



The Calcutta Official Receiver's Act, 1938

Act 7 of 1938

Keyword(s):

Court, Official Receiver, Receivership, Property

Amendment appended: 25 of 2000

DISCLAIMER: This document is being furnished to you for your information by PRS Legislative Research (PRS). The contents of this document have been obtained from sources PRS believes to be reliable. These contents have not been independently verified, and PRS makes no representation or warranty as to the accuracy, completeness or correctness. In some cases the Principal Act and/or Amendment Act may not be available. Principal Acts may or may not include subsequent amendments. For authoritative text, please contact the relevant state department concerned or refer to the latest government publication or the gazette notification. Any person using this material should take their own professional and legal advice before acting on any information contained in this document. PRS or any persons connected with it do not accept any liability arising from the use of this document. PRS or any persons connected with it shall not be in any way responsible for any loss, damage, or distress to any person on account of any action taken or not taken on the basis of this document.

©

Bengal Act VII of 1938

[THE CALCUTTA OFFICIAL RECEIVER'S ACT, 1938.]¹

²AMENDED . . . West Ben. Act XVIII of 1959.
ADAPTED . . . The Adaptation of Laws
Order, 1950.

[22nd September, 1938.]

*An Act to provide for the administration and control of the office of
Official Receiver of the High Court in Calcutta.*

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

It is hereby enacted as follows:—

1. (1) This Act may be called the Calcutta Official Receiver's Act,
1938.

Short title
and
commence-
ment.

(2) It shall come into ³force on such date as the ⁴[State] 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 in Calcutta;

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

(3) "prescribed" means prescribed by rules made by the ⁵[State]
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 ⁶[Government] in India.

(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.

¹For Statement of Objects and Reasons, see the *Calcutta Gazette*, dated the 27th January, 1938, Pt. IVA, page 11. For proceedings of the Bengal Legislative Assembly, see the Official Report of the Bengal Legislative Assembly Proceedings, Vol. LII, No. 1, pages 52-56 and 94-108, and for proceedings of the Bengal Legislative Council, see the Official Report of the Bengal Legislative Council Proceedings, Vol. II, pages 227-231.

²This Act came into force on the 6th July, 1939, vide Notification No. 2365J, dated the 1st July, 1939, published in the *Calcutta Gazette*, of the 6th July, 1939, Part I, page 1542.

³The word "State" was substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

⁴The word "Government" was substituted for the word "Crown", *ibid.*

(Sections 4-6.)

(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 [State] 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 subsection (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.

Liability of State revenues in certain cases.

6. (1) The ²[Consolidated Fund of the State of West Bengal] 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:

Provided that neither the ²[Consolidated Fund of the State of West Bengal] 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.

¹See foot-note 3 on page 481, *ante*.

²The words within square brackets were substituted for the words "revenues of the State" by s. 2(a) of the Calcutta Official Receiver's (Amendment) Act, 1959 (West Ben. Act XVIII of 1959).

of 1938.]

(Sections 7-9.)

(2) Nothing in sub-section (1) shall be deemed to render liable the [Consolidated Fund of the State of West Bengal] 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 [State] Government from recovering any sum paid by them thereunder from the Official Receiver liable personally to pay such sum.

* * * * *

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 * * * * * classes of properties.

(3) The Official Receiver shall charge such fees as may in consultation with the Court be prescribed for the grant of copies by him, of statements of account, minutes of proceedings, possession and inventory reports or any other public document in his custody relating to his functions as Official Receiver and for the production and inspection of any of such record or document.

8. (1) The Official Receiver shall transfer and pay into the Consolidated Fund of the State of West Bengal all fees received by him under section 7 after the commencement of this Act.

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.

9. (1) The Official Receiver shall transfer and pay into the public account of the State of West Bengal all monies received by him in the administration of any property in respect of which he has been appointed a receiver by the Court.

Receipt, withdrawal, payment and investment by the Official Receiver.

(2) Subject to the control of the State Government and in accordance with such procedure as may be prescribed—

- (a) the Official Receiver shall be entitled to withdraw from and out of the account referred to in sub-section (1)—
 - (i) the amounts required for the time being to meet the demands in respect of the administration of the

¹See foot-note 2 on page 482, *ante*.
²See foot-note 3 on page 481, *ante*.
³Sub-section (4) was omitted by s. 2(b) of the Calcutta Official Receiver's (Amendment) Act, 1959 (West Ben. Act XVIII of 1959).
⁴The words "properties or" were omitted by s. 3(a), *ibid*.
⁵Sub-section (3) was added by s. 3(b), *ibid*.
⁶Sub-section (1) was substituted for the original sub-section (1) by s. 4, *ibid*.
⁷Section 9 was substituted for the original section by s. 5, *ibid*.

(Sections 10, 11.)

