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**STANDING COMMITTEE  
ON FINANCE  
(2005-2006)**

**FOURTEENTH LOK SABHA**

**MINISTRY OF FINANCE  
(DEPARTMENT OF ECONOMIC AFFAIRS)**

**THE BANKING COMPANIES  
(ACQUISITION AND TRANSFER OF UNDERTAKINGS)  
AND FINANCIAL INSTITUTIONS LAWS  
(AMENDMENT) BILL, 2005**

**THIRTY-FOURTH REPORT**



सत्यमेव जयते

**LOK SABHA SECRETARIAT  
NEW DELHI**

*April, 2006 / Chaitra, 1928 (Saka)*

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(AMENDMENT) BILL, 2005

*Presented to Lok Sabha on 11.5.2006*

*Presented to Rajya Sabha on 11.5.2006*



LOK SABHA SECRETARIAT  
NEW DELHI

*April, 2006/Chaitra, 1928 (Saka)*

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COMPOSITION OF STANDING COMMITTEE ON  
FINANCE (2005-2006)

Maj. Gen. (Retd.) B.C. Khanduri — *Chairman*

MEMBERS

*Lok Sabha*

2. Shri Jaswant Singh Bishnoi
3. Shri Gurudas Dasgupta
4. Shri Bhartruhari Mahtab
5. Shri Shyama Charan Gupta
6. Shri Gurudas Kamat
7. Shri A. Krishnaswamy
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*Rajya Sabha*

22. Shri M. Venkaiah Naidu
23. Shri Yashwant Sinha
24. Shri Chittabrata Majumdar
25. Shri S.P.M. Syed Khan

26. Shri Amar Singh
27. Shri C. Ramachandraiah
28. Shri Mangani Lal Mandal
- \*29. Shri Santosh Bagrodia
- \*\*30. Smt. Shobhana Bhartia
31. Vacant

SECRETARIAT

- |                             |   |                             |
|-----------------------------|---|-----------------------------|
| 1. Shri John Joseph         | — | <i>Secretary</i>            |
| 2. Dr. (Smt.) P.K. Sandhu   | — | <i>Additional Secretary</i> |
| 3. Shri A. Mukhopadhyay     | — | <i>Joint Secretary</i>      |
| 4. Shri S.B. Arora          | — | <i>Deputy Secretary</i>     |
| 5. Shri T.G. Chandrashekhar | — | <i>Under Secretary</i>      |

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\*Nominated to this Committee *w.e.f.* 9.3.2006.

\*\*Nominated to this Committee *w.e.f.* 17.3.2006.

## INTRODUCTION

1. Chairman of the Standing Committee on Finance having been authorised by the Committee to submit the Report on their behalf present this Thirty-fourth Report on the Banking Companies (Acquisition and Transfer of Undertakings) and Financial Institutions Laws (Amendment) Bill, 2005.

2. The Banking Companies (Acquisition and Transfer of Undertakings) and Financial Institutions Laws (Amendment) Bill, 2005 introduced in Lok Sabha on 16 August, 2005 was referred to the Committee on 30 August, 2005 for examination and report thereon, by the Hon'ble Speaker, Lok Sabha under Rule 331E of the Rules of Procedure and Conduct of Business in Lok Sabha.

3. The Committee obtained written information on various provisions contained in the aforesaid Bill from the Ministry of Finance (Department of Economic Affairs), who also briefed them at their sitting held on 30 September, 2005.

4. Written views/Memoranda were received from State Bank of India, Punjab National Bank, Oriental Bank of Commerce, Bank of India, Allahabad Bank, Indian Banks' Association, Industrial Development Bank of India, PHD Chamber of Commerce and Industry, Bombay Chamber of Commerce and Industry, Associated Chamber of Commerce and Industry (ASSOCHAM), Institute of Company Secretaries of India, Institute of Chartered Accountants of India, All India Bank Officers' Association, All India Bank Officers' Confederation, All India Bank Employees Association, Bank Employees Federation of India and National Confederation of Bank Employees.

5. The Committee, at their sitting held on 7 November, 2005, heard the views of the representatives of National Institute of Public Finance and Policy (NIPFP), Indian Banks' Association and Industrial Development Bank of India. On 8 November, 2005, the Committee heard the views of the representatives of Punjab National Bank and Oriental Bank of Commerce.

6. At their sitting held on 5 January, 2006 the Committee heard the views of the representatives of All India Bank Officers' Association, All India Bank Officers' Confederation, All India Bank Employees Association, Bank Employees Federation of India and National

Confederation of Bank Employees. On 6 January, 2006 the Committee heard the views of the representatives of State Bank of India, Bank of India and Allahabad Bank.

7. The Committee took oral evidence of the representatives of the Ministry of Finance (Department of Economic Affairs) on 19 January, 2006.

8. The Committee, at their sitting held on 4th April, 2006, considered and adopted the draft report and authorised the Chairman to finalise the same and present it to the Hon'ble Speaker/Parliament.

9. The Committee wish to express their thanks to the Officers of the Ministry of Finance, Department of Economic Affairs, representatives of the Banks, Chambers of Commerce, Officers' and Employees Associations/Confederations of public sector banks and other individuals for their co-operation in placing before them their considered views and perceptions on the provisions of the Bill and for furnishing written notes and information that the Committee had desired in connection with the examination of the Bill.

10. For facility of reference, the observations/recommendations of the Committee have been printed in thick type.

NEW DELHI;  
12 April, 2006  
22 Chaitra, 1928 (Saka)

MAJ. GEN. (RETD.) B.C. KHANDURI,  
*Chairman,*  
*Standing Committee on Finance.*



## REPORT

In July, 1969 fourteen major commercial banks, each with deposits of Rs. 50 crores or more, were nationalised by the Banking Companies (Acquisition and Transfer of Undertakings) Ordinance, 1969, which was replaced by an Act in 1970. At that time, it was visualised that public ownership of these banks would help in more effective mobilisation of savings and their channelisation for productive purposes. In order to further control the heights of the economy, to meet progressively, and serve better, the needs of the development of the economy and to promote the welfare of the people, in conformity with the policy of the State towards securing the principles laid down in Clause (b) and (c) of article 39 of the Constitution, six more commercial banks, each having deposits of Rs. 200 crores or more as on the 14th March, 1980, were nationalised by the Banking Companies (Acquisition and Transfer of Undertakings) Ordinance, 1980, promulgated by the President on the 15th April, 1980. The Ordinance, apart from providing for the transfer and vesting of the undertakings of the six banks in the corresponding new banks, provided for payment of an amount for the acquisition of such undertakings, the management of the corresponding new banks and other necessary and consequential provisions. The Bill to replace the ordinance, upon being passed by both the Houses of Parliament received the assent of the President on the 11th July, 1980, and came on the statute book as the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980.

2. At present, there are 19 nationalised banks. The Government holds the entire equity in four of these banks and majority equity in fifteen banks. The nationalised banks to which the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 applies are:

- (i) Central Bank of India
- (ii) Bank of India
- (iii) Punjab National Bank
- (iv) Bank of Baroda
- (v) UCO Bank
- (vi) Canara Bank
- (vii) United Bank of India

- (viii) Dena Bank
- (ix) Syndicate Bank
- (x) Union Bank of India
- (xi) Allahabad Bank
- (xii) Indian Bank
- (xiii) Bank of Maharashtra
- (xiv) Indian Overseas Bank

3. The Banks to which the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 applies are: (i) Andhra Bank, (ii) Corporation Bank, (iii) Oriental Bank of Commerce, (iv) Punjab & Sind Bank, and (v) Vijaya Bank.

4. The two Acts of 1970 and 1980 originally envisaged that the paid up capital of these banks may be raised either by transfer from the reserve fund or by contribution by the Central Government. Thus, the entire capital of the public sector Banks was to be held by the Government. However, the increasing need for capital was felt by these banks due to introduction of prudential norms on capital adequacy during 90s, lack of sufficient internal accruals and to meet their increasing business needs. It was, therefore, considered appropriate to raise capital by way of public issue to the extent needed. Thus, in 1994, the Acts were amended to provide that the paid up capital of these banks may be increased by such amounts as the Board of Directors of the Bank may, after consultation with the Reserve Bank of India and with the previous sanction of the Central Government, raise by public issue of shares in such manner as may be prescribed, so that the Central Government shall, at all times, hold not less than 51% of the paid up capital of each such bank. Presently the shareholding pattern of the 15 nationalised banks which have gone in for public issues varies from 51% to 77%.

5. In addition to the changes in the pattern of shareholding in nationalised banks, need has been felt on the part of the Government to bring forth amendments in some other provisions of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980 to bring the operation of the nationalized banks in tune with the changed scenario and modern business practices. To meet this end, the Banking Companies (Acquisition and Transfer of Undertakings) and Financial Institutions Laws (Amendment) Bill, 2000 was introduced in Lok Sabha on the 13th December, 2000. The Bill lapsed due to dissolution of the 13th Lok Sabha.

6. The Banking Companies (Acquisition and Transfer of Undertakings) and Financial Institutions Laws (Amendment) Bill, 2005 was introduced in Lok Sabha on 16.8.2005 and referred to the Standing Committee on Finance by the Hon'ble Speaker on 30.08.2005 for examination and report.

7. The amendments proposed to be carried out *vide* the Banking Companies (Acquisition and Transfer of Undertakings) and Financial Institutions Laws (Amendment) Bill, 2005 as introduced in the Lok Sabha and referred to the Committee are as follows:

- (i) Increasing the number of whole time directors on the boards of nationalised Banks from existing two whole time directors to four, to have more functional Directors in view of expansion of activities of the nationalised banks.
- (ii) Modification of clause (c) of sub-section (3) of Section (9) of the Act to provide for nomination of a Director by RBI as considered necessary instead of it being mandatory as at present.
- (iii) Deletion of Section 9 (3) (d) which provides for nomination of not more than two directors from SEBI and other Financial Institutions on the board of nationalised banks.
- (iv) Amendment of Section 9 (3) (i) to provide for a maximum of three elected shareholder directors on the Board of the nationalised banks on the basis of issued capital of the banks, instead of one to six Directors as per the existing provisions, so as to provide for more equitable representation which reflects the percentage of ownership in the banks.
- (v) Enabling the shareholders to discuss, adopt and approve the annual accounts and the balance sheet of the bank concerned at the Annual General Meeting.
- (vi) Inclusion of a new section similar to section 212 of the Companies Act, 1956 providing for attaching the details of a subsidiary or subsidiaries such as balance-sheet, profit and loss accounts and reports of Auditors along with the annual report of the bank.
- (vii) Addition of new section for enabling banks to transfer the unclaimed dividends of over 7 years to Investor Education and Protection Fund established by the Central Government under Section 205C of Companies Act, 1956.

- (viii) Addition of a new section in the Act enabling the Central Government to supersede the Board of Directors of a Bank in case the RBI is satisfied that the affairs of the bank are being conducted in a manner detrimental to the interest of depositors and other stake holders.
- (ix) Amendment of relevant statutes relating to banks and financial institutions for prescribing the term of non-official/ elected directors other than workmen/officer employee directors as three years subject to further re-appointment/ re-election with total continuous period not exceeding six years.

8. Except for the amendment proposal relating to restricting the number of share holder directors to provide for more equitable representation on the Board of Directors of the nationalised banks on the basis of percentage of ownership [(iv) above] the amendments proposed in the Bill, as introduced and referred to the Committee, are broadly the same as the ones that were incorporated in the lapsed Bill of 2000. However, the amendment relating to reduction of prescribed minimum shareholding of the Central Government in nationalised banks from 51% to 33% as incorporated in the earlier Bill has been omitted in the amendments proposed in the present Bill.

9. On the reasons for proposing to reduce the prescribed minimum equity of the Government to 33% in the earlier Bill of 2000 that lapsed, the Ministry of Finance, in a written reply, *inter-alia*, informed as follows:

“In 1999 itself, it was felt that the additional capital requirement of eight public sector banks which had raised capital from the market was quite large (estimated to be in the range of Rs. 10,000 crore for the next five years). It was neither feasible nor desirable to provide this large amount of capital through the Government budget (or through monetisation by the Reserve Bank of India in case of SBI). Hence unless the mandatory minimum stake of Government was reduced and thereby the ‘head room’ was created for raising the additional capital requirement from the market, it was not feasible to reach the international standards. It had, therefore, become necessary to make appropriate legislative changes to reduce the stipulation regarding minimum Government share holdings in nationalised banks (From 51% to 33% of the paid-up capital)”.

10. As for the decision to retain the minimum prescribed equity of the Government in Public Sector banks at 51%, the Ministry's reply *inter-alia* reads as follows:

"All the nationalised Banks have been able to meet the capital adequacy norm of 9% keeping the Government's holding intact at 51%. Moreover, it may be possible for banks to meet a part of the regulatory capital requirement in a non-dilutive manner (*i.e.*, without dilution of the voting rights of the shareholders) through certain instruments like preference shares, Innovative Tier I and Upper Tier II instruments in the next few years. Thus, as a matter of public policy, it was decided to retain the minimum equity level of the Government at 51%.

11. The Committee received written views/suggestions on the various provisions of the Bill from (i) State Bank of India, (ii) Punjab National Bank, (iii) Oriental Bank of Commerce, (iv) Bank of India, (v) Allahabad Bank, (vi) Indian Banks' Association, (vii) Industrial Development Bank of India, (viii) PHD Chamber of Commerce and Industry, (ix) Bombay Chamber of Commerce and Industry (x) Institute of Company Secretaries of India, (xi) Institute of Chartered Accountants of India, (xii) All India Bank Officers' Association, (xiii) All India Bank Officers' Confederation, (xiv) All India Bank Employees Association, (xv) Bank Employees Federation of India, (xvi) National Confederation of Bank Employees and (xvii) ASSOCHAM. The Committee also had personal hearings of the views of the representatives of these Banks/Associations/Confederations as well as the National Institute of Public Finance & Policy.

12. The Committee took oral evidence of the representatives of the Ministry of Finance (Department of Economic Affairs) to further enlighten themselves on various aspects of the proposed legislation.

13. In the course of the Committee's examination of the amendment proposals contained in the Bill, certain issues, which primarily relate to the requirement of uniformity and level playing field *vis-à-vis* the provisions applicable or proposed for the Private Sector Banks came to light. Such issues *inter-alia* relate to: the legal mechanism for enabling raising of preference capital by Banks, and provisions relating to supersession of Board of Directors in the event of the affairs of a bank being conducted in a manner detrimental to the interest of depositors and shareholders as proposed for Private Sector Banks *vis-à-vis*, the proposals relating to Public Sector Banks.

14. Mainly in response to the Committee's questioning on the related issues, the Ministry of Finance, in consultation with the Reserve Bank, worked out and proposed certain changes in the Banking Companies (Acquisition and Transfer of Undertakings) and Financial Institutions Laws (Amendment) Bill, 2005 (Annexure I).

15. A summarised account of the changes proposed by the Ministry for incorporation in the Bill and the rationale/justification given for the proposed changes is given below:

Proposed changes	Rationale
1	2
(i) Amendment of section 3 for permitting nationalised banks to issue preference shares.	(i) The proposed change is intended to enable nationalised banks to raise capital in a cost effective manner at par with private sector banks and without infusion of capital from the Government.
(ii) Insertion of new section 18A relating to appointment of Administrator in lieu of sections 18A to 18F regarding constitution of a Financial Restructuring Authority.	(ii) In terms of the existing provisions of section 9A of the Act, the Central Government, in consultation with the RBI, is empowered to revamp/restructure weak/potentially weak banks; the public sector banks have been faring well as of now; and the basic objective of helping a bank in making a turnaround could be effectively achieved with the provisions of the revised section 18A, whose contents and approach are in line with the amendment proposed in the Banking regulation (Amendment) Bill, 2005 in respect of private sector banks.
(iii) Amendment of section 9 for including 'fit and proper' status as a criteria to be fulfilled by elected directors.	(iii) Inclusion of 'fit and proper' status as a requirement for elected directors would ensure that the Board comprises of persons of high integrity.

(iv) Deletion of section 10B of the Bill relating to inclusion of certain particulars of subsidiaries in the balance sheets of nationalised banks.

(iv) The stipulation of section 10B for attaching specified documents such as balance sheets has been observed to be redundant as, in terms of section 29A, which is to be incorporated in the Banking Regulation Act (which is also applicable to nationalised banks), the RBI can advise the banks to disclose in the financial statements information relating to the business or affairs of any associate enterprise of the bank concerned.

16. The proposals of the Banking companies (Acquisition and Transfer of Undertakings) and Financial Institutions Laws (Amendment) Bill, 2005, *inter-alia* intend to bring forth certain changes in the composition of the Board of Directors of Nationalised Banks by way of increasing the number of whole time Directors from two to four, and doing away with the compulsory nomination of an officer of the Reserve Bank on the Boards. The Bill also seeks to provide for the statutory framework for supersession and subsequent management of the Boards of the Banks which are observed to be functioning to the detriment of the interest of the depositors and the stake holders.

