

ELECTION OF DIRECTORS – EXTRACTS OF RELEVANT ACTS, SCHEME AND REGULATIONS, ETC.

In terms of Section 9(3) (i) of The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, the Shareholder Directors shall have to be appointed depending upon the extent of capital issued under clause (c) of sub-section (2B) of Section 3 of the Act.

The relevant Sections of The Banking Regulations Act, 1949, The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, the Nationalized Banks (Management & Miscellaneous Provisions) Scheme, 1970 and the relevant regulations of Indian Overseas Bank (Shares and Meetings) Regulations, 2003 and as amended upto 2008 respectively in this regard, are reproduced below for the information of the shareholders.

THE BANKING REGULATION ACT, 1949

Substantial Interest - Section 5(ne)

- (i) In relation to a company, means the holding of a beneficial interest by an individual or his spouse or minor child, whether singly or taken together, in the shares thereof, the amount paid up on which exceeds five lakhs of rupees or ten percent of the paid-up capital of the company, whichever is less.
- (ii) In relation to a firm, means the beneficial interest held therein by the individual or his spouse or minor child, whether singly or taken together, which represents more than ten percent of the total capital subscribed by all the partners of the said firm.

Prohibition of Common Directors – Section 16(1)

No Banking Company incorporated in India shall have as a Director in its Board of Directors any person who is a Director of any other Banking Company.

Restrictions on Loans and Advances – Section 20

1. Notwithstanding anything to the contrary contained in Section 77 of the Companies Act, 1956 (1 of 1956), no Banking Company shall –
 - a) grant any loans or advances on the security of its own shares, or
 - b) enter into any commitment for granting any loan or advance to or on behalf of –
 - (i) any of its Directors
 - (ii) any firm in which any of its Directors is interested as partner, manager, employee or guarantor, or
 - (iii) any company (not being a subsidiary of the banking company or a company registered under Section 25 of the Companies Act, 1956 (1 of 1956), or a Government company) of which or the subsidiary or the holding company of which any of the Directors of the banking company is a Director, Managing Agent, Manager, Employee or guarantor or in which he holds substantial interest, or
 - (iv) any individual in respect of whom any of its Directors is a partner or guarantor.

- 2) Where any loan or advance granted by a banking company is such that a commitment for granting it could not have been made if Clause (b) of sub-section (1) had been in force on the date on which the loan or advance was made or is granted by a banking company after the commencement of Section 5 of the Banking Laws (Amendment) Act, 1968 (58 of 1968), but in pursuance of a commitment entered into before such commencement, steps shall be taken to recover the amounts due to the banking company on account of the loan or advance together with interest, if any, due thereon within the period stipulated at the time of the grant of loan or advance or where no such period has been stipulated, before the expiry of one year from the commencement of the said Section 5;

Provided that the Reserve Bank may, in any case, on an application in writing made to it by the banking company in this behalf, extend the period for the recovery of the loan or advance until such date, not being a date beyond the period of three years from the commencement of the said Section 5 and subject to such terms and conditions, as the Reserve Bank may deem fit:

Provided further that this sub-section shall not apply if and when the Director concerned vacates the office of the Director of the banking company, whether by death, retirement, resignation or otherwise.

- 3) No loan or advance, referred to in sub-section (2), or any part thereof shall be remitted without the previous approval of the Reserve Bank, and any remission without such approval shall be void and of no effect.
- 4) Where any loan or advance referred to in sub-section (2), payable by any person, has not been repaid to the banking company within the period specified in that sub-section, then, such person shall, if he is a Director of such banking company on the date of the expiry of the said period, be deemed to have vacated his office as such on the said date.

Explanation - in this Section –

- a) "Loan or advance" shall not include any transaction which the Reserve Bank may, having regard to the nature of the transaction, the period within which, and the manner and circumstances in which, any amount due on account of the transaction is likely to be realized, the interest of the depositors and other relevant considerations, specify by general or special order as not being a loan or advance for the purpose of this Section.
- b) "Director" includes a member of any board or committee in India constituted by a banking company for the purpose of managing, or for the purpose of advising it in regard to the management of, all or any of its affairs.
- 5) If any question arises whether any transaction is a loan or advance for the purpose of this Section, it shall be referred to the Reserve Bank, whose decision thereon shall be final.

THE BANKING COMPANIES (ACQUISITION AND TRANSFER OF UNDERTAKINGS) ACT, 1970

Restrictions on voting rights

Section 3(2E) No shareholder of the corresponding new bank, other than the Central Government, shall be entitled to exercise voting rights in respect of any shares held by him in

excess of [ten per cent] of the total voting rights of all the shareholders of the corresponding new bank.

Composition of the Board of Directors

Section 9 (3) (i) Where the capital issued under clause (c) of sub-section (2B) of Section 3 is:-

- I. not more than sixteen per cent of the total paid up capital, one Director.
- II. more than sixteen per cent of the total paid up capital, but not more than thirty-two per cent of the total paid up capital, two Directors.
- III. more than thirty-two per cent of the total paid-up capital, three Directors to be elected by the shareholders other than the Central Government from amongst themselves.

Provided that on the assumption of charge after election of any such director under this clause, equal number of directors nominated under clause (h) shall retire in such manner as may be specified in the Scheme.

Provided further that in case the number of directors elected, on or before the commencement of The Banking Companies (Acquisition and Transfer of Undertakings) and Financial Institutions Laws (Amendment) Act, 2006, in a corresponding new Bank exceed the number of directors specified in sub-clause (I) or sub-clause (II) or sub-clause (III), as the case may be, such excess number of directors elected before such commencement shall retire in such manner as may be specified in the scheme and such directors shall not be entitled to claim any compensation for the premature retirement of their term of office.

