

BANKING SECTOR



**THE INSTITUTE OF
Company Secretaries of India**

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

Statutory body under an Act of Parliament



August 2018

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This industry specific research report is for wide circulation among experts to receive valuable suggestions and necessary supports for further improving the manuscript. Experts are encouraged to email their suggestions and contribute any material which they think could value add the manuscript to research@icsi.edu.

The Section 3, "Legal Framework" is indicative only.

Published by :

THE INSTITUTE OF COMPANY SECRETARIES OF INDIA

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Laser typesetting at: AArushi Graphics

Printed at: Indian Offset Press/August 2018

PREFACE

In the liberalized economic policy regime, the corporate sector has been assigned a major role as the driver of growth and development of the Indian economy. This has resulted in a number of changes, especially in the regulatory framework applicable to specific industry sectors. As an economy is consist of different industries like agriculture, service, engineering, manufacturing etc., it provides impetus to the economy i.e. employment generation, production of goods and services, income distribution in the whole economy.

With the intent to further enhance the competitiveness of India's services sector and to boost productivity with the creation of new employment opportunities, the Central Government has focused attention on 12 sectors in the economy as 'Champion Sectors' i.e., IT & ITeS, Tourism and Hospitality, Financial, Accounting and Finance, Transport and Logistics, Construction and Related Engineering, Communication, Education, Medical Value Travel, Audio Visual, Legal and Environmental.

As part of its support to government's policy initiatives, the Institute has started an initiative by projecting Company Secretary as 'Corporate Saviour' - a person who can be relied upon by stakeholders i.e., Corporates, Promoters, Shareholders, Government and Regulators.

With this basic objective, the institute has initiated the process of developing industry specific knowledge through research, creating awareness among the members about the contribution the Company Secretary can make in specific industry, capacity building of members in the specific industry, securing recognitions for members in specific industry sector, and sensitisation of regulatory authorities about the contribution the Company Secretaries can make in specific industry.

For conducting the detailed analysis in a structured manner, a format is designed with four sections, Section-I covering the industry profile, Section-II Business Scenario, Section-III legal framework and Section-IV Contribution of Company Secretary in employment and in practice. The research publications in all the industry sector are based on exploratory research.

I wish to express my sincere thanks and gratitude to CS Ahalada Rao V, Vice-President, the ICSI for his efforts in guiding and finalizing industry specific publications.

I also appreciate Dr. Prasant Sarangi, Director (Research), and CS Sharad Jhunjunwala-Assistant Director, the ICSI-Research Cell for doing in-depth study of Banking Sector and bringing out this research publication, under the guidance of CS Sonia Baijal, Director,

Professional Development, Prospective Planning and Studies and Dr. S.K. Dixit, Mentor, Research Cell.

I am sure this research publication will prove to be of immense value to professionals, corporates and researchers. The research is an ongoing process, and I welcome the readers to give suggestions to make this research publication more comprehensive.

I wish all the readers a happy reading

New Delhi

Date: August 23, 2018

CS Makarand Lele

President

The Institute of Company Secretaries of India

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SECTION 1

INTRODUCTION

1.1 INTRODUCTION

Indian Banking System has seen many developments during the last two centuries. An indigenous banking system was being carried out by the businessmen called Sharoffs, Seths, Sahukars, Mahajans, Chettis, etc., since the ancient times. They performed the usual functions of lending money to traders and craftsmen, and sometimes even placed funds at the disposal of kings for financing wars. The indigenous bankers could not, however, develop, to any considerable extent, the system of obtaining deposits from the public, which today is an important function of a bank.

Modern banking in India originated in the last decades of the 18th century. The first banks were The General Bank of India (which started in 1786), and the Bank of Hindustan. Thereafter, three presidency banks, namely the Bank of Bengal (this bank was originally started in the year 1806 as Bank of Calcutta which in the year 1809 became the Bank of Bengal), the Bank of Bombay and the Bank of Madras, were set up. For many years the Presidency banks acted as quasi-central banks. The three banks merged in 1925 to form the Imperial Bank of India. Indian merchants in Calcutta established the Union Bank in 1839, but it failed in 1848 as a consequence of the economic crisis of 1848-49. Bank of Upper India was established in 1863 which failed in 1913. The Allahabad Bank established in 1865 is the oldest survived Joint Stock bank in India. Oudh Commercial Bank, established in 1881 in Faizabad, failed in 1958. The next was the Punjab National Bank, established in Lahore in 1895, which is now one of the largest banks in India. The Swadeshi movement inspired local businessmen and political figures to established banks for the Indian community during 1906 to 1911. A number of banks established then have survived to the present days such as Bank of India, Corporation Bank, Indian Bank, Bank of Baroda, Canara Bank and Central Bank of India. A major landmark in Indian banking history took place in 1934 when a decision was taken to establish 'Reserve Bank of India' which started functioning in 1935. Since then, RBI, as a central bank of the country, has been regulating banking system.

1.2 CATEGORY OF BANKS:

The constituents of the Indian Banking System can be broadly listed as under:

(a) Commercial Banks:

- (i) Public Sector Banks
- (ii) Private Sector Banks
- (iii) Foreign Banks

(b) Cooperative Banks:

- (i) Short-term agricultural institutions
- (ii) Long-term agricultural credit institutions
- (iii) Non-agricultural credit institutions

(c) Development Banks:

- (i) National Bank for Agriculture and Rural Development (NABARD)
- (ii) Small Industries Development Bank of India (SIDBI)
- (iii) EXIM Bank
- (iv) National Housing Bank

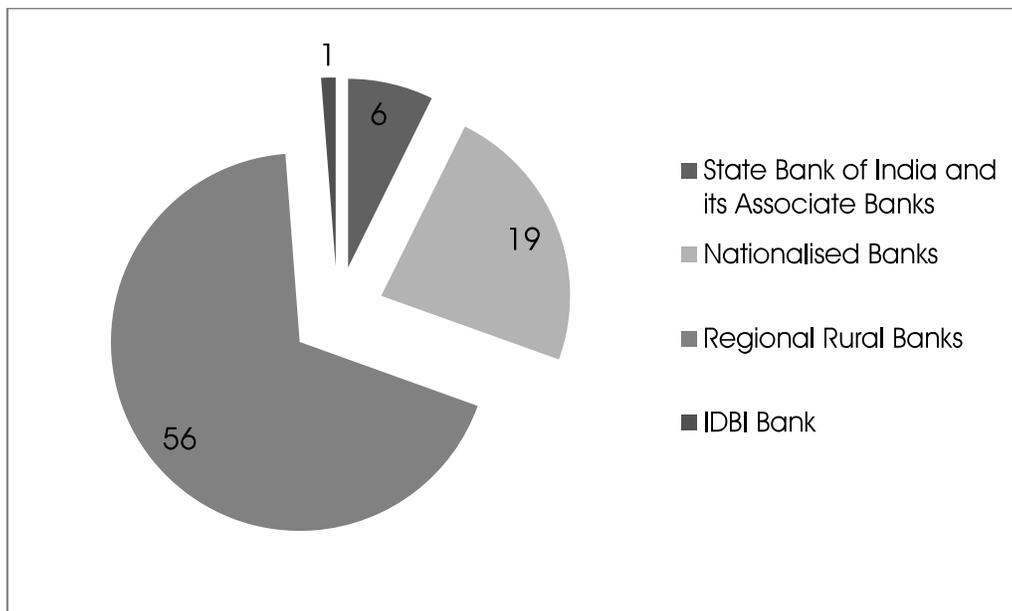


COMMERCIAL BANKS

1. Public Sector Banks

The term 'public sector banks' in itself connotes a situation where the major/full stakes of the banks are held by Government. Till July 1969, there were only 8 Public Sector Banks (SBI & its 7 associate banks). When 14 commercial banks (total 20 banks) were nationalized in 1969, 100% ownership of these banks was held by the Government of India. Subsequently, six more private banks were nationalized in 1980. However, with the changing in time and environment, these banks were allowed to raise capital through IPOs and thereby the shareholding pattern changed. By default the minimum 51% shares would be kept by the Government of India, and the management control of these nationalized banks is only with Central Government. Since all these banks have ownership of Central Government, they can be classified as public sector banks. Apart from the nationalized banks, State Bank of India, and its associate banks, IDBI Bank and Regional Rural Banks are also included in the category of Public Sector banks. The total numbers of public sector banks as on March, 2013 were 82 as per the following categorization:

Figure-1 Numbers of Public Sector Banks



2. Private Sector Banks

The major stakeholders in the private sector banks are individuals and corporates. When banks were nationalized under two tranches (in 1969 and in 1980), all banks were not included. Those non-nationalized banks which continue operations even today are classified as Old Generation Private Sector Banks, like The Jammu & Kashmir Bank Ltd, The Federal Bank, The Laxmi Vilas Bank etc. In July 1993 on account of banking sector reforms the Reserve Bank of India allowed many new banks to start banking operations. Some of the leading banks which were given licenses are: UTI bank (presently called Axis Bank) ICICI Bank, HDFC Bank, Kotak bank.

Mahindra Bank, Yes Bank etc., these banks are recognized as New Generation Private Sector Banks. Ten banks were licensed on the basis of guidelines issued in January 1993. The guidelines were revised in January 2001 based on the experience gained from the functioning of these banks, and fresh applications were invited.

Of the 10 licences issued in 1993, four banks merged with other lenders over a period of time. Times Bank merged with HDFC Bank, while Global Trust Bank was amalgamated with the state-owned Oriental Bank of Commerce. Centurion Bank took over Bank of Punjab to become Centurion Bank of Punjab, which merged with HDFC Bank in 2008. On account of these new generation private sector banks, a new competitive environment was created in the Indian Banking System. These banks were having competitive advantages over their counterparts (of the existing old private banks, public sector banks) in their IT support system, innovative products, and pricing of their products. Private sector banks have been rapidly increasing their presence in the recent times and offering a variety of newer services to the customers and posing a stiff competition to the group of public sector banks. Total private sector banks as on 31st March 2013 were 22. Besides these, four Local Area Banks are also categorized as private banks.

3. Foreign Banks

The other important segment of the commercial banking is that of foreign banks. Foreign banks have their registered offices outside India, and through their branches they operate in India. Foreign banks are allowed on reciprocal basis. They are allowed to operate through branches or wholly owned subsidiaries. These foreign banks are very active in Treasury (forex) and Trade Finance and Corporate Banking activities. These banks assist their clients in raising External Commercial Borrowings through their branches outside India or foreign correspondents. They are active in loan syndication as well. Foreign banks have to adhere to all local laws as well as guidelines and directives of Indian Regulators such as Reserve Bank of India, Insurance and Regulatory Development Authority, Securities Exchange Board of India. The foreign banks have to comply with the requirements of the Reserve Bank of India in respect to Priority Sector lending, and Capital Adequacy ratio and other norms. Total foreign banks as on 31st March 2013 were 43 having 331 branches. Besides these, 46 foreign banks have their representative offices in India as on 31st March 2013.

COOPERATIVE BANKING SYSTEM

Cooperative banks play an important role in the Indian Financial System, especially at the village level. The growth of Cooperative Movement commenced with the passing of the Act of 1904. A cooperative bank is a cooperative society registered or deemed to have been registered under any State or Central Act. If a cooperative bank is operating in more than one State, the Central Cooperative Societies Act is applicable. In other cases the State laws are applicable. Apart from various other laws like the Banking Laws (Application to Co-operative Societies) Act, 1965 and Banking Regulation (Amendment) and Miscellaneous Provisions Act, 2004, the provisions of the RBI Act, 1934 and the BR Act, 1949 would also be applicable for governing the banking activities.

These cooperative banks cater to the needs of agriculture, retail trade, small and medium industry and self-employed businessmen usually in urban, semi-urban and rural areas. In case of cooperative banks, the shareholders should be members of the cooperative banks. The share linkage to borrowing is a distinctive feature of a cooperative bank. Rural cooperative sector in India plays a vital role in fulfilling the credit requirements of rural agricultural sector of India. At recent times, the rural credit flow through rural cooperative sector has risen substantially in order to keep pace with the growing demand for credit in the rural parts of India. The Cooperative rural Credit Structure in our country are of following types:

1. Short-Term Agricultural Credit institutions

The short-term credit structure consists of the Primary Agricultural Credit Societies at the base level, which are affiliated at the district level into the District Central Cooperative Bank and further into the State Cooperative Bank at the State level. Being federal structures, the membership of the DCCB comprises all the affiliated PACS and other functional societies and for the SCB, the members are the affiliated DCCBs. The DCCB being the middle tier of the Cooperative Credit Structure, is functionally positioned to deal with the concerns of both the upper and lower tiers. This very often puts the DCCB in a position of balancing competing concerns. While the SCB may managing District Central Cooperative wish the DCCB to prioritize its task in a particular manner, the PACs may have their own demands on the DCCB. Balancing these competing concerns could often be a dilemma for the DCCBs.

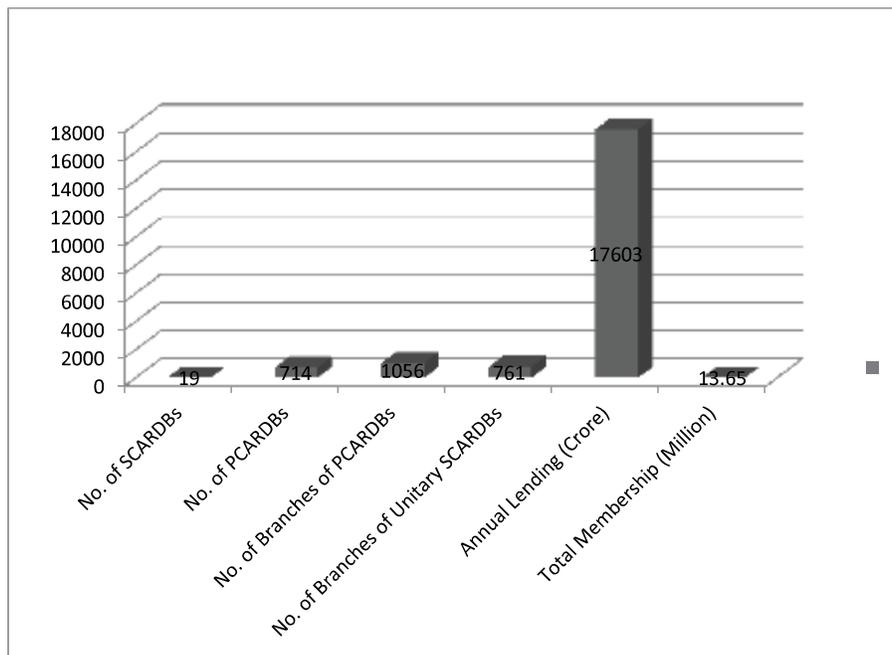
There are 30 State Cooperative Banks. These banks support and guide 372 District Central Cooperative Banks (DCCBs) in India which have 13478 branches as on March, 2013. These DCCBs are providing finance to more than 35 lakhs farmers through about 1.15 lacs Primary Agricultural Cooperative Societies (PACS).

