-10-1972), for "Central Government"..

(4) During the period of moratorium, if the State 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 State 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 (in this section referred to as "the transferee bank").

(5) The scheme aforesaid may contain provisions for all or any of the following matters, namely:—

- (a) 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;
- (b) 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;
- (c) 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 and the authority by whom, the manner in which, and the other terms and conditions on which, such change or appointment shall be made and in the case of appointment of a new Board of Directors or of any director, the period for which such appointment shall be made;
- (d) 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;
- (e) subject to the provisions of the scheme, the continuation by or against the banking company on its reconstruction or, as the case may be, the transferee bank, of any actions or proceedings pending against the banking company immediately before the date of the order of moratorium;

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- (f) 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 State Bank considers necessary in the public interest or in the interests of the members, depositors and the creditors or for the maintenance of the business of the banking company;
 - (g) the payment in cash or otherwise to depositors and other creditors in full satisfaction of their claim—
 - (i) in respect of their interest or rights in or against the banking company before its reconstruction or amalgamation; or
 - (ii) where their interest or rights aforesaid in or against the banking company has or have been reduced under clause (f), in respect of such interest or rights as so reduced;
 - (h) the allotment to the members of the banking company for shares held by them therein before its reconstruction or amalgamation, whether their interest in such shares has been reduced under clause (f) or not, of shares in the banking company on its reconstruction or, as the case may be, in the transferee bank and where any

members claim payment in cash and not allotment of shares, or where it is not possible to allot shares to any members, the payment in cash to those members in full satisfaction of their claim—

- (i) in respect of their interest in shares in the banking company before its reconstruction or amalgamation; or
 - (ii) where such interest has been reduced under clause (f), in respect of their interest in shares as so reduced;
- (i) the continuance of the services of all the employees of the banking company, excepting such of them who, not being workmen within the meaning of the Industrial Disputes Ordinance, 1959, are specifically mentioned in the scheme, in the banking company itself on its reconstruction or, as the case may be, 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;
- Provided that the scheme shall contain a provision that—

(i) the banking company shall pay or grant not later than the expiry of the period of three years from the date on which the scheme is sanctioned by the ¹[Federal Government], to the said employees the same remuneration and the same terms and conditions of service as are applicable to employees of corresponding rank or status of a comparable banking company to be determined for this purpose by the State Bank whose determination in this respect shall be final;

(ii) the transferee bank shall pay or grant not later than the expiry of the aforesaid period of three years, to the said employees the same remuneration and the same terms and conditions of service as are applicable to the other employees of corresponding rank or status of the transferee bank subject to the qualifications and experience of the said employees being the same as or equivalent to those of such other employees of the transferee bank:

Provided further that if in any case under clause (ii) of the first proviso any doubt or difference arises as to whether the qualification and experience of any of the said employees are the same as or equivalent to the qualifications and experience of the other employees of corresponding rank or status of the transferee bank, the doubt or difference shall be referred to the State Bank whose decision thereon shall be final.

- (j) notwithstanding anything contained in clause (i) where any of the employees of the banking company, not being workman within the meaning of the ²[Industrial Relations Ordinance, 1969 (XXIII of 1969)], are specifically mentioned in the scheme under clause (i), or where any employees of the banking company have by notice in writing given to the banking company or, as the case may be, the transferee bank at any time before the expiry of one month next following the date on which the scheme is sanctioned by the ¹[Federal Government], intimated their intention of not becoming employees of the banking company on its reconstruction or, as the case may be, of the transferee bank, the payment to such employees of compensation, if any, to which they are entitled under the ²[Industrial Relations Ordinance, 1969 (XXIII of 1969)], and such pension, gratuity, provident fund and other retirement benefits ordinarily admissible to them under the rules or authorizations of the banking company immediately before the date of the order of moratorium;

¹Subs. by the Banking Companies (Amdt.) Act, 1972 (30 of 1972), s. 23 (w.e.f. 13-10-1972), for "Central Government".

²Subs. by the Federal Laws (Revision and Declaration) Ordinance, 1981 (27 of 1981), s. 3, and sch., II, for "Industrial Disputes Ordinance, 1959".

(k) any other terms and conditions for the reconstruction or amalgamation of the banking company;

(l) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out.

(6) A copy of the scheme prepared by the State Bank shall be sent in draft to the banking company and also to the transferee bank and any other banking company concerned in the amalgamation, for suggestions and objections, if any,

within such period as the State Bank may specify for this purpose.

(7) The State Bank may make such modifications, if any, in the draft scheme as it may consider necessary in the light of the suggestions and objections received from the banking company and also from the transferee bank, and any other banking company concerned in the amalgamation and from any members, depositors or other creditors of each of those companies and the transferee bank.

(8) The scheme shall thereafter be placed before the ¹[Federal Government] for its sanction and the ¹[Federal Government] may sanction the scheme without any modifications or with such modifications as it may consider necessary; and the scheme as sanctioned by the ¹[Federal Government] shall come into force on such date as the ¹[Federal Government] may specify in this behalf:

Provided that different dates may be specified for different provisions of the scheme.

(9) Upon the coming into operation of the scheme or any provision thereof, the scheme or such provision shall be binding on the banking² * * * company or, as the case may be, on the transferee bank and any other banking company concerned in the amalgamation and also on all the members, depositors and other creditors and employees of each of those companies and of the transferee bank, and on any other person having any right or liability in relation to any of those companies or the transferee bank.

(10) On such date as may be specified by the ¹[Federal Government] in this behalf, the properties and assets of the banking company shall, by virtue of and to the extent provided in the scheme, stand transferred to, and vest in, and the liabilities of the banking company shall, by virtue of and to the extent provided in the scheme, stand transferred to, and become the liabilities of, the transferee bank.

(11) If any difficulty arises in giving effect to the provisions of the scheme, the ¹[Federal Government] may by order do anything not inconsistent with such provisions which appears to it necessary or expedient for the purpose of removing the difficulty.

¹Subs. by the Banking Companies (Amdt.) Act, 1972 (30 of 1972), s. 23 (w.e.f. 13-10-1972), for "Central Government".

²The words "and any other Banking Company concerned in the amalgamation and also" omitted *ibid.*, s. 14 (w.e.f. 13-10-1972).

(12) Copies of the scheme or of any order made under sub-section (11) shall be laid on the table of the Legislature, as soon as may be, after the scheme has been sanctioned by the ¹[Federal Government], or as the case may be, the order has been made.

(13) Where the scheme is a scheme for amalgamation of the banking company, any business acquired by the transferee bank under the scheme or under any provision thereof shall, after the coming into operation of the scheme or such provision, be carried on by the transferee bank in accordance with the law governing the transferee bank, subject to such modifications in that law or such exemptions of the transferee bank from the operation of any provisions thereof as the ¹[Federal Government], on the recommendation of the State Bank, may, by notification in the official Gazette, make for the purpose of giving full effect to the scheme:

Provided that no such modification or exemption shall be made so as to have effect for a period of more than seven years from the date of the acquisition of such business.

(14) Nothing in this section shall be deemed to prevent the amalgamation with ²[one or more banking institutions] by a single scheme of several banking companies in respect of each of which an order of moratorium has been made under this section.

³[(14A) The provisions of this section shall apply also to a banking company in respect of which no order of moratorium has been made and, in its application to such a banking company, shall have effect as if—

- (a) in sub-section (4), the words and comma "During the period of moratorium," were omitted;
- (b) in sub-section (5), the references to the date of the order of moratorium were references to the date specified under sub-section (8) for the coming into force of the scheme; and
- (c) in sub-section (14), the words "in respect of each of which an order of moratorium has been made under this section" were omitted.]

(15) The provisions of this section and of any scheme made under it shall have effect notwithstanding anything to the contrary contained in any other provisions of this Ordinance or in any other law or any agreement, award or other instrument for the time being in force.

¹Subs. by the Banking Companies (Amdt.) Act, 1972 (30 of 1972), s. 23 (w.e.f. 13-10-1972), for "Central Government".

²Subs. *ibid.*, s. 14, for "a banking institution".

³Sub-section (14A) *ins. ibid.*,

¹[(16) In this section, "banking institution" and "banking company" mean any banking company and includes the National Bank of Pakistan, the Agricultural Development Bank of Pakistan, the Industrial Development Bank of Pakistan, the House Building Finance Corporation, investment finance companies, venture capital companies, housing finance companies, leasing companies and any other financial institution covered under section 3A.]

48. 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 the presiding officer of the meeting that he dissents from the scheme of amalgamation, shall be entitled, in the event of the scheme being sanctioned by the State 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 State Bank when sanctioning the scheme and such determination by the State 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 State Bank for sanction and shall, if sanctioned by the State Bank by an order in writing passed in this behalf be binding on the banking companies concerned and also on all the shareholders thereof [:]²

²[Provided that in case of foreign banking companies, notwithstanding the fact that the scheme of the amalgamation is not approved by the requisite majority of shareholders, such sanction may be granted by the State Bank upon a certificate issued by their respective head offices approving the scheme.]

¹Subs. by Ord. III of 02, s. 8.

²Subs. and added by Act IV of 2007, s. 4 (w.e.f. 1-7-07).

(5) Where a scheme of amalgamation is sanctioned by the State Bank under the provisions of this section, the State 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 State 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.

¹[(7) In this section, "banking company" means any banking company and includes the National Bank of Pakistan, the Agricultural Development Bank of Pakistan, the Industrial Development Bank of Pakistan, the House Building Finance Corporation, investment finance companies, venture capital companies, housing finance companies, leasing companies, ²[branch of a foreign banking company doing business in Pakistan] and any other financial institution covered under section 3A.]

49. Winding up by High Court.—(1) Notwithstanding anything contained in section 153, section 162 and section 271 of the Companies Act, 1913 (VII of 1984), but without prejudice to its powers under sub-section (1) of section 45 of this Ordinance, the High Court shall order the winding up of a banking company—

(a) if the banking company is unable to pay its debts; or

(b) if an application for its winding up has been made by the State Bank under section 45 or this section.

(2) The State Bank shall make an application under this section for the winding up of a banking company if it is directed so to do by an order under clause (b) of sub-section (6) of section 40.

(3) The State 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 13; or

¹Subs. by Ord. III of 02, s. 9.

²Ins. by Act IV of 07, s. 4 (w.e.f. 1-7-07).

