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THE RESERVE BANK OF INDIA ACT.

THE
RESERVE BANK OF INDIA ACT

ACT II OF 1934

WITH

NOTES AND COMMENTS

BY

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PREFACE

In this book an attempt has been made to explain and comment upon the provisions of the Reserve Bank of India Act both in their legal and economic aspects. It is hoped that it will be found useful not only by the officers and employees of the Reserve Bank and Scheduled banks and bankers in general who may be directly concerned with the business and everyday working of the Bank, but also by its shareholders who will be interested in the elections and general meetings, and members of the public including businessmen, economists and politicians who may like to have a general idea of the structure, functions and activities of the Bank as the regulator of the currency and credit system of the country.

From a legal point of view, the book has been rather a hazardous enterprise in view of the fact that I have had to explore a practically little known field of law; and this will be some excuse for the many imperfections and shortcomings of which I feel I may be guilty.

In view of the fact that some of the essential provisions of the Act are based on principles underlying similar provisions governing the Federal Reserve System of the U. S. A. the law and practice associated with the operations of that System for the past more than twenty years have been found to be a valuable guide within limits, to the interpretation of the purposes, structure and functions of the Indian Reserve Bank also. In preparing this Commentary I have accordingly made use of references to the Federal Reserve Act, the Federal Reserve Bulletins and Annual Reports of the Federal Reserve Board and the very valuable studies of Doctors E. A. Goldenweiser, Randolph Burgess and H. Parker Willis on the workings of the Federal Reserve System. I also owe a debt of gratitude

to Dr. Léon Fraser, President of the Bank for International Settlements for having made available to me some very valuable papers on Central Banking Practice not ordinarily available to other than its own member Central Banks.

In order to make the book fully useful to those whom it is intended to serve, I have added in the Appendices the texts of the Indian Coinage Act and the Imperial Bank Act as amended up to date, as well as a memorandum on Central Banking policy prepared by the Bank for International Settlements.

My thanks are due to Mr. K. Muthuswami, who is assisting me in the Bureau of Economic Research here, for the compilation of the Table of Cases, Table of Statutes and Index and for other help in connection with my task.

August, 1934,
Madura.

A. R.

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REPORT OF THE LONDON COMMITTEE

ON

INDIAN RESERVE BANK LEGISLATION

1. It was recommended by the Federal Structure Sub-Committee of the First Round Table Conference that, "with a view to ensuring confidence in the management of Indian credit and currency, . . . efforts should be made to establish on sure foundations and free from any political influence, as early as may be found possible, a Reserve Bank, which will be entrusted with the management of the currency and exchange."* The Financial Safeguards Committee of the Third Round Table Conference recommended "that steps should be taken to introduce into the Indian Legislature a Reserve Bank Bill conceived on the above lines as soon as possible."† In the Report of that Committee it was also placed on record that "The Secretary of State undertook that representative Indian opinion would be consulted in the preparation of proposals for the establishment of the Reserve Bank including those relating to the reserves." The present Committee has been set up in pursuance of that undertaking.

2. We understand that the Bill, when drafted, is to be placed before the present Indian Legislature with a view to its being brought into force before the expiry of the existing Constitution. The provisions of the Bill, therefore, will have to be designed to fit in with the existing Constitution, but in discussing them we have kept in view the conditions contemplated under the new Federal Constitution and endeavoured to frame proposals on lines which will require the minimum of adaptation to those conditions.

A complication arises from the uncertain future of Burma. We have, however, assumed that Burma, if separated, will continue to utilise the Indian currency system, and that no material changes in the Reserve Bank Act will be required.

3. We fully accept the principle that the Reserve Bank should be free from any political influence. The best device which the

*Second Report of the Federal Structure Sub-Committee, paragraph 18.

† Report of the Committee on Financial Safeguards, paragraph 4.

practical experience of other countries has evolved for achieving this object is that the capital of the Bank should be held by private shareholders, and we recommend that this plan should be adopted in the case of India.

4. In formulating a scheme for the constitution of the Board of Directors, we have borne in mind the importance of securing the representation of the economic life of India as a whole, while at the same time guarding against undue influence in the affairs of the Bank by sectional interests, acquired through the control of voting power. The proposals below are designed to fulfil these aims, but their efficacy will depend in the first place upon proper restriction of voting power. We propose that the denomination of the share should be Rs. 500. On this basis we recommend that the minimum voting qualification should be two shares, which must have been held for at least six months, and that the maximum number of votes that may be exercised by any one shareholder should be ten. If such a limitation is imposed on voting power we do not think it necessary to place any restriction on the amount of capital to be held by any one shareholder. Such a restriction would place undesirable obstacles in the way of free marketing of the shares. [Section 4]

THE BOARD OF THE BANK.

5. We consider that the Board should be as small as practicable. The majority of the Board of Directors should in our opinion derive their mandate from the shareholders. We do not recommend that any special provision should be made for the representation on the Board of commercial bodies as such. In view, however, of the fact that in the particular circumstances of India election may fail to secure the representation of some important elements in the economic life of the country, such as agricultural interests, we recommend that a minority of the Board should be nominated by the Governor-General-in-Council under the present Constitution and by the Governor-General at his discretion under the new Constitution, it being understood that this power would be exercised to redress any such deficiencies. We agree generally that the Board should be constituted as follows:—

8 Directors representing the shareholders;

4 Directors nominated by the Governor-General-in-Council;

- 1 Governor;
- 1 Deputy-Governor (or two, if two are appointed), with no voting power;
- 1 officer of Government with no voting power.

We contemplate that the Governor would ordinarily attend all meetings of the Board, but if he is unable to do so on any particular occasion we consider that his vote should be exercised by a Deputy-Governor authorised by him to act as his substitute. [Section 8]

6. The plan which we recommend for the appointment of Directors to represent the shareholders is set forth in the next paragraph. It involves the division of India (including for this purpose Burma) into five "areas"; the election, by the shareholders resident ✓ in each area, of members of a Local Board; and the selection by the latter, from among themselves, of Directors to represent the respective areas on the Central Board.

7. In Appendix II will be found, in tabular form, our proposals for the geographical division into areas, and for the allocation among them of seats on the Central Board, and the initial allocation of share capital. It is suggested that Bombay should be the headquarters for the western area (two seats on the Central Board), Calcutta for the Eastern area (two seats), Delhi for the Northern area (two seats), Madras for the Southern area (one seat), and Rangoon for the Burma area (one seat). (The number of Local Boards for this purpose should not be capable of increase). The electoral scheme in the 1928 Bill provided for the inclusion of all the Indian States in the "Delhi Area." We consider, however, that the States should for this purpose fall into their natural geographical divisions, and our proposals, shown in detail in Appendix II, have been made on this basis. We propose that five members should be elected to each Local Board by the shareholders "resident" in the area according to the definition given in clause 4 (4) of the 1928 Bill. The members so elected should appoint, from among themselves, the Director or Directors to represent the area on the Central Board. Provision should be made to enable a substitute Director to be appointed from and by a Local Board in case a Director representing it is unable to attend a particular meeting. [Schedule I and Sections 9 & 12 (2)]

8. Clause 6 of the 1928 Bill provides for the opening of offices at the headquarters of the five areas which we propose. We observe that this clause as it stands would oblige the Bank to establish a branch in London. We understand that it is the recognised practice of Central Banks to conduct their operations in another country through the agency of the Central Bank of that country. We do not consider that the Board should be precluded by statute from following this practice. We therefore recommend that the words "and London" should be omitted from clause 6, the effect of which will be to make the establishment of a London branch optional. Should the Bank arrange to employ the Bank of England as its agent in London, we contemplate that the arrangement would be reciprocal and that the Bank of England would employ the Reserve Bank as its agent in India. [Section 6]

9. Apart from their functions in the machinery by which Directors are appointed, the Local Boards would have no executive duties, except as may be delegated to them by the Central Board. Otherwise they would be purely advisory bodies. In particular, they might play a valuable part in the security of commercial paper, analogous to the functions of the discount committees established in Belgium, Bulgaria, Japan and Lithuania. With a view to ensuring that all appropriate interests, agriculture and the Indian States in particular, are adequately represented, the Central Board should be empowered to nominate to each Local Board not more than three additional members who should be full members of the Local Board, except that they should not be eligible to be returned as representatives of the area on the Central Board, nor to take part in the selection of such representatives. [Section 9]

10. As regards the qualification of elected Directors, we consider a provision on the lines of sub-clause 2 of clause 11 of the Bill of 1928 to be desirable. We would also provide that within six months of their appointment to the Central Board the four nominated Directors must become possessed of the same share qualification as is prescribed for Directors elected by the shareholders. We do not, of course, suggest that a share qualification must be acquired by the Governor, the Deputy-Governor or Governors, or the Government officer. We accept the disqualifications set out in clause 8 of the 1928 Bill, to which, however, we could add "Insolvency." We have considered whether the disqualification of Government

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officials should apply also to officials of Indian States. We are all agreed that, so far as elected members of Central or Local Boards are concerned, this disqualification should apply, but as regards nominated directors, either on the Central or Local Boards, the Indian States representatives have pressed that an exception should be made. Recognising that there might on occasions be practical difficulties in finding suitable non-official representatives of the Indian States, a majority of the Committee are prepared to recommend an exception in this case, provided that it shall not apply to officials of the Government of India lent to an Indian State. [Sections 10 and 11]

11. The qualifications and disqualifications applicable to members of a Local Board, whether elected or nominated, should, subject to what is said in paragraph 10 above, be the same as those applicable to the elected members of the Central Board. [Sections 10 and 11]

12. We recommend, in order that the Reserve Bank may be able to commence operations, that the first appointment of Directors should be made by the Governor-General-in-Council, suitable arrangements being made for retirement in rotation. [Section 15]

13. The method of appointing the Governor is a matter of the highest importance. It is essential that this officer should command general confidence, both in India and abroad. As regards the appointment of the Governor and Deputy-Governor (or Deputy-Governors), the majority of the Committee hold that the Governor-General in his discretion should be the appointing authority when the new Constitution comes into force. Those who were of this opinion felt no doubt that before making these appointments the Governor-General would ascertain the views of the Board of the Bank. A minority of the Committee, however, hold that these appointments should be made by the Board of Directors, subject to the approval of the Governor-General. An attempt to harmonise views was made by proposing that the existing provision of the Imperial Bank constitution should be followed in drafting the Bill, and that the Governor and Deputy-Governors should be appointed by the Governor-General after consideration of the recommendations of the Board of the Bank. This solution, as a compromise, was acceptable to all members of the Committee except four. [Section 8 (1) (a)]

SHARE CAPITAL AND SHARE REGISTERS.

✓ 14. We recommend that the original share capital of the Bank should be Rs. 5 crores, divided into shares of Rs. 500 each, which should be fully paid: that the initial allocation as between the five areas should be on the lines indicated in Appendix II; that a separate share register should be maintained in each of the five areas; and that shares should be transferable from one register to another, so that there would be a free market in them, but shareholders should only be entitled to vote in respect of the areas in which they are resident. [Section 4]

STRUCTURE OF THE BANK.

✓ 15. The two previous Bills provided for separate Issue and Banking Departments as in the case of the Bank of England, and we understand that this provision has met with general approval in India. We recommend that the new Bill should be drafted on this basis.

BUSINESS OF THE BANK.

✓ 16. We approve generally of the provisions of clauses 17 and 18 of the Bill of 1928, but we consider that some extension may be required to enable the Indian States to participate in the Reserve Bank Scheme, and detailed suggestions of this nature are included in Appendix I.

✓ 17. The Banking Enquiry Committee recommended* that additional provision should be made enabling the Bank to make loans and advances on the security of moveable goods, wares and merchandise, as well as against the warehouse warrants and warehouse receipts representing such goods. We do not feel able to recommend any such provision, since it would tend to render the Bank's resources less liquid, and might involve it in undesirable competition with commercial banks. [Section 17]

✓ 18. An important question arises in regard to clause 18. Since the Hilton Young Commission reported and the previous Bills were drafted, Central Banking practice in other countries has developed in the direction of utilising open market operations to an increasing

*Report of the Indian Central Bank Enquiry Committee of 1931, paragraph 407.

extent for the purpose of regulating credit. Clause 18 as it stands might be read as necessitating a meeting of the Board on each occasion on which such operations are required. Since action may be necessitated, for the purpose of regulating credit, with a degree of urgency which does not permit prior consultation with the Board, it should be made clear that the Board is not precluded from delegating to the Governor powers in this behalf for the above-mentioned purpose. [Section 18]

EXCHANGE OBLIGATIONS OF THE BANK.

19. The questions which arise in connection with the exchange obligations to be imposed on the Bank present special difficulty in existing circumstances. In the prevalent state of monetary disorganisation throughout the world, it is impossible to incorporate in the Bill provisions which would necessarily be suitable when monetary systems generally have been re-cast and stabilised. In these circumstances we consider that the only sound course for India is to remain on the sterling standard. On this basis the exchange obligations incorporated in the Bill must necessarily be in accord with the rupee-sterling ratio existing at the time when the Bill is introduced. This statement does not, however, imply any expression of opinion on the part of the Committee on the merits or demerits of the present ratio. The ratio provisions in the Bill are designed to make it clear that there will not be any change in the *de facto* situation by the mere coming into operation of the Reserve Bank Act.

A considerable majority of the Indian Delegates feel it their duty to record their view that a suitable exchange ratio is one of the essential factors for the successful working of the Reserve Bank. They point out that considerable changes have occurred in the currency bases and policies of almost all the countries of the world in the last few years. In their view it is for the Government of India and the Legislature to examine these and all other relevant considerations with a view to ensuring that the minimum possible strain is placed on the currency system of India.

We are all agreed that it should, in any case, be made clear in the Preamble that the whole question of the monetary standard best suited to India will have to be reviewed when the international monetary position has clarified itself and become sufficiently stable to make it possible to frame more permanent provisions.

20. It will be necessary in the Bill to provide limits to the ✓ range of exchange fluctuations by prescribing upper and lower points at which the Bank will be required to buy and sell on demand sterling for immediate delivery. According to the practice now prevailing upper and lower points have in fact been retained as though the rupee was still on a gold basis. As the fixing of new points would in any case have to be on an arbitrary basis we recommend that this practice, to which the public have become accustomed, should be continued. [Sections 40 & 41]

ASSETS AND LIABILITIES OF THE ISSUE DEPARTMENT.

21. The addition of 40 crores to the liabilities of the Issue Department for the purpose of providing for rupee redemption requires reconsideration in view of the large return of rupees from circulation since the Hilton Young Commission reported and the indications as to the probable trend of the movement of rupees in and out of circulation in the future. We recommend that, as the future return of rupees over a series of years is likely to be ✓ considerably less than in the past few years, the rupee redemption fund ✓ should be dispensed with and in its place the following scheme should be adopted:—

(1) The amount of rupees transferred at the outset to the Bank should not exceed Rs. 50 crores.

(2) Any surplus of rupees which this arrangement would enable Government to remove from the reserve should be held by Government in a separate account, the silver being held as bullion, not as coin. Subject to further consideration, such rupees should not be used, except for the purpose specified in (3) below.

(3) In any year in which the minimum holding of silver rupees by the Bank exceeding 50 crores of rupees or one-tenth of the total amount of the reserve, the Bank would have the right to make over the surplus to Government to an amount not exceeding 5 crores of rupees in any year, and Government would be required to pay full value for these (to the extent of 40 per cent. in sterling or other external assets acceptable to the Bank if the Bank so required, and if the Bank's external assets at the time did not exceed 50 per cent. of its total reserve).

(4) If in any year the Bank's maximum holding fell below the amounts indicated above, Government would similarly have the right to sell rupees to the Bank up to a maximum of 5 crores in any one year.

We observe in this connection that the omission of any provision for a specific rupee redemption fund makes it all the more necessary that the reserves of the Bank should at the outset provide an ample margin over the statutory amount. Under the proviso to clause 33 of 1928 Bill, the initial proportion of gold and sterling assets must be not less than one-half of the liabilities of the Issue Department. We do not propose any alteration in this figure in the new Bill, but we think that this proportion may not necessarily be adequate, and we recommend that the question whether a higher proportion is required at the outset should, before the Bank is set up, be carefully considered by Government in the light of all the prevailing circumstances.

22. As regards the holding of Government of India rupee securities, the question was raised whether the limits proposed in the second proviso of clause 31 (3) might not prove unduly restrictive of the Bank's open market operations; and we recommend that this point should be further considered in India.

23. With regard to the remainder of the reserve, we recommend that "Gold Securities" should be replaced by "Sterling Securities." The holding of gold securities would be not merely inappropriate to a sterling standard, but, in the present state of uncertainty, a possible source of weakness. As regards the aggregate proportion of gold coin or bullion and sterling securities to be held, we recommend that the minimum figure of 40 per cent. proposed by the Hilton Young Commission and adopted in the previous Bills should be retained.

24. As regards the distribution of this minimum between sterling and gold various considerations have to be taken into account. On the one hand it must be recognised that the Bank will always require to hold a substantial amount of sterling in order to enable it to fulfil its sterling obligations. Indeed it might be argued that so long as the rupee is not based on a gold standard there is no logical necessity to prescribe a minimum holding of gold and that

any such limitation would restrict the freedom of the Bank's operations and would, to that extent, be a source of weakness in relation to its obligations to maintain the currency standard. There is, moreover, a further argument that as gold carries no interest any undue proportion of gold holdings would unjustifiably reduce the Bank's profits and so impose, indirectly, an unnecessary burden on the Indian taxpayer. As against these considerations, must be weighed the deep and widespread feeling in India in favour of holding gold as affording ultimately the most reliable form of reserve, a feeling which may necessitate some provision for a minimum gold holding in order to secure the confidence of the Indian public in the stability of the Bank. While individual members of our Committee have been inclined to attach varying degrees of importance to these different considerations we have been able to reach agreement on a recommendation that the Bill should prescribe a minimum gold holding of Rs. 35 crores.

The minimum of Rs. 35 crores represents actually about 20 per cent. of the present note liability. Should, however, through any considerable expansion of the note issue, this percentage fall below 15 per cent., some members of the Committee are of opinion that the position should be immediately reviewed.

25. The question of valuation of the gold assets presents some difficulty. At a time when monetary standards are completely disorganised, there is, in fact, no logical figure applicable to the valuation of gold reserves. We consider that the best course would be to retain the valuation laid down in sub-clause (4) of clause 31. This would be in accordance with the practice at present followed by the Bank of England and in India, where gold continues to be valued at the old parity. Under this arrangement the existing holdings would be covered against loss by a wide margin. The possibility would obviously be present that the Bank might gain a large premium on the gold handed over to it by Government. The question as to how such premium should be dealt with, especially in the event of sales being made in the intermediate period pending revaluation of the gold, raises, complex practical issues which we have not fully discussed. In principle such profits should belong rather to the Government than to the Bank, but our view is that this unrealised margin should in some way or other be kept available for strengthening the position of the currency reserves. We recommend

that detailed proposals should be worked out by the Government of India for consideration during the passage of legislation on this subject. [Sections 33 & 34]

26. We approve generally of the provisions of clause 41 of the 1928 Bill, relating to the suspension of reserve requirements and the connected tax provision. We think it would be well to bring clause 41 into a closer connection with clause 31 in order to make it clear that the "minimum" reserve can, and should be utilised whenever this is called for the circumstances. [Section 37]

RESERVE FUND AND ALLOCATION OF SURPLUS.

27. We approve, generally, the provisions for "Reserve Fund and Allocation of Surplus" in clause 46 of the 1928 Bill, subject to the following modifications in regard to the distribution of dividends. The appropriate rate for the fixed dividend must depend to some extent on the return on comparable securities at the time of issue of the shares. We recommend that the Bill should empower the Governor-General-in-Council to fix this rate, subject to a maximum of 5 per cent. Provision should also be made, on the lines of the Third Schedule to the 1928 Bill, for a gradually increasing dividend up to a maximum of 6 per cent. In determining the fixed rate of dividend the Governor-General-in-Council should take into account, not only the yield on Government long-term securities, but also the desirability of attracting the small investor in the mofussil and thereby securing a wide distribution of the shares [Sections 46 & 47]

SCHEDULED BANKS.

28. We approve the principle of clause 44 of the 1928 Bill, under which Scheduled Banks are required to maintain minimum balances with the Reserve Bank. Some doubts have been expressed as to the appropriateness of (a) the criterion for inclusion in the schedule, viz., Rs. 3 lakhs paid-up capital and reserves; and (b) the percentages prescribed in sub-clause (1) of that clause. We recommend that these two questions should be reconsidered in India together with the question whether the criterion should be based on the amount of deposits rather than on the paid-up capital and reserves. [Section 42]

RELATIONS OF THE RESERVE BANK WITH THE IMPERIAL BANK OF INDIA.

29. We recommend that the Reserve Bank should be required to enter into an agreement with the Imperial Bank on the general lines of clause 45 of the 1928 Bill, but we consider that the period of 25 years prescribed in that clause is too long, and we suggest that this point should be further considered by the Government of India. The initial period, however, should be of substantial duration, with provision thereafter for termination on several years' notice given by either side. The agreement should further contain a stipulation that its continuance is dependent on the maintenance of a sound financial position by the Imperial Bank.

30. With regard to the Second Schedule to the 1928 Bill, we approve of the provision that the Imperial Bank should be the sole agent of the Reserve Bank at all places in British India where there is a branch of the Imperial Bank of India and no branch of the Banking Department of the Reserve Bank. It should be understood that this only applies to branches that are in existence at the time when the Act comes into force. We also agree that the Imperial Bank shall not, without the approval of the Reserve Bank, open any branch in substitution for a branch existing at the time when the agreement comes into force. As regards other branches that may be opened in the future, the Reserve Bank should be under no obligation to employ the Imperial Bank and should be free to make its own arrangements. The agency terms provided for in paragraphs 2 and 3 of Schedule II will require reconsideration in the light of present circumstances, and we recommend that the Government of India should frame revised terms in consultation with the Imperial Bank.

31. It was submitted to us that, apart from the question of remuneration for services to be rendered, the Imperial Bank of India has a moral claim for compensation in respect of its disappointed expectations and of commitments which it undertook, by arrangement with Government, before the institution of the Reserve Bank was contemplated. It was suggested to us that such compensation should be given in the form of an allotment of a part of the share capital of the Reserve Bank to shareholders of the Imperial Bank. We do not consider that the question whether the Imperial Bank is

entitled to compensation is within the purview of this Committee, but, in any case, we cannot recommend any special allocation of Reserve Bank shares to the shareholders of the Imperial Bank, as this would be inconsistent with our scheme for the distribution of shares on the broadest possible basis throughout India. We have no doubt, however, that any claim for compensation which may be put forward by the Imperial Bank will receive due consideration by the authorities in India. If the claim is conceded we consider that the compensation should be given in some other form. [Section 45 & Schedule III]

GENERAL.

32. The Committee considered whether the powers to be given to the Governor-General-in-Council in various clauses of the Bill should, under the new Federal Constitution, be exercised by the Governor-General at his discretion or by the Governor-General on the advice of his Ministers. In agreeing to the recommendations recorded below, some of the members took into account the powers which they assume the Governor-General will possess under the new Constitution Act to intervene if on any occasion his special responsibilities are involved.

In clause 41 of the 1928 Bill (Suspension of Reserves) no agreement was reached between the three alternatives of the exercise of these powers—

- (a) by the Governor-General at his discretion;
- (b) by the Federal Government; or
- (c) by the Federal Government with the approval of the Governor-General at his discretion.

In clause 43 and 52 of the 1928 Bill (Forfeiture of Right of Note Issue and Liquidation) it was agreed that the powers should be exercised by the Federal Government with the approval of the Governor at his discretion.

In clause 53 (Regulations) it was agreed that the power should be exercised by the Federal Government.

33. In the preceding paragraphs we have dealt with all the major questions in respect of which we recommend any departure

from the provisions of the 1928 Bill. In other respects we recommend that the principles of that Bill should be followed in drafting the new Reserve Bank Bill. There are, however, a number of minor points on which we recommend modification of the provisions of the 1928 Bill, either as being consequential on our major recommendations or desirable on other grounds. These suggestions are set forth in Appendix I, and for convenience of reference we annex to our Report a copy of the 1928 Bill.*

APPENDIX I.

(See paragraph 33 of Report.)

Title and Preamble.—The reference to “Gold Standard Currency” will require amendment.

Clause 1 (1).—This clause will need to be similarly amended.

Clause 1 (2).—We have assumed that Burma, if separated, will continue to utilise the Indian currency system. If the decision ultimately reached is otherwise, an amendment of this sub-clause will be necessary.

Clause 1 (3).—A modification of dates will be necessary.

Clause 1 (4).—We recommend that this sub-clause should provide that Chapter III shall be in force for a period of 25 years, and shall continue in force thereafter until revoked or modified by further legislation.

Clause 2 (g).—The definition of a “gold standard country” will have to be replaced by that of a “sterling standard country.”

Clause 4 (8).—The scheme of allotment should be modified so as to provide for preferential allotment to the extent of two shares (the suggested minimum qualification for a vote) being given to applicants for two shares and over. A specific provision should also be made excluding Government from voting power in respect of any capital left in its hand.

Clause 8 (1) (a) (i).—We would amend this to read:—

“engaged in the direction of agricultural, commercial, financial or industrial activities, or”

* Not printed here.

Clause 11 (1).—Elected Directors should be removable by the Governor-General-in-Council on a resolution passed by the Board by a majority consisting of not less than nine Directors. Other members of the Board be removable by the authority which nominated or appointed them.

Clause 13.—Election rules should be drawn up by the Bank in the manner provided for in clause 53.

Clause 15 (1).—Provision will be necessary for calling local meetings to elect the Local Boards.

Clause 15 (2).—Bearing in mind the widespread practice of blank transfers in India we consider that members of Local Boards might be empowered to call upon any registered and resident shareholder to make a statutory declaration to the effect that he is actual owner of the shares registered in his name.

Clause 17 (1).—Provision should be made to enable the Bank to act as Bankers for Indian States.

Clause 17 (2) (c).—We would add after the words "Local Government" the words "or such securities of an Indian State as may be specified in that behalf by the Governor-General-in-Council on the recommendation of the Central Board of the Reserve Bank."

Clause 17 (3).—The reference to "Gold standard countries" shall be changed to "Sterling standard countries."

Clause 17 (7) and (8).—It has been suggested that in present conditions these sub-sections are unduly restrictive as regards the maturities of Government securities in which the Bank is permitted to deal. We recommend that this point should be further examined by the Government of India. An amendment similar to that already suggested above to sub-clause 17 (2) (c) might also be made to sub-clause 8.

Clause 17 (11).—The words "or Indian State" might be added after the words "Local Government" to admit of the Bank acting as agent for the Indian States.

Clause 17 (14).—We consider that external borrowing should be expressly confined to other Central Banks, and that in that event no limitation need be placed on the amount which it is permissible to borrow externally.

Clause 17 (16).—We would redraft this sub-clause as follows:—

“Generally, the doing of all such matters and things as may be incidental to, or consequential upon, the provisions of this Act and not prohibited by this Act.”

Clause 18.—We would substitute for the words “in the interests of Indian trade or commerce, or for the purpose of enabling the Bank to perform any of its functions under this Act,” the words “for the purpose of regulating credit in the interests of Indian trade, commerce, industry and agriculture.”

A further amendment of this clause has been recommended in paragraph 18 of our Report.

Clause 31.—Here, and in other clauses where it is referred to, the provision for “gold securities” should be replaced by “sterling securities.”

Clause 31 (3).—It is for consideration whether it should not be made clear that the “Government of India rupee securities” must be marketable securities.

Clause 31 (6).—This sub-clause will require amendment in view of the adoption of a sterling standard.

Clauses 32—37 will require modification in the light of our proposal for the omission of provision for a specific rupee redemption fund.

Clauses 38—40.—These clauses will require to be replaced by provisions on the lines indicated in paragraphs 19 and 20 of our Report.

Clause 53.—Amendments and additions will be required in consequence of certain of our recommendations.

REPORT OF JOINT COMMITTEE

ON THE

RESERVE BANK BILL

Notes on clauses.

[*Clauses 1 to 42 correspond to sections 1 to 42 of the Act, and corresponding sections to the remaining clauses are indicated within square brackets at the beginning of each clause.*]

Preamble.—We have made a verbal alteration to indicate more definitely what we consider to be the main purposes of the Bill.

Clause 1.—Although we agree that no specific date can be inserted for setting up the Bank, we desire to represent strongly to the Government that the Bank should be set up with all possible speed.

We have substituted the words "This Act" for "Chapter III" in sub-clause (4) because we do not see any reason why the other Chapters of the Bill should be treated differently from Chapter III.

Clause 2, sub-clause (b).—We considered whether it was necessary to frame a more comprehensive definition of "bank note" but decided that this was unnecessary and that the definition might be omitted.

Sub-clause (d).—We are of opinion that investments of external assets should be confined to Government securities of the United Kingdom and that purchases of foreign currency should be restricted to sterling. We have modified clauses 17 and 33 accordingly. The definition of sterling standard countries therefore becomes unnecessary.

Sub-clause (e).—We have altered the definition of "provincial co-operative bank" because the wording of the original Bill would not have covered the special conditions as regards co-operative bank in the United Provinces.

Clause 4, sub-clause (1).—In order to ensure that the shares of the Reserve Bank shall be widely held we recommend that the nominal value of each share should be reduced from Rs. 500 to Rs. 100.

Sub-clause (2).—It was represented to us that shares should not be allowed to be transferred from one register to another because this might lead to certain registers being denuded of a large number of shares, thus leaving the holders of a comparatively small number of shares to elect representatives to the Local Board and thereby to the Central Board. We have come to the conclusion that the advantages of free marketability are so great that transfers from one register to another should be freely allowed. We further consider that a contingency such as that referred to is extremely unlikely to arise and that a majority of the shares of the Reserve Bank when once allotted will be firmly held as a lock up investment by the original holders. If, contrary to our expectations, it is found that one register is accumulating a large number of shares while another is being denuded by a really substantial percentage, the Government should consider the question of bringing forward suitable amending legislation in order to rectify the position.

Sub-clause (3).—As regards the provisions of this sub-clause, while we are prepared to accord full equality of treatment to United Kingdom British subjects so long as they are normally resident in India on the ground that the United Kingdom Government gives the same reciprocal treatment to Indians resident there, the case is different as regards those Dominions which in various ways apply discriminatory provisions to the Indian Subjects of His Majesty. We feel that every occasion should be taken to assert the principle that the citizens of such Dominions should not be allowed equal privileges in India so long as their Governments maintain any measure of discrimination against Indians, and we have taken the opportunity of this particular Bill to give effect to this principle by recommending changes in sub-clauses (3) (b) and (3) (c).

Sub-clause (3) (c).—As regards this sub-clause, it has also been brought to our notice that the limitations on share-holding provided for in sub-clauses (3) (a) and (3) (b) might be defeated if subjects of a foreign country or of a British Dominion which has discriminated against India were to form themselves into a limited company for the purpose of holding shares in the Reserve Bank, and we therefore considered whether some provisions should be inserted to the effect that a company registered under the Indian Companies Act, 1913, should only be allowed to hold shares if a majority of the shareholders consisted of persons qualified under sub-clauses (3)

(a) and (3) (b). It appeared to us on further examination, however, that any such provision would be extremely difficult to enforce in practice owing to the constant variations which would be possible in the shareholders of any company. On the other hand, the alternative of excluding companies not registered in India altogether would go too far, for there are many private and public companies formed for the purposes of investment which might hold shares in the Reserve Bank. We have not therefore proposed the introduction of any restriction, but we recommend that the Government and the Central Board of the Reserve Bank should watch carefully for any signs of evasion of the purposes of sub-clauses (3) (a) and (3) (b) by the formation of companies by persons disqualified from holding shares. If any such abuse were to attain serious dimensions we think that the Government should consider amending legislation.

Sub-clause (4).—We have recommended the deletion of the discretionary power proposed to be vested in the Central Board to decline without giving any reasons to allot shares to any applicant or to register any transfer of shares.

Sub-clauses (5) and (6).—We consider that if the scheme for the election of Directors to the Boards of the Reserve Bank is to work satisfactorily the proviso to sub-clause (5) should be deleted and that sub-clause (6) should be amended in the manner suggested by us so as to restrict the sale by the Governor-General-in-Council of unallotted shares only to residents of the areas concerned, except as regards a part of the unallotted shares from the Delhi area which we have treated as a special case.

We have carefully considered the manner of allotment of shares in order to secure as wide a distribution of voting rights as possible and to provide fair facilities for investment by the less wealthy classes. In view of the reduction which we have recommended in the nominal value of each share we propose that five shares should carry one vote. In allotting the shares assigned to a register the Central Board should therefore in the first instance allot five shares to each qualified applicant who has applied for five or more shares. Of the remaining unallotted shares, shares up to the amount of one-half of the balance should be allotted to applicants for less than five shares. The balance still remaining should be allotted to appli-

cants for more than five shares, the distribution being so made as to secure the widest distribution of voting rights.

In order to avoid any possibility of difficulty for the Directors elected to the Boards of the Reserve Bank to acquire the prescribed number of qualifying shares, we recommend that a sufficient number of shares should be reserved by Government to be available for purchase by the Directors and members of Local Boards at par, and that these purchasers should give an option to Government to repurchase such shares at par when they retire.

We attach great importance to securing that as large a proportion of the population of India as possible shall become shareholders of the Reserve Bank and thereby take an interest in its efficient working. We therefore recommend that the widest publicity should be given to the prospectus of the issue of the Reserve Bank shares and that facilities for applications to investors should be given through Government post offices and treasuries.

Sub-clause (5).—We have come to the conclusion that a more equitable distribution of the original capital having regard to the population of the areas concerned be made in the following manner:—

Bombay register—140 lakhs;

Calcutta register—145 lakhs;

Delhi register—115 lakhs;

Madras register—70 lakhs;

Rangoon register—30 lakhs;

We have suitably amended this sub-clause.

Sub-clause (6).—We have split up this sub-clause into a number of sub-clauses. The original arrangement seemed unwieldy.

Clause 5.—It was originally provided in the Bill that any additional shares created should be assigned to the various registers in any manner fixed by the Central Board with the previous sanction of the Governor-General-in-Council and that the latter should also determine the manner in which such additional capital should be

allotted to the various areas. We have recommended that the distribution should be in the same proportions as fixed for the original share capital.

In view of the liability that would be placed on the Government by any increase in the share capital of the Bank we consider that the previous approval of the Central Legislature should be obtained to any increase in the share capital.

We have also made certain minor consequential amendments in this clause.

Clause 6.—It was suggested to us that branches of the Reserve Bank should be opened at Lahore, Cawnpore and Karachi. The principal reason for this suggestion was that the banks and the public at those places would not otherwise get the same facilities as would be available at places where there were offices and branches of the Reserve Bank. We wish to emphasize that at places, where it has no branch the Reserve Bank must through its agencies, provide facilities of the same adequacy as are available at places where it has offices or branches. We do not desire to fetter the discretion of the Reserve Bank in regard to the opening of branches as it should be guided in this matter by practical experience. We, however, recommend that in the Agreement between the Reserve Bank and the Imperial Bank of India it should be made clear that the former is not prevented by that Agreement from opening a branch anywhere if it considers this necessary or desirable.

We considered in this connection whether it would be proper to place a statutory obligation on the Reserve Bank to open a branch in London. We have noted that the present tendency among the Central Banks of the world is not to establish branches outside their own countries but to employ other Central Banks as their agents at foreign centres. While we should be unwilling to make any recommendation which could be construed as a failure to appreciate the importance of international co-operation between the Central Banks of various countries, we cannot accept the view that the practice of other countries affords an exact parallel to the particular case of India as regards representation in London. We therefore think that the Board should have absolute discretion to open a branch in London and we recommend that the provision requiring the prior assent of the Governor-General-in-Council should be deleted.

We recommend that, as in the case of the Imperial Bank, the Head Office of the Bank should be migratory, as we consider that otherwise there might be some risk of failure to secure evenly balanced consideration of the varying interests of different parts of the Indian continent. We have therefore amended the clause to provide that there shall be offices in Bombay, Calcutta, Delhi, Madras and Rangoon and have left it to the discretion of the Central Board how they should move their headquarters between them.

Clause 7.—We have made a small drafting amendment to bring out more clearly the intention of this clause.

Clause 8, sub-clause (1) (a).—We consider that one of the most vital points affecting the successful operation of the Bank will be the personality and qualifications of the Governor. It is in our view essential that he should be a man who will command the confidence of the public generally and particularly of banking and commercial circles, so that the policy of the Bank which will largely depend on his guidance, may be accepted as authoritative. We do not consider that these conditions will be fulfilled unless he is a man who has established a position in the business world and we have therefore recommended the insertion of a provision in a new sub-clause (2), to cover appointments, made both under clause 8 and clause 15, that he must be a man "of tested banking experience covering a period of at least five years." We have given full consideration to the arguments put forward by the Government members who, while not differing from our general appreciation of the position as stated above, have warned us that the actual definition of the qualifications which we have recommended may, on the one hand, prove ineffective for excluding unsuitable appointments, and, on the other hand, prove unduly hampering to the discretion of the appointing authorities and by their very rigidity exclude a man who might be exactly fitted for the post. They have pointed out to us that the commercial banking experience is not necessarily an adequate qualification for the head of a Central Bank, and that recent experience of other countries affords many examples of extremely successful appointments of men who would have been excluded by the words of our proviso. While recognizing the force of these arguments, we think it necessary definitely to provide in the statute for the exclusion of certain types of appointment which we should consider undesirable, and we are prepared to face the necessity for amending

legislation in the event of our words proving in practice to be unduly hampering.

We do not think it necessary to impose any similar restriction on the selection of the Deputy Governor because these appointments will afford a suitable opportunity for giving practical banking experience to men who are otherwise well qualified.

We consider that the responsibilities falling on the chief executive officers of the Bank will be such that it will from the very outset be necessary that there should be two Deputy-Governors and we have amended this clause so as to make their appointment obligatory. Many of us wished to add a provision that of the three highest posts thus created (*viz.*, the Governor and two Deputy-Governors) one at least should be an Indian. We have, however been informed that the official members in charge of the Bill are prepared to give a definite assurance in the Legislature that the Government will take account of our representations and that it will be its policy in making the first appointments and thereafter that at least one of the three shall be a qualified Indian. We are satisfied with this assurance.

We wish to make it clear that we accept the proposals of this clause as regards the appointment of the Governor and Deputy Governors on the understanding that there must be prior consultation between the Governor-General-in-Council and the Central Board before any recommendation is made—in short that the practice hitherto followed in the case of the appointment of the Managing Governors of the Imperial Bank, to which an exactly similar statutory provision has applied, should be observed.

Sub-clause (1) (b).—We considered whether any addition should be made to this sub-clause in the form of a direction to the Governor-General-in-Council as to the manner in which he should exercise his power of nomination. We have been assured that it is intended that this power shall be used to ensure that territorial or economic interests which have not secured adequate representation in the elections shall have such inadequacy corrected by this means. We do not consider it appropriate to embody in the statute any specific provision for the fulfilment of this intention, but we consider that in the instrument of instructions to the Governor-Genera

a passage should be inserted making it clear that this power should be exercised in the general manner indicated above and in particular to secure adequate representation of the interests of agriculture and co-operative banking if these interests had not secured such representation among the elected directors.

Sub-clause (2).—We have made an alteration in the wording here. In view of the Government's interest in the financial earnings of the Bank we consider that it should have a voice in fixing the salaries paid to the chief executive officers.

Sub-clause (4).—We recommend that nominated Directors should hold office for five years in the same way as elected Directors. We consider that the provision in its original form might tend to fetter their independence of judgment. We have proposed an amendment for the same purpose in clause 11.

Clause 9, sub-clause (1) (b).—We have filled in an obvious lacuna in this sub-clause and in the new proviso which we have added, we have indicated clearly for the guidance of the Central Board, the object with which the power of nominating three members to each local board has been conferred on that body.

Sub-clause (2).—We have reduced the value of a voting qualification from two shares of Rs. 500 each to five shares of Rs. 100 each.

We have included a provision for the exercise of shareholders' votes by proxy which is undoubtedly necessary. We have, however, thought it desirable to include certain limitations as to the persons who may hold proxies for this purpose, and also to introduce words which will make it clear that a shareholder should not be allowed to give a general proxy, and that proxies should not be accepted if made out under a general power-of-attorney.

Sub-clause (4) and (4-A).—We consider it essential for the convenience of the shareholders that the Bank should give adequate notice of elections to the local boards and publish a list of shareholders which should be available on purchase. For the latter purpose the Bank must have power to suspend the registration of transfers for a reasonable period preceding the election. We have made amendments to give effect to these purposes.

The other amendments suggested by us in this clause are of a drafting nature only.

Clause 10, sub-clause (1).—We have omitted certain words in sub-clause (1) (a) and deleted sub-clause (1) (b) which appeared to us to be unnecessary as the qualifications are sufficiently defined by sub-clause (1) (a).

Sub-clause (2).—We have added in this sub-clause certain additional disqualifications taken from the Indian Companies Act which seem to us to be necessary.

We have omitted the proviso to this sub-clause as we considered that the objections to a State official being appointed would be no less than to any other Government official.

Sub-clause (2-A).—We have proposed the insertion of a new sub-clause on the lines of a similar provision in the Imperial Bank of India Act.

We have also suggested in this clause certain minor amendments of a drafting nature.

Clause 11, sub-clause (1).—For the purpose explained in our note on clause 8 (4) we have amended the proviso to this clause so as to place nominated directors on the same footing as elected directors.

Sub-clause (2).—We have reduced the value of qualifying shares from Rs. 10,000 to Rs. 5,000. We consider the similar figure adequate.

We have added a provision at the end of this sub-clause for the vacation of office in the case of continued absence. It is of the highest importance that Directors and Members of Local Boards of the Reserve Bank should be ready to give adequate attention to their responsibilities.

Sub-clause (3).—We have altered the wording of this sub-clause so as to make the provision mandatory instead of discretionary. We have also deleted as unnecessary certain words in this sub-clause regulating the period within which directors should be required to acquire the prescribed number of qualifying shares as the

addition which we have suggested in new clause 4 (8) should obviate any difficulty.

Sub-clause (3-A).—We have inserted a new sub-clause (3-A); we feel that in the interests of the Bank a provision on these lines is desirable.

Sub-clause (4).—We have increased the period within which a member of the Legislature must demit office. To limit this to one month would, in our opinion, present practical difficulties.

Clause 12, sub-clause (1).—We think that the initiative in this matter should come from the Central Board. We have amended this sub-clause accordingly.

Sub-clauses (3) and (4).—We have rearranged the provisions of these sub-clauses as it did not appear to us that in their original form they provided properly for maintaining at all times the representative nature of the elected members of the Central Board. The effect of our proposals is that a vacancy of an elected member in the Central Board will be filled in the following manner: first an election to fill his vacancy in his Local Board and then an election by the newly completed local board to fill the vacancy in the Central Board. In the case of a vacancy of an elected member of a Local Board who is not also a member of the Central Board we consider that it would suffice for such a vacancy to be filled by co-option until such time as the Local Board is called upon to fulfil its function of electing a member to the Central Board. Before that is done, the co-opted member should be replaced by an elected member.

Clause 13, sub-clause (1).—We have made an amendment consequential to our amendment of clause 6.

Sub-clause (1-A).—We think that provision should be made so as to enable any three Directors to convene a meeting of the Central Board. We have added this new sub-clause accordingly.

We considered whether it was necessary to provide what should be a quorum for a Directors' meeting, but have agreed that this matter should properly be governed by regulations to be made under clause 52.

Clause 14.—We have made a consequential amendment corresponding to our amendment of clause 6. We have followed the procedure of the Imperial Bank of India.

Clause 15, sub-clause (3) and (4).—We have redrafted these sub-clauses on lines which we consider to be a distinct improvement on the original draft of these sub-clauses, by providing both for a more even flow of replacement and for a quicker replacement of nominated by elected directors.

As regards the general purpose of this sub-clause the non-official members of the Committee have made it clear that they would not consider anything less than 75 per cent. of the voting directors as affording a proper representation of Indians. We have received an assurance on behalf of the Government from the Government members of the Committee that the Governor-General-in-Council will exercise his powers so as to ensure the proper representation of Indians on the first Board.

Clause 17, sub-clause (1).—We think that it is desirable to make it clear that the Reserve Bank can accept money on deposit from local authorities. We have amended the sub-clause accordingly.

Sub-clause (2) (a).—We have added the word “on” to enable the Bank to discount rupee import bills in the event of such instruments coming into existence in the future as contemplated by the Central Banking Enquiry Committee.

Sub-clause (2) (b).—We consider that the period of six months is unduly restrictive in the case of agricultural bills and, following the practice in the United States of America, we have raised the period of six to nine months. We have also omitted the proviso in the original clause as being undesirable in the present conditions of India.

Sub-clause (3).—We have re-arranged this sub-clause and divided it into three sub-clauses 3 (a), (b) and (c). In sub-clause (3) (a) we have restricted the operations of the Reserve Bank to scheduled banks only, as we do not think the Bank would normally require to transact such business with other persons, while we have separately provided in clause 18 for relaxing the restrictions in this sub-clause on special occasions.

On the other hand in sub-clause 3 (b) we have removed any restrictions on the persons with whom the Bank may deal outside India in sterling bills.

We have altered this sub-clause consistently with the recommendation recorded in our note on clause 2 (d) that operations in foreign currency should be restricted to sterling currency of the United Kingdom.

Sub-clause (4).—We consider that in ordinary circumstances dealings under this sub-clause should be restricted to banks, public authorities and Indian States. We have made provision in clause 18 for its extension where this is considered desirable on special occasions.

Sub-clause (4) (b).—We have included silver.

Sub-clause (4) (c).—We have omitted the proviso for the same reasons which led us to omit the proviso to sub-clause (2) (b) of this clause.

Sub-clause (4) (d).—We have omitted this as unnecessary in consequence of the change made in 17 (4) (c).

Sub-clause (4) (e).—We have omitted the proviso because we consider that there is little likelihood of the bill habit developing within five years to such an extent as to make it possible to discontinue this practice within that time.

Sub-clause (5).—We consider that the provision in its original form might lead to undue latitude. In an extreme case it would be permissible for Government to borrow in this way for a period of fifteen months. We consider that such advances should normally, as soon as possible, be converted into treasury bills which should be offered on the open market even though the Reserve Bank may take them up. We have therefore limited the period to three months. We have enlarged the scope of this clause so as to include advances to such Local Governments as may have the custody and management of their own provincial revenues.

Sub-clause (6).—We are informed that bank post bills are not made payable elsewhere than at the office of issue and have amended the sub-clause so as to state the existing practice correctly.

Sub-clause (7).—We consider that in view of the limitation of holdings to securities of the British Government [*vide* our note on sub-clause (2) (d)] this provision is unduly restrictive and that the Bank should be empowered to purchase such securities up to a maturity of ten years. We must make it clear that our intention is that this should be merely an enabling clause and that in practice the Bank should arrange for its holding of securities to be as liquid as possible.

Sub-clause (8).—We consider that the sub-clause as originally drafted was unduly restrictive and would not allow sufficient facilities for open market operations by the Bank. We have therefore modified the amounts in the proviso but wish to make the same point here which we did with reference to sub-clause (7), namely, that these figures are to be regarded as a maximum and that in ordinary circumstances the Bank must keep its security holding as liquid as possible and operate well below these limits. We also consider that, in view of recent floatations by provincial Governments, there is no reason for restricting the maturity of securities of a Local Government to ten years. As regards securities of Local Authorities and of States in India we think it better that instead of limiting these according to their maturity, their eligibility should be subject to the general overriding approval of the Government of India which would enable each particular case to be considered on its merits. We have amended the sub-clause accordingly.

We also wish to provide that where a security is fully guaranteed both as to principal and interest by any authority, it shall be considered for all purposes as the equivalent of a security of such authority.

Sub-clause (9).—We have not restricted the operation of this sub-clause to scheduled banks or public authorities because we consider that there might be cases in which such restriction would operate inconveniently in practice. At the same time we wish to make it clear that in our view this power should not be exercised by the Bank so as to compete in its normal business with the commercial business of other banks. It should be the duty of the Government to watch this and to see that the interests of other banks are in practice protected.

Sub-clause (13).—We see no reason why this should be restricted to sterling standard countries. It is desirable to promote co-operation between Central Banks, and we therefore consider that the Reserve Bank should be empowered to act as the agent of any Central Bank, and *vice-versa*.

Clause 18.—We have added words to this clause so as to make it clear that although the exercise of these powers should not necessarily be regarded as limited to occasions of so critical a nature as to justify their description as an emergency, nevertheless they are not to be used for the normal operations of the Bank and should be restricted to special occasions. We have also modified it so as to provide for the delegation of the powers of the Board to a committee of the Board as well as to the Governor. We have further thought it desirable to make it clear that although in order to make quick action possible the Board may delegate its special powers under this section to a committee or to the Governor, nevertheless such delegated powers should not normally be utilized without previous consultation with the Board, and that if in cases of special urgency such previous consultation is impossible, the members of the Board shall be informed at once so that, if they think fit they can convene a special meeting to have the policy considered and decided.

We have also made amendments consequential on the limitations which we have suggested in our amendments in sub-clause (3) and sub-clause (4) of clause 17.

Clause 19, sub-clause (4).—The word “unsecured” appears to convey very little meaning without qualification and we think that it should be omitted, thus leaving the powers to make loans and advances exclusively regulated by the clauses which give powers in this respect.

Clauses 20 and 21.—We think that it should be made clear that the Governor-General-in-Council should have the final power of decision regarding the terms on which these transactions are to be carried out in the unlikely event of a failure to settle them by agreement. We also consider that the Agreement to be entered into with the Reserve Bank, in view of its importance, should be laid on the table of both Houses.

Clause 21, sub-clause (2).—We have omitted the words “in India.” They appear to us to be unnecessary, because in present

circumstances neither the Governor-General nor Local Governments can, as such, float loans outside India, and, should they acquire this power in the future, an amendment would be necessary, if these words were retained, to have them removed.

Clause 22.—We do not see any need to use the expression “paper money.” We also think that the limitation to one year is unduly rigid and might prove inconvenient in practice, while, on the other hand, we cannot see any objection to the Bank being allowed to use Government currency notes until the stocks are exhausted.

Clause 24.—We consider that the clause in its original form was unduly rigid and might have proved inconvenient.

Clause 25.—We have added a few words so as to make it clear that the primary duty for making proposals as to the form and design of notes rests with the Central Board. We consider that sudden and drastic changes in the design and form of notes should not be made.

Clause 27.—There is at present no machinery for the sterilization of notes and it is unlikely that any will be introduced in view of the comparative simplicity of destroying notes and issuing new ones. We have therefore omitted the first part of this clause.

Clause 28.—We have retained this clause pending examination by a small committee of official and non-official experts, which should meet as soon as possible, of the whole question of the rules regarding payment on lost, stolen or mutilated or imperfect currency or bank notes. We may add that if our recommendation that the Reserve Bank should offer free remittance facilities to scheduled banks between their branches is accepted, the question of the rules referred to above may lose much of the importance that is now attached to it.

Clause 30.—We consider that the remedy proposed in the clause in its original form was inappropriate. If the Bank failed to comply with the requirements of Chapter III or of any other provision of the Act and if, in consequence, it was decided that it should forfeit the right of note issue, it is hardly conceivable that it would command the confidence of the public to such

an extent as to be allowed to remain in charge of the other functions entrusted to it by the Act. We therefore consider that in such circumstances a complete reconsideration of the position will be necessary. It is not possible to lay down in advance exactly what steps will be necessary nor do we feel entitled to assume that the liquidation of the Bank will necessarily and inevitably be the only possible course. We therefore think that the right form of provision is one which will give the Government power to make emergency arrangements and lay upon it the duty of consulting the Legislature at the first opportunity, after which further and permanent measures can be settled. We have drafted the clause accordingly.

We think it important to record our view that if a failure by the Bank to fulfil its obligations under the Acts is the result of a national emergency or a crisis arising from factors over which the Bank had no control, it would be the duty of the Government to use the resources of the State in maintaining the Bank and tiding over the difficulty.

Clause 31.—We have inserted the words “including hundis” after “drafts” in the proviso so as to make the wording of the proviso conform to the wording in the body of the clause.

Clause 32.—The powers of a Presidency Magistrate or a Magistrate of the first class to impose fines are limited to a maximum of Rs. 1,000, so that the wording of the clause as it stood was self-contradictory. We have altered it to make the meaning clear.

Clause 33, sub-clauses (1) and (2).—As we stated in our note on clause 2, sub-clause (d), we consider that the fiduciary external assets should be limited to securities of the United Kingdom.

Sub-clause (2).—Some of us have wished to prescribe (a) for the amount of gold at present held by Government in its currency reserves—namely, about 44½ crores—being retained as a minimum, and (b) for maintaining the gold in the reserves at a minimum percentage of 20 per cent, to the liabilities of the issue department. As against this it has been argued by the Government members (a) that even if it might be thought right as a

matter of policy, at least in present circumstances, not to part with any of the present stocks of gold, nevertheless a statutory prohibition against dealing in any way with any of the gold may prove unduly hampering on the Bank and so weaken its power to defend the position in case of need that in practice the limitation might prove to be not an added safeguard for the preservation of the reserves but an actual source of weakness, (b) that any percentage provision is in present circumstances entirely unsuitable, for it might force the Bank actually to buy gold at times when such a purchase would involve in any case a heavy book loss (owing to the fact that gold has according to the accepted provisions of this Bill to be valued at a price which is about 33 per cent. below its present market value) and possibly an ultimate real loss. Those of us who have supported the former views are prepared to accept a compromise in the form of increasing the minimum to 40 crores and this the Government members have stated that they are prepared to accept as part of a general plan which is in other respects satisfactory.

Sub-clause (3).—We have omitted the words “drawn and” as a consequential amendment to the amendment which we have suggested in 17 (2) (a). We also consider that the limitation of rupee securities might prove unduly restrictive. We have therefore altered the word “less” to “greater” and have made additional provision for a further 10 crores with the permission of the Governor-General-in-Council.

Sub-clause (6).—We have omitted sterling securities of the Government of India. We do not consider that these are assets which could properly form part of the external reserves, and there is no need even for their temporary inclusion.

Clause 35.—We have added a proviso to make it clear that at the time of transfer the whole of the gold coin and bullion held by the Governor-General-in-Council in his reserves should be transferred to the Bank.

Clause 36.—As a result of the provisions of this clause which differ from those of the earlier Reserve Bank Bills, the Government will be left in possession of a large part of the stocks of silver bullion and rupees which it now holds. The policy of disposing of such silver and the methods of accounting for its proceeds involve im-

portant issues which the Legislature should be given an opportunity to consider. We have dealt with this question in the final paragraph to this Report.

Sub-clause (1).—We have altered 1-10th to 1-6th because we consider that, particularly in view of the obligations which we are putting on the Bank in clause 39 to make its notes fully convertible into silver rupees, a proportion of 1-10th is too low.

Sub-clause (2).—For the same reason we have altered “may” in sub-clause (2) to “shall.”

We have also substituted the words “securities of the British Government” for “securities of sterling standard countries” consistently with our proposals under clause 33.

Clause 37.—The small amendments in this clause is consequential.

We have added a proviso to ensure that the minimum gold holding specified in clause 33 (2) shall in any case be retained as the last reserve. We consider that if the currency reserves had to be drawn upon so heavily that they were reduced to 40 crores a situation would have been created which would in any case require reconsideration of the whole position. In that event we think it of the greatest importance that the Bank should possess at least this minimum holding of gold as a nucleus of reserves with which to maintain the currency position on the new basis which might be settled after such reconsideration. It is because we consider that a stock of gold will in such circumstances be the most valuable nucleus that we think this minimum should be preserved in the shape of gold rather than in sterling securities. In making this recommendation we do not imply that a provision of this nature, earmarking a certain portion of the currency reserves for special treatment, is necessarily suitable as a permanent provision, and we recognise that it may have to be reconsidered when the occasion contemplated in the preamble to the Bill arises and it is possible to frame measures for establishing the Indian monetary standard on a permanent basis.

