



RBI/DBR/2015-16/22

Master Direction DBR.PSBD.No. 96/16.13.100/2015-16

April 21, 2016

Master Direction – Amalgamation of Private Sector Banks, Directions, 2016

In exercise of the powers conferred by Section 35A of the Banking Regulation Act, 1949 and pursuant to the Section 44A of the Banking Regulation Act, 1949, the Reserve Bank of India being satisfied that it is necessary and expedient in the public interest so to do, hereby, issues the Directions hereinafter specified.

CHAPTER – I

PRELIMINARY

1. Short Title and Commencement.

- (a) These Directions shall be called the Reserve Bank of India (Amalgamation of Private Sector Banks) Directions, 2016
- (b) These directions shall come into effect on the day it is placed on the official website of the Reserve Bank of India(RBI).

2. Applicability

- (a) The provisions of these Directions shall apply to all private sector banks licensed to operate in India by the RBI and to the Non-Banking Financial Companies (NBFC) registered with the RBI.
- (b) The principles underlying these Directions would be applicable, as appropriate, to public sector banks.

3. Definitions

(i) In these Directions, unless the context otherwise requires, the terms herein shall bear the meanings assigned to them below -

- (a) “Private Sector Banks” means banks licensed to operate in India under Banking Regulation Act, 1949, other than Urban Co-operative Banks, Foreign Banks and banks licensed under specific Statutes.
- (b) “Amalgamated Company” means the company which is proposed to transfer its business to another company under the scheme of amalgamation.
- (c) “Amalgamating Company” means the company which is to acquire the business of the amalgamated company under the scheme of amalgamation.

(ii) All other expressions unless defined herein shall have the same meaning as have been assigned to them under the Banking Regulation Act, 1949 or the Reserve Bank of India Act, 1934 or as used in commercial parlance, as the case may be.

4. Scope

These guidelines shall cover the undernoted situations

- (a) An amalgamation of two banking companies.
- (b) An amalgamation of an NBFC with a banking company.

5. Statutory Provisions

- (a) The Reserve Bank has discretionary powers to approve the voluntary amalgamation of two banking companies under the provisions of Section 44A of the Banking Regulation Act, 1949.
- (b) Voluntary amalgamation of a NBFC with a banking company is governed by sections 232 to 234 of the Companies Act, 2013 in terms of which, the scheme of amalgamation has to be approved by the Tribunal¹.

¹ “Tribunal” means the National Company Law Tribunal constituted under section 408 as defined in Section 90 of Companies Act 2013.

CHAPTER - II

APPROVAL BY BOARD OF DIRECTORS

6. Boards of the banks concerned shall play a crucial role in the process, while dealing with the amalgamation proposals between two banking companies or between a banking company and a NBFC. The decision of amalgamation shall be approved by two-third majority of the total Board members and not just of those present and voting. Further, in view of the importance of the responsibility implicit in such merger decisions, it shall be ensured that the Deeds of Covenants as recommended by Ganguly Working Group on Corporate Governance, as per [circular DBOD.No.BC.116/08.139.001/2001-02 dated June 20, 2002](#) have been obtained from all independent and non-executive directors who participate in the said meetings.

CHAPTER – III

AMALGAMATION BETWEEN TWO BANKING COMPANIES

7. In terms of Section 44A of the Banking Regulation Act, 1949, the draft scheme of amalgamation shall be approved by the shareholders of each banking company by a resolution passed by a majority in number representing two-thirds in value of the shareholders, present in person or by proxy at a meeting called for the purpose. Ceiling on voting rights under section 12(2) would apply in the context of section 44A, when there is a poll, to determine whether the resolution has been passed by required majority.

8. Before convening the meeting for the purposes of obtaining the shareholders' approval, the draft scheme of amalgamation shall be approved by the Boards of Directors of the two banking companies separately.