(ii) has by reason of the provisions of section 27 become disentitled to carry on banking business in Pakistan; or

(iii) has been prohibited from receiving fresh deposits by an order under clause (a) of sub-section (6) of section 40, or under clause (b) of sub-section (5) of section 36 of the State Bank of Pakistan Act, 1956 (XXXIII of 1956); or

(iv) having failed to comply with any requirement of this Ordinance other than the requirements laid down in section 13, has continued such failure or, having contravened any provision of this Ordinance has continued such contravention beyond such period or periods as may be specified in that behalf by the State Bank from time to time after notice in writing of such failure or contravention has been conveyed to the banking company; or

(b) if in the opinion of the State 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 Ordinance disclose that the banking company is unable to pay its debts; or

(iii) the continuance of the banking company is prejudicial to the interests of its depositors.

(4) Without prejudice to the provisions contained in section 163 of the Companies Act, 1913 (VII of 1913), 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 two working days, if such demand is made at a place where there is an office, branch or agency of the State Bank, or within five working days, if such demand is made elsewhere, and if the State Bank certifies in writing that the banking company is unable to pay its debts.

(5) A copy of every application made by the State Bank under sub-section (1) shall be sent by the State Bank to the registrar.

(6) Notwithstanding anything contained in the Companies Act, 1913 (VII of 1913), no Court shall entertain an application for winding up of a banking company by the Court unless such application is accompanied by a certificate in writing from the State Bank certifying that it has no objection to the making of such application.

50. Court Liquidator.—(1) When, having regard to the number of proceedings for the winding up of banking companies or the extent of the work involved in such proceedings, in any Province or at any place in any Province, the ¹[Federal Government] is of the opinion that it is necessary or expedient to attach a Court Liquidator to the High Court of that province it may, in consultation with the State Bank, appoint a Court Liquidator, for the Province or at a place in the Province, and for such time as the ¹[Federal Government] may think fit, for the purpose of conducting all proceedings for the winding up of banking companies and performing such duties in reference thereto as the High Court may impose.

(2) where there is a court liquidator attached to a High Court and an order is passed by the High Court for the winding up of any banking company, then, notwithstanding anything contained in section 171A or section 175 of the Companies Act, 1913 (VII of 1913), the court liquidator shall become the official liquidator of the banking company.

(3) Where there is a court liquidator attached to a High Court and any proceeding for the winding up of a banking company in which any person other than the State Bank or the court-liquidator has been appointed as official liquidator, is pending before the High Court immediately before the commencement of this Ordinance or the date on which the court liquidator is so attached to the High Court, whichever is later, then, notwithstanding anything contained in section 176 of the Companies Act, 1913 (VII of 1913), the person appointed as official liquidator shall, on such commencement or, as the case may be, on the aforesaid date, be deemed to have vacated his office as such and the vacancy so caused shall be deemed to be filled up by the appointment of the court liquidator as the official liquidator:

Provided that where the High Court, after giving the court liquidator and the State Bank an opportunity of being heard, is of opinion that the appointment of the court liquidator would be detrimental to the interests of the depositors of the banking company, it may direct the person appointed as the official liquidator to continue to act as such.

51. State Bank to be official liquidator. Notwithstanding anything contained in section 50, or in section 175 of the Companies Act, 1913 (VII of 1913), where in any proceeding for the winding up of a banking company by the High Court the State Bank applies for an order appointing the State Bank or any individual as the official liquidator of the banking company in that proceeding, the application shall ordinarily be granted and the liquidator, if any, functioning in such proceeding shall vacate office upon such appointment.

52. Application of Companies Act to liquidators.—(1) All the provisions of the Companies Act, 1913 (VII of 1913), relating to a liquidator, and so far as they are not inconsistent with this Ordinance, shall apply to or in relation to a liquidator appointed under section 50 or section 51.

¹*Subs. by the Banking Companies (Amdt.) Act, 1972 (30 of 1972), s. 23 (w.e.f. 13-10-1972), for "Central Government".*

(2) Any reference to the "official liquidator" in this Part and Part IV shall be construed as including a reference to any liquidator of a banking company.

53. Stay of proceedings.—Notwithstanding anything to the contrary contained in section 173 of the Companies Act, 1913 (VII of 1913), the High Court shall not make any order staying the proceedings in relation to the winding up of a banking company, unless the High Court is satisfied that an arrangement has been made whereby the company can pay its depositors in full as their claims accrue.

¹**54. Preliminary report by the official liquidator.** Notwithstanding anything to the contrary contained in section 329 of the Companies Ordinance, 1984 (XLVII of 1984), where a winding-up order has been made in respect of a banking company, the official liquidator shall submit a preliminary report to the High Court within ninety days from the date of the winding up order or where the winding up order has been made before the 1st day of August 2001, within ninety days therefrom, giving the information required by section 329 *ibid* so far as it is available to the official liquidator and also stating the amount of assets of the banking company in cash which are in his custody or under his control on the date of the report and the amount of its assets which are likely to be collected in cash before the expiry of that period of ninety days in order that such assets may be applied speedily towards making priority payments under section 58 and in the discharge, as far as possible, of the liabilities and obligations of the banking company in accordance with the provisions of section 58, and the official liquidator shall make for the purposes aforesaid every endeavour to collect in cash as much of the assets of the banking company as practicable:

Provided that the High Court may, if it deems fit in any particular case, extend the period of ninety days, referred to in this section, for a further period of sixty days.]

55. Notice to preferential claimants and secured and unsecured creditors.—(1) Within fifteen days from the date of the winding-up order of a banking company or where the winding-up order has been made before the commencement of this Ordinance, within one month from such commencement, the official liquidator shall, for the purpose of making an estimate of the debts and liabilities of the banking company (other than its liabilities and obligations to its depositors), by notice served in such manner as the State Bank may direct, call upon—

- (a) every claimant entitled to preferential payment under section 230 of the Companies Act, 1913 (VII of 1913), and
- (b) every secured and every unsecured creditor, to send to the official liquidator within one month from the date of the service of the notice a statement of the amount claimed by him.

¹Subs. by Ord. 47 of 2001, s. 5.

(2) Every notice under sub-section (1) sent to a claimant having a claim under section 230 of the Companies Act, 1913 (VII of 1913), shall state that if a statement of the claim is not sent to the official liquidator before the expiry of the period of one month from the date of the service, the claim shall not be treated as a claim entitled to be paid under that section in priority to all other debts but shall be treated as an ordinary debt due by the banking company.

(3) Every notice under sub-section (1) sent to a secured creditor shall require him to value his security before the expiry of the period of one month from the date of the service of the notice and shall state that if a statement of the claim together with the valuation of the security is not sent to the official liquidator before the expiry of the said period, then the official liquidator shall himself value the security and such valuation shall be binding on the creditor.

(4) If a claimant fails to comply with the notice sent to him under sub-section (1), his claim will not be entitled to be paid under section 230 of the Companies Act, 1913 (VII of 1913), in priority to all other debts but shall be treated as an ordinary debt due by the banking company; and if a secured creditor fails to comply with the notice sent to him under sub-section (1), the official liquidator shall himself value the security and such valuation shall be binding on the creditor.

56. Power to dispense with meetings of creditors, etc. Notwithstanding anything to the contrary contained in sections 178A and 183 of the Companies Act, 1913 (VII of 1913), the High Court may, in the proceedings for winding up a banking company, dispense with any meetings of creditors or contributories or with the appointment of a committee of inspection if it considers that no object will be secured thereby sufficient to justify the delay and expense.

57. Booked depositors credit to be deemed proved.—In any proceeding for the winding-up of a banking company, every depositor of the banking company shall be deemed to have filed his claim for the amount shown in the books of the banking company as standing to his credit and, notwithstanding anything to the contrary contained in section 191 of the Companies Act, 1913 (VII of 1913), the High Court shall presume such claim to have been proved, unless the official liquidator shows that there is reason for doubting its correctness.

¹**58. Priority payments to depositors.**—(1) In every proceeding for winding-up of a banking company where a winding-up order has been made, within ninety days from the date of the winding up order or where the winding up order has been made before the 1st day of August 2001, within ninety days therefrom, the payments referred to in sub-section (2) shall be made by the official liquidator or adequate provision for such payments shall be made by him.

¹Subs. by Ord. 47 of 01, s. 6.

(2) Subject to sub-section (3), there shall be paid within the period of ninety days as specified in sub-section (1), in the first place, to every depositor of the banking company a sum of one hundred thousand rupees or the balance at his credit whichever is less.

- (3) The total amount paid under sub-section (2) shall not exceed a sum of one hundred thousand rupees –
- (i) where a depositor is maintaining more than one account with a banking company; and

(ii) in the case of joint account holders of an account

(4) Where within the period of ninety days as specified in sub-section (1), full payments cannot be made of the amounts required to be paid under sub-section (2) with the assets in cash, the official liquidator shall pay within that period to every depositor on a pro rata basis so much of the amount due to every depositor as the official liquidator is able to pay with those assets, and shall pay the rest of that amount to every depositor as and when sufficient assets are collected by the official liquidator in cash.

(5) After payments have been made first to depositors in accordance with the foregoing provisions, the remaining assets of a banking company available for payment shall be utilised according to the following order of priority, namely:-

- (a) firstly, for payment of balance due to depositors in accordance with a scheme to be prepared by the State Bank;
- (b) after payments have been made to depositors in accordance with clause (a), secondly, for payment on a pro rata basis to every claimant entitled to preferential payment under section 405 of the Companies Ordinance, 1984 (XLVII of 1984); and
- (c) after payments have been made in full in accordance with clauses (a) and (b), thirdly, for payment on a pro rata basis of the debts of the general creditors.

(6) For the purposes of this section, banking companies, financial institutions specified in sub-section (1) of section 3A, leasing companies and modaraba companies shall be treated as general creditors and not depositors.

(7) Subject to sub-section (8), in order to enable the official liquidator to have in his custody or under his control in cash as much of the assets of a banking company as possible, the securities given to every secured creditor may be redeemed by the official liquidator—

- (a) where the amount due to a creditor is more than the value of the securities as assessed by him or, as the case may be, assessed by the official liquidator, on payment of such value; and

- (b) where the amount due to the creditor is equal to or less than the value of the securities as so assessed, on payment of the amount due.

