

# Banking Regulation Act 1949 (AACCS)

Compiled and presented  
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We have different types of banks in the country –

- Commercial banks, cooperative banks, Regional Rural banks and Private sector banks.
- Who give guidance to those banks, who controls them, who regulates them?
- The Reserve Bank of India
- Who has given powers to control those banks?

# Banking Regulation Act 1949 (AACCS)

## Powers of RBI

The BR Act and the RBI Acts give the supervisory and regulatory powers to the RBI over the functions of all types of banks in India.

## Banking Regulation Act 1949

The Banking Regulations Act 1949 was enacted on 16 March 1949, to consolidate the regulatory laws relating to banking and also to define the transactions that can be carried out by commercial banks in the country and to bring all commercial banks into its fold.

Though the BR Act was in existence, it was not applicable to the Cooperative banks for a long time

But when the deposits started increasing in the Coop sector, BR Act was made applicable to Coop banks also, with effect from 1 March 1966 with a nomenclature - BR Act 1949 (As Applicable to Coop Societies).

This Act gives supervisory and regulatory powers to RBI over the Coop banks .

But basically all cooperative banks are registered under the Cooperative Societies Act and therefore the powers regarding incorporation, management, elections to the Board of Directors still rest with the Registrar of Coop societies of the State or Centre concerned.

So all cooperative banks come under dual control ie RBI and RCS.

# Objectives of the Banking Regulation Act broadly are:

- to safeguard the interest of depositors;
- to develop banking institutions on sound lines;  
and
- to attune the monetary and credit system to the larger interests and priorities of the nation.

Let us discuss some of the important provisions  
of BR Act 1949 (AACCS).

The Act was originally in force from 16 March 1949 as the Banking Companies Act, 1949. It was amended and renamed as Banking Regulation Act, 1949 and extended to the cooperative banks from 1 March 1966 as the Banking Regulation Act, 1949 (As Applicable to Cooperative Societies) [B R Act, 1949 (AACCS)].

Sec 56 :

BR Act was made applicable to Cooperative societies - under the provision of Sec 56.

As per this, a Cooperative Bank means a SCB, CCB and Primary Coop Bank.

## Important provisions of BR Act 1949 (AACCS)

Sec 1 :The Act extends to whole of India and  
wef. 01.03.1966

Sec 3 : Nothing in this Act shall apply to certain  
Co-ops such as :

- a) PACS,
- b) LDB and
- c) Other Coop Societies except in the manner and to the extent specified in the Act



# What is banking ?

## Definition of Bank

As per Sec 5(1)(b) of the Act –

Banking is the :

- 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.

- “Sec 5(1)(c) – Banking company means
- any company which transacts the business of banking in India”

A cooperative bank is

- a State Cooperative Bank,
- a Central Cooperative Bank or
- a Primary Cooperative Bank - Section 5 (cci)

. Some more Definitions are :

- A Primary Cooperative Bank is:
- A cooperative society (other than a PACS) which accepts deposits from the public i.e., members and non-members and utilizes these for lending, will be deemed to be transacting banking business primarily in banking business
- with capital and reserves of not less than Rs.1 lakh &
- whose byelaws do not permit admission of any other society as a member.

## Essential characters of a bank are :

Acceptance of deposits from the public on different types of accounts

Allowing withdrawals of these deposits by cheques, drafts, orders or otherwise

Utilisation of deposits in hand for the purpose of lending or investments

Performance of other activities called subsidiary services, in addition to the principal activities of receiving of deposits and lending of funds

Performance of banking business as the main business

Using the term Bank, banker or banking company as part of its name

## What sorts of business it can conduct ?.....

Sec 6 – deals with the forms of business a coop bank can undertake:

Coop banks in addition to banking can undertake following:

- Borrowing or raising money
- Lend money either on or without security
- 20 major activities like dealing in cheques and instrument, granting of letter of credits, providing safe deposit lockers, hold any property for the purpose of security against loans, acquisition, construction, maintenance of any building for the purpose of the bank etc.

