

ELECTION OF DIRECTORS - DECEMBER 2020

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 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 relevant clauses of the Nationalized Banks (Management & Miscellaneous Provisions) Scheme, 1970 and the relevant regulations of Bank of Baroda General (Shares and Meetings) Regulations, 1998 respectively in this regard, are reproduced below for the information of the Shareholders.

THE BANKING REGULATION ACT, 1949

Substantial interest- Section 5 (n-e)

- 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 upon which exceeds five lakhs of rupees or ten per cent. of the paid-up capital of the company, whichever is less;
- ii. In relation to a firm, means the beneficial interest held therein by an individual or his spouse or minor child, whether singly or taken together, which represents more than ten per cent 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 on 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 subsection, 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 of India 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. "Directors" includes a member of any Board or Committee in India constituted by 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:-

- a) not more than sixteen per cent of the total paid up capital, one Director
- b) 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.
- c) 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. agriculture 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 be useful to the corresponding new Bank.
- B. represents the interests of depositors; or
- C. represent the interest of farmers, workers and artisans

Section 9(3AA):

Without prejudice to the provision of sub-section 3(A) and notwithstanding anything to the contrary contained in the 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 the track record, integrity and such other criteria as 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 requirement 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 Extraordinary 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

Term of office of elected Director

Clause 9(4) :

An elected Director shall hold office for three years and shall be eligible for re-election. Provided no such Director shall hold office continuously for a period exceeding six years.

Disqualification of Directors

Clause 10 :

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 criminal court of an offence which involves moral turpitude
- 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 Bank.

Vacation of office of Directors -etc.

Clause 11 :

1. If a Director becomes subject to any of disqualification 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 a whole-time Director including the Managing Director or a Director referred to in clause (b) or clause (c) or clause (d) 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.

Removal from office of an elected Director

Clause 11A :

The shareholders, other than the Central Government, may, by a resolution passed by the 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 the sub-section (3) of Section 9 and elect in his stead another person to fill the vacancy.

Filling of vacancy in the office of an elected Director

Clause 11B :

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

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

Disclosure of interest by Directors

Clause 12(8) :

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 proposes 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.

BANK OF BARODA GENERAL (SHARES AND MEETINGS) REGULATIONS, 1998

Exercise of rights of joint holders

Regulation 10:

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

Manner of taking poll and result thereof:

Regulation 61B

- (i) The Chairman of the meeting shall have power to regulate the manner in which a poll shall be taken.
- (ii) The result of the poll shall be deemed to be the decision of the meeting on resolution on which the poll was taken.

Directors to be elected at general meeting

Regulation 63

- 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 the 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.

List of shareholders

Regulation 64

- 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 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.

Nomination of candidates for election:

Regulation 65:

- 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 the 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 at least 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 Head Office of the 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 Head office of the Bank on a working day not less than fourteen days before the date fixed for the meeting.

Scrutiny of nominations:

Regulation 66:

- i. Nominations shall be scrutinized on the first working day following the date fixed for receipt of nominations and in case any nomination is not found to be valid, the same shall be rejected after recording the reason thereof. 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.

Election disputes:

Regulation 67:

- 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 the 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 the 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 results 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 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.

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 the 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.

Voting by duly authorized representative:

Regulation 69:

- i. A shareholder, being the Central Government or a Company, may by a resolution, as the case may be, authorize any of its officers 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 representatives” in these regulations) shall be entitled to exercise the same powers on behalf of the Central Government or the Company which he represents, as if he were an individual shareholder of the 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 a duly authorized representative of the Central Government/ Company.
- ii. No person shall attend or vote at any meeting of the shareholders of the Bank as the duly authorized representative of the 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 Head 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 Baroda (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 DBR.Appt.No: 9/29.67.001/2019-20 dated 02nd August 2019 laying down specific “Fit and Proper” Criteria to be fulfilled by the persons being elected as directors on the Board of the Banks 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:

The Bank is required to constitute a Nomination and Remuneration Committee [hereinafter referred to as the Committee] consisting of a minimum of three non-executive directors from amongst the Board of Directors [hereinafter referred to as Board], 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 a process of due diligence to determine the 'fit and proper' status of the persons to be elected as directors under sub-section (c) of Section 19 of the SBI Act/ clause (i) of sub-section (3) of Section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980.

b) Manner and procedure:

The banks shall obtain necessary information, and a declaration & undertaking, in the prescribed format. from the persons who file their nominations 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 below. The Committee's discussions shall be properly recorded as formal minutes of the meeting and the voting, if done, shall also be noted. Based on the information provided in the signed declaration, the Committee shall decide on the acceptance or otherwise of the candidature and shall make references, where considered

necessary, to the appropriate authority / persons, to ensure that the candidate conforms to the requirements indicated.

c) Criteria

The Nomination and Remuneration committee should determine the 'fit and proper' status of the proposed candidates 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 19A(a) of the SBI Act / 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 Section 22 of the SBI Act, 1955 / 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 an 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/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 (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.