Clause 38.—We have omitted the word “new” which seems irrelevant in this context.

Clause 39.—We consider it essential that provision should be made to ensure the legal convertibility of the notes of the Reserve Bank into silver rupees. Even though on theoretical grounds such a provision might seem undesirable, we feel that it is much more important to ensure that confidence in the notes of the new institution will not be endangered.

It is, in our view, implicit in this clause that the Bank will create sufficient branches, offices and agencies throughout the country to enable it to fulfil its obligations to supply different forms of currency so as to meet the reasonable needs of the public.

Clauses 40 and 41.—In accepting the provisions of these clauses we have read them together with the preamble and have accepted the conclusions of the London Committee which we think it advisable to restate:—

“In the prevalent state of monetary disorganization throughout the world, it is impossible to incorporate in the Bill provisions which would necessarily be suitable when monetary systems generally have been recast and stabilised. In these circumstances we consider that the only sound course for India is to remain on the sterling standard. On this basis the exchange obligations incorporated in the Bill must necessarily be in accord with the rupee sterling ratio existing *at the time when the Bill is introduced*. The statement does not, however, imply any expression of opinion on the part of the Committee on the merits or demerits of the present ratio. The ratio provisions in the Bill are designed to make it clear that there will not be any change in the *de facto* situation by the mere coming into operation of the Reserve Bank Act.”

The Government members have made it clear to us that their intention in introducing this Bill is merely to create the machinery of a Central Bank and not to ask for any special confirmation from the Legislature of the present ratio. We are prepared to accept the view therefore that the ratio issue does not arise in the present Bill.

Clause 41.—We have added the second proviso with a view to protect the interests of the Bank.

Clause 42.—This is a wide and very difficult clause as it covers entirely new ground and the conditions in India are so diverse that its provisions must be regarded as tentative and may have to be modified by legislation after practical experience has been gained. We have had particularly in mind a certain modification in the form of an extension of the scope of this clause and for this reason have added a new clause 49-A making it incumbent on the Bank to submit proposals for legislation with particular reference to the conditions of indigenous banking.

Apart from this, we consider that the clause in its original form would have been likely to prove unduly rigid in its operation; and in particular that to calculate the average holdings of the scheduled banks from monthly returns might have involved the imposition of penalties in an inequitable manner. We have therefore substituted weekly returns based on the actual figures of a particular working day. We discussed the percentages of $7\frac{1}{2}$ and $2\frac{1}{2}$ with the banking experts. They thought that those proportions were too high but agreed that 5 and 2 would be practicable. We agree and have reduced the proportions accordingly. We further recommend the exclusion of certain liabilities of a more or less technical character from the liabilities on which the minimum deposit has to be calculated. In addition we consider that loans from the Reserve Bank should be excluded from the liabilities as calculated.

In sub-clause (7) we have come to the conclusion that the limit of 3 lakhs is too low and might result in the inclusion of petty firms which do not really fall within the intention of the section. We have therefore increased 3 lakhs to 5 lakhs. We considered whether it would be possible to include together with capital and reserve the amount of deposits as a criterion but came to the conclusion that they are so variable that this would be impracticable. In our view any alteration on these lines must be considered in the light of practical experience. We also consider that when the question of the inclusion of companies is being considered, special care should be taken that companies are not included which are not performing what is really banking business. This should not be difficult for the Bank to decide with reference to each particular case, though it is difficult to draft a general definition of what is banking business and we have not attempted to do so. It may later be

found, as a result of practical experience, possible to incorporate such a definition in the statute. We have made consequential amendments in the Second Schedule but we would emphasise the fact that the Schedule is merely illustrative and that it has been compiled on admittedly inadequate material. After the passing of the Bill early intimation should be sent to the companies included in it or to any others the inclusion of which would seem to be indicated by later statistical returns so as to give them ample time to show cause if they consider that they should not be included.

In connexion with this clause we have also considered several representations made by banks and other parties. One is that the repayment of these compulsory deposits should be guaranteed by Government. We are not prepared to recommend such a provision. It was also suggested that savings bank deposits should be reckoned as time liabilities for the purpose of calculations in sub-clause (1). We consider that the terms on which savings banks are run by various banks vary so widely that it would be impossible to frame any general rule.

In view of the fact that the Reserve Bank will only have a few offices of its own, it will obviously be necessary for the scheduled banks to keep accounts with the Reserve Bank at branches of the Imperial Bank as agents for the Reserve Bank. Balances held on such accounts will of course be taken into account in calculating the amount of any scheduled banks' deposits with the Reserve Bank.

Sub-clause (4).—We are informed that it may be difficult for banks in certain parts of the country which have branches in the interior having no easy communication with their head offices to submit the returns prescribed in this clause within the allotted time. We have provided that in such cases the Reserve Bank should have power to extend the period for the submission of the returns.

[SECTION 43] *Clause 42-A.*—We consider that a consolidated statement based on the returns collected under clause 42 should be published on the ground that they should be of interest and value to the public. Though the returns of individual banks must obviously be regarded as highly confidential, this consideration does not apply to statistical returns compiled from them all.

To make the returns more complete for statistical purposes we consider that the Government should also furnish the Bank periodically with figures of the amounts of rupee coin, subsidiary coin and notes held at treasuries and sub-treasuries.

[SECTION 44] *Clause 42-B.*—We considered whether provincial co-operative banks should be included in the Schedule, but came to the conclusion that though there may be considerable advantages in such a course, the time is not yet ripe for it. We consider, however, that if co-operative banks are to be given the facilities indicated in clause 17, they should submit the same returns as those prescribed for scheduled banks so as to enable the Reserve Bank to see that they are maintaining a satisfactory position.

[SECTION 45] *Clause 43 and the Third Schedule.*—We have given very careful consideration, after discussion with the representatives of the Imperial Bank and other bankers, to the various issues involved in the Agreement to be entered into between the Reserve Bank and the Imperial Bank of India. We think it necessary to record our views under the following three main headings:—

(a) *Remuneration for handling Government Account.*—On the basis of the figures supplied to us we have reached the conclusion that the terms suggested are reasonable and represent no more than is necessary barely to cover the actual cost incurred by the Imperial Bank in performing these services. We are assured by the Government representatives that these figures were based on detailed and audited statements supplied by the Imperial Bank and accepted by the Finance Department after careful examination of the method of distribution of over-head charges. We think, however, that it would be satisfactory to the Legislature that the basis on which the costs have been calculated should be independently examined by the Auditor-General and that a report by him should be presented by the Government when these provisions of the Bill are under discussion indicating whether in his view the basis on which the costs have been calculated is reasonable and the results of the calculations correct.

(b) *Compensation for the keeping open of branches.*—We consider that the method proposed in the Schedule of keeping specified minimum balances with these branches either free of interest or at

concessional rates is not a satisfactory method for fixing compensation under this head, for the value of such balances must vary greatly according to the rates obtainable for the use of money. It appears to us much more satisfactory that a definite annual payment should be made, based on the losses actually incurred. At the same time it would not be justifiable to settle this compensation for a long period on the basis of present results because it must be anticipated that with the general development of banking in India these branches will become progressively more remunerative. We therefore propose a diminishing scale leading to a termination of all compensation after 15 years. We consider that the figures proposed are reasonable on the basis of the statements supplied to us as to the actual cost of maintaining these branches but in this case also we recommend that an independent check on the calculations should be made by the Auditor-General and included in the report already referred to.

(c) *Period of agreement.*—We have taken into account the fact that as the compensation for maintaining the unremunerative branches would terminate after 15 years, there would be some advantage to the public in continuing the Agreement beyond 15 years so as to prolong the period during which the Imperial Bank remains under an obligation not to close any of these branches. On the other hand, we consider, first, that a period of 15 years is in any case too long for a commitment of this important nature, and, secondly, that inasmuch as the commission payable for handling Government Account is intended to be based on the actual cost of the services rendered, the rate of commission should be open to recalculation at a comparatively early date. Taking all the foregoing considerations into account, we recommend that the Agreement should run for 15 years subject to termination on five years' notice given at any time after that period, and that the commission payable for handling the Government Account should be reviewed at the end of ten years and thereafter at five-yearly intervals. It should be made clear that the object of such review would be to settle the actual cost to the Imperial Bank, that the commission should be settled on this basis, and that the calculations shall be subject to expert accounting investigation. In the event of any difference of opinion as to terms arising between the Reserve Bank and the Imperial Bank, we recommend that power to settle the terms finally should be vested in the Governor-General-in-Council.

In view of all the arrangements as regards staff, etc., involved we consider that a period of five years for notice of termination is no more than reasonable.

Lastly, there is one important point which should be made clear in this agreement, namely, that it should not in any way preclude the Reserve Bank from opening its own offices or branches at any place where the Central Board may, as a result of experience, find this to be expedient in the interests of the public notwithstanding the fact that the Imperial Bank has up to then acted as its agent at such places.

[SECTIONS 46 & 47] *Clause 43-A and Clause 44 (included in Chapter IV).*—We think that the provision in clause 44 for the building up of a Reserve Fund would throw an unnecessarily heavy initial burden on central revenues. At the same time we consider it highly desirable that an adequate Reserve Fund should be available to the Bank in its early years, the main purpose of such a Reserve Fund being to provide a margin against possible depreciation in securities held either in the Issue or Banking departments of the Bank. After careful consideration we have come to the conclusion that the most satisfactory solution would be for Government to start the Bank with the full reserve proposed in the Bill by making over to it the sum of 5 crores in short-dated Government securities—probably treasury bills.

The arrangements for distribution of profits should then provide that this Reserve Fund will always be maintained at the figure of 5 crores.

This change does not involve any substantial recasting of the provisions of the original Bill, all that is necessary being to omit that part of the provisions which covered the period until the reserve had been built up to 5 crores. We have amended the clause accordingly and also included a provision for the initial transfer of the 5 crores Fund by Government, so that this transaction may be covered by a vote of the Legislature.

[SECTION 48] *Clause (44-A).*—We consider it desirable to make provision for the exemption of the profits of the Bank from income-tax and company super-tax, while at the same time providing that the shareholders will have to pay income-tax on the dividends which they actually receive.

[SECTION 49] *Clause 45.*—We think it desirable that the Bank should have power to discount agricultural bills at concessional rates which may be below the rate for the purchase or rediscount of commercial paper. We have therefore altered the words “minimum rate” in this clause to “standard rate.”

[SECTION 51] *Clause 47.*—We think that the Governor-General-in-Council should also have discretion to appoint the Auditor-General as auditor under this clause if he so desires. We have amended the clause accordingly.

[SECTION 53] *Clause 49.*—We have provided that the annual accounts transmitted to the Governor-General-in-Council by the Reserve Bank should be accompanied by a copy of the Directors' report on those accounts.

[SECTION 54] *Clause (49-A).*—Though we consider it important that a start should be made on the lines indicated in clause 42, we recognize that the developments at this stage must be tentative. We therefore consider it important that a statutory provision should be included, making it incumbent on the Bank to report at the earliest practicable date and in any case within three years and, if necessary, to prepare proposals for legislation so as to include indigenous bankers and other parties doing banking business in India who are not at present included in the Schedule within its scope subject to such restrictions as the Board may consider necessary. In this report it should also include proposals for the closer linking of agricultural enterprise with the machinery of the Reserve Bank, possibly by the establishment of a separate rural credit department.

We also think that in this clause it would be desirable to include a provision embodying in a more concrete form the principle recognised in the preamble, by placing a definite obligation on the Board to put up proposals for a more permanent currency system for India when they consider that the prerequisites indicated in the preamble have been fulfilled, that is to say, the international monetary position has become sufficiently clear and stable.

[SECTION 56] *Clause 50, sub-clause (5).*—We have added this sub-clause to fill up a lacuna in the clause as originally drafted.

[SECTION 57] *Clause 51.*—Some of us are of opinion that the

Governor-General-in-Council should have power to purchase the shares of the Bank at the end of 25 years if in the interests of the country it is then considered desirable to run the institution as a State Bank.

Clause 51, sub-clause (1).—This sub-clause as originally drafted left it doubtful in whom the power to initiate liquidation proceedings was vested.

Sub-clause (2).—We have added a proviso to limit the amount of the surplus assets which would go to the shareholders in the event of liquidation of the Bank in the early years. We consider that, without some limitation of this nature, the shareholders might, particularly as a result of the proposals mentioned in the note on clause 44 for starting the Bank off with a Reserve Fund of 5 crores, be placed in an unduly favourable position in the event of early liquidation of the Bank. Unlikely though that contingency may be, we have thought it necessary to provide for it. It will be noted that according to the original proposals in the Bill shareholders would have been entitled to receive 25 per cent. of the “surplus assets” on liquidation, and as according to the proposals for distribution of profits these surplus assets could hardly have exceeded the maximum amount of the Reserve Fund, namely, the amount of the share capital of the Bank, the shareholders would under the original proposals also have had no expectation of a higher profit on liquidation than 25 per cent.; and this position would only have been attained after several years of working.

[SECTION 58] *Clause 52, sub-clause (2) (mm).*—We have added the power to make regulations regarding the fees to be paid to Directors and to members of the Local Boards.

Sub-clause (2) (mmm).—We think it desirable to make special provision for regulations regarding the relations of scheduled banks with the Reserve Bank. In particular, it may be found necessary or desirable for the Reserve Bank to call for further information from them.

Sub-clause (2) (mmmm).—Though the management of clearing houses is one of the usual functions of a Reserve Bank, we think that it would be as well to make specific provision for the regulations which the Bank will issue in this matter.

Sub-clause (3).—We have added this sub-clause to make it clear that copies of any such regulations will be available to the public on payment.

4. The Government put before us a memorandum which we have attached to this Report [Appendix A] containing their proposals for dealing with three important matters which were recommended for further consideration in India by the Committee which considered the Reserve Bank proposals in London. These matters are:—

- (1) The method for dealing with the surplus stock of rupees which are at present held in the Government's currency reserves, but which will under the plan embodied in the present Bill be retained by Government.
- (2) The amount of external reserves which should be handed over by Government initially on the formation of the Bank.
- (3) The method for dealing with any profit or loss which may result from a revaluation or a sale of the stocks of gold to be handed over to the Bank by Government.

The first of these questions arises as a result of the general plan embodied in clause 36 of the Bill—the effect of which is that, contrary to the plan embodied in the earlier Bills, Government will retain the responsibility in connexion with the silver coinage so that the Bank will not have to carry stocks of silver coin surplus to its own requirements, or be concerned with sales or purchases of silver bullion or any loss which such transactions may involve. While we are prepared to state that we approve of this general plan, we have not had time fully to consider the details of the Government's proposals as regards the methods for dealing with the stocks of silver to be retained by Government nor as regards the matters arising under the other two heads. In the circumstances, as we are bound to present our report on the Reserve Bank Bill by November 20 and shall by that act have completed the function laid upon us by the Legislature in this matter, we can only recommend that the details of the Government proposals should be further studied by the Legislature by such means as it thinks fit.

APPENDIX A.

MEMORANDUM BY THE GOVERNMENT REGARDING DISPOSAL OF SURPLUS SILVER.

In paragraph 21 of the report of the London Committee on Indian Reserve Bank legislation they made certain recommendations regarding the transfer of rupee coin between Government and the Bank which have been embodied in clause 36 of the Reserve Bank of India Bill, 1933, and as regards certain matters arising out of these recommendations the Committee proposed that they should be further examined in India.

(a) Heading (2) of the arrangement recommended was as follows:—

“Any surplus of rupees which this arrangement would enable Government to remove from the reserve should be held by Government in a separate account, the silver being held as bullion, not as coin. *Subject to further consideration by the Government of India* any proceeds from the realisation of such rupees should not be used, except for the purpose specified in (3) below.”

The purpose thus specified was the “payment of full value” (40 per cent. in external assets) for any further surplus rupees transferred by the Bank to the Government.

(b) The concluding recommendation of paragraph 21 was as follows:—

“We do not propose any alteration in the figure (of external reserves) in the new Bill, but we think that this proportion may not necessarily be adequate and we recommend that the question whether a higher proportion is required at the outset should, before the Bank is set up, *be carefully considered by Government* in the light of all the prevailing circumstances.

2. In paragraph 25 of their Report they also remarked:

“The possibility would obviously be present that the Bank might gain a large premium on the gold handed over to it by Government. The question as to how such premium

should be dealt with, specially in the event of sales being made in the intermediate period pending revaluation of the gold, raises complex practical issues which we have not fully discussed. - In principle such profits should belong rather to the Government than to the Bank, but our view is that this unrealized margin should in some way or other be kept available for strengthening the position of the currency reserves. *We recommend that detailed proposals should be worked out by the Government of India for consideration during the passage of legislation on this subject.*"

3. The points thus referred for further examination raise two problems which are closely connected and which, in the opinion of the Government of India, should be treated together. The following appear to be the main considerations which should be taken into account:

(a) The proceeds of any sales of the surplus silver (to be retained by the Government under the arrangement proposed) and of any surplus realized on the sale or revaluation of the gold (to be transferred to the Bank) would represent assets originally accumulated against the issue of currency and as part of the ordinary currency business of Government. Such assets should therefore be regarded as primarily earmarked for currency purposes.

(b) It does not however necessarily follow that such assets should be directly or immediately absorbed in the currency reserves of the Bank, because—

- (i) The Government must retain a separate reserve against the liability imposed upon it to pay full value for further surplus rupees which it may be required to take over from the Bank under the proviso to sub-clause (1) of clause 36 [Cf. also the recommendation of the London Committee referred to above in paragraph 1 (a)].
- (ii) Reasonable account must be taken of the general financial position of the Government which may react on the currency position. Looking at the matter from a practical point of view, it may not be good policy to accumulate excessive funds in specially earmarked reserves, be-

cause in the first place this may involve a substantial loss of interest seeing that in normal circumstances it will only be possible to earn a much lower rate of interest on such funds than the Government has to pay on its own public debt, and, in the second place, the general effect on India's credit of repaying outstanding loans may be of greater value than adding to the accumulated reserves (*Cf.* as an actual example in the past the repayment by the Government of India from its own resources of the £ 15,000,000 sterling loan in January 1932).

- (iii) If the Bank is started off initially with reserves in gold and sterling assets which afford amply adequate cover against its issue liabilities, the addition from outside of still further external assets would serve no useful purpose and might even put the Bank into a position of being able with undue ease to expand the currency against rupee assets when that was not justified.

4. The Government of India have carefully weighed the above considerations and I am directed to place the following scheme before the Committee for its consideration:—

(a) The silver which will be retained by Government, whether in rupee coin or bullion, should be regarded as stock purchased by Government from its Currency Department. On the basis of the accounts of the Currency Department on the 31st August 1933 (at which date the silver stock attained the maximum point reached during the current year) Government after handing over 50 crores of rupees to the Bank would retain rupees and silver of a nominal value of 55,41 lakhs would be set off the value of the assets of the Gold Standard Reserve, 53,33 lakhs, so that the net debt against the silver thus retained by the Government would be the difference between these two figures, namely, 2,08 lakhs.

(b) The proceeds of any sales of silver after the transfer would be credited to a separate fund more or less on the lines of the present Gold Standard Reserve which it is suggested might be called the "Silver Redemption Reserve." This reserve would be invested by Government in its entirety in gold or sterling securities.

(c) The book loss on sales of silver since the commencement of selling operations is approximately 31,63 lakhs,* and this figure must also together with the 2,08 lakhs mentioned under (a) be regarded as a debt incurred against silver. To this debt will also have to be added the full nominal value of any silver rupees returned by the Bank under clause 36 (1) of the Bill, while the full nominal value of any rupees sold to the Bank under clause 36 (2) will be deducted from it. The loss of 31,63 lakhs already incurred is at present held in a suspense account and it will continue to be so treated. Interest and amortisation provisions against the debt represented by this loss and the 2,08 lakhs balance of silver to be taken over together with any further silver which may be taken over will be made in the manner described in the following paragraphs.

(d) Interest on the outstanding loss which is in fact represented by a corresponding portion of the public debt (namely, treasury bills in the Paper Currency Reserve) is at present met out of the revenues of the Government of India. This should continue both for the outstanding loss and any other additions to the silver debt referred to above, but the Government of India should be allowed to set off the interest which it receives from the investments in the Silver Redemption Reserve. In other words, the interest on this reserve will not be added to the reserve but will, as at present, accrue as a receipt to Government revenues.

(e) Provision will also have to be made for the amortisation of the outstanding "silver debt." At present no provision is made for the amortisation of treasury bills held in the Paper Currency Reserve so that in practice there is no amortisation provision for the debt representing losses on account of silver. The Government of India consider that some provision should be made but any plan for this must be dealt with as part of the Government's general plan for Sinking Fund provisions on the public debt—a question which must be dealt with separately.

5. It remains to consider how the funds which would accumulate in the Silver Redemption Reserve should be utilized. The

* This is not really in the true sense a loss. It is the figure which represents the difference between the price of the silver sold as bullion and the face value of the rupees from which the silver was produced. In order to get a true picture of the position there must be balanced against this nominal loss the profits which the Government originally made when the rupees were put into circulation from which profits *inter alia*, the £40 millions Gold Standard Reserve was built up.

considerations affecting this question have been set out in paragraph 3 above. Weighing up the various considerations, the Government of India consider that it would be a reasonable arrangement to allow the Silver Redemption Reserve to accumulate until it reached a total of 10 crores. Any further receipts should not be separately invested but should be taken direct into Treasury balances to reduce the outstanding "silver debt" described in paragraph 4 (c), i.e., to be utilized for the reduction of debt either by the redemption of existing debt or the avoidance of new borrowing. A reserve of 10 crores in external assets would allow for a return of 25 crores of rupees by the Bank to Government, that is to say the maximum amount which could be returned in five years. This should be adequate for all practical purposes and against locking up funds beyond this reasonable margin must be weighed the consideration mentioned on paragraph 3 (b) (ii) above.

6. As regards the second recommendation of the London Committee [paragraph 1 (b)] of this Memorandum, the Government of India do not consider that it would be practicable at present to decide whether and, if so, to what extent the Bank should be provided with external cover in addition to the 50 per cent. indicated in clause 35 of the Bill. It is of course understood that the whole of the Government's gold holding will in any case be handed over. Apart from this, if there should be any margin of other external assets which the Government at the time when the Bank is set up did not consider it necessary to hand over to the Bank and which it would consequently retain for its own purposes, the Government of India provisionally consider that the most suitable alternative method for appropriating any such surplus would be to transfer it as an opening balance to the Silver Redemption Reserve proposed above.

7. As regards the third point in paragraph 25 of the London Report (vide paragraph 2 of this Memorandum), the Government of India do not consider it necessary to make any specific proposals regarding the utilization of any hypothetical profits on the revaluation of gold. Such profits might arise in two ways:

(a) There might be sales, in which case there might be a considerable premium representing the difference between the market price and the statutory price as indicated in clause 33 (4) of the Bill.

(b) When the time comes to adopt a permanent currency standard as contemplated in the preamble to the Reserve Bank Bill, the new valuation as compared with the valuation at the old parity as adopted in clause 33 (4) might be such as to show either a paper gain or loss.

8. As regards alternative (a), sales are very unlikely and unless they were for a very large amount, the profit on them would not be sufficient to alter the dividend payable to the shareholders, in which case the whole of the profit on such sales would accrue to Government under clause 44. The Government of India do not consider it necessary to legislate for this highly hypothetical contingency.

9. As regards alternative (b), if there was a revaluation, clause 33 (4) of the Bill would require amendment, in which case it would be open to the Legislature to make a further amendment of the Bill so as to ensure that the whole of the profits or losses on such revaluation would accrue to or be borne by Government. If there were profits, the actual manner in which any such hypothetical profits would be utilized is a still more hypothetical question on which it appears to the Government of India to be even less necessary to formulate any specific scheme. It is obvious that any such paper gain should not be swallowed up in ordinary revenues but should be devoted to some currency purpose and this most probably would take the form of an additional fortification of the Silver Redemption Reserve. That, however, is a matter which could be left to be decided at the time.

10. The Government of India therefore do not consider that any provision need be made in the present Bill with respect to these recommendations of the London Committee, but they would suggest that a note might be made in the report, possibly on clause 33 (4), on the lines indicated in the preceding paragraph, regarding the utilization of any book gain or loss on gold, while they would also be glad to have the views of the Committee on the scheme for a Silver Redemption Fund set out in paragraphs 4 and 5 of this Memorandum.

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THE
RESERVE BANK OF INDIA

(ACT II OF 1934)

Received Governor-General's Assent 6th March 1934.

An Act to constitute a Reserve Bank of India.

Whereas it is expedient to constitute a Reserve Bank for India to regulate the issue of bank notes and the keeping of reserves with a view to securing monetary stability in British India and generally to operate the currency and credit system of the country to its advantage;

And Whereas in the present disorganization of the monetary systems of the world it is not possible to determine what will be suitable as a permanent basis for the Indian monetary system;

But Whereas it is expedient to make temporary provision on the basis of the existing monetary system and to leave the question of the monetary standard best suited to India to be considered when the international monetary position has become sufficiently clear and stable to make it possible to frame permanent measures;

It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title, extent and commencement.

1. (1) This Act may be called the Reserve Bank of India Act, 1934.

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas.

(3) This section shall come into force at once, and the remaining provisions of this Act shall come into force on such date or dates as the Governor-General-in-Council may, by notification in the Gazette of India, appoint.

NOTES.

The Preamble.—Object of preamble: “The preamble of a statute has been said to be a good means to find out its meaning, and is as it were, a key to the understanding of it; and as it usually states or professes to state the general object and intention of the Legislature in passing the enactment, it may legitimately be consulted for the purpose of solving any ambiguity or fixing the meaning of words which may have more than one, or of keeping the effect of the Act, within its real scope, whenever the enacting part is in any of these respects open to doubt.” (*Maxwell on ‘Interpretation on Statutes’ 6th edition pp. 77-78*). But the preamble cannot either restrict or extend the enacting part when the language and the object and scope of the Act are not open to doubt (*ibid* p. 82). The modern rule is that where the enacting part is explicit and unambiguous, the preamble cannot be resorted to, to control, qualify or restrict it; but when the enacting part is ambiguous, the preamble can be referred to, to explain and elucidate it. To quote Lord Halsbury, “Two propositions are quite clear—one that a preamble may afford useful light as to what a statute intends to reach, and another that, if an enactment is itself clear and unambiguous, no preamble can qualify or cut down the enactment”. *Powell v. Kempton Park Race Course Co.* (1899) A. C. 143 (157)

The preamble to the present Act indicates in para one in very wide terms the purposes for which the Reserve Bank of India is constituted, refers in para two to the difficulty of adopting at the present time permanent measures with regard to the monetary system of India, and while expressly leaving the question of framing permanent measures to a future occasion, states in para three that it is now expedient to make temporary provision on the basis of the existing monetary position.

Para 1.—The purpose for which the Bank is constituted is stated to be (1) to regulate the issue of bank notes and the keeping of reserves with a view to achieve monetary stability and (2) generally to conduct the currency and credit system of the Country to its advantage. Meaning by monetary stability, stability of the value of the currency both internally and externally, internally through a stable level of general

prices and externally through stability of its exchange value, the preamble assumes that such stability can be secured through regulation of the issue of bank notes and of the keeping of reserves, the reserves referred to being the currency reserves provided in Section 33 and the banking reserves in Section 42. The preamble also states in unambiguous terms that the Bank's operation of the currency and credit system of the country is to be *to its advantage* and not to the advantage of any other country.

The Primary Task of the Bank.—"The goal of all monetary policy is the achievement of stability of the purchasing power of the monetary unit, and the condition under which the sole right of note issue is entrusted to the Bank must clearly be the obligation to maintain stable the purchasing power of the rupee, both internally and externally. This stability will find expression internally in the stability of the general level of commodity prices, and externally in the stability of the purchasing power of the monetary unit in relation to gold, and consequently in relation to all exchanges with countries whose currencies are linked to gold through either a gold or a gold exchange standard. To assure this stability, it is indispensable that the obligation should be put upon the Bank at all times to buy and sell gold at fixed prices which are laid down in the charter." "What is the machinery which enables the Reserve Bank to undertake this obligation? The sole right of note issue, and the stoppage of all further issues of money by the Government of India except through the Bank, coupled with the power to impose upon the country a judicious credit policy—these give the Reserve Bank the means to control the volume of the monetary circulation in India, and thus to stabilise the purchasing power of the monetary unit." (*Currency Commission (1926) Report, paras 114, 115.*)

Para 2: Present Disorganisation of the Monetary Systems of the World.—Of no country of the world can it now be said that its monetary system is definitely on a particular standard or that it is free from uncertainties. Of the 65 or so nations which partook in the World's Monetary and Economic Conference in June-July 1933, not a few can be said to possess a stable monetary standard. A survey of the monetary position of the world early in 1934 about the time when the Reserve Bank of India Act was passed, would show that out of 50 important commercial nations more than thirty were officially off the gold standard, of which fourteen had introduced complete foreign exchange control while most of the other sixteen were exercising some measure of unofficial regulation of their exchange rates. Nine countries were still nominally on the gold standard and were attempting to maintain their gold parities by means of official control measures of varying degrees of stringency and with a decidedly uneven degree of success. But in many of them

the measures of control were only partly effective and the currency-units were in fact depreciated. Even in the countries that have remained on the full gold standard limitations have been imposed on its free operation with a view to safeguard their gold reserves. In the U.S.A. which is undoubtedly the most vital factor in the international monetary system, dramatic changes have been taking place for the past nearly one year, making it practically impossible for any other country to determine what will be suitable as a permanent basis for its own monetary system.

Permanent Basis for Indian Monetary System not now possible.—Whether the monetary system of India should be based on any variety of the gold standard or should be linked to sterling and maintain a sterling exchange standard or should have a managed currency with reference to the internal price level, or international price level or be linked to any kind of international monetary system with or without gold as its basis, is not a matter which in the present unsettled monetary condition of the world, can possibly be decided. As para three of the preamble says, we have to wait until the international monetary position becomes clear.

Para 3.—This gives effect to the report of the London Committee on Indian Reserve Bank legislation which stated that “In the prevalent state of monetary disorganisation throughout the world, it is impossible to incorporate in the Bill provisions which would necessarily be suitable when monetary systems generally have been recast and stabilised. In these circumstances we consider that the only sound course for India is to remain on the sterling standard. On this basis the exchange obligations incorporated in the Bill must necessarily be in accord with the rupee-sterling ratio existing at the time when the Bill is introduced We are all agreed that it should, in any case, be made clear in the preamble that the whole question of the monetary standard best suited to India will have to be reviewed when the international monetary position has clarified itself and become sufficiently stable to make it possible to frame more permanent provisions” (para 19).

The framers of the Act have accordingly recommended that temporary provision may be made on the basis of the existing monetary system, *viz.*, the sterling exchange standard. It is in conformity with this that Section 55 (2) is enacted providing that when the Bank finds that the international monetary position has become clear and stable it shall report its views to the Governor-General-in-Council.

Position of Governor-General-in-Council.—While the number of the sections in the Act is sixty-one, the number of times the name of the

Governor-General-in-Council occurs in the Act is nearly eighty four. *Powers*
 He is given direct powers of interference in various matters, such as the
 appointment of Governor, Deputy Governors, nominated Directors etc., *1*
 and his previous sanction is required in other matters. He has ultimate *2*
 power of superseding the Central Board when it fails to carry out its *3*
 obligations and his order is necessary to place the Bank in liqui- *4*
 dation.

The reasons for giving the Governor-General-in-Council supreme powers under the Act are twofold. In the first place, he has to safeguard the interests of Government whose money, remittance, exchange, *1* and banking transactions are entrusted to the Bank which is not a Department of the State and is for all practical purposes, independent of Government control. Secondly and more importantly he has to safeguard the interests of the public and see that the Bank functions *ii* efficiently and exclusively in the public interest. There is no other proper authority in the Indian constitution which can safeguard these two fundamental interests. What will be the authority that will take the place of the Governor-General-in-Council under the new Constitution cannot now be stated until the Constitution Act is passed by the Imperial Parliament.

Amending the Act.—There was a good deal of controversy about this, both during the Joint Committee's sittings and during the discussion in the Legislative Assembly on the motion to consider the Bill as recommended by the Joint Committee. While it is premature to say anything definitely about the exact powers of the Indian Legislature to amend the Reserve Bank of India Act, until the new Constitution Act is passed by the Imperial Parliament, it is not without interest to note what the Finance Member with the concurrence of the Secretary of State for India said to the Joint Committee *vis.*, that 'There is no intention under the present proposals that the British Parliament should undertake legislation amending the Reserve Bank Act. According to the White Paper proposals this would be the function of the Indian Legislature subject to the prior approval of the Governor-General'.

Local Extent of Act.—The Act extends only to the whole of British India including British Baluchistan and the Sonthal Parganas. British India is defined in Section 3 (7) of the General Clauses Act to mean "all territories and places within Her Majesty's dominions which are for the time being governed by Her Majesty through the Governor-General of India or through any Governor or other officer subordinate to the Governor-General of India". With regard to Burma, the London Committee stated in their note to this clause "We have assumed that

Burma, if separated, will continue to utilise the Indian currency system. If the decision ultimately reached is otherwise, an amendment of this clause will be necessary". (clause 1 (2) Appendix I to Report).

The Reserve Bank and the Position of the Indian States.—Sub-section 2 of Section 1 of the Reserve Bank Act provides that the Act extends to the whole of British India, but unless the States are also included within the zone of its operation, the Bank will fail of its purpose. As British India money is legal tender throughout India, the Bank will not be in a position to maintain stability of the monetary system unless it is in a position to regulate the volume of currency and credit for the whole of India. Factors leading to a greater or a smaller absorption of currency or credit by the States such as the financial operations of the States' Governments, changes in the hoarding or banking habits of the States' people and Princes, changes in the methods of private and public economy in the States, a greater or smaller resort to the use of local currency in such States as Hyderabad, Travancore and so on are likely to affect the powers of control of the Reserve Bank over the country's monetary system. Unless the banks in the States whether having a branch in British India or not are also included among the Scheduled banks and brought under control, and the minting and coinage privileges of such of the Ruling Princes as still possess them completely taken away from them, there will not be that amount of unity of policy in the regulation of currency and credit which may be necessary for the Central Bank to secure monetary stability. In the interests of the States themselves, which are in many respects economically more backward than British India, their union with the latter for the purpose of having a united system of currency and credit will be an unmixed good. The Indian States Committee (1928-29) have also emphasised the advantage of a united system and stated "We are strongly of opinion that the multiplication of different currencies in India is hostile to the best interests of the States and to the country as a whole. We have heard of one State where the currency has been manipulated with such results that trade has been seriously affected". Report (p. 47.)

The States have therefore to be advised or, if necessary, prevailed upon, by the Paramount Power in the exercise of its Sovereign power of intervention for the economic good of India as a whole, to extend the operation of the Reserve Bank Act to their territories also. The existence of such a power is unambiguously affirmed in the States Committee Report (p. 30.)

As it is, the Act is very defective in its references to and distinction between "India" and 'British India' which may lead to various legal difficulties :—

The preamble para 1 begins by saying that it is expedient to constitute a Reserve Bank for *India*, but recites that the aim of the Act is to secure monetary stability in *British India* and operate the currency system of the country to its advantage leaving it vague whether 'the country' denotes 'British India' or the whole of India. Para 3 of the preamble speaks of the monetary standard best suited to *India* but S. 1 (2) extends the Act to the whole of British India only. S. 2 (e) confines the definition of Provincial Co-operative Bank to Societies in British India, thus excluding Co-operative Banks in the States.

S. 4 (3) provides that those persons can be shareholders who have their principal places of business or are domiciled in India, thus extending the right to hold shares, to the Princes and peoples of the States also, and Schedule 1 includes in the areas to be served by the various share registers all the Indian States without any reservation. But S. 4 (3) (c) would seem unintentionally to exclude companies incorporated or registered under an Act or Regulation of a State in India, while including foreign companies outside India.

S. 6 permits the Bank to have branches or agencies anywhere in India thus including places in the States. Here it is perhaps open to question whether the Bank whose sphere of operation is by S. 1 (2) extended only to British India, can transact any business outside British India by having branches there, without an express statutory provision to that effect.

S. 17 (1) authorises the Bank to transact business for the governments of Indian States also.

S. 17 (2) (a) and (b) permit the Bank's dealing in bills of exchange and promissory notes payable in India (thus including the States also). Here again it has to be noted that under the law of British India bills drawn or payable in the States are according to S. 12 of the Negotiable Instruments Act, foreign bills governed in certain essential matters by the law of the place where they are made as provided in S. 134 and 135 of the same Act: and as for decrees obtained in respect of them execution is not possible as the States and British India treat one another as 'foreign countries'. Unless therefore the whole of India has a unified system of law and judicial enforcement, it is dangerous for the Reserve Bank to deal in bills payable in the States, as the liquidity of its assets is liable to be hampered on account of legal difficulties and delays. This difficulty is apparently recognised in relation to the assets of the Issue Department. [S. 33 (3)], where the only bills and promissory notes permitted to form part of the assets are those payable in British India.

S. 20 authorises the Bank to transact central banking business on behalf of States approved by the Governor-General-in-Council. This

may make it necessary or convenient for the Bank to have branches or agencies in those States.

S. 22 says that the Bank will have the sole right of note issue in British India and would thus seem to exclude the States from the benefits of such issue. The States except Hyderabad have also not got the power to issue currency or bank notes of their own. But S. 26 makes the notes legal tender only in British India while Ss. 31 and 32 protect the monetary character of the notes only against persons in British India. Unless each State adopts these provisions within itself, the power of the Bank to so regulate the note issue as to secure monetary stability will be considerably weakened.

S. 33 (5) requires that the Bank shall hold 17-20ths of its gold assets in British India (so that any holding in its branches or agencies in the States will not count for the purpose of this section). But the form of return given in the Fifth Schedule to the Act, ignores this and speaks of gold held in India and 'outside India' thus making no distinction between gold held in British India and in the States.

S. 42 (1) requires that for the purpose of determining the liabilities of a Scheduled Bank, its liabilities in the whole of India (including the States) have to be included, and it is required to make the statutory return relating to its banking transactions over the whole of India [S. 42 (2)]. While this will affect banks like the Bank of Mysore having branch offices in British India, a bank in a State, having no such branch office will wholly escape, as S. 42 cannot operate outside British India as per S. 1 (2); and to this extent the credit system of the country will be out of the Bank's control. [see also S. 42 (6) and 55 (1) (a)].

S. 48 (1) does not exempt the Bank from levy of States' Incometax on the profits of its branches or agencies in the States.

These points are mentioned here simply to show the necessity of a uniform system of currency and credit and unification of the laws relating to same for the whole of India. The present writer has not had either the facilities or the time required to investigate the question of the Bank's relation with the States in full but ventures to suggest the following matters for considerations :—

(1) By arrangement with the major States, the Bank should open branches or agencies in important places, and undertake to transact all financial business for them. The States governments should agree not to carry out their financial operations such as the raising of loans, etc., except through the Bank and should also keep their balances with the Bank. This will enable the Bank to control the currency and credit

system of the country more efficiently than it otherwise could and at the same time secure advantageous terms to the States.

(2) In the assets of note issue, securities of the States, approved by the Governor-General-in-Council and having a maturity of not more than five years and fully guaranteed as to principal and interest may also be included up to a fixed proportion. As the Bank's notes will be current legal tender in the States also, this is quite a proper asset for backing the note issue.

(3) In order to make the Bank a thoroughly Central Bank for the whole of India, it is also desirable that at least 2 of the Directors of the Central Board and two members of each of the Local Boards are representative of the States. If no one of the elected Directors is such a representative, the Governor-General-in-Council may so exercise his power of nomination as to bring about this result.

Definitions. 2. In this Act, unless there is anything repugnant in the subject or context,—

(a) "the Bank" means the Reserve Bank of India constituted by this Act;

(b) "the Central Board" means the Central Board of Directors of the Bank;

(c) "provincial co-operative bank" means the principal society in a province which is registered or deemed to be registered under the Co-operative Societies Act, 1912 or any other law for the time being in force in British India relating to co-operative societies and the primary object of which is the financing of the other societies in the province which are or are deemed to be so registered:

Provided that in addition to such principal society in a province or where there is no such principal society in a province the Local Government may declare any central co-operative society in that province to be a provincial co-operative bank within the meaning of this definition;

(d) "rupee coin" means silver rupees which are legal tender under the provisions of the Indian Coinage Act, 1906; and

(e) "scheduled bank" means a bank included in the Second Schedule.

NOTES

Unless there is anything repugnant in the subject or context.—This is an important qualification which is likely to be forgotten but has to be borne in mind. For example in Sections 42 (1) Explanation, the expression 'the bank' cannot mean the Reserve Bank which is obviously distinguished from it, but only means a scheduled bank.

'The Central Board'.—The definition of this term is merely ornamental if not pedantic and is utterly superfluous. Wherever this term is used it is perfectly clear from the context that by 'the Central Board' can only be meant the Central Board of Directors of the Reserve Bank of India and not anything else. Occasionally the term 'the Board' is simply used to signify 'the Central Board' as in Sections 8 (5), & 30 (2).

'Provincial Co-operative Bank'.—This definition is important for the following Sections; 17 (2), 17 (4) (c) and (d), 33 (3) and 44.

An analysis of the definition shows that for a Co-operative Society to come within the definition three conditions are necessary:

(1) that it must be the principal society in a province or being a central co-operative society other than the principal society, declared by the Local Government of the province where it is situated to be treated as a provincial co-operative society. The proviso enables not only the principal society in a province but also an ordinary central co-operative society in approved cases to get into direct contact with the Reserve Bank.

(2) that it must be either registered or deemed to be registered under the Co-operative Societies Act 1912 or other law in force in British India relating to co-operative Societies as in Madras.

(3) that its primary object must be the *financing* of the other societies in the province. From this it is clear that no co-operative society of a State outside British India, however well-organised and financially strong can be deemed a 'provincial co-operative bank' so as to enjoy the privileges given to such a bank under the Act, unless such a society can get itself registered (which is not possible) as a co-operative society in any province of British India, so as to enable the Local Government there to declare it a provincial co-operative bank, within the meaning of this definition.

Importance of the definition.—Provincial co-operative banks are interested in the following kinds of business of the Reserve Bank:—

(a) S. 17 (2) (b) *i.e.*, purchase, sale, and rediscount of bills of exchange and promissory notes drawn and payable in India and issued for the purpose of financing seasonal agricultural operations or the marketing of crops.

(b) S. 17 clause (4) (a) and (d) *i.e.*, the making of loan and advances against the security of stocks, funds and securities (other than immovable property) against bills and promissory notes eligible under S. 17 (2) (b) and against promissory notes of provincial co-operative banks supported by documents of title to goods.

In these cases, provincial co-operative banks are given equal privileges with scheduled banks, without the responsibilities or obligations imposed upon the latter under S. 42.

The Reserve Bank may however under S. 44 require a provincial co-operative bank with which it has transactions, to furnish the returns required of scheduled banks under S. 42 (2). The object of this provision is only to enable the Reserve Bank to satisfy itself of the financial or banking soundness of such provincial co-operative bank.

'Province' means the territories for the time being administered by any Local Government. [*General Cl. Act S. 3, (43)*].

'Local Government' is defined by the Gen. Cl. Act S. 3 (29) as meaning 'the person authorized by law to administer executive Government in the part of British India in which the Act or Regulation containing the expression operates, and shall include a Chief Commissioner.' But this must be read along with the further definition given in Sec. 134 (4) of the Government of India Act, which says that "'Local Government' means, in the case of a Governor's province, the Governor-in-Council or the Governor acting with Ministers (as the case may require) and, in the case of a province other than a Governor's province, a Lieutenant-Governor-in-Council, Lieutenant-Governor or Chief Commissioner".

Rupee coin.—This definition is important for Ss. 33 (1) and (3), 35, 36, 38 and 39. 'Rupee coin' includes only silver rupees and not silver half rupees though they are also legal tender for any amount under section 12 of the Indian Coinage Act nor any other silver coin. As to the consequence of this definition see Notes under those Sections.

'Legal tender'.—This term is explained in S. 12 of the Coinage Act where it is stated that silver rupees and half rupees shall be legal tender in payment or on account that is to say the acceptance of which is

legally compellable in discharge of all debts and other obligations payable in terms of money. It is money of a character which by law a debtor may require a creditor to receive in payment of debts, in the absence of any agreement or contract to the contrary. It is money legally tenderable in payment of debts unless the contract calls for payment in some specified kind of money, *e.g.*, gold coin of a particular standard of weight and fineness cf: *Feist v Soci t  Intercommunale Belge D'Electricit * 1934 A. C. 161; In the Report of the Treasury, U. S. A., for 1931 at page 616 the following definition of legal tender is approvingly quoted from Bouvier's Law Dictionary: "Legal tender is that currency which has been made suitable by law for the purposes of a tender in the payment of debts."

See also Notes under section 26.

Scheduled Bank.—This definition is important for the following Sections 17 (2) (a) (b) (c), 3 (a), and 42.

It is to be read with the provisions of S. 42 (6) of the Act, empowering the Governor-General-in-Council to direct inclusions in and exclusions from the Second Schedule. The definition requires two things:—

(1) that it should be a bank and (2) that it should be included in the Second Schedule. Thus mere inclusion in that schedule will not make a non-bank a bank, though it is unlikely that such inclusion will take place.

The term 'bank' is not however defined in the Act, except that in S. 42 (6) (b), it is stated that for the purposes of that Section 'bank' means a company registered under S. 2 (2) of the Indian Companies Act, or by or under any law in force outside British India.

CHAPTER II.

INCORPORATION, SHARE CAPITAL, MANAGEMENT AND BUSINESS.

3. (1) A Bank to be called the Reserve Bank of India shall be constituted for the purposes of taking over the management of

Establishment and incorporation of Reserve Bank.

i) the currency from the Governor-General-in-Council and of

ii) carrying on the business of banking in accordance with the provisions of this Act.

(2) The Bank shall be a body corporate by the name of the Reserve Bank of India, having perpetual succession and a common seal, and shall by the said name sue and be sued.

NOTES.

Object of establishing the Bank.—It is (1) to take over the management of the currency from the Governor-General-in-Council and (2) to carry on the business of banking in accordance with the provisions of the Act. The Governor-General-in-Council is not hereafter to issue or manage any kind of currency—paper or metallic (See Sections 22 (2) and 38); and the Indian Paper Currency Acts are accordingly repealed by Section 60 of this Act. The term ‘currency’ includes any form of money which serves as a medium of exchange and passes from bearer to bearer without indorsement (Encyclopedia of Banking and Finance).

Compare this Section with the preamble para 1 which states that the object of constituting the Bank is to regulate the issue of bank notes and the keeping of reserves with a view to securing monetary stability and generally to operate the currency and credit system of the country to its advantage. For the kinds of banking business which the Bank can and cannot transact see Ss. 17, 18 and 19. The term “business of banking in accordance with the provisions of this Act” is wide enough to include all the purposes mentioned in the preamble. But the business of the Bank is confined to central banking functions only, and it cannot do any business which is not authorised by this Act that is to say which an ordinary commercial or other bank can carry on.

Sub-section (2).—Regulations may be made as to the official seal, the manner and effect of its use, the manner and form of contracts to be executed by the Bank etc. See S. 57 (2) (h) & (l).

Body corporate having perpetual succession and a common seal.—A body corporate or corporation is not a mere collection or aggregation of individual units, but is, in contemplation of law, a *person* distinct from the members or shareholders who are interested in it—a metaphysical body—a mere abstraction of law, without any physical existence. (Cf. *G. E. Rail Co. vs. Turner & Ch.* App. 152; *Flitcroft's case* 21 Ch. D. 536.)

Suits by and against the Bank.—The Bank shall sue and be sued in the name of the Reserve Bank of India as a corporate body. As to suits by and against corporations, Order XXIX Rules 1 to 3 of the Code of Civil Procedure provide:—

" 1. In suits by or against a corporation, any pleading may be signed and verified on behalf of the corporation by the secretary or by any director or other principal officer of the corporation who is able to depose to the facts of the case.

2. Subject to any statutory provision regulating service of process, where the suit is against a corporation, the summons may be served—

(a) on the secretary, or on any director, or other principal officer of the corporation, or

(b) by leaving it or sending it by post addressed to the corporation at the registered office, or if there is no registered office then at the place where the corporation carries on business.

3. The Court may, at any stage of the suit, require the personal appearance of the secretary or of any director, or other principal officer of the corporation who may be able to answer material questions relating to the suit."

The expression used in the section is 'sue and be sued'. In a similar Section of the Federal Reserve Act (U.S.A.) (S. 4) the expression used is 'sue and be sued, complain and defend, in any court of law or equity'. In the present Act, S. 32 (2) authorises the Bank to institute complaints under that Section.

The name 'Reserve Bank of India'.—The name was suggested by the Currency Commission (1926) Report para 92. In order to prevent fraudulent use of the name by any company, Section 61 enacts that Section 11 (3) of the Indian Companies Act should be so amended as to include the words 'Reserve Bank' also among the words which a company registered under that Act should not use as its name, wholly or in part.

Share capital, share registers and shareholders.

✓ 4. (1) The original share capital of the Bank shall be five crores of rupees divided into shares of one hundred rupees each, which shall be fully paid up.

✓ (2) Separate registers of shareholders shall be maintained at Bombay, Calcutta, Delhi, Madras and Rangoon, and a separate issue of shares shall be made in each of the areas served by those registers, as defined in the First Schedule, and shares shall be transferable from one register to another.

(3) A shareholder shall be qualified to be registered as such in any area in which he is ordinarily resident or has his principal place of business in India, but no person shall be registered as a shareholder in more than one register; and no person who is not—

(a) domiciled in India and either an Indian subject of His Majesty, or a subject of a State in India, or

(b) a British subject ordinarily resident in India and domiciled in the United Kingdom or in any part of His Majesty's Dominions the Government of which does not discriminate in any way against Indian subjects of His Majesty, or

(c) a company registered under the Indian Companies Act, 1913, or a society registered under the Co-operative Societies Act, 1912, or any other law for the time being in force in British India relating to co-operative societies or a scheduled bank, or a corporation or company incorporated by or under an Act of Parliament or any law for the time being in force in any part of His Majesty's Dominions the government of which does not discriminate in any way against Indian subjects of His Majesty, and having a branch in British India,

shall be registered as a shareholder or be entitled to payment of any dividend on any share, and no person who, having been duly registered as a shareholder, ceases to be qualified to be so registered, shall be able to exercise any of the rights of a shareholder otherwise than for the purpose of the sale of his shares.

(4) The Governor-General-in-Council shall, by notification in the Gazette of India, specify the parts of His Majesty's Dominions which shall be deemed for the purposes

of clauses (b) and (c) of sub-section (3) to be the parts of His Majesty's Dominions in which no discrimination against Indian subjects of His Majesty exists.

✓ (5) The nominal value of the shares originally assigned to the various registers shall be as follows, namely :—

(a) to the Bombay register—one hundred and forty lakhs of rupees ;

(b) to the Calcutta register—one hundred and forty-five lakhs of rupees ;

(c) to the Delhi register—one hundred and fifteen lakhs of rupees ;

(d) to the Madras register—seventy lakhs of rupees ;

(e) to the Rangoon register—thirty lakhs of rupees :

Provided that if at the first allotment the total nominal value of the shares on the Delhi register for which applications are received is less than one hundred and fifteen lakhs of rupees, the Central Board shall, before proceeding to any allotment, transfer any shares not applied for up to a maximum nominal value of thirty-five lakhs of rupees from that register in two equal portions to the Bombay and the Calcutta register.

✓ A Committee consisting of two elected members of the Assembly and one elected member of the Council of State to be elected by non-official members of the respective Houses shall be associated with the Central Board for the purpose of making public issue of shares and looking after the first allotment of shares.

(6) In allotting the shares assigned to a register, the Central Board shall, in the first instance, allot five shares to

each qualified applicant who has applied for five or more shares; and, if the number of such applicants is greater than one-fifth of the total number of shares assigned to the register, shall determine by lot the applicants to whom the shares shall be allotted.

(7) If the number of such applicants is less than one-fifth of the number of shares assigned to the register, the Central Board shall allot the remaining shares firstly, up to the limit of one-half of such remaining shares, to those applicants who have applied for less than five shares, and thereafter as to the balance to the various applicants in such manner as it may deem fair and equitable, having regard to the desirability of distributing the shares and the voting rights attached to them as widely as possible.

(8) Notwithstanding anything contained in sub-sections (6) and (7), the Central Board shall reserve for and allot to Government shares of the nominal value of two lakhs and twenty-thousand rupees to be held by Government for disposal at par to Directors seeking to obtain the minimum share qualification required under sub-section (2) of section 11. ✓

(9) If, after all applications have been met in accordance with the provisions of sub-sections (6), (7) and (8), any shares remain unallotted, they shall, notwithstanding anything contained in this section, be allotted to and taken ✓ up by Government, and shall be sold by the Governor General in Council as soon as may be, at not less than par, to residents of the areas served by the register concerned.

(10) The Governor General in Council shall have no right to exercise any vote under this Act by reason of any shares allotted to him under sub-section (8) or under sub-section (9).

(11) A Director shall not dispose of any shares obtained from Government under the provisions of sub-section (8) otherwise than by re-sale to Government at par, and Government shall be entitled to re-purchase at par all such shares held by any Director on his ceasing from any cause to hold office as Director.

NOTES

A Shareholder's Bank.—The Report of the London Committee on the Indian Reserve Bank Legislation on whose recommendation the present Act is based stated, "We fully accept the principle that the Reserve Bank should be free from any political influence. The best device which the practical experience of other countries has evolved for achieving this object is that the capital of the Bank should be held by private shareholders, and we recommend that this plan should be adopted in the case of India." (para 3).

Historically this section may be said to be the most important. The centre of controversy in the course of the legislation both in 1927 and 1928 and in 1933 was whether the Bank to be established should be a Shareholder's Bank or State Bank. The present Act is based on the view that share capital affords the only satisfactory basis for the constitution of any Central Bank, care being taken at the same time to see that the Bank in its working should ensure the interests of the country as a whole and not the interests of one or other sections of the community. The Bank though in name a Shareholder's Bank, is so constituted as to escape the possibilities of control by vested interests, and carry on its activities entirely in the public interest, though it cannot be said that its management will always be entirely in the national interest. The preamble para one lays down unequivocally that the Bank is constituted to operate 'the currency and credit system of the country to its advantage'.

Sub-section (1).—'Fully paid up' means that the full face value of each share shall have been paid in money or money's worth and that no further amounts shall be due in respect of them. Cf. *Bloomenthal v. Ford* (1897) A. C. 156.

Sub-section (2).—**Transferability of shares from one register to another.**—Transfer of shares from one register to another is unrestricted to any extent. This free transferability may result in very uneven distribution of the shares so as even to make candidates or electors unavailable for some of the areas. Further the uneven distribution may result in

uneven representation in the Central Board of Directors also. The Act does not provide for an equitable adjustment when such contingencies arise. The Joint Committee on the Bill, which was not unaware of this possibility reported as follows in this connection ; " It was represented to us that shares should not be allowed to be transferred from one register to another because this might lead to certain registers being denuded of a large number of shares, thus leaving the holders of a comparatively small number of shares to elect representatives to the Local Board and thereby to the Central Board. We have come to the conclusion that the advantages of free marketability are so great that transfers from one register to another should be freely allowed. We further consider that a contingency such as that referred to is extremely unlikely to arise and that a majority of the shares of the Reserve Bank when once allotted will be firmly held as a lock up investment by the original holders. If, contrary to our expectations, it is found that one register is accumulating a large number of shares while another is being denuded by a really substantial percentage, the Government should consider the question of bringing forward suitable amending legislation in order to rectify the position."