- Further, GOI by notification, has specified hire purchase, equipment leasing and insurance as new forms of business, in which, it is lawful for coop banks to be engaged.
- Further, the RBI can issue guidelines for the conduct of above referred types of business activities.

Sec 7 : Use of word bank, banker , banking or banking company:

No Coop society other than a Coop bank shall use as part of its name bank, banker or banking and no coop society shall carry on the business of banking in India unless it uses as part of its name at least one of such words.

What sort of activities it is prohibited to do from?.....

## Sec 8 – Prohibition of trading

Coop bank is prohibited from

- engaging directly or indirectly in any trading, buying,
- selling or bartering of goods (Goods means any movable property, other than auctionable claims, stock, shares, money, bullion etc referred to sec 6) for others, except
- for realisation of security given or held by it or in connection with the bills of exchange received for collection or negotiation.
- Thus, basically a coop bank cannot undertake any trading activity

What about doing estate business/acquisition of land and building?.....

Sec 9 -Deals with disposal of non banking assets.

Except required for its own, a coop bank is prohibited from holding immovable property, howsoever acquired, for more than 7 years.

If not, it can seek extension of period from RBI which may grant extension upto 5 years period in the interest of depositors of the bank.



What is the minimum share capital it has to have?.....

- Sec 11 - deals with minimum paid up capital and reserves. As per this,
- No coop bank can commence or carry on the business of banking in India, unless the aggregate value of its paid up capital and reserves is not less than Rs. One lakh.

If a Cooperative society wants to become a Coop bank, it has to work as a cooperative society atleast for a period of two years.

(Sec.s 12,12A, 13,15,16,17 shall be omitted)

## Sec 14 A – Prohibition on creating floating charge on bank's assets

No coop bank can create a floating charge on any property of the bank, unless it is certified by the RBI in writing, as not being detrimental to the interest of depositors.

Can a bank utilise entire deposits it receives in loans and advances and other investments?.....

As a precaution all banks are to keep a portion of deposits so received, in the form of CRR & SLR.

What is meant by CRR ?.....

It is Cash Reserve Ratio and  
as per Sec 18 of BR Act

Every cooperative bank (not SCB) shall maintain in India by way of

- cash reserve with itself, &
- net balances in current account with SBI & its subsidiaries and Nationalised banks or
- by way of balance in a current account with the RBI or
- the State Coop bank of the State concerned or by way of net balances in current accounts with its higher financing agency (SCB) -
- a sum equivalent to atleast 3% of the total demand and time liabilities in India, as on the last Friday of the second preceding fortnight and shall submit to the RBI before 15<sup>th</sup> day of every month a return in Form B showing the amount so held

The average cash balance maintained in such account should not be less than 3% (can be increased upto 20%) of the NDTL of the bank as on the last Friday of the second preceding fortnight.

- Explanation.--For the purposes of this section,--

- (a) "average daily balance" shall mean the average of the balances held at the close of business on each day of the fortnight

- - (b) "fortnight" shall mean the period from Saturday to the second following Friday, both days inclusive

- on alternate Fridays during a month with particulars of its DTL.
- Notified bank under this section are SBI, its subsidiaries and all Nationalised banks.

Similar to Sec 18 of BR Act - Sec 42(1) of RBI Act

Scheduled coop banks are governed by Sec 42(1) of RBI Act for this purpose.

Every bank included in the Second Schedule shall maintain with the RBI an average daily balance the amount of which shall not be less than three per cent of the total of the demand and time liabilities in India

- 42 (6) (a) For the purpose of inclusion in Second Schedule the bank –

(i) has a paid-up capital and reserves of an aggregate value of not less than five lakhs of rupees, and

(ii) satisfies the Bank that its affairs are not being conducted in a manner detrimental to the interest of its depositors, and

- 6. (b) direct the exclusion from that Schedule of any scheduled bank,--
  - (i) the aggregate value of whose paid-up capital and reserves becomes at any time less than five lakhs of rupees, or
  - (ii) which is in the opinion of the Bank after making an inspection under section 35 of the 1\*[BR Act, 1949 conducting its affairs to the detriment of the interest of its depositors, or
  - (iii) which goes into liquidation or otherwise ceases to carry on banking business:



In addition to regular banking, banks can purchase the shares of other cooperative institutions as a member.

