

The Banking Companies (Liquidation) Punjab & Delhi Rules, 1957

PUNJAB

India

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Rule

THE-BANKING-COMPANIES-LIQUIDATION-PUNJAB-DELHI-RULES-1957

- Published on 31 July 1952
- Commenced on 31 July 1952
- [This is the version of this document from 31 July 1952.]
- [Note: The original publication document is not available and this content could not be verified.]

The Banking Companies (Liquidation) Punjab & Delhi Rules, 1957Published vide High Court Notification No. 156-16-A-101/Liquidation dated the 31st July, 1952In exercise of the powers conferred by Section 45-N(2) and Section 45-U of the Banking Companies Act, 1949 (Act X of 1949), as amended, and in supersession of the Banking Companies, Punjab & Delhi Rules, 1952, as published in Notification No. 156-XVI-A-101/Liqn. dated the 31st July, 1952, the Punjab High Court hereby makes the following rules :-

1. Short title.

- These rules may be called "The Banking Companies (Liquidation) Punjab and Delhi Rules, 1957."General

2. Definition.

- In these rules, unless there is anything repugnant in the subject or context :-(i)'Act' means the Banking Companies Act, 1949 (X of 1949) as amended from time to time.(ii)'Company' means a company to which the provisions of the Act apply.(iii)'Form' means a form given in the Appendix to these rules.(iv)References to Indian Companies Act, 1913 in these rules shall be deemed to be references to corresponding provisions of the Indian Companies Act, 1956, in relation to banking companies wound up on or after the 1st of April, 1956.

3. Presentation of Petition.

- Applications under Part III or Part III-A of the Act in respect of a Company shall be presented by litigants or their Advocates by depositing them in the petition box of the court outside the room of the Deputy Registrar.

4. General Heading.

- Applications under Part III or Part III-A of the Act shall be instituted in the matter of the Act and in the matter of the Banking Company and where necessary in the matter of the Act under which the Banking Company has been ordered to be wound up as follows :-The Punjab High Court _____ .In the matter of the Banking Companies Act X of the 1949 (and in the matter of _____ Act) and of the Limited _____ Petition under Section(s) _____.
Petitioner.versus _____ Respondents.

5. Drafting of Petition.

- The petition shall contain a statement of facts relied on and the nature of the relief asked for, and shall be signed and verified in the same manner as a plaint under the Code of Civil Procedure and shall be supported by an affidavit.

6. Notice of Petition.

- Where a notice is directed to be given to any party, it shall be served together with a copy of the petition and the petition shall not be heard until fourteen days after the service of the notice, unless the Court otherwise directs.

7. General Duties and Powers of the Special Officer.

- Without prejudice to the generality of the powers of the Court under section 37(3) of the Act -(a)A Special Officer appointed under section 37(3) of the Act shall furnish security in such amount as may be ordered by the Court.(b)He shall generally have all the powers and shall take all the steps to do all the things necessary or expedient to protect the rights and interest of all the creditors and share holders of the Banking Company and to conserve and ensure the proper disposition according to law of the assets of the Banking Company.(c)The Special Officer may be empowered to represent the Banking Company in proceedings before any Court, Tribunal or Public Officer.(d)The Special Officer shall, where his duties so require, maintain proper accounts.(e)The Special Officer may apply to the Court for such directions as he may deem necessary.(f)The Special Officer shall be paid such remuneration as may be determined by the Court, which shall be paid, unless the Court otherwise directs, from the assets of the Banking Company.(g)The Special Officer shall continue to supervise the affairs of the Banking Company until he is removed from office, or the term of his appointment terminates, or until the Banking Company resumes business or until a Liquidator is duly appointed

to wind up the business of the Banking Company.(h)An order appointing the Special Officer shall be in Form No. 1.

8. Inspection of the Report of the Reserve Bank of India.

- No person, other than the parties to the proceedings and the Official Liquidator shall be entitled to inspection of any report made by the Reserve Bank of India or be entitled to receive a copy thereof, without an order of the Court.