2. Long Term Agricultural Credit Institutions

The long-term cooperative credit structure consists of the State Cooperative Agriculture & Rural Development Banks (SCARDBs) and Primary Cooperative Agriculture & Rural

Development Banks (PCARDBs) which are affiliated to the SCARDBs. The total No. of SCARDB's are 19; of which 10 have Federal Structure, 7 have Unitary Structure and 2 have Mixed Structure (i.e. operating through PCARDBs as well as its own branches). Loans are given to members on the mortgages of their land usually up to 50% of their value in some states or up to 30 times the land revenue payable in other states, duly taking into account their need and repayment capacity. The performance of these banks as on 31st March 2012 has been as under:

Figure-2: Performance of Long-Term agricultural Credit Institutions



3. Urban Cooperative Banks

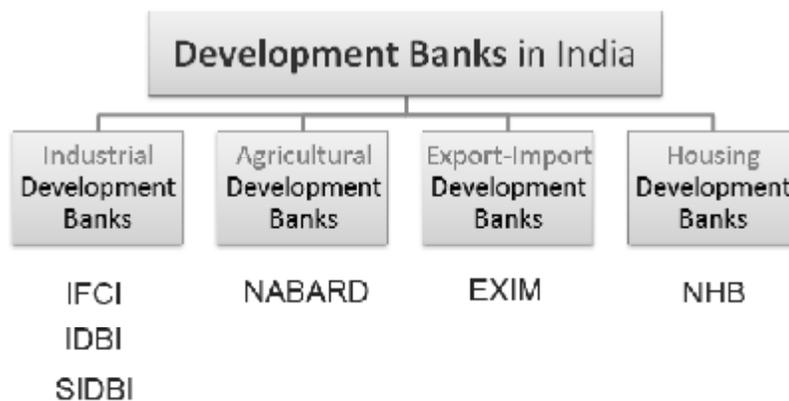
The term Urban Cooperative Banks (UCBs), although not formally defined, refers to the primary cooperative banks located in urban and semi-urban areas. These banks, until 1996, were allowed to lend money only to non-agricultural purposes. This distinction remains today. These banks have traditionally been around communities, localities working out in essence, loans to small borrowers and businesses. Today their scope of operation has expanded considerably. The urban cooperative banks can spread operations to other States and such banks are called as multi state cooperative banks. They are governed by the Banking Regulations Act, 1949 and Banking Laws (Cooperative Societies) Act, 1965. The total number of UCBs stood at 1,618 as on 31st March 2012. Scheduled UCBs are

banks included in the Second Schedule of the RBI Act, 1934 and include banks that have paid-up capital and reserves of not less than 5 lakhs and carry out their business in the interest of depositors to the satisfaction of the Reserve Bank.

DEVELOPMENT BANKS

History of development banking in India can be traced to the establishment of the Industrial Finance Corporation of India in 1948. Subsequently, with the passing of State Financial Corporation Act, 1951 and several SFCs came into being. With the introduction of financial sector reforms, many changes have been witnessed in the domain of development banking. There are more than 60 Development Banking Institutions at the both Central and State level.

Figure- Derived below are the glimpses of the picture of development banks in India



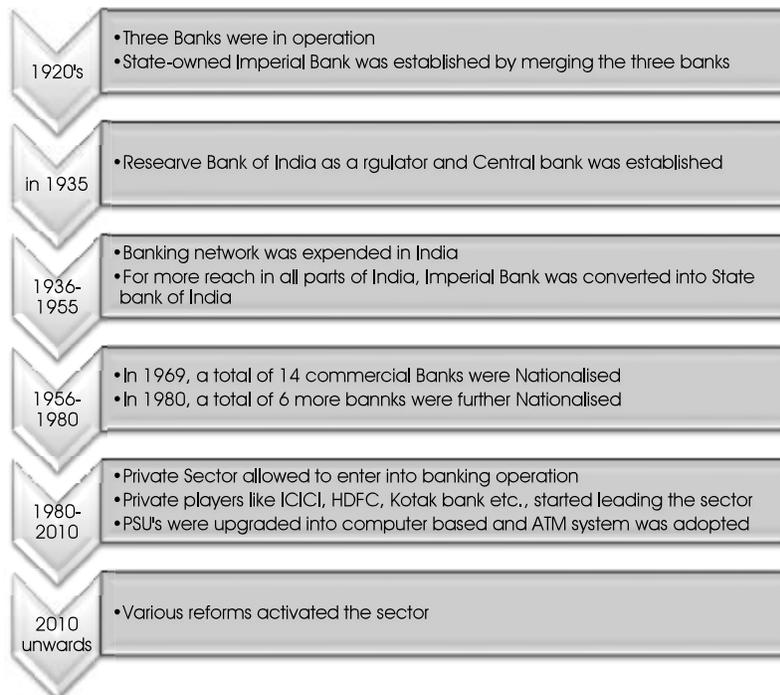
SECTION 2

BUSINESS SCENARIO

2.1 HISTORY

Banking in India is more than 200 years old. It was developed during the British era. British East India Company established three banks during 1800's. First bank in India i.e., Bank of Bengal was established in the year 1809 followed by Bank of Bombay in the year 1840 and Bank of Madras in the year 1843. These three banks were later amalgamated and called Imperial Bank, which was taken over by SBI in 1955. The Reserve Bank of India was established in 1935, followed by the Punjab National Bank, Bank of India, Canara Bank and Indian Bank. They have been the pall bearers in the History of Banking in India. The development of banking practices in India could be well understood from the figure derived below.

Figure 3 - Development of Indian Banking System



In 1969, 14 major banks were nationalized and in 1980, 6 major private sector banks were taken over by the government.

Indian banking system, over the years, has gone through various phases. For an easy understanding, a broad category could be done to understand the phases through which the Indian banking sector has evolved.

Early Phase : During the first phase, the growth was very slow and banks experienced periodic failures during the Early Phase between. There were approximately 1100 banks, mostly small which failed in the early phase.

- *Pre Nationalization Phase* : Reserve Bank of India (RBI) was created with the central task of maintaining monetary stability in India. This phase of Indian banking was eventful and was a phase of restructuring, regulation. However, despite these provisions, control and regulations, banks in India except the State Bank of India, continued to be owned and operated by private persons.
- *Post Nationalization Phase* : This phase of Indian banking was not so happening by for the entry of new banks. Undoubtedly, it was a phase of expansion, consolidation and increment in many ways. The banking sector grew at a phenomenal rate, fruits of nationalization were evident, and the common man was now banking with great trust.
- *Modern Phase* : This is the phase of “New Generation” tech-savvy banks. This phase can be called as ‘The Reforms Phase’.

2.2 THE STRUCTURE OF INDIAN BANKING SECTOR

The banking system has three tiers. These are the scheduled commercial banks; the regional rural banks which operate in rural areas not covered by the scheduled banks; and the cooperative and special purpose rural banks. There are approximately 80 scheduled commercial banks, Indian and foreign; almost 200 regional rural banks; more than 350 central cooperative banks, 20 land development banks; and a number of primary agricultural credit societies. The Reserve Bank of India is India’s Central Bank. The banking industry is currently dominated by the public sector banks. Eight new private sector banks are currently in operation. Domestic banks accounts for 92% of total banking assets in India.

The structure of Indian banking sector could be well understand from the figure derived below:

Figure-4

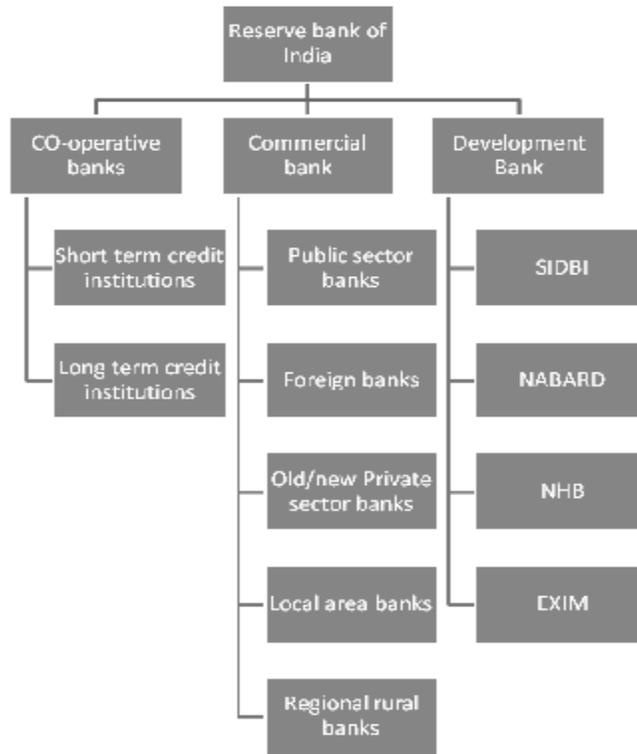
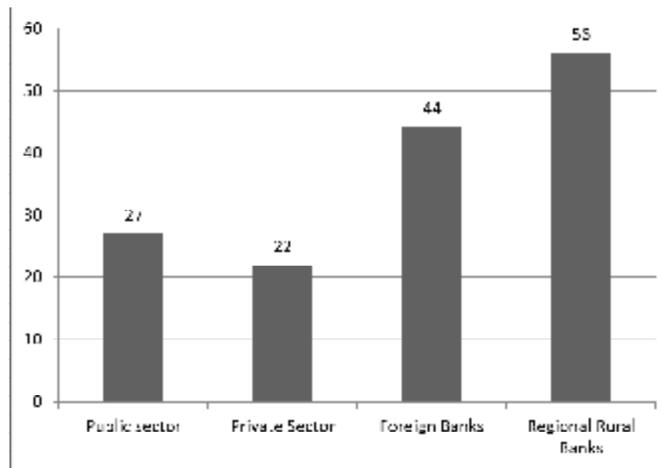


Figure-5 (a) derived below shows numbers of scheduled commercial banks in India by the year 2017.

Figure-5 (a) Scheduled Commercial Banks



Whereas figure-5 (b) shows total numbers of urban cooperative banks and rural cooperative institutions that are operating in India since the 2014.

Figure-5 (b) Scheduled Commercial Banks

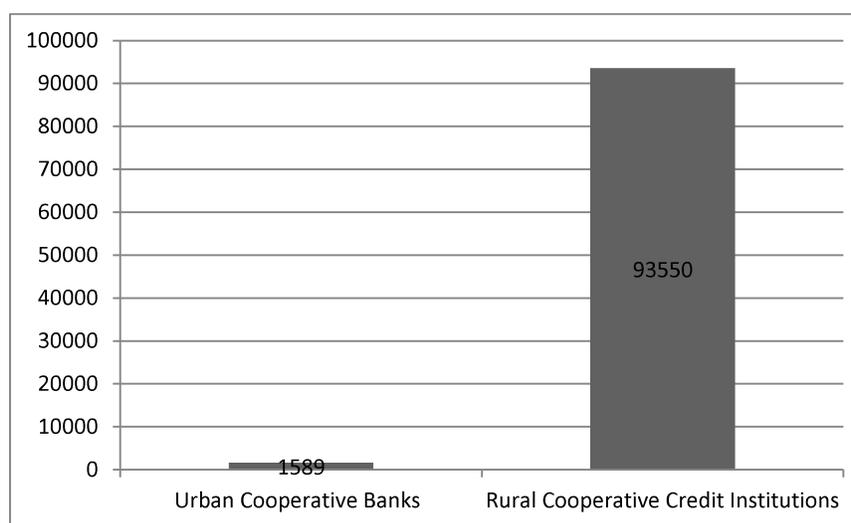


Table 1: derived below shows the overall performances of Indian banking Sector

Table : Indian Banking Sector

(Amount in Billion)

Sr. No	Items	Amount Outstanding (As at end-March)		Percentage Variation	
		2016	2017*	2015-16	2016-17*
1	Balance Sheet Operations				
1.1	Total liabilities/assets	131,293	141,586	9.1	7.8
1.2	Deposits	100,927	111,139	7.0	10.1
1.3	Borrowings	14,488	12,807	26	-11.6
1.4	Loans and advances	78,965	81,162	6.9	2.8
1.5	Investments	33,278	36,522	11.8	9.7
1.6	Off-balance sheet exposure (as percentage of on-balance sheet liabilities)	111	107	-	-
1.7	Total consolidated international claims	5,774	7,168	42.5	24.2

2	Profitability				
2.1	Net profit	341	439	-61.7	28.6
2.2	Return on Asset (RoA) (Per cent)	0.4	0.35	-	-
2.3	Return on Equity (RoE) (Per cent)	3.58	4.16	-	-
2.4	Net Interest Margin (NIM) (Per cent)	2.6	2.5	-	-
3	Capital Adequacy				
3.1	Capital to risk weighted assets ratio (CRAR) @	13.3	13.6	-	-
3.2	Tier I capital (as percentage of total capital) @	81.2	82.1	-	-
3.3	CRAR (tier I) (Per cent) @	10.8	11.2	-	-
4	Asset Quality				
4.1	Gross NPAs	6,119	7,918	89.3	29.4
4.2	Net NPAs	3,498	4,331	98.9	23.8
4.3	Gross NPA ratio (Gross NPAs as percentage of gross advances)	7.5	9.3	-	-
4.4	Net NPA ratio (Net NPAs as percentage of net advances)	4.4	5.3	-	-
4.5	Provision Coverage Ratio (Per cent)**	41.9	43.5	-	-
4.6	Slippage ratio (Per cent)	6.3	5.7	-	-
5	Sectoral Deployment of Bank Credit				
5.1	Gross bank credit	66,500	71,347	9.0	7.3
5.2	Agriculture	8,829	9,924	15.3	12.4
5.3	Industry	27,307	26,800	2.7	-1.9
5.4	Services	15,411	18,022	9.1	16.9
5.5	Personal loans	13,922	16,200	19.4	16.4
6	Technological Development				
6.1	Total number of credit cards (in million)	25	30	16.1	21.8
6.2	Total number of debit cards (in million)	662	772	19.6	16.6
6.3	Number of ATMs	198,952	208,354	12	4.9
7	Customer Services				
7.1	Total number of complaints received during the year	102,894	130,987	20.9	27.3
7.2	Total number of complaints addressed	101,153	125,345	19.5	23.9
7.3	Percentage of complaints addressed	94.8	92	-	-

8	Financial Inclusion				
8.1	Credit-deposit ratio (Per cent)	78.2	73.03	-	-
8.2	Number of new bank branches opened	6,986	4,830	-20.0	-30.9
8.3	Number of banking outlets in villages (Total)	586,307	598,093	5.9	2.0
<p>*: Provisional **: Based on off-site returns and without write-off adjusted. @: Figures are as per the Basel III framework.</p> <p>Notes:</p> <p>1. Percentage variation could be slightly different as figures have been rounded off to million/billion.</p> <p>2. Data on sectoral deployment of bank credit pertains to last reporting Friday of March.</p>					

Source: <https://www.rbi.org.in/scripts/PublicationsView.aspx?id=18064>

The sector-wise development of gross bank credit by April 2018 is derived in the table below.