The banks shall obtain from the elected director:

- (a) a Deed of Covenant executed in the format annexed in prescribed format, 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 Annexure incorporating the changes.

The banks 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.

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 (2) of section 19A of the SBI Act / 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.

The Committee shall adopt the revised criteria stated above while scrutinizing the nomination of candidates seeking election as new directors (appointment/re-appointment). However, existing elected directors may be allowed to complete their current terms as per the pre-revised criteria.

GIST OF RBI GUIDELINES (vide circular no. DBR.Apt.BC.No.39/29.39.001/2016-17 dated 24.11.2016)

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.

REVISED GUIDELINES DATED 25th MARCH 2015 ISSUED BY GOI FOR APPOINTMENT OF PARTTIME NON-OFFICIAL DIRECTORS (NOD) ON THE BOARDS OF PUBLIC SECTOR BANKS/FINANCIAL INSTITUTIONS:

GENERAL

1. Nominations will be made keeping in view the provisions of the relevant Acts/Rules.
2. The suitability of nominees may be assessed in terms of qualification 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 eminence 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 ex-CMDs/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 of the case.
- f) As far as 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.

WORK EXPERIENCE

Professionals/academicians should ordinarily have 20 years of work experience in their particular field.

DISQUALIFICATIONS

- a) A director already on a Bank/Financial Institution (FIs)/RBI/Insurance Company, under any category, may not be considered for nomination as NOD in any other Bank/Fl/RBI/Insurance Company.
- b) Persons connected with hire purchase, financing investment, leasing and other parabanking activities, MPs, MLAs, MLCs 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/Fl/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.

TENURE

An NOD would not be considered for nomination as a Director on the Board of a Bank/Fl/RBI/Insurance Company if such Director has already been a NOD / Shareholder- Director on the board of any other Bank/Fl/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 Nationalised Banks Scheme (Management and Miscellaneous) Provision 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.

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 Non-official 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.

IMPORTANT SECTION OF THE COMPANIES ACT, 2013

Section 2(77)

(77) "relative", with reference to any person, means any one who is related to another, if—

- (i) they are members of a Hindu Undivided Family;
- (ii) they are husband and wife; or
- (iii) one person is related to the other in such manner as may be prescribed;

Section 89

Declaration in Respect of Beneficial Interest in any Share

1. Where the name of a person is entered in the register of members of a company as the holder of shares in that company but who does not hold the beneficial interest in such shares, such person shall make a declaration within such time and in such form as may be prescribed to the company specifying the name and other particulars of the person who holds the beneficial interest in such shares.
2. Every person who holds or acquires a beneficial interest in share of a company shall make a declaration to the company specifying the nature of his interest, particulars of the person in whose name the shares stand registered in the books of the company and such other particulars as may be prescribed.
3. Where any change occurs in the beneficial interest in such shares, the person referred to in sub-section (1) and the beneficial owner specified in sub-section (2) shall, within a period of thirty days from the date of such change, make a declaration to the company in such form and containing such particulars as may be prescribed.
4. The Central Government may make rules to provide for the manner of holding and disclosing beneficial interest and beneficial ownership under this section.
5. If any person fails to make a declaration as required under sub-section (1) or sub-section (2) or sub-section (3), he shall be liable to a penalty of fifty thousand rupees and in case of continuing failure, with a further penalty of two hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees.
6. Where any declaration under this section is made to a company, the company shall make a note of such declaration in the register concerned and shall file, within thirty days from the date of receipt of declaration by it, a return in the prescribed form with the Registrar in respect of such declaration with such fees or additional fees as may be prescribed .
7. If a company, required to file a return under sub-section (6), fails to do so before the expiry of the time specified therein, the company and every officer of the company who is in default shall be liable to a penalty of one thousand rupees for each day during which such failure continues, subject to a maximum of five lakh rupees in the case of a company and two lakh rupees in case of an officer who is in default.

