

COMPARATIVE TABLE OF CORRESPONDING CLAUSES OF BCO IN BCA WITH CERTAIN OR NO AMENDMENTS IN BCA

| | SECTIONS | PARTS | SCHEDULE |
|--|----------|--|----------|
| BANKING COMPANIES ORDINANCE 1962 | 133 | 5 | 2 |
| [DRAFT] BANKING COMPANIES ACT , 2006 | 188 | 15 | 2 |
| PARTS/SCHEDULES OF BCO | | PARTS/SCHEDULES OF BCA[DRAFT] | |
| Part - I - Preliminary Section 1-6 | | Part I - Preliminary Section 1-9 | |
| Part -II -Business of Banking Companies Section 7-43 | | Part II - Licensing of banks Section 10-18 | |
| Part -IIA-Transaction of Banking Business Illegally By Companies, Etc. Section 43A-43F | | Part III - Business of Banks Section 19-26 | |
| Part -III- Suspension of Business and winding up of Banking Companies Section 44-59 | | Part IV - Provisions in relation to banks carrying on business based on Shariah Principles Section 27-32 | |
| Part -IV- Special Provisions for Speedy Disposal of Winding up Proceedings Section 60-82 | | Part V - Ownership, control and management of banks Section 33-47 | |
| Part-IVA-Banking Mohtasib Section 82A-82G | | Part VI - Financial and Operational Requirements of Banks Section 47-68 | |

| | |
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| Part -V- Miscellaneous Section 83-95 | Part VII - Reporting, Inspection and Audit Section 69-81 |
| - | Part VIII - Powers of State Bank in relation to Illegal Banking Business, Illegal Deposit Taking and other Contraventions of this Act Section 82-89 |
| - | Part IX - Enforcement and Secrecy Section 90-92 |
| - | Part X - Corrective actions and bank resolution measures Section 93-107 |
| - | Part XI - Liquidation - Division I Section 108-128 Division II- Special Provisions for Speedy Disposal of Winding Up Proceedings Section 129-142 |
| - | Part XII - Banking Mohtasib Section 146-152 |
| - | Part XIII - Provisions relating to Deposit Protection Fund Section 153-165 |
| - | Part XIV - Miscellaneous Sections 166-185 |
| - | Part XV - Savings and Transitional Section 186-188 |
| SCHEDULE II- FORM OF BALANCE SHEET | SCHEDULE I - PERMISSIBLE ACTIVITIES OF BANKS |
| SCHEDULE III-LIST OF DEBTORS | SCHEDULE II - OFFENCES AND PENALTIES |

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| BANKING COMPANIES ORDINANCE 1962 | CORRESPONDING PROVISIONS IN [DRAFT] | REMARKS |
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| <p>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</p> | <p>BANKING COMPANIES ACT, 2006</p> <p>An Act to repeal, and with certain modification to consolidate and re -enact the Banking Companies Ordinance, 1962</p> <p>WHEREAS, it is expedient to repeal, and with certain modifications to consolidate and re-enact the Banking Companies Ordinance, 1962 (LVII of 1962) for the purposes hereinafter appearing;</p> | <p>Purpose of BCA to repeal and re-enact BCO with some modification</p> |
| <p>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.</p> | <p>PRELIMINARY 1. Short Title and Date of Operation. — (1) This Act may be called as the Banking Act, 2006 which shall come into operation on such date as the Federal Government may declare by notification in the official Gazette. (2) Without prejudice to sub-Section (1), the Federal Government may on the recommendation of the State Bank, declare different dates for the coming into force of - (a) different provisions of this Act; or (b) all or different provisions of this Act in respect of different classes or categories of persons or institutions. (3) This Act shall extend to the whole of Pakistan</p> | <ul style="list-style-type: none"> • BCA may not come into force at once • On SBP's recommendations, F. Government may declare the operation of different dates for different clauses of BCA |
| <p>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 Ordinance, 1984 (XLVII of 1984), and any other law for the time being in force</p> | <p>3. Application of Companies Ordinance, 1984. Where a bank is a company or corporation to which all or any of the provisions of the Companies Ordinance, 1984 apply, such provisions shall be in addition to the provisions of this Act and not in derogation thereof, but where</p> | <ul style="list-style-type: none"> • The provisions of BCA are in addition to other laws. • In case of conflict between BCA and other law then BCA |

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| | <p>there is any conflict or inconsistency between the provisions of the Companies Ordinance, 1984 and this Act in their respective application to the abovementioned bank, the provisions of this Act shall prevail.</p> | <p>shall prevail</p> |
| <p>5. Definitions. – In this Ordinance, unless there is anything repugnant in the subject or context, –</p> <p>(a) “approved securities” means the 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 –</p> <p>(i) sub-section (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</p> <p>(ii) sub-section (1) of section 29, includes such types of Pakistan rupee obligations of the Federal Government or a Provincial Government or of a Corporation wholly owned or controlled, directly or indirectly, by the Federal Government or a Provincial Government and guaranteed 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;</p> <p>(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;</p> | <p>2. Definitions. –</p> <p>(1) In this Act, unless the context otherwise requires</p> <p>(c) “approved securities” means such securities as the State Bank may specify in the regulations to be approved securities;</p> <p>(e) “banking business” means the business of accepting or receiving money on current account, deposit account or other similar account, paying and collecting cheques drawn by or paid in by customers, the provision of finance, and includes such other business as the State Bank may prescribe by order published in the Gazette;</p> | <ul style="list-style-type: none"> • In BCA this term is kept simple as compared to BCO in which through later amendments number of definitions were included that have been defined independently in BCA • The term used in BCA has certain additional features - the word banking business has been used instead of banking-Accepting |

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| <p>(c) “banking company” means any company which transacts the business of banking in Pakistan 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;</p> | <p>(f) “bank” means a company (whether incorporated in Pakistan or outside Pakistan) which is licensed to carry on banking business in Pakistan under Section 14;</p> | <p>and receiving money is made independent from investing the same- Mode of withdrawing is not mentioned-The customer is used instead of public-Provision of finance not necessarily from deposits-F.Gov. may include any business as Banking.</p> <ul style="list-style-type: none"> • BCO only included the banks incorporated in Pakistan but the Term ‘bank’ in BCA has included all the banks incorporated in Pakistan or abroad doing business in Pakistan • Subsidiaries have been omitted from |
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| <p>(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;</p> <p>(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;</p> | <p>(h) "branch" or "branch office", in relation to a bank, includes the principal place of business, a branch, an agency, a mobile place of business, a place of business set up and maintained for a limited period only, and electronic terminal and any other place of business as may be specified by the State Bank in regulations made by it;</p> <p>(q) "creditor" includes any person from whom deposits have been received on the basis of participation of profit and loss and a bank from which credit facility has been received on the basis of participation in profit and loss, mark up in price, hire purchase, lease, or other wise;</p> | <p>definition in BCA</p> <ul style="list-style-type: none"> • Explanation is omitted • This term as used in BCA is not exhaustive as of BCO because its starts from 'includes' • BCO included all places as 'branch' from where it can transact any business under the law • New terms as 'electronic terminal have also been included • The only difference in this term as used in BCA is omission of word' financial institution. It is because of |
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| <p>(e) “company” means any company which may be wound up under the Companies Ordinance, 1984 (XLVII of 1984) 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;</p> <p>(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;</p> <p>(f) “demand liabilities” means liabilities which must be met on demand, and “time liabilities” means liabilities which are not demand liabilities;</p> | <p>(j) “company” means any company which may be wound up under the Companies Ordinance, 1984.;</p> <p>(r)“debtor” includes any person who is obligated or liable to pay a claim or demand, which is due or may become due :”</p> <p>(s) “demand liabilities” means liabilities which must be met on demand;</p> | <p>application of certain provisions of BCO on DFI’s. BCA does not apply its provision on them.</p> <ul style="list-style-type: none"> • BCA has omitted from the definition of this term ‘the branch of any foreign banking company’. • In both statute the definition is not exhaustive. • In BCA the word ‘ financial institution is omitted • The definition in BCA is made independent of any other law. • In BCA, the term time liability is excluded from the definition of demand liability otherwise the |
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| <p>(ff) “family members” in relation to a person means his spouse, dependent lineal ascendants and descendants and dependent brothers and sisters;</p> <p>(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;</p> | <p>(z) “family member”, in relation to an individual, means -</p> <p>(a) the spouse, father, mother, brother or sister of the individual;</p> <p>(b) the father, mother, brother or sister of the spouse of the individual; and</p> <p>© any lineal ascendant or descendant of the individual or spouse of the individual;</p> <p>(zb) “foreign bank” means a body incorporated outside Pakistan which is licensed under Section 14 to carry on banking business through a branch in Pakistan</p> | <p>remaining expression is same.</p> <ul style="list-style-type: none"> • The term used in BCA is more exhaustive than of BCO • In BCA, it starts with .. an ‘individual rather than ‘person’ as used in BCO. • In BCA, it includes all the lineal ascendants or descendents of individual and his/her spouse as against dependant lineal ascendants or descendents of the person as used in BCO. • Except mentioning of relevant section of ‘license’ in BCA otherwise the definition in both |
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| <p>(gg)“ loans, advances, and credit” includes “finance” as defined in the Banking Tribunals Ordinance, 1984;</p> | <p>(za) “finance” includes □</p> <p>(i) an accommodation or facility provided on the basis of participation in profit and loss, mark-up or mark-down in price, hire-purchase, equity support, lease, rent-sharing, licensing charge or fee of any kind, purchase and sale of any property including commodities, patents, designs, trade marks and copy-rights, bills of exchange, promissory notes or other instruments with or without buy-back arrangement by a seller, participation term certificate, musharika, morabaha, musawama, istisnah or modaraba certificate, term finance certificate;</p> <p>(ii) facility of credit or charge cards;</p> <p>(iii) facility of guarantees, indemnities, letters of credit or any other financial engagement which a financial institution may give, issue or undertake on behalf of a customer, with a corresponding obligation by the customer to the financial institution;</p> <p>(iv) a loan, advance, cash credit, overdraft, packing credit, a bill discounted and purchased or any other financial accommodation provided by a financial institution to a customer;</p> <p>(v) any amount due from a customer to a financial institution under a decree passed by a Civil Court or an award given by an arbitrator;</p> <p>(vi) any amount due from a customer to a financial institution which is the subject matter of any pending suit, appeal or revision before any Court;</p> | <p>BCO and BCA is the same.</p> <ul style="list-style-type: none"> • Definition is not exhaustive in both the instruments. • The terms are almost replica of the terms used in the relevant recovery laws. |
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| <p>(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;</p> <p>(i) “prescribed” means prescribed by rules made under this Ordinance;</p> <p>(k) “registrar” has the same meaning as in, the Companies Ordinance, 1984 (XLVII of 1984);</p> <p>(n) “State Bank” means the State Bank of Pakistan</p> | <p>(vii) any other facility availed by a customer from a financial institution.</p> <p>(i) “chief executive”, in relation to a bank, means an individual, howsoever designated, who, either individually or jointly with one or more other individuals, is substantially responsible, subject to the authority of the Board of Directors, for the conduct or administration of the business of the bank”</p> <p>(zn) “prescribed”, where no mode is mentioned, means prescribed by order in the Gazette or by rules or regulations under this Act.</p> <p>(zo) “Registrar” has the same meaning as in the Companies Ordinance , 1984;</p> <p>(zs) “State Bank” means State Bank of Pakistan established under the State Bank of Pakistan Act, 1956;</p> | <ul style="list-style-type: none"> • Definitions are exhaustive • In BCA as compared to BCO such person does not need to be a ‘director’ • In BCA such person(s) singly or jointly is/are working under the authority of ‘Board of Directors’. • In BCA it may be by order in Gazette or under the regulation as well. • Same clause in both instruments • In BCA the constitutive act of SBP has been |
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| <p>(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, –</p> <p>(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;</p> <p>(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</p> | <p>(zu) “substantial interest” in a company or 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 company or the undertaking or if he or any of his family members hold shares carrying not less that twenty per centum of the voting shares in such company</p> <p>(m) “control”, in relation to a company or undertaking, means the power to exercise a significant influence over the management or the policies of the company or undertaking, and in relation to shares, means the power to exercise the voting power or a controlling interest over the voting power, attached to such shares;</p> <p>(zk) “person” means an individual, corporation, statutory body, local authority, society, trade union, co-operative society, partnership and any other body, organization, association or group of persons, whether incorporated or unincorporated;</p> | <p>mentioned.</p> <ul style="list-style-type: none"> • Almost the same definition in both instruments. However, the explanations as given in BCO have been separately defined in BCA • Almost the same definition except certain expression are rearranged • The term used in BCA is exhaustive than of BCO. |
| <p>6. Ordinance to override memorandum, articles, etc.– Save as other-wise expressly provided in this Ordinance,-</p> | <p>5. This Act to override constituent documents, memorandum, articles etc.</p> | <ul style="list-style-type: none"> • Almost same clause in both the |

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| <p>(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</p> <p>(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</p> | <p>(1) Unless otherwise expressly provided in this Act,-</p> <p>(a) the provisions of this Act shall have effect notwithstanding anything to the contrary contained in the constituent documents, memorandum or articles of a bank or in any agreement executed by it, or in any resolution passed 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 Act; and</p> <p>(b) any provision contained in the constituent documents, memorandum, articles, agreement or resolution aforesaid shall, to the extent to which it is repugnant to the provisions of this Act, become or be void, as the case may be.</p> | <p>instruments.</p> |
| <p>7. Form of business in which banking companies may engage. – (Section 19 r/w Schedule 1 of BCA)</p> <p>(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:-</p> <p>(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, hundies, promissory notes, coupons, drafts, bills of lading, railway receipts, warrants, debentures, certificates, scrips (participation term certificates, term</p> | <p>19. Forms of business which banks may engage in.</p> <p>(1) In addition to banking business, a bank may engage in one or more of the permissible activities specified in Schedule I.</p> <p>(2) No bank shall carry on any business other than banking business and the permissible activities specified in Schedule I, <u>subject to the provisions of its memorandum of association or its articles of association and subject to the conditions and restrictions imposed on its license or imposed by or under this Act.</u></p> | <ul style="list-style-type: none"> • Clause 7(1)(a) to (o) of BCO is corresponded with S. 19 r/w Schedule I of BCA • In Schedule I of BCA the Clause (a) is a new clause • Underlined portion in Clause (b) of Schedule I is a new addition • In Clause (c) of Schedule I of BCA |

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 (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 (participation terms certificates, term finance certificates, musharika certificates, modaraba certificates and such other instruments as may be approved by the State Banks) on behalf of constituents or others, the negotiating of loans and advances; the receiving of all kinds of bonds, scrips of valuables on deposit or for safe custody or otherwise; "the providing of safe deposit vaults": the collecting and transmitting of money and securities;

(aa) the providing of finance as defined in the Banking Tribunals Ordinance, 1984;

(b) acting agents for any Government or local authority

SCHEDULE I

(Sub-section (1) of section 19)

PERMISSIBLE ACTIVITIES OF BANKS

(a) Acceptance of deposits and other repayable funds and the opening, maintaining and managing deposit, savings and other similar accounts;

(b) 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, hundies, promissory notes, coupons, drafts, bills of lading, railway receipts, warrants, debentures certificates, scrips, 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, participation term certificates, term finance certificates, musharika

which corresponded to sub-clause (aa) of Section 7(1) the name of the recovery law is amended.

- Clause (d) of Schedule I of BCA which is corresponded with sub-clause (b) of Section 7(1) the underline portion is a new addition.
- Clause (i) of Schedule I of BCA which is corresponded with sub-clause (ee) of Section 7(1) the underline portion is a new addition.
- Clause 'l', 'm', 's', 't', 'v' of Schedule I of BCA are new addition.
- Clause (x) of Schedule I of BCA is the amended version of sub-clause (o) of Section 7(1). In this clause power to notify is given to

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| <p>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;</p> <p>(bb)acting as “modaraba company” under the provision of the Modaraba Companies and Modaraba (Floatation and Control) Ordinance, 1980 (XXXI of 1980);</p> <p>(c) contracting for public and private loans and negotiating and issuing the same;</p> <p>(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, (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;</p> <p>(ee)purchase or acquisition in the normal course of its banking business of any property, including commodities, patents, designs, trademarks 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;</p> <p>(f) managing, selling and realising any property which</p> | <p>certificates, modaraba certificates and such other instruments as may be approved by the State Bank and investment of all kinds either as agent or principal and providing corporate, financial or portfolio advance on the same; the purchasing and selling of bonds, scrips or other forms of securities, (participation terms certificates, term finance certificates, musharika certificates, modaraba certificates and such other instruments as may be approved by the State Banks on behalf of constituents or <i>others</i>; the negotiating of loans and <i>advances</i>; <u>dealing or arranging deals or advising on collective investment or other investment schemes of any type and setting up and establishing or managing collective investment or other investment schemes of any type</u>; <u>the receiving, safeguarding and administering of all kinds of bonds, scrips of valuables on deposit or for safe custody or otherwise</u>; the providing of safe deposit vaults; the collecting and transmitting of money and securities; <u>and using computer or other electronic systems or delivery channels to carry out any of the foregoing subject to any regulations as may be issued by the State Bank</u>;</p> <p>(c) the providing of finance as defined under the <u>Financial Institutions (Recovery of Finances) Ordinance, 2001</u>;</p> | <p>F.Gov. instead of SBP</p> <ul style="list-style-type: none"> • Sub-clause (2) of Section 19 of BCA is a amended version of Section 7 of BCO through which the banks can do business subject to not only the law but also under M&A and terms of license. |
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| <p>may come into the possession of the company in satisfaction or part satisfaction of any of its claims;</p> <p>(g) acquiring and holding and generally dealing with any property or any right, title or interest in any such property which may form security or part of the security for any loans or advances or which may be connected with any such security;</p> <p>(h) undertaking and executing trusts;</p> <p>(i) undertaking the administration of estates as executor, trustee or otherwise;</p> <p>(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;</p> <p>(k) the acquisition, construction, maintenance and alteration of any building or works necessary or convenient for the purpose of the company;</p> <p>(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;</p> <p>(m) acquiring and undertaking the whole or any part of the business of any person or company, when such</p> | <p>(d) the carrying on of an agency function for and on behalf of the Government or local authority or any other person or persons <i>in respect of any business related to the provision of financial services</i> and otherwise acting as an attorney on behalf of customers, but excluding the business of a managing agent or treasurer of a company;</p> <p>(e) acting as modaraba company under the provision of the Modaraba Companies and Modaraba (Floatation and Control) Ordinance, 1980 (XXXI of 1980);</p> <p>(f) contracting for public and private loans and negotiation and issuing the same;</p> <p>(g) the promoting, 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, debenture stock or other securities of any company, corporation or association and the lending of money or financing for the purpose of any such issue;</p> <p>(h) carrying on and transacting every kind of guarantee and indemnity business;</p> <p>(i) <i>financial leasing</i> and the purchasing or acquiring in the normal course of its banking business any property, including commodities, patents, designs, trademarks and copyrights with or without buy-back arrangements by the seller, or for sale in the</p> | |
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| <p>business is of a nature enumerated or described in this sub-section;</p> <p>(n) doing all such other things as are incidental or conducive to the promotion or advancement of the business of the company;</p> <p>(o) any other form of business which the State Bank by circular, specify as a form of business in which it is lawful for a banking company to engage.</p> <p>(2) No banking company shall engage in any form of business other than those referred to in sub-section (1).</p> | <p>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 <i>Islamic</i> mode of financing;</p> <p>(j) managing, selling and realising any property which may come into the possession of the bank in satisfaction or part satisfaction of any of its claims;</p> <p>(k) acquiring and holding and generally dealing with any property or any right, title or interest in any such property which may form security or part of the security for any loans or advances or which may be connected with any such security; for any loans or advances or which may be connected with any such security;</p> <p><u>(l) issuing and administering paper and electronic means of payment including digital or electronic money subject to any regulations as may be made by the State Bank;</u></p> <p><u>(m) money transmission services and money booking;</u></p> <p>(n) undertaking and executing trusts;</p> <p>(o) undertaking the administration of estates as executor, trustee or otherwise;</p> <p>(p) 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 bank or the dependents or connections of such persons; granting pensions and allowances and</p> | |
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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;

(q) the acquiring, constructing, maintaining and renovating any building or works necessary or convenient for the purpose of the bank;

(r) 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*;

(s) the acceptance of a sum of money in any manner or form from any person for a fixed period of time for investment in a business venture of the bank on the basis that the profit and loss of the venture will be shared with the person from whom such money is accepted in a manner determined at the time the money is accepted;

(t) the purchase of goods to be sold immediately upon purchase to a buyer on deferred payment terms provided that the goods and their suppliers are specified by such buyer and the price at which such goods are sold to the buyer and the deferred payment terms are determined at the time the bank agrees with the buyer to purchase the said goods for sale to the buyer;

(u) acquiring and undertaking the whole or any

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| | <p>part of the business of any person or company, when such business is of a nature enumerated or described in this Schedule;</p> <p><u>(v) credit reference services;</u></p> <p>(w) doing all such other things as are incidental or conducive to the promotion or advancement of the business of the bank; and</p> <p>(x) <u>any other activity which the Federal Government shall, on the recommendations of the State Bank,, authorise by notification in the Official Gazette.</u></p> | |
| <p>8. Use of the word “Bank” or any of its derivatives - 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-</p> <p>(a) subsidiary of a banking company formed for one or more of the purpose mentioned in sub-section (1) of Section 23 whose name indicates that it is a subsidiary of that banking company; and</p> <p>(b) any association of banks formed for the protection of their mutual interests and registered under section 42 of the Companies Ordinance 1984(XLVII of 1984): Provided further that the State Bank may, subject to such conditions, if any, as it may deem fit, by notification in the Official Gazette, authorise a company</p> | <p>20. Prohibition of the words “bank”, “banking”, “banker”, “Islamic bank”, or any of their derivatives.</p> <p>(1) No person, not being a bank, shall assume or use the words “bank”, “banker”, “banking”, “Islamic bank”, as the case may be, or any derivatives of these words in any <u>language, or any other words in any language capable of being construed as indicating carrying on of such business, in relation to the business or any part of the business carried on by such person, or make representation to such effect in any bill, letter, notice, advertisement, or in any other manner whatsoever.</u></p> <p>(2) Sub-section (1) shall not apply to the following:</p> <p>(a) an association of banks formed for the protection of their mutual interests and duly</p> | <ul style="list-style-type: none"> • In the title of the Section ‘20’ of BCA, the words ‘banking’, ‘banker’, Islamic bank are added. • In Section ‘20’ the underline portion is a new addition • Clause ‘20(5)’ of BCA, is corresponded with Clause ‘88’ of BCO. |