9. While according this approval, the Boards of the banks shall give particular consideration to the following matters:-

- (a) The values at which the assets, liabilities and the reserves of the amalgamated company are proposed to be incorporated into the books of the amalgamating

company and whether such incorporation will result in a revaluation of assets upwards or credit being taken for unrealized gains.

- (b) Whether due diligence exercise has been undertaken in respect of the amalgamated company.
- (c) The nature of the consideration, which, the amalgamating company will pay to the shareholders of the amalgamated company.
- (d) Whether the swap ratio has been determined by independent valuers having required competence and experience and whether in the opinion of the Board such swap ratio is fair and proper.
- (e) The shareholding pattern in the two banking companies and whether as a result of the amalgamation and the swap ratio, the shareholding of any individual, entity or group in the amalgamating company will be violative of the Reserve Bank guidelines or require its specific approval.
- (f) The impact of the amalgamation on the profitability and the capital adequacy ratio of the amalgamating company.
- (g) The changes which are proposed to be made in the composition of the board of directors of the amalgamating banking company, consequent upon the amalgamation and whether the resultant composition of the Board will be in conformity with the Reserve Bank guidelines in that behalf.

10. In terms of Section 44A of the Banking Regulation Act, 1949, after the scheme of amalgamation is approved by the requisite majority of shareholders in accordance with the provisions of the Section, it shall be submitted to the Reserve Bank for sanction.

CHAPTER – III A

PROCEDURE FOR APPLICATION FOR AMALGAMATION OF TWO BANKING COMPANIES

11. To enable the Reserve Bank to consider the application for sanction, the amalgamating and the amalgamated banking companies shall submit to the Reserve Bank the information and documents specified in the Schedule to these Directions.

CHAPTER III B

ENTITLEMENT OF DISSENTING SHAREHOLDERS

12. In terms of Section 44A (3), a dissenting shareholder is entitled, in the event of the scheme being sanctioned by the Reserve Bank, to claim within 3 months from the date of sanction, from the banking company concerned, in respect of the shares held by him in that company, their value as determined by the Reserve Bank when sanctioning the scheme and such determination by the Reserve Bank as to the value of the shares to be paid to the dissenting shareholders shall be final for all purposes.

13. To enable the Reserve Bank to determine such value, the amalgamating / amalgamated banking company shall submit the following: -

- (a) A report on the valuation of the shares of the amalgamating / amalgamated company made for this purpose by the valuers appointed for the determination of the swap ratio.
- (b) Detailed computation of such valuation.
- (c) Where the shares of the amalgamating / amalgamated company are quoted on the stock exchange:-
 - i) Details of the monthly high and low of the quotes on the exchange where the shares are most widely traded together with number of shares traded during the six months immediately preceding the date on which the scheme of amalgamation is approved by the Boards.
 - ii) The quoted price of the share at close on each of the fourteen days immediately preceding the date on which the scheme of amalgamation is approved by the Boards.
- (d) Such other information and documents as the Reserve Bank may require.

CHAPTER - IV

AMALGAMATION OF AN NBFC WITH A BANKING COMPANY

14. Where a NBFC is proposed to be amalgamated with a banking company, the banking company shall obtain the approval of the Reserve Bank of India after the scheme of amalgamation is approved by its Board and the Board of NBFC, but before it is submitted to the Tribunal for approval.

15. When according its approval to the scheme, the Board of the banking company shall give consideration to the matters listed in paragraph 9, Chapter III above.

16. In addition, the Board shall examine whether: -

- (a) The NBFC has violated / is likely to violate any of the RBI / SEBI norms and if so, shall ensure that these norms are complied with before the scheme of amalgamation is approved.
- (b) The NBFC has complied with the "Know Your Customer" norms for all the accounts, which will become accounts of the banking company after amalgamation.
- (c) If the NBFC has availed of credit facilities from banks / FIs, whether the loan agreements mandate the NBFC to seek consent of the bank / FI concerned for the proposed merger / amