

THE BANKING COMPANIES (COURT) RULES, 1972.

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- (1) Rules framed under the Acts of the Sind Assembly and the Acts of the National Assembly; and
- (2) Other Statutory rules framed by the Sind and National Assemblies.

PART IV-A

GOVERNMENT OF SIND THE HIGH COURT OF SIND AND BALUCHISTAN, KARACHI.

NO. 22271/Gaz.V.Z.43. -- In exercise of Powers conferred under section 79 of the Banking Companies Ordinance, 1962 (Ordinance LVII of 1962), the High Court of Sind and Baluchistan has been pleased to make the following Rules:--

1. Short Title and Commencement.-

These rules shall be cited as the Banking Companies (Court) Rules, 1972 and shall come into force at once.

2. Interpretation.- In these Rules, unless the context or subject matter otherwise requires:-

- (1) The Ordinance means the Banking Companies Ordinance, 1962.
- (2) 'Certified' means in relation to a copy certified as provided in section 76 of the Evidence Act, 1872 (Act I of 1872).
- (3) 'Code' means the Code of Civil Procedure, 1908 (Act V of 1908).
- (4) 'Court' means the court having jurisdiction under the Ordinance.
- (5) 'High Court' means the Sind and Baluchistan High Court.
- (6) 'Registrar' means the Registrar of the High Court and includes the Additional Registrar.
- (7) 'The State Bank' means the State Bank of Pakistan and includes its branches.
- (8) 'The Rules, means Banking Companies (Court) Rules 1972 and includes the prescribed forms thereunder.
- (9) 'Sealed' means sealed with the seal of the Court.
- (10) 'Section' means sections of the Ordinance.

Save as aforesaid, and unless the context otherwise requires, words and expression contained in these Rules shall bear the same meanings, in the Ordinance, and the General Clauses Act, 1897 (X of 1897) shall apply for the interpretation of these Rules as it applies for the interpretation of an Act of parliament.

3. Practice and Procedure of the Court and provisions of the Code to apply.-

The provisions of the Code and the rules of the Court shall apply to all proceedings under the Ordinance save and to the extent to which they are inconsistent with the provisions of the Ordinance of the Rules.

4. Register to be kept.- There shall be kept, in the High Court, the following Registers relating to proceedings under this Ordinance and these Rules:-

- (1) Banking Company Petition Register in which shall be entered and numbered serially all the petitions filed under the Ordinance or these Rules with particulars as to:- (1) Date of presentation; (2) Name of Banking Company, (3) Name of parties and their Advocates, (4) Provisions of Law under which the petition is made, (5) Nature of relief Sought, (6) Date and nature of order made, (7) Date of filing of appeal, if any (8) Date of Deposal of appeal, and (9) Result of Judgement in appeal.
- (2) Banking Company Application Register in which shall be entered and numbered serially all applications other than Petitions with particulars as to:- (1) Date of presentation; (2) Name of Banking Company; (3) Number of main proceedings if any, to which the application relates, (4) Name of parties and their Advocates, (5) Provision of Law, if any, under which the application is made, (6) Nature of relief sought, (7) Date and nature of order made, (8) Date of filing of appeal, if any, (9) Date of disposal of appeal, and (10) Result of Judgement in appeal.
- (3) Appearance Book shall be maintained by the Registrar in which shall be entered the appearances filed by or on behalf of any creditor or contributory. No contributory or creditor shall be entitled to attend any proceeding before the judge, unless and until he or an Advocate on his behalf has filed an appearance with the Registrar.
- (4) Liquidations Register shall be maintained by the Liquidator in which shall be entered Banking Company wise, under a separate heading for each company ordered to be wound up, briefly in chronological order, all proceedings in winding up until conclusion of the winding up.
- (5) Banking Company Documents Register shall be maintained by the Liquidator in which shall be entered under separate heading for each Banking Company and valuable securities such as negotiable instruments, documents of title and the like that may be filed in proceedings before the Court.

