FORTY-THIRD REPORT

STANDING COMMITTEE ON FINANCE
(2011-2012)

(FIFTEENTH LOK SABHA)

MINISTRY OF FINANCE
(DEPARTMENT OF FINANCIAL SERVICES)

The Banking Laws (Amendment) Bill, 2011

Presented to Lok Sabha on 13.12.2011
Laid in Rajya Sabha on 13.12.2011

LOK SABHA SECRETARIAT
NEW DELHI

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CONTENTS

COMPOSITION OF THE STANDING COMMITTEE ON FINANCE (2011-2012)

Shri Yashwant Sinha — *Chairman*

MEMBERS

Lok Sabha

2. Shri Shivkumar Udasi Chanabasappa
3. Shri Jayant Chaudhary
4. Shri Harishchandra Deoram Chavan
5. Shri Bhakta Charan Das
6. Shri Gurudas Dasgupta
7. Shri Nishikant Dubey
8. Shri Chandrakant Khaire
9. Shri Bhartruhari Mahtab
10. Shri Anjan Kumar Yadav M.
11. Shri Prem Das Rai
12. Dr. Kavuru Sambasiva Rao
13. Shri Rayapati S. Rao
14. Shri Magunta Sreenivasulu Reddy
15. Shri Sarvey Sathyanarayana
16. Shri G.M. Siddeswara
17. Shri N. Dharam Singh
18. Shri Yashvir Singh
19. Shri Manicka Tagore
20. Shri R. Thamaraiselvan
21. Dr. M. Thambidurai

Rajya Sabha

22. Shri S.S. Ahluwalia
23. Shri Raashid Alvi
24. Shri Vijay Jawaharlal Darda

25. Shri Piyush Goyal
26. Shri Moinul Hassan
27. Shri Satish Chandra Misra
28. Shri Mahendra Mohan
29. Dr. Mahendra Prasad
30. Dr. K.V.P. Ramachandra Rao
31. Shri Yogendra P. Trivedi

SECRETARIAT

1. Shri A.K. Singh — *Joint Secretary*
2. Shri R.K. Jain — *Director*
3. Shri Ramkumar Suryanarayanan — *Deputy Secretary*

INTRODUCTION

I, the Chairman of the Standing Committee on Finance, having been authorised by the Committee, present this Forty-third Report on the Banking Laws (Amendment) Bill, 2011.

2. The Banking Laws (Amendment) Bill, 2011, introduced in Lok Sabha on 22 March, 2011 was referred to the Committee on 29 March, 2011 for examination and report thereon, by the 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 Financial Services).

4. Written views/memoranda were received from the Reserve Bank of India, State Bank of India, Indian Banks Association, Bank of Baroda, Syndicate Bank, Canara Bank, Vijaya Bank, Indian Bank, Corporation Bank, Oriental Bank of Commerce, Bank of India, ICICI Bank, IDBI Bank, Indus Ind Bank, Bank Employees' Federation of India (BEFI), All India Bank Employees' Association (AIBEA), All India Bank Officers' Association (AIBOA), and All India Bank Officers' Confederation (AIBOC).

5. The Committee, at their sitting held on 14 July, 2011 took evidence of the representatives of the Ministry of Finance (Department of Financial Services) and Indian Banks' Association (IBA).

6. The Committee, at their sitting held on 8 December, 2011 considered and adopted this Report.

7. The Committee wish to express their thanks to the officials of the Ministry of Finance (Department of Financial Services) and the representatives of Indian Banks' Association (IBA) for appearing before the Committee and furnishing the requisite material and information which were desired in connection with the examination of the Bill.

8. The Committee also wish to express their thanks to the Reserve Bank of India, State Bank of India, Bank of Baroda, Syndicate Bank, Canara Bank, Vijaya Bank, Indian Bank, Corporation Bank, Oriental Bank of Commerce, Bank of India, ICICI Bank, IDBI Bank, Indus Ind Bank,

Bank Employees' Federation of India (BEFI), All India Bank Employees' Association (AIBEA), All India Bank Officers' Association (AIBOA), and All India Bank Officers' Confederation (AIBOC) for placing before them their considered views on the Bill in the form of memoranda.

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

NEW DELHI;
09 *December,* 2011
18 *Agrahayana,* 1933 *(Saka)*

YASHWANT SINHA,
Chairman,
Standing Committee on Finance.

REPORT

Background

The Banking Regulation Act, 1949 being the law relating to banking has been in force for more than six decades. It, *inter alia,* empowers the Reserve Bank to regulate and supervise the banking sector. The Reserve Bank of India (RBI) has asked the Government to move certain legislative amendments to not only develop the banking sector in India, but also strengthen its regulatory powers. The legislative amendments in the Bill relating to strengthening of RBI's regulatory and supervisory powers are thus proposed by way of amendments to the Banking Regulation Act, 1949. Further, other consequential amendments are also proposed in Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and 1980 to grant greater flexibility to nationalised banks in raising capital to meet the requirements of expanding banking business.

2. The Banking Regulation (Amendment) Bill, 2005 (72 of 2005) was introduced in the Lok Sabha on the 13th May, 2005 to strengthen RBI's supervisory and regulatory powers over the banking sector. The Bill was referred to the Standing Committee on Finance for examination and report thereon in the year 2005 and based on the recommendations of the Standing Committee, the Government decided to move official amendments to the Bill in the Lok Sabha, but the Bill could not be taken up for consideration and passing in the 14th Lok Sabha and after the dissolution of the Lok Sabha, the Bill lapsed.

3. The present Bill *inter alia* incorporates certain provisions of the Banking Regulation (Amendment) Bill, 2005.

(i) The basic features of the Bill

4. The salient features of the Bill are as follows:

- To exempt bank mergers from scrutiny of the Competition Commission of India;
- To enable banking companies to issue preference shares subject to regulatory guidelines by the RBI;
- To remove the restrictions on voting rights for private banks and raise the ceiling to 10% for public sector banks on par with State Bank of India;

- To create a Depositor Education and Awareness Fund by utilising the inoperative deposit accounts;
- To provide prior approval of RBI for acquisition of 5% or more of shares or voting rights in a banking company by any person and empowering RBI to impose such conditions as it deems fit in this regard;
- To empower RBI to collect information and inspect associate enterprises of banking companies;
- To empowering RBI to supersede the Board of Directors of banking company and appointment of administrator till alternate arrangements are made;
- To provide for primary cooperative societies to carry on the business of banking only after obtaining a license from RBI;
- To provide for special audit of cooperative banks at instance of RBI by extending applicability of section 30 to them; and
- To enable the nationalised banks to raise capital through "bonus" and "rights" issue and also enable them to increase or decrease the authorised capital with approval from the Government and RBI without being limited by the ceiling of Rs. 3000 crore under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980.

(ii) Comparative Statement of provisions of the Banking Regulation (Amendment) Bill, 2005 *vis-a-vis* the Banking Laws (Amendment) Bill, 2011

5. The provisions of the Banking Laws (Amendment) Bill, 2011 incorporate almost all the recommendations/amendments suggested by the Standing Committee on Finance in its 26th Report on the Banking Regulation (Amendment) Bill, 2005 with suitable modifications required in the present day circumstances and other consequential amendments in the Banking Regulation Act, 1949. The tabular statement given below shows in detail the recommendations of the Standing Committee on Finance in its 26th Report on the Banking Regulation (Amendment) Bill, 2005 and how these have been incorporated in the Banking Laws (Amendment) Bill, 2011. The table also gives in detail additional amendments which were not part of the Banking Regulation (Amendment) Bill, 2005.

Comparative Statement indicating provisions as originally proposed in the Banking Regulation (Amendment) Bill, 2005 and the Recommendations made by the Standing Committee on Finance and incorporation of the Recommendations of the Standing Committee on Finance in the Banking Laws (Amendment) Bill, 2011.

Provision in the Banking Regulation (Amendment) Bill, 2005	Recommendations of the Standing Committee on Finance	Incorporation of the recommendation of the Standing Committee on Finance in the Banking Laws (Amendment) Bill, 2011
1	2	3
Clause 3 **Section 12** (i) For clause (ii), the following clause shall be substituted, namely:- "(ii) that notwithstanding anything contained in the Companies Act, 1956, the capital of such banking company consists of— (a) ordinary or equity shares, and (b) Preference shares issued in accordance with the guidelines framed by the Reserve Bank specifying the class of, and the terms and conditions subject to which, the preference shares may be issued; Provided that no holder of the preference share issued by the company shall be entitled to exercise the voting right specified in clause (b) of sub-section (2) of section 87 of the Companies Act, 1956";	The standing Committee on Finance observed that the Government may consider bringing in such changes in the proposed provisions to also clearly indicate the fact that the extent to which a banking company may issue preference shares of a particular description would be specified by the Reserve Bank.	Clause 4 of the Bill incorporates the recommendations of the Standing Committee on Finance as follows: 4. In section 12 of the principal Act, in subsection (1),— (i) for clause (ii), the following clause shall be substituted, namely:— "(ii) that, notwithstanding anything contained in the Companies Act, 1956, the capital of such banking company consists of— (a) equity shares only, or (b) equity shares and preference shares: Provided that the issue of preference share shall be in accordance with the guidelines framed by the Reserve Bank specifying the class of preference shares, the extent of issue of each class of such preference shares, (whether perpetual or irredeemable or

1	2	3
(iii) The proviso shall be omitted. (iv) Sub-section (2) shall be omitted."		redeemable), and the terms and conditions subject to which each class of preference shares may be issued: Provided further that no holder of the preference share, issued by the company, shall be "entitled to exercise the voting right specified in clause (b) of subsection (2) of section 87 of the Companies Act, 1956"; (ii) the proviso shall be omitted; (iii) sub-section (2) shall be omitted.
Clause 4 **Section: Sub-section (6) of 12B** (6) Every application made under sub-section (1) shall be deemed to have been granted, unless before the expiry of a period of ninety days from the date on which the application was received by the Reserve Bank, it communicates to the applicant that the approval applied for has not been granted: Provided that in computing the period of ninety days, the period taken by the applicant for furnishing the information called for by the Reserve Bank shall be executed.	The Committee, recommended that clause 12 B (6) be amended suitably to specify in clear terms that the decision of either accepting or rejecting an application for acquisition of shares under sub-section (1) of Section 12B will necessarily be taken and conveyed by the Reserve Bank within the stipulated period of 90 days.	Sub-clause (6) of Clause 12B of the Bill is as follows: (6) The decision of the Reserve Bank on the application made under sub-section (1) shall be taken within a period of ninety days from the date of receipt of the application by the Reserve Bank: Provided that in computing the period of ninety days, the period taken by the applicant for furnishing the information called for by the Reserve Bank shall be excluded.
Clause 5 **Section: 20** "(6) The Reserve Bank may, subject to such conditions as may be specified, grant to any	The Committee, therefore, strongly recommend that instead of pursuing the present	There is no such proposal in the present Bill to allow exemption from the provisions

1	2	3
banking company exemption from the provisions of this section in regard to any restriction on entering into any commitment for granting any loan or advance to any company referred to in sub-clause (iii) of clause (b) of subsection (1). "	proposal to ease the restrictions, the Government should reintroduce the proposals made in the earlier Bill of 2003, to specifically debar banks from granting any loan or advance to relatives of Directors on their Boards and prohibit "connected lending".	of the section 20 which prohibits "connected lending."
Clause 8 **Section: 36 ACA** (2) The Reserve Bank may, on supersession of Board of Directors of the Banking company under sub-section (1), appoint an Administrator for such period as it may determine. (5) The Reserve Bank 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.	Though the Ministry has informed that selection of Administrator would be from persons having experience in law, finance, banking, administration or accountancy, the Committee feels that the qualifications required to be met should be confined to experience in the fields of law, finance, banking and accountancy only and no bureaucrat should be chosen for the assignment. The Committee, accordingly, recommends that appropriate changes be made in the provisions to indicate the qualifications of the administrator.	Sub-clause (2) of Clause 11 of the Bill provides for appointment of an Administrator for a banking company whose Board of Directors has been superseded in certain cases by Reserve Bank. (2) The Reserve Bank may, on supersession of the Board of Directors of the banking company under subsection (1) appoint in consultation with the Central Government for such period as it may determine, an Administrator (not being an officer of the Central Government or a State Government) who has experience in law, finance, banking, economics or accountancy.

(iii) Additional amendments in the Banking Laws (Amendment) Bill, 2011 which were not part of the Banking Regulation (Amendment) Bill, 2005

New Section	Provision
1	2
2A	To exempt matters relating to amalgamation, reconstruction, transfer, reconstitution of acquisition of Banking companies from the applicability of the provisions of the Companies Act, 2002.

1	2
Amendment of Section 13	To amend Section 13 to relax the ceiling on commission, brokerage, discount and remuneration for issue of shares such that this ceiling is fixed with reference to the price at which the shares are issued instead of the paid up value.
26A	To create a Depositor Education and Awareness Fund to takeover inoperative deposit accounts of banks which have not been operated for more than 10 years and to provide for mode of operation of the Fund to be regulated by Reserve Bank.
Amendments of Sections 46 and 47A	To increase the amount of penalty for violations of the Act.
Amendment of section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980.	To grant additional flexibility to nationalised banks to raise capital.