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| <p>not being a banking company to use in its name the word 'bank' or any of its derivatives.</p> | <p>recognized by the State Bank ;</p> <p>(b) a subsidiary of a bank formed for one or more of the purposes specified in section 60 whose name suggests that it is a subsidiary of that bank;</p> <p>(c) <u>an institution with respect to which such usage is established or recognized by law or international agreement;</u></p> <p>(d) any other person as may be authorized in writing by the State Bank subject to such terms and conditions specified by the State Bank.</p> <p><u>(3) No bank shall carry on banking business in Pakistan unless it uses as part of its name at least one of the words referred to in sub-section (1):</u> <u>Provided that a foreign bank and each of its branches that does not have any of the words referred to in sub-section (1) in any language in its name may carry on banking business in Pakistan notwithstanding the omission of these words in its name.</u></p> <p><u>(4) A bank that uses or assumes the words "Islamic" or "Islamic bank", or any derivatives of these words in any language, or holds itself out as to carry on banking business in conformity with the principles of Shariah, shall fully comply with the provisions of Part IV.</u></p> <p>(5) Any bank that seeks to change its name shall obtain the prior written approval of the State Bank.</p> | |
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| <p>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.</p> <p>Explanation._ For the purpose of this section, “goods” means every kind of movable property, other than actionable claims, stocks, shares, money, bullion and species, and all instruments referred to in clause (a) of sub-section (1) of Section 7.</p> | <p>22. Restrictions on carrying on of trade</p> <p>(1) Except as may be specifically authorized by the State Bank or as provided under sub-section (2), no bank shall engage, whether on its own account or on a commission basis, <u>and whether alone or with others, in wholesale or retail trade, including export and import trade, except in connection with the realization of security given to it or held by it for the purpose of carrying on its banking business.</u></p> <p>(2) The provisions of sub-section (1) shall not apply to the following:</p> <p><u>(a) the purchase or sale of gold or foreign currency by any bank; or</u></p> <p>(b) where the carrying on of trade by the bank, including export and import trade, is in the course of its business that is in conformity with Shariah and that complies with the provisions of Part IV.</p> <p>(3) A bank that carries on a trade under subsection (2), shall comply with any requirements or criteria as may be specified in the regulations made by the State Bank.</p> | <ul style="list-style-type: none"> • Section 22 of BCA is a totally revised version of Section 9 of BCO. • It does not specifically mention ‘goods as given in Section ‘9’ of BCO rather it generally focuses on trade of any description • Exception to the rule is realization of security. • It allows banks to trade in gold and foreign currency which Section ‘9’ of BCO does not give. • Section 22(2)(b) is added in BCA for shariah compliant products of Islamic Banks |
| <p>10. Disposal of non-banking assets.— Notwithstanding anything contained in section 7, no banking company shall hold (except as may be permitted by the State Bank from time to time or as is required by it for its own use held any immovable property howsoever acquired) for any period exceeding seven years from the</p> | <p>57. Restrictions on acquisitions of immovable property by banks.</p> <p>(1) A bank shall not purchase or acquire any immovable property or any right therein except-</p> <p>(a) as may be reasonably necessary for the purpose of conducting its business;</p> | <ul style="list-style-type: none"> • Section ‘10’ of BCO discourages banks to keep/purchase/hold immovable property. Section 57(1)(a)(b)(c) and 57(2)(a)(b) are exception to that rule. |

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| <p>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:</p> <p>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:</p> <p>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.</p> <p>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.</p> | <p>(b) for housing or providing amenities for its staff; or</p> <p>(c) as may be authorized in writing by the State Bank.</p> <p>(2) Sub-section (1) shall not-</p> <p>(a) prevent a bank from letting part of any building which is used for the purpose of conducting its business;</p> <p>(b) prevent a bank from securing a debt on any immovable property and, in the event of default in payment of the debt, from holding that immovable property for realization by sale or auction at the earliest suitable opportunity; or</p> <p>(c) apply where the acquisition of unmovable property by the bank is in the course of its business in accordance with the provisions of Part IV and any regulations made there under.</p> <p>(3) For the purpose of this section, property, a substantial portion of which is in used by a bank for its own genuine requirements, shall be deemed to be property for its own use.</p> | |
| <p>11. Prohibition of employment of managing agents and restrictions on certain forms of employment. – (1) No banking company –</p> <p>(a) shall employ or be managed by a managing agent; or</p> <p>(b) shall employ or continue the employment of any</p> | <p>45. Prohibition of employment of managing agents and restrictions on certain forms of employment.</p> <p><u>(1) Except as may be authorized by the State Bank, no person shall serve as executive director or officer of a bank except as an employee of such bank.</u></p> | <ul style="list-style-type: none"> • These clauses are related to the management of banks’. • Section ‘45’ of BCA is a slightly modified form of Section ‘11’ of |

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| <p>person –</p> <p>(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; and</p> <p>(ii) whose remuneration or part of whose remuneration takes the form of commission or a share in the profits of the company:</p> <p>Provided that nothing contained in sub-clause (ii) shall apply to the payment by a banking company of –</p> <p>(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</p> <p>(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</p> <p><u>(c) shall be managed by any person –</u></p> <p><u>(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 Ordinance, 1984 (XLVII of 1984),except with the previous approval of the State Bank; or</u></p> <p><u>(ii) who is engaged in any other business or vocation; or</u></p> | <p>(2) Except as may be authorized by the State Bank, no bank-</p> <p>(a) shall employ or be managed by a managing agent; or</p> <p>(b) shall employ or continue the employment of any person-</p> <p>(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; and</p> <p>(ii) whose remuneration or part of whose remuneration takes the form of commission or a share in the profits of the bank:</p> <p>Provided that nothing contained in sub-paragraph (ii) shall apply to the payment by a bank of –</p> <p>(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 bank or in accordance with the usual practice prevailing in banking business; or</p> <p>(b) any commission to any broker (including guarantee broker), cashier contractor, clearing and forwarding agent, auctioneer or any other person, employed by the bank under a contract otherwise than as a regular member of the staff of the company;</p> | <p>BCA. The underline portion in Section '45' is an addition while the underline portion of Section 11 of BCO has been discarded from Section '45' of BCA</p> |
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| <p>(iii)who has a contract with the company for its management for a period exceeding five years at any one time: Provided that any contract with the company for its management may be renewed or extended for a <u>further period not exceeding five years</u> at a time if and so often as the directors so decide: Provided further that nothing in this clause shall apply to a director, <u>other than the managing director</u>, of a banking company by reason only of his being such director.</p> <p><u>(2) Where a person holding the office of a chairman or 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 interest 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.</u></p> <p><u>(3) Any order made under sub-section (2) in respect of any person may also provide that he shall not, without the pervious permission of the State Bank in writing, in</u></p> | <p>(c) who has a contract with the bank for its management for a period exceeding five years at any one time: Provided-</p> <p>(a) any contract with the company for its management may be renewed or extended for such further period as may be specified by the State Bank in regulations made by it; and</p> <p>(b) nothing in this section shall apply to a director of a bank by reason only of his being such director.</p> | |
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| <p><u>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.</u></p> <p><u>(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:</u> <u>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.</u></p> <p><u>(5) Any decision or order of the State Bank made under this section shall be final for all purposes.</u></p> | | |
| <p>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.</p> <p>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.</p> | <p>67. Restrictions on removal of records and documents.</p> <p>(1) No bank shall remove from Pakistan to a place outside Pakistan any of its records and documents relating to its business or its branches, without the prior written permission of the State Bank.</p> <p>(2) In this section, the term “records” means ledgers, day books, cash books, accounts books and all other books used in the business of a bank 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 bank, <u>whether such records and documents are stored in</u></p> | <ul style="list-style-type: none"> • Section ‘67’ of BCA is almost the same as of Section ‘12’ of BCO except the underline addition through which the electronic form of the record is included in the definition of term ‘document’. |

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| <p>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 <i>an amount by transfer of funds from outside Pakistan</i> or in the form of assets <i>acquired out of remittable profits made by it from deposits in Pakistan</i> 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.</p> | <p><u>electronic form or otherwise.</u></p> <p>50. Requirements relating to minimum paid-up capital and reserves etc. <u>(1) No bank shall-</u> (a) commence business unless it has such minimum paid-up capital as may be specified in the regulations made by the State Bank; and (b) carry on business unless the aggregate of its paid-up capital and unencumbered general reserves is of such minimum value as may be specified in the regulations made by the State Bank from time to time for banks in general or for any class or category of banks. (2) No foreign bank shall be deemed to have complied with the provisions of sub-section (1) unless it <u>maintains</u> deposits for its branch in Pakistan with the State Bank, or keep such type of assets in Pakistan as may be specified in the regulations made by the State Bank, of an amount which is not less than what is required to be maintained under sub-section (1), in one or more of the following forms- (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 each foreign bank;</p> | <ul style="list-style-type: none"> • S. '50' of BCA is modified/extended form of S. '12' of BCO • The underline portion of S. '50' is a new addition • The <i>italic</i> expression/portion in S. '12' of BCO has either not been retained in S. '50' of BCA or is modified with <u>underlined</u> portion of S.50 |
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| <p>(3) <i>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 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.</i></p> <p>(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 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 a first charge.</p> <p>(5) <i>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.</i></p> <p>Explanation.___ <i>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</i></p> | <p>(iii) deposit of un-encumbered approved securities; or</p> <p><u>(iv) such other form as the State Bank may specify in the regulations made by it.</u></p> <p>(3) The State Bank may in writing require any bank which has failed to comply with the provisions of paragraph (b) of sub-section (1) to deposit with the State Bank within a specified period such amount not exceeding the amount by which the aggregate value of the capital and unencumbered reserves of such bank falls short of the minimum amount of the aggregate of the capital and unencumbered general reserves to be maintained by such bank pursuant to paragraph (b) of sub-section (1) or sub-section (2) on such terms and conditions as the State Bank may determine.</p> <p>(4) Any amount deposited and maintained with the State Bank under subsection (2) by any foreign bank shall, in the event of the foreign bank ceasing for any reason to carry on banking business in Pakistan, be an asset of the bank on which the claims of all its creditors in Pakistan shall have a first charge.</p> <p><u>(5) Each bank shall ensure that the value of its unimpaired capital funds shall at all times be equivalent to not less than such percentage of the total value of its assets determined on a risk-adjusted basis as may be specified in the</u></p> | |
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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.

regulations made by the State Bank.

(6) For the purposes of calculating the capital adequacy ratio of a bank which has any subsidiary, the State Bank may require in the regulations made by it the capital adequacy ratio of the bank or a class or category of banks, as the case may be, to be calculated-

(a) on a consolidated basis instead of on an unconsolidated basis; or

(b) on a consolidated basis only in respect of such subsidiaries of the bank or class or category of subsidiaries of the bank, as the case may be.

(3) Any regulations made under sub-section (5) shall provide for-

(a) the meaning of "capital funds" and "unimpaired capital funds";

(b) the assets to be classified;

(c) the provisions for losses to be made; and

(d) the values of capital funds and assets to be maintained by banks.

(7) For the purposes of this section, "capital funds" means paid up capital and reserves, and includes the whole or any portion of any other class, category or description of capital as may be specified in the regulations made by the State Bank.

(8) Whenever a director, chief executive or officer of a bank is aware that the capital funds of the

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| | <p><u>bank is less than the value required by the regulations made by the State Bank, the director, chief executive or officer shall promptly notify the State Bank thereof.</u></p> | |
| <p>14. Regulation of paid-up capital, subscribed capital and authorized capital and voting rights of shareholders.— (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 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; (iv) that the voting rights of any one shareholder, except those of the Federal Government or a Provincial Government do not exceed <i>five per cent</i> 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</p> | <p>49. Regulation of paid-up capital and authorized capital of domestic banks. (1) No domestic bank shall carry on banking business in Pakistan unless it satisfies the following conditions:- <u>(a) its paid-up capital is not less than such proportion of the authorized capital as may be specified by the State Bank in regulations made by it;</u> <u>(b) the capital of the bank consists of ordinary shares and such other shares as many be specified by the State Bank in regulations made by it;</u> © subject to the provisions contained in paragraph (d), the voting rights of any one shareholder are strictly proportionate to the contribution made by him to the paid- up capital of the bank; and (d) the voting rights of any one shareholder, except those of the Federal Government or a Provincial Government, do not exceed such amount as may be specified in regulations made by the State Bank (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</p> | <ul style="list-style-type: none"> • S. '49' of BCA is a simplified form of S. '14' of BCO. • Sub-clauses 1(a)&(b) of BCA have been slightly modified and sub-clause '3' S.14 of BCO is omitted from S. 49 of BCA |

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| <p>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:</p> <p>Provided that nothing contained in this sub-section shall bar a suit or other Proceeding—</p> <p>(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</p> <p>(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.</p> <p><i>(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.</i></p> | <p>holder of a share in a bank on the ground that the title to the said share vests in a person other than the registered holder:</p> <p>Provided that nothing contained in this sub-section shall bar a suit or other proceeding—</p> <p>(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</p> <p>(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.</p> | |
| <p>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.</p> | <p>56. Prohibition of charge on unpaid capital and on assets</p> <p>(1) No domestic bank shall create any charge upon any unpaid capital of the domestic bank and such charge, if created, shall be invalid.</p> | <ul style="list-style-type: none"> • S.56 of BCA is somehow a combined and modified effect of two Ss. 17 & 18 of BCO. |

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| | <p>(2) No domestic bank shall create a charge on the undertaking or any of its assets or any part thereof, unless the creation of such charge is authorized in writing by the State Bank as not being detrimental to the interests of the depositors of such domestic bank.</p> <p>(3) Any charge created without obtaining the authorization of the State Bank under sub-section (2) shall be invalid.</p> <p>(4) Where any civil proceedings have been instituted against any domestic bank in respect of a charge upon unpaid capital of the domestic bank or over the undertaking or assets of the domestic bank, if these proceedings materially affect, or could materially affect the financial position of the domestic bank, the domestic bank shall promptly notify the State Bank of these proceedings and provide the State Bank with such particulars of those proceedings as may be required.</p> <p>(5) The State Bank may specify in the regulations made by it the class or categories of charges to which sub-section (1) and sub-section (2) shall not apply.</p> | <ul style="list-style-type: none"> • Sub-section '1' of S.56 is corresponding section of S.17 of BCO • Sub-section 2 of S. 56 is slightly modified form of Sub-section 1 of S.18 of BCO • Sub-section 4 and 5 of S.56 are new addition. • Underline portion of S.18 of BCO is discarded from S.56 of BCA |
| <p>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</p> | <p>-DO-</p> | |

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| <p>is certified in writing by the State Bank as not being detrimental to the interest of the depositors of such company.</p> <p>(2) Any such charge created without obtaining the certificate of the State Bank shall be invalid.</p> <p>(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 Federal Government.</p> <p>(4) The decision of the 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.</p> | | |
| <p>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, <i>organisation expenses, share-selling commission, brokerage, amounts of losses incurred and any other item of expenditure not represented by tangible assets</i>) have been completely written off.</p> <p>(2) Notwithstanding anything to the contrary contained in subsection (1) or in the Companies Ordinance, 1984 (XLVII of 1984), a banking company may pay dividends on its shares without writing off—</p> <p>(i) the depreciation, if any, in the value of its investment in approved securities in any case where such depreciation has not actually been capitalised or otherwise accounted for as a loss;</p> | <p>52. Payment of dividends and transfers.</p> <p>(1) No domestic bank shall pay any dividend on its shares until all capitalized expenses (including preliminary expenses and other items of expenditure not represented by tangible assets) have been completely written off.</p> <p>(2) Notwithstanding the provisions of sub-section (1) or any provisions of the Companies Ordinance, 1984, a domestic bank may pay dividends on its shares without writing off—</p> <p>(a) the depreciation, if any, in the value of its investment in approved securities in any case where such depreciation has not actually been capitalized or otherwise accounted for as a loss;</p> <p>(b) the depreciation, if any, in the value of its</p> | <ul style="list-style-type: none"> • Except three new (underlined) clauses S.52 is replica of S.19 of BCO. • Three new clauses are added because in BCA the ‘foreign banks’ have properly elaborated and new set of principles are inserted in BCA to cater with the issues related to them. |

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| <p>(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;</p> <p>(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.</p> <p>(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.</p> | <p>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 bank; and</p> <p>(c) the bad debts, if any, in any case where adequate provision for such debts had been made to the satisfaction of the auditor of the bank.</p> <p><u>(3) No foreign bank shall transfer out of Pakistan any of its assets in Pakistan-</u></p> <p><u>(a) until such time as all its capitalized expenses, including preliminary expenses and other items of expenditure not represented by tangible assets, have been completely written off;</u></p> <p><u>(b) if as a result of the transfer, the aggregate book value of its assets would be less than the sum of the book values of its liabilities and unimpaired paid-up capital; and</u></p> <p><u>(c) as long as the foreign bank is in breach of a requirement imposed by or under this Act or any regulations there under.</u></p> <p>(4) Notwithstanding the provisions of sub-section (1) or Companies Ordinance, 1984, if a domestic bank meets the minimum capital requirement and capital adequacy ratio as may be specified in the regulations made by the State Bank from time to time, and has accounted for the portion of capitalized expenses and goodwill for the financial</p> | |
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| | <p>year to the satisfaction of the auditors of the domestic bank, the domestic bank may pay dividends on its shares for the financial year.</p> | |
| <p>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—</p> <p>(i) of any other banking company; or</p> <p>(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.</p> <p>(IA) No banking company incorporated in Pakistan shall have as a director any person who is—</p> <p>(a) a Federal Minister, a Minister of State or a Provincial Minister; or</p> <p>(b) a person in the service of Pakistan who is not appointed or nominated by Government as a director by virtue of his office.</p> <p>(2) <i>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—</i></p> <p>(a) <i>either resign his office as a director of the banking</i></p> | <p>42. Prohibition of common directors.</p> <p>(1) Except with the prior approval of the State Bank, no domestic bank shall have as a director any person who is a director-</p> <p>(a) of any other bank; or</p> <p>(b) of companies which among themselves are entitled to exercise voting rights in excess of twenty per centum <u>or such other percentage as may be specified by the State Bank in regulations made by it</u>, of the total voting rights of all the shareholders of the domestic bank.</p> <p>(2) No domestic bank shall have as a director any person who is-</p> <p>(a) a Federal Minister, a Minister of State or a Provincial Minister or equivalent;</p> <p>or</p> <p>(b) a person in the service of Pakistan who is not appointed or nominated by government as a director by virtue of his office.</p> | <ul style="list-style-type: none"> • Except the underlined portion of S.42 and sub-section '2' of S. 20 of BCO, the rest of the S.42 is same as of S.20 of BCO. • Sub-section '2' of S.20 relates to the period prior to the commencement of BCO when there was no such prohibition hence time was extended to such persons to comply with this condition. |

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| <p><i>company; or</i> <i>(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.</i></p> | | |
| <p>21. Reserve Fund.—(1) Every banking company <u>incorporated in Pakistan</u> 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</p> | <p>51. Reserve Fund. (1) <u>Every bank shall-</u> (a) maintain a reserve fund; and (b) before any dividend is declared from its net profits of each year (after due provision is made for tax), transfer such amount and in such manner as may be specified in regulations made by the State Bank to the reserve fund out of the net profits of each year. <u>(2) If the State Bank is satisfied that the aggregate reserve fund of a foreign bank is adequate for its business in Pakistan, the State Bank may authorize such foreign bank to be exempted from the provisions of sub-section (1).</u> (3) Where a domestic bank appropriates any sum or sums from the reserve fund or the share premium account, it shall, within such period as may be specified by the State Bank in regulations made by it from the date of such appropriation, report the fact to the State Bank explaining the circumstances relating to such appropriation:</p> | <ul style="list-style-type: none"> • As per S.21 of BCO banking companies incorporated in Pakistan are required to keep 'Reserve Fund' but under S.51 of BCA it would be obligatory for every banking company (domestic or foreign) to keep the 'Reserve Fund' as per the specifications of SBP • In S.12 of BCO, word 'create' is used because it was a novel concept in 1962 but in S.51 of BCA the word 'maintain' is used because the concept of 'Reserve Fund' was already there. |

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| <p>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.</p> | <p>Provided that the State Bank may, in any particular case, extend the first mentioned period by such longer period as it thinks fit. <u>(4) Without prejudice to the generality of the provisions of sub-section (1), the State Bank may from time to time specify in regulations made by it, a different portion of the net profits of each year, being lesser or greater than the portion specified in sub-section (1), to be transferred to the reserve fund of a particular bank for the purpose of ensuring that the amount of the reserve fund of the bank is sufficient for the purpose of its business and adequate in relation to its liabilities.</u></p> | <ul style="list-style-type: none"> • Sub-clause 1(b) of BCO is not retained in BCA • The underline portion of S.51of BCA is the fresh addition. |
| <p>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 Thursday of each week of the preceding month with particulars of its time and demand liabilities in Pakistan on each such Thursday or if any such Thursday is a public holiday under the Negotiable Instruments Act, 1881 (XXVI of 1881), at the</p> | <p>53. Cash Reserve. (1) Every bank shall maintain with the State Bank a balance the amount of which shall not at the close of business on any day be less than such proportion of demand liabilities and time liabilities of such bank in Pakistan as may be specified in the regulations made by the State Bank. (2) Every bank shall submit to the State Bank a return showing the amount so held under sub-section (1) within such period and in such manner as may be specified by the State Bank in the regulations made by it. (3) Notwithstanding the provisions of sub-section (1), the State Bank may from time to time specify in</p> | <ul style="list-style-type: none"> • S.53 of BCA is a totally modified form of S.22 of BCO • Under S.22 of BCO a bank can maintain such account with itself or SBP or any of SBPs agent but in under S.53 the can only be maintained with SBP. • S.22 of BCO envisage cash reserve may be partly in form of cash held with the bank and partly in |