Table 2 : Deployment of Gross Bank Credit By Major Sectors

Sector	Apr. 2018
Gross Bank Credit (II + III)	76130
Food Credit	326
Non-food Credit (1 to 4)	75804
Agriculture & Allied Activities	10269
Industry (Micro & Small, Medium and Large)	26511
Micro & Small	3629
Medium	1027
Large	21854
Services	19813
Transport Operators	1214
Computer Software	179
Tourism, Hotels & Restaurants	371
Shipping	65
Professional Services	1532
Trade	4605
Wholesale Trade (other than food procurement)	1985
Retail Trade	2621

Commercial Real Estate	1849
Non-Banking Financial Companies (NBFCs)	4524
Other Services	5472
Personal Loans	19211
Consumer Durables	201
Housing (Including Priority Sector Housing)	9855
Advances against Fixed Deposits (Including FCNR (B), NRNR Deposits etc.)	710
Advances to Individuals against share, bonds, etc.	54
Credit Card Outstanding	732
Education	691
Vehicle Loans	1904
Other Personal Loans	5065
Priority Sector	24928
Agriculture & Allied Activities	10240
Micro & Small Enterprises	9526
Manufacturing	3629
Services	5897
Housing	3667
Micro-Credit	255
Education Loans	593
State-Sponsored Orgs. for SC/ST	3
Weaker Sections	5781
Export Credit	201

Source: https://rbi.org.in/SCRIPTS/BS_PressReleaseDisplay.aspx?prid=44074

2.3 MARKET SIZE

In August 2017, Global rating agency Moody's announced that its outlook for the Indian banking system was stable. In November 2017, Global rating agency Moody's upgraded four Indian banks from Baa3 to Baa2.

- The Indian banking system consists of 27 public sector banks, 26 private sector banks, 46 foreign banks, 56 regional rural banks, 1,574 urban cooperative banks and 93,913 rural cooperative banks, in addition to cooperative credit institutions. Public-sector banks control more than 70 per cent of the banking system assets,

thereby leaving a comparatively smaller share for its private peers. Banks are also encouraging their customers to manage their finances using mobile phones.

- As the Reserve Bank of India (RBI) allows more features, such as unlimited fund transfers between wallets and bank accounts, mobile wallets are expected to become strong players in the financial ecosystem.
- The unorganized retail sector in India has huge untapped potential for adopting digital mode of payments, as 63 per cent of the retailers are interested in using digital payments like mobile and card payments, as per a report by Centre for Digital Financial Inclusion (CDFI). ICRA estimates that credit growth in India's banking sector would be at 7-8 per cent in FY 2017-18.

2.4 INVESTMENTS/DEVELOPMENTS

Key investments and developments in India's banking industry include:

- The bank recapitalization plan by Government of India is expected to push credit growth in the country to 15 per cent and as a result help the GDP grow by 7 per cent in FY2019.
- Public sector banks are lining up to raise funds via qualified institutional placements (QIP), backed by better investor sentiment after the Government of India's bank recapitalization plan and an upgrade in India's sovereign rating by Moody's Investor Service.
- The RBI amends statutes thereby allowing lenders to invest in real estate investment trusts (REITs) and infrastructure investment trusts (InvITs) not exceeding 10 per cent of the unit capital of such instruments.

Table 3 : Listed Public Company

Company Name (Private sector)	Company Name (Public sector)
HDFC Bank	SBI
ICICI Bank	PNB
Axis Bank	Bank of Baroda
Yes Bank	Bank of India
Kotak Mahindra	Canara Bank
IndusInd Bank	Union Bank
Federal Bank	IDBI Bank
IDFC Bank	Syndicate Bank
JK Bank	Central Bank
South Ind Bk	Oriental Bank
Karnataka Bank	IOB

Karur Vysya	Allahabad Bank
RBL Bank	Corporation Bk
Lakshmi Vilas	Indian Bank
City Union Bank	Andhra Bank
DCB Bank	UCO Bank
Dhanlaxmi Bank	Vijaya Bank
	Bank of Mah
	United Bank
	Dena Bank
	Punjab & Sind

Source: <http://www.moneycontrol.com/stocks/marketinfo/totassets/bse/banks-private-sector.html>

Table shows list of Asset Reconstruction Companies (ARCs) registered with the Bank (As on November 30, 2017)

Table 4: List of ARCs

Sr. No.	Name of Registered ARC	Address
1	Asset Reconstruction Company (India) Limited	The Ruby, 10th Floor, 29, Senapati Bapat Marg, Dadar (West), Mumbai-400028
2	Assets Care & Reconstruction Enterprise Ltd	2 nd Floor, Mohan Dev Building 13, Tolstoy Marg, New Delhi – 110001
3	ASREC (India) Limited	Solitaire Corporate Park ,Bldg No.2, Unit No.201-202A & 200-202 B Gr.Floor, Andheri Ghatkopar Link Rd, Chakala Andheri (E), Mumbai-400093
4	Pegasus Assets Reconstruction Pvt Ltd	55-56, 5th Floor, Free Press House, Nariman Point, Mumbai-400021
5	Alchemist Asset Reconstruction Company Limited	D-54, 1st Floor, Defence Colony New Delhi-110024
6	International Asset Reconstruction Company Pvt Ltd	709, 7th Floor, Ansal Bhawan, 16, Kasturba Gandhi Marg, New Delhi - 110 001
7	Reliance Asset Reconstruction Company Limited	Reliance Centre, 19 Walchand Hirachand Marg, Ballard Estate, Mumbai – 400 001

8	Pridhvi Asset Reconstruction And Securitisation Company Ltd	D No.1-55, Raja Praasadamu, 4 th Floor, Wing-I, Masjid Banda Road Kondapur, Hyderabad-500084
9	Phoenix ARC Private Limited	5th Floor,Dani Corporate Park 158, CST Road, Kalina, Santacruz (East) Mumbai-400098
10	Invent Assets Securitisation & Reconstruction Pvt Ltd	107,Jolly Maker Chambers No.2 225,Nariman Point Mumbai-400021
11	JM Financial Asset Reconstruction Company Private Limited	7th Floor, Cnergy Appasaheb Marathe Marg Prabhadevi Mumbai-400025
12	India SME Asset Reconstruction Company Limited	1004, 10th Floor, Naman Centre, Plot No. C-31, G-Block, Bandra - Kurla Complex, Bandra (E), Mumbai400051
13	Edelweiss Asset Reconstruction Company Limited	Edelweiss House, Off CST Road, Kalina, Mumbai-400098
14	UV Asset Reconstruction Company Limited	704, Deepali Building, 92, Nehru Place, New Delhi-110019
15	Meliora Asset Reconstruction Company Limited	106, Bharat Towers, 5 th Lane, Dwaraka Nagar, Visakhapatnam Andhra Pradesh -530016
16	Omkaara Assets Reconstruction Private Limited	9, M.P. Nagar First Street, Kongu Nagar Extension, Tirupur, Tamil Nadu 641 607
17	Prudent Asset Reconstruction Company Ltd	611, Sixth Floor, D Mall, Plot No. A-1, Netaji Subhash Place, Pitampura, New Delhi – 110 034
18	MAXIMUS ARC Limited	59A-18/1-5A, Sri Plaza Teachers Colony, Patamata, Vijaywada, Andhra Pradesh -520 008
19	CFM Asset Reconstruction Private Limited	A/3, Safal Profitaire, 5th Floor, Near Prahlad Nagar Garden, Ahmedabad363610, Gujarat
20	Encore Assets Reconstruction Company Private Limited	15th Floor, Eros Corporate Tower, Nehru Place, New Delhi - 110019
21	Rare Asset Reconstruction Pvt. Ltd	203, Gala Argos, Nr. Harikrupa Tower, Ellisbridge Gymkhana, Gujarat College Road, Ahmedabad - 380006
22	Suraksha Asset Reconstruction Private Limited	20th Floor, A - Wing, Naman Midtown, Elphinstone Road, Mumbai - 400013
23	Ambit Flowers Asset Reconstruction Private Limited	Ambit House, 449, Senapati Bapat Marg, Lower Parel, Mumbai - 400013

24	Indiabulls Asset Reconstruction Private Limited	M-62 & 63, First Floor, Connaught Place, New Delhi- 110 001
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Source: <https://rbidocs.rbi.org.in/rdocs/content/pdfs/LSCRCRBI07092016.pdf>

2.5 GOVERNMENT INITIATIVES

- The Government of India is planning to introduce a two percentage point discount in the Goods and Services Tax (GST) on business-to-consumer (B2C) transactions made via digital payments.
- A new portal named 'Udyami Mitra' has been launched by the Small Industries Development Bank of India (SIDBI) with the aim to improve credit availability to Micro, Small and Medium Enterprises' (MSMEs) in the country.
- Mr Arun Jaitley, Minister of Finance, Government of India, introduced 'The Banking Regulation (Amendment) Bill, 2017', which will replace the Banking Regulation (Amendment) Ordinance, 2017, to allow the Reserve Bank of India (RBI) to guide banks to resolve the problems of stressed assets.
- Under the Union Budget 2018-19, the Government has allocated Rs 3 trillion (US\$ 46.34 billion) towards the Mudra Scheme and Rs 3,794 crore (US\$ 586.04 million) towards credit support, capital and interest subsidy to MSMEs.

The Government and the regulator have undertaken several measures to strengthen the Indian banking sector.

- A two-year plan to strengthen the public sector banks through reforms and capital infusion of Rs 2.11 lakh crore (US\$ 32.5 billion), has been unveiled by the Government of India that will enable these banks to play a much larger role in the financial system and give a boost to the MSME sector. In this regard, the Lok Sabha has approved recapitalisation bonds worth Rs 80,000 crore (US\$ 12.62 billion) for public sector banks, which will be accompanied by a series of reforms, according to Mr Arun Jaitley, Minister of Finance, Government of India.
- The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017 Bill has been passed by Rajya Sabha and is expected to strengthen the banking sector.

2.6 ROAD AHEAD

Enhanced spending on infrastructure, speedy implementation of projects and continuation of reforms are expected to provide further impetus to growth. All these factors suggest that India's banking sector is also poised for robust growth as the rapidly growing business would turn to banks for their credit needs.

Also, the advancements in technology have brought the mobile and internet banking services to the fore. The banking sector is laying greater emphasis on providing improved services to their clients and also upgrading their technology infrastructure, in order to enhance the customer's overall experience as well as give banks a competitive edge.

Many banks, including HDFC, ICICI and AXIS are exploring the option to launch contact-less credit and debit cards in the market shortly. The cards, which use near field communication (NFC) mechanism, will allow customers to transact without having to insert or swipe.

2.7 Payment and settlement Systems in India- Vision 2018¹

The broad contours of Vision-2018 revolve around the 5 Cs:

1. *Coverage* – by enabling wider access to a variety of electronic payment services
2. *Convenience* – by enhancing user experience through ease of use and of products and processes
3. *Confidence* – by promoting integrity of systems, security of operations and customer protection
4. *Convergence* – by ensuring interoperability across service providers
5. *Cost* – by making services cost effective for users as well as service providers

Vision-2018 focuses on four strategic initiatives viz., responsive regulation, robust infrastructure, effective supervision and customer centricity.

- Firstly, RBI, in consultation with all the stakeholders, will continue its efforts to create a regulatory framework to promote twin objectives of enhanced coverage with interoperability of the payments system and convenience with security for the end-users in sync with emerging developments and innovations.
- Secondly, building a robust payments infrastructure in the country to increase the accessibility, availability, interoperability and security of the payment systems will continue to remain a key objective.
- Thirdly, Vision-2018 will focus on effectiveness of supervisory mechanisms to strengthen the resilience of the Financial Market Infrastructures (FMIs) and System Wide Important Payment Systems (SWIPS) in the country besides setting up appropriate oversight framework for new systems, and augmenting the data reporting and fraud monitoring systems.

1. Payment and settlement systems in India, Vision 2018, Department of Payment and Settlement Systems, RBI (<https://rbidocs.rbi.org.in/rdocs/PublicationReport/Pdfs/VISION20181A8972F5582F4B2B8B46C5B669CE396A.PDF>)

- Finally, Vision-2018 will adopt a customer centric approach to streamline the customer grievance redressal mechanism, focus on building customer awareness and education, and initiate customer protection measures.

Vision 2018 is expected to result in:

- i. Continued decrease in the share of paper-based clearing instruments;
- ii. Consistent growth in individual segments of retail electronic payment systems viz. NEFT, IMPS, Card transactions, mobile banking, etc.;
- iii. Increase in registered customer base for mobile banking;
- iv. Significant growth in acceptance infrastructure; and
- v. Accelerated use of Aadhaar in payment systems

2.8 SHG-BANK CREDIT LINKAGE¹

A major effort to provide banking services to the weaker and unorganised sector was the Bank Self Help Group Linkage Programme that was launched in early 1990s. The programme was started at the initiative of NABARD in 1992 to link the unorganised sector with the formal banking sector.

Under this programme, banks were allowed to open savings accounts for Self-Help Groups (SHGs). SHGs are registered/unregistered entities which usually has a membership of 15 to 20 members from very low income families, usually women. They mobilize savings from members and uses the pooled funds to give loans to the needy members. Under this programme, banks provide loans to the SHGs against group guarantee and the quantum of loan could be several times the deposits placed by such SHGs with the banks. Banks should consider entire credit requirements of SHG members, namely, (a) income generation activities, (b) social needs like housing, education, marriage, etc. and (c) debt swapping”.