(iv) Rationale for bringing the amendments

7. • Certain amendments have been proposed to the Banking Regulation Act, 1949 to not only develop the banking sector in India, but also strengthen its regulatory powers.

• Some of the regulatory powers, such as, power of prior approval to shareholding of 5% or more to only "fit and proper" shareholders of private banks, power of supersession of board of private sector banks and consolidated supervision over "associates" and "subsidiaries" of banking companies, may be required for grant of new banking licenses to private sector banks (including Industrial Houses and Subsidiary of holding companies) by RBI.

• The voting rights of shareholders of private sector banks would be equal to that of shareholding rights. This, coupled with the power to issue preference shares, would enable the private sector banks to access capital for further development of banking business.

• The exemption of bank mergers etc. from the scrutiny of the Competition Commission of India (CCI) would allow

RBI to approve bank mergers in public/depositors' interest, in the interest of the banking system in India and to secure the proper management of the banking company in a timely manner without waiting for approval of the CCI.

- The additional flexibility proposed to be granted to nationalised banks would allow them to raise regulatory capital to meet the growing business requirements.

8. The Banking Laws (Amendment) Bill, 2011 was introduced in Lok Sabha on 22 March, 2011 and referred to Standing Committee on Finance for examination and report on 24 March, 2011. The Committee invited views/suggestions of various banks, RBI and employees associations on the various/provisions of the Bill. They also took evidence of the representatives of the Ministry of Finance (Department of Financial Services) on the amendment proposals of the Bill. After their deliberations, the Committee have approved the Bill with certain modifications and comments as brought out in succeeding paras.

(A) Banking Mergers to remain outside the purview of Competition Commission of India

9. Clause 2 of the Bill proposes insertion of a new Section after Section 2 of the principal Act *i.e.* the Banking Regulation Act, 1949 which reads as below:

"After section 2 of the Banking Regulation Act, 1949 (hereinafter in this Chapter referred to as the principal Act), the following section shall be inserted, namely:—

"2A. Notwithstanding anything to the contrary contained in section 2, nothing contained in the Competition Act, 2002 shall apply to any banking company, the State Bank of India, any subsidiary bank, any corresponding new bank or any regional rural bank or co-operative bank or multi-state co-operative bank in respect of the matters relating to amalgamation, merger, reconstruction, transfer, reconstitution or acquisition under—

(i) this Act;

(ii) the State Bank of India Act, 1955;

(iii) the State Bank of India (Subsidiary Banks) Act, 1959;

(iv) the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970;

(v) the Regional Rural Banks Act, 1976;

(vi) the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980;

(vii) the Multi-State Co-operative Societies Act, 2002; and

(viii) any State law relating to co-operative societies."

10. Justifying the above proposal, the representatives of the Department of Financial Services submitted *inter-alia* as under:

> "Banking is some kind of an entity and the trust of people on the banking system is paramount. There are times when decisions have to be taken very quickly. Competition Commission's procedures gives sometime for scrutiny and for decision to be taken. Our financial sector in some sense is getting strengthened and it would take sometime to find them as quick to be US or EU kind of a system. So after great deliberations the Government took the view that we will keep the mergers and acquisitions of banks with the RBI. Obviously, when time demands, we will revisit. For the time being, the Government's careful consideration is that it remains with the RBI so that we are in a position to ensure the safety, security, trust and confidence of people in the banking system are maintained. Today, until the financial system becomes very strong we need to ensure that the depositors, the customers and stakeholders in the system retain their faith in the financial system of the Government. So, the best way is 16 to keep it within the confines of the Reserve Bank of India. Otherwise, all issues would be published, everything would come into public domain, people would think this is unsafe, and the confidence in the system would be shaken and it would become a run on the bank, not only on one but on other banks also. So, a kind of stability should be provided."

11. Further on this issue, they elaborated as follows:

> "There is a procedure under the existing Competition Act for a certain period of time when application is given should be in the public domain, some investigation has to be made, after investigation, the same has to be proposed to the Commission Members; they have to scrutinize—it can take a good amount of time."

> "Hon'ble Members are aware, I know, that certain mergers have been done with an overnight kind of a focus and it has stood the test of time because the confidence of the people in the financial system got restored as a result of such actions were taken. So, that is the reason. Let me look at the NPAs, the financial stability, those kinds of things-unless we come to that mature level, it will take some more time to get into that."

12. The Committee, while supporting the Government's proposal to keep bank mergers etc., outside the purview of Competition Commission of India for the time being, would recommend that

this exemption should be considered as a special case and an expedient measure to be revisited in due course in the light of experience gained by both the regulators in question, namely the RBI and the Competition Commission of India. This however does not in any manner convey the Committee's views on mergers or acquisition policy in banking sector as such, which is an issue meriting a separate discourse.

(B) Voting Rights

13. Clause 4 of the Bill proposes amendment of Section 12 of the principal Act *i.e.* the Banking Regulation Act, 1949 which includes omission of the sub-section (2) of Section 4 of the Act which reads as below:-

> "No person holding shares in a banking company shall, in respect of any shares held by him, exercise voting rights on poll in excess of ten per cent of the total voting rights of all the shareholders of the banking company".

Clause 5 of the Bill also proposes insertion of a new Section after Section 12A of the principal Act which *inter-alia* reads as below:

> "12B. (1) No person (hereinafter referred to as "the applicant") shall, except with the previous approval of the Reserve Bank, on an application being made, acquire or agree to acquire, directly or indirectly, by himself or acting in concert with any other person, shares of a banking company or voting rights therein, which acquisition taken together with shares and voting rights, if any, held by him or his relative or associate enterprise or person acting in concert with him, makes the applicant to hold five per cent or more of the paid-up share capital of such banking company or entitles him to exercise five per cent or more of the voting rights in such banking company."
>
> (4) The approval for acquisition of shares may be subject to such conditions as the Reserve Bank may deem fit to impose, including a condition that any further acquisition of shares shall require prior approval of the Reserve Bank and that the applicant continues to be a fit and proper person to hold the shares or voting rights.
>
> (5) Before issuing or allotting any share to any person or registering the transfer of shares in the name of any person, the banking company shall ensure that the requirements of sub-section (i) are complied with by that person and where the acquisition is with the approval of the Reserve Bank, the banking company shall further ensure that the conditions imposed under sub-section (4), if any, of such approval are fulfilled.

(8) The Reserve Bank may, if it is satisfied that any person or persons acting in concert with him holding shares or voting rights in excess of five per cent of the total voting rights of all the shareholders of the banking company, are not fit and proper to hold such shares or voting rights, pass an order directing that such person or persons acting in concert with him shall not, in the aggregate, exercise voting rights on poll in excess of five per cent. of the total voting rights of all the shareholders of the banking company.

14. In their 26th Report on the earlier Bill of 2005, the Committee *vide* para 27 had made their observation on the issue of proportionate voting rights as reproduced hereunder:

"The Committee note that placing a limitation on the exercise of voting rights of share holders of private sector banks, which stands at 10% at present, was necessitated owing to the likely problems of credit concentration and credit diversion that had beset the banking system prior to nationalization. The proposal of the present Bill to do away with the restrictions and permit proportionate voting rights to the promoters/shareholders is in consonance with the principles of Company Law. While addressing the issue of impact of the proposal to do away with the restrictions on voting rights as contained in the earlier Bill that lapsed *viz.*, the Banking Regulation (Amendment) Bill, 2003, the Committee had, in the related report (Forty-Seventh Report; Thirteenth Lok Sabha) *inter alia* observed that the move would pave way for a process of consolidation in Indian private banks and also lead to setting up of subsidiaries of foreign banks. The Committee reiterate the opinion expressed in the earlier report that allowing proportionate voting rights to shareholders would provide greater opportunities for investors. The Committee, however, note that the main concerns relating to the proposals to do away with the restrictions presently applicable on exercise of voting rights centered on the possibility of concentration of power or shareholding in the hands of a single entity or a conglomerate. The legal and regulatory measures available, or proposed, to address such concerns, as informed by the Ministry include, the move to incorporate Section 12B in the principal Act as per which acquisition of 5% or more of shareholding in a banking company would require the prior approval of Reserve Bank; the ceiling limits applicable on foreign holding in banks; and mandatory requirement of acknowledgement of the Reserve Bank for effecting any transfer of shareholding in excess of 5%. The Committee trust and hope that the Reserve Bank would ensure that the legal and regulatory mechanism is adequate and complied with strictly so that no scope is left for possible misuse of the provisions relating to permitting proportionate voting rights to shareholders."

15. Explaining the logic of lifting the ceiling on voting rights in respect of private sector banks, the representatives of the Ministry submitted as under:

> "The removal off restrictions on voting rights on the shares of private sector banks would facilitate them in raising regulatory capital from the capital market as the shareholders would like to have appropriate control on the management of the banking company. The public sector banks have shareholding restrictions while private sector banks have no such restrictions. So, both categories of banks are not on the same footing. For example, while foreign investment upto 74% of the shareholding is permitted in the case of private sector banks, the foreign investment ceiling for public sector banks is 20% of the shareholding. Further, the Government shareholding in public sector bank by definition cannot go below 51%, whereas in private sector banks, there is no such restriction. In view of the different shareholding restrictions for private sector banks *vis-a-vis* public sector banks, it is not appropriate to remove the restriction on voting rights for public sector banks. On the other hand, since private sector banks would be constantly in need of raising regulatory capital from the Capital Market on their own, their shares should appear to be attractive for prospective investors lest they should avoid investment in such banks."

16. They further clarified the position on this issue as below:-

> "There are four sets of legislations that basically cover all banking activity in the country. As far as public sector banks are concerned, there are two legislations; the Acquisition Act of 1970 and the Acquisition Act of 1980. In both these acts, there is a restriction of voting rights to only one per cent, irrespective of the number of shares held by an individual. It is sought by this Bill to increase that one per cent to ten per cent. So, we are enhancing the limit and bringing it at par with the State Bank of India where it is ten per cent. So, it increases from current one per cent to ten per cent. All public sector banks and State Banks will now have the ten per cent clause. As far as the Banking Regulation Act, 1940 is concerned, which primarily deals with the licensing and other issues of private banks, there is a current limit of ten per cent of the voting rights. The limit is sought to be removed. Now, in case of private sector banks, it will be equivalent to the number of shares."

17. On the issue of non-voting rights, the representatives of Ministry of Finance (Department of Financial Services) expressed their view as under:—

> "It is an issue which needs serious examination. One of the legal feedbacks that we have got is that introduction of the concept of non-voting rights would require a change in the basic structure of

the Banking Regulation Act and the Acquisition and Nationalisation Acts because the nature of government holding or public sector holding has been defined in terms of shareholding and not voting rights per se."

18. With regard to the proposal for making the voting rights in private sector banks proportionate to shareholding, while removing the existing ceiling of 10 percent, the Committee feel that the Ministry may consider increasing the limit only to 26% from the existing 10% inorder to keep a balance between conflicting factors underpinning the decisio, namely concentration of economic power/ control and promotion of corporate democracy. The Committee would also reiterate their earlier recommendation that the Reserve Bank of India must ensure that the regulatory mechanism is adequate and is strictly complied with so that no scope is left for possible misuse of this provision. As Reserve Bank of India has been entrusted with the mandate to grant approval for acquisitions, transfer, mergers etc. in the banking sector, the Committee would expect that the Reserve Bank of India would conduct due diligence of 'fit and proper' persons/entities (as per sub-clause 8 of Clause 5) and take sufficient safeguards while stipulating conditions as to credentials, source of funds, track record, financial inclusion etc. before granting approvals under this clause.

19. The Committee would also like the Government to consider the merits of issuing non-voting shares as an avenue to expand the capital base of banks without allowing concentration of management control in a few hands and which would also enable them to grow faster.

(C) Depositor Education and Awareness Fund

20. Clause 9 of the Bill proposes insertion of a new Section after Section 26 of the principal Act which reads as below:—

"After section 26 of the principal Act, the following section shall be inserted, namely:—

26A. (1) The Reserve Bank shall establish a Fund to be called the 'Depositor Education and Awareness Fund' (hereafter in this section referred to as the "Fund").

(2) There shall be credited to the Fund the amount to the credit of any account in India with a banking company which has not been operated upon for a period of ten years or any deposit or any amount remaining unclaimed for more than ten years, within a period of three months from the expiry of the said period of ten years:

Providing that nothing contained in this sub-section shall prevent a depositor or any other claimant to claim his deposit or unclaimed amount or operate his account or deposit account from or with the banking company after the expiry of said period of ten years and such banking company shall be liable to repay such deposit or amount at such rate of interest as may be specified by the Reserve Bank in this behalf.