Possible migration of Shares.—Further the transferability from one register to another may also encourage the frequent migration of shares to the area or areas where in any particular year the election of Directors and members of Local Boards is to take place. According to the scheme of rotation of elections of Directors provided by the Act [vide Sections 15 (4), 8 (4) para 2, and 9 (4) and (7)] it is definitely ascertainable in which area or areas the elections are to be held in any ensuing year; and share transfers can be accordingly manipulated so as to increase the number of voters in the register for that area in due time.

Sub-section (3.)—Who may be Shareholders.—To be registered as a shareholder or to be entitled to receive any dividend a person must be,

- (1) Ordinarily resident or have a place of business in India and
- (2) Either

(A) domiciled in India being either an Indian subject of His Majesty or a subject of a State in India. This excludes the Ruling Princes of India who cannot be said to be *subjects* of His Majesty or of any State in India and cannot therefore acquire shares in the Bank

or (B) a British subject residing in India and domiciled either in the United Kingdom or in a Dominion not discriminating against Indians in any manner. In the case of a person coming under this category the right to be registered as shareholder or receive dividend continues only so long as such person is ordinarily resident in India. The moment he ceases to reside in India, the right is terminated.

British subject.—The expressions “British subject” and “natural-born British subject” are defined in Ss. 27 and 1, respectively, of the British Nationality and Status of Aliens Act, 1914 (4 and 5 Geo. 5, Ch. 17), as follows :—

“27 The expression ‘British subject’ means a person who is a natural-born British subject or a person to whom a certificate of naturalisation has been granted or a person who has become a subject of His Majesty by reason of any annexation of territory”.

“1. (1) The following persons shall be deemed to be natural-born British subjects, namely :—

(a) any person born within His Majesty’s dominions and allegiance ; and

(b) any person born out of His Majesty’s dominions whose father was, at the time of that person’s birth, a British subject, and who fulfils any of the following conditions, that is to say, if either—

(i) his father was born within His Majesty’s allegiance or,

(ii) his father was a person to whom a certificate of naturalization had been granted ; or

(iii) his father had become a British subject by reason of any annexation of territory ; or

(iv) his father was at the time of that person’s birth in the service of the Crown ; or

(v) his birth was registered at a British Consulate within one year or in special circumstances with the consent of the Secretary of State, two years after its occurrence, or in the case of a person born on or after the first day of January, nineteen hundred and fifteen, who would have been a British subject if born before that date, within twelve months after the first day of August, nineteen hundred and twenty-two ; and

(c) any person born on board a British ship whether in foreign territorial waters or not ;

Provided that the child of a British subject, whether that child was born before or after the passing of the Act, shall be deemed to have been born within His Majesty’s allegiance if born in a place where by treaty, capitulation, grant, usage, sufferance, or other lawful means, His Majesty exercises jurisdiction over British subjects :

Provided also that any person whose British nationality is conditional upon registration at a British Consulate shall cease to be a British subject unless within one year after he attains the age of

twenty-one, or within such extended period as may be authorised in special cases by regulations made under this Act—

(i) he asserts his British nationality by a declaration of retention of British nationality, registered in such manner as may be prescribed by regulations made under this Act; and

(ii) if he is a subject or citizen of a foreign country under the law of which he can, at the time of asserting his British nationality divest himself of the nationality of that foreign country by making a declaration of alienage or otherwise he divests himself of such nationality accordingly.

(2) A person born on board a foreign ship shall not be deemed to be a British subject by reason only that the ship was in British territorial waters at the time of his birth.

(3) Nothing in this section, shall, except as otherwise expressly provided, affect the status of any person born before the commencement of this Act.

(4) The certificate of a Secretary of State that a person was at any date in the service of the Crown shall, for the purposes of this section, be conclusive."

or (C) a company registered in and according to the law of British India or the United Kingdom or a nondiscriminating Dominion and having a branch in British India. This excludes companies registered in and according to the law of any State in India

or (D) a co-operative society registered under the law of British India. This excludes co-operative societies of any State in India.

or (E) a Scheduled Bank. In this case whatever may be its nationality such a bank can be a shareholder provided it is included in the second Schedule; and it will be so included if it satisfies the provisions of S. 42 (6) and carries on the business of banking in British India.

It will be noted that unlike in the case of other countries where none but nationals are permitted to hold shares in the Central Bank, here in India, British subjects and subjects of the Dominions are given the same rights as nationals.

Article 5 of the Bank of Japan for instance lays down that 'All the shares of the Bank of Japan shall be registered, and the Japanese alone shall be entitled to make a sale, a purchase, or a transfer thereof.' The recent report of the Canadian Currency Commission 1933 (presided over by Lord Macmillan) which has recommended a Central Bank for Canada also suggests that such a Bank being in the nature of a public trust, its stock should not be held by foreigners (Appendix to Report, p. 98).

'Person' in this section includes not only an individual but any company or an association or body of individuals, whether incorporated or not. [Gen. Cl. Act S. 3 (39)] In the same sense it is also used in sections 17 (1), and (14), 31, 32 (1), 40, 41, 55 (1) and 56 (3); but in section 9 (6), and (7), 10 (1) and (2) and 12 (3) it denotes only natural persons.

'Domicile' means the country which is considered by law to be a person's permanent home, 'home' meaning the place or country in which he in fact either resides with the intention of a residence or having so resided continues to do so whether with or without the intention, or in respect of which he retains the intention to reside whether in fact he resides there or not. (See Dicey : Conflict of Laws, 3rd ed. pp. 83, 85.)

Principal place of business in India.—A shareholder is qualified to be registered only in the register of that area in which he either ordinarily resides or has his principal place of business in India. It is not necessary that the principal place of business of a person for all the world should be in India. But what is meant by the expression is that within India if a person has more than one business office he can be registered only in that area where he has his principal office. He may have his Head office somewhere outside India and only branches in this country. In the latter case he must state which of the branches in India he treats as his principal place of business for the purpose of this sub-section. In the case of certain foreign companies and scheduled banks having their Head offices in the United Kingdom or elsewhere but having only branches in important centres in India, it will not be possible to say which is their principal place of business here. They may have to declare which is their principal place of business in this country, if they are to be qualified to be registered as shareholders under this Act.

Discrimination by a Dominion.—This will include every measure legislative or administrative which tends to place British Indian subjects in a position of disability as compared with that of other non-nationals. Discrimination between nationals and all non-nationals cannot be said to be discrimination within the meaning of this section. But discrimination for instance by the South African Government, between British subjects and Indian subjects of His Majesty will come within the meaning of this sub-section. Again legislation against Asiatics (including the people of India) while there is no such legislation against Europeans also be discrimination coming within the purview of the sub-section. The principle underlying the disqualification of subjects of foreign Dominions was thus stated by the Joint Committee. It was prepared to accord full equality of treatment to United Kingdom subjects so long as they are normally resident in

India on the ground that the United Kingdom Government gives the same reciprocal treatment to Indians resident there, the case is different as regards those Dominions which in various ways apply discriminatory provisions to the Indian subjects of His Majesty. We feel that every occasion should be taken to assert the principle that the citizens of such Dominions should not be allowed equal privileges in India so long as their Governments maintain any measure of discrimination against Indians, and we have taken the opportunity of this particular Bill to give effect to this principle by recommending changes in sub-clauses (3) (b) and (3) (c)."

Sub-section 5: Allotment.—'Allotment' ordinarily means the acceptance of an application for shares. It involves the appropriation to an applicant of a certain number of shares in response to an application. Shares so allotted are not, in general, specific shares identified by number, numbering coming only later. As in the case of an ordinary contract, the acceptance of an application for shares to be effective must be unconditional. (see Palmer's Company Law 14th Ed. p. 100.)

Sub-section 6: Qualified applicant.—This refers to the qualifications required to be registered as a shareholder, under sub-section 3. Though according to that sub-section the want of the qualification will only disqualify for registration as shareholder and for receipt of dividend, the present sub-section extends the qualification for purposes of allotment also. Among the applicants those who from the particulars that may be required to be furnished along with their applications are found wanting in any of the qualifications, will be rejected.

The term 'qualified applicant' may also include other qualifications that may be necessary before applications are accepted, such as prepayment of the full value of the shares applied for along with the application and so on.

Sub-section 8 and 11.—This is an ingenious but awkward provision for enabling the Directors of the Bank to obtain the minimum share qualification required of them by section 11 (2). That section requires the same qualification for members of Local Boards also. But by some oversight the present sub-sections (8 and 11) are not extended to members of Local Boards also. So that they will have no means of acquiring the minimum qualification at all, if the allotment is to take place in the manner provided by sub-section 5 of the present section.

That the omission with regard to Local Board members is only due to oversight is clear from the fact that the total number of shares allotted to Government is 2200 which exactly equals the total minimum qualification required of all Directors and Members of Local Boards

taken together. For Directors alone the total of 600 shares would have been enough. The total of 2200 is made up as follows:

| | |
|--|----|
| Directors nominated and elected | 12 |
| Local Board members for the five areas at eight each 40; out of whom 8 being also Directors, the others number | 32 |
| TOTAL .. | 44 |

The minimum share qualification for each being 50 the total thus comes to 2200.

The omission has to be rectified by amending sub-section 8 by adding the words 'and members of Local Boards' after the word Directors, and sub-section 11 by adding the words 'or member of a Local Board' after the word Director in each of the three places where it occurs in that sub-section.

Sub-section 11: Resale and Repurchase.—The right conferred on Government by this sub-section is a statutory right making alienations and transfers either voluntarily or otherwise, contrary to that right void, and it is not a mere right of pre-emption. As to the legal effect of this see Notes under Section 11 (2) *infra*.

Sub-section 10.—Though the Governor-General-in-Council has no voting power his right to payment of dividend on the shares allotted to him and for which he must necessarily have paid the share value by virtue of sub-section 1, is not taken away.

'Government': This term occurring in sub-sections 8 and 9 are not defined in the Act but is defined in the General Cl. Act S. 3 (21) as including 'the Local Government as well as the Government of India.' But sub-section 10 makes it clear that it is the 'Government of India' alone that is meant by the term here.

5. (1) The share capital of the Bank may be increased or reduced on the recommendation of the Central Board, with the previous sanction of the Governor-General-in-Council and with the approval of the Central Legislature, to such extent and in such manner as may be determined by the Bank in general meeting.

(2) The additional shares so created shall be of the nominal value of one hundred rupees each and shall be

assigned to the various registers in the same proportions as the shares constituting the original share capital.

(3) Such additional shares shall be fully paid up, and the price at which they may be issued shall be fixed by the Central Board with the previous sanction of the Governor-General-in-Council.

(4) The provisions of section 4 relating to the manner of allotment of the shares constituting the original share capital shall apply to the allotment of such additional shares, and existing shareholders shall not enjoy any preferential right to the allotment of such additional shares.

NOTES

Though the nominal *i.e.* the face value of each additional share issued, in the case of an increase of the share capital of the Bank, will be mentioned as Rs. 100, the price at which each share will be issued may be fixed by the Bank with the previous sanction of the Governor-General-in-Council. It may possibly be fixed with reference to the market price of the existing shares. The requirement that "such additional shares shall be fully paid up" will not be satisfied by payment of the full nominal or face value of the shares but the full price fixed for each share.

For the ordinary commercial meaning of the term 'fully paid up' see Notes under S. 4 (1), *supra*.

'Central Legislature': This under the present constitution obviously means the Indian Legislature as defined in S. 63 of the Government of India Act which says that 'Subject to the provisions of this Act, the Indian Legislature shall consist of the Governor-General and two Chambers, namely, the Council of State and the Legislative Assembly.'

'The Bank in general meeting' *see* S. 14.

Sub-section 4.—Though this states that the provisions of S. 4 relating to the manner of allotment will apply, it does not mean that sub-section 8 of that section also applies. It obviously means that the provisions as to the manner of allotment to share-holders will apply and nothing more.

6. The Bank shall, as soon as may be, establish offices in Bombay, Calcutta, Delhi, Madras and Rangoon and a branch in London, and may establish branches or agencies in any other place in India or, with the previous sanction of the Governor-General-in-Council, elsewhere.

Offices, branches
and agencies.

NOTES

Offices and Branches.—Unlike in the case of an ordinary company which is required to have a registered office as provided by S. 72 of the Indian Companies Act, the present section enables the Reserve Bank to have offices in the five places where it is also required to maintain share registers.

Except for this feature and for the obligation imposed by Ss. 40 and 41 there does not seem to be difference between a branch and an office from the point of view of transacting its other businesses. While sections 40 and 41 impose a duty to buy and sell sterling at its offices, they do not prohibit its transacting the said business also in its branches or through agencies.

Agencies out of India.—To establish these, previous sanction of Governor-General-in-Council is required. S. 17 Cl. (13) which authorises the Bank to make agency agreements with Central Banks of other countries and with the B. I. S. or other International Bank must be read subject to this section; that is to say, the Governor-General's sanction will be required for such agreements.

The Bank cannot have offices in other than the five places specified nor can it have agencies in places where it has its own offices or branches but only in other places in India or elsewhere.

7. The general superintendence and direction of the affairs and business of the Bank shall be entrusted to a Central Board of Directors which may exercise all powers and do all acts and things which may be exercised or done by the Bank and are not by this Act expressly directed or required to be done by the Bank in general meeting.

Management.

NOTES

The section is similar to section 24 of the Imperial Bank of India Act. All the powers to be exercised and all acts and things to be done by the Bank are entrusted by this Section to the Central Board of

Directors except such as are expressly directed or required by any provisions of this Act to be done by the Bank in general meeting. The only acts and things so provided are:—

S. 14 providing for an annual and other general meetings, and empowering the shareholders at such meetings to discuss the annual accounts, the report on the working of the Bank throughout the year and the Auditors' report on the balance sheet and accounts.

S. 5 (1) In case of increase or reduction of share capital, extent and manner of increase or reduction to be determined in general meeting.

S. 5) (1) Election of auditors and fixing of their remuneration to take place at the annual general meeting.

Except for these matters everything connected with the administration of the Bank is entrusted to the Central Board, so that the expressions 'The Bank' and 'the Central Board' are identical for all practical purposes.

Composition of
the Central Board
and term of office
of Directors.

8. (1) The Central Board shall consist of the following Directors, namely:—

(a) a Governor and two Deputy Governors, to be appointed by the Governor-General-in-Council after consideration of the recommendations made by the Board in that behalf;

(b) four Directors to be nominated by the Governor-General-in-Council;

(c) eight Directors to be elected on behalf of the shareholders on the various registers, in the manner provided in section 9 and in the following numbers, namely:—

(i) for the Bombay register—two Directors;

(ii) for the Calcutta register—two Directors;

(iii) for the Delhi register—two Directors;

(iv) for the Madras register—one Director;

(v) for the Rangoon register—one Director; and

(d) one government official to be nominated by the Governor-General-in-Council

(2) The Governor and Deputy Governors shall devote their whole time to the affairs of the Bank, and shall receive such salaries and allowances as may be determined by the Central Board, with the approval of the Governor General in Council.

(3) A Deputy Governor and the Director nominated under clause (d) of sub-section (1) may attend any meeting of the Central Board and take part in its deliberations but shall not be entitled to vote :

Provided that when the Governor is absent a Deputy Governor authorized by him in this behalf in writing may vote for him.

(4) The Governor and a Deputy Governor shall hold office for such term not exceeding five years as the Governor-General-in-Council may fix when appointing them, and shall be eligible for re-appointment.

A Director nominated under clause (b) or elected under clause (c) of sub-section (1) shall hold office for five years, or thereafter until his successor shall have been duly nominated or elected, and, subject to the provisions of section 10, shall be eligible for re-nomination or re-election.

A Director nominated under clause (d) of sub-section (1) shall hold office during the pleasure of the Governor-General-in-Council.

(5) No act or proceeding of the Board shall be questioned on the ground merely of the existence of any vacancy in, or any defect in the constitution of, the Board.

NOTES

Sub-section(1) and (2).—Appointment and salaries of Governor and Deputy Governors :—After considering the recommendations of the Central Board, which may be accepted or rejected, the Governor-General-in-Council may appoint the Governor and Deputy Governors, whose

salaries, however, are to be determined by the Board with the approval of the Governor-General-in-Council. If a Governor or Deputy Governor unacceptable to the Board, is appointed, a deadlock may ensue if the Board and the Governor-General-in-Council do not agree over the salary question. The expression "such salaries and allowances as may be determined" shows that the salaries etc are not to be fixed with reference to the offices as such, but only with reference to the individuals that are appointed. If so, unless an appointment by the Governor-General-in-Council is to the satisfaction of the Central Board, the Board may, by fixing such an unacceptably low salary, become master of the situation. Again it may be noted that the Board alone has the power to fix the salary and the Governor-General-in-Council may approve or disapprove of it. If both disagree and a deadlock ensues there is no provision in the Act to get out of it. An honest disagreement with the Governor-General-in-Council cannot be construed as a failure on the part of the Board to carry out an obligation imposed on it by or under this Act, so as to invoke the operation of Section 30 *infra*.

A regulation will therefore have to be made in this connection, under Section 5B.

Sub-section (1) (a).—In this connection an assurance has been given on behalf of Government that 'in making appointments to the three posts of the Governor and the two Deputy Governors, the Governor-General-in-Council accepts the position that at least one shall be a qualified Indian' (Legislative Assembly Debates Vol. VIII No. 5 dated 27-11-33 page 2197). This is what the Joint Committee say in this connection: "Many of us wished to add a provision that of the three highest posts thus created (*viz.*, the Governor and two Deputy Governors) one at least should be an Indian. We have, however, been informed that the official members in charge of the Bill are prepared to give a definite assurance in the Legislature that the Government will take account of our representations and that it will be its policy in making the first appointments and thereafter that at least one of the three shall be a qualified Indian. We are satisfied with this assurance."

Sub-section (1) (b): Guiding principle for nomination.—"We have been assured that it is intended that this power shall be used to ensure that territorial or economic interests which have not secured adequate representation in the elections shall have such inadequacy corrected by this means. We do not consider it appropriate to embody in the statute any specific provision for the fulfilment of this intention, but we consider that in the instrument of instructions to the Governor-General a passage should be inserted making it clear that this power should be exercised in the general manner indicated above and in particular to

✓ secure adequate representation of the interests of agriculture and co-operative banking if these interests had not secured such representation among the elected directors." (Joint Committee's Report).

Sub-section (1) (d).—'Government Official.' The expression is not defined in the Act but signifies the same thing as the term 'official' defined in Section 134 of the Government of India Act, as meaning any person who is in the Civil or Military service of the Crown in India.

Sub-section (3). Proviso.—The authority to the Deputy Governor to vote for the Governor during his absence, should be given by the Governor himself, and it should be in writing.

Such an authority gives also a statutory right to the Deputy Governor to preside at meetings of the Central Board during the absence of the Governor. [Section (13) (3)].

Such an authority is a power-of-attorney within the meaning of Section 2 (21) of the Indian Stamp Act and will have to be on stamp paper of the value of Rs. 1-8-0, if executed in any of the Provinces of Assam, Bengal, Central Provinces and Madras, of Rs. 2-0-0, in Bombay, Burma or the Punjab, and Re. 1-0-0 elsewhere.

Sub-section (4). Term of office of Governor and Deputy Governor.—The Governor-General in Council while appointing or reappointing a Governor or Deputy Governor will have to fix the period for such appointment. While the term in each case should not *exceed* five years, it may be any period within that limit.

The Governor-General-in-Council may, however, remove from office a Governor or Deputy Governor at any time. [Section 11 (1)].

Sub-section (5): Validation of Acts and Proceedings of Central Board.—The right to question the validity of any act or proceeding of the Board is barred only in so far as it is founded merely on the ground.—(1) that there was a vacancy among the Directors at the time of the act or proceeding in question or (2) that there was a defect in the constitution of the Board such, for instance, as the want of qualification of any kind, of one or more or the whole of the Directors, or that there was no valid election of one or more, or of the whole of them and so on.

Though these may not serve as the sole grounds for invalidating any act or proceeding of the Board, they may be urged along with other grounds such as the want of power to do a particular act. Further the provision in this sub-section does not bar a proceeding questioning the validity of the constitution of the Board itself, or the right of one or more, or all of the Directors to their respective offices.

Local Boards,
their constitution
and functions.

9. (1) A Local Board shall be constituted for each of the five areas specified in the First Schedule, and shall consist of—

(a) five members elected from amongst themselves by the shareholders who are registered on the register for that area and are qualified to vote, and

(b) not more than three members nominated by the Central Board from amongst the shareholders registered on the register for that area, who may be nominated at any time:

Provided that the Central Board shall in exercising this power of nomination aim at securing the representation of territorial or economic interests not already represented, and in particular the representation of agricultural interests and the interests of co-operative banks.

(2) At an election of members of a Local Board for any area, any shareholder who has been registered on the register for that area, for a period of not less than six months ending with the date of the election, as holding five shares shall have one vote, and each shareholder so registered as having more than five shares shall have one vote for each five shares, but subject to a maximum of ten votes, and such votes may be exercised by proxy appointed on each occasion for that purpose, such proxy being himself a shareholder entitled to vote at the election and not being an employee of the Bank.

(3) The members of a Local Board shall hold office until they vacate it under sub-section (6) and, subject to the provisions of section 10, shall be eligible for re-election or re-nomination, as the case may be.

(4) At any time within three months of the day on which the Directors representing the shareholders on any

register are due to retire under the provisions of this Act, the Central Board shall direct an election to be held of members of the Local Board concerned, and shall specify a date from which the registration of transfers from and to the register shall be suspended until the election has taken place.

(5) On the issue of such direction the Local Board shall give notice of the date of the election and shall publish a list of shareholders holding five or more shares, with the dates on which their shares were registered, and with their registered addresses, and such list shall be available for purchase not less than three weeks before the date fixed for the election.

(6) The names of the persons elected shall be notified to the Central Board which shall thereupon proceed to make any nominations permitted by clause (b) of sub-section (1) it may then decide to make, and shall fix the date on which the out-going members of the Local Board shall vacate office, and the in-coming members shall be deemed to have assumed office on that date.

(7) The elected members of a Local Board shall as soon as may be after they have been elected, elect from amongst themselves one or two persons, as the case may be, to be Directors representing the shareholders on the register for the area for which the Board is constituted.

(8) A Local Board shall advise the Central Board on such matters as may be generally or specifically referred to it and shall perform such duties as the Board may, by regulations, delegate to it.

NOTES

Sub-section (1). (b) The Central Board has a discretion to nominate any number not exceeding three; and though this subsection seems to give

the Board discretion to make the nominations at any time, sub-section (6) requires the Board to proceed to make the nominations immediately after it is notified of the election of the elected members.

Sub-section (2).—The Act does not provide as to how a shareholder who is not a natural person, but a firm, company, corporation or other legal person, is to exercise his vote. Any such body will act through such agency as may be provided by its own internal constitution.

Section 80 of the Indian Companies Act provides that "A company which is a member of another company may, by resolution of the directors, authorise any of its officials or any other person to act as its representatives at any meeting of that other company and the person so authorised shall be entitled to exercise the same powers on behalf of the company which he represents as if he were an individual shareholder of that other company."

The present sub-section lays down:—

(1) That only shareholders registered as such in a particular register for not less than six months ending with the date of an election, can vote at that election.

(2) That each shareholder who is so registered will have one vote for each five shares of his, but none for a fractional part or parts thereof. Any shareholder who, on the date of voting, has ceased to be a shareholder within the meaning of Section 4 (3), is not, however, entitled to vote, even though he may be found in the list of shareholders.

(3) That the maximum number of votes exercisable by any shareholder is ten, whatever the number of shares he may own.

(4) That the votes may be exercised either in person or by proxy.

(5) That a proxy appointed for a particular occasion and for a particular purpose, cannot be availed of for any other occasion or purpose. It will be necessary to appoint a new proxy, in case the particular meeting for which it was given is adjourned to some other date. 'Each occasion' in the section means 'each occasion for the purpose of exercising votes.' This will probably disable a proxy exercising the voting power for more than one purpose even at a single meeting. In that case, as many proxy papers will be required as there may be occasions for voting even at the same meeting.

(6) That only a shareholder having for himself a right of vote exercisable at that particular election can be appointed proxy, and none else. This will be so even where the appointor is a company, corporation or other body.

(7) That no employee of the Reserve Bank, even though he may be a shareholder having a right of vote can be appointed proxy. The expression 'employee' is not defined in the Act, but obviously means every officer or other person who is in the service of the Bank including a Director or member of a Local Board.

Voting by Proxy.—A proxy is a 'lawfully constituted agent.' If there is an instrument of proxy, it is not absolutely necessary to produce it at the meeting for which it is to be used, unless there is some requirement to that effect. *Re : English, Scottish and Australian Bank (1893) 3 Ch. 385.*

A proxy paper signed in blank and handed over with authority to fill up is effective, if the blank has been properly filled up when the proxy paper has been deposited or used. *Sadgrove v. Bryden (1907) 1 Ch. 318, Ernest v. Loma Gold Mins Co. (1897) 1 Ch. 1.*

Though in a meeting voting may be either personally or by proxy, the proxy ought not to be counted when the voting is by show of hands. *Ernest v. Loma Mins Co. (1896) 2 Ch. 572.* But a proxy has a right to demand a poll.

The same person may be proxy for any number of other shareholders and for the exercise of any number of votes on behalf of each (subject to the statutory maximum of ten for each shareholder).

A proxy unless irrevocably made may be revoked. *Spillen v. Mayo, (English) W. N. (1926) page 78.* A shareholder after appointing a proxy may attend and vote in person. Such right is paramount to the proxy's right. The shareholder's presence does not itself avoid the instrument of proxy, but if he votes before his proxy has voted for him, he impliedly revokes the proxy. *Cousins v. International Brich Co. (1931) 2 Ch. 90 ; see also Palmer's Company Law 15th Ed. page 173.* The death of a shareholder who appoints a proxy, revokes it. *ibid.*

Form of Proxy.—I, A.B. appoint C.D. to be my proxy to vote for me and on my behalf at the General meeting of the Reserve Bank of India to be held at _____ on the _____ day of _____ for the purpose of _____
(*Sd.*) A. B.

Stamp duty.—A Proxy has to be stamped under the Indian Stamp Act Sch. I, Article 52 with a Stamp of two annas.

Sub section (4) 'due to retire under the provisions of this Act.'—In the case of the First Directors to be elected for each area, the due dates of retirement of their nominated predecessors will be the dates on which such predecessors are due to retire as per Section 15 (4). In the case of others, the due dates will be five years after their predecessors began to hold office. (Section 8 (4) para 2.)

Sub-section (7). It is not the entire Local Board but only the elected members thereof, that have to elect from among themselves the Directors to the Central Board.

Disqualifications
of Directors and
members of Local
Boards.

10. (1) No person may be a Director or a member of a Local Board who—

(a) is a salaried government official or a salaried official of a State in India, or

(b) is, or at any time has been, adjudicated an insolvent, or has suspended payment or has compounded with his creditors, or

(c) is found lunatic or becomes of unsound mind, or

(d) is an officer or employee of any bank, or

(e) is a director of any bank, other than a bank which is a society registered or deemed to be registered under the Co-operative Societies Act, 1912, or any other law for the time being in force in British India relating to co-operative societies.

(2) No two persons who are partners of the same mercantile firm, or are directors of the same private company, or one of whom is the general agent of or holds a power of procuration from the other, or from a mercantile firm of which the other is a partner, may be Directors or members of the same Local Board at the same time.

(3) Nothing in clause (a), clause (d) or clause (e) of sub-section (1) shall apply to the Governor, or to a Deputy Governor or to the Director nominated under clause (d) of sub-section (1) of section 8.

NOTES

Person.—The expression here means only 'natural person' and cannot include other legal persons such as a company, corporation or other body of persons. See notes under Section 4.

Salaried Government Official, Salaried Official of a State.—'Government Official' means a person in the military or civil service of Government in India, the term 'Government' including both the Central and Provincial Governments, according to Section 3 (21) or the General Clauses Act. It does not include officials in the service of any local bodies such as a district board or municipal corporation. See also Notes under Section 8 (11) (d).

'Salary' denotes any remuneration given for work done or service rendered, but cannot include a pension which is given for past services. It is defined in Wharton's Law Lexicon as 'a recompense or consideration to a person for his pains and industry in another person's business; also wages, stipend or annual allowance.'

Sub-section (1) (b): Insolvency.—Not only present insolvency but past insolvency is a disqualification. The term 'is or at any time has been' shows that even if a person was at one time adjudicated insolvent and was subsequently discharged or the order of adjudication annulled, he would still be ineligible. But it must be noted that the mere presentation, an insolvency petition either by the debtor himself or by a creditor is no disqualification. There must be an adjudication as insolvent. In the cases of 'suspension of payment' and 'compounding with creditors', the disability continues only so long as the condition of suspending or compounding continues. If the person resumes payment or pays his creditors in full, he is no longer under the disability. Mere suspension of payment or compounding with creditors is not an act of insolvency, but is a disqualification under his section.

Both under the Presidency Towns Insolvency Act (Sections 9 & 10, and the Provincial Insolvency Act (Sections 6 & 7) the provisions of both of which are substantially same, a debtor commits an act of insolvency in each of the following cases, namely:—

(a) if, in British India or elsewhere, he makes a transfer of all or substantially all his property to a third person for the benefit of his creditors generally;

(b) if, in British India or elsewhere, he makes a transfer of his property or of any part thereof with intent to defeat or delay his creditors;

(c) if, in British India or elsewhere, he makes any transfer of his property or of any part thereof, which would, under these or any other enactment for the time being in force, be void as a fraudulent preference if he were adjudged an insolvent;

(d) if, with intent to defeat or delay his creditors,—

(i) he departs or remains out of British India,

(ii) he departs from his dwelling house or usual place of business or otherwise absents himself,

(iii) he secludes himself so as to deprive his creditors of the means of communicating with him ;

(e) if any of his property has been sold or in cases where the Presidency Towns Insolvency Act applies, attached for a period of not less than twenty-one days in execution of the decree of any Court for the payment of money ;

(f) if he petitions to be adjudged an insolvent ;

(g) if he gives notice to any of his creditors that he has suspended, or that he is about to suspend payment of his debts ;

(h) if he is imprisoned in execution of the decree of any Court for the payment of money.

Explanation.—For the purposes of these Acts, the act of an agent may be the act of the principal, even though the agent may have no specific authority to commit the act.

Sub-section (1) (c) : Lunacy and Unsoundness of Mind.—This does not require a judicial finding or declaration that the person in question is a lunatic or is of unsound mind. If the Central Board or the Governor-General-in-Council finds him to be under the disability, he may be removed under Section 11 (3). If the Governor-General-in-Council or the Central Board had acted *malafide* or even committed a mere error of judgment, they may be liable in damages.

'Lunatic' is defined in section 3 (5) of the Indian Lunacy Act (IV of 1912) as meaning 'an idiot or person of unsound mind.'

What constitute 'unsound mind' is not defined. But the Indian Contract Act Section 12 says that a person is said to be of sound mind for the purpose of making a contract if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interests.

Sub-section (1) (d) & (e) : Exclusion of Officers, Employees and Directors of Banks.—The object of excluding from the Central and Local Boards, persons connected with any bank is thus stated in the Report of the Indian Currency Commission (1926), on whose recommendation the original scheme for a Reserve Bank for India was based:—

"The Reserve Bank's principal function being to rediscount bankable bills held by the commercial banks, it is desirable that the Boards of the Reserve Bank should exercise their unfettered discretion in accepting or rejecting such paper, and it is therefore undesirable that re-

representatives of any of the commercial banks should hold the position of President, Vice-President or Member of a Local Board or that of Member of the Central Board. A provision to this effect should be embodied in the charter." (*Para 96, Report*) Sir Cecil Kisch in his book 'Central Banks' (Page 59) also speaks to the same effect: "As the dealings of the Central Bank will be largely with the commercial banks, it is desirable to provide that the latter should not obtain control of central banking policy. The relations of the commercial banks with trade and industry may on occasion colour their views as to what the policy of the Central Bank should be. Clearly a policy that should be directed by national considerations ought not to be subordinated to the interests of the principal customers of the Central Bank."

The term 'bank' is not defined in this Act or in any other enactment. The Currency Commission (Report Para 162) suggested the interpretation of the terms 'bank' or 'banker' as meaning "every person, firm or company using in its description or title 'bank' or 'banker' or 'banking' and every company accepting deposits of money subject to withdrawal by cheque, draft or order." They however recognised that the conditions of indigenous banking in India required further consideration.

The present clause of sub-section (1) leave the meaning of the term inexcusably vague. If the term simply included the 'scheduled banks' the application of the disqualification clauses will be exceedingly simple. As it is, the term will have a wide application. Every Nattukottai Chetty or other person who receives deposits from customers, has been judicially held to be a banker (See *Official Assignee of Madras v. Ramasami Chetty*, 43 Madras 747). If the term is to be so widely applied then very many of the monied persons who may have acquired share in the Reserve Bank will be excluded. Unless the Act is so amended as to confine the term 'bank' as used in this Section, to only 'scheduled banks', there will be a lot of unnecessary and avoidable difficulties and disputes.

Definitions of 'bank' and 'banker'.—Dr. Leaf, late Chairman of Westminster Bank, in his book on 'Banking' defines a bank as 'a person or corporation which holds itself out to receive from public, deposits payable on demand by cheque. This does not express more than one part of the business of a bank; but it does express the characteristic by which a bank is, to the common apprehension of the public, distinguished from other financial institutions. But the definition only holds good for Great Britain including Ireland as well as Scotland, and perhaps the United States. But it would not be applicable on the continent, where the use of the cheque is too little developed to

be regarded in any sense as a fundamental part of the operation of a bank ; and a definition would rather be sought from the discounting of bills and the giving of monetary credits.' (Page 21). As in the case of the continent, in India the cheque-system is little developed so that, the last remark in the above passage applies with equal force to India also.

Dr. Hart in his *Law of Banking* (3rd Ed. Page 1) defines of banker as 'one who, in the ordinary course of his business, honours cheques drawn upon him by persons from and for whom he receives money on current accounts.'

Sir John Paget, another well-known authority says that no one and nobody, corporate or otherwise, can be a 'Banker' who does not (1) take deposit accounts, (2) take current accounts, (3) issue and pay cheques drawn on himself, (4) collect cheques, crossed and uncrossed for his customers ('the Law, Banking' 4th Ed. p. 5.)

The Imperial Dictionary defines a banker to be one who traffics in money, receives and remits money, negotiates bills of exchange and a bank as an establishment which trades in money, an establishment for the deposit, custody and issue of money, as also for granting loans, discounting bills, and facilitating the transmission of remittance from one place to another.

This last definition has been approvingly quoted in the *New Flemings etc., Co. v. Kessowji*, 9 Bom. 373 (411).

The following is a statutory definition of "bank" and "banking" adopted in an Act, Congress of U. S. A. 'By banking' we mean the business of dealing in credits, and by a 'bank' we include every person firm or company having a place of business where credits are opened by the deposit or collection of money or currency, subject to be paid, or remitted upon draft, cheque or order, or where money is advanced or loaned on stocks, bonds, bullion, bills of exchange, or promissory notes are received for discount or sale." (14 Statutes at large p. 115, quoted in M. L. Tannan's *Banking Law and Practice in India* pp. 23-24.)

The New York State Banking Law defines a bank as 'any domestic moneyed corporation, other than a trust company, authorised to discount and negotiate promissory notes, draft bills of exchange and other evidences of draft ; to receive deposits of money and commercial paper ; to lend money on real or personal security ; and to buy and sell gold and silver bullion, foreign coins or bills of exchange.'

It will be seen from these definitions that the guidance to be derived from them is by no means clear or conclusive. Having regard to Indian conditions, one will find that many monylending persons and firms and

companies can be said to carry on the business of banking. If so, the proprietors, officers and employees in all of them will be disqualified for the officers of Directors and members of Local Boards of the Reserve Bank.*

Sub-section (1) (e) : Director.—The term does not necessarily indicate that the 'bank' referred to here is a bank registered as a company or corporation. 'Director' in its wider sense denotes 'one who directs' and may include also the proprietor or proprietors or manager of a private banking business.

Exception of Directors of Co-operative Banks.—While other officers and employees of all banks including co-operative banks are disqualified an exception is made in the case of directors of co-operative banks only.

Sub-section (2).—This is adopted from a similar provision in the Imperial Bank of India Act, Schedule II Art. 39 (3).

It only prohibits two or more partners, or directors of a private company, or principal and agent, or a partner of a firm and an agent of the same firm, acting together as Directors or members of the same Local Board. It does not prohibit one of them being a Director, and another being a member of a Local Board different from that in which the Director if he was an elected Director, will also serve as a member of the Local Board.

The provision does not prevent the directors of a company other than a private company being also Directors or members of the same Local Board of the Reserve Bank.

The policy underlying the provision of this sub-section (2) is to prevent cliques influencing the policies of the Bank for their own private advantage.

Partners of a mercantile firm.—The term does not include members of a trading Hindu joint family. Section 5 of the Indian Partnership Act (IX of 1932) provides that "the relation of partnership arises from contract and not from status; and in particular, the members of a Hindu undivided family carrying on a family business as such, or a Burmese Buddhist husband and wife carrying on business as such are not partners in such business."

Private Company.—"private company" means a company which

(i) by its articles—

(a) restricts the right to transfer its shares; and

*For a full discussion of the subject, see an article by the present writer in the Journal of the Indian Institute of Banker (October 1934) under the title "What is a 'Bank' or 'Banker'?"

- (b) limits the number of its members (exclusive of persons who are in the employ of the company) to fifty; and
 - (c) prohibits any invitation to the public to subscribe for any shares or debentures of the company; and
- (ii) continues to observe such restrictions, limitations and prohibitions: Provided that where two or more persons hold one or more shares in a company jointly they shall, for the purposes of this definition, be considered as a single member: (Indian Companies Act Section 2 (13).]

Sub-section (3).—This keeps open the posts of Governor and Deputy Governors to capable government officials and directors and other officers of other banks.

11. (1) The Governor-General-in-Council may remove from office the Governor, or a Deputy Governor or any nominated or elected Director :

Provided that in the case of a Director nominated or elected under clause (b) or clause (c) of sub-section (1) of section 8 this power shall be exercised only on a resolution passed by the Central Board in that behalf by a majority consisting of not less than nine Directors.

(2) A Director nominated or elected under clause (b) or clause (c) of sub-section (1) of section 8, and any member of a Local Board shall cease to hold office if, at any time after six months from the date of his nomination or election, he is not registered as a holder of unencumbered shares of the Bank of a nominal value of not less than five thousand rupees, or if he ceases to hold unencumbered shares of that value, and any such Director shall cease to hold office if without leave from the Governor-General-in-Council he absents himself from three consecutive meetings of the Central Board convened under sub-section (1) of section 13

(3) The Governor-General-in-Council shall remove from office any Director, and the Central Board, shall remove from office any member of a Local Board, if such Director or member becomes subject to any of the disqualifications specified in sub-section (1) or sub-section (2) of section 10.

(4) A Director or member of a Local Board removed or ceasing to hold office under the foregoing sub-sections shall not be eligible for re-appointment either as Director or as member of a Local Board until the expiry of the term for which his appointment was made.

(5) The appointment, nomination or election as Director or member of Local Board of any person who is a member of the Indian Legislature or of a Local Legislature shall be void, unless, within two months of the date of his appointment, nomination or election, he ceases to be such member, and, if any Director or member of a Local Board is elected or nominated as a member of any such Legislature, he shall cease to be a Director or member of the Local Board as from the date of such election or nomination, as the case may be.

(6) A Director may resign his office to the Governor-General-in-Council, and a member of a Local Board may resign his office to the Central Board, and on the acceptance of the resignation the office shall become vacant.

NOTES.

Sub-section (1) : Resolution passed by the Central Board.—This is the only reference in the Act to a resolution of the Board acting by a majority. Out of the 16 Directors, 3 being voteless (*Vide* S. 8 (3)) 13 have votes, and out of this 9 at least must vote for removal of any Director.

Sub-section (2).—While Section 4 (8) enables the Directors to acquire the share qualifications, by purchase of the necessary shares at par value from Government, it does not so enable members of Local Boards to acquire the qualification. As Section 4 (8) allots to Government 2,200 shares, of which 600 will be enough for the Directors, and the remainder will exactly satisfy the share qualification for the members of Local Boards other than those elected as Directors, it is clear from this that there has been an inadvertent omission of the words ' and members of Local Boards' after the word 'Directors', in Section 4 (8) and the Section has to be amended. As the shares to be allotted to any person in the first instance are not to exceed five in number, and as the Bank's shares will probably be over-subscribed, it may be extremely difficult, if not impossible for members of Local Boards to acquire the necessary share qualification except, if possible, by purchase of shares at prohibitive prices in the market.

Unencumbered shares.—The Directors and Members of Local Boards are required to be registered holders of unencumbered shares of the nominal value of Rs. 5,000. This share qualification they can acquire only from Government under Section 4 (8). Section 4 (11) however prohibits the disposal of such shares except by re-sale to Government at par. This means that the Government has a lien on the shares. If so, can they be said to be 'unencumbered'? An incumbrance is defined in Wharton's Law Lexicon as a claim, lien or liability attached to property and this definition has been judicially approved in *Jones, v. Barnett* (1899) 1 Ch: page 620.

This difficulty can be avoided only by amending this sub-section, so as to include a para at end of it, declaring that the right of Government under Section 4 (11) over shares disposed of by it under Section 4 (8) is not an incumbrance within the meaning of this sub-section.

Absence from three consecutive meetings.—There is no power in the Governor-General-in-Council to condone this absence. Absence with leave of the Governor-General-in-Council from any number of meetings does not invite the penalty. The leave must have been obtained prior to the absence. For other wise, leave obtained after absence from three consecutive meetings will have a curing effect, and make the provision of the Act effectless.

Convened under sub-section (1) of Section 13.—Every meeting of the Central Board will have to be convened by the Governor, under the power given to him under sub-section (1) of Section 13. And there is no difference between meetings convened by the Governor at his own discretion and those convened by him on the requisition of three or more Directors under sub-section (2) of Section 13.

If a Director is absent from any three consecutive meetings, in whatever manner convened, the disability applies.

In the case of an elected Director, if he ceases to hold office as Director, will he also cease to hold office as an elected member of the Local Board by the elected members of whom he was originally elected? Though this Section does not expressly say that he will also vacate the office of member of Local Board such a meaning is clear from sub-section (3) of Section 12, a general reading of which shows that the occurrence of a vacancy in the office of an elected Director will also result in a vacancy of his position as elected member of the Local Board.

The consequence of ceasing to hold office applies only to Directors. But the Report of the Joint Committee shows that they intended the provision to apply to members of Local Boards also. This is what the Committee say:—

"We have added a provision at the end of this sub-clause for the vacation of office in the case of continued absence. It is of the highest importance that Directors and Members of Local Boards of the Reserve Bank should be ready to give adequate attention to their responsibilities."

When a Director ceases to hold office, or is removed, his office will be filled in the manner provided by Section 12 (4).

Sub-sections (3),(4), (5),(6).—These provisions apply to all Directors and Members of Local Boards, including the Governor, Deputy Governors and the Government Director.

Sub-section (5).—In the case of a Member of the Indian or Local legislature, elected or nominated as Director or member of a Local Board, he is given two months time to choose between the two. But in the case of a Director or Member of a Local Board, elected or nominated to any of the Legislatures, he automatically ceases to be Director or Member of Local Board, because his seeking election or accepting nomination to the Legislature is itself evidence of his preferential choice.

Being member of the Legislature of a State in India is not a disability.

Filling up of vacancies arising under this section.—These are casual vacancies to be filled in manner provided by Section 12.

Sub-section (6).—In the case of an elected Director who is also a member of a Local Board, it is doubtful if he resign his place as a Director he will continue to be a member of the Local Board.

In such case, Section 12 (4) will apply for filling up the casual vacancy.

12 (1) If the Governor or a Deputy Governor by infirmity or otherwise is rendered incapable of executing his duties or is absent on leave or otherwise in circumstances not involving the vacation of his appointment, the Governor-General-in-Council may, after consideration of the recommendations made by the Central Board in this behalf, appoint another person to officiate for him, and such person notwithstanding anything contained in clause (d) of sub-section (1) of section 10, be an officer of the Bank.

Casual vacancies and absences.

(2) If an elected Director is for any reason unable to attend a particular meeting of the Central Board, the elected members of the Local Board of the area which he represents may elect one of their number to take his place, and for the purposes of that meeting the substitute so elected shall have all the powers of the absent Director.

(3) Where any casual vacancy in the office of any member of a Local Board occurs otherwise than by the occurrence of a vacancy in the office of a Director elected by the Local Board, the Central Board may nominate thereto any qualified person recommended by the elected members of the Local Board.

(4) Where any casual vacancy occurs in the office of a Director other than the vacancies provided for in sub-section (1), the vacancy shall be filled, in the case of a nominated Director by nomination, and in the case of an elected Director by election held in the manner provided in Section 9 for the election of Directors :

Provided that before such election is made the resulting vacancy, if any, in the Local Board and any vacancy in the office of an elected member of such Board which may have been filled by a member nominated under sub-section (3) shall be filled by election held as nearly as may be in the manner provided in Section 9 for the election of members of a Local Board.

(5) A person nominated or elected under this Section to fill a casual vacancy shall, subject to the proviso contained in sub-section (4), hold office for the unexpired portion of the term of his predecessor.

NOTES.

Sub-section (2).—This must be read subject to the provisions of sub-section 11 (2), under which a Director ceases to hold office, if he is absent from three consecutive meetings of the Central Board. The pre-

sent provision enables the elected members of a Local Board to send a substitute from among themselves to take the place of the absent Director.

But the substitute can exercise the powers of the Director for the particular meeting only, and for every meeting during the absence of the Director, the substitute will have to be freshly elected; this cannot however continue for three consecutive meetings, in which contingency Section 11 (2) will come into operation

In case of the absent Director serving on any committee of the Board, this sub-section does not enable the substitute to function in such committee.

Sub-section (3).—This speaks of a 'Director elected by the Local Board.' This is inaccurate. Not the whole Local Board, but only the elected members thereof elect the Director from among themselves. (*Vide* Section 9 (7)).

Sub-section (4).—The procedure to be adopted in the case of a casual vacancy in the office of an elected Director is that prescribed in Section 9 (4) to (7).

In cases where the vacancy in the office of an elected Director, results also in vacating his office as an elected member of the Local Board from which he came, there will have to be first an election of a member of the Local Board to take his place, and after that election, all the elected members will proceed as per sub-section (7) of Section 9 to elect a Director from among themselves.

Such Director elected to fill a casual vacancy will, however, remain in office only for the unexpired portion of the term of his predecessor. If, for instance, only one year remained for his predecessor when he ceased to hold office or was removed from it, the person newly elected to take his place, can serve only for that unexpired term.

This is what the Joint Committee say on the general scheme of sub-sections (3) & (4):—

“ The effect of our proposals is that a vacancy of an elected member in the Central Board will be filled in the following manner: first an election to fill his vacancy in his Local Board and then an election by the newly completed Local Board to fill the vacancy in the Central Board. In the case of a vacancy of an elected member of a Local Board who is not also a member of the Central Board we consider that it would suffice for such a vacancy to be filled by co-option until such time as the Local Board is called upon to fulfil its function of electing a member to the Central Board. Before that is done, the co-opted member should be replaced by an elected member.”

Casual Vacancy. This has been interpreted with reference to Company Law to mean, and means also here 'a vacancy occurring otherwise than by retirement in rotation'. (*Munster v. Cammell Co.* (1882). 21 Ch-D. 183, 187.)

13. (1) Meetings of the Central Board shall be convened by the Governor at least six times in each year and at least once in each quarter.

Meetings of the Central Board.

(2) Any three Directors may require the Governor to convene a meeting of the Central Board at any time and the Governor shall forthwith convene a meeting accordingly.

(3) The Governor, or in his absence the Deputy Governor authorized by the Governor under the proviso to sub-section (3) of section 8 to vote for him, shall preside at meetings of the Central Board, and, in the event of an equality of votes, shall have a second or casting vote.

NOTES.

Year.—It is not stated to be the 'financial year.' So it means 'calendar year,' according to S. 3 (59) of the General Clauses Act.

Sub-section (2).—The three Directors who may require the Governor to convene a meeting, may or may not have voting rights; that is to say, the two Deputy Governors and the Government official may require the convening of the meeting.

Any meeting will have to be convened by the Governor, whether on requisition of other directors, or at his own discretion. While the Governor is bound to convene at least six meetings every year, his discretion is not fettered as to the upper limit which will depend on the exigencies of the situation.

The present section gives power to convene the meetings, only to the Governor; During his absence though a Deputy Governor authorized by him may preside over and vote for him in the Central Board, he has no power to convene meetings either of his own accord or on the requisition of three or more Directors according to Sub-section (2). But any person officiating as Governor can exercise the duties and powers of the Governor. (See Section 12 (1) *Supra.*)

14. (1) A general meeting (hereinafter in this Act referred to as the annual general meeting) shall be held annually at a place where there is an office of the Bank within six weeks from the date on which the annual accounts of the Bank are closed, and a general meeting may be convened by the Central Board at any other time :

Provided that the annual general meeting shall not be held on two consecutive occasions at any one place.

(2) The shareholders present at a general meeting shall be entitled to discuss the annual accounts, the report of the Central Board on the working of the Bank throughout the year and the auditors' report on the annual balance-sheet and accounts.

(3) Every shareholder shall be entitled to attend at any general meeting and each shareholder who has been registered on any register, for a period of not less than six months ending with the date of the meeting, as holding five or more shares shall have one vote and on a poll being demanded each shareholder so registered shall have one vote for each five shares, but subject to a maximum of ten votes and such votes may be exercised by proxy appointed on each occasion for that purpose, such proxy being himself a shareholder entitled to vote at the election and not being an officer or employee of the Bank.

NOTES.

Sub-section (1).—While the Bank cannot hold two annual general meetings consecutively in the same place, it is not obliged to hold its meetings in turn in all the places where it has offices. The Bank will be within the statute if it should hold its annual general meetings in one or other of two convenient places such as Calcutta and Bombay in turn. Nor is the Bank required to hold other general meetings in any specified place or at any specified time.

General meetings can be convened only by the Central Board, and the shareholders (in whatever majority) have no right to require the Board or the Bank to convene such meetings.

Sub-section (2).—This sub-section gives a right to the shareholders to discuss the annual accounts, the report of the Central Board and the auditors' report not only at an annual general meeting but at any and every general meeting, that may be convened. Perhaps this was not the intention of the framers of the Act.

If this effect was not intended, the sub-section should be so amended as to substitute the words 'annual general meeting' for the words 'general meeting'.

Sub-section (3)—Voting by shareholders.—See notes under Section 9 (2), which deals with voting by shareholders in case of elections in their respective areas.

The only difference between their voting at the annual and other general meetings and at elections is that at the general meetings, those who are entitled to more than one vote cannot exercise that right, according to the number of their votes, unless a poll is demanded. "There are two well-known methods of voting (1) by show of hands and (2) by a poll; and the essence of the former method is that the hands are held up and counted by decision of the eye." *Ernest v. Loma Co.* (1896) 2 Ch. 572.

In this sub-section the word 'election' is used inadvertently for the word 'meeting'.

15. (1) The following provisions shall apply to the first constitution of the Central Board, and notwithstanding anything contained in Section 8, the Central Board as constituted in accordance therewith shall be deemed to be duly constituted in accordance with this Act.

(2) The first Governor and the first Deputy Governor or Deputy Governors shall be appointed by the Governor General-in-Council on his own initiative, and shall receive such salaries and allowances as he may determine.

(3) The first eight Directors representing the shareholders on the various registers shall be nominated by the Governor-General-in-Council from the areas served respecti-

vely by those registered, and the Directors so nominated shall hold office until their successors shall have been duly elected as provided in sub-section (4).

(4) On the expiry of each successive period of twelve months after the nomination of Directors under sub-section (3) two Directors shall be elected in the manner provided in section 9 until all the Directors so nominated have been replaced by the elected Directors holding office in accordance with Section 8. The register in respect of which the election is to be held shall be selected by lot from among the registers still represented by nominated Directors, and for the purposes of such lot the Madras and Rangoon registers shall be treated as if they comprised one register only.

NOTES.

Sub-section (2).—This does not provide for the duration of office of the first Governor and Deputy Governors. But under Section 8 (4) the Governor-General-in-Council has to fix a period not exceeding five years.

Sub-section (3). 'Representing the share-holders on the various registers.'—A more appropriate expression will be 'representing the areas to be served by the various share registers.' For at the time when the First Central Board is formed, neither allotment of shares, nor the share registers will have come into existence. Section 4 (4) & (5) entrust the duty of receiving applications for shares and allotting shares to the Central Board which it expects to have come into existence. The wording of the present Section 15 makes the first constitution presuppose the existence of 'share-holders on the various registers' and a capacity on the part of those nominated as Directors to represent such share-holders, but in fact neither share-holders nor share registers will be in existence at the time when the first Central Board is formed by nomination of all the Directors.

Sub-section (4).—The scheme of this sub-section is that after the 3 Directors are nominated, at end of each year two of them are to be replaced by two elected Directors, and the area or areas for which they are to be elected are to be determined by lot.

This scheme does not provide for the filling of casual vacancies, in case any of the first Directors nominated under sub-section (3) dies or is removed or otherwise ceases to hold office. In such case Section 12 (4) will apply.

16. As soon as may be after the commencement of this Act, the Central Board shall direct elections to be held and may make nominations, in order to constitute Local Boards in accordance with the provisions of Section 9, and the members of such Local Boards shall hold office up to the date fixed under sub-section (6) of Section 9, but shall not exercise any right under sub-section (7) of that Section.

First constitution
of Local Boards.

NOTES.

The elected members of the first Local Boards constituted according to this Section will have no power to elect any Directors, when occasion for electing them will arise at the end of the first, second, third and fourth years as provided in Section 15 (4).

When, for instance, at the end of the first year, it is determined by lot that Directors for the Calcutta register are to be elected, then, the procedure prescribed by Section 9 (4) to (7) will be followed for that register, a new Local Board will be formed of new members elected and nominated and the newly elected members of the Local Board will proceed to elect from among themselves, two Directors to represent the Calcutta register in the Central Board.

As soon as may be after commencement of this Act.—The first Section of the Act comes into force immediately: and the other Sections at such times as the Governor-General-in-Council may by notification determine. The whole Act does not commence on a particular date.

So it is difficult to understand what is meant by 'the commencement of this Act.' But it is not of material importance here. After the Central Board is created, and shares allotted and share-registers come into existence, elections for the Local Boards may be held, and the Local Boards constituted.

17. The Bank shall be authorized to carry on and transact the several kinds of business hereinafter specified, namely:—

Business which
the Bank may
transact.

