



भारतीय प्रतिभूति
और विनिमय बोर्ड
Securities and Exchange
Board of India

General Manager
Corporation Finance Department
Policy and Development
Email: yogitag@sebi.gov.in

No.: SEBI/HO/CFD/PoD2/OW/P/2023/13479/1

April 3, 2023

To

Bank of Baroda,
C-26, G-Block, Bandra Kurla Complex,
Bandra (E),
Mumbai - 400051

Sir,

Kind attention: Mr. P K Agarwal (Company Secretary)

Sub: Request received from Bank of Baroda for informal guidance by way of an "interpretive letter" under Securities and Exchange Board of India (Informal Guidance) Scheme, 2003

1. This is with reference to your letter dated February 10, 2023 ("**Application**") seeking guidance by way of an interpretive letter under the SEBI (Informal Guidance) Scheme, 2003 ("**Scheme**") with respect to the recent amendment made in the proviso to Regulation 17(1C) of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("**LODR Regulations**").
2. The facts of the matter as stated in your Application are summarized below:
 - i. Bank of Baroda ("**The bank**" or "**BOB**" or "**Applicant**") is a corresponding new bank constituted under the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970 and is not a company incorporated under the Companies Act, 1956/2013.
 - ii. The Government of India (i.e. President of India) is identified as a Promoter of The Bank and holds 63.97% of the paid up share capital of The Bank.
 - iii. Currently, there are 12 directors on the board of The Bank out of which 5 are whole time directors (including 1 MD & CEO and 4 EDs), 1 is RBI Nominee director, 1 is the Government of India Nominee Director and 5 Independent Directors (including 3 shareholders' directors).
 - iv. Only shareholders' directors are being elected by the shareholders of the Bank and all other categories of directors are being appointed/ nominated by the Government of India.

सेबी भवन, प्लॉट नं. सी 4-ए, "जी" ब्लॉक, बांद्रा-कुर्ला कॉम्प्लेक्स, बांद्रा (पूर्व), मुंबई - 400 051.

दूरभाष : 2644 9950 / 4045 9950 (आई.वी.आर.एस.), 2644 9000 / 4045 9000 फैक्स : 2644 9019 से 2644 9022 वेब : www.sebi.gov.in



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3. You have requested SEBI to provide "Informal guidance – interpretive letter" in relation to recent amendment made in the proviso of Regulation 17(1C) of LODR regulations by seeking clarification on the aspects as mentioned below:
- The Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970 provides for election of up to 3 directors on the board of the Bank by shareholders other than Central Government. Other directors are being directly appointed / nominated by the Government of India. Will the above referred amendment in SEBI (LODR) Regulations prevail over Bank's governing Act?
 - Government of India notifies the terms of directors while appointing/ nominating directors on board of the Bank. Hypothetically, in case of agenda item for appointment or re-appointment of a person on the Board of Directors, is disapproved by shareholders, what will be the status of the directors?
 - Whether Government of India will be voting in the said resolution?
4. The submissions made in your letter have been considered. Without necessarily agreeing with your analysis, our views on the queries raised in your letter are as under:
5. **Issue at 3 (a)** The text of Regulation 17(1C) of the LODR Regulations is reproduced below:

"The listed entity shall ensure that approval of shareholders for appointment or re-appointment of a person on the Board of Directors or as a manager is taken at the next general meeting or within a time period of three months from the date of appointment, whichever is earlier

Provided that a public sector company shall ensure that the approval of the shareholders for appointment or re-appointment of a person on the Board of Directors or as a Manager is taken at the next general meeting."

6. You have stated that in terms of Section 9(3) of Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970, Government of India (GoI) appoints directors to the board of the Bank and is not required to seek approval from the shareholders. The Bank has, therefore, raised the query as to whether the proviso to regulation 17(1C) of the LODR Regulations would prevail over the Bank's governing Act.
7. Overriding effect of the provisions of any enactment would arise only when there is anything inconsistent or repugnant in the said enactment vis-a-vis any other law. If any enactment is silent on a particular subject-matter and any other law mandates any particular action to be taken thereunder, such a requirement would have to be complied with. The LODR Regulations specify that every listed entity listing its specified securities on a recognized stock exchange shall comply with the provisions of the LODR Regulations. In the absence of any provisions in the Banking Companies



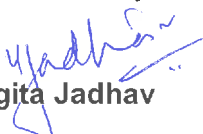
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(Acquisition and Transfer of Undertaking) Act, 1970 relating to the approval of the shareholders for the appointment or re-appointment of directors, compliance with the relevant provision of LODR Regulations would not violate the provisions of the said Act. Accordingly, the requirement under regulation 17 (1C) would have to be complied with by the Bank. This would be in addition to the obligations specified under any other relevant laws.

8. In this regard, it may also be relevant to note that the erstwhile proviso to regulation 15(2) of the LODR Regulations, which provided a special dispensation to listed entities that were not companies but body corporates or were subject to regulations under other statutes, from compliance with certain corporate governance provisions specified in the LODR Regulations, was omitted with effect from September 1, 2021. This reflects a conscious policy decision to bring about uniformity in the application of minimum standards of corporate governance provisions to all listed entities.
9. Therefore, in the absence of any irreconcilable inconsistency between the provisions of the LODR Regulations and the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970, the requirement specified in regulation 17(1C) would be applicable to the Bank.
10. **Issue at 3 (b)** As observed above, regulation 17(1C) of the LODR Regulations would be applicable to the Bank and consequently, the approval of shareholders for appointment or re-appointment of a person on the Board of Directors or as a manager is mandatorily required to be taken at the next general meeting of the Bank. Accordingly, if the shareholders do not approve the resolution for the appointment of any director, such person would cease to be a director of the Bank.
11. **Issue at 3 (c)** The LODR Regulations place restriction on voting by a shareholder in certain circumstances, which does not include voting on a resolution to approve appointment or re-appointment of directors. In the absence of any express prohibition under LODR Regulations, there is no restriction on voting by the Government of India on a resolution put up for consideration of the shareholders to approve appointment or re-appointment of directors.
12. The above position is based on the facts and circumstances described by you in your application. Further, this letter does not express a decision of the Board on the questions referred.
13. You may also note that the above position is expressed only with respect to the guidance sought in your letter under reference in respect of the Regulation as referred above and does not affect the applicability of any other law or requirement of any other SEBI Regulation, Guidelines and Circulars administered by SEBI or the laws administered by any other authority.

Yours faithfully,


Yogita Jadhav