



Ref: NF/P-1/2021-22/587

Date: 11 December 2021

**The Governor,
Reserve Bank of India,
Central Office,
Shahid Bhagat Singh Marg,
Mumbai-400025.**

Respected Sir,

Banking Regulation Amendment Act 2020-
Terms of Directors of Primary Urban Co-operative Banks

We submit that with the introduction of the Banking Regulation (Amendment) Bill, 2020 (Bill No. 56 of 2020), various provisions of Section 10 of the Act ibid have now been made applicable to all the cooperative banks. As per Section 10 (2A) (i) of the Banking Regulation Act, 1949, as amended in September, 2020,

“No director of the banking company, other than its chairman or whole-time director by whatever name called, shall hold office continuously for a period exceeding eight years”.

2. Needless to mention that the above provisions are neither in conformity with co-operative laws nor as per the provisions of 97th Amendment of the Constitution of India (Constitution). In this connection, in terms of Section 243ZJ (2) of the 97th amendment of the Constitution, the terms of the office of elected members of the Board and its office bearers shall be five years from the date of election, and the term of office bearers shall be co-terminus with the term of the Board. There is also no provision restricting re-election of members on the Board of the co-operative society.

3. As per Section 44(2) of the Multi State Co-operative Societies Act, 2002, (MSCS Act) no member of a Board shall be eligible to be elected as Chairperson or President of a multi-state co-operative society after he has held the office as such during two consecutive terms, whether full or part. Further, a member who has ceased to hold office of the Chairperson or President continuously for one full term shall again be eligible for election to the office as such.

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In terms of Section 45 (4) of the aforesaid MSCS Act, the elected members of the Board shall, if the byelaws of such society permit, be eligible for re-election. Similar provisions also exist in many of the State Co-operative Societies Acts.

4. The above position reveals that there are no restrictions on any member of the co-operative society for being re-elected as member of the Board if the byelaws of the society permit such election on the Board. **Thus, the eight years cap for members of BOD prescribed in the amended BR Act,2020 is in violation of the provisions of 97th amendment of the Constitution as also the provisions of MSCS Act,2002 and Co-operative Societies Acts of various states.**

5. As per Article 43A of the 97th Constitution amendment, the state shall endeavour to promote voluntary formation, autonomous functioning, democratic control, and professional management of co-operative societies. The 97th amendment also envisages that formation of co-operative society is a fundamental right. Even while moving the amendment of the B R Act, 2020, the Hon'ble Finance Minister stated that the implementation of the provision of amendment in the B R Act, 2020 will be in conformity with the basic provisions governing co-operative Societies. It is, however, observed that the above provisions of Section 10 (2A) (1) of the amended B R Act are not only in violation of Constitution, but also of co-operative principles of democratic control and open membership, as enshrined by International Co-operative Alliance (ICA) and the co-operative laws of the Country.

6. In this connection, Section 53 of the amendment Bill states that RBI may exempt a co-operative bank or a class of cooperative banks from certain provisions of the Act through notification. These provisions relate to restrictions of certain types of employment, qualifications of the Board of Directors and appointment of a chairman. The time-period and conditions for the exemption will also be specified by the RBI. The above amendment has created an uncertain situation in the UCB sector in the country and their normal functioning has been jeopardized.

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7. In view of the above, and, having regard to the serious implications and cascading effect on the management of UCBs across the country, RBI may kindly examine the matter and consider invoking the powers vested with RBI under Section 53 of the B R Act to defer the implementation of provisions contained in Section 10(2A) (i) of the Act and allow the newly elected directors to continue in their position as Directors as per the co-operative laws. **The matter regarding jurisdictional issues arising out of Banking Regulation (Amendment) Act 2020 was also examined by the Expert Committee on UCBs and NAFCUB had suggested formation of a committee to sort out the problems emanating from cross jurisdictional issues and statutory provisions.** It is therefore again requested that RBI may consider constituting a committee comprising members from RBI, Ministry of Cooperation, Govt. of India, a few state govts. NAFCUB and state federations to arrive at the modalities of implementation of the above amendments in a manner that the cooperative values of the UCBs are not affected while RBI has effective regulation. This will help co-operative banks to avoid violation of co-operative laws and ensure their smooth transition over a period.

With kind regards,

Yours Sincerely

(Jyotindra Mehta)