(3) Where the banking company has paid outstanding amount referred to in sub-section (2) or allowed operation of such account or deposit, such banking company may apply for refund of such amount in such manner as may be specified by the authority or committee referred to in sub-section (5).

(4) The Fund shall be utilised for promotion of depositors' interests and for such other purposes as may be specified by the Reserve Bank from time to time.

(5) The Reserve Bank shall, by notification in the Official Gazette, specify an authority or committee, with such members as the Reserve Bank may appoint, to administer the Fund, and to maintain separate accounts and other relevant records in relation to the Fund in such forms as may be specified by the Reserve Bank.

(6) It shall be competent for the authority or committee appointed under sub-section (5) to spend moneys out of the Fund for carrying out the objects for which the Fund has been established".

21. On the operation of Depositor Education and Awareness Fund and settlement of accounts beyond 10 years, the representatives of the Ministry stated as under:—

"This is the liability of a bank. That liability cannot be quashed. Even after 10 years a rightful person were to make a claim money has to be paid by the bank".

On this issue, the representatives of the RBI clarified that:—

"We have issued detailed instructions to banks that wherever they find inoperative type of accounts they should write to customer in the last available address and try to follow it up. Also in the new accounts we are always telling that nomination facility is a must so that the legal heirs can easily excess the funds".

22. The Committee desire that the proposed Depositor Education and Awareness Fund should be created without compromising the rights and claims of depositors or their legal heirs, who should be able to secure their claims without difficulty. Depositors' legal heirs should be informed before transfer of funds to Depositor Education Protection Fund. Further, it should be amply clarified that even after

transfer to the fund, the bank would be liable to repay with interest claims of depositors within a period of one month of claim. RBI should also be mandated to refund the claimed amount under the fund immediately on demand from the concerned bank. In this context, the Government may also consider incorporating a similar provision for determining the fate of unclaimed articles under safe custody of the banking company or lying in the lockers, which have not been operated for more than certain period of time.

23. With regard to the issue that the Depositors Education and Awareness Fund shall be utilized for promotion of depositors interest and for "such other purposes" as may be specified by RBI from time to time as mentioned in sub-clause 4 of Clause 26 (a), the representatives of IBA explained the rationale as:—

> "The other purpose will take colour from the provisions of the Act. They will not be able to go beyond the purposes for which it is meant. For education of the depositor and awareness of the depositors, it can be used because the substantive provisions would restrict the other purpose for which it can be used."

24. The Committee are of the view that the words "Other purpose" used in the Clause is too wide and broad and may needlessly lead to ambiguities on the deployment of funds. The Committee would therefore recommend that these words should be replaced with the words "incidental or ancillary to the promotion of depositor interest". Amendments may thus be made accordingly.

(D) Definition of Associated Enterprises

25. Clause 10 of the Bill proposes insertion of a new Section after Section 29 of the principal Act which reads as below:—

> "After section 29 of the principal Act, the following section shall be inserted, namely:—
>
> 29A. (1) The Reserve Bank may, at any time, direct a banking company to annex to its financial statements or furnish to it separately, within such time and at such intervals as may be specified by the Reserve Bank, such statements and information relating to the business or affairs of any associate enterprise of the banking company as the Reserve Bank may consider necessary or expedient to obtain for the purpose of this Act.
>
> (2) Notwithstanding anything to the contrary contained in the Companies Act, 1956, the Reserve Bank may, at any time, cause an inspection to be made of any associate enterprise of a banking company and its books of account by one or more of its officers or employees or other persons.

(3) The provisions of sub-section (2) and (3) of section 35 shall apply *mutatis mutandis* to the inspection under this section.

Explanation.—"associate enterprise" in relation to a banking company includes an enterprise which—

(i) is a holding company or a subsidiary company of the banking company; or

(ii) is a joint venture of the banking company; or

(iii) is a subsidiary company or a joint venture of the holding company of the banking company; or

(iv) controls the composition of the Board of Directors or other body governing the banking company; or

(v) exercises, in the opinion of the Reserve Bank, significant influence on the banking company in taking financial or policy decisions; or

(vi) is able to obtain economic benefits from the activities of the banking company."

26. As regards proposed definition of an "associated enterprises" of a banking company, the representatives of Department of Financial Services deposed as under:—

"One holding company can have many associated companies; they may also have a banking company. The point we are trying to say is that we want to avoid the risk of the holding companies seeping through the associated company into the banking company. When we have to have new banks, the regulatory machinery of RBI has to be beefed up. There is no way it can be done otherwise. RBI will find ways of doing it. It is not necessary that they add on to staff. There are very many ways in which this can be done but ultimate responsibility is only with the RBI. RBI can take a view as to how they would like to regulate the bank. So it is left to their own knowledge and experience."

27. Considering the wide scope and amplitude proposed in the definition of "associated enterprises" of a banking company, the Committee would expect that RBI's regulatory machinery would be adequately beefed up in view of their expanding role and augmented functions as proposed in the Bill. However, the Committee believe that an elaborate and expansive explanation as proposed in the Clause is superfluous, as the main clause by itself ensures adequate risk management of "associated enterprises" by RBI. The Government may therefore consider omitting the Explanation to Clause 10 of the Bill. Further, any reference to the Companies Act in the Bill as in the above Clause, should be considered in harmony with the amended Companies Bill being introduced in Parliament after incorporating the recommendations of this Committee.

(E) Supersession of Board of Directors of Banking Company—Appointment of Administrator

(Clause 11 of the Bill)

28. Clause 8 of the Banking Regulation (Amendment) Bill, 2005 had proposed for insertion of a new Section after 36AC of the Banking Regulation Act, 1949 as follows:—

> "(2) The Reserve Bank may, on supersession of Board of Directors of the Banking company under sub-section (1), appoint an Administrator for such period as it may determine.
>
> (5) The Reserve Bank 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."

29. The Standing Committee on Finance in 26 th Report (14th Lok Sabha) on the Bill had made their recommendation as reproduced below:—

> "Though the Ministry has informed that selection of Administrator would be from persons having experience in law, finance, banking, administration or accountancy, the Committee feels that the qualifications required to be met should be confined to experience in the fields of law, finance, banking and accountancy only and no bureaucrat should be chosen for the assignment. The Committee, accordingly, recommends that appropriate changes be made in the provisions to indicate the qualifications of the administrator".

30. The Ministry of Finance (Department of Financial Services) have submitted that the recommendation of the Committee was accepted and consequently the following provisions have been proposed in the current Bill in **sub-clause (2) of Clause 11** of the Bill which reads as below:—

> "(2) The Reserve Bank may, on supersession of the Board of Directors of the banking company under sub-section (1) appoint in consultation with the Central Government for such period as it may determine, an Administrator (not being an officer of the Central Government or a State Government) who has experience in law, finance, banking, economics or accountancy."

31. The Committee find that the Ministry have not wholly accepted their recommendation made in their Report on the Banking Regulation (Amendment) Bill, 2005 on the qualifications to be

prescribed for the Administrator to be appointed by the RBI in consultation with Central Government on supersession of the Board of Directors of the banking company. The Committee would thus reiterate that no serving or retired officer of the Central Government or a State Government should be considered for appointment as Administrator. Suitable amendments may therefore be carried out in sub-clause (2) of Clause 11 of the Bill accordingly.

32. While broadly endorsing the proposals contained in the Bill as measures to facilitate growth with regulation in banking sector, the Committee would like to emphasise that the recent failures of some major private banks internationally and the lessons learnt from them should not be lost sight of, while formulating the new policy on banking licences as per the mandate proposed in the Bill. The Committee would like the stability of the banking system to be preserved, while nurturing growth and development of the banking sector as a whole. Key issues and concerns such as banking penetration, coverage and financial inclusion should remain paramount and the entire banking industry including banks in the private sector should be clearly mandated to achieve the desired objectives in this regard.

33. As amendments are being proposed by Government frequently in banking law covering different aspects at different points of time, the Committee would recommend that the Government, instead of bringing piecemeal amendments, should consider formulating an integrated modern banking law for the country, which will be comprehensive and will consolidate all related provisions and aspects of banking presently dispersed in different statutes. Such an integrated and holistic law will also be in line with the proposed legislation in other areas like the Direct Taxes Code and the Companies Bill. Employee-friendly measures like introduction of Employee Stock Options (ESOPs), deterrent safeguards against 'willful default' by a borrower in repayment of loans and such other fresh and forward-looking proposals reflecting emerging realities, may be considered for inclusion in the integrated banking law.

NEW DELHI;
09 *December,* 2011
18 *Agrahayana,* 1933 *(Saka)*

YASHWANT SINHA,
Chairman,
Standing Committee on Finance.

NOTE OF DISSENT

Shri Moinul Hassan, MP

Respected Sir,

I suggest that note of dissent may please be recorded in the Standing Committee draft report on the Banking Laws (Amendment) Bill, 2011 at least against the following sections of the Bill:

Section 2 of the Bill that seeks to exempt banks from Competition Commission of India as this will pave the way for unrestricted merger of banks and resultant closure of bank branches but need of the hour is opening of more branches to cover 74000 habitats with more than 2000 population having no branch of any bank.

Section 3 of the Bill that seeks to include securities issued by private corporate within the definition of 'approved securities'. Banks' investment in securities represent hard earned savings of common people and that should not be allowed to be utilized by private corporate as this will expose people's money to unwarranted risks.

Section 4 of the Bill is intended to allow proportionate voting right to FDI in case of private banks. This amendment, if passed, will allow any foreign investor to take over any Indian private bank. Similarly section 5 of the Bill has to be objected as this section is linked with the proposal under section 4.

Sections 16(f) and 17(f) of the Bill seek to increase the limit of voting right of private share holders in public sector banks from existing 1% to 10%. This is a very dangerous proposal against maintaining public sector character of public sector banks as the Government will not stop here and it will move for proportionate voting right for private share holders in public sector banks in future. In fact, Indian Banks Associations (IBA) has already recommended to the Government for that.

With regards,

Sd/-
(MOINUL HASSAN)

MINUTES OF THE TWENTIETH SITTING OF THE STANDING COMMITTEE ON FINANCE (2010-11)

The Committee sat on Thursday, the 14th July, 2011 from 1100 hrs. to 1530 hrs.

PRESENT

Shri Yashwant Sinha—*Chairman*

MEMBERS

Lok Sabha

2. Shri C.M. Chang
3. Shri Harishchandra Chavan
4. Shri Nishikant Dubey
5. Shri Bhartruhari Mahtab
6. Shri Mangani Lal Mandal
7. Shri G.M. Siddeshwara

Rajya Sabha

8. Shri S.S. Ahluwalia
9. Shri Raashid Alvi
10. Shri Vijay Jawaharlal Darda
11. Shri Piyush Goyal
12. Shri Moinul Hassan
13. Shri Satish Chandra Misra
14. Shri Mahendra Mohan
15. Dr. Mahendra Prasad
16. Dr. K.V.P. Ramachandra Rao

SECRETARIAT

1. Shri A.K. Singh — *Joint Secretary*
2. Shri R.K. Jain — *Director*
3. Shri Ramkumar Suryanarayanan — *Deputy Secretary*
4. Shri Kulmohan Singh Arora — *Under Secretary*

Part I
(1100 hrs. to 1145 hrs.)

2. *** *** *** ***
*** *** *** ***

Part II
(1200 hrs. to 1330 hrs.)

WITNESSES

3. *** *** *** ***
*** *** *** ***

The witnesses then withdrew.

Part III
(1400 hrs. to 1530 hrs.)

WITNESSES

Ministry of Finance (Department of Financial Services)

1. Shri R. Gopalan, Secretary
2. Shri Rakesh Singh, Additional Secretary
3. Shri Alok Nigam, Joint Secretary

Reserve Bank of India (RBI)

4. Shri P.R. Ravimohan, CGM
5. Shri A. Unnikrishnan, Jt. Legal Advisor

Indian Banks' Association (IBA)

6. Shri M.R. Umerji, Chief Legal Advisor, IBA

4. The Committee heard the representatives of Ministry of Finance (Department of Financial Services) in connection with examination of 'the Banking Laws (Amendment) Bill, 2011'. The major issues discussed during the briefing included, exemption of banking company from the scrutiny of Competition Commission of India (CCI), removal of the existing restriction of voting rights of all shareholders of the banking companies, rationale for establishment of Depositor Education and Awareness Fund (DEAF), regulation of acquisition of shares or voting rights etc. The Chairman directed the representatives of Ministry of Finance (Department of Financial Services) to furnish replies to the points raised by the Members during the discussion at an early date.

A verbatim record of the proceedings was kept.

The witnesses then withdrew.

The Committee then adjourned.

MINUTES OF THE TWENTY-SECOND SITTING OF THE STANDING COMMITTEE ON FINANCE (2010-11)

The Committee sat on Friday, the 29th July, 2011 from 1100 hrs. to 1715 hrs.