(8) Where the official liquidator is not satisfied with the valuation made by a creditor, he may apply to the High Court for making a valuation.

(9) When any depositor, claimant or creditor to whom any payment is to be made in accordance with the foregoing provisions, cannot be found or is not readily traceable, adequate measures shall be taken by the official liquidator for such payment.

(10) For the purposes of this section, the payments specified in each of the following clauses shall be treated as payments of a different class, namely:—

- (a) payments to depositors pursuant to sub-sections (2) and (4);
- (b) payments to depositors pursuant to clause (a) of sub-section (5);
- (c) payments to preferential claimants pursuant to clause (b) of sub-section (5); and
- (d) payments to the general creditors pursuant to clause (c) of sub-section (5).

(11) The payments to persons in each different class as specified in sub-section (10) shall rank equally among themselves and be paid in full unless the assets are insufficient to meet them, in which case they shall abate in equal proportion.]

59. Restriction on voluntary winding up.—Notwithstanding anything to the contrary contained in section 203 of the Companies Act, 1913 (VII of 1913), no banking company which holds a licence granted under section 27 may be voluntarily wound up unless the State Bank certifies in writing that the company is able to pay in full all its debts to its creditors as they accrue, and without prejudice to the provisions contained in sections 218 and 220 of that Act, the High Court shall, on application of the State Bank, order the winding up of the company by the High Court if at any stage during the voluntary winding up proceedings the company is not able to meet such debts as they accrue.

PART IV

SPECIAL PROVISIONS FOR SPEEDY DISPOSAL OF WINDING UP PROCEEDINGS

60. Part IV to override other laws. The provisions of this Part and the rules made thereunder shall have effect notwithstanding anything inconsistent therewith contained in the Companies Act, 1913 (VII of 1913), or the code of Civil Procedure, 1908 (Act V of 1908), or the Code of Criminal Procedure, 1898 (Act V of 1898), or any other law for the time being in force or any instrument having effect by virtue of any such law; but the provisions of any such law or instrument in so far as the same are not varied by, or inconsistent with, the provisions of this Part or rules made thereunder shall apply to all proceedings under this Part.

61. Power of High Court to decide all claims in respect of banking companies. The High Court shall, save as otherwise expressly provided in section 62, have exclusive jurisdiction to entertain and decide any claim made by or against a banking company which is being wound up (including claims by or against any of its branches in Pakistan) or any application made under section 153 of the Companies Act, 1913 (VII of 1913), by or in respect of a banking company or any question of priorities or any other question whatsoever, whether of law or fact, which may relate to or arise in the course of the winding up of a banking company, whether such claim or question has arisen or arises or such application has been made or is made before or after the date of the order for the winding up of the banking company or before or after the commencement of this Ordinance.

62. Transfer of pending proceedings.—(1) Where a winding up order is made or has been made in respect of a banking company, no suit or other legal proceeding, whether civil or criminal, in respect of which the High Court has jurisdiction under this Ordinance and which is pending in any other court immediately before the commencement of this Ordinance or the date of the order for the winding up of the banking company, whichever is later, shall be proceeded with except in the manner hereinafter provided.

(2) The official liquidator shall, within three months from the date of the winding up order or the commencement of this Ordinance whichever is later or such further time as the High Court may allow, submit to the High Court a report containing a list of all such pending proceedings together with particulars thereof.

(3) On receipt of a report under sub-section (2), the High Court may, if it so thinks fit, give the parties concerned an opportunity to show cause why the proceedings should not be transferred to itself and after making an inquiry in such manner as may be provided by rules made under section 79, it shall make such order as it deems fit transferring to itself all or such of the pending proceeding as may be specified in the order and such proceedings shall thereafter be disposed of by the High Court.

(4) If any proceeding pending in a court is not so transferred to the High Court under sub-section (3), such proceeding shall be continued in the court in which the proceeding was pending.

(5) Nothing in this section shall apply to any proceeding pending in appeal before the Supreme Court or a High Court.

63. Settlement of list of debtors.—(1) Notwithstanding anything to the contrary contained in any law for the time being in force, the High Court may settle in the manner hereinafter provided a list of debtors of a banking company which is being wound up.

(2) Subject to any rules that may be made under section 92, the official liquidator shall, within six months from the date of the winding up order or the commencement of this Ordinance, whichever is later, from time to time, file to the High Court lists of debtors containing such particulars as are specified in the Third Schedule:

Provided that such lists may, with the leave of the High Court, be filed after the expiry of the said period of six months.

(3) On receipt of any list under sub-section (2), the High Court shall, wherever necessary, cause notices to be issued on all persons affected and after making an inquiry in such manner as may be provided by rules made under section 79, it shall make an order settling the list of debtors:

Provided that nothing in this section shall debar the High Court from settling any such list in part as against such of the persons whose debts have been settled without settling the debts of all the persons placed on the list.

(4) At the time of the settlement of any such list, the High Court shall pass an order for the payment of the amount due by each debtor and make such further orders as may be necessary in respect of the relief claimed, including reliefs against any guarantor or in respect of the realisation of any security.

(5) Every such order shall, subject to the provisions for appeal, be final and binding for all purposes as between the banking company on the one hand and the person against whom the order is passed and all persons claiming through or under him on the other hand, and shall be deemed to be a decree in a suit.

(6) In respect of every such order, the High Court shall issue a certificate specifying clearly the reliefs granted and names and descriptions of the parties against whom such reliefs have been granted, the amount of costs awarded and by whom, and out of what funds and in what proportions, such costs are to be paid; and every such certificate shall be deemed to be a certified copy of the decree for all purposes including execution.

(7) At the time of settling the list of debtors or at any other time prior or subsequent thereto, the High Court shall have power to pass any order in respect of a debtor on the application of the official liquidator for the realisation, management, protection, preservation or sale of any property given as security to the banking company and to give such powers to the official liquidator to carry out the aforesaid directions as the High Court thinks fit.

(8) The High Court shall have power to sanction a compromise in respect of any debt and to order the payment of any debt by installments.

(9) In any case in which any such list is, settled ex-parte as against any person, such person may, within thirty days from the date of the order settling the list, apply to the High Court for an order to vary such list, so far as it concerns him, and if the High Court is satisfied that he was prevented by any sufficient cause from appearing on the date fixed for the settlement of such list and that he has a good defence to the claim of the banking company on merits, the High Court may vary the list and pass such orders in relation thereto as it thinks fit.

Provided that the High Court may, if it so thinks fit, entertain the application after the expiry of the said period of thirty days.

(10) Nothing in this section shall—

(a) apply to a debt which has been secured by a mortgage of immovable property, if a third party has any interest in such immovable property; or

(b) prejudice the rights of the official liquidator to recover any debt due to a banking company under any other law for the time being in force.

64. Special provisions to make calls on contributories. Notwithstanding that the list of contributories has not been settled under section 184, of the Companies Act, 1913 (VII of 1913), the High Court may, if it appears to it necessary or expedient so to do, at any time after making a winding up order, make a call on and order payment thereof by any contributory under sub-section (1) of section 187 of the Companies Act, 1913 (VII of 1913), if such contributory has been placed on the list of contributories by the official liquidator and has not appeared to dispute his liability.

65. Documents of banking company to be evidence.—(1) Entries in the books of account or other documents of a banking company which is being wound up shall be admitted in evidence in all proceedings by or against the banking company; and all such entries may be proved either by the production of the books of account or other documents of the banking company containing such entries or by the production of a copy of the entries, certified by the official liquidator under his signature and stating that it is a true copy of the original entries and that such original entries are contained in the books of account or other documents of the banking company in his possession.

(2) Notwithstanding anything to the contrary contained in the Evidence Act, 1872, all such entries in the books of account or other documents of a banking company shall as against the directors of the banking company in respect of which the winding up order has been made before the commencement of this Ordinance, be prima facie evidence of the truth of all matters purporting to be therein recorded.

66. Public examination of directors and auditors.—(1) Where an order has been made for the winding up of a banking company, the official liquidator shall submit a report whether in his opinion any loss has been caused to the banking company since its formation by any act or omission (whether or not a fraud has been committed by such act or omission) of any person in the promotion or formation of the banking company or of any director or auditor of the banking company.

(2) If, on consideration of the report submitted under sub-section (1), the High Court is of opinion that any person who has taken part in the promotion or formation of the banking company or has been a director or an auditor of the banking company should be publicly examined, it shall hold a public sitting on a date to be appointed for that purpose and direct that such person, director or auditor shall attend thereat and shall be publicly examined as to the promotion or formation or the conduct of the business of the banking company, or as to his conduct and dealings, in so far as they relate to the affairs of the banking company:

Provided that no such person shall be publicly examined unless he has been given an opportunity to show cause why he should not be so examined.

(3) The official liquidator, shall take part in the examination and for that purpose may, if specially authorized by the High Court in that behalf, employ such legal assistance as may be sanctioned by the High Court.

(4) Any creditor or contributory may also take part in the examination either personally or by any person entitled to appear before the High Court.

(5) The High Court may put such questions to the person examined as it thinks fit.

(6) The person examined shall be examined on oath and shall answer all such questions as the High Court may put or allow to be put to him.

(7) A person ordered to be examined under this section may, at his own cost, employ any person entitled to appear before the High Court who shall be at liberty to put to him such questions as the High Court may deem just for the purpose of enabling him to explain or qualify any answer given by him:

Provided that if he is, in the opinion of the High Court, exculpated from any charges made or suggested against him, the High Court may allow him such costs in its discretion as it may deem fit.

(8) Notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined and may thereafter be used in evidence against him in any proceeding, civil or criminal, and shall be open to the inspection of any creditor or contributory at all reasonable times.

(9) Where on such examination, the High Court is of opinion (whether a fraud has been committed or not)—

(a) that a person who has been a director of the banking company is not fit to be director of a company, or

(b) that a person who has been an auditor of the banking company or a partner of a firm acting as such auditor is not fit to act as an auditor of a company or to be a partner of a firm acting as such auditor, the High Court may make an order that that person shall not, without the leave of the High Court, be a director of, or in any way, whether directly or indirectly, be concerned or take part in the management of any company or, as the case may be, act as an auditor of, or be a partner of a firm acting as auditors of, any company for such period not exceeding five years as may be specified in the order.

