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Salient Features of Banking Laws (Amendment) Bill 2012

The Banking Laws (Amendment) Bill 2011 was introduced in order to amend the Banking Regulation Act, 1949, the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980. The said Bill has been passed by both the Houses of Parliament during its just concluded Winter Session.

This Bill would strengthen the regulatory powers of Reserve Bank of India (RBI) and to further develop the banking sector in India. It will also enable the nationalized banks to raise capital by issue of preference shares or rights issue or issue of bonus shares. It would also enable them to increase or decrease the authorized capital with approval from the Government and RBI without being limited by the ceiling of a maximum of Rs. 3000 crore.

Beside above, the Bill would pave the way for new bank licenses by RBI resulting in opening of new banks and branches. This would not only help in achieving the goal of financial inclusion by providing more banking facilities but would also provide extra employment opportunities to the people at large in the banking sector.

The salient features of the Bill are as follows:

• To enable banking companies to issue preference shares subject to regulatory guidelines by the RBI;

• To increase the cap on restrictions on voting rights;

• To create a Depositor Education and Awareness Fund by utilizing 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 empower 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 nationalized banks to raise capital through “bonus” and “rights” issue and also enable them to increase or decrease the authorized capital with approval from the Government and RBI without being limited by the ceiling of a maximum of Rs. 3000 crore under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980.

Certain additional official amendments have been proposed on the basis of recommendations of the Standing Committee of Finance which gave its report on the Bill on the 13th December, 2011 and has recommended enactment of the Bill, subject to the following modifications:

i) Voting rights in banks may be restricted up to 26%.

ii) The Depositors’ Education and Awareness Fund may be used for the purpose of promoting depositors’ interests.

Further, pursuant to the discussion with Indian Banks’ Association (IBA), RBI and Industry Associations, the following additional amendments are proposed:

a) to exempt guarantee agreements of banks from the purview of the section 28 of the Indian Contract Act, 1872 to bring finality to redemption of such guarantees;

b) to allow select Directors on the Board of RBI a fixed maximum tenure of eight years with terms of not more than two terms of four years each either continuously or intermittently in consonance with the directions of the ACC;

c) to exempt conversion of branches of foreign banks to wholly owned subsidiary entities of foreign banks and transfer of shareholding of banks to the Holding Company structure pursuant to guidelines of RBI from payment of stamp duty; and

d) to ensure that unnecessary inspections are avoided and to encourage regulatory coordination, a condition has been added such that the inspection of the associate enterprise of a banking company would be conducted by RBI jointly with the sector regulator.

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