Then how many shares it can purchase?.....

Sec 19 – Restriction on holding the shares in other coop societies -

Bank shall not hold shares in any other coop society beyond the limit prescribed by the RBI.

Such total investments should not exceed 2% of its own funds or 5% of the subscribed share capital of such society.

## Can a coop bank lend against its own shares?....

Sec 20 – Restriction on loans against its own shares and to Directors and their relatives.

20 (a) - A coop bank cannot grant loans and advances against its own shares

20 (b) - A coop bank cannot sanction unsecured advances to the Directors and to firms in which the Director is interested acting as partner or MD or guarantors or to individuals where the Director is the guarantor.

20A – Without the prior approval of RBI, a coop bank cannot remit in whole or in part, any debt due by its past or present director or a firm where the Director is interested.

Advance portfolio of banks can be controlled by RBI

- Sec 21 – RBI's power to control advances of coop banks
- RBI has powers to determine the policy in relation to advances to be followed by Coop banks. It may be in general or - of a specific bank or - a specific activity.
- This is as a part of Selective Credit Control measure the RBI has.

Under the powers conferred by this section 21, the RBI may issue directives to coop bank for the:

- a) Purpose for which advances may or may not be made
- b) Margins to be maintained in respect of secured advances
- c) Maximum amount of advances or other financial accommodation in relation to its paid up capital and reserves , may be made by a coop bank to any party
- d) Rate of interest, guarantees to be issued for such advances

Every coop bank is required to comply with whatever the directions issued by the RBI.

Banks may fix rate of interest, margin etc., but if some body goes to court against this ?.....

- Sec 21A – Rate of interest charged by bank not to be subjected of scrutiny by courts.
- A transaction between a bank and its debtors cannot be reopened by any court on the ground that the rate of interest charged by the Coop bank in respect of any such transaction is excessive.
- However, courts can disallow excess interest and give relief, if it is proved that the interest charged and compounded is not in conformity with the rate and periodicity prescribed by RBI, if supported by reasons.

How RBI grants licence?..... If somebody wants to open bank – how to open?.

## Sec 22 – Licensing of coop banks

No coop bank can carry on banking business unless a license is issued by the RBI to the effect.

However, in case of coop banks which were in existence as on 1 March 1966, were required to apply for a license to RBI within 3 months from 1 March 1966.

Such banks were permitted to carry on banking business till their application for license is rejected by RBI.

For an existing bank, before granting the license, the RBI by inspecting the books of accounts of the bank, will have to satisfy itself on the following points:

- a) The bank is in a position to pay claims of the present and future depositors.
- b) The affairs of the bank are not / not likely being conducted in a manner detrimental to the interest of depositors
- c) General character of management of the bank will not be prejudicial to the public and the depositors
- d) The bank has adequate capital structure and earning prospects
- e) Public interest will be served by granting license.



- f) The opening of the bank in that area will not affect the banking system or monetary stability and economic growth of the country.
- g) Any other condition the RBI feels necessary

Similarly the bank can cancel the license already issued, if any of the above conditions are violated / not fulfilled.

The bank can appeal to the Central Govt against the RBI's decision to cancel the license.

Sec 22 deals with opening of bank then what about branches.....

Sec 23 – Deals with opening of branches by banks

Under the Sec 23, no Scheduled Coop bank (other than DCCB) can open its branches, without the prior permission / approval of the RBI.

Exception is opening of branch in shandies / special functions for a short period of 1 month

## Sec 24 – Maintenance of Statutory Liquidity Ratio (SLR)

Every bank shall maintain in form of cash, gold or unencumbered approved securities an amount, which shall not, at the close of business be less than 25 % of its DTL as specified by RBI from time to time.

Consequent upon amendment in the Act, w.e.f January 23, 2007, the minimum 25% has been removed and presently the SLR is 23%. This SLR shall not exceed 40% of DTL.