17. The Committee are in agreement with the broad objectives of the amendment proposals which are aimed at meeting the requirements of the present day complexities as well as expanding activities of the banking system. In the course of their deliberations, however, certain issues which mainly relate to the statutory framework pertaining to the capital structure, and supersession of the Boards of weak or potentially weak public sector banks *vis-à-vis* the provisions envisaged for the private sector banks came to light. As a consequence thereof, the Ministry of Finance have, in consultation with the Reserve Bank proposed certain changes in the Bill, which, *inter-alia*, seek to enable public sector banks to raise 'non-dilutive' preference capital at par with private sector banks and provide for appointment of an Administrator to manage the affairs of a superseded bank in lieu of the proposal to constitute a financial

**Restructuring Authority (FRA) for the purpose. Such issues, and the recommendations/observations of the Committee on the provisions of the Bill are detailed in the subsequent paragraphs.**

### **Capital Structure of Nationalised Banks**

18. Section 3 (2B) of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980 provides that the paid-up capital of the nationalised banks can be increased either by transfer from the reserve fund or by contribution for the Central Government or by public issue of shares with the approval/consultation of Central Government and RBI.

19. Section 2 (B) (c) of the Act relating to public issue of shares, provides that the paid-up capital of nationalised banks may, from time to time, be increased by:—

“Such amounts as the Board of Directors of the corresponding new bank may, after consultation with the Reserve Bank and with the previous sanction of the Central Government, raise by public issue of shares in such manner as may be prescribed, so however that the Central Government shall at all times hold not less than fifty-one per cent of the paid-up capital of each corresponding new bank.”

20. Questioned whether the limitation of 49% for public shareholding in nationalised banks has been found to be adequate enough in meeting the capital adequacy requirements of public sector banks, the Ministry of Finance, in a written reply submitted as under:—

“The banks were able to meet their additional requirements of capital through public issue/achieve higher business growth and internal accruals without Government having to make any additional contribution in case of many banks. However, to sustain economic growth at about 8% per annum, banking services have to expand at a rapid rate warranting infusion of capital to a significant extent in banks. Further, in view of the increased capital requirement in the wake of implementation of Basle II, the Government may have to make fresh contribution to maintain their shareholding of 51% whenever the banks approach market to raise additional capital. However, with the proposed introduction of new instruments, banks would be able to meet the capital adequacy requirements in the near to medium term without the Government having to infuse additional capital to maintain its holding at 51% depending on the financial standing of banks concerned.”



21. In this regard, the Ministry also informed:

“... for banks to be able to issue preference shares, amendments to various banking statutes will be required.”

22. In terms of the amendments proposed in Section 12 of the Banking Regulation Act, 1949 *vide* the Banking Regulation (Amendment) Bill, 2005, which was examined and endorsed for enactment by the Committee in the related report presented to Parliament, private sector banking companies are to be enabled to issue preference shares subject to the regulatory guidelines of the RBI. The holders of preference shares issued by the Banking Companies are not entitled to exercise voting rights.

23. On the need for providing more avenues to nationalised banks for raising capital, and with particular reference to the legislative measures proposed in this direction for private sector banks, the Bank of India, in a Memorandum submitted to the Committee, *inter alia*, stated as follows:—

“The provisions in regard to capital for nationalised banks are covered in Section 3 of the Nationalisation Acts. This section is silent on the class of shares (*viz.* equity, preference, etc.) that the nationalised banks can issue. The section *inter alia* provides for issuance of new capital by the banks in the manner that the Government holding does not fall below 51% of the paid-up capital.

This is crucially important in view of the pressures on capital adequacy, and need to have new instruments which can provide the much needed capital without diluting the Government of India stake to below 51% in voting rights. We strongly suggest that a Clause may be inserted in Section 3 to provide for the class of shares that the public sector banks can issue, and other relevant issues concerning the matter. Preference shares are non-dilutive and the Government would need to maintain 51% holding only in respect of the shares with voting rights *viz.* the equity share capital.”

24. In this regard, the CMD, Bank of India, in the course of evidence pointed out before the Committee that while the Capital structure of private sector banks has been looked into with the amendments proposed in Section 12 of the Banking Regulation Act, issues relating to the capital structure of the nationalised banks remained to be addressed. Emphasising on the need to urgently address

issues relating to augmenting the capital structure of nationalised banks, the CMD stated as follows:—

“The Reserve Bank of India has already started thinking in terms of introducing new capital instruments to augment tier I and III capital. There is a necessity for looking at section 3 of the Nationalisation Act which should provide for preference shares which can be reckoned as part of tier I capital.”

25. Questioned as to why it was not considered prudent to provide for an enabling mechanism for public sector banks to raise preference capital, as proposed in the case of private sector banks, the Ministry, in a written reply *inter alia* stated as follows:—

“Although the Act does not explicitly indicate that nationalised banks can issue preference shares, it can be inferred from the provisions that they can issue preference share capital but only through ‘public issue’. However, the manner of issue otherwise than by way of public issue, the terms/conditions of issue of preference shares have not been provided either in the Act or in the General Regulations.

In order to overcome these difficulties and also to keep the terms/conditions/manner/mode of issue shares similar as in the case of private sector banks, RBI has recommended amendment to Section 3 of the Act.”

26. The amendment proposed by the Reserve Bank to Section 3 of the Nationalisation Act for enabling public sector banks to raise capital in a cost-effective manner at par with private sector banks, and without diluting the Central Government’s holding to a level less than 51% of the paid-up capital consisting of equity shares, provides as follows:—

“Amendment of section 3

In section 3 of the Bank Nationalisation Act:

(i) in sub-section 2B, for clause (c), the following clause shall be substituted, namely:

(c) such amounts as the Board of Directors of the corresponding new bank may, after consultation with the Reserve Bank and with the previous sanction of the Central Government, raise whether by public issue or preferential allotment or private placement, of equity or preference shares;

Provided that the issue of preference shares shall be in accordance with the guidelines framed by the Reserve Bank specifying the class of and the terms and conditions of the issue;

Provided further that the Central Government shall, at all times, hold not less than fifty one per cent of the paid up capital consisting of equity shares, of the corresponding new bank.

(ii) in sub-section 2BB, the word "public" may be deleted.

(iii) In sub-section 2BBA, in clause (a), the word "public" may be deleted.

(iv) In sub-section 2C, the word "public" may be deleted.

(v) For sub-section 2E, the following shall be substituted, namely:

(2-E) 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 one per cent of the total voting rights of all the shareholders of the corresponding new bank;

Provided that the shareholder holding any preference share capital in the corresponding new bank shall, in respect of such capital, have a right to vote only on resolutions placed before corresponding new bank, which directly affects the rights attached to his preference shares.

Provided further that in the case of preference shareholders, the ceiling of one per cent on voting rights shall be of the total voting rights of all the shareholders holding preference share capital only."

27. On the factors that led to the thinking to propose the change to this effect in the Bill at a stage later to its introduction, the Secretary, Economic Affairs *inter-alia* stated as follows during evidence:

"...since the banks now require more capital, particularly in view of the fact that they have to now adopt to Basel II norms and capital adequacy would be higher. This would enable them to raise more capital without diluting the equity."

28. In this regard, the Ministry of Finance in a post-evidence written reply, *inter alia* stated that with the proposed introduction of new methods of raising capital by issue of preference shares, 'banks would be able to meet the capital adequacy requirements in the near to medium term without the government having to infuse additional capital to maintain its holdings at 51% depending on the financial standing of banks concerned. Thus, the amendment of this section would enable the banks to raise capital in cost-effective manner at par with private sector bank without Government's contribution'.

29. The Committee note the proposal to enable capital restructuring of nationalised banks by way of allowing the banks to issue non-dilutive preference shares did not find a place in the amendments proposed in the Bill which was introduced in Lok Sabha on 16 August, 2005. It was only after questioning by the Committee that the Government have, in consultation with RBI, proposed for substitution of Clause (c) of Sub-Section (2B) of Section 3 of the Nationalisation Acts 1970/1980 for enabling public sector banks to raise preference capital at par with the private sector banks as envisaged under the proposals relating to the Banking Regulation Act. In terms of the existing provisions, effective since 1994, nationalised banks are entitled to raise capital by way of public issue of shares in such manner as may be prescribed so that the Central Government shall always hold a minimum of 51% of the shareholding. From the information furnished, the Committee note that though, till date, the public sector banks have been able to meet the additional capital requirements through public issue of shares without the Government having to infuse additional capital to maintain its shareholding at a level above 51%, this may not be possible in future, particularly in the wake of the implementation of Basel II norms.

30. The proposed amendment is in consonance with the related provisions envisaged for the private sector banks and is expected to enable public sector banks to meet the capital adequacy requirements of the future in a cost effective manner, without infusion of additional capital from the Government, or 'diluting the voting rights'. The Committee, while endorsing the same for inclusion in the Bill for enactment, however, feel the need to emphasize on ensuring that the regulatory aspects relating to the terms and conditions for issue of preference shares by public sector banks are not in variance with or detrimental to the public sector banks *vis-à-vis* private sector banks.

**Clause 3-Amendment of section 9 (Power of Central Government to make Scheme)**

31. Clause 3 reads as under:

"In section 9 of the Bank Nationalisation Act,—

(a) in sub-section (2), after clause (c), the following clause shall be inserted, namely:—

"(ca) the manner in which the excess number of directors shall retire under second proviso to clause (i) of sub-section (3)";

(b) in sub-section (3),—

(i) in clause (a), for the words "not more than two whole-time directors", the words "not more than four whole-time directors" shall be substituted;

(ii) clauses (c) and (d) shall be omitted;

(iii) for clause (i), the following clause shall be substituted, namely:—

(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 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, 2005, 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 no such directors shall be entitled to claim any compensation for the premature retirement of their term of office."

#### **Reduction in the number of Elected Shareholder Directors**

32. In terms of the existing provisions of Section 9 (3) (i) of the Banks Nationalisation Acts the number of directors entitled to be elected by the shareholders, other than the Central Government nominee director, from amongst themselves is as follows:—

##### (Public Shareholding)

Percentage	No. of Shareholder Directors
0-20	Not more than 02
20-40	Not more than 04
40-49	Not more than 06

33. The provisions provide that all the six non-official directors nominated by the Government under section 9 (3) (h) of the Act, get replaced by shareholder directors once Government shareholding comes below 60%. As per the Ministry of Finance, this representation of directors does not correctly reflect the ownership pattern. Hence, to provide for a more equitable representation which appropriately reflects the percentage of ownership, it has been proposed to allow a maximum of three shareholder directors on the board—one for public shareholding upto 16%, two for shareholding upto 32% and three for shareholding above 32%. With the enactment of the proposed amendment, the number of Government nominee non-official directors and shareholder directors will be as follows:—

Government shareholding		Public shareholding (rounded off to lower digit)	
Percentage	No. of shareholder directors	Percentage	No. of shareholder directors
100%	06	0%	None
84-99%	05	1-16%	01
67-83%	04	17-32%	02
51-66%	03	33-49%	03

34. An issue raised by the Oriental Bank of Commerce and Punjab National Bank in particular was that with the proposed increase in the number of whole-time Directors to a maximum of four and limiting the elected shareholder Directors to a maximum of 3, certain public sector Banking Companies could face difficulties in adhering to the requirements of Clause 49 of the stock Listing Agreement prescribed by SEBI, which, *inter alia*, provides that at least 50% of the Boards should comprise of independent directors.

35. Asked whether the move to bring down the number of elected directors by the shareholders would be in consonance with the principles of corporate governance, the Ministry, in a written reply *inter alia*, stated:

“...reducing the number of elected shareholders directors to a maximum of 3 is not against the principles of corporate governance and the banks will not face any difficulty in complying with the listing agreements.”

36. Responding specifically to the issue of likely problems that some of the Banking Companies may face—as pointed out by the Punjab National Bank and the Oriental Bank of Commerce—in adhering to the requirements of the 'listing agreement' with the coming into force of the proposed amendments, the Ministry, in a written reply stated as under:

“As per SEBI, the definition of the term 'independent directors' means a non-executive director who:

- Does not have a pecuniary relationship with company, its promoters, Senior Management or affiliate companies.
- Is not related to promoters or the Senior Management.
- Has not been an executive with the company in the immediately three preceding financial years.
- Is not a partner or executive of the auditors/lawyers/consultants of the company.
- Is not a supplier, service provider or customer of the company.
- Does not hold 2% or more of the shares of the company.

In this connection it would appear from the definition of 'independent director' contained in clause 49 of the Listing Agreement of SEBI that the Government nominated directors would qualify to be treated as independent directors. Further, nominee directors appointed by the investing or lending institutions are deemed to be independent directors. The directors nominated by the Government should also be similarly treated as independent directors. The workmen and non-workmen directors also do not seem to be disqualified from being treated as independent directors. Their receiving remuneration may not be equated with having material pecuniary relationship or transaction with the bank. In this situation, the number of non-executive nominated directors will invariably be equal to or more than 50% of the total strength of the board...”

37. The Ministry also informed that in terms of para 5 of the SEBI Circular on the Listing Agreement; 'for other listed entities which are not companies, but body corporate (e.g. private and public sector banks, financial institutions, insurance companies etc.) incorporated under other statutes, the revised Clause 49 will apply to the extent that it does not violate their respective statutes and guidelines or directives issued by the relevant regulatory authorities'.

38. In terms of the second proviso to Section 9 (3) (i), as proposed in the Bill, the excess number of elected directors representing the shareholders shall retire in such manner as may be specified in the scheme *viz*, Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970/1980 and 'no such directors shall be entitled, to claim any compensation for the premature retirement of their term of office'.

39. As the existing provisions of the Banking Companies (Acquisition and Transfer of Undertakings) Act 1970/1980 entitle for a maximum number of six directors representing the shareholders as compared to the proposal to restrict the number of such elected directors to a maximum of three, with the enactment of the proposed legislation, such number of elected directors, who may be rendered to be in excess, will have to retire.

40. In this regard, the Punjab National Bank, in their Memorandum submitted as follows:

"As and when the amendment comes into force, it will create a tight corner situation to the elected directors, who are in surplus than the number prescribed... Elected directors stand on a higher pedestal and they are elected after going through a process of election and as such, they should not be shunted out just like that. Better view seems to be that the directors already elected may be allowed to complete their term and vacancy arising out of their exit needs not be filled up further. This may require a specific provision."

41. On the issue of retirement of the elected directors who may be rendered to be in excess, the CMD, Oriental Bank of Commerce, stated as follows while tendering evidence:

".....in our bank, we have got six directors representing the shareholders. When the Central Government is going to appoint three as per the new dispensation, the manner in which we have to retire the three out of the six may have to be specified. Otherwise, the tenure is unto three years, and they have been recently appointed."

42. The Bank also submitted as under in a written memorandum:

".....the directors already elected may be allowed to complete their term and the amendment may be effective from the subsequent elections only. Any vacancy in the present directors



need not be filled. This will avoid the awkward situation of retiring some of the directors when the remaining directors are elected on the same date.”

43. Questioned whether it would not be appropriate to prescribe that the elected directors, rendered to be in excess with the coming into force of the proposed amendments, would be entitled to complete their term, the Ministry, in a written reply, stated as follows:

“The suggestion is in conformity with the principles of corporate governance and democratic norms. It, is therefore, felt that the elected directors may be allowed to continue to complete their term of three years.”

44. The Committee note that as per the prevailing position, the number of elected directors representing the shareholders of public sector banks could be a maximum of six in situations where the Government’s shareholding comes below 60%. With the proposed amendment of Section 9 (3) (i), the number of shareholder directors is sought to be restricted to a maximum of three in the case of banks where the public shareholding ranges from 33% to 49%. Further, the elected directors rendered to be in excess of the prescribed number of three will have to retire following the enactment of the proposed legislation. Banks with an issued capital base in excess of 40%, and have, as many as six directors on the Boards representing the shareholders, in particular, emphasized before the Committee on the need for ensuring that such directors, rendered to be in excess with the coming into force of the proposed amendment, should be allowed to complete their term of office. The Government have agreed to this proposal which is in consonance with the principles of Corporate Governance and the same needs to be incorporated in the Scheme.

45. The Committee also note that as suggested by them it has been proposed to address issues relating to ‘fit and proper’ status of shareholder directors on the Boards by adding the new Section 9 (3AA). The Committee endorse the same.

46. The Committee also note from the information furnished that with a view to overcome the problem of a large number of Government Nominee Directors continuing to hold office even after the expiry of their term owing to non-appointment of the successors, the relevant provisions of the Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970/1980 as effective since 2000, provides that ‘non-official directors including elected directors shall

hold office for a period of 3 years and can be reappointed/re-elected as the case may be, subject to the total continuous period not exceeding 6 years'. While the avowed purpose of this stipulation in ensuring that non-official directors do not continue to hold office beyond the expiry of their term is understandable, the Committee are of the strong view that the onus of ensuring that the vacancies that arise in the Boards are filled without any delay or lapse of time should squarely rest on the Government. The Committee, therefore, recommend for incorporation of appropriate provisions in the Scheme to provide for mandatory initiation of prior action for filling up the vacancies on the Boards, three months in advance to their likely occurrence, so that neither retiring directors continue to hold office beyond the expiry of their term nor the vacancies caused by their retirement remain unfilled.

**Clause 5—Amendment of Section 10 A (Shareholders' Rights at Annual General Meeting)**

47. Clause 5 of the Bill states as below:

"In section 10A of the Bank Nationalisation Act,—

(a) in sub-section (2), for the words "shall be entitled to discuss", the words "shall be entitled to discuss, approve and adopt" shall be substituted;

(b) after sub-section (2), the following sub-section shall be inserted, namely:-

"(3) Nothing contained in this section shall apply during the period for which the Board of Directors of a corresponding new bank had been superseded under sub-section (1) of section 18A:

Provided that the Financial Restructuring Authority may, if it considers it appropriate in the interest of the corresponding new bank whose Board of Directors had been superseded, call annual general meeting in accordance with the provisions of this section."