67. Special provisions for assessing damages against delinquent directors, etc.—(1) Where an application is made to the High Court under section 235 of the Companies Act, 1913 (VII of 1913), against any promoter, director, manager, liquidator or officer of a banking company for repayment or restoration of any money or property and the applicant makes out a **prima facie** case against such person, the High Court shall make an order against such person to repay and restore the money or property unless he proves that he is not liable to make the repayment or restoration either wholly or in part.

Provided that where such an order is made jointly against two or more such persons, they shall be jointly and severally liable to make the repayment or restoration of the money or property.

(2) Where an application is made to the High Court under section 235 of the Companies Act, 1913 (VII of 1913), and the High Court has reason to believe that a property belongs to any promoter, director, manager, liquidator or officer of the banking company, whether the property stands in the name of such person or of any other person as the ostensible owner, the High Court may, at any time, whether before or after making an order under sub-section (1), direct the attachment of such property or of such portion thereof as the High Court may think fit, and when the property so attached stands in the name of an ostensible owner, it shall remain subject to attachment unless the ostensible owner can prove to the satisfaction

of the High Court that he is the real owner and the provisions of the Code of Civil Procedure, 1908 (Act V of 1908), relating to attachment of property shall, as far as may be, apply to such attachment.

¹[(3) For the purposes of this section and section 70 of this Ordinance and section 235 of the Companies Act, 1913 (VII of 1913), "property" includes property transferred or otherwise disposed of by the person referred to in sub-section (1) or any other person as ostensible owner of such property within two years preceding the commencement of proceedings under section 235 of the Companies Act, 1913 (VII of 1913), or during the currency of such proceedings, if the High Court is satisfied by affidavit or otherwise that the transfer was otherwise than in good faith and for sufficient consideration.]

68. Duty of directors and officers of banking company to assist in the realisation of property.—Every director or other officer of a banking company which is being wound up shall give such assistance to the official liquidator as he may reasonably require in connection with the realisation and distribution of the property of the banking company.

69. Special provisions for punishing offences in relation to banking companies being wound up.—(1) The High Court may, if it thinks fit, take cognizance of and try in a summary way any offence punishable under this Ordinance or under the Companies Act, 1913 (VII of 1913), alleged to have been committed by any person who has taken part in the promotion or formation of the banking company which is being wound up or by any director, manager or officer thereof.

(2) When trying any such offence as aforesaid, the High Court may also try any other offence not referred to in sub-section (1) which is an offence with which the accused may, under the Code of Criminal Procedure, 1898 (Act V of 1898), be charged at the same trial.

(3) In any case tried summarily under sub-section (1), the High 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 High Court, necessary in the interest of justice;
- (c) shall, before passing any sentence, record judgement embodying the substance of the evidence and also the particulars specified in section 263 of the Code of Criminal Procedure, 1898 (Act V of 1898), so far as that section may be applicable;

¹Sub-section (3) added by the Banking Companies (Amdt.) Act, 1972 (30 of 1972), s. 15 (w.e.f. 13-10-1972).

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

(4) All offences in relation to winding up alleged to have been committed by any person specified in sub-section (1) which are punishable under this Ordinance or under the 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 High Court other than the Judge for the time being dealing with the proceeding for the winding up of the banking company.

(5) Notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1898 (Act V of 1898), the High Court may 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.

70. Public examination of directors and auditors etc. in respect of a banking company under scheme of arrangement.—(1) Where an application for sanctioning a compromise or arrangement in respect of a banking company is made under section 153 of the Companies Act, 1913 (VII of 1913), or where such sanction has been given and the High Court is of opinion, whether on a report of the State Bank or otherwise, that any person who has taken part in the promotion or formation of that banking company or has been a director or auditor thereof should be publicly examined, it may direct such examination of such person and the provisions of section 66 shall, as far as may be, apply to such banking company as they apply to a banking company which is being wound up.

(2) Where a compromise or arrangement is sanctioned under section 153 of the Companies Act, 1913 (VII of 1913), in respect of a banking company, the provisions of section 235 of that Act and of section 67 shall, as far as may be, apply to such banking company as they apply to a banking company which is being wound up as if the order sanctioning the compromise or arrangement were an order for the winding up of that banking company.

(3) Where a scheme of reconstruction or amalgamation of a banking company has been sanctioned by the ¹[Federal Government] under section 47 and the ¹[Federal Government] is of opinion that any person who has taken part in the promotion or formation of that banking company or has been a director or auditor thereof should be publicly examined, that Government may apply to the High Court for the examination of such person and if on such examination the High Court finds (whether a fraud has been committed or not) that that person is not fit to be a director of a company or to act as an auditor of a company or to be a partner of a firm acting as such auditors, the ¹[Federal Government] shall make an order that that person shall not, without the leave of the ¹[Federal Government], be a director of , or in any way, whether directly or indirectly, be concerned or take part in the management of any company or, as the case may be, act as an auditor of, or be a partner of a firm acting as auditors of, any company for such period not exceeding five years as may be specified in the order.

¹Subs. by the Banking Companies (Amdt.) Act, 1972 (30 of 1972), s. 23 (w.e.f. 13-10-1972), for "Central Government".

(4) Where a scheme of reconstruction or amalgamation of a banking company has been sanctioned by the ¹[Federal Government] under section 47, the provision of section 235 of the Companies Act, 1913 (VII of 1913), and those of section 67 shall, as far as may be, apply to the banking company as they apply to a banking company which is being wound up as if the order sanctioning the scheme of reconstruction or amalgamation, as the case may be, were an order for the winding-up of the banking company; and any reference in the said section 235 to the application of the official liquidator shall be construed as a reference to the application of the [Federal Government.]

²[(5) The provisions of sub-sections (3) and (4) shall apply to a banking company in respect of which a scheme of amalgamation has been sanctioned by the State Bank under section 48, and in their application to such a banking company shall have effect as if—

(a) the word "reconstruction or" wherever occurring were omitted; and

(b) for the words ³[Federal Government] wherever occurring the words "State Bank" were substituted.

(6) The provisions of sub-sections (3) and (4) shall apply to a banking company other than a banking company in relation to which provision has been made in the preceding sub-sections and, in their application to such a banking company, shall have effect as if—

(a) in sub-section (3),—

(i) for the words and figure "where a scheme of reconstruction or amalgamation of a banking company has been sanctioned by the ¹[Federal Government] under section 47 and" the word "If" were substituted; and

(ii) for the words ¹[Federal Government] wherever occurring the words "State Bank" were substituted; and

(b) in sub-section (4),—

(i) the words, figure and comma "Where a scheme of reconstruction or amalgamation of a banking company has been sanctioned by the ¹[Federal Government] under section 47," were omitted;

(ii) for the words and commas "order sanctioning the scheme of reconstruction or amalgamation, as the case may be," the words and figure "making of the application by the State Bank under the said section 235" were substituted; and

(iii) for the words ¹[Federal Government] twice occurring the words "State Bank" were substituted.].

¹Subs. by the Banking Companies (Amdt.) Act, 1972 (30 of 1972), s. 23 (w.e.f. 13-10-1972), for "Central Government".

²Sub-section (5) and (6) added *ibid.*, s. 16 (w.e.f. 13-10-1972).

³Subs. by F.A.O. 1975, Art. 2 and Table, for "Central Government" (w.e.f. 28-7-1975).

71. Special provisions for banking companies working under schemes of arrangement at the commencement of the Ordinance.—Where any compromise or arrangement sanctioned in respect of a banking company under section 153 of the Companies Act, 1913 (VII of 1913), is being worked at the commencement of this Ordinance, the High Court may, if it so thinks fit, on the application of such banking company—

- (a) excuse any delay in carrying out any of the provisions of the compromise or arrangement; or
- (b) allow the banking company to settle the list of its debtors in accordance with the provisions of section 63 and in such a case, the provisions of the said section shall, as far as may be, apply to the banking company as they apply to a banking company which is being wound up as if the order sanctioning the compromise or arrangement were an order for the winding up of the banking company.

72. Appeals.—(1) An appeal shall lie from any order or decision of the High Court in a civil proceeding under this Ordinance when the amount or value of the subject-matter of the claim exceeds five thousand rupees.

(2) The High Court may by rules provide for an appeal against any order made under section 69 and the conditions subject to which any such appeal would lie.

(3) Subject to the provisions of sub-section (1) and sub-section (2) and notwithstanding anything contained in any other law for the time being in force every order or decision of the High Court shall be final and binding for all purposes as between the banking company on the one hand, and all persons who are parties thereto and all persons claiming through or under them or any of them, on the other hand.

73. Special period of limitation.—(1) Notwithstanding anything to the contrary contained in the 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 a suit or application by a banking company which is being wound up, the period commencing from the date of the presentation of the petition for the winding up of the banking company shall be excluded.

(2) Notwithstanding anything to the contrary contained in the Limitation Act, 1908 (IX of 1908), or section 235 of the Companies Ordinance, 1913 (VII of 1984), or in any other law for the time being in force, there shall be no period of limitation for the recovery of arrears of calls from any director of a banking company which is being wound up or for the enforcement by the banking company against any of its directors of any claim based on a contract, express or implied; and in respect of all other claims by the banking company against its directors, the period of limitation shall be twelve years from the date of the accrual of such claims or five years from the date of the first appointment of the liquidator, whichever is longer.

(3) The provisions of this section, in so far as they relate to banking companies being wound up, shall also apply to a banking company in respect of which a petition for the winding up has been presented before the commencement of this Ordinance.

74. State Bank to 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 State Bank has been appointed as the official liquidator and the High Court has directed the official liquidator to obtain the advice of the State Bank on any matter (which it is hereby empowered to do), it shall be lawful for the State Bank to examine the record of any such proceeding and tender such advice on the matter as it may think fit.

75. Power to inspect.—(1) The State Bank shall, on being directed so to do by the ¹[Federal Government] or by the High Court, cause an inspection to be made one or more of its officers of a banking company which is being wound up and its books and accounts.

(2) On such inspection, the State Bank shall submit its report to the ¹[Federal Government] and the High Court.

(3) If the ¹[Federal Government], on consideration of the report of the State Bank, is of opinion that there has been a substantial irregularity in the winding up proceedings, it may bring such irregularity to the notice of the High Court for such action as the High Court may think fit.