(1) the accepting of money on deposit without interest ✓
from, and the collection of money for, the Secretary of State

in Council, the Governor-General-in-Council, Local Governments, States in India, local authorities, banks and any other persons ;

(2) (a) the purchase, sale and rediscount of bills of exchange and promissory notes, drawn on and payable in India and arising out of *bona fide* commercial or trade transactions bearing two or more good signatures, one of which shall be that of a scheduled bank and maturing within ninety days from the date of such purchase or rediscount, exclusive of days of grace ;

(b) the purchase, sale and rediscount of bills of exchange and promissory notes, drawn and payable in India and bearing two or more good signatures, one of which shall be that of a scheduled bank, or a provincial co-operative bank, and drawn or issued for the purpose of financing seasonal agricultural operations or the marketing of crops, and maturing within nine months from the date of such purchase or rediscount, exclusive of days of grace ;

(c) the purchase, sale and rediscount of bills of exchange and promissory notes drawn and payable in India and bearing the signature of a scheduled bank, and issued or drawn for the purpose of holding or trading in securities of the Government of India or a Local Government, or such securities of States in India as may be specified in this behalf by the Governor-General-in-Council on the recommendation of the Central Board, and maturing within ninety days from the date of such purchase or rediscount, exclusive of days of grace ;

(3) (a) the purchase from and sale to scheduled banks of sterling in amounts of not less than the equivalent of one lakh of rupees ;

(b) the purchase, sale and rediscount of bills of exchange (including treasury bills) drawn in or on any place in the United Kingdom and maturing within ninety days from the date of purchase, provided that no such purchase, sale or rediscount shall be made in India except with a scheduled bank; and

(c) the keeping of balances with banks in the United Kingdom;

(4) the making to States in India, local authorities, schedule banks and provincial co-operative banks of loans and advances, repayable on demand or on the expiry of fixed periods not exceeding ninety days, against the security of—

(a) stocks, funds and securities (other than immovable property) in which a trustee is authorized to invest trust money by any Act of Parliament or by any law for the time being in force in British India;

(b) gold or silver or documents of title to the same;

(c) such bills of exchange and promissory-notes as are eligible for purchase or rediscount by the Bank;

(d) promissory notes of any scheduled bank or a provincial co-operative bank, supported by documents of title to goods which have been transferred, assigned, or pledged to any such bank as security for a cash credit or overdraft granted for *bona fide* commercial or trade transactions, or for the purpose of financing seasonal agricultural operations or the marketing of crops;

(5) the making to the Governor-General-in-Council and to such Local Governments as may have the custody and management of their own provincial revenues of advances repayable in each case not later than three months from the date of the making of the advance;

✓ (6) the issue of demand drafts made payable at its own offices or agencies and the making, issue and circulation of bank post bills ;

✓ (7) the purchase and sale of Government securities of the United Kingdom maturing within ten years from the date of such purchase ;

✓ (8) the purchase and sale of securities of the Government of India or of a Local Government of any maturity or of such securities of a local authority in British India or of such States in India as may be specified in this behalf by the Governor-General in-Council on the recommendation of the Central Board :

✓ Provided that securities fully guaranteed as to principal and interest by the Government of India, a Local Government, a local authority or a State in India shall be deemed for the purposes of this clause to be securities of such Government, authority or State :

✓ Provided further that the amount of such securities held at any time in the Banking Department shall be so regulated that—

(a) the total value of such securities shall not exceed the aggregate amount of the share capital of the Bank, the Reserve Fund and three-fifths of the liabilities of the Banking Department in respect of deposits ;

(b) the value of such securities maturing after one year shall not exceed the aggregate amount of the share capital of the Bank, the Reserve Fund and two-fifths of the liabilities of the Banking Department in respect of deposits ; and

(c) the value of such securities maturing after ten years shall not exceed the aggregate amount of the share-

capital of the Bank and the Reserve Fund and one-fifth of the liabilities of the Banking Department in respect of deposits ;

(9) the custody of monies, securities and other articles of value, and the collection of the proceeds, whether principal, interest or dividends, of any such securities ;

(10) the sale and realization of all property, whether movable or immovable, which may in any way come into the possession of the Bank in satisfaction, or part satisfaction, of any of its claims ;

(11) the acting as agent for the Secretary of State in Council, the Governor-General-in-Council or any Local Government or local authority or State in India in the transaction of any of the following kinds of business, namely:—

(a) the purchase and sale of gold or silver ;

(b) the purchase, sale, transfer and custody of bills of exchange, securities or shares in any company ;

(c) the collection of the proceeds, whether principal, interest or dividends, of any securities or shares ;

(d) the remittance of such proceeds, at the risk of the principal, by bills of exchange payable either in India or elsewhere ;

(e) the management of public debt ;

(12) the purchase and sale of gold coin and bullion ;

(13) the opening of an account with or the making of an agency agreement with, and the acting as agent or correspondent of a bank which is the principal currency authority of any country under the law for the time being in force in that country or any international bank formed by such

banks, and the investing of the funds of the Bank in the shares of any such international banks;

(14) the borrowing of money for a period not exceeding one month for the purposes of the business of the Bank, and the giving of security for money so borrowed;

Provided that no money shall be borrowed under this clause from any person in India other than a scheduled Bank, or from any person outside India other than a bank which is the principal currency authority of any country under the law for the time being in force in that country:

Provided further that the total amount of such borrowings from persons in India shall not at any time exceed the amount of the share capital of the Bank;

(15) the making and issue of bank notes subject to the provisions of this Act; and

(16) generally, the doing of all such matters and things as may be incidental to or consequential upon the exercise of its powers or the discharge of its duties under this Act.

NOTES.

This and the next two Sections are very important, because they deal with the various kinds of business which the Bank may and may not carry on and transact. Being a Central Bank, it must not engage in any and every kind of banking business, nor compete with other banks, for the sake of profit.

No obligation on the Bank to do all authorised business.—Though the Bank has been authorised or empowered to do the various kinds of business enumerated in this section, yet within the limits prescribed, it will exercise its discretion and engage only in such business as it considers necessary or proper in the public interest. That is to say, there is no obligation on the Bank to carry on and transact all the business which it is authorised by this Section to do. Its sole guide will be, as the preamble states, the operation of the currency and credit system of the country to the country's advantage.

Clause (1).—The provision for the Bank receiving only non-interest bearing deposits, is in accordance with the general practice of most other central banks of the world. While it prevents the Bank from competing with the commercial banks, the condition that it should not pay interest on deposits, is very necessary for giving the Bank full freedom of action in altering the proportion between its earning and unearning assets, which is essential for exercising proper control over credit conditions.

The expression 'accepting of money on deposit' means accepting both on current and deposit accounts. The deposits may come into existence both by receiving deposits of actual cash and by the making of loans and advances in such ways as prescribed by Clause (4) below.

The deposits may be received from any person whatever, without distinction, though the only persons, compelled to make deposits with the Bank, are the Government of India and such Local Governments as have the custody and management of their own provincial revenues. [see Section 21 (1).]

Character of business under Clause (2).—The fundamental basis of the Reserve Bank's business under this sub-section is the demand for credit in the commercial market for purposes of production and distribution. But the Bank is intended to create only circulating credit and not credit to be used for capital purposes or for speculation. The liquid nature of the dealings is assured by the requirement that the bills and promissory notes dealt with must mature within 90 days or in the case of agricultural paper, 9 months. The provision is not designed as to make all paper in the hands of the Reserve Bank self-liquidating *i.e.* originating in transactions whose consummation would automatically produce the funds for the liquidation of the loan. "If a man borrows money for the purpose of shipping cotton he will need the loan while the cotton is in transit, and when it reaches its destination and is paid for, the shipper will be in funds and in a position to repay his loan. Similarly, if a farmer borrows money for the purpose of feeding a load of steers, he expects to be able to repay the loan as soon as the steers have been fattened and sold. The 9 months' limit permitted for agricultural paper is a concession to agriculture in recognition of the fact that the agricultural turnover is slower than the industrial turnover and that 9 months' paper offers no greater facilities to agriculture than 3 months' paper offers to commerce and industry." (*cf. Goldenweiser: Federal Reserve System in Operation p. 23.*)

Thus in order to be eligible the paper must arise out of a current business transaction directly related to the production or distribution of commodities. The law specifically prohibits loans, the proceeds of which are to be used for investment purposes, or for the purpose of

trading in or carrying stocks or bonds or investment securities, an exception to this rule being in respect of paper created for the purpose of holding or trading in Government securities [sub-clause (c.)]. The principle upon which the Reserve Bank must operate is thus to supply only the short term credit needs and not the capital needs of trade and industry.

Eligible Paper.— This sub-section deals with what in central banking practice is known as 'eligible paper' for purchase, sale and rediscount by the Reserve Bank. Though the Bank is authorised to deal in such paper, it will use its own discretion for accepting or not accepting any particular paper, and will be the sole judge to decide whether a bill or promissory note has arisen out of *bona-fide* commercial or trade transactions, or has been drawn or issued for the purpose of financing seasonal agricultural operations or the marketing of crops or for the purpose of holding or trading in the specified securities or whether it contains signatures which it considers good.

Eligibility and acceptability.—“ In discussing this subject it is important to keep in mind clearly the distinction between the eligibility of paper and its acceptability, and between the definition of the character of paper eligible for discount and the decision as to whether a given piece of paper qualifies under the definition. The Federal Reserve Board's function is confined to the definition of eligibility in general terms, while the question of acceptability and the application to individual offerings for discount or purchase, of the principles laid down by the Board is left to the reserve banks. In order to be eligible for discount, the paper must conform to the conditions laid down in the Act as interpreted by the Board, while in order to be acceptable the paper must be such as to convince the loan committee of a reserve bank that it is a good risk either on the strength of the names attached to it or of the security back of it. Paper that is entirely eligible under the law may nevertheless be unacceptable because the loan committee may know that the parties who borrowed the money are not financially dependable, but paper ineligible under the law, though it may be perfectly good and would be acceptable to the loan committee, cannot be lawfully acquired by a reserve bank. (*cf. Goldenweiser; Federal Reserve System in Operation : pp. 146-7.*)

These observations equally apply to the Reserve Bank of India, the only point to be noted being that unlike in the U.S.A., where the Federal Reserve Board and the Reserve Banks are different, in India the Reserve Bank functions as both.

Nature of the bills and promissory notes eligible under this sub-section.— For a clear understanding of all the clauses, the legal definition of a bill of exchange and a promissory note may be noted.

The Indian Negotiable Instruments Act, Sections 4 & 5 define them as follows:—

“A “promissory note” is an instrument in writing (not being a bank-note or a currency-note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument. ✓

A “bill of exchange” is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument. ✓

A promise or order to pay is not “conditional,” within the meaning of this Section and Section 4, by reason of the time for payment of the amount or any instalment thereof being expressed to be on the lapse of a certain period after the occurrence of a specified event which, according to the ordinary expectation of mankind, is certain to happen, although the time of its happening may be uncertain.

The sum payable may be “certain,” within the meaning of this Section and Section 4, although it includes future interest or is payable at an indicated rate of exchange, or is according to the course of exchange, and although the instrument provides that, on default of payment of an instalment, the balance unpaid shall become due.

The person to whom it is clear that the direction is given or that payment is to be made may be a “certain person,” within the meaning of this Section and Section 4, although he is mis-named or designated by description only.”

Drawn on and payable in India.—In clause (a) of sub-section (2), eligible paper comprises ‘bills of exchange and promissory notes drawn on and payable in India’. From a legal point of view this expression is inartistic if not nonsense. A bill of exchange can be drawn only on a person and not on India, which is only a country and is not in any conceivable sense a person. ‘India’ is defined in the General Clauses Act S. 3 (27) as meaning “British India with any territories of any Native Prince or Chief under the suzerainty of Her Majesty exercised through the Governor-General of India or through any Governor or other Officer subordinate to the Governor-General of India”. Further a promissory note contains only a promise to pay and cannot be drawn on another person. The expression in the original Bill was ‘bills of exchange and promissory notes drawn and payable in India.’ The word ‘on’ was added by the Select Committee and their reason for the amendment is given as follows:—

“We have added the word “on” to enable the Bank to discount rupee import bills in the event of such instruments coming into exist- ✓

ence in the future as contemplated by the Central Banking Enquiry Committee."

This is what the Central Banking Enquiry Committee stated (Report para 608) : " We contemplate the introduction of rupee import bills as a possible and desirable future development of the Indian bill market. When this development takes place, we think it necessary that the Reserve Bank should have powers to purchase, sell and rediscount such bills. The provisions of the Bill of 1928 confined the business of the Reserve Bank to the purchase, sale and rediscount of bills of exchange and promissory notes *drawn and payable* in India. As rupee import bills would be drawn out of India, we suggest that the Bill should be amended so as to omit the condition that the bills should be drawn in India." It will be noted that the Central Banking Enquiry Committee did not suggest the addition of the word ' on '.

The object could have been achieved with greater clearness and legal perfection, if the words ' drawn on and ' were deleted. That would have given full effect to the Select Committees' intentions.

Foreign bills and promissory notes.—The bills and promissory notes in clauses (a) (b) & (c) inasmuch as they may be drawn payable anywhere in India, *i. e.*, outside British India also, may be either inland or foreign instruments according to Section 11 & 12 of the Negotiable Instruments Act which define these as follows :—

11. A promissory note, bill of exchange or cheque drawn or made
Inland instrument. in British India, and made payable in, or drawn upon any person resident in, British India, shall be deemed to be an inland instrument.

12. Any such instrument not so drawn, made or made payable
Foreign instru- shall be deemed to be a foreign instrument.
ment.

As to the special law relating to foreign bills, and promissory notes the following are the provisions, (Sections 104 and 134 to 137) :—

104. Foreign bills of exchange must be protested for dishonour when such protest is required by the law of the place where they are drawn.

134. In the absence of a contract to the contrary, the liability
of the maker or drawer of a foreign promissory note,
bill of exchange or cheque is regulated in all essential
matters by the law of the place where he made the
instrument, and the respective liabilities of the
acceptor and indorser by the law of the place where
the instrument is made payable.
Law governing liability of maker, acceptor or indorser of foreign instrument.

Illustration.

A bill of exchange was drawn by *A* in California, where the rate of interest is 25 per cent. and accepted by *B*, payable in Washington, where the rate of interest is 6 per cent. The bill is indorsed in British India, and is dishonoured. An action on the bill is brought against *B* in British India. He is liable to pay interest at the rate of 6 per cent. only; but, if *A* is charged as drawer, *A* is liable to pay interest at the rate of 25 per cent.

135. Where a promissory note, bill of exchange or cheque is made payable in a different place from that in which it is made or indorsed, the law of the place where it is made payable determines what constitutes dishonour and what notice of dishonour is sufficient.

Law of place of payment governs dishonour.

Illustration.

A bill of exchange drawn and indorsed in British India, but accepted payable in France, is dishonoured. The indorsee causes it to be protested for such dishonour, and gives notice thereof in accordance with the law of France, though not in accordance with the rules herein contained in respect of bills which are not foreign. The notice is sufficient.

136. If a negotiable instrument is made, drawn, accepted or indorsed out of British India, but in accordance with the law of British India, the circumstance that any agreement evidenced by such instrument is invalid according to the law of the country wherein it was entered into does not invalidate any subsequent acceptance or indorsement made thereon in British India.

Instrument made etc., out of British India, but in accordance with its law.

137. The law of any foreign country regarding promissory notes, bills of exchange and cheques shall be presumed to be the same as that of British India, unless and until the contrary is proved.

Presumption as to foreign law.

Thus, under the law of British India bills drawn or payable in the Indian States as well as in other countries are foreign bills, governed by possibly different provisions, with regard to presentation, dishonour, notice of dishonour, protest, etc., and as for decrees obtained in respect of them execution is not possible as the States and British India treat one another as 'foreign countries'. Unless therefore the whole of India has a unified system of law and judicial enforcement, it is unsafe for the Reserve Bank to deal in bills drawn and/or payable in the States as the liquidity of its assets is liable to be hampered on account of legal difficulty and delays.

It may be noted in this connection that Section 42 (6) or any other Section of the Act does not require a bank already included in the Second Schedule, to continue to have an office or branch in British India; If so, there may happen cases, where the Reserve Bank may be purchasing or rediscounting bills, all the other parties to which including a Scheduled Bank reside or have their places of business outside British India.

Period of Maturity.—The bills and notes may, by themselves, be for any period but the Section only requires that at the date of the Bank's purchase or rediscounting, their period of maturity shall not be longer than what is prescribed. When a period of maturity is mentioned, it refers to the time that has to elapse before maturity from the date on which the bill is purchased or discounted, or rediscounted by the Bank, and not from the date at which the bill was originally drawn. A scheduled bank may itself purchase or discount a bill having a maturity of, say, six months in the case of a commercial or financial bill or 12 months in the case of an agricultural bill but when it seeks to sell or rediscount it with the Reserve Bank, the further period remaining for its maturity shall not be more than 90 days under sub-clause (a) or (c) or 9 months under sub-clause (b).

In computing the number of days or months, the date, on which the purchase or rediscounting takes place, will have to be excluded in accordance with the provisions of Section 9 (1) of the General Clauses Act which provides that "it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word "from" and, for the purpose of including the last in a series of days or any other period of time, to use the word "to".

Clause 2 (b).—'Month' will have to be reckoned according to the British calendar [Gen. Cl. Act. S. 3 (33)], and not according to any of the Indian vernacular calendars even though the bill or note may be dated according to such calendar.

'Maturity'; 'Days of Grace':—The provisions relating to these are contained in Sections 22 to 25 of the Negotiable Instruments Act which provide as follows :

22. The maturity of a promissory note or bill of exchange is the date at which it falls due.

Every promissory note or bill of exchange which is not expressed to be payable on demand, at sight or on presentment is at maturity on the third day after the day on which it is expressed to be payable.

"Maturity."

Days of grace.

23. In calculating the date at which a promissory note or bill of exchange, made payable a stated number of months after date or after sight, or after a certain event, is at maturity, the period stated shall be held to terminate on the day of the month which corresponds with the day on which the instrument is dated, or presented for acceptance or sight, or noted for non-acceptance, or protested for non-acceptance, or the event happens, or, where the instrument is a bill of exchange made payable a stated number of months after sight and has been accepted for honour, with the day on which it was so accepted. If the month in which the period would terminate has no corresponding day, the period shall be held to terminate on the last day of such month.

Calculating maturity of bill or note payable so many months after date or sight.

Illustrations.

(a) A negotiable instrument, dated 29th January 1878, is made payable at one month after date. The instrument is at maturity on the third day after the 28th February 1878.

(b) A negotiable instrument, dated 30th August 1878, is made payable three months after date. The instrument is at maturity on the 3rd December 1878.

(c) A promissory note or bill of exchange, dated 31st August 1878, is made payable three months after date. The instrument is at maturity on the 3rd December 1878.

24. In calculating the date at which a promissory note or bill of exchange made payable a certain number of days after date or after sight or after a certain event is at maturity, the day of the date or of presentment for acceptance or sight, or of protest for non-acceptance, or on which the event happens, shall be excluded.

Calculating maturity of bill or note payable so many days after date or sight.

25. When the day on which a promissory note or bill of exchange is at maturity is a public holiday, the instrument shall be deemed to be due on the next preceding business day.

Purchase, sale and rediscount of bills ; no power to draw etc.

The Bank has no power to draw its own bills or notes and sell or discount them with any Scheduled Bank or other person, except that it can issue demand drafts and bank post bills as provided in clause (6) below.

Bearing two or more good signatures.—For sub-clauses (a) & (c) of Clause (2) one of the signatures shall be that of a scheduled bank and for sub-clause (b) it may also be that of a Provincial Co-operative Bank.

The meaning of the expression 'bearing a signature' is, that the person, whose signature is on the bill or note, is liable as drawer or maker, or endorser, or acceptor.

In the case of companies and other bodies of individuals signing, the Bank will have to be acquainted with the internal constitution of the corporate or un-incorporated body, in order to satisfy itself as to the authority, validity etc., of the signature and its legal sufficiency to bind such a body.

Ineligible paper as additional security.—While this sub-clause prescribes the kinds of commercial bills eligible for purchase or rediscount by the Reserve Bank, it does not prohibit the Bank demanding or taking from the Scheduled Bank or Provincial Co-operative Bank or other person seeking rediscount facilities with it, as additional security ineligible paper of any kind, or even real property. It was so held in a recent case which arose under the Federal Reserve System of U.S.A., *Lucas v. Federal Reserve Bank of Richmond* reported in the Federal Bulletin, July 1932, pp. 452-454). There the question arose, whether the Federal Reserve Bank of Richmond could assert any legal right to additional, collateral security furnished to it by the First National Bank of New Bern, and whether any other creditor of the latter when it became insolvent could proceed against the said security.

The contention of the plaintiff was that "the Reserve Bank under the statute creating it, is limited in its acceptance of paper and securities to those of the kind eligible for discount under the act; that the paper which the Reserve Bank required the National Bank to deposit as additional collateral was not of this character; that the requirement was, therefore, unauthorized and unlawful; and that this unauthorized and unlawful conduct produced in the National Bank and in the First National Bank 'a condition equivalent to insolvency' and resulted in the closing of the latter with consequent damage to complainants and those in like situation." The Court of Appeal in confirming the decree of the District Court dismissing the suit, observed as follows :—

"As to the second cause of action, it is sufficient to say that, in our opinion, there can be no doubt as to the right and power of the federal reserve banks to take, as collateral security to the indebtedness of member banks, paper, which is not eligible for discount. While the Federal Reserve Act limits the class of paper which a reserve bank may discount or purchase (12 U. S. C. A. 343 and 356), there is no reason why such bank may not accept paper ineligible for discount as additional security for the indebtedness arising out of the discount of eligible paper. It is given power by the Act (12 U. S. C. A. 341 seventh) to exercise, not only the powers expressly granted therein but also such incidental

powers as shall be necessary to carry on the business of banking within the limitations prescribed; and, that the power to require and accept additional security, either for existing indebtedness or for eligible paper discounted, is a power necessary to carry on properly the business of banking within the limitations of the act, seems too clear to admit of argument. The fact that the paper taken as additional security is ineligible for discount, ought not and does not preclude its being taken as collateral.

The section of the Federal Reserve Act granting incidental powers to the Federal Reserve Banks is practically the same as the section granting incidental powers to national banking associations (12 USCA 24, seventh); and, with respect to the incidental powers granted to the latter, Mr. Chief Justice Waite, in the case of *First National Bank v. National Exchange Bank* 92 U. S. 122, 127. said:

“ Authority is thus given to transact such a banking business as is specified, and all incidental powers, necessary to carry it on, are granted. These powers are such, as are required to meet all the legitimate demands of the authorised business, and to enable a bank to conduct its affairs, within the general scope of its charter, safely and prudently. This necessarily implies the right of a bank to incur liabilities in the regular course of its business, as well as to become the creditor of others. Its own obligations must be met, and debts due to it collected or secured. The power to adopt reasonable and appropriate measures for these purposes is an incident to the power to incur the liability or become the creditor.”

It is well settled, that, under these incidental powers, a national banking association may take, as security for a loan, collateral of a character in which it is precluded from investing its funds. *Curtis v. Metcalf* 259 Fed. 961; *Thompson v. St. Nicholas Nat. Bank* 146 U. S. 240; *Germania Nat. Bank v. Case* 99 U. S. 628; *Fourth Nat. Bank of Nashville v. Stahlman* 132 Tenn. 367, L. R. A. 1916A 568 and note.. According to the allegations here, the ineligible paper was demanded and taken as additional security after credit had been extended upon the discount of eligible paper, although it is a fair inference that it was taken at the time when new paper was discounted in substitution of other paper then retired. It was taken, then, in an effort to collect or secure existing indebtedness; and a contention that the power to take such security for the protection of the bank does not exist, is hardly to be accepted in view of the decisions holding that a national bank, for the collection and better security of debt owing to it, may acquire corporate stocks (*First Nat. Bank v. Nat. Exchange Bank Supra*) may buy grain needed to seed a farm which it has been compelled to purchase on exe-

cution (*Great Bend First Nat. Bank v. Bannister*, 7 Kan. App. 787, 54 Pac. 20), and, although expressly forbidden to make loans on realty, may take a mortgage on realty as additional security to a loan already made (*Norton Grocery Co. v. Peoples Nat. Bank of Abingdon*, 151 Va. 195, 144 S. E. 501.)”

Waiver of notice of dishonour etc., by Scheduled Banks.—In the Federal Reserve Act of U. S. A., Section 13 provides that ‘the indorsement of any member bank shall be deemed a waiver of demand, notice and protest.’ A similar statutory provision is essential in the case of the Scheduled Banks, and Provincial Co-operative Banks dealing with the Reserve Bank, as it is to the liability of these banks that the Reserve Bank principally looks to, when purchasing or rediscounting any eligible paper.

Meaning of rediscount.—‘Rediscount’ is a term usually applied to the process of discounting of bills and promissory notes, by the Central Bank of a country, when they are offered to it for discount by a member bank who having previously discounted the same for its own customers wants to convert them into cash again. That is to say, when a member bank wants to offer its own customer’s paper to be discounted by the Central Bank, it is said to offer it for re-discount. In the history of the bill or note, the discounting with the Central Bank being a re-or second discounting (the first discounting having already taken place when the customer offered it for discount with his own bank) it is called re-discounting. A Central Bank is not generally given the power of direct discount except when special occasions for same arises, when it can, not merely rediscount for a member bank but also directly discount bills and notes for any person. (See Section 18.)

Discount.—A discount means an advance of money made upon transfer of a negotiable instrument payable at a future day, as security. *Landry v. Bank of Nova Scotia* (1879) 29 N. B. R. 564 (Canadian case);

The difference between ‘lending’ money and ‘discounting’ is that the latter term implies a purchase, the discounter of a bill becoming its owner. If the market value of the bill depreciates the loss falls upon the discounter; if it appreciates the profit of the transaction belongs wholly and exclusively to him. *London Financial Association v. Kelle*. (1884) 26 Ch. D. 107.

“To discount a bill is to buy it, to become the transferee of it, by having it indorsed or transferred by delivery by the holder, by giving him a price settled either by agreement or by the current rate in the money market, and based on the time the bill has yet to run. . . . A dis-

counter is a holder for full value. He is not a pledgee, he can deal and part with the bill as he likes, his title to the bill and to sue on it is absolute and covers the whole face value, he is in no sense a trustee for the previous holder as to any part of the bill or its proceeds. The person who gets the bill discounted is a transferor; if by endorsement then with all the liabilities of an indorser, if a transferor by delivery then with the liabilities attaching to that character. In either case he parts with all right, title and interest in the bill and its proceeds." (Sir J. R. Paget in his *Gilbart Lectures*, 1912.)

Features of a bonafide commercial bill.—'The true commercial bill is a bill drawn in respect of a genuine commercial transaction.....It is a self-liquidating asset in the sense that the liquidation of the commercial transaction liquidates the bill.' (Indian Currency Commission Report Para 116.)

What are commercial or trade transactions?—"The terms 'commercial transactions,' and 'commercial purposes', in their broadest sense, would cover any transaction and any purpose connected with commerce. Commerce is not confined to the buying, selling or bartering of commodities, but is a term of large significance, and as was said by Mr. Justice Harlan, of the United States Supreme Court, "comprehends traffic intercourse, trade navigation, communication, the transit of persons, and the transmission of messages by telegraph—indeed every species of commercial intercourse which is carried on between man and man."

But having regard to the purpose of the Indian Reserve Bank Act which, as in the case of the Federal Reserve System of U. S. A., is primarily to furnish an elastic currency and credit system and afford rediscount facilities in the interests of Indian trade and commerce, a fundamental requirement in the case of commercial paper is that it shall be used not only in connection with the commerce of the country, but that it shall be either directly used in the purchase of commodities or that the proceeds shall be intended to be so used, so that it will have the presumptive security of the commodities, or the avails of a resale thereof, back of it. (The above quoted extracts are from the correspondence of the New York Clearing House with the Federal Reserve Bank Organization Committee (quoted by Dr. H. Parker Willis in his book, 'The Federal Reserve System' at page, 941). Regulation A of the Federal Reserve Board defines commercial paper as one 'issued or drawn or the proceeds of which have been used or are to be used in the first instance in producing, purchasing, carrying or marketing goods in one or more of the steps of the process of production, manufacture or distributions.' That is to say it should represent in every case "some distinct step or stage in the productive or distributive process—the pro-

gression of goods from producer to consumer". It includes all kinds of short term negotiable instruments (notes, bills and acceptances) that arise out of *commercial* as distinguished from speculative, investment, real estate, personal or public transactions; that is to say short term notes, bills of exchange and acceptances arising out of industrial, agricultural or commercial transactions, the essential qualities of which are early maturity, automatic or self liquidating power, and soundness in origin and purpose of use. (Encyclopaedia of Banking and Finance.)

Longer maturity of agricultural paper.—The reasons for this is thus given by Dr. Goldenweiser in his book 'Federal Reserve System in Operation' (pages 150-151.) "This distinction in favour of agricultural paper was made because agricultural operations are, as a rule, slower than industrial operations; and because the turnover in agriculture is much less rapid and that, in order to serve agriculture, paper of longer maturity must be discounted. This extension of maturity for agricultural paper is not inconsistent with the principle that the reserve banks' assets must be self-liquidating since the fundamental requirement is that the period for which the paper is discounted do not exceed the length of time required to complete the operation for which the loan is made. If therefore, the operation of feeding live-stock for market requires 9 months, the paper arising out of that operation is essentially no less self-liquidating than 3 months' paper of a retail store, and in principle, as well as in law, is no less acceptable for discount at the reserve bank."

Nature of Agricultural paper.—In view of the longer maturity of agricultural paper, there may occasionally arise in actual practice, some difficulty in deciding whether a particular bill or note is to be classed as commercial or agricultural paper. This is what Dr. Goldenweiser says in this connection:—

"In defining agricultural as distinct from commercial paper, many fine points have had to be determined in practice. It has been held, for instance, that the note of a packing company, the proceeds of which are used for the purchase of live-stock for slaughter, is not live-stock paper within the meaning of the Act, and is eligible for discount only when its maturity do not exceed 90 days. A note of a grain dealer given to a grower for grain purchased for resale is commercial paper, even though the grower subsequently discounts the note and uses the proceeds for an agricultural purpose. This is on the principle that the classification of paper depends upon the transaction out of which it originally arises, irrespective of the nature of any further transaction in which the paper may be subsequently negotiated. A note given by a farmer in payment for a motor truck is agricultural paper,

but notes of motor distributing companies given for the purchase of motors are commercial paper eligible for discount for a period not exceeding 90 day."

Holding or trading in securities.—With a view to prevent undesirable diversion of the Reserve Bank's rediscounting facilities to speculation in securities, a safeguarding provision similar to that contained in Section 4 of the Federal Reserve Act of U.S.A., may be adopted, in any regulations that may be made by the Central Board.

The provision in U.S.A., is as follows:—"Each Federal Reserve Bank shall keep itself informed of the general character and amount of the loans and investments of its member banks with a view to ascertaining whether undue use is being made of bank credit for the speculative carrying of or trading in securities, real estate, or commodities, or for any other purpose inconsistent with the maintenance of sound credit conditions; and, in determining whether to grant or refuse advances, rediscounts or other credit accommodations, the Federal Reserve Bank shall give consideration to such information. The chairman of the Federal Reserve Bank shall report to the Federal Reserve Board any such undue use of bank credit by any member bank, together with his recommendations. Whenever, in the judgment of the Federal Reserve Board, any member bank is making such undue use of bank credit, the Board may, in its discretion, after reasonable notice and an opportunity for a hearing, suspend such bank from the use of the credit facilities of the Federal Reserve System and may terminate such suspension or may renew it from time to time."

CLAUSE (3).

Dealings in sterling exchange.—The Bank is authorised to deal in sterling alone and not in any other foreign currency.

Apart from the obligation to maintain the Sterling Exchange Standard at the statutory ratio prescribed by Sections 40 & 41, this clause will enable the Bank to maintain stability of exchange by dealings in sterling. While under Sections 40 & 41, the Bank is obliged to buy and sell sterling to any person but only in its offices, it may, under this clause, give facilities to scheduled banks in any of its offices, branches or agencies.

In case of emergencies, the Bank may deal also with persons other than 'scheduled banks' (See Section 18).

Sub-clause (b).—As to the meaning of 'bills, drawn on' a place, 'maturity', 'days of grace' etc., See notes under clause (2) above. It may be noted that the bills coming under this clause may be non-British in origin, and expressed to be payable even in non-British

currency. The only condition is that the bills must be drawn in or on a place in the United Kingdom whatever may be the currency, (dollar, franc, mark etc.) For the definition of 'United Kingdom' See notes under Section 4 (3).

Treasury Bills.—The following is a fairly accurate description of the nature and use of "British Treasury Bills".

The material wording on a Treasury Bill runs as follows: "This Treasury bill entitles A. B. or order to payment of pounds at the Bank of England out of the Consolidated Fund of the United Kingdom on the day of " It is signed by the Secretary to His Majesty's Treasury. In effect it is equivalent to a bill of exchange drawn upon H. M. Treasury and made payable on its due date at the Bank of England.

Treasury bills form part of the floating debt of the United Kingdom, which, as its name implies, represents (or should represent) temporary discrepancies between the revenue and expenditure of the country which should be rectified by the end of the financial year. In particular, whereas national expenditure is spread evenly over the whole of the year, the bulk of the revenue is only collected in the last three months of the financial year. Thus the normal tendency is for the excess of expenditure over revenue to grow steadily from April until the end of December, and for revenue to catch up again during the months of January, February and March. Consequently the floating debt grows between April and December and contracts during the following quarter.

* * * * *

Treasury bills were instituted in 1877 on the suggestion of Walter Bagehot, a former editor of *The Economist*. Each week a certain number of them are sold by the Bank of England on behalf of the Government, and are paid for by their buyers in spot cash, which is handed over to the Government. On the maturity of the bill, the Government reimburses the holder with the amount specified thereon. The function of the bill from the Government's point of view is that it is a means of raising a loan running for the period of the bill. Its function from the money-market's point of view is that it provides a means of lending spare funds for a short time to the British Government, whose status and security as a borrower are unquestionable. The real point of the Treasury Bill, as envisaged by Bagehot, was that it would enable the Government to tap the floating supplies of money, which are always to be found in the London money-market.

* * * * *

Since they were first instituted, Treasury bills have been issued to run for various periods up to a year, but of recent years only three

months' bills have been issued, and so they alone will be considered. Incidentally, Treasury bills are not entitled to days of grace, but are paid on their date of maturity.

* * * * *

Treasury bills are issued in denominations of £5,000, and £10,000, but tenders must be for an amount not less than £50,000, and must be submitted through a London banker, Discount House or Broker.

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Once Treasury bills are issued; they exchange hands in the money market just as other bills of exchange, and while the rates of discount, at which they are bought and sold naturally conform, fairly closely to the rate, at which new Treasury bills are being issued each week, the agreement is not exact. Treasury bills during their week of issue are known as "hot" bills, and the rate of discount, at which they are dealt in, is described accordingly. As Treasury bills approach maturity they come within the category of "short" bills. (Lloyds Bank Review September 1931 pages 360 to 364.)

Though under this sub-clause 3 (b) the Bank cannot deal in securities of longer maturity than 90 days, under clause (7) below, it may purchase of and sell Government Securities of the United Kingdom, maturing within 10 years, that is to say, that the Bank may also deal in Treasury Bills of longer maturity.

Clause 3 (c). The balance may be kept in any Bank in the United Kingdom. Having regard to the elastic meaning of the expression 'bank' (See notes Section 10), this clause gives a free charter to the Bank to keep balances at its discretion with any person, company or corporation doing banking business in the United Kingdom.

CLAUSE (4).

The making of temporary loans and advances to banks or other persons is not and ought not to be properly the function of a sound central banking system. But under the Federal Reserve System loans to member banks on their collateral notes, secured by customers' paper or by Government obligations, are permitted. The reasons for this are:

"Collateral notes are used chiefly by the large banks in financial centres, where commercial banks do a great deal of business for short terms and where they can easily adjust their borrowings from time to time to immediate requirements. For purposes of this kind of borrowing, collateral notes are much more convenient than customers' notes, which generally have longer maturities. By borrowing on its own note made out for a relatively large amount in a round figure, such as \$1,000,000, \$5,000,000, or \$10,000,000, the member bank can save a great deal of book keeping and clerical work. On the other hand, the smaller banks, which find themselves short of funds, are more likely to

rediscount one or more of the customers' notes in their possession, with the Reserve Bank, which will carry them until maturity." (Goldenweiser: Federal Reserve System in Operation pages 23-4.)

Further in this country the financing of industry and seasonal agricultural operations being almost wholly affected by a system of cash credits, and there being practically no bill market to any appreciable extent, the making of loans and advances becomes a necessary function for the central banking institution in India. The loans are repayable either on demand or after fixed periods. No days of grace are allowed.

The terms 'loans' and 'advances' mean more or less the same thing. Both indicate the letting out or renting of sums of money by a lender to a borrower to be repaid with or without interest. But in the case of an advance it may be on open account, as well as being evidenced by a note, with or without collateral.

While this clause provides for loans and advances to Indian States, local authorities, scheduled banks, and provincial co-operative banks, the next clause (Clause 5) authorises the making of advances to the Government of India and Local Governments.

For the definition of 'Scheduled Banks' and 'Provincial Co-operative Bank' see notes under Section 2.

Local authority.—This is defined in the General Clauses Act S. 3 (28) as meaning, 'a municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with the control or management of a municipal or local fund:—'

Stocks, funds and securities in which a trustee can invest trust funds.—The Indian Trust Act Section 20 provides:—

Where the trust-property consists of money and cannot be applied immediately or at an early date to the purposes of the trust, the trustee is bound (subject to any direction contained in the instrument of trust) to invest the money on the following securities, and on no others:—

Investment of trust-money.

- ✓ (a) in promissory notes, debentures, stock or other securities of the Government of India, or of the United Kingdom of Great Britain and Ireland;
- ✓ (b) in bonds, debentures and annuities charged by the Imperial Parliament on the revenues of India;

Provided that, after the fifteenth day of February 1916, no money shall be invested in any such annuity being a terminable annuity unless

a sinking fund has been established in connection with such annuity; but nothing in this proviso shall apply to investments made before the date aforesaid.

- ✓ (bb) in India three and a half per cent. stock, India three per cent. stock, India-two and a half per cent. stock or any other capital stock which may at any time hereafter be issued by the Secretary of State for India in Council under the authority of an Act of Parliament and charged on the revenues of India ;
- ✓ (c) in stock or debentures of, or shares in Railway or other Companies the interest whereon shall have been guaranteed by the Secretary of State for India in Council or by the Government of India ;
- ✓ (d) in debentures or other securities for money issued, under the authority of any Act of a Legislature established in British India, by or on behalf of any municipal body, port trust or city improvement trust in any Presidency-town, or in Rangoon Town, or by or on behalf of the trustees of the port of Karachi :
- (e) on the first mortgage of immoveable property situate in British India : Provided that the property is not a leasehold for a term of years and that the value of the property exceeds by one-third, or, if consisting of buildings, exceeds by one-half, the mortgage-money ; or
- (f) on any other security expressly authorized by the instrument of trust, or by any rule which the High Court may from time to time prescribe in this behalf :

Provided that, where there is a person competent to contract and entitled in possession to receive the income of the trust-property for his life, or for any greater estate, no investment on any security mentioned or referred to in clauses (d), (e) and (f) shall be made without his consent in writing.

The British Trustee Act.—(15 Geo. 5. Ch. 19), Section 1 enacts :—

A trustee may invest any trust funds in his hands, whether at the time in a state of investment or not, in manner following, that is to say :—

- (a) In any of the parliamentary stocks or public funds or Government securities of the United Kingdom :
- (b) * * * * *

- (c) In the stock of the Bank of England or the Bank of Ireland ;
- (d) In India Seven, Five and a half, Four and a half, Three and Two and a half per cent. stock, or in any other capital stock which may at any time be issued by the Secretary of State in Council for India, under the authority of any Act of Parliament, and charged on the revenues of India, or any other securities the interest in sterling whereon is, payable out of and charged on the revenues of India ;
- (e) In any securities the interest of which is for the time being guaranteed by Parliament ;
- (f) In consolidated stock created by the Metropolitan Board of works, or by the London County Council, or in debenture stock created by the Receiver for the Metropolitan Police District, or in metropolitan water stock ;
- (g) In the debenture or rentcharge, or guaranteed or preference, stock of any railway company in the United Kingdom incorporated by special Act of Parliament, and having during each of the ten years last past before the date of investment paid a dividend at the rate of not less than three percentum on its ordinary stock ;
- (h) In the stock of any railway or canal company in the United Kingdom whose undertaking is leased in perpetuity or for a term of not less than two hundred years at a fixed rental to any such railway company as is mentioned in paragraph (g) of this sub-section, either alone or jointly with any other railway company ;
- (i) In the debenture stock of any company owning or operating a railway in India the interest in sterling on which is paid or guaranteed by the Secretary of State in Council for India :
- (j) In the " B " annuities of the Eastern Bengal, the East Indian the Scinde Punjab and Delhi, Great Indian Peninsula and Madras Railways, or in any securities substituted therefor, and any like annuities which may at any time after the commencement of this Act be created on the purchase of any other railway by the Secretary of State in Council of India, and charged on the revenues of India, and which may be authorised by Act of Parliament to be accepted by trustees in lieu of any stock held by them in the purchased railway ; also in deferred annuities comprised in the

or other. Securities which are either never to be redeemed or to be redeemed at some indefinite time or at the pleasure of the authority issuing them are not eligible because they cannot be said to *mature* at any time. But such other securities are eligible under Section 20 of the Indian Trusts Act for purposes of Clause 4 (a).

Another condition is that they must be fully guaranteed as to principal and interest.

Extent of the Bank's power under this clause—The Bank's power under this clause is limited as follows:—

(a) The total value of the securities specified under this clause should not at any time exceed the total of:—

- (1) The share capital of the Bank for the time being. (See Sections 4 (1) and 5 (1)).
- (2) The Reserve fund (See Section 46), and
- (3) Three-fifths of the Banking Department's liabilities in respect of deposits.

(b) The total value of the securities maturing after one year should not exceed (1) & (2) of (a) & two-fifth of the Banking Department's deposit liabilities.

(c) The total value of the Securities maturing after 10 years should not exceed (1) & (2) of (a) & one fifth of the Banking Department's deposit liabilities.

The term 'value' denotes not the face or par value but the market value of the securities.

The Bank may keep itself within the prescribed limit as to the various kinds of securities, by making from time to time transfers from the Banking Department to the Issue Department and *vice-versa* of Government of India securities of longer or shorter maturity, and thus enable each Department to feed on the other as occasion demanded. As to the securities that can form part of the assets of the Issue Department see Section 33 (2) and (3).

CLAUSE (11).

This clause authorises the Bank functioning as agent of the Government of India, Local Governments, local authorities and States in India. Clause (13) empowers its acting as agent or correspondent of the Central Banks of other countries and of the Bank for International Settlements and other International Banks formed by the Central Banks. For acting as agent of States in India no specification of particulars States by Governor-General-in-Council required ; so that the Bank may act as agent of any State which may require its services ✓

- (g) In any stock or securities issued in respect of any loan raised by the Government of Northern Ireland ;
- (r) In any of the stocks, funds, or securities for the time being authorised for the investment of cash under the control or subject to the order of the court ;

and may also from time to time vary any such investment.

Sub-clause (d).—This authorises the Bank to make loans and advances to scheduled banks and provincial co-operative banks on their own promissory notes, supported by documents of title to goods which have been either transferred, assigned or pledged to them as security for a cash credit or overdraft. Documents of title to goods coming to the possession of such banks in any other manner or for any other purpose cannot be availed of.

Documents of title to goods.—This is defined in the Sale of Goods Act (III of 1930) Section 2 (4) as including “a bill of lading, dock-warrant, warehouse-keeper’s certificate, wharfingers’ certificate, railway receipt, warrant or order for the delivery of goods and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented.”

Cash credit, overdraft.—‘Cash credit’ is a form of lending adopted from the old Scottish banking system. Under it, a bank grants credit to a customer up to a fixed amount, and allows him to draw cheque against the account. The customer in return pays a fee for the accommodation, generally $\frac{1}{2}$ to 1%, of the total credit and in addition pays interest only on such amount as he utilised at any given period. Cash credits are subject to renewals and are practically frozen credits.

“A cash credit is an arrangement by which a banker allows his customer to borrow money up to a certain limit against a bond of credit by one or more sureties or certain other securities. The advantage of this arrangement to the customer is that he need not borrow at once the whole of the amount he is likely to require, but can draw such amounts as and when required. Generally, he has to pay interest on the amount due from him although in some cases there is a clause which requires the customer to pay minimum interest for either half or one quarter of the amount of the credit agreed upon.

When a customer requires an accommodation temporarily, he may be allowed to overdraw his current account usually against collateral securities. Sometimes bankers also charge a small commission on the turnover of the current account when a certain minimum credit balance

is not maintained. The essential difference between a cash credit and overdraft is that the latter is supposed to be for a comparatively short-time whereas it is not so in the case of the former." (M. L. Tannan- 'Banking Law & Practice in India.' pages 211-212.)

So far as advances by the Reserve Bank are concerned, they cannot be made against promissory notes of member banks, supported by security of cash credits, and overdrafts unless the security consists of documents of title to goods. That is to say, the Reserve Bank's funds will not be available except in respect of self-liquidating commercial and agricultural transactions.

CLAUSE (5)

Ways and Means advances.—These are what are known as ways and means advances in the nature of temporary overdraft granted by the Bank to the Government of India and Local Governments, on occasions when revenue is slow in coming or when they have some special expenditure to meet. ✓

The period of three months from date of advance instead of from end of financial year may be a handicap to the Local Governments concerned, as there are only certain months when their revenues are collectable, while their expenditure is spread over the year. ✓

The provisions of the present clause may well be not resorted to all by any of the Governments who may issue Treasury bills or ways or means bills of their own, maturing during the period of their next revenue collection, which need not in any case exceed 9 months, such securities being eligible for sale and purchase by the Reserve Bank under Clause 8 below.

CLAUSE (6)

Demand drafts & Bank post bills.—A demand draft is defined by Section 85-A of the Negotiable Instruments Act as "an order to pay money, drawn by one office of a bank upon another office of the same bank for a sum of money payable to order on demand, and where it purports to be endorsed by or on behalf of the payee, the bank is discharged by payment in due course." ✓

Demand drafts are exempt from stamp duty in British India.

Demand drafts are useful both in domestic and foreign trade but are not as important as the usual type of commercial bill of exchange. The advantage of the latter is that in most cases the purchaser in good credit, can act on a letter of credit through his agent, and does not need to provide funds until the bill drawn on him by his agent matures. In the case of the bank draft the funds must be provided when the draft is purchased, though in many cases this is done by means of a cash, credit or overdraft. Though from the point of view of traders, the draft

is comparatively less important than the usual type of bill of exchange, it is generally used by individuals who are not regular traders and want to make only occasional remittances.

Bank Post Bills.—In England bank post bills are now in practice issued only by the Bank of England. They are bills payable to order, at seven or sixty days' sight for convenience in remitting small or odd sums of money. Being issued accepted, they are practically equivalent to promissory notes (Byles on Bills, 18th Ed. Page. 92; *Forbes v. Marshall* (1855) 11 Exch. 166; *Willis v. Bank of England* (1835), 43 Revisional Reports 232). As title can only be made through the payee's indorsement, they offer more security against loss than bank notes. It is said that no days of grace are allowed on them, but this must be more a matter of courtesy than of right: (Byles on Bills Page. 92 footnote (a)).

The following is a specimen of one of these bills issued by the Bank of England.

No.

London.

4th April 1934.

At seven days sight I promise to pay this my sole Bill of Exchange to A.B. or order, one Hundred pounds sterling value received of C.D.

(Accepted 4th April 1934).

E. F.

For the Governor and Company of the
Bank of England

G. H.

Bank post bills being usually payable at seven days sight, give time for notification to stop payment when necessary.

CLAUSE (7)

Government Securities of the United Kingdom.—Government securities of the United Kingdom include consols and other British Government stocks, Treasury bills, Exchequer bonds and other short term obligations of the British Government. (Withers, 'the Meaning of Money' 1932 Edition, page 242).

CLAUSE (8)

While under this clause the Bank can deal in all the securities specified herein, it cannot finance the stock market by re-discounting bills issued or drawn for holding all of such securities. That is limited to certain specific securities of short maturity, by Clause 2 (c) above.

Maturableness of Securities essential.—One condition of the securities dealt with here is that all of them must be such as to mature sometime

as agent. But the Bank cannot act as agent of any Scheduled Bank or other person.

Other kinds of agency work done by the Bank are specified in Clauses (1), (9) and (13).

Management of the Public Debt.—‘Public Debt’ includes the debts, of the various public authorities, raised by public loans. Though the term ordinarily signifies the national debt *i.e.* of the Government of India it includes here the debt of all the authorities enumerated in the Clause *viz*, Local Governments, local authorities and States. ‘Management’ includes issue, interest payment, redemption etc.

CLAUSE (12).

The Bank cannot on its own account deal in silver, except making loans and advances on its security under Clause 4 (b), and acting as agent for purchase or sale of silver under Clause 11 (a).

CLAUSE (13).

The Bank is authorised by this Clause to act as agent or correspondent of the Central Bank of any other country, of the Bank for International Settlements and of any other International Banks provided it is formed by the Central Banks of countries.

It may also open accounts with these banks and invest its funds in the shares of the Bank for International Settlements and/or other International Bank that may be formed.

But it cannot appoint any of them as its agent at its own discretion. Though the present Clause would seem to empower the Bank to enter into an agency agreement with them, the provision must be taken subject to Section 6 which requires the previous sanction of the Governor-General-in-Council for the Bank establishing any agencies outside India.

CLAUSE (14).

Borrowing.—This evidently means only direct borrowing as a ‘debt.’ The Bank may, by means of the various acts enumerated already raise very large sums of money to meet its requirements. For instance, it may by selling eligible paper, by selling its gold, by selling securities, and by the issue of bank post bills raise whatever amounts it may need. But in order to maintain the external stability of the currency the power of borrowing outside India, especially in England may on occasions be necessary, in view of the obligations imposed on the Bank to keep the Secretary of State in funds and to maintain the Sterling Exchange Standard.

It is also necessary to have the power of borrowing in India to facilitate the control of credit.

The exercise of this power will to some extent evade Clause (1) of this Section in a way ; as by this means interest may be indirectly paid by the Bank on what may in substance prove to be fixed deposits.

The first proviso has inadvertently omitted the inclusion of the Bank for International Settlements and/or other International Bank mentioned in Clause 13, above, as a proper person from whom the Bank may also borrow.

Clause 15.—The provisions relating to the making and issue of bank notes are contained in Sections 22 to 29, and 31 to 37, and in any regulations that may be made in this connection under Section 57.

Clause 16.—This must be read subject to the provision contained in Section 19. This residuary clause will authorise the Bank to do only such matters and things as are either incidental or consequential on the exercise of its powers or the discharge of its duties under this Act. That is to say, the Bank cannot act beyond the expressed powers given under the other provisions of the Act unless such action is incidental to or consequential on the exercise of such powers.

Power of direct
discount.

18. When, in the opinion of the Central Board or, where the powers and functions of the Central Board under this section have been delegated to a committee of the Central Board or to the Governor, in the opinion of such committee or of the Governor as the case may be, a special occasion has arisen making it necessary or expedient that action should be taken under this section for the purpose of regulating credit in the interests of Indian trade, commerce, industry and agriculture, the Bank may, notwithstanding any limitation contained in sub-clauses (a) and (b) of clause (2) or sub-clause (a) or (b) of clause (3) or clause (4) of section 17,—

(1) purchase, sell or discount any of the bills of exchange or promissory notes specified in sub-clause (a) or (b) of clause (2) or sub-clause (b) of clause (3) of that section though such bill or promissory-note does not bear the signature of a scheduled bank or a provincial co-operative bank ; or ✓

(2) purchase or sell sterling in amounts of not less than the equivalent of one lakh of rupees ; or ✓

(3) make loans or advances repayable on demand or on the expiry of fixed periods not exceeding ninety days against the various forms of security specified in clause (4) of that section :

Provided that a committee of the Board or the Governor shall not, save in cases of special urgency, authorize action under this section without prior consultation with the Central Board and that in all cases action so authorized shall be reported to the members of the Central Board forthwith.

NOTES.

The Section makes provision for what has come to be known as Open Market operations through exercise of the power of direct discount. By kind permission of the President of the Bank for International Settlements, I have reproduced in Appendix A, portions of a very valuable and instructive paper on the Open Market operations of Central Banks, prepared by the Bank for International Settlements for consideration by the Preparatory Committee of Experts of the World Economic Conference 1933.

For action to be taken under this Section the conditions are :—

1. that in the opinion of the Central Board, or of the committee empowered by it in this behalf or of the Governor if so empowered, a special occasion has arisen making it necessary or expedient to take actions under this Section.

2. that such action is required for the purpose of regulating *i.e.*, expanding, contracting or stabilising credit.

3. that the regulation of credit is needed in the interests of Indian trade, commerce, industry and agriculture. This last condition implies that all the interests, trade, commerce, industry and agriculture require the regulation. It is not enough if it is advantageous to one or more particular interests and detrimental to the others. The regulation of credit should be found necessary generally in the economic interests of the country. Further it should not be resorted to with a view to achieve any other purpose, such as maintaining the credit of Government or feeding or disciplining the money market for its own sake.

Joint Committee's Note on the provisions of this Section.—"We have added words to this clause so as to make it clear that although the exercise of these powers should not necessarily be regarded as limited to occasions of so critical a nature as to justify their description as an emergency,

nevertheless they are not to be used for the normal operations of the Bank and should be restricted to special occasions. We have also modified it so as to provide for the delegation of the powers of the Board to a committee of the Board as well as to the Governor. We have further thought it desirable to make it clear that although in order to make quick action possible the Board may delegate its special powers under this section to a committee or to the Governor, nevertheless such delegated powers should not normally be utilized without previous consultation with the Board, and that if in cases of special urgency such previous consultation is impossible, the members of the Board shall be informed at once so that, if they think fit they can convene a special meeting to have the policy considered and decided."

The power of direct discount under this Section.—Section 17 Clause (2), (3) and (4) enable the Bank to deal only with Scheduled Banks and Provincial Co-operative Banks. The present Section empowers it to deal directly with any person *i.e.*, with the public at large. In such a position it may have to compete with the Scheduled banks. But then the occasion demands that it should. The present Section does not, it must be noted, empower the Bank to deal in other than eligible paper. It only enables direct discounting in addition to rediscounting.

The power which this Section gives to the Bank is a well-known power possessed by the Central Banks of almost all countries of the world. It is necessary to enable the Bank as the country's Central Currency and Banking authority to fulfil its responsibilities with regard to the monetary system, and as the preamble states, generally to operate it to the country's advantage. But the power must be used with caution. As Sir Henry Stakosch stated in the World Economic Conference "Open Market operations must be undertaken with prudence and must be kept within appropriate limits. Deliberately to stimulate demands for credit where no such demand existed might be dangerous." (World Economic Conference Journal June, 22nd 1933, page 78.)

Delegation of power to Governor.—The essence of direct intervention on the part of the Reserve Bank in the market is that the Governor should be able to act in time and on right and adequate lines. If it is provided that the Governor should every time before he initiates open market operations, consult his Board and take their consent, the very purpose of Open Market operations would be defeated. The Governor may not, in such a situation, be able to get such consent till the situation for which such operations are needed is past or has got out of hand. The power conferred in respect of Open Market operations assumes the fullest faith in the ability and adroitness of the Governor. It may well be that the Central Board will have to delegate powers under this section to the Governor as the only way by which Open Market operations can be, in

practice, carried out. The success of such a policy depends upon the judgment, and discretion of the Governor. There is no purpose in limiting or qualifying such discretion.

Currency Commission did not provide for Open Market operations.—The Royal Commission on Indian Currency and Exchange in outlining the charter for the Reserve Bank which they recommended, did not think it necessary to confer on the Bank the power of direct discount given by this section. They gave the following reason for not making the provision :—

“ We have advisedly made no provision for the Reserve Bank having recourse to direct operations in the Bill Market ; not that such a provision is unnecessary—we regard it as a cardinal provision in the charter of a true Central Bank if it is properly to discharge its primary duty of regulating credit and maintaining the stability of the currency ; but in the present state of development of the Bill Market in India, we do not consider that Open Market Operations by the Reserve Bank are an indispensable method for carrying out its credit policy. Rather we think that this development should follow in the wake of banking progress and the growth of a large and healthy Bill Market. Experience in other countries shows that with the creation of a Central Bank, and the consequential development of a sound banking system, the Bill Market comes into being in a surprisingly short time. In India, where the hundi or internal bill of exchange has been in existence for many years, we hope the growth of the habit of drawing bills instead of opening cash credits will be more rapid than elsewhere. In order to provide for such future development, the charter should enable the Reserve Bank to apply to the Governor-General-in-Council for power to buy and sell in the market bills of exchange, promissory notes or other commercial paper arising out of *bona fide* commercial or trade transactions bearing two or more good signatures and having a maturity not exceeding 90 days, if and when it finds such powers necessary to the performance of its function of regulating the supply of credit. In deciding whether to grant or refuse this application, the Governor-General-in-Council would of course give due consideration to the possible effect, on the various classes of persons concerned, of the operation of the proposed new procedure. To avoid ambiguity we should state that our proposal is that this power, if and when granted, should be granted once and for all ; not that it should have to be applied for one each occasion”. (Report, para 102).