48. Section 10 A (2) of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980 entitles the shareholders' present at an Annual General Meeting (AGM) to discuss the balance sheet and the profit and loss accounts, the report of the board of directors and activities of the nationalised banks but without any voting rights. The proposed amendment seeks to entitle the shareholders to discuss the annual accounts and the balance sheet of the concerned bank at the AGM and also to adopt and approve such accounts.

49. Public Sector Banks such as the State Bank of India and Allahabad Bank as well as the Indian Banks' Association have perceived the proposed amendment as a step towards corporate governance, which was in accordance with the provisions applicable to companies under the Companies Act. However, the Punjab National Bank and the Oriental Bank of Commerce, in particular, *inter alia*, expressed the following views on the proposals to enable the shareholders to approve the balance sheet and profit and loss accounts in addition to discussing the same:

- (i) The proposal would not have any meaningful purpose or give any value addition so long as the government holding in banks is in excess of 50%.
- (ii) The proposal may only result in long drawn AGMs and additional expenses, if poll is conducted.
- (iii) The regulations relating to conduct of AGMs need to be amended by incorporating the procedure and the manner in which the accounts are to be approved and adopted; and the approved accounts should be filed with the RBI (as the companies do with the ROCs) within 30 days.

50. Further, the All India Bank Officers' Association expressed the following view on the proposed amendment:

"Shareholders entitled to discuss, approve and adopt as the shareholders (other than Government) cannot be more than 49%. What if they do not adopt? Provisions need to be clarified to state that in case of voting, Government will have its full ownership right exhibited."

51. On the background to the proposed amendment, the Ministry, in a written note, stated as follows:

"The Parliamentary Committee has commented that the existing provisions are not in consonance with corporate governance. In view of the observations of the Parliamentary Committee and the practice followed by companies under Companies Act, 1956, it is proposed to amend the relevant section to enable the shareholders to discuss the annual accounts and the balance sheet of the concerned bank at the AGM and to adopt and approve such accounts. The proposal to entitle the shareholders to adopt the balance sheet, profit and loss account, was aimed at enhancing the quality of corporate governance in nationalised banks."

52. On the need expressed by the representatives of Banks for prescribing the procedure to be followed, in the matter of discussing, approving and adopting the balance sheet and 'profit and loss accounts' and 'auditor's reports' at the AGMs, the Ministry, *inter alia*, informed as under in written note:

"Chapter IV of the General Regulations of the Public Sector Banks provides the details regarding meeting of shareholders. As per Regulation 56, a notice for convening an Annual General Meeting has to be published which will state, among other things, the business that shall be transacted at the meeting. The procedure for quorum of general meeting, voting at general meeting, the persons entitled to attend such meetings have also been prescribed in the General Regulation."

53. As per the written reply furnished by the Ministry, *inter alia*, on the consequences of non-adoption of the balance sheet at the AGMs, in the case of companies, in terms of Section 173 of the Companies Act, the 'business relating to the consideration of the accounts, balance sheet and reports of Board and auditors, is deemed to be ordinary'. As regards Banks, Section 31 of the Banking Regulation Act, 1949, which also applies to nationalised banks provides for 'submission of accounts and balance sheet to RBI within the specified period'.

54. As informed by the Ministry, 'non-adoption of balance sheet by AGM has no consequence' and this aspect could be added in the provisions.

55. The proposed amendment of Section 10A seeks to enable the shareholders to 'adopt and approve the balance sheet and profit and loss accounts' of banking companies, in addition to 'discussing' them, as presently provided for. Though the proposal is in consonance with the principles of Corporate Governance and the procedure followed by companies under the Companies Act, the Committee cannot help taking note of the concerns expressed before them by the representatives of some banking companies on aspects relating to likely problems in regulating the AGMs to enable for 'approval and adoption' of the balance sheets and accounts. The Committee also take note of the information furnished by the Ministry that the 'business relating to the consideration of the accounts, balance sheet etc. is deemed to be ordinary' and 'non-adoption of balance sheets and reports of Boards and auditors' being of no consequence. Mainly in view of the concerns expressed before them, the Committee feel that it may be desirable to have a relook at the general regulations

relating to convening and conduct of the AGMs of Banks so as to assess the requirement of changes needed therein, if any, in the light of the proposal to enable for 'approval' and 'adoption' of the balance sheets/accounts in addition to 'discussing them'.

**Clause 6—Insertion of New Section 10 C (Transfer of Unpaid or Unclaimed Dividend to Unpaid Dividend Account)**

56. Clause 6 (Insertion of new section 10 C regarding transfer of unpaid or unclaimed dividend to unpaid dividend Account) states as below:

“(1) Where, after the commencement of the Banking Companies (Acquisition and Transfer of Undertakings) and Financial Institutions Laws (Amendment) Act, 2005, a dividend has been declared by a corresponding new bank but has not been paid or claimed within forty-two days from the date of declaration, to or by, any shareholder entitled to the payment of the dividend, the corresponding new bank shall, within seven days from the date of the expiry of such period of forty-two days, transfer the total amount of dividend which remains unpaid or unclaimed within the said period of forty-two days, to a special account to be called “Unpaid Dividend Account of... (the name of the corresponding new bank)”.

*Explanation.*—In this sub-section, the expression “dividend which remains unpaid” means any dividend the warrant in respect thereof has not been encashed or which has otherwise not been paid or claimed.

(2) Where the whole or any part of any dividend, declared by a corresponding new bank before the commencement of the Banking Companies (Acquisition and Transfer of Undertakings) and Financial Institutions Laws (Amendment) Act, 2005, remains unpaid at such commencement, the corresponding new bank shall, within a period of six months from such commencement, transfer such unpaid amount to the account referred to in sub-section (1).

(3) Any money transferred to the unpaid dividend account of a corresponding new bank in pursuance of this section which remains unpaid or unclaimed for a period of seven years from the date of such transfer, shall be transferred by the corresponding new bank to the Investor Education and Protection Fund established under sub-section (1) of section 205C of the Companies Act, 1956 (1 of 1956).

(4) The money transferred under sub-section (3) to the Investor Education and Protection Fund shall be utilised for the purposes and in the manner specified in section 205C of the Companies Act, 1956 (1 of 1956).

57. Presently, the unclaimed dividends remain in the books of the nationalised banks for a long-time. The proposed addition of the new section 10 C to the Nationalisation Acts seeks to enable the banks to transfer the unclaimed or unpaid dividends of over seven years to the Investor Education and Protection Fund established under sub-section (1) of Section 205 (C) of the Companies Act, 1956.

58. It was pointed out to the Committee that the proposed Section 10 C needed to be recast on the lines of the amended Sections 205 and 205 A of the Companies Act, which, *inter alia*, provide for:

- “— Deposit of the amount of dividend including interim dividend in a separate bank account within five days from the date of declaration of such dividend.
- Application of the provisions relating to dividend, as far as possible, to any interim dividend.
- Transfer of unpaid/unclaimed dividend to a special account within seven days from the expiry of thirty days, where the dividend remains unpaid/unclaimed for a period for thirty days (instead of 42 days) and in case of default to pay interest at the rate of twelve percent per annum which shall ensure to the benefit of members of the company.”

59. Further, as regards utilisation of the accruals to the Investor Education Fund by way of transfer of individual dividends etc., the ‘explanation’ under Section 205 (C) provides that ‘no claim shall lie against the funds or the company in respect of individual amounts which were unclaimed and unpaid for a period of seven years from the dates that they first became due for payment and no payment shall be made in respect of any such claims’.

60. On this specific provision which prohibits a shareholder to stake claim on any unpaid dividend beyond a seven year period, the Indian Banks’ Association expressed the following view point:

“...this provision is against public interest. There can be situations where for genuine reasons a person is unable to make a claim in respect of dividend payable to him and to totally bar any such claim after a period of seven years is unreasonable. There is a

need to modify this provision by adding a further sub-section stating that it shall be permissible for any person to make a claim in respect of any unclaimed dividend credited to the fund from the concerned bank and if such claim on verification is found to be genuine and payable, the bank shall pay the same with interest and claim reimbursement from the fund. While amendment to section 205 (C) of the Companies Act may not be feasible by making a change in the present Bill under consideration it will be permissible to make the provisions of section 205 (C) applicable to the unclaimed dividends of nationalised banks with a modification as suggested above. The amendment of Section 205 (C) can be taken up separately."

61. In a similar vein, the ASSOCHAM, in a written Memorandum emphasised on the need for being a mechanism 'wherein a shareholder is able to claim his due dividend even after seven years'.

62. Asked to respond to the suggestions, as enumerated above in this regard, the Ministry, in a written reply, stated as follows:

"Government agrees to the suggestion. Necessary changes, as already been made to sections 205 A to 205 C to the Companies Act, may be incorporated."

**63. The Committee note that though the proposed addition of new Section 10C is intended to enable transfer of unclaimed dividend amounts on the books of nationalized banks to the Investor Education and Protection Fund, as pointed out before them, the proposals are not in line with the relevant provisions of the Companies Act, 1956. The provisions of the Companies Act *inter alia* provide for 'deposit of the dividend amount, inclusive of interim dividend in a separate bank account within five days of the declaration of the dividend', which is not the case as per the proposals of the Bill. Questioned in this regard, the Government have agreed to incorporate necessary changes in the proposals of Clause 10C so as to make the provisions in consonance with those of the Companies Act. The Committee accordingly recommend that necessary changes, as agreed to, be carried out in the proposed Section 10C so as to make them in conformity with the Companies Act.**

64. As per the provisions applicable, the unclaimed dividend amounts cease to be payable beyond a seven year period, which may deprive bonafide claimants of their rightful dues. In response to the suggestion made by the Committee to address such cases, by way of incorporating a separate sub-section to 10C to provide for a mechanism whereby, a shareholder could, owing to bonafide reasons,



and subject to verification, claim his dividend dues even after the seven year limitation, the Government have expressed concurrence. The Committee, therefore, desire that necessary changes be made in the amendment proposals to provide for legitimate space to bonafide claimants of dividend amounts even after the seven year time stipulation.

**Clause 7:—Insertion of New Sections 18A to 18F (Power of Central Government to supersede Board of Directors of New Corresponding Bank)**

65. The existing provisions of the Banking Companies (Acquisition and Transfer of Undertakings) Acts, 1970/1980 do not provide any mechanism regarding supersession of board of directors of the nationalised banks, which may, sometimes be necessary in case of weak or potentially weak banks. The amendment proposals under Clause 7, by way of seeking to add Sections 18A to 18F to the Bank Nationalisation Acts 1970/1980, as incorporated in the Bill referred to the Committee seek to empower the Central Government to supersede the Board of Directors of any nationalised bank and constitute a Financial Restructuring Authority and appoint a Chief Executive Officer of such bank.

66. The Amendment proposals under Clause 7 as proposed in the Bill read as follows:

“After section 18 of the Bank Nationalisation Act, the following sections shall be inserted, namely:—

18A (1) if at any time the Central Government, on the recommendation of the Reserve Bank, is of the opinion—

(a) that, on account of circumstances beyond the control of the corresponding new bank, such bank is unable to discharge the functions or perform the duties imposed on it by or under the provisions of this Act, or

(b) that a corresponding new bank has persistently made default in complying with any direction given by the Reserve Bank of India or the Central Government under this Act or any other law for the time being in force or in discharge of the functions or performance of the duties imposed on it by or under the provisions of this Act or any other law for the time being in force and as a result of such default the financial position of the corresponding new bank or the administration of such bank has deteriorated, or



(c) the affairs of the corresponding new bank are being conducted in a manner detrimental to the interest of its depositors or banking policy, or

(d) that circumstances exist which render it necessary in the public interest so to do,

the Central Government may, by notification and for reasons to be specified therein, supersede the Board of Directors of such corresponding new bank for such period, not exceeding three years, as may be specified in the notification and appoint establish under section 18B, an authority to be known as the Financial Restructuring Authority:

Provided that the Central Government may, for reasons to be recorded in writing, extend such period from three years to five years:

Provided further that before issuing any such notification, the Central Government shall give a reasonable opportunity to the Board of Directors of such corresponding new bank to make representations against the proposed supersession and shall consider the representations, if any, of the Board of Directors.

(2) Upon the publication of a notification under sub-section (1) superseding the Board of Directors of a corresponding new bank,—

(a) the Chairperson and other directors shall, as from the date of supersession, vacate their offices as such;

(b) all the powers, functions and duties which may, by or under the provisions of this Act, or any other law for the time being in force, be exercised or discharged by or on behalf of the Board of Directors of such corresponding new bank or by a resolution passed in general meeting of that bank, shall, until the Board of Directors of such corresponding new bank is re-constituted under sub-section (3), be exercised and discharged by the Financial Restructuring Authority:

Provided that the powers, exercised by the Financial Restructuring Authority shall be valid notwithstanding that such powers are exercisable by a resolution passed in the general meeting of such a corresponding new bank.

(3) On or before the expiration of the period of supersession specified in the notification issued under sub-section (1), the Central

Government shall re-constitute the Board of Directors of such corresponding new bank by a fresh appointment of its Chairperson and other directors and in such case any person who had vacated his office under clause (a) of sub-section (2) shall not be deemed to be disqualified for re-appointment.

(4) The Central Government shall cause a copy of the notification issued under sub-section (1) and a full report of any action taken under this section and the circumstances leading to such action to be laid before each House of Parliament at the earliest.

18B. Establishment of Financial Restructuring Authority. (1) The Central Government shall, on supersession of the Board of Director of the corresponding new bank under sub-section (1) of section 18A, establish an authority to be known as Financial Restructuring Authority.

(2) The Financial Restructuring Authority shall consist of not less than three, but not exceeding seven members to be appointed by the Central Government from amongst persons of ability, integrity and standing who have knowledge and experience in banking, finance, economics, law, accountancy, administration or any other discipline which would in the opinion of the Central Government be useful to the corresponding new bank.

(3) The Central Government shall appoint one of the Members as the Chairperson of the Financial Restructuring Authority.

(4) The salary and allowances payable to and other terms and conditions of the Chairperson and Members of the Financial Restructuring Authority shall be such as may be specified, by rules made by the Central Government.

(5) the salary and allowances and other conditions of service of the Chairperson and Members of the Financial Restructuring Authority shall not be varied to his disadvantage after appointment.

(6) The salary and allowances payable to the Chairperson and Members of the Financial Restructuring Authority and the Chief Executive Officer of the corresponding new bank shall be borne by the corresponding new bank in respect of which such an Authority has been established and a Chief Executive Officer appointed.

18C. Meeting of Financial Restructuring Authority. (1) The Financial Restructuring Authority shall meet at such times and places and

shall observe such rules and procedures in regard to transaction of business at its meeting (including quorum of such meeting) as may be specified, by rules made by the Central Government.

(2) The Chairperson, if for any reasons, is unable to attend a meeting of the Financial Restructuring Authority, any other Member chosen by the Members present amongst themselves at the meeting shall preside at the meeting.

(3) All questions which come up before any meeting of the Financial Restructuring Authority shall be decided by a majority of votes by the Members present and voting, and in the event of an equality of votes, the Chairperson or in his absence the person presiding shall have second or casting vote.

18D. Vacancy, etc., not to invalidate proceedings of Financial Restructuring Authority. (1) No act or proceeding of the Financial Restructuring Authority shall be invalid merely by reason of—

(a) any vacancy in, or any defect in the constitution of, the Financial Restructuring Authority; or

(b) any defect in the appointment of a person acting as a Member of the Financial Restructuring Authority; or

(c) any irregularity in the procedure of the Financial Restructuring Authority not affecting the merits of the case.

18E. Chief Executive Officer. (1) The Central Government shall, on supersession of the Board of Directors of a corresponding new bank under section 18B, by notification, appoint any person not below the rank of Joint Secretary to the Government of India or an Executive Director of any corresponding new bank as the Chief Executive of the bank whose board of Directors had been superseded under that section.

(2) The Chief Executive officer shall hold office for a term not exceeding three years from the date on which he enters upon his office or reconstitution of the Board of Directors of the corresponding new bank referred to in section 18B, whichever is earlier.

(3) The other terms and conditions of service of the Chief Executive Officer shall be such as may be specified, by rules made by the Central Government.

(4) Subject to general superintendence, direction and management of the affairs by the Financial Restructuring Authority, the Chief Executive officer shall be the Chief Executive Authority of the corresponding new bank whose Board of Directors had been superseded.

(5) The Chief Executive Officer shall be *ex officio* Member of the Financial Restructuring Authority.

(6) The Chief Executive Officer shall exercise and discharge such powers and duties of the corresponding new bank, whose Board of Directors had been superseded, as may be specified by the Financial Restructuring Authority.

18F. Power to make rules. (1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the salary and allowances payable to and other terms and conditions of the Chairperson and Members of the Financial Restructuring Authority under sub-section (4) of section 18B;

(b) the time and places of the meeting of the Financial Restructuring Authority under sub-section (1) of section 18C;

(c) the other terms and conditions of service of the Chief Executive Officer under sub-section (3) of section 18E.

(3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule."

67. In terms of the provisions, as envisaged under the provisions proposed in the Bill, the Central Government will be empowered to

constitute a Financial Restructuring Authority (FRA) which would take over the management and affairs of the bank which would consist of experts drawn from areas such as management, banking, accountancy, law and such other fields which may be decided in consultation with RBI.

