

## **CONTROL OVER ORGANISATION OF BANKS**

### **LICENSING OF BANKING COMPANIES**

To commence or carry on, the banking business in India, a company requires a license from the Reserve Bank under Section 22 of the Banking Regulation Act, 1949.

**Discretion of Reserve Bank:** The granting of a license by the Reserve Bank may be subject to such conditions as the RBI may think fit in each case.

#### **Conditions to be Satisfied:**

Whether the company is or will be able ***to pay its present and future depositors*** in full as their claims accrue

Whether the ***affairs of the company*** are being conducted or likely to be conducted in a manner ***not detrimental to the interests of its present and future depositors.***

Whether the ***company has an adequate capital structure*** and earnings prospects

Whether ***public interest*** will be served by the grant of license to the company.

The ***fulfilment of any other condition*** which the Reserve Bank considers relevant in public interest or in the interest of depositors.

Although **Section 11 of the BR Act specifies the minimum capital and reserve requirements of a banking company**, the Reserve Bank can stipulate a higher requirement of capital for licensing a banking company as under Section 22. The Reserve Bank has to be satisfied that the company has an adequate capital structure and earnings prospects.

**Cancellation of License:** Reserve Bank may cancel license on basis of one or more of the following grounds:

1. The *company ceases* to carry on banking business in India
2. The company at any time *fails to comply with any of the conditions imposed* under the sub-Section (1) of Section 22 of the Banking Regulation Act
3. The company does not fulfil at any time, any of the conditions referred.

**Before cancellation** of a licence for non-compliance with any of the conditions as above, the company must be given an opportunity for taking necessary steps for complying with or fulfilling the conditions.

**However, in cases where the Reserve Bank is of the opinion that delay will be prejudicial to the interests of depositors or the public**, the requirement of opportunity can be dispensed .

**INDIAN BANKS:** In the case of banking companies incorporated in India, the requirements of minimum paid-up capital and reserves are as follows:

If it has a place of business in more than one state,	Rs 5 lacs,
if such places of business include Mumbai, Kolkata, or both,	10 lacs.
If the place of business is in only one state and does not include Mumbai or Kolkata,	Rs 1 lac for its principal place of business, plus Rs 10,000 for other places of business, in the same district in which the principal place of business is situated, + an additional Rs 20,000, for each place of business elsewhere: in total not exceeding Rs 5 lacs.

If the bank has only one place of business, the amount is limited to	<u>Rs 50,000</u>
If places of business are in one state only, but one or more of them is in Mumbai or Kolkata	Rs 5 lacs, plus Rs 25,000 for each place of business outside these cities and the aggregate not exceeding Rs 10 lacs.

**Foreign Banks:** A foreign bank (banking company incorporated outside India) operating in India, has to deposit and keep deposited with the Reserve Bank, **an amount of Rs 15 lacs** and if it has a place of business in Mumbai or Kolkata or both, **Rs 20 lacs. amount** has to be kept in cash or unencumbered approved securities or partly in both.

- *an amount of 20%* of the profit for each year, in respect of business transacted through the branches in India as disclosed in the profit and loss account, must be deposited with the Reserve Bank.
- The cash/ securities deposited can be replaced by other unencumbered approved securities or cash deposited can be similarly replaced by securities.
- The Central Government could exempt any foreign bank from this requirement on the recommendation of the Reserve Bank for a specified period if the amounts deposited already by it are considered adequate.
- On the cessation of business by any foreign bank for any reason, these deposits shall form the assets of the company on which the creditors in India shall have the first charge.

### **Paid-up Capital, Subscribed Capital and Authorized Capital (Section 12)**

- It stipulates that the subscribed capital of a banking company shall not be less than half of its authorized capital; and
- the paid-up capital shall not be less than half of its subscribed capital.
- That is authorized capital, subscribed capital, and paid-up capital should be in the ratio of 4:2:1
- If capital is increased, this requirement has to be complied with in a period not exceeding two years as allowed by the Reserve Bank.

