

RBI/2007-08/178

DBOD. No. BC.No.47/29.39.001/2007-08

November 1, 2007

The Chairman & Managing Director of all Nationalised Banks.

Dear Sir / Madam,

'Fit and proper' criteria for elected directors on the boards of nationalised banks

It has been decided to lay down specific 'fit and proper' criteria to be fulfilled by the persons being elected as directors on the Boards of the nationalised banks under the provisions of Section 9(3)(i) of Banking Companies (Acquisition and Transfer of undertakings) Act 1970/80. The authority, manner/procedure and criteria for deciding the 'fit and proper' status etc. are as under:

(a) **Authority**: All the nationalized banks are required to constitute a "nomination committee" consisting of a minimum of three directors (all independent/non-executive directors) from amongst the Board of Directors. The Board of Directors should also nominate one among them as Chairman of the nomination committee. The quorum required is three, including the Chairman. In case of absence of any member already nominated, the board of directors may nominate any other independent director in his place for the ensuing meeting. At the time of constituting the nomination committee the board can decide on its tenure.

(b) **Manner and procedure**: The nomination committee should undertake a process of due diligence to determine the 'fit and proper' status of existing elected directors/the person to be elected as a director under Sec 9 (3)(i) of the Act *ibid*. For this purpose, the banks should obtain necessary information and declaration, in the format enclosed (Annexure-1), from the existing elected directors/persons, who file their nominations for election. The nomination

committee should meet before the last date of acceptance of nominations in case of candidate to be elected and decide whether or not the person's candidature should be accepted based on the criteria mentioned below. The committee's discussions should be properly recorded as formal minutes of the meeting and the voting if done should also be noted in case of both existing and proposed Directors. Based on the information provided in the signed declaration, Nomination Committee should decide on the acceptance or otherwise of the candidate and may make references, where considered necessary to the appropriate authority/persons, to ensure their compliance with the requirements indicated.

(c) **Criteria:** The nomination committee should determine the 'fit and proper' status of the existing elected directors/proposed candidates based on the broad criteria as mentioned hereunder:

- (i) Educational qualification
- (ii) Experience and field of expertise
- (iii) Track record and integrity

(The above list is only illustrative and not exhaustive).

The Nomination Committee should see whether the non-adherence to any of the above criteria would hamper the existing elected director/proposed candidate from discharging the duties as a director on the Board of the bank. Further, the candidate coming to the adverse notice of any authority/regulatory agency or insolvency or default of any loan from any bank or financial institution would make the candidate unfit and improper to be a director on the Board of a bank.

(d) **Other matters:** It is desirable that the board ensures, in the public interest, that the elected directors execute the deed of covenants (copy enclosed for ready reference – Annexure-2) as recommended by the Dr Ganguly Group vide our circular DBOD.No.BC.116/08.139.001/2001-02 dated 20th June 2002 and also every year as on 31st March.

2. It is also mandatory that all the elected directors must furnish a simple declaration every year as on 31st March that the information already provided by them has not

undergone any change and where there is any change, requisite details are furnished by the directors forthwith. If there are any significant changes, the nomination committee should undertake the due diligence exercise afresh and examine the 'fit and proper' status of the director.

3. The process of determining the 'fit and proper' status in respect of existing elected directors on the Board of the bank should be completed at the earliest.

4. Accordingly, Notification DBOD.BC.No.46/29.39.001/2007-08 dated November 1, 2007 issued by the Reserve Bank in exercise of powers conferred on it under sub-sections (3AA) and (3AB) of Section 9 of the Banking Companies (Acquisition & Transfer of Undertakings) Act, 1970/1980 is enclosed.