68. On the proposed provisions, as envisaged in the Bill, while the Chiefs of public sector Banks have not expressed disfavour to empowering the Central Government to supersede the Board of nationalised banks if the situation necessitates, the views expressed by others, particularly the representatives of employees and officers unions of Banks *inter alia* centered on the aspect of the proposed period of supersession under the provisions being too long *viz.*, 3 to 5 years; and the need for having a mandatory system of consultation with the Reserve Bank in the matter of appointment of the authorities who could take charge of the affairs of a bank following the supersession of the Board of Directors.

69. A specific issue brought before the Committee was that the proposed provisions (Section 18A to 18F) need to be in consonance with the provisions applicable or envisaged to the private sector Banks in terms of the amendment proposals pertaining to the Banking Regulation Act.

70. As regards private sector Banks, the proposed addition of Part II AB to the Banking Regulation (Amendment) Bill, 2005 *inter alia* provides for supersession of Board of Directors of private sector banks for a period not exceeding six months (as opposed to 3 to 5 years proposed for public sector banks) as may be specified in the order provided that the period of supersession of the Board of directors may be extended from time to time but not beyond twelve months on the whole.

71. Questioned about the proposed provisions for appointment of FRA etc., in respect of the Board of nationalised banks following supersession *vis-a-vis* provisions proposed in respect of private sector banks, the Ministry of Finance, in a written reply, informed that the Reserve Bank had proposed to replace the Section 18A to 18F incorporated in the Bill with a revised section 18A, which was in line with the proposal pertaining to private sector Banks. In this regard, the Ministry informed as under:

“Reserve Bank has proposed to replace by a revised Section 18A which is in lines with the amendment already proposed in the

Banking Regulation Act (Amendment) Bill, 2005 so that uniformity in contents, approach and legal provisions with regard to supersession of the boards is maintained. RBI has also pointed out certain deficiencies such as (a) period of supersession proposed in the above Bill is too long *i.e.* 3 to 5 years, (b) appointment of CEO in addition to FRA may lead to clash of interest, (c) opportunity for representation will also delay the process of restructuring and proposed to replace sections 18A to 18F by a new section 18A.”

72. The revised section 18A proposed by the Reserve Bank reads as follows:

“Amendment of Section 3

18A. (1) Where the Central Government, on the recommendation of Reserve Bank, is satisfied that in the public interest or for preventing the affairs of any corresponding new bank being conducted in a manner detrimental to the interest of the depositors or any corresponding new bank or for securing the proper management of any corresponding new bank, it is necessary so to do, the Central Government may, for reasons to be recorded in writing, by order, supersede the Board of directors of such corresponding new bank for a period not exceeding six months as may be specified in the order:

Provided that the period of supersession of the Board of directors may be extended from time to time, so, however, that total period shall not exceed twelve months.

2. The Central Government may, on supersession of the Board of Directors of the corresponding new bank under sub-section (1), appoint an Administrator for such period as it may determine.

3. The Central Government may issue such directions to the Administrator as it may deem appropriate and the Administrator shall be bound to follow such directions.

4. Upon making the order of supersession of the Board of Directors of a corresponding new bank, notwithstanding anything contained in the Companies Act, 1956,—

(a) the Chairman, Managing Director and other Directors shall, as from the date of supersession, vacate their offices as such;

(b) all the powers, functions and duties which may, by or under the provisions of the Companies Act, 1956 or this Act, or any other law for the time being in force, be exercised and discharged by or on behalf of the Board of directors of such corresponding new bank, or by a resolution passed in general meeting of such corresponding new bank, shall, until the Board of directors of such corresponding new bank is reconstituted, be exercised and discharged by the Administrator appointed by the Central Government Bank under sub-section (2):

Provided that the power exercised by the Administrator shall be valid notwithstanding that such power is exercisable by a resolution passed in the general meeting of such corresponding new bank.

5. The Central Government may constitute a committee of three or more persons who have experience in law, finance, banking, administration or accountancy to assist the Administrator in the discharge of his duties.

6. The Committee shall meet at such times and places and observe such rules of procedure as may be specified by the Central Government.

7. The salary and allowances to the Administrator and the members of the committee constituted by the Central Government shall be such as may be specified by the Central Government and be payable by the concerned corresponding new bank.

8. On and before the expiration of two months before expiry of the period of supersession of the Board of directors as specified in the order issued under sub-section (1), the Administrator of the corresponding new bank, shall call the general meeting of the company to elect new directors and reconstitute its Board of directors.

9. Notwithstanding anything contained in any other law or in any contract, the memorandum or articles of association no person shall be entitled to claim any compensation for the loss or termination of his office.

10. The Administrator appointed under sub-section (2) shall vacate office immediately after the Board of directors of such corresponding new bank has been reconstituted."

73. As per the revised section 18A proposed by RBI for supersession of Board of Directors, the Central Government will appoint an

Administrator and a Committee of three or more persons having experience in law, finance, banking administration or accountancy to assist the Administrator in the discharge of his duties.

74. Questioned on the reasons for seeking to replace Sections 18A to 18F as proposed in the Bill, with the revised section 18A, a representative of the Ministry of Finance stated during evidence:

“We have brought three Acts for amendment before the hon’ble House—the RBI Act, the Banking Regulation Act and the Acquisition Act. Our thinking has also gone along with the thinking that the hon’ble Committee has brought about and we have been guided in large number of ways by the thought process in discussions with this hon’ble Committee. One of the things that we have sought to do subsequently is to bring about a consistency which is a uniformity across all the three Acts with the multi-state cooperative where the RBI has now been empowered with powers of a regulator. If you would recall in the Cooperative Act, the power is there to dismiss or supersede a Board and appoint an administrator. We had thought that the Financial Restructuring Authority would be appointed for public sector banks. But when we compared across the Board of these three of our different Acts, we found that the system which has worked best is that of appointment of an administrator who will be normally a government official. That has acted well in Cooperatives and the same kind of a system we have introduced through the Bill in the Banking Regulation Act and we want to introduce that as the best and most improved version which will be consistent among all the Acts in these process.”

75. By way of giving a detailed rationale/justification for proposing to replace Section 18A to 18F with the revised Section 18A, the Ministry, in a post-evidence reply, *inter alia* stated as under:

“Section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980, *inter alia*, empowers Central Government to make scheme, after consultation with the Reserve Bank for the following matters, such as:

- (a) Reconstitution of any corresponding new bank into two or more corporations.
- (b) The amalgamation of any corresponding new bank with any other corresponding new bank or with another banking institution.



(c) The transfer of the whole or any part of the undertaking of corresponding new bank or banking institution or the transfer of the whole or any part of the undertaking of any other banking institution to a corresponding new bank.

Central Government can therefore, exercise the above powers in consultation with RBI to revamp/restructure weak/potentially weak nationalised banks. It was therefore felt that there was no need for a FRA exclusively for restructuring of weak banks. Moreover, as of now, all the public sector banks have fared well and there is no immediate concern as to weakness of public sector banks.

It was also felt that the Act should provide enabling provision to supersede the Boards of directors in extreme exigencies. The basic objective is to help the bank make a turnaround and help in reconstitution of the Board without prolonged interference in the affairs of the banks.

In view of the above, on the reconsideration, Reserve Bank proposed to replace all sections from 18A to 18F by a revised Section 18A which is in lines with the amendment already proposed in the Banking Regulation Act (Amendment) Bill, 2005 and amendment already passed by the Parliament in case of multi-state co-operative banks in the Banking Regulation (Amendment) and Miscellaneous Provisions Act, 2004 so that uniformity in contents, approach and legal provisions with regard to supersession of the Boards is maintained.

RBI has also pointed out certain deficiencies such as (a) Period of supersession proposed in the above Bill is too long *i.e.* 3 to 5 years, (b) Appointment of CEO in addition to FRA may lead to clash of interest, (c) Opportunity for representation will also delay the process of restructuring; and proposed to replace sections 18A to 18F by a new section 18A.

- As per the revised section 18A proposed by RBI for supersession of Board of Directors, the Central Government will appoint an Administrator and a Committee of three or more persons having experience in law, finance, banking administration or accountancy to assist the Administrator in the discharge of his duties. This is proposed in lieu of FRA and CEO and is in lines with the amendment proposed to Banking Regulation Act, 1949 which has already been approved by the Standing Committee on Finance and amendment already passed by the Parliament in case of Multi-State Co-operative banks in the Banking Regulation (Amendment) and Miscellaneous Provisions Act, 2004."

76. With regard to private sector Banks, the Committee had in their report on the Banking Regulation (Amendment) Bill, 2005 recommended that the qualifications required to be met for election of the Administrator who would take charge of the affairs of a Bank following the supersession of the Board of Directors should be confined to experience in the fields of law, finance, banking and accountancy only and no bureaucrat should be chosen for the assignment.

77. In response to a query made in this regard, the Ministry informed as under:

“It is proposed to agree with the recommendation of the Standing Committee made in Banking Regulation (Amendment) Bill, 2005 to delete the word ‘administration’ and specify the qualification such as law, finance, banking or accountancy for the administrator who will be appointed by the Government in consultation with RBI.”

78. As regards the related provisions of the present Bill in respect of nationalised banks, the Ministry informed as under:

“It is proposed to include ‘economics’ as a subject for qualification as has been proposed in case of Banking Regulation (Amendment) Bill, 2005 pursuant to the suggestion of the Standing Committee.”

79. On the issue of ensuring a system of consultation with the Reserve Bank in the matter of appointment of the Administrator and members of the Committee, which may be constituted to assist the Administrator in terms of the proposed Section 18A, the Ministry, in a post-evidence reply informed as under:

“The Government agrees to the proposal of consultation with RBI for appointments in this regard.”

**80. The Committee note that the proposed provisions relating to the supersession of the Board of Directors of weak or potentially weak banks originally envisaged in the Bill (Sections 18A to 18F) *inter alia* sought to provide for constituting a Financial Restructuring Authority (FRA) and also appoint a CEO to take charge of the management and affairs of the bank concerned, for a period which could range from three to five years. Mainly in view of the fact that the contents and approach of the legal provisions proposed under Sections 18A to 18F not being in consonance with the provisions envisaged for supersession of the Boards of private sector banks under the Banking Regulation (Amendment) Bill, 2005 which has been examined and reported upon by the Committee, these have been sought to be replaced by the revised Section 18A, as formulated by the Reserve Bank.**

81. As in the case of private sector banks, the provisions of the revised Section 18A *inter alia* seek to empower the Central Government to appoint an Administrator, who would be assisted by a Committee of three to four persons to oversee the management of the affairs of the superseded bank for a maximum permissible period of twelve months. The Committee note from the information furnished by the Ministry that the legal provisions as proposed in the revised section 18A would bring about consistency and uniformity across the Acts pertaining not only to the public and private sector banks but the multi-state co-operative banks as well, where the system is reported to have worked well. Given the reasons advanced for the replacement of the proposed provisions, which include, the permissible period of supersession of three to five years as per the original provisions being too long, and the possibility of clash of interest of the CEO and FRA, the Committee are inclined to recommend the newly proposed provision for enactment.

82. The Committee also note from the information furnished that as recommended by them and accepted for implementation in the case of the Banking Regulation (Amendment) Bill, 2005, the Government have decided to omit 'administrative experience' as a criteria to be met for selection of the 'Administrator'. The Government have also accepted the proposal for having a mandatory system of consultation with the Reserve Bank in the matter of appointment of Administrator and related authorities. The Committee, accordingly recommend that appropriate changes be carried out in the provisions/regulations to specify the qualifications of Administrator and provide for a system of consultation with the Reserve Bank in the matter of appointing the Administrator and his assisting authorities.

83. The Committee further note that with the proposed replacement of Sections 18A to 18F, defining the offices of FRA and CEO in the Nationalisation Acts, as envisaged under Clause 2 of the Bill would be redundant. The Committee, therefore, expect the Government to delete the proposals of Clause 2, whereby these offices are sought to be defined.

NEW DELHI;  
17 April, 2006  
27 Chaitra, 1928 (Saka)

MAJ. GEN. (RETD.) B.C. KHANDURI,  
Chairman,  
Standing Committee on Finance.

ANNEXURE I

(vide Para 14)

CHANGES PROPOSED TO THE BANKING COMPANIES  
(ACQUISITION AND TRANSFER OF UNDERTAKINGS) AND  
FINANCIAL INSTITUTIONS LAWS (AMENDMENT) BILL, 2005

Amendment of section 3. In section 3 of the Bank Nationalization Act:

(i) in sub-section 2B, for clause (c), the following clause shall be substituted, namely:

“(c) such amounts as the Board of Directors of the corresponding new bank may, after consultation with the Reserve Bank and with the previous sanction of the Central Government, raise whether by public issue or preferential allotment or private placement, of equity or preference shares;

Provided that the issue of preference shares shall be in accordance with the guidelines framed by the Reserve Bank specifying the class of and the terms and conditions of the issue;

Provided further that the Central Government shall, at all times, hold not less than fifty one per cent of the paid up capital consisting of equity shares, of the corresponding new bank.”

(ii) in sub-section 2BB, the word “public” may be deleted.

(iii) in sub-section 2BBA, in clause (a), the word “public” may be deleted.

(iv) in sub-section 2C, the word “public” may be deleted.

(v) for sub-section 2E, the following shall be substituted, namely:

“(2-E) 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 one percent of the total voting rights of all the shareholders of the corresponding new bank;

Provided that the shareholder holding any preference share capital in the corresponding new bank shall, in respect of such capital, have a right to vote only on resolutions placed before corresponding new bank, which directly affects the rights attached to his preference shares;

Provided further that in the case of preference shareholders, the ceiling of one percent on voting rights shall be of the total voting rights of all the shareholders holding preference share capital only.”

Amendment  
of section 9.

In section 9 of the Bank Nationalisation Act,—

(a) after sub-section (3A), the following sub-section shall be inserted, namely:—

“(3AA) without prejudice to the provisions of sub-section (3A) and notwithstanding anything to the contrary contained in this Act or in any law for the time being in force, no person shall be eligible to be elected as 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.

(3AB) The Reserve Bank may also specify in the notification issued under sub-section (3AA), the authority to determine the fit and proper status, the manner of such determination, the procedure to be followed, and such other matters as may be considered necessary or incidental thereto.”

(b) in sub-section (3B), after the words “sub-section (3A)” wherever they occur, the words “and sub-section (3AA)”, shall be inserted.

Insertion of  
new section  
18A.

**Supersession of Board of Directors of Corresponding New Bank**

18A. (1) Where the Central Government, on the recommendation of the Reserve Bank, is satisfied that

in the public interest or for preventing the affairs of any corresponding new bank being conducted in a manner detrimental to the interest of the depositors or any corresponding new bank or for securing the proper management of any corresponding new bank, it is necessary so to do, the Central Government may, for reasons to be recorded in writing, by order, supersede the Board of Directors of such corresponding new bank for a period not exceeding six months as may be specified in the order:

Provided that the period of supersession of the Board of Directors may be extended from time to time, so, however, that total period shall not exceed twelve months.

(2) The Central Government may, on supersession of the Board of Directors of the corresponding new bank under sub-section (1), appoint an Administrator for such period as it may determine.

(3) The Central Government may issue such directions to the Administrator as it may deem appropriate and the Administrator shall be bound to follow such directions.

(4) Upon making the order of supersession of the Board of Directors of a corresponding new bank, notwithstanding anything contained in the Companies Act, 1956,—

(a) the chairman, managing director and other directors shall, as from the date of supersession, vacate their offices as such;

(b) all the powers, functions and duties which may, by or under the provisions of the Companies Act, 1956 or this Act, or any other law for the time being in force, be exercised and discharged by or on behalf of the Board of Directors of such corresponding new bank, or by a resolution passed in general meeting of such corresponding new bank, shall, until the Board of Directors of such corresponding new bank is reconstituted, be exercised and discharged by the Administrator appointed by the Central Government Bank under sub-section (2):

Provided that the power exercised by the Administrator shall be valid notwithstanding that such power is

exercisable by a resolution passed in the general meeting of such corresponding new bank.

(5) The Central Government may constitute a committee of three or more persons who have experience in law, finance, banking, administration or accountancy to assist the Administrator in the discharge of his duties.

(6) The Committee shall meet at such times and places and observe such rules of procedure as may be specified by the Central Government.

(7) The salary and allowances to the Administrator and the members of the committee constituted by the Central Government shall be such as may be specified by the Central Government and be payable by the concerned corresponding new bank.

(8) On and before the expiration of two months before expiry of the period of supersession of the Board of Directors as specified in the order issued under sub-section (1), the Administrator of the corresponding new bank, shall call the general meeting of the company to elect new directors and reconstitute its Board of Directors.

(9) Notwithstanding anything contained in any other law or in any contract, the memorandum or articles of association no person shall be entitled to claim any compensation for the loss or termination of his office.

(10) The Administrator appointed under sub-section (2) shall vacate office immediately after the Board of Directors of such corresponding new bank has been reconstituted."

## NOTE OF DISSENT

Shri Rupchand Pal, MP

This has reference to the draft report on Banking Companies (Acquisition and Transfer of Undertakings) and Financial Institutions Laws (Amendment) Bill, 2005. I would like to submit my "Note of Dissent" in respect of the following:

- (i) Page 9, para 16, line 5—sentence beginning—"and do away with the compulsory nomination of an officer of the Reserve Bank on the Boards"—*be deleted.*
- (ii) Page 14, para 30, *add* at the end "The terms and conditions for issue of preference shares by public sector banks should be made fully transparent and is to be reviewed on regular basis to prevent misuse of the same."

