



Ref. No.: NF/P-6/2021-22/1420

Dated: July 16, 2021

Dear Shri Shaktikanta Das,

Sub: Directions of RBI on appointment of Managing Director (MD)/ Whole Time Director (WTD) in Primary Urban Cooperative Banks

RBI has issued directions vide notification No.RBI/2020-21/60 DOR.GOV.REC.25/1.10.000/2021-22 dated 25th June 2021 to all urban cooperative banks on appointment of MDs/WTDs.

The directions are issued in terms of the powers conferred in Banking Regulations Act 1949 (as amended) under Sections 10,10B,10BB,35A,35B,36AA (read with Sec 56). The direction also refers to amendment of Sec 53 by insertion of Sec 53A that empowers RBI to exempt generally or for a specific period from certain sub sections of Sections 10,10A and 35B.

As you are kindly aware Sir, that the enactment of Banking Regulations (Amendment) Act, 2020 was essentially necessitated by the fact that RBI did not have the necessary regulatory powers over cooperative banks that would enable the Regulator to ensure safety of deposits of their depositors in a manner it is able to do with deposits of commercial banks. Accordingly, the Parliament passed the amendment to Banking Regulations (Amendment) Act 2020 empowering RBI also under the Banking Regulation Act 1949, on matters that were, till recently, under the sole powers of central/state governments under the respective cooperative societies acts, and with clarity that all the provisions of the amended Sec 56 of the Act shall be applicable "*Notwithstanding anything contained in any other law for the time being in force...*".

The said amendment to Banking Regulations Act, 1949 deletes a majority of the clauses of Section 56 that qualified every section of the main Banking Regulation Act 1949 for its applicability or otherwise to cooperative banks. The main act is meant originally for banking companies. Now while making most of the provisions applicable to UCBs, RBI has to keep in mind that directions/guidelines are issued under these provisions are compatible with the democratic structure of the cooperative banks and their essential cooperative character. This was an assurance given by the Hon'ble Finance Minister in the Parliament during the



discussion on the bill to amend the Banking Regulation Act 1949 when some Hon'ble members raised apprehensions that the provisions of bill would allow authorities to undermine cooperative character of cooperative banks.

This challenge is most evident when the provisions regarding constitution and powers of board, appointment of chairman and managing director are concerned. It is very much for this reason that Sec 53A has been included in the legislation.

However, it appears that RBI has largely brought about changes through the above mentioned directions without visualizing the disruption it would cause in the sector. It has practically incorporated same provisions that are prescribed for banks that have corporate structure.

There is no denying that steps are needed to be taken to upgrade professionalism and bring in more transparency in managements of many of the urban cooperative banks. At the same time it is also a fact that almost 90 per cent or more of the UCBs are very small sized entities in comparison to commercial banks that pose no major risk to the banking system. Their management structures are decades old. In some of the cases, over a century old. They will need time to change and to adopt things that are totally alien to them like concepts of "appointment" of directors, (as against elected) "CMD", "WTD" and so on as they do not exist in cooperative lexicon. Most of the banks have MDs who are employees and retire like other employees. (They are subject to trade union agreement or on contract basis) Some of the MDs are not taking any remuneration from the concerned UCBs and are virtually honorary MDs. Fixed tenure contractual appointments of MDs and WTDs are not common. Suddenly forcing the banks to implement all these concepts all at once would be highly disruptive and inviting chaos. It could lead to a situation where hundreds of banks will be needing to change their MDs within two months and it will be not easy for the banks to find suitable candidates. Stretching such an exercise over a period of time of say, 4 –5 years or more in stages will do no harm to the sector.

While the requirements of 5 years contractual appointment and a maximum of 15 years continuous tenure consisting of renewal of the 5 years tenure twice is prescribed in the Act.



The minimum and maximum age restrictions have been prescribed by RBI, exercising the powers by it from the Act.

Our apprehension is that if the maximum 15 years continuous tenure and 3 years complete break from the institution are implemented immediately as per directions, a very large number of banks will have to appoint new MDs which is not practicable in short time. It is also a practice in many smaller banks that middle level commercial bank officers take voluntary retirement and take appointment in cooperative banks. The UCBs who cannot also pay market rates for qualified persons of 35-40 years range go in for VRS officers of commercial banks. Similarly, some banks appoint bright youngsters with 6-8 years' experience but below 35 years of age at a relatively lesser remuneration. In all such cases if the position is destabilized suddenly, it will create problems to banks. **So, in both cases i.e., above 15 years' service and below 35 year age, the incumbent officials should be allowed to complete their tenure as per appointment order, and the new regulations be made applicable to people being inducted after them.**

Over and above what is submitted above, there are some cases that are being heard in different courts which may have bearing on the validity off of the amendments to the Banking Regulations Act

As you may be kindly aware, the Hon'ble Madras High Court is hearing a petition on the validity of the Banking Regulations (Amendment) Act, 2020. At the same time, the Hon'ble Supreme Court is presently hearing a petition on the Judgment of Hon'ble Gujarat High Court quashing certain provisions of the 97th Constitution Amendment. The hearing on the case is expected to be concluded soon. Verdict of the Hon'ble Supreme Court is expected in a short time. The Hon'ble Madras High Court which is perhaps also waiting for the Supreme Court verdict, will also give its judgment on the validity of the Banking Regulation (Amendment) Act, 2020. In addition, the Karnataka High Court has recently given an interim stay on the application of the Dec 31, 2019 circular on the constitution of BOM in the tier II urban cooperative banks.

JYOTINDRA MEHTA
PRESIDENT



NAFCUB

In view of the above it is our submission that **the said directions be made applicable only to all the appointments being made after the date of the circular and all the present incumbent MDs be permitted to complete their tenures in conformity with their existing appointment orders and service rules.**

Such an arrangement will be least disruptive and also give time for the banks to plan and prepare for the changes to be made, and nothing will really be lost by this arrangement.

With kind regards,

Yours Sincerely,

Jyotindra Mehta
(Jyotindra Mehta)

Sh. Shaktikanta Das
Governor
Reserve Bank of India
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