9. Applications in winding up to be by petition.

- Applications for the determination of all questions of priorities and all other questions whatsoever, whether of law or fact, which may relate to or arise in the course of the winding up of a Banking Company, shall be made by petition. The petition shall contain a statement of facts relied on and the nature of the relief asked for. The petition shall be signed and verified in the same manner as a plaint and shall be supported by an affidavit.

10. Interim Orders.

- The Court on hearing the application may pass such interim orders as it deems proper.

11. Affidavit in Answer.

- An answer to the petition under the Act shall be made by filing an affidavit and a copy thereof shall be furnished to the petitioner or his Advocate at least two clear days before the returnable date of the notice.

12. Directions for the hearing of the petition.

(a)On the date fixed for the hearing of the petition, the Court may proceed to hear the petition or give such directions as it may think proper as to discovery and inspection, examination of witness in Court or in Chambers, taking of evidence by affidavit or otherwise and generally for the speedy determination of the petition.(b)An order for the winding up of a company under the Act shall be in Form No. 2.

13. Transfer of suits and proceedings to the High Court.

- When the Official Liquidator submits to the Court a report under section 45-C(2) of the Act, he shall apply to the Judge for the time being dealing with the proceedings for the winding up of the Company or to such other Judge as the Chief Justice may direct, for directions as to the parties to whom notice may be given and the date and time for holding an inquiry whether or not the suits and proceedings mentioned in the report should be transferred to the High Court. The notice shall contain particulars of the suit or proceeding in which the party may be concerned and require him to

appear and show cause why it should not be transferred to the High Court. The notice shall be served fourteen days before the date appointed for holding the inquiry.

14. Affidavit in reply.

- Any party desiring to oppose the transfer of the suit or proceeding to the High Court shall file an affidavit and furnish a copy thereof to the Official Liquidator or his advocate at least two clear days before returnable date of the notice.

15. When proceedings not transferred, Court may request expedition of the same.

- If any proceeding in any Court is not transferred to the High Court under section 45-C(3) the Judge for the time being dealing with the proceedings for the winding up of the Banking Company or such other Judge as the Chief Justice may direct may issue directions to the Deputy Registrar to write a letter of request to the Court in which the proceeding is pending, requesting that the proceeding may be disposed of as expeditiously as possible.

16. List of Debtors.

(1)When the Official Liquidator files in the Court a list of debtors under section 45-D(2) of the Act, he shall obtain an appointment from the Judge for the time being dealing with the proceedings for the winding up of the Banking Company or from such other Judge as the Chief Justice may direct to settle the same and shall give notice in writing of such appointment to every person mentioned in such list. The notice shall contain such of the particulars mentioned in the list of debtors as are applicable to such person. In case any variation or addition to such list is made by the Official Liquidator, a similar notice in writing shall be given to every person to whom such variation or addition applies. All such notices shall be served four weeks before the date appointed to settle such list, variation or addition.(2)The Official Liquidator shall file in Court a sufficient number of copies of the list of Debtors to enable the Court to supply all Debtors and the parties with a copy each of the list. In addition to the above, two copies for the use of the court shall also be filed.

17. Service of Notice.

(a)Service of notice upon the debtors shall be effected by sending the notice through post by a Registered letter or if the Court so directs under certificate of posting. The notice shall be addressed to the party to his last known address or place of abode and such notice shall be considered as served at the time the same ought to be delivered in due course of delivery by the Post Office and notwithstanding the same may be returned by the Post Office.(b)If a debtor desires to show cause against the inclusion of his name in the list of debtors he shall file an affidavit and furnish a copy thereof to the Official Liquidator or his attorney or advocate at least seven clear days before the day appointed for the settlement of the list.

18. Statement of the list of Debtors.

- On the date fixed for settlement of the list of debtors, the Court may settle the list or such part thereof as it may think proper. If the Court is of opinion that it is not immediately possible to adjudicate upon any particular debt mentioned in the list, it may give such directions as it may think proper as to discovery and inspection, examination of witness in Court or in Chambers, taking of evidence by affidavit or otherwise and generally for the speedy adjudication of the debt. The Court may in a special case refer the Official Liquidator to a regular suit.