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| <p>close of business on the preceding working day.</p> | <p>the regulations a different proportion of time and demand liabilities, being either lesser or greater than the proportions specified in sub-section (1), to be maintained as cash reserves.</p> | <p>accounts maintained with SBP or any of its agent but S.53 does not stipulate any such liberty.</p> <ul style="list-style-type: none"> • Under S.22 of BCO the amount of cash reserve is two percent of demand and time liabilities but under S.53 such ratio is not predetermined and SBP would from time specify such ratio |
| <p>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:—</p> <p>(a) the undertaking and executing of trusts, “(aa) the carrying on of banking business strictly in conformity with the Injunctions of Islam as laid down in the Holy Quran and Sunnah;”.</p> <p>(b) the undertaking of the administration of estates as executor, trustee or otherwise, (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).</p> <p>(c) the providing of safe deposit vaults, (d) with the previous permission in writing of the State</p> | <p>61. Restrictions concerning subsidiaries.</p> <p>(1) No bank shall without the prior approval of the State Bank -</p> <p>(a) if it is a domestic bank, establish or acquire any subsidiary in or outside Pakistan; or (b) if it is a foreign bank, establish or acquire any subsidiary in Pakistan,.</p> <p>(2) An approval under sub-section (1) may be given if the subsidiary or proposed subsidiary of the bank -</p> <p>(a) carries on any activity that such bank may carry on under this Act; or (b) an activity that the State Bank may determine to be incidental to or compatible with an activity that the bank may carry on under this Act.</p> <p>(3) The provisions of sub-section (1) shall not apply</p> | <ul style="list-style-type: none"> • Ss. 61 & 62 of BCA are modified/ extended form of S.23 of BCO and they elaborately deals with the matters as contained in S.23 of BCO. • S.61 of BCA deals with the matters as contained in S.23(1) and S.62 deals with the matter as contained in S.23(2) of BCO • S.23(1) of BCO put an embargo on banking |

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| <p>Bank, the carrying on of the business of banking exclusively outside Pakistan;</p> <p>(dd) the conduct of any from of business permitted by section 7; or</p> <p>(e) such other purposes as are incidental to the business of banking.</p> <p>(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:</p> <p>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 therefore if it reports the matter without delay, to the State Bank and if it brings its holding of shares into conformity with the said provision within such period, not exceeding two years, as the State Bank may think fit to allow.</p> <p>(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.</p> | <p>to subsidiaries of a bank formed before the coming into force of this Act.</p> <p>62. Restriction on investments by domestic banks in other enterprises.</p> <p>(1) Subject to sub-section (2), a domestic bank shall not acquire or hold shares of, or hold a participation in, whether by one acquisition or participation or a series of acquisitions or participations and by whatever means, any enterprise to a value of five per centum or more of the unimpaired capital funds of the domestic bank at the time of the acquisition or participation, as the case may be, unless the approval of the State Bank has been given to such proposed acquisition or participation.</p> <p>(2) Sub-section (1) shall not apply-</p> <p>(a) where the domestic bank acquires or holds any shares of any enterprise under an underwriting or sub-underwriting contract for a period not exceeding seven business days, or such further period as the State Bank may approve in writing, and subject to such conditions as it thinks fit;</p> <p>(b) where the domestic bank acquires or holds any shares of any enterprise as part of its business in accordance with the provision of Part IV and any regulations made there under;</p> <p>(c) to any acquisition or holding of shares, or</p> | <p>companies to form a subsidiary it also gives the exception to this rule in sub-sections 1(a) to (e).</p> <ul style="list-style-type: none"> • S.61 1(a)(b) requires a prior permission of SBP to establish/acquire subsidiary of a nature as mentioned in sub-section 2(a), (b) of S.61 • S.23(2) of prohibits the banks to have any kind of interest in the shares of any company which may exceed thirty per cent of the paid-up capital of such company or thirty per cent of its own paid-up capital and reserves. Exception of the rule is contained in preceding Section • While under S.62(1) of BCA no |
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| | <p>participation in as may be approved in writing by the State Bank in-</p> <ul style="list-style-type: none"> (i) another bank under section 33; or (ii) another company that is a subsidiary of the bank under section 61; <p>and</p> <p>(d) in the course of the satisfaction of any debt due to such domestic bank only if such acquisition or participation is declared in writing to the State Bank and is disposed of within such period from the date of acquisition as may be specified in the regulation made by the State Bank.</p> <p>(3) For the purposes of this section, the State Bank may by regulations specify-</p> <ul style="list-style-type: none"> (a) any term and condition under which an acquisition or holding of, or participation in, an enterprise may be made by such banks; and (b) the nature and maximum value of shares or participation in any enterprise and aggregate values of all shares or participations, as the case may be, that may be made by such banks. <p>(4) Where a domestic bank has contravened the provisions of this section or any regulations made there under, the State Bank may-</p> <ul style="list-style-type: none"> (a) prohibit such domestic bank from increasing the amount of shares or participation in an enterprise; and (b) require such domestic bank to decrease the | <p>'domestic bank' without the prior approval of SBP can hold/acquire shares of any company in single transaction or series of transaction of a value of five per cent or more of the unimpaired capital funds of the domestic bank. The exception to the rule is contained in S.62(2)(a)-(d).</p> |
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| | <p>amount of its shares participation in an enterprise to specified limits within a specified period of time.</p> | |
| <p>24. Restrictions on loans and advances.—(1) No banking company shall—</p> <p>(a) make any loans or advances against the security of its own shares;</p> <p>or</p> <p>(b) grant unsecured loans or advances to, or make loans and advances on the guarantee of,—</p> <p>(i) any of its directors;</p> <p>(ii) any of the family members of any of its directors;</p> <p>(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</p> <p>(iv) any public limited company in which the banking company or any of the persons as aforesaid is substantially interested.</p> <p>(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.</p> | <p>63. Credit facilities and limits.</p> <p>(1) Subject to sub-section (3), a bank shall not—</p> <p><u>(a) grant or permit to be outstanding to any one person or to any group of persons under the control or influence of any person, any credit facilities if the aggregate amount of such credit facilities exceeds such amount of its capital funds as the State Bank may specify in the regulations made it;</u></p> <p><u>(b) grant substantial loans which in the aggregate of its total credit facilities, exceeds such percentage as the State Bank may specify in the regulation made by it;</u></p> <p>(c) grant any credit facility or enter into any other transaction against the security of its own shares, <u>or the shares of its holding company or its subsidiaries;</u></p> <p>(d) grant, <u>directly or indirectly, unsecured credit facilities which in the aggregate and outstanding at any one time, exceed such amount as may be specified by the State Bank in the regulations made by it -</u></p> <p>(i) to any of its directors, <u>whether those credit facilities are obtained by its directors jointly or</u></p> | <ul style="list-style-type: none"> • The scope of S.63 of BCA is wider than S.24 of the BCO. • The underline portion of S.63 is a fresh addition. |

severally;

(ii) to a company or an enterprise in which the bank or any of its directors has an interest as a partner, manager or agent, or to any individual or firm of whom or of which any of its directors is a guarantor;

(iii) to a company or enterprise in which any of its directors, whether legally or beneficially, has substantial interest or in which any of its directors controls the composition of the board of directors; but excluding public companies the securities of which are listed on a Stock Exchange in Pakistan or any other stock exchange which the State Bank may approve; or

(iv) to any company or enterprise, other than a bank, that is deemed to be its associated company or associated undertaking; or

(e) grant to any of its officers (other than a director) or its employees or other persons, being persons receiving remuneration from the bank other than any persons receiving remuneration from a bank in respect of their professional services, unsecured credit facilities which in the aggregate and outstanding at any one time exceeds such amount of emoluments of that officer or employee or person as may be specified by the State Bank in regulations made by it.

(2) Paragraph (a) and paragraph (b) of sub-section

(1) shall not apply to-

- (a) transactions with the Government;
- (b) transactions between banks;
- (c) the purchase of telegraphic transfers or loans or advances made against telegraphic transfers;
- (d) any facilities provided to finance the export of commodities eligible under Export Financing Scheme;
- (e) any facilities covered by the guarantee of the Pakistan Export Finance Guarantee Agency;
- (f) any loans given to the employees of banks in accordance with their scheme of service with the bank; and
- (g) any other type of transactions which the State Bank may from time to time authorize in regulations made by the State Bank.

(3) For the purposes of sub-section (1), in computing the amount of any credit facility given to a single person, or any liability incurred on behalf of a single person, any credit facility given to, or any liability incurred on behalf of, the following persons shall be deemed to be a credit facility given to, or a liability incurred on behalf of such single person -

- (a) where such single person is an individual, his family member;
- (b) where such single person is a company or an enterprise, its associated companies or associated

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| | <p><u>undertakings and subsidiaries;</u> <u>(c) where such single person is a society registered under any law relating to cooperative societies, its subsidiaries and the associated companies or associated undertakings of such subsidiaries; or</u> <u>(d) persons acting in concert with such single person.</u> <u>Provided that the State Bank may specify in regulations made by it that all or any of the persons, or any particular person, or any class, category or description of persons mentioned in the foregoing paragraphs shall be excluded in the application of this sub-section to which a credit facility is to be given, and at the same time specify the criteria or the basis on which the said person or persons are to be excluded.</u></p> | |
| <p>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. (2) Without prejudice to the generality of the power</p> | <p>66. Power of State Bank in relation to the granting and recovery of loans and advances by banks. 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 the granting and recovery of loans and advances to be followed by banks generally or any class or category of banks and, when the policy has been so determined, all banks, or such class or category of bank as the case may be, shall be bound to follow the policy so determined.</p> | <ul style="list-style-type: none"> • S.25 of BCO deals the power of SBP to issue policies relating to granting credit facilities & S.33B of BCO deals with the power of SBP to formulate policies/guidelines for the recovery debts. • S.66 of BCA is short/concise form of both the said Ss of |

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| <p>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. –</p> <p>(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</p> <p>(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.</p> <p>(3) If any default is made by a banking company in complying with the policy determined under sub-section (1) or direction given under subsection (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 twenty thousand rupees and, where the default is a continuing one, of a further amount which may extend to one thousand rupees for every day after the first during which the default continues.</p> <p>(4) Without prejudice to the provisions of sub-section</p> | | <p>BCO and gives power to SBP to determine any policy for the grant and recovery of loans.</p> |
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(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.

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

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| <p>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 there rehabilitation of sick units.</p> | | |
| <p>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:</p> <p><i>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:</i></p> <p>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.</p> <p>(2) Any credit information furnished by the State Bank to a banking company under sub-section (1) shall be</p> | <p>90. Power of State Bank to collect, publish and furnish credit information. (1) Every bank/ financial institution shall furnish to the State Bank credit information in such manner <u>and at such intervals</u> as the State Bank may specify in regulations made by it and may, either on its own or at the request of any bank, make such information available <u>to the bank</u> or another bank on payment of such fee as the State Bank may specify from time to time:</p> <p>Provided that a bank shall not enter into any financial arrangement or provide any credit facility in excess of the limit specified by the State Bank in its regulations without obtaining credit information on the borrower from the State Bank.</p> <p>(2) Any credit information furnished by the State Bank to a bank under subsection (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.</p> <p>(3) <u>The information furnished under sub-section (1) may be consolidated by the State Bank to</u></p> | <ul style="list-style-type: none"> • Except underline portion of S.90 of BCA and first proviso of S.25A of BCO, rest of the contents of both Sections is almost the same. |

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| <p>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.</p> <p>(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.</p> <p>Explanation. – For the purpose of this section, –</p> <p>(a) “borrower” means any person to whom any credit limit has been sanctioned by any banking company, whether availed of or not, and includes –</p> <p>(i) in the case of a company or corporation, its subsidiaries;</p> <p>(ii) in the case of a Hindu undivided family, any member thereof or any firm in which such member is a partner;</p> <p>(iii) in the case of a firm, any partner thereof or any other firm in which such partner is a partner; and</p> <p>(iv) in the case of an individual, any firm in which such individual is a partner; and</p> <p>(b) “credit information” means any information relating to –</p> <p>(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;</p> | <p><u>determine, at a minimum, the total indebtedness and payment performance of each customer of a bank which may then be provided to each bank under sub-section (2) for internal control and monitoring purposes of the bank and to monitor the exposure of the banking system to credit facilities and non-performing loans.</u></p> <p>(4) No court, tribunal or other authority, including an officer of the Government, shall require the State Bank or any bank to disclose any information furnished to, or supplied by, the State Bank under this section.</p> <p>(5) For the purposes of this section-</p> <p>(a) “borrower” means any person to whom any credit limit has been granted by any bank, whether disbursed or not, and includes –</p> <p>(i) in the case of a company or corporation, its subsidiaries;</p> <p>(ii) in the case of a Hindu undivided family, any member thereof or any firm in which such member is a partner;</p> <p>(iii) in the case of a firm, any partner thereof or any other firm in which such partner is a partner; and</p> <p>(iv) in the case of an individual, any firm in which such individual is a partner; and</p> <p>(b) “credit information” means any information relating to –</p> <p>(i) the amounts and the nature of loans or</p> | |
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| <p>(ii) the nature of security taken from any borrower for credit facilities granted to him;</p> <p>(iii) the guarantees, indemnities or other engagements furnished to a banking company by any of its customers; and</p> <p>(iv) operations or accounts in respect of loans, advances and other credit facilities referred to in this clause.</p> | <p>advances or other credit facilities, including bills purchased or discounted, letters of credit and guarantees, indemnities and other engagements extended by a bank to any borrower or class of borrowers;</p> <p>(ii) the nature of security taken from any borrower for credit facilities granted to him;</p> <p>(iii) the guarantees, indemnities or other engagements furnished to a licensed bank by any of its customers; and</p> <p>(iv) operations or accounts in respect of loans, advances and other credit facilities referred to in this section.</p> | |
| <p>26. Power of State Bank to prohibit acceptance of deposits by banking companies incorporated outside Pakistan.-The State Bank may, by notification in the Official Gazette, order that any banking company or any class of banking companies incorporated outside Pakistan shall from a date to be specified in the notification-</p> <p>(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:</p> <p>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</p> | <p>173. Power of State Bank in regard to activities of domestic banks outside Pakistan.</p> <p>The State Bank may, by notification in the Gazette, order that any domestic bank or any class or category of domestic banks shall in regard to their activities outside Pakistan from a date to be specified in the regulations, -</p> <p>(a) 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 regulations; or</p> <p>(b) discontinue to accept any deposits or accept deposits only upon such terms and under such conditions as may be specified in the notification.</p> | <ul style="list-style-type: none"> • The expression used in S.26 of BCO and S.173 of BCA is the same but conceptually both are entirely different. As S.26 of BCO deals with the banks incorporated outside Pakistan and S.173 deals with the banks incorporated in Pakistan. |

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| <p>notification; or (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.</p> | | |
| <p>27. Licensing of banking companies.—(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</p> | <p>12. Application for a banking license. (1) For the purposes of this Part, an “applicant” shall include an existing company or a company yet to be incorporated for which a banking license is requested. (2) An applicant shall state in its application a statement detailing its short term and long term business plans including the type of business that it seeks to engage in. (3) An application for a banking license shall be made in writing to the State Bank in such form and manner and shall be accompanied by such documentation and such other information, as may be specified in regulations made by the State Bank, and the payment of a processing fee of such amount as may be specified by the State Bank. (4) The State Bank may at any time after receiving an application for a banking license and prior to the issue of a license under this Act, conduct such</p> | <ul style="list-style-type: none"> • Section ‘27’ of BCO r/w Rule 10 of Banking Companies Rules 1963 deal with the most important issue of ‘licensing’, while Part II, Section “11-18” of BCA elaborately deals with this issue. • In this comparative table we have only reproduced those Ss of BCA those have somehow relevance with S.27 of BCO |

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| <p>pursuance of this section or is by notice in writing informed by the State Bank that a licence cannot be granted to it:</p> <p>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.</p> <p>(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:-</p> <p>(a) that the company is or will be in a position to pay its present or future depositors in full as their claims accrue;</p> <p>(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;</p> <p>(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</p> | <p>inquiry or investigations, as it may deem necessary to satisfy itself that none of the grounds in section 14 for the rejection of an application applies, including -</p> <p>(a) on-site examination of the applicant;</p> <p>(b) financial, criminal and professional background checks of the applicant, sponsors who hold or would hold substantial interest in the applicant and directors and officers of the applicant.</p> <p>(5) For the purposes of paragraph (b) of sub-section (4), the persons referred to there in shall provide an authorization sign by or on behalf of the persons, authorizing, the State Bank to carry out financial, criminal and professional background checks concerning them and permitting banks, the national and local tax collection and other relevant law enforcement authorities, to provide such information to the State Bank as it may require.</p> <p>(6) The State Bank shall be authorized to carry out the background checks referred to in sub-section (4)</p> <p>(7) For the purposes of this section, the State Bank may require the applicant to satisfy the State Bank on any matter relevant to application and in particular-</p> <p>(a) the acceptability and validity of the documents</p> | |
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| <p>incorporated outside Pakistan.</p> <p>(4) The State Bank may cancel a licence granted to a banking company under this section,—</p> <p>(i) if the company ceases to carry on banking business in Pakistan; or</p> <p>(ii) if the company at any time fails to comply with any of the conditions imposed upon it under sub-section (1); or</p> <p>(iii) if at any time, any of the conditions referred to in sub-section (3) ceases to be fulfilled:</p> <p>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 interest 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.</p> <p>(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 apply for review to the Central Board of the State Bank.</p> <p>(6) The decision of the State Bank subject to the result of</p> | <p>and any other information submitted by the applicant;</p> <p>(b) the financial history of the applicant;</p> <p>(c) based on the information furnished on behalf of an applicant, the ability of the applicant to raise adequate capital; and</p> <p>(d) the ability of the applicant to meet all its obligations and other liabilities incurred in the conduct of banking business in Pakistan and to observe the provisions of this Act.</p> <p>16. Cancellation of license.</p> <p>(1) A banking license shall be cancelled by the State Bank if:</p> <p>(a) the license was issued based on information in support of application that was found to be false and misleading subsequent to the issue of the license;</p> <p>(b) the bank has been liquidated and the State Bank has determined that all its obligations have been discharged;</p> <p>(c) all of the assets and liabilities deriving from the banking business of a bank have been vested in another bank;</p> <p>(d) a bank requests for its liquidation and where the State Bank is satisfied that all the deposit liabilities and liabilities imposed under this Act have been duly met; and</p> <p>(e) the license of the principal place of business of a</p> | |
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| <p>review under sub-section (5), if any, shall be final.</p> | <p>foreign bank has been cancelled by the bank regulator of the country of its principal place of business.</p> <p>(2) Where a banking license has been cancelled under subsection (1), the State Bank shall, as soon as possible-</p> <p>(a) remove the name of the bank from the register of banks; and</p> <p>(b) publish a notice of the cancellation in the Gazette and in at least two major newspapers circulating in Pakistan.</p> <p>(3) A banking license may be cancelled by the State Bank if the bank has failed to commence banking business within six months of the issue of the license or has failed to continue its business for any period exceeding six months.</p> <p>(4) Before a banking license is cancelled under subsection (3), a notice of the proposed cancellation shall be served by the State Bank on the bank concerned specifying the reasons for the proposed cancellation and inviting the bank to a hearing on a date specified in the notice.</p> <p>(5) After considering any representations made under sub-section (4), the State Bank may cancel the license or allow an extension of time for the bank to commence banking business.</p> | |
| <p>27A.—Prohibition of advertising for deposits and</p> | <p>23. Advertisement for deposits.</p> | <ul style="list-style-type: none"> • S.23 of BCA is a detailed version of |

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| <p>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 Co-operative 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.</p> <p>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.</p> | <p>(1) No person, other than a bank and the persons specified in sub-section (2), shall issue or publish or otherwise facilitate any person to issue or publish an advertisement containing –</p> <p>(a) an invitation to make a deposit or enter into or offer to enter into any agreement to make a deposit; or</p> <p>(b) information which is intended or might reasonably be presumed to be intended to lead directly or indirectly to the making of a deposit.</p> <p>(2) The provisions of sub-section (1) shall not apply to the following persons:</p> <p>(a) a corporation or authority established by the Federal Government that is allowed to solicit or invite deposits;</p> <p>(b) a person duly authorized by the Securities and Exchange Commission of Pakistan under any law, to solicit or invite deposits in ordinary course of business;</p> <p>(c) any person who publishes for or on behalf of a bank; and</p> <p>(d) any other person as may be authorized by the State Bank.</p> <p>(3) For the purposes of this section, “advertisement” means the disseminating or conveying of information, invitation or solicitation by any means or in any form, including by means of –</p> | <p>S.27 of BCO.</p> <ul style="list-style-type: none"> • Although the intent of the legislature is same but the expression used in S.23 of BCA is entirely different. • S.23(2) gives exception to the general rule which is missing in S.27 of BCO • In 23(2) of BCA term advertisement is defined |
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| | <p>(a) publication in a newspaper, magazine, journal or other periodical;</p> <p>(b) display of posters or notices;</p> <p>(c) circulars, handbills, brochures, pamphlets, books or other documents;</p> <p>(d) letters addressed to individuals or bodies;</p> <p>(e) photographs or cinematograph films;</p> <p>(f) sound broadcasting;</p> <p>(g) television or other electronic medium or means;</p> <p>and</p> <p>(h) the internet.</p> <p>(4) For the purposes of this section, "deposits" 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 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 person making the investment, deposit or payment on the understanding on which the money is so invited, called, collected or received.</p> <p>(5) The State Bank may specify the manner, standards and conduct required of banks or any person authorized by it under sub-section (2) in their issue or publication of advertisements for deposits through regulations made by the State</p> | |
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| <p>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.</p> | <p>Bank.</p> <p>183. Restrictions on usage of banking facilities for disruptive activities. <u>(1) Officers and members of a trade union in a bank shall be the employees of the bank.</u> <u>Provided that any officer of a trade union shall continue to hold office of the said trade union until his employment has been terminated in accordance with the law for or ceases to be an officer of the said trade union, whichever is earlier</u> (2) No officer or member of a trade union in a bank shall use any bank facilities or assets to conduct or promote disruptive activities or carry out trade union activities during office hours or subject bank officials to physical harassment or abuse. <u>Provided that officers of the Collective Bargaining Agent union or unit can have negotiations with the management during office hours</u> (3) No officer or member of a trade union in a bank shall carry weapons into bank premises unless so authorized by the management of the bank. (4) Any person violating any of the provisions of sub-section (1), (2) & (3) shall be guilty of an offence punishable with imprisonment of either description which may extend to three years, or with fine, or with both</p> | <ul style="list-style-type: none"> • S.183 of BCA is an extended version of S.27B of BCO. • Except the underline portion of S.183 rest of the contents of both sections are almost same. |
| <p>28. Restrictions on opening of new, and transfer of existing places of business.—(1) No banking company</p> | <p>60. Restrictions concerning establishment of offices etc.</p> | <ul style="list-style-type: none"> • S.60 of BCA is a rearranged form of S.28. of BCO |