### **SHAREHOLDING IN BANKING COMPANIES (Section 12)**

- Voting rights of shareholders *There is no specified ceiling on a person's holding of shares in a banking company.*
- However, no shareholder can Exercise Voting rights in respect of the shares held by him/ her more than 10%. (Which may be increased upto 12% by Reserve Bank) of the total voting rights of all the shareholders of the banking company.

**Reports On Shareholding:** A report regarding the particulars of shareholding of the Chairman, Managing Director, or Chief Executive Officer, by whatever name called, of every banking company, requires submission to the Reserve Bank.

- Such report should contain the full particulars and extent of the value of shares held directly or indirectly and of any change in the extent of holding or of any variation in the rights attaching thereto.
- The Reserve Bank may also order for any other information relating to those shares.

**Commission, Brokerage, Discount** Section 13 of BR Act imposes a ceiling on the commission, brokerage, discount, or remuneration on the sale of shares of banking companies to 2.5% of the paid-up value of the share.

### **Dividend (Section 15 of BR Act):**

- No dividend is payable until all capitalized expenses are completely written off.
- Such expenses include preliminary expenses, organization expenses, share-selling commission, brokerage, the loss incurred, and any other item of expenditure not represented by tangible assets.

**Restriction in Shareholding in other companies (Sec 19(2)):** No banking company shall be holding shares in any company as pledgee, mortgagee or absolute owner exceeding 30% of the paid-up share capital of that company or the paid-up share capital and reserves of the banking company itself.

- Holding of shares in any company in which the managing director or manager of a banking company is interested in or concerned with in any manner, is prohibited except in the case of subsidiaries.

### **BOARD OF DIRECTORS**

#### **Qualifications (Section 10A BR Act)**

- **At least 51% of the total number of directors** shall have special knowledge or practical experience, with respect of accountancy, agriculture, and rural economy, banking, co-operation, economics, finance, law, small scale industry or any other matter, the special knowledge or practical experience, which is useful to the banking company, in the opinion of the Reserve Bank.
- **Period of office: directors other than chairman or whole-time director shall not hold office for more than 8 years continuously.**
- **When the chairman or a whole-time director of a bank is removed from office,** he/ she ceases to be a director of the bank and shall not be eligible for a further appointment as director of that banking company for a period of 4 years.

### **TEMPORARY VACANCIES**

- In case the whole-time chairman or the managing director dies or he/ she resigns or is not capable of discharging his/her functions due to illness, temporary arrangements can be made to carry out the duties of the chairman or the managing director for a period not exceeding 4 months with the approval of the Reserve Bank.

### **CHAIRMAN OF BANKING COMPANY (Section 10B of BR Act)**

#### **Whole-time Chairman/ Managing Director**

- Every banking company should have a full-time or part-time chairman, appointed from among its directors.
- The whole-time chairman and a managing director shall hold office for a period not exceeding 5 years as the board may fix and is also eligible for re-election or re-appointment.
- In the absence of a chairman, the management of the whole of the affairs of the banking company shall be entrusted to a managing director.
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#### **Power of Reserve Bank to appoint Chairman (Section 10BB of BR Act)**

- if the office of the whole-time chairman or the managing director is vacant, RBI may appoint an eligible person to fill such vacancy for a period not more than 3 Years.
- If the chairman or the managing director so appointed is not a director of the banking company, he/she shall be deemed to be a director of the banking company.
- There is also a provision for reappointment after the initial period.

### **APPOINTMENT OF ADDITIONAL DIRECTORS (Section 36AB of BR Act)**

- The **appointment may be for a period not exceeding three years** or further extended periods not exceeding three years at a time as specified by the Reserve Bank.
- The additional directors are protected from any liability or obligation for executing their functions in good faith.
  - **Appeal:** An appeal against the order of removal can be made with the Central Government within 30 days from the date of communication of the order.
  - The appellate decision of the Central Government shall be final and not liable to challenge in any Civil Court.
  - **Effect of the order of removal:** The person concerned ceases to hold office which he/ she was holding till then.
  - He/ she is prohibited from directly or indirectly taking part in the management of any banking company for a period not exceeding 5 years as may be specified in the order.