Section 9(3A) The Directors to be elected under the said clause (i) shall –

(A) have special knowledge or practical experience in respect of the one or more of the following matters, namely –

- i. agricultural and rural economy
- ii. banking
- iii. co-operation
- iv. economics
- v. finance
- vi. law
- vii. small scale industry
- viii. any other matter the special knowledge of, and practical experience in which would, in the opinion of the Reserve Bank of India be useful to the Bank

(B) represent the interests of depositors; or

(C) represent the interest of farmers, workers and artisans

RBI vide its Notification DBR.Appt.BC.No.38/29.39.001/2016-17 dated November 24, 2016 has notified that special knowledge or practical experience in matters or areas relating to (i) Information Technology (ii) Payment & Settlement Systems (iii) Human Resources (iv) Risk Management and (v) Business Management would be useful to a corresponding new bank.

Section 9(3AA) Without prejudice to the provision of sub-section 3(A) and notwithstanding anything to the contrary contained in this Act or in other law for the time being in force, no person shall be eligible to be elected as a Director under Clause (i) of Sub-Section (3) unless he is a person having 'fit and proper status' based upon track record, integrity and such other criteria as the Reserve Bank may notify from time to time in this regard.

Section 9(3AB) The Reserve Bank may also specify in the notification issued under sub-section 3(AA), the Authority to determine the 'Fit and Proper' status, the manner of such determination, the procedure to be followed for such determination and such other matters as may be considered necessary or incidental thereto.

Section 9(3B) Where the Reserve Bank is of the opinion that any Director of a corresponding new bank elected under clause (i) of sub-section (3) does not fulfill the requirements of sub-section (3A) and (3AA), it may after giving to such Director and the Bank a reasonable opportunity of being heard, by order, remove such Director and on such removal, the Board of Directors shall co-opt any other person fulfilling the requirements of sub-section (3A) and (3AA), as a Director in place of the person so removed till a Director is duly elected by the shareholders of the corresponding new bank in the next Annual General Meeting and the person so co-opted shall be deemed to have been duly elected by the shareholders of the corresponding new bank as a Director.

Obligation as to Fidelity and Secrecy:

Section 13(2): Every Director, member of a local Board or a Committee, or Auditor, Advisor, Officer or other employee of a corresponding new bank shall before entering upon his duties, make a declaration of fidelity and secrecy in the form set out in the Third Schedule.

THE NATIONALISED BANKS (MANAGEMENT AND MISCELLANEOUS PROVISIONS) SCHEME, 1970

Clause 9: Term of office of elected directors

Clause 9(4):

An elected Director shall hold office for three years (and thereafter until his successor shall have been duly elected) and shall be eligible for re-election.

Provided that no such Director shall hold office continuously for a period exceeding six years.

Clause 10: Disqualification of Directors

A person shall be disqualified for being appointed as, and for being, a Director:-

- a) if he has at any time been adjudicated an insolvent or has suspended payment or has compounded with his creditors or
- b) if he has been found to be of unsound mind and stands so declared by a competent court; or
- c) if he has been convicted by a Criminal Court of an offence which involves moral turpitude; or
- d) if he holds any office of profit under any Nationalized Bank or State Bank of India, constituted under sub-section (1) of Section 3 of the State Bank of India Act, 1955 or any subsidiary Bank as defined in Section 3 of the State Bank of India (Subsidiary Banks) Act, 1959, except for holding the

post of a whole-time Director, including the Managing Director and Directors nominated under clauses (e) and (f) of sub-section (3) of Section 9 of the Act from amongst the employees of the corresponding new bank.

Clause 11: Vacation of office of Directors

- 1) If a Director becomes subject to any of the disqualifications specified in clause 10 or is absent without leave of the Board for more than three consecutive meetings thereof, he shall be deemed to have vacated his office as such and thereupon his office shall become vacant.
- 2) The Chairman or whole-time Director including the Managing Director or a Director referred to in clause (b) or clause (c) of sub section 3 of Section 9 of the Act may resign his office by giving notice thereof in writing to the Central Government and on such resignation being accepted by that Government shall be deemed to have vacated his office; and any other Director may resign his office by giving notice thereof in writing to the Central Government and such resignation shall take effect on the receipt of the communication of the resignation by the Central Government.
- 3) Without prejudice to the provision of the foregoing sub-clauses, the office of a Director referred to in clause (e) or clause (f) of sub-section 3 of Section 9 of the Act shall become vacant as soon as the Director ceases to be a workman or an employee other than workman of the Nationalized Bank of which he is a Director.
- 4) Where any vacancy occurs in the office of a Director other than an elected Director, it shall be filled in accordance with sub-section (3) of Section 9 of the Act.

Clause 11A: Removal from office of an elected Director

The shareholders, other than the Central Government, may, by a resolution passed by majority of the votes of such shareholders holding in the aggregate, not less than one half of the share capital held by all such shareholders, remove any Director elected under Clause (i) of sub-section (3) of Section 9 and elect instead of him another person to fill the vacancy.

Clause 11B: Filling of vacancy in the office of an elected Director

- 1) Where any vacancy occurs before the expiry of the term of office of an elected Director, the vacancy shall be filled in by election :

Provided that where the duration of vacancy is likely to be less than six months, the vacancy may be filled in by the remaining Directors.

- 2) A person elected or co-opted, as the case may be, under sub clause (1) shall hold office for the unexpired portion of the term of his predecessor.

Clause 12(8): Disclosure of interest by Directors

A Director who is directly or indirectly concerned or interested in any contract, loan, arrangement or proposal entered into or proposed to be entered into by or on behalf of the Nationalized Bank, shall, as soon as possible after the relevant circumstances have come to his knowledge, disclose

the nature of his interest to the Board and shall not be present at the meeting of the Board when any such contract, loan, arrangement or proposal is discussed unless his presence is required by the other Directors for the purpose of eliciting information and no Director so required to be present shall vote on any such contract, loan, arrangement or proposal :

Provided that nothing contained in this sub-clause shall apply to such Director by reason only of his being:

- i) a shareholder (other than a Director) holding not more than two percent of the paid up capital in any public company as defined in the Companies Act, 1956 (1 of 1956), or any corporation established by or under any law for the time being in force in India or any co-operative society, with which or to which the Nationalized Bank has entered into or made or proposed to enter into or make, a contract, loan, arrangement or proposal; or
- ii) an officer or other employee of the Nationalized Bank, if he is a director referred to in clause (e) or clause (f) of sub-section (3) of Section 9 of the Act.

INDIAN OVERSEAS BANK (SHARES AND MEETINGS) REGULATIONS, 2003

Chapter II

Regulation 10: Exercise of rights of joint holders

If any share stands in the names of two or more persons, the person first named in the register shall, as regards voting, receipt of dividends, service of notices and all or any other matters connected with Indian Overseas Bank except the transfer of shares, be deemed to be the sole holder thereof.

Chapter V

Election of Directors

Regulation 63: Directors to be elected at general meeting

- i. A Director under clause (i) of sub-section (3) of Section 9 of the Act shall be elected by the shareholders on the register, other than the Central Government, from amongst themselves in the general meeting of Indian Overseas Bank.
- ii. Where an election of a Director is to be held at any general meeting, the notice thereof shall be included in the notice convening the meeting. Every such notice shall specify the number of Directors to be elected and the particulars of vacancies in respect of which the election is to be held.

Regulation 64: List of shareholders

- i. For the purpose of election of a Director under sub-regulation (i) of Regulation 63 of these regulations, a list shall be prepared of shareholders on the register by whom the Director is to be elected.
- ii. The list shall contain the names of the shareholders, their registered addresses, the number and denoting distinctive numbers of shares held by them with the dates on which the shares were registered and the number of votes to which they will be entitled on the date fixed for the meeting at which the election will take place and copies of the list shall be available for

purchase at least three weeks before the date fixed for the meeting at a price to be fixed by the Board or the Management Committee, on application at the Head- Office.

Regulation 65: Nomination of candidates for election

- i. No nomination of a candidate for election as a Director shall be valid unless,
 - a) he is a shareholder holding not less than 100 (One hundred) shares in Indian Overseas Bank.
 - b) he is on the last date for receipt of nomination, not disqualified to be a Director under the Act or under the Scheme.
 - c) he has paid all calls in respect of the shares of the Bank held by him, whether alone or jointly with others, on or before the last date fixed for the payment of the call.
 - d) the nomination is in writing signed by atleast one hundred shareholders entitled to elect Directors under the Act or by their duly constituted attorney, provided that a nomination by a shareholder who is a company may be made by a resolution of the Directors of the said company and where it is so made, a copy of the resolution certified to be a true copy by the Chairman of the meeting at which it was passed shall be dispatched to the HeadOffice of Indian Overseas Bank and such copy shall be deemed to be a nomination on behalf of such company;
 - e) the nomination accompanies or contains a declaration signed by the candidate before a Judge, Magistrate, Registrar or Sub-Registrar of Assurances or other Gazetted Officer or an Officer of the Reserve Bank of India or any Nationalized Bank, that he accepts the nomination and is willing to stand for election and that he is not disqualified either under the Act or the Scheme or these regulations from being a Director.
- ii) No nomination shall be valid unless it is received with all the connected documents complete in all respects and received, at the Central Office of Indian Overseas Bank on a working day not less than fourteen days before the date fixed for the meeting.

Regulation 66: Scrutiny of nominations

- i. Nominations shall be scrutinized on the first working day following the date fixed for receipt of the nominations and in case any nomination is not found to be valid, the same shall be rejected after recording the reason therefor. If there is only one valid nomination for any particular vacancy to be filled by election, the candidate so nominated shall be deemed to be elected forthwith and his name and address shall be published as so elected. In such an event there shall not be any election at the meeting convened for the purpose and if the meeting had been called solely for the purpose of the aforesaid election, it shall stand cancelled.
- ii. In the event of an election being held, if valid nominations are more than the number of Directors to be elected, the candidate polling the majority of votes shall be deemed to have been elected.
- iii. A Director elected to fill an existing vacancy shall be deemed to have assumed office from the date following that on which he is, or is deemed to be, elected.

Regulation 67: Election disputes

- i) if any doubt or dispute shall arise as to the qualification or disqualification of a person deemed, or declared to be elected, or as to the validity of the election of a Director, any person interested, being a candidate or shareholder entitled to vote at such election, may within seven days of the date of the declaration of the result of such election, give intimation in writing thereof to the Chairman and Managing Director of Indian Overseas Bank and shall in the said intimation give full particulars of the grounds upon which he doubts or disputes the validity of the election.
- ii) On receipt of an intimation under sub-regulation (i) the Chairman and Managing Director or in his absence, the Executive Director of Indian Overseas Bank shall forthwith refer such doubt or dispute for the decision of a committee consisting of the Chairman and Managing Director or in his absence, the Executive Director and any two of the Directors nominated under clauses (b) and (c) of sub-section (3) of Section 9 of the Act.
- iii) The committee referred to in sub-regulation (ii) shall make such enquiry as it deems necessary and if it finds that the election was a valid election, it shall confirm the declared result of the election or, if it finds that the election was not a valid election, it shall, within thirty days of the commencement of the enquiry, make such order and give such directions including the holding of a fresh election as shall in the circumstances appear just to the committee.
- iv) An order and direction of such committee in pursuance of this regulation shall be conclusive.

