

THE OFFICIAL RECEIVER'S ACT, 1938 (BENGAL ACT)

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THE OFFICIAL RECEIVER'S ACT, 1938 (BENGAL ACT)

ACT NO. VII OF 1938

[22nd September, 1938]**An Act to provide for the administration and control of the Office of Official Receiver of the High Court Division.***

WHEREAS it is expedient to provide for the administration and control of the office of Official Receiver of the High Court Division;

It is hereby enacted as follows:-

1. (1) This Act may be called the Official Receiver's Act, 1938. Short title and commencement

(2) It shall come into force on such date as the Government may, by notification in the *official Gazette*, appoint.

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

(1) "Court" means the High Court Division;

(2) "Official Receiver" means the Official Receiver of the Court;

(3) "prescribed" means prescribed by rules made by the Government under this Act.

3. (1) There shall be an Official Receiver and there may be one or more Deputy Official Receivers. Appointment, status, rights, liabilities, etc., of Official Receiver and Deputy Official Receiver

(2) The offices of Official Receiver and of Deputy Official Receivers (if any) shall be civil posts under the Government.

* Throughout this Act the words "Government" and "High Court Division" were substituted for the words "Provincial Government" or "Province" or "Provincial" and "High Court of East Pakistan" respectively by section 3 and the Second Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

(3) Subject to the provisions of sub-section (2) of section 6, all rights, privileges, titles and liabilities of the Official Receiver subsisting immediately prior to the commencement of this Act shall accrue to and vest in the Official Receiver appointed under this Act.

(4) The person holding the office of Official Receiver immediately prior to the commencement of this Act shall without further appointment become the Official Receiver appointed under this Act, and it shall not be necessary for the Court to reappoint him under section 4 in any case in which he has previously been appointed a receiver.

(5) A Deputy Official Receiver shall, subject to the control of the Government and to general or special orders of the Official Receiver, be competent to discharge any of the duties and exercise any of the powers of the Official Receiver and shall, when discharging such duties or exercising such powers, have the same rights and privileges and be subject to the same liabilities as the Official Receiver.

Appointment of Official Receiver as receiver and his duties, rights and liabilities as such

4. Subject to, and in accordance with, the provisions of this Act and of rules made thereunder but notwithstanding the provision of sub-section (2) of section 3, the Official Receiver may be appointed a Receiver by the Court in respect of any property, and save as provided in this Act, he shall have the same powers, duties and liabilities, shall be entitled to the same rights and privileges and shall be subject to the same control by the Court as any other receiver so appointed.

Conditions of receivership

5. (1) The Official Receiver shall not act as receiver in respect of any property except in accordance with the provisions of this Act and of rules made thereunder.

(2) Notwithstanding anything contained in any other law, the Official Receiver-

- (a) shall not be required by the Court to enter into any bond or security, and
- (b) shall always be a sole receiver, and it shall not be lawful to appoint him to be a receiver in respect of any property jointly with any other person.

6. (1) The revenues of the Government shall be liable to make good all sums required to discharge any liability which the Official Receiver may, as a receiver appointed by the Court, be personally liable to discharge:

Liability of Government revenues in certain case

Provided that neither the revenues of the Government nor the Official Receiver shall be liable to discharge any liability to which neither the Official Receiver nor any of his officers has in any way contributed, or which neither he nor any of his officers could, by exercise of reasonable diligence, have averted.

(2) Nothing in sub-section (1) shall be deemed to render liable the revenues of the Government or any Official Receiver appointed under this Act for anything done by, or under the authority of, any Official Receiver of the Court before the commencement of this Act.

(3) Nothing in sub-section (1) shall prevent the Government from recovering any sum paid by them thereunder from the Official Receiver liable personally to pay such sum.

(4) Sums payable by the Government under sub-section (1) are hereby declared to be charged on the revenues of the Government.

