RBI draft governance code undermines bank bosses: IBA

Says move to make board executive in nature will not fly; some independent directors expected to move on

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The Indian Banks' Association (IBA) has told the Reserve Bank of India (RBI) that its draft code on governance will dilute the position of the corner-room occupant under Section 10B of the Banking Regulation (BR) Act, 1949. The BR Act states the incumbent will be entrusted with the management of the whole bank.

The stage is set for prolonged talks between the banking lobby group and the central bank as the draft is categorical that chief executive officers (CEOs) are not to have a seat on key committees of the board — remuneration and nomination, audit committee, and risk management. Key officials are to report to board-level committees, not to CEOs.

A major area of anxiety is that capital-raising after the pandemic may be affected. The draft limits the ability of the board to induct nominee directors who among themselves are entitled to exercise more than 20 per cent of the total voting rights in a bank. A few large institutional investors are now in talks with their legal advisors on the implications of the draft governance code.

The IBA's views were conveyed to the banking regulator on Tuesday. The issue can be expected to figure at its management committee meeting on Friday as a non-agenda item.

This will be the first meeting of the management committee after the July 15 deadline for submitting banks' responses to the draft.

"It (draft) makes the board the ultimate authority in running a bank and undermines bank CEOs. The hierarchy and operational matrix will stand to be affected," said a high-level source.

Another added: "This will call for related changes to the central bank's operational circulars as well. Either we are CEOs or we are not. Going by the draft code, we will not have a say as we did earlier. It basically means little freedom to form our teams."

Bank CEOs had hammered out their response after a conference call last week. It has been gathered that the Confederation of Indian Industry (CII) may give its views on the subject. The CII's banking vertical is headed by State Bank of India Chairman Rajnish Kumar.

Sub-Section IA (Sub-Clause ii) of 10B of the BR Act says: "The management of the whole of the affairs of such a banking company shall be entrusted to a managing director who shall exercise his powers, subject to the superintendence, control, and direction of the board of directors."

Many CEOs have been at their desks for more than a decade or close to it, and are identified with the fortunes of the banks they helm.

The new governance arrangement can have far-reaching implications at the time of raising capital, especially in a post-Covid world where serious conversations are on at a few private banks to bring in strategic investors.

Independent directors have also informally conveyed to bank chairmen and CEOs that they may have to revisit their board positions, even as some have already raised the matter with the Ministry of Finance in their individual capacity.

"We can't take on executive roles, save for the credit committee. It is for the professionals at the bank who will have to play this role. Our role has to be restricted to governance."

The pain-points are that the nomination and remuneration committee, audit committee, and the risk management committee are to have only non-executive directors. And that promoter-CEOs and non-promoter CEOs will have to move on after completion of 10 years and 15 years, respectively. Both categories of CEOs shall have two years or up to the expiry of their current tenure, whichever is later, to identify and appoint a successor.

The draft says the chief risk officer, chief compliance officer, chief vigilance officer, and the human resource heads are to report to the board. The board will look into performance appraisals and approval of departmental budgets, even as they are to be administered and monitored by the executive management.

Should a bank be part of a group, the board of the bank, through its risk management committee, is responsible for establishing a group-wide enterprise risk-management system.

Senior bankers were hesitant to hazard a guess on the impact of the last mentioned aspect when a holding company structure comes into fruition.

The draft limits the ability of the board to induct nominee directors who among themselves are entitled to exercise more than 20% of the total voting rights in a bank

PAIN POINTS

- Nomination and remuneration committee, audit committee, and risk management committee to have only non-executive directors
- Promoter CEOs and non-promoter CEOs to move on after completion of 10 years and 15 years, respectively
- Chief risk officer, chief compliance officer, chief vigilance officer, and the human resource heads to report to the board
- A few independent directors have hinted to the chairmen and CEOs that may have to reconsider their positions
- Worried large institutional investors have sought legal opinion on the regulatory plot ahead
- Post-Covid fund-raising may get impacted, given the restriction on offering board seats to investors who collectively hold more than 20%
- CII committee headed by SBI Chairman Rajnish Kumar; may give its views to RBI and finance ministry