Sd/-  
(Shri Rupchand Pal, MP)



## NOTE OF DISSENT

Shri Chittabrata Majumdar, MP

The Committee is going to finalise the report on Banking Companies (Acquisition and Transfer of Undertakings) and Financial Institutions Laws (Amendment) Bill, 2005. I would like to submit the following points to amend some paragraphs contained in the draft report on the said Bill and request for including the same in the final report otherwise treat this as my "Note of Dissent":

1. Page 9, para 16, line 5—Delete the sentence starting from ".....and do away with the compulsory nomination of an officer of the Reserve Bank on the Boards."
2. Page 14, para 30—*add* the following at the end:

"The terms and conditions for issue of preference shares by public sector banks should be made fully transparent and need regular monitoring to prevent misuse of the same."

Sd/-

(Shri Chittabrata Majumdar, MP)

MINUTES OF THE SIXTH SITTING OF STANDING  
COMMITTEE ON FINANCE (2005-06)

The Committee sat on Thursday, 30 September, 2005 from 1100 to  
1300 hrs. and 1530 to 1640 hrs.

PRESENT

Maj. Gen. (Retd.) B.C. Khanduri—*Chairman*

MEMBERS

*Lok Sabha*

2. Shri Jaswant Singh Bishnoi
3. Shri Gurudas Dasgupta
4. Shri Bhartruhari Mahtab
5. Shri Madhusudan Mistry
6. Shri K.S. Rao
7. Shri M.A. Kharabela Swain

*Rajya Sabha*

8. Shri M. Venkaiah Naidu
9. Shri Mangani Lal Mandal

SECRETARIAT

1. Dr. (Smt.) P.K. Sandhu — *Additional Secretary*
2. Shri A.K. Singh — *Joint Secretary*
3. Shri S.B. Arora — *Deputy Secretary*
4. Shri T.G. Chandrasekhar — *Under Secretary*

**Part I**

(at 1130 hours)

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| 2. | ** | ** | ** | ** |
| 3. | ** | ** | ** | ** |
| 4. | ** | ** | ** | ** |
| 5. | ** | ** | ** | ** |

**Part II**  
**(at 1530 hours)**

WITNESSES

**Ministry of Finance**

- (i) Shri Ashok Jha, Secretary (DEA)
- (ii) Shri Vinod Rai, Additional Secretary (FS)
- (iii) Shri Amitabh Verma, Joint Secretary (BOA)
- (iv) Shri U.K. Sinha, Joint Secretary (CM)

**Reserve Bank of India**

- (i) Shri H. Bhattacharya, CGM
- (ii) Shri Anand Sinha, CGM
- (iii) Shri G.S. Hedge, Joint Legal Advisor

2. At the outset, the Chairman welcomed the representatives of the Ministry of Finance and Reserve Bank of India to the sitting of the Committee and invited their attention to the provisions contained in Direction 55 of the Directions by the Speaker.

3. Then the representatives of the Ministry of Finance (Department of Economic Affairs) and Reserve Bank of India briefed the Committee on the various provisions contained in the Banking Companies (Acquisition and Transfer of Undertakings) and Financial Institutions Laws (Amendment) Bill, 2005. The Members asked clarificatory questions which were replied to by the representatives. The Chairman, then, directed the representatives of the Ministry that the information with regard to queries of the Members which was not readily available with them might be furnished to the Committee later on.

4.**	**	**	**
5.**	**	**	**
6.**	**	**	**

7. The briefing was concluded.

8. A verbatim record of the proceedings has been kept.

*The witnesses then withdrew.*

*The Committee then adjourned.*

MINUTES OF THE SEVENTH SITTING OF STANDING  
COMMITTEE ON FINANCE (2005-06)

The Committee sat on Monday, 7 November, 2005 from 1030 to 1145 hrs. and thereafter from 1145 to 1330 hours.

PRESENT

Maj. Gen. (Retd.) B.C. Khanduri—*Chairman*

MEMBERS

*Lok Sabha*

2. Shri Jaswant Singh Bishnoi
3. Shri Gurudas Dasgupta
4. Shri A. Krishnaswamy
5. Shri Bir Singh Mahato
6. Shri Madhusudan Mistry
7. Shri Rupchand Pal
8. Shri Shriniwas D. Patil
9. Shri K.S. Rao
10. Shri Jyotiraditya Madhavrao Scindia
11. Shri G.M. Siddeshwara
12. Shri Ajit Singh
13. Shri M.A. Kharabela Swain
14. Shri Vijoy Krishna
15. Shri Magunta Sreenivasulu Reddy

*Rajya Sabha*

16. Shri R.P. Goenka
17. Shri Jairam Ramesh
18. Shri M. Venkaiah Naidu
19. Shri Yashwant Sinha
20. Shri Amar Singh

SECRETARIAT

1. Dr. (Smt.) P.K. Sandhu — *Additional Secretary*
2. Shri S.B. Arora — *Deputy Secretary*
3. Shri T.G. Chandrasekhar — *Under Secretary*

**Part I**

**(1030 to 1145 hrs.)**

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**Part II**

**(1145 to 1330 hrs.)**

WITNESSES

1. Shri V.P. Shetty, Chairman and Managing Director, IDBI Bank
2. Dr. (Smt.) Indira Rajaraman, Senior Fellow, National Institute of Public Finance and Policy (NIPFP)
3. Shri M.R. Umarji, Consultant and Chief Advisor (Legal), Indian Banks' Association

2. At the outset, the Chairman welcomed Shri V.P. Shetty, Dr. (Smt.) Indira Rajaraman and Shri M.R. Umarji to the sitting of the Committee and invited their attention to Direction 55 of the Directions by the Speaker, Lok Sabha.

3. The Committee then heard the views of Shri V.P. Shetty, Dr. (Smt.) Indira Rajaraman and Shri M.R. Umarji on the provisions of the Banking Companies (Acquisition and Transfer of Undertakings) and Financial Institutions Laws (Amendment) Bill, 2005. Thereafter, the Members sought clarifications and the Chairman asked the representatives to furnish written information/replies to the queries raised by the Members in respect of which information was not readily available with them.

4. The evidence was concluded.

5. A verbatim record of the proceedings has been kept.

*The witnesses then withdrew.*

*The Committee then adjourned.*

MINUTES OF THE EIGHTH SITTING OF STANDING  
COMMITTEE ON FINANCE (2005-06)

The Committee sat on Tuesday, 8 November, 2005 from 1030 hrs.  
to 1200 hrs. and thereafter from 1200 to 1330 hours.

PRESENT

Maj. Gen. (Retd.) B.C. Khanduri—*Chairman*

MEMBERS

*Lok Sabha*

2. Shri Jaswant Singh Bishnoi
3. Shri Bhartruhari Mahtab
4. Shri Shyama Charan Gupta
5. Shri Jyotiraditya Madhavrao Scindia
6. Shri G.M. Siddeshwara
7. Shri M.A. Kharabela Swain

*Rajya Sabha*

8. Shri Jairam Ramesh

SECRETARIAT

1. Shri S.B. Arora — *Deputy Secretary*
2. Shri T.G. Chandrasekhar — *Under Secretary*

WITNESSES

**Part I**

**(1030 hrs. to 1200 hrs.)**

1. PUNJAB NATIONAL BANK (PNB)  
Shri S.C. Gupta, Chairman and Managing Director
2. ORIENTAL BANK OF COMMERCE  
Shri K.N. Prithviraj, Chairman & Managing Director

2. At the outset, the Chairman welcomed the representatives of Punjab National Bank and Oriental Bank of Commerce to the sitting of the Committee and invited their attention to the provisions contained in Direction 55 of the Directions by the Speaker.

3. The Committee then took oral evidence of the representatives of Punjab National Bank and Oriental Bank of Commerce on the provisions of the Banking Companies (Acquisition and Transfer of Undertakings) and Financial Institutions Laws (Amendment) Bill, 2005. The Members asked clarificatory questions which were replied to by the representatives. The Chairman, then, directed the representatives that the information with regard to queries of the Members which was not readily available with them might be furnished to the Committee later on.

4. The evidence was concluded.

5. A verbatim record of proceedings has been kept.

*The witnesses then withdrew.*

## **Part II**

**(1200 hrs. to 1330 hrs.)**

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*The Committee then adjourned.*

MINUTES OF THE ELEVENTH SITTING OF STANDING  
COMMITTEE ON FINANCE (2005-06)

The Committee sat on Thursday, the 5th January, 2006 from  
1030 hours to 1215 hours.

PRESENT

Maj. Gen. (Retd.) B.C. Khanduri — *Chairman*

MEMBERS

*Lok Sabha*

2. Shri Jaswant Singh Bishnoi
3. Shri Gurudas Dasgupta
4. Shri Bhartruhari Mahtab
5. Shri Madhusudan Mistry
6. Shri Rupchand Pal
7. Shri Shrinivas D. Patil
8. Shri M.A. Kharabela Swain
9. Shri Magunta Sreenivasulu Reddy

*Rajya Sabha*

10. Shri R.P. Goenka
11. Shri Jairam Ramesh
12. Shri M. Venkaiah Naidu
13. Shri Yashwant Sinha
14. Shri Chittabrata Majumdar
15. Shri Mangani Lal Mandal

SECRETARIAT

1. Dr. (Smt.) P.K. Sandhu — *Additional Secretary*
2. Shri A. Mukhopadhyay — *Joint Secretary*
3. Shri T.G. Chandrasekhar — *Under Secretary*



WITNESSES

**1. All India Bank Officers' Association**

- (i) Shri Alok Khare, President
- (ii) Shri R.J. Sridharan, General Secretary
- (ii) Shri S. Nagarajan, Deputy General Secretary

**2. All India Bank Officers' Confederation**

- (i) Shri R.C. Agrawal, President
- (ii) Shri T.R. Bhatt, Joint General Secretary

**3. All India Bank Employees Association**

- (i) Shri Rajen Nagar, President
- (ii) Shri C.H. Venkatachalam, General Secretary
- (iii) Shri Ramanand, Joint Secretary

**4. Bank Employees Federation of India**

- (i) Shri S. Bardhan, General Secretary
- (ii) Shri M.L. Malkuntia, Joint Secretary

**5. National Confederation of Bank Employees**

Shri L. Balasubramanian, President

At the outset, the Chairman welcomed the representatives of the (i) All India Bank Officers' Association, (ii) All India Bank Officers' Confederation, (iii) Bank Employees Federation of India, (iv) All India Bank Employees Association, and (v) National Confederation of Bank Employees to the sitting of the Committee and invited their attention to Direction 55 of the Directions by the Speaker, Lok Sabha.

2. The Committee then took the oral evidence of the representatives of above Associations/Confederations on the provisions of the Banking Companies (Acquisition and Transfer of Undertakings) and Financial Institutions Laws (Amendment) Bill, 2005.

3. Thereafter, the members raised queries which were replied to by the witnesses.

4. The evidence was concluded.

5. A verbatim record of the proceedings has been kept.

*The witnesses then withdrew.*

*The Committee then adjourned.*

MINUTES OF THE TWELFTH SITTING OF STANDING  
COMMITTEE ON FINANCE (2005-06)

The Committee sat on Friday, the 6th January, 2006 from  
1030 hours to 1230 hours.

PRESENT

Maj. Gen. (Retd.) B.C. Khanduri — *Chairman*

MEMBERS

*Lok Sabha*

2. Shri Jaswant Singh Bishnoi
3. Shri Gurudas Dasgupta
4. Shri Bhartruhari Mahtab
5. Shri A. Krishnaswamy
6. Shri Bir Singh Mahato
7. Shri Madhusudan Mistry
8. Shri Rupchand Pal
9. Shri M.A. Kharabela Swain
10. Shri Magunta Sreenivasulu Reddy

*Rajya Sabha*

11. Shri R.P. Goenka
12. Shri Jairam Ramesh
13. Shri M. Venkaiah Naidu
14. Shri Yashwant Sinha
15. Shri Mangani Lal Mandal

SECRETARIAT

1. Dr. (Smt.) P.K. Sandhu — *Additional Secretary*
2. Shri A. Mukhopadhyay — *Joint Secretary*
3. Shri S.B. Arora — *Deputy Secretary*
4. Shri T.C. Chandrasekhar — *Under Secretary*

WITNESSES

**1. State Bank of India**

Shri A.K. Purwar, Chairman

**2. Bank of India**

Shri M. Balachandran, Chairman and Managing Director

**3. Allahabad Bank**

Shri O.N. Singh, Chairman and Managing Director

2. At the outset, the Chairman welcomed the representatives of the (i) State Bank of India, (ii) Bank of India, and (iii) Allahabad Bank to the sitting of the Committee and invited their attention to Direction 55 of the Directions by the Speaker, Lok Sabha.

3. The Committee then took the oral evidence of the representatives of above Banks on the provisions of the Banking Companies (Acquisition and Transfer of Undertakings) and Financial Institutions Laws (Amendment) Bill, 2005.

4. Thereafter, the members raised queries which were replied to by the witnesses. The Chairman directed the witnesses to send written replies to some of the queries in respect of which information was not readily available with them during the evidence.

5. The evidence was concluded.

6. A verbatim record of the proceedings has been kept.

*The witnesses then withdrew.*

*The Committee then adjourned.*

MINUTES OF THE FIFTEENTH SITTING OF STANDING  
COMMITTEE ON FINANCE (2005-06)

The Committee sat on Thursday, 19th January, 2006 from 1030 hrs.  
to 1210 hrs. and 1225 hrs. to 1305 hrs.

PRESENT

Maj. Gen. (Retd.) B.C. Khanduri — *Chairman*

MEMBERS

*Lok Sabha*

2. Shri Jaswant Singh Bishnoi
3. Shri Bhartruhari Mahtab
4. Shri Danve Raosaheb Patil
5. Shri Shrinivas D. Patil
6. Shri K.S. Rao
7. Shri Jyotiraditya Madhavrao Scindia
8. Shri M.A. Kharabela Swain

*Rajya Sabha*

9. Shri Jairam Ramesh
10. Shri Mangani Lal Mandal

SECRETARIAT

1. Shri A. Mukhopadhyay — *Joint Secretary*
2. Shri T.G. Chandrasekhar — *Under Secretary*

WITNESSES

**Ministry of Finance**  
**(Department of Economic Affairs)**

1. Shri Ashok K. Jha, Secretary
2. Shri Vinod Rai, Addl. Secretary
3. Shri Amitabh Verma, Joint Secretary

## **National Housing Bank**

1. Shri R.V. Verma, Executive Director

2. At the outset, the Chairman welcomed the representatives of Ministry of Finance and invited their attention to the provisions contained in Direction 55 of the Directions by the Speaker.

### **Part I**

**(1030—1210 hours)**

3. The Committee took oral evidence of the representatives of the Ministry of Finance (Department of Economic Affairs) on the Banking Companies (Acquisition and Transfer of Undertakings) and Financial Institutions Laws (Amendment) Bill, 2005. Thereafter, the Members asked clarificatory questions which were replied to by the representatives. The Chairman, then, directed the representatives that the information with regard to queries of the Members which was not readily available with them might be furnished to the Committee later on.

### **Part II**

**(1225—1305 hours)**

4.   \*\*   \*\*   \*\*   \*\*

5. The evidence was concluded.

6. A verbatim record of proceedings has been kept.

*The witnesses then withdrew.*

*The Committee then adjourned.*

MINUTES OF THE NINETEENTH SITTING OF STANDING  
COMMITTEE ON FINANCE (2005-06)

The Committee sat on Tuesday, 4th April, 2006 from 1030 hrs. to  
1300 hrs.

PRESENT

Maj. Gen. (Retd.) B.C. Khanduri — *Chairman*

MEMBERS

*Lok Sabha*

2. Shri Jaswant Singh Bishnoi
3. Shri Bhartruhari Mahtab
4. Shri A. Krishnaswamy
5. Shri Bir Singh Mahato
6. Shri Madhusudan Mistry
7. Shri Rupchand Pal
8. Shri Shriniwas D. Patil
9. Shri K.S. Rao
10. Shri Jyotiraditya Madhavrao Scindia
11. Shri G.M. Siddeshwara
12. Shri Ajit Singh
13. Shri M.A. Kharabela Swain
14. Shri Vijoy Krishna

*Rajya Sabha*

15. Shri Yashwant Sinha
16. Shri Chittabrata Majumdar
17. Shri C. Ramachandraiah
18. Shri Mangani Lal Mandal
19. Shri Santosh Bagrodia
20. Smt. Shobhana Bhartia

SECRETARIAT

1. Dr. (Smt.) P.K. Sandhu — *Additional Secretary*
2. Shri S.B. Arora — *Deputy Secretary*
3. Shri T.G. Chandrasekhar — *Under Secretary*
4. Smt. Anita B. Panda — *Under Secretary*

WITNESSES

**Investors' Grievances Forum**

1. Dr. Kirit Somaiya, President
2. Shri Hinesh Doshi, Vice President
3. Shri S. Vedula, General Secretary

- |    |    |    |    |    |
|----|----|----|----|----|
| 2. | ** | ** | ** | ** |
| 3. | ** | ** | ** | ** |
| 4. | ** | ** | ** | ** |
| 5. | ** | ** | ** | ** |

6. The Committee, thereafter, took up for consideration the draft report on the Banking Companies (Acquisition and Transfer of Undertakings) and Financial Institutions Laws (Amendment) Bill, 2005. The Committee, after deliberation, adopted the same with the modifications/amendments shown in the Annexure.

7. Some Members desired to submit notes of dissent on certain proposals of the Bill. The Chairman informed them that they could send the notes by 7 April, 2006.