Chapter VI

Voting Rights of Shareholders:

Regulation 68: Determination of voting rights

- i) Subject to the provisions contained in Section 3 (2E) of the Act, each shareholder who has been registered as a shareholder on the date of closure of the register prior to the date of a general meeting shall, at such meeting, have one vote on show of hands and in case of a poll shall have one vote for each share held by him.
- ii) Subject to the provisions contained in Section 3 (2E) of the Act, every shareholder entitled to vote as aforesaid who, not being a company, is present in person or by proxy or who being a company is present by a duly authorized representative, or by proxy shall have one vote on a show of hands and in case of a poll shall have one vote for each share held by him as stated hereinabove in sub-regulation (i).

Explanation – for this Chapter, “Company” means any body corporate.

- iii) Shareholders of the Bank entitled to attend and vote at a general meeting shall be entitled to appoint another person (whether a shareholder or not) as his proxy to attend and vote instead of himself; but a proxy so appointed shall not have any right to speak at the meeting.

Regulation 69: Voting by duly authorized representative

- i) A shareholder, being the Central Government or a company, may by a resolution, as the case may be, authorize any of its officials or any other person to act as its representative at any general meeting of the shareholders and the person so authorized (referred to as a “duly authorized representative” in these regulations) shall be entitled to exercise the same powers

on behalf of the Central Government or company which he represents, as if he were an individual shareholder of Indian Overseas Bank. The authorization so given may be in favour of two persons in the alternative and in such a case any one of such persons may act as the duly authorized representative of the Central Government/ company.

- ii) No person shall attend or vote at any meeting of the shareholders of Indian Overseas Bank as the duly authorized representative of a company unless a copy of the resolution appointing him as a duly authorized representative certified to be a true copy by the Chairman of the meeting at which it was passed shall have been deposited at the Central Office of the Bank not less than four days before the date fixed for the meeting.

RBI'S FIT AND PROPER CRITERIA GUIDELINES

Reserve Bank of India (RBI), in exercise of powers conferred on it under sub-sections (3AA) of Section 9 of the Banking Companies (Acquisition & Transfer of Undertakings) Act 1970/1980 has issued notification RBI/DBR/2019- 20/71 Master Direction DBR.Appt. No:9/29.67.001/2019-20 dated August 2, 2019 laying down specific "Fit and Proper" Criteria to be fulfilled by the persons being elected as directors on the Board of PSBs under the provisions of Section 9 (3)(i) of the Banking Companies (Acquisition & transfer of undertakings) Act 1970/1980.

SALIENT FEATURES OF THE NOTIFICATION:

The Authority, Manner/ Procedure and Criteria for deciding the "Fit and Proper "status etc. are as under:

a) Authority:

All the nationalized banks are required to constitute a "Nomination and Remuneration Committee" consisting of a minimum of three non-executive directors from amongst the Board of Directors, out of which not less than one-half shall be independent directors and should include at least one member from Risk Management Committee of the Board, for undertaking the process of due diligence to determine 'fit and proper' status of the persons to be elected as directors under clause (i) of sub-section (3) of Section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980. The Government of India nominee director and the director nominated under section 9(3)(c) of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980 shall not be part of the Committee. The non-executive Chairperson of the bank may be appointed as a member of the Committee but shall not chair such Committee. The Board should also nominate one among them as Chairman of the Committee. The quorum required is three, including the Chairman. In case the absence of any nominated member results in want of quorum, the Board may nominate any other non-executive director in his place for the meeting. At the time of constituting the Committee, the Board can decide on its tenure.

b) Manner and procedure:

The Bank shall obtain necessary information, and declaration & undertaking in format as given in the circular from the persons who file their nomination for election. The committee shall meet after the last date prescribed for acceptance of nominations and determine whether or not the person's candidature should be accepted, based on the criteria mentioned in the RBI circular.

The committee's discussions should be properly recorded as formal minutes of the meeting and the voting if done should also be noted. Based on the information provided in the signed

declaration, the Committee shall decide on the acceptance or otherwise of the candidate and may make references, where considered necessary to the appropriate authority/persons, to ensure that the candidate conforms to the requirements indicated.

c) Criteria

The committee shall determine the 'fit and proper' status of the proposed candidate based on the broad criteria as mentioned hereunder:

(i) Age - The candidate's age should be between 35 to 67 years as on the cut-off date fixed for submission of nominations for election.

(ii) Educational qualification - The candidate should at least be a graduate.

(iii) Experience and field of expertise - The candidate shall have special knowledge or practical experience in respect of one or more of the matters enumerated in section 9(3A)(A) of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980, as the case may be, read with RBI Circular DBR.Appt.BC No 39/29.39.001/2016-17 dated November 24, 2016.

(iv) Disqualifications: In addition to 'Disqualifications of Directors' as prescribed in Clause 10 of Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970/80:

a) The candidate should not be a member of the Board of any bank or the Reserve Bank or a Financial Institution (FI) or Insurance Company or a NOFHC holding any other bank.

Explanation: For the purpose of this sub-para and sub-para (c), the expression "bank" shall include a Banking company, a corresponding new bank, State Bank of India, a co-operative bank and a regional rural bank.

b) A person connected with hire purchase, financing, money lending, investment, leasing and other para banking activities shall not be considered for appointment as elected director on the board of a PSB.