5. Please acknowledge receipt.

Yours faithfully,

(P. Vijaya Bhaskar)
Chief General Manager

Annexure - 1

Name of Bank : _____

Declaration and Undertaking by Director* (with enclosures as appropriate as on _____)		
I.	Personal details of director	
<input type="checkbox"/>	a. Full name	
<input type="checkbox"/>	b. Date of Birth	
<input type="checkbox"/>	c. Educational Qualifications	
<input type="checkbox"/>	d. Relevant Background and Experience	
<input type="checkbox"/>	e. Permanent Address	
<input type="checkbox"/>	f. Present Address	
<input type="checkbox"/>	g. E-mail Address / Telephone Number	
<input type="checkbox"/>	h. Permanent Account Number under the Income Tax Act and name and address of Income Tax Circle	
<input type="checkbox"/>	i. Relevant knowledge and experience (Refer Section 9(3-A) of the Banking Companies (Acquisition & Transfer of Undertakings) Act, 1970/1980	
<input type="checkbox"/>	j. Any other information relevant to Directorship of the Bank	
<input type="checkbox"/>		
II	Relevant Relationships of director	
<input type="checkbox"/>	a. List of Relatives if any who are connected with the Bank (Refer Section 6 and Schedule 1A of the Companies Act, 1956)	
<input type="checkbox"/>	b. List of entities if any in which he/she is considered as being interested (Refer Section 299(3)(a) and Section 300 of the Companies Act, 1956)	
<input type="checkbox"/>	c. List of entities in which he/she is considered as holding substantial interest within the meaning of Section 5(ne) of the Banking Regulation Act, 1949 proposed and existing	
<input type="checkbox"/>	d. Name of Bank in which he/she is or has been a member of the board (giving details of period during which such office was held)	
<input type="checkbox"/>	e. Fund and non-fund facilities, if any, presently availed of by him/her and/or by entities listed in II (b) and (c) above from the bank	
<input type="checkbox"/>	f. Cases, if any, where the director or entities listed in II (b) and (c) above are in default or have been in default in the past in respect of credit facilities obtained from the bank or any other bank.	
III	Records of professional achievements	
<input type="checkbox"/>	a. Professional achievements relevant	
<input type="checkbox"/>		

IV.	Proceedings, if any, against the director	
a.	If the director is a member of a professional association/body, details of disciplinary action, if any, pending or commenced or resulting in conviction in the past against him/her or whether he/she has been banned from entry of at any profession/ occupation at any time.	
b.	Details of prosecution, if any, pending or commenced or resulting in conviction in the past against the director and/or against any of the entities listed in II (b) and (c) above for violation of economic laws and regulations	
c.	Details of criminal prosecution, if any, pending or commenced or resulting in conviction in the past against the director	
d.	Whether the director attracts any of the disqualifications envisaged under Section 274 of the Company's Act 1956?	
e.	Has the director or any of the entities at II (b) and (c) above been subject to any investigation at the instance of Government department or agency?	
f.	Has the director at any time been found guilty of violation of rules/regulations/ legislative requirements by customs/ excise /income tax/foreign exchange /other revenue authorities, if so give particulars	
g.	Whether the director at any time come to the adverse notice of a regulator such as SEBI, IRDA, DCA.	
V.	Any other explanation / information in regard to items I to III and other information considered relevant for judging fit and proper	
	Undertaking	
	I confirm that the above information is to the best of my knowledge and belief true and complete. I undertake to keep the bank fully informed, as soon as possible, of all events which take place subsequent to my appointment which are relevant to the information provided above.	
	I also undertake to execute the deed of covenant required to be executed by all directors of the bank.	
	Place :	Signature of director
	Date :	
VI.	Remarks of Nomination Committee of the Bank	
	Place :	Signature
	Date :	

FORM OF DEED OF COVENANTS WITH A DIRECTOR

THIS DEED OF COVENANTS is made this _____ day of _____ Two thousand _____ BETWEEN _____, having its registered office at _____ (hereinafter called the 'Bank') of the one part and Mr/Ms _____ of _____ (hereinafter called the 'Director') of the other part.

WHEREAS

A. The director has been appointed as a director on the Board of Directors of the Bank (hereinafter called 'the Board') and is required as a term of his/her appointment to enter into a Deed of Covenants with the Bank.

B. The director has agreed to enter into this Deed of Covenants, which has been approved by the Board, pursuant to his said terms of appointment.

NOW IT IS HEREBY AGREED AND THIS DEED OF COVENANTS WITNESSETH AS FOLLOWS:

1. The director acknowledges that his/her appointment as director on the Board of the Bank is subject to applicable laws and regulations including the Memorandum and Articles of Association of the Bank and the provisions of this Deed of Covenants.

2. The director covenants with the Bank that:

(i) The director shall disclose to the Board the nature of his/her interest, direct or indirect, if he/she has any interest in or is concerned with a contract or arrangement or any proposed contract or arrangement entered into or to be entered into between the Bank and any other person, immediately upon becoming aware of the same or at meeting of the Board at which the question of entering into such contract or arrangement is taken into consideration or if the director was not at the date of that meeting concerned or interested in such proposed contract or arrangement, then at the first meeting of the Board held after he/she becomes so concerned or interested and in case of any other contract or arrangement, the required disclosure shall be made at the first meeting of the Board held after the director becomes concerned or interested in the contract or arrangement.