19. Official Liquidator to Report, if he contests claims of depositors.

- If the Official Liquidator desires to contest a claim shown in the books of the company as due to a depositor on the ground that there is reason for doubting the correctness of any particular entry in the books, he shall make a report to the Judge for the time being dealing with the proceedings for the winding up of the Banking Company or to such other Judge as the Chief Justice may direct stating his reason for doubting the correctness of such entry; and if, upon such report, the Court is satisfied that there is prima facie reason for doubting the correctness of the entry, the Judge may cause notice to be given to the depositor concerned to come in and prove his claim.

20. Register of suits in winding up matters.

- Suits in respect of claims made by or against any Company in Liquidation including claims by or against any of its Branches in India which are filed in the High Court or transferred to it under the Act shall be entered in a separate list to be maintained by the Deputy Registrar and shall be treated as expedited suits. If such suits have been filed before the date of the order for winding up, the Official Liquidator shall furnish to the Deputy Registrar a list of such suits.

21. Hearing of suits and matters.

- All suits referred to in the preceding rule and all matters and proceedings connected with the suits shall be heard by the Judge for the time being dealing with the proceedings for the winding up of the Banking Company or by such other Judge as the Chief Justice may direct.

22. Procedure in such suits.

(a) In all such suits the following procedure shall be followed :- Within ten days of the service of the summons or such longer period as the Court may direct on the application of the plaintiff in that behalf, the plaintiff shall take out a summons for directions and the court shall give such directions as it may think proper as to filing the written statement and counter-claim, if any, or points of defence, discovery, inspection, examination of witness in Court or in chambers, taking of evidence by affidavit or otherwise and generally for the speedy determination of the suit. (b) As soon as practicable after the list of debtors has been settled and signed by the Judge under sub-section (4) of Section 45-D of the Act, a certificate in Form No. 3 shall issue under the seal of the Court and signed

by the Deputy Registrar in terms of sub-section (6) of Section 45-D of the Act in respect of each debtor placed on the list setting out the relevant particulars.

23. Application for inspection of records.

- The Reserve Bank of India may apply to the Judge for the time being dealing with the proceedings for the winding up of a Company or to such other Judge as the Chief Justice may direct, for permission to inspect the records of the Company or of the High Court in the matter of the Company, and such permission may be granted by the Judge in his discretion.

24. Recovery of dues as arrears of Revenue.

- When the Court grants leave under section 45-T(3) of the Act for recovery of any amount found due to the Company, the Official Liquidator may apply to the proper Revenue Authorities to recover the said amount as arrears of land revenue.

25. Supervision of carrying out of compromise or arrangement.

- Where an order under section 153 of the Indian Companies Act, 1913 (Act VII of 1913), sanctioning a compromise or arrangement in respect of a Banking Company is passed, the Court may direct the Official Liquidator or any other person to supervise the carrying out of the compromise or arrangement and to make a report to the Court in regard thereto. Civil Appeal

26. Appeal to the High Court to be heard by Division Bench.

(a) Subject to the provisions of Section 45-N(1) of the Act, an appeal shall lie from an order or decision of a Judge in a civil proceeding under the Act to a Division Bench of the High Court. (b) Rules relating to appeals contained in the Punjab High Court Rules and Orders, Volume V, shall apply mutatis mutandis to such appeals.

27. Period for filing appeals.

- The appeal shall be filed within 20 days from the date of the decree or order appealed from. Criminal Complaints and Public Examination

28.

(1) As soon as practicable after the order of winding up is made or within such time as the Court may grant, the Official Liquidator shall file into court the report required by sub-section (1) of Section 45-G of the Act, for directions. (2) After hearing the Official Liquidator, the court may direct notice to issue to persons concerned to show cause why they should not be publicly examined. (3) After hearing all the parties on the day fixed in the notice, or on such other day to which the matter may be adjourned, the court may, if it desires to direct the public examination of any one or more

person(s), fix a date for such examination.(4)The Official Liquidator shall notify the creditors and contributories of the company of the original date fixed under the preceding sub-rule by advertisement in a newspaper or in such other manner as the court may direct.