8. The Committee then authorized the Chairman to finalise the report in the light of the amendments/suggestions made by the Members and also to make consequential verbal changes and present the same to the Hon'ble Speaker/both Houses of Parliament.

*The Committee then adjourned.*

*ANNEXURE*

[MODIFICATIONS/AMENDMENTS MADE BY STANDING  
COMMITTEE ON FINANCE IN THEIR DRAFT REPORT ON  
THE BANKING COMPANIES (ACQUISITION AND  
TRANSFER OF UNDERTAKINGS) AND FINANCIAL  
INSTITUTIONS LAWS (AMENDMENT) BILL, 2005  
AT THEIR SITTING HELD ON 4 APRIL, 2006]

Page No. 21

Para No. 46,

Line 4 from below

For "...to provide for mandatory initiation of prior action for filling up the vacancies on the Boards, well in advance to their likely occurrence,...."

Substitute "... to provide for mandatory initiation of prior action for filling up the vacancies on the Boards, three months in advance to their likely occurrence,...."



## APPENDIX

AS INTRODUCED IN LOK SABHA

16 August, 2005

Bill No. 103 of 2005

### THE BANKING COMPANIES (ACQUISITION AND TRANSFER OF UNDERTAKINGS) AND FINANCIAL INSTITUTIONS LAWS (AMENDMENT) BILL, 2005

A

BILL

*further to amend the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980, the State Bank of India Act, 1955, the State Bank of India (Subsidiary Banks) Act, 1959, the Deposit Insurance and Credit Guarantee Corporation Act, 1961, the Export-Import Bank of India Act, 1981 and the National Housing Bank Act, 1987.*

BE it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:—

#### CHAPTER I

##### PRELIMINARY

1. (1) This Act may be called the Banking Companies (Acquisition and Transfer of Undertakings) and Financial Institutions Laws (Amendment) Act, 2005. Short title, extent and commencement.

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

Provided that different dates may be appointed for different provisions of this Act and any reference in such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

## CHAPTER II

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

Amendment of section 2. 2. In section 2 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (hereafter in this Chapter referred to as the Bank Nationalisation Act),— 5 of 1970.

(a) after clause (b), the following clause shall be inserted, namely:—

‘(ba) “Chief Executive Officer” means the Chief Executive Officer appointed under sub-section (1) of section 18E;’;

(b) for clause (fa), the following clauses shall be substituted, namely:—

‘(fa) “Financial Restructuring Authority” means the Authority established under sub-section (1) of section 18B;

(fb) “prescribed” means prescribed by regulations made under this Act;’.

Amendment of section 9. 3. In section 9 of the Bank Nationalisation Act,—

(a) in sub-section (2), after clause (c), the following clause shall be inserted, namely:—

“(ca) the manner in which the excess number of directors shall retire under second proviso to clause (i) of sub-section (3);”;

(b) in sub-section (3),—

(i) in clause (a), for the words “not more than two whole-time directors”, the words “not more than four whole-time directors” shall be substituted;

(ii) clauses (c) and (d) shall be omitted;

(iii) for clause (i), the following clause shall be substituted, namely:—

“(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 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 director selected, on or before the commencement of the Banking Companies (Acquisition and Transfer of Undertakings) and Financial Institutions Laws (Amendment) Act, 2005, 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 no such directors shall be entitled to claim any compensation for the premature retirement of their term of office.”.

Insertion of new section 9A.

4. After section 9 of the Bank Nationalisation Act, the following section shall be inserted, namely:—

Power of Reserve Bank to appoint additional director.

‘9A. (1) If the Reserve bank is of the opinion that in the interest of banking policy or in the public interest or in the interests of the corresponding new bank or its depositors, it is necessary so to do, it may, from time to time, by order in writing, appoint, with effect from such date as may be specified in the order, one or more persons to hold office as additional directors of the corresponding new bank.

(2) Any person appointed as an additional director in pursuance of this section—

(a) shall hold office during the pleasure of the Reserve Bank and subject thereto for a period not exceeding three years or such further periods not exceeding three years at a time as the Reserve Bank may specify;

(b) shall not incur any obligation or liability by reason only of his being a director or for anything done or omitted to be done in good faith in the execution of the duties of his office or in relation thereto; and

(c) shall not be required to hold qualification shares in the corresponding new bank.

(3) For the purpose of reckoning any proportion of the total number of directors of the corresponding new bank, any additional director appointed under this section shall not be taken into account.”.

Amendment of section 10A.

5. In section 10A of the Bank Nationalisation Act,—

(a) in sub-section (2), for the words “shall be entitled to discuss”, the words “shall be entitled to discuss, approve and adopt” shall be substituted;

(b) after sub-section (2), the following sub-section shall be inserted, namely:—

“(3) Nothing contained in this section shall apply during the period for which the Board of Directors of a corresponding new bank had been superseded under sub-section (1) of section 18A:

Provided that the Financial Restructuring Authority may, if it considers it appropriate in the interest of the corresponding new bank whose Board of Directors had been superseded, call annual general meeting in accordance with the provisions of this section.”.

6. After section 10A of the Bank Nationalisation Act, the following sections shall be inserted, namely:—

Insertion of new sections 10B and 10C.

‘10B. (1) There shall be attached to the balance-sheet of corresponding new bank having a subsidiary, or, subsidiaries at the end of the financial year as at which the corresponding new bank’s balance-sheet is made out, the following documents in respect of such subsidiary or of each such subsidiary, as the case may be:—

Balance-sheet of corresponding new bank to include certain particulars as to its subsidiary.

(a) a copy of the balance-sheet of the subsidiary;

(b) a copy of its profit and loss account;

(c) a copy of the report of its Board of Directors;

(d) a copy of the report of its auditors;

(e) a statement of the corresponding new bank’s interest in the subsidiary as specified in sub-section (3);

(f) the statement referred to in sub-section (5), if any; and

(g) the report referred to in sub-section (6), if any.

(2) (a) The balance-sheet referred to in clause (a) of sub-section (1) shall be made out in accordance with the requirements of the Banking Regulation Act, 1949 or any other law for the time being in force,— 10 of 1949.

(i) as at the end of the financial year of the subsidiary, where such financial year coincides with the financial year of the corresponding new bank;

(ii) as at the end of the financial year of the subsidiary last before that of the corresponding new bank where the financial year of the subsidiary does not coincide with that of the corresponding new bank.

(b) The profit and loss account and the reports of the Board of Directors and of the auditors, referred to in clauses (b), (c) and (d) of sub-section (1), shall be made out, in accordance with the requirements of the Banking Regulation Act, 1949 or any other law for the time being in force, for the financial year of the subsidiary referred to in clause (a). 10 of 1949.

(c) Where the financial year of the subsidiary does not coincide with that of the corresponding new bank, the financial year aforesaid of the subsidiary shall not end on a day which precedes the day on which the corresponding new bank's financial year ends by more than six months.

(d) Where the financial year of the subsidiary is shorter in duration than that of its corresponding new bank, references to the financial year of the subsidiary in

clauses (a), (b) and (c) shall be construed as references to two or more financial years of the subsidiary the duration of which, in the aggregate, is not less than the duration of the corresponding new bank's financial year.

(3) The statement referred to in clause (e) of sub-section (1) shall specify—

(a) the extent of the corresponding new bank's interest in the subsidiary at the end of the financial year or of the last of the financial years of the subsidiary referred to in sub-section (2);

(b) the net aggregate amount, so far as it concerns shareholders of the corresponding new bank and is not dealt with in the bank's accounts, of the subsidiary's profits after deducting its losses or *vice versa*—

(i) for the financial year or years of the subsidiary aforesaid; and

(ii) for the previous financial years of the subsidiary since it became the corresponding new bank's subsidiary;

(c) the net aggregate amount of the profits of the subsidiary after deducting its losses or *vice versa*—

(i) for the financial year or years of the subsidiary aforesaid; and

(ii) for the previous financial years of the subsidiary since it became the corresponding new bank's subsidiary,

so far as those profits are dealt with, or provision is made for those losses, in the bank's accounts.

(4) Clauses (b) and (c) of sub-section (3) shall apply only to profits and losses of the subsidiary which may properly be treated in the corresponding new bank's accounts as revenue profits or losses, and the profits or losses attributable to any shares in a subsidiary for the time being held by the corresponding new bank or any other of its subsidiaries shall not (for that or any other purpose) be treated as aforesaid so far as they are profits or losses for the period before the date on or as from which the shares were acquired by the bank or any of its subsidiaries and for the purpose of determining whether any profits or losses are to be treated as profits or losses for the said period, the profit or loss for any financial year of the subsidiary may, if it is not practicable to apportion it with reasonable accuracy by reference to the facts, be treated as accruing from day-to-day during that year and be apportioned accordingly.

(5) Where the financial year or years of a subsidiary referred to in sub-section (2) do not coincide with the financial year of the corresponding new bank, a statement containing information on the following matters shall also be attached to the balance-sheet of the corresponding new bank, namely:—

(a) whether there has been any, and, if so, what change in the corresponding new bank's interest in the subsidiary between the end of the financial year or of the last of the financial years of the subsidiary and the end of the corresponding new bank's financial year;

(b) details of any material changes which have occurred between the end of the financial year or of the last of the



financial years of the subsidiary and the end of the corresponding new bank's financial year in respect of—

(i) the subsidiary's fixed assets;

(ii) its investments;

(iii) the moneys lent by it;

(iv) the moneys borrowed by it for any purpose other than that of meeting current liabilities.

(6) If, for any reason, the Board of Directors of the corresponding new bank is unable to obtain information on any of the matters required to be specified by sub-section (4), a report in writing to that effect shall be attached to the balance-sheet of the corresponding new bank.

(7) The documents referred to in clauses (e), (f) and (g) of sub-section (1) shall be signed by the persons by whom the balance-sheet of the corresponding new bank is required to be signed.

(8) The Central Government may, on the application or with the consent of the Board of Directors of the bank, direct that in relation to any subsidiary, the provisions of this section shall not apply, or shall apply only to such extent as may be specified in the direction.

10C. (1) Where, after the commencement of the Banking Companies (Acquisition and Transfer of Undertakings) and Financial Institutions Laws (Amendment) Act, 2005, a dividend has been declared by a corresponding new bank but has not been paid or claimed within forty two days from the date of declaration, to, or by, any shareholder entitled to the payment of the dividend, the corresponding new bank shall, within seven days from the date of the expiry of such period of forty two days, transfer the total amount

Transfer of unpaid or unclaimed dividend to unpaid dividend Account.

of dividend which remains unpaid or unclaimed within the said period of forty-two days, to a special account to be called "Unpaid Dividend Account of ... (the name of the corresponding new bank).".

*Explanation.*—In this sub-section, the expression "dividend which remains unpaid" means any dividend the warrant in respect thereof has not been encashed or which has otherwise not been paid or claimed.

(2) Where the whole or any part of any dividend, declared by a corresponding new bank before the commencement of the Banking Companies (Acquisition and Transfer of Undertakings) and Financial Institutions Laws (Amendment) Act, 2005, remains unpaid at such commencement, the corresponding new bank shall, within a period of six months from such commencement, transfer such unpaid amount to the account referred to in sub-section (1).

(3) Any money transferred to the unpaid dividend account of a corresponding new bank in pursuance of this section which remains unpaid or unclaimed for a period of seven years from the date of such transfer, shall be transferred by the corresponding new bank to the Investor Education and Protection Fund established under sub-section (1) of section 205C of the Companies Act, 1956.

1 of 1956.

(4) The money transferred under sub-section (3) to the investor Education and Protection Fund shall be utilised for the purposes and in the manner specified in section 205C of the Companies Act, 1956.'.

1 of 1956.

Insertion of new sections 18A, 18B, 18C, 18D, 18E and 18F.

Power of Central Government to supersede Board of Directors of new corresponding bank.

7. After section 18 of the Bank Nationalisation Act, the following sections shall be inserted, namely:—

"18A. (1) If at any time the Central Government, on the recommendation of the Reserve Bank, is of the opinion—

(a) that, on account of circumstances beyond the control of the corresponding new bank, such bank is unable to discharge

the functions or perform the duties imposed on it by or under the provisions of this Act, or

(b) that a corresponding new bank has persistently made default in complying with any direction given by the Reserve Bank of India or the Central Government under this Act or any other law for the time being in force or in discharge of the functions or performance of the duties imposed on it by or under the provisions of this Act or any other law for the time being in force and as a result of such default the financial position of the corresponding new bank or the administration of such bank has deteriorated, or

(c) the affairs of the corresponding new bank are being conducted in a manner detrimental to the interest of its depositors or banking policy, or

(d) that circumstances exist which render it necessary in the public interest so to do,

the Central Government may, by notification and for reasons to be specified therein, supersede the Board of Directors of such corresponding new bank for such period, not exceeding three years, as may be specified in the notification and appoint establish under section 18B, an authority to be known as the Financial Restructuring Authority:

Provided that the Central Government may, for reasons to be recorded in writing, extend such period from three years to five years:

Provided further that before issuing any such notification, the Central Government shall give a reasonable opportunity to the Board of Directors of such corresponding new bank to

make representations against the proposed supersession and shall consider the representations, if any, of the Board of Directors.

(2) Upon the publication of a notification under sub-section (1) superseding the Board of Directors of a corresponding new bank,—

(a) the Chairperson and other directors shall, as from the date of supersession, vacate their offices as such;

(b) all the powers, functions and duties which may, by or under the provisions of this Act, or any other law for the time being in force, be exercised or discharged by or on behalf of the Board of Directors of such corresponding new bank or by a resolution passed in general meeting of that bank, shall, until the Board of Directors of such corresponding new bank is re-constituted under sub-section (3), be exercised and discharged by the Financial Restructuring Authority:

Provided that the powers, exercised by the Financial Restructuring Authority shall be valid notwithstanding that such powers are exercisable by a resolution passed in the general meeting of such a corresponding new bank.

(3) On or before the expiration of the period of supersession specified in the notification issued under sub-section (1), the Central Government shall re-constitute the Board of Directors of such corresponding new bank by a fresh appointment of its Chairperson and other directors and in such case any person who had vacated his office under clause (a) of sub-section (2) shall not be deemed to be disqualified for re-appointment.

(4) The Central Government shall cause a copy of the notification issued under sub-

section (1) and a full report of any action taken under this section and the circumstances leading to such action to be laid before each House of Parliament at the earliest.

18B. (1) The Central Government shall, on supersession of the Board of Directors of the corresponding new bank under sub-section (1) of section 18A, establish an authority to be known as Financial Restructuring Authority.

Establishment  
of Financial  
Restructuring  
Authority.

(2) The Financial Restructuring Authority shall consist of not less than three, but not exceeding seven members to be appointed by the Central Government from amongst persons of ability, integrity and standing who have knowledge and experience in banking, finance, economics, law, accountancy, administration or any other discipline which would in the opinion of the Central Government be useful to the corresponding new bank.

(3) The Central Government shall appoint one of the Members as the Chairperson of the Financial restructuring Authority.

(4) The salary and allowances payable to and other terms and conditions of the Chairperson and Members of the Financial Restructuring Authority shall be such as may be specified, by rules made by the Central Government.

(5) The salary and allowances and other conditions of service of the Chairperson and Members of the Financial Restructuring Authority shall not be varied to his disadvantage after appointment.

(6) The salary and allowances payable to the Chairperson and Members of the Financial Restructuring Authority and the Chief Executive Officer of the corresponding new bank shall be borne by the corresponding new bank in respect of which such an Authority has been

established and a Chief Executive Officer appointed.

Meeting of  
Financial  
Restructuring  
Authority.

18C. (1) The Financial Restructuring Authority shall meet at such times and places and shall observe such rules and procedures in regard to transaction of business at its meeting (including quorum of such meeting) as may be specified, by rules made by the Central Government.

(2) The Chairperson, if for any reasons, is unable to attend a meeting of the Financial Restructuring Authority, any other Member chosen by the Members present amongst themselves at the meeting shall preside at the meeting.

(3) All questions which come up before any meeting of the Financial Restructuring Authority shall be decided by a majority of votes by the Members present and voting, and in the event of an equality of votes, the Chairperson or in his absence the person presiding shall have second or casting vote.

Vacancy,  
etc., not to  
invalidate  
proceedings  
of Financial  
Restructuring  
Authority.

18D. (1) No act or proceeding of the Financial Restructuring Authority shall be invalid merely by reason of—

(a) any vacancy in, or any defect in the constitution of, the Financial Restructuring Authority; or

(b) any defect in the appointment of a person acting as a Member of the Financial Restructuring Authority; or

(c) any irregularity in the procedure of the Financial Restructuring Authority not affecting the merits of the case.

Chief  
Executive  
Officer.

18E. (1) The Central Government shall, on supersession of the Board of Directors of a corresponding new bank under section 18B, by notification, appoint any person not below the

rank of Joint Secretary to the Government of India or an Executive Director of any corresponding new bank as the Chief Executive of the bank whose Board of Directors had been superseded under that section.

(2) The Chief Executive Officer shall hold office for a term not exceeding three years from the date on which he enters upon his office or reconstitution of the Board of Directors of the corresponding new bank referred to in section 18B, whichever is earlier.

(3) The other terms and conditions of service of the Chief Executive Officer shall be such as may be specified, by rules made by the Central Government.

(4) Subject to general superintendence, direction and management of the affairs by the Financial Restructuring Authority, the Chief Executive Officer shall be the Chief Executive Authority of the corresponding new bank whose Board of Directors had been superseded.