(4) On receipt of the report of the State Bank under sub-section (2) or on any irregularity being brought to its notice by the ¹[Federal Government], under sub-section (3) the High Court may, if it deems fit, after giving notice to and hearing the ¹[Federal Government] in regard to the report, give such directions as it may consider necessary.

76. Power to call for returns and information.— The State Bank may, at any time by notice in writing, require the liquidator of a banking company to furnish it, within such time as may be specified in the notice or such further time as the State Bank may allow, any statement or information relating to or connected with the winding up of the banking company; and it shall be the duty of every liquidator to comply with such requirements.

Explanation.— For the purposes of this section and section 75, a banking company working under a compromise or arrangement but prohibited from receiving fresh deposits, shall, as far as may be, be deemed to be a banking company which is being wound up.

¹*Subs. by the Banking Companies (Amdt.) Act, 1972 (30 of 1972), s. 23 (w.e.f. 13-10-1972), for "Central Government".*

77. 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 or the special officer appointed under sub-section (4) of section 45 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 or the special officer as the case may be, may if he deems it necessary in the interest of speedy liquidation, request in writing the District Magistrate, within whose jurisdiction any property, books of account or other documents of such banking company may be situated or 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 documents and forward them to the official liquidator or the special officer.

(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.

78. Enforcement of orders and decisions of High Court.— (1) All orders made in any civil proceeding by a High Court may be enforced in the same manner in which decrees of such court made in any suit pending therein may be enforced.

(2) Notwithstanding anything to the contrary contained in the Code of Civil Procedure, 1908 (V of 1908), a liquidator may apply for the execution of a decree by a court other than the one which made it, on production of a certificate granted under sub-section (6) of section 63 and on his certifying in writing the amount remaining due or relief remaining unenforced under the decree.

(3) Without prejudice to the provisions of sub-section (1) or sub-section (2), any amount found due to the banking company by an order or decision of the High Court may, with the leave of the High Court, be recovered in the same manner as an arrears of land revenue.

79. Power of High Court to make rules.— The High Court may make rules consistent with this Ordinance and the rules made under section 92 prescribing:

- (a) the manner in which inquiries and proceedings under Part III or Part IV may be held;
- (b) the offences which may be tried summarily;
- (c) the authority to which, and the conditions subject to which, appeals may be preferred and the manner in which such appeals may be filed and heard; and
- (d) any other matter for which provision has to be made for enabling the High Court to effectively exercise its functions under this Ordinance.

80. References to directors etc., shall be construed as including references to past directors, etc. For the removal of doubts it is hereby declared that any reference in this Part to a director, manager, liquidator, officer or auditor of a banking company shall be construed as including a reference to any past or present director, manager, liquidator, officer or auditor of the banking company.

81. Part II not to apply to banking companies being wound up. Nothing contained in Part II shall apply to a banking company which is being wound up.

82. Validation of certain proceedings. Notwithstanding anything contained in section 61 or any other provision of this Part no proceeding held, judgement delivered or decree or order made before the commencement of this Ordinance, by any Court other than the High Court in respect of any matter over which the High Court has jurisdiction under this Ordinance shall be invalid or be deemed ever to have been invalid merely by reason of the fact that such proceeding, judgement, decree or order was held, delivered or made by a court other than the High Court.

¹[PART-IVA
BANKING MOHTASIB

82A. Appointment of Mohtasib. There shall be a Banking Mohtasib who shall be appointed by the President in consultation with the Governor of the State Bank of Pakistan.

(2) The Banking Mohtasib shall be a person of high integrity and unimpeachable banking or legal credentials who is not a share-holder of a banking company or financial institution and is not, and has not, been a bank defaulter.

(3) The jurisdiction of the Banking Mohtasib in relation to banking transactions shall be to—

- (a) enquire into complaints of banking malpractices;
- (b) perverse, arbitrary or discriminatory actions;
- (c) violations of banking laws, rules, regulations or guidelines;
- (d) inordinate delays or inefficiency; and
- (e) corruption, nepotism or other forms of maladministration.

(4) The Banking Mohtasib shall hold office a period of three years and shall not be eligible for any extension of tenure or for re-appointment under any circumstances whatsoever.

¹Ins. by Act XIV of 1997, s. 15.

(5) The Banking Mohtasib shall not hold any other office of profit in the service of Pakistan or occupy any other position carrying the right to remuneration for the rendering of services.

82B. Terms and conditions of the Banking Mohtasib.-(1) The Banking Mohtasib shall be entitled to the same salary and allowances as a Judge of a High Court.

(2) The Banking Mohtasib may be removed from office on the ground that he has been guilty of misconduct or that he is incapable of properly performing the duties of his office by reason of physical or mental incapacity.

Provided that he shall have the right to file an appeal before the Federal Services Tribunal.

(3) The Banking Mohtasib shall be provided with a secretariat to be appointed in consultation with the State Bank. Appointments to the Secretariat may be made on deputation from the State Bank of Pakistan or other banks or otherwise on the basis of professional qualifications and the costs of the Secretariat shall be shared by banks in such proportions as may be determined by the State Bank of Pakistan.

(4) The Banking Mohtasib shall have the power and responsibility—

- (a) to entertain complaints from customers, borrowers, banks or from any concerned body or organization;
- (b) to facilitate the amicable resolution of complaints after giving hearings to the complainant and the concerned bank;
- ¹[(c) to receive evidence on affidavit;
- (d) to issue commission for the examination of witnesses; and]
- ¹[(e)] in the event that complaints cannot be resolved by consent, to give findings which shall be acted upon in the manner set out herein.

(5) The Banking Mohtasib shall exercise his powers and authority in the following manner:-

- (a) In relation to all banks operating in Pakistan. The Banking Mohtasib shall be authorised to entertain complaints of the nature set out herein below:-
 - (i) failure to act in accordance with banking laws and regulations including policy directives or guidelines issued by the State bank from time to time.

Provided that if there is a dispute as to the proper interpretation of any regulations, directions or guidelines, the same shall be referred to the State Bank for clarification.

¹Omitted, re-lettered and ins. by Act IV of 07, s. 4 (w.e.f. 1-7-07)

- (ii) delays or fraud in relation to the payment or collection of cheques, drafts or other banking instruments or the transfer of funds;
 - (iii) fraudulent or unauthorised withdrawals or debit entries in accounts;
 - (iv) complaints from exporters or importers relating to banking services and obligations including letter of credits;
 - (v) complaints from holders of foreign currency accounts, whether maintained by residents or non-residents;
 - (vi) complaints relating to remittances to or from abroad;
 - (vii) complaints relating to mark-up or interest rates based on the ground of a violation of an agreement or of State Bank directives; and
 - (viii) complaints relating to the payment of utility bills.
- (b) In relation to banks in the public sector.— The Banking Mohtasib shall be authorized to entertain complaints against such banks on the following additional grounds as well—
- (i) corrupt or malafide practices by bank officers;
 - (ii) gross dereliction of duty in dealing with customers; and
 - (iii) inordinate delays in taking decisions; [and]¹
- ¹[(c) The Banking Mohtasib shall not entertain any complaint or application which has already been disposed of by the State Bank, or any court in Pakistan.].

82C. Reference to Banking Mohtasib by Court. If at any time during the pendency of a case, a court trying a case relating to recovery of loan by a banking company is of the opinion that the management of the banking company has prima facie acted in a malafide manner, or in violation of banking rules and regulations, it may make reference to the Banking Mohtasib for inquiring into the matter and passing such order in accordance with the provisions hereof as may deem fit:

Provided that the making of a reference shall not prevent the court from deciding the claim before it on merits.

82D. Procedure for making complaints.—(1) A complaint shall be made on solemn affirmation or oath in writing addressed to the Banking Mohtasib. The complaint shall set out the full particulars of the transaction complained of and the name and address of the complainant.

(2) Prior to making a complaint the complainant shall intimate in writing to the concerned bank his intention of filing a complaint and if the bank either fails to respond, or makes a reply which is unsatisfactory to the complaint, within a period of ¹[forty-five days], the complainant may file a complaint at any time thereafter within a further period of ¹[forty-five days]:

¹Subs. and added by Act IV of 07, s. 4 (w.e.f. 1-7-07).

Provided that the Banking Mohtasib may, if satisfied that there were grounds for the delay in filing the complaint, condone the delay and entertain the complaint.

(3) The Banking Mohtasib may adopt any procedure as he considers appropriate for investigating a complaint:

Provided that he shall not pass any order against a bank without first giving it a notice and an opportunity of a hearing.

(4) Subject to section 82C, the Banking Mohtasib shall not have any power to issue an order in the nature of a stay order or to entertain any complaints if the matter is pending before a court or other legal forum.

(5) The Banking Mohtasib may reject a complaint summarily or he may accept the same or pass any other order he deems fit:

Provided that in each case he shall pass a reasoned order for his decision.

82E. Recommendations for implementation.—(1) In the event the Banking Mohtasib comes to the conclusion that the complaint is justified, in part or in whole, he shall try and facilitate an amicable resolution or settlement by resort to mediation and failing that communicate his findings to the concerned bank with the direction—

- (a) to reconsider the matter;
- (b) to modify or cancel the earlier decision, action or failure to take the appropriate action;
- (c) to pay reasonable compensation to the complainant as fixed by the Banking Mohtasib;
- (d) to take the requisite steps to improve the functioning or efficiency of the bank; and
- (e) to take such other remedial steps or actions as may be specified by the Banking Mohtasib.

(2) The Banking Mohtasib may, in any case, he deems fit or proper, forward a report to the State Bank recommending—

- (a) an inquiry, or the taking of the requisite steps or legal proceedings against a bank which has acted in violation of banking laws, procedure, regulations or directives of the State Bank; and
- (b) in the case of a bank in the public sector in cases of banking malpractices or corruption, nepotism or gross and flagrant dereliction by bank officers of their duties and responsibilities, the initiation of such action including a criminal prosecution or disciplinary proceedings as the State Bank may deem fit, either by itself, or through filing a report with the Government of Pakistan.

(3) In no case whatsoever shall the Banking Mohtasib have the power to direct that loans, advances or finances be given to a complainant.

¹[(4) Any bank, or official of a bank, or a complainant aggrieved by any order passed by the Banking Mohtasib may, within thirty days of the order, prefer an appeal to the Governor State Bank who shall decide the appeal within sixty days.