29. Presentation of complaints and issue of process.

- Proceedings under section 45-J of the Act shall commence with a complaint being presented by the Official Liquidator to such Judge as the Chief Justice may direct. On presentation of the complaint the Judge may issue a summons or a bailable or non-bailable warrant against the accused and shall fix a date for the trial, or may, if he thinks fit postpone the issue of process for compelling the attendance of the person complained against and may direct an inquiry or investigation to be made by the Inspector-General of Police or by such other person as he thinks fit, or may dismiss the complaint as he may in his discretion think fit.

30. Process in Criminal Cases.

- All complaints shall be filed with the Deputy Registrar and all process shall issue from the Court.

31. What offences to be tried summarily.

- Offences punishable under Indian Companies Act, 1913 (Act 7 of 1913), or under the Banking Companies Act, 1949 (Act X of 1949), with imprisonment for a term which does not exceed three years and or with fine which does not exceed one thousand rupees may be tried in a summary way. An offence triable under section 45-J(2) of the Act jointly with the offences mentioned in this rule may also be tried summarily provided that it is punishable with imprisonment for a term which does not exceed three years or with fine which does not exceed one thousand rupees.

32. Procedure in Summary trials.

- Where an offence triable under section 45-J(1) is tried summarily, the procedure provided in the Code of Criminal Procedure for the trial of Summons cases shall, so far as it is not inconsistent with the provisions of the Act, be applicable. Where, however the offence to be tried summarily under section 45-J(1) is tried jointly with an offence under section 45-J(2), the procedure provided in the Code of Criminal Procedure for the trial of Warrant cases shall be applicable provided that it shall not be necessary to adjourn the case under section 256(1) of the Code of Criminal Procedure before requiring the accused to enter upon his defence or inquiring of him whether he wishes to further cross-examine any witness whose evidence has been taken.

33. Procedure in Non-Summary trials.

- Where the offences triable under section 45-J are not tried summarily, the procedure provided in the Code of Criminal Procedure for the trial of Warrant cases shall, so far as it is not inconsistent with the provisions of the Act, be applicable.

34. Bail.

- The Court may at any time grant bail to the accused on such terms as it thinks proper.

35. Accused person to be competent witness.

- Any person against whom a complaint is filed by the Official Liquidator under the Act shall be a competent witness for the defence and may give evidence on oath in disproof of the charges made against him or any person charged together with him at the same trial. Provided that : (a) he shall not be called and examined as witness except with his consent; (b) his failure to give evidence shall not be made the subject of any comment by the prosecution or give rise to any presumption against himself or any person charged together with him at the same trial. (c) he shall not be asked, and if asked shall not be required to answer, any question tending to show that he has committed or been convicted of any offence other than the offence with which he is charged, or is of bad character unless - (i) the proof that he has committed or been convicted of such offence is admissible in evidence to show that he is guilty of the offence with which he is charged, or (ii) he has personally or by his Advocate asked questions of any witness for the prosecution with a view to establish his own good character, or has given evidence of his good character or the nature or conduct of the defence is such as to involve imputations on character of the prosecutor or of any witness for the prosecution, or (iii) he has given evidence against any other person charged with the same offence.

36. Compounding of offences.

- All offences triable under Part III-A of the Act may be compounded with the leave of the Court. Criminal Appeals

37. Appeal against conviction.

- (a) Any person convicted on a trial held by the High Court in the exercise of its jurisdiction under section 45-J of the Act may appeal to the High Court, where he has been sentenced to imprisonment exceeding six months or fine exceeding five hundred rupees. (b) The Official Liquidator may appeal to the High Court against any order of acquittal on any grounds which involves a matter of law only.

38. Period of limitation.

- An appeal under the last preceding rule shall be filed within 30 days from the date of the order appealed from.

39. Appeal to be filed with the Deputy Registrar.

- Appeals shall be filed with the Deputy Registrar of the Court.

40. Memorandum of Appeal.

- The memorandum of appeal shall be made in the form of a petition giving the grounds of objection numbered consecutively. It shall also show that the appeal is within time, and shall be accompanied by a certified copy of the Judgment or order of the Court.