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| <p>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.</p> <p>(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:</p> <p>Provided intimation of such opening is given to the State Bank within one week of the date of opening.</p> <p>Explanation. – For the purpose of this section –</p> <p>(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;</p> <p>(b) “new place of business” includes a place of business which is reopened after being temporarily closed.</p> <p>(3) The State Bank may, before giving the permission referred to in sub-section (1) of this section to any banking company,</p> | <p>(1) No bank shall establish a new office or place of business in any part of Pakistan or change, otherwise than within the same city, town or village the location of an existing office or place of business situated in any part of Pakistan, without obtaining the prior authorization of the State Bank.</p> <p>(2) No domestic bank shall establish a new office or 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 obtaining the prior authorization of the State Bank.</p> <p>(3) Nothing in this section shall apply to the establishment for a period not exceeding one month of a temporary office or place of business within a city, town or village or the environs thereof within which the bank already has an office or place of business, for the purpose of affording banking facilities to the public on the occasion of an exhibition, a conference or a mela.</p> <p>(4) The State Bank may, before giving the authorization under sub-section (1), conduct an inspection as the State Bank may deem necessary.</p> | <ul style="list-style-type: none"> • Contents of both the Sections are approximately same except the ‘Explanation’ of S.28 of BCO which is not included in S.60 of BCA |
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| <p><i>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</i></p> | | |
| <p>29. Maintenance of liquid assets.-(1) Every banking company “and every financial institution specified in section 3A” shall maintain in Pakistan in cash, gold or unencumbered approved securities valued at a price not exceeding “the lower of the cost or” the current market price an amount which shall not at the close of business on any day be less than “such percentage” of the total of its time and demand liabilities in Pakistan, as may be notified by the State Bank from time to time. Provided that the State Bank may separately specify for banking companies or financial institutions the applicable percentage either in general or in relation to any class of banking companies or any class of financial institutions or to any bank or financial institution in particular.</p> <p>Explanation.—For the purpose of this section, “unencumbered approved securities” of a banking company “or financial institution” 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 ‘and the liabilities shall not include the paid up capital or the reserves or any credit balance in the profit and loss account of the Banking company or, as the case may be, the financial institution or any</p> | <p>54. Maintenance of liquid assets.</p> <p>(1) The State Bank may specify in regulations made by the State Bank that a bank shall hold such minimum, or minimum average, amount of liquid assets in Pakistan at all times or over such period of time, as may be set out in the regulations.</p> <p>(2) The minimum or minimum average, amount of liquid assets specified in the regulations made under sub-section (1) shall be expressed as a percentage of all or such of its liabilities incurred by its offices in Pakistan as may be set out in the regulations.</p> <p>(3) The State Bank may specify in the regulations made under sub-section (1)-</p> <p>(a) different minimum, or different minimum average amounts, of liquid assets for different classes or categories of banks;</p> <p>(b) different types of assets to be classified as liquid assets for different classes or categories of banks; or</p> <p>(c) different types of liabilities as mentioned in sub-section (2) to be classified as liabilities for different classes or categories of banks.</p> <p><u>(4) The State Bank may prohibit any bank from giving any credit facilities to any person during the</u></p> | <ul style="list-style-type: none"> • S.54 of BCA is a totally rearranged section and has made the procedure for maintaining/ascertaining the liquid asset more simple than its counterpart i.e. S.29 of BCO. • S.54(1) of BCA requires maintaining of liquid assets .. at all times <u>or over such period of time</u> The underline expression is not used in BCO • S.29 of BCO the benchmark for maintaining/determining liquid assets in Pakistan is percentage of its <u>'total of its time and demand liabilities in Pakistan as specified by SBP'</u>. While S.54(2) envisage minimum average amount of |

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| <p>such liabilities as may be notified by the State Bank for the purposes of this section’</p> <p>(2) In computing the amount provided for in sub-section (1), any deposit required under the proviso to 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, {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.</p> <p>(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 Thursday during the month, or if any Thursday is a public holiday under the Negotiable Instruments Act, 1881 (XXVI of 1881), at the close of business on the preceding working day.</p> | <p><u>period in which the bank has failed to comply with any regulations made under sub-section (1).</u></p> <p>(5) Every bank shall, furnish to the State Bank a return showing particulars of the bank’s assets maintained in accordance with this section in such form and manner as may be specified by the State Bank in regulations made by it</p> | <p>liquid assets ... ‘percentage of all or such of its liabilities incurred by its offices in Pakistan’</p> <ul style="list-style-type: none"> • S.54(3)&(4) are also new additions |
| <p>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</p> | <p>55. Maintenance of assets in Pakistan.</p> <p>(1) At the close of business on any day, the assets in Pakistan of every bank, <u>or such class or category of banks</u>, shall at all times hold, shall not be less in</p> | <ul style="list-style-type: none"> • S.55 of BCA is rearranged form of S.30 of BCO and this also due to the changed scheme of |

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| <p>liabilities in Pakistan as may be prescribed by the State Bank from time to time <i>provided that the percentage so prescribed shall not exceed eighty five per cent.</i></p> <p>(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 Thursday or if any Thursday² is a public holiday under the Negotiable Instruments Act, 1881 (XXVI of 1881), at the close of business, on the preceding working day.</p> <p>(3) For the purposes of this section—</p> <p>(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;</p> <p>(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.</p> | <p>value than an amount representing such percentage of all or such of the liabilities in Pakistan of the bank as may be specified in the regulations made by the State Bank.</p> <p>(2) Every bank shall furnish to the State Bank in such form and manner as may be specified in regulations made by the State Bank a return showing particulars of the bank's assets maintained in accordance with sub-section (1).</p> <p>(3) for the purpose of sub-section (1), the State Bank may specify-</p> <p>(a) different minimum amounts of assets to be held in Pakistan by different classes or categories of banks;</p> <p>(b) different types of assets to be classified as assets to be held in Pakistan for different classes or categories of banks; or</p> <p>(c) different provisions for different classes or categories of banks in relation to any matter provided under the regulations.</p> | <p>BCA.</p> <ul style="list-style-type: none"> • The expression used S.55(1) of BCA has the same meaning as of S.30(1) of BCO except addition of underline portion in S.55(1) and omission of italic portion of S.30(1) from it. • Both S. 55(2) of BCA and S.30(2) of BCO requires from banks submission of returns relating to their assets in Pakistan. However, S.30(2) gives the detailed and time capped criteria but S.55(2) has not given such criteria. • S.55(3) has not retained S.30(3) hence is a new addition. |
| <p>31. Unclaimed deposits and articles of value.—(1) Where—</p> | <p>174. Unclaimed deposits and articles of value. (1) Where—</p> | <ul style="list-style-type: none"> • Expression used S.31 of BCO and S.174 of BCA is almost the |

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| <p>(a) a debt payable in Pakistan currency 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 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 –</p> <p>(i) in the case of a deposit made for a fixed period, from the day on which the fixed period terminated, and</p> <p>(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</p> <p>(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</p> <p>(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 or any other currency has been issued, certified or accepted by a banking company at a branch of the banking company and no payment has been made in respect thereof for a period of ten years from the date of issue, certification or acceptance; or</p> | <p>(a) a debt payable in Pakistan currency or any <u>foreign</u> currency <u>as may be prescribed by the State Bank by order published on the Gazette</u> is owing by a bank 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 bank <u>in Pakistan</u> 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 –</p> <p>(i) in the case of a deposit made for a fixed period, from the day on which the fixed period terminated, and</p> <p>(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;</p> <p>(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;</p> <p>(c) a cheque, draft or bill of exchange including an instrument drawn by one branch of the bank upon another such branch payable in Pakistan currency or any <u>foreign</u> currency <u>referred to in paragraph</u></p> | <p>same except few changes in S.174 of BCA.</p> <ul style="list-style-type: none"> • In S.1(a) underline expression is added. • In S.174(1)(c), the underline portion is a new addition • In S.174(8), the italic portion of S.31(8) is replaced with the underline portion of S.174(8) • S.31(13)(a) has been omitted in S.174(13) which means that after the lapsing of prescribed time the F.Gov. would become the absolute owner of such articles. • In sub-section 18 to be checked '480' or '490' of PPC |
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(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; 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) has been issued, certified or accepted by a bank at a branch of the bank in Pakistan and no payment has been made in respect thereof for a period of ten years from the date of issue, certification or acceptance;

(d) a security, share, goods or any valuable article, hereinafter collectively and individually called "article", lying in safe custody with a bank has not been inspected or acknowledged by the person who deposited the article with the bank for a period of ten years from the day on which it was last inspected or acknowledged by such person, the bank shall forthwith give 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 bank on his address last made known by him to the bank, and if on the expiry of the three months' period, no acknowledgement or reply is received from the addressee, the bank shall pay or deliver as the case may be, to the State Bank an amount equal (to the amount that would be owing if the instrument had been presented for payment, including interest or profit, as the loss may be, 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

(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.

safe custody of the bank, an payment or delivery accordingly shall discharge the bank from all liabilities in respect of the debt or instrument, or 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 authorized agent of the person 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 bank 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

(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 [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

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 bank 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 a bank whose duty it is to address, prepay and post letters on behalf of the bank 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 bank to the State Bank under subsection (1), it shall cease to bear interest or rank for a share of profit and 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 bank has paid an amount or delivered an article to the State Bank under sub-section (1), the bank 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

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| <p>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).</p> <p>(8) The State Bank <i>shall publish in the Gazette of Pakistan and not less than two newspapers once each quarter</i> 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.</p> <p>(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 setoff in relation to the amount so paid or article so delivered.</p> <p>(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.</p> <p>(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</p> | <p>need not be preserved any longer.</p> <p>(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 bank toward the State Bank under sub-section (1).</p> <p>(7) Every bank 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 bank, after the expiry of ten years as reckoned under sub-section(1).</p> <p>(8) The State Bank shall <u>place on its website</u> 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.</p> <p>(9) Any bank 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.</p> | |
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| <p>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.</p> <p>(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 other-wise 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.</p> <p>(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. —</p> <p><i>(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</i></p> <p><i>(b) in the Federal Government in any other case.</i></p> <p>(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</p> | <p>(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.</p> <p>(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.</p> <p>(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.</p> <p>(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</p> | |
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| <p>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.</p> <p>(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 counterclaim 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.</p> <p>(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.</p> <p>(17) For the purpose of adjudicating and determining any claim under sub-section (9) or sub-section (10) or deciding any appeal under subsection (16) the State Bank shall follow such procedure as may be prescribed and shall have the same powers as are vested in a court</p> | <p>shall, on the expiry of the said period of the said period of one year, cease to be a claimable and shall, become the absolute property of and vest with the Federal Government.</p> <p>(14) Notwithstanding anything contained in sub-section (1) about the giving of a notice by a bank to any creditor or beneficiary of any cheque, draft or bill of exchange or the person in whose name any article stands, or in subsection (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.</p> <p>(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 counterclaim of a bank 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 subsection (16), be called in question in any manner by or before any court, tribunal or other authority.</p> <p>(16) Any person aggrieved by a decision of the State Bank under sub-section (11) may, within one</p> | |
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| <p>under the Code of Civil Procedure, 1908 (Act V of 1908), when trying a suit in respect of the following matters, namely:-</p> <p>(a) enforcing the attendance of any person and examining him on oath;</p> <p>(b) compelling the production of documents and materials objects; and</p> <p>(c) issuing commissions for the examination of witnesses.</p> <p>(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).</p> <p>(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.</p> | <p>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 authorized in this behalf by the Governor of the State Bank.</p> <p>(17) For the purpose of adjudicating and determining any claim under subsection (9) or subsection (10) or deciding any appeal under subsection (16), the State Bank shall follow such procedures 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:-</p> <p>(a) enforcing the attendance of any person and examining him on oath;</p> <p>(b) compelling the production of documents and materials objects; and</p> <p>(c) issuing commissions for the examination of witnesses</p> <p>(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 490 of the Code of Criminal Procedure, 1898(Act V of 1898).</p> | |
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| | <p>(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.</p> | |
| <p>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.</p> <p>(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 investment of banking companies and the classification of their advances in respect of industry, commerce and agriculture.</p> | <p>72. Submission of statistics and returns to State Bank.</p> <p>(1) Every bank shall-</p> <p>(a) within such time as may be stipulated in the regulations made by the State Bank, submit to the State Bank a periodic return in the form and manner and at such interval as may be specified in regulations showing its assets and liabilities in Pakistan; and</p> <p><u>(b) submit such further information, documents, statistics or returns as the State Bank may require as may be specified in the regulations made by it.</u></p> <p><u>(2) Every domestic bank which operates any office outside Pakistan shall submit to the State Bank such information or statistics relating to the operations of such office as may be specified in the regulations made by the State Bank.</u></p> <p>(3) The State Bank may, at any time by notice in writing, require banks generally, or any bank 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 banks or bank, as the case may be, and without prejudice to the</p> | <ul style="list-style-type: none"> • S.72 of BCA in its rearranged form has the combined effect of S.32 & 33 of BCO. • In S.72(1)(a) of BCA no time limit has been prescribed and it has been left on SBP to prescribe such period through its regulations. • S.72(1)(b), S. 72(2) and S. 72(4) of BCA are new addition. • S.72(5) of BCA is the corresponding clause of S.33 of BCO |

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| <p>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.</p> | <p>generality of the foregoing, may call for information at such intervals as the State Bank may deem necessary regarding the investments of banks and the classification of their advances in respect of different sectors of the economy</p> <p><u>(4) Except as may be permitted under this Act, any information received from a bank under this section shall be regarded as secret between that bank and the State Bank.</u></p> <p>(5) Notwithstanding anything in this Act, the State Bank may publish consolidated statements in respect of each class or category of banks as the State Bank deems appropriate aggregating the statistics submitted under this section, and no provision in any law relating to secrecy shall apply to such consolidated statements.</p> | |
| <p>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.</p> <p>(2) Every president, chairman, member of the Board, administrator, auditor, adviser, officer or other</p> | <p>92. Banking secrecy.</p> <p><u>(1) Except as provided under section 90 and sub-section (3), and without prejudice to the powers of supervision, inspection and investigation of the State Bank conferred under this Act, nothing in this Act shall authorize the Federal Government to direct the State Bank to inquire specifically into the affairs of any individual customer of a bank.</u></p> <p><u>(2) Subject to sub-section (3), no director, chief executive or officer of a bank, whether during his tenure of office or during his employment, or</u></p> | <ul style="list-style-type: none"> • S.92 of BCA is a totally revamped section. • In addition to new sub-sections S.92 of BCA has somehow the combined effect of S.33A and 93C of BCO • The underline portion of S.92 of BCA is a new addition. |

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.

thereafter, and no person who for any reason, has by any means access to any record, register, correspondence, or other document whatsoever relating to the affairs or account of any particular customer of a bank, shall, give divulge reveal or other-wise disclose any information relating to the affairs of such customer.

(3) The provisions of sub-section (2) shall not apply to-

(a) the statements prepared by a bank in such form and manner as the State Bank may specify in respect of written off loans or any other financial relief to a person as well as the provision, if any, made for bad or doubtful debts, that is reflected in the balance sheet and profit and loss accounts of the bank;

(b) the exchange of information amongst banks, either directly between themselves or through any other credit reference bureau authorized by the State Bank, for the purpose of credit assessment of any customer or prospective customer;

(c) the information for which, the customer, or his personal representative, has given permission in writing to disclose;

(d) a case where the customer is declared bankrupt, or, if the customer is a company or enterprise, the company or enterprise is being or has been wound up in Pakistan or in any country,

- S.33A(4) of BCO has also been omitted from S. 92 of BCA.
- S.92(3)(b) of BCA to some extent relates with S.93C of BCO.
- S.93C of BCO allows the banks to exchange information on confidential basis relating to their 'respective customers'.
- While S.92(3)(b) allows the banks to exchange information, not necessarily on confidential basis, to assess the credit worthiness of any customer or 'prospective customer'.

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

(2) No suit or other legal proceeding shall lie against the any credit information provider or any banking company or any officer of the Pakistan such credit information providers 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.

territory or place outside Pakistan;

(e) where a customer of a bank has died, whether testate or in testate, and the information is required by his appointed personal representative or any person entitled to letters of administration solely in connection with an application for a grant of probate or letters of administration;

(f) for the purposes of any criminal proceedings or in respect of any civil proceedings-

(i) between a bank and its customer or his guarantor relating the customer's transaction with the bank ; or

(ii) between the bank and two or more parties making adverse claims to money in a customer's account where the bank seeks relief by way of interpleader;

(g) where the bank has been served a garnishee order attaching monies in the account of the customer;

(h) any information provided to an external bureau established, or to an agent appointed, by the bank with the prior written consent of the State Bank;

(i) information that relates solely to-

(i) credit facilities granted by a branch of a foreign bank;

(ii) foreign exchange, money market or other transactions between the branch in Pakistan of a foreign bank and other companies or financial

institutions, in or outside Pakistan, and the information is required by its head office;

(j) any information or document which at the time of disclosure is or has already been made lawfully available to the public from any source other than the bank, or to information which is in the form of a summary or collection of information set out in such manner as does not enable information relating to any particular bank or any customer of the bank to be ascertained;

(k) any information or documents that is disclosed to the State Bank, or to any of its directors, officers or employees or to any person authorized by the State Bank, where such disclosure is for the purpose of the exercise of powers, performance of functions or the discharge of duties of the State Bank, or of the directors, officers or employees, or of the authorized person;

(l) the information provided to any authority authorized by law to have jurisdiction over anti money laundering or funding of terrorism; and

(m) any information provided in accordance with practice and usage customary among bankers, necessary or appropriate for a bank to divulge such information.

(4) In any civil proceedings under paragraph (f) of sub-section (3) where any information or document is likely to be disclosed in relation to a

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| | <p><u>customer's account, such proceedings may, if the court, of its own motion, or on the application of a party to the proceedings, so orders, be held in camera and in such case, the information or document shall be secret as between the court and the parties thereto, and no such party shall disclose such information or document to any other person.</u></p> <p><u>(5) Unless the court otherwise orders, no person shall publish the name, address or photograph of any parties to such civil proceedings as are referred to in paragraph (f) of sub-section (3), or any information likely to lead to the identification of the parties thereto, either during the currency of the proceedings or at any time after they have been concluded.</u></p> | |
| <p>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.</p> <p>(2) The balance sheet and profit and loss account shall be signed.—</p> <p>(a) in the case of a banking company incorporated in</p> | <p>70. Preparation of Financial Statements</p> <p><u>(1) Except as may be authorized by the State Bank, at the expiration of each financial year, every bank shall prepare with reference to that year, financial statements in respect of the financial year.</u></p> <p><u>(2) The financial statements of a bank shall reflect its operations and financial condition and those of its subsidiaries, both on an individual basis and on a consolidated basis.</u></p> <p><u>(3) The financial statements shall be signed—</u></p> <p><u>(a) in the case of a domestic bank, by the chief executive and at least three directors of the bank;</u></p> <p>and</p> | <ul style="list-style-type: none"> • S.70 of BCA is a modified form of S.34 of BCO. • The underline portion to the extent of 70(2) and 70(5) of BCA is the new addition and rest is modified form of S.34 of BCO. |

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| <p>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</p> <p>(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.</p> <p>(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 Ordinance, 1984 (XLVII of 1984), 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.</p> <p>(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.</p> | <p><u>(b) in the case of a foreign bank, by the chief executive and another officer next in seniority to the chief executive of its branch in Pakistan.</u></p> <p><u>(4) Notwithstanding the provisions of the Companies Ordinance, 1984, the State Bank may make regulations concerning the form, content and certification of financial statements and other disclosure statements to be made under this Part and where such form or content is specified, the financial statements and disclosure statement of every bank shall be prepared accordingly.</u></p> <p><u>(5) For the purposes of this section and section 71, "financial statements" include the balance sheet, profit and loss accounts, statement of changes in equity, cash flow statement and notes to the accounts.</u></p> | |
| <p>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</p> | <p>79. Audit. (1) The financial statements prepared in accordance with section 70 shall be audited by a person who is duly qualified, under the Chartered</p> | <ul style="list-style-type: none"> • S.79 of BCA is a refined form of S.35 of BCO. • The italic portion of |

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| <p>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. 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.</p> <p>(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.</p> <p>(3) If 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,-</p> <p>(a) revoke the appointment of external auditors of the banking company;</p> <p>(b) downgrade the category of the auditor in the panel of the auditors; and</p> <p>(c) remove the auditor from the panel of the auditors for a maximum period of five years.</p> <p>(4) <i>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.</i></p> <p>(5) <i>The State Bank may, from time to time, lay down</i></p> | <p>Accountants Ordinance, 1961 (X of 1961), or any other law for the time being in force, to be an auditor and whose name appears on the panel of auditors maintained by the State Bank as persons to be suitable auditors for banks.</p> <p>(2) The panel of auditors so maintained by the State Bank under sub-section (1) may classify auditors in different categories for different banks taking into account the scope, complexity and size of the operations of the banks.</p> <p>(3) An auditor of a bank 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: <u>Provided that such auditor shall not hold office for a period exceeding six years unless the authorization of the State Bank is given.</u></p> <p><u>(4) The State Bank may, from time to time, specify in the regulations the scope, approach and procedures that an auditor of a bank shall follow in its audit of a bank.</u></p> <p><u>(5) Each bank shall promptly after the appointment of an auditor in accordance with the provisions of this section, inform the State Bank of the name and business address of the auditor.</u></p> <p><u>(6) If a bank fails to appoint an auditor in accordance with the provisions of this section, the State Bank shall be authorized to appoint an</u></p> | <p>S.35 of BCO has not been retained in S.79 of BCA</p> <ul style="list-style-type: none"> • The underline portion of S.35 of S.79 is a new addition |
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| <p><i>guidelines for the audit of banking companies and the auditors shall be bound to follow those guidelines.</i></p> <p>(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 Ordinance, 1984 (XLVII of 1984).</p> <p>(7) <i>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 –</i></p> <p>(a) <i>whether or not the information and explanations required by him have been found to be satisfactory;</i></p> <p>(b) <i>whether or not the transactions of the banking company which have come to his notice have been within the powers of the banking company;</i></p> <p>(c) <i>whether or not the returns received from branch offices of the banking company have been found adequate for the purposes of his audit;</i></p> <p>(d) <i>whether the profit and loss account shows a true balance of profit and loss for the period covered by such account; and</i></p> <p>(e) <i>any other matter which he considers should be brought to the notice of the shareholders of the banking company.</i></p> | <p><u>auditor to carry out the duties of an auditor at the expense of the bank.</u></p> <p>(7) If the State Bank is not satisfied with the performance of the auditor of a bank or the auditor has not fulfilled any of the requirements specified in the regulations made under sub-section (4), the State Bank may, after giving the auditor an opportunity to be heard,–</p> <p>(a) <u>notwithstanding the provisions of the Companies Ordinance, 1984,</u> revoke the appointment of the auditor for the bank;</p> <p>(b) downgrade the auditor in the panel referred to in sub-section (1);</p> <p>(c) remove the auditor from the panel of auditors for a maximum period of five years; or</p> <p>(d) <u>direct the bank to appoint another auditor in accordance the provisions of this section.</u></p> <p><u>(8) Where, in the performance of his duties as an auditor for a bank, the auditor becomes aware of any matter or irregularity that may have a material effect upon the financial position of the bank, the auditor shall immediately report the matter or irregularity, as the case may be, to the State Bank.</u></p> <p><u>(9) When an auditor makes a report under sub-section (8), the auditor shall not be liable to be sued in any court in respect of any statement made by the auditor in good faith in his report made under sub-section (8).</u></p> | |
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| | <p>(10) An auditor appointed in accordance with the provisions of this section shall have the powers of, and exercise the functions vested in, and discharge the duties and be subject to the liabilities and penalties imposed on, auditors of companies by virtue of section 147 of the Companies Ordinance, 1984, <u>and without prejudice to the generality of the foregoing, shall have a right of access at all times to the books, accounts, vouchers and all documents and records belonging to the bank, which he considers necessary for the performance of his duties, and he shall be entitled to require from the directors and officers of the bank, such information and explanations as he thinks necessary for the performance and proper discharge of his duties as an auditor.</u></p> | |
| <p>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.</p> | <p>71. Financial statements to be submitted to the State Bank. (1) After the close of each financial year, a bank shall submit to the State Bank in respect of its entire operations in Pakistan, three copies each of the following documents— (a) its latest audited financial statements setting out the sources of its funds, the purposes for which, and the manner in which, such funds have been utilized; and (b) the report of the auditor and its directors as required under the Companies Ordinance, 1984,</p> | <ul style="list-style-type: none"> • S.71 of BCA is refurbished form of S.36 of BCO. |

(Section '71' of BCA)

within such period as may be specified by the State Bank in regulations made by it.