- properties under his control or to make any payments that may be prescribed,
- (ii) any amount which may be required for investment in any particular case;
- (b) the Official Receiver shall invest the amount withdrawn under sub-clause (ii) of clause (a) in such securities as may be prescribed; and
- (c) the Official Receiver may, if in his opinion any part of the money so invested is required to meet the demands or to make the payments referred to in clause (a), realise such part of the sums invested as may be necessary for such purposes.

(3) The Official Receiver shall transfer and pay into the account referred to in sub-section (1) in such manner and at such times as may be prescribed the proceeds of the realisation of investments under clause (c) of sub-section (2), any profits accruing from such realisation and the interest earned by any investments under clause (b) of sub-section (2).

(4) The Official Receiver shall maintain a personal deposit account in the prescribed manner and shall pay into such account all sums withdrawn under clause (a) of sub-section (2) and any other sum as may be prescribed.

(5) 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 amount and manner of investment, or of the realisation of investment, of any property held by him as a receiver appointed by the Court.

Suits by or
against the
Official
Receiver.

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

Act V of
1908.

(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 in the execution of his office.

Power of
State
Government
to make
rules.

11. ¹(1) The State Government may make ²rules for carrying into effect objects of this Act in regard to the functions of the Official Receiver.

¹Sub-section (1) was substituted for the original sub-section by s. 6(a) of the Calcutta Official Receiver's (Amendment) Act, 1959 (West Ben. Act XVIII of 1959).

²For rules made in exercise of the powers conferred by this section, see notification No. 1517J., dated the 27th April, 1939, published in the *Calcutta Gazette*, dated the 4th May, 1939, Pt. I, page 1074, as subsequently amended.

of 1938.]

(Section 11.)

(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 ¹[State] 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;
- ²(d) the manner in which and the time at which fees or remuneration referred to in section 8 shall be transferred and paid;
- (e) the receipts, payments and accounts of the Official Receiver;
- (f) the audit of the accounts of the Official Receiver;
- (g) ³[the insurance of such properties and assets or] the safe custody of such monies and securities as may come into the hands of or under the control of, the Official Receiver:
* * * * *
- ⁴(i) the manner and times of making payments into, and the procedure to be followed in making withdrawals from, the account referred to in sub-section (1) of section 9;
- ⁵(j) the investment of monies, the securities for investment and the realisation of investments under section 9;
- ⁶(k) the payments referred to in clause (a) of sub-section (2) of section 9;
- ⁸(l) the personal deposit account and the sums payable therein under sub-section (4) of section 9.

¹See foot-note 3 on page 481. *ante*.

²Clause (d) was substituted for the original clause by s. 6(b)(i) of the Calcutta Official Receiver's (Amendment) Act, 1959 (West Ben. Act XVIII of 1959).

³The words within square brackets were inserted by s. 6(b)(ii), *ibid*.

⁴Clause (h) was omitted by s. 6(b)(iii), *ibid*.

⁵Clause (i) was substituted for the original clause by s. 6(b)(iv), *ibid*.

⁶Clause (j) was substituted for the original clause by s. 6(b)(v), *ibid*.

⁷Clause (k) was substituted for the original clause by s. 6(b)(vi), *ibid*.

⁸Clause (l) was added by s. 6(b)(vii) *ibid*.

©

GOVERNMENT OF WEST BENGAL
LAW DEPARTMENT
Legislative

West Bengal Act XXV of 2000

THE CALCUTTA OFFICIAL RECEIVER'S
(AMENDMENT) ACT, 2000.

[Passed by the West Bengal Legislature.]

[Assent of the Governor was first published in the *Calcutta Gazette*,
Extraordinary, of the 4th September, 2000.]

[4th September, 2000.]

An Act to amend the Calcutta Official Receiver's Act, 1938.

Ben. Act VII
of 1938.

WHEREAS it is expedient to amend the Calcutta Official Receiver's Act, 1938, for the purposes and in the manner hereinafter appearing;

It is hereby enacted in the Fifty-first Year of the Republic of India, by the Legislature of West Bengal, as follows:—

1. (1) This Act may be called the Calcutta Official Receiver's (Amendment) Act, 2000.

Short title
and
commence-
ment.

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

2. In the Calcutta Official Receiver's Act, 1938 (hereinafter referred to as the principal Act), after section 3, the following section shall be inserted:—

Insertion of
new section
3A in Ben.
Act VII of
1938.

"Method of,
and
qualifica-
tions
required for,
recruitment
of Official
Receiver.

3A. The method of, and the qualifications required for, recruitment to the post of Official Receiver shall be such as may be prescribed."

3. In section 11 of the principal Act, after sub-section (2), the following sub-section shall be inserted:—

Amendment
of section
11.

"(3) Notwithstanding anything contained in the foregoing provisions of this section, the State Government may make rules providing for the method of, and the qualifications required for, recruitment to the post of Official Receiver."