

Banking Laws (Amendment) Act, 2012

Section 4 - Insertion of New Section 12-B."

After Section 12-A of the principal Act, the following Section shall be inserted, namely:" 12-B. (1) No person (hereinafter referred to as "the applicant") shall, except with the previous approval of the Reserve Bank, on an application being made, acquire or agree to acquire, directly or indirectly, by himself or acting in concert with any other person, shares of a banking company or voting rights therein, which acquisition taken together with shares and voting rights, if any, held by him or his relative or associate enterprise or person acting in concert with him, makes the applicant to hold five per cent or more of the paid-up share capital of such banking company or entitles him to exercise five per cent or more of the voting rights in such banking company. Explanation 1."For the purposes of this sub-section,"(a) "associate enterprise" means a company, whether incorporated or not, which,"(i) is a holding company or a subsidiary company of the applicant;(ii) is a joint venture of the applicant; or(iii) controls the composition of the Board of Directors or other body governing the applicant; or(iv) exercises, in the opinion of the Reserve Bank, significant influence on the applicant in taking financial or policy decisions; or(v) is able to obtain economic benefits from the activities of the applicant;(b) "relative" shall have the meaning assigned to it in Section 6 of the Companies Act, 1956 (1 of 1956);(c) persons shall be deemed to be "acting in concert" who, for a common objective or purpose of acquisition of shares or voting rights in excess of the percentage mentioned in this sub-section, pursuant to an agreement or understanding (formal or informal), directly or indirectly cooperate by acquiring or agreeing to acquire shares or voting rights in the banking company. Explanation 2."For the purposes of this Act, joint venture means a legal entity in the nature of a partnership engaged in the joint undertaking of a particular transaction for mutual profit or an association of persons or companies jointly undertaking some commercial enterprise wherein all contribute assets and share risks.(2) An approval under sub-section (1) may be granted by the Reserve Bank if it is satisfied that"(a) in the public interest; or(b) in the interest of banking policy; or(c) to prevent the affairs of any banking company being conducted in a manner detrimental or prejudicial to the interests of the banking company; or(d) in view of the emerging trends in banking and international best practices; or(e) in the interest of the banking and financial system in India, the applicant is a fit and proper person to acquire shares or voting rights:Provided that the Reserve Bank may call for such information from the applicant as it may deem necessary for considering the application referred to in sub-section (1):Provided further that the Reserve Bank may specify different criteria for acquisition of shares or voting rights in different percentages.(3) Where the acquisition is by way of transfer of shares of a banking company and the Reserve Bank is satisfied that such transfer should not be permitted, it may, by order, direct that no such share shall be transferred to the proposed transferee and may further direct the banking company not to give effect to the transfer of shares and in case the transfer has been registered, the transferee shall not be entitled to exercise voting rights on poll in any of the meetings of the banking company.(4) The approval for acquisition of shares may be subject to such conditions as the Reserve Bank may deem fit to impose, including a condition that any further acquisition of shares shall require prior approval of the Reserve Bank and that the applicant continues to be a fit and proper person to hold the shares or voting rights.(5) Before issuing or allotting any share to any person or registering the transfer of shares in the name of any person, the banking company shall ensure that the requirements of sub-section (1) are complied with by that person and where the acquisition is with the approval of the Reserve Bank, the banking company shall further ensure that the conditions imposed under sub-section (4), if any, of such approval are fulfilled.(6) The decision of the Reserve Bank on the application made under sub-section (1) shall be taken within a period of ninety days from the date of receipt of the application by the Reserve Bank:Provided that in computing the period of ninety days, the period taken by the applicant for furnishing the information called for by the Reserve Bank shall be excluded.(7) The Reserve Bank may specify the minimum percentage of shares to be acquired in a banking company if it considers that the purpose for which the shares are proposed to be acquired by the applicant warrants such minimum shareholding.(8) The Reserve Bank may, if it is satisfied that any person

or persons acting in concert with him holding shares or voting rights in excess of five per cent of the total voting rights of all the shareholders of the banking company, are not fit and proper to hold such shares or voting rights, pass an order directing that such person or persons acting in concert with him shall not, in the aggregate, exercise voting rights on poll in excess of five per cent of the total voting rights of all the shareholders of the banking company: Provided that the Reserve Bank shall not pass any such order without giving an opportunity of being heard to such person or persons acting in concert with him.'.

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