(2) In the case of a domestic bank with subsidiaries or offices outside Pakistan, within the time stipulated in sub-section (1), the domestic bank shall, in addition to the requirements under sub-section (1), submit to the State Bank, all the documents referred to under sub-section (1) in respect of-

- (a) its operations in each country outside Pakistan;
- (b) its entire operations both in outside Pakistan on a consolidated basis.

(3) Where applicable, the holding company of a domestic bank shall submit to the State Bank within the time stipulated in sub-section (1) the latest audited financial statements which reflect the operations and financial position of the holding company, both on an individual basis and on a consolidated basis.

(4) The State Bank may require a bank referred to in sub-section (1), subsection (2) or sub-section (3) to submit any additional information as it may deem necessary either by way of explanation, amplification or otherwise with regard to any documents submitted under sub-section (1), sub-section (2), or sub-section (3), as the case may be, or to amend or modify the documents in accordance with such form or content as the State

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| | Bank may deem appropriate. | |
| <p>37. Copies of Balance Sheet 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 subsection (1) of section 134 of the Companies Ordinance, 1984 (XLVII of 1984), 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.</p> | <p>74. Copies of balance sheet and profit and loss accounts to be sent to Registrar. (1) Where a bank in any year furnishes its financial statements in accordance with the provisions of section 71, the bank <u>shall</u> at the same time send to the Registrar three copies of the balance sheet, profit and loss accounts and the auditor’s report. (2) Where copies of balance sheet and profit and loss accounts are sent to the Registrar under subsection (1), it shall not be necessary for the bank to file copies of the balance sheet and profit and loss accounts with the Registrar as required by subsection (1) of section 134 of the Companies Ordinance, 1984, 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.</p> | <ul style="list-style-type: none"> • S.37 of BCO and S.74 of BCO almost have the same expression except one change/amendment. • S.37 of BCO envisage two categories of bank (i) a public limited company and (ii) Pvt. Ltd. co. For a bank which is a public limited company it uses the word ‘may’ while for a bank which is pvt. Ltd. it uses the word ‘shall. It may be because initially DFI and Investment Bank were also supervised by SBP. While S.74 of BCA uses the word ‘shall’ for the submission of accounts. |
| <p>38. Display of audited balance sheet by banking companies incorporated outside Pakistan.— Every banking company incorporated outside Pakistan shall,</p> | <p>73. Publication and display of audited balance sheet and profit and loss accounts. Every bank shall within such time as may be</p> | <ul style="list-style-type: none"> • The basic difference between clauses is that S.37 of BCO is only for ‘every |

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| <p>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.</p> | <p>specified by the State Bank in regulations made by it, publish in not less than two daily newspapers circulating in Pakistan, and exhibit thereafter throughout the year in a conspicuous place at every of its office in Pakistan, a copy each of its latest audited balance sheet, profit and loss accounts and such other financial statements in such format and manner as the State Bank may specify in the regulations.</p> | <p>banking company incorporated outside Pakistan, while S.73 of BCA for 'every bank'</p> <ul style="list-style-type: none"> • Publication of audited account is required u/s. 73 of BCA but it is not required under S.37 of BCO because it is covered under S.34 of BCO. |
| <p>40 Inspection. – (1) Notwithstanding anything to the contrary contained in section 138 of the Companies Ordinance, 1984 (XLVII of 1984), the State Bank may, at any time, and, on being directed so to do by the 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 or any company or firm or person referred to in section 27A to produce to any officer, hereafter in this section called the inspecting</p> | <p>76. Inspection. (1) The State Bank shall, from time to time and at intervals it deems appropriate, examine, the books or other documents, accounts and transactions of each bank and of any office outside Pakistan of a domestic bank. (2) Notwithstanding anything to the contrary contained in section 140 of the Companies Ordinance, 1984, the State Bank shall, on being directed to do so by the Federal Government, inspect under conditions of secrecy, the books or other documents, accounts and transactions of a bank, if the Federal Government has reason to believe that the bank is carrying on its business in a manner which is, or which is likely to be,</p> | <ul style="list-style-type: none"> • Under S.76 of BCA it is mandatory upon SBP to inspect the affairs of banks, while in S.40 of BCO it is a discretion of SBP. • S.76(7) is a new addition. |

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 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.

(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.

detrimental to the interests of depositors or creditors, or has insufficient assets to cover its liabilities.

(3) The inspection shall be carried out by such officer of the State Bank as the State Bank may authorize who in this Part is referred to as "inspecting officer".

(4) It shall be the duty of the directors, chief executive and officers of a bank to produce to any inspecting officer making an inspection under this section all such books, accounts and other documents in his custody or power, and to furnish the inspecting officer with such statements, information and facilities within such time as the inspecting officer may require.

(5) The inspecting officer may examine on oath any directors, chief executive or officer of a bank in relation to its business and may administer an oath accordingly.

(6) The State Bank shall, if it has been directed by the Federal Government to make an inspection under sub-section (2), submit a report of such inspection to the Federal Government.

(7) For the purposes of ascertaining the true condition of the affairs of a bank under inspection, the State Bank may for the purpose of an inspection under this section, also examine the business of any firm or company, enterprise or

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| | <p><u>account, which is or has been at any relevant time been –</u></p> <p><u>(a) a holding company or subsidiary of the bank under inspection;</u></p> <p><u>(b) a subsidiary of a holding company of the bank under inspection;</u></p> <p><u>(c) an associate company or associate undertaking or subsidiary of the bank under inspection ; and</u></p> <p><u>(d) an enterprise or account under the control or administration of the bank under inspection, and may exercise in relation to such aforementioned persons any of the powers conferred on the State Bank under this Part.</u></p> | |
| <p>40A. 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.</p> <p><i>(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</i></p> | <p>48. Responsibility of State Bank and prudential requirements.</p> <p>(1) It shall be the responsibility and duty of the State Bank to continuously monitor the performance of every bank so as to ensure that the bank is complying with all applicable requirements, standards and regulations.</p> <p><u>(2) The State Bank shall make regulations in accordance with the provisions of this Act specifying the prudential requirements for banks which the State Bank shall use in its supervision of banks:</u></p> <p><u>Provided that such requirements may be specified for all banks or may be specified for one or more</u></p> | <ul style="list-style-type: none"> • S.48 of BCA is more exhaustive than S.40A of BCO • The underline portion of S.48 of BCA is a new addition. • The italic portion in S.40A of BCO has been omitted in S.48 of BCA. |

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.

classes or categories of banks, on the basis of the differences in the purpose, nature or size of business or the origin of financial resources, of such banks.

(3) Without prejudice to the generality of subsection (2), the State Bank may make regulations in respect of the following :-

(a) the liquid resources in relation to the value or change in value of assets (including guarantees and collateral received);

(b) the liquid resources in relation to liabilities;

(c) the maximum aggregate amount of all or certain categories of credit facilities or investments, guarantees and other commitments, whether contingent or not, and including without limitation, letters of credit, lines of credit and unused credit card balances;

(d) margins to be maintained in respect of secured loans;

(e) the ratio to be maintained between capital funds and deposit liabilities;

(f) maximum amount of credit facilities that may be made for the benefit of single customer and different classes of customers;

(g) specific circumstances concerning the return and mark ups and other conditions applicable to any type of credit facility extended or received (including deposits) or applicable to contingent

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| | <p><u>liabilities;</u> <u>(h) the classification and evaluation of assets, and provisions to be made on the basis of such classification and evaluation, and the time when earnings on non-performing assets may no longer be accounted for as income; and (i) prohibitions, restrictions and conditions relating to:-</u> <u>(A) the types or forms of credit facilities and investments made, and liabilities assumed (contingent or otherwise);</u> <u>(B) matching as to maturity and return in respect of assets and liabilities (contingent or otherwise);</u> <u>and</u> <u>(C) unhedged positions, exceeding a specified ratio, in any underlying asset or investment.</u> <u>(4) A bank shall conduct its administration and operations in a sound and prudent manner and in accordance with the provisions of this Act, any conditions or restrictions attached to its banking license, rules made by Federal Government and regulations made by the State Bank under this Act.</u> <u>(5) A bank shall produce to the State Bank such evidence or information as may be required by the State Bank relating to its compliance with any provision of this Act, or any regulation made by the State Bank, or in relation to any particular matter.</u></p> | |
| <p>41. Power of the State Bank to give directions.—(1)</p> | <p>4. General powers, functions and duties of State</p> | <ul style="list-style-type: none"> • Except the underline portion of S.4 of BCA |

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| <p>Where the State Bank is satisfied that—</p> <p>(a) in the public interest; or</p> <p>(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</p> <p>(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.</p> <p>(2) The State Bank may, from time to time, issue direction, 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.</p> <p>(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.</p> | <p>Bank.</p> <p><u>(1) The State Bank shall have the powers, functions and duties conferred on it by this Act.</u></p> <p><u>(2) The State Bank shall have all such powers as may be necessary for or in connection with, or reasonably incidental to, the performance of its functions under this Act including in relation to the maintenance of safety and soundness of the banking and financial system in Pakistan.</u></p> <p>(3) Where the State Bank is satisfied that—</p> <p>(a) in the public interest; or</p> <p>(b) to prevent the affairs of any bank being conducted in a manner detrimental to the interests of the depositors or in a manner prejudicial to the interests of the bank; or</p> <p>(c) to secure the proper management of any bank generally; it is necessary to issue directions to banks generally or to any bank particular, it may, from time to time, issue such directions as it deems fit, and the banks or the bank concerned, as the case may be, shall be bound to comply with such directions.</p> <p>(4) State Bank may, from time to time issue direction, guidelines and instructions with respect to activities and operations of banks and the institutions under its regulatory control as may be deemed necessary by it for carrying out purposes and provisions of this Act or anything ancillary to</p> | <p>the rest of the contents of both clauses are almost same.</p> |
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| | <p>it.</p> <p>(5) The State Bank may, on representation made to it or on its own motion, modify or cancel any direction issued under sub-section(4), 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.</p> | |
| <p>41A. Power of the State Bank to remove directors or other managerial persons from office—.(1) where the State Bank is satisfied that –</p> <p>(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</p> <p>(b) in the public interest; or</p> <p>(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</p> <p>(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 .</p> | <p>43. Removal of directors or chief executive.</p> <p>(1) An individual shall be disqualified from holding the office of director of a domestic bank or a chief executive of a bank, as the case may be, if –</p> <p>(a) he is not a fit and proper person or if he is prevented from holding such office by or under a provision of this Act or other law;</p> <p>(b) in the case of a director of a domestic bank, he is a person whose appointment, election or nomination was not approved by the State Bank under section 40, or whose appointment, election or nomination was in contravention of section 42;</p> <p>(c) in the case of the chief executive of a bank, he is a person whose appointment has not been approved by the State Bank under section 41;</p> <p>(d) he has become permanently incapable of performing the duties of his office; or</p> <p>(e) he has committed an act which is detrimental to the objectives and interests of the bank or its depositors.</p> <p>(2) A bank shall ensure that no person holds office</p> | <ul style="list-style-type: none"> • Under S.41A of BCO SBP has the power to remove any officer of the bank. • Under S.43 of BCA only director or chief executive may be removed by SBP • Under S.41A BCO SBP can exercise the power of removal without giving any notice to the bank while under S.43 of BCA, SBP would give a notice to such bank to remove director/CEO as the case may to remove him from officer failing which SBP can directly remove such officer after the |

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| <p>(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:</p> <p>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—</p> <p>(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,—</p> <p>(a) act as such chairman or director or chief executive or other officer of the banking company; or</p> <p>(b) in any way, whether directly or indirectly, be concerned with, or take part in the management of the banking company; and any person authorised by the State Bank in this behalf shall act as such chairman or director or chief executive of the banking company.</p> <p>(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</p> | <p>as a director of the domestic bank or a chief executive of a bank, as the case may be, if sub-section (1) applies.</p> <p>(3) Where a bank fails to comply with the requirement under sub-section (1), the State Bank may direct the bank in writing, to remove such person from the office of director or chief executive, as the case may be, within such period as may be specified in such direction.</p> <p>(4) Notwithstanding the provisions of any other law, the State Bank shall within the period specified in the direction remove such person from the office of director or chief executive, as the case may be, and shall take such steps as are necessary to inform the shareholders of the bank and the Registrar of such removal.</p> <p>(5) The removal of a director or chief executive, as the case may be, in accordance with the directions given under sub-section (3) shall take effect from the date of issuance of the notification of removal by the bank, notwithstanding the provisions of any other law or the Memorandum of Association or Articles of Association of the bank.</p> | <p>expiry of notice period.</p> |
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| <p>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 or for such extended period as may be specified by the Governor, State Bank of Pakistan.</p> <p>(4) Any person appointed as chairman or director or chief executive under sub-section (2) shall –</p> <p>(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 years as the State Bank may specify or for such extended period as may be specified by the Governor, State Bank of Pakistan. ;and</p> <p>(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.</p> <p>(5) No person removed from office under sub-section (1) shall be entitled to claim any compensation for the loss or termination of office.</p> | | |
| <p>41B. Power of the State Bank to supersede Board of Directors of banking company. –(1) where the State Bank is satisfied that –</p> <p>(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</p> <p>(b) for all any of the reasons mentioned in sub-section</p> | <p>96. Power of State Bank to ensure prompt corrective actions</p> <p>(1) Without prejudice to the generality of section 93, the State Bank may take one or more of the following actions against a bank under sub-section (2) of section 94 or in respect of which a notice has been issued under sub-section (1) of section 95:</p> <p>(a) caution or prohibit banks generally or any bank</p> | <ul style="list-style-type: none"> • The BCA has methodically dealt with a situation where a banking company is unable to perform its routine functions or its functioning is detrimental to the |

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| <p>(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.</p> <p>(2) The period of super session specified in an order under subsection (1) may from time to time be extended by the State Bank so, however, that the total period of super session does not exceed three years or for such extended period as may be specified by the Governor, State Bank of Pakistan</p> <p>(3) All powers and duties of the Board of Directors shall, during the period of super session, be exercised and performed by such person as the State Bank may from time to time appoint in this behalf.</p> <p>(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 subsection (1) or sub-section (3).</p> | <p>in particular against entering into any particular transaction or class of transactions ;</p> <p>(b) direct the bank to cease and desist from any unsafe or unsound practice or contravention;</p> <p>(c) require the bank to take appropriate action as may be directed by the State Bank;</p> <p>(d) during the course, or after the completion, of any inspection of a bank under section 75, on such terms and conditions as may be specified by the State Bank-</p> <p>(i) require the bank to call a meeting of its directors for the purpose of considering any matter relating to or arising out of the affairs of the bank, or require an officer of the bank to discuss any such matter with an officer of the State Bank;</p> <p>(ii) depute one or more of the officers of the State Bank to watch the proceedings at any meeting of the Board of Directors of the bank or of any committee or of any other body constituted by it;</p> <p>(iii) require the bank to give an opportunity to the officers so deputed under sub-paragraph (ii) to be heard at such meetings and also require the bank to send a report of such proceedings to the State Bank;</p> <p>(iv) require the Board of Directors of the bank 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</p> | <p>rights of depositors etc. in 'Part X - Corrective actions and bank resolution measures'. In the said Chapter of BCA SBP have powers to proceed systematically. S.96 of BCA is part of that overall scheme and it cannot be taken as single independent clause.</p> <ul style="list-style-type: none"> • As the concept of suspension of board of S.41B of BCO was corresponding in S.96 of BCA so we have placed it here other wise we have put this entire chapter in the table of new provisions • S.96(1)(p) of BCA somehow relates with S.41B of BCO |
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notices of, and other communications relating to, any meeting of the Board, committee or other body constituted by it;

(v) appoint one or more of the officers of the State Bank to observe the manner in which the affairs of the bank or of its offices or branches are being conducted and make a report thereon; or

(vi) require the bank to make, within such time as may be specified by the State Bank, 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;

(e) require the bank to increase its paid up capital either through the issue of new shares or a call on the unpaid portion of the issued capital;

(f) require the bank to maintain higher capital adequacy or liquidity ratios or place other restrictions or conditions on the business conducted by the bank;

(g) suspend or reduce in whole or part of shareholders' rights, including voting rights, in the bank;

(h) prohibit the distribution of profits or other withdrawals by shareholders of the bank;

(i) limit the compensation (including management fees and bonuses) paid to directors and officers of the bank;

(j) prohibit or impose limitations on the acceptance

of deposits and the granting of loans or advances or the making of investments by the bank;

(k) require the bank to enhance its governance, internal controls and risk management systems;

(l) require the downsizing of operations and sale of assets, restrict the expansion of branches or offices or the closing of branches or offices in Pakistan or abroad, of the bank;

(m) enhance provisioning for assets of doubtful quality and for those that are not represented in the accounts at fair value;

(n) prohibit principal or other payments on subordinated debt provided by the shareholders of the bank; or

(o) notwithstanding the provision of the Companies Ordinance, 1984 or any other law and without prejudice to section 43, the State Bank may be order in writing remove from office any officer or person acting for or on behalf of the bank;

(p) notwithstanding the provisions of the Companies Ordinance, 1984 and any other law, by order in writing made by the State Bank, supersede the Board of Directors and take control of the bank and operate its business through the appointment of any person, selected by the State Bank as being appropriate to manage hereinafter referred to as "Administrator" business of the bank for the period specified in the order ;

(q) notwithstanding the provision of any other law, by order in writing made by the State Bank, require the bank to apply for de-listing from any stock exchange on which it is listed; and

(r) where the State Bank has determined that any income earned by a bank that is subject to the provisions Part IV is not in accordance with Shariah, direct the bank to credit such income into any charity fund in such manner and under such terms as may be specified in the regulations made by the State Bank.

(2) An order or requirement shall only be made under paragraph (o), (p) and (q) of sub-section (1) after the affected persons have been given a reasonable opportunity to make representations to the State Bank against, or otherwise in respect of, the proposed order:

Provided that if in the opinion of the State Bank, in the case of an order or requirement to be made by the State Bank under paragraph (o), paragraph (p) and paragraph (q) of sub-section (1), any delay would be detrimental to the interests of the bank, or its depositors, creditors or the public generally, the order may be made immediately and the opportunity to make representations against or otherwise in relation to the order shall, in such case, be given as soon as possible after the order has been made, and the order may, in consequence

of such representations either be confirmed, or be modified, amended, altered, varied or replaced or be revoked subject to such conditions, if any, as the State Bank may specify.

(3) A bank in respect of which an order is issued under paragraph (p) of subsection (1) shall bear all expenses incurred while managed by an Administrator pursuant to an order.

(4) An order made under paragraph (p) of subsection (1) shall be valid for a period not exceeding 2 years unless extended by subsequent order issued by the State Bank.

(5) No order or requirement under paragraph (o), (p) or (q) of sub-section (1) 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 this purpose.

(6) Any person affected by an order or requirement referred to in sub-section (5) may make an appeal to the Central Board of Directors of the State Bank whose decision shall be final.

(7) The State Bank shall provide an initial report to Federal Government as soon as practicable after the control of a bank has been taken over by an Administrator appointed under paragraph (p) of sub-section (1) and a yearly report thereafter.