(5) The findings of Banking Mohtasib shall be implemented by the concerned bank or financial institution within forty days and compliance thereof shall be submitted accordingly. In case an appeal against the decision of the Banking Mohtasib is preferred to the Governor State Bank the aforesaid period of forty days shall be reckoned from the date of decision of appeal.]

¹[(6)] Any order passed by the Banking Mohtasib which has not been appealed against ¹[within a period of thirty days from the date of order], or any order passed by the State Bank in appeal, as the case may be, shall become final and operative and if not implemented shall render the bank concerned to such action including the imposition of a fine or penalty as the State bank may deem fit, and in relation to a bank officer, to the appropriate disciplinary or other proceedings.

¹[(7)] Nothing contained herein shall prevent a complainant from filing a suit against a bank in the event his complaint is rejected.

82F. Power to call for information. The Banking Mohtasib shall have the power for purposes of disposing a case, to require a bank to disclose to him any information subject to the following conditions:-

- (a) The Banking Mohtasib shall make every endeavour to ensure that banking confidentiality is maintained as required by banking law and procedure and shall take no action which is violative thereof.
- (b) The Banking Mohtasib may call for any or all such documents which are relevant or pertinent for purposes of deciding a complaint:

Provided that he shall not be entitled to call for unrelated documents or documents which may compromise the bank's position in relation to other customers:

Provided further that incases where the Banking Mohtasib is investigating cases of corruption, he shall have a greater latitude in relation to the inspection of documents.

- (c) In the event of a bank refusing to furnish information, or copies of relevant documents, the Banking Mohtasib shall not be authorised to compel the bank to comply with his order but he may draw an adverse inference and comment on the same in his findings.

¹Subs. renumbered and ins. by Act IV of 07, s. 4 (w.e.f. 1-7-07).

82G. Report of Banking Mohtasib.—(1) The Banking Mohtasib shall send to the State Bank of Pakistan on or before the 31st March in every succeeding year a report setting out a review of the activities of his office during the preceding year.

(2) The Banking Mohtasib shall also submit a report or reports to the State Bank of Pakistan containing the results of such inquiries as he may be directed to conduct by the State Bank from time to time.

(3) All reports submitted by the Banking Mohtasib shall be published and released to the public unless he directs otherwise for reasons to be recorded.]

PART V MISCELLANEOUS

83. Penalties.—(1) Whoever in any return balance-sheet or other document or in any information required or furnished by or under or for the purposes of any provision of this Ordinance, wilfully makes a statement which is false in any material particular, knowing it to be false, or wilfully omits to make a material statement, shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine ¹[not exceeding five hundred thousand rupees.]

²[(1A) If any person, being the chairman, director, chief executive, by whatever name called, or official liquidator or an officer of a banking company, mismanages the affairs of the banking company or misuses his position for gaining direct or indirect benefit for himself or any of his family members, he shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine ¹[not exceeding ten million rupees], and shall be ordered by the court trying the offence, to deliver up or refund within a time to be fixed by the court any property acquired or gained by him in his own name or in the name of his family members by so mismanaging the affairs of the banking company or misusing his position or, in default, to suffer imprisonment for a term which may extend to three years.]

³[(1AA) Any executive officer, director or chief executive of a banking company which is either directly or indirectly owned, controlled or managed by the Federal Government or a Provincial Government who extends, or aids in extending, a loan, advance, or any financial facility to a borrower or customer on the verbal instructions of a holder of a public office without reducing the terms of the instructions into writing and drawing them to the attention of his superior officer, or the board of directors, shall be guilty of an offence punishable with imprisonment of either description which may extend to one year, or with fine ³[not exceeding the amount of loan, advance or financing facility so extended], or with both, in addition to such other action which may be taken against him in accordance with law; and]

¹Added by Act IV of 07, s. 4 (w.e.f. 1-7-07).

²Sub-Section (1A) ins. by the Banking Companies (Amdt.) Act, 1972 (30 of 1972), s. 17 (w.e.f. 13-10-1972).

³Ins. and subs. by Act XIV of 1997, s. 4 (w.e.f. 1-7-07).

¹[(1B) If any company which is not a banking company, or a banking company which does not hold a licence under section 27 or the licence granted to which has been cancelled, or any individual or association or body of individuals, transacts the business of banking in Pakistan, the chief executive, by whatever name called, of the company and every director, manager, and other officer of the company, and the individual and every member of the association or body of individuals, shall be deemed to be guilty of such contravention and shall be punishable with imprisonment of either description for a term which may extend to seven years and with fine the amount of which shall not be less than twice the amount of deposits received by the company or, as the case may be, the individual or the association or body of individuals in transacting the business of banking, and shall be ordered by the court trying the offence to pay the fine within a time to be fixed by the court or in default to suffer further imprisonment for a term which may extend to five years.

(1C) Whoever contravenes, or attempts to contravene, or abets the contravention of, the provisions of ²[section 27A or section 43A] or section 43C or sub-section (1) or sub-section (3) or sub-section (4) of section 43D or section 43E ³[or obstructs or hinders any person in the exercise of his powers or discharge of his functions under section 43AA] shall be punishable with imprisonment of either description for a term which may extend to five years and with fine ⁴[not exceeding five million rupees], and, where the contravention is a continuing one, with a further fine which may extend to ⁴[one hundred] thousand rupees for every day during which such contravention continues.]

⁵[(1D) If any company, firm or person contravenes the provisions of section 27A, the chief executive of the company and its directors, every partner of the firm and such person shall be guilty of a offence punishable with imprisonment of either

description for a term which may extend to ten years and with fine the amount of which shall not be less than twice the amount of deposits received in contravention of the said section and forfeiture of whole or part of the property of such company, firm or person and the chief executive of the company and its directors, every partner of the firm and person.].

(2) If advances are made by a banking company in contravention of the provisions of sub-section (1) and (2) of section 24, every director or other officer of the banking company who is knowingly a party to the contravention shall be punishable with imprisonment which may extend to three years and with a fine ⁴[which may extend to the amount of loan so extended and with a further fine which may extend to one hundred thousand rupees for every day during which such contravention continues.]

(3) If any person fails to produce any book, account or other document or to furnish any statement or information which under sub-section (4) of section 40 it 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 an inspection under that section, he shall be punishable with a fine which may extend to ⁴[two hundred thousand] rupees in respect of each offence, and if he persists in such refusal, to further fine which may extend to ⁴[twenty thousand] rupees for every day during which the offence continues.

¹New sub-section (1B) and (1C) ins. by the Banking Companies (Amdt.) Ordinance, 1979 (56 of 1979), s. 4.

²Subs. by the Finance Act, 1990 (7 of 1990), s. 4A, for "section 43A".

³Ins. *ibid*.

⁴Ins. and subs. by Act IV of 07, s. 4 (w.e.f. 1-7-07).

⁵Subs. *ibid.*, for sub-section (1D), which was previously added by Act 6 of 1987, s. 6.

(4) If any deposits are received by a banking company in contravention of an order under clause (a) of sub-section (6) of section 40, 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.

(5) If any other provision of this Ordinance is contravened, or if any default is made in complying with any requirement of this Ordinance or of any order, rule or direction made or condition imposed thereunder, every director, liquidator and other officer of the company and any other person who is knowingly a party to the contravention or default shall be punishable with fine which may extend to ¹[two hundred] thousand rupees, and where contravention or default is a continuing one, with a further fine which may extend to ¹[ten] ²[thousand] rupees for every day during which such contravention or default continues.

³[(6) Without prejudice to the provisions of sub-section (5), a banking company which makes default in complying with the requirement of sub-section (1) of section 29 shall, in respect of every day of default, pay to the State Bank on demand a penalty of a sum not exceeding such percentage as is five per cent above the bank rate,

(a) if no amount is maintained, of the minimum amount required to be maintained under that sub-section, and

(b) if any amount below such minimum is maintained, of the amount by which the amount maintained falls short of the required minimum [:]⁴

⁵[Provided that, in the case of default relating to liabilities assumed on the basis of participation in profit and loss, the penalty shall be as determined by the State Bank from time to time].

⁶[(7) Without prejudice to the provisions of sub-section (5), if a banking company fails or refuses to pay or make the whole or part of the amount of deposit or special deposits or penalty referred to respectively ⁷[* * *] in section 13, sub-section (4) of section 25 and sub-section (6), the State Bank may, without notice to the banking company, debit the amount of default to any account of the defaulting banking company held with the State Bank.

⁸[(8) Without prejudice to the provisions of sub-section (5) the pecuniary fines prescribed under this Ordinance shall be imposed and recovered by State Bank:

Provided that if a banking company fails or refuses to pay the fines or penalties imposed by State Bank under this Ordinance, the State Bank may, without notice to the banking company, debit the amount of default to any account of the banking company held with the State Bank.]

¹Subs. by Act IV of 07, s. 4 (w.e.f. 1-7-07). ²Subs. by Act XIV of 1997, s. 16.

³Sub-section (6) added by the Banking Companies (Amdt.) Act, 1968 (15 of 1968), s. 2 (w.e.f. 23-12-1968).

⁴Subs. by the Banking Companies (Third Amdt.) Ordinance, 1980 (58 of 1980), s. 11, for the full-stop.

⁵Proviso added *ibid*.

⁶Sub-section (7) added by the Banking Companies (Amdt.) Act, 1972 (30 of 1972), s. 17 (w.e.f. 13-10-1972).

⁷Omitted. by Ord. 48 of 2000, s.7. ⁸Added by Act IV of 07, s.4 (w.e.f 1-7-07).

¹[83A. Dishonest removal of pledged goods. Whoever, dishonestly removes or disposes of any goods pledged with any banking company as security for the payment of any debt, loan, finance or other similar facility or removes or disposes of any such goods without the prior approval in writing of the banking company, shall be punishable with imprisonment for a term which may extend to three years, and shall also be liable to fine which may extend to the value of the goods removed or disposed of.]

²[84. Cognizance of offences, etc.-³[(1) No court shall take cognizance of any offence punishable under sub-sections (1), (1A), (1B), (1C) and (1D) of section 83 except on a complaint in writing made by an officer of the State Bank generally or specially authorised in writing in this behalf by the State Bank and no court other than the High Court shall try any such offence.]