(ii) The director shall disclose by general notice to the Board his/her other directorships, his/her memberships of bodies corporate, his/her interest in other entities and his/her interest as a partner or proprietor of firms and shall keep the Board apprised of all changes therein.

(iii) The director shall provide to the Bank a list of his/her relatives as defined in the Companies Act, 1956 and to the extent the director is aware directorships and interests of such relatives in other bodies corporate, firms and other entities.

(iv) The director shall in carrying on his/her duties as director of the Bank:

(a) use such degree of skill as may be reasonable to expect from a person with his/her knowledge or experience;

(b) in the performance of his/her duties take such care as he/she might be reasonably expected to take on his/her own behalf and exercise any power vested in him/her in good faith and in the interests of the Bank;

(c) shall keep himself/herself informed about the business, activities and financial status of the Bank to the extent disclosed to him/her;

(d) attend meetings of the Board and Committees thereof (collectively for the sake of brevity hereinafter referred to as ' Board ') with fair regularity and conscientiously fulfil his/her obligations as director of the Bank;

(e) shall not seek to influence any decision of the Board for any consideration other than in the interests of the Bank;

(f) shall bring independent judgment to bear on all matters affecting the Bank brought before the Board including but not limited to statutory compliances, performance reviews, compliances with internal control systems and procedures, key executive appointments and standards of conduct;

(g) shall in exercise of his/her judgment in matters brought before the Board or entrusted to him/her by the Board be free from any business or other relationship which could materially interfere with the exercise of his/her independent judgment; and

(h) shall express his/her views and opinions at Board meetings without any fear or favour and without any influence on exercise of his/her independent judgment;

(v) The director shall have:

(a) fiduciary duty to act in good faith and in the interests of the Bank and not for any collateral purpose;

(b) duty to act only within the powers as laid down by the Bank's Memorandum and Articles of Association and by applicable laws and regulations; and

(c) duty to acquire proper understanding of the business of the Bank.

(vi) The director shall:

(a) not evade responsibility in regard to matters entrusted to him/her by the Board;

(b) not interfere in the performance of their duties by the whole-time directors and other officers of the Bank and wherever the director has reasons to believe otherwise, he/she shall forthwith disclose his/her concerns to the Board; and

(c) not make improper use of information disclosed to him/her as a member of the Board for his/her or someone else's advantage or benefit and shall use the information disclosed to him/her by the Bank in his/her capacity as director of the Bank only for the purposes of performance of his/her duties as a director and not for any other purpose.

3. The Bank covenants with the director that: (i) the Bank shall apprise the director about:

(a) Board procedures including identification of legal and other duties of Director and required compliances with statutory obligations;

(b) control systems and procedures;

(c) voting rights at Board meetings including matters in which Director should not participate because of his/her interest, direct or indirect therein;

(d) qualification requirements and provide copies of Memorandum and Articles of Association;

(e) corporate policies and procedures;

(f) insider dealing restrictions;

(g) constitution of, delegation of authority to and terms of reference of various committees constituted by the Board;

(h) appointments of Senior Executives and their authority;

(i) remuneration policy,

(j) deliberations of committees of the Board, and

(k) communicate any changes in policies, procedures, control systems, applicable regulations including Memorandum and Articles of Association of the Bank, delegation of authority, Senior Executives, etc. and appoint the compliance officer who shall be responsible for all statutory and legal compliance.

(ii) the Bank shall disclose and provide to the Board including the director all information which is reasonably required for them to carry out their functions and duties as a directors of the Bank and to take informed decisions in respect of matters brought before the Board for its consideration or entrusted to the director by the Board or any committee thereof;

(iii) the disclosures to be made by the Bank to the directors shall include but not be limited to the following:

(a) all relevant information for taking informed decisions in respect of matters brought before the Board;

(b) Bank's strategic and business plans and forecasts;

(c) organisational structure of the Bank and delegation of authority,

(d) corporate and management controls and systems including procedures;

(e) economic features and marketing environment,

(f) information and updates as appropriate on Bank's products;

(g) information and updates on major expenditure;

(h) periodic reviews of performance of the Bank; and

(i) report periodically about implementation of strategic initiatives and plans;

(iv) the Bank shall communicate outcome of Board deliberations to directors and concerned personnel and prepare and circulate minutes of the meeting of Board to directors in a timely manner and to the extent possible within two business days of the date of conclusion of the Board meeting; and

(v) advise the director about the levels of authority delegated in matters placed before the Board.