Lending to SHGs should be included by the banks as part of their lending to the weaker sections. As per the RBI's latest (May 2016) Priority Sector Lending norms, bank credit to members of SHGs is eligible for priority sector advance under respective categories viz., Agriculture, Micro, Small and Medium Enterprises, Social Infrastructure and Others.

The recovery rates of loans are good and banks have found that the transaction cost of reaching the poor through SHGs is considerably lower rather than direct lending by the bank.

According to NABARD as on 31 March 2014, there were around 74.30 lakh savings-linked

1. <https://www.indianeconomy.net/splclassroom/what-is-self-help-group-shg-bank-linkage-programme/>

SHGs, covering over 9.7 crore poor households. The total savings of these SHGs with banks amounted to Rs. 9897 crore. The number of credit-linked SHGs under the programme was around 42 lakhs.

The initial phase of SHG movement saw concentration of SHGs in the southern parts of the country, but now the SHGs have spread more to the eastern and northeastern regions where the extent of financial exclusion is greater. The Government of India has also been using the SHGs for subsidy-linked credit schemes for the poor. NABARD offers grant assistance to NGOs that promote SHGs and link them to banks.

SBI has actively participated in SHG-Bank Credit Linkage programme since its inception in 1992 as a pilot project of NABARD. Since then, the Bank has made a steady progress in financing SHGs. Our market share in SHG credit linkage is 17.93% (March 2017). As on 31st March 2017, Bank's lending to SHGs is Rs.6,139 crore to 3.57 lac SHGs, of which 91% are women SHGs

Table 5: Products available at Retail Banking/ Personal Banking at SBI

SBI Term Deposits	SBI Loan For Pensioners
SBI Recurring Deposits	Loan Against Mortgage Of Property
SBI Housing Loan	Loan Against Shares & Debentures
SBI Car Loan	Rent Plus Scheme
SBI Educational Loan	Medi-Plus Scheme
SBI Personal Loan	Interest Rates
e-Invest (ASBA) - IPO	

2.9 RETAIL BANKING IN INDIA¹

Retail banking is, however, quite broad in nature - it refers to the dealing of commercial banks with individual customers, both on liabilities and assets sides of the balance sheet. Fixed, current / savings accounts on the liabilities side; and mortgages, loans (e.g., personal, housing, auto, and educational) on the assets side, are the more important of the products offered by banks. Related ancillary services include credit cards, or depository services. Today's retail banking sector is characterized by three basic characteristics:

- multiple products (deposits, credit cards, insurance, investments and securities);
- multiple channels of distribution (call centre, branch, Internet and kiosk); and
- multiple customer groups (consumer, small business, and corporate).

What is the nature of retail banking? In a recent book, retail banking has been described
1. https://rbi.org.in/scripts/BS_ViewBulletin.aspx?id=6698

as “hotter than vindaloo”. Considering the fact that vindaloo, the Indian-English innovative curry available in umpteen numbers of restaurants of London, is indeed very hot and spicy, it seems that retail banking is perceived to be the in-thing in today’s world of banking.

2.10 CORPORATE GOVERNANCE IN BANKING SECTOR

It is evident that banking and financial institutions are the strong backbone of any economy. This results in healthy economic condition of a country, which positively correlates with sound functioning of its banking sector. Functioning of banking and financial institutions differs with other corporate entities in many ways that makes corporate governance of banks very different and critical too. So, if a corporate fails to do proper governance, the fall outs can be restricted to the stakeholders, but on the other hand, if a banking or financial institution fails, the impact can spread rapidly through other banks and financial institutions, which ultimately have serious implication on financial system at large. Thus, corporate governance has equal importance in case of banks and financial institutions as well. In Indian market, the concept of corporate governance is emphasized considering the liberalization, privatization and globalization phase, whereby institutionalization of financial markets, foreign institutional investors (FIIs) became dominant players in the stock markets. This phase also left private sector companies with a realization that ‘investors keep invested in those corporate, which create values for their investors’. Thus, in this way, corporate essentially requires to adhere with the honest, fair and transparent corporate procedures and practices.

Banks play an important role in the economic development of a nation. As intermediaries in the Financial Sector, banks also act as trustees of the funds of the depositors. For an appropriate functioning banks an effective Corporate Governance practices should become an integral part of bank management. Banks should have good Corporate Governance which should be much more than complying with legal and regulatory requirements. Good governance facilitates effective management and control of business, enabling it to maintain a high level of business ethics and to provide value additions to all their stakeholders. The objectives of corporate governance would be :

1. To protect and enhance shareholders value
2. To protect the interest of all other stakeholders such as customers, employees and society at large
3. To ensure transparency and integrity in communication and to make available full, accurate and clear information to all concerned
4. To ensure accountability for performance and customer service and to achieve excellence at all levels

Role of the Board of Directors

- (i) The Bank's Board of Directors should meet regularly and to provide effective leadership and insights in business and functional areas. They also should monitor Bank's performance.
- (ii) Setting up of a framework of strategic control and continuously reviewing its efficacy.
- (iii) Implementation, review and monitoring the integrity of its business and control mechanisms
- (iv) Overseeing the risk profile of the Bank.
- (v) Ensuring expert management and decision-making, internal control and reporting requirements.
- (vi) Maximizing the interests of its stakeholders.

2.11 COMPLIANCE OFFICER

A senior executive is made responsible in respect of compliance issues with all applicable statutes, regulations and other procedures, policies as laid down by the GOI/RBI and other regulators and the Board, and reports deviations, if any.

Audit Committee (AC)

The Audit committee functions as per RBI guidelines and complies with the provisions of Clause 49 of the Listing Agreement to the extent that they do not violate the directives/guidelines issued by RBI. Functions of Audit Committee:

- (a) Audit Committee provides direction and also oversees the operation of the total audit function in the Bank.
- (b) Audit Committee also appoints Statutory Auditors of the Bank and reviews their performance from time to time.
- (c) Ensures transparency by reviewing bank's financials, Risk Management, IS Audit Policies and Accounting policies, systems and procedures.
- (d) Audit Committee also reviews the internal inspection/audit plan and functions in the Bank – the system, its quality and effectiveness in terms of follow-up.
- (e) Audit Committee focuses on the follow up of implementation: – KYC-AML Guidelines; – Major areas of housekeeping; – Compliance of Clause 49 and other guidelines issued by SEBI from time to time;

- (f) Audit Committee follows up on all the issues raised in RBI's Annual Financial Inspection Reports under Section 35 of Banking Regulation Act, 1949 and Long Form Audit Reports of the Statutory

2.12 GOVERNANCE REFORMS¹

The process of governance reforms started with "Gyan Sangam" - a conclave of PSBs and FIs organized at the beginning of 2015 in Pune which was attended by all stakeholders including Prime Minister, Finance Minister, MoS (Finance), Governor, RBI and CMDs of all PSBs and FIs. There was focus group discussion on six different topics which resulted in specific decisions on optimizing capital, digitizing processes, strengthening risk management, improving managerial performance and financial inclusion. The decision to set up a Bank Board Bureau which was subsequently announced in the Budget Speech of Hon'ble Finance Minister, came out of the recommendations of Gyan Sangam. Also, at this conclave, Hon'ble Prime Minister made a significant promise to the bankers that there would be no interference from any Government functionary in the matter of their commercial decisions.

This promise of Hon'ble Prime Minister was immediately translated into a circular issued to all banks assuring them of "no interference policy", but at the same time asking them to have robust grievance redressal mechanism for borrowers, depositors as well as staff. The Gyan Sangam recommendations included strengthening of risk management practices. Each bank agreed to nominate a senior officer as Chief Risk Officer of the bank. A special training programme for Chief Risk Officers was recently organized by Centre for Advanced Financial Research and Learning (CAFRAL).

The Government has been constantly engaging with the Banks through review meeting and sessions for strategic reviews etc. The focus is on improving HR management practices and removing barriers so that the Banks can share and work together on common resources. Various steps have been taken to empower Bank's Boards.

Policies framed by SBI under Corporate Governance Initiative²

- Policy for Determination of Materiality and Disclosure of Events/Information.
- Policy for Determining Material Subsidiaries and Corporate Governance Requirements with respect to Subsidiaries
- Policy on Materiality of Related Party Transactions and on dealing with Related Party Transactions.
- Archival Policy

¹ http://financialservices.gov.in/sites/default/files/PressnoteIndardhanush_1.pdf

² <https://www.sbi.co.in/portal/web/corporate-governance/policies>

- Dividend Distribution Policy
- Policy SBI Compensation -2018
- Sustainability and Business Responsibility Policy
- FEDAI & FIMMDA Code
- Clouds over Corporate Governance in Banks

2.13 DOCUMENTARY TRANSACTIONS

Information Utility is going to change the documentary transactions landscape as:

- An Information Utility is a professional organization (which is registered with IBBI under Section 210 of IBC, 2016 as per the eligibility criteria prescribed) that will collect financial information, get the same authenticated by other parties connected to the debt & store the same and provide access to the Resolution Professionals, Creditors and other stake holders in the Insolvency Resolution Process, so that all stake holders can make decisions based on the same information.
- The New Law IBC,2016 consolidates the existing framework and creates a new institutional structure, by setting up of Information Utility Companies, which will store all the credit information of Corporates/entities/persons; The Certificate & data furnished by IUs are accepted by NCLT/DRTs as legal evidence.
- This IU set-up is expected to contribute significantly for reduction of NPAs in banking sector, as the code aims to resolve the insolvencies in a time bound manner.
- The information utilities shall act as a regulated information agency which shall accept, electronically record, get authentication, maintain and provide access to financial information to the persons as may be specified in the Act, e.g., creditors, Adjudicating Authority and other persons having interest in the information.

2.14 CONCEPTUAL FRAMEWORK OF AN INFORMATION UTILITY

IBC sets the objectives for this key economic reform of addressing insolvency and to improve the ease of doing business. The highlights are:

- Low time to resolution
- Low loss in recovery
- Higher levels of debt financing across more debt instruments

- To promote entrepreneurship
- Consolidate and amend the laws relating to restructuring and insolvency resolution of corporates, partnership firms and individuals

Information utility is designed as an institution for enforcement of contracts and is a pioneering effort:

To provide undisputed information for initiation of insolvency process

- IU to act like a Credit Repository
- Accept financial information from financial creditors and operational creditors
- Financial information will get authenticated by all the parties of the debt and store to be used as evidence in the legal process
- Provides a platform for the creditors and debtors-submission and authentication
- IU is a Cost effective tool for
- Proof of Borrower;
- Proof of borrowing;
- Proof of Security interest; and
- Proof of Default

2.15 INTERNATIONAL BANKING

“International Banking” can be defined as a sub-set of commercial banking transactions and activity having a cross-border and/or cross currency element. Multinational banking refers to the location and ownership of banking facilities in a large number of countries and geographic regions. International banking comprises a range of transactions that can be distinguished from purely domestic operations by (a) the currency of denomination of the transaction, (b) the residence of the bank customer and (c) the location of the booking office.

SECTION 3

LEGAL FRAMEWORK

3.1 INDUSTRY TYPE (CONSTITUTION)

- Listed Private Sector Banks incorporated as Companies
- Listed Public Sector Banks constituted under Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970 and 1980.
- Unlisted Public Sector Banks
- Cooperative banks

3.2 APPLICABLE LAWS

Insolvency Specific Laws

- Companies Act, 2013
- Banking Companies (Acquisition and Transfer of Undertaking Act, 1970 and 1980 and Regulations made thereunder
- Insolvency and Bankruptcy Code, 2016
- The Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002
- The Recovery Of Debts Due To Banks And Financial Institutions Act, 1993
- Banking Regulation Act, 1949
- State wise Registrars of Cooperative Societies, Act
- Circulars issued by RBI
- Consumer Protection Act
- Payment and Settlement Systems Act, 2007

Concerned Tribunals

- RBI
- Debt Recovery Tribunal
- NCLT and NCLAT
- Banking Ombudsman
- The Banking Codes and Standards Board of India

Relevant Regulations

In India, there are various types of banks and they were set up under different Acts passed by the Central and State Governments as under:

Table 6a: Category wise Legal Framework

Banks - category	Legal Frame Work
State Bank of India	State Bank of India Act, 1955
SBI Associate Banks	State Bank (Subsidiary Banks) Act, 1959
Nationalised Banks - 1969	Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970
Nationalised Banks - 1980	Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980
Regional Rural Banks	Regional Rural Banks Act, 1976
Private Sector Banks	Indian Companies Act, 1986
Co-operative Banks	Co-operative Societies Acts (State/Central) and Banking Laws (Applicable to Cooperative Societies) Act, 1965
	Banking Laws (Application to Co-operative Societies Act, 1965
	Reserve Bank of India Act, 1934

Table 6b: Category wise Legal Framework (Development Banks)

Industrial Finance Bank of India	Industrial Finance Corporation Act of 1948
Small Industries Development Bank of India	The Small Industries Development Bank of India Act, 1989

National Bank for Agriculture and Rural Development	The National Bank For Agriculture And Rural Development Act, 1981
Export-Import Bank of India	Export-import Bank of India Act, 1981
The National Housing Bank	National Housing Bank Act, 1987

Table 6c : International Banking

FOREIGN EXCHANGE MANAGEMENT ACT 1999
To conserve foreign exchange and to it to facilitate external trade and payments and also to misuse develop foreign exchange markets in India Violation of FERA was a criminal offence Violation of FEMA is a civil offence Offences under FERA were not compoundable Offences under FEMA are compoundable While many restrictions were part of FERA in respect Almost all current account transactions are free except of transfer of funds a few FERA was draconian criminal law FEMA is a civil law.

Other Laws

- Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002
- The Bankers' Books Evidence Act, 1891
- Recovery of Debts due to Banks & Financial Institution Act, 1993
- Credit Information Companies (Regulation) Act, 2005
- Prevention of Money Laundering Act, 2002
- The Deposit Insurance and Credit Guarantee Corporation Act, 1961
- Industrial Disputes (Banking and Insurance Companies) Act, 1949
- Information Technology Act, 2000
- Credit Information Companies (Regulation) Act (CICRA), 2005

Concerned Ministries

Ministry of Finance, Department of Financial Services

The mandate of the Department of Financial Services covers the functioning of Banks, Financial Institutions, Insurance Companies and the National Pension System. The Department is headed by the Secretary, (Financial Services) who is assisted by two Additional Secretary (AS), six Joint Secretaries(JS), two Economic Advisers(EA) and a Deputy Director General(DDG).