PRESENT

Shri Yashwant Sinha—*Chairman*

MEMBERS

Lok Sabha

2. Dr. Baliram (Lalganj)
3. Shri C.M. Chang
4. Shri Gurudas Dasgupta
5. Shri Nishikant Dubey
6. Shri Bhartruhari Mahtab
7. Shri Mangani Lal Mandal
8. Dr. Kavuru Sambasiva Rao
9. Shri Manicka Tagore

Rajya Sabha

10. Shri S.S. Ahluwalia
11. Shri Raashid Alvi
12. Shri Moinul Hassan
13. Shri Satish Chandra Misra
14. Shri Mahendra Mohan
15. Dr. Mahendra Prasad
16. Dr. K.V.P. Ramachandra Rao

SECRETARIAT

1. Shri A.K. Singh — *Joint Secretary*
2. Shri R.K. Jain — *Director*
3. Shri Ramkumar Suryanarayanan — *Deputy Secretary*
4. Shri Kulmohan Singh Arora — *Under Secretary*

Part I
(1100 hrs. to 1130 hrs.)

2. The Committee took up the draft report on the 'the Banking Laws (Amendment) Bill, 2011' for consideration and adoption. As some Members desired more time to consider and formulate their views on the draft report, the Committee decided to postpone the adoption of the draft report.

Part II
(1130 hrs. to 1300 hrs.)

WITNESSES

3. *** *** *** ***
*** *** *** ***

The witnesses then withdrew.

Part III
(1400 hrs. to 1715 hrs.)

WITNESSES

4. *** *** *** ***
*** *** *** ***

The witnesses then withdrew.

WITNESSES

5. *** *** *** ***
*** *** *** ***

A verbatim record of the proceedings was kept.

The witnesses then withdrew.

The Committee then adjourned.

MINUTES OF THE SIXTH SITTING OF THE STANDING COMMITTEE ON FINANCE

The Committee sat on Thursday, the 08th December, 2011 from 1500 hrs. to 1615 hrs.

PRESENT

Shri Yashwant Sinha—*Chairman*

MEMBERS

Lok Sabha

2. Shri Shivkumar Udasi Chanabasappa
3. Shri Harishchandra Deoram Chavan
4. Shri Bhakta Charan Das
5. Shri Nishikant Dubey
6. Shri Chandrakant Khaire
7. Shri Bhartruhari Mahtab
8. Shri Prem Das Rai
9. Dr. Kavuru Sambasiva Rao
10. Shri Rayapati S. Rao
11. Shri Magunta Sreenivasulu Reddy
12. Shri G.M. Siddeswara
13. Shri Yashvir Singh
14. Shri R. Thamaraiselvan
15. Dr. M. Thambidurai

Rajya Sabha

16. Shri S.S. Ahluwalia
17. Shri Raashid Alvi
18. Shri Vijay Jawaharlal Darda
19. Shri Moinul Hassan
20. Shri Satish Chandra Misra
21. Shri Mahendra Mohan
22. Dr. Mahendra Prasad
23. Dr. K.V.P. Ramachandra Rao
24. Shri Yogendra P. Trivedi

SECRETARIAT

1. Shri A.K. Singh	—	*Joint Secretary*
2. Shri R.K. Jain	—	*Director*
3. Shri Ramkumar Suryanarayanan	—	*Deputy Secretary*

2. The Committee took up the following draft Reports for consideration and adoption:—

(i) The Insurance Laws (Amendment) Bill, 2008;

(ii) The National Identification Authority of India Bill, 2010; and

(iii) The Banking Laws (Amendment) Bill, 2011.

3. The Committee adopted the above draft reports with some minor modifications/changes as suggested by Members. The Committee authorised the Chairman to finalise the Reports in the light of the modifications suggested and present these Reports to Parliament.

The Committee then adjourned.

As introduced in Lok Sabaha

Bill No. 18 of 2011

THE BANKING LAWS (AMENDMENT) BILL, 2011

A

BILL

further to amend the Banking Regulation Act, 1949, the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 and to make consequential amendments in certain other enactments.

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

CHAPTER I

Preliminary

Short title and commencement.

1. (*1*) This Act may be called the Banking Laws (Amendment) Act, 2011.

(*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 any 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 Regulation Act, 1949

Insertion of new section 2A.

2. After section 2 of the Banking Regulation Act, 1949 (hereinafter in this Chapter referred to as the principal Act), the following section shall be inserted, namely:—

10 of 1949.

Competition Act not to apply in certain cases.

'' 2A. Notwithstanding anything to the contrary contained in section 2, nothing contained in the Competition Act, 2002 shall apply to any banking company, the State Bank of India, any subsidiary bank, any corresponding new bank or any regional rural bank or co-operative bank or multi-State co-operative bank in respect of the matters relating to amalgamation, merger, reconstruction, transfer, reconstitution or acquisition under— 12 of 2003.

(*i*) this Act;

(*ii*) the State Bank of India Act, 1955; 23 of 1955.

(*iii*) the State Bank of India (Subsidiary Banks) Act, 1959; 38 of 1959.

(*iv*) the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970; 5 of 1970.

(*v*) the Regional Rural Banks Act, 1976; 21 of 1976.

(*vi*) the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980; 40 of 1980.

(*vii*) the Multi-State Co-operative Societies Act, 2002; and 39 of 2002.

(*viii*) any State law relating to co-operative societies.''.

Amendment of section 5.

3. In section 5 of the principal Act, for clause (a), the following clause shall be substituted, namely:—

'(*a*) ''approved securities'' means the securities issued by the Central Government or any State Government or such other securities as may be specified by the Reserve Bank from time to time;'.

Amendment of section 12.

4. In section 12 of the principal Act, in sub-section (1),—

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

''(*ii*) that, notwithstanding anything contained in the Companies Act, 1956, the 1 of 1956.

capital of such banking company consists of—

(a) equity shares only, or

(b) equity shares and preference shares:

Provided that the issue of preference share shall be in accordance with the guidelines framed by the Reserve Bank specifying the class of preference shares, the extent of issue of each class of such preference shares (whether perpetual or irredeemable or redeemable), and the terms and conditions subject to which each class of preference shares may be issued:

Provided further that no holder of the preference share, issued by the company, shall be entitled to exercise the voting right specified in clause (b) of sub-section (2) of section 87 of the Companies Act, 1956;";

1 of 1956.

(*ii*) the proviso shall be omitted;

(*iii*) sub-section (2) shall be omitted.

Insertion of new section 12B.

5. After section 12A of the principal Act, the following section shall be inserted, namely:—

Regulation of acquisition of shares or voting rights.

'12B. (1) No person (hereinafter referred to as "the applicant") shall, except with the previous approval of the Reserve Bank, on an application being made, acquire or agree to acquire, directly or indirectly, by himself or acting in concert with any other person, shares of a banking company or voting rights therein, which acquisition taken together with shares and voting rights, if any, held by him or his relative or associate enterprise or person acting in concert with him, makes the applicant to hold five per cent. or more of the paid-up share capital of such banking company or entitles him

to exercise five per cent. or more of the voting rights in such banking company.

Explanation 1.—For the purposes of this sub-section,—

(*a*) "relative" shall have the meaning assigned to it in section 6 of the Companies Act, 1956; 1 of 1956.

(*b*) "associate enterprise" means a company, whether incorporated or not, which,—

(*i*) is a holding company or a subsidiary company of the applicant; or

(*ii*) is a joint venture of the applicant; or

(*iii*) controls the composition of the Board of Directors or other body governing the applicant; or

(*iv*) exercises, in the opinion of the Reserve Bank, significant influence on the applicant in taking financial or policy decisions; or

(*v*) is able to obtain economic benefits from the activities of the applicant;

(*c*) persons shall be deemed to be "acting in concert" who, for a common objective or purpose of acquisition of shares or voting rights in excess of the percentage mentioned in this sub-section, pursuant to an agreement or understanding (formal or informal), directly or indirectly cooperate by acquiring or agreeing to acquire shares or voting rights in the banking company.

Explanation 2.—For the purposes of this Act, joint venture means a legal entity in the nature of a partnership engaged in the joint undertaking of a particular transaction for mutual profit or an association of persons or companies jointly undertaking some commercial enterprise wherein all contribute assets and share risks.

(*2*) An approval under sub-section (*1*) may be granted by the Reserve Bank if it is satisfied that—

(*a*) in the public interest; or

(*b*) in the interest of banking policy; or

(*c*) to prevent the affairs of any banking company being conducted in a manner detrimental or prejudicial to the interests of the banking company; or

(*d*) in view of the emerging trends in banking and international best practices; or

(*e*) in the interest of the banking and financial system in India, the applicant is a fit and proper person to acquire shares or voting rights:

Provided that the Reserve Bank may call for such information from the applicant as it may deem necessary for considering the application referred to in sub-section (*1*):

Provided further that the Reserve Bank may specify different criteria for acquisition of shares or voting rights in different percentages.

(*3*) Where the acquisition is by way of transfer of shares of a banking company and the Reserve Bank is satisfied that such transfer should not be permitted, it may, by order, direct that no such share shall be transferred to the proposed transferee and may further direct the banking company not to give effect to the transfer of shares and in case the transfer has been registered, the transferee shall not be entitled to exercise voting rights on poll in any of the meetings of the banking company.

(*4*) The approval for acquisition of shares may be subject to such conditions as the Reserve Bank may deem fit to impose, including a condition that any further acquisition of shares shall require prior approval of the Reserve Bank and that the applicant continues to be a fit and proper person to hold the shares or voting rights.

(*5*) Before issuing or allotting any share to any person or registering the transfer of shares in the name of any person, the banking company shall ensure that the requirements of sub-section (*1*) are complied with by that person and where the acquisition is with the approval of the Reserve Bank, the banking company shall further ensure that the conditions imposed under sub-section (*4*), if any, of such approval are fulfilled.

(*6*) The decision of the Reserve Bank on the application made under sub-section (*1*) shall be taken within a period of ninety days from the date of receipt of the application by the Reserve Bank:

Provided that in computing the period of ninety days, the period taken by the applicant for furnishing the information called for by the Reserve Bank shall be excluded.

(*7*) The Reserve Bank may specify the minimum percentage of shares to be acquired in a banking company if it considers that the purpose for which the shares are proposed to be acquired by the applicant warrants such minimum shareholding.

(*8*) The Reserve Bank may, if it is satisfied that any person or persons acting in concert with him holding shares or voting rights in excess of five per cent. of the total voting rights of all the shareholders of the banking company, are not fit and proper to hold such shares or voting rights, pass an order directing that such person or persons acting in concert with him shall not, in the aggregate, exercise voting rights on poll in excess of five per cent. of the total voting rights of all the shareholders of the banking company:

Provided that the Reserve Bank shall not pass any such order without giving an opportunity of being heard to such person or persons acting in concert with him.'.

Amendment of section 13.

6. In section 13 of the principal Act,—

(*i*) for the words "paid-up value of the said shares" occurring at the end, the words "price at which the said shares are issued" shall be substituted;

(*ii*) the following Explanation shall be inserted, namely:—

'Explanation.—For the removal of doubts, it is hereby declared that expression "price at which the said shares are issued" shall include amount or value of premium on such shares.'.

Amendment of section 18.

7. In section 18 of the principal Act,—

(*i*) in sub-section (*1*),—

(*a*) for the words "shall maintain in India", the words "shall maintain in India on a daily basis" shall be substituted;

(*b*) for the words "at least three per cent", the words "such per cent." shall be substituted;

(*c*) after the words "second preceding fortnight", the words "as the Reserve Bank may specify, by notification in the Official Gazette, from time to time, having regard to the needs of securing the monetary stability in the country" shall be inserted;

(*d*) in the Explanation, in clause (*a*), in sub-clause (ii), the words "or from the Development Bank" shall be omitted;

(*ii*) after sub-section (*1*), the following sub-sections shall be inserted, namely:—

(*1A*) If the balance held by such banking company at the close of business on any day is below the minimum specified under sub-section (*1*), such banking company shall, without prejudice to the provisions of any other law for the time being in force, be liable to pay to the Reserve Bank, in respect of that day, penal interest at a rate of three per cent. above the bank rate on

the amount by which such balance falls short of the specified minimum, and if the sortfall continues further, the penal interest so charged shall be increased to a rate of five per cent. above the bank rate in respect of each subsequent day during which the default continues.

(*1B*) Notwithstanding anything contained in this section, if the Reserve Bank is satisifed, on an application in writing by the defaulting banking company, that such defaulting banking company had sufficient cause for its failure to company with the provisions of sub-section (*1*), it may not demand the payment of the penal interest.

(*1C*) The Reserve Bank may, for such period and subject to such conditions as may be specified, grant to any banking company such exemptions from the provisions of this section as it thinks fit with reference to all or any of its offices or with reference to the whole or any part of its assets and liabilities.".

Amendment of section 24.

8. In section 24 of the principal Act,—

(*a*) in sub-section (*4*), in clause (*a*), the words, brackets and letter "clause (*a*) of" shall be omitted;

(*b*) in sub-section (*5*), in clause (*b*), the words, brackets and letter "clause (*a*) of" shall be omitted;

(*c*) in sub-section (*8*), the words, brackets and letter "clause (*a*) of" shall be omitted;

Insertion of new section 26A.

