

RBI Revisions on Corporate Governance in Banks

Reserve Bank of India (“**RBI**”) issued instructions vide circular dated April 26, 2021 (“**Instructions**”) on corporate governance in commercial banks in India, specifically with regard to the chair and meetings of the board, composition of certain committees of the board, age, tenure and remuneration of directors, and appointment of the whole-time directors. As per the Instructions, a ‘Master Direction on Governance’ will be issued in due course.

KEY HIGHLIGHTS

Applicability: The Instructions are applicable to all the private sector banks including small finance banks (SFBs) and wholly owned subsidiaries of foreign banks but are not applicable to foreign banks operating as branches in India. Further, these Instructions will apply to State Bank of India and Nationalised Banks to the extent they are not inconsistent with provisions of specific statutes applicable to these banks or instructions issued under the statutes.

Chair: The chair of the board of the commercial banks (“**Board**”) will be an independent director and in the absence of such chair, the meetings of the Board will be chaired by another independent director.

Quorum: The quorum for the Board meetings will be one-third of the total strength of the Board or 3 directors, whichever is higher. At least one half of the directors attending the meetings of the Board will be independent directors.

Committees of the Board: The Board will constitute the Audit Committee (“**ACB**”), Risk Management Committee (“**RMCB**”) and a Nomination and Remuneration Committee (“**NRC**”) (collectively “**Committees**”). The ACB and NRC will be constituted with only non-executive directors (“**NEDs**”), and the RMCB will be constituted with a majority of NEDs.

Quorum of Committee meetings: The quorum for the meetings of the Committee will be 3 members. The meetings of ACB and RMCB will be held at least once in a quarter, and the meeting of NRC may be held as and when required. The Instructions also prescribe the requirement of the members being independent directors and possess certain qualifications/professional expertise for being appointed on the board of the Committees.

Chair of Committee meetings: The chair of each of the Committees will be an independent director. In addition, the Instructions also prescribe certain restrictions relating to the appointment of the chair of Committee, for e.g., the chair of ACB cannot be a member of any committee of the Board which has a mandate of sanctioning credit exposures, the chair of the Board cannot be the chair of the NRC etc.

Non-Executive Director: The age limit for NEDs including the chair of the Board is 75 years. The total tenure of an NED on the board of a bank is 8 years and re-appointment will be considered only after a minimum gap of 3 years. However, the cooling period of 3 years will not be applicable in case of appointment of the NED as a director in another bank subject to meeting the requirements. The banks may provide for a fixed remuneration which will not exceed INR 20 Lakh per annum in addition to sitting fees and expenses.

Managing Director & Chief Executive Officer (“MD & CEO”) and Whole Time Directors (“WTDs”): The age limit for MD & CEO and WTDs in the private sector banks is 70 years. However, individual bank’s boards may prescribe a lower retirement age basis their internal policy. The total tenure of the MD & CEO or WTD cannot be more than 15 years and re-appointment may be considered only after a minimum gap of 3 years, subject to meeting other conditions. During this 3 year cooling period, the individual will not be appointed or associated with the bank or its group entities in any capacity, either directly or indirectly.

Where a promoter/ major shareholder is a MD & CEO or WTD, the total tenure of such promoter/major shareholder cannot be more than 12 years. However, at the sole discretion of the RBI, the tenure of such MD & CEO or WTDs may be extended to continue up to 15 years. The Instructions also specify that adherence to certain milestones will be factored in by the RBI for re-appointment of such MD & CEO or WTDs within the 12 / 15 years period.

Transition: The instructions have already come into effect from the date of the Instructions issued by RBI. For the smooth transition, the banks are permitted to comply with these instructions latest by October 01, 2021. Further, RBI has allowed the chair of the Board who is not an independent director to complete the current term as chair and MD & CEOs or WTDs who have already completed 12 / 15 years as MD & CEO or WTD, on the date of these Instructions coming to effect, will also be allowed to complete their current term.

CONCLUSION

These Instructions were issued in response to the feedback received on a discussion paper on ‘Governance in Commercial Banks in India’ issued by RBI on June 11, 2020 to review the framework for governance in the commercial banks. Accordingly, these Instructions limit the terms of directors and chief executive officers and place more responsibility on the board of directors for a bank’s culture and compensation.

For more details, please contact km@jsalaw.com



Ahmedabad | Bengaluru | Chennai | Gurugram | Hyderabad | Mumbai | New Delhi

This update is not an advertisement or any form of solicitation and should not be construed as such. This update has been prepared for general information purposes only. Nothing in this update constitutes professional advice or a legal opinion. You should obtain appropriate professional advice before making any business, legal or other decisions. JSA and the authors of this update disclaim all and any liability to any person who takes any decision based on this publication.