### **CONTROLS OVER MANAGEMENT**

#### ***Power to remove Management and other personnel (Section 36AA of BR Act)***

- **RBI is empowered to remove any chairman, director, chief executive officer (by whatever name called) or other officer or employee of a banking company.**
- The RBI has the ***discretionary power*** to remove management and other personnel if it is in public interest
- ***The Reserve Bank must pass such an order recording the reasons in writing.*** Before passing the order, the affected person must be given a reasonable opportunity of making a representation.

***Appeal:*** An appeal against the order of removal can be made with the Central Government within 30 days from the date of communication of the order.

*The appellate decision of the Central Government shall be final and not liable to challenge in any Civil Court.*

***Appointment of a suitable person:*** When any chairman, director, chief executive officer, other officer or employee is removed under Section 36AA, the Reserve Bank may appoint a suitable person in his place.

- Such person shall hold office at the pleasure of the Reserve Bank.
- Appointment may be for a period not exceeding 3 years and is extendable for further periods not exceeding 3 years at a time.
- Such appointee shall not incur any obligation or liability for action taken in good faith in the execution of the duties of his office.

### ***CORPORATE GOVERNANCE***

- Corporate governance is a *dynamic concept*.
- It involves the promotion of corporate fairness, transparency, and accountability in the interest of shareholders, employees, customers, and other stakeholders.
- By this boards oversee the running of a company by its managers and accountability of members toward shareholders and the company.
- It is concerned with practices and procedures for trying to make sure that a company is run in such a way that it achieves its objectives, while ensuring that stakeholders can have confidence that their trust in that company is well founded.
  - Bad corporate governance can cast doubt on a company's operations and its ultimate profitability.



**OECD (Organisation for Economic Co-operation and Development)  
Principles of Corporate Governance, 2004:**

- To promote transparent and efficient markets which are consistent with the rule of law.
- To articulate clearly the division of responsibilities among the different supervisory, regulatory, and enforcement authorities.
- To protect and facilitate the exercise of shareholders' rights.
- All shareholders should have the opportunity to obtain effective redress for violation of their rights. (Equitable Treatment)
- Timely and accurate disclosures on all material matters regarding the corporation, including the financial situation, performance, ownership, and governance of the company.
- Boards Responsibility: Strategic guidance of the company, effective monitoring of management by the board, and the board's accountability to the company and the shareholders.

**Q1. Central govt. may cancel license of banks. (True/False)**

**Ans: False, Reserve Bank**

**Q2. If the bank has only one place of business, the minimum paid-up capital and reserves amount is limited to \_\_\_\_\_?**

**Ans: 50,000**

**Q3. If bank has a place of business in more than one state, minimum paid-up capital and reserves is Rs 10 lac if place of business is in Mumbai, Kolkata, Chennai. (true/false)**

**Ans: False, only Mumbai, Kolkata**



**Q4. The paid-up capital shall not be more than half of its subscribed capital. (true/false)**

**Ans: False, less than half of its subscribed capital**

**Q5. No shareholder can Exercise Voting rights in respect of the shares held by him/ her more than 10%, which may be increased upto 12% by Central govt.(true/false)**

**Ans: False, Reserve Bank**

**Q6. Section 13 of BR Act imposes a ceiling on the commission, brokerage, discount, or remuneration on the sale of shares of banking companies to 2.5% of the face value of the share. (True/False)**

**Ans: False**

**Q7. Banking companies are not permitted to give dividend until all \_\_\_\_\_ are written off:**

**Ans: Capitalised expenses**

**Q8. If the chairman of a bank is to be removed from office RBI has to give the opportunity to him of being heard. (True/False)**

**Ans: True**

**Q9. In India, the corporate governance guidelines have been issued for banks by \_\_\_\_\_ based on the recommendations of \_\_\_\_\_ committee:**