41. Procedure in Appeals.

- On presentation of an appeal, the date of such presentation shall be marked thereon, and it shall be accepted, if within time, and placed on a register of appeals to be kept for the purpose. When an appeal appears to the Deputy Registrar to be beyond time, it shall be returned to the party or his advocate, unless the party or his advocate applies for it to be placed before the Court for orders. An application for excusing the delay in presenting the appeal may be made to the Deputy Registrar within a fortnight of the date of such return, and such application shall be placed before the Court for orders.

42. Admission of appeals.

- Applications referred to in the preceding rule, together with the memorandum of appeal in question and appeals which have been accepted by the Deputy Registrar being within time shall be placed for admission before a Division Bench constituted by the Chief Justice and composed of not less than 2 Judges, being Judges other than the Judge by whom the original trial was held.

43. Application for bail in appeals.

(a) Applications for bail shall ordinarily be heard by the Bench referred to in the preceding rule. (b) Applications mentioned in sub-rule (a) above may be made on a shorter notice than 48 hours, if the Court so permits. Ordinarily a copy of the application shall be supplied to the Official Liquidator at least 48 hours before the application is heard.

44. Paper-books to be prepared by appellant.

- In appeal, paper books shall be prepared at the cost of the appellant and shall be printed except where such printing is dispensed with by the Appellate Court, in which case the paper books shall be type-written.

45. Contents of paper books.

- Note. - Normally ten copies of printed paper books or six copies of typed paper books will be prepared. The paper book shall contain the following papers arranged in two parts in the same volume where practicable in the following order :-

Part I – (1) Complaint.

(2)Charge or charges against the accused in the trial Court.(3)Notes of evidence including statement of the accused.(4)Judgment including sentence or order.(5)Memorandum of appeal.(6)Order admitting the appeal.(7)Such other papers as may be deemed necessary by the Court.

Part II – Exhibits

46. Hearing of Appeals.

- After the paper books have been prepared, the appeal shall be set down for hearing and final disposal before a Division Bench constituted by the Chief Justice and composed of not less than 2 Judges, being Judges other than the Judge by whom the original trial was held.Miscellaneous

47. Section 5 Limitation Act Applicable.

- The provisions of Section 5 of the Indian Limitation Act shall apply to appeals - Civil or Criminal - under the Act.

48. Filing of appeals.

- All appeals - Civil or Criminal - shall be filed with the Deputy Registrar and shall be registered if within time and are otherwise in conformity with the Rules.

49. Procedure regarding appeals which are beyond time.

- When an appeal - Civil or Criminal - appears to the Office to be beyond time, it shall be returned to the party or his advocate unless it is accompanied by a separate petition for excuse of delay or the party or his Advocate applies for it to be placed before the Court for orders.

50. Application for excusing delay.

- An application for excusing the delay in presenting the appeal shall be filed within a fortnight of such return. Such application shall be placed before the Court for orders as soon as practicable.

51. Return of petition for removal of defects.

- The Deputy Registrar may return for amendment, within a time to be specified in an order to be recorded by him on the petition, any petition not drawn up in conformity with these rules.

52. Appeal not prosecuted diligently.

- Where an appellant after the admission of an appeal does not prosecute the appeal diligently the appeal shall be placed before the Appellate Court for orders. The appellate Court may dismiss the appeal or pass such orders as it may deem fit.

53. Applicability of Civil Procedure Code, Criminal Procedure Code and High Court Rules.

- The provisions of the Code of Civil Procedure, the Code of Criminal Procedure and the High Court Rules and Orders, unless inconsistent with these Rules, shall apply mutatis mutandis to civil and criminal proceedings or Appeals under these Rules.