3.3 PUBLIC SECTOR BANKS' REVAMP PLAN¹

The Public Sector Banks (PSBs) play a vital role in India's economy. In the past few years, because of a variety of legacy issues including the delay caused in various approvals as well as land acquisition etc., and also because of low global and domestic demand, many large projects have stalled. Public Sector Banks which have got predominant share of infrastructure financing have been sorely affected. It has resulted in lower profitability for PSBs, mainly due to provisioning for the restructured projects as well as for gross NPAs. The present Government has put in place a comprehensive framework for improving PSBs. Most recently, we have made the announcement of capital allocation by Government for PSBs in the next four years. Announcement of capital plans for the PSBs is only one of the many steps taken by the Government. The other steps taken by Government are as follows:-

A) Appointments

The Government decided to separate the post of Chairman and Managing Director by prescribing that in the subsequent vacancies to be filled up the CEO will get the designation of MD & CEO and there would be another person who would be appointed as non-Executive Chairman of PSBs. This approach is based on global best practices and as per the guidelines in the Companies Act to ensure appropriate checks and balances. The selection process for both these positions has been transparent and meritocratic. The entire process of selection for MD & CEO was revamped. Private sector candidates were also allowed to apply for the position of MD & CEO of the five top banks i.e. Punjab National Bank, Bank of Baroda, Bank of India, IDBI Bank and Canara Bank. Three stage screening was done for the MD's position culminating into final interview by three different panels.

B) Bank Board Bureau

The announcement of the Bank Board Bureau (BBB) was made by Hon'ble Finance Minister in his Budget Speech for the year 2015-16. The BBB will be a body of eminent professionals and officials, which will replace the Appointments Board for appointment of Whole-time Directors as well as non-Executive Chairman of PSBs. They will also constantly engage with the Board of Directors of all the PSBs to formulate appropriate strategies for their growth and development. The structure of the BBB is going to be as follows; the BBB will comprise of a Chairman and six more members of which three will be officials and three experts (of which two would necessarily be from the banking sector). The Search Committee for members of the BBB would comprise of the Governor, RBI and Secretary (FS) and Secretary (DoPT) as members. The BBB would broadly follow the selection methodology as approved in relevant ACC guidelines. Banking Regulatory Powers Should Be Ownership Neutral.²

1. http://financialservices.gov.in/sites/default/files/PressnoteIhdardhanush_1.pdf

2. Urjit R. Patel, Governor, Reserve Bank of India – March 14, 2018 – Inaugural Lecture : Centre for Law & Economics, Centre for Banking & Financial Laws Gujarat National Law University, Gandhinagar (https://www.rbi.org.in/Scripts/BS_SpeechesView.aspx?id=1054)

C) Capitalization

As of now, the PSBs are adequately capitalized and meeting all the Basel III and RBI norms. However, the Government of India wants to adequately capitalize all the banks to keep a safe buffer over and above the minimum norms of Basel III. It has, therefore been, estimated how much capital will be required this year and in the next three years till FY 2019. If the internal profit generation which is going to be available to PSBs (based on the estimate of average profit of the last three years), the capital requirement of extra capital for the next four years up to FY 2019 is likely to be about Rs.1,80,000 crore. This estimate is based on credit growth rate of 12% for the current year and 12 to 15% for the next three years depending on the size of the bank and their growth ability. We are also presuming that the emphasis on PSBs financing will reduce over the years by development of vibrant corporate debt market and by greater participation of Private Sector Banks.

D) (a) De-stressing PSBs

The infrastructure sector and core sector have been the major recipient of PSBs' funding during the past decades. But due to several factors, projects are increasingly stalled/ stressed thus leading to NPA burden on banks. In a recent review, problems causing stress in the power, steel and road sectors were examined. It was observed that the major reasons affecting these projects were delay in obtaining permits / approvals from various governmental and regulatory agencies, and land acquisition, delaying Commercial Operation Date (COD); lack of availability of fuel, both coal and gas; cancellation of coal blocks; closure of Iron Ore mines affecting project viability; lack of transmission capacity; limited off-take of power by Discoms given their reducing purchasing capacity; funding gap faced by limited capacity of promoters to raise additional equity and reluctance on part of banks to increase their exposure given the high leverage ratio; inability of banks to restructure projects even when found viable due to regulatory constraints. In case of steel sector the prevailing market conditions, viz. global over-capacity coupled with reduction in demand led to substantial reduction in global prices, and softening in domestic prices added to the woes.

A meeting was held on 28th April, 2015 at Mumbai first with all the banks and concerned Ministries to understand the problems for each sector. Subsequently, meetings were held with project promoters of steel, power and road sectors at various levels to understand further the pain points of each and every sector. Some of the actions proposed / undertaken after these meetings are as follows:- (i) Project Monitoring Group (Cab. Sectt.) / Respective Ministries will pursue with concerned agencies to facilitate issue of pending approval/ permits expeditiously. (ii) Pending policy decisions to facilitate project implementation/ operation would be taken up by respective Ministries/Departments. (iii) Ministry of Coal/PNG

will evolve policies to address long-term availability of fuel for these projects. (iv) Respective Discoms will be provided hand-holding towards enabling early reforms. (v) Promoters will be asked to bring in additional equity in an attempt to address the worsening leverage ratio of these projects. Wherever the promoters are unable to meet this requirement, the Banks would consider viable options for substitution or taking over management control. (vi) The possibility of changing the extant duty regime without adversely impacting the downstream user industry would be considered by the Government. The decision to increase import duty on steel has already been taken. (vii) RBI has been requested to consider the proposal of the Banks for granting further flexibility in restructuring of existing loans wherever the Banks find viability.

D) (b) Strengthening Risk Control measures and NPA Disclosures

Besides the recovery efforts under the DRT & SARFASI mechanism the following additional steps have been taken to address the issue of NPAs:

- i. RBI has released guidelines dated 30 January, 2014 for "Early Recognition of Financial Distress, Prompt Steps for Resolution and Fair Recovery for Lenders: Framework for Revitalizing Distressed Assets in the Economy" suggesting various steps for quicker recognition and resolution of stressed assets:
 - Creation of a Central Repository of Information on Large Credits (CRILC) by RBI to collect, store, and disseminate credit data to banks on credit exposures of Rs. 5 crore and above,
 - Formation of Joint Lenders Forum (JLF), Corrective Action Plan (CAP), and sale of assets – The Framework outlines formation of JLF and corrective action plan that will incentivise early identification of problem cases, timely restructuring of accounts which are considered to be viable, and taking prompt steps by banks for recovery or sale of unviable accounts

ii. Flexible Structuring of Loan-Term Project Loans to Infrastructure and Core Industries – RBI issued guidelines on July 15, 2014 and December 15, 2014:

Long-term financing for infrastructure has been a major constraint in encouraging larger private sector participation in this sector. On the asset side, banks will be encouraged to extend long term loans to infrastructure sector with flexible structuring to absorb potential adverse contingencies, (also known as the 5/25 structure).

iii. Wilful Default/Non-Cooperative Borrowers:

- RBI has now come out with new category of borrower called Non-Cooperative borrower. A non-cooperative borrower is a borrower who does

not provide information on its finances to the banks. Banks will have to do higher provisioning if they give fresh loan to such a borrower.

- Fresh exposure to a borrower reported as non-cooperative will necessitate higher provisioning. Banks/FIs are required to make higher provisioning as applicable to substandard assets in respect of new loans sanctioned to such borrowers as also new loans sanctioned to any other company that has on its board of directors any of the whole time directors/promoters of a non-cooperative borrowing company or any firm in which such a non-cooperative borrower is in charge of management of the affairs.

iv. Asset Reconstruction Companies:

Taking further steps in the area, RBI has tightened the norms for Asset Reconstruction Companies (ARCs), vide guidelines dated August 5, 2014, where the minimum investment in Security Receipts should be 15% which was earlier 5%. This step will increase the cash stake of ARCs in the assets purchased by them. Further, by having more cash up front, the banks will have better incentive to clean their balance sheet.

v. Establishment of six New DRTs:

Government has decided to establish six new Debt Recovery Tribunals (DRT) (at Chandigarh, Bengaluru, Ernakulum, Dehradun, Siliguri, Hyderabad) to speed up the recovery of bad loans of the banking sector

E) Empowerment:

The Government has issued a circular that there will be no interference from the Government, hence the Banks are encouraged to take their decision independently keeping the commercial interest of the organization in mind. A cleaner distinction between interference and intervention has been made. With autonomy comes accountability, accordingly Banks have been asked to build robust Grievances Redressal Mechanism for customers as well as staff so that concerns of the affected are addressed effectively in time bound manner. The Government intends to provide greater flexibility in hiring manpower to Banks. The Government is committed to provide required professionals as NoDs to the Board so that well-informed and well-discussed decisions are taken.

F) Framework of Accountability:

The present system for the measurement of bank's performance was a system called Sol- Statement of Intent. Based on certain criteria decided by Ministry of Finance, the banks used to come up with their annual target figures which was discussed between the Ministry and banks and finalized. The entire exercise took very long and sometimes

the targets for banks used to be finalized only towards the end of the year which is not a desirable thing to do. There are two changes we are making in this:

- A new framework of Key Performance Indicators (KPIs) to be measured for performance of PSBs is being announced. It is divided into four sections totaling up to 100 marks. 25 marks each are allotted to indicators relating to efficiency of capital use and diversification of business/processes and 15 marks each are allotted for specific indicators under the category of NPA management and financial inclusion. The total marks to be allotted for quantifiable, measurable criteria is 80.
- The remaining 20 marks are reserved for measurement of qualitative criteria which includes strategic initiatives taken to improve asset quality, efforts made to conserve capital, HR initiatives and improvement in external credit rating. The qualitative performance would be assessed based on a presentation to be made by banks to a committee chaired by Secretary, Department of Financial Services.

The new framework for KPIs is in the docket

Operating performance evaluated through the KPI framework will be linked to the performance bonus to be paid to the MD & CEOs of banks by the Government.

- (a) The quantum of performance bonus is also proposed to be revised shortly to make it more attractive.
- (b) DFS has issued a circular to PSBs laying down strict timelines for filing of complaints of fraud cases with CBI as well as for monitoring each and every case almost on a day-to-day basis.
- (c) Streamlining vigilance process for quick action for major frauds including connivance of staff. RBI has issued guidelines in May, 2015 to streamline the framework for dealing with the loan frauds. Under the new guidelines, a timeframe of six months, red flagging of accounts, constitution of a Risk Management Group (RMG) in banks to monitor pre-sanction and disbursement, nodal officer for filing complaints with CBI, provisioning in four quarters and creation of Central Fraud Registry have been laid down. Department of Financial Services (DFS) has directed PSBs to make CVO as the nodal officer for fraud exceeding Rs 50 crore, in consortium lending the lead bank will file the FIR for all banks and CBI has designated one officer for reviewing and monitoring progress of bank's fraud cases.

All commercial banks in India are regulated by the RBI under the Banking Regulation (BR)

Act of 1949. Additionally, all public sector banks are regulated by the Government of India (GoI) under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970; the Bank Nationalisation Act, 1980; and the State Bank of India Act, 1955. Section 51 of the amended BR Act explicitly states which portions of the BR Act apply to the PSBs, most common thread across the omissions being complete removal or emaciation of RBI powers on corporate governance at PSBs:

1. RBI cannot remove directors and management at PSBs as Section 36AA(1) of the BR Act is not applicable to the PSBs.
2. Section 36ACA(1) of the BR Act that provides for supersession of a Bank Board is also not applicable in the case of PSBs (and regional rural banks or RRBs) as they are not banking companies registered under the Companies Act.
3. Section 10B(6) of the BR Act that provides for removal of the Chairman and Managing Director (MD) of a banking company is also not applicable in the case of PSBs.²
4. RBI cannot force a merger in the case of PSBs as per Section 45 of the BR Act.
5. PSB's banking activity does not require license from RBI under Section 21 of the BR Act; hence, RBI cannot revoke a license under Section 22(4) of the BR Act as it can in the case of private sector banks.
6. RBI cannot trigger liquidation of PSBs as per Section 39 of the BR Act.
7. Furthermore, in a remarkable exception of sorts, in some cases there is duality of Managing Director and the Chairman – they are the same – implying the MD is primarily answerable only to himself or herself.

This legislative reality has in effect led to a deep fissure in the landscape of banking regulatory terrain: a system of dual regulation, by the Finance Ministry in addition to RBI.³ I will now take a few minutes to explain why this fissure or the fault line is bound to lead to tremors such as the most recent fraud.

Temptation to engage in fraud at the level of employee or employees is always present, in banks (or in corporations), be it in public sector or private sector. The question then is whether there is adequate deterrence faced by employees from undertaking frauds and enough incentives for management to put in place preventive measures to pre-empt frauds. In the case of banks, three potentially powerful mechanisms could induce discipline against frauds:

- **Investigative/vigilance/legal deterrence** : Criminal investigation of frauds and attach penalties can serve as an effective deterrence if reporting and investigation

are expedient and penalties are adequately severe relative to the gains from fraudulent activity.

- **Market discipline** : Fraudulent activity can be a net loss to the bottom-line; in this case, bank investors would impose deterrence, e.g., uninsured creditors might “run” on the bank inducing liquidity problems, or shareholders might “exit”, effectively raising the cost of capital and inducing solvency questions. In anticipation of such disruptive outcomes that might cause loss of control, management and board members may put in place governance mechanisms to prevent or reduce the incidence of fraud and/or hold larger buffers in the capital structure to bear losses when fraud materializes.
- **Regulatory discipline** : Banks in most parts of the world, however, have a significant portion of deposit funding that is insured, and since banks serve critical payments and settlements function, they are often too big and too many to fail. Hence, a part of the market discipline is weakened as a trade off with financial stability and is substituted by delegation of supervisory and regulatory powers to a banking regulator. Detection and punishment by the regulator then need to be effective to discipline fraud.

How do these mechanisms work in case of private and public sector banks in India?

Investigative and formal enforcement process takes in our country, perhaps for the right reasons, a fair bit of time. Indeed, RBI data on banking frauds suggests that only a handful of cases over the past five years have had closure, and cases of substantive economic significance remain open. As a result, the overall enforcement mechanism – at least until now – is not perceived to be a major deterrent to frauds relative to economic gains from fraud.