However, investors of such entities would not be disqualified for appointment as directors if they do not enjoy any managerial control in them.

c) No person may be elected/ re-elected on the Board of a bank if he/she has served as director in the past on the board of any bank (including the bank in which he/she has served as director in the past) /FI/RBI/Insurance Company under any category for six years, whether continuously or intermittently.

d) The candidate should not be engaging in the business of stock broking.

e) The candidate should not be holding the position of a Member of Parliament or State Legislature or Municipal Corporation or Municipality or other local bodies (means bodies such as Notified Area Council, City Council, Panchayat, Gram Sabha, Zila Parishad, etc).

f) The candidate should not be acting as a partner of a Chartered Accountant firm which is currently engaged as a Statutory Central Auditor of any nationalised bank or State Bank of India.

g) The candidate should not be acting as a partner of a Chartered Accountant firm which is currently engaged as Statutory Branch Auditor or Concurrent Auditor of the Bank in which nomination for election is filed.

(v) Tenure - An elected director shall hold office for three years and shall be eligible for re-election: Provided that no such director shall hold office for a period exceeding six years whether served continuously or intermittently.

(vi) Professional Restrictions

- a) The candidate should neither have any business connection (including legal services, advisory services etc.) with the concerned bank nor should be engaged in activities which might result in a conflict of business interests with that bank.
- b) The candidate should not be having any professional relationship with a bank or any Non-Operative Financial Holding Company (NOFHC) holding any other bank.

Provided that a candidate having any such relationship with a bank at the time of filing nomination for election shall be deemed to be meeting the requirement under item (b), the candidate shall submit a declaration to the Committee that such relationship with the bank shall be severed if he is elected as a director, and upon being elected, severs such relationship before appointment as a director of the bank.

(vii) Track record and integrity - The candidate should not be under adverse notice of any regulatory or supervisory authority/agency, or law enforcement agency and should not be a defaulter of any lending institution.

d) The banks shall obtain from the elected director:

(a) Deed of Covenant executed in the format given in the RBI circular, before such person assumes office of director.

(b) a simple declaration every year as on 31st March to the effect that the information already provided by such person has not undergone any change.

(c) Where the elected director informs that there is change in the information provided earlier, the bank shall obtain from such director a fresh Annex 1 incorporating the changes.

e) Further, the Circular also provides that the Bank shall also ensure compliance to Section 20 of the Banking Regulation Act, 1949. In addition,

(a) Put in place a system of safeguards, including proper disclosure of the elected CA director's/his firm's clients, and not participating in bank's credit/investment decisions involving his/firm's clients. The elected CA director should be required to compulsorily dissociate himself from the entire process and sign a covenant to this effect.

(b) Require the elected director to make a full and proper disclosure of his interests and directorships in business entities, with the director personally distancing himself from and not participating in the bank's credit/investment decisions involving entities in which he is interested.

(c) Not allot any professional work to a person who was an elected director of that bank, for a period of two years after demitting office as such director.

f) Where the elected director:

(a) fails to

(i) submit the Deed of Covenant or declaration; or

(ii) make proper disclosures; or

(iii) refrain from participating in credit/investment decisions, where he is interested; or

(b) makes incomplete or incorrect disclosures, or

(c) involves in such activities that render him/her 'not fit and proper' as per the criteria mentioned above,

such director shall be deemed to be not fulfilling the requirements of sub-section (3AA) of section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980 and shall be liable for the consequences thereof.

GUIDELINES FOR SELECTION OF PART-TIME NON-OFFICIAL DIRECTOR

As advised by Govt. of India vide its letter dated 3rd September, 2013 the 'Nomination and Remuneration Committee of Board shall keep in mind the Guidelines issued by GOI for Appointment of Non-Official Directors (NOD), while determining "Fit and Proper Status" of the Shareholder Director. The GOI has forwarded revised Guidelines dated 25th March 2015 and amendments dated 8th July 2016 to Public Sector Banks vide its letters dated 28th April 2015 and 20th July, 2016, the gist of which is as follows:

General

a) Nominations will be made keeping in view the provisions of the relevant Acts/Rules..

b) The suitability of nominees may be assessed in terms of formal qualifications and expertise, track record, integrity etc. For assessing integrity and suitability, information on criminal records, financial position, civil actions undertaken to pursue personal debts, refusal of admission to or expulsion from professional bodies, sanctions applied by regulators and similar bodies and previous questionable business practices etc. will be relied upon.

Experience

a) Persons with special academic training or practical experience in the fields of agriculture, rural economy, banking, cooperation, economics, business management, human resources, finance, corporate law, risk management, industry and IT will ordinarily be considered. 20 years of industry experience at a senior position, established expertise in respective areas (successfully led a reputed organization, brought turnaround in a failing organization) would be preferred.

b) Retired senior Government officials with total experience of 20 years and minimum 10 years of experience at Joint Secretary and above level. Retired CMDs/EDs of Public Sector Banks after one year of retirement. The exCMDs/EDs will not be considered for appointment as NOD on

the Board of the PSB from which they have retired. Serving CMDs/ EDs of PSB will not be considered as NOD on the Board of any other PSB.

- c) Academicians Directors of premier Management Banking Institutes and Professors having more than 20 years of experience.
- d) Chartered Accountants with 20 years' experience (excluding audit experience) would also be preferred.
- e) However, the experience criteria may be relaxed with the approval of the Finance Minister in exceptional cases based on merits. Page 71 of 88 f) Wherever possible representation may also be given to women and the persons belonging to SC/ST community.

Education

An NOD should at least be a graduate in any stream preferably with specialization in Business Management, Risk Management, Finance, Human Resources and IT.