8. No right in relation to any share in respect of which a declaration is required to be made under this section but not made by the beneficial owner, shall be enforceable by him or by any person claiming through him.
9. Nothing in this section shall be deemed to prejudice the obligation of a company to pay dividend to its members under this Act and the said obligation shall, on such payment, stand discharged.
10. For the purposes of this section and section 90, beneficial interest in a share includes, directly or indirectly, through any contract, arrangement or otherwise, the right or entitlement of a person alone or together with any other person to—
 - (i) exercise or cause to be exercised any or all of the rights attached to such share; or
 - (ii) receive or participate in any dividend or other distribution in respect of such share.]
11. The Central Government may, by notification, exempt any class or classes of persons from complying with any of the requirements of this section, except sub-section (10), if it is considered necessary to grant such exemption in the public interest and any such exemption may be granted either unconditionally or subject to such conditions as may be specified in the notification.]

Section 90

Register of significant beneficial owners in a company

1. Every individual, who acting alone or together, or through one or more persons or trust, including a trust and persons resident outside India, holds beneficial interests, of not less than twenty-five per cent. or such other percentage as may be prescribed, in shares of a company or the right to exercise, or the actual exercising of significant influence or control as defined in clause (27) of section 2, over the company (herein referred to as "significant beneficial owner"), shall make a declaration to the company, specifying the nature of his interest and other particulars, in such manner and within such period of acquisition of the beneficial interest or rights and any change thereof, as may be prescribed:

Provided that the Central Government may prescribe a class or classes of persons who shall not be required to make declaration under this sub-section.
2. Every company shall maintain a register of the interest declared by individuals under sub-section (1) and changes therein which shall include the name of individual, his date of birth, address, details of ownership in the company and such other details as may be prescribed.
3. The register maintained under sub-section (2) shall be open to inspection by any member of the company on payment of such fees as may be prescribed.
4. Every company shall file a return of significant beneficial owners of the company and changes therein with the Registrar containing names, addresses and other details as may be prescribed within such time, in such form and manner as may be prescribed.
- 4A. Every company shall take necessary steps to identify an individual who is a significant beneficial owner in relation to the company and require him to comply with the provisions of this section.]
5. A company shall give notice, in the prescribed manner, to any person (whether or not a member of the company) whom the company knows or has reasonable cause to believe—
 - (a) to be a significant beneficial owner of the company;
 - (b) to be having knowledge of the identity of a significant beneficial owner or another person likely to have such knowledge; or
 - (c) to have been a significant beneficial owner of the company at any time during the three years immediately preceding the date on which the notice is issued, and who is not registered as a significant beneficial owner with the company as required under this section.
6. The information required by the notice under sub-section (5) shall be given by the concerned person within a period not exceeding thirty days of the date of the notice.
7. The company shall,—
 - (a) where that person fails to give the company the information required by the notice within the time specified therein; or

(b) where the information given is not satisfactory,

apply to the Tribunal within a period of fifteen days of the expiry of the period specified in the notice, for an order directing that the shares in question be subject to restrictions with regard to transfer of interest, suspension of all rights attached to the shares and such other matters as may be prescribed.

8. On any application made under sub-section (7), the Tribunal may, after giving an opportunity of being heard to the parties concerned, make such order restricting the rights attached with the shares within a period of sixty days of receipt of application or such other period as may be prescribed.
9. The company or the person aggrieved by the order of the Tribunal may make an application to the Tribunal for relaxation or lifting of the restrictions placed under sub-section (8), within a period of one year from the date of such order:

Provided that if no such application has been filed within a period of one year from the date of the order under sub-section (8), such shares shall be transferred, without any restrictions, to the authority constituted under sub-section (5) of section 125, in such manner as may be prescribed;]]]

9A. The Central Government may make rules for the purposes of this section.]

10. If any person fails to make a declaration as required under sub-section (1), he shall be liable to a penalty of fifty thousand rupees and in case of continuing failure, with a further penalty of one thousand rupees for each day after the first during which such failure continues, subject to a maximum of two lakh rupees.
11. If a company, required to maintain register under sub-section (2) and file the information under sub-section (4) or required to take necessary steps under sub-section (4A), fails to do so or denies inspection as provided therein, the company shall be liable to a penalty of one lakh rupees and in case of continuing failure, with a further penalty of five hundred rupees for each day, after the first during which such failure continues, subject to a maximum of five lakh rupees and every officer of the company who is in default shall be liable to a penalty of twenty-five thousand rupees and in case of continuing failure, with a further penalty of two hundred rupees for each day, after the first during which such failure continues, subject to a maximum of one lakh rupees.
12. If any person wilfully furnishes any false or incorrect information or suppresses any material information of which he is aware in the declaration made under this section, he shall be liable to action under section 447.