It is fair to say that in case of private sector banks, the real deterrence arises from market and regulatory discipline, and their confluence. A private bank CEO’s primary concern is whether s/he will be able to raise capital when the need arises or even whether she/he will still be running the bank the next day. The point is that they could be readily cautioned through their Boards and even replaced by the RBI in case of large or persistent irregularities. Further, a private bank failing to meet bank solvency standards and under RBI’s “prompt corrective action” (PCA) would find it hard to raise capital, whereby it would need to put the house in order at swift notice so it can raise funding from markets and get back to the growth path. In turn, there are incentives to invest in governance, so as to limit frauds and regulatory violations, and to respond with alacrity when such incidents do arise.

In contrast, the market discipline mechanism for public sector banks is appreciably weaker

compared to that at private banks. There is implicitly a stronger perceived sovereign guarantee for all creditors of PSBs, and the principal shareholder – the Government – has not so far been interested in fundamentally modifying the ownership structure. From an economic standpoint, this weakened market discipline should imply that the Government would prefer stronger regulatory discipline of these banks, not weaker. However, as I explained above at length, and perhaps since the original idea behind bank nationalization was complete Government control over credit allocation to the economy, the situation in India is exactly the reverse: RBI's regulatory powers over PSBs are weaker than those over the private sector banks.

The BR Act exemptions for PSBs mean that the one agency – the regulatory – that can respond relatively quickly against banking frauds or irregularities cannot take effective action. Hence, for example, MDs at PSBs find it comfortable to tell media that business will be as usual for them under RBI's Prompt Corrective Action framework as even if they do not meet the stipulated restrictions of the framework, the ultimate authority to give them for is with the Government and not with the RBI.

It is not entirely surprising that there has been a recurring theme in report after report on financial sector reforms in the country that has suggested strengthening of PSB governance through improvement in top management and Board Members appointments; or, ownership neutrality in banking regulatory powers; or improving market discipline by considering a variety of diverse ownership structures.

Will we let another opportunity to catalyse fundamental reform at PSBs pass by?

It is fully transparent what needs to be done. From the RBI's standpoint, legislative changes to the BR Act that make our banking regulatory powers fully ownership neutral – not piecemeal, but fully – is a minimum requirement. It might also be the most readily feasible of these options.

3.4 EMERGING REGULATORY AND SUPERVISORY ISSUES IN INDIA

FinTech has significant implications for the entire financial system in India. The multiplicity of firms and a mosaic of business models complicate the classification of the various types of activities, products and transactions covered under the FinTech spectrum. Though the western world has been using the term 'FinTech' for some time, it has only recently become a buzzword in India. Notwithstanding this, FinTech has, since quite some time, gathered momentum in the country. However, as of now, the FinTech risks are being looked at more in terms of what is associated with the traditional IT systems, such as cyber security risks. While the IT related risks are no doubt multiplying manifold under FinTech, the whole gamut of issues under the FinTech umbrella, particularly those of regulatory concern, have to be responded to on priority. It is, therefore, necessary to examine these issues and

outline the contours of an appropriate regulatory strategy. However, FinTech treads across several activities that are within the scope of different financial sector regulators.

RBI issued a consultation paper on P2P lending in April 2016. Some of the issues raised in the consultation paper are as under:

- Regulations may also be perceived as too stringent, thus stifling the growth of an innovative, efficient and accessible avenue for borrowers who either do not have access to formal financial channels or are denied loans by them.
- The market for P2P lending is currently in a nascent stage and they neither pose an immediate systemic risk nor any significant impact on monetary policy transmission mechanism.
- In its nascent stage, this industry has the potential to disrupt the financial sector and throw surprises. A sound regulatory framework will prevent such surprises.
- P2P lending promotes alternative forms of finance, where formal finance is unable to reach and also has the potential to soften the lending rates as a P2P Lending result of lower operational costs and enhanced competition with the traditional lending channels.
- If the sector is left unregulated altogether, there is the risk of unhealthy practices being adopted by one or more players, which may have deleterious consequences.

It has been proposed in the consultation paper to bring the P2P lending platforms under the purview of Reserve Bank's regulation by notifying P2P platforms as NBFCs.

Reg Tech

Reg Tech is a sub-set of FinTech that focuses on technologies that facilitate the delivery of regulatory requirements more efficiently and effectively than existing capabilities. In July 2015 the FCA issued a call for input entitled "Supporting the development and adoption of Reg Tech". Some of the key Reg Tech processes and their benefits are as under:

- *Alternative reporting methods* : Technology that allows data to be provided (or taken) in a different way.
- *Shared utilities* : Technology that allows firms to share services via the cloud and/or online platforms.
- *Semantic tech and data point models* : Technology that converts regulatory text into a programming language.

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- *Shared data ontology* : A formal naming and definition of the types, properties, and interrelationships of entities.
 - *Robo-Handbook* : Interactive technology that allows firms to understand the impact of regulations on their systems and processes.
 - *Big data analytics* : Advanced analytics solutions that can interpret vast amounts of structured and unstructured data that could be stored in 'data lakes' (storage repositories).
 - *Risk and compliance monitoring* : Technology that allows an always-on, non-invasive surveillance of transactions, behaviour and communications.
 - *Inbuilt compliance* : Regulatory requirements can be coded into automated rules which are applied when relevant.
 - *System monitoring and visualization* : Technology that captures and traces all messages created by systems and their interactions.

SECTION 4

CONTRIBUTION OF COMPANY SECRETARY

4.1 INTRODUCTION

.During the last decade rapid innovations in financial markets, globalization & deregulation have not only changed the functioning of the banks beyond recognition but in the process banks are now exposed to various types of risks and their activities have become more complex. It is not always possible for the banks to meet the demands of the new challenges from their internal managerial resources. Due to the specialized legal and technical nature of the requirements, the banks are seeking assistance from many outside areas for professional services. The Company Secretaries (CS) having first hand experience in handling legal, regulatory and accounting matters can play a vital role in assisting the banks in managing their affairs more effectively, and providing results in an efficient manner.

Company Secretary in Practice with their legal orientation can lend their professional assistance in legal and also in Investor Management, Stock Exchange and other Secretarial Compliances. All banks and financial institutions should therefore consider appointing qualified Company Secretary as the (i) Secretary to the Board and (ii) As a Compliance Officer for monitoring and reporting compliance with various regulatory / accounting requirements.

4.2 NEW AREAS OF PROFESSIONAL SUPPORT

Under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 a Practicing Company Secretaries can lend various services as:

- Incorporation and monitoring secretarial compliances of Securitization and Reconstruction Companies of the Banks and Financial Institutions.
- Compliances of various R.B.I. formalities for such Securitisation and Reconstruction Companies.
- Can assist in debt recovery and enforcement of security interest by representing the Banks and Financial Institutions before the Debt Recovery Tribunal and its Appellate tribunal.

- Can be appointed to manage secured assets as third party intermediaries and act on behalf of Securitisation and Reconstruction Companies.
- To act as a authorized representative before the Central Registry proposed to be set up under the new securitization Act for the purpose of registration of transaction of Securitization & Reconstruction of financial assets & creation of security interest.
- Legal & Secretarial Compliance Report of assisted Companies of various laws applicable to them. This is most suitable in cases where banks & Financial Institution have appointed their nominee Director on the board of assisted Companies
- Spot Audit conducted generally in case of large advances for verifying implementation on part of Borrower of compliance of terms & conditions of availing Loan facility.
- Certification with respect to insurance of secured assets.
- Assistance in project financing, Merchant banking activities & raising of funds through public deposits & from Capital & Money market and related activities like listing & delisting of securities of these institutions.
- In Management & Monitoring of Risk of exposures both in credit & investment by the banks with special reference to managing Investment Portfolio in Banks & Financial Institutions, review of internal control systems and the adequacy of the risk management process and upgradation thereof and ensuring compliance with the statutory/ regulatory framework.
- Assistance in consortium/ Institutional lending; Venture Capital funding; In Loan Syndication services and also managing and giving advisory services in mandates issued to Banks & Financial Institutions.
- Assisting Banks & Financial Institutions in their Corporate Restructuring.
- Assist in Depository activities of Banks & Financial Institutions.
- Appearance as an authorized representative before Regulatory Authorities like Central Government, Company Law Board, proposed National Company Law Tribunal & Appellate Tribunal, MRTI Commission, Consumer Forums, Securities Appellate Tribunal, BIFR & DRT on behalf of the banks and financial institutions.
- In Management, control & elimination of Non Performing Assets (NPA's). The large portion of NPA's is largely accounted from the corporate sector.

4.3 DEVELOPMENT OF GOOD GOVERNANCE PRACTICES

As transparency and openness is the essence of corporate governance and reporting/disclosures to the board, public and shareholders has a significant place. Banks have to comply with the directions given to it in writing under sections relating to banking policy and should not be managed in a manner detrimental to the interests of its depositors. Thus Company Secretaries have a major role to play in this regard in assisting the Board not only in the agenda items but also guiding them regarding various provisions of the Companies Act, 2013, obligations/liabilities of directors under various Acts and assisting them in normal course of board meetings. Secretary to the Board is also an important functionary and more important for Corporate Governance. The Consultative Group of Directors of Banks/financial institutions set up by the RBI under the chairmanship of Dr. A. S. Ganguly has also recognised the critical role the CS can play in implementing good governance in banks. Thus Company Secretaries can play a major role in the following areas in the banking sector:

- Compliance of banking laws
- Ensuring Corporate Governance Practices
- Suspension of Business And Winding up of Banking Companies
- Act as a liquidators
- Procedure for amalgamation of banking companies.
- Compromise arrangement between banking company and creditors.
- Prepare scheme of reconstitution or amalgamation
- Public examination of directors and auditors.
- Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI Act)
- Risk Management
- Securities Market
- Documentation Audit
- Stock Audit
- Concurrent Audit
- Internal Audit
 - Bank Investment

- Reconciliation of Inter Branch Accounts
- Borrowings from Other Banks
- Fees and Travelling Expenses of Employees
- Renewal of Credit Limit
- Revenue Audit
 - Interest Charge on Advances
 - Cash Credit/Over Draft
 - Interest Paid on Deposits
 - Bills Purchased
 - Expenses
 - Income From Investment

CS is well recognised as Governance Professionals and are most apt to certify regarding governance standards being followed at the company. The Company Secretary are widely recognized as compliance officers and have a reputation of acting as watchdog to ensure compliance of various laws.

The banks are already recruiting Chartered Accountants, Engineers, and various other professionals. These professionals are being utilized not just for internal bank related functions, but also to ensure that all is well with the banks customers and that the public money is safe in the hands of borrowers. With the greater recognition about importance of Governance, the bank should seriously contemplate about recruiting Company Secretary which will help the bank ensure that best governance standards are being followed at the end of its corporate clients and as a result not only benefit the bank but will also benefit the economy as whole.

It is also high time that the Bank considers establishing a specialized cadre and starts recruiting a Company Secretary and assigning them specialised work to ensure that the Governance standards of its Corporate Clients along with those of the bank complying with the various laws applicable on them.

4.4 FUNCTIONS OF CS IN EMPLOYMENT

As per SBI ADVERTISEMENT NO. CRPD/CON/VPCS/2015-16/08, regarding recruitment of vice president - compliance (Company Secretary)

Roles and Responsibilities for Vice President – Compliance (Company Secretary)

- Ensuring compliance of various Regulations of SEBI Listing Regulations, and related RBI/GOI provisions/Regulations and SBI Act/ Regulations.
- Ensuring conformity with the regulatory provisions applicable to SBI in letter and spirit.
- Coordination with and reporting to the SEBI, recognized stock exchange(s) and depositories and compliance with rules, regulations and other directives of these authorities.
- Ensuring that the correct procedures have been followed that would result in the correctness, authenticity and comprehensiveness of the information, statements and reports filed by SBI under SEBI Listing Regulations. Periodical back testing of information.
- Monitoring emails of grievance redressal division as designated by SBI for the purpose of registering complaints by investors.
- Submission of periodical returns/ information to Stock Exchanges as per statutory/ regulatory requirement.
- Submission of necessary disclosures to Stock Exchanges in terms of Bank's Fair Disclosure Policy.
- Capital raising exercise i.e. Preferential Issue, QIP, and Rights issue, FPO, Bonds / Debt Capital etc.
- Ensuring compliance under Code of Conduct, Insider Trading Regulations and necessary reporting to Stock Exchanges.
- Compliance related to conduct of Annual General Meeting (AGM) of shareholders of the bank.
- Preparation of probable questions & answers booklet for the AGM.
- Reply to the queries raised by shareholders during the proceedings of the AGM.
- Compliance related to conduct of General Meeting for election of Shareholder Directors.
- Compliance related to conduct of General Meetings for capital-raising, share-split or any other related activity.
- Maintain minutes/proceedings of all General Meetings.
- Intimation to Stock Exchanges on various developments, received from other

departments of the bank, which are required to be reported to Stock Exchanges, ensuring compliance with bank's internal resources.

- Announcement of quarterly results to Stock Exchanges through laid down procedure.
- Advise/consult in preparation/drafting of Corporate Governance and other relevant sections of the Annual Report.
- Reconciliation of Share Capital Audit (Secretarial Audit) — reporting to Stock Exchanges and putting up to the Chairman & ECCB.
- Payment of quarterly (RNS) charges to London Stock Exchange and Singapore Stock Exchange, etc.
- Payment of Annual Listing Fee to all Stock Exchanges including London Stock Exchange.
- Payment of Annual Custodial Fee to NSDL/ CDSL.
- Compliance of Corporate Governance Certificate after obtaining report from various departments and reporting the same to Stock Exchanges.
- Submission of quarterly shareholding pattern to Stock Exchanges.
- Submission of other regulatory returns on quarterly basis.
- To obtain Corporate Governance Certificate from the Statutory Auditors.
- Reengineering of Compliance Function in SBI.
- Providing compliance support and clarifications to all departments in SBI, and to other entities in group wherever required.
- Any other matter, as may be entrusted by the Bank from time to time.

4.5 FUNCTIONS OF CS IN PRACTICE

The Practicing Company Secretaries are already providing the following services to the banks

Diligence report

Reserve Bank of India, looking to the needs of the industry has liberalized rules for consortium lending a little more than a decade back. Multiple banking as a concept had also started gaining ground at that time and many corporates opted for the multiple banking route presumably due to the perceived rigidity of the consortium arrangement.

Sadly, exchange of information between banks was minimal and resultantly unethical borrowers were able to take advantage of the information asymmetry that prevailed. The Central Vigilance Commission concerned at this development had attributed this phenomena to lack of effective sharing of information among banks. A felt need, all along has also been the requirement to have certification of statutory compliance by a Company through a professional such as a Company Secretary/ Chartered Accountant/ Cost Accountant so that the lending banker gets the desired comfort.