9. After section 26 of the principal Act, the following section shall be inserted, namely:—

Establishment of Depositor Education and Awareness Fund.

'26A. (*1*) The Reserve Bank shall establish a Fund to be called the "Depositor Education and Awareness Fund" (hereafter in this section referred to as the "Fund").

(2) There shall be credited to the Fund the amount to the credit of any account in India with a banking company which has not been operated upon for a period of ten years or any deposit or any amount remaining unclaimed for more than ten years, within a period of three months from the expiry of the said period of ten years:

Providing that nothing contained in this sub-section shall prevent a depositor or any other claimant to claim his deposit or unclaimed amount or operate his account or deposit account from or with the banking company after the expiry of said period of ten years and such banking comapny shall be laible to repay such deposit or amount at such rate of interest as may be specified by the Reserve Bank in this behalf.

(3) Where the banking company has paid outstanding amount referred to in sub-section (2) or allowed operation of such account or deposit, such banking company may apply for refund of such amount in such manner as may be specified by the authority or Committee referred to in sub-section (5).

(4) The Fund shall be utilised for promotion of depositors' interests and for such other purposes as may be specified by the Reserve Bank from time to time.

(5) The Reserve Bank shall, by notification in the Official Gazette, specify an authority or Committee, with such members as the Reserve Bank may appoint, to administer the Fund, and to maintain separate accounts and other relevant records in relation to the Fund in such forms as may be specified by the Reserve Bank.

(6) It shall be competent for the authority or Committee appointed under sub-section (5) to spend moneys out of the Fund for carrying out the objects for which the Fund has been established.'.

Insertion of new section 29A.

10. After section 29 of the principal Act, the following section shall be inserted, namely:—

Power in respect of associate enterprises.

'29A. (*1*) The Reserve Bank may, at any time, direct a banking company to annex to its financial statements or furnish to it separately, within such time and at such intervals as may be specified by the Reserve Bank, such statements and information relating to the business or affairs of any associate enterprise of the banking company as the Reserve Bank may consider necessary or expedient to obtain for the purpose of this Act.

(*2*) Notwithstanding anything to the contrary contained in the Companies Act, 1956, the Reserve Bank may, at any time, cause an inspection to be made of any associate enterprise of a banking company and its books of account by one or more of its officers or employees or other persons. 1 of 1956.

(*3*) The provisions of sub-section (*2*) and (*3*) of section 35 shall apply *mutatis mutandis* to the inspection under this section.

Explanation.—"associate enterprise" in relation to a banking company includes an enterprise which—

(*i*) is a holding company or a subsidiary company of the banking company; or

(*ii*) is a jont venture of the banking company; or

(*iii*) is a subsidiary company or a joint venture of the holding company of the banking company; or

(*iv*) controls the composition of the Board of directors or other body governing the banking company; or

(*v*) exercises, in the opinion of the Reserve Bank, significant influence on the banking company in taking financial or policy decisions; or

(*vi*) is able to obtain economic benefits from the activities of the banking company.'.

11. After Part IIA of the principal Act, the following Part shall be inserted, namely:— Insertion of new Part IIAB.

"PART IIAB

SUPERSESSION OF BOARD OF DIRECTORS OF BANKING COMPANY

Supersession of Board of Directors in certain cases.

36ACA. (*1*) Where the Reserve Bank is satisfied, in consultation with the Central Government, that in the public interest or for preventing the affairs of any banking company being conducted in a manner detrimental to the interest of the depositors or any banking company or for securing the proper management of any banking company, it is necessary so to do, the Reserve Bank may, for reasons to be recorded in writing, by order, supersede the Board of Directors of such banking company 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 the total period shall not exceed twelve months.

(*2*) The Reserve Bank may, on supersession of the Board of Directors of the banking company under sub-section (*1*) appoint in consultation with the Central Government for such period as it may determine, an Administrator (not being an officer of the Central Government or a State Government) who has experience in law, finance, banking, economics or accountancy.

(*3*) The Reserve Bank 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 banking company, notwithstanding anything contained in the Companies Act, 1956,— 1 of 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 banking company, or by a resolution passed in general meeting of such banking company, shall, until the Board of Directors of such banking company is reconstituted, be exercised and discharged by the Administrator appointed by the Reserve Bank under sub-section (*2*) : 1 of 1956.

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 banking company.

(*5*) The Reserve Bank may constitute, in consultation with the Central Government, a Committee of three or more persons who have experience in law, finance, banking, economics 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 Reserve Bank.

(*7*) The salary and allowances to the Administrator and the members of the Committee constituted under sub-section (*5*) by the Reserve Bank shall be such as may be specified by the Reserve Bank and be payable by the concerned banking company.

(*8*) On and before the expiration of two months before the 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 banking company, 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 banking company has been reconstituted.".

Amendment of section 46.

12. In section 46 of the principal Act,—

(*a*) in sub-section (1), for the words "and shall also be liable to fine", the words "or with fine, which may extend to one crore rupees or with both" shall be substituted;

(*b*) in sub-section (2),—

(*i*) for the words "two thousand rupees", the words "twenty lakh rupees" shall be substituted;

(*ii*) for the words "one hundred rupees", the words "fifty thousand rupees" shall be substituted;

(*c*) in sub-section (*4*),—

(*i*) for the words "fifty thousand rupees", the words "one crore rupees" shall be substituted;

(*ii*) for the words "two thousand and five hundred rupees", the words "one lakh rupees" shall be substituted.

Amendment of section 47A.

13. In section 47A of the principal Act, in sub-section (*1*),—

(*a*) in the opening portion, for the words, brackets and figures "sub-section (*3*) or sub-section (*4*)" the words, brackets and figures "sub-section (*2*) or sub-section (*3*) or sub-section (*4*)" shall be substituted;

(*b*) for sub-clauses (*a*) and (*b*), the following sub-clauses shall be substituted, namely:—

"(a) where the contravention or default is of the nature referred to in sub-section (2) of section 46, a penalty

not exceeding twenty lakh rupees in respect of each offence if the contravention or default persists, a further penalty not exceeding fifty thousand rupees for everyday, after the first day, during which the contravention or deafult continues;

(*b*) where the contravention is of the nature referred to in sub-section (*3*) of section 46, a penalty not exceeding twice the amount of the deposits in respect of which such contravention was made;

(*c*) where the contravention or default is of the nature referred to in sub-section (*4*) of section 46, a penalty not exceeding one crore rupees or twice the amount involved in such contravention or deafult where such amount is quantifiable, whichever is more, and where such contravention or deafult is a continuing one, a further penalty which may extend to one lakh rupees for everyday, after the first day, during which the contravention or deafult continues.".

Amendment of section 51.

14. In section 51 of the principal Act, in sub-section (*1*),—

(*a*) after the words "provisions of sections", the figure and letter "2A," shall be inserted;

(*b*) before the words, brackets, figures and letters "sub-sections (*1B*), (*1C*) and (*2*) of sections 30", the figures and letter, "29A," shall be inserted.

Amendment of section 56.

15. In section 56 of the principal Act,—

(*a*) in clause (*i*) relating to substitution of section 18,—

(*A*) in sub-section (*1*),—

(*i*) for the words "State Co-operative Bank", the words "a co-operative bank" shall be substituted;

(*ii*) for the brackets and words '(hereinafter referred to as a "scheduled State co-operative bank")', the brackets and words '(hereinafter referred to as a "scheduled co-operative bank")' shall be substituted;

(*iii*) for the words "at least three per cent.", the words "such per cent." shall be substituted; and

(*iv*) after the words "second preceding fortnight", the words "as the Reserve Bank may specify, by notification in the Official Gazette, from time to time having regard to the needs for securing the monetary stability in the country" shall be inserted;

(*B*) in the Explanation,—

(*i*) in clause (*a*),—

(*1*) in sub-clause (*ii*), the words "the Development Bank" shall be omitted;

(*2*) in sub-clauses (*iii*) and (*iv*), for the words "State co-operative bank", the words "Co-operative Bank" shall be substituted;

(*ii*) in clause (*c*), for the letter and words "a corresponding new bank", the letters and words "a corresponding new bank of IDBI Bank Ltd." shall be substituted;

(*C*) after sub-section (*1*), the following sub-sections shall be inserted, namely:—

"(*1A*) If the balance held by co-operative bank referred to in sub-clause (*cci*) of clause (*c*) of section 56 of the Banking Regulation Act, 1949, at the close of business on any day is below the minimum specified under sub-section (*1*), such co-operative bank shall, without prejudice to the provisions of any other law for the time being in force, be liable to pay to the Reserve Bank, in respect of that day, penal interest at a rate

10 of 1949.

of three per cent. above the bank rate on the amount by which such balance falls short of the specified minimum, and if the shortfall continues further, the penal interest so charged shall be increased to a rate of five per cent. above the bank rate in respect of each subsequent day during which the default continues.

(*1B*) Notwithstanding anything contained in this section, if the Reserve Bank is satisfied, on an application in writing by the defaulting co-operative bank, that such defaulting co-operative bank had sufficient cause for its failure to comply with the provisions of sub-section (*1*), it may not demand the payment of the penal interest.

(*1C*) The Reserve Bank may, for such period and subject to such conditions as may be specified, grant to any co-operative bank such exemptions from the provisions of this section as it thinks fit with reference to all or any of its officers or with reference to the whole or any part of its assets and liabilities.";

(*b*) in clause (*o*) relating to the modification of section 22,—

(*A*) in sub-section (*1*),—

(*i*) clause (*a*) shall be omitted;

(*ii*) after the proviso, the following proviso shall be inserted, namely:—

"Provided further that nothing in this sub-section shall apply to a primary credit society carrying on banking business on or before the commencement of the Banking Laws (Amendment) Act, 2011, for a period of one year or for such further period not exceeding three years, as the Reserve Bank may, after recording the reasons in writing for so doing, extend.";

(*B*) in sub-section (2),—

(*i*) for the words "every primary credit society which becomes a primary co-operative bank after such commencement shall before the expiry of three months from the date on which it so becomes a primary co-operative bank", the words, brackets and figures "every primary credit society which had become a primary co-operative bank on or before the commencement of the Banking Laws (Amendment) Act, 2011, shall before the expiry of three months from the date on which it had become a primary co-operative bank" shall be substituted;

(*ii*) the words "other than a primary credit society" shall be omitted;

(*iii*) in the proviso,—

(*a*) in clause (*ii*), for the words "thereafter, or", the word "thereafter," shall be substituted;

(*b*) clause (*iii*) shall be omitted;

(*c*) in clause (*q*) relating to modification of section 24,—

(*a*) sub-clause (*i*) shall be omitted;

(*b*) for sub-clause (*ii*), the following sub-clause shall be substituted, namely:—

'(*ii*) for sub-section (2*A*), the following sub-section shall be substituted, namely:—

"(2*A*) A scheduled co-operative bank, in addition to the average daily balance which it is, or may be, required to maintain under section 42 of the Reserve Bank of India Act, 1934 and every other co-operative bank, in addition to the cash reserve which it is required to maintain under section 18, shall maintain in India, assets, the value of which shall not be less than such

2 of 1934.

percentage not exceeding forty per cent. of the total of its demand and time liabilities in India as on last Friday of the second preceding fortnight as the Reserve Bank may, by notification in the Official Gazette, specify from time to time and such assets shall be maintained in such form and manner, as may be specified in such notification." ';

(*d*) after clause (*ri*), the following clause shall be inserted, namely:—

'(*ria*) in section 26A, for the words "banking companies", the words "co-operative bank" shall be substituted;',

(*e*) in clause (*s*), in the opening portion, for the words and figures, "sections 29 and 30", the word and figures "section 29" shall be substituted;

(*f*) after clause (*s*), the following clause shall be inserted, namely:—

'(*sa*) for section 30, the following section shall be substituted, namely:—

Audit.

"30. (*1*) Without prejudice to anything contained in any other law for the time being inforce, where the Reserve Bank is satisfied that it is necessary in the public interest or in the interest of the co-operative bank or its depositors so to do, it may at any time by general or special order direct that an additional audit of the co-operative bank accounts, for any such transactions or class of transactions or for such period or periods as may be specified in the order, shall be conducted and may by the same or a different order appoint a person duly qualified under any law for the time being inforce to be an auditor of companies to conduct such audit, and the auditor shall comply with such directions and make a report of such audit to the Reserve Bank and forward a copy thereof to the co-operative bank.

(2) The expenses of, or incidental to, the additional audit specified in the order made by the Reserve Bank shall be borne by the co-operative bank.

(3) The auditor referred to in sub-section (1) shall have such powers, exercise such functions vested in and discharge the duties and be subject to the liabilities and penalties imposed on auditors of companies by section 227 of the Companies Act, 1956 and also that of the auditors, if any, appointed by the law establishing, constituting or forming the co-operative bank to the extent the provisions of the Companies Act, 1956 are not inconsistent with the provisions of such law.