(5) The Chief Executive Officer shall be *ex officio* Member of the Financial Restructuring Authority.

(6) the Chief Executive Officer shall exercise and discharge such powers and duties of the corresponding new bank, whose Board of Directors had been superseded, as may be specified by the Financial Restructuring Authority.

18F. (1) the Central Government may, by notification, make rules for carrying out the provisions of this Act. Power to make rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the salary and allowances payable to and other terms and conditions of the

Chairperson and Members of the Financial Restructuring Authority under sub-section (4) of section 18B;

(b) the time and places of the meeting of the Financial Restructuring Authority under sub-section (1) of section 18C;

(c) the other terms and conditions of service of the Chief Executive Officer under sub-section (3) of section 18E.

(3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.”.

### CHAPTER III

#### AMENDMENTS TO THE BANKING COMPANIES (ACQUISITION AND TRANSFER OF UNDERTAKINGS) ACT, 1980

Amendment  
of section 2.

8. In section 2 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 [hereafter in this Chapter referred to as the Bank (Second) Nationalisation Act],— 40 of 1980.

(a) after clause (a), the following clause shall be inserted, namely:—

‘(ab) “Chief Executive Officer” means the Chief Executive Officer appointed under sub-section (1) of section 18E;’



(b) for clause (da), the following clauses shall be substituted, namely:—

‘(da) “Financial Restructuring Authority” means the authority established under sub-section (1) of section 18B;

(db) “Prescribed” means prescribed by regulations made under this Act;’.

9. In section 9 of the Bank (Second) Nationalisation Act,— Amendment of section 9.

(a) in sub-section (2), after clause (c), the following clause shall be inserted, namely:—

“(ca) the manner in which the excess number of directors shall retire under the second proviso to clause (i) of sub-section (3);”;

(b) in sub-section (3),—

(i) in clause (a), for the words “not more than two whole-time directors”, the words “not more than four whole-time directors” shall be substituted;

(ii) clauses (c) and (d) shall be omitted;

(iii) for clause (i), the following clause shall be substituted, namely:—

“(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, 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, 2005, 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 no such directors shall be entitled to claim any compensation for the premature retirement of their term of office.’.

Insertion of new section 9A.

10. After section 9 of the Bank (Second Nationalisation Act), the following section shall be inserted, namely:—

Power of Reserve Bank to appoint additional director.

“9A. (1) If the Reserve Bank is of the opinion that in the interest of banking policy or in the public interest or in the interests of the corresponding new bank or its depositors, it is necessary so to do, it may, from time to time, by order in writing, appoint, with effect from such date as may be specified in the order, one or more persons to hold office as additional directors of the corresponding new bank.

(2) Any person appointed as an additional director in pursuance of this section—

(a) shall hold office during the pleasure of the Reserve Bank and subject thereto for

a period not exceeding three years or such further periods not exceeding three years at a time as the Reserve Bank may specify;

(b) shall not incur any obligation or liability by reason only of his being a director or for anything done or omitted to be done in good faith in the execution of the duties of his office or in relation thereto; and

(c) shall not be required to hold qualification shares in the corresponding new bank.

(3) For the purpose of reckoning any proportion of the total number of directors of the corresponding new bank, any additional director appointed under this section shall not be taken into account.”.

11. In section 10A of the Bank (Second Nationalisation Act,— Amendment of section 10A.

(a) in sub-section (2), for the words “shall be entitled to discuss”, the words “shall be entitled to discuss, approve and adopt” shall be substituted;

(b) after sub-section (2), the following sub-sections shall be inserted, namely:—

“(3) Nothing contained in this section shall apply during the period for which the Board of Directors of a corresponding new bank had been superseded under sub-section (1) of section 18A:

Provided that the Financial Restructuring Authority may, if it considers it appropriate in the interest of the corresponding new bank whose Board of Directors had been superseded, call annual general meeting in accordance with this provision of this section.”.

Insertion of new sections 10B and 10C.

Balance sheet of corresponding new bank to include certain particulars as to its subsidiary.

12. After section 10A of the Bank (Second) Nationalisation Act, the following sections shall be inserted, namely:—

'10B (1) There shall be attached to the balance sheet of corresponding new bank having a subsidiary or, subsidiaries at the end of the financial year as at which the corresponding new bank's balance sheet is made out, the following documents in respect of such subsidiary or of each such subsidiary, as the case may be:—

(a) a copy of the balance sheet of the subsidiary;

(b) a copy of its profit and loss account;

(c) a copy of the report of its Board of Directors;

(d) a copy of the report of its auditors;

(e) a statement of the corresponding new bank's interest in the subsidiary as specified in sub-section (3);

(f) the statement referred to in sub-section (5), if any; and

(g) the report referred to in sub-section (6), if any.

(2) (a) The balance-sheet referred to in clause (a) of sub-section (1) shall be made out in accordance with the requirements of the Banking Regulation act, 1949 or any other law for the time being in force,—

(i) as at the end of the financial year of the subsidiary, where such financial year coincides with the financial year of the corresponding new bank;

(ii) as at the end of the financial year of the subsidiary last before that

of the corresponding new bank where the financial year of the subsidiary does not coincide with that of the corresponding new bank.

10 of 1949.

(b) The profit and loss account and the reports of the Board of Directors and of the auditors, referred to in clauses (b), (c) and (d) of sub-section (1), shall be made out, in accordance with the requirements of the Banking Regulation Act, 1949 or any other law for the time being in force, for the financial year of the subsidiary referred to in clause (a).

(c) Where the financial year of the subsidiary does not coincide with that of the corresponding new bank, the financial year aforesaid of the subsidiary shall not end on a day which precedes the day on which the corresponding new bank's financial year ends by more than six months.

(d) Where the financial year of the subsidiary is shorter in duration than that of its corresponding new bank, references to the financial year of the subsidiary in clauses (a), (b) and (c) shall be construed as references to two or more financial years of the subsidiary the duration of which, in the aggregate, is not less than the duration of the corresponding new bank's financial year.

(3) The statement referred to in clause (e) of sub-section (1) shall specify—

(a) the extent of the corresponding new bank's interest in the subsidiary at the end of the financial year or of the last of the financial years of the subsidiary referred to in sub-section (2);

(b) the net aggregate amount, so far as it concerns shareholders of the

corresponding new bank and is not dealt with in the bank's accounts, of the subsidiary's profits after deducting its losses or *vice versa*—

(i) for the financial year or years of the subsidiary aforesaid; and

(ii) for the previous financial years of the subsidiary since it became the corresponding new bank's subsidiary;

(c) the net aggregate amount of the profits of the subsidiary after deducting its losses or *vice versa*—

(i) for the financial year or years of the subsidiary aforesaid; and

(ii) for the previous financial years of the subsidiary since it became the corresponding new bank's subsidiary,

so far as those profits are dealt with, or provision is made for those losses, in the bank's accounts.

(4) Clauses (b) and (c) of sub-section (3) shall apply only to profits and losses of the subsidiary which may properly be treated in the corresponding new bank's accounts as revenue profits or losses, and the profits or losses attributable to any shares in a subsidiary for the time being held by the corresponding new bank or any other of its subsidiaries shall not (for that or any other purpose) be treated as aforesaid so far as they are profits or losses for the period before the date on or as from which the shares were acquired by the bank or any of its subsidiaries and for the purpose of determining whether any profits or losses are to be treated as profits or losses for the said period, the profit or loss for any financial year of the subsidiary may, if it is not practicable to apportion it with reasonable accuracy by

reference to the facts, be treated as accruing from day-to-day during that year and be apportioned accordingly.

(5) Where the financial year or years of a subsidiary referred to in sub-section (2) do not coincide with the financial year of the corresponding new bank, a statement containing information on the following matters shall also be attached to the balance-sheet of the corresponding new bank, namely:—

(a) whether there has been any, and, if so, what change in the corresponding new bank's interest in the subsidiary between the end of the financial year or of the last of the financial years of the subsidiary and the end of the corresponding new bank's financial year;

(b) details of any material changes which have occurred between the end of the financial year or of the last of the financial years of the subsidiary and the end of the corresponding new bank's financial year in respect of—

(i) the subsidiary's fixed assets;

(ii) its investments;

(iii) the moneys lent by it;

(iv) the moneys borrowed by it for any purpose other than that of meeting current liabilities.

(6) If, for any reason, the Board of Directors of the corresponding new bank is unable to obtain information on any of the matters required to be specified by sub-section (4), a report in writing to that effect shall be attached to the balance-sheet of the corresponding new bank.

(7) The documents referred to in clauses (e), (f) and (g) of sub-section (1) shall be signed

by the persons by whom the balance-sheet of the corresponding new bank is required to be signed.

(8) The Central Government may, on the application or with the consent of the Board of Directors of the bank, direct that in relation to any subsidiary, the provisions of this section shall not apply, or shall apply only to such extent as may be specified in the direction.

Transfer for Unpaid or unclaimed Dividend to Unpaid Dividend Accounts.

10C. (1) Where, after the commencement of the Banking Companies (Acquisition and Transfer of Undertakings) and Financial Institutions Laws (Amendment) Act, 2005, a dividend has been declared by a corresponding new bank but has not been paid or claimed within forty-two days from the date of declaration, to, or by, any shareholder entitled to the payment of the dividend, the corresponding new bank shall, within seven days from the date of the expiry of such period of forty-two days, transfer the total amount of dividend which remains unpaid or unclaimed within the said period of forty-two days, to a special account to be called "Unpaid Dividend Account of ... (the name of the corresponding bank).".

*Explanation.*—In this sub-section, the expression "dividend which remain unpaid" means any dividend the warrant in respect thereof has not been encashed or which has otherwise not been paid or claimed.

(2) Where the whole or any part of any dividend, declared by a corresponding new bank before the commencement of the Banking Companies (Acquisition and Transfer of Undertakings) and Financial Institutions Laws (Amendment) Act, 2005, remains unpaid at such commencement, the corresponding new bank shall, within a period of six months from such commencement, transfer such unpaid amount to the account referred to in sub-section (1).



(3) Any money transferred to the unpaid dividend account of a corresponding new bank in pursuance of this section which remains unpaid or unclaimed for a period of seven years from the date of such transfer, shall be transferred by the corresponding new bank to the Investor Education and Protection Fund established under sub-section (1) of section 205C of the Companies Act, 1956.

1 of 1956.

(4) The money transferred under sub-section (3) to the Investor Education and Protection Fund shall be utilised for the purposes and in the manner specified in section 205C of the Companies Act, 1956.”

1 of 1956.

13. After section 18 of the Bank (Second) Nationalisation Act, the following sections shall be inserted, namely:—

Insertion of new sections 18A, 18B, 18C, 18D, 18E and 18F.

“18A. (1) If at any time the Central Government, on the recommendation of the Reserve Bank, is of the opinion—

Power of Central Government to supersede Board of Directors of new corresponding bank.

(a) that, on account of circumstances beyond the control of the corresponding new bank, such bank is unable to discharge the functions or perform the duties imposed on it by or under the provisions of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980, or

40 of 1980.

(b) that a corresponding new bank has persistently made default in complying with any direction given by the Reserve Bank of India or the Central Government under this Act or any other law for the time being in force or in the discharge of the functions or performance of the duties imposed on it by or under the provisions of this Act or any other law for the time being in force and as a result of such default the financial position of the corresponding new bank or the administration of such bank has deteriorated, or

(c) the affairs of the corresponding new bank are being conducted in a manner detrimental to the interest of its depositors or banking policy, or

(d) that circumstances exist which render it necessary in the public interest so to do,

the Central Government may, by notification and for reasons to be specified therein, supersede the Board of Directors of such, corresponding new bank for such period, not exceeding three years, as may be specified in the notification and establish under section 18B, an authority to be known as the Financial Restructuring Authority:

Provided that the Central Government may, for reasons to be recorded in writing, extend such period from three years to five years:

Provided further that before issuing any such notification, the Central Government shall give a reasonable opportunity to the Board of Directors of such corresponding new bank to make representations against the proposed supersession and shall consider the representations, if any, of the Board of Directors.

(2) Upon the publication of a notification under sub-section (1) superseding the Board of Directors of a corresponding new bank,—

(a) the Chairperson and other directors shall, as from the date of supersession, vacate their offices as such;

(b) all the powers, functions and duties which may, by or under the provisions of this Act, or any other law for the time being in force, be exercised or discharged by or on behalf of the Board of Directors of such corresponding new bank or by a resolution passed in general meeting of that

bank, shall, until the Board of Directors of such corresponding new bank is re-constituted under sub-section (3), be exercised and discharged by the Financial Restructuring Authority:

Provided that the powers, exercised by the Financial Restructuring Authority shall be valid notwithstanding that such powers are exercisable by a resolution passed in the general meeting of such a corresponding new bank.

(3) On or before the expiration of the period of supersession specified in the notification issued under sub-section (1), the Central Government shall reconstitute the Board of Directors of such corresponding new bank by a fresh appointment of its Chairperson and other directors and in such case any person who had vacated his office under clause (a) of sub-section (2) shall not be deemed to be disqualified for re-appointment.

(4) The Central Government shall cause a copy of the notification issued under sub-section (1) and a full report of any action taken under this section and the circumstances leading to such action to be laid before each House of Parliament at the earliest.

18B. (1) The Central Government shall, on supersession of the Board of Directors of the corresponding new bank under sub-section (1) of section 18A, establish an authority to be known as Financial Restructuring Authority.

Establishment  
of Financial  
Restructuring  
Authority.

(2) The Financial Restructuring Authority shall consist of not less than three, but not exceeding seven members to be appointed by the Central Government from amongst persons of ability, integrity and standing who have knowledge and experience in banking, finance, economics, law, accountancy, administration or any other discipline which would in the opinion of the Central Government be useful to the corresponding new bank.

(3) The Central Government shall appoint one of the Members as the Chairperson of the Financial Restructuring Authority.

(4) The salary and allowances payable to and other terms and conditions of the Chairperson and Members of the Financial Restructuring Authority shall be such as may be specified, by rules made by the Central Government.

(5) The salary and allowances and other conditions of service of the Chairperson and Members of the Financial Restructuring Authority shall not be varied to his disadvantage after appointment.

(6) The salary and allowances payable to the Chairperson and Members of the Financial Restructuring Authority and the Chief Executive Officer of the corresponding new banks shall be borne by the corresponding new bank in respect of which such an Authority has been established and a Chief Executive Officer appointed.

Meeting of  
Financial  
Restructuring  
Authority.

18C. (1) The Financial Restructuring Authority shall meet at such times and places and shall observe such rules and procedures in regard to the transaction of business at its meeting (including quorum of such meeting) as may be specified, by rules made by the Central Government.

(2) The Chairperson, if for any reasons, is unable to attend a meeting of the Financial Restructuring Authority, any other Member chosen by the Members present amongst themselves at the meeting shall preside at the meeting.

(3) All questions which come up before any meeting of the Financial Restructuring Authority shall be decided by a majority of votes by the Members present and voting, and

in the event of an equality of votes, the Chairperson or in his absence the person presiding shall have second or casting vote.

18D. (1) No act or proceeding of the Financial Restructuring Authority shall be invalid merely by reason of—

Vacancy, etc., not to invalidate proceedings of Financial Restructuring Authority.

(a) any vacancy in, or any defect in the constitution of, the Financial Restructuring Authority; or

(b) any defect in the appointment of a person acting as a Member of the Financial Restructuring Authority; or

(c) any irregularity in the procedure of the Financial Restructuring Authority not affecting the merits of the case.

18E. (1) The Central Government shall, on supersession of the Board of Directors of a corresponding new bank under section 18BN, by notification, appoint any person not below the rank of Joint Secretary to the Government of India or an Executive Director of any corresponding new bank as the Chief Executive of the bank whose Board of Directors have been superseded under that section.

Chief Executive Officer.

(2) The Chief Executive Officer shall hold office for a term not exceeding three years from the date on which he enters upon his office or reconstitution of the Board of Directors of the corresponding new bank referred to in section 18B, whichever is earlier.

(3) The other terms and conditions of service of the Chief Executive Officer shall be such as may be specified by rules made by the Central Government.

(4) Subject to the general superintendence, direction and management of the affairs by the Financial Restructuring Authority, the

Chief Executive Officer shall be the Chief Executive Authority of the corresponding new bank whose Board of Directors have been superseded.

(5) The Chief Executive Officer shall be *ex-officio* Member of the Financial Restructuring authority.

(6) The Chief Executive Officer shall exercise and discharge such powers and duties of the corresponding new bank, whose Board of Directors had been superseded, as may be specified by the Financial Restructuring Authority.

Power to  
make rules.

18F. (1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the salary and allowances payable to and other terms and conditions of the Chairperson and Members of the Financial Restructuring Authority under sub-section (4) of section 18B;

(b) the time and places of the meeting of the Financial Restructuring Authority under sub-section (1) of section 18C;

(c) the other terms and conditions of service of the Chief Executive Officer under sub-section (3) of section 18E.

(3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more

successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.”.

#### CHAPTER IV

##### AMENDMENTS TO THE STATE BANK OF INDIA ACT, 1955

14. In section 20 of the State Bank of India Act, 1955 (hereafter in this Chapter referred to as the State Bank Act), in sub-section (3), the words “and thereafter until his successor shall have been duly elected” shall be omitted.

Amendment  
of section  
20.

15. In section 21A of the State Bank Act, in sub-section (1), the words “and thereafter until his successor has been duly nominated” shall be omitted.

Amendment  
of section  
21A.