The Reserve Bank of India vide its Circular No. DBOD NO. BP. BC. 46/ 08.12.001/2008-09 dated September 19, 2008 advised all the scheduled commercial Banks (excluding RRBs and LABs) to obtain regular certification (DILIGENCE REPORT) by a professional, preferably a Company Secretary, regarding compliance of various statutory prescriptions that are in vogue, as per specimen given in the aforesaid notification. Further RBI vide its Circular dated January 21, 2009 also advised all Primary Urban Co-operative Banks to obtain Diligence Report. Subsequently the RBI vide its Circulars dated December 08, 2008 and February 10, 2009 revised the format of Diligence Report for Scheduled Commercial Banks and also for Primary Urban Co-operative Banks vide its Circular dated February 12, 2009.

Prior to disbursement of loan or giving of any financial facility

1. Due Diligence exercise comprising verification of documents like MOA; pre-clearance exercise like search of ROC records after examination of company's statutory documents like minutes, books of account, tallying of internal & external information and signature on public documents.
2. Assessment of Financial position of Company & their project & making of Due Diligence/ Comfort Certificate for project appraisal/ financing.
3. Making search & preparation of Search report on charges on the assets of Company & assessing & preparing certificate on borrowing powers of the Company & on borrowing limits of the board of Directors of the borrowing company.
4. Assistance in drafting the Loan Documentations.
5. Certification of shares/ securities as pledged to bank as primary or collateral security.
6. Certification of due incorporation of Company, present directors, shareholding pattern, capital structures, duly maintenance of statutory records, scope of business etc.
7. Reporting on the present activities and future plans of the borrower Company.
8. Filing & processing of documents for charge creation with Registrar of Companies.

9. Filing and processing of petitions under section 141 with the Company Law Board.

Documentation

It is one of the important aspects of credit management by Lending Institutions. It forms the primary evidence of the nature of transaction between both the parties. It determines the relationship between lending Institution and borrower Company. Properly executed documents determine the extent of claims, which can be enforced by lending Institution before Debt Recovery Tribunal & Appellate Tribunal at time of enforcement of claims. Bank & Financial Institution officials who are enjoined with this responsibility, besides being fully conversant of facts also need to know the rules & regulations by which borrower Company is governed, the law regarding execution of documents and other related aspects. However, due to pressure of work, the process of documentations is treated in a routine manner and the gaps or inadequacies in documentations come to light when the bank is required to file a case against the borrower. It is too late to rectify the position. Some important considerations inter-alia while preparing & collecting documents are:

- Status of the company
- Type of activities carried on by the borrower in the regulatory framework by which it is governed.
- Constitution of management of the borrower company
- Nature, type of securities being charged, liability of guarantors & legal nature of charges.
- Company Secretary in practice with their legal orientation and impetus can lend their professional assistance in this area.
- NPA Management Proactively after disbursement of Loans:

Banks in India are presently bogged down with large volumes of Non Performing Assets (NPAs) which is reportedly 10% of the aggregate loans. These NPAs have emerged over a period of time and are weakening the capital structures of the banks. Management and reduction of NPAs has to be attended on an urgent basis. With the Securitisation Act in place, it will assist the banks for faster recovery of the existing NPAs. It is equally, if not more important, to introduce proper systems and procedures for ensuring that future growth of NPAs is restricted. As a corollary to this the banks would need to tighten their Credit Risks Management systems which lies at the heart of NPA Management.

While there are various components of credit risks, one important aspect is follow up of the loans after disbursement. After disbursement of loans, the following areas need attention on an ongoing basis, and the same can be very ably taken care of by a Practicing Company secretary.

1. Post Documentation Inspection/ Audit.
2. Ensuring compliance of covenants of loan agreement by the borrower by periodical review.
3. Preparation & Review of legal/ secretarial compliance report by assisted Company on periodical basis.
4. Compliance reporting for selected legal obligations like borrowing powers, fixed deposit repayments, inter-corporate deposits/ borrowings/ unsecured loans/ deposits.
5. To verify & report compliance made by Company under Companies Act, 2013, Rules & Regulations made thereunder and compliance of conditions imposed by the bank while granting the loan facilities.
6. Provide opinions on various corporate events occurred at the borrower company, like change of name, conversion, takeover, merger, etc.

In all these areas the CSP can provide professional assistance to the banks.

Scope of CS to work as Credit Counsellors and Audit/certifying the working of Certified Credit Counsellor (CCC) and Credit Counselling Institution (CCI)

Strategic Role of Credit Counsellors

Several National Missions like Start Up India, MUDRA, Stand Up India, Make in India, Clean India and Digital India are aimed at evolving entrepreneurial India. Access to financial and non financial services is to be made more effective and digital platforms have potential to resolve these challenges. Digital lending is a gap which needs to be filled up. SIDBI's digital lending solutions comprising sidbi startup mitra (for developing startup eco system), small B (knowledge hub), standup mitra (launched by Hon'ble PM for Stand-up India loans to new entrepreneurs in SC/ST/Woman segment enabling setting up of 2.5 lakh new enterprises between ₹10 lakh to ₹1 crore) & udyamimitra (access all enterprise loans; MUDRA - upto ₹10 lakh, MSME loans- presently upto ₹2 crore) have potential to change the lending landscape. However, a need has been felt to have a mechanism to link potential entrepreneurs with these initiatives and provide handholding especially in the field of credit and later on in related areas like skill, technology, marketing, etc.

Deepak Mohanty Committee, a committee constituted to study on medium term path on financial inclusion, in its report of December 2015, had recommended as under: "The Committee recommends exploring a system of professional credit intermediaries / advisors for MSMEs, which could help bridge the information gap and thereby help banks to make better credit decisions. The credit intermediaries / advisors could function in a

transparent manner for a fee and be regulated by the Reserve Bank”

Following the above recommendation, in the first Bi-Monthly Monetary Policy Statement for FY 2016-17 on April 05, 2016 an announcement was made by Dr. Raghuram G. Rajan, the then Governor as follows: “ The Reserve Bank will lay down a framework by September 2016 for accreditation of credit counsellors who can act as facilitators for entrepreneurs to access the formal financial system with greater ease and flexibility. Credit counsellors will also assist MSMEs in preparing project reports in a professional manner which would, in turn, help banks make more informed credit decisions.”

Information asymmetry and the perception of high risk are two major constraints on the flow of credit to the MSME sector. This can be addressed by permitting credit intermediaries to act as facilitators and enablers to micro and small entrepreneurs, so that they can access the formal financial system channel with greater ease and flexibility. The credit intermediaries can assign part of this role, with adequate checks and balances, to Small Business Advisors who may advise the entrepreneurs by (a) offering help in preparing business proposals; (b) helping to prepare financial documents and financial statements; (c) sharing information on suitable credit instruments available in the market and (d) supporting with non-financial or semifinancial business decisions such as business expansion plans.

They can also (i) recommend to the banks the business proposals of entrepreneurs; (ii) perform preliminary credit appraisal on behalf of the banks and (iii) collate additional supporting information required by the banks/ credit institutions.

Table- 7: Envisaged Role of Credit Intermediaries

Area	Value addition	
	For borrowers	For lenders
Economies of scale	Collecting documents, Filing credit applications, Other administrative tasks	Collecting documents, Formalising contracts, Other administrative tasks
Lowering search and matching costs	Searching products for borrowers, Providing customers with price quotation	Establishing Links with clients. Distributing credit products, Promoting and advertising lenders' product

Alleviating asymmetric information problems	Suggesting suitable products, Cautioning about the risk involved in specific products, Explaining contract term	Direct assessment of creditworthiness, Confirming whether customers meet credit-worthiness requirements set by the lender
Alleviating moral hazard concerns	Monitoring lenders' compliance with contract terms Assisting borrowers in filing consumer complaints	Monitoring borrowers' post contractual performance, Collecting borrowers' repayments Recovering credit from defaulting consumers

Source: Study on Credit Intermediaries in the Internal Market by Europe Economics, 2009 (and illustrated in Deepak Mohanty Committee Report).

Setting up Enterprises

At this stage, an aspirant looks forward to handholding services for shaping business plans, project reports, work shed, subsidy information, build financial & enterprise oriented skills, applying for credit and establishing the enterprise. When he approaches Financial Institutions or Bankers, he is sometimes unable to put across his thoughts. Bankers, in turn, feel that they are unable to get a viable project in line with lending parameters. Aspirants also face problems in obtaining application forms, adequate loan, availability of handholding support for services (like preparation of detailed project report, help in loan application filling, entrepreneurship development program, financial training, mentoring, skill development, etc.). If they lodge loan requests they expect timely response. They have resource scarcity (including time to invest by running around) and look for a seamless experience in setting up an entrepreneurial venture. Here an expert handholding and guidance shall enable it to approach Small Finance Banks (SFBs), Non-Banking Financial Companies (NBFCs), Regional Rural Banks (RRBs) and Banks for credit as also credit enhancement institutions such as rating and guarantee companies.

Running operations and achieving Competitive Advantage

In this stage enterprise has to make decisive calling on expanding operations, nurturing its employees/promoters skills, acquire state-of-art technologies and expand market (local, regional, national or global). He has to orient the enterprise to sustainable agenda where environment and social risk aspects are attended. All these endeavours lead to investments and thus CCCs role comes into picture.

Consolidate and scale up

The entrepreneur needs to align its endeavours as per market expectations. They have to take a call on scale up investments including diversification, modernizations, upgrading its governance standards including HR, acquire/dispose technology and sometime exit a sector and enter an evolving one. Here entrepreneur approaches banks, ARCs, technology matchmaking companies and so on. Here role of industry associations also emerge important. Initiatives like green financing, quality and technology upgradation, handholding for growth & exit plans would continue to require the support of CCCs and other handholding and/ or business service providers.

Roles and Responsibilities

The broad roles and responsibilities of CCC/CCI stakeholders are as under:-

- CCCs empanelled on portal shall undertake enterprise-level advisory services (bankable proposals, bank linkages, post disbursement support) credit counselling; link the potential entrepreneurs to lending institutions & subsidy disbursing agencies.
- CCC shall guide the aspirants for maintaining financial discipline, governance standards and emerging tools/ areas of growth.
- CCCs shall endeavour to connect these entities to strategic service providers such as marketing, HR, technology access and e-commerce, etc.
- CCCs shall abide by the guidelines, procedures, code of conduct and other relevant documents hosted on the portal from time to time.
- Anyone involved in malpractices/ misappropriation, misconduct, misuse of CCC status shall be liable for disqualification.

Duties and Responsibilities of CCC

1. General Responsibilities

- A Credit Counsellor shall act independently or as a representative of a Credit Counselling Institution (CCI). Credit Counsellor shall assist the MSMEs in preparing documentation etc of the project reports in a professional manner which would, in turn, help banks make more informed credit decisions.
- A Credit Counsellor shall act in a fiduciary capacity towards its clients. He should advise without any consideration for future work; in providing advice should avoid conflicts with other assignments and he shall disclose conflicts of interests as and when they arise and how he intends and plan to avoid it.
- A Credit Counsellor shall not receive any consideration by way of remuneration or

compensation or in any other form from any person other than the client being advised; and except as is provided in the contract or as per agreed terms, in respect of the underlying banking products or services for which advice is being provided.

- A Credit Counsellor shall maintain an arm's length relationship between its credit counselling activity and other activities. Further, if they are also engaged in activities other than Credit Counselling, it should be ensured that its Credit Counselling services are clearly segregated from all its other activities to avoid any conflict of interest.
- A Credit Counsellor shall not divulge any confidential information about its client, which has come to its knowledge, without taking prior written consent of the client, except where such disclosures are required to be made in compliance with any law for the time being in force.
- The credit counsellor shall furnish to IRA the information and reports as may be specified by IRA from time to time. It shall be the responsibility of the Credit Counsellor to ensure that they comply with the certification and qualification requirements as specified by the IRA at all times.
- The credit counsellor shall not assure to provide credit, as credit would be purely a 'commercial' decision of the banks / financial institution concerned.
- The credit counsellors have to protect the privacy of their clients. Therefore, in case they share / disclose information about their clients to third parties without the written consent of the borrowers then they would be liable for the legal consequences thereof and / or disciplinary action by IRA as per the rules framed by them in this regard.
- The credit counsellors registered on portal shall provide their services to the borrower irrespective of mode of submission of their loan application [i.e. on-line, web-based, off-line (direct to bank branches in physical forms), etc.]
- If required, a Credit Counsellor shall maintain a record of the copies of project reports and other documents that were assisted while helping the clients obtain credit.
- The credit counsellors shall also maintain a register or record containing the list of MSME clients advised, the date of advice, nature of the advice, the products / services for which advice was rendered and fee, if any, charged for such advice. All records shall be maintained either in physical or electronic form and preserved for a minimum period of five years from the date of submission.

2. Pre-disbursement

- Assist the borrower in completion of documentation (including KYC-related) and filling up of the application form.
- Suggest the most appropriate loan products from banks and financial institutions and other banking services. Explain the terms and conditions involved in availing these facilities.
- Assist the MSMEs in preparing project reports and business proposals in a professional manner.
- Assist in preparing and completing the required documentation and financial statements for availing loans from banks and financial institutions.
- Explain the meaning and importance of a credit score. Emphasize the importance of being a responsible borrower and repaying loans in full and on time to maintain a good credit history and instill confidence in banks and financial institutions.
- Create awareness about the costs of misusing a credit, help in its proper utilisation.
- Advise the entrepreneur on the optimum quantum of credit to be availed considering the overall repaying capacity and projected cash flows. Extend professional advice in order to avoid the borrower from seeking under / over credit from the banking system.

3. Post-disbursement

- Advice on preparation of financial statements, maintaining proper books of accounts, cash flow management and further borrowing as business scales up.
- Assist through debt counselling and extend help for preparing a Debt Management Plan (DMP) to address the problems in repayment and to prevent default and foreclosure.
- Assist in and cooperative with the Grievance Redressal.

4. Others

- The CCCs are to carry out their assigned jobs with utmost care, devotion, prudence, diligence and with the highest degree of integrity.
- Shall identify aspirant entrepreneurs for loan assistance. The selection by the CCCs shall be based on aspirant's credentials & credit needs for their genuine requirements.
- Persuade aspirants to register online on the portal. If they are in areas which are having E access issues, offline process can be followed.