Section 164 - Disqualifications for Appointment of Director

(1) A person shall not be eligible for appointment as a director of a company, if –

- (a) he is of unsound mind and stands so declared by a competent court;
- (b) he is an undischarged insolvent;
- (c) he has applied to be adjudicated as an insolvent and his application is pending;
- (d) he has been convicted by a court of any offence, whether involving moral turpitude or otherwise, and sentenced in respect thereof to imprisonment for not less than six months and a period of five years has not elapsed from the date of expiry of the sentence:

Provided that if a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of seven years or more, he shall not be eligible to be appointed as a director in any company;

- (e) an order disqualifying him for appointment as a director has been passed by a court or Tribunal and the order is in force;
- (f) he has not paid any calls in respect of any shares of the company held by him, whether alone or jointly with others, and six months have elapsed from the last day fixed for the payment of the call;
- (g) he has been convicted of the offence dealing with related party transactions under section 188 at any time during the last preceding five years; or

(h) he has not complied with sub-section (3) of section 152.

(i) he has not complied with the provisions of sub-section (1) of section 165.

(2) No person who is or has been a director of a company which—

(a) has not filed financial statements or annual returns for any continuous period of three financial years; or

(b) has failed to repay the deposits accepted by it or pay interest thereon or to redeem any debentures on the due date or pay interest due thereon or pay any dividend declared and such failure to pay or redeem continues for one year or more, shall be eligible to be re-appointed as a director of that company or appointed in other company for a period of five years from the date on which the said company fails to do so.

Provided that where a person is appointed as a director of a company which is in default of clause (a) or clause (b), he shall not incur the disqualification for a period of six months from the date of his appointment.

(3) A private company may by its articles provide for any disqualifications for appointment as a director in addition to those specified in sub-sections (1) and (2):

Provided that the disqualifications referred to in clauses (d), (e) and (g) of sub-section (1) shall continue to apply even if the appeal or petition has been filed against the order of conviction or disqualification.

Section 184 - Disclosure of Interest by Director

(1) Every 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 disclosures already made, then at the first Board meeting held after such change, disclose his concern or interest in any company or companies or bodies corporate, firms, or other association of individuals which shall include the shareholding, in such manner as may be prescribed.

(2) Every director of a company who is in any way, whether directly or indirectly, concerned or interested in a contract or arrangement or proposed contract or arrangement entered into or to be entered into—

(a) with a body corporate in which such director or such director in association with any other director, holds more than two per cent. shareholding of that body corporate, or is a promoter, manager, Chief Executive Officer of that body corporate; or

(b) with a firm or other entity in which, such director is a partner, owner or member, as the case may be, shall disclose the nature of his concern or interest at the meeting of the Board in which the contract or arrangement is discussed and shall not participate in such meeting:

Provided that where any director who is not so concerned or interested at the time of entering into such contract or arrangement, he shall, if he becomes concerned or interested after the contract or arrangement is entered into, disclose his concern or interest forthwith when he becomes concerned or interested or at the first meeting of the Board held after he becomes so concerned or interested.

(3) A contract or arrangement entered into by the company without disclosure under sub-section (2) or with participation by a director who is concerned or interested in any way, directly or indirectly, in the contract or arrangement, shall be voidable at the option of the company.

(4) If a director of the company contravenes the provisions of sub-section (1) or subsection (2), such director shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to one lakh rupees, or with both.

(5) Nothing in this section—

(a) shall be taken to prejudice the operation of any rule of law restricting a director of a company from having any concern or interest in any contract or arrangement with the company;

(b) shall apply to any contract or arrangement entered into or to be entered into between two companies or between one or more companies and one or more bodies corporate where any of the directors of the one company or body corporate or two or more of them together holds or hold not more than two per cent. of the paid-up share capital in the other company or the body corporate.

Company Secretary
Bank of Baroda
Baroda Corporate Centre,
C-26, "G"Block, BKC
Bandra (East)
Mumbai 400 051