4. The Bank shall provide to the director periodic reports on the functioning of internal control system including effectiveness thereof.

5. The Bank shall appoint a compliance officer who shall be a Senior executive reporting to the Board and be responsible for setting forth policies and procedures and shall monitor adherence to the applicable laws and regulations and policies and procedures including but not limited to directions of Reserve Bank of India and other concerned statutory and governmental authorities.

6. The director shall not assign, transfer, sublet or encumber his/her office and his/her rights and obligations as director of the Bank to any third party provided that nothing herein contained shall be construed to prohibit delegation of any authority, power, function or delegation by the Board or any committee thereof subject to applicable laws and regulations including Memorandum and Articles of Association of the Bank.

7. The failure on the part of either party hereto to perform, discharge, observe or comply with any obligation or duty shall not be deemed to be a waiver thereof nor shall it operate as a bar to the performance, observance, discharge or compliance thereof at any time or times thereafter.

8. Any and all amendments and/or supplements and/or alterations to this Deed of Covenants shall be valid and effectual only if in writing and signed by the director and the duly authorized representative of the Bank.

9. This Deed of Covenants has been executed in duplicate and both the copies shall be deemed to be originals.

IN WITNESS WHEREOF THE PARTIES HAVE DULY EXECUTED THIS AGREEMENT ON THE DAY, MONTH AND YEAR FIRST ABOVE WRITTEN.

For the Bank	Director
By
Name:	Name:
Title:	
In the presence of:	
1.....	2.....

November 1, 2007

'Fit and proper' criteria for elected directors on the boards of nationalized banks:

In exercise of the powers conferred by sub-sections (3AA) and (3AB) of Section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/80 (as amended in 2006), the Reserve Bank of India hereby notifies that with immediate effect:

(a) All the nationalized banks are required to constitute a 'nomination committee' consisting of a minimum of three directors (all independent directors/non-executive directors) from amongst the board of directors. The Board of directors should also nominate one among them as Chairman of the nomination committee. The quorum required is three, including the Chairman. In case of absence of any member already nominated, the board of directors may nominate any other independent director in his place for the ensuing meeting. At the time of constituting the nomination committee the board can decide on its tenure.

(b) The nomination committee should undertake a process of due diligence to determine the 'fit and proper' status of the existing elected directors/person to be elected as a director under Sec 9 (3)(i) of the Act *ibid*. For this purpose, the banks should obtain necessary information and declaration, in the format enclosed (Annexure-1), from the existing elected directors/persons, who file their nominations for election. The nomination committee should meet before the last date of acceptance of nominations in case of candidates to be elected and decide whether or not the person's candidature should be accepted based on the criteria mentioned below. The committee's discussions should be properly recorded as formal minutes of the meeting and the voting if done should also be noted in case of both existing and proposed Directors. Based on the information provided in the signed declaration, Nomination Committee should decide on the acceptance or otherwise of the candidate and may make references, where considered necessary to the appropriate authority/persons/institutions etc., to ensure their compliance with the requirements indicated.

(c) The nomination committee should determine the 'fit and proper' status of the existing elected Directors/proposed candidates based on the broad criteria as mentioned hereunder:

- (i) Educational qualification
- (ii) Experience and field of expertise
- (iii) Track record and integrity

(The above list is only illustrative and not exhaustive).

The Nomination Committee should see whether the non-adherence to any of the above criteria would hamper the existing elected director/proposed candidate from discharging the duties as a director on the Board of the bank. Further, the candidate coming to the adverse notice of any authority/regulatory agency or insolvency or default of any loan from any bank or financial institution would make the candidate unfit and improper to be a director on the Board of a bank.

d) It is desirable that the board ensures, in the public interest, that the elected directors execute the deed of covenants (copy enclosed for ready reference – Annexure-2) as recommended by the Dr Ganguly Group vide our circular DBOD.No.BC.116/08.139.001/2001-02 dated 20th June 2002 after the election and also every year as on 31st March.

2. The nomination committee is required to complete the process of determining the 'fit and proper' status of the existing elected directors on the Board of the bank at the earliest.

3. It is also mandatory that all the elected directors must furnish a simple declaration every year as on 31st March that the information already provided by them has not undergone any change and where there is any change, requisite details are furnished by the directors forthwith. If there are any significant changes, the nomination committee should undertake the due diligence exercise afresh and examine the 'fit and proper' status of the director.

(Anand Sinha)
Executive Director