1 of 1956.

(4) In addition to the matters referred to in the order under sub-section (1) the auditor shall state in his report—

(a) whether or not the information and explanation required by him have been found to be satisfactory;

(b) whether or not the transactions of the co-operative bank which came to his notice have been within the powers of the co-operative bank;

(c) whether or not the returns received from branch offices of the co-operative bank have been found adequate for the purpose of his audit;

(d) whether the profit and loss accounts, shows a true balance or profit or loss for the period covered by such account;

(e) any other matter which he considers should be brought to the notice of the Reserve Bank and the shareholders of the co-operative bank.''.'.

CHAPTER III

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

Amendment of section 3.

16. In section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970— 5 of 1970.

(*a*) for sub-section (2*A*), the following sub-section shall be substituted, namely:—

"(2*A*) Subject to the provisions of this Act, the authorised capital of every corresponding new bank shall be three thousand crores of rupees divided into three hundred crores of fully paid-up shares of ten rupees each:

Provided that the corresponding new bank may reduce the nominal or face value of the shares, and divide the authorised capital into such denomination as it may decide with the prior approval of the Reserve Bank:

Provided further that the Central Government may in consultation with the Reserve Bank and by notification in the Official Gazette increase or reduce the authorised capital as it deems fit so however that the shares in all cases shall be fully paid-up shares.";

(*b*) in sub-section (2*B*), in clause (*c*), after the words "public issue", the words "or rights issue or by issue of bonus shares" shall be inserted;

(*c*) in sub-section (2*BB*), after the words ''public issue'', the words ''or rights issue or by issue of bonus shares'' shall be inserted;

(*d*) in sub-section (2*BBA*), in clause (*a*), after the words "public issue", the words "or rights issue or by issue of bonus shares" shall be inserted;

(*e*) in sub-section (2*C*), after the words "public issue", the words "or rights issue or by issue of bonus shares" shall be inserted;

(*f*) in sub-section (2*E*),—

(*i*) for the words "one per cent.", the words "ten per cent." shall be substituted;

(*ii*) in the second proviso, for the words "no preference shareholder shall be entitled to exercise voting rights in respect of preference shares held by him in excess of one per cent.", the words "no preference shareholder, other than the Central Government, shall be entitled to exercise voting rights in respect of preference shares held by him in excess of ten per cent." shall be substituted.

CHAPTER IV

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

Amendment of section 3.

17. In section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980,— 40 of 1980.

(*a*) for sub-section (2*A*), the following sub-section shall be substituted, namely:—

"(2*A*) Subject to the provisions of this Act, the authorised capital of every corresponding new bank shall be three thousand crores of rupees divided into three hundred crores of fully paid-up shares of ten rupees each:

Provided that the corresponding new bank may reduce the nominal or face value of the shares, and divide the authorised capital into such denomination as it may decide with the prior approval of the Reserve Bank:

Provided further that the Central Government may, in consultation with the Reserve Bank, and by notification in the Official Gazette increase or reduce the authorised capital as it deems fit so however that the shares in all cases shall be fully paid-up shares.";

(*b*) in sub-section (2*B*), in clause (*c*), after the words "public issue", the words "or rights issue or by issue of bonus shares" shall be inserted;

(*c*) in sub-section (2*BB*), after the words "public issue", the words "or rights issue or by issue of bonus shares" shall be inserted;

(*d*) in sub-section (2*BBA*), in clause (*a*), after the words "public issue", the words "or right issue or by issue of bonus shares" shall be inserted;

(*e*) in sub-section (2*C*), after the words "public issue", the words "or rights issue or by issue of bonus shares" shall be inserted;

(*f*) in sub-section (2*E*),—

(*i*) for the words "one per cent.", the words "ten per cent." shall be substituted.

(*ii*) in the second proviso, for the words "no preference shareholder shall be entitled to exercise voting rights in respect of preference shares held by him in excess of one per cent.", the words "no preference shareholder, other than the Central Government, shall be entitled to exercise voting rights in respect of preference shares held by him in excess of ten per cent." shall be substituted.

CHAPTER V

MISCELLANEOUS

Amendment of certain enactments.

18. The enactments specified in the Schedule are hereby amended to the extent and in the manner mentioned in the third column thereof.

THE SCHEDULE

(*See* section 18)

Sl.No.	Short Title	Amendment
1.	The State Financial Corporation Act, 1951 (63 of 1951).	In section 7, in sub-section (3), the words and figures "and the Banking Regulation Act, 1949" shall be omitted.
2.	The State Bank of India Act, 1955 (23 of 1955).	In section 12, the words and figures "and the Banking Regulation Act, 1949" shall be omitted.
3.	The State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959).	In section 20, the words and figures "and the Banking Regulation Act, 1949" shall be omitted.
4.	The Warehousing Corporations Act, 1962 (58 of 1962).	In section 5, the words and figures "and the Banking Regulation Act, 1949" shall be omitted.
5.	The Regional Rural Banks Act, 1976 (21 of 1976).	In section 7, the words and figures "and shall also be deemed to be approved securities for the purposes of the Banking Regulation Act, 1949" shall be omitted.
6.	The Industrial Finance Corporation (Transfer of Undertaking and Repeal) Act, 1993 (23 of 1993).	In section 10, the words and figures "and the Banking Regulation Act, 1949" shall be omitted.
7.	The Industrial Reconstruction Bank (Transfer of Undertakings and Repeal) Act, 1997 (7 of 1997).	In section 11, the words and figures "and the Banking Regulation Act, 1949" shall be omitted.
8.	The Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002 (58 of 2002).	In section 17, the words and figures "and the Banking Regulation Act, 1949" shall be omitted.

STATEMENT OF OBJECTS AND REASONS

The Banking Regulation Act, 1949 being the law relating to banking has been in force for more than six decades. It, *inter alia,* empowers the Reserve Bank to regulate and supervise the banking sector. The banking companies are now operating in a liberalised environment. In this scenario, it has become necessary that the banking companies in India are enabled to raise capital in accordance with the international best practices. Therefore, it is proposed to—

(*a*) enable the nationalised banks to increase or decrease the authorised capital with approval from the Central Government and the Reserve Bank without being limited by the ceiling of a maximum of three thousand crores of rupees;

(*b*) provide the nationalised banks to issue two additional instruments ("bonus shares" and "rights issue") for accessing the capital market to raise capital required for expansion of banking business;

(*c*) raise the ceiling on voting rights of shareholders of nationalised banks from one per cent. to ten per cent.;

(*d*) make provisions to ensure that control of banking companies is in the hands of fit and proper persons, it should be mandatory for the persons to obtain prior approval from the Reserve Bank who propose to acquire five per cent. or more of the share capital of a banking company;

(*e*) confer power upon the Reserve Bank to impose such conditions as it deems necessary while granting such approval for acquisitions of five per cent. or more share capital of a banking company (including specifying acquisition of a minimum percentage of shares in a banking company) if it considers necessary; and

(*f*) remove the existing restriction on voting rights limited to ten per cent. of the total voting rights of all the shareholders of the banking company.

2. Taking advantage of the liberalised environment, banking companies are engaging in multifarious activities through the medium of associate enterprises. It has, therefore, become necessary for the Reserve Bank, as the regulator of the banking companies, to be aware of the financial impact of the business of such enterprises on the

financial position of the banking companies. It is, therefore, proposed to confer power upon the Reserve Bank to call for information and returns from the associate enterprises of banking companies also and to inspect the same, if necessary.

3. Under the existing provision contained in section 36AA of the Banking Regulation Act, 1949, the Reserve Bank has, *inter alia,* power to remove any director or other officers of a banking company, but such power is not adequate if the entire Board of directors of a banking company is functioning in a manner detrimental to the interest of the depositors or the banking company itself. It is, therefore, proposed to confer power upon the Reserve Bank to supersede the Board of Directors of a banking company for a total period not exceeding twelve months and appoint an administrator to manage the banking company during the said period.

4. The Part V of the Banking Regulation Act, 1949 applies to co-operative societies subject to modifications which, *inter alia,* allow a primary co-operative society to carry on business of banking till it has been granted a licence or a notice is notified that the licence cannot be granted to it. For a sound and healthy banking system and to protect the interest of depositors, it has become necessary to ensure that only the co-operative societies licensed by the Reserve Bank should carry on the business of banking by fulfilling all the requirements specified by the Reserve Bank and it has become essential to provide the time limit of one year to be extended to three years within which a primary credit society should carry on the business of banking or stop the business of banking.

5. Under the existing provisions of the Competition Act, 2002, the Competition Commission of India has power to regulate combination, which causes or is likely to cause an appreciable adverse effect on competition within the relevant market in India. It is proposed to insert a new section 2A in the Banking Regulation Act, 1949 so as to exempt mergers of the banking companies from the applicability of the provisions of the Competition Act, 2002. The exemption of mergers of banking companies from the scrutiny of the Competition Commission of India would allow the Reserve Bank to approve mergers of banking companies in public or depositors' interest, in the interest of the banking system in India and to secure the proper management of the banking company in a timely manner without waiting for the approval of the Competition Commission of India.

6. The Banking Regulation (Amendment) Bill, 2005 was introduced in the Lok Sabha on the 13th May, 2005 to strengthen the Reserve Bank's supervisory and regulatory powers over the banking sector.

The Bill was referred to the Standing Committee on Finance for examination and report thereon. Based on the recommendations of the Standing Committee, it was decided to move official amendments to the Bill in the Lok Sabha, but the Bill could not be taken up for consideration and lapsed due to dissolution of the Lok Sabha. The present Bill incorporates certain provisions of the Banking Regulation (Amendment) Bill, 2005.

7. In addition to the changes proposed in paragraphs 1 to 5, it is also proposed to,—

(*a*) enable the banking companies to issue preference shares subject to regulatory guidelines of the Reserve Bank;

(*b*) align the restriction on commission, etc., on sale of shares to issue price rather than to the paid-up value of shares;

(*c*) establish a "Depositor Education and Awareness Fund" to take over in operative deposit accounts which have not been claimed or operated for a period of ten years or more;

(*d*) substantially increase the penalties and fine for some violations of the Banking Regulation Act, 1949;

(*e*) confer power upon the Reserve Bank to levy penal interest in case of non-maintenance of required cash reserve ratio;

(*f*) confer power upon the Reserve Bank to order a special audit of co-operative banks in public interest for a more effective supervision of co-operative banks.

8. The Banking Laws (Amendment) Bill, 2011 seeks to amend the Banking Regulation Act, 1949, the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 to make the regulatory powers of Reserve Bank more effective and to increase the access of the nationalised banks to capital market to raise capital required for expansion of banking business and also to make certain other consequential amendments in certain other enactments.

9. The Bill seeks to achieve the above objects.

NEW DELHI;
The 9th March, 2011.

PRANAB MUKHERJEE

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 3 of the Bill proposes to confer power upon the Reserve Bank to specify approved securities.

Clause 4 of the Bill proposes to empower the Reserve Bank to issue guidelines so as to specify the class of preference shares, the extent of issue of each class of such preference shares, and the terms and conditions subject to which, the preference shares may be issued.

Clause 5 of the Bill confers power upon the Reserve Bank to specify different criteria for acquisition of shares or voting rights in different percentages. This clause further empowers the Reserve Bank to specify the minimum percentage of shares to be acquired in a banking company by an applicant.

Clause 7 of the Bill confers power upon the Reserve Bank to specify the cash reserve ratio for select banks. This clause further confers power upon the Reserve Bank to specify the conditions subject to which the select banks would be exempt from provisions of maintenance of specified level of cash reserve ratio.

Clause 9 of the Bill confers power upon the Reserve Bank to specify the rate of interest on unclaimed deposit. This clause further confers power upon the Reserve Bank to specify the purposes for which the Depositor Education and Awareness Fund would be utilised. This clause also confers power upon the Reserve Bank to notify an Authority or Committee to administer the Depositor Education and Awareness Fund.

Clause 11 of the Bill confers power upon the Reserve Bank to specify the rules of procedure for the Committee to help the Administrator appointed for the superseded banks. This clause further confers power upon the Reserve Bank to specify the periodicity of the meetings and rules of procedure, salary and allowances payable to the members of the Committee or Administrator.

Clause 15 of the Bill confers powers upon the Reserve Bank to specify the cash reserve ratio for select cooperative banks. This clause further confers power upon the Reserve Bank to specify the conditions subject to which the select cooperative banks would be exempt from provisions of maintenance of specified level of cash reserve ratio. This clause also confers power upon the Reserve Bank to specify such percentage of value of assets, in such form and manner, which shall be maintained in India by select cooperative banks.

The matters in respect of which the notification or guidelines are issued or specified are all 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 of a normal character.

ANNEXURE

EXTRACTS FROM THE BANKING REGULATION ACT, 1949
(10 OF 1949)

* * * * *

Interpretation.