In order to provide for such future development, they wanted the Reserve Bank to apply to the Governor-General-in-Council for such powers. But since the Commission reported (1926), Central Banking practice in other countries has developed in the direction of utilising

Open Market operations to an increasing extent for the purpose of regulating credit. Section 18 has accordingly been made elastic, so as to enable action being taken speedily and without hindrance.

Business which the Bank may not transact.

19. Save as otherwise provided in sections 17, 18 and 45, the Bank may not—

(1) engage in trade or otherwise have a direct interest in any commercial, industrial, or other undertaking, except such interest as it may in any way acquire in the course of the satisfaction of any of its claims: provided that all such interests shall be disposed of at the earliest possible moment; ✓

(2) purchase its own shares or the shares of any other bank or of any company, or grant loans upon the security of any such shares; ✓

(3) advance money on mortgage of, or otherwise on the security of, immovable property or documents of title relating thereto, or become the owner of immovable property, except so far as is necessary for its own business premises and residences for its officers and servants; ✓

(4) make loans or advances; ✓

(5) draw or accept bills payable otherwise than on demand; ✓

(6) allow interest on deposits or current accounts. ✓

NOTES.

This section in substance and principle follows the statutes of other central banks of the world, where a provision of the kind is generally made. The reason for it is that the assets of a Central Bank should be of the most liquid type. ✓ *Imp.*

Article 12 of the Code of the Bank of Japan, for instance provides as follows:—

“ The Bank of Japan shall not engage in lines of business other than those set forth in Article 11, and is expressly forbidden to undertake the following operations:—

1. To make loans on the security of real estate or shares of banks or other companies;

2. To make loans on the security of shares of the Bank or to purchase the same ;
3. To become a shareholder in industrial companies or to take any part, either directly or indirectly, in industrial enterprises ;
4. To become the owner of real estate except so far as it is necessary for establishing the Head office and branches of the Bank.

Immoveable property.—This is defined in the General Clauses Act S. 3 (25) as including 'land, benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth.'

CHAPTER III.

CENTRAL BANKING FUNCTIONS.

✓ Obligation of the Bank to transact Government business.

20. The Bank shall undertake to accept monies for account of the Secretary of State in Council and the Governor-General-in-Council and such Local Governments as may have the custody and management of their own provincial revenues and such States in India as may be approved of and notified by the Governor-General-in-Council in the *Gazette of India*, and to make payments up to the amount standing to the credit of their accounts respectively, and to carry out their exchange, remittance and other banking operations, including the management of the public debt.

NOTES.

Under this Section, the Bank has a duty to receive monies and make payments but only up to the amount standing to the credit of each party concerned.

✓ Under S. 17 (5), the Bank is further authorised though it is not made its duty, to make temporary loans by way of advance payments, each repayable not later than three months from date of advance, to the Governor-General-in-Council and such Local Governments as have the custody of their own provincial revenues.

The present section includes also Secretary of State in Council and approved States in India, to whom the Bank cannot extend the privilege under Section 17 (5).

The Bank is not however expected to render the services freely. The terms are to be provided so far as the Government of India and Local Governments are concerned, by agreement made, in accordance with Section 21.

Bank to have the right to transact Government business in India.

21. (1) The Governor-General-in-Council and such Local Governments as may have the custody and management of their own provincial revenues shall entrust the Bank, on such conditions as may be agreed upon, with all their money, remittance, exchange and banking transactions in India and, in particular shall deposit free of interest all their cash balances with the Bank: ✓

Provided that nothing in this sub-section shall prevent the Governor-General-in-Council or any Local Government from carrying on money transactions at places where the Bank has no branches or agencies, and the Governor-General-in-Council and Local Governments may hold at such places such balances as they may require. ✓

(2) The Governor-General-in-Council and each Local Government shall entrust the Bank, on such conditions as may be agreed upon, with the management of the public debt and with the issue of any new loans. ✓

(3) In the event of any failure to reach agreement on the conditions referred to in this section the Governor-General-in-Council shall decide what the conditions shall be.

(4) Any agreement made under this section to which the Governor-General-in-Council or any Local Government is a party shall be laid, as soon as may be after it is made, before the Central Legislature and in the case of a Local Government before its local Legislature also. ✓

NOTES.

This Section makes it obligatory on the Governor-General-in-Council and Local Governments to entrust all their money, etc., transactions in India to the Bank and deposit their cash balances free of interest.

But where the Bank has no office, branch or agency the respective Governments may have their own treasuries.

The Bank can help scheduled banks by appointing them agents in places where there are no branches of the Imperial Bank and thus have a net work of banking organization throughout the country.

The States may also entrust the Bank with their monies in conformity with the Bank's obligation in this connection, created under Section 20, and the Bank is also authorised to do agency work on their behalf by S. 17 Cl. (11).

If the Bank starts a branch or appoints an agent in any new place where there is a Government treasury, the Governor-General-in-Council and the Local Government of that place must entrust their monies to the branch or agent of the Bank.

While under Section 20, the Bank is bound to undertake all money transactions on behalf of the Secretary of State, this Section does not impose a similar obligation on the Secretary of State though the Currency Commission (Report Para 140) suggested that the Secretary of State should also entrust his transactions to the Bank. For this an amendment of Section 23 of the Government of India Act will be necessary. That section, as it is, lays down :—

“23. (1) Such parts of the revenues of India as are remitted to the United Kingdom, and all money arising or accruing in the United Kingdom from any property or rights vested in His Majesty for the purposes of the Government of India, or from the sale or disposal thereof, shall be paid to the Secretary of State in Council, to be applied for the purposes of this Act.

Accounts of Secretary of State with Bank.

(2) All such revenues and money shall, except as by this Section is provided, be paid into the Bank of England to the credit of an account entitled, “The Account of the Secretary of State in Council of India.”

(3) The money placed to the credit of that account shall be paid out on drafts or orders, either signed by two members of the Council of India and countersigned by the Secretary of State or one of his Under Secretaries or his Assistant Under-Secretary, or signed by the Accountant-General on the establishment of the Secretary of State in Council or by one of the two senior clerks in the department of that Accountant-General and countersigned in such manner as the Secretary of State in Council directs; and any draft or order so signed and countersigned shall effectually discharge the Bank of England for all money paid thereon.

(4) The Secretary of State in Council may, for the payment of current demands, keep at the Bank of England such accounts as he deems expedient; and every such account shall be kept in such name and be drawn upon by such person, and in such manner, as the Secretary of State in Council directs.

(5) There shall be raised in the books of the Bank of England such accounts as may be necessary in respect of stock vested in the Secretary of State in Council; and every such account shall be entitled "The Stock Account of the Secretary of State in Council of India."

(6) Every account referred to in this section shall be a public account.

Currency Commission's Recommendations regarding remittances for financing the Home Treasury :—

"The business of remittance is essentially banking business. Since the bank of issue must be the bank of the Government in other matters, it is convenient and, as will be seen, essential that it should be so in this matter also; and it may be assumed that it will be able to transact the business at least as economically as the Government. Further, an obligation is imposed upon the Bank to maintain the value of the currency. The annual remittance on Government account amounts to a sum £ 95 millions, a large sum in proportion to the total foreign remittance business of the country. The time and method of making these remittances have an intimate connection with the Bank's discharge of its obligations. It would be difficult, if not impossible, for the Bank to discharge its essential obligation to the currency unless it conducted the remittance business of the Government."

* * * * *

"It has been suggested that the Secretary of State has constitutional and statutory responsibilities to Parliament (including the particular responsibility to the holders of India Sterling Debt) which make it impossible for him to be satisfied with an obligation undertaken by a bank, however pre-eminent in status, to keep him supplied with funds. We are, however, unable to find that the duties and responsibilities laid upon the Secretary of State in relation to financial commitments in the United Kingdom are different in kind or extent from those laid upon him in relation to financial commitments in India, which are similarly incurred in his name. The latter are already discharged on his behalf by the Government of India, and are to some extent discharged through the agency of the Imperial Bank. If the Secretary of State is able to entrust to duly authorised agents the carrying out of his debt and remittance obligations in India, he may be satisfied similarly to employ an agent to keep him in funds for the implementing of his obligations in

the United Kingdom. The employment of an agent does not imply the abrogation of the ultimate control and responsibility vested in the Secretary of State. Should the agent not discharge the obligations which it has accepted, the power of the Secretary of State himself to discharge his own obligations is in no way qualified or diminished."

"When arrangements have been made for the transfer of the conduct of Government remittance to the Reserve Bank, it will be necessary for the successful discharge of that function that the Secretary of State should furnish to the Bank in advance, through the Government of India, periodical information as to his requirements. It has been suggested in evidence that it would not be possible to forecast with accuracy the requirements for any considerable length of time ahead. Occasions may obviously arise when unexpected commitments, or increases of existing commitments, may materialise on a large scale. Any scheme must provide for meeting such a contingency, which would no doubt be of rare occurrence. But a great part of the Secretary of State's commitments are in respect of payments which are regularly recurring, or at least easily foreseeable; and it should not as a rule be difficult to produce reasonably accurate forecasts of the funds required. As regards minor variations between estimates and actuals no difficulty is likely to arise. It is not, of course, suggested that it should be laid down that estimates once furnished must be rigidly adhered to. The Bank would be primarily responsible for the programme of remittance, after giving due regard to the views of the Government of India. The Secretary of State will no doubt retain a working balance sufficient to ensure his having funds available to meet any ordinary and foreseeable excess of actual over expected expenditure." (Report, paras 103, 105 & 106.)

Such conditions as may be agreed upon.—The following memorandum on remittances submitted to the Joint Committee on the Reserve Bank Bill of 1927, by the Honourable Sir Basil Blackett, the then Finance Member of the Government of India may be of interest in this connection :—

Memorandum on Remittances.

1. The Reserve Bank shall effect such transfers as may be required between the account of the Government of India in India and the accounts in London of the Secretary of State and the High Commissioner.

2. Transfers to London shall be made on the demand of the Secretary of State in Council or the High Commissioner, who shall on Friday in each week notify the Bank of the amounts required to be placed to the credit of their respective accounts on each day of the suc-

ceeding week, and shall at the same time advise the Government of India by telegram of the amounts so demanded.

NOTE.—The Secretary of State in Council and the High Commissioner will regulate their remittance programme with a view to restricting their balance so supplied to an amount not materially in excess of current requirements on capital and revenue account.

3. The rupee amounts corresponding to the transfers referred to in para 2 above shall be debited to the account of the Government of India in India on the day on which the sums are credited to the accounts of the Secretary of State or the High Commissioner and shall be calculated at the selling rate of the day for Telegraphic Transfers in Bombay. In the event of any fluctuation during the day, the rate shall be fixed by agreement between the Governor of the Bank and such officer of Government as the Government of India may appoint.

4. The following information shall be supplied to the Bank:—

(a) Before the end of December in each year the Government of India shall furnish a preliminary estimate of the probable sterling requirements for the next financial year, showing the probable amount of the drawings in each month.

(b) Before the end of March the Government of India shall furnish a revised estimate as above.

(c) Seven-days before the end of each month the Secretary of State and the High Commissioner shall send to the London Office of the Bank statements showing their probable drawings during each of the next three months, noting the days on which net disbursements are likely to be heavy and the probable amount of such disbursements.

The Bank shall be given the earliest possible intimation of any substantial change in the estimates furnished as above.

5. In regard to all matters connected with the remittance programme, the Government and the Bank shall maintain close and continuous contact, and due regard shall be paid by Government to any representations made by the Bank regarding the reaction of the programme on the exchange and money market.

Right to issue bank notes. **22.** (1) The Bank shall have the sole right to issue bank notes in British India, and may, for a period which shall be fixed by the Governor-General-in-Council on the recommendation of the Central Board, issue currency notes of the Government of India supplied to it by the Governor-General-in-Council, and the

provisions of this Act applicable to bank notes shall, unless a contrary intention appears, apply to all currency notes of the Government of India issued either by the Governor-General in-Council or by the Bank in like manner as if such currency notes were bank notes, and references in this Act to bank notes shall be construed accordingly.

(2) On and from the date on which this Chapter comes into force the Governor-General-in-Council shall not issue any currency notes.

NOTES.

This Section gives the monopoly of note issue to the Bank. For some time in the beginning, the Bank may have to issue currency notes only and only after it has made suitable arrangements for making bank notes, it can issue them. The Governor-General-in-Council is not to issue any currency notes, from the date of the coming into force of this chapter (which is to be notified by him under S. 1 (3.)) But he has to supply the Bank with such notes, as when and to the extent it may require, till it is in a position to issue bank notes.

| | | |
|----------------------|---------|--|
| Issue Department. | Depart- | <p>23. (1) The issue of bank notes shall be conducted by the Bank in an Issue Department which shall be separated and kept wholly distinct from the Banking Department, and the assets of the Issue Department shall not be subject to any liability other than the liabilities of the Issue Department as hereinafter defined in section 34.</p> |
|----------------------|---------|--|

(2) The Issue Department shall not issue bank notes to the Banking Department or to any other person except in exchange for other bank notes or for such coin, bullion or securities as are permitted by this Act to form part of the Reserve.

NOTES.

Separation of Departments.—The Act adopts what is called the proportional Reserve System under which the notes in circulation are secured by a statutorily prescribed minimum percentage of gold and

external (sterling) securities (S. 33). This System does not require separation of the Issue and Banking Department. But the principle of Separation has been adopted for the following reasons given by the Currency Commission :—

“We have stated above that the proportional reserve system does not necessitate the separation of the banking and note issuing functions of a Reserve Bank. Wherever the system is in operation no such separation is in fact made. If, nevertheless, in the plan submitted in our Report such a separation is proposed, it is because we have been impressed by the view put forward by many witnesses that the accounts of the Reserve Bank should be presented in the simplest possible form, and that it is essential from this point of view to set out in a separate statement the assets and liabilities in respect of the note issue. We think that such a separation would inspire greater confidence in the new note. Although this is a novel way of dealing with the matter, there would seem to be no strong reason why it should not be adopted” (Report, para. 137).

The Currency Commission also recommended that the Central Board should appoint a committee of its own for the conduct and management of the Issue Department, and regulate the constitution and powers of such committee. The Act does not make any provision for this but it may possibly be provided by regulations.

Assets and liabilities of the Issue Department.—See Sections 33 and 34 below.

Sub-section 2.—The issue Department may issue bank notes not only to the Banking Department but also directly to any other person. While it is obligatory to issue such notes as against other bank notes or silver rupees offered in exchange (Section 39), there is no such obligation as against the offer of bullion or securities except as provided in this sub-section and in section 59 below. As for the coin, bullion and securities permitted to form part of the Reserve of the Issue Department, see Sections 33, 35 and 37.

Denominations of notes.

24. Bank notes shall be of the denominational values of five rupees, ten rupees, fifty rupees, one hundred rupees, five hundred rupees, one thousand rupees and ten thousand rupees, unless otherwise directed by the Governor-General-in-Council on the recommendation of the Central Board.

NOTES.

With a view to popularise the use of bank notes to a great extent, the Bank may take up the question of the issue of one rupee and two and a half rupee notes. The following passage in the Report of the Currency Commission may be of interest in this connection :—

“ We recommend that the currency authority should, concurrently with the first issue of notes of the new status, re-introduce one-rupee notes, which should be full legal tender and which, like other notes of the new status, should not be convertible by law into silver rupees. In spite of the fact that the issue of one-rupee notes may retard the absorption of the surplus silver rupees now in the Reserve, we consider it worth while incurring such retardation in order to popularise the use of notes, and to prepare the way for dealing with such an emergency as a rise in the price of silver above the melting point of the rupee. The alleged comparative expense of small notes seems a consideration that is negligible in comparison with these advantages. We do not recommend the re-introduction of 2½ rupee notes.” (Report para 72).

Form of bank notes.

25. The design, form and material of bank notes shall be such as may be approved by the Governor-General-in-Council after consideration of the recommendations made by the Central Board.

NOTES.

In view of the illiteracy of the population, in general notes of each denomination should be so distinctive as to be easily known by sight.

If the provisions of Section 28 below are to be stringent, then particular attention has to be paid to the design, form and material of the notes in order to make them better proof against damage through frequent handling. (Compare also S. 27.)

Legal tender character of notes.

26. (1) Subject to the provisions of subsection (2), every bank note shall be legal tender at any place in British India in payment or on account for the amount expressed therein, and shall be guaranteed by the Governor-General-in-Council.

(2) On recommendation of the Central Board the Governor-General-in-Council may, by notification in the *Gazette of India*, declare that, with effect from such date as

may be specified in the notification, any series of bank notes of any denomination shall cease to be legal tender save at an office or agency of the Bank.

NOTES.

'Legal tender' means legally tenderable in payment or on account. It is defined in Bouviers' Law Dictionary (Quoted in U. S. A., Treasury Report (1931) page 616), as "that currency which has been made suitable by law for the purposes of a tender in the payment of debts." See also Notes under Section 2.

Local extent of legal tender.—Here, there is an anomaly. Most of the Indian States have no currency of their own, but employ only British Indian currency; and as a matter of consequence British Indian currency is accepted in almost all the States. Hyderabad is the only important State where local currency is of considerable amount, extending to about 9 crores of rupees.

By treaty with individual States, the British Indian Currency system should be extended to their territories. Then only the management and control of the currency system will be efficient and effective. (See Notes under Section 1.)

Guaranteed by Governor-General-in-Council.—It is difficult to understand the object of this guarantee unless it be merely the guarantee of the legal tender character of the notes. If it means the guarantee of mutual exchangeability with sterling there is no provision that the Governor-General-in-Council will be answerable in case of failure of the Bank to discharge its obligation under Sections 40 and 41. In that event the Governor-General-in-Council will at best only supersede the Central Board, but does not thereby undertake to discharge the obligation himself or through any other agency.

The notes of the Bank are not redeemable in terms of gold or silver.

The Currency Commission recommended the insertion of the guarantee provision, the only reason for it being to promote confidence in the notes of the Bank. (Report para 138.)

Section 26 (2).—By virtue of Section 22 (1), this provision applies also to currency notes.

At an office or agency of the Bank.—An office includes here also 'a branch office' though not specifically stated.

Re-issue of notes. **27.** The Bank shall not re-issue bank notes which are torn, defaced or excessively soiled.

Recovery of notes lost, stolen, mutilated or imperfect. **28.** Notwithstanding anything contained in any enactment or rule of law to the contrary, no person shall of right be entitled to recover from the Governor General in Council or the Bank the value of any lost, stolen, mutilated or imperfect currency note of the Government of India or bank note :

Provided that the Bank may, with the previous sanction of the Governor General in Council, prescribe the circumstances in and the conditions and limitations subject to which the value of such currency notes or bank notes may be refunded as of grace and the rules made under this proviso shall be laid on the table of both Houses of the Central Legislature.

NOTES.

This Section is a reproduction in substance of the provisions of Section 28 of the Indian Paper Currency Act (X of 1923) which is repealed by this Act.

The rules under that Section will by virtue of Section 24 of the General Clauses Act continue in force until superseded by any new rules in their place :—

Undue severity of the law in this connection, may lead to preference of rupee coin by the public, and discourage the circulation, of bank notes.

Bank exempt from stamp duty on bank notes. **29.** The Bank shall not be liable to the payment of any stamp duty under the Indian Stamp Act, 1899, in respect of bank notes issued by it.

NOTES.

It is only in respect of the bank notes issued by it that the Bank is exempt from stamp duty.

With regard to every other transaction, the Bank is in the same position as any other person as regards liability to payment of stamp duty.

Further the exemption is only with reference to British Indian stamp duty and not that of any of the States, where the notes may circulate.

Powers of
Governor-General-
in-Council to super-
sede Central Board.

30. (1) If in the opinion of the Governor-General-in-Council the Bank fails to carry out any of the obligations imposed on it by or under this Act, he may, by notification in the *Gazette of India*, declare the Central Board to be superseded, and thereafter the general superintendence and direction of the affairs of the Bank shall be entrusted to such agency as the Governor-General-in-Council may determine, and such agency may exercise the powers and do all acts and things which may be exercised or done by the Central Board under this Act.

(2) When action is taken under this section the Governor-General-in-Council shall cause a full report of the circumstances leading to such action and of the action taken to be laid before the Central Legislature at the earliest possible opportunity and in any case within three months from the issue of the notification superseding the Board.

NOTES.

The Bill as originally drafted provided for supersession of the Bank but the Select Committee amended the provision in its present form for the following reasons given by the Committee :—

“We consider that the remedy proposed in the clause in its original form was inappropriate. If the Bank failed to comply with the requirements of Chapter III or of any other provision of the Act and if, in consequence, it was decided that it should forfeit the right of note

issue, it is hardly conceivable that it would command the confidence of the public to such an extent as to be allowed to remain in charge of the other functions entrusted to it by the Act. We therefore consider that in such circumstances a complete reconsideration of the position will be necessary. It is not possible to lay down in advance exactly what steps will be necessary nor do we feel entitled to assume that the liquidation of the Bank will necessarily and inevitably be the only possible course.

✓ We therefore think that the right form of provision is one which will give the Government power to make emergency arrangements and lay upon it the duty of consulting the Legislature at the first opportunity after which further and permanent measures can be settled. We have drafted the clause accordingly."

Now this may lead to various anomalies. What is it to become of the Local Boards? Are they or are they not to exist? Or are the Local Boards existing at the time of the supersession to continue indefinitely? The present section does not provide for appointment by nomination, election or otherwise of any new members to the Local boards. If the Central Board is suspended, are the elected Directors nevertheless to continue to be members of the respective Local Boards from which they were elected? With regard to the substitute created in the place of the Central Board what is to be function of the suspended Directors especially the Governor and Deputy Governors? Are they also to become non-existent by removal or otherwise. All these matters will probably be provided in the order directing the supersession.

The reason for superseding the Central Board is that it is the Central Board which is responsible for all acts and things exercised or done by the Bank. (*Vide* S. 7 *supra*).

Condition for supersession.—It is only the failure to carry out an obligation or duty imposed or enforceable by or under the Act, that will entail supersession. A failure or refusal to do things which the Bank is authorised to do under the Act in respect of which it has to exercise its own discretion, for example, any of the businesses which it is merely authorised to do under Section 17 or 18, will not be a failure within the meaning of this Section.

✓ The Governor-General-in-Council is the sole authority to judge whether the Bank has or has not failed to carry out its obligations. No previous investigation is required by the Act, though it is not unlikely that an investigation will take place before the Governor-General-in-Council resorts to this extreme course of superseding the Board, especially in view of the necessity to make a full report of the circumstances leading to such action, to the Central Legislature.

The Superseding Agency.—Though the Governor-General-in-Council has the power to supersede, he cannot himself directly carry out the functions of the Central Board; *i.e.*, the Government of India cannot function as the Board, through any of its Departments.

It must be carried on only through an agency and not as a Department of Government directly.

The agency may be a single person or a Board or any other body of persons.

After superseding the Central Board and creating the agency, the Governor-General-in-Council becomes *functus officio*. Any further reform of the constitution of the Bank will rest with the authority having the power to amend the Act (See Notes under S. 1).

Sub-section (2).—'Central Legislature' means Indian Legislature. [See Notes under Section 5 (2)]

31 No person in British India other than the Bank or, as expressly authorized by this Act, the Governor-General-in-Council shall draw, accept, make or issue any bill of exchange, hundi, promissory note or engagement for the payment of money payable to bearer on demand, or borrow, owe or take up any sum or sums of money on the bills, hundis or notes payable to bearer on demand of any such person :

Provided that cheques or drafts including hundis, payable to bearer on demand or otherwise may be drawn on a person's account with a banker, shroff or agent.

32. (1) Any person contravening the provisions of section 31 shall be punishable with fine which may extend to the amount of the bill, hundi, note or engagement in respect whereof the offence is committed.

(2) No prosecution under this section shall be instituted except on complaint made by the Bank.

NOTES.

These Sections are based upon similar provisions (section 25 and 26) in the Indian Paper Currency Act, 1923 now repealed by Section 60 of this

Act. The only change is that the proviso in Section 31 has been altered from the form in which it stood for many years, in order to make it clear that cheques upon a banking account are not prohibited even though the account may be overdrawn.

Sections extend only to British India.—As British Indian currency is also the currency of almost all the Indian States, unless the States also agree to enforce these provisions within their territories, the purpose of these provisions may to some extent be defeated and the Bank's power of control over the currency and credit system considerably affected.

33. (1) The assets of the Issue Department shall consist of gold coin, gold bullion, sterling securities, rupee coin and rupee securities to such aggregate amount as is not less than the total of the liabilities of the Issue Department as hereinafter defined.

Assets of the
Issue Department.

(2) Of the total amount of the assets, not less than two-fifths shall consist of gold coin, gold bullion or sterling securities :

Provided that the amount of gold coin and gold bullion shall not at any time be less than forty crores of rupees in value.

(3) The remainder of the assets shall be held in rupee coin, Government of India rupee securities of any maturity and such bills of exchange and promissory notes payable in British India as are eligible for purchase by the Bank under sub-clause (a) or sub-clause (b) of clause (2) of section 17 or under clause (1) of section 18 :

Provided that the amount held in Government of India rupee securities shall not at any time exceed one-fourth of the total amount of the assets or fifty crores of rupees, whichever amount is greater, or, with the previous sanction of the Governor-General-in-Council, such amount plus a sum of ten crores of rupees.

(4) For the purposes of this section, gold coin and gold bullion shall be valued at 8·47512 grains of fine gold per rupee, rupee coin shall be valued at its face value, and securities shall be valued at the market rate for the time being obtaining.

(5) Of the gold coin and gold bullion held as assets, not less than seventeen-twentieths shall be held in British India, and all gold coin and gold bullion held as assets shall be held in the custody of the Bank or its agencies :

Provided that gold belonging to the Bank which is in any other bank or in any mint or treasury or in transit may be reckoned as part of the assets.

(6) For the purposes of this section, the sterling securities which may be held as part of the assets shall be securities of any of the following kinds payable in the currency of the United Kingdom, namely :—

(a) balances at the credit of the Issue Department with the Bank of England ;

(b) bills of exchange bearing two or more good signatures and drawn on and payable at any place in the United Kingdom and having a maturity not exceeding ninety days ;

(c) Government securities of the United Kingdom maturing within five years :

Provided that, for a period of two years from the date on which this Chapter comes into force, any of such last mentioned securities may be securities maturing after five years, and the Bank may, at any time before the expiry of that period, dispose of such securities notwithstanding anything contained in section 17.

NOTES.

This Section deals with what is known as the Note Issue Reserve. The value, *i.e.*, market value of the assets should always be equal to the

face value of the notes in circulation. (See Section 34 (1)). The assets are required to consist of:—

(1). Gold coin and bullion of not less than 40 crores of rupees, valued at 8·47512 grains per rupee.

(2). Sterling securities—of no specified amount but (1) & (2) together not to be less than 40% of the total assets. By Section 34, the two are together initially required to be not less than 50% of the total.

(3) Government of Indian rupee securities of any maturity not to exceed 25 per cent or 50 crores of rupees or with the previous sanction of the Governor-General-in-Council such amount plus an additional 10 crores. These securities must have *some maturity*. Securities which are not to mature at any time *i. e.* those which are irredeemable or enable at the pleasure of Government will not be eligible.

(4) Rupee coin and such eligible bills and promissory notes as mentioned in Section 17 (2) (a) & (b) & Section 18 (1). But not all bills and promissory notes eligible under Section 17 (2) (a) & (b) will be eligible here also. Only such of them as are payable in British India are permissible assets. 'Rupee coin' does not include $\frac{1}{2}$ rupees or other subsidiary coins, but only silver rupees. See Notes under Section 2 (d).

There is no proportion for each of these assets *i. e.*, for rupee coin and eligible paper, but the balance of the assets over and above (1), (2) & (3) may consist of these taken altogether. This makes the currency system very elastic and gives the Bank a real power of management.

Sub-section 5.—The effect of this sub-section is not quite clear. While the sub-section provides that, of the total gold coin and bullion $\frac{17}{20}$ should be held in British India, and the whole of it should be in the custody of the Bank or its agencies, the proviso enables the Bank to treat as part of the assets gold belonging to it and either kept in any other bank or in any mint or treasury or being in transit.

Now if the latter are to be reckoned as part of its gold assets, then the effect of the sub-section is almost *nil*, because any gold assets may be remaining with any bank in the world, whether in or out of British India and whether an agent of the Bank or not, and if so, may be deemed to satisfy the requirements of this provision.

Sterling securities.—For purposes of this Section, the following sterling securities are eligible:—

1. Balances belonging to the Issue Department, and remaining with the Bank of England and payable in United Kingdom currency.

2. Bills of exchange only (and not promissory notes also) bearing two or more good signatures and payable in the United Kingdom in

United Kingdom currency and having a maturity not exceeding 90 days. The bills themselves may be drawn in any part of the world and with a longer maturity, but at any time when they remain as part of the assets of the Issue Department the period for maturity should not exceed 90 days.

3. Government securities of the United Kingdom payable in United Kingdom currency and maturing within five years. Here also, the securities might originally have been drawn or continued with longer periods for maturity but at any time when they remain as part of the assets of the Issue Department, their remaining period for maturity should not exceed five years.

4. For the first two years from the coming into force of this chapter the maturity of such last mentioned securities may be beyond five years.

Government securities of the United Kingdom include Consols and other British Government stocks, Treasury bills, exchequer bonds and other short term obligations of the British Government (Withers 'The Meaning of Money' 1932 Ed. page. 242).

Sub-section (3). Proviso.—Whatever may be the object of the provision in this proviso, permitting an increase of the total Government securities by ten crores with the previous sanction of Governor-General-in-Council, one effect of it will certainly be to maintain the market value of such securities from depreciating. The Bank's power to purchase them, upto 10 crores must have an appreciable effect on the market for such securities.

Further the Bank can control and regulate financial speculation by selling the securities and thus sucking that portion of the currency available for stock exchange speculation. This is an ideal provision and attempts a solution which other Central Banks have in part failed to achieve, namely to control the utilisation of the currency system for stock exchange speculative purposes.

Some special aspects of assets requirements in India.—“While internal stability is a fundamental condition to assure the external stability of the rupee, it is nevertheless essential that the note issue should be secured to a substantial extent by assets which are capable of rectifying a temporary equilibrium in the foreign balance of payments. Disequilibria are bound to occur, sometimes for seasonal causes, and sometimes for reason of a bad harvest or financial stringency internally or externally Gold and Gold securities are the assets most suitable for this purpose, for they can be readily employed to discharge external liabilities, pending the adjustment of the disequilibrium through an appropriate credit policy by the Bank.

It is evident that the maximum amount which needs to be kept at any given time as a reserve to maintain the external value of the rupee is the amount by which India's payments abroad exceed her receipts from abroad at that time, or briefly, Indian's adverse balance of payments at any given time. But, as every sale of gold or gold exchange by the Reserve Bank operates in the direction of contracting the internal circulation, and as there is a point beyond which the contraction of monetary circulation cannot be carried, it may be said that the size of the gold reserve need not exceed the maximum amount to which currency can be so withdrawn from circulation." (*Currency Commission Report*, Paras 117 & 118). In view of the fact that the Indian Currency Standard is not now a gold or gold exchange standard the above passage has to be read by substituting for the expressions 'gold securities and gold exchange' occurring therein the terms 'sterling securities' 'and sterling exchange.'

Government Securities as part of the Note Issue Reserve.—"They form a far less desirable asset than commercial bills, for they lack that most useful quality of the latter to expand and contract the currency automatically in accordance with the needs of the country.

In the case of Government securities, expansion and contraction depends entirely upon the will and judgment of the currency authority, and is therefore more liable to errors of judgment. A large holding of Government securities, moreover, might give rise to difficulties in connection with their realisation if the need for it arose. Their inclusion among the reserve assets of the Issue Department can therefore only be justified if the amount held is limited to only so much of the circulation as is unlikely, in any circumstances, to be withdrawn, *plus* such further amount as can in all probability be realised without causing an undue disturbance of the Government credit." (*Currency Commission Report* Para 136).

Section 33 (4): Valuation of gold.—The report of the London Committee on Reserve Bank Legislation, on which the present Act is based stated:—"The question of valuation of the gold assets presents some difficulty. At a time when monetary standards are completely disorganised, there is, in fact, no logical figure applicable to the valuation of gold reserves. We consider that the best course would be to retain the valuation laid down in sub-clause (4) of clause 31. This would be in accordance with the practice at present followed by the Bank of England and in India, where gold continues to be valued at the old parity. Under this arrangement the existing holdings would be covered against loss by a wide margin. The possibility would obviously be present that the Bank might gain a large premium on the gold handed

over to it by Government. The question as to how such premium should be dealt with, especially in the event of sales being made in the intermediate period pending revaluation of the Gold, raises complex practical issues, which we have not fully discussed. In principle such profits should belong rather to the Government than to the Bank, but our view is that this unrealised margin should in some way or other be kept available for strengthening the position of the currency reserves. We recommend that detailed proposals should be worked out by the Government of India for consideration during the passage of legislation on this subject " (Report para 25.)

34. (1) The liabilities of the Issue Department shall be an amount equal to the total of the amount of the currency notes of the Government of India and bank notes for the time being in circulation.

Liabilities of the Issue Department.

(2) For the purposes of this section, any currency note of the Government of India or bank note which has not been presented for payment within forty years from the first day of April following the date of its issue shall be deemed not to be in circulation, and the value thereof shall, notwithstanding anything contained in sub-section (2) of section 23, be paid by the Issue Department to the Governor-General-in-Council or the Banking Department, as the case may be; but any such note, if subsequently presented for payment, shall be paid by the Banking Department, and any such payment in the case of a currency note of the Government of India shall be debited to the Governor-General-in-Council.

NOTES.

Sub-section (1).—The Issue Department shall not be subjected to any other liabilities than those imposed by this Section (Section 23 (1) Supra).

S. 34 (2). The purpose for this provision so far as bank notes are concerned is understandable. Currency notes which are only representative money contain promise to pay on demand, but bank notes

are legal tender and there is no promise to pay. Nor is the obligation to supply different forms of currency under S. 39 absolute. So far, therefore, as bank notes are concerned, there is no question of any payment and the bank notes being themselves legal tender in payment or on account need not be and are not required to be presented at all. The promise is therefore either humbugging or meaningless, so far as presentment for payment is concerned. No section of the Act requires a bank note in circulation or which has been issued, to be re-presented to the Bank for any purpose. The only purpose of the Sub-section (2) seems to be to adjust the liability of the Issue Department and treat it as non-existent in the case of bank notes not received back in the Issue Department within forty years, and shift the liability to the Banking Department which is to treat the assets against such notes as its profits, until and unless the notes come back to the Bank.

Bank Notes for the time being in circulation.—Does this include bank notes delivered to the Governor-General-in-Council in exchange for rupee coin under Section 36 (2) ? It may include, if the Governor-General-in-Council puts them in circulation *i.e.*, uses them.

35. On the date on which this Chapter comes into force the Issue Department shall take over from the Governor-General-in-Council the liability for all the currency notes of the Government of India for the time being in circulation and the Governor-General-in-Council shall transfer to the Issue Department gold coin, gold bullion, sterling securities, rupee coin and rupee securities to such aggregate amount as is equal to the total of the amount of the liability so transferred. The coin, bullion and securities shall be transferred in such proportion as to comply with the requirements of section 33 :

Provided that the total amount of the gold coin, gold bullion and sterling securities so transferred shall not be less than one-half of the whole amount transferred and that the amount of rupee coin so transferred shall not exceed fifty crores of rupees :

Provided further that the whole of the gold coin and gold bullion held by the Governor-General-in-Council in the gold standard reserve and the paper currency reserve at the time of the transfer shall be so transferred.

NOTES.

On the day when this chapter comes into force.—Though Section 1 (3) provides that the various provisions of the Act may come into force on such date or dates as the Governor-General-in-Council appoints, this section as well as Section 33 (6), (c) proviso shows that the whole of this chapter is to come into force on a particular day, so that the whole of the functions of the Central Banking system provided in this Chapter, may fit in with the structure.

Currency notes for the time being in circulation.—These exclude the notes coming under S. 34 (2).

36. (1) After the close of any financial year in which the minimum amount of rupee coin held in the assets, as shown in any of the weekly accounts of the Issue Department for that year prescribed under sub-section (1) of section 53, is greater than fifty crores of rupees or one-sixth of the total amount of the assets as shown in that account, whichever may be the greater, the Bank may deliver to the Governor-General-in-Council rupee coin up to the amount of such excess but not without his consent exceeding five crores of rupees, against payment of legal tender value in the form of bank notes, gold or securities :

Method of dealing with fluctuations in rupee coin assets.

Provided that if the Bank so desires and if the amount of gold coin, gold bullion and sterling securities in the assets does not at that time exceed one-half of the total assets, a proportion not exceeding two-fifths of such payment shall be in gold coin, gold bullion or such sterling securities as may be held as part of the assets under sub-section (6) of section 33.

(2) After the close of any financial year in which the maximum amount of rupee coin held in the assets, as so shown, is less than fifty crores of rupees or one-sixth of the total amount of the assets, as so shown, whichever may be the greater, the Governor-General-in-Council shall deliver to the Bank rupee coin up to the amount of such deficiency, but not without its consent exceeding five crores of rupees, against payment of legal tender value.

NOTES.

This Section deals with fluctuations in rupee coin assets.

✓ It says that if after the close of any financial year it is seen from any of the weekly statements for that year that the minimum amount of rupee coin taking into account all the weeks of the year is in excess of 50 crores or one-sixth of the assets or the maximum has fallen short of that limit, the Bank may deliver to or demand from the Governor-General-in-Council, as the case may be, five crores of such excess or deficiency, or with the consent of the Governor-General-in-Council or the Bank, more than that amount.

There may be enormous fluctuations as between the weekly statements. What is to be taken into account is the minimum and the maximum for all the weeks of the year. If the minimum is in excess of the prescribed limit, the excess may be delivered to the Governor-General-in-Council. If the maximum is less than 50 crores the deficiency may be made up by delivery to the Bank of the excess.

In exchange the Governor-General-in-Council if he receives rupee coin, has to deliver bank notes, gold or securities. If he delivers rupee coin, he has to be paid in legal tender value. Legal tender in British India consists of bank notes, and rupee coins and half rupee coins and to a very limited extent other coins. (See Indian Coinage Act, Appendix B.)

The Governor-General-in-Council cannot, it would seem from section 38 below, reissue or circulate either the rupee coins or bank notes etc. received by him from the Bank in return for delivery to the Bank of bank notes or other assets or rupee coin as the case may be, under Sub-section (1) or sub-section (2) of this section.

Financial Year.—This is defined in the General Clauses Act, Section 3 (19) as, meaning 'the year commencing on the 1st day of April'.

The term 'year' occurring in other sections does not necessarily mean the financial year. The Bank may have its own year for its annual general meeting and other purposes.

With regard to disposal of surplus rupees in the hands of Government, see Memorandum Appendix A to Joint Committee's Report, printed in the introductory pages of this book.

37. (1) Notwithstanding anything contained in the foregoing provisions, the Bank may, with the previous sanction of the Governor-General-in-Council, for periods not exceeding thirty days in the first instance, which may, with the like sanction, be extended from time to time by periods not exceeding fifteen days, hold as assets gold coin, gold bullion or sterling securities of less aggregate amount than that required by sub-section (2) of section 33 and, whilst the holding is so reduced, the proviso to that sub-section shall cease to be operative :

Provided that the gold coin and gold bullion held as such assets shall not be reduced below the amount specified in the proviso to sub-section (2) of section 33 so long as any sterling securities remain held as such assets.

(2) In respect of any period during which the holding of gold coin, gold bullion and sterling securities is reduced under sub-section (1), the Bank shall pay to the Governor-General-in-Council a tax upon the amount by which such holding is reduced below the minimum prescribed by sub-section (2) of section 33; and such tax shall be payable at the bank rate for the time being in force, with an addition of one per cent. per annum when such holding exceeds thirty-two and a half per cent. of the total amount of the assets and of a further one and a half per cent. per annum in respect of every further decrease of two and a half per cent. or part of such decrease :

Provided that the tax shall not in any event be payable at a rate less than six per cent. per annum.

NOTES.

This provision is similar to Section 11 (c) of the Federal Reserve Act of U.S.A., which is as follows:—

S. 11.—The Federal Reserve Board shall be authorised and empowered:

(c) "To suspend for a period not exceeding thirty days, and from time to time to renew such suspension for periods not exceeding fifteen days, any reserve requirements specified in this Act: *Provided*, that it shall establish a graduated tax upon the amounts by which the reserve requirements of this Act may be permitted to fall below the level hereinafter specified: *And provided further*, that when the gold reserve held against Federal Reserve Notes falls below forty per centum, the Federal Reserve Board shall establish a graduated tax of not more than one per centum per annum upon such deficiency until the reserves fall to thirty-two and one-half per centum, and when said reserve falls below thirty-two and one-half per centum, a tax at the rate increasingly of not less than one and one-half per centum per annum upon each two and one-half per centum or fraction thereof that such reserve falls below thirty-two and one-half per centum. The tax shall be paid by the reserve bank, but the reserve bank shall add an amount equal to said tax to the rates of interest and discount fixed by the Federal Reserve Board."

The provision ineffective.—Having regard to the composition and scope of the assets of the Issue Department, it will be clear that by clever management the Bank can evade the provisions of this section completely. The section requires that if the gold and sterling portion of the assets is reduced below the minimum of 40 per cent. of the total assets as prescribed by S. 33 (2), the Bank should, during the period of the shortage, pay a graduated tax to the Governor-General-in-Council on the amount by which those assets are reduced below the prescribed percentage. An analysis of the nature of the assets of the Issue Department will show that the Bank can avoid paying the tax so long as it has any rupee coin left in the assets. It will be noted that the limitations imposed by the reserve requirements extend only to notes issued by the Bank. But the Bank can put into circulation another kind of currency, namely rupee coin. When, at any time, the Bank finds it not possible for it to issue further Bank notes without reducing the proportion which the gold and sterling portion of the assets bears to the total, it may, instead of suspending the assets requirements, and paying the tax under this Section, simply stop issuing

further notes, and in its place, issue the silver rupee coins forming part of the assets of the Issue Department.

It may be noted that Section 33 does not require any fixed proportion or amount of rupee coin to be kept as part of the assets. As rupee coin is an unearning asset, there will be a natural tendency to keep its amount at a minimum, and substitute in its place such earning assets as eligible bills and promissory notes. [See Section 33 (3).]

Now to take a hypothetical instance, if the total assets are 200 crores of rupees as against a note circulation of equal amount then,

40 per cent. must be in gold and sterling,

25 per cent or Rs. 50 crores may be in rupee securities, and the balance of 35 per cent. or 70 crores in rupee coins and internal bills.

Now supposing the Bank decides that the credit situation must be made easier and that to achieve this end an amount of say 10 crores worth of notes should be pumped out into circulation; and assuming that it is not for the time being possible to increase the gold and sterling proportion of the Reserve, the question is whether the Bank should at all apply for sanction of the Governor-General-in-Council and resort to suspension of its gold and sterling reserve requirements as provided by this Section. It may safely be asserted that the Bank will have no need to resort to this course at all. It must be remembered that the Bank holds 50 crores of its assets in legal tender rupee coins. The Bank has simply to issue these coins instead of printing and issuing further bank notes. As rupee coins are legal tender at par with the Bank's notes, the purpose of expanding the currency is equally effectively served, by adopting this trick of releasing rupee coins from the assets and replacing them by profit yielding bills.

This process of expansion of the currency can continue to go on to the full extent of the rupee coins in the Bank's assets and thus the Bank can literally live on its own fat to the extent of 50 crores of rupees, and thus potentially increase the volume of currency in circulation by full 50 crores of rupees at a time.

Thus it will be seen that under skilful management Section 37 may not come into operation at all at any time.

A humbugging provision.—Further it is in a sense a humbugging provision. The tax is in reality paid out of profits which go to Government. Only a small amount of Rs. 25 to 30 lakhs of rupees will be required for distribution as dividend among the shareholders. As the Bank will from the beginning be in possession of interest-yielding securities to the extent of about 80 to 100 crores, it will be making an annual

profit of 4 to 4½ crores of rupees in the least, almost the whole of which will go to Government. The tax will not therefore affect anybody else's pocket except that of the Government. And the Government will by this process be simply making an ostentation of taxing its own profits.

✓ 38. The Governor-General-in-Council shall undertake not to re-issue any rupee coin delivered under section 36 nor to put into circulation any rupees, except through the Bank and as provided in that section; and the Bank shall undertake not to dispose of rupee coin otherwise than for the purposes of circulation or by delivery to the Governor-General-in-Council under that section.

Obligations of Government and the Bank in respect of rupee coin.

NOTES.

Under Section 36, the Governor-General-in-Council has to deliver to the Bank rupee coin in exchange for bank notes and/or other assets in exchange for rupee coin, as prescribed in that Section. What he receives in exchange he is not to dispose of in any manner. The term "rupees" in the Section includes both rupee coins and bank notes.

✓ 39. (1) The Bank shall issue rupee coin on demand in exchange for bank notes and currency notes of the Government of India, and shall issue currency notes or bank notes on demand in exchange for coin which is legal tender under the Indian Coinage Act, 1906.

Obligation to supply different forms of currency.

✓ (2) The Bank shall, in exchange for currency notes or bank notes of five rupees or upwards, supply currency notes or bank notes of lower value or other coins which are legal tender under the Indian Coinage Act, 1906, in such quantities as may, in the opinion of the Bank, be required for circulation; and the Governor-General-in-Council shall supply such coins to the Bank on demand. If the Governor-General-in-Council at any time fails to supply such coins, the Bank shall be released from its obligation to supply them to the public.

NOTES.

This Section is not well-drafted, though its meaning is fairly clear. The Section in substance imposes on the Bank an obligation to supply different forms of currency in exchange for one another, rupee coins and other coins in exchange for bank and currency notes and *vice versa* but in exchanging other coins, the Bank may itself determine the quantities in which they are required for circulation. Here the intention is not well expressed. What it means is that the Bank should require of the Governor-General-in-Council such quantities of the different kinds of coins, as in its opinion are required for circulation and the Bank should supply the public rupee and other coins in exchange for notes and for one another as may be required. And the Governor-General-in-Council should supply the Bank with such kinds of coins and in such quantities as may be required.

In the case of rupee coins, Section 36 provides the method by which the Bank should acquire them. In the case of other coins sub-section (2) of this Section says that the Governor-General-in-Council is to supply them to the Bank on demand. Though it is not stated what he receives in return, it is clear that the Bank should give him credit in its accounts for the face value of the coins supplied. The Bank cannot itself appropriate the profits of the coins which are to go to the Governor-General-in-Council.

The whole Section may be simplified and re-drafted as follows :—

The Bank shall, on demand by any person in exchange for bank notes and currency notes of the Government of India, or rupee coin supply bank notes or currency notes of lower or higher denominations, or rupee coins or other coins which are legal tender under the Indian Coinage Act 1906, as may be required; and the Governor-General-in-Council shall in exchange for legal tender value supply such other coins to the Bank on demand in such quantities as in the Bank's opinion may be required for circulation: If the Governor-General-in-Council at any time fails to supply such coins, the Bank shall be released from its obligations to supply them to the public.

Subsidiary Coins.—If the Governor-General-in-Council is to supply without anything in return the Bank will try to live on this means in times of emergency and pump into circulation, these coins in larger than necessary quantities.

Policy underlying free interchangeability of the different forms of Currency.
—The policy was thus explained by Sir George Schuster in making the motion to consider the Bill, in the Legislative Assembly.

“ Here, in deference to the advice of the bankers and on the unanimous view of the Committee, we have felt it right to retain for the bank notes which will be issued by the Bank in the future the same unlimited convertibility into silver rupees which is a privilege now enjoyed by treasury notes. Theoretically there was a good deal to be said for taking this occasion to change a practice which is inconsistent with modern conceptions about bank notes, but we have recognised that special conditions prevail in India, and practical considerations outweigh these theoretical arguments.” (Legislative Assembly Debates 27th November 1933, page 2203.)

The recommendations of the Currency Commission in this connection were as follows:—“ We recommend, that no legal obligation for conversion into silver rupees should attach to the new notes, the issue of which we propose below. At the same time we think it essential to provide facilities for the free exchange of notes for rupees so long as the people desire to obtain metallic rupees in exchange for them. The people of India have for centuries has been habituated to a metallic currency, and to the use of the rupee as a standard coin, and although the one-rupee note has been readily accepted in many parts of the country, notably in the jute districts of Bengal, it would be unwise to attempt to force paper money upon the people against their will. Experience has shown that the best way to foster the use of currency notes is to establish confidence in their practical convertibility, and this confidence has been secured not so much by a legal obligation to encash them at currency offices as by making rupees readily available to the public at centres where there is a demand for them. The public are more concerned with practical facilities of this kind than with legal rights, and if these facilities were withdrawn or seriously curtailed, the growth of the note circulation would probably be checked, and the popularity of the new notes would be endangered. For these reasons we propose to make it incumbent on the currency authority (subject to the reservation indicated in paragraph 135 below) to make rupees and other coin freely available to the public in such quantities as may be required for circulation.” (Report para 69.)

40. The Bank shall sell, to any person who makes a demand in that behalf at its office in Bombay, Calcutta, Delhi, Madras or Rangoon and pays the purchase price in legal tender currency, sterling for immediate delivery in London, at a

✓ Obligation to sell sterling.

rate not below one shilling and five pence and forty-nine sixty-fourths of a penny for a rupee;

Provided that no person shall be entitled to demand to buy an amount of sterling less than ten thousand pounds.

41. The Bank shall buy, from any person who makes a demand in that behalf at its office in Bombay, Calcutta, Delhi, Madras or Rangoon, sterling for immediate delivery in London, at a rate not higher than one shilling and six pence and three-sixteenths of a penny for a rupee :

Obligation to buy sterling.

Provided that no person shall be entitled to demand to sell an amount of sterling less than ten thousand pounds :

Provided further that no person shall be entitled to receive payment unless the Bank is satisfied that payment of the sterling in London has been made.

NOTES.

These Sections impose on the Bank the obligation of maintaining stability of the exchange value of the rupee with sterling.

As stated in the Notes to the Preamble and Section I, the Act aims at establishing a sterling exchange standard with all its advantages and defects. But it is only a temporary provision, and is liable to be changed for a permanent measure when the international monetary position becomes stable and clear. [See paras, two and three of Preamble and Section 55 (2)].

In this connection the London Committee on Reserve Bank Legislation on whose report the Act is based, stated as follows:—

“ In these circumstances we consider that the only sound course for India is to remain on the sterling standard. On this basis the exchange obligations incorporated in the Bill must necessarily be in accord with the rupee-sterling ratio existing at the time when the Bill is introduced. This statement, does not, however, imply any expression of opinion on the part of the Committee on the merits or demerits of the present ratio. The ratio provisions in the Bill are designed to make it clear that there will not be any change in the *de facto* situation by the mere coming into operation of the Reserve Bank Act.

It will be necessary in the Bill to provide limits to the range of the exchange fluctuations by prescribing upper and lower points at which the Bank will be required to buy and sell on demand sterling for immediate delivery. According to the practice now prevailing, upper and lower points have in fact been retained as though the rupee was still on a gold basis. As the fixing of new points would in any case have to be on an arbitrary basis we recommend that this practice, to which the public have become accustomed, should be continued." (London Committee's Report, paras 19 & 20.)

Compare Section 17, (3) (a), where the Bank is authorised to buy from and sell to scheduled banks sterling in amounts of not less than one lakh of rupees. The rates for buying and selling cannot in normal times appreciably differ from those fixed in these Sections. In times of emergency, the Bank can also operate in the Open Market with regard to sterling exchange. [See Section 18 (b)].

Obligations only at its offices.—The obligation to buy and sell is confined to the Bank at its offices in the 5 places and not at any branch or agency.

But nothing prevents the Bank from giving exchange facilities at other places also, though it cannot be legally compelled to deal in sterling in other than the specified offices.

Under Section 17 the Bank can deal in any of its offices, branches or agencies, but only with Scheduled Banks. And when occasion for the exercise of the power of direct discount arises under S. 18, the Bank may also deal with the public direct at all the places.

42. (1) Every bank included in the Second Schedule shall maintain with the Bank a balance the amount of which shall not at the close of business on any day be less than five per cent. of the demand liabilities and two per cent. of the time liabilities of such Bank in India as shown in the return referred to in sub-section (2).

✓ Cash reserve of scheduled banks to be kept with the Bank.

Explanation.—For the purposes of this section liabilities shall not include the paid-up capital or the reserves, or any credit balance in the profit and loss account of the bank or the amount of any loan taken from the Reserve Bank.

(2) Every scheduled bank shall send to the Governor-General-in-Council and to the Bank a return signed by two responsible officers of such bank showing— ✓

(a) the amounts of its demand and time liabilities, respectively, in India,

(b) the total amount held in India in currency notes of the Government of India and bank notes,

(c) the amounts held in India in rupee coin and subsidiary coin, respectively,

(d) the amounts of advances made and of bills discounted in India, respectively, and

(e) the balance held at the Bank, at the close of business on each Friday, or if Friday is a public holiday under the Negotiable Instruments Act, 1881, at the close of business on the preceding working day; and such return shall be sent not later than two working days after the date to which it relates :

Provided that where the Bank is satisfied that the furnishing of a weekly return under this sub-section is impracticable in the case of any scheduled bank by reason of the geographical position of the bank and its branches, the Bank may require such bank to furnish in lieu of a weekly return a monthly return to be dispatched not later than fourteen days after the end of the month to which it relates giving the details specified in this sub-section in respect of such bank at the close of business for the month.

(3) If at the close of business on any day before the day fixed for the next return, the balance held at the Bank by any scheduled bank is below the minimum prescribed in sub-section (1), such scheduled bank shall be liable to pay to the Bank in respect of each such day penal interest at a rate three ✓

per cent. above the bank rate on the amount by which the balance with the Bank falls short of the prescribed minimum, and if on the day fixed for the next return such balance is still below the prescribed minimum as disclosed by this return, the rates of penal interest shall be increased to a rate five per cent. above the bank rate in respect of that day and each subsequent day on which the balance held at the Bank at the close of business on that day is below the prescribed minimum.

(4) Any scheduled bank failing to comply with the provisions of sub-section (2) shall be liable to pay to the Governor-General-in-Council or to the Bank as the case may be, or to each, a penalty of one hundred rupees for each day during which the failure continues.

(5) The penalties imposed by sub-sections (3) and (4) shall be payable on demand made by the Bank, and, in the event of a refusal by the defaulting bank to pay on such demand, may be levied by a direction of the principal Civil Court having jurisdiction in the area where an office of the defaulting bank is situated, such direction to be made only upon application made in this behalf to the Court by the Governor-General-in-Council in the case of a failure to make a return under sub-section (2) to the Governor-General-in-Council, or by the Bank with the previous sanction of the Governor-General-in-Council in other cases.

(6) The Governor-General-in-Council shall, by notification in the *Gazette of India*, direct the inclusion in the Second Schedule of any bank not already so included which carries on the business of banking in British India and which—

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

(b) is a company as defined in clause (2) of section 2 of the Indian Companies Act, 1913, or a corporation or a company incorporated by or under any law in force in any place outside British India, and shall by a like notification direct the exclusion from that Schedule of any scheduled bank the aggregate value of whose paid-up capital and reserve becomes at any time less than five lakhs of rupees, or which goes into liquidation or otherwise ceases to carry on banking business.

NOTES.