**Ans: RBI, Ganguly Committee**

**Q10. OECD stands for \_\_\_\_\_?**

**Ans: Organisation for Economic Co-operation and Development**

**Q11. If the banking license of a company is cancelled, the appeal can be made to \_\_\_\_\_?**

**Ans: Central govt, 30 days**

**Q12. Corporate fairness, corporate transparency, corporate accountability are principles followed in \_\_\_\_\_.**

**Ans: Corporate governance**

**Q13. The period of office that may be held continuously by an ordinary director in a banking company is eight years. (True/False)**

**Ans: True**

**Q14. Section 36AB of BR ACT stipulates certain qualification of the post of chairman of a banking company may be on part-time basis. (True/False)**

**Ans: False**

**Q15. The chairman of a banking company can hold office only for a maximum period of eight years. (True/False)**

**Ans: False**



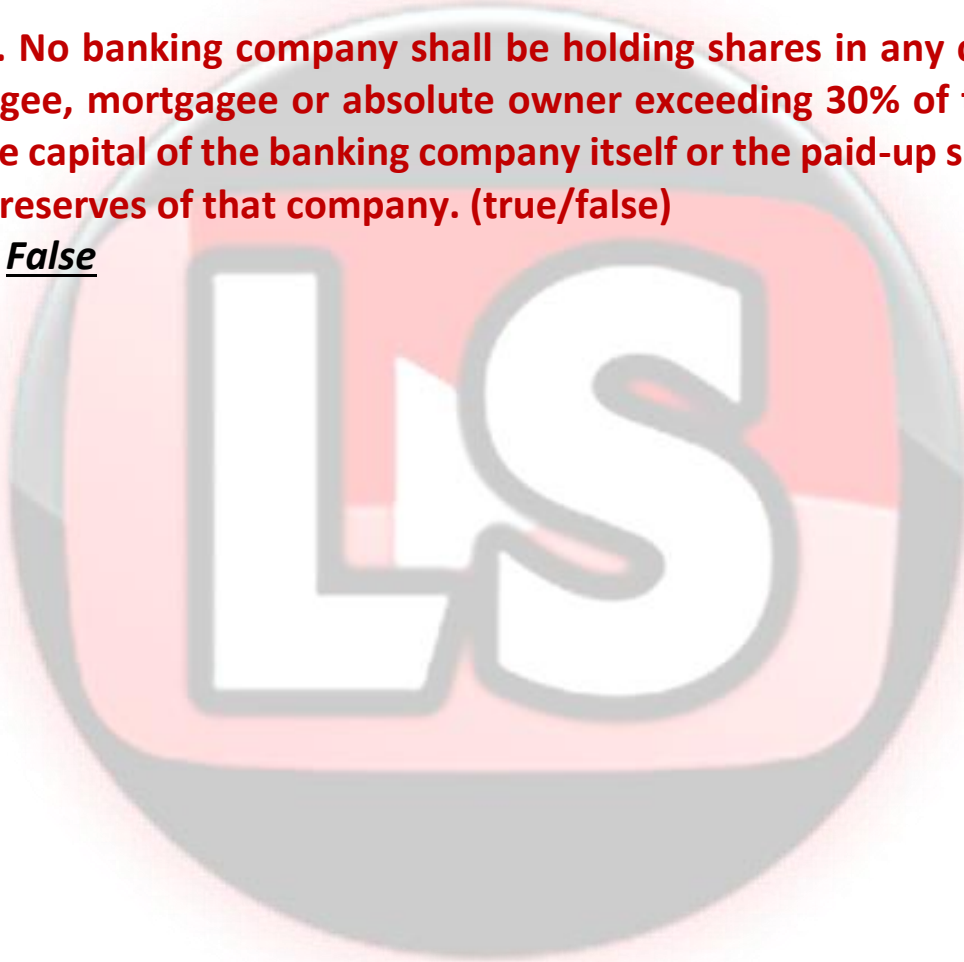


**Q16. Power to remove Management and other personnel is covered under Section 35A of BR Act. (true/false)**

**Ans: Section 36AA**

**Q17. No banking company shall be holding shares in any company as pledgee, mortgagee or absolute owner exceeding 30% of the paid-up share capital of the banking company itself or the paid-up share capital and reserves of that company. (true/false)**

**Ans: False**





**LEARNING  
SESSIONS**

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