(2) The High Court shall have, in respect of the trial of an offence referred to in sub-section (1), all the powers which it has in relation to a trial before it under the Code of Criminal Procedure, 1898 (Act V of 1898), hereafter in this section referred to as the Code, and shall follow the procedure provided in the Code for such trial except as hereinafter provided, namely:-

- (a) the trial shall be without a jury and the provisions of the Code shall have effect as if all references therein to jury or jurymen and to commitment proceedings and to any statement or documents made or prepared in the course of such proceedings had been omitted;
- (b) section 297 of the Code shall have effect as if it required the High Court, upon the case for the defence and the prosecutor's reply, if any being concluded, to proceed, with all reasonable speed, to pronounce its judgment; and
- (c) section 352 of the Code shall have effect as if it required the High Court, upon an application being submitted to it by the State Bank stating that it is in the interest of the banking companies in general or a banking company in particular that any proceedings are not held in open court, to order that the public generally shall not have access to, or be or remain in, the room or building used by the court.]

⁴[85. Application of fines. A Court imposing any fine under this Ordinance may direct that the whole or any part thereof shall be applied in or towards—

- (a) payment of the costs of the proceedings;
- (b) the rewarding of the person on whose information the fine is recovered; or
- (c) payment to a banking company of compensation for any loss caused by the offence.]

86. Special provisions for private banking companies. The exemptions, whether express or implied, in favour of a private company in sections 17, 77, 83B, 86H, 91B and 91D, and sub-section (5) of section 144 of the Companies Act, 1913 (VII of 1913), shall not operate in favour of a private company which is a banking company.

¹Ins. by Act XIV of 1997, s. 17.

²Subs. *ibid.*, s. 18 (w.e.f. 13-10-1972), for the original section 84.

³Subs. by the Finance Act, 1990 (7 of 1990), s. 4A, for sub-section (1).

⁴Subs. by the Banking Companies (Amdt.) Act, 1972 (30 of 1972), s. 19, (w.e.f. 13-10-1972), for the original section 85.

87. Restriction on acceptance of deposits withdrawable by cheques. No person other than a banking company, the State Bank, the National Bank of Pakistan or any other banking institution notified by the ¹[Federal Government] in this behalf shall accept from the public deposits of money withdrawable by cheque:

Provided that nothing contained in this section shall apply to any savings bank scheme run by the Government.

88. Change of name by a banking company. Notwithstanding anything contained in section 11 of the Companies Act, 1913 (VII of 1913), the ¹[Federal Government] shall not signify its approval to the change of name of any banking company unless the State Bank certifies in writing that it has no objection to such change.

89. Alteration of memorandum of a banking company. Notwithstanding anything contained in the Companies Act, 1913 (VII of 1913), no application for the confirmation of the alteration of the memorandum of a banking company shall be maintainable unless the State Bank certifies that there is no objection to such alteration.

90. Certain claims for compensation barred. No person shall have any right, whether in contract or otherwise, to any compensation for any loss incurred by reason of the operation of any of the provisions contained in sections 11, 15, ²[15A, 15B, 15C, 20, 25, 25A, ³[27A], 35, 41, 41A, 41B, 41C], 42, ⁴[43A, ³[43AA], 43B, 43C, 43D, 43E, 43F], 47, and 58 or by reason of the compliance by a banking company with any order or direction given to it under this Ordinance.

91. Application of certain provisions to banking company incorporated by special enactments of the Central Legislature. In the case of a banking company incorporated by a Central Act ⁵[or an Act of Parliament] and not liable to be wound up under the companies Act, 1913 (VII of 1913), the provisions of sections 11, ⁶[15A, 15C, 16 to 19, 21, 23 to 25B], 28 to 33, 34 [excluding sub-section (3)] , 36, 39, 40, ⁷[41, 41A, 41B, 41C, 41D,] 42, 45, 46, 83, 84, 85, 90, 92 and 93 shall, without prejudice to the provisions of such Central Act, apply so far as may be, to and in relation to such banking company.

¹Subs. by the Banking Companies (Amdt.) Act, 1972 (30 of 1972), s. 23, for "Central Government". ²Subs. *ibid.*, s. 20 (w.e.f. 13-10-1972), for "20, 41". ³Ins. by Finance Act, 1990 (7 of 1990), s. 4A.

⁴Ins. by the Banking Companies (Amdt.) Ordinance, 1979 (56 of 1979), ss. 5 and 6.

⁵Ins. by F.A.O., 1975, Art. 2 & Sch. (w.e.f. 14-8-1973).

⁶Subs. by Act 30 of 1972, s. 21, for "16 to 19, 21, 23 to 25".

⁷Ins. by Act XIV of 1997, s. 18.

¹[91A. Application of other laws barred. The provisions of ²[clauses (dd), (ee) and (gg) of section 5, section 13, 15A, 15B, 15C, 21, 24, 25, 25A, 25B, 26A, ³[27A], 35, 41, 41A, 41B, 41C, 42, ⁴[43A, ³[43AA], 43B, 43C, 43D, 43E, 43F] and 84 shall have effect notwithstanding any thing contained in any other provision of this Ordinance except section 91, or in any other law for the time being in force or in any contract, agreement, award, memorandum or articles of association or other instrument.].

⁵[91B. Removal of difficulties. If any difficulty arises in giving effect to any of the provisions of this Ordinance, the Federal Government may make such order as may appear to it to be necessary for the purpose of removing the difficulty.]

92. Power of ⁶[Federal Government] to make rules.—(1) The ⁶[Federal Government] may, after consultation with the State Bank, make rules to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of this Ordinance and all such rules shall be published in the Official Gazette.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for the details to be included in the returns required by this Ordinance and the manner in which such returns shall be submitted and the form in which the official liquidator may file lists of debtors to the Court having jurisdiction under Part III or Part IV and the particulars which such lists may contain and any other matter which has to be, or may be prescribed.

(3) All rules made under this section shall be subject to the condition of previous publication, and the date to be specified under clause (3) of section 23 of the General Clauses Act, 1897 (X of 1897), shall not be less than six months from the date on which the draft of the proposed rules was published:

Provided that in respect of first occasion on which rules are made under this section, the provisions of this sub-section shall not apply.

(4) The ⁶[Federal Government] may, by rules made under this section, annul, alter or add to, all or any of the provisions of the Third Schedule.

¹S. 91A ins. by the Banking Companies (Amdt.) Act, 1972 (30 of 1972), s. 22. ²Subs. by the Banking Companies (Third Amdt.) Ordinance, 1980 (58 of 1980), s. 12, for "section 13, 15A, 15B, 15C, 21, 24, 25, 25A, 25B". ³Ins. by Finance Act, 1990 (7 of 1990), s. 4A. ⁴Ins. by the Banking Companies (Amdt.) Ordinance, 1979 (56 of 1979), ss. 5 and 6. ⁵New section 91B ins. by Ord. 58 of 1980, s. 13. ⁶Subs. by F.A.O., 1975, Art. 2 & Sch for "Central Government".

93. Power to exempt in certain cases. The ¹[Federal Government] may, on the recommendation of the State Bank, declare, by notification² in the official Gazette, that any or all of the provisions of this Ordinance shall not apply to any banking company or to any class of banking companies either generally or for such period as may be specified.

³**93A. Exemption of Officers, etc., from liability.** A banking company and its officers and employees shall be exempted from criminal or civil liability of every description provided for in any law in respect of any property, movable or immovable, owned by the banking company, exclusively or jointly with another person or persons so long as the property remains in the custody, power and control of such person or persons on account of licence, lease, hire-purchase, forward sale, rent-sharing agreement or in any other arrangement within the purview of clauses (ee) and (gg) of section 5.¹

93B. Exemption from requirement of licence. Any requirement of a licence or permit to import or export any commodity or article or its purchase or sale shall not apply to a banking company undertaking such transaction in the normal course of its banking business.

Explanation.—In this section, a transaction undertaken by a banking company shall be deemed to be in the normal course of its banking business, only if it is based on an agreement for sale or purchase, lease, or hire-purchase of the said commodity or article by the banking company with its customer to whom finance is provided by it and who is in possession of a valid licence or has otherwise complied with the requirements of law governing the import or export or sale or purchase of such commodity or article.

93C. Exchange of information.—(1) Banking companies may exchange on confidential basis amongst themselves, either directly or through ⁴[any other person providing credit information services], information about their respective clients.

(2) No suit or other legal proceeding shall lie against ⁴[the any credit information provider] or any banking company or any officer of ⁴[such credit information provider] or banking company for anything which is in good faith done in pursuance of this section or for any damage caused or likely to be caused by anything done or intended to be done as aforesaid.

¹Subs. by the Banking Companies (Amdt.) Act, 1972 (30 of 1972), s. 23 (w.e.f. 13-10-1972), for "Central Government". ²For such notifi. See Gaz. of P., 1965, Ext., p. 754. ³New section 93A, 93B, 93C and 93D ins. by the Banking and Financial Services (Amendment of Laws) Ordinance, 1984 (57 of 1984), s. 2 and Sch. ⁴Subs. by Act IV of 07, s.4 (w.e.f. 1-7-07).

93D. Continuance of charge and priority. Where a charge over any property has been or is created by any person in favour of a banking company to secure any interest-based facility extended by the banking company to such person and such facility is at any time converted into or substituted by any facility not based on interest, such charge shall continue to remain valid and shall maintain its priority in favour of the banking company against all charges created by such person in favour of any other person subsequent to the original date of registration of such charge.

Explanation.— For the purposes of sections 93A, 93B, 93C and 93D, "banking company" shall have the same meaning as in the Banking Tribunals Ordinance, 1984".]

94. Protection of action taken in good faith. No suit or other legal proceeding shall lie against the ¹[Federal Government], the Provincial Government, the State Bank or any officer of such Government or Bank for anything which is in good faith done or intended to be done in pursuance of this Ordinance or of any rules or orders made thereunder, or for any damage caused or likely to be caused by anything done or intended to be done as ²[foresaid].

95. [Repeals.] Omitted by the Federal Laws (Revision and Declaration) Ordinance, 1981 (XXVII of 1981), s. 3 and Sch., II.

[THE FIRST SCHEDULE] Omitted by the Federal Laws (Revision and Declaration) Ordinance, 1981 (XXVII of 1981), s. 3 and Sch., II.