This Section follows in principle the provisions of Section 19 of the Federal Reserve Act of U.S.A., the relevant portions of which are as follows:—

“ Every bank, banking association, or trust company which is or which becomes a member of any Federal Reserve Bank shall establish and maintain reserve balances with its Federal Reserve Bank as follows:

(a) If not in a reserve or central reserve city, as now or hereafter defined, it shall hold and maintain with the Federal Reserve Bank of its district an actual net balance equal to not less than seven per centum of the aggregate amount of its demand deposits and three per centum of its time deposits.

(b) If in a reserve city, as now or hereafter defined, it shall hold and maintain with the Federal Reserve Bank of its district an actual net balance equal to not less than ten per centum of the aggregate amounts of its demand deposits and three per centum of its time deposits; *Provided, however*, that if located in the outlying districts of a reserve city or in territory added to such a city by the extension of its corporate charter, it may, upon the affirmative vote of five members of the Federal Reserve Board, hold and maintain the reserve balances specified in paragraph (a) thereof.

(c) If in a Central Reserve city, as now or hereafter defined, it shall hold and maintain with the Federal Reserve Bank of its district an actual net balance equal to not less than thirteen per centum of the aggregate amount of its demand deposits and three per centum of its time deposits: *Provided, however*, that if located in the outlying districts of a central reserve city or in territory added to such city by the extension of its corporate charter, it may, upon the affirmative vote of five members of the Federal Reserve Board, hold and maintain the reserve balances specified in paragraphs (a) or (b) thereof.”

Purpose of the Section.—"The first necessity of a Central Bank charged with responsibility for the management of the monetary system as a whole, is to make sure that it has an unchallengeable control over the total volume of bank-money created by its member banks." (J.M. Keynes, *A Treatise on Money*, Vol. II, p. 225). "If a Central Bank is to be in a position to control credit, it must have an unchallengeable voice in deciding the volume of credit to be available from time to time. If the banking reserves of the country are in the hands of a Central Bank, it is able to regulate the credit position on its appreciation of the situation as a whole and in the light of changing developments. If, on the other hand, reserve balances representing potential credit are held by the commercial banks themselves, it would be easy for them to pursue a credit policy independent of that of the Central Bank, and possibly conflicting with it. The very idea of a Central Bank presupposes that the commercial banks will deposit their cash resources, other than till money, with it, and that a system will be established under which the commercial bank will not counter the credit policy of the Central Bank by any action on their part." (Kisch: *Central Banks* p. 101.)

This Section is intended to help and achieve this end. There is however an erroneous impression among businessmen, and others in India that the main purpose of such legal reserve requirements as contained in this section is simply to ensure liquidity of the individual member banks; and taking their stand on this basis, they argue that the meagre cash reserves of 5% and 2% of the demand and time liabilities of the scheduled banks, required to be kept with the Reserve Bank are not going to save them from insolvency if the banks are not otherwise prudent in their lending policy as regards the remaining 95% and 98% of their liabilities, and that therefore the reserve requirements are useless and may misguide depositors into thinking that their position is secure when it is not, and not secure when it really is secure.

As stated in the Report of the Committee on Finance and Industry 1931 (popularly known as the Macmillan Committee because Lord Macmillan was chairman of the Committee), "the main reason for expecting the banks to keep reserves above the minimum needed for daily convenience is no longer primarily the safety and solvency of the banks themselves, as it was in former times, but the necessity for providing the Central Institution with adequate resources wherewith to manage the monetary system and safely furnish the member institutions with precisely those conveniences, for rapidly liquidating earning assets, upon which the latter depend when determining the amount of their cash reserves." (Report, page 158)

Similar view was also expressed by an expert Committee of the Federal Reserve System of U. S. A., who investigated the whole subject of member Bank cash reserves from whose authoritative report, the following extract is taken :—

“The committee takes the position that it is no longer the primary function of legal reserve requirements to assure or preserve the liquidity of the individual member bank. The maintenance of liquidity is necessarily the responsibility of bank management and is achieved by the individual bank when an adequate proportion of the port-folio consists of assets that can be readily converted into cash. Since the establishment of the Federal reserve system, the liquidity of an individual bank is more adequately safe-guarded by the presence of the Federal reserve banks, which were organized for the purpose, among others; of increasing the liquidity of member banks by providing for the rediscount of their eligible paper, than by the possession of legal reserves. The two main functions of legal requirements for member bank reserves under our present banking structure are, first, to operate in the direction of sound credit conditions by exerting an influence on changes in the volume of bank credit, and, secondly, to provide the Federal reserve banks with sufficient resources to enable them to pursue an effective banking and credit policy.” (Report of Committee on Bank Reserves of the Federal Reserve System p. 8.) ✓

Sub-section (1) requires that each scheduled bank should keep with the Reserve Bank a cash reserve which shall not be less than 5% of its liabilities to be met on demand, and 2% of its liabilities which may be met at some fixed date or after a fixed period. Demand liabilities consist mostly of deposits on current account payable on demand by cheque or such other means as may be adopted, and time liabilities relate to fixed deposits, savings deposits etc., repayable after some specified period or on some specific date.

The Act does not define ‘demand and time liabilities’. Under the Federal Reserve Act of U. S. A., Section 19 quoted above, defines demand deposits as comprising all deposits payable within thirty days, and time deposits as comprising deposits payable after thirty days. This is a special statutory definition, not applicable elsewhere than in U. S. A. In this country, which follows British practice, a demand liability will be only a liability which should be met on demand, *i.e.*, in 24 hours, and all other liabilities are time liabilities.

In England the terms used to denote demand and time deposits are ‘current account’ and ‘deposit account’ respectively. The Macmillan Committee say that ‘There is no universally recognised line of division between the two, but as far as possible current accounts are

taken as sums payable on demand and deposit accounts as sums payable after date or notice, (Report page 283).

In order to see that each Scheduled bank satisfies the provisions of sub-section (1), sub-section (2) enacts that each such bank should make a weekly return or when the Reserve Bank does not consider it practicable in view of the geographical position of any Scheduled bank, a monthly return containing the particulars detailed therein. Though the sub-section does not seem specifically to require the particulars for each day, the statement has to disclose the daily condition with regard to all the matters required, as otherwise it will not be possible to enforce the provisions of sub-section (1) or impose the penalty or penalties provided by sub-section (3). The wording of sub-section (3) clearly shows that the disclosure should be made as for each day.

Sub-section (5) provides the means of recovering the penalties imposed under sub-sections (3) & (4). As both the existing and future Scheduled banks are included only in so far as they have branches or offices in British India (otherwise they cannot be brought under the Act which as it is, extends only to British India) the Principal Civil Court referred to in sub-section (5) is the District Court in British India as defined in the Code of Civil Procedure, Section 2 (4), and application has to be made to such Court in British India within whose jurisdiction the defaulting bank has its head office or a branch office.

In the case of the penalties payable either to the Governor-General-in-Council or to the Bank, a demand by the Bank is necessary, and is condition precedent to an application to the Court.

Clause (6) requires the future inclusion of only such banking companies as do banking business in British India. But its provision for removals from the Schedule is anomalous in that there is no provision for exclusion where a Scheduled bank ceases to have an office or branch in British India. In that case, the liability of that bank cannot be enforced against it in British India.

Detailed regulations will have to be made in this connection as to forms of return etc.

Special position of the Imperial Bank.—The Imperial Bank as agent of the Reserve Bank will have custody of enormous monies belonging to the Government of India and Local Governments. Are these amounts to be included in the liabilities of the Imperial Bank for the purposes of this Section? No, because in such case the Imperial Bank's liability is only to the Reserve Bank and in its capacity of agent. The claims on the Imperial Bank as agent of the Reserve Bank cannot be said to be its own demand and time liabilities within the meaning of sub-section (1).

Further, the balances of Scheduled banks to be kept with the Reserve Bank will have themselves to be kept with the Imperial Bank as agent of the Reserve Bank in many places.

Power of Reserve Bank to call for information.—For efficient control of credit system the Bank should have power to call for information from Scheduled banks, similar to that given to the Federal Reserve Banks in U. S. A. :—

“Each Federal Reserve Bank shall keep itself informed of the general character and amount of loans and investment of its member banks with a view to ascertaining whether undue use is being made of bank credit for the speculative carrying of or trading in securities, real estate, or commodities, or for any other purpose inconsistent with the maintenance of sound credit conditions ; and, in determining whether to grant or refuse advances, rediscounts or other credit accommodations, the Federal Reserve Bank shall report to the Federal Reserve Board any such undue use of bank credit by any member bank, together with his recommendation. Whenever, in the judgment of the Federal Reserve Board, any member bank is making such undue use of bank credit, the Bank may, in its discretion, after reasonable notice and an opportunity for a hearing, suspend such bank from the use of the credit facilities of the Federal Reserve System and may terminate such suspension or may renew it from time to time.” (Federal Reserve Act. S. 4.) ✓

43. The Bank shall compile and shall cause to be published each week a consolidated statement showing the aggregate of the amounts under each clause of sub-section (2) of section 42 exhibited in the returns received from scheduled banks under that section.

Publication of consolidated statement by the Bank.

44. The Bank may require any provincial co-operative bank with which it has any transactions under section 17 to furnish the return referred to in sub-section (2) of section 42, and if it does so, the provisions of sub-sections (4) and (5) of section 42 shall apply so far as may be to such co-operative bank as if it were a Scheduled bank. ✓

Power to require returns from co-operative banks.

NOTES.

In the case of a Provincial Co-operative Bank, some of the privileges of a Scheduled bank are given but it is not compelled to keep any portion of its cash with the Reserve Bank on any account. ✓

✓ But the Reserve Bank, in as much as it incurs contingent liabilities by rediscounting bills on behalf of the provincial co-operative banks, is entitled to know whether such banks dealing with it are in sound financial condition and do sound business. The present section empowers the Reserve Bank to call for returns similar to those required of Scheduled banks under Section 42 (2), and subjects any provincial co-operative banks failing to comply with the requisition, to the penalty provided by S. 42 (4), and the procedure for recovery of same contained in S. 42 (5).

45. (1) The Bank shall enter into an agreement with the Imperial Bank of India which shall be subject to the approval of the Governor-General-in-Council, and shall be expressed to come into force on the date on which this Chapter comes into force and to remain in force for fifteen years and thereafter until terminated after five years' notice on either side, and shall further contain the provisions set forth in the Third Schedule :

Agreement with
the Imperial Bank.

✓ Provided that the agreement shall be conditional on the maintenance of a sound financial position by the Imperial Bank and that if, in the opinion of the Central Board the Imperial Bank has failed either to fulfil the conditions of the agreement or to maintain a sound financial position, the Central Board shall make a recommendation to the Governor-General-in-Council, and the Governor-General-in-Council, after making such further enquiry as he thinks fit, may issue instructions to the Imperial Bank with reference either to the agreement or to any matter which in his opinion involves the security of the Government monies or the assets of the Issue Department in the custody of the Imperial Bank, and in the event of the Imperial Bank disregarding such instructions may declare the agreement to be terminated.

(2) The agreement referred to in sub-section (1) shall, as soon as may be after it is made, be laid before the Central Legislature. ✓

NOTES.

The agreement shall be deemed to come into force only on the date when this Chapter, *i.e.*, Chapter III comes into force as per sub-section (3) of Section (1). The agreement does not automatically terminate at the end of fifteen years, but will continue to remain in force unless terminated by a five years' notice. If the agreement is to be terminated at the end of fifteen years, notice of termination shall have been given before end of ten years of the agreement.

The agreement is not limited to the terms contained in Schedule III. It may contain any additional terms, provided they are not inconsistent with these.

'Central Legislature' means 'Indian Legislature' as defined in the Government of India Act Section 63.

For further comment on the agreement with the Imperial Bank, see Notes under Schedule III.

CHAPTER IV.

GENERAL PROVISIONS.

46. The Governor-General-in-Council ✓ shall transfer to the Bank rupee securities of the value of five crores of rupees to be allocated by the Bank to the Reserve Fund.

Contribution by Governor-General-in-Council to the Reserve Fund.

NOTES.

Though the section speaks 'of rupee securities' in general terms what the Governor-General-in-Council is to transfer is only 'Government securities'. ✓

The following passage from the speech of the Finance Member, (The Hon'ble Sir George Schuster) in the Legislative Assembly on 27-11-1933 when making the motion for consideration of the Bill as amended by the Joint Committee, clearly explains the scope and object of the Section :—

" I might remind Honourable Members that the original plan provided for building up a reserve fund in a way which would have

involved the absorption of a very substantial portion of the Issue Department's profits in the early years until the reserve fund had been built up to five crores. Now, the profits of the Issue Department represent the currency profits which have hitherto formed an important item in the Central Government's budgetary revenue. These receipts, under a different name, will continue to accrue to the Government budget in the future. They will come in the shape of a share in the profits of the Bank, for, as Honourable Members will appreciate, subject to paying a dividend to the shareholders which cannot exceed a maximum of Rs. 30 lakhs per annum, the whole of the profits of the Bank will accrue to the Government. But if, in the early years of the Bank, a substantial portion of these profits has to be diverted to the building up of a reserve,—and it might quite well amount to a diversion of $1\frac{1}{2}$ to 2 crores of Government's ordinary revenue—the result would be a very considerable budgetary embarrassment to Government which would come just at a time, namely in the first years of the new Constitution, when such an embarrassment was particularly undesirable. This result seemed to us to be not only unreasonable, but likely to have reactions which might themselves defeat the very object of the whole plan. We, therefore, devised a plan which seems to us not only to be financially justifiable, but also a plan which will put the Bank into a much more satisfactory position. We propose in fact that Government shall, from the very outset, transfer to the Bank over and above the rupee securities required to provide backing for note issue a further block of five crores of Government securities probably in the form of treasury bills. Now, that transaction will not embarrass the Government in any way. The securities can be created; Government will, of course, add that amount to the public debt and will be responsible for the interest on that sum. But, on the other hand, it must be remembered that interest on that sum will accrue to the Bank and, therefore, indirectly will come back to the Government's pockets. This course appears to be the more justifiable when one considers what the main object is for which the reserve fund is required. It is required mainly to provide a fund which can be drawn upon to make up any depreciation which may accrue in the market value of the Government securities held by the Bank. Honourable Members will appreciate that the reserves must exactly cover the nominal amount of the note issue and those reserves must be kept up from day to day at their full market value. If, on the 50 or 60 crores of Government securities which the Bank may hold on its reserves, there is a depreciation of, say, one per cent. then at once the Bank would have to set aside 50 lakhs, from its reserves so as to keep the figure up to its right level. For that purpose it should have a reserve fund, and indeed it should have that fund from the very beginning, and our proposal will ensure that it is a fund of

that kind available from the beginning. The result is that allocations to reserve fund will not be made from the profits of the Bank, and, therefore, will not embarrass the budgetary position of the Government except in so far as allocations are necessary from year to year to keep the fund up to its original amount of five crores."

47. After making provision for bad and doubtful debts, depreciation in assets, contributions of to staff and superannuation funds, and such other contingencies as are usually provided for by bankers, and after payment out of the net annual profits of a cumulative dividend at such rate not exceeding five per cent. per annum on the share capital as the Governor-General-in-Council may fix at the time of the issue of shares, a portion of the surplus shall be allocated to the payment of an additional dividend to the shareholders calculated on the scale set forth in the Fourth Schedule and the balance of the surplus shall be paid to the Governor-General-in-Council:

Provided that if at any time the Reserve Fund is less than the share capital, not less than fifty lakhs of rupees of the surplus, or the whole of the surplus if less than that amount, shall be allocated to the Reserve Fund.

NOTES.

The rate of dividend fixed at the time of issue of shares, cannot for any reason be changed subsequently.

The Fourth Schedule gives the details as to the calculation of the dividend.

Cumulative Dividend.—This means that when the profits for any year are insufficient to pay the dividend on the shares, for that year, the deficiency is to be made good out of the profits of subsequent years; that is to say, if there be a failure of profits wherewith to pay dividend in any one year, it will be made good out of the profits of subsequent years. In the case of a non-cumulative dividend, it is payable as regards each year, out of the profits of that year only. (Palmer's Company Law 15th ed. page 79.)

✓ **Protection of Reserve Fund from depreciation.**—The Reserve Fund is always to be kept at least equal to the total amount of the sharecapital. If, on account of depreciation in value, it is less than the sharecapital at any time, not less than 50 lakhs out of the surplus profits, or the whole of it if less than 50 lakhs has to be added to the Reserve Fund until it is equal to the sharecapital. Even if the Reserve Fund has depreciated by one rupee and is less than the sharecapital by only one rupee, this extent of appropriation *i.e.*, 50 lakhs of the surplus should be made.

In case there is an increase of sharecapital, the Reserve Fund, also will have to be accumulated up to, and then kept, at that point.

For disposal of Reserve Fund, in the event of the Bank's liquidation, *See* Section 56 (2).

Bad and doubtful debts.—These are not exactly defined in this or any other enactment. The decision of the Privy Council in *Commissioner of Income-tax v. Sir S. M. Chitnavis* (59 Indian Appeals page 290) simply says that the question at what time a debt becomes a bad debt is to be determined after consideration of all relevant circumstances. (*Cf.* also *In re. Binraj Hukumchand* 58 Cal. 1446 ; *Gleaner Co. v. Assessment Committee* (1922) 2 A. C. 169 ; Article entitled 'Bad Debts and the Incometax' by the present writer in Vol. XXXVI of the Calcutta Weekly Notes : and Dicksie : Auditing. 14th Ed. p. 63). But in the case of a Central Bank where liquidity of assets is the first essential, the question as to when a debt should be considered to be bad, has a special significance and must have a special meaning. In the National Bank Act of the United States of America, Section 5204, (Government Edition 1930 at page 75) there is a definition which lays down that " All debts due to any association on which interest is part due and unpaid for a period of six months, unless the same are well secured and in process of collection, shall be considered bad debts". Having regard to the nature of the assets of the Reserve Bank, a rule similar to this may have to be adopted in making provision for bad and doubtful debts, under this Section.

Depreciation of assets.—The assets herein include all the assets of both of the Issue and Banking Departments.

48. (1) Notwithstanding anything contained in the Indian Income-tax Act, 1922, or any other enactment for the time being in force relating to income-tax or super-tax, the Bank shall not be liable to pay income-tax or super-tax on any of its income, profits or gains :

✓ Exemption of Bank from income-tax and super-tax and provision for deduction at source of income-tax on dividends.

Provided that nothing in this section shall affect the liability of any shareholder in respect of income-tax or super-tax.

(2) For the purposes of Section 18 of the Indian Income-tax Act, 1922, and of any other relevant provision of that Act relating to the levy and refund of income-tax any dividend paid under Section 47 of this Act shall be deemed to be "Interest on Securities."

NOTES.

Sub-section (2).—The relevant portions of the Indian Income-tax Act relating to the levy and refund of income-tax on "Interest on Securities" are Section 18 (3) and (4) to (9) and Section 48 (3), which provide as follows :

S. 18 (3) "The person responsible for paying any income chargeable under the head "Interest on Securities" shall, unless otherwise prescribed in the case of any security of the Government of India at the time of payment, deduct income-tax but not super-tax on the amount of the interest payable at the maximum rate :

Provided that where the Income-tax Officer gives a certificate in writing (which certificate he shall give in every proper case on the application of the assessee) that to the best of his belief the total income of a recipient will be less than the minimum liable to income-tax or will be liable to a rate of income-tax less than the maximum rate, the person responsible for paying any income herein referred to, to such recipient shall, until such certificate is cancelled by the Income-tax Officer, pay the income without deduction or deduct the tax at such less rate, as the case may be.

(4) All sums deducted in accordance with the provisions of this section shall, for the purpose of computing the income of an assessee, be deemed to be income received.

(5) Any deduction made in accordance with the provisions of this section shall be treated as a payment of income-tax or super-tax on behalf of the person from whose income the deduction was made, or of the owner of the security, as the case may be, and credit shall be given to him therefor in the assessment, if any, made for the following year under this Act :

Provided that, if such person or such owner obtains, in accordance with the provisions of this Act, a refund of any portion of the tax so deducted, no credit shall be given for the amount of such refund.

(6) All sums deducted in accordance with the provisions of this section shall be paid within the prescribed time by the person making the deduction to the credit of the Government of India, or as the Central Board of Revenue directs.

(7) If any such person does not deduct and pay the tax as required by or under this section, he shall, without prejudice to any other consequences which he may incur, be deemed to be an assessee in default in respect of the tax.

Provided that the Income-tax Officer shall not make a direction under sub-section (1) of Section 46 for the recovery of any penalty from such person unless satisfied that such person has wilfully failed to deduct and pay the tax.

(8) The power to levy by deduction under this section shall be without prejudice to any other mode of recovery.

(9) Every person deducting income-tax in accordance with the provisions of sub-section (3) shall at the time of payment of interest, furnish to the person to whom the interest is paid a certificate to the effect that income-tax has been deducted, and specifying the amount so deducted, the rate at which the tax has been deducted, and such other particulars as may be prescribed."

S. 48. (3).—" If the owner of a security from the interest on which, or any person from whose salary, income-tax has been deducted in accordance with the provisions of Section 18, satisfies the Income-tax Officer or other authority appointed by the Governor-General-in-Council in this behalf that the rate of income-tax applicable to his total income of the previous year was less than the rate at which income-tax has been charged in making such deduction in that year or that his total income of the previous year was below the minimum chargeable with income-tax, he shall be entitled to a refund on the amount of interest or salary from which such deduction has been made calculated at the difference between those rates, or at the rates at which income-tax has been deducted as the case may be."

The dividend payable to Government on account of any share held by it under Section 4 (8) to (11) are not however subject to the deduction of income-tax and super tax, as Section 3 of the Income-tax Act extends the liability to pay such tax only to every 'individual, Hindu undivided family, company, firm and other associations of individuals' and the Government does not come under any of these categories.

S. 49 (1) Extent of the exemption.—The exemption is only from Indian income-Tax. The London branch will be liable for British Income-Tax and the States may levy income-tax on the profits of the Bank in its branches or agencies within their territories. The Bank is also not exempt from any provincial or local taxes.

49. The Bank shall make public from time to time the standard rate at which it is prepared to buy or re-discount bills of exchange or other commercial paper eligible for purchase under this Act.

Publication of bank rate.

NOTES.

The Joint Committee on the Reserve Bank Bill substituted the words 'standard rate' for the words 'minimum rate' in the original Bill. They gave the following reason for the change:—

'We think it is desirable that the Bank should have power to discount agricultural bills at concessional rates which may be below the rate for the purchase or rediscount of commercial paper. We have therefore altered the words 'minimum rate' in this clause to 'standard rate.'

Nature of Bank Rate in England.—Unlike the present Section which requires the Reserve Bank to publish the standard rate at which it is prepared to discount or rediscount eligible paper, the practice of the Bank of England is generally to fix the Bank rate above the open-market rate. More specifically it is 'the minimum rate at which the Bank of England will discount bills of exchange for others than its customers.' Bank rate bears the same relation to the money market as the North Pole does to the world. Everything revolves round it, but little or no business is transacted at it. Even when the Bank buys or sells bills on its own account it does so not at Bank rate but at rates agreed upon between itself and the market. To quote from Hartley Withers' book *'The Meaning of Money'* (Ed. 1932 p. 208). "Bank rate is the official *minimum* rate at which the Bank of England will discount bills. It differs from the market rate of discount in that it is normally higher, and in that it is not a constantly fluctuating rate, shifting with the supply of and demand for bills, but is fixed and announced every Thursday morning at a special meeting of the Bank Court, and except under most unusual circumstances is not changed on any other day. But the fact that it is only the *minimum* is occasionally enforced in practice, if the Bank finds that too many bills are being brought to it for discount; on such occasions it sometimes refuses to take bills except

at a higher rate, which usually becomes the official rate on the following Thursday. For loans and advances the Bank usually charges $\frac{1}{2}$ per cent., more than for discounting bills. When the Bank is discounting bills at the official rate or making advances at or above it, Bank rate is said to be effective."

Changes in Bank Rate.—"The importance of a change in discount rate lies principally in its being a public recognition by a group of responsible and well informed people of a change in the credit situation. For example, a change in the discount rate from 4 to $3\frac{1}{2}$ per cent. is equivalent to an announcement that credit conditions are easier, and the Reserve Bank making the change feels justified in lending its money at a little lower rate."

✓ "Of the various factors which are taken into consideration when a decision is made with regard to the discount rate, the following are prominent:—

A. Changes in the total volume of credit in relation to the usual rate of growth which goes forward from year to year.

B. The ways in which credit is being used.

C. The movement of all kinds of prices, including wholesale and retail commodity prices, security prices, rents, wages, etc.

E. International conditions, including their influence upon the movement of gold.

Thus a wide range of complex considerations enters into discount rate decisions. In the last analysis reliance must be placed on judgment rather than formulas." (Burgess: *The Reserve Banks and the Money Market* p. 185.)

Commercial Paper.—The true definition of 'commercial paper' gives rise to a great difference of opinion on the part of bankers generally and is susceptible of a broad or very narrow interpretation. In a purely technical and narrow sense it may be construed to mean an obligation representing the purchase price of some commodity sold. But trade custom has so developed in modern times that instead of the purchaser "executing his note to the vendor for the whole or any part of the purchase price of the commodity sold, it has become customary, in order to obtain the benefit of cash discounts, for the purchaser to borrow directly from the banks and to use the proceeds of such loans to make the payment due to the vendor." (H. Parker Willis: *The Federal Reserve System* P. 939.)

The term in its broadest sense will cover any transaction and purpose connected with commerce. And "commerce is not confined to the

buying, selling or bartering of commodities, but is a term of large significance, and as was said by Mr. Justice Harlan, of the United States Supreme Court, 'comprehends traffic, intercourse, trade, navigation, communication, the transit of persons, and the transmission of messages by telegraph—indeed every species of commercial intercourse' which is carried on between man and man." (*ibid* Page 941).

So far as the Reserve Bank is concerned, not all commercial paper is eligible for rediscounting "A fundamental requirement is that the paper shall be used not only in connection with the commerce of the country, but that it shall be either directly used in the purchase of commodities or that the proceeds shall be intended to be so used, so that it will have the presumptive security of the commodities, or the avails of a re-sale thereof, back of it." (*ibid* Page 941).

50. (1) Not less than two auditors shall be elected and their remuneration fixed at the annual general meeting. The auditors may be shareholders, but no Director or other officer of the Bank shall be eligible during his continuance in office. Any auditor shall be eligible for re-election on quitting office.

(2) The first auditors of the Bank may be appointed by the Central Board before the first annual general meeting and, if so appointed, shall hold office only until that meeting. All auditors elected under this section shall severally be, and continue to act as, auditors until the first annual general meeting after their respective elections :

Provided that any casual vacancy in the office of any auditor elected under this section may be filled by the Central Board.

51. Without prejudice to anything contained in Section 50, the Governor-General-in-Council may at any time appoint the Auditor-General or such auditors as he thinks fit to examine and report upon the accounts of the Bank.

Appointment of special auditors by Government.

52. (1) Every auditor shall be supplied with a copy of the annual balance-sheet, and it shall be his duty to examine the same, together with the accounts and vouchers relating thereto; and every auditor shall have a list delivered to him of all books kept by the Bank, and shall at all reasonable times have access to the books, accounts and other documents of the Bank, and may, at the expense of the Bank if appointed by it or at the expense of the Governor-General-in-Council if appointed by him, employ accountants or other persons to assist him in investigating such accounts, and may, in relation to such accounts, examine any Director or officer of the Bank.

(2) The auditors shall make a report to the shareholders or to the Governor-General-in-Council, as the case may be, upon the annual balance-sheet and accounts, and in every such report they shall state whether, in their opinion, the balance sheet is a full and fair balance-sheet containing all necessary particulars and properly drawn up so as to exhibit a true and correct view of the state of the Bank's affairs, and in case they have called for any explanation or information from the Central Board, whether it has been given and whether it is satisfactory. Any such report made to the shareholders shall be read together with the report of the Central Board, at the annual general meeting.

NOTES.

These sections follow generally the wording of Regulations 58 to 60 of Schedule VI to the Imperial Bank of India Act. (XLVII of 1920), except that instead of three auditors, this Act provides for not less than two auditors.

All auditors to make one report.—Though the auditors elected may be two or more, the report made by them will be only one.

Only the report of the Bank's auditors and not any report called for by the Governor-General-in-Council according to Section 51, is required to be read before the annual general meeting.

Auditors to be natural persons only.—Though the Sections do not expressly exclude firms, companies and other corporate or unincorporated bodies from being appointed as auditors, the provisions of Section 50(1) and 52(1) clearly show that only individuals and not corporate or other bodies are contemplated.

53. (1) The Bank shall prepare and transmit to the Governor-General-in-Council a weekly account of the Issue Department and of the Banking Department in the form set out in the Fifth Schedule or in such other form as the Governor-General-in-Council may, by notification in the Gazette of India, prescribe. The Governor-General-in-Council shall cause these accounts to be published weekly in the Gazette of India.

Returns.

(2) The Bank shall also, within two months from the date on which the annual accounts of the Bank are closed, transmit to the Governor-General-in-Council a copy of the annual accounts signed by the Governor, the Deputy Governors and the Chief Accounting Officer of the Bank, and certified by the auditors, together with a report by the Central Board on the working of the Bank throughout the year, and the Governor-General-in-Council shall cause such accounts and report to be published in the *Gazette of India*.

(3) The Bank shall also, within two months from the date on which the annual accounts of the Bank are closed, transmit to the Governor-General-in-Council a statement showing the name, address and occupation of, and the number of shares held by, each shareholder of the Bank.

NOTES.

The weekly return.—The weekly statement of the Central Bank in each country is regarded as the key to the condition of the money-market, as a kind of epitome of the country's banking conditions reflecting the various phases of business activity, and is therefore awaited and examined with keen interest. 'The weekly return issued by the Bank of England represents one of the most important sources of regular

information at the disposal of the Money Market and, indeed, of bankers and businessmen generally, for it shows the state of the national credit system at its model point' (Lloyd's Bank Review April, 1932 page 160). The form of return given in the Vth Schedule broadly adopts the form of the weekly statements published by the Bank of England.

As to the sufficiency of the particulars furnished by the form of weekly statement, provided by Schedule V, see notes thereunder.

54. The Bank shall create a special Agricultural Credit Department the functions of which shall be—

(a) to maintain an expert staff to study all questions of agricultural credit and be available for consultation by the Governor-General-in-Council, Local Governments, provincial co-operative banks, and other banking organisations.

(b) to co-ordinate the operations of the Bank in connection with agricultural credit and its relations with provincial co-operative banks and any other banks or organisations engaged in the business of agricultural credit.

NOTES.

In an essentially agricultural country like India, the need for special attention to agricultural credit cannot be sufficiently emphasised.

The creation of a special Agricultural Credit Department as part of the constitution of the Reserve Bank, follows in principle similar provision in the Commonwealth Bank of Australia Act.

The relevant sections of the Australian Act provide as follows:—

PART VI B.—*Rural Credits Department.*

60ABA. In this Part, unless the contrary intention appears, "primary produce" means wool, grain, butter, cheese, fresh, preserved or dried fruits, hops, cotton, sugar and such other produce as is prescribed.

60ABB. For the purposes of this Part there shall be a Rural Credits Department of the Bank which shall be kept distinct from all other Departments of the Bank.

60ABC. The Treasurer may, from time to time, out of moneys legally available, lend to the Rural Credits Department such sums, for such periods and at such rates of interest as are agreed upon by the Treasurer and the Bank :

Provided that the total of the sums so lent and not repaid shall not at any time exceed Three million pounds.

60ABD. Twenty-five per centum of the net annual profits of the Note Issue Department shall be paid into the Rural Credits Department until the amount so paid reaches a total of Two million pounds.

60ABE.—(1.) For the purposes of this Part, the Bank may issue debentures.

(2.) The amount of debentures issued under this section and not repaid shall not at any time exceed—

(a) the amount advanced on primary produce by the Rural Credits Department and still outstanding as at the date of the issue of the debentures ; or

(b) four times the amount of the aggregate of—

(i) the sums lent by the Treasurer to the Rural Credits Department and not repaid ;

(ii) moneys paid to the Rural Credits Department out of the net profits of the Note Issue Department; and

(iii) moneys at credit of the Rural Credits Department Reserve Fund,

whichever is the greater.

60ABF. Subject to this Act, debentures issued for the purposes of this Part shall be in such form and subject to such conditions as are prescribed.

60ABG. The dates for the redemption of the debentures shall be fixed so as to coincide, as nearly as practicable, with the dates at which advances made by the Rural Credits Department are repayable.

60ABH. The Bank may make advances to the Rural Credits Department of such amounts, and subject to such terms and conditions, as the Board determines.

60ABI. Advances may be made by the Rural Credits Department, upon the security of primary produce placed under the legal control of the Bank, to—

(a) the Bank or other banks ;

- (b) co-operative associations formed under the law of the Commonwealth, a State or a Territory under the authority of the Commonwealth; and
- (c) such Corporations or unincorporate bodies, formed under the law of the Commonwealth, a State or a Territory under the authority of the Commonwealth, as are specified by Proclamation.

60ABJ. No advance under this Part shall be made for a period of more than one year.

60ABK. In lieu of making advances in accordance with the provisions of this Part, the Rural Credits Department may, on behalf of any institution mentioned in section sixty ABI of this Act, discount bills secured upon produce placed under the legal control of the Bank.

60ABL. The funds of the Bank shall not be used in the business of the Rural Credits Department except in so far as advances may be made to the Rural Credits Department.

60ABM. The assets of the Rural Credits Department shall be available, firstly, for meeting the liabilities of the Department other than loans made to it by the Treasurer under this Part and interest thereon, and, secondly, for repaying those loans and paying that interest.

60ABN. The net profits of the Rural Credits Department shall be dealt with as follows :—

- (a) One-half shall be placed to the credit of a fund to be called the " Rural Credits Department Reserve Fund "; and
- (b) One-half shall be placed to the credit of the Rural Credits Development Fund, to be used, in such manner as the Board directs, for the promotion of primary production.

60ABO. The Board may allot to the Rural Credits Department such portion of the general receipts and expenditure of the Bank as is, in the Board's opinion, referable to the Department.

60ABP. Any surplus funds in the Rural Credits Department may be invested in such manner as the Board directs.

With regard to the functioning of this Department, Professor D.B. Copland, the Australian economist observes as follows:—

" This is an important break in the traditional credit functions of State institutions and involves the assumption of technical risks which hitherto have largely been the responsibility of pastoral and finance Companies. Funds are to be provided by the Commonwealth Treasury to a maximum of £ 3,000,000, by the allotment of 25 % of the annual profits of the Note Issue Department to a maximum of £ 2,000,000, and

by short period debentures to the amount of the total advances made. Advances are to be for periods not exceeding one year and the Rural Credit Department holds a lien on the produce against which advances are to be made. The new department will assist co-operative companies through which producers sell their goods but its activities are limited by the funds available. The maximum capital of the Department from the profits of the Commonwealth Bank or from the Treasury will be £ 5,000,000. Further funds are obtainable only by the issue of debentures, the success of which will depend upon the administration of the Department, and the degree to which the money market can provide money for the purpose. The Department has now been established, but it is too early to say how it will affect the investment market. An interesting possibility is, however, the facilities it will offer for short period investments and the assistance it will render in the development of a short loan market for Australia." (Willis and Beckhart: *Foreign Banking Systems*, Chapter II, The Banking System of Australia by D.B. Copland, page 67-8).

So far as India is concerned we have to remember that conditions here are such as to make the problem of the working of the rural credits Department more difficult than in Australia. Sir George Schuster also pointed this out in the Legislative Assembly. This is what he said: "My Honourable friend quoted the experience of Australia, but he was only able to give us the provisions of the Australian Act. He was not able to give us any account of how those provisions had worked in practice, and I would ask him to remember that conditions in Australia are so entirely different to conditions in India that, even if he had been able to quote Australian experience, it would hardly have afforded a valuable parallel. In Australia, you are dealing with a comparatively small population of highly educated and comparatively wealthy people, large farmers who understand dealing with banks and who can keep accounts, and so on. But even so I am told by Sir Osborne Smith who has a very wide experience of Australia that attempts to form rural credit institutions have been on the whole faced with terrible difficulties and on the whole singularly unsuccessful. It is an extremely difficult problem and the problem in India is quite different to that in any other country." (Legislative Assembly Debates, Vol. VIII, No. 8).

55. (1) The Bank shall, at the earliest practicable date and in any case within three years from the date on which this Chapter comes into force, make to the Governor-General-

Reports by the
Bank.

in-Council a report, with proposals, if it thinks fit, for legislation, on the following matters, namely :—

(a) the extension of the provisions of this Act relating to scheduled banks to persons and firms, not being scheduled banks, engaged in British India in the business of banking, and

(b) the improvement of the machinery for dealing with agricultural finance and methods for effecting a closer connection between agricultural enterprise and the operations of the Bank.

(2) When the Bank is of opinion that the international monetary position has become sufficiently clear and stable to make it possible to determine what will be suitable as a permanent basis for the Indian monetary system and to frame permanent measures for a monetary standard it shall report its views to the Governor-General-in-Council.

NOTES.

The reasons for enacting this Section are thus given by the Joint Committee : "Though we consider it important that a start should be made on the lines indicated in clause 42, we recognize that the developments at this stage must be tentative. We therefore consider it important that the statutory provision should be included, making it incumbent on the Bank to report at the earliest practicable date, and in any case within three years and if necessary, to prepare proposals for legislation so as to include indigenous bankers and other parties doing banking business in India who are not at present included in the Schedule within its scope, subject to such restrictions as the Board may consider necessary. In this report it should also include proposals for the closer linking of agricultural enterprise with the machinery of the Reserve Bank, possibly by the establishment of a separate rural credit department.

We also think that in this clause it would be desirable to include a provision embodying in a more concrete form the principle recognized in the preamble, by placing a definite obligation on the Board to put up proposals for a more permanent currency system for India when they consider that the pre-requisites indicated in the preamble have been fulfilled, that is to say, the international monetary position has become sufficiently clear and stable."

Report as to extending Act to non-Scheduled banks.—The Finance Member (The Hon'ble Sir George Schuster) in introducing the Bill as amended by the Joint Committee, in the Legislative Assembly, explained the need for this Statutory report as follows :

“ The second point arising out of clause 42 to which I wish especially to refer is the question as to how provision should be made for the extension of the Reserve Bank facilities to indigenous bankers, shroffs, etc. and to the whole field of rural credit. It is impossible to over estimate the importance that the indigenous banker plays in the whole of the banking and credit machinery of India. I think it would be no exaggeration to say that his part of the organisation represents, if anything, more than 90% of the whole ; and it is unfortunately true that the links between the whole of this system and the modern banking system of India, in spite of the development of rural co-operative societies and in spite of the opening of one hundred new branches by the Imperial Bank of India, are still rudimentary and incomplete. I want to make it quite clear that we recognise that until the vast portion of India's banking and credit machinery, which is represented by the indigenous bankers, is put into gear with the relatively small machine of the modernised money market, with the Reserve Bank as its central control, it will be impossible for the Reserve Bank to exercise that full control of currency and credit of India which is understood as the function of a central bank in western countries ; and it will be equally impossible for the masses of the people who populate the countryside of India to get the full benefits of credit and banking facilities on reasonable terms which a well organised system of banking ought to give. That, I believe, is one of the greatest problems of the future for India, and it is a problem which I at any rate personally feel must be thought of, not in terms of displacing the vast masses of indigenous bankers throughout the country, but of making the fullest use of them by adapting their methods so that they may fit in with the modern banking system and the central bank ; but, unfortunately, it is a problem which we could not possibly tackle in connection with this Bill. We could not tackle it in the sense of proposing any definite solution. I would remind Honourable Members that it was a problem that was very carefully investigated by the Banking Inquiry Committees, and yet they were unable to make any definite proposals on which action could at once be taken, but we felt that, although we could not tackle the problem immediately in the Bill, we certainly ought to do something about it, and we have taken what we believe to be the best step towards tackling it. We have proposed in a very important new clause, which is numbered 54 in the Bill, that the banks shall be put under a Statutory obligation to report in the shortest possible time, and, at any rate, within three years, on this whole pro-

blem and to make proposals for legislation." (Legislative Assembly Debates, Vol, VIII. No. 5).

Sub-section (2).—This, as well as para 3 of the Preamble, gives effect to the recommendation of the London Committee on Reserve Bank Legislation "that the whole question of the monetary standard best suited to India will have to be reviewed when the international monetary position has clarified itself and become sufficiently stable to frame more permanent provisions—" (Para. 19). See also Notes under Preamble.

56. (1) The Local Board of any area may at any time require any shareholder who is registered on the register for that area to furnish to the Local Board within a specified time, not being less than thirty days, a declaration, in such form as the Central Board may by regulations prescribe, giving particulars of all shares on the said register of which he is the owner.

Power to require declaration as to ownership of registered shares.

(2) If it appears from such declaration that any shareholder is not the owner of any shares which are registered in his name, the Local Board may amend the register accordingly.

(3) If any person required to make a declaration under sub-section (1) fails to make such declaration within the specified time, the Local Board may make an entry against his name in the register recording such failure and directing that he shall have no right to vote, either under section 9 or Section 14, by reason of the shares registered in his name on that register.

(4) Whoever makes a false statement in any declaration furnished by him under sub-section (1) shall be deemed to have committed the offence of giving false evidence defined in section 191 of the Indian Penal Code, and shall be punishable under the second paragraph of Section 193 of that Code.

(5) Nothing contained in any declaration furnished under sub-section (1) shall operate to affect the Bank with notice of any trust, and no notice of any trust expressed, implied or constructive shall be entered on the register or be receivable by the Bank.

(6) Until Local Boards have been constituted under section 9 the powers of a Local Board under this Section shall be exercised by the Central Board in respect of any area for which a Local Board has not been constituted.

NOTES.

Punishment for false statement in declaration as to ownership of registered shares.—The punishment is the same as that prescribed in Sections 191 & 193 of the Indian Penal Code for giving false evidence. They are as follows :—

191. Whoever, being legally bound on an oath, or by any express provision of law to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false, or does not believe to be true, is said to give false evidence.

Explanation 1.—A statement is within the meaning of the section, whether it is made verbally or otherwise.

Explanation 2.—A false statement as to the belief of the person attesting is within the meaning of the section, and a person may be guilty of giving false evidence by stating that he believes a thing which he does not believe, as well as by stating that he knows a thing which he does not know.

193. Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Sub-section (5).—This provision is similar to S. 33 of the Indian Companies Act.

57. (1) Nothing in the Indian Companies Act, 1913, shall apply to the Bank, and the Bank shall not be placed in liquidation save by order of the Governor-General-in-Council and in such manner as he may direct.

(2) In such event the Reserve Fund and surplus assets, if any, of the Bank shall be divided between the Governor-General-in-Council and the shareholders in the proportion of seventy-five per cent and twenty-five per cent, respectively:

Provided that the total amount payable to any shareholder under this section shall not exceed the paid-up value of the shares held by him by more than one per cent for each year after the commencement of this Act subject to a maximum of twenty-five per cent.

NOTES.

Sub-section (2); Surplus assets.—These include all the excess of assets remaining after meeting all the liabilities of the Bank.

There is no provision for return of the share value of each share to the shareholder and a twenty-five per cent proportion of the available surplus as well as the whole of the Reserve Fund is to be available for distribution among the shareholders. It may be either more or less than the paid up share value.

'One per cent' in the proviso means one per cent. of the paid up value of each share.

In case the 25% allotted for distribution among the shareholders in excess of the amount limited by the proviso, there is no provision as to what should be done with it. By necessary implication, all the residue will go to the Governor-General-in-Council.

Surplus assets.—With regard to the meaning of this expression, the following is the summary of the law given in Palmer's Company Law 15th Ed. p. 450:—"Surplus assets" has no technical meaning. *Re. New Transvaal Co.*, (1896) 2 Ch. 750. It may mean the fund remaining in the hands of the liquidator after all claims of outside creditors and costs of winding-up have been met (*Re. Crichton's Oil Co.*, (1902) 2 Ch.86):

or it may mean what remains, after payment also of the capital paid upon all classes of shares. *Ramel Syndicate, Ltd.*, (1911) 1 Ch. 749. The meaning must in each case be determined by the context. *Re Bridgwater Navigation Co.*, (1891) 2 Ch. 317: *Madame Tussaud & Sons, Ltd.*, (1927) 1 Ch. 657.

58. (1) The Central Board may, with the previous sanction of the Governor-General-in-Council, make regulations consistent with this Act to provide for all matters for which provision is necessary or convenient for the purpose of giving effect to the provisions of this Act.

Power of the Central Board to make regulations.

(2) In particular and without prejudice to the generality of the foregoing provision, such regulations may provide for all or any of the following matters, namely:—

(a) the holding and conduct of elections under this Act, including provisions for the holding of any elections according to the principle of proportional representation by means of the single transferable vote;

(b) the final decision of doubts or disputes regarding the qualifications of candidates for election or regarding the validity of elections;

(c) the maintenance of the share register, the manner in which and the conditions subject to which shares may be held and transferred, and, generally, all matters relating to the rights and duties of shareholders;

(d) the manner in which general meetings shall be convened, the procedure to be followed thereat and the manner in which votes may be exercised;

(e) the manner in which notices may be served on behalf of the Bank upon shareholders or other persons;

(f) the manner in which the business of the Central Board shall be transacted, and the procedure to be followed at meetings thereof;

(g) the conduct of business of Local Boards and the delegation to such Boards of powers and functions ;

(h) the delegation of powers and functions of the Central Board to the Governor, or to Deputy Governors, Directors or officers of the Bank ;

(i) the formation of Committees of the Central Board, the delegation of powers and functions of the Central Board to such Committees, and the conduct of business in such Committees ;

(j) the constitution and management of staff and superannuation funds for the officers and servants of the Bank ;

(k) the manner and form in which contracts binding on the Bank may be executed ;

(l) the provision of an official seal of the Bank and manner and effect of its use ;

(m) the manner and form in which the balance-sheet of the Bank shall be drawn up, and in which the accounts shall be maintained ;

(n) the remuneration of the Directors of the Bank ;

(o) the relations of the scheduled banks with the Bank and the returns to be submitted by the scheduled banks to the Bank ;

(p) the regulation of clearing houses for the scheduled banks ;

(q) the circumstances in which, and the conditions and limitations subject to which, the value of any lost, stolen, mutilated or imperfect currency note of the Government of India or bank note may be refunded ; and

(r) generally, for the efficient conduct of the business of the Bank.

(3) Copies of all regulations made under this section shall be available to the public on payment.

NOTES.

Previous Sanction of Governor-General-in-Council for making regulations.—This does not mean that by obtaining a general previous sanction, the Bank can make any regulations, as it may like. It means that the previous sanction of the Governor-General-in-Council is to be obtained for each regulation made. ✓

It also means by necessary implications that amendments and changes in regulations should also require the Governor-General-in-Council's previous sanction.

The Central Board is given the widest scope for making the regulations, the only condition being :—

1. That they should not be inconsistent with the provisions of the Act.

2. That they are to be confined to matters necessary or convenient for the purpose of giving effect to any of the provisions of the Act.

59. In the Indian Coinage Act, 1906, for Section 11 the following section shall be substituted, namely :

Amendment of Act
III of 1906.

“ 11. Gold coins, coined at His Majesty's Royal Mint in England or at any mint established in pursuance of a proclamation of His Majesty as a branch of His Majesty's Royal Mint, shall not be legal tender in British India in payment or on account, but such coins shall be received by the Reserve Bank of India at its offices, branches and agencies in India at the bullion value of such coins calculated at the rate of 8·47512 grains troy of fine gold per rupee.”

Demonetisation
of sovereign and
half-sovereign.

60. The Indian Paper Currency Act, 1923, the Indian Paper Currency (Amendment) Act, 1923, the Indian Paper Currency (Amendment) Act, 1925, and the Currency Act, 1927, are hereby repealed.

Repeals.

61. In sub-section (3) of Section 11 of the Indian Companies Act, 1913, after the word
Amendment of section 11, Act VII of 1913. "Royal" the words "Reserve Bank" shall be inserted.

NOTES.

This protection is not enough. The protection must be against all persons carrying on banking business. Such a protection is given by the Federal Reserve Act of U.S.A., (Section 2 of Amending Act 44 Stat. 628, (1926), where it is provided "That no bank, banking association, trust company, corporation, association, firm, partnership, or person engaged in the banking, loan, building and loan brokerage, factorage, insurance, indemnity, or trust business shall use the word "Federal," the words "United States", or the word "reserve", or any combination of name or title or of the name under which it does business." (Page 168).

Compare also protection of word 'Co-operative' in S. 47 (1) of the Indian Co-operative Societies Act (II of 1912).

THE FIRST SCHEDULE.

(See section 4.)

AREAS SERVED BY THE VARIOUS SHARE REGISTERS.

- I. The WESTERN AREA, served by the BOMBAY Register, shall consist of—
 - the Bombay Presidency including Sind, the Central Provinces, Berar, Hyderabad, Baroda, Khairpur, the Western India States, the Central India States (including Makrai but excluding Rewah and other States of Bundelkhand and Baghelkhand), the Gujerat States, Kolhapur and the Deccan States.
- II. The EASTERN AREA, served by the CALCUTTA Register, shall consist of—
 - the Bengal Presidency, Bihar and Orissa, Assam, Sikkim, Manipur, Cooch-Bihar, Tripura, the Eastern States, Rewah and other States of Bundelkhand and Baghelkhand, and the Khasi States.
- III. The NORTHERN AREA, served by the DELHI Register, shall consist of—
 - the United Provinces, Delhi, the Punjab, the North-West Frontier Province, Ajmer-Merwara, Baluchistan, Kashmir, the Punjab States excluding Khairpur, the Simla Hill States, Dujana, Pataudi, Kalsia, Rampur, Tehri-Garhwal, Benares, the Rajputana States including Palanpur and Danta, Gwalior, Khaniadhana, Kalat, Las Bela, Hunza, Nagir, Amb, Chitral, Dir, Phulera and Swat.
- IV. The SOUTHERN AREA, served by the MADRAS Register, shall consist of—
 - the Madras Presidency, Coorg, Mysore and the Madras States.
- V. The BURMA AREA, served by the RANGOON Register, shall consist of—
 - Burma, the Andaman and Nicobar Islands, Bawlake, Kantarawadi, and Kyebogyi.

THE SECOND SCHEDULE.

[See section 42 and section 2 (e).]

SCHEDULED BANKS.

Ajodhia Bank, Fyzabad.
Allahabad Bank.
American Express Company Incorporated.
Banco National Ultramarino.
Bangalore Bank.
Bank of Baroda.
Bank of Bihar.
Bank of Chettinad, Madras.
Bank of Hindustan, Madras.
Bank of India, Bombay.
Bank of Mysore.
Bank of Taiwan.
Bank of Upper Burma.
Benares Bank.
Bengal Central Bank.
Bhagwan Das & Co., Dehra Dun.
Canara Bank.
Central Bank of India.
Chartered Bank of India, Australia and China.
Comptoir National d'Escompte de Paris.
Eastern Bank.
Grindlay and Company.
Hongkong and Shanghai Banking Corporation.
Imperial Bank of India.
Imperial Bank of Persia.
Indian Bank, Madras.
Industrial Bank of Western India, Ahmedabad.
Jalpaiguri Banking and Trading Corporation.
Karnani Industrial Bank.
Lloyds Bank.
Mercantile Bank of India.

Mitsui Bank, Bombay.
Muffassil Bank, Gorakhpur.
National Bank of India.
National City Bank of New York.
Nederlandsche Indische Handels-Bank.
Nederlandsche Handel-Maatschappij.
Nedungadi Bank, Calicut.
Oudh Commercial Bank.
Peoples' Bank of Northern India.
P. and O. Banking Corporation.
Punjab and Sind Bank, Amritsar.
Punjab Co-operative Bank, Amritsar.
Punjab National Bank, Lahore.
Simla Banking and Industrial Company.
Thomas Cook & Sons.
Travancore National Bank, Tiruvalla.
Union Bank of India, Bombay.
U. Rai Gyaw Thoo and Co., Akyab
Yokohama Specie Bank.

THE THIRD SCHEDULE.

(See section 45.)

PROVISIONS TO BE CONTAINED IN THE AGREEMENT BETWEEN THE RESERVE BANK OF INDIA AND THE IMPERIAL BANK OF INDIA.

1. The Imperial Bank of India shall be the sole agent of the Reserve Bank of India at all places in British India where there is a branch of the Imperial Bank of India which was in existence at the commencement of the Reserve Bank of India Act, 1934, and there is no branch of the Banking Department of the Reserve Bank of India.

2. In consideration of the performance at the places referred to in clause 1 by the Imperial Bank of India on behalf of the Reserve Bank of India of the functions which the Imperial Bank of India was performing on behalf of the Governor-General-in-Council before the coming into force of the Reserve Bank of India Act, 1934, the Reserve Bank of India shall pay to the Imperial Bank of India as remuneration a sum which shall be for the first ten years during which this agreement is in force a commission calculated at one-sixteenth of one per cent. on the first 250 crores and one thirty-second of one per cent. on the remainder of the total of the receipts and disbursements dealt with annually on account of Government by the Imperial Bank of India on behalf of the Reserve Bank of India. At the close of the said ten years the remuneration to be paid by the Reserve Bank of India to the Imperial Bank of India for the performance of these functions shall be revised and the remuneration for the ensuing five years shall be determined on the basis of the actual cost to the Imperial Bank of India, as ascertained by expert accounting investigation, of performing the said functions. The remuneration so determined shall thereafter be subject to revision in like manner at the end of each period of five years so long as this agreement remains in force. If any dispute arises between the Reserve Bank of India and the Imperial Bank of India as to the amount of the said remuneration the matter shall be referred for final decision to the Governor-General-in-Council who may require from the Imperial Bank such information and may order such accounting investigation as he thinks fit.

3. In consideration of the maintenance by the Imperial Bank of India of branches not less in number than those existing at the commencement of the Reserve Bank of India Act, 1934, the Reserve Bank of India shall, until the expiry of fifteen years from the coming int

force of this agreement, make to the Imperial Bank of India the following payments, namely:—

(a) during the first five years of this agreement—nine lakhs of rupees per annum ;

(b) during the next five years of the agreement—six lakhs of rupees per annum ; and

(c) during the next five years of the agreement—four lakhs of rupees per annum.

4. The Imperial Bank of India shall not without the approval of the Reserve Bank of India open any branch in substitution for a branch existing at the time this agreement comes into force.

NOTES.

Third Schedule.—The Imperial Bank is given sole agency only in places in British India where the Reserve Bank has no office or branch but where the Imperial Bank has a branch at time of commencement of the Reserve Bank Act 1934, *i.e.*, on 6-3-34 when the Act received the Governor-General-in-Council's assent and became law.

In places where the Reserve Bank has an office, it cannot also have, an agency (Section 6). This means that the Imperial Bank cannot act as agent of the Reserve Bank in Bombay, Calcutta, Delhi, Madras and Rangoon.

The Reserve Bank is not obliged to appoint the Imperial Bank as its agent in any other places where the Imperial Bank may open new branches ; and it may appoint any other Bank as its agent in such places. Nor need the Reserve Bank appoint the Imperial Bank as its agent in any place outside British India, whether the latter has or has not a branch in such place.

Again if the Reserve Bank opens a branch of its own in any place where the Imperial Bank has had a branch and acted as sole agent, then the agency will cease with the opening of the Reserve Bank's branch.

Imperial Bank's remuneration for other Agency work :—Though para one of the Agreement appoints the Imperial Bank as sole agent for all purposes of the Reserve Bank, the Agreement deals only with its remuneration so far as concerns the performing of functions on behalf of the Governor-General-in-Council. With regard to the numerous other functions of the Reserve Bank (*Vide Sec. 17*), in respect of which also the Imperial Bank has to function as agent of the Reserve Bank, the remuneration will have to be fixed by negotiation between the two Banks

The Imperial Bank or any other person cannot be expected to do free agency work relating to the businesses of the Reserve Bank. With the growth of the Reserve Bank's activities, the remuneration accruing to the Imperial Bank in this connection will be on a far larger scale than the remuneration in respect of performing any functions on behalf of Government. This aspect of the matter has been apparently ignored by those responsible for the insertion of para three of the Agreement. It cannot be contended that the lump sum remuneration provided by that paragraph relates to agency work to be done by the Imperial Bank in respect of the banking businesses of the Reserve Bank enumerated in Sec. 17. If the remuneration in para three should be deemed to relate to such agency work, it would be grossly unjust to the Imperial Bank as the work will be steadily growing with years.