(8) Any person removed from office under

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| | <p>paragraph (o) of sub-section (1) shall cease to hold the office from which he is removed with effect from the date set out in the order and shall not thereafter hold any other office whatsoever in that bank or, in any manner, whether directly or indirectly, be concerned with, or take part, or engage in, any activity, affairs or business whatsoever of or in relation to that bank.</p> <p>(9) The removal of any person under paragraph (o) of sub-section (1) shall be lawful and valid notwithstanding anything contained in any contract of service or other contract or agreement, whether express or implied, whether individual or collective, and whether or not made or provided for under any law or regulation and any person so removed from office shall not be entitled to claim any compensation for the loss or termination of office.</p> <p>(10) For the purposes of this Part, the capital of a bank shall be determined in accordance with standards and procedures may be specified in the regulations made by the State Bank; and the value of the assets and liabilities of a bank shall be determined in accordance with valuation standards and procedures specified in the regulations made by the State Bank.</p> | |
| 41D. Prosecution of directors, chief executives or other | 47. Prosecution of directors, chief executive and | <ul style="list-style-type: none"> • The expression of both clauses is almost |

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| <p>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 depositors’ money or of the income of the banking company.</p> <p>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.</p> | <p>officers. (1) Notwithstanding the provisions of section 43, the State Bank may direct prosecution of a director, chief executive or officer of a bank who, in the opinion of the State Bank, has knowingly acted in a manner causing loss of depositors’ money or of the financial resources of the bank. (2) For the purposes of this section, a director, chief executive or officer shall be deemed to have acted knowingly if he has departed from established banking practices and procedures, or contravened the regulations or related restrictions specified by the State Bank from time to time.</p> | <p>the same</p> |
| <p>43A. Power to call for certain information, etc. Where it appears to the State Bank that a company, 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 or is receiving or has received deposits of money in contravention of section 27A the State Bank may – (a) direct the company, 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, 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</p> | <p>82. Power to call for certain information. Where it appears to the State Bank that any person is contravening or has contravened the provisions of section 10, section 23, section 24, section 25 or any other provision of this Act (hereinafter referred to in this Part as “defaulting person”), the State Bank may– (a) direct the defaulting person, or any other person who is, or has at any time been dealing, doing business or associated in any manner, with the defaulting person (hereinafter referred in this Part to “such other person”), to give or furnish to the State Bank, within such time as the State Bank may specify in its direction, such information,</p> | <ul style="list-style-type: none"> • S.83 of BCA is a rearranged form of S.43A of BCO. • Expression of S.83 of BCA is slightly different as of S.43A of BCO otherwise the concept is same |

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| <p>on by the company, firm or such other person as may be within its or his knowledge or in or under its or his possession, custody or control;</p> <p>(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, firm or such other person as may be in or under the possession, custody or control of the company, 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, firm or such other person, or any officer or employee of the company, firm or such other person or of the person dealing, doing business or associated with the company, firm or such other person.</p> <p>(c) inspect or examine, or cause to be inspected or examined, the company, 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, firm or such other person or of the person dealing, doing business or associated with the company, firm or such other person, and any of its or his books, accounts or other documents or records referred to in clause (b); and</p> <p>(d) exercise, as far as may be applicable, in relation to the company, 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</p> | <p>documents or records in respect of any business carried on by the defaulting person or such other person, as the case may be;</p> <p>(b) authorize any officer of the State Bank or any other person authorized by the State Bank to enter and search any premises and seize books, accounts or other documents or records in respect of any business carried on by the defaulting person or such other person, as the case may be, which are or were under the possession, custody or control of the defaulting person or such other person;</p> <p>(c) inspect or examine, or cause to be inspected or examined any of the books, accounts or other documents or records of the defaulting person or such other person; and</p> <p>(d) exercise, any powers conferred on the State Bank under section 76 as far as may be applicable in relation to the defaulting person or any other person.</p> | |
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| <p>conferred on the State Bank by sub-sections (1), (2), (4) and (5) of section 40</p> | | |
| <p>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—</p> <p>(a) appointing one or more persons as interim receiver or receivers authorising him or, as the case may be, each one of them to—</p> <p>(i) enter and search any premises and seize books of accounts or other documents or records of such deposits of money; and</p> <p>(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;</p> | <p>83. Special provisions. (1) Where the State Bank has called for information under section 82 and it appears to the State Bank that, in the interest of the person for whom the deposits were received, it is necessary that the moneys received and other assets of the defaulting person whether held in the name of the defaulting person or otherwise are protected and preserved, the State Bank may, without prejudice to any other action or proceeding which may be taken against such defaulting person under any other provisions of this Act or any other law for the time being in force, by written direction—</p> <p>(a) appoint one or more persons as interim receiver or receivers authorizing him, or as the case may be, each one of them to—</p> <p>(i) enter and search any premises and seize books of accounts or other documents or records of such deposits of money; and</p> <p>(ii) take in his custody, on behalf of the State Bank, all moneys, cash securities, title deeds, properties, whether movable or immovable, belonging to such defaulting person, including those being held on behalf or in the name of any director, manager, officer, partner, employee, agent, beneficiary or transferee of such defaulting person or their</p> | <ul style="list-style-type: none"> • Except few minor changes in S.83 of BCA that are due to its revised structure, rest of the contents of both these clauses is the same. |

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| <p>(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);</p> <p>(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;</p> <p>(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 or 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</p> <p>(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.</p> <p>(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,</p> | <p>dependants;</p> <p>(b) require any bank, financial institution or any other person to freeze all moneys deposited with it or him on behalf of the defaulting person or of any director, manager, officer, partner or employee, agent, beneficiary or transferee of such defaulting person;</p> <p>(c) authorize a person appointed under paragraph (a) to take all necessary steps and measures for identifying the assets and properties of the defaulting person and for realization, protection and preservation thereof;</p> <p>(d) restrain any or defaulting person or any director, manager, officer, partner or employee or agent, beneficiary or transferee of such defaulting person or such 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 there-from; and</p> <p>(e) make such orders for realization, protection and preservation of deposits of money and other assets and properties of the defaulting person, as it may deem fit.</p> <p>(2) A direction issued under sub-section (1) shall, unless it is earlier withdrawn in pursuance of the proviso to sub-section (1) of section 84, remain in</p> | |
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| <p>properties, books of account, documents or records to which the order relates is 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:</p> <p>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.</p> <p>(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.</p> <p>(4) If any person authorised under sub-section (1) require 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.</p> | <p>force until possession of the moneys, cash securities, title deeds, properties, book of account, documents or records to which the order relates is 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 88:</p> <p>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 asset from the defaulting person, bona fide and for valuable and adequate consideration which such person shall be required to prove as paid from his own resources.</p> <p>(3) An order made under sub-section (1) may be served on the Registrar or such other officer or authority or person as the State Bank may deem proper.</p> <p>(4) If the State Bank or any person authorized under sub-section (1) require assistance of the police or any other civil authority in the exercise of powers or discharge of functions under this Part, a requisition may be sent to the officer in charge of a police station or to such authority that shall on such requisition render the assistance required</p> | |
| <p>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, firm or a person referred to in section 43A is transacting in any manner or form</p> | <p>84. Power to make declaration. (1) Without prejudice to the provision of Part X, where the State Bank, after making such inquiries as it may deem fit, is of the opinion that a</p> | <ul style="list-style-type: none"> • Except few minor changes in S.84 of BCA that are due to its revised structure, rest of the contents of |

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| <p>whatsoever the business of banking in contravention of sub-section (1) of section 27, or is receiving or has received deposits of money in contravention of section 27A, the State Bank may, after giving the company, firm or such person an opportunity of showing cause against the proposed action being taken, make a declaration to that effect:</p> <p>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.</p> <p>(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</p> | <p>defaulting person is receiving or has received deposits in contravention of section 23, section 24 or section 25, or has contravened any other provisions of this Act, the State Bank may, after giving the defaulting person an opportunity to make representations to it against the proposed action being taken, make a declaration to that effect:</p> <p>Provided that, in a case in which the State Bank has made direction under subsection (1) of section 83 in respect of a defaulting person, the State Bank shall</p> <p>make a declaration under this sub-section in respect of such defaulting person within three months of the issuance of such direction or within such further time, not exceeding three months in the aggregate, as the High Court may allow, or withdraw such direction.</p> <p>(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 defaulting person or the principal office of the person, to which or to whom the declaration relates is situated; and upon such publication, the defaulting person or the chief executive, by whatever name called, or directors, managers, officers, employees or agents of the defaulting person, or any other</p> | <p>both these clauses is the same.</p> |
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| <p>43E, shall not be heard to plead ignorance of the making of the declaration.</p> <p>(3) A declaration under sub-section (1) shall, for the purposes of this Part, be conclusive proof of the fact stated therein.</p> | <p>person referred to in subsection (1), sub-section (3) or sub-section (4) of section 86 or section 87, shall not be heard to plead ignorance of the making of the declaration.</p> <p>(3) A declaration made under sub-section (1) shall, for the purposes of this Part, be conclusive proof of the fact stated therein.</p> | |
| <p>43.C Consequences of a declaration under section 43B. –(1) A company, 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, firm or person, or with any person acting or purporting to act for and on behalf of such company, firm or person, on or after the publication of the declaration as aforesaid, shall be void.</p> <p>(2) The provisions of sub-section (1) and sections 43D, 43E and 43F shall, as far as may be, apply to a company or undertaking which is an associated undertaking of a company, firm or person in respect of which or whom a declaration under sub-section (1) of section 43B is made.</p> <p>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).</p> | <p>85. Consequences of a declaration made under section 84.</p> <p>(1) A person in respect of which or whom a declaration has been made under sub-section (1) of section 84 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 defaulting person, or with any person acting or purporting to act for and on behalf of such defaulting person, on or after the publication of the declaration as aforesaid, shall be void.</p> <p>(2) The provisions of sub-section (1) and section 86, section 88 and section 89 shall, as far as may be, apply to company or undertaking which is an associated undertaking of a defaulting person in respect of which or whom a declaration under subsection (1) of section 84 is made.</p> <p>(3) In this sub-section, “undertaking” and “associated undertaking” have the same meanings as in the Monopolies and Restrictive Trade</p> | <ul style="list-style-type: none"> • Except few minor changes in S.85 of BCA that are due to its revised structure, rest of the contents of both these clauses is the same |

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| | Practices (Control and Prevention) Ordinance, 1970. | |
| <p>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, 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, 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.</p> <p>(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).</p> <p>(3) Until such time as an official liquidator, official</p> | <p>86. Deposit of cash and preservation of assets, etc. (1) Notwithstanding anything contained in section 85, where a declaration under sub-section (1) of section 84 has been made in respect of any defaulting 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 defaulting person shall promptly deposit, or cause to be deposited, such moneys, movable properties, shares, securities and title deeds with any of banks or any other person as may be specified by the State Bank.</p> <p>(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 84, any person authorized 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).</p> <p>(3) Until such time as an official liquidator, official assignee, interim receiver or official receiver, as the</p> | <ul style="list-style-type: none"> • Except few minor changes in S.86 of BCA that are due to its revised structure, rest of the contents of both these clauses is the same |

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 of 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, 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

case may, be appointed by the Court on an application made under section 88, takes over the possession, custody or control of any books, documents, records and assets of a defaulting person in respect of which or whom a declaration under sub-section (1) of section 84 has been made, including any actionable claims to which such defaulting person is, or appears to be, entitled, the chief executive, by whatever name called, and a director, manager, officer, employee and agent of such defaulting person, and every other person who may have in or under his possession, custody or control of 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 defaulting person in respect of which or whom a declaration under sub-section (1) of section 84 has been made shall during the period between the date on which such declaration is published and the date as which and order for winding up an order of adjudication, as the case may be, 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

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| <p>(1) and inform the State Bank in writing of his having done so.</p> <p>(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</p> | <p>writing of his having done so.</p> <p>(5) In computing the period prescribed by the Limitation Act, 1908 for any suit, appeal or application in respect of anything arising from actions which, immediately before the coming into force of this Act were pending against a defaulting person in respect of which or whom a declaration under sub-section (1) of section 84 has been made, or in respect of any action to the filing of which the defaulting 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 for adjudication is made by the Court shall be excluded.</p> | |
| <p>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</p> | <p>87. 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 84 in respect of a defaulting 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 defaulting person, and every partner of the firm and the manager, officer and agent of the defaulting person, and every other</p> | <ul style="list-style-type: none"> • Except few minor changes in S.87 of BCA that are due to its revised structure, rest of the contents of both these clauses is the same |

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| <p>shall submit to the State Bank as statement showing the assets and liabilities of the company, firm or such person so far as may be known to him.</p> | <p>person having a claim or liability against or towards the defaulting person, shall submit to the State Bank a statement showing the assets and liabilities of the person so far as may be known to him.</p> | |
| <p>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 Ordinance, 1984 (XLVII of 1984). (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 subsection (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) <i>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.</i> (4) Notwithstanding anything contained in the Provincial Insolvency Act, 1920 (V of 1920), and the</p> | <p>88. Consequential provisions for winding up, etc. (1) Where the declaration made under sub-section (1) of section 84 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 Ordinance, 1984. (2) Where the person in respect of which a declaration has been made under sub-section (1) of section 84 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 84, 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) 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</p> | <ul style="list-style-type: none"> • S. 43F(3) of BCO has not been retained in S.88 of BCA. Rest of the contents of both these clauses are almost the same. |

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| <p>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 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 (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.</p> | <p>84 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 84, or such further time as the Federal Government may allow, pass an order of adjudication against such individual without further 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 (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.</p> | |
| <p>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</p> | | <ul style="list-style-type: none"> • The BCA has entirely revamped the concept of ‘suspension of business of banking company and/or moratorium and/or |

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| <p>there is good reason so to do, the State Bank may apply to the Federal Government for an order of moratorium in respect of a banking company.</p> <p>(2) The 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.</p> <p>(3) Except as otherwise provided by any directions given by the 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.</p> <p>(4) During the period of moratorium, if the State Bank is satisfied that—</p> <p>(a) in the public interest; or</p> <p>(b) in the interests of the depositors; or</p> <p>(c) in order to secure the proper management of the banking company;</p> <p>or</p> <p>(d) in the interests of the banking system of the country as a whole, it is necessary so to do, the State Bank may</p> | | <p>reconstruction/arrangement of shares through a new chapter containing 15 sections from 'Section 93-107'. We have placed this clause in this table because concept is there but the said clauses have been placed in the table of new provisions.</p> |
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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;

(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

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| <p>company for shares held by them therein before its reconstruction or amalgamation, weather 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 –</p> <p>(i) in respect of their interest in shares in the banking company before its reconstruction or amalgamation; or</p> <p>(ii) where such interest has been reduced under clause (f) in respect of their interest in shares as so reduced;</p> <p>(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 Relations Ordinance, 1969 (XXII of 1969)], 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:</p> <p>Provided that the scheme shall contain a provision that –</p> <p>(i) the banking company shall pay or grant not later than the expiry of the period of three years from the</p> | | |
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date on which the scheme is sanctioned by the 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 Industrial Disputes Ordinance, 1959, 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 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 Industrial Disputes Ordinance, 1959, 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;

(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 Federal Government for its sanction and the 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 Federal Government shall come into force on such date as the 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 banking 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 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 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.

(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 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 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 {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.

(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

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| <p>provisions of this Ordinance or in any other law or any agreement, award or other instrument for the time being in force.</p> <p>(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, 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</p> | | |
| <p>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.</p> <p>(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</p> | <p>107. Procedure for amalgamation.—(1) Notwithstanding anything contained in any law for the time being in force, no bank shall be amalgamated with another institution, unless a scheme containing the terms of such amalgamation has been placed in draft before the shareholders of each of the institution 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 institutions, present either in person or by proxy at a meeting called for the purpose.</p> <p>(2) Notice of every such meeting as is referred to in sub-section (1) shall be given to every shareholder of each of the institution concerned in accordance</p> | <ul style="list-style-type: none"> • S.48 of BCO and S.107 are almost the same except a significant change in sub clause ‘7’ of S.107 of BCA. • In the said sub-section institutions has been defined as ‘any institution which comes under the supervisory jurisdiction of SBP or SECP. |

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 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;

Provided that in case of foreign banking companies,

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 Institutions 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 institution 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 institution concerned, in respect of the shares held by him in that institution, 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 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

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.

(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 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.

“(7) In this section, “banking company” means any banking company and includes the National Bank of Pakistan, the Agricultural Development Bank of

order in writing passed in this behalf shall be binding on the institutions concerned and also on all the shareholders thereof;

Provided that in case of foreign companies, notwithstanding the fact that a meeting of the shareholders has not been so called, such sanction may be granted by the State Bank, upon a certificate issued by their respective head offices, approving the scheme.

(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 institutions concerned have been registered and the registrar shall, on receipt of any such order, strike off the name of the institution (hereinafter in this section referred to as the amalgamated institution) which by reason of the amalgamation will cease to function.

(6) On the sanctioning of scheme of amalgamation by the State Bank, the property of the amalgamated institution shall, by virtue of the order of sanction, be transferred to and vest in, and the liabilities of the said institution shall, by virtue of the said order be transferred to and become the liabilities of the institution which under the scheme of amalgamation is to acquire the business of the amalgamated institution, subject in all cases

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| <p>Pakistan, the Industrial Development Bank of Pakistan, the House Building Finance Corporation, investment finance companies, venture capital companies, housing finance companies, leasing companies, branch of a foreign banking company doing business in Pakistan and any other financial institution covered under section 3A.”</p> | <p>to the terms of the order sanctioning the scheme. 7) In this section “institution” means any bank and includes branch of foreign bank and any other financial institution under the supervisory jurisdiction of State Bank or Securities and Exchange Commission of Pakistan.</p> | |
| <p>49. Winding up by High Court.—(1) Notwithstanding anything contained in section 153, section 162 and section 271 of the Companies Ordinance, 1984 (XLVII of 1984), but without prejudice to its powers under the 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</p> | <p>108. General The provisions of the Companies Ordinance, 1984 shall not, unless otherwise specified in this Part, apply to the winding-up and liquidation of a bank. 109. State Bank’s permission required for the winding-up and liquidation of a bank. (1) No person shall petition for the winding-up and liquidation of a bank in any court of law, without the written approval of the State Bank. (2) Notwithstanding the provisions of any other law and subject to the provisions of this Part, no court or tribunal of Pakistan, other than the High Court, shall entertain any action or petition brought by a bank for relief from payment of its obligations, or against a bank for a winding-up order, and no such court or tribunal shall appoint a custodian, receiver or liquidator for a bank. 111. Compulsory Liquidation.</p> | <ul style="list-style-type: none"> • Sections ‘108’, 109(1) and 111(2) of BCA collectively have the effect that may relate to S. 49 of BCO. • S.109(1) of BCA relates to S.49(6) of BCO • The Scheme for winding up/merger/reconstruction is entirely different in BCA as that of BCO. We have just mentioned the clauses of BCA that may relate to the clauses of BCO. |

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| <p>(ii) has by reason of the provisions of section 27 become dis-entitled 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 interest of its depositors. (4) Without prejudice to the provisions contained in section 163 of the Companies Ordinance, 1984 (XLVII of 1984), a banking company shall be deemed to be unable</p> | <p>..... (2) A bank may be compulsorily wound up by the State Bank, if one or more of the following grounds exist: (a) the bank is not paying its financial obligations in Pakistan as they fall due; or (b) the State Bank determines that the capital of the bank is less than one half of the minimum capital to be maintained by the bank by or under this Act; (c) the State Bank determines that the value of the assets of the bank is less than the value of the debts of the bank ; or (d) the Administrator appointed under paragraph (p) of sub-section (1) of section 96 recommends that the bank be wound-up.</p> | <p>Otherwise, we have placed these clauses in the table 'New Clauses in BCA'</p> |
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| <p>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.</p> <p>(5) A copy of every application made by the State Bank under subsection (1) shall be sent by the State Bank to the registrar.</p> <p>(6) Notwithstanding anything contained in the Companies Ordinance, 1984 (XLVII of 1984), no Court shall entertain an application for winding up of 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.</p> | | |
| <p>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 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</p> | <p>116. Appointment of Liquidator. (1) Upon an application made by the State Bank to commence liquidation proceedings under subsection (1) of section 113 against a bank, the High Court shall appoint the State Bank or a person or persons nominated by the State Bank to act as a liquidator of the bank (hereinafter referred to as the “Liquidator”). (2) In this Part, a bank against which liquidation</p> | <ul style="list-style-type: none"> • Both the instruments have the idea of ‘Liquidator’. • In BCA structure for the appointment of ‘Liquidator’ is different as of BCO. • We have placed the |

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| <p>Province, and for such time as the 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.</p> <p>(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 Ordinance, 1984 (XLVII of 1984), the court liquidator shall become the official liquidator of the banking company.</p> <p>(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 Ordinance, 1984 (XLVII of 1984), 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:</p> | <p>proceedings have been commenced may be referred to as “bank in liquidation.”</p> <p>117. Terms and Conditions of Service of Liquidator.</p> <p>(1) The decision of the High Court appointing a Liquidator shall specify the remuneration and the other terms and conditions of his employment.</p> <p>(2) The remuneration and other costs incurred on account of the Liquidator shall be paid from the assets of the bank in liquidation.</p> <p>(3) The Liquidator shall carry out his activities under the direction and supervision of the High Court in close consultation with the State Bank.</p> <p>(4) The High Court shall provide the Liquidator with written directions including a list of activities which the Liquidator may undertake and the Liquidator may at any time apply to the High Court for directions where specifically required to do so by or under this Act.</p> <p>(5) Upon the resignation, death or incapacity to act as liquidator, a person appointed by the State Bank shall temporarily assume the position of the Liquidator and exercise all the powers of the Liquidator until a successor liquidator is appointed by the High Court, upon the application of the State Bank.</p> <p>(6) Whenever a Liquidator is replaced, the person</p> | <p>relevant clauses of both the instruments but as the structure is different in BCA so we have placed these clause of BCA in the table ‘New Clauses in BCA’</p> |
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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 Ordinance, 1984 (XLVII of 1984), 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

replacing the Liquidator shall succeed to all the powers of the Liquidator, and the books, records and remaining assets of the bank in liquidation in the custody of the Liquidator or the State Bank as well as the books and records of the Liquidator shall be promptly transferred into the custody of that person.

(7) The State Bank shall indemnify the Liquidator for all liabilities and all reasonable costs and expenses incurred by the Liquidator on account of the liquidation to the extent that the available assets of the bank in liquidation are insufficient to meet such liabilities, costs and expenses

118. Duties and Powers of Liquidator.

(1) Immediately upon his appointment by the High Court, the Liquidator shall take charge of the offices, books, records and assets of the bank and direct the liquidation proceedings in accordance with this Act.