5. In this Act, unless there is anything repugnant in the subject or context,—

(*a*) "approved securities" means—

(*i*) securities in which a trustee may invest money under clause (*a*), clause (*b*), clause (*bb*), clause (*c*) or clause (*d*) of section 20 of the Indian Trusts Act, 1882; 2 of 1882.

(*ii*) such of the securities authorised by the Central Government under clause (*f*) of section 20 of the Indian Trusts Act, 1882, as may be prescribed; 2 of 1882.

* * * * *

Regulation of paid-up capital, subscribed capital and authorised capital and voting rights of shareholders.

12. (*1*) No banking company shall carry on business in India, unless it satisfies the following conditions, namely:—

* * * * *

(*ii*) that the capital of the company consists of ordinary shares only or of ordinary shares or equity shares and such preferential shares as may have been issued prior to the 1st day of July, 1944:

Provided that nothing contained in this sub-section shall apply to any banking company incorporated before the 15th day of January, 1937.

(*2*) No person holding shares in a banking company shall, in respect of any shares held by him, exercise voting rights on poll in excess of ten per cent. of the total voting rights of all the shareholders of the banking company.

* * * * *

Restriction on commission, brokerage, discount, etc., on sale of shares.

13. Notwithstanding anything to the contrary contained in sections 76 and 79 of the Companies Act, 1956, no banking company shall pay out directly or indirectly by way of commission, brokerage, discount or remuneration in any form in respect of any shares issued by it, any amount exceeding in the aggregate two and one-half per cent. of the paid-up value of the said shares.

1 of 1956.

* * * * *

Cash reserve.

18. (*1*) Every banking company, not being a scheduled bank, shall maintain in India by way of cash reserve with itself or by way of balance in a current account with the Reserve Bank, or by way of net balance in current accounts or in one or more of the aforesaid ways, a sum equivalent to at least three per cent. of the total of its demand and time liabilities in India as on the last Friday of the second preceding fortnight and shall submit to the Reserve Bank before the twentieth day of every month a return showing the amount so held on alternate Friday during a month with particulars of its demand and time liabilities in India on such Fridays or if any such Friday is a public holiday under the Negotiable Instruments Act, 1881 at the close of business on the preceding working day.

26 of 1881.

Explanation.—In this section, and in section 24,—

(*a*) "liabilities in India" shall not include—

* * * * *

(*ii*) any advance taken from the Reserve Bank or from the Development Bank or from the Exim Bank or from the Reconstruction Bank or from the National Bank or from the Small Industries Bank by the banking company;

* * * * *

Maintenance of a percentage of assets.

24. (*1*) * * * * *

(*4*) (*a*) If on any alternate Friday or, if such Friday is a public holiday, on the preceding working day, the amount maintained by a banking company at the close of business on that day falls below the minimum prescribed by or under clause (*a*) of sub-section (2*A*), such banking company shall be liable to pay to the Reserve Bank in respect of that day's default, penal interest for that day at the rate of three per cent. per annum above the bank rate on the amount by which the amount actually maintained falls short of the prescribed minimum on that day; and

* * * * *

(*5*) (*a*) * * * * *

(*b*) without prejudice to the provisions of sub-section (*4*), on the failure of a banking company to maintain as on any day, the amount so required to be maintained by or under clause (*a*) of sub-section (2*A*) the Reserve Bank may, in respect of such default, require the banking company to pay penal interest for that day as provided in clause (*a*) of sub-section (*4*) and if the default continues on the next succeeding working day, the penal interest may be increased as provided in clause (*b*) of sub-section (*4*) for the concerned days.

* * * * *

(*8*) Notwithstanding anything contained in this section, if the Reserve Bank is satisfied, on an application in writing by the defaulting banking company, that the banking company had sufficient cause for its failure to comply with the provisions of clause (*a*) of sub-section (2*A*), the Reserve Bank may not demand the payment of the penal interest.

Explanation.—In this section, the expression "public holiday" means a day which is a public holiday under the Negotiable Instruments Act, 1881. 26 of 1881.

* * * * *

PART IV

MISCELLANEOUS

Penalties.

46. (*1*) Whoever in any return, balance-sheet or other document for or in any information required or furnished by or under or for the purpose of any provision of this Act, wilfully makes a statement which is false in any material particular, knowing it to be false, or wilfully omits to make a material statement, shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.

(*2*) If any person fails to produce any book, account or other document or to furnish an statement or information which under sub-section (*2*) of section 35 it is his duty to produce or furnish, or to answer any question relating to the business of a banking company which he is asked by an officer making any inspection or scrutiny under that section, he shall be punishable with a fine which may extend to two thousand rupees in respect of each offence, and if he persists in such refusal, to a further fine which may extend to one hundred rupees for every day during which the offence continues.

* * * * *

(*4*) If any other provision of this Act is contravened or if any default is made in—

(*i*) complying with any requirement of this Act or of any order rule or direction made or condition imposed thereunder, or

(*ii*) carrying out of terms of, or the obligations under, a scheme sanctioned under sub-section (*7*) of section 45,

by any person, such person shall be punishable with fine which may extend to fifty thousand rupees or twice the amount involved in such contravention or default where such amount is quantifiable, whichever is more, and where a

contravention or default is a continuing one, with a further fine which may extend to two thousand and five hundred rupees for every day, during which the contravention or default continues.

* * * * *

Power of Reserve Bank to impose penalty.

47A. (*1*) Notwithstanding anything contained in section 46, if a contravention or default of the nature referred to in sub-section (*3*) or sub-section (*4*) of section 46, as the case may be, is made by a banking company, then, the Reserve Bank may impose on such banking company—

(*a*) where the contravention is of the nature referred to in sub-section (*3*) of section 46, a penalty not exceeding twice the amount of the deposits in respect of which such contravention was made;

(*b*) where the contravention or default is of the nature referred to in sub-section (*4*) of section 46, a penalty not exceeding five lakh rupees or twice the amount involved in such contravention or default where such amount is quantifiable, whichever is more, and where such contravention or default is a continuing one, a further penalty which may extend to twenty-five thousand rupees for every day, after the first, during which the contravention or default continues.

* * * * *

Application of certain provisions to the State Bank of India and other notified banks.

51. (*1*) Without prejudice to the provisions of the State Bank of India Act, 1955, or any other enactment, the provisions of sections 10, 13 to 15, 17, 19 to 21-A, 23 to 28, 29 [excluding sub-section (*3*)], sub-sections (1B), (1C) and (2) of sections 30, 31, 34, 35, 35A, 36 [excluding clause (*d*) of sub-section (*1*)], 45Y to 45-ZF, 46 to 48, 50, 52 and 53 shall also apply, so far as may be, to and in relation to the State Bank of India for any corresponding new bank or a Regional Rural Bank or any subsidiary bank as they apply to and in relation to banking companies.

Provided that—

(*a*) nothing contained in clause (*c*) of sub-section (*1*) of section 10 shall apply to the chairman of the State Bank of India or to a managing director of any subsidiary bank in so far as the said clause precludes him from being a director of, or holding an office in, any institution approved by the Reserve Bank;

(*b*) nothing contained in sub-section (*iii*) of clause (*b*) of sub-section (*1*) of section 20 shall apply to any bank referred to in sub-section (*1*), insofar as the said sub-clause (*iii*) of clause (*b*) precludes that bank from entering into any commitment for granting any loan or advance to or on behalf of a company (not being a Government company) in which not less than forty per cent. of the paid-up capital is held (whether singly or taken together) by the Central Government or the Reserve Bank or a corporation owned by that bank; and

(*c*) nothing contained in section 46 or in section 47A shall apply to,—

(*i*) an officer or the Central Government or the Reserve Bank, nominated or appointed as director of the State Bank of India or any corresponding new bank or a Regional Rural Bank or any subsidiary bank or a banking company; or

(*ii*) an officer of the State Bank of India or a corresponding new bank or a Regional Rural Bank or a subsidiary bank nominated or appointed as director of any of the said banks (not being the bank of which he is an officer) or of a banking company.

PART V

APPLICATIONS OF THE ACT TO CO-OPERATIVE BANKS

Act to apply to co-operative societies subject to modifications.

56. The provisions of this Act, as in force for the time being, shall apply to, or in relation to, co-operative societies as they apply to, or in relation to banking companies subject to the following modifications, namely:—

* * * *

(*f*) for section 18, the following section shall be substitued, namely:—

Cash reserve.

'18. (*1*) Every co-operative bank, not being a State Co-operative Bank for the time being included in the Second Schedule to the Reserve Bank of India Act, 1934 (hereinafter referred to as a "scheduled State Co-operative Bank"), shall maintain in India by way of cash reserve with itself or by way of balance in a current account with the Reserve Bank or the State co-operative bank of the State concerned or by way of net balance in current accounts, or, in the case of a primary co-operative bank, with the central co-operative bank of the district concerned, or in one or more of the aforesaid ways, a sum equivalent to at least three per cent. of the total of its demand and time liabilities in India, as on the last Friday of the second preceding fortnight and shall submit to the Reserve Bank before the fifteenth day of every month a return showing the amount so held on alternate Fridays during a month with particulars of its demand and time liabilities in India on such Friday or if any such Friday is a public holiday under the Negotiable Instruments Act, 1881 at the close of business on the preceding working day. 2 of 1934. 26 of 1881.

Explanation.—In this section and in section 24—

(*a*) "liabilities in India" shall not include—

* * * *

(*ii*) any advance taken from a State Government, the Reserve Bank, the Development Bank, the Exim Bank, the Reconstruction Bank, the National Housing Bank, the National Bank, the Small Industries Bank or from the

National Co-operative Development Corporation established under section 3 of the National Co-operative Development Corporation Act, 1962, by the co-operative bank;

26 of 1962.

(*iii*) in the case of a State or Central co-operative bank, also any deposit of money with it representing the reserves fund or any part thereof maintained with it by any other co-operative society within its area of operation, and in the case of a Central co-operative bank, also an advance taken by it from the State co-operative bank of the State concerned;

(*iv*) in the case of a primary co-operative bank, also any advance taken by it from the State co-operative bank of the State concerned or the Central co-operative bank of the district concerned;

* * * *

(*c*) "net balance in current accounts" shall, in relation to a co-operative bank, mean the excess, if any, of the aggregate of the credit balances in current account maintained by that co-operative bank with the State Bank of India or a subsidiary bank or a corresponding new bank, over the aggregate of the credit balances in current accounts held by the said banks with such co-operative bank;

* * * *

(*o*) in section 22,—

(*i*) for sub-sections (*1*) and (*2*) the following sub-sections shall be substituted, namely:—

"(*1*) Save as hereinafter provided, no co-operative society shall carry on banking business in India unless—

(*a*) it is a primary credit society, or

(*b*) it is a co-operative bank and holds a licence issued in that behalf by the Reserve Bank, subject to such conditions, if any, as the Reserve Bank may deem fit to impose:

Provided that nothing in this sub-section shall apply to co-operative society, not being a primary credit society or a co-operative bank carrying on banking business at the commencement of the Banking Laws (Application to Co-operative Societies) Act, 1965 for a period of one year from such commencement. 23 of 1965.

(*2*) Every co-operative society carrying on business as a co-operative bank at the commencement of the Banking Laws (Application to Co-operative Societies) Act, 1965 23 of 1965. shall before the expiry of three months from the commencement, every co-operative bank which comes into existence as a result of the division of any other co-operative society carrying on business as a co-operative bank, or the amalgamation of two or more co-operative societies carrying on banking business shall, before the expiry of three months from its so coming into existence, every primary credit society which becomes a primary co-operative bank after such commencement shall before the expiry of three months from the date on which it so becomes a primary co-operative bank and every co-operative society other than a primary credit society shall before commencing banking business in India, apply in writing to the Reserve Bank for a licence under this section:

Provided that nothing in clause (*b*) of sub- section (*1*) shall be deemed to prohibit—

* * * *

(*ii*) a co-operative bank which has come into existence as a result of the division of any other co-operative society carrying on business as a co-operative bank, or the

amalgamation of two or more co-operative societies carrying on banking business at the commencement of the Banking Laws (Application to Co-operative Societies) Act, 1965 or at any time thereafter, or

23 of 1965.

(*iii*) a primary credit society which becomes a primary Co-operative bank after such commencement,

from carrying on banking business until it is granted a licence in pursuance of this section or is, by a notice in writing, notified by the Reserve Bank that the licence cannot be granted to it. ;

* * * *

(*q*) in section 24,—

(*i*) in sub-section (*1*), the words "after the expiry of two years from the commencement of this Act," shall be omitted;

(*ii*) for sub-section (*2*) and (*2A*), the following sub-sections shall be substituted, namely—

"(*2*) In computing the amount for the purposes of sub-section (*1*),—

(*a*) any balances maintained in India by a co-operative bank in current account with the Reserve Bank or by way of net balance in current accounts, and in the case of a scheduled State co-operative bank, also the balance required under section 42 of the Reserve Bank of India Act, 1934 to be so, maintained;

2 of 1934.