#### CHAPTER V

##### AMENDMENTS TO THE STATE BANK OF INDIA (SUBSIDIARY BANK) ACT, 1959

16. In section 26 of the State Bank of India (Subsidiary Banks) Act, 1959,—

Amendment  
of Act 38  
of 1959.

(a) in sub-section (2), the words “and thereafter until his successor is duly elected” shall be omitted;

(b) in sub-section (2A), for the words “and thereafter until his successor shall have been duly nominated or appointed”, the words “and thereafter until his successor shall have been duly appointed” shall be substituted.

## CHAPTER VI

### AMENDMENTS TO CERTAIN OTHER ENACTMENTS

- Amendment  
of Act 47  
of 1961.
17. In section 6 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961, in sub-section (2), in clause (ii), the words “and thereafter until his successor assumes office” shall be omitted.
- Amendment  
of Act 28  
of 1981.
18. In section 6 of the Export-Import Bank of India Act, 1981, in sub-section (6), the words “and thereafter until his successors enters upon his office” shall be omitted.
- Amendment  
of Act 53  
of 1987.
19. In section 7 of the National Housing Bank Act, 1987, in sub-section (2), the proviso shall be omitted.



## STATEMENT OF OBJECTS AND REASONS

Fourteen major Indian Scheduled banks, each with deposits of rupees fifty crores or more, were nationalised in July, 1969 by the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1969. However, the Supreme Court by a majority judgment delivered on the 10<sup>th</sup> day of February, 1970 declared the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1969, void. With a view to resume control over these banks, the President promulgated, on the 14<sup>th</sup> day of February, 1970, the Banking Companies (Acquisition and Transfer of Undertakings) Ordinance, 1970. The said Ordinance was replaced by the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. Subsequently, six Indian private banks, each having deposits of rupees two hundred crores or more, were nationalised by the Banking Companies (Acquisition and Transfer of Undertakings) Ordinance, 1980, promulgated by the President, on the 15<sup>th</sup> day of April, 1980. The said Ordinance was also replaced by the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980. Following the merger of two of the nationalised banks there are presently 19 nationalised banks.

2. The aforesaid two Acts of 1970 and 1980 originally envisaged that the paid-up capital of these banks may be raised either by transfer from the reserve fund or by contribution by the Central Government. In 1994, the said Acts were amended to provide that the paid-up capital of these banks may be increased by such amounts as the Board of Directors of the bank may, after consultation with the Reserve Bank of India with the previous sanction of the Central Government, raise by public issue of shares in such manner as may be prescribed, so that the Central Government shall, at all times, hold not less than 51% of the paid-up capital of each such bank. The shareholding pattern of the fifteen nationalised banks which had gone in for public issues varies from 51% to 77%. The Central Government holds the entire equity in four nationalised banks and has majority equity shareholding in fifteen nationalised banks.

3. In addition to the changes in the pattern of shareholding in nationalised banks introduced in 1994, some other provisions of the Banking Companies (Acquisition and Transfer of Undertakings) Acts, 1970 and 1980 also require amendments so as to bring the operation of these banks in tune with the changed scenario and modern business practices.

4. The Banking Companies (Acquisition and Transfer of Undertakings) and Financial Institutions Laws (Amendment) Bill, 2000 was introduced on 13<sup>th</sup> December, 2000 in the Lok Sabha and had lapsed due to dissolution of the 13<sup>th</sup> Lok Sabha. The proposed amendment mentioned in sub-paragraphs (b) to (h) of paragraph 5 below are broadly the same which were incorporated in the earlier Bill. However, the amendment relating to reduction of prescribed minimum shareholding of the Central Government in nationalised banks from 51% to 33% as mentioned in the earlier Bill has been omitted in the amendments proposed in the present Bill.

5. It is proposed to amend the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980, *inter alia*, to—

(a) allow one to three shareholder directors on the Board of the nationalised banks on the basis of issued capital of the bank instead of one to six directors as per existing provisions so as to provide for a more equitable representation on the Board of Directors of the nationalised banks on the basis of percentage of ownership in such banks;

(b) omit the provisions relating to mandatory nomination of directors by the Reserve Bank of India and financial institutions on the Board of nationalised banks, etc.;

(c) confer power upon the Reserve Bank to appoint one or more additional directors;

(d) increase the number of whole-time directors from two to four to have more functional directors in view of expansion of activities of the nationalised banks;

(e) empower the shareholders of nationalised banks to discuss, adopt and approve the Directors' report, the annual accounts and the balance-sheet of the bank for the period covered by such accounts at their annual general meeting;

(f) the enable the banks to transfer the unclaimed dividends for more than seven years to Investor Education and Protection Fund established by the Central Government under section 205C of the Companies Act, 1956;

(g) prescribe annexing of the details of the subsidiary or subsidiaries such as balance-sheet, profit and loss accounts and reports of auditors along with the annual report of the bank;

(h) empower the Central Government to supersede, on the recommendation of the Reserve Bank of India, the Board of Directors of any nationalised bank and constitute the Financial Restructuring Authority and appoint a Chief Executive Officer of such bank.

6. The State Bank of India Act, 1955, the State Bank of India (Subsidiary Banks) Act, 1959, the Deposit Insurance and Credit Guarantee Corporation Act, 1961, the Export-Import Bank of India Act, 1981, and the National Housing Bank Act, 1987, provide that the part-time non-official directors on the Boards of Directors of financial institutions under the said Acts shall hold office for a period of three years or until a successor is appointed subject to a maximum period of six years. Since a large number of part-time non-official directors in banks and financial institutions continued to hold office even after expiry of their term as their successor could not be appointed in time, it is proposed to amend the said Acts so as to provide that such non-official directors will vacate their office whether their successor is appointed or not. These amendments are on the lines of the provisions for part-time non-official directors in the nationalised banks. For the workmen and officer directors, the existing provisions are proposed to be continued.

7. The Bill seeks to achieve the above objects.

New Delhi;  
The 8th August, 2005.

P. CHIDAMBARAM.

## FINANCIAL MEMORANDUM

Clause 7 of the Bill, *inter alia*, contains provisions that the Central Government may, by notification and for reasons to be specified therein, supersede the Board of Directors of any corresponding new bank for such period, not exceeding three years, as may be specified in the notification and appoint under section 18B an authority to be known as the Financial Restructuring Authority and a Chief Executive Officer under section 18E. Similarly provisions relating to the corresponding new banks constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 are provided in clause 13 of the Bill. The expenditure on the Financial Restructuring Authority and the Chief Executive Officer will be borne by the concerned corresponding new bank and no expenditure is envisaged from the Consolidated Fund of India.

2. The provisions of the Bill do not involve any other expenditure of recurring or non-recurring nature.

## MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 7 of the Bill proposes to insert new section 18F in the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 which confers power upon the Central Government to make rules for carrying out the provisions of the said Act. The matters in respect of which such rules may be made relate, *inter alia*, to the salary and allowances payable to and other terms and conditions of the Chairperson and Members of the Financial Restructuring Authority under sub-section (4) of section 18B; the time and places of the meeting of the Financial Restructuring Authority under sub-section (1) of section 18C; the terms and conditions of service of the Chief Executive Officer under sub-section (3) of section 18E.

2. Clause 13 of the Bill proposes to insert new section 18F in the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980, which confers power upon the Central Government to make rules for carrying out the provisions of the said Act. The matters in respect of which such rules may be made relate, *inter alia*, to the salary and allowances payable to and other terms and conditions of the Chairperson and Members of the Financial Restructuring Authority under sub-section (4) of section 18B; the time and places of the meeting of the Financial Restructuring Authority under sub-section (1) of section 18C; the terms and conditions of service of the Chief Executive Officer under sub-section (3) of section 18E.

3. The rules made by the Central Government shall be laid, as soon as may be, after they are made, before each House of Parliament.

4. The matters in respect of which rules may be made are generally matters of procedure and administrative details and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

ANNEXURE

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

(5 OF 1970)

	*	*	*	*	*
Definitions.	2.	In this Act, unless the context otherwise requires,—			
	*	*	*	*	*
	(fa)	“prescribed” means prescribed by regulations made under this Act;			
	*	*	*	*	*
Power of Central Government to make scheme.	9. (1)	*	*	*	*
	(2)	In particular, and without prejudice to the generality of the foregoing power, the said scheme may provide for all or any of the following matters, namely:—			
	*	*	*	*	*
	(3)	Every Board of Directors of a corresponding new bank, constituted under any scheme made under sub-section (1), shall include—			
	(a)	not more than two whole-time directors to be appointed by the Central Government after consultation with the Reserve Bank;			
	(b)	one director who is an official of the Central Government to be nominated by the Central Government:			
	Provided that no such director shall be a director of any other corresponding new bank.				

40 of 1980. *Explanation.*—For the purposes of this clause, the expression “corresponding new bank” shall include a corresponding new bank within the meaning of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980;

(c) one director who is an officer of the Reserve Bank to be nominated by the Central Government on the recommendation of the Reserve Bank.

2 of 1934. *Explanation.*—For the purpose of this clause, “an officer of the Reserve Bank” includes an officer of the Reserve Bank who is deputed by that Bank under section 54AA of the Reserve Bank of India Act, 1934 to any institution referred to therein;

15 of 1992.  
61 of 1981.  
1 of 1956. (d) not more than two directors to be nominated by the Central Government from amongst the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992, the National Bank for Agriculture and Rural Development established under section 3 of the National Bank for Agriculture and Rural Development Act, 1981, public financial institutions as specified in sub-section (1), or notified from time to time under sub-section (2) of section 4A of the Companies Act, 1956 and other institutions established or constituted by or under any Central Act or incorporated under the Companies Act, 1956 and having not less than fifty-one per cent of the paid-up share capital held or controlled by the Central Government;

\* \* \* \* \*

(i) where the capital issued under clause (c) of sub-section (2B) of section (3) is—

(I) not more than twenty per cent of the total paid-up capital, not more than two directors,

(II) more than twenty per cent but not more than forty per cent of the total paid-up capital, not more than four directors,

(III) more than forty per cent, of the total paid-up capital, not more than six directors,

to be elected by the shareholders, other than the Central Government, from the amongst themselves:

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

Annual  
general  
meeting.

10A. (1) \* \* \* \* \*

(2) The shareholders present at an annual general meeting shall be entitled to discuss the balance-sheet and the profit and loss account of the corresponding new bank made up to the previous 31<sup>st</sup> day of March, the report of the Board of Directors on the working and activities of the corresponding new bank for the period covered by the accounts and the auditor's report on the balance-sheet and accounts.

\* \* \* \* \*

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EXTRACTS FROM THE BANKING COMPANIES  
(ACQUISITION AND TRANSFER OF UNDERTAKINGS)  
ACT, 1980

(40 OF 1980)

\* \* \* \* \*

Definitions. 2. In this Act, unless the context otherwise requires,—

\* \* \* \* \*



(de) "prescribed" means prescribed by regulations made under this Act;

\* \* \* \* \*

9. (1) \* \* \* \*

Power of Central Government to make scheme.

(2) In particular, and without prejudice to the generality of the foregoing power, the said scheme may provide for all or any of the following matters, namely:—

\* \* \* \* \*

(3) Every Board of Directors of a corresponding new bank, constituted under any scheme made under sub-section (1), shall include—

(a) not more than two whole-time directors to be appointed by the Central Government after consultation with the Reserve Bank;

(b) one director who is an official of the Central Government to be nominated by the Central Government:

Provided that no such director shall be a director of any other corresponding new bank.

*Explanation.*—For the purposes of this clause, the expression "corresponding new bank" shall include a corresponding new bank within the meaning of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970;

5 of 1970.

(c) one director who is an officer of the Reserve Bank to be nominated by the Central Government on the recommendation of the Reserve Bank.

*Explanation.*—For the purpose of this clause, "an officer of the Reserve bank"

include an officer of the Reserve Bank who is deputed by that Bank under section 54AA of the Reserve Bank of India Act, 1934 to any institution referred to therein; 2 of 1934.

(d) not more than two directors to be nominated by the Central Government from amongst the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992, the National Bank for Agriculture and Rural Development established under section 3 of the National Bank for Agriculture and Rural Development Act, 1981, public financial institutions as specified in sub-section (1), or notified from time to time under sub-section (2), of section 4A of the Companies Act, 1956 and other institutions established or constituted by or under any Central Act or incorporated under the Companies Act, 1956 and having not less than fifty-one per cent of the paid-up share capital held or controlled by the Central Government; 15 of 1992. 61 of 1981. 1 of 1956.

\* \* \* \* \*

(i) where the capital issued under clause (c) of sub-section (2B) of section (3) is—

(i) not more than twenty per cent of the total paid-up capital, not more than two directors,

(ii) more than twenty per cent but not more than forty per cent of the total paid-up capital, not more than four directors,

(iii) more than forty per cent, of the total paid-up capital, not more than six 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 directors under this clause, equal number of directors nominated under clause (h) shall retire in such manner as may be specified in the scheme.

10A. (1) \* \* \* \* \* Annual general meeting.

(2) The shareholders present at an annual general meeting shall be entitled to discuss the balance sheet and the profit and loss account of the corresponding new bank made up to the previous 31st day of March, the report of the Board of Directors on the working and activities of the corresponding new bank for the period covered by the accounts and the auditor's report on the balance-sheet and accounts.

\* \* \* \* \*

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EXTRACT FROM THE STATE BANK OF INDIA ACT,  
1955

(23 OF 1955)

\* \* \* \* \*

20. (1) \* \* \* \* \* Term of office of chairman, managing director, etc.

(3) Subject to the provisions contained in section 19, a director elected under clause (c) of that section 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.

\* \* \* \* \*

21A. (1) Subject to the provisions contained in this section and in sub-section (2) of section 21, a member of a Local Board nominated under clause (c) of sub-section (1) of section 21 Term of office of members of Local Board.

shall hold office for such term, not exceeding three years, as the Central Government may specify in this behalf and thereafter until his successor has been duly nominated and shall be eligible for re-nomination:

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

\* \* \* \* \*

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EXTRACT FROM THE STATE BANK OF INDIA  
(SUBSIDIARY BANKS) ACT, 1959

(38 OF 1959)

\* \* \* \* \*

Term of  
office of  
directors.

26. (1) \* \* \* \* \*

(2) Subject to the provisions contained in section 25, a director elected under clause (d) of sub-section (1) of that section shall hold office for three years and thereafter until his successor is duly elected, and shall be eligible for re-election:

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

(2A) Subject to the provisions contained in section 25 and in sub-section (1), a director nominated under clause (c) and not being an officer of the State Bank or a director appointed under clause (ca) or clause (cb) or a director, not being an officer of the Central Government, nominated under clause (e) of sub-section (1) of section 25 shall hold office for such term not exceeding three years, as the Central Government may specify and thereafter until his successor shall have been duly nominated or appointed, and shall be eligible for

re-nomination or re-appointment, as the case may be:

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

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EXTRACT FROM THE DEPOSIT INSURANCE AND  
CREDIT GUARANTEE CORPORATION ACT, 1961

(47 OF 1961)

\* \* \* \* \*

6. (1) \* \* \* \* \* Board of  
Directors.

(2) (i) \* \* \* \* \*

(ii) A director nominated under clause (d) or clause (e) of sub-section (1), shall hold office for such period not exceeding four years as may be specified by the Central Government and thereafter until his successor assumes office.

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EXTRACT FROM THE EXPORT-IMPORT BANK OF INDIA  
ACT, 1981

(28 OF 1981)

\* \* \* \* \*

6. (1) \* \* \* \* \* Constitution  
of Board.

(6) Subject to the provisions contained in sub-section (7), any director nominated under clause (b) or clause (c) or clause (e) of sub-section (1) and not being an official of Government or not being a whole-time director

or official of the Reserve Bank or the Development Bank or the said Export Credit and Guarantee Corporation Limited or a scheduled bank, shall hold office for such term, not exceeding three years, as the Central Government or, as the case may be, the authority nominating him, may specify in this behalf and thereafter until his successor enters upon his office, and shall be eligible for re-nomination:

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

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EXTRACT FROM THE NATIONAL HOUSING BANK  
ACT, 1987

(53 OF 1987)

\* \* \* \* \*

Term of office of chairman, managing director and other directors, service conditions, etc.

7. (1) \* \* \* \* \*

(2) The directors referred to in clauses (b) and (c) of sub-section (1) of section 6 shall hold office for a term of three years:

Provided that any such director shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

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LOK SABHA

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BILL

further to amend the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980, the State Bank of India Act, 1955, the State Bank of India (Subsidiary Banks) Act, 1959, the Deposit Insurance and Credit Guarantee Corporation Act, 1961, the Export-Import Bank of India Act, 1981 and the National Housing Bank Act, 1987.

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*(Shri P. Chidambaram, Minister of Finance)*

THIRTY-FOURTH REPORT  
STANDING COMMITTEE ON FINANCE  
(2005-2006)

(FOURTEENTH LOK SABHA)

MINISTRY OF FINANCE  
(DEPARTMENT OF ECONOMIC AFFAIRS)

THE BANKING COMPANIES  
(ACQUISITION AND TRANSFER OF UNDERTAKINGS)  
AND FINANCIAL INSTITUTIONS LAWS  
(AMENDMENT) BILL, 2005

*Presented to Hon'ble Speaker on 24.4.2006*

*Presented to Lok Sabha on 11.5.2006*

*Laid in Rajya Sabha on 11.5.2006*



LOK SABHA SECRETARIAT  
NEW DELHI

*April, 2006/Chaitra, 1928 (Saka)*