(2) Upon his appointment as a Liquidator for a bank in liquidation, the Liquidator shall become the sole legal representative of the bank, and succeeds to all rights and powers of the shareholders of the bank relating to their shares of the bank, the Board of Directors of the bank, and the officers of the bank including all powers necessary or expedient to manage, operate and

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| | <p>liquidate the bank and to comply with any order, direction or guideline received from the High Court.</p> <p>(3) Without limiting the generality of the provisions of subsection (2), the Liquidator may request the High court to vest all or part of the assets and liabilities of the bank in liquidation in another bank in accordance with the provisions of Part X.</p> <p>(4) The Liquidator may engage the services of any professionally qualified person to assist the Liquidator in the exercise of the Liquidator's functions in a liquidation of a bank under this Part</p> | |
| <p>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 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.</p> <p>(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</p> <p>(3) The total amount paid under sub-section (2) shall</p> | <p>121. Priority of Payment.</p> <p>(1) Notwithstanding the provision of any law, assets of a bank in liquidation, not being assets securing approved claims of creditors of the bank, shall be used to discharge the approved claims of creditors of the bank in the following order of priority:</p> <p>(a) claims on account of deposits that are not in the form of debt securities up to a maximum amount of one hundred thousand Rupees per depositor, or such higher amount as the State Bank, having regard to decreases in the domestic value of the rupee, may prescribe from time to time by order published in the Gazette;</p> <p>(b) necessary and reasonable expenses incurred by</p> | <ul style="list-style-type: none"> • S.58 of BCO after paying the amounts to depositors as specified therein refer S.405 of CO 1984 for further payments. • S.121 gives detail of priority of payments without referring to S. 405 of CO. |

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| <p>not exceed a sum of one hundred thousand rupees –</p> <p>(i) where a depositor is maintaining more than one account with a banking company; and</p> <p>(ii) in the case of joint account holders of an account</p> <p>(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.</p> <p>(5) After payments have been made first to depositors in accordance with the foregoing provisions, the remaining assets of the banking company available for payment shall be utilised according to the following order of priority, namely:-</p> <p>(a) firstly, for payment of balance due to depositors in accordance with a scheme to be prepared by the State Bank;</p> <p>(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 after payments have been made in full in accordance with clauses (a)</p> | <p>the Liquidator on account of the liquidation which are approved by the State Bank;</p> <p>(c) liabilities of the bank in liquidation to the State Bank on account of the suspension of its business, or its administration, management, rehabilitation, vesting or restructuring by or under supervision of the State Bank under this Act;</p> <p>(d) taxes, rates and deposits owed to the Government and local authorities by the bank in liquidation;</p> <p>(e) other deposits not included under paragraph (a);</p> <p>(f) fees and assessments due to the State Bank;</p> <p>(g) other claims to which a priority of payment attaches according to their ranking; and</p> <p>(h) other claims not included under paragraph (g).</p> <p>(2) For the purposes of paragraph (a) of sub-section (1), only demand deposits that are in compliance with Shariah and such other deposits as may be prescribed by the State Bank by order published in the Gazette, shall constitute deposits.</p> | |
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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 as 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 the 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.

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| <p>(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: –</p> <p>(a) payments to depositors pursuant to sub-sections (2) and (4);</p> <p>(b) payments to depositors pursuant to clause (a) of sub-section (5);</p> <p>(c) payments to preferential claimants pursuant to clause (b) of subsection (5); and</p> <p>(d) payments to the general creditors pursuant to clause (c) of subsection (5).</p> <p>(11) The payments to persons in each different class specified in subsection (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.</p> | | |
| <p>59. Restriction on voluntary winding up.– Notwithstanding anything to the contrary contained in section 203 of the Companies Ordinance, 1984 (XLVII of 1984), 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</p> | <p>109. State Bank’s permission required for the winding-up and liquidation of a bank.</p> <p>(1) No person shall petition for the winding –up and liquidation of a bank in any court of law, without the written approval of the State Bank.</p> <p>(2) Notwithstanding the provisions of any other law and subject to the provisions of this Part, no court or tribunal of Pakistan, other than the High Court, shall entertain any action or petition brought by a bank for relief from payment of its obligations, or against a bank for a winding-up order, and no such court or tribunal shall appoint a</p> | <ul style="list-style-type: none"> • S.59 of BCO briefly touches the concept of voluntary winding up. While BCA through S. 109 and S.110 has exhaustively dealt this one. |

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| <p>proceedings the company is not able to meet such debts as they accrue.</p> | <p>custodian, receiver or liquidator for a bank.</p> <p>(3) An approval under subsection (1) shall not be granted unless the State Bank is satisfied -</p> <p>(a) that the bank is solvent and has the ability to repay its depositors and other creditors without delay; and</p> <p>(b) that the liquidation of the bank has been approved at a meeting of the shareholders of the bank by an affirmative vote representing not less than three fourths of the outstanding shares entitled to vote, except that no such authority may be granted by the State Bank for the winding -up of a domestic bank being a public corporation without the prior written approval by the Federal Government, or for the liquidation of a branch in Pakistan of a foreign bank without the written request by the management of the foreign bank to which the branch belongs.</p> <p>110. Rules of Voluntary Liquidation.</p> <p>(1) Before the State Bank grants an approval to any person including a bank seeking voluntary liquidation under sub-section (1) of section 107, it shall ensure that the bank that is the subject matter of the petition for winding- up or liquidation (hereinafter referred to as “the incumbent bank” has -</p> <p>(a) repaid first its depositors, paid all financial</p> | |
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liabilities or obligations incurred under this Act and returned all funds and other property held by it in a fiduciary capacity, under bailment or as lessor of a safe deposit box to the persons entitled to possession of such funds and property; and

(b) and in the case of a bank seeking to petition for voluntary winding -up or liquidation, in addition to the requirements in paragraph (a), it has-

(i) immediately cease to carry on the business to be liquidated, exercising only such powers as are necessary to effect an orderly liquidation; and

(ii) wound- up all operations undertaken.

(2) The State Bank may request for reports, documents and such other information concerning the person seeking the approval and the incumbent bank, including its winding -up and liquidation plan.

(3) The State Bank may issue such directions as it deems fit to any person seeking the approval of the State Bank and the incumbent bank to ensure that the requirements in subsection (2) are met.

(4) Upon the issuance of the approval under subsection (1), the State Bank shall cancel the license of the incumbent bank.

(5) The approval for voluntary liquidation shall not prejudice the rights of a depositor or other creditor of an incumbent bank to payment in full of his claim, or the rights of an owner of funds or other

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| | <p>property held by the incumbent bank.</p> <p>(6) If the State Bank determines that an incumbent bank is unable to meet or may not be able to meet its financial obligations in Pakistan as they fall due, the State Bank shall proceed to take any actions under Part X or appoint an Administrator under paragraph (p) of sub-section (1) of section 95.</p> | |
| <p>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 Ordinance, 1984 (XLVII of 1984), 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.</p> | <p>129. Part XI to override other Laws. The provisions of this Part and the rules made there-under shall have effect notwithstanding anything inconsistent with the provision the Companies Ordinance 1984, 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 there under shall apply to all proceedings under this Part.</p> | <ul style="list-style-type: none"> • Ditto |
| <p>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 proceedings, whether civil or criminal, in respect of which the High Court has jurisdiction under this</p> | <p>130. Transfer of pending proceedings. (1) Where a winding up order is made or has been made in respect of a bank, no suit or other legal proceedings, whether civil or criminal, in respect of which the High Court has jurisdiction under this</p> | <ul style="list-style-type: none"> • Both clauses are exactly the same except few changes in S.130 of BCA due to the change in scheme of the instrument. |

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| <p>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.</p> <p>(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.</p> <p>(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 proceedings as may be specified in the order and such proceedings shall thereafter be disposed of by the High Court.</p> <p>(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.</p> <p>(5) Nothing in this section shall apply to any proceeding pending in appeal before the Supreme Court or a High</p> | <p>Act and which is pending in any other court immediately before the coming into force of this Act or the date of the order for the winding up of the bank, whichever is later, shall be proceeded with except in the manner hereinafter provided.</p> <p>(2) The Liquidator duly appointed under this Part shall, within three months from the date of the winding up order or the coming into force of this Act, 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.</p> <p>(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 this Division, it shall make such order as it deems fit transferring to itself all or such of the pending proceedings as may be specified in the Order and such proceedings shall thereafter be disposed of by the High Court under this part.</p> <p>(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.</p> <p>(5) Nothing in this section shall apply to any</p> | |
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| Court. | proceeding pending in appeal before in Supreme Court. | |
| <p>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.</p> <p>(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.</p> <p>(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.</p> | <p>131. Settlement of list of debtors.</p> <p>(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 bank which is being wound up.</p> <p>(2) Subject to any rules made under this Part, the Liquidator duly appointed under this Part shall, within six months from the date of the winding up order or the commencement of this Act, whichever is later, from time to time, file to the High Court a list of debtors containing such particulars as maybe required by the High Court: Provided that such list may, with the leave of the High Court, be filed after the expiry of the said period of six months:</p> <p>(3) On receipt of any list under sub-section (2), the High Court shall, wherever necessary, cause notices to be issued to all persons affected and after making an inquiry in such manner as may be provided by rules made under this Part, it shall make an order settling the list of debtors: Provided that nothing in this section shall prevent the High Court from settling any such list in part as against such of the persons whose debts have</p> | <ul style="list-style-type: none"> • Both clauses are exactly the same except few changes in S.131 of BCA due to the change in scheme of the instrument. |

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| <p>(4) At the time of the settlement of any such list, 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.</p> <p>(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.</p> <p>(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.</p> <p>(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</p> | <p>been settled without settling the debts of all the persons placed on the list.</p> <p>(4) At the time of the settlement of any such list, 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 relief against any guarantor or in respect of the realisation of any security.</p> <p>(5) Every such order shall, subject the provisions for appeal, be final and binding for all purposes as between the bank 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.</p> <p>(6) In respect of every such order, the High Court shall issue a certificate specifying clearly the relief granted and names and descriptions of the parties against whom such relief 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.</p> <p>(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</p> | |
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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 lists, 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 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 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 being in force.

Liquidator duly appointed under this Part for the realisation, management, protection, preservation or sale of any property given as security to the bank and to give such powers to the 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 instalments.

(9) In any case in which any such list, settled ex-parte as against any 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 bank on merits, the High Court may vary the list and pass such orders in relation thereto as it thinks fit:

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

(10) Nothing in this section shall –

(a) apply to 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 Liquidator to recover

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| | any debt due to bank under any other law for the being in force | |
| <p>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.</p> | <p>132. Documents of bank to be evidence. (1) Entries in the books of account or other documents of a bank which is being wound up shall be admitted in evidence in all proceeding by or against the bank; and all such entries may be proved either by the production of the books of account or other documents of the bank containing such entries or by the production of a copy of the entries, certified by the 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 bank 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 bank shall as against the directors of the bank in respect of which the winding up order has been made before the coming into force of this Act, be prima facie evidence of the truth of all matters purporting to be therein recorded.</p> | <ul style="list-style-type: none"> • Ditto |
| <p>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</p> | <p>133. Report by Liquidator on conduct of promoters of banks etc. (1) Where an order has been made for the winding up of a bank, the Liquidator duly appointed under</p> | <ul style="list-style-type: none"> • S. 133 and 134 of BCA have the combined effect as of S.66 of BCO |

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 there at 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.

this Part shall submit a report whether in his opinion any loss has been caused to the bank 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 bank or of any director or auditor of the bank.

(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 bank or has been a director or an auditor of the bank should be publicly examined, it shall hold a public sitting on a date to be appointed for the purpose and direct that such person, director or auditor to attend the sitting and shall be publicly examined as to the promotion or formation or the conduct of the business of the bank, or as his conduct and dealings, in so far as they relate to the affairs of the bank:

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.

134. Public examination of directors and auditors.

(1) The Liquidator duly appointed under this Part shall take part in the examination and for that

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| <p>(5) The High Court may put such questions to the person examined as it think fit.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> <p>(9) Where on such examination, the High Court is of opinion (whether a fraud has been committed or not) –</p> <p>(a) that a person who has been a director of the banking company is not fit to be a director of a company, or</p> <p>(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</p> | <p>purpose may, if specially authorized by the High Court in that behalf, employ such legal assistance as may be sanctioned by the High Court.</p> <p>(2) Any creditor or contributory may also take part in the examination either personally or by any person entitled to appear before the High Court.</p> <p>(3) The High Court may put such questions to the person examined as it think fit.</p> <p>(4) 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.</p> <p>(5) 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 and 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.</p> <p>(6) 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</p> | |
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| <p>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.</p> | <p>reasonable times. (7) 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 bank is not fit to be a director of a company; or (b) that a person who has been an auditor of the bank 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.</p> | |
| <p>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 Ordinance, 1984 (XLVII of 1984), 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</p> | <p>135. Special provisions for assessing damages against delinquent directors, etc. (1) Where an application is made to the High Court under section ? of the Companies Ordinance 1984, against any promoter, director, manager, liquidator or officer of a bank for repayment or restoration of any money or property and the applicant makes out a prima facie case against</p> | <ul style="list-style-type: none"> • Ditto |

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| <p>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.</p> <p>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.</p> <p>(2) Where an application is made to the High Court under section 235 of the Companies Ordinance, 1984 (XLVII of 1984), 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.</p> <p>(3) For the purposes of this section and section 70 of this Ordinance and section 235 of the Companies</p> | <p>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:</p> <p>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.</p> <p>(2) Where an application is made to the High Court under section ? of the Companies Ordinance, 1984 and the High Court has reason to believe that a property belongs to any promoter, director, manager, liquidator or officer of the bank, 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.</p> | |
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| <p>Ordinance, 1984 (XLVII of 1984), 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 Ordinance, 1984 (XLVII of 1984), 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</p> | <p>(3) For the purposes of this Division and section ? of the Companies Ordinance, 1984, “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 ? of the Companies Ordinance, 1984 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.</p> | |
| <p>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.</p> | <p>136. Duty of directors and officers of a bank to assist in the realisation of property. Every director or other officer of a bank which is being wound up shall give such assistance to the liquidator duly appointed under this Part as he may reasonably require in connection with the realisation and distribution of the property of the bank.</p> | <ul style="list-style-type: none"> • Both clauses are exactly the same except a couple of changes in S.136 of BCA due to the change in scheme of the instrument |
| <p>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 Ordinance, 1984 (XLVII of 1984), alleged to have been</p> | <p>137. Special provisions for punishing offences in relation to banks 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 Act or under the Companies Ordinance, 1984 alleged to have been committed by any person who has taken part in</p> | <ul style="list-style-type: none"> • Ditto |

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| <p>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.</p> <p>(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.</p> <p>(3) In any case tried summarily under sub-section (1), the High Court –</p> <p>(a) need not summon any witness, if it is satisfied that the evidence of such witness will not be material;</p> <p>(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;</p> <p>(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; 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.</p> <p>(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 Ordinance, 1984 (XLVII of</p> | <p>the promotion or formation of the bank which is being wound up or by any director, manager or officer thereof.</p> <p>(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.</p> <p>(3) In any case tried summarily under sub-section (1), the High Court –</p> <p>(a) need not summon any witness, if it is satisfied that the evidence of such witness will not be material;</p> <p>(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;</p> <p>(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 the section may be applicable; 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.</p> | |
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| <p>1984), 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.</p> <p>(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.</p> | <p>(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 Act or under Companies Ordinance, 1984 and which are not tried in a summary way under subsection (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 bank.</p> <p>(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.</p> | |
| <p>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.</p> <p>(2) The High Court may by rules provide for an appeal against any order made under section 69 and the</p> | <p>138. Appeals.</p> <p>(1) An appeal shall lie from any order or decision of the High Court in a civil proceeding under this Act when the amount or value of the subject matter of the claim exceeds five thousand rupees.</p> <p>(2) The High Court may by rules provide for an appeal against any order made under this Division</p> | <ul style="list-style-type: none"> • Both clauses are exactly the same except one change in S.138 of BCA due to the change in scheme of the instrument. |

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| <p>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.</p> | <p>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 bank on the one hand, and all person who are parties thereto and all persons claiming through or under them or any of them, on the other hand.</p> | |
| <p>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, 1984 (XLVII 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</p> | <p>139. 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 bank which is being wound up, the period commencing from the date of the presentation of the petition for the winding up of the bank shall be excluded. (2) Notwithstanding anything to the contrary contained in the Limitation Act, 1908 (IX of 1908), or section ? of the Companies Ordinance, 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 bank which is being wound up or for the enforcement by the</p> | <ul style="list-style-type: none"> • Ditto |

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| <p>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.</p> <p>(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.</p> | <p>bank against any of its directors of any claim based on a contract, express or implied; and in respect of all other claims by the bank 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.</p> <p>(3) The provisions of this section, in so far as they relate to banks being wound up, shall also apply to a bank in respect of which a petition for the winding up has been presented before the coming into force of this Act.</p> | |
| <p>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.</p> | <p>140. State Bank to tender advice in winding up proceedings. Where in any proceeding for the winding up of a bank in which any person other than the State Bank has been appointed as the liquidator and the High Court has directed the 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.</p> | <ul style="list-style-type: none"> • Both clauses are exactly the same except few changes in S.140 of BCA due to the change in scheme of the instrument |
| <p>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-</p> | <p>141. District Magistrate to assist liquidator in taking charge of property of bank being wound up. — (1) For the purpose of enabling the liquidator to take into his custody or under his</p> | <ul style="list-style-type: none"> • Both clauses are exactly the same except couple of changes in S.141 of BCA due to the |

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| <p>section (4) of section 45 to take into his custody or under his control all property, effect 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.</p> <p>(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.</p> | <p>control all property, effect and actionable claims to which a bank, which has been ordered to be wound up, is or appears to be entitled, the liquidator or the Administrator 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 bank 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 liquidator or the Administrator.</p> <p>(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.</p> | <p>change in scheme of the instrument</p> |
| <p>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.</p> <p>(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</p> | <p>142. 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.</p> <p>(2) Notwithstanding anything to the contrary contained in the Code of Civil Procedure, 1908 (V of 1908), a liquidator may apply for the execution</p> | <ul style="list-style-type: none"> • Both clauses are exactly the same except couple of changes in S.142 of BCA due to the change in scheme of the instrument |

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| <p>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.</p> <p>(3) Without prejudice to the provisions of sub-section (1) or subsection (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.</p> | <p>of a decree by a court, other than the one which made it, on production of a certificate granted under subsection (6) of section 129 and on his certifying in writing the amount remaining due or relief remaining unforced under the decree.</p> <p>(3) Without prejudice to the provisions of sub-section (1) or sub-section (2), any amount found due to the bank 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.</p> | |
| <p>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:</p> <p>(a) the manner in which inquiries and proceedings under Part III or Part IV may be held;</p> <p>(b) the offences which may be tried summarily;</p> <p>(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</p> <p>(d) any other matter for which provision has to be made for enabling the High Court to effectively exercise its functions under this Ordinance.</p> | <p>143. Power of High Court to make rules. The High Court may make rules consistent with this Act prescribing:</p> <p>(a) the manner in which inquiries and proceedings this Part may be held;</p> <p>(b) the offences which may be tried summarily;</p> <p>(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</p> <p>(d) any other matter for which provision has to be made for enabling the High Court to effectively exercise its functions under this Act.</p> | <ul style="list-style-type: none"> • Both clauses are exactly the same except couple of changes in S.143 of BCA due to the change in scheme of the instrument |
| <p>80. References to directors, etc., shall be construed as</p> | <p>144. References to directors, etc., shall be</p> | <ul style="list-style-type: none"> • Ditto |

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| <p>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.</p> | <p>construed as including reference to past directors, etc.—For the removal of doubt, it is hereby declared that any reference in this Part to a director, manager, liquidator, officer or auditor of a bank shall be construed as including a reference to any past or present director, manager, liquidator, officer or auditor of the bank.</p> | |
| <p>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.</p> | <p>145. Validation of certain proceedings. Notwithstanding anything in this Part, no proceeding held, judgement delivered or decree or order made before the commencement of this Act, by any Court other than the High Court in respect of any matter over which the High Court has jurisdiction under this Act 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.</p> | <ul style="list-style-type: none"> • The expression 'Notwithstanding .. as contained in S.82 of BCO has not been used in S.145 of BCA. • Otherwise, S.145 of BCA is the rearranged version S.82 of BCO |
| <p>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,</p> | <p>146. Appointment of Banking Mohtasib.-- (1) There shall be a Banking Mohtasib who shall be appointed by the President in consultation with the Governor of the State Bank. (2) The Banking Mohtasib shall be a person of high integrity and unimpeachable banking or legal credentials who is not a shareholder of a bank or financial institution and is not, has not, been a</p> | <ul style="list-style-type: none"> • Ditto |

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| <p>been a bank defaulter.</p> <p>(3) The jurisdiction of the Banking Mohtasib in relation to banking transactions shall be to—</p> <p>(a) enquire into complaints of banking malpractices;</p> <p>(b) perverse, arbitrary or discriminatory actions;</p> <p>(c) violations of banking laws, rules, regulations or guidelines;</p> <p>(d) inordinate delays or inefficiency and</p> <p>(e) corruption, nepotism or other forms of maladministration.</p> <p>(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.</p> <p>(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.</p> | <p>defaulter of any loans.</p> <p>(3) The jurisdiction of the Banking Mohtasib in relation to banking transactions shall be to—</p> <p>(a) enquire into complaints of banking malpractices;</p> <p>(b) perverse, arbitrary or discriminatory actions;</p> <p>(c) violations of banking laws, rules, regulations or guidelines;</p> <p>(d) inordinate delays or inefficiency; and</p> <p>(e) corruption, nepotism or other forms of maladministration.</p> <p>(4) The Banking Mohtasib shall hold office for a period of three years and shall not be eligible for any extension of tenure or for re-appointment under any circumstances whatsoever.</p> <p>(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.</p> | |
| <p>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.</p> <p>(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.</p> | <p>147. 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.</p> <p>(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</p> | <ul style="list-style-type: none"> • Both the sections have same expression except some minor readjustments in S.147 of BCA |

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| <p>Provided that he shall have the right to file an appeal before the Federal Services Tribunal.</p> <p>(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.</p> <p>(4) The Banking Mohtasib shall have the power and responsibility –</p> <p>(a) to entertain complaints from customers, borrowers, banks or from any concerned body or organization;</p> <p>(b) to facilitate the amicable resolution of complaints after giving hearings to the complainant and the concerned bank;</p> <p>(c) to receive evidence on affidavit;</p> <p>(d) to issue commission for the examination of witnesses; and</p> <p>(e) in the event that complaints cannot be resolved by consent, to give finding which shall be acted upon in the manner set out herein.</p> <p>(5) The Banking Mohtasib shall exercise his powers and authority in the following manner:-</p> <p>(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:-</p> | <p>physical or mental incapacity:</p> <p>Provided that he shall have the right to file an appeal before the Federal Services Tribunal.</p> <p>(3) The Banking Mohtasib shall be provided with a secretariat to be appointed in consultation with the State Bank.</p> <p>(4) Appointments to the secretariat may be made on deputation from the State Bank 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.</p> <p>(5) The Banking Mohtasib shall have the power and responsibility –</p> <p>(a) to evaluate complaints from customers, borrowers, banks or from any concerned body or organization;</p> <p>(b) to facilitate the amicable resolution of complaints after giving hearings to the complainant and the concerned bank; and</p> <p>(c) receiving evidence on affidavit</p> <p>(d) issuing commission for the examination of witnesses; and</p> <p>(e) in the event that complaints cannot be resolved by consent, to give this finding which shall be acted upon in the manner set out herein.</p> <p>(6) The Banking Mohtasib shall exercise his powers and authority in the following manner:-</p> | |
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| <p>(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.</p> <p>(ii) delays or fraud in relation to the payment or collection of cheques, drafts or other banking instruments or the transfer of funds;</p> <p>(iii) fraudulent or unauthorised withdrawals or debit entries in accounts;</p> <p>(iv) complaints from exporters or importers relating to banking services and obligations including letter of credits;</p> <p>(v) complaints from holders of foreign currency accounts, whether maintained by residents or non-residents;</p> <p>(vi) complaints relating to remittances to or from abroad;</p> <p>(vii) complaints relating to mark-up or interest rates based on the ground of a violation of an agreement or of State Bank directives;</p> <p>and</p> <p>(viii) complaints relating to the payment of utility bills.</p> <p>(b) In relation to banks in the public sector.— The Banking Mohtasib shall be authorized to entertain complaints against such banks on the following</p> | <p>(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:-</p> <p>(i) failure to act in accordance with banking laws and regulations including policy directives or guidelines, the proper interpretation of any regulations, directions or guidelines issued by the State Bank from time to time: Provided that if there is a dispute as to issued by the State Bank the same shall be referred to the State Bank for clarification;</p> <p>(ii) delays or fraud in relation to the payment or collection of cheques, drafts or other banking instruments or the transfer of funds;</p> <p>(iii) fraudulent or unauthorised withdrawals or debit entries in accounts;</p> <p>(iv) complaints from exporters or importers relating to banking services and obligations including letter of credits;</p> <p>(v) complaints from holders of foreign currency accounts, whether maintained by residents or non-residents;</p> <p>(vi) complaints relating to remittances to or from abroad;</p> <p>(vii) complaints relating to mark-up or other matters based on the ground of a violation of an agreement or of regulations made by the State</p> | |
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| <p>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 (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.</p> | <p>Bank. (viii) complaints relating to the payment of utility bills; (ix) corrupt or mala fide practices by bank officers; (x) gross dereliction of duty in dealing with customers; and (xi) inordinate delays in taking decisions; and (b) the Banking Mohtasib shall not entertain any complaint or application which has already been disposed off by State Bank or any court in Pakistan</p> | |
| <p>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 <i>prima facie</i> acted in a <i>malafide</i> manner, or in violation of banking rules and regulations, it may 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.</p> | <p>148. 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 bank is of the opinion that the management of the bank has <i>prima facie</i> acted in a <i>mala fide</i> 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.</p> | <ul style="list-style-type: none"> • Ditto |
| <p>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</p> | <p>149. Procedure for making complaints. (1) A complaint shall be made on solemn affirmation or oath in writing addressed to the Banking Mohtasib.</p> | <ul style="list-style-type: none"> • Ditto |

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 forty-five days, the complainant may file a complaint at any time thereafter within a further period of forty-five days:

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 complaints.