## The eligible SLR include :

- Excess cash maintained over and above the required CRR under Sec18 / 42(1).
- Gold, valued at price, not exceeding market price
- Unencumbered approved securities valued at cost price, or market price or book value or face value as specified by RBI from time to time

Approved securities means, the securities approved under Sec 20 of Indian Trust Act 1882 and include Central and State Govt securities and others as prescribed by RBI.

On failure to maintain such CRR or SLR, the RBI is empowered to levy penalty on the bank and every Director/Manager of the bank who was responsible for such deficit.

The CRR and SLR, is to see that the banks have liquidity to meet the demand for cash in case of exigencies.

- Sec 24 A – Exemption from CRR & SLR
- RBI by notification, may exempt a Coop bank or a class of banks from the provisions of Sec 18 & 24. Such notification may specify the period, branch, bank with or without any condition.
- Sec 26 – Unclaimed deposits
- Every coop bank has to keep a record of all the accounts which are not operated or unclaimed for 10 years and submit a return to RBI in form VIII as at the end of the calendar year and within one month.

## Sec 27 – Monthly and other Returns

Every coop bank has to submit to RBI a monthly Return in prescribed form showing the assets and liabilities of the bank as at the close of business on last Friday of the month.

Under this provision, RBI may also prescribe any other Return to be submitted on a periodical basis.

## Sec 28 – Power to publish information

RBI may in the public interest publish information obtained by it under this act, in such a consolidated form as it thinks fit.

## Sec 29 & 31 – P&L A/c and B/S

Every coop bank has to prepare its Profit and loss account and the Balance sheet as at 31 March in the proforma set out in Third schedule to BR Act.

These banks have to submit to RBI three copies of the P&L and B/s together with the Statutory Auditor's Report before 30 Sep every year.

In case of failure to submit, the RBI under Secs 46 & 47 A of BR Act, may penalise the bank for non-submission.



## Sec 35 : Inspection

RBI at any time may cause an inspection by its own officers or any officer authorised by it, of any Coop Bank and its books of accounts. RBI shall supply to the Coop Bank a copy of its report on such inspection.

## Sec 35 A – powers of RBI to give Directions

RBI can issue Directions to any coop bank in general or any coop in specific on any aspect of banking. The direction is issued in the interest of the public / depositors

## Sec 36 – Further powers and functions

RBI can caution, may give loan or advance, may depute, appoint officer to observe, for scrutiny of returns, statements, information submitted by any coop bank.

### 36 A – Exemption from the Act

Sec 11, 18 & 24 will not apply to the coop banks whose license have been rejected under Sec 22 of the Act or who have been prohibited from accepting deposits. They have to pay back the deposit.

## Sec 36 AD – punishment for certain activities

Any person who obstructs any person entering, leaving a bank, carrying on banking business, prevent normal business shall be punishable with imprisonment and or fine.

## Sec 45 – Power to RBI to apply to Central Govt for suspension of banking business

RBI with a good reason to do so, may apply to Central Govt. to issue an order of moratorium in respect of a coop bank.

The coop bank will not make any payment to any depositor or discharge any liability or obligation of any creditor, except otherwise provide in the order issued by Central Govt.

## 45 – Y, Power of Central Govt to make Rules for preservation of Records.

CG has power to make Rules, in consultation with RBI specifying the period which Coop bank shall

- Preserve its books of account and other documents &
- Keep with itself different instruments paid by it

Accordingly Coop banks (Period of preservation of Records) Rules 1985, have been made effective by CG and as per this

- Coop banks shall preserve, their books, accounts and other documents like registers of cheque book, liability, remittances received or dispatched, vault, TT transfer in good order for a period of 5 yrs.

- Records of loan, deposit, stock, investments, safe custody, cash, transfers, paid cheques, pay-in-slips, vouchers etc, to be retained for 8 years.
- RBI has powers to advise any Coop bank to maintain any record for longer periods also.

### 45 – Z Return of paid instruments to customers.

With a request made by the customer, the Coop bank can return the paid instrument before the prescribed period after taking a true copy of the instrument giving the accuracy of the instrument.