- (6) Register of Petitions in winding up matters-petitions in respect of claims made by or against any Banking company in liquidation including claims by or against any of its Branches in Pakistan referred to in Section 61 of the Ordinance shall be entered in a separate list to be maintained by the office of the Court and shall be treated as expedited petitions.

Nothing in this Rule shall affect the discretion of the Court of direct the keeping of any other Register that may be deemed necessary.

5. Notice of petition and time of Service.- Notice of every petition required to be served upon any person shall unless otherwise orders by Court or provided by these Rules be served not less than 14 days before the date of hearing.

6. Service on Banking Company:-

- (1) Where a petition is presented against Banking Company, it shall be accompanied by a notice of the petition in the prescribed form together with a copy of the petition for service on the Banking Company and envelope addressed to the Banking Company at its registered office or its principal place of business and sufficiently stamped for being sent by registered post for acknowledgement. The registrar shall immediately on the admission of the petition and the notice together with the copy of the petition to the Banking Company by registered post.
- (2) Every petition and, save as otherwise provided by these Rules, or by an order or court, every application, shall unless presented by the Banking Company, be served on the Banking Company at its registered office, or if there is no registered office, at its principal or last known principal place of business, by leaving a copy thereof with an officer or employee of the Banking Company, and in case no such person is available, in such manner, as the judge or Registrar may direct, or by sending a copy thereof by prepaid registered post address to the Banking Company at its registered office, or, if there is no registered office, at its principal or last known principal place of business, or to such person and at such address as the Judge or Registrar may direct. Where the Banking Company is being wound up, the petition or application shall also be served on the liquidator, if any, appointed for the purpose of winding up the affairs of the Banking Company.

7. Mode of service and service when deemed to be effected:-

- (1) Save as otherwise provided by these Rules or by an order of court, all notices, summons, and other documents required to be served on any person, may be served either personally by delivering a copy thereof to such person, or upon his advocate where he Advocate or except where personal service is required, by prepaid registered post for acknowledgment duly addressed to the last known address of such person. In the case of service by registered post where no acknowledgment signed by the

addressee or his duly authorized agent is received, orders of court shall be obtained as to the sufficiency of service or as to the further steps to be taken for service as the court may direct; provided that where a notice summons or other documents has to be served on any class of person such as share-holders, debenture holders creditors and the like, the same may be sent by prepaid registered post or by ordinary post under the postal certificate of posting, as may be provided by these rules or by an order of court, and unless otherwise ordered by the court, the service shall be deemed to be effected at the time when the said notice, summons or other documents ought to be delivered in the ordinary course of post by the post office, and notwithstanding the same is returned to receive undelivered by the post office.

- (2) Where notice of any petition, application, summons or other proceeding has to be given to the Central Government under these rules, it shall be addressed to and served on the Secretary to Government of Pakistan or such other officer as the Central Government may authorize to receive notices on its behalf.
- (3) Where any person has to be served at an address outside Pakistan, the notice or other process to be served on him shall, subject to orders of the court, be sent to such an address by prepaid air mail registered post for acknowledgement due.

8. Validity of service and of proceedings.- No service under these Rules shall be deemed invalid by reason of any defect in the name or description of a person in the list of contributories or in the petition, summons, notice or other proceeding, provided that the court is satisfied that such service is in other respect sufficient; and no proceedings under the Ordinance or these Rules shall be invalidated by reasons of any formal defect of irregularity, unless the judge before whom the objections has taken is of the opinion that substantial injustice has been caused by such defect or irregularity and that the injustice cannot be remedied by an order of Court.

9. Advertisement of petition:

- (1) Where any petition is required to be advertised it shall, unless the judge otherwise orders, or these Rules otherwise provide, be advertised not less than Fourteen days before the date fixed for hearing, in one issue of the official Gazette of the province and in a daily newspaper in the English language and newspaper in the regional language circulating in the province concerned, as may be fixed by the judge;
- (2) Except in the case of a petition to wind up a Banking Company the Judge may, if he thinks fit, dispense with any advertisement required by these Rules.