(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.

(2) The complaint shall set out the full particulars of the transaction complained of and the name and address of the complainant.

(3) 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 three months, the complainant may file a complaint at any time thereafter within a further period of 45 days:

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 complaints.

(4) 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.

(5) Subject to section 146, 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.

(6) The Banking Mohtasib may reject a complaint summarily or he may accept the same or pass any

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| | <p>other order he deems fit: Provided that in each case he shall pass a reasoned order for his decision.</p> | |
| <p>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 –</p> <p>(a) to reconsider the matter;</p> <p>(b) to modify or cancel the earlier decision, action or failure to take the appropriate action;</p> <p>(c) to pay reasonable compensation to the complainant as fixed by the Banking Mohtasib;</p> <p>(d) to take the requisite steps to improve the functioning or efficiency of the bank; and</p> <p>(e) to take such other remedial steps or actions as may be specified by the Banking Mohtasib.</p> <p>(2) The Banking Mohtasib may, in any case, he deems fit or proper, forward a report to the State Bank recommending –</p> <p>(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</p> <p>(b) in the case of a bank in the public sector in cases of banking malpractices or corruption, nepotism or gross</p> | <p>150. Recommendations for implementation.</p> <p>(1) In the event the Banking Mohtasib comes to the conclusion that the complain is justified, in part or in whole, he shall try and facilitate an amicable resolution or settlement by resort to mediation.</p> <p>(2) In the event that no resolution of the dispute is achieved, the Banking Mohtasib may communicate his findings to the concerned bank with the direction –</p> <p>(a) to reconsider the matter;</p> <p>(b) to modify or cancel the earlier decision, action or failure to take the appropriate action;</p> <p>(c) to pay reasonable compensation to the complainant as fixed by the Banking Mohtasib;</p> <p>(d) to take the requisite steps to improve the functioning or efficiency of the bank; and</p> <p>(e) to take such other remedial steps or actions as may be specified by the Banking Mohtasib.</p> <p>(2) The Banking Mohtasib may, in any case, <u>if</u> he deems fit or proper, forward a report to the State Bank recommending –</p> <p>(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</p> | <ul style="list-style-type: none"> • The purpose of both these sections is same. However, there are some changes/errors in S.150 of BCA. • In S.50(4) of BCA the period of appeal is 14 days from the passing of order while in S.82E(4) of BCO it is 30 days. • In 82E(4) of BCO SBP has to decide the appeal in 60 days but no such limitation is given in S.50 of BCA • Under S.50(7) The limitation for implementing the order is 30 days while in S.82E(5) of BCO it is 40 days |

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 be Banking Mohtasib have the power to direct that loans, advances or finances be given to a complainant.

(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.

(6) Any order passed by the Banking Mohtasib which has not been appealed against 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

(b) in the case of banking malpractice 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 relevant authorities in Pakistan.

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

(5) Any bank, or officer or employee of a bank or a complainant aggrieved by an order passed by the Banking Mohtasib may file an appeal with the State Bank within fourteen days which shall pass any order thereon it deems fit.

(6) The findings of the Banking Mohtasib shall be implemented by the concerned bank within a period of thirty days and compliance thereof shall be submitted accordingly.

(7) In case an appeal against the decision of the Banking Mohtasib is filed before the State Bank, the said period of thirty days shall be computed from the date of rejecting the said appeal.

(8) Any order passed by the Banking Mohtasib which has not been appealed against, within a period of 14days from the date of the order or any order passed by the State Bank in appeal, as the

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| <p>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.</p> <p>(7) Nothing contained herein shall prevent a complainant from filing a suit against a bank in the event his complaint is rejected</p> | <p>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 an officer of a bank, to the appropriate disciplinary or other proceedings.</p> <p>(9) Nothing contained herein shall prevent a complainant from filing a suit against a bank in the event his complaint is rejected.</p> | |
| <p>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:-</p> <p>(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.</p> <p>(b) The Banking Mohtasib may call for any or all such documents which are relevant or pertinent for purposes of deciding a complaint:</p> <p>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:</p> <p><i>Provided further that incases where the Banking Mohtasib is investigating case of corruption, he shall have a greater latitude in relation to the inspection of documents.</i></p> | <p>151. Power to call for information.</p> <p>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:-</p> <p>(a) the Banking Mohtasib shall make every endeavour to ensure that banking confidentiality is maintained as required by this Act and banking practice and shall take no action which is in violation thereof;</p> <p>(b) the Banking Mohtasib may call for any or all such documents which are relevant or pertinent for purposes of deciding a complaint:</p> <p>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; or</p> <p>(c) in the event of a bank refusing to furnish</p> | <ul style="list-style-type: none"> • Except second proviso to S.82F(b) of BCO the rest of the contents of both clauses are same. |

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| <ul style="list-style-type: none"> (c) In the event of a bank refusing to furnish information, or copies of relevant documents, the Banking Mohtasib shall not be authorized to compel the bank to comply with his order but he may draw an adverse inference and comment on the same in his findings. | <p>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.</p> | |
| <p>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.</p> <p>(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.</p> <p>(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.</p> | <p>152. Report of Banking Mohtasib.</p> <p>(1) The Banking Mohtasib shall send to the State Bank 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.</p> <p>(2) The Banking Mohtasib shall also submit a report to the State Bank containing the results of such inquiries as he may be directed to conduct by the State Bank from time to time.</p> <p>(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.</p> | <ul style="list-style-type: none"> Ditto |
| <p>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</p> | <p>167. Penalties.</p> <p>(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 Act, wilfully makes a statement which is false, <u>inaccurate or misleading</u> in any material particular, knowing it to be false, or</p> | <ul style="list-style-type: none"> S.167 of BCA has been thoroughly revised through which the amount of fine and term of imprisonment is enhanced considerably. |

which may extend to three years and shall also be liable to fine not exceeding five hundred thousand rupees.

(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 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.

(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

wilfully omits to make a material statement, shall be punishable with imprisonment for a term which may extend to five years and shall also be liable to fine not exceeding ten million rupees.

(2) If any person, being the chairman, director, chief executive, by whatever name called, or official liquidator or an officer of a bank, mismanages the affairs of the bank 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 ten years and shall also be liable to fine 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 bank or misusing his position or, in default, to suffer imprisonment for a term which may extend to ten years.

(3) Any director, chief executive or officer of a bank that 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

- Underline portion in S.167 of BCA is addition or amendment while italic portion in S.83 has not been retained in S.167.

punishable with imprisonment of either description which may extend to one year, or with fine 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;

(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 section

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 ten years, or with fine not exceeding the amount of loan, advance or financing facility so extended or ten million, whichever is higher, or with both, in addition to such other action which may be taken against him in accordance with law.

(4) If any person who is not a bank, or a bank whose licence 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 bank and every of its director, manager, and other officer and the individual and every member of the association or body of individuals (hereinafter referred to as "the defaulting persons"), 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 ten years and with a fine the amount of which shall not be less than five times the amount of deposits received by the defaulting persons or ten million, as the case may be, 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

[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 [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 not exceeding five million rupees, and, where the contravention is a continuing one, with a further fine which may extend to one hundred thousand rupees for every day during which such contravention continues.

(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 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 the section, he shall be punishable with a fine which may extend to two hundred thousand rupees in respect of each offence, and if he persists in such refusal, to

to ten years.

(5) Whoever contravenes, or attempts to contravene, or abets the contravention of any provisions of this Act or obstructs or hinders any person in the exercise of his powers or discharge of his functions under this Act, shall be punishable with imprisonment of either description for a term which may extend to five years and with fine not exceeding five million rupees, and, where the contravention is a continuing one, with a further fine which may extend to one hundred thousand rupees for every day during which such contravention continues.

(6) Where any offence against any provision of this Act has been committed by any institution, any person who at the time of the commission of the offence was director, chief executive or officer of the institution or was purporting to act in any such capacity, or was in any manner or to any extent responsible for the management of any of the affairs of such institution, or was assisting in such management, shall be guilty of that offence unless he proves that the offence was committed without the consent or connivance and that he had exercised all such due diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of the functions in that capacity and to all the

further fine which may extend to twenty thousand² rupees for every day during which the offence continues.

(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 two hundred thousand rupees, and where a contravention or default is a continuing one, with a further fine which may extend to ten thousand rupees for every day during which such contravention or default continues.

(6) Without prejudice to the provisions of sub-section (5), a banking company which makes default in complying with the requirements 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

circumstances.

(7) Where any person (hereinafter in this sub-section referred to as the "principal") would be liable under this Act to any punishment or penalty for any act, omission, neglect or default, he shall be liable to the same punishment or penalty for every such act, omission, neglect or default of any clerk, servant or agent of his, or of the clerk or servant of the agent:

Provided that such act, omission, neglect or default was committed by the principal's clerk or servant in the course of his employment, or by the agent when acting on behalf of the principal, or by the clerk or servant of such agent in the course of his employment by such agent or otherwise on behalf of that agent.

(8) Except as may be expressly provided in this section, any person who contravenes-

(a) any provision of this Act; or

(b) any specification or requirement made or any order in writing, direction, instruction, or notice given, or any limit, term, condition or restriction imposed, or any other thing howsoever done, in the exercise of any power conferred under, pursuant to, or by virtue of, any provision of this Act, shall be guilty of an offence under such provisions, and if no penalty is expressly provided for the offence in this Act, shall be punishable with

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

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

(7) Without prejudice to the provisions of sub-section (5), if a banking company fails or refuses to pay or make whole or part of the amount of deposit or special deposits or penalty referred to respectively 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 defaulting banking company held with the State Bank.

(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.

(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 an offence punishable with imprisonment of either description for a term which may extend to ten years

fine which may extend to three million rupees, and where a contravention or default is in continuing one, with a further fine which may extend to ten thousand rupees for every day during which such contravention or default continues.

Provided that the pecuniary penalties prescribed under this Act shall be imposed and recovered by State Bank.

(c) Without prejudice to the provisions contained in this Act, if a bank fails or refuses to pay the fines or penalties imposed by State bank under this Act, State Bank may, without notice to the bank, debit the amount of default to any account of the bank held with the State Bank.

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| <p><i>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.</i></p> | | |
| <p>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</p> | <p>168. Dishonest removal of pledged goods. No one shall dishonestly remove or dispose any goods pledged with any bank as security for the payment of any debt, loan, finance or other similar facility or remove or dispose any such goods without the prior approval in writing of the bank.</p> | <ul style="list-style-type: none"> • Under Schedule II of BCA at serial No. the punishment of this offence is five yrs imprisonment and Rs. 5 million fine. |
| <p>84. Cognizance of offences, etc.--- (1) No court shall take cognizance of any offence punishable <i>under sub-sections (1), (1A), (1B), (1C) and (1D) of section 83 except</i> 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 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</p> | <p>169. Cognizance of offences, etc. (1) No court shall take cognizance of any offence punishable 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 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</p> | <ul style="list-style-type: none"> • Except the Italic portion of S.84 of BCO that are omitted in S.169 of BCA because of its own structure rest of the contents of both the clauses are same. |

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| <p>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 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</p> | <p>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 banks in general or a bank 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</p> | |
| <p>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</p> | <p>171. Application of fines. A Court imposing any fine under this Act 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</p> | <ul style="list-style-type: none"> • Ditto |

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| any loss caused by the offence. | (c) payment to a bank of compensation for any loss caused by the offence. | |
| <p>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 Federal Government in this behalf shall accept from the public deposits of money withdrawable by cheque:</p> | <p>172. Restriction on acceptance of deposits withdrawable by cheques. No person other than a bank, the State Bank, or any other financial institution notified by the Federal Government in the Gazette in this behalf shall accept from the public deposits of money withdraw able by cheque: Provided that nothing contained in this section shall apply to any savings bank scheme run by the Government.</p> | <ul style="list-style-type: none"> • The essence of both the section is same. • A proviso has been added in S.172 of BCA through which saving schemes of govt. have been excluded from the ambit of S.172 |
| <p>88. Change of name by a banking company.— Notwithstanding anything contained in section 11 of the Companies Ordinance, 1984 (XLVII of 1984), the 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.</p> | <p>20. Prohibition of the words “bank”, “banking”, “banker”, “Islamic bank”, or any of their derivatives.(5) Any bank that seeks to change its name shall obtain the prior written approval of the State Bank.</p> | <ul style="list-style-type: none"> • S.88 of BCO requires the approval of F.Gov through SBP for the change of name of a bank but S.20(5) requires only SBP’s written approval |
| <p>89. Alteration of memorandum of a banking company – <u>Notwithstanding anything contained in the Companies Ordinance, 1984 (XLVII of 1984), 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</u></p> | <p>21. Changes in memorandum and articles of banks. Every domestic bank shall, prior to making any amendment or alteration to its memorandum or articles of association, furnish to the State Bank particulars in writing of such proposed amendment or alteration for the approval of the</p> | <ul style="list-style-type: none"> • Both these clauses have the same effect however the wording is different and the underline portion of S.89 of BCO is not used in S.21 of BCA. |

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| <p>alteration.</p> <p>91. Application of certain provisions to banking company incorporated by special enactments of the Federal Legislature. – In the case of a banking company incorporated by a Federal Act (or an Act of Parliament) and not liable to be wound up under the companies Ordinance, 1984 (XLVII of 1984), the provisions of <u>sections 11, (15A, 15C, 16 to 19, 21, 23 to 25B), 28 to 33, 34 (excluding sub-section (3) , 36, 39, 40, 41, 41A, 41B, 41C, 41D, 42, 45, 46, 83, 84, 85, 90, 92 and 93</u> shall, without prejudice to the provisions of such Federal Act, apply so far as may be, to and in relation to such banking company.</p> | <p>State Bank.</p> <p>175. Application of certain provisions to a bank incorporated by special enactments of the Federal Legislature . In the case of a bank incorporated by a Federal Act (or an Act of Parliament) and not liable to be wound up under the Companies Ordinance, 1984, the provisions relevant of this Act as may be prescribed by the Federal Government by order published in Gazette, without prejudice to the provisions of such Federal Act, apply so far as may be, to and in relation to such bank.</p> | <ul style="list-style-type: none"> • Except the underline italic portion of S.91 of BCO (this too, is because of its own structure) the rest of the expression/effect of the both these clause is the same. |
| <p>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.</p> | <p>176. Removal of difficulties. If any difficulty arises in giving effect to any of the provisions of this Act, the Federal Government may make such order as may appear to it to be necessary for the purpose of removing the difficulty.</p> | <ul style="list-style-type: none"> • Ditto |
| <p>92. Power of Federal Government to make rules. – (1) The Federal Government may, <u>after</u> 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.</p> <p><u>(2) In particular, and without prejudice to the generality of the foregoing power, such rules may</u></p> | <p>178. Power of Federal Government to make rules. (1) The Federal Government may, in 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 Act and all such rules shall be published in the Official Gazette.</p> <p>(2) All rules made under this section shall be</p> | <ul style="list-style-type: none"> • Except the underline, italic and bold portion of S.92 of BCO the rest of the contents and effect of both these sections is the same. |

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| <p><u>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.</u></p> <p>(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.</p> <p><u>(4) The Federal Government may, by rules made under this section, annul, alter or add to, all or any of the provisions of the Third Schedule.</u></p> | <p>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 month from the date on which the draft of the proposed rules was published: Provided that in respect of that first occasion on which rules are made under this section, the provisions of this sub-section shall not apply.</p> | |
| <p>93. Power to exempt in certain cases.—The Federal Government may, on the recommendation of the State Bank, declare, by notification 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.</p> | <p>179. Power to exempt in certain cases. (1) The State Bank may, if it is satisfied that it would not be prejudicial to the promotion of a sound financial structure in Pakistan or if it would not be contrary to the public interest to do so, declare, by order published in the Gazette, that any or all of the provisions of this Act shall not apply to any bank or to any class of banks generally, or to any particular person, or such class, category or</p> | <ul style="list-style-type: none"> • In S.93 of BCO, F.Gov. has the power to exempt the application of certain provision of BCO to any bank in a manner as prescribed therein. • In S.179 of BCA, SBP has the same power |

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| | <p>description of persons :</p> <p>Provided that the State Bank shall notify the Federal Government of any such exemption as may have been made by the State Bank under this sub-section. As soon as may be practicable</p> <p>(2) An exemption under sub-section (1) may be granted for such duration as may be specified in the order, or for the duration of the existence of the person or bank, as the case may be, and may be subject to such limitations, restrictions or conditions as the State Bank may specify in the exemption.</p> | |
| <p>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 of account of licence, lease, hire-purchase, forward sale, rent sharing agreement or in any other arrangement <u>within the purview of clauses (ee) and (gg) or section 5.</u></p> | <p>180. Exemption from liability.</p> <p>A bank 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 bank, 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.</p> | <ul style="list-style-type: none"> • Except the underline, italic portion of S.93A the rest of contents and effect of these clauses are the same. |
| <p>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</p> | <p>181. Exemption from requirement of licence.</p> <p>(1) 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 bank</p> | <ul style="list-style-type: none"> • Ditto |

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| <p>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.</p> | <p>undertaking such transaction in the normal course of its banking business. (2) In this section, a transaction undertaken by a bank 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 bank 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.</p> | |
| <p>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 <i>interest-based</i> facility extended by the banking company to such person and such facility is at any time converted into or substituted by any facility <i>not based on interest</i>, 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. <u><i>Explanation:- For the purposes of section 93A, 93B, 93C and 93D, "Banking company" shall have the same meaning as in the Banking Tribunals Ordinance, 1984".</i></u></p> | <p>182. Continuance of charge and priority. Where a charge over any property has been or is created by any person in favour of a bank to secure any facility extended by the bank to such person and such facility is at any time converted into or substituted by any facility, such charge shall continue to remain valid and shall maintain its priority in favour of the bank against all charges created by such person in favour of any other person subsequent to the original date of registration of such charge.</p> | <ul style="list-style-type: none"> • S. 93D of BCO addresses a situation when a charged is created for an interest based financing and then the nature of financing is changed to non-interest based financing, the charge would remain available. • The scope of S.182 of BCA is wider because it covers 'any facility' for which the charge is created and later on it is substituted with |

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| | | other facility, the charge would remain there. |
| <p>94. Protection of action taken in good faith.—No suit or other legal proceeding shall lie against the 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 [foresaid].</p> | <p>184. Indemnity. (1) No action, suit, prosecution or other proceeding whatsoever shall lie or be brought, instituted, or maintained in any court or before any other authority against-</p> <p>(a) the Federal Government and the Provincial Government;</p> <p>(b) the State Bank;</p> <p>(c) <u>the Banking Mohtasib;</u></p> <p>(d) <u>any officer or employee of any such Government or of the State Bank, either personally or in his official capacity;</u> and</p> <p>(e) <u>any person lawfully acting on behalf of any such Government, or on behalf of the State Bank or the Banking Mohtasib or the Deposit Insurance Board, or on behalf of any such officer or employee, either personally or in his capacity as a person acting on such behalf,</u> for, any thing which is in good faith done or intended to be done including any act done or statement made or omitted to be done or made, or purporting to be done or made or omitted to be done or made, in pursuance or in execution of, or intended pursuance or execution of, this Act, or any order in writing, direction, instruction, notice or other thing whatsoever issued under this Act:</p> | <ul style="list-style-type: none"> • The indemnity clause i.e. S.184 of BCA has much wider scope than S.94 of BCO |

(2) No suit, prosecution or any other legal proceeding shall lie against the State Bank or any of its officers or employees or any other person acting on its behalf, for any thing done or intended to be done in good faith under this Act or any other law for the time being in force

(i) If any suit, application or other proceeding filed against the State Bank, the court is satisfied that the State Bank has been improperly joined as an opposite party or the suit or proceeding is false, vexatious, unreasonable or without cause of action to the knowledge of the party by whom it has been put forward, and if such proceeding is dismissed, disallowed, abandoned or withdrawn against the State Bank, or its name as opposite party is struck out, the court may order payment to the State Bank by the party by which such suit or proceeding has been filed, special costs by way of compensation not exceeding an amount of one million rupees or the court's pecuniary jurisdiction, whichever is less.

(ii) The party against which an order has been made under this section shall not be exempted from any other liability which it might have incurred on account of such suit or proceeding.

(iii) The order passed under this section shall be executed as decree.