¹Subs. by the Banking Companies (Amdt.) Act, 1972 (30 of 1972), s. 23 (w.e.f. 13-10-1972), for "Central Government".

²Sic. Should read "aforesaid".

FORM A
Form of Balance Sheet

Capital and Liabilities				Property and Assets		
		Rs Ps.	Rs Ps.		Rs Ps.	Rs.Ps.
1.	Capital : (a) Authorised Capital..... Share of Rs..... each Issued Capital Share of Rs.....each Subscribed Capital Share of Rs..... each Amount called up at Rs..... per share..... Less calls un-paid Add for forfeited shares			1. CASH : In hand with State Bank and National Bank of Pakistan (including foreign currency notes) 2. BALANCES WITH OTHER BANKS (showing whether on deposit or current account): (i) In Pakistan (ii) Outside Pakistan 3. MONEY AT CALL AND SHORT NOTICE 4. INVESTMENTS (stating mode of valuation. e.g., cost of market value) : (d) (i) Securities of the ¹ [Federal] and Provincial Government and other Trustee securities, including Treasury Bills of the ¹ [Federal] and Provincial Governments. (ii) Shares (classifying into preference, ordinary, deferred and other classes of shares and showing separately share fully paid-up and partly paid-up) (iii) Debentures or Bonds (iv) Other investments (to be classified under proper heads) (v) Gold		
2.	RESERVE FUND AND OTHER RESERVES					
3.	DEPOSITS AND OTHER ACCOUNTS : Fixed Deposits..... Savings Bank Deposits..... Current Accounts, Contingency Accounts, etc.					

¹Subs. By the Banking Companies (Amdt.) Act, 1972 (30 of 1972), s. 23, for "Central"

4.	BORROWINGS FROM OTHER BANKING COMPANIES, AGENTS ETC: (i) In Pakistan (ii) Outside Pakistan Particulars :			5.	ADVANCES : (Other than bad and doubtfull debts for which provision has been made to the satisfaction of the auditors) (I) Loans. Cash Credits, Overdrafts, etc. (i) In Pakistan		
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	(i) Secured (stating the nature of securities) (ii) Unsecured			(ii) Outside Pakistan		
5.	BILLS PAYABLE			(II) Bills Discounted and purchased: (excluding Treasury Bills of the ¹ [Federal] and Provincial Governments) :		
6.	BILLS FOR COLLECTION BEING BILLS RECEIVABLE AS PER CONTRA: (i) Payable in Pakistan (ii) Payable outside Pakistan			(i) Payable in Pakistan (ii) Payable outside Pakistan Particulars of ADVANCES :		
7.	OTHER LIABILITIES : (b)			(i) Debts considered good in respect of which the banking company is fully secured.. . . .		
8.	ACCEPTANCES, ENDORSEMENTS AND OTHER OBLIGATIONS PER CONTRA:			(ii) Debts considered good for which the banking company holds no other security than the debtors' personal security.		
9.	PROFIT AND LOSS: Profit as per last balance sheet.. . . . Less appropriations.. Add profit for the year brought from the Profit & Loss Account			(iii) Debts considered good secured by the personal liabilities of one or more parties in addition to the personal security of the debtors.. . . . (iv) Debts considered doubtful or bad, not provided for		
10.	CONTINGENT LIABILITIES : (c)			(v) Debts due by directors or officers of the banking company or any of them either severally or jointly with any other persons.. . . . (vi) Debts due by companies or firms in which the directors of the banking company are interested as directors, partners or managing agents or in the case of private companies, as members.		

¹Subs. By the Banking Companies (Amdt.) Act, 1972 (30 of 1972), s. 23, for "Central"

(vii) Maximum total amount of
advances, including temporary
advances made at any time during
the year to directors or managers
or officers of the banking company

		or any of them either severally or jointly with any other persons : (e) (viii) Maximum total amount of advances, including temporary advances granted during the year to the companies or firms in, which the directors of the banking company are interested as directors, partners or managing agents or, in the case of private companies, as members : (e) (ix) Due from banking companies ..		
	6.	BILLS RECEIVABLE BEING BILLS FOR COLLECTION AS PER CONTRA: (i) Payable in Pakistan (ii) Payable outside Pakistan .. .		
	7.	CONSTITUENTS' LIABILITIES FOR ACCEPTANCES, ENDORSEMENTS AND OTHER OBLIGATIONS PER CONTRA:		
	8.	PREMISES LESS DEPRECIATION : (f)		
	9.	FURNITURE AND FIXTURES LESS DEPRECIATION : (f)		
	10.	OTHER ASSETS, INCLUDING SILVER (to be specified) : (g)		
	11.	NON-BANKING ASSETS ACQUIRED IN SATISFACTION OF CLAIMS (stating mode of valuation) : (h)		
Total ..	12.	PROFIT AND LOSS.. . . .	Total..	

NOTES

(a) capital.—(i) the various classes of capital, if any, should be distinguished.

Shares issued as fully paid-up pursuant to any contract without payments being received in cash should be stated separately.

Where circumstances permit, issued and subscribed capital and amount called up may be shown, as one item, e.g., Issued and Subscribed Capital

Shares of Rs. paid-up.

In the case of banking companies incorporated outside Pakistan the amount of deposit kept with the State Bank of Pakistan under sub-section (3) of section 13 of the Banking Companies Ordinance, 1962, should be shown under this head; the amount, however, should not be extended to the outer column.

(b) Under this heading may be included such items as the following: pension-or insurance funds, unclaimed dividends, advance payments and unexpired discounts, liabilities to subsidiary companies and any other liabilities.

(c) These should be classified under the following categories :—

- (i) Claims against the banking company not acknowledged as debts.
- (ii) Money for which the banking company is contingently liable showing separately the amount of any guarantee given by the banking company on behalf of directors or officers.
- (iii) Arrears of cumulative preference dividends.
- (iv) Liability on Bills of Exchange re-discounted.
- (v) Liability on account of outstanding Forward Exchange Contracts.

(d) Where the value of the investments shown in the outer column of the balance sheet is higher than the market value, the market value shall be shown separately in brackets.

(e) Maximum total outstanding balance in all such accounts as a unit on any day during the year should be given under this heading.

(f) Premises wholly or partially occupied by the banking company for the purposes of business should be shown against "Premises less depreciation". In the case of fixed capital expenditure, the original cost, and additions thereto and deductions therefrom during the year should be stated, as also the total depreciation written off. Where sums have been written off on a reduction of capital or revaluation of assets, every balance sheet after the first balance sheet subsequent to the reduction or revaluation should show the reduced figures with the date and amount of the reduction made. Furniture, fixtures and other assets which have been completely written off need not be shown in the balance sheet.

(g) Under this heading may be included such items as the following, which must be shown under headings suitably described ; preliminary, formation and organisation expenses, development expenditure, commission and brokerage on shares, interest accrued on investments but not collected, investments in shares of subsidiary companies and any other assets.

(h) Value shown shall not exceed the market value and in cases where the market value is not ascertainable, the estimated realisable value.

General Instructions.—The corresponding figures (to the nearest rupee, if so desired) for the year, immediately preceding the year to which the profit and loss account relates should be shown in separate columns.

FORM B

FORM OF PROFIT AND LOSS ACCOUNT

Profit and Loss Account for the year ended December,

Expenditure			INCOME* (LESS PROVISIONS MADE DURING THE YEAR FOR BAD & DOUBTFUL DEBTS AND OTHER USUAL OR NECESSARY PROVISIONS)		
		Rs. Ps.			Rs. Ps.
[1.	Interest on deposits, borrowing etc. and or *Return].		² [1.	Interest and Discount and or Return *].	
2.	Salaries and Allowances and provident Fund (showing separately salaries and allowances to managing director,		2.	Commission, Exchange and Brokerage ..	

	manager or chief executive officer)				
3.	Directors' and Local Committee Members' fees and allowances		3.	Rents	
4.	Rent, Taxes, Insurance, Lighting, etc.		4.	Net profit on sale of investments, gold and silver, land, premises and other assets (not credited to Reserves or any particular Fund or Account) . .	
5.	Law Charges		5.	Net profit on revaluation of investments, gold and silver, land, premises and other assets (not credited to Reserves or any particular Fund or Account)	
6.	Postage, Telegrams and Stamps . .		6.	Income from non-banking assets, and profit from sale of or dealing with such assets	
7.	Auditors' Fees		7.	Other receipts	
8.	Stationery, Printing, Advertisement, etc, . .		8.	Loss (if any)	
9.	Stationery, Printing, Advertisement, etc, . .				
10.	Loss from sale of or dealing with non-banking assets				
11.	Other Expenditure				
12.	Balance of Profit				
	Total . .			Total . .	

* Net loss on sale or revaluation of investments, gold and silver, land premises and other assets, if any, may be deducted from income.

* 'Return' means income from, or as case may be, paid on, non-interest bearing accounts.

¹Subs. by the Notifin. No. BCD. 2/81, dt. 13-12-1981, for "1. Interest paid on deposits, borrowings etc.", See Gaz. of P. Ext., Pt.I11, dt. 19-12-1981, P.446.

²Subs. *ibid.*, for "1. Interest and Discount".

THE THIRD SCHEDULE

[See section 63(2)1

List of Debtors

The official liquidator shall, from time to time, submit lists of debtors to the High Court, each list being verified by an affidavit.

Every such list shall contain the following particulars :—

names and addresses of the debtors ;

amount of debt due to the banking company by each debtor;

rate of interest, if any, and the date up to which such interest has been calculated in the case of each debtor;

description of papers, writings and documents, if any, relating to each debt;

relief or relief's claimed against each debtor.

3.—(a) In every such list, the official liquidator shall distinguish between the debts for which the banking company holds any security other than a personal security and the debts for which no security or only a personal security is given ;

In the case of secured debts, particulars of the securities claimed by the banking company, and whenever possible their estimated value, and the names and addresses of person or persons, if any, having an interest in the securities or the right of redemption therein ;

In case the debt is guaranteed by any person or persons, the name and address of the guarantor or guarantors with particulars as to the extent to which the debt is guaranteed and description of documents, papers or writings, in support of such guarantee.

4. If the debtor is adjudged insolvent either before or after he has been included in any such list, but before such list is settled, the name and address of the assignee or the receiver of his estate, as the case may be, should be stated in, or added to the list.