Age

The age of the Director, on the date of recommendation by Search Committee should not be more than 67 years. v. Work Experience Professionals/academicians should ordinarily have 20 years of work experience in their particular field.

Disqualifications

- a) A director already in a Bank/Financial Institution (FIs)/RBI/Insurance Company, under any category, may not be considered for nomination as NOD in any other Bank/FI/RBI/Insurance Company.
- b) Persons connected with hire purchase, financing investment, leasing and other para-banking activities, Members of Parliament, Members of Legislative Assemblies, Members of Legislative Councils and Stock Brokers will not be appointed as non-official directors on the boards of Banks/FIs/RBI/Insurance Companies. Investors in a hire purchase, financing investment, leasing and other para banking activities would not be disqualified for appointment as NOD, if they are not having any managerial control in such companies.
- c) No person may be re- nominated as an NOD on the Board of a Bank/FI/RBI/ Insurance Company on which he/she has served as Director in the past under any category for two terms or six years whichever is longer.
- d) If a Chartered Accountant firm is currently engaged in any Public Sector Bank (PSB) as a Statutory Central Auditor, no partner of the same Chartered Accountant firm shall be eligible for appointment as NOD in any Nationalised Bank/PSB.
- e) If a Chartered Accountant firm is currently engaged in a Nationalised Bank as a Statutory Branch Auditor or Concurrent Auditor, no partner of the same Chartered Accountant firms should be eligible for appointment as NOD in the same bank.

Tenure

An NOD would not be considered for nomination as a Director on the Board of a Bank/FI/RBI/ Insurance Company if such Director has already been a NOD/ Shareholder-Director on the board of any other Bank/FI/RBI/Insurance Company for six years, whether continuously or intermittently.

Professional restriction

The issue of professional restriction vis-à-vis office of profit in any Public Sector Bank under clause 10(d) of the Nationalized Banks (Management and Miscellaneous Provisions) Scheme, 1970 may be separately examined.

Regional Representation

Efforts should be made to ensure representation of all the six zones of the country – North, South, East, West, Central and North-East on the boards of Public Sector Banks taken together. While determining the 'Fit & Proper Status' of candidates contesting election of shareholder Director the Guidelines issued by Department of Financial Services, Ministry of Finance, Government of India for the appointment of Non-Official Directors vide its letter dated 25.03.2015 and subsequent amendments informed vide its letter dated 08.07.2016 are also required to be kept in mind. However, these Guidelines have been aligned with the aforementioned RBI Master Directions.

NOTIFICATION : RESERVE BANK OF INDIA (DBR.APPT.BC.NO.39/29.39.001/2016-17 DATED NOVEMBER 24, 2016)

Special knowledge or practical experience useful to banking companies

In the backdrop of innovations in banking and technology, it is felt that the domain knowledge and experience enumerated under various statutory provisions for the directors on the boards of commercial banks (excluding RRBs) need to be augmented by knowledge and experience in other specialized areas, to guide the banks in managing their diversified business portfolios and risks. It has, therefore, been decided to broaden the fields of specialization to include (i) Information Technology (ii) Payment & Settlement Systems (iii) Human Resources (iv) Risk Management and (v) Business Management, for persons who could be considered for appointment of director in the banks.

GIST OF REVISED GUIDELINES DATED 08TH JULY 2016 ISSUED BY GOI FOR APPOINTMENT OF PART-TIME NON-OFFICIAL DIRECTORS:

- i. If a Chartered Accountant firm is currently engaged in any Public Sector Bank (PSB) as a Statutory Central Auditor, no partner of the same Chartered Accountant firm shall be eligible for appointment as a Nonofficial Director in any Nationalised Bank / PSB.
- ii. If a Chartered Accountant firm is currently engaged in a Nationalised Bank as Statutory Branch Auditor or Concurrent Auditor, no partner of the same Chartered Accountant firms should be eligible for appointment as a Non-official Director in the same Bank.

RBI MASTER CIRCULAR- LOANS AND ADVANCES – STATUTORY AND OTHER RESTRICTIONS DATED 01st JULY 2015 (DBR.No.Dir.BC.10/13.03.00/2015-16)

2.2.1 Granting loans and advances to relatives of Directors

Without prior approval of the Board or without the knowledge of the Board, no loans and advances should be granted to relatives of the bank's Chairman/Managing Director or other Directors, Directors (including Chairman/Managing Director) of other banks and their relatives, Directors of Scheduled Co-operative Banks and their relatives, Directors of Subsidiaries/Trustees of Mutual Funds/Venture Capital Funds set up by the financing banks or other banks, as per details given below.

2.2.1.1. Lending to directors and their relatives on reciprocal basis

There have been instances where certain banks have developed an informal understanding or mutual/reciprocal arrangement among themselves for extending credit facilities to each other's directors, their relatives, etc. By and large, they did not follow the usual procedures and norms in sanctioning credit limits to the borrowers, particularly those belonging to certain groups or directors, their relatives, etc. Facilities far in excess of the sanctioned limits and concessions were allowed in the course of operation of individual accounts of the parties. Although, there is no legal prohibition on a bank from giving credit facilities to a director of some other banks or his relatives, serious concern was expressed in Parliament that such quid pro quo arrangements are not considered to be ethical. The banks should, therefore, follow the guidelines indicated below in regard to grant of loans and advances and award of contracts to the relatives of their directors and directors of other banks and their relatives:

2.2.1.2. Unless sanctioned by the Board of Directors/Management Committee, banks should not grant loans and advances aggregating Rupees twenty-five lakhs and above to –

- a. directors (including the Chairman/Managing Director) of other banks.
- b. any firm in which any of the directors of other banks is interested as a partner or guarantor; and
- c. any company in which any of the directors of other banks holds substantial interest or is interested as a director or as a guarantor.