- Make them ready through sensitisation as how to approach banks and render handholding.
- CCCs shall undertake risk profiling of an entrepreneur and enterprise as also techno economic mapping for the proposed venture. (vi) Help prepare/collect backup documents to enable the applicant to submit loan application online/offline. Shall peruse and validate the proposal before it is lodged.
- The CCCs shall help the customers in furnishing information (including additional information) in such form as required by the Bank considering the loan support.
- Shall create awareness about the products and services being offered by banks and FIs and educate and advise the customers on debt discipline.
- All MSME clients served by CCCs has to be updated on the portal for performance evaluation.

Grievance Redressal

- Endeavour would be made to make the grievance redressal machinery automated through portal by (i) Any grievances pertaining to services rendered need to be resolved first between the CCC and loan aspirant. (ii) If the same is not resolved then complaints can be scaled up to identified Grievance Redressal Officer (GRO). (iii) If the same is not resolved at GRO level, it is to be referred to the inter institutional group or committee or any other identified authority/agency prescribed.
- The name and contact number of designated Grievance Redressal Officer would be made known and widely publicized. The designated officer should ensure that genuine grievances are redressed promptly. The grievance redressal procedure and the time frame fixed for responding to the complaints would be placed on the portal.

Monitoring and Evaluation

- CCC services shall be monitored online through the portal. Even if a service is rendered for offline proposal, the particulars shall have to be fed by CCC on the portal and a system of competition/ confirmation/ grading of services shall be introduced.
- In order to incentivise those who are efficient/responsive, portal shall have colouring system (Green for excellent CCCs, Orange for Moderate and Red for not satisfactory). These colours shall be awarded based on already existing rating system on the portal which grades on five counts (excellent, very good, good,

satisfactory and unsatisfactory).

- There can be three levels
 - Green – Serving more than 50 customers (for loans above Rs 5 lakh) and getting more than 70% rating for good and above in a panel year.
 - Orange - Serving more than 25 customers (for loans above Rs 5 lakh) and getting more than 50% rating for satisfactory and above.
 - Red- More than 60% awarding rating as unsatisfactory for the services rendered.

Performance evaluation

- The evaluation exercise shall be conducted periodically, generally once in a year.
- Those CCC rendering less than 25 customers or as decided/advised by IRA and or getting 60% or more unsatisfactory status shall be considered for delisting as CCC.
- The performance shall be tapped through the portal in terms of:
 - o Performance and tagging of satisfaction by recipient of service.
 - o Complaints received in a year.

NOTES

Extracts from RBI annual report 2016-17 (page 81)

Framework for rolling out Certified Credit Counsellors (CCC) through SIDBI

Following the recommendation of the Committee on Medium-term Path on Financial Inclusion to explore a system of professional credit intermediaries/advisors for MSMEs, the Reserve Bank had announced in its first bi-monthly monetary policy statement for 2016-17 that a framework for accreditation of credit counsellors who can act as facilitators for entrepreneurs to access the formal financial system with greater ease and flexibility would be drawn up. Credit counsellors were to also assist MSMEs in preparing project reports in a professional manner which would, in turn, help banks make more informed credit decisions. Accordingly, the Reserve Bank finalised a framework for accreditation of credit counsellors and the same was provided to Small Industries Development Bank of India (SIDBI) for rolling out the certified credit counsellors scheme by acting as their registering authority. SIDBI, after finalising the board-approved operational guidelines, launched the scheme in July 2017.

Extracts from SIDBI annual report 2016-17 (page 12)

RBI has designated your Bank to be the registering authority for implementation of the Certified Credit Counsellors (CCC) Scheme. As per the CCC Scheme launched on July 11, 2017, credit counsellors will be appointed for the MSME ecosystem under a governance framework. This is expected to ease access to credit, especially to micro enterprises. Your Bank has roped in Indian Institute of Banking and Finance (IIBF) for certification of the CCC and Indian Banks' Association (IBA) for coordination.

BFSI Sector Skill Council of India¹

The BFSI Sector Skill Council of India is set up to bring leading organizations of the BFSI industry together to create strategies and operational plans that will create standardized skill requirements for the various job roles in the industry. The skill council will also accredit well equipped service providers who will partner to disseminate the training. The skill council is seen by its stakeholders and partners as a nation-building activity with far reaching implications for social development and empowerment through financial inclusion. Great care is being taken to appropriately address the needs of the various industry verticals as well as the geographical regions of the country.

The Prime Minister's Office has issued a mandate that by the year 2022, India should have 500 million skilled employees across various sectors. The Ministry of Finance has been charged with overseeing this mandate and has established the National Skill Development Corporation (NSDC) for this purpose. NSDC has been working with leading organizations and associations from several sectors on setting up Sector Skill Councils to address the need for skill development.

The BFSI Sector Skill Council of India is set up to bring leading organizations of the BFSI industry together to create strategies and operational plans that will create standardized skill requirements for the various job roles in the industry. The skill council will also accredit well-equipped service providers who will partner to disseminate the training. The skill council is seen by its stakeholders and partners as a nation-building activity with far reaching implications for social development and empowerment through financial inclusion. Great care is being taken to appropriately address the needs of the various industry verticals as well as the geographical regions of the country.

NSDC has been in close contact with the BFSI Sector Skill Council as we partner to address skill development needs in a large, highly segmented industry which is characterized by accelerated growth. The progress of the BFSI industry has significant impact on the progress of our nation and the issue of skill development is one that the industry holds as being of great importance.

The BSE Institute Ltd. is a wholly owned subsidiary of BSE Limited and has been a pioneer

1. <http://www.bfsissc.com/>

in the field of Financial Education for the last twenty three years. The BSE Institute Ltd. has taken the lead in setting up the BFSI Sector Skill Council of India with the active support of the Confederation of Indian Industry (CII).

- The BFSI Sector Skill Council of India has been set up with the aim of enhancing skill development across the BFSI sector leading to greater efficiency, productivity and sustained growth.
- It addresses the shortages in skill development, known as 'skill gaps'; targets skill development strategies accordingly and thereby helps in enhancement of skill level of employees.
- The approach to this is by defining the standards for skill development for the various job roles of the industry using a competency based framework.

The Indian economy has quite evidently been on a relatively high growth trajectory. It has experienced an average growth rate of over 9% annually for the last three years. There is no question that this surge has favorably impacted the Banking, Financial Services and Insurance (BFSI) sector.

BFSI companies are now able to expand by introducing new products, leveraging technology, deploying innovative strategies and ramping up distribution networks. Greater levels of consumer awareness about various investment options have enlarged the potential of this sector for catering to the various strata of society. Deregulation has induced the banking sector in particular to explore new business avenues. A strong regulatory and compliance framework in creating an investment friendly environment is showing positive signs for the sector too.

The projected manpower requirement of the BFSI labor force by 2022 is 8.5 million - which is an increase of about 4 - 4.5 million from where we stand today. Many leaders in the industry agree that skill development is an issue that needs attention as we seek to grow as an industry and forge ahead as critical part of the Indian economy. We are confident that with the support of the industry and other service providers, we can collaborate successfully for this nation-building endeavor and create significant progress in the area of skill development. By partnering with the leaders of this industry, industry association bodies and various service providers, the skill council is looking forward to working hard to take our industry and therefore, our nation forward.

Data Protection Officer

The European Union General Data Protection Regulation (GDPR) has been made applicable with effect from 25 May 2018. They will bring several improvements to deal with data protection violations in the future.

Stronger rules on data protection mean

- people have more control over their personal data
- businesses benefit from a level playing field

The General Data Protection Regulation rules applicable from 25 May 2018, has brought several improvements to deal with data protection violations in the future:

- 1) Clear Language- Privacy policies will have to be written in a clear, straightforward language
- 2) Consent from User- The user will need to give an affirmative consent before his/her data can be used by a business. Silence is no consent
- 3) More Transparency- Businesses will need to clearly inform when his/her data is transferred outside the EU. Businesses will be able to collect and process data only for a well-defined purpose. They will have to inform the user about new purposes for processing. Businesses will have to inform the user whether the decision is automated and give him/her a possibility to contest it.
- 4) Stronger Rights- Businesses will have to inform users without delay in case of harmful data breach. The user will be able to move his/her data, for instance to another social media platform. The user will have the right to access and get a copy of his/her data, a business has on him/her. Users will have a clearly defined "right to be forgotten" (right to erasure), with clear safeguards.
- 5) Stronger Enforcement- The European Data Protection Board grouping all 28 data protection authorities, will have the powers to provide guidance and interpretation and adopt binding decisions in case several EU countries are concerned by the same case. The 28 data protection authorities will have harmonised powers and will be able to impose fines to businesses up to 20 million EUR or 4% of a company's worldwide turnover.

Article 37 of GDPR provides for appointment of Data Protection officer to ensure the compliance of data protection laws and practices in the organisation. The text of Article 37 is reproduced below:

"The controller and the processor shall designate a data protection officer in any case where:

- The processing is carried out by a public authority or body, except for courts acting in their judicial capacity;
- The core activities of the controller or the processor consist of processing operations

which, by virtue of their nature, their scope and/or their purposes, require regular and systematic monitoring of data subjects on a large scale; or

- The core activities of the controller or the processor consist of processing on a large scale of special categories of data pursuant to Article 9 or personal data relating to criminal convictions and offences referred to in Article 10.
- A group of undertakings may appoint a single data protection officer provided that a data protection officer is easily accessible from each establishment.
- Where the controller or the processor is a public authority or body, a single data protection officer may be designated for several such authorities or bodies, taking account of their organisational structure and size.
- 1 In cases other than those referred to in paragraph 1, the controller or processor or associations and other bodies representing categories of controllers or processors may or, where required by Union or Member State law shall, designate a data protection officer. 2 The data protection officer may act for such associations and other bodies representing controllers or processors.
- The data protection officer shall be designated on the basis of professional qualities and, in particular, expert knowledge of data protection law and practices and the ability to fulfil the tasks referred to in Article 39.
- The data protection officer may be a staff member of the controller or processor, or fulfil the tasks on the basis of a service contract.
- The controller or the processor shall publish the contact details of the data protection officer and communicate them to the supervisory authority.”

Proactive NPA Management after disbursement of Loans

Banks in India are presently saddled with large volumes of Non Performing Assets (NPAs). These NPAs have resulted over a period of time and reduction of NPAs has emerged as the top priority for banks. With the Securitization Act in place, it will assist the banks for faster recovery of the existing NPAs. It is equally, if not more important, to introduce proper systems and procedures for ensuring that future growth of NPAs is restricted. As a corollary to this the banks would need to tighten their Credit Risks Management systems which lies at the heart of NPA Management. While there are various components of credit risks, one important aspect is follow up of the loans after disbursement. After disbursement of loans, the following areas need attention on an ongoing basis. 1. Post Documentation Inspection/ Audit. 2. Ensuring compliance of covenants of loan agreement by the borrower by periodical review. 3. Preparation & Review of legal/ secretarial compliance report by the assisted Company on periodical basis. 4. Compliance reporting for select legal obligations like borrowing powers, fixed deposit repayments, inter-corporate deposits/

borrowings/ unsecured loans/deposits. 5. Provide opinions on various corporate events of the borrowing Company.

In all these areas the PCS can provide professional assistance to the banks.

Governance

As mentioned earlier, deregulation and volatility of financial markets have increased competition among banks who are also exposed to number of risks and challenges. The increasing market related approach require that banks follow good governance processes from the Board level downwards. The company secretary both in employment and in practice can assist the Boards and top management of the banks in establishing good governance and ethical practices both in business development and administrative matters. The Company Secretary can also play an effective role as two-way communicator between the Board and senior executives of the banks. He can also assist the Audit Committee of the Board in introducing proactive measures. The Consultative Group of Directors of Banks/financial institutions set up by the RBI under the chairmanship of Dr A S Ganguly has also recognized the critical role, the Company Secretary can play in implementing good governance in banks.

Over a period of time with adequate support and sponsorship from industry organization like IBA (Indian Bank Association) the following services may be possible to be rendered by a PCS :

- Due Diligence exercise of the corporate customer/loanee to ensure secretarial/legal compliance at regular intervals.
- Assessment of Financial position of Company/ project & making of Due Diligence/ Comfort Certificate for project appraisal/ financing.
- Making search at ROC & preparation of Search report on charges created on the assets of Company issuing certificate on borrowing powers/limits of the Company.
O Assistance if any in the Loan Documentations.
- Certification of shares/ securities pledged to bank as primary or collateral security.
- Certifications of relevant net-worth and other relevant data of the borrowing Company.
- Filing & processing of documents for charge creation with Registrar of Companies.
- Filing and processing of petitions under Section 141 of the Companies Act, 1956 with the Company Law Board / Central Government.
- Under the new Securitisation and Reconstruction of Financial Assets and Enforcement of security interest Act, 2002 a Practicing Company Secretaries can lend various services as:

- Incorporation and monitoring secretarial compliances of Securitisation and Reconstruction Companies of the Banks and Financial Institutions.
- Compliances of various RBI formalities for such Securitisation and Reconstruction Companies.
- Can assist in debt recovery and enforcement of security interest by representing the Banks and Financial Institutions before the Debt Recovery Tribunal and its Appellate tribunal.

New Areas of Professional Support

CS Can be appointed to manage secured assets as third party intermediaries and act on behalf of Securitisation and Reconstruction Companies. O To act as a authorised representative before the Central Registry proposed to be set up under the new securitisation Act for the purpose of registration of transaction of Securitisation & Reconstruction of financial assets & creation of security interest.

Legal & Secretarial Compliance Report of assisted companies of various laws applicable to them. This is most suitable in cases where Banks & Financial Institution have appointed their nominee Director on the board of assisted companies. 2. Spot Audit conducted generally in case of large advances for verifying implementation on part of Borrower of compliance of terms & conditions of availing loan facility. 3. Certification with respect to insurance of secured assets. 4. Assistance in compliance with regulations in respect of raising of funds, Capital and Money market instruments and in listing/ delisting of securities. 5. Assistance in consortium/ Institutional lending; Venture Capital funding; Loan Syndication services and also managing and giving advisory services in mandates issued to Banks & Financial Institutions. 6. Assisting Banks & Financial Institutions in their Corporate Restructuring. 7. Assistance in Depository activities of Banks & Financial Institutions. 8. Appearance as an authorised representative before Regulatory Authorities like Central Government, Company Law Board, proposed National Company Law Tribunal & Appellate Tribunal, Competition Commission, Consumer Forums, Securities Appellate Tribunal, BIFR & DRT on behalf of the banks and financial institutions.

All these developments are bound to create a huge demand for professional data protection officers. The Company Secretaries being a professional well versed in legal and compliance domain, are most competent to cater this demand specially in banking sector.

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