54. Fees to be charged by Official Liquidator.

- Unless otherwise ordered by the Judge, the Official Liquidator shall charge fees according to the following scale :-(1)(a)In the High Court, upon the total assets except as provided in clause (1)(b) including produce of calls on contributories, realised or brought to credit and not being moneys received and spent on carrying on the business :-

On the first Rs. 10,000 or fraction thereof	5%
On the next Rs. 15,000 or fraction thereof	3%
On the next Rs. 25,000 or fraction thereof	2½ %
On the next Rs. 50,000 or fraction thereof	2%
On any sum above Rs. 1,00,000	1%
(b) On rents recovered	5%

(2)When the Official Liquidator collects, calls or realizes property for debenture holder of other secured creditors, the same rate of fees as under clause (1)(a) above to be paid out of the proceeds of such calls or property.(3)When the Official Liquidator acts as Trustee under a scheme of arrangement, such remuneration not exceeding the rate of fees under clause (1)(a) above as the Court shall allow.(4)When the Official Liquidator performs any special duties not provided for above, such amount as the Court on the application of the Official Liquidator may consider reasonable.

Part II – Appendix

Form No. 1[Rule 7(h)]Order appointing Special Officer(For general heading, see rule 4)Upon the petition of _____ filed _____ on the _____ day of 195 _____, under sub-section (1) of Section 37 of the Banking Companies Act, 1949, as amended, upon hearing _____, Advocate for the petitioner, _____, Advocate for the respondent, upon reading the petition and the affidavits of _____ and filed on the _____ day of 195 _____.(Enumerate all affidavits read) and the report of

the Manager of the Reserve Bank of India, _____ dated the _____ day of _____ 195 _____ and filed on the _____ day of _____ 195 _____. It is ordered :-(1)That A. B. _____ be and hereby is appointed the Special Officer for the said _____ Bank, Limited, pending disposal of the petition read above, or until further orders.(2)That the said A. B. _____ do forthwith take into his custody or under his control all the assets, books, documents, effects and auctionable claims to which the said _____ Bank, Limited, is or appears to be entitled and which are found at the registered office of the said Bank at (here enter the address) and all its branches at (here enter the address of the branches).(3)That all officers of the said Bank do assist the Special Officer in every aspect in carrying out this order.(4)That the Special Officer do submit a report to this Court on or before the _____ day of _____ 195 _____.(5)That the Special Officer be at liberty to apply to this Court for directions, if necessary. Deputy Registrar. Dated. Copy to -A.B. Advocate Special Officer. Form No. 2[Rule 12(b)](For general heading see rule 4)Upon the petition of the above-named company [(or A.B.) _____ of _____ a creditor (or contributory of the above-named Company) or of the Registrar of the Companies)], filed on the _____ day of _____ 195 _____ and the verification thereof by _____ A.B., _____ etc., filed, etc. and upon hearing the Advocate for (or attorney or agent of) the petitioner, and _____ for _____ and upon reading the "Local Gazette" of the _____ day of _____ 195 _____, the newspaper of the day of _____ 19 _____ (enter any other paper) each containing an advertisement of the said petition. This Court doth order that the said _____ Company be wound up by this Court under provisions of the Banking Companies Act, X of 1949. And it is ordered that the costs of the said petition be taxed and paid out of the assets of the said Company. Dated Deputy Registrar Form No. 3 Form of the Certificate[Vide Rule 22(b)](For general heading, see rule 4)

O.L. Applicant.

Respondent. Debtor No.

Certificate under section 45-D(6) and rule 22(6). Whereas in Application No. _____ of 195 _____, the Official Liquidator, applied for settlement of the list of certain debts of the above-named bank; And Whereas in respect of the debtor above-named an order was made by the Court on _____ day of _____ 195 _____, in the presence of _____ for the Liquidator and _____ for the said debtor; It is hereby certified that the said _____ (Debtor) was placed in the list as Debtor No. _____ and he was adjudged liable to and directed to pay to the Liquidator the sum of money with interest and costs specified hereunder :

1	2	3	4	5	6	7
Serial Number	Name and address	Description of Debt	Amount	Rate of interest	Costs	*Relief granted

*Here set out :(a)the relief against any guarantor;(b)in the case of debts secured by mortgage the particulars of the mortgaged property, the date of the order of sale and any other direction or

directions of Court.(c)in the case of payment by instalments, the particulars of the order as to payment of the instalments.DatedDeputy Registrar.