2.2.1.3. The restrictions as contained in Section 20 of the Banking Regulation Act, 1949 would apply to grant of loans and advances to spouse and minor / dependent children of the Directors of banks. However, banks may grant loan or advance to or on behalf of spouses of their Directors in cases where the spouse has his / her own independent source of income arising out of his / her employment or profession and the facility so granted is based on standard procedures and norms for assessing the creditworthiness of the borrower. Such facility should be extended on commercial terms. All credit proposals for Rupees twenty-five lakhs and above should be sanctioned by the bank's Board of Directors / Management Committee of the Board. The proposals for less than Rupees twenty-five lakhs may be sanctioned by the appropriate authority in banks in terms of the powers delegated to them.

2.2.1.4. Unless sanctioned by the Board of Directors/Management Committee, banks should also not grant loans and advances aggregating Rupees twenty-five lakhs and above to –

- a. any relative other than spouse (spouse as specified in para 2.2.1.3 above) and minor / dependent children of their own Chairmen/Managing Directors or other Directors.
- b. any relative other than spouse (spouse as specified in para 2.2.1.3 above) and minor / dependent children of the Chairman/Managing Director or other directors of other banks.

c. any firm in which any of the relatives other than spouse (spouse as specified in para 2.2.1.3 above) and minor / dependent children as mentioned in (a) & (b) above is interested as a partner or guarantor; and

d. any company in which any of the relatives other than spouse (spouse as specified in para 2.2.1.3 above) and minor / dependent children as mentioned in (a) & (b) above hold substantial interest or is interested as a director or as a guarantor.

*including directors of Scheduled Co-operative Banks, directors of subsidiaries/trustees of mutual funds/venture capital funds.

2.2.1.5. The proposals for credit facilities of an amount less than Rupees twenty-five lakh to these borrowers may be sanctioned by the appropriate authority in the financing bank under powers vested in such authority, but the matter should be reported to the Board.

2.2.1.6. The Chairman/Managing Director or other director who is directly or indirectly concerned or interested in any proposal should disclose the nature of his/her interest to the Board when any such proposal is discussed. He/she should not be present in the meeting unless his/her presence is required by the other directors for the purpose of eliciting information and the director so required to be present shall not vote on any such proposal.

2.2.1.7. The above norms relating to grant of loans and advances will equally apply to awarding of contracts.

2.2.1.8. The scope of the term 'relative' will be as under:

- Spouse
- Father
- Mother (including stepmother)
- Son (including stepson)
- Son's Wife
- Daughter (including stepdaughter)
- Daughter's Husband
- Brother (including stepbrother)
- Brother's wife
- Sister (including stepsister)
- Sister's husband
- Brother (including stepbrother) of the spouse
- Sister (including stepsister) of the spouse

2.2.1.9. The term 'loans and advances will not include loans or advances against –

- Government securities
- Life insurance policies
- Fixed or other deposits
- Stocks and shares
- Temporary overdrafts for small amounts, i.e. upto Rupees twenty-five thousand
- Casual purchase of cheques up to Rupees five thousand at a time
- Housing loans, car advances, etc. granted to an employee of the bank under any scheme applicable generally to employees.

2.2.1.10. The term 'substantial interest' shall have the same meaning as assigned to it in Section 5(ne) of the Banking Regulation Act, 1949.

2.2.1.11. Banks should evolve, inter alia, the following procedure for ascertaining the interest of a director of a financing bank or of another bank, or his relatives, in credit proposals/award of contracts placed before the Board/Committee or other appropriate authority of the financing banks:

i. Every borrower should furnish a declaration to the bank to the effect that –

a) (where the borrower is an individual) he is not a director or specified near relation of a director of a banking company.

b) (where the borrower is a partnership firm) none of the partners is a director or specified near relation of a director of a banking company; and

c) (where the borrower is a joint stock company) none of its directors, is a director or specified near relation of a director of a banking company

ii. The declaration should also give details of the relationship of the borrower to the director of the bank.

2.2.1.12. In order to ensure compliance with the instructions, banks should forthwith recall the loan when it transpires that the borrower has given Page 26 of 35 a false declaration.

2.2.1.13. The above guidelines should also be followed while granting loans/ advances or awarding contracts to directors of scheduled co-operative banks or their relatives.

2.2.1.14. These guidelines should also be followed by banks when granting loans and advances and awarding of contracts to directors of subsidiaries/trustees of mutual funds/venture capital funds set up by them as also other banks.

2.2.1.15. These guidelines should be duly brought to the notice of all directors and also placed before the bank's Board of Directors.

SECURITIES AND EXCHANGE BOARD OF INDIA (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2015

Regulation 16 (1) (b)

"**Independent director**" means a non-executive director, other than a nominee director of the listed entity:

- (i) who, in the opinion of the board of directors, is a person of integrity and possesses relevant expertise and experience.
- (ii) who is or was not a promoter of the listed entity or its holding, subsidiary or associate company or member of the promoter group of the listed entity.

- (iii) who is not related to promoters or directors in the listed entity, its holding, subsidiary or associate company.
- (iv) who, apart from receiving director's remuneration, has or had no material pecuniary relationship with the listed entity, its holding, subsidiary or associate company, or their promoters, or directors, during the three immediately preceding financial years or during the current financial year.
- (v) none of whose relatives—

[(A) is holding securities of or interest in the listed entity, its holding, subsidiary or associate company during the three immediately preceding financial years or during the current financial year of face value in excess of fifty lakh rupees or two percent of the paid-up capital of the listed entity, its holding, subsidiary or associate company, respectively, or such higher sum as may be specified.