Imperial Bank's own agents cannot act on behalf of Reserve Bank.—The Agreement only authorises the Imperial Bank's acting as agent of the Reserve Bank. The Imperial Bank has no power or authority to entrust any part of its agency duties to any of its own agents. That is to say, the Imperial Bank cannot delegate its duties to any sub-agent, except as provided by the Indian Contract Act.

The relevant sections of that Act are as follows :—

190. An agent cannot lawfully employ another to perform acts which he has expressly or impliedly undertaken to perform personally, unless by the ordinary custom of trade a sub-agent may, or from the nature of the agency, a sub-agent must, be employed.

191. A "sub-agent" is a person employed by, and acting under the control of, the original agent in the business of the agency.

192. Where a sub-agent is properly appointed, the principal is, so far as regards third persons, represented by the sub-agent, and is bound by and responsible for his acts, as if he were an agent originally appointed by the principal.

The agent is responsible to the principal for the acts of the sub-agent :

The sub-agent is responsible for his acts to the agent, but not to the principal, except in case of fraud or wilful wrong.

193. Where an agent, without having authority to do so, has appointed a person to act as a sub-agent, the agent stands towards such person in the relation of a principal to an agent, and is responsible for his acts both to the principal and to third persons; the principal is not represented by or responsible for the acts of the person so employed, nor is that person responsible to the principal.

194. Where an agent, holding an express or implied authority to name another person to act for the principal in the business of the agency, has named another person accordingly, such person is not a sub-agent, but an agent of the principal for such part of the business of the agency as is entrusted to him.

195. In selecting such agent for his principal, an agent is bound to exercise the same amount of discretion as a man of ordinary prudence would exercise in his own case; and if he does this he is not responsible to the principal for the acts or negligence of the agent so selected.

Joint Committee Report on the Agreement.—With regard to the agreement with the Imperial Bank, this is what the Joint Committee say in their report :—

(a) *Remuneration for handling Government Account.*—On the basis of the figures supplied to us we have reached the conclusion that the terms suggested are reasonable and represent no more than is necessary barely to cover the actual cost incurred by the Imperial Bank in performing these services. We are assured by the Government representatives that these figures were based on detailed and audited statements supplied by the Imperial Bank and accepted by the Finance Department after careful examination of the method of distribution of over-head charges. We think, however, that it would be satisfactory to the Legislature that the basis on which the costs have been calculated should be independently examined by the Auditor-General and that a report by him should be presented by the Government when these provisions of the Bill are under discussion indicating whether in his view the basis on which the costs have been calculated is reasonable and the results of the calculations correct.

(b) *Compensation for the keeping open of branches.*—We consider that the method proposed in the Schedule of keeping specified minimum balances with these branches either free of interest or at concessional rates is not a satisfactory method for fixing compensation under this head, for the value of such balances must vary greatly according to the rates obtainable for the use of money. It appears to us much more satisfactory that a definite annual payment should be made, based on the losses actually incurred. At the same time it would not be justifiable to settle this compensation for a long period on the basis of present results because it must be anticipated that with the general development of banking in India these branches will become progressively more remunerative. We therefore propose a diminishing scale leading to a termination of all compensation after 15 years. We consider that the figures proposed are reasonable on the basis of the statements supplied to us as to the actual cost of maintaining these branches but in this.

case also we recommend that an independent check on the calculations should be made by the Auditor-General and included in the report already referred to.

(c) *Period of agreement.*—We have taken into account the fact that as the compensation for maintaining the unremunerative branches would terminate after 15 years, there would be some advantage to the public in continuing the Agreement beyond 15 years so as to prolong the period during which the Imperial Bank remains under an obligation not to close any of these branches. On the other hand, we consider, first, that a period of 25 years is in any case too long for commitment for this important nature and, secondly, that inasmuch as the commission payable for handling Government Account is intended to be based on the actual cost of the services rendered, the rate of commission should be open to recalculation at a comparatively early date. Taking all the foregoing considerations into account, we recommend that the Agreement should run for 15 years subject to termination on five years' notice given at any time after that period, and that the commission payable for handling the Government Account should be reviewed at the end of ten years and thereafter at five yearly intervals. It should be made clear that the object of such review would be to settle the actual cost to the Imperial Bank, that the commission should be settled on this basis, and that the calculations shall be subject to expert accounting investigation. In the event of any difference of opinion as to terms arising between the Reserve Bank and the Imperial Bank, we recommend that power to settle the terms finally should be vested in the Governor-General-in-Council.

In view of all the arrangements as regards staff, etc., involved we consider that a period of five years for notice of termination is no more than reasonable.

Lastly, there is one important point which should be made clear in this agreement, namely, that it should not in any way preclude the Reserve Bank from opening its own offices or branches at any place where the Central Board may, as a result of experience, find this to be expedient in the interests of the public notwithstanding the fact that the Imperial Bank has up to then acted as its agent at such places."

THE FOURTH SCHEDULE.

(See section 47.)

SCALE OF ADDITIONAL DIVIDEND PAYABLE TO SHAREHOLDERS.

A. If the maximum rate of dividend fixed under section 47 is five per centum and so long as the share capital of the Bank is five crores of rupees—

(1) if the surplus does not exceed four crores of rupees—*Nil* ;

(2) if the surplus exceeds four crores of rupees—

(a) out of such excess up to the first one and a half crores of rupees—a fraction equal to one-sixtieth ;

(b) out of each successive additional excess up to one and a half crores of rupees—one-half of the fraction payable out of the next previous one and a half crores of excess :

Provided that the additional dividend shall be a multiple of one-eighth of one per cent on the share capital, the amount of the surplus allocated thereto being rounded up or down to the nearest one-eighth of one per cent on the share capital.

B. If the maximum rate of dividend fixed under Section 47 is below five per centum, the said fraction of one-sixtieth shall be increased in the ratio of the difference between six and the fixed rate to unity.

C. When the original share capital of the Bank has been increased or reduced, the said fraction of one-sixtieth shall be increased or diminished in proportion to the increase or reduction of the share capital.

NOTES.

Fourth Schedule.—The scheme of the Schedule is as follows :—

This schedule provides for a maximum dividend of six per cent. to be reached by stages diminishing by fifty per cent. successively with a minimum rise of $\frac{1}{2}$ per cent. Thus, if the fixed minimum dividend is five per cent. it will be raised to $5\frac{1}{2}$ per cent. if the distributable surplus rises to $5\frac{1}{2}$ crores, to $5\frac{3}{4}$ per cent if it rises to 7 crores, and so on. If the fixed minimum is four per cent. the stages will be five per cent. $5\frac{1}{2}$ per cent. and so on. (Notes on clauses appended to original Bill).

B. This means that if the maximum rate, for example, is fixed at 4 per cent., the fraction of $\frac{1}{60}$ th will be increased in the ratio of the difference between 6 and the fixed rate which is 4, and unity. The difference between 6 & 4 is 2. The ratio of 2 to 1 is $\frac{2}{1}$. $\frac{1}{60}$ has to be increased to $\frac{2}{1} \times \frac{1}{60} = \frac{1}{30}$.

If the maximum rate is $4\frac{1}{2}$ per cent. then the difference between 6 and $4\frac{1}{2}$ is $1\frac{1}{2}$. Ratio between $1\frac{1}{2}$ and 1 is $\frac{1\frac{1}{2}}{1} = \frac{3}{2}$. The fraction of $\frac{1}{60}$ has to be increased $\frac{3}{2} \times \frac{1}{60} = \frac{1}{40}$.

C. If the share capital is increased (which can be done as per Section 5 (1)), the fraction of one-sixtieth is to be increased in proportion to the increase of the share capital. If it is, for instance, increased by 5 crores, *i.e.*, doubled, then, the said one-sixtieth fraction also is to be doubled *i.e.*, it will be one-thirtieth. If the share capital is reduced to, say, 4 crores the fraction of one-sixtieth has to be reduced proportionally to the reduction *i.e.*, by one-fifth to four-fifths, which comes to $\frac{1}{60} \times \frac{4}{5} = \frac{1}{75}$ th and so on.

THE FIFTH SCHEDULE.

(See section 53.)

RESERVE BANK OF INDIA.

An Account pursuant to the Reserve Bank of India Act, 1934, for the week ending on the day of

ISSUE DEPARTMENT.

| Liabilities. | RS. | Assets. | RS. |
|--|-----|--|-------------|
| Bank Notes held in the Banking Department | | A. Gold coin and bullion*— | |
| Bank Notes in circulation .. | | (a) held in India ... | |
| Total Bank Notes issued .. | | (b) held outside India. | |
| Government of India Notes in circulation | | Sterling Securities .. | |
| | | Total of A ... | |
| | | B. Rupee coin | |
| | | Government of India rupee securities ... | |
| | | Internal bills of exchange and other commercial paper .. . | |
| Total Liabilities .. | | Total Assets .. | |
| | | | |
| | | Ratio of total of A to liabilities | per cent. |
| | | Dated the | day of 19 . |

BANKING DEPARTMENT.

| Liabilities. | RS. | Assets. | RS. |
|--------------------------|-----|--|-------------|
| Capital paid up | | Notes | |
| Reserve Fund | | Rupee coin | |
| Deposits— | | Subsidiary coin | |
| (a) Government | | Bills discounted— | |
| (b) Banks † | | (a) Internal | |
| (c) Others | | (b) External | |
| Bills payable | | (c) Government of India Treasury Bills | |
| Other liabilities | | Balances held abroad .. | |
| | | Loans and advances to the Government | |
| | | Other loans and advances.. | |
| | | Investments | |
| | | Other assets | |
| | | | |
| | | Dated the | day of 19 . |

* Section 33 (5) requires that seventeen-twentieth of the gold coin and bullion held as assets of the Issue Department shall be held in British India. The weekly return must show under Sub-head (a) gold coin and bullion held in *British India* and not in India and (b) held outside British India.

† This is quite ambiguous: 'banks, must be changed into scheduled banks'. Otherwise, the expression 'banks' is apt to mislead the public as it is wide enough to include in addition to scheduled banks various persons and institutions doing banking business. As the banking system of the country is not well organised, the public must know exactly what banks are included under this heading.

APPENDIX A.

Open Market Operations of Central Banks.

[*Extracts from a Paper submitted by the Bank for International Settlements to the Preparatory Committee of Experts of the World Economic Conference 1933.*]

Open Market Operations may be defined as those operations which are undertaken by a Central Bank on its own initiative in order to affect the volume of short term funds (Central Bank credit) in the country by dealing directly on the market instead of using its influence only indirectly by altering the price of supply.

NOTE :—The methods used may vary according to the structure of the market upon which the Central Bank operates but broadly it can be said that these operations must take one of the following forms : the purchase of gold (at other than the statutory price where this exists) ; the purchase and sale of short term or long term securities (usually of the Government) or of foreign exchange ; or the acceptance of deposits (by arrangement in special cases or at interest) ; or the substitution of one form of currency for another (*e.g.*, gold certificates for Federal Reserve notes). It has been suggested that the power of a Central Bank over its market would be greatly strengthened if it were given authority to vary by some form of ordinance the percentage of cash which the commercial banks maintain with it ; this suggestion, which in some cases may be practicable, has not yet been applied. It will be seen that it is as a rule an essential element of open market policy that the Central Bank should be in a position to reverse its operations.

Open Market Operations have been undertaken for the following reasons :

- (i) to enforce bank rate policy by making the rate effective in the short term market ;
- (ii) to achieve day-to-day offsetting of temporary market maladjustments (*e.g.*, tax payments) ;
- (iii) to offset seasonal gold movements and thus maintain the market on an even keel ;
- (iv) to offset the effects of abnormal movements due to some exterior influence and not to the more ordinary items in the balance of payments ;
- (v) to increase the liquidity of the market when eligible paper is lacking ;
- (vi) to affect long term interest rates ; and
- (vii) otherwise to assist in enforcing long term policy.

Apart from the special arguments which apply to the particular objects in view set out above (and which will be reviewed below) some general arguments are often advanced either in favour of or against the application of an open market policy.

The general arguments against Open Market policy may be given as follows :

(a) An open market policy makes greater claims on the activity of Central Banks, and therefore also on their judgment of the credit situation which of course increases the possibilities of errors being committed. Whenever the market demands further credits through the usual discounting methods, the Bank knows that there is an active demand for more funds and can judge whether it is in a position to respond to the needs of the market or whether special steps must be taken for the curtailment of credit.

If Open Market Operations are allowed in principle, a Central Bank may be tempted to judge a situation too leniently, for instance, to offset gold movements in the belief that they are seasonal whereas in fact the situation would demand a restriction of credits by an increase in the discount rate.

On the other hand a lowering of the discount rate, which may be desirable for general reasons but be contrary to certain interests, may be *postponed* or avoided by the Central Bank attempting to influence the credit position merely by putting funds on the market. The latter method may not have the same all round effects as a reduction in the discount rate, as this rate often determines more or less automatically a range of other rates.

(b) It is probable that by extending credit only or mainly against self-liquidating commercial bills or similar paper, Central Banks force the financial community to employ the discounting of bills as its principal means of granting credits, instead of availing itself more freely of other means (advances, open credits, etc.), which from certain points of view may be regarded as less desirable.

(c) The purchase of Government securities, either at long or short term which at maturity may have to be renewed, may mean investment in less liquid assets than those obtained by discounting bills, corresponding to genuine business transactions, and may therefore make it more difficult for the Central Bank, when occasion arises, to contract the credit volume outstanding. The difficulty may be of four kinds:

- (i) The particular market for Government Securities may not be sufficiently large or well organised to make it possible to reverse the operations at any given moment.
- (ii) Objections may be raised in influential quarters against a sale of Government securities, which might have a depressing effect on public credit, and these objections may be so strong as to make sales at least very difficult, at a time of crisis when a contraction of the market would be needed.
- (iii) It has also been feared that Central Banks may not be so disposed to sell an earning asset like Government securities, particularly in a period when they find difficulty in covering their expenses, and that profit considerations may therefore unduly influence the credit policy pursued.
- (iv) Finally the Government may pursue a policy of budget deficits harmful to the nation's credit, and if the Central Bank holds Government securities it may find its possibilities of arranging assets to suit the requirements of a sound monetary policy seriously hampered.

The above arguments are obviously not everywhere equally valid. It is true that in a number of countries the market for Government securities is so narrow that operations on that market undertaken by the Central Bank may involve certain risks, but in the larger countries adequate markets exist for Government stock.

(d) It may be feared that if Open Market Operations in Government securities are permitted, a Government might insist on the Central Bank buying such securities in order to assist in meeting a budget deficit at a time when an increase in the credit volume may not be justified. This is another instance of the fact that an extension of freedom also means greater temptations and greater possibilities of mis-using that freedom.

(e) Objection is sometimes made to open market policy on the ground that it is ineffective, at least in its more ambitious forms. The value of this objection can obviously only be considered in the light of the particular purposes for which Open Market Operations may be employed.

When faced with these objections adherents of an open market policy might make the following observation:

(i) It is true that most kinds of open market operations presuppose the existence of an organised market for the type of securities to be bought or sold by the Central Bank, and thus in a country where no

such market exists Open Market Operations of this class are impossible. It should be noted, however, that in some countries the Central Bank has been able to make direct arrangements with the private banks (for instance, by selling securities to these banks) which have the same character as Open Market Operations and serve the same purpose. In Rumania during 1930 the National Bank sold nearly one milliard lei of Treasury "bons" to the commercial banks, in this way giving them a short term investment for money which otherwise would probably have been employed outside the country thus straining the Central Bank's reserves.

(ii) The greater degree of activity demanded by modern conditions lays, of course, greater responsibility on the Central Banks. Some cases of Open Market Operations would seem, however, to call for comparatively little hesitation. When stringency develops on a market on account of tax payments, the facts are usually well known and the additional amounts required to prevent a disturbance can be fairly accurately calculated in advance. When market rates do not follow a change in the official discount rate the position is also comparatively clear. With regard to more complicated situations much depends on the contact which the Central Bank maintains with its market.

(iii) It is important to emphasise how diverse in aim and method are the transactions on the various markets lumped together and often somewhat loosely referred to as "Open Market Operations". No generalities can with any advantage be made, without more precise definition. It is necessary to examine each case separately; and also to relate the arguments to the particular market on which the operations are undertaken. Whereas the objections to Open Market Operations are often founded on distrust in principle of an enlargement of Central Bank activity, the arguments in favour of such operations are less general and are chiefly concerned with the special purposes for which they may be applied.

(iv) The main argument in favour of furnishing the Central Banks with a new weapon with which to carry out their policy is that in this way the policy can be more easily enforced. It is therefore proposed to examine more fully the particular cases enumerated on page 5.

1. **Enforcement of bank rate policy in the short term market.**—This is probably the least controversial form of open market policy. It was already employed on the London market during last century. Before the war intervention was made chiefly by means of long term Government securities (2½% Consolidated Stock), but the growth of the floating debt has now made dealings in Treasury bills the most practicable method in England.

When certain important rates in the market are by practice based on "bank rate", their adjustment is more or less automatic whenever a change is made, although bank rate itself may strictly apply only to a certain limited class of credit instruments. The alignment of rates for other forms of credit depends upon the extent to which the various markets are inter-communicating, *i.e.*, how easily money flows from one employment to another on account of minor differences of yield. In general it may be said that this type of operation is undertaken whenever, for some reason, the reaction of market rates to changes in bank rate is too slow or insufficiently marked, and it has no other purpose than to supplement the effectiveness of discount rate policy. It has already been pointed out that if private banks hold large cash reserves they may be in a position to ignore the Central Bank. Something similar may take place in debtor countries, where the banks may be able to utilise foreign credits. On the London market very little or no borrowing takes place at the discount rate, which is almost nominal. The Bank of England, therefore, by the very structure of its monetary framework, is often forced to act through the market on the banks, and to deal on the market directly by the sale (or purchase) of securities.

It has sometimes been questioned whether Open Market Operations are effective in enforcing bank rate policy. Suppose the Central Bank has increased its discount rate by 1% but that market rates tend to remain the same. Now, if the Central Bank sells Government securities for £ 10 million, the money market has to pay the Central Bank by means of Central Bank money, *i.e.*, either with notes or by a reduction in the balances with the Central Bank. These notes and balances represent, however, the basis (the "cash" on which the credit structure is built and therefore the tendency to restriction should be even greater than the amount of notes and balances withdrawn. It may, however, happen that the money market, in order to get the necessary resources, starts re-discounting with the Central Bank. "The market is thus driven in to the Bank" as the expression is on the London market. On that market, where the banks do not discount directly with the Bank of England, but draw their funds from the money market in case of need, it would seem as if by forcing the market to rely upon the Bank the change in the rate must soon become effective.

In other markets, where private banks re-discount direct with the Central Bank, it may conceivably happen that these banks increase their re-discounts with the Central Bank, pay the higher rate on their total re-discounts with the Central Bank (which may not be a heavy burden) and leave other rates and the credit volume unchanged, in order, perhaps, to maintain easier money conditions for the industries in which they are directly interested. If so, the discount policy of the

Central Bank could not be made effective even with the aid of Open Market Operations. It would seem, however, as if only in exceptional circumstances would the money market be able to carry on a policy opposed to that pursued by the Central Bank. It will be observed that the operations dealt with in this connection are only designed to make bank rate effective in the *short term money market*. To what extent Open Market Operations may be employed to effect changes in other branches of the credit structure (overdraft rates quoted by the commercial banks, long term rates, etc.) is a much more difficult question to answer. (See below under 6 and 7).

2. Day-to-day offsetting of temporary market maladjustments.—A temporary shortage or abundance of funds is often caused by tax payments or the distribution of interest on Government debt. The more the State takes of the national income, the larger public undertakings get, the more important can this disturbing factor become. It is possible by a wise distribution of tax payments over the year and by making tax payment dates coincide with dividend distribution to lessen the inconveniences involved. However, in so far as these methods are not in themselves sufficient or employed to their full extent, the money market may be temporarily affected. The collection of large non-interest bearing Treasury balances with the Central Bank, besides being expensive to a Government with interest bearing debt outstanding, would when not actively employed by the Bank, tend to have a deflationary effect, which may be undesirable from every point of view, while a correction by means of the discount rate would appear unwarranted if no great change in the credit situation has taken place but only a transfer of funds from the holder to another. The employment of the highly flexible bill buying rate may mean then an excellent means of coping with the situation in New York. In other markets offsetting by means of Open Market Operations would appear appropriate.

In London day-to-day offsetting of this kind is made through dealings in Treasury bills. In Switzerland the Government and the railways borrow from the Central Bank against "rescriptions", a kind of Treasury bill negotiable on the market, and the Bank uses these securities for its offsetting policy. In Sweden strictly temporary deposits have been made through the Public Debt Office with private banks during tax payment periods—the arrangements having been made by the Central Bank.

It has happened in some markets, where no similar day-to-day offsetting has taken place, that the credit institutions have largely called upon their funds abroad to meet tax payment requirements and thus also caused disturbances of exchange rates and in foreign markets.

3. The offsetting of seasonal gold movements.—This is a more ambitious form of Central Bank activity than the operations described under (1) and (2), which are more of a routine character.

The principles on which such offsetting is based may be given as follows :

If there is an influx of gold of a purely seasonal character and unconnected with any fundamental change in international relations, it would be dangerous to allow such an influx to influence the credit conditions of the market, since the gold may be expected to flow out within (say) half a year when the seasonal trend has changed. The gold coming in should, therefore, be offset by open market policy and, likewise, when gold flows out the Central Bank should absorb the shock and increase the availabilities of the market.

In order to make a seasonal offsetting policy successful it would seem as if at least the following conditions must be fulfilled :

- (i) seasonal movements must be carefully studied and well understood ;
- (ii) the Central Bank must be satisfied that no fundamental disequilibrium exists ;
- (iii) not only the efflux but also the influx of gold must be offset.

Before as well as after the war a number of Central Banks have purchased and sold foreign exchange instead of having to import and then to export gold during different months or, may be, the same year. These purchases (or sales) of foreign exchange do not in themselves constitute Open Market Operations. A Central Bank in control of its market may try to influence more directly the amount of rediscounts of private banks and in that way offset the movements of gold or devisa. To what extent the purchase and sale of securities will prove an appropriate method will naturally greatly depend on how far other possible methods prove inadequate.

There is a well defined and, in England, well understood seasonal fluctuation of sterling which is normally strong in the spring and weak in the autumn. Operations to meet this movement by allowing the reserve to fluctuate while maintaining the market stable by offsetting may be shown by the following example of the period February 1929 to February 1930.

£ millions—items from Bank of England return—

| | <i>Gold.</i> | <i>Total Government securities.</i> |
|-------------------|--------------|-------------------------------------|
| 1929 6th February | 150 | 289 |
| „ 12th June | 163 | 273 |
| | — | — |
| | + 13 | - 16 |
| 1929 12th June | 163 | 273 |
| „ 2nd October | 129 | 309 |
| | — | — |
| | - 3½ | + 36 |
| 1929 2nd October | 129 | 309 |
| 1930 5th February | 151 | 284 |
| | — | — |
| | + 22 | - 25 |
| | — | — |

At the end of the year covered by this table the gold reserve was practically unchanged on balance, in spite of the violent swings during the twelve months, while, although there was a slight compression of the security holding which appears to have been effected in pursuance of a long term policy, the market's resources were maintained throughout on an even keel.

4. **Offsetting the effects of abnormal movements due to some special influence and not to the more ordinary items in the balance of payments.**—A typical case is that when there is a large amount of foreign borrowing.

If the Government is the borrower the Central Bank may be able to arrange for the fund to be made available only as and when they are required for the completion of public works, for which purpose they may have been borrowed, and in this way these funds will have no undesirable influence on the market in the meantime.

In the case of private borrowing it may be difficult to obtain exact "timing" of this kind, for the private borrowers may prefer to invest the money immediately on the home market in order to profit from the higher interest level in their own country. It has been common procedure in a great many markets to offset the inflow of the extra funds so as to avoid any tendency to inflation based on resources only temporarily available.

Other examples of offsetting abnormal movements are given in an Annex to this note.

The examples set out in the Annex show how impossible it is to generalise as to whether or not offsetting may safely be carried out in the event of abnormal movements. The desirability of such operations must depend upon a number of factors, such as the degree of abnormality of the movement and the strength of the market internationally on which the operations are made. If the Central Bank has collected strong reserves in gold in order to be able to absorb the shock which would result from the withdrawal of foreign credits, it seems obvious that the bank should take advantage of its strong position when such withdrawals take place. It may be that in some cases ordinary discounting possibilities are sufficient for the market to avail itself of the assistance of the Central Bank. The Annual Report of the Nederlandsche Bank for 1927-28, after describing a sudden movement of the exchanges, says :

“ . . . the fluctuations of the home bill portfolio and the foreign bill portfolio between them form a certain equilibrium, which proves to what great extent the foreign bill portfolio acts as a sort of regulator, the increase in one being, as a rule, soon followed by a decrease in the other.”

Likewise during the liquidity crisis of 1931-32 the decrease in the foreign exchange holdings of a number of European Central Banks was more or less counterbalanced by an increase in the inland bill portfolio and advances.

It appears, however, that discounting possibilities may not always be adequate to bring about offsetting to the desired extent. It has been maintained that in 1932 the American market would not, even at a lower rate, have taken by way of discounts or sales of bills amounts sufficient to offset the outflow of gold and hoarding of notes, but that in spite of the resources which the system had in hand, there would have been danger of credit stringency being added to the other factors making for an aggravation of the depression. In such circumstances the Federal Reserve Banks felt that they should use their power to supply the market with funds by extensive purchases of securities.

The local situation may sometimes be influenced by the fact that the private banks hesitate for reasons of prestige, tradition, *etc.*, to borrow heavily from the Central Bank, or else they may lack the particular paper which, according to the Central Bank Statutes, is eligible. This last point brings us to the next group of Open Market Operation :—

5. Increasing the liquidity of the market when eligible paper is lacking.—Discounts and re-discounts of three months' commercial bills have for obvious reasons been the most favoured basis of Central Bank

credit in the past: (i) the limitation to these particular assets has been taken to ensure the genuine need for credit as representing goods actually sold, hence the self-liquidating nature of the instrument; (ii) the short currency of the individual credits makes it possible for the Central Bank to influence the market more speedily (in the event of changes in rates), for some bills will always be maturing and others be offered in their place.

One of the features of post-war financing is, however, that commercial bills are gradually disappearing and financing by means of open credits to a large extent takes their place. There are many reasons for this change. It may for instance be noted that the more complex forms of modern economic life often necessitate longer periods, while changes in commercial practice have also given rise to an increase in the popularity of overdrafts relative to bills; moreover, large industrial and commercial concerns (such as department stores and also co-operative societies) are more and more financing themselves out of their own resources. This is shown by the fact that even in the period of trade activity before 1930 the volume of commercial bills steadily declined. Even if the volume of bills dealt in on the market fluctuated in a regular way according to trade activity, the Central Bank re-discounting these bills had no knowledge of the use to which its credit was put, but only knew that the borrowing bank had at least a certain number of bills, representing genuine commercial transactions, in its portfolio.

The strict definitions laid down in many Central Bank Statutes have led to difficulties in nearly all countries at times of emergency. Various methods have been employed to overcome these difficulties:

- (i) The conditions for eligibility have often been widely extended *de facto* while maintaining the statutes unchanged.
- (ii) Legal amendments of the statutes have been made, the most notable of which was the Glass-Steagall bill in the U. S. A., which permitted the holding of Government securities as supplementary cover.
- (iii) On the London Market the Bank of England will discount or advance temporarily against Treasury Bills and also buy and sell such bills on the market.
- (iv) In Germany and Italy institutions have been set up at the side of the Central Bank (the Golddiskontbank and the Istituto di Liquidazione) with the express purpose of providing credit facilities, in conjunction with the Central

Bank upon securities which the Central Bank under its statutes might not admit directly. A somewhat similar development has taken place in Belgium through the Société Nationale de Crédit à l' Industrie.

A Central Bank may also increase the volume of outstanding credit by the purchase of Government securities at a time when the supply of eligible paper is getting low. The Central Bank may wish that the banks retain eligible paper in their possession, particularly for psychological reasons. If these banks were drained of the resources by means of which they could obtain assistance from the Central Bank, they might, in order to strengthen their position, curtail credits granted to customers. The opinion is sometimes expressed that Central Banks would be in a better position to influence the credit volume by holding readily marketable Government securities than by a portfolio of three-months' bills, which, in fact, may represent frozen credits to industry. It is evidently impossible to lay down general principles, for conditions naturally vary from one market to another regarding the volume of eligible paper available and the existence of an active market for Government securities (the latter also depending on the state of Government credit.)

6. Open Market Operations to affect long-term interest rates.—An analysis of the relation between short and long-term rates is only available for a few markets, but the evidence tends to show that a change in short-term rates is followed eventually by a more or less corresponding change in long-term rates. It would seem, however, as if in certain circumstances the movement in long-term rates failed to react with sufficient rapidity and it has been argued that in such cases the Central Bank might use its power to hasten developments. In a period of strong credit expansion when the Central Bank finds it necessary to put on the brake, it may be desirable to make borrowing by long-term loans less attractive, in order to keep investments within the limits of available savings. By selling Government securities, the Central Bank would lower their price and thus increase the effective interest, which would tend to increase the cost of long-term borrowing.

On the other hand, in a period of acute depression, it may happen that long-term rates remain at a relatively high level, as abundant funds in the short-term markets may remain uninvested. As it is the low income obtained from real investment (the building of new houses, factories, *etc.*) which during depression causes the greatest difficulties and is chiefly responsible for high unemployment figures, it is obviously desirable to make the rates of interest at which long-term transactions may take place as low as possible. In fact, previous depressions have

usually been overcome *inter alia* by lowering of long-term interest. In order to assist in such a readjustment, Central Banks might purchase long-term securities.

It appears probable that both before and after the war the Bank of England has utilised its power to influence the quotations of Government securities in conjunction with schemes for the conversion of Government indebtedness. Such conversions help to consolidate the reduction in long-term interest rates and, from that point of view, may be a step of considerable importance towards a recovery of trade.

In other countries also similar operations have been carried out :

In the annual report of the National Bank of Denmark for 1927-28, it is reported how the Bank purchased 40 million kroner of bonds of the "Sociétés de Crédit Foncier"—about one-fifth of the bonds issued. These purchases direct from the issuing institutions (in effect, "open market" operations) contributed, it is explained, to an improvement in the price of these securities and thus towards a lowering of the long-term yield. The bonds purchased were easily negotiable and the Central Banks could sell on the market when it pleased to do so.

Operations of this kind, unless the Central Bank has seriously misjudged the situation, would seem to involve little or no risk of capital, but rather the possibility of profit; for purchases would normally be made when yields were comparatively high (*i.e.* when security prices were low) and sales when the yield was low (*i.e.* prices high).

Objections are sometimes made against the purchase of long term obligations, on the ground that it is more difficult to restrict the market by the sale of such securities, if need be. In this connection, the nature of the holdings of commercial banks and also psychological considerations of various kinds may be of importance, as, for instance, the possibility that the market may become nervous if the Central Bank reduces its holdings of Government bonds.

Extensive purchases of exclusively short-term obligations may have the effect of bringing interest rates in the short term market down to very low levels, which from certain points of view may be undesirable. Commercial banks naturally tend to keep a certain proportion of their assets in short-term paper, and if the interest earned on these assets becomes unremunerative the banks may find it more difficult to lower interest rates on overdrafts and advances.

7. Open market operations to assist in enforcing a long-trend policy.— It is evident that in undertaking Open Market Operations under any of the headings discussed above, it is essential that long-trend movements

should be taken into account and an unbalanced position *vis-a-vis* other countries not be allowed to develop so as to endanger the equilibrium of the currency.

A good example of long-term policy is given by the figures of the Bank of England's return :

Average yearly figures from Bank of England return

| | £ millions | | |
|------|------------|------------|-------|
| | Gold | Securities | Total |
| 1925 | 145 | 101 | 246 |
| 1926 | 149 | 95 | 244 |
| 1927 | 150 | 90 | 240 |
| 1928 | 158 | 79 | 237 |
| 1929 | 147 | 75 | 222 |
| 1930 | 155 | 78 | 233 |

The item "Securities" above is the total securities (Government and other) in the Banking Department, and its fluctuations reflect the deliberate policy of the Bank in its control of credit (although this item may also include foreign exchange and care is therefore needed not to draw wrong conclusions, *e.g.* the increase in 1930 may be due to a higher holding of international, and not national, assets). Considering the period covered by the table, it will be seen that in spite of an increase in the gold holding of £10 millions, "Securities" held fell by £23 millions, so that there was a steady compression of Central Bank credit in spite of a more favourable gold position. If we take the six years as a whole, then the first three years give averages of £148 millions gold and £95 millions securities, while in the next three years gold was £153 millions and securities £77 millions, showing a long-term deflationary influence.

In the United States day-to-day adjustments are mostly achieved through re-discounts, purchase of bills and re-purchase agreements against short-term Government securities, while Open-Market Operations involving the purchase or sale of short-term Government securities have usually been employed as a means for executing deliberate long trend monetary policy.

During the period February-July 1932, the Federal Reserve Banks bought Government securities for about \$1,100 millions. As seen from the balance-sheet of the Reserve Banks, the effect of these purchases was roughly that the member banks reduced their indebtedness to the Reserve Banks by \$325 millions and, at the same time, increased their reserve balances with the System by \$100 millions. The liquidity of the banks has thus been considerably strengthened: the member banks

have now no reason to curtail credit to their customers in order to increase their reserves, and if a genuine demand for more credit should arise, the necessary funds would be available. Since July the excess reserves of member banks have been further increased by an influx of gold, so that they now amount to about \$400 millions.

At the same time another development of a monetary character, somewhat akin to Open Market Operations, has taken place on the American market. National Banks have been granted an extended right to issue, during three years, so-called National Bank notes, issued to them by the Federal Treasury, against specified categories of Federal bonds to a maximum amount equal to the capital of each bank. In effect this means an issue of notes against long-term Government securities. The object has evidently been to improve the liquidity and the earning position of national banks all over the country and to enlarge the potential money circulation, especially in view of the greater requirements for notes resulting from the numerous bank failures. This issue of a particular kind of notes has, however, increased the volume of currency in circulation outside the control of the Federal Reserve System. Up to October 1st about \$100 million of new national bank notes had been issued.

At the time of writing it is still too early to indicate what effects the extensive Open Market Operations and the issue of national bank notes may have on economic and financial developments in the U. S. A., apart from the improvement in the liquidity position of the banks.

It is obvious that for a country on the gold standard large Open Market Operations of the kind undertaken in the U. S. A. are possible only if the Central Bank is technically in a very strong position, which enables it to maintain without difficulty the international value of the currency.

* * * * *

The different purposes for which Open Market Operations may be undertaken make it necessary to indicate very clearly in cases of discussion what particular kind of operations is intended, for, as has been pointed out above, generalisation would seem to be of no value whatsoever. Some Central Banks have acquired experience in day-to-day offsetting and operations undertaken to enforce a discount policy, but with regard to other classes of operations it would appear as if more knowledge were required before final opinion can be given. Open Market Operations as practised in the U.S.A have sometimes not influenced the total of Reserve credit outstanding but led to a change in the assets—the holding of more Government securities and less re-dis-

counted bills, or *vice versa*. How does such a change in the composition of the assets of the Central Bank, involving a corresponding change in the liabilities of member banks, affect the credit position? What effects may an increase in excess reserves of the member banks tend to have? To what extent are long-term interest rates influenced by various kinds of Open Market Operations?

It would seem dangerous to give dogmatic answers to these questions on the basis of the experience hitherto acquired; it would also seem hazardous to presume that experience gained in one market is directly applicable to conditions in another.

ANNEX.

Examples of Open Market Operations undertaken in order to offset effects due to some special influence and not to the more ordinary items of the Balance of Payments.

(a) In 1926 when the Norwegian authorities, with the exchange still 30% below par, had declared that it was their policy to stabilise at par, a strong bull speculation in the Norwegian krone set in. The funds would obviously be available only for a short period and the Bank of Norway in conjunction with the Government and the private banks took steps to offset the inflow. The private banks were obliged to surrender *devisen* above a certain amount to the Bank of Norway and receive payment in blocked account. When the reverse movement took place there was similarly no adverse effects on the credit structure.

(b) The Bank of France during the period of *de facto* stabilisation of the franc from the end of 1926 to the middle of 1928 offset, to a great extent, the effects of the purchase of foreign currency in conjunction with the Government. Several technical methods were employed: the final outcome was that the Government (through the issue of bonds, the opening of banking accounts at the Central Treasury Office, budget surpluses, *etc.*), was able to reduce its debt to the Bank of France, and thereby the note circulation which otherwise would have increased when foreign exchange was bought by the Bank.

(c) The following example from the Bank of England's return shows how the routine operations of day-to-day adjustment may be combined with the offsetting of an abnormal gold movement. When the B. I. S. shares were issued in Paris and greatly oversubscribed there was a withdrawal of funds from London and a gold efflux which fell heavily on the Bank of England between the 14th and 28th May 1930:

| | £ millions | | | items from Bank of England's return | |
|--------------|------------|-----------------------|---------------------|-------------------------------------|--|
| Assets: | Gold: | Government securities | Other securities | | |
| | | (in Banking Dept.): | (in Banking Dept.): | | |
| 14th May | 162·4 | 52·8 | 17·4 | | |
| 28th May | 157·2 | 45·6 | 18·3 | | |
| | <hr/> | <hr/> | <hr/> | | |
| | - 5·2 | - 7·2 | + 0·9 | | |
| | <hr/> | <hr/> | <hr/> | | |
| Liabilities: | Notes: | Bankers' accounts: | Public accounts: | | |
| 14th May | 356·5 | 58·3 | 24·5 | | |
| 28th May | 356·1 | 59·0 | 13·2 | | |
| | <hr/> | <hr/> | <hr/> | | |
| | - 0·4 | + 0·7 | - 11·3 | | |
| | <hr/> | <hr/> | <hr/> | | |

Thus while an abnormal efflux of gold of £5·2 million was taking place, the Bank of England sold a net amount of £6·3 million securities, reducing its total assets by £11·5 million, because it knew that the payments out of the Treasury's accounts would be sufficient to put the market in funds again; in fact during the troubled fortnight there was only an insignificant net movement of the note issue and market resources (Bankers' accounts).

(d) An example of particular strain on the currency unconnected with fundamental reasons of the balance of payments is offered by the U. S. A. from July 1931 to June 1932 when the credit system was influenced by the conversion of foreign exchange holdings into gold and by the hoarding of notes in the country itself. This example falls into three separate stages :

(i) July-October 1931

(million dollars)

| | | |
|--------------|-----------------------|--------------------------|
| Gold exports | Expansion of currency | Total "strain" on System |
| 511 | 642 | 1153 |

The total strain put on the Federal Reserve System as measured by abnormal exports of gold combined with an intense drain of currency due to hoarding during this period, caused a normal reaction—the member banks rediscounted and the Federal Reserve Banks (passively) bought eligible bills brought to them—while there was only a small increase in the Reserve System's holding of Government securities :

| | | | |
|------------------|--------------|------------------|--------------------------------|
| Bills discounted | Bills bought | Govt. securities | Total increase of F. R. credit |
| + 444 | + 613 | + 59 | + 1116 |

(the difference being covered by the Federal Reserve Banks' "float", etc.).

(ii) **October 1931-February 1932.**—During this period there was a net increase in the gold holding of about 20 million dollars but the internal drain increased also by a further 150 million. In February the strain was at its greatest, but instead of there being an increase of Federal Reserve credit to meet this strain there was the following movement compared with October 1931 :

(million dollars)

| Bills discounted | Bills bought | Govt. securities | Decrease of F. R. credit |
|------------------|--------------|------------------|-----------------------------|
| + 235 | - 541 | + 10 | - 296 |

Considerable liquidation was thus being forced on the banks by the hoarding of notes within the country, a movement which during the whole period from July 1931 caused a greater strain on the banking system than the gold exports. At this time the Federal Reserve System was not in a position to come to the relief of the market by extensive purchases of Government securities (Open Market Operations) on account of the strictness of its supplementary cover regulations (which admitted only eligible bills in addition to gold).

(iii) **February-July 1932.**—On 27th February 1932 the Glass-Steagall bill was passed authorising the Federal Reserve Banks under certain conditions to utilise U. S. Government securities as collateral for Federal Reserve notes. From this date the restriction on Federal Reserve activity mentioned above was removed by greatly increasing the potentially "free" gold. From February to July 1932 the monetary gold stock again decreased by 443 millions while currency increased by a further 124 millions but the strain on the member banks' reserves was released by the expansion of Federal Reserve credit due to the Open Market purchases of Government securities :

(million dollars)

| Bills discounted | Bills bought | U. S. Govt. securities | Increase of F. R. credit |
|------------------|--------------|---------------------------|-----------------------------|
| - 325 | - 91 | + 1075 | + 659 |

By July the run was over and the dollar had risen to par against the French franc. During the whole period from July 1931 to July 1932 the movements were as follows :

(million dollars)

| | Monetary gold stock | Money in circulation | |
|-----------|---------------------|----------------------|------------|
| July 1931 | 4958 | 4836 | |
| July 1932 | 3941 | 5751 | " Strain " |
| | <hr/> | <hr/> | |
| | - 1017 | + 915 | 1932 |
| | <hr/> | <hr/> | <hr/> |

| | Bills discounted | Bills bought | U. S. Govt. securities | Other F. R. credit | Total F. R. credit |
|-----------|---------------------|-----------------|---------------------------|-----------------------|-----------------------|
| July 1931 | 169 | 79 | 674 | 32 | 954 |
| July 1932 | 523 | 60 | 1818 | 21 | 2422 |
| | <u>+ 354</u> | <u>- 19</u> | <u>+ 1144</u> | <u>- 11</u> | <u>+ 1468</u> |

A reduction of Member Banks' reserve balances from 2407 millions to 2003 millions (- 404) accounts for the greater part of the difference between the theoretical "strain" and the increase of Federal Reserve credit and reflects the pressure put on the banking system of the country. The whole of this decrease took place in the first two periods described above, that is, before the extensive Open Market Operations took place. Indeed, from February to July 1932 there was an increase of Member Banks' balances by about 100 million.

(e) A further example of the offsetting of an abnormal gold movement is given by the United States immediately after the war, when, New York being the only free gold market, it received the bulk of the freshly mined gold.

| | Total monetary gold stock. | Increase on year. | Gold certifs. outstanding. | Increase on year. |
|----------|-------------------------------|----------------------|-------------------------------|----------------------|
| End 1920 | 2926 | .. | 219 | .. |
| .. 1921 | 3660 | + 734 | 177 | - 42 |
| .. 1922 | 3929 | + 269 | 303 | + 126 |
| .. 1923 | 4244 | + 315 | 584 | + 281 |
| .. 1924 | 4499 | + 255 | 970 | + 386 |
| .. 1925 | 4399 | - 100 | 1113 | + 143 |
| | | <u>+ 1473</u> | | <u>+ 894</u> |

The policy of offsetting the influx of gold by the issue of gold certificates was not inaugurated until the middle of 1922 so that the large influx of gold in 1921 had its full effect on the gold holding of the Federal Reserve System. During the years 1922, 1923 and 1924 the total gold influx of 839 millions in all was used as to 793 millions (94½%) for the issue of gold certificates, while a further 143 million were issued during 1925, during which year there was on balance an efflux of gold. These gold certificates did not, of course, go to increase the basis of credit, nor did they increase the circulation above what it would otherwise have been. The gold certificates did, however, exist as a sort of secondary reserve because they could to a great extent be replaced if necessary by Federal Reserve or other notes, and this has, indeed, happened to a certain extent within recent years.

APPENDIX B.
THE INDIAN COINAGE ACT (III OF 1906.)
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THE INDIAN COINAGE ACT (III OF 1906).

[2nd March, 1906]

An Act to consolidate and amend the law relating to Coinage and the Mint.

WHEREAS it is expedient to consolidate and amend the law relating to Coinage and the Mint ; It is hereby enacted as follows :

PRELIMINARY.

Short title and extent. 1. (1) This Act may be called the INDIAN COINAGE ACT, 1906 ; and

(2) It extends to the whole of British India, inclusive of British Baluchistan, the Santhal Parganas and the Pargana Spiti.

Definitions 2. In this Act, unless there is anything repugnant in the subject or context,—

- (a) "deface," with its grammatical variations and cognate expressions, includes clipping, filing, stamping, or such other alteration of the surface or shape of a coin as is readily distinguishable from the effects of reasonable wear ;
- (b) "the Mint " includes the Mints now existing and any which may hereafter be established ;
- (c) "prescribed " includes prescribed by a rule made under this Act ;
- (d) "remedy " means variation from the standard weight and fineness ; and
- (e) "standard weight " means the weight prescribed for any coin.

Power to establish and abolish Mints. 3. The Governor-General-in-Council may by notification in the Gazette of India—

- (a) establish a Mint at any place at which a Mint does not for the time being exist ; and
- (b) abolish any Mint, whether now existing or hereafter established.

SILVER COINAGE.

4. The following silver coins only shall be coined at the Mint for issue under the authority of the Governor-General-in-Council, namely :—

(a) a rupee to be called the Government rupee ;

(b) a half-rupee [* * *]

(c) a quarter-rupee [* * *]

5. (1) The standard weight of the Government rupee shall be one hundred and eighty grains Troy and its standard fineness shall be as follows, namely : eleven-twelfths, or one hundred and sixty five grains of fine silver, and one-twelfth or fifteen grains of alloy.

(2) The other silver coins shall be of proportionate weight and of the same fineness :

Provided that, in the making of silver coins, a remedy shall be allowed of an amount not exceeding the following, namely :—

| | Remedy in weight. | Remedy in fineness |
|-------------------------|-------------------|--------------------|
| Rupee | Five-thousands | Two thousandths. |
| Half-rupee | | |
| Quarter-rupee | Seven thousands . | Three-thousandths. |
| [* *] | | |

NICKEL COINAGE.

6. The following nickel coin only shall be coined at the Mint for issue under the authority of the Governor-General-in-Council namely : [an eight-anna, a four-anna, a two-anna and a one-anna piece.]

7. The standard weight of the [eight-anna, four-anna, two-anna, and one-anna pieces shall be one hundred and twenty, one hundred and five, ninety and sixty grains troy, respectively.]

Provided that, in the making of nickel coin, a remedy shall be allowed of an amount not exceeding one-fortieth in weight.

BRONZE COINAGE.

8. The following bronze coins only shall be coined at the Mint for issue under the authority of the Governor-General-in-Council, namely :—

Bronze coins,

- (a) a pice, or quarter-anna ;
- (b) a half-pice, or one eighth of an anna ; and
- (c) a pie, being one-third of a pice, or one-twelfth of an anna.

Standard Weight
and Compositions.

9. (1) The standard weight of the pice shall be seventy-five grains Troy and the other bronze coins shall be of proportionate weight.

(2) Bronze coins shall be coined from a mixed metal consisting of copper, tin and zinc.

Provided that, in the making of bronze coins, a remedy shall be allowed of an amount not exceeding one-fortieth in weight.

DIMENSIONS AND DESIGNS OF COINS.

Power to direct
coining and to pre-
scribe dimensions
and designs.

10. (1) The Governor-General-in-Council may, by notification in the Gazette of India,—

- (a) direct the coining and issuing of all coins referred to in sections 4, 6 and 8, and
- (b) determine the dimensions of, and designs for, such coins.

(2) Until the Governor-General-in-Council otherwise determines by notification under sub-section (1), the dimensions and designs of the silver coins coined under this Act shall be those prescribed for the like silver coins under the Indian Coinage Act, 1870, at the time of the commencement of this Act.

LEGAL TENDER.

11. Gold coins, whether coined at His Majesty's Royal Mint in England or at any Mint established in pursuance of a Proclamation of His Majesty as a branch of His Majesty's Royal Mint, shall be a legal tender in payment or on account at the rate of [ten] rupees for one sovereign :

Provided that such coins have not been called in by any Proclamation made in pursuance of the Coinage Act, 1870, or have not lost

weight so as to be of less weight than that for the time being prescribed for like coins by or under the said Statute as the least current weight.

12. (1) The rupee and half-rupee shall be a legal tender in payment or on account :

Silver coin when a legal tender.

Provided that the coin—

(a) has not lost in weight so as to be more than two per cent. below standard weight, and

(b) has not been defaced.

(2) The quarter-rupee [* * * *] shall be a legal tender in payment or on account for any sum not exceeding one rupee :

Provided that the coin—

(a) has not lost in weight so as to be more than such percentage below standard weight as may be prescribed as the limit of reasonable wear, and

(b) has not been defaced.

[13. The eight-anna, four-anna, two-anna, and one-anna nickel coins specified in section 6 shall be a legal tender in payment or on account for any sum not exceeding one rupee at the rate of two, four, eight and sixteen for a rupee respectively]

Nickel coin, when a legal tender.

14. The bronze coins specified in section 8 shall be a legal tender in payment or on account for any sum not exceeding one rupee at the following rates, respectively, namely:—

Bronze coin, when a legal tender.

(a) the pice at the rate of sixty-four for a rupee, or four for an anna ;

(b) the half-pice at the rate of one hundred and twenty-eight for a rupee, or eight for an anna ; and

(c) the pie at the rate of one hundred and ninety-two for a rupee, or twelve for an anna.

15. (1) (a) All silver coin of the weight and standard specified in Acts No. XVII of 1835, No. XXI of 1838, No. XIII of 1862 and the Indian Coinage Act, 1870, and

Coin made under former Acts.

(b) all copper coin of the weight specified in Acts No. XXI of 1835, No. XXII of 1844, No. XIII of 1862, and the Indian Coinage Act, 1870.

which may have been issued since the passing of those Acts respectively, and declared by those Acts respectively to be a legal tender, shall, [subject only to the provisions of section 15-A and] in the case of silver coin to the provisos contained in section 12 of this Act in so far as such provisos apply to like coins under this Act, continue to be a legal tender for the amounts for which the like silver and bronze coins are a legal tender under this Act respectively.

(2) All double pice copper coins which may have been issued under the Acts specified in sub-section (1), clause (b), shall continue to be a legal tender in payment or on account for any sum not exceeding one rupee at the rate of thirty-two for a rupee or two for an anna.

[" 15-A. Notwithstanding anything contained in section 12, section 13, section 14 or section 15, the Governor-General-in-Council may, by notification in the Gazette of India call in, with effect from such date as may be specified in the notification, any coin of whatever, date or denomination, referred to in any of those sections, other than the rupee and half-rupee referred to in sub-section (1) of section 12, and on and from the date so specified such coin shall cease to be a legal tender save at a Government currency office :

Provided that such coin shall continue to be a legal tender also at Government treasuries until the expiry of such further period, not being less than twelve months, as the Governor-General-in-Council may fix by the notification. "]

DIMINISHED, DEFACED AND COUNTERFEIT COINS.

16. Where any silver coin which has been coined and issued under the authority of the Governor-General-in-Council is tendered to any person authorised by the Governor-General-in-Council or by the Local Government to act under this section, and such person has reason to believe that the coin—

(a) has been diminished in weight so as to be more than such percentage below standard weight as may be prescribed as the limit of reasonable wear, or

(b) has been defaced,
he shall, by himself or another, cut or break the coin.

17. A person cutting or breaking coin under the provisions of clause (a) of section 16 shall observe the following procedure, namely :—

(a) if the coin has been diminished in weight so as to be more than such percentage below standard weight as may be prescribed as

the limit of reasonable wear, but not more than such further percentage as may be prescribed in this behalf, he shall either return the pieces to the person tendering the coin, or, if such person so requests, shall receive and pay for the coin at such rates as may be prescribed in this behalf; and

(b) if the coin has been diminished in weight so as to be more than such further percentage below standard weight so prescribed as aforesaid, he shall return the pieces to the person tendering the coin, who shall bear the loss caused by such cutting or breaking.

Procedure in regard to coin cut under section 16 (b).

18. A person cutting or breaking coin under the provisions of clause (b) of section 16 shall observe the following procedure, namely:—

(a) if such person has reason to believe that the coin has been fraudulently defaced, he shall return the pieces to the person tendering the coin, who shall bear the loss caused by such cutting or breaking;

(b) if such person has not reason to believe that the coin has been fraudulently defaced, he shall receive and pay for the coin at its nominal value.

Explanation.—For the purposes of this section a coin which there is reason to believe has been defaced by sweating shall be deemed to have been fraudulently defaced.

Procedure in regard to coin which is liable to be cut under both clause (a) clause (b) of section 16.

19. If a coin is liable to be cut or broken under the provisions of both clause (a) and clause (b) of section 16, the person cutting or breaking the coin shall deal with it, —

(a) if he has reason to believe that the coin has been fraudulently defaced under clause (a) of section 18, and

(b) in other cases, under section 17.

20. Where any silver [or nickel] coin purporting to be coined or issued under the authority of the Governor-General-in-Council is tendered to any person authorised by the Governor-General-in-Council or by the Local Government to act under this section, and such person has reason to believe that the coin is counterfeit, he shall by himself or another cut or break the coin, and may at his discretion either return the pieces to the tenderer, who shall bear the loss caused by such cutting or breaking, or receive and pay for the coin according to the value of the silver bullion contained in it.

Power to certain persons to cut counterfeit silver coin and procedure in regard to coin so cut.

SUPPLEMENTAL PROVISIONS.

Power to make rules. 21. (1) The Governor-General-in-Council may make rules to carry out the purposes and objects of this Act.

(2) In particular and without prejudice to the generality of the foregoing power such rules may—

(a) reduce the amount of remedy allowed by sections 5, 7 and 9 in the case of any coin ;

(b) provide for the guidance of persons authorised to cut or break coin under sections 16 and 20 ;

(c) determine the percentage of diminution in weight below standard weight not being less in any case than two per cent. which shall be the limit of reasonable wear ;

(d) prescribe the further percentage referred to in clause (a) of section 17, and the rates at which payments shall be made in the case of coins falling under the same clause ;

(e) provide for the acceptance at prescribed rates by officers authorized in this behalf of the gold coins described in section 11 where such coins have lost weight so as to be of less weight than that for the time being prescribed for like coins by or under the Coinage Act, 1870, as the least current weight.

(3) Every such rule shall be published in the Gazette of India, and on such publication shall have effect as if enacted in this Act.

Bar of suits. 22. No suit or other proceeding shall lie against any person in respect of anything in good faith done, or intended to be done, under or in pursuance of the provisions of this Act.

Saving of making of other coins at Mints. 23. Nothing in this Act shall be deemed to prohibit or restrict the making at the Mint of coins intended for issue as money by the Government of any territories beyond the limits of British India.

24. [* * * * *]
 [* * *] copper coins of such descriptions as at the time of the commencement of this Act may be coined at the Mint for issue under the authority of the Governor-General-in-Council may [* * *] continue to be so coined until such time as the Governor-General-in-Council may by notification in the Gazette of India otherwise direct, and all copper coins so coined shall be a legal tender in payment or on account for the amounts for which bronze coins of corresponding nominal value are a legal tender under this Act.

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THE IMPERIAL BANK OF INDIA ACT (XLVII OF 1920).
As amended up to 6th March, 1934.

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THE IMPERIAL BANK OF INDIA ACT (XLVII of 1920.)

As amended up to 6th March, 1934.

[19th September, 1920.]

An Act to constitute an Imperial Bank of India and for other purposes.