- 45 - ZA and ZB - Nomination for payment of depositor's money and protection against third party
- It is a facility provided to the depositor where, in case of death of the depositor the amount may be returned by the bank.
- The bank is fully discharged of its liability in respect of such deposit by payment in accordance with this section.
- However, if there is court order, then only the bank may stop payment to the nominee.

## 45 - ZC and ZD : Nomination for Articles kept in Safe Custody and protection against third party notice

Similar to the nomination of deposits, a depositor can nominate a person for receiving the articles kept in the Safe Custody and the nominee has right to receive the articles in case of death of the depositor.

The bank is not bound by any third party notice in respect of articles kept in Safe custody.

## 45 – ZE and ZF : Nomination in respect of Safety Locker

Sole hirer can nominate only one person in form SL 1, Coop bank can give access to that person either to operate or remove the articles.

When locker is hired and operated by two or more, they can jointly nominate a person / persons in form SL 1A, to give access with surviving hirer to operate or remove the articles.

The bank is protected from any legal proceedings for any damage for allowing access as per these provisions



## Sec 46 – Punitive power of RBI

- I. Any person knowingly giving false information / document to the RBI can be imprisoned upto 3 years
- II. Any person failing to produce any book of accounts or answer / any information to the Inspecting officer under Sec 35 with a fine upto Rs.2500 for each offence and Rs.100 per day during continuance of such offence
- III. Any person knowingly has allowed the bank to accept deposit when prohibited will be fined upto Rs.50,000 or twice the amount involved.

I. Any person responsible for contravention or default in complying with any provision, order, rule, direction or condition imposed under the Act with a fine upto 50,000 or twice the amount involved, which ever is more and Rs.2500 per day of continuation of contravention or default

## 47 A – Penalty imposition

- Under this provision, the RBI can impose penalties for the default as per III and IV of 46, without recourse to any court of law.
- For the purpose of adjudging penalty, RBI will serve a show-cause notice on the bank and give it reasonable opportunity of being heard. Conducting enquiry is laid down in Rule II of BR Coop Rules 1966.

Sec 49 – Restriction on acceptance of deposits withdrawable by cheque

No person other than a Coop bank, RBI, SBI or any other banking institution, shall accept deposits from public,

Sec 35 A – powers of RBI to give Directions

RBI can issue Directions to any coop bank in general or any coop in specific on any aspect of banking. The direction is issued in the interest of the public / depositors,

- Form I – Statement of Demand and Time liabilities in India and amount maintained in India in Cash, gold and unencumbered approved securities for the month of ..... to be submitted within 15 days from the close of the month
- Form II – Return showing the unsecured advances sanctioned by the bank to its Directors or their relatives, to the companies in which the Director is acting as the Director of Managing director or interested in it as on the last day of the month – to be submitted within one month

# Statutory Returns to be submitted by banks under the BR Act 1949 AACS

Return in Form	Periodicity	As on	Section of BR Act 1949(AACS)	About
I	Monthly	last Friday of month	18 & 24 {42(1) of RBI Act}	DTL, CRR & SLR
II	Monthly	- do -	20	Unsecured advances to Directors
VI	Quarterly	Last day of quarter	23	Branches opened/closed
VIII	Annual	31 Dec	26	Unclaimed deposits for more than 10 years
IX	Monthly	Last Friday of month	27	Balance sheet of the bank

- These powers have been conferred to RBI to control / direct the banks to function in a proper way so that entire banking system in the country is safe, strong and self dependent.
- Till now we have discussed about various important provisions of BR Act 1949(AACS) like, 5, 6, 8, 9, 11, 14 A, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 31, 35, 45, 46 etc.
- Let us look back what those provisions/sections deal with?.....

- Form VI – Statement showing the details of branches opened and closed during the quarter – as on the last day of the quarter – to be submitted within one month
- Form VIII – Return showing the details of the unclaimed deposits held by the bank for more than 10 years to be submitted as on 31 December of every year – within one month from the close of the year
- Form IX – Return showing the details of assets and liabilities of the bank as on the last Friday of month to be submitted within one month from the date of the Return

09/11/08

- OSS returns – OSC 1 to 4



*Any clarifications please?*

*Thanque*

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