(B) is indebted to the listed entity, its holding, subsidiary or associate company or their promoters or directors, in excess of such amount as may be specified during the three immediately preceding financial years or during the current financial year

(C) has given a guarantee or provided any security in connection with the indebtedness of any third person to the listed entity, its holding, subsidiary or associate company or their promoters or directors, for such amount as may be specified during the three immediately preceding financial years or during the current financial year; or

(D) has any other pecuniary transaction or relationship with the listed entity, its holding, subsidiary or associate company amounting to two percent or more of its gross turnover or total income: Provided that the pecuniary relationship or transaction with the listed entity, its holding, subsidiary or associate company or their promoters, or directors in relation to points (A) to (D) above shall not exceed two percent of its gross turnover or total income or fifty lakh rupees or such higher amount as may be specified from time to time, whichever is lower.]

- (vi) who, neither himself/herself, nor whose relative(s) —

(A) holds or has held the position of a key managerial personnel or is or has been an employee of the listed entity or its holding, subsidiary or associate company or any company belonging to the promoter group of the listed entity, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed:
Provided that in case of a relative, who is an employee other than key managerial personnel, the restriction under this clause shall not apply for his / her employment.

(B) is or has been an employee or proprietor or a partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of —

(1) a firm of auditors or company secretaries in practice or cost auditors of the listed entity or its holding, subsidiary or associate company; or

(2) any legal or a consulting firm that has or had any transaction with the listed entity, its holding, subsidiary or associate company amounting to ten per cent or more of the gross turnover of such firm.

(C) holds together with his relatives two per cent or more of the total voting power of the listed entity; or

(D) is a chief executive or director, by whatever name called, of any nonprofit organisation that receives twenty-five per cent or more of its receipts or corpus from the listed entity, any of its promoters, directors or its holding, subsidiary or associate company or that holds two per cent or more of the total voting power of the listed entity.

(E) is a material supplier, service provider or customer or a lessor or lessee of the listed entity.

(vii) who is not less than 21 years of age.

(viii) who is not a non-independent director of another company on the board of which any non-independent director of the listed entity is an independent director.

which is a Trust, mandated to constitute its 'board of trustees' in accordance with the law under which it is established, the non-employee trustees on its board shall be treated as independent directors

Regulation 25 -Obligations with respect to independent directors:

1. No person shall be appointed or continue as an alternate director for an independent director of a listed entity with effect from October 1, 2018.
2. The maximum tenure of independent directors shall be in accordance with the Companies Act, 2013 and rules made thereunder, in this regard, from time to time.

2A. The appointment, re-appointment or removal of an independent director of a listed entity, shall be subject to the approval of shareholders by way of a special resolution.]
[Provided that where a special resolution for the appointment of an independent director fails to get the requisite majority of votes but the votes cast in favour of the resolution exceed the votes cast against the resolution and the votes cast by the public shareholders in favour of the resolution exceed the votes cast against the resolution, then the appointment of such an independent director shall be deemed to have been made under sub-regulation (2A):

Provided further that an independent director appointed under the first proviso shall be removed only if the votes cast in favour of the resolution proposing the removal exceed the votes cast against the resolution and the votes cast by the public shareholders in favour of the resolution exceed the votes cast against the resolution.]

3. The independent directors of the listed entity shall hold at least one meeting in a financial year, without the presence of non-independent directors and members of the management and all the independent directors shall strive to be present at such meeting.
4. The independent directors in the meeting referred in sub-regulation (3) shall, inter alia-
 - (a) review the performance of non-independent directors and the board of directors as a whole.

(b) review the performance of the chairperson of the listed entity, taking into account the views of executive directors and non-executive directors.

(c) assess the quality, quantity and timeliness of flow of information between the management of the listed entity and the board of directors that is necessary for the board of directors to effectively and reasonably perform their duties.

5. An independent director shall be held liable, only in respect of such acts of omission or commission by the listed entity which had occurred with his/her knowledge, attributable through processes of board of directors, and with his/her consent or connivance or where he 231[/she] had not acted diligently with respect to the provisions contained in these regulations.
6. Omitted w.e.f 13.12.2024
7. The listed entity shall familiarise the independent directors through various programmes about the listed entity, including the following:
 - (a) nature of the industry in which the listed entity operates.
 - (b) business model of the listed entity.
 - (c) roles, rights, responsibilities of independent directors; and
 - (d) any other relevant information.
8. Every independent director shall, at the first meeting of the board in which he participates as a director and thereafter at the first meeting of the board in every financial year or whenever there is any change in the circumstances which may affect his status as an independent director, submit a declaration that he meets the criteria of independence as provided in clause (b) of sub-regulation (1) of regulation 16 and that he is not aware of any circumstance or situation, which exist or may be reasonably anticipated, that could impair or impact his ability to discharge his duties with an objective independent judgment and without any external influence.
9. The board of directors of the listed entity shall take on record the declaration and confirmation submitted by the independent director under sub-regulation (8) after undertaking due assessment of the veracity of the same.
10. The top 1000 listed entities by market capitalization shall undertake Directors and Officers insurance ('D and O insurance') for all their independent directors of such quantum and for such risks as may be determined by its board of directors.
11. No independent director, who resigns from a listed entity, shall be appointed as an executive / whole time director on the board of the listed entity, its holding, subsidiary or associate company or on the board of a company belonging to its promoter group, unless a period of one year has elapsed from the date of resignation as an independent director.