WHEREAS it is expedient to constitute an Imperial Bank of India and to transfer to the Bank so constituted the undertaking of each of the Presidency Banks and to dissolve those Banks and to make provision for the regulation and management of the Imperial Bank of India ; It is hereby enacted as follows :—

Short title and commencement. 1. (1) This Act may be called THE IMPERIAL BANK OF INDIA ACT, 1920.

(2) It shall come into force on such date as the Governor-General-in-Council may, by notification in the *Gazette of India*, appoint.

Definitions. 2. In this Act, unless there is anything repugnant in the subject or context.—

- (a) "appointed day" means such day as the Governor-General-in-Council may appoint for the commencement of this Act ;
- (b) "the Bank of Bengal," "the Bank of Madras" and "the Bank of Bombay" mean, respectively, those Banks as constituted by the Presidency Banks Act, 1876 ;
- (c) "dividend" includes bonus ;
- (d) "general meeting" means the annual meeting of the shareholders of the Bank ;
- (e) "goods" includes also bullion, wares and merchandise ;
- (f) "local meeting" means the annual meeting of the shareholders whose names are registered in a branch register ;
- (g) "meeting" includes an adjourned holding of a meeting ;
- (h) "prescribed" means prescribed by by-laws made under this Act ;
- (i) "Presidency Banks" means the Bank of Bengal, the Bank of Madras, and the Bank of Bombay as constituted by the Presidency Banks Act, 1876, and a "Presidency Bank" means any one of these Banks ;
- (ii) "Secretary" and 'deputy secretary' mean, respectively, a secretary and treasurer and a deputy secretary and treasurer of the Bank.

- (j) "special local meeting" means a meeting of the shareholders whose names are registered in a branch register, convened for the transaction of some particular business specified in the notice convening the meeting ;
- (k) "special local resolution" means a resolution passed at a special local meeting ;
- (l) "special meeting" means a meeting of shareholders convened for the transaction of some particular business specified in the notice convening the meeting ; and
- (m) "special resolution" means a resolution passed at a special meeting.

CHAPTER I.

ESTABLISHMENT AND INCORPORATION OF THE IMPERIAL BANK OF INDIA.

3. (1) A Bank to be called the Imperial Bank of India and in this Act referred to as "the Bank" shall be constituted for the purpose of taking over the undertakings of the Presidency Banks and to carry on the business of banking in accordance with the provisions of this Act.

(2) Every person who, immediately before the appointed day, was registered as a shareholder or as a holder of stock in any of the Presidency Banks, together with such other persons as may from time to time become shareholders in the Banks in accordance with the provisions of this Act, shall, as long as they are shareholders in the Bank constitute a body corporate with perpetual succession and a common seal under the name of the Imperial Bank of India and shall sue and be sued in that name.

(3) Subject to the provisions of this Act, the capital of the Bank shall consist of one hundred and twelve millions and five hundred thousand rupees divided into shares of five hundred rupees each.

(4) The liability of the shareholders of the Bank shall be limited to the amount not fully paid on their shares.

CHAPTER II.

TRANSFER OF THE UNDERTAKINGS OF PRESIDENCY BANKS TO THE IMPERIAL BANK.

4. (1) Subject to the provisions of this Act, as from the appointed day, the undertakings of each of the Presidency Banks shall be transferred to and shall vest in the Bank.

(2) The undertaking of a Presidency Bank shall be deemed to include all rights, powers, authorities and privileges, and all property, moveable or immovable, including cash balances, reserve funds, investments and all other interests and rights in or arising out of such property as may be in the possession of that Bank immediately before the appointed day, and all books, accounts and documents relating thereto, and shall also be deemed to include all debts, liabilities and obligations of whatever kind then existing of that Bank.

(3) If, on the appointed day, any suit, appeal or legal proceeding of whatever nature is pending by or against any Presidency Bank, the same shall not abate, be discontinued or be in any way prejudicially affected by reason of the transfer to the Bank of the undertaking of such Presidency Bank or of anything in this Act, but the suit, appeal or proceeding may be continued, prosecuted and enforced by or against the Bank.

(4) All contracts, deeds, bonds, agreements and other instruments of whatever nature subsisting or having effect immediately before the appointed day and to which any Presidency Bank is a party shall be of as full force and effect against or in favour of the Bank, as the case may be, and may be enforced as fully and effectually as if instead of the Presidency Bank the Bank had been a party thereto.

5. (1) The name of every person who immediately before the appointed day was registered as a shareholder in any of the Presidency Banks shall be registered in accordance with the provisions of this Act hereinafter appearing as holding the same number of shares in the Bank as stood in his name in the register of such Presidency Bank :

Terms of transfer as regards shareholders in the Presidency Banks.

Provided that, for the purposes of this section two half-shares standing in the name of any such person in the register of any Presidency Bank shall be taken as the equivalent of one share, and odd half-shares shall be dealt with as hereinafter provided.

(2) The name of every person who immediately before the appointed day was registered as a holder of stock in any of the Presidency Banks shall be registered in accordance with the provisions of this Act hereinafter appearing as holding one share in the Bank for every rupees five hundred of stock of which he was the registered holder in such Presidency Bank, and odd amounts of stock not amounting to rupees five hundred shall be dealt with as hereinafter provided.

(3) The Bank shall issue fractional certificates to the holders of odd half-shares and of odd amounts of stock, not amounting to rupees

five hundred certifying, as the case may be, that the holder is entitled to one-half of one fully paid share or such fraction of a share as the odd amount or stock is of rupees five hundred.

(4) Holders of fractional certificates shall, if resident in India within three months and in any other case within six months from the date of the certificate either—

- (i) surrender their fractional certificate with other similar fractional certificates representing in all one fully paid share, in which case the surrenderor shall be entitled to be registered as a shareholder and to have a fresh certificate for a fully paid share in the Bank issued to him and be entitled to an allotment of new shares in the same way as if he had been the holder of one fully paid share, or
- (ii) at their option surrender the fractional certificates to the Bank, in which case the Bank shall be entitled to sell the shares represented by the fractions so surrendered from time to time in such manner as the Bank deems expedient, and the aggregate net sale-proceeds realized by such sale or sales shall be divided proportionately and paid by the Bank to the holders of fractional certificates for whose account the shares may have been so sold.

(5) Every shareholder of the Bank whose name has been registered in accordance with the provisions of this section shall be entitled in respect of every share of which he is so registered as the holder to an allotment to himself or to his nominee (provided that such nominee is approved by the Bank) of two shares in the Bank with the sum of rupees one hundred and twenty-five credited as paid up on payment in respect of each share in the case of a former shareholder or stockholder of the Bank of Bengal or the Bank of Bombay of rupees one hundred and twenty-five, and of the Bank of Madras of rupees two hundred and twenty-five.

(6) The Bank shall cause notice to be published in the *Gazette of India* and in two daily papers in each Presidency, and shall also send by post to every person whose name immediately before the appointed day was entered in the register of shareholders or stockholders of any of the Presidency Banks a notice giving particulars of the terms hereinbefore set out as to the allotment of new shares and the surrender of fractional certificates, and as to the manner and form in which application for the allotment of new shares and the surrender of fractional certificates is to be made.

(7) If within a period of three months from the date of publication in the *Gazette of India* of the notice referred to in sub-section (6)

any shareholder has not made an application for the allotment of new shares to which he is entitled, the Bank may offer such shares for public subscription and allot them to any person applying therefor:

Provided that the Bank in the case of shareholders whose addresses are out of British India may, either generally or in any particular instance, fix an extended period for the admission of applications, but in no case shall that period be later than six months from the date of the publication of the notice in the *Gazette of India*.

6. (1) Subject to the provisions of this Act, every officer and servant employed immediately before the appointed day by a Presidency Bank shall, from the appointed day, become an officer or servant of the Bank, and shall hold his office or service therein by the same tenure and upon the same terms and conditions and with the same rights and privileges as to pension or gratuity as he would have held the same under the Presidency Bank if this Act had not been passed.

Existing officers and servants of Presidency Banks and existing Provident Funds.

(2) Any person who, on the appointed day has been granted or is in receipt of a pension or other superannuation or compassionate allowance from a Presidency Bank shall be entitled to be paid by, and to receive from, the Bank the same pension or allowance so long as he observes the conditions on which the pension or allowance was granted. Any question whether he has so observed such conditions shall, in case of any difference arising, be determined by the Governor-General-in-Council.

(3) For the Directors and officers of the Banks of Bombay and Madras who are at the commencement of this Act the respective trustees of the following funds, that is to say,—

(a) the Bank of Bombay Officers' Pension and Guarantee Fund, and

(b) the Bank of Madras Pension and Gratuity Fund and the Bank of Madras Officers' Provident and Mutual Guarantee Fund,

there shall be substituted as trustees of those funds respectively, the members for the time being and the corresponding officers of the Local Boards of the Bank at Bombay and Madras; and if any doubt arises as to who are the corresponding officers to the officers who are trustees at the commencement of this Act, the decision of the Central Board shall be final.

7. As from the appointed day the Presidency Banks shall be dissolved, and thereafter no person shall make, assert or take any claims, demands or proceedings against any of the said Banks or against a director or officer thereof, in his capacity as such director or officer except in so far as may be necessary for enforcing the provisions of this Act.

CHAPTER III.

BUSINESS OF THE BANK.

8. Subject to the provisions of this Act, the business which the Bank is authorized to carry on and transact shall be the several kinds of business specified in Schedule I subject to the limitations therein mentioned.

Business which Bank may transact.

9.

*

*

[Repealed].

Bank may do Government business.

10. (1) It shall also be lawful for the Bank under any agreement with the Reserve Bank of India—

(i) to pay, receive, collect and remit money, bullion and securities as agent for the Reserve Bank of India on behalf of the Government;

(ii) to undertake and transact any other business which the Reserve Bank of India may from time to time entrust to the Bank.

(2)

*

*

[Repealed].

Acquisition of business premises.

11. For the purpose of providing buildings and places in and at which to carry on and manage the business of the Bank and proper residences for its officers and servants, the Bank may—

(a) acquire any interest in immoveable property, and

(b) sell, buy, re-sell, exchange, let, furnish, repair, insure against fire and other risks or deal with all or any part of the same as it may consider most conducive to the interest of the Bank.

Establishment of branches and agencies.

12. Subject to the provisions of this Act the Bank may—

(a) maintain, as branches or agencies of the Bank, any branches or agencies of the Presidency Banks which were in existence immediately before the appointed day, and may establish branches or agencies at such places whether in India or elsewhere as it deems advantageous for the interests of the Bank, and

(b) discontinue any branch or agency maintained or established under this section.

13. (1) With the sanction of the Governor-General-in-Council, the Bank may enter into negotiations for and purchase and take over the business, including the capital, assets and liabilities, of any banking company carrying on business in India (or elsewhere) of which the capital is divided into shares, and may pay the consideration for such purchase either in cash or by the allotment of shares in the capital of the Bank, or partly in one and partly in the other of these ways, and may (subject to the provisions of this Act relating to the increase of capital) for the purpose of any such allotment of shares, increase the capital of the Bank by the issue of such number of shares as may be determined on by the Bank.

(2) Any business so purchased shall after the purchase be carried on by the Bank subject to the provisions of this Act.

13-A. Notwithstanding anything contained in Schedule I, the Bank may, either alone, or conjointly with other persons for the purpose of averting the winding up of any company * * having a share capital which is expressed in rupees in its memorandum of association or of any society registered under the Co-operative Societies Act, 1912, (or any other law for the time being in force in British India relating to co-operative societies) or where any such company or society is being wound up, of facilitating the winding up, advance or lend money to, or open a cash credit in favour of such company or society or the liquidators thereof, as the case may be, for any period upon the security of all or any of the assets whatsoever of such Company or Society.

CHAPTER IV.

SHARES.

14. (1) The shares of the Bank shall be moveable property.

(2) Each share in the Bank shall be distinguished by its appropriate number.

15. A certificate under the common or official seal of the Bank specifying the shares held by any shareholder shall be *prima facie* evidence of the title of the shareholder to the shares therein specified.

16. The Bank shall keep in one or more books a register of its shareholders (in this Act referred to as the principal register), and shall enter therein the following particulars so far as they may be available :—

- (i) the names and addresses and occupations, if any, of the shareholders and a statement of the shares held by each shareholder, distinguishing each share by its number, and of the amount paid on the shares of each shareholder.
- (ii) the date on which each person is so entered as a shareholder; and
- (iii) the date on which any person ceases to be a shareholder.

17. (1) The Bank shall cause to be kept at the local head offices of the Bank in Calcutta, Madras and Bombay Branch registers, branch registers which shall be deemed to be part of the principal register, and may do so at any other local head office which may hereafter be established under this Act.

(2) There shall be entered in the branch register to be kept in Calcutta the name of every person who having been registered as a shareholder or stockholder in the Bank of Bengal is entitled under the provisions of section 5 to be registered as a shareholder in the Bank, with the same particulars appended thereto as are required in the case of the principal register, and the same provisions shall apply *mutatis mutandis* to the branch registers to be kept in Madras and Bombay.

(3) Any shareholder may apply to the Bank to have his name transferred from one branch register to another in respect of either the whole or any part of the shares standing in his name, and the Bank shall, subject to such conditions as may be prescribed, cause the registers to be amended accordingly.

(4) Subject to the provisions of sub-section (3) no transaction with respect to any share registered in one branch register shall be registered in any other branch register.

18. No notice of any trust, express, implied or constructive, shall be entered on the principal or any branch register or be receivable by the Bank.

19. The Bank may close the principal register or any branch register for any time or times, not exceeding in the whole thirty days in each year.

20. (1) The principal register of shareholders shall be kept at such places as the Bank, by notification in the *Gazette of India*, may appoint and, except when closed under the provisions of this Act, that register or any branch register shall during business hours (subject to such

unreasonable restrictions as the Bank may impose, so that not less than two hours in each day be allowed for inspection) be open to the inspection of any shareholder gratis.

(2) Any shareholder may require a copy of any such register, or of any part thereof, on prepayment therefor at the rate of six annas for every hundred words or fractional part thereof required to be copied.

(3) A copy of the principal register of shareholders shall be compiled within 30 days after the date of the first ordinary general meeting in each year and shall be filed forthwith with the officer performing the duty of registration of companies under the Indian Companies Act, 1913.

CONTRACTS.

Form of contracts.

21. (1) Contracts on behalf of the Bank may be made as follows :—

- (i) any contract, which, if made between private persons, would be by law required to be in writing, signed by the parties to be charged therewith, may be made on behalf of the Bank in writing signed by any person acting under its authority, express or implied, and may in the same manner be varied or discharged ;
- (ii) any contract which, if made between private persons would by law be valid although made by parol only, and not reduced to writing, may be made by parol on behalf of the Bank by any person acting under its authority, express or implied, and may in the same manner be varied or discharged.

(2) All contracts made according to the provisions of this section shall be effectual in law, and shall bind the Bank and all other parties thereto and their legal representatives.

REGULATIONS OF BANK.

Regulations of the Bank.

22. The provisions contained in Schedule II shall be the regulations of the Bank in regard to the matters to which they relate.

CHAPTER V.

MANAGEMENT.

Offices of the Bank.

23. The Bank shall have local head offices in Calcutta, Madras and Bombay, and at such other places in British India as the Bank, [* * *] may determine.

24. The general superintendence of the affairs and business of the Bank shall be entrusted to a Central Board of Directors (hereinafter in this Act referred to as the "Central Board"), who may exercise all powers and do all such acts and things as may be exercised or done by the Bank and are not by this Act expressly directed or required to be done by the Bank in general meeting.

25. Local Boards shall be established at Calcutta, Madras and Bombay, and may be established at such other places in British India as the Central Board, [* * *] may determine.

26. Without prejudice to the powers conferred by S. 24, the Local Boards, established at Calcutta, Madras and Bombay, shall have power generally to transact all the usual business of the Bank, and shall have power as regards entries in the branch registers, respectively kept at those places to examine and pass or refuse to pass transfers and transmissions and to approve or refuse to approve transferees of shares and to give certificates of shares.

LOCAL BOARDS AT CALCUTTA, MADRAS AND BOMBAY.

27. The several persons who were, immediately before the appointed day, respectively the directors of the Presidency Banks shall constitute the first Local Boards of the Bank at Calcutta, Madras and Bombay respectively, and the persons who were then president, vice-president and secretary, respectively, of the said bank shall fill the same offices in the respective Local Boards until they vacate office in accordance with the provisions of this Act.

CENTRAL BOARD.

28. (1) The Central Board shall consist of the following Directors, namely:—

- (i) the presidents and vice-presidents of the Local Boards established by this Act;
- (ii) one person to be elected from amongst themselves by the members of each Local Board established by this Act;
- (iii) a Managing Director who shall be appointed by the Central Board for a period not exceeding five years on such terms as the Central Board may direct, and may be continued in his appointment by the Central Board for such further periods not exceeding five years in each case as the Central Board thinks fit;

- (iv) such number of persons not exceeding two and not being officers of the Government as may be nominated by the Governor-General-in-Council. Such persons shall hold office for one year but may be re-nominated ;
- (v) a Deputy Managing Director who shall be appointed by the Central Board ;
- (vi) the secretaries of the Local Boards established by this Act ; and
- (vii) if any Local Board is hereafter established under this Act, such number of persons to represent it as the Central Board may prescribe.

(2) The Directors specified in clauses (v) and (vi) of sub-section (1) shall be at liberty to attend all meetings of the Central Board and to take part in its deliberations, but shall not be entitled to vote on any question arising at any meeting :

Provided that the Deputy Managing Director shall be entitled to vote in the absence of the Managing Director.

(3) The Governor-General-in-Council shall nominate an officer of Government to attend the meetings of the Central Board, and such officer shall be entitled to attend all meetings of the Central Board and to take part in its deliberations but shall not be entitled to vote on any question arising at any meeting.

29. (1) Where the Central Board establishes any additional local head office of the Bank in British India, a Local Board shall be constituted to manage the local business of the Bank.

(2) The number of the members of any such Local Board shall be such number, not less than three, as may be prescribed and shall be appointed in such manner as may be prescribed.

30. [* * * *]

CHAPTER VI.

MISCELLANEOUS.

31. (1) The Central Board shall, with the previous approval of the Governor-General-in-Council, make bye-laws consistent with this Act regulating the following matters, namely :—

Power of Central Board to make bye-laws.

- (a) the maximum amounts which may be advanced, or lent to or for which bills may be discounted for any individual or

partnership, without the security mentioned in sub-clauses (i) to (iv) of clause (a) of part I of Schedule I, the conditions under which advances may be made on the said security and the extent of the sums to which accounts may be overdrawn without security :

- (b) the conditions subject to which alone advances may be made to Directors, members of Local Boards, or officers of the Bank, or the relatives of such Directors, members or officers or to companies, firms or individuals with which or with whom such Directors, members, officers or relatives are connected as partners, directors, managers, servants, shareholders or otherwise :—

Provided that the bye-laws shall provide that no advance without security shall be made to any officer of the Bank without the specific sanction of the Local Board under which he is serving ;

- (c) the particulars to be contained in the annual and half-yearly balance sheets and
 (d) any matter which by this Act is directed to be prescribed.

(2) The Central Board may, with the previous approval of the Governor-General-in-Council, make bye-laws consistent with this Act regulating the following matters or any of them, namely :—

- (a) the keeping of the register and branch registers of shareholders ;
 (b) the distribution of business amongst the Directors and their remuneration, if any ;
 (c) the distribution of business among the members of a Local Board and their remuneration, if any ;
 (d) the delegation of any powers of the Central Board or of a Local Board to committees consisting of Directors or members, as the case may be ;
 (e) the procedure to be followed at the meetings of the Central or Local Boards or of any committees thereof ;
 (f) the first appointment and the appointment of members of a Local Board established under this Act ;
 (g) the powers of Local Boards established by or under this Act ;
 (h) the localities in, and with respect to which such Local Boards shall exercise their powers ;
 (i) the books and accounts to be kept at the local head offices of the Bank ;

- (j) the renewal of certificates of shares which have been worn out or lost ;
- (k) the conduct and defence of legal proceedings and the manner of signing pleadings ;
- (l) the constitutions and management of pension and provident funds for the offices and servants of the Bank ;
- (m) all matters which are by this Act permitted to be prescribed; and
- (n) generally, the conduct of the business of the Bank,

32. (1) The references in sections 188, 189, and 289, of the Indian Companies Act, 1913, and references in any other enactment to the Presidency Banks or any of them shall be deemed to be references to the Bank.

(2) Where by any instrument power is given to invest in, to hold or to exercise any rights in regard to shares or stock in a Presidency Bank, then that power may be exercised as if the same power were given by such instrument in regard to shares in the Bank.

(3) A power of attorney in favour of a Presidency Bank or in favour of a Presidency Bank and its offices shall be deemed, as the case may be, to be a power of attorney in favour of the Bank or of the Bank and its offices.

33. In section 11 sub-section (3) of the Indian Companies Act, 1913, after the word "Royal" the word "Bank of Bengal", "Bank of Madras," "Bank of Bombay" shall be inserted.

34. The enactments specified in Schedule III are hereby repealed.

SCHEDULE I.

(See section 8).

PART I.

BUSINESS WHICH THE BANK IS AUTHORISED TO CARRY ON AND TRANSACT.

The Bank is authorized to carry on and transact the several kinds of business hereinafter specified, namely :—

- (a) the advancing and lending money, and opening cash-credits upon the security of—
- (i) stocks, funds and securities (other than immoveable property) in which a trustee is authorized to invest trust money by

any Act of Parliament or by any Act of the Governor-General-in-Council, any securities of a Local Government or the Government of Ceylon and shares of the Reserve Bank of India.

- (ii) such securities issued by State-aided railways as have been notified by the Governor-General-in-Council under section 36 of the Presidency Banks Act, 1876 or may be notified by him under this Act in that behalf;
- (iii) debentures or other securities for money issued under the authority of any Act of a legislature established in British India by, or on behalf of, a district board or a municipal board or committee or, with the sanction of the Governor-General-in-Council, debentures or other securities for money issued under the authority of a Prince or Chief of any State in India;
- (iii a) subject to such directions as may be issued by the Central Board, debentures of companies with limited liability whether registered in India or elsewhere;
- (iv) goods which, or the documents of title to which, are deposited with, or assigned to, the Bank as security for such advances, loans or credits;
- (iv a) goods which are hypothecated to the Bank as security for such advances, loans or credits, if so authorized by special directions of the Central Board;
- (v) accepted bills of exchange and promissory notes endorsed by the payees and joint and several promissory notes of two or more persons or firms unconnected with each other in general partnership, and
- (vi) fully paid shares * * of companies with limited liability, or immoveable property or documents of title relating thereto as collateral security only where the original security is one of those specified in sub-clauses (i) to (iv), and subject to such directions as may be issued by the Central Board where the original security is of the kind specified in sub-clause (v) :

Provided that such advances and loans may be made, if the Central Board think fit, to the Secretary of State for India in Council, without any specific security ;

- (b) the selling and realisation of the proceeds of sale of any such promissory notes, debentures, stock-receipts, bonds, annuities, stock-shares, securities or goods which or the documents of title to which have been deposited with or

pledged, hypothecated, assigned or transferred to the bank as security for such advances, loans or credits, or which are held by the Bank or over which the Bank is entitled to any lien or charge in respect of any such loan or advance or credit or any debt or claim of the Bank and which have not been redeemed in due time in accordance with the terms and conditions (if any) of such deposit pledge, hypothecation, assignment or transfer;

- (c) the advancing and lending money to Courts of Wards upon the security of estates in their charges or under their superintendence, and the realisation of such advances or loans and any interest due thereon, provided that no such advance or loan shall be made without the previous sanction of the Local Government concerned, and that the period for which any such advance or loan is made shall not exceed nine months in the case of advances or loans relating to the financing of seasonal agricultural operations or six months in other cases ;
- (d) the drawing, accepting, discounting, buying and selling of bills of exchange and other negotiable securities ; * *
- (e) the investing of the funds of the Bank upon any of the securities specified in sub-clauses (i) to (iii) of clause (a) and converting the same into money when required, and altering, converting and transposing such investments for or into others of the investments above specified;
- (f) the making, issuing and circulating of bank-post-bills and letters of credit * * to order, or otherwise than to the bearer on demand ;
- (g) the buying and selling of gold and silver whether coined or uncoined ;
- (h) the receiving of deposits and keeping cash accounts on such terms as may be agreed on ;
- (i) the acceptance of the charge of plate, jewels, title-deeds or other valuable goods on such terms as may be agreed on ;
- (j) the selling and realising of all property whether moveable or immovable, which may in any way come into the possession of the Bank, in satisfaction or part satisfaction of any of its claims and the acquisition and holding of, and generally the dealing with, any right, title or interest in any property, moveable or immovable, which may be the Bank's security for any loan or advance or may be connected with any such security ;

- (k) the transacting of pecuniary agency business on commission; and the entering into of contracts of indemnity, suretyship or guarantee with specific security or otherwise ;
- (l) the administration of estates for any purpose whether as an executor, trustee or otherwise and the acting as agent on commission in the transaction of the following kinds of business, namely :—
 - (i) the buying, selling, transferring and taking charge of any securities or any shares in any public company ;
 - (ii) the receiving of the proceeds, whether principal, interest or dividends, of any securities or share ;
 - (iii) the remittance of such proceeds * * by public or private bills of exchange, payable either in India or elsewhere ;
 - (m) the drawing of bills of exchange and the granting of letters of credit payable out of India. * * *
 - (n) the buying of bills of exchange payable out of India, at any usance not exceeding nine months in the case of bills relating to the financing of seasonal agricultural operations or six months in other cases ;
 - (o) the borrowing of money for the purposes of the Bank's business and the giving of security for money so borrowed by pledging assets or otherwise ;
 - (p) the subsidizing from time to time of the pension funds of the Presidency Banks ; and ;
 - (q) generally, the doing of all such matters and things as may be incidental or subsidiary to the transaction of the various kinds of business including foreign exchange business hereinbefore specified.

PART II.

BUSINESS WHICH THE BANK IS NOT AUTHORIZED TO CARRY OUT OR TRANSACT.

The Bank shall not transact any kind of banking business other than those specified in Part I and in particular—

- (1) It shall not make any loan or advance—
 - (a) for a longer period than six months, except as provided in clause (c) and clause (n) of Part I or,
 - (b) upon the security of stock or shares of the Bank, or

(c) save in the case of the estates specified in clause (c) of Part I, upon mortgage or in any other manner upon the security of any immoveable property, or the documents of title relating thereto.

(2) The Bank shall not (except upon a security of the kind specified in sub-clauses (i) to (iv) of clause (a) of part I) discount bills for any individual or partnership firm for an amount exceeding in the whole at any one time such sum as may be prescribed or lend or advance in any way to any individual or partnership firm an amount exceeding in the whole at any one time such sum as may be so prescribed.

(3) The Bank shall not discount or buy, or advance and lend, or open cash credits on the security of any negotiable instrument of any individual or partnership firm, payable in the town or at the place where it is presented for discount, which does not carry on it the several responsibilities of at least two persons or firms unconnected with each other in general partnership.

(4) The Bank shall not discount or buy, or advance and lend, or open cash-credits on the security of any negotiable security (not being a security in which a trustee may invest trust money under section 20 of the Indian Trusts Act, 1882,) having at the date of the proposed transaction, a longer period to run than nine months if a bill drawn for the purpose of financing seasonal agricultural operations and six months in other cases, or if drawn after sight, drawn for a longer period than nine months if a bill drawn for the purpose of financing seasonal agricultural operations and six months in other cases.

Provided that nothing in this Part shall be deemed to prevent the Bank from allowing any person who keeps an account with the Bank to overdraw such account, without or with security, to such extent as may be prescribed.

SCHEDULE II.

REGULATIONS OF THE BANK.

(See section 22.)

1. Every person whose name is entered as a shareholder in the register of shareholders shall, without payment, be entitled to a certificate under the common seal of the Bank (or if the certificate relates to shares registered in a branch register under the official seal of the Bank) specifying the share or shares held by him and the amount paid up thereon: Provided that, in respect of a share or shares held jointly by several persons, the Bank shall

not be bound to issue more than one certificate, and delivery of a certificate for a share to one of several joint-holders shall be sufficient delivery to all.

Lien.

2. The Bank shall have a lien on every share (not being a fully paid share) for all moneys (whether presently payable or not) called or payable at a fixed time in respect of that share, and the Bank shall also have a lien on all shares standing registered in the name of a single person for all moneys presently payable by him or his estate to the Bank. The Bank's lien, if any, on a share shall also extend to all dividends payable thereon.

3. The Bank may sell, in such manner, as it thinks fit, any shares on which it has a lien, but no sale shall be made unless some sum in respect of which the lien exists is presently payable, nor until the expiration of fourteen days after a notice in writing, stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable has been given to the registered holder for the time being of the share, or to the person entitled by reason of his death or insolvency to the shares.

4. The proceeds of the sale shall be applied in payment of such part of the amount in respect of which the lien exists as is presently payable and the residue shall (subject to a like lien for sums not presently payable as existed upon the shares prior to the sale) be paid to the person entitled to the shares at the date of sale. The purchaser shall be registered as the holder of the shares, and he shall not be bound to see to the application of the purchase-money nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.

Calls on Shares.

5. The Bank may, from time to time, make calls upon the shareholders in respect of any moneys unpaid on their shares, provided that no call shall exceed one-fourth of the nominal amount of the share, or be payable at less than two months from the last call; and each shareholder shall (subject to receiving at least two months' notice specifying the time or times of payments) pay to the Bank at the time or times so specified the amount called on his shares.

6. The joint-holders of a share shall be jointly and severally liable to pay all calls in respect thereof.

7. If a sum called in respect of a share is not paid before or on the day appointed for payment thereof, the person from whom the sum is due shall pay interest upon the sum at the rate of ten per cent. per annum from the day appointed for the payment thereof to the time of the actual payment, but the Central Board shall be at liberty to waive payment of that interest wholly or in part.

Transfer and transmission of shares.

8. The instrument of transfer of any share in the Bank shall be executed both by the transferor and transferee, and the transferor shall be deemed to remain holder of the share until the name of the transferee is entered in the register of shareholders in respect thereof.

9. Shares in the Bank shall be transferred in the following Form, or in any usual or common form which the Bank shall approve:—

I, A B of _____, in consideration of the sum of rupees _____ paid to me by C D of _____ (hereinafter called "the said transferee") do hereby transfer to the said transferee the share (or shares) numbered _____ in the Imperial Bank of India to hold unto the said transferee, his executor, administrators and assigns, subject to the several conditions on which I held the same at the time of the execution thereof, and I, the said transferee, do hereby agree to take the said share (or shares) subject to the conditions aforesaid.

As witness our hands the

day of

Witness to the signature of, etc.

10. The Bank may decline to register any transfer of shares, not being fully paid shares, to a person of whom it does not approve, and may also decline to register any transfer of shares on which the Bank has a lien or any transfer of shares to any person who is a minor or has been found by a Court of competent jurisdiction to be of unsound mind or to or in the name of any firm. The Bank may also suspend the registration of transfers for any period during which it has under the provisions of this Act directed that the registers shall be closed.

The Bank may decline to recognize any instrument of transfer unless—

(a) a fee not exceeding two rupees is paid to the Bank in respect thereof; and

- (b) the instrument of transfer is accompanied by the certificate of the shares to which it relates, and such other evidence as the Bank may reasonably require to show the rights of the transferor, to make the transfer.

11. The executors or administrators of a deceased sole holder of a share; the holder of a succession certificate issued under Part X of the Indian Succession Act, 1925, in respect of the share, and a person in whose favour a valid instrument of transfer of the share was executed by the deceased holder during his lifetime, shall be the only persons who may be recognized by the Bank as having any title to the share. In the case of a share registered in the names of two or more holders; the survivors or survivor and, on the death of the last survivor his executors or administrators or any person who is the holder of a succession certificate in respect of such survivor's interests in the share, and a person in whose favour a valid instrument of transfer of the share was executed by such survivor during his lifetime, shall be the only persons who may be recognized by the Bank as having any title to the share.

12. Any person becoming entitled to a share in consequence of the death or insolvency of a shareholder or in consequence of a transfer by a deceased shareholder during his life time shall, upon such evidence being produced as may be required by the Bank, have the right subject to the provisions of Regulation 10, either to be registered as a shareholder in respect of the share or, instead of being registered himself, to make such transfer of the share as the deceased or insolvent person could have made.

13. Any person becoming entitled to a share in consequence of the death or insolvency of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share, except that he shall not, before being registered as a shareholder in respect of the share, be entitled in respect of it to exercise any right conferred on a shareholder in relation to meetings of the Bank.

Forfeiture of Shares.

14. If a shareholder fails to pay any call or instalment of a call on the day appointed for payment thereof, the Central Board may, at any time thereafter during such time as any part of such call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued.

15. The notice shall name a further day (not earlier than the expiration of fourteen days from the date of the notice) on or before which the payment required by the notice is to be made, and shall state that in the event of non-payment at or before the time appointed, the shares in respect of which the call was made will be liable to be forfeited.

16. If the requirements of any such notice as aforesaid are not complied with, any share in respect of which the notice has been given may at anytime thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the Central Board to that effect.

17. A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the Central Board thinks fit, and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the Central Board thinks fit.

18. A person whose shares have been forfeited shall cease to be a shareholder in respect of the forfeited shares, but shall, notwithstanding, remain liable to pay to the Bank all moneys which, at the date of forfeiture were presently payable by him to the Bank in respect of the shares, but his liability shall cease if and when the Bank receives payment in full of the nominal amount of the shares.

Alteration of Capital.

19. The shareholders of the Bank may, by special resolution increase or with the previous sanctions of the Governor-General-in-Council reduce the capital of the Bank :

Provided that no such special resolution shall be deemed to have been passed, unless at least one-third in number of the shareholders, holding at least one-half of the paid-up capital of the Bank for the time being, be present in person or by proxy, and the majority of such shareholders have voted either by show of hands or by poll, as the case may be, in favour of the said resolution.

20. When any such special resolution to increase the capital has been passed, the Central Board may, subject to the provisions of this Act and to the special directions (if any) given in reference thereto by the meeting at which such resolution has been passed—

(a) make such orders as it thinks fit for the opening of subscriptions by the shareholders towards such increase of capital :

- (b) allow to the shareholders such period to fill up the subscription as it thinks fit;
- (c) direct the manner in which the shareholders shall subscribe and pay into the Bank the proportions of new capital which they may respectively desire to subscribe; and
- (d) make such orders as it thinks fit for the disposal and allotment of the amount of new capital that may not be subscribed for and paid up in the manner aforesaid.

21. Any new shares shall be subject to the same provision with reference to the payment of calls, lien, transfer, transmission forfeiture and otherwise as the shares in the original capital.

22. When any such special resolution to reduce the capital has been passed, the Central Board may (subject as aforesaid) determine the manner in which the reduction shall be carried into effect.

Meetings of Shareholders.

23. (1) On the first Monday of the month of August in every year, or as soon after such day as is convenient, a general meeting shall be held at such time and at such town where there is a local head office of the Bank as shall from time to time be prescribed by the Central Board, at which meeting the Central Board shall submit to the shareholders a balance sheet of the Bank made up to the preceding thirtieth day of June;

Provided that such general meeting shall not be held on two consecutive occasions at any one town in which there is a local head office of the Bank.

(2) A notice convening such meeting, signed by a Managing Director or Deputy Managing Director shall be published in the *Gazette of India* and in such other manner as the Central Board may direct at least fifteen days before the meeting is held.

24. (1) The Central Board shall convene a special meeting on the requisition of any three Directors or of not less than one hundred shareholders holding shares whether fully paid up or otherwise of the aggregate amount of not less than five hundred thousand rupees, upon which all calls or other sums due have been paid, if such requisition is signed by the requisitionists and addressed to the Managing Director or Deputy Managing Director and contains a statement of the object of the proposed meeting.

(2) The requisition may consist of several documents in like form, each signed by one or more of the requisitionists.

(3) Sixty days' previous notice of any such meeting shall be given by the Central Board under the hand of not less than three Directors, and such notice shall state the purpose for which the meeting is convened and the time and place of such meeting, and shall be advertised in the *Gazette of India* and in not less than three daily newspapers, of which one shall be a newspaper published in the vernacular :

Provided that not less than three months' previous notice shall be thus given of any special meeting held for the purpose of increasing or reducing the capital of the Bank.

(4) The place of such meeting shall be the place where the head office of the Bank is situated at the time of the meeting.

(5) If the Central Board does not proceed within 21 days from the date of deposit of the requisition referred to in sub-sections (1) and (2) to cause a meeting to be called, the requisitionists, or a majority of them in value, may themselves call the meeting, but in either case any meeting so called shall be held within three months from the date of deposit of the requisition.

25. (1) No business shall be transacted at any meeting, whether general or special, unless a quorum of two hundred shareholders, in person or by proxy is present at the commencement of such business.

(2) If within one hour from the time appointed for the meeting a quorum is not present, the meeting, if convened by shareholders not being Directors shall be dissolved : in any other case, it shall stand adjourned to the same day in the following week at the same time and place, and if at such adjourned meeting a quorum is not present, those shareholders who are present, shall be a quorum.

Decision by majority of votes. 26. (1) Save as is otherwise provided in this Act in regard to resolutions for the increase or reduction of capital or for the removal of a Director every election and every matter submitted to a meeting, whether general or special shall be decided by a majority of votes.

(2) No shareholder shall be allowed to vote at any such meeting in respect of any share acquired by transfer; unless such transfer shall have been completed and registered at least three months before the time of such meeting.

(3) No shareholder shall be entitled to vote at any meeting in respect of any shares held by him alone or jointly, whilst any call due from him alone or jointly remains unpaid.

27. Save as otherwise provided in this Schedule a declaration by the chairman of any meeting, that a resolution has been carried or rejected thereat upon a show of hands, shall be conclusive, and an entry to that effect in the book of proceedings of the Bank shall be sufficient evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution, unless immediately on such declaration, a poll be demanded in writing by ten shareholders present and entitled to vote at such meeting.

Power to declare resolution carried by show of hands.

28. If a poll be duly demanded, it shall be taken either at once or at such time and place, and save as otherwise provided in this Act, either by open voting or by ballot, as the chairman directs and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

Poll to be taken, if duly demanded.

29. The proceedings at any meeting and all resolutions and decisions of such meeting shall be valid and binding on the Bank so far as such proceedings, resolutions and decisions are consistent with the provisions of this Act.

Proceedings and resolutions at meetings to be binding.

Votes of Members.

30. On a show of hands every shareholder present in person shall have one vote. On a poll every shareholder shall have one vote for every four shares of which he is the holder.

Votes.

31. In the case of joint-holders, the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint-holders; and for this purpose seniority shall be determined by the order in which the names stand in the register of shareholders.

Votes of joint-holders.

32. A shareholder of unsound mind, or in respect of whom an order has been made by any Court having jurisdiction in lunacy, may vote whether on a show of hands or on a poll, by his committee or other legal guardian, and a shareholder who is a minor may similarly vote by his guardian and any such committee or guardian may, on a poll, vote by proxy.

Votes on behalf of lunatics.

Shareholders in default. 33. No shareholder shall be entitled to vote at any general meeting unless all calls or other sums presently payable by him in respect of shares in the Bank have been paid.

Poll 34. On a poll votes may be given either personally or by proxy.

Form of proxies. 35. The instrument appointing a proxy shall be in writing under the hand of the appointer or of his attorney duly authorized in writing. No person shall act as a proxy unless either he is entitled on his own behalf to be present and vote at the meeting at which he acts as proxy, or he has been appointed to act at that meeting as proxy for a corporation.

Deposit of proxies. 36. The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed, or a notarially certified copy of that power or authority or in the case of a power of attorney previously deposited and registered with any local head office, a certificate of the Secretary of such local head office as to such deposit and registration shall be deposited at the head office of the Bank in the place where the meeting is to be held not less than ninety-six hours before the time for holding the meeting at which the person named in the instrument proposes to vote, and in default the instrument of proxy shall not be treated as valid.

Local Meetings.

Annual local meeting. 37. A general meeting of the shareholders on a branch register shall be held once in every year at the local head office of the Bank at which the branch register is kept. It shall be held on such date as the Central Board may direct.

Procedure at local meeting. 38. The foregoing provisions of this Schedule as to the convening of general and special meetings and procedure at meetings shall, so far as may be, apply to local and special local meetings of the shareholders on a branch register ;

Provided that references in the said provisions to shareholders shall be deemed to be references to shareholders on the Branch register, and references to Directors, the Managing Governor or Deputy Managing Governor, and the *Gazette of India* shall be deemed to be references, respectively, to the members of the Local Board, secretaries and to the local official Gazette :

Provided further that ten or more share-holders holding share to the aggregate amount of fifty thousand rupees may convene a special local meeting and that the number of share-holders to constitute a quorum and to demand a poll in the case of a local meeting shall be, respectively, twenty and five.

Qualifications and disqualifications of Directors and others.

Qualification and disqualification of Directors and of members of Local Boards. 39. (1) No person shall be qualified to serve as a Director or as member of a Local Board who is not a holder in his own right of unencumbered shares of the Bank, to the nominal amount of ten thousand rupees at the least ;

Provided that this provision shall not apply in the case of a person who is an officer of the Bank or is nominated by the Governor-General-in-Council.

(2) No person shall be qualified to serve as a Director or as a member of a local board—

if he holds the office of director, provisional director, promoter, agent or manager of any joint-stock bank established, or having a branch or agency, in British India, or advertised as about to be established, or to have a branch or agency in British India :

Provided that this disqualification shall not apply to any person, being a director of a joint-stock bank, who may be nominated as a Director under the provision of clause (iv) of sub-section (1) of S. 28; or

if he is a salaried officer of Government not specially authorized by this Act or by the Governor-General-in-Council to serve as a member;

and the office of a Director or a member of the Local Board shall be vacated—

if the person holding it resigns his office or dies ;

if he accepts or holds any other office of profit under the Bank ;

if he becomes insolvent or bankrupt, or compounds with his creditors ;

if he is declared lunatic, or becomes of unsound mind ;

if he is absent from the Central Board or the Local Board, as the case may be, for more than six consecutive months ; or

if he ceases to hold in his own right the amount of shares required to qualify him for the office.

(3) No two persons who are partners of the same mercantile firm, or are directors of the same private company, or one of

whom is the general agent of, or holds a power of procurement from the other, or from a mercantile firm of which the other is a partner, shall be eligible or qualified to serve as members of the Central Board or of the same Local Board at the same time.

Removal of Directors and members of Local Boards.

40. The shareholders may, by a special resolution passed by a majority of the votes of shareholders holding in the aggregate not less than one-half of the capital, remove any Director other than a Director nominated by the Governor-General-in-Council before the expiration of his period of office, and appoint, in his stead, a qualified person, who shall in all respects stand in his place.

Removal of Directors.

41. The shareholders on a branch register may, by a special local resolution passed by the votes of shareholders holding in the aggregate not a less than one-half of the capital on the branch register remove any member of the Local Board before the expiration of his period of office, and appoint, in his stead, a qualified person who shall in all respects stand in his place.

Meetings of Central Board.

42. (1) Meetings of the Central Board shall be convened not less than once in every four months by the managing Director or Deputy Managing Director and a meeting of the Central Board shall be held once at least in every year at each of the local head offices established at Calcutta, Bombay, and Madras ;

Meetings of Central Board.

Provided that not less than four meetings shall be convened by the Managing Director or Deputy Managing Director in every year.

(2) Any Local Board may require the Managing Director or Deputy Managing Director to convene a meeting of the Central Board at any time and the Managing Director or Deputy Managing Director shall forthwith convene a meeting accordingly.

(3) Four Directors entitled to vote shall form a quorum for the transaction of business.

(4) At each meeting of the Central Board the Directors present shall elect from among themselves a chairman for such meeting, who, if he is entitled to vote, shall have a second or casting vote in all cases of an equal division of votes.

Local Boards.

43. (1) At the first general local meeting after the commencement of this Act, and at the annual general local meeting thereafter, the two members of the Local Board who have been longest in office as members thereof shall go out of office. The vacancies shall be filled by election at a general or special local meeting.

Term of office and number of members of Local Boards.

(2) Any member so retiring may be re-elected; and if any question arises as to which of the members who have been the same time in office shall retire, the question shall be decided by the Local Board by ballot.

(3) Subject to any bye-laws which may be prescribed the number of members of any Local Board may be varied by a special local resolution.

(4) Three of the members of a Local Board shall form a quorum for the transaction of business.

(5) Meetings of a Local Board shall be convened by the president, vice-president or, in their absence, the senior member of the Board, whenever he thinks fit.

44. (1) At the first meeting of the Local Board which takes place after the first meeting of the Central Board in each year, the Local Board shall elect from among its members a president and a vice-president and the elected Director referred to in clause (ii) of sub-section (1) of section 28. They shall continue in their respective offices until the first meeting of the Local Board after the first meeting of the Central Board in the following year, and, whenever the office of president or vice-president or of such elected Director becomes vacant, the Local Board shall at its next meeting elect a successor who shall hold office for the unexpired portion of the period for which his predecessor was appointed.

(2) The president or, in his absence, the vice-president shall be chairman at all meetings of the Local Board at all general or special meetings held in the town where the Local Board is established and at all general or special local meetings.

Provided that, if both the president and vice-president be absent at any meeting the persons present at such meeting shall elect a chairman from among the members of the Local Board present.

(3) The chairman shall have a second or casting vote in all cases of an equal division of votes.

45. (1) Any vacancy occurring on a Local Board by the death, resignation or disqualification of any member shall be filled up by the remaining members who shall co-opt a duly qualified person to fill the vacancy.

(2) Any member so appointed shall be considered to have held office from the date on which the member in whose place he is appointed was elected or, when such member was appointed under this clause, from the date on which his mediate or immediate predecessor was elected, as the case may be.

General provisions as to Central and Local Boards.

46. No act or proceeding of the Central Board or of a Local Board shall be invalidated merely by reason of the existence of a vacancy or vacancies among its Directors or members.

47. All acts done by any person acting in good faith as a Director or as a member of a Local Board shall be as valid as if he was a member of the Central or Local Board as the case may be, notwithstanding it be afterwards discovered that there was some defect in his appointment or qualification.

48. (1) Every Director and every member of a Local Board shall be indemnified by the Bank against all losses and expenses incurred by him in or about the discharge of his duties, except such as happen from his own wilful act or default.

(2) A Director shall not nor shall a member of a Local Board be responsible for any other Director or member, or for any officer or servant of the Bank or for any loss or expense happening to the Bank by the insufficiency or deficiency of, value of or title to, any property or security acquired or taken on behalf of the Bank, or by the insolvency, bankruptcy or wrongful act of any customer or debtor of the Bank, or by anything done in the execution of the duties of his office or in relation thereto, or otherwise than for his own wilful act or default.

The Seals.

49. (1) The common seal of the Bank shall not be affixed to any instrument except in the presence of at least three Directors including the Managing Director or Deputy Managing Director who shall sign their names to the instrument in token of their presence, and such signing shall be independent of the signing of any person who may sign the instrument as a witness. Unless so signed as aforesaid such instrument shall be of no validity.

(2) The Bank shall have for use by the Local Boards at Calcutta; Madras and Bombay and may have for the use of other Local Boards established under this Act official seals which shall be facsimiles of the common seal of the Bank with the addition of the name of the local head office where it is to be used.

(3) The official seal shall be affixed to the certificates issued in respect of any shares entered in the branch registers kept at those places and may be used for such other purposes as may be prescribed.

(4) An instrument to which an official seal is duly affixed shall bind the Bank as if it had been sealed with the common seal of the Bank.

(5) An official seal shall not be affixed to any instrument except in the presence of at least two members of the Local Board and the secretary or deputy secretary who shall sign their names to the instrument in token of their presence and such signing shall be independent of the signing of any person who may sign the instrument as a witness. Unless so signed as aforesaid such instrument shall be of no validity.

Officers of the Bank.

Appointment, salaries, suspension and removal of officers.

50. The Central Board and subject to the provisions of this Act, the Local Boards shall have power—

- (a) to appoint such officers, and servants as may be necessary to conduct the business of the Bank,
- (b) to grant salaries, pensions and other emoluments to such officers and servants, and to grant gratuities or other financial assistance, either temporary or permanent, to widows, children or other dependants, of deceased officers or servants, and
- (c) to suspend or remove any officer or servant of the Bank.

51. The Managing Director and Deputy Managing Director, the secretaries and such other employees of the Bank as the Central Board may authorize in this behalf by notification in the *Gazette of India* are hereby severally empowered for and on behalf of the Bank to endorse and transfer promissory notes, stock receipts, stock debentures, shares, securities and documents of title to goods, standing in the name of, or held by, the Bank and to draw, accept and endorse bills of exchange, bank post-bills, and letters of credit, in the current and authorized business of the Bank, to sign all other accounts, receipts and documents connected with such business, and to execute proxies to vote at meetings on behalf of shareholders from whom the Bank holds general powers of attorney.

Accounts, receipts and documents of Bank by whom to be signed.

52. No Managing Director, secretary, inspector, manager, or accountant in the service of the Bank and, without the previous sanction of the Board, no *khazanچی*, cashier or shroff in the service of the Bank and no agent, at any branch or agency of the Bank, shall engage in any other banking or commercial business, either on his own account or as agent for any other person or persons, or shall act as broker or agent for the sale or purchase of Government or other securities.

53. Every person appointed to hold or act in any one or more of the said offices, and every other officer from whom Security from officers, the Central Board may think fit to require it, shall give security to the Bank for the faithful discharge of his duty to the satisfaction of the Central Board in such amount and in such manner as it thinks proper. The security to be given as aforesaid by the person holding or acting in the office of secretary shall not be in a less amount than fifty thousand rupees.

Accounts and Dividends.

54. (1) The Central Board shall cause the Books to be balanced twice a year. books of the Bank to be balanced on every thirty-first day of December and every thirtieth day of June.

(2) A statement of the balance at every such period, signed by a majority of the Directors shall be forthwith sent to the Governor-General-in-Council.

(3) The statement of the balance shall contain the particulars and shall be in the form required by section 132 of the Indian Companies Act, 1913, and the provisions of that section and of section 136 of the same Act, shall apply to the Bank in like manner as they apply to a banking company.

55. (1) An account of the profits of the Bank during the previous half-year shall be taken on or immediately after every thirty-first day of December and every thirtieth day of June, and a dividend shall be made as soon thereafter as conveniently may be and the amount of such dividend shall be determined by the Central Board.

(2) No unpaid dividend shall bear interest as against the Bank.

56. The Central Board may, before declaring any dividend, set aside out of the profits of the Bank such sums as it thinks proper as a reserve or reserves which shall, at the discretion of the Central Board, be applicable Transfer to Reserve.

for meeting contingencies, or for equalizing dividends, or for any other purpose to which the profits of the Bank may be properly applied, and pending such application may, at the like discretion, either be employed in the business of the Bank or be invested in any of the securities specified in sub-clauses (i) to (iii) of clause (a) of Part I of Schedule I.

Joint-holders. 57. If several persons are registered as joint-holders of any share, any one of them may give effectual receipts for any dividend payable on the share.

Audit.

Auditors. 58. (1) Three auditors shall be elected and their remuneration fixed at the annual general meeting. The auditors may be shareholders; but no Director or member of a Local Board or other officer of the Bank shall be eligible during his continuance in office. Any auditor shall be eligible on quitting office for re-election.

(2) The first auditors of the Bank may be appointed by the Central Board before the annual general meeting and if so appointed shall hold office only until the first annual general meeting. All auditors elected under this clause shall severally be and continue to act as auditors until the first general meeting after their respective elections:

Provided that, if any casual vacancy occurs in the office of any auditor elected under this section the vacancy may be filled by the Central Board.

Government auditors. 59. Without prejudice to anything contained in the foregoing provisions the Governor-General-in-Council may appoint such auditors as he thinks fit to examine and report upon the accounts of the Bank.

Rights and duties of auditors. 60. (1) Every auditor shall be supplied with a copy of the half-yearly balance-sheet, and it shall be his duty to examine the same, with the accounts and vouchers relating thereto. Every auditor shall have a list delivered to him of all books kept by the Bank, and shall at all reasonable times have access to the books, accounts and other documents of the Bank, and may, at the expense of the Bank if appointed by it and at the expense of the Governor-General-in-Council if appointed by him, employ accountants or other persons to assist him in investigating such accounts, and may, in relation to such accounts, examine any Directors or any member of a Local Board, or any officer of the Bank.

(2) The auditors shall make a report to the shareholders or to the Governor-General-in-Council, as the case may be, upon the annual

balance-sheet and accounts and in every such report they shall state whether, in their opinion, the balance-sheet is a full and fair balance-sheet containing the prescribed particulars and properly drawn up so as to exhibit a true and correct view of the state of the Bank's affairs, and in case they have called for any explanation or information from the Central Board, whether it has been given and whether it is satisfactory. Any such report made to the shareholders shall be read together with the report of the Central Board at the annual general meeting.

60 A. Notwithstanding anything contained in this Act or in section 271 of the Indian Companies Act, 1913, if the shareholders of the Bank pass a special resolution that the Bank be wound up voluntarily under the provisions of the Indian Companies Act, 1913, the Bank shall be wound up in accordance with the provisions of that Act with regard to the voluntary winding up of a company:

Provided that, for the purposes of this section, no such special resolution shall be deemed to have been passed unless at least one-third of the shareholders holding at least one-half of the paid-up capital of the Bank for the time being be present in person or by proxy and a majority poll by open voting in favour of the said resolution and such resolution is thereafter confirmed by a majority of the shareholders at a subsequent special meeting held at an interval of not less than two months or more than three months from the date of the meeting at which the resolution was first passed.

Notices.

61. (1) A notice may be given by the Bank to any shareholder either personally or by sending it by post to him to his registered address or (if he has no registered address in British India) to the address, if any within British India supplied by him to the Bank for the giving of notices to him.

(2) Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

62. A shareholder who has no registered address in India and has not supplied to the Bank an address for the giving of notices to him shall not be entitled to any notice, notwithstanding anything contained in this Act.

63. A notice may be given by the Bank to the joint-holders of a share by giving the notice to the joint-holder named first in the register in respect of the share.

64. Any notice given in accordance with the foregoing provisions shall be deemed to have been duly given notwithstanding that the shareholder be then deceased and whether or not the Bank had notice of his decease and shall in that event be deemed to be a notice to his legal representative.

65. A notice may be served on the Bank by leaving it at, or sending it by post to, any local head office of the Bank.

SCHEDULE III.

ENACTMENTS REPEALED

(See section 34.)

| Year. | Number | Short title. |
|------------|--------|---|
| 1876 | XI | The Presidency Banks Act, 1876. |
| 1879 | V | The Presidency Banks Act, 1879. |
| 1899 | XX | The Presidency Banks Act, 1899. |
| 1907 | I | The Presidency Banks (Amendment) Act, 1907. |
| 1916 | VIII | The Presidency Banks (Amendment) Act, 1916. |

THE IMPERIAL BANK OF INDIA (AMENDMENT) ACT

(ACT III OF 1934.)

*An Act further to amend the Imperial Bank of India Act, 1920,
for certain purposes.*

[6th March 1934.]

Whereas by reason of the constitution of the Reserve Bank of India it is expedient further to amend the Imperial Bank of India Act, 47 of 1920, in order to modify the control of the Governor-General-in-Council over the management of the Bank, to remove certain restrictions on the transaction of business by the Bank, and to provide for an agreement between the Bank and the Reserve Bank of India; It is hereby enacted as follows :—

1. *Short title and commencement:—*

- (1) This Act, may be called the Imperial Bank of India (Amendment) Act, 1934.
- (2) It shall come into force on such date as the Governor-General-in-Council may, by notification in the *Gazette of India*, appoint.

41. *Temporary saving of existing Central Board:—*Notwithstanding any amendment made in the said Act by this Act in regard to the manner in which the Central Board shall be constituted, the Central Board existing at the commencement of this Act shall, until it has been re-established in accordance with the said Act as amended by this Act, continue to transact business and shall have all the powers of the Central Board under the said Act as so amended.

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