(*b*) any balances maintained by a Central co-operative bank with the State co-operative bank of the State concerned; and

(*c*) any balance maintained by a primary co-operative bank with Central co-operative bank of the district concerned or with the State co-operative bank of the State concerned,

shall be deemed to be cash maintained in India.

(2*A*) (*a*) Notwithstanding anything contained in sub-section (*1*) or in sub-section (2), after the expiry of two years from the commencement of the Banking Laws (Application to Co-operative Societies) Act, 1965 or of such further period not exceeding one year as the Reserve Bank, having regard to the interests of the co-operative bank concerned, may think fit in any particular case to allow— 23 of 1965.

(*i*) a scheduled State co-operative bank, in addition to the average daily balance which it is or may be, required to maintain under section 42 of the Reserve Bank of India Act, 1934, and 2 of 1934.

(*ii*) every other co-operative bank, in addition to the cash reserve which is required to maintain under section 18,

shall maintain in India, in cash or in gold valued at a price not exceeding the current market price or in unencumbered approved securities valued at a price determined in accordance with such one or more of, or combination of, the following methods of valuation namely, valuation with reference to cost price, market price, book value or face value, as may be specified by the Reserve Bank from time to time, an amount which shall not, at the close of business on any day, be less than twenty-five per cent or such other percentage not exceeding four per cent as the Reserve Bank may, from time to time, by notification in the Official Gazette, specify, of the total of its demand and time liabilities in India, as on the last Friday of the second preceding fortnight.

(*b*) In computing the amount for the purpose of clause (*a*), the following shall be deemed to be cash maintained in India, namely:—

(*i*) any balance maintained by scheduled State co-operative bank with the Reserve Bank in excess of the balance required to be maintained by it under section 42 of the Reserve Bank of India Act, 1934; 2 of 1934.

(*ii*) any cash or balances maintained in India by a co-operative bank, other than a scheduled State co-operative bank, with itself or with the State co-operative bank of the State concerned, or in current account with the Reserve Bank or by way of net balance in current accounts and, in the case of a primary co-operative bank, also any balances maintained with the Central co-opeartive bank of the district concerned, in excess of the aggregate of the cash or balances required to be maintained under section 18;

* * * * *

(*s*) for sections 29 and 30, the following section shall be substituted, namely:—

* * * * *

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

(5 OF 1970)

* * * * *

CHAPTER II

TRANSFER OF THE UNDERTAKINGS OF EXISTING BANKS AND SHARE CAPITALS OF THE CORRESPONDING NEW BANKS

3. * * * * *

Establishment of corresponding new banks and business thereof.

(2*A*) Subject to the provisions of this Act, the authorised capital of every corresponding new bank shall be one thousand five hundred crores of rupees divided into one hundred fifty crores fully paid-up shares of ten rupees each:

Provided that the Central Government may, after consultation with the Reserve Bank and by notification in the Official Gazette, increase or reduce the authorised capital as it thinks fit,

so, however, that after such increase or reduction, the authorised capital shall not exceed three thousand crores or be less than one thousand five hundred crores, of rupees.

(2*B*) Notwithstanding anything contained in sub-section (*2*) the paid-up capital of every corresponding new bank constituted under sub-section (*1*) may from time to time be increased by—

* * * * *

(*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 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.

(2*BB*) Notwithstanding anything contained in sub-section (*2*), the paid-up capital of a corresponding new bank constituted under sub-section (*1*) may, from time to time and before any paid-up capital is raised by public issue under clause (*c*) of sub-section (2*B*), be reduced by—

(*a*) the Central Government after consultation with the Reserve Bank, by cancelling any paid-up capital which is lost, or is unrepresented by available assets;

(*b*) the Board of Directors, after consultation with the Reserve Bank and with the previous sanction of the Central Government, by paying off any paid-up capital which is in excess of the wants of the corresponding new bank:

Provided that in a case where such capital is lost, or is unrepresented by available assets because of amalgamation of another

corresponding new bank or a corresponding new bank as defined in clause (*b*) of section 2 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 with the corresponding new bank, such reduction may be done, either prospectively or retrospectively, but not from a date earlier than the date of such amalgamation.

40 of 1980.

(*2BBA*) (*a*) A corresponding new bank may, from time to time and after any paid-up capital has been raised by public issue under clause (*c*) of sub-section (*2B*), by resolution passed at an annual general meeting of the shareholders entitled to vote, voting in person, or, where proxies are allowed, by proxy, and the votes cast in favour of the resolution are not less than three time the number of the votes, if any, cast against the resolution by the shareholders so entitled and voting, reduce its paid-up capital in any ways.

* * * * *

(*2C*) The entire paid-up capital of a corresponding new bank, except the paid-up capital raised by public issue under clause (*c*) of sub-section (*2B*), shall stand vested in an allotted to, the Central Government.

* * * * *

(*2E*) No shareholder of the corresponding new bank, other than the Central Government, shall be entitled to exercise voting rights in respect of any shares held by him in excess of 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 such corresponding new bank which directly affects the rights attached to his preference shares:

Provided further that no preference shareholder shall be entitled to exercise voting

rights in respect of preference shares held by him in excess of one per cent of the total voting rights of all the shareholders holding preference share capital only.".

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

(40 OF 1980)

* * * * *

CHAPTER II

TRANSFER OF THE UNDERTAKINGS OF EXISTING BANKS AND SHARE CAPITALS OF THE CORRESPONDING NEW BANKS

Establishment of corresponding new banks and business thereof.

3. (*1*)* * * * *

(2*A*) Subject to the provisions of this Act, the authorised capital of every corresponding new bank shall be one thousand five hundred crores of rupees divided into one hundred fifty crores fully paid-up shares of ten rupees each:

Provided that the Central Government may, after consultation with the Reserve Bank and by notification in the Official Gazette, increase or reduce the authorised capital as it thinks fit, so, however, that after such increase or reduction, the authorised capital shall not exceed three thousand crores or be less than one thousand five hundred crores, of rupees.

* * * * *

(2*B*) Notwithstanding anything contained in sub-section (2), the paid-up capital of every corresponding new bank constituted under sub-section (*1*) may from time to time be increased by—

* * * * *

(*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 shares or preference shares in accordance with the procedure 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 consisting of equity shares of each corresponding new bank:

Provided that the issue of preference shares shall be in accordance with the guidelines framed by the Reserve Bank specifying the class of preference shares, the extent of issue of each class of such preference share (whether perpetual or irredeemable or redeemable) and the terms and conditions subject to which, each class of preference shares may be issued.

(2*BB*) Notwithstanding anything contained in sub-section (*2*), the paid-up capital of a corresponding new bank constituted under sub-section (*1*) may, from time to time and before any paid-up capital is raised by public issue or preferential allotment or private placement under clause (*c*) of sub-section (*2B*), be reduced by—

(*a*) the Central Government, after consultation with the Reserve Bank, by cancelling any paid-up capital which is lost, or is unrepresented by available assets;

(*b*) the Board of Directors, after consultation with the Reserve Bank and with the previous sanction of the Central Government, by paying off any paid-up capital which is in excess of the wants of the corresponding new bank:

Provided that in a case where such capital is lost, or is unrepresented by available assets because of amalgamation of another corresponding new bank or a corresponding new bank as defined in clause (*d*) of section 2 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 with the corresponding new bank, such reduction

5 of 1970.

may be done, either prospectively or retrospectively, but not from a date earlier than the date of such amalgamation.

(2*BBA*) (*a*) A corresponding new bank may, from time to time and after any paid-up capital has been raised by public issue or preferential allotment or private placement under clause (*c*) of sub-section (2*B*), by resolution passed at an annual general meeting of the shareholders entitled to vote, voting in person, or, where proxies are allowed, by proxy, and the votes cast in favour of the resolution are not less than three times the number of the votes, if any, cast against the resolution by the shareholders so entitled and voting, reduce its paid-up capital in any way.

* * * * *

(2*C*) The entire paid-up capital of a corresponding new bank except the paid-up capital raised from public by public issue or preferential allotment or private placement under clause (*c*) of sub-section (2*B*), shall stand vested in, and allotted to, the Central Government.

* * * * *

(2*E*) No shareholder of the corresponding new bank, other than 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 such corresponding new bank which directly affects the rights attached to his preference shares:

Provided further that no preference shareholder shall be entitled to exercise voting rights in respect of preference shares held by him in excess of one per cent of the total voting rights of all the shareholders holding preference share capital only.

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EXTRACT FROM THE STATE FINANCIAL CORPORATION ACT, 1951

(63 OF 1951)

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7. (*1*)* * * * * Additional capital of Financial Corporation and borrowing powers.

(*3*) Notwithstanding anything contained in the Acts hereinafter mentioned in this sub-section, such of the bonds and debentures issued by the Financial Corporation as are guaranteed by the State Government as to the repayment of the principal and payment of interest and receipts issued by it for such of deposits as are guaranteed by the State Government as to the repayment of the principal and payment of interest shall be deemed to be included among the securities enumerated in section 20 of the Indian Trusts Act, 1882 and also to be approved securities for the purpose of the Insurance Act, 1938 and the Banking Regulations Act, 1949.

2 of 1882.
4 of 1938.
10 of 1949.

* * * * *

EXTRACT FROM THE STATE BANK OF INDIA ACT, 1955

(23 OF 1955)

* * * * *

12. Notwithstanding anything contained in the Acts hereinafter mentioned in this section, the shares of the State Bank shall be deemed to be included among the securities enumerated in section 20 of the Indian Trusts Act, 1882, and also to be approved securities for the purposes of the Insurance Act, 1938, and the Banking Regulation Act, 1949. Shares to be approved securities.

2 of 1882.
4 of 1938.
10 of 1949.

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

(38 OF 1959)

* * * * *

Shares to be approved securities.

20. Notwithstanding anything contained in the Acts hereinafter mentioned in this section, the shares of subsidiary Bank shall be deemed to be included among the securities enumerated in section 20 of the Indian Trusts Act, 1882, and also to be approved securities for the purposes of the Insurance Act, 1938, and the Banking Regulation Act, 1949. 2 of 1882. 4 of 1938. 10 of 1949.

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EXTRACT FROM THE WAREHOUSING CORPORATIONS ACT, 1962

(58 OF 1962)

Shares to be guaranted by Central Government and to be trusted or approved securities.

5. (*1*) * * * * *

(*2*) Notwithstanding anything contained in the Acts mentioned in this sub-section, the shares of the Central Warehousing Corporation shall be deemed to be included among the securities enumerated in section 20 of the Indian Trusts Act, 1882, and also to be approved securities for the purpos of the Insurance Act, 1938 and the Banking Regulation Act, 1949. 2 of 1882. 4 of 1938. 10 of 1949.

EXTRACT FROM THE REGIONAL RURAL BANKS ACT, 1976

(21 OF 1976)

* * * * *

Shares to be approved securities.

7. Notwithstanding anything contained in the Acts hereinafter mentioned in this section, the shares of a Regional Rural Bank shall be deemed to be included among the securities enumerated in section 20 of the Indian Trusts Act, 1882, and shall also be deemed to be approved securities for the purposes of the Banking Regulation Act, 1949. 2 of 1882. 10 of 1949.

EXTRACT FROM THE INDUSTRIAL FINANCE CORPORATION (TRANSFER OF UNDERTAKING AND REPEAL) ACT, 1993

(23 OF 1993)

* * * * *

Shares, bonds and debentures to be deemed to be approved securities.

10. Notwithstanding anything contained in any other law for the time being in force, the shares, bonds and debentures of the Company shall be deemed to be approved securities for the purposes of the Indian Trusts Act, 1882, the Insurance Act, 1938 and the Banking Regulation Act, 1949.

2 of 1882.
4 of 1938.
10 of 1949.

EXTRACT FROM THE INDUSTRIAL FINANCE CORPORATION (TRANSFER OF UNDERTAKING AND REPEAL) ACT, 1997

(7 OF 1997)

* * * * *

Shares, bonds and debentures to be deemed to be approved securities.

11. Notwithstanding anything contained in any other law for the time being in force, the shares, bonds and debentures of the Company shall be deemed to be approved securities for the purposes of the Indian Trusts Act, 1882, the Insurance Act, 1938 and the Banking Regulation Act, 1949.

2 of 1882.
4 of 1938.
10 of 1949.

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EXTRACT FROM THE UNIT TRUST OF INDIA (TRANSFER OF UNDERTAKING AND REPEAL) ACT, 2002

(58 OF 2002)

* * * * *

Shares, bonds, debentures and units to be deemed to be approved securities.

17. Notwithstanding anything contained in any other law for the time being in force, the shares, bonds, debentures and units of the specified undertakings shall be deemed to be approved securities for the purposes of the Indian Trusts Act, 1882, the Insurance Act, 1938 and the Banking Regulation Act, 1949.

2 of 1882.
4 of 1938.
10 of 1949.

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further to amend the Banking Regulation Act, 1949, the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 and to make consequential amendments in certain other enactments.

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(Shri Pranab Mukherjee, Minister of Finance)