10. Contents of advertisement. Contents of advertisement except as otherwise provided in these Rules, such advertisement shall be in form No. 1-A and shall state the date on which the petition was presented, the name and address of the petitioner and his advocate, the nature of the petition and the date fixed for hearing. It shall,

unless otherwise ordered further state that any person who intends either to oppose or support the petition at the hearing should send notice of his intention to the petitioner or his Advocate so as to reach him not later than four days previous to the day fixed for hearing, and in the case of a petition for winding up, not later than 5 days previous to the day fixed for the hearing of the petition.

11. Notice to be given by person intending to appear at the hearing of petition every person who intends to appear at the hearing of a petition whether to support or oppose the petition, shall serve on the petitioner or his advocate, notice of his intention at the address given in the advertisement, the notice shall contain the address of such person, and be signed by him or his advocate and save as otherwise provided by these Rules shall be served (or if sent by post, shall be posted in such time as to reach the addressee) not later than four days previous to the date of hearing and in the case of a petition for winding up, not later than five days of hearing to the day of hearing. Such notice shall be with such variation as the circumstances may require, and where such person intends to oppose the petition, the grounds of his opposition, or a copy of his affidavit, if any, shall be furnished alongwith the notice. Any person who has failed to comply with this Rule shall not except with the leave of the Judge, be allowed to appear at the hearing of the petition.

12. Application for winding up by petition.- Applications for the determination of priorities and all questions whatever, whether of law or fact, which may relate to or arise in the course of the winding up of a banking company mentioned in section 61 of the Ordinance, shall contain a statement of the facts relied on and the nature of the relief asked for and shall be supported by an affidavit.

13. Notice of petitions mentioned in the last proceeding rule shall be presented to the Judge for the time being dealing with the proceedings for the winding up the banking Company or to such other judge or the Chief Justice may direct. The Judge shall direct, notice of the petition to be given to the respondent or such person or persons as may seem to him likely to be affected by the proceedings. Such notice 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 judge otherwise directs.

14. Subject to the directions of the Court, notice of every petition under Rule 12 shall be served by registered post with acknowledgment due on all parties directly affected and in support of the same the petitioner shall file affidavit of service:

Provided that at the hearing of the petition any person, who desires to be heard, in opposition to the petition and appears to the court to be a proper person to be heard, shall be heard notwithstanding that he has not been served with notice and subject to such conditions as to costs as the Court, may deem fit to impose.

15. Official Liquidator to report if he contest claim of depositors.-

If upon receipt of claim by depositors of a Banking Company, the official Liquidator desire to contest a claim shown in the books of the Company as due to the depositors on the ground that there is reason for doubting any particulars entry in the

books, he shall make a report to the court stating the reason for doubting such entry, and if, upon such report the court is satisfied that there is prima facie reason for doubting any particular entry the Court may cause notice to be given to the depositor concerned to come in and prove his claim.

16. Presentation and hearing of complaints:-

- (1) Proceedings under Section 69 of the Ordinance shall commence with a complaint being presented by the Official Liquidator to such judge as the Chief Justice may direct. Such 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 dismiss the complaint as he may in his discretion think fit.
- (2) In the case of a trial Under Section 69(1), the procedure provided in the criminal procedure code for the trial of summons cases shall, so far it is not inconsistent with the provision of the Ordinance, be applicable.
- (3) In the case of a trial Under Section 69, Sub-Section (4) the procedure provided in the Criminal Procedure Code for the trial of warrant cases shall, so far as it is not inconsistent with the provisions of the Ordinance be applicable.
- (4) The offences mentioned in clause (a) to (l) of Section 238-A of Company Act, 1913 and also under the Ordinance shall be tried in a summary way.
- (5) The offences mentioned in clauses (m) to (o) and other penal section of Companies Act, 1913 and also under this Ordinance shall be tried in warrant cases.

By order of the High Court
S.ASHHAD ALI,
Registrar.

FORM No. 1-A.
(Rule 10)

IN THE HIGH COURT RULE 10.....AT.....

ORIGINAL JURISDICTION.

IN THE MATTER OF THE BANKING COMPANIES ORDINANCE, 1962.

AND

In the matter of Banking Company Ltd.
Company Petition No..... of 19 .

NOTICE OF PETITION.

A petition Under Section..... of the Banking Companies Ordinance, 1962, for winding up and presented by..... on the.....day of.....19 and the said petition is fixed for hearing before the Company Judge on.....19 any person desirous of supporting or opposing the said petition, sent to the petitioner's advocate, notice of his intention, signed by him or his advocate, with his name and address, so as to reach the petitioner's advocate not later than 4 days before the date fixed for hearing of the petition. Where he seeks to oppose the petition, the grounds of opposition or a copy of his affidavit shall be furnished with such notice. A copy of the petition will be furnished by the undersigned to any person requiring same to payment of the prescribed charges for the same.

Dated;

Address:--

Advocate for the Petitioner.

FORM No. 1.
(RULE 13)

IN THE COURT OF.....

ORIGINAL JURISDICTION.
IN THE MATTER OF
An Application under section
Of the Banking Companies Ordinance, 1962.

In the matter of.....Petitioner.

Versus

.....Respondent.

To,

Please take notice that a petition has been presented by the above named petitioner Under Section..... of the Banking Companies Ordinance, 1962, for settlement of the list of debtors of the petitioner on.....and the matter has been directed to be heard on.....at 10-30 O'Clock in the forenoon or as soon thereafter as the business of the Court permits.

You are therefore, summoned to appear before this Court either in person or by an Advocate of this Court on or before.....the day fixed for hearing and on which date you must be prepared to produce all your witnesses and documents in your possession or power upon which you intend to rely.

If no appearance is made on your behalf either by yourself or by your Advocate to act for you in this matter it will be heard and disposed of ex-parte in your absence.

Chief Justice at

Day in the year

aforesaid this the
of
Deputy Registrar.

FORM No. 2-A
(RULE 14)

Matter No. _____ of 197 .

In the matter of

To,

Whereas it appears from the examination on oath of the serving officer that summon on the above named defendant could not be served as he is not available at this last known residing place nor anybody in the locality can say where he is residing at present this notice, is, therefore, under Order 5, rule 20 of the Civil Procedure Code as mentioned in the rule 14 of the Banking Companies Ordinance, 1962, published requiring the attendance of the above mentioned defendant in this Court on the..... day of..... 197.....atO'clock in the forenoon, and if the defendant fails to attend on the day and hour aforesaid it will be treated that the summons was properly served upon the defendant personally and the suit will be decided exparte according to law.

Given under my hand and the seal of the Court this.....day
of 197 .

Deputy Registrar.

FORM No. 2
(RULE 14)

Advertisement in the newspaper about the substituted Service as mentioned in Rule 14.

Matter No. _____ of 19 ____ .

In the matter of.....Petitioner

Versus

..... Respondent.

Whereas it appears from the examination on oath of the serving officer that the summons on the above named defendant could not be served as he is not available and whereas it has been brought to the notice of the Court on oath by the Plaintiff that the defendant is intentionally keeping himself out of the way for the purpose of evading the service of the summons on him, the notice is therefore under order 3, rule 20 of the Civil Procedure Code as mentioned in rule 14 of the Banking Companies Ordinance, 1962, published requiring the attendance of the above mentioned defendant in this Court on the.....day of197 ____ . at.....O'clock in the forenoon, and if the defendant fails to attend on the day and hour aforesaid it will be treated that the summons was properly served upon the defendant personally and the suit will be decided ex-parte according to law.

Given under my hand and the seal of the Court this.....day of 197 ____ .

Deputy Registrar.

30th December, 1972.