7. (1) The Official Receiver shall charge such fees, by way of percentage or otherwise, as may in consultation with the Court be prescribed, provided that in the case of any receivership accepted by him before the commencement of this Act, he shall charge fees in accordance with the law then in force.

Fees

(2) The fees prescribed under sub-section (1) may be at different rates for different properties or classes of properties.

8. (1) The Official Receiver shall transfer and pay to such authority and in such manner and at such times as may be prescribed, all fees received by him after the commencement of this Act, and the same shall be carried to the account and credit of Government revenues.

Transfer and payment of fees

(2) Any fees or remuneration received by the Official Receiver as agent of an Official Receiver (by whatever designation called) of another Court or in accordance with the provisions of any other Act shall be similarly so transferred and paid by him.

Account of
Official
Receiver,
investments and
proceeds of
investments

9. (1) The Official Receiver shall maintain an account in the prescribed manner, and shall pay into such account after making any prescribed deductions-

- (a) all monies received by him in the administration of any property, and
- (b) any other sums that may be prescribed.

(2) Subject to the control of the Government-

- (a) whenever the cash balance standing to the credit of the account referred to in sub-section (1) is, in the opinion of the Official Receiver, in excess of the amount required for the time being both to meet demands in respect of properties under the control of the Official Receiver and to make any payments that may be prescribed, the Official Receiver shall invest such excess, and
- (b) whenever any part of the money so invested is in the opinion of the Official Receiver, required to meet such demands or to make such payments, he may realise such part of the sums invested as may be necessary for such purposes, and he shall credit the proceeds of such realisation to the said account.

(3) The Official Receiver shall transfer and pay to such authority and in such manner and at such times as may be prescribed, the interest earned by, and any profits accruing from the realisation of, any investments under clause (a) of sub-section (2), and the same shall be carried to the account and credit of Government revenues.

(4) Nothing in this section shall be deemed to affect the power of the Court to give directions to the Official Receiver in regard to the investment of any property held by him as a receiver appointed by the Court or in regard to the credit of any interest earned by, and any profits accruing from the realisation of, such investment.

10. (1) Nothing in section 80 of the Code of Civil Procedure, 1908 (Act No. V of 1908), shall apply to any suit against the Official Receiver in which no relief is claimed against him personally.

Suits by or against the Official Receiver

(2) The Official Receiver shall not sue or be sued without the express permission of the Court.

(3) Subject to the provisions of this Act and of all other law relating to receivers appointed by the Court, the Official Receiver may sue and be sued by and in the name of "The Official Receiver in the matter of" and in that name, may hold property of every description, make contracts, enter into engagements binding upon himself and his successors in office and do all other acts necessary or expedient to be done the execution of his office.

11. (1) The Government may make rules for carrying into effect the objects of this Act in regard to those functions of the Official Receiver which are discharged under the administrative control of the Government.

Power of Government to make rules

(2) In particular and without prejudice to the generality of the foregoing power such rules may provide for-

- (a) the distribution of work between the Official Receiver and any Deputy Official Receiver;
- (b) the payment or recovery of any sums by the Government under section 6;
- (c) the fees to be charged by the Official Receiver under section 7 and the manner in which the same are to be collected and accounted for;
- (d) the authority referred to in sections 8 and 9 and the manner in which fees, remuneration or interest and profits on investments shall be paid and transferred thereto;
- (e) the receipts, payments and accounts of the Official Receiver;
- (f) the audit of the accounts of the Official Receiver;

- (g) the safe custody of such monies and securities as may come into the hands of, or under the control of, the Official Receiver;
 - (h) the deductions referred to in sub-section (1) of section 9 and the sums which shall be paid into the account of the Official Receiver under clause (b) thereof;
 - (i) the procedure to be followed in making payments into, and withdrawals from, the account referred to in section 9;
 - (j) the investment of monies and the realisation of investments under section 9;
 - (k) the payments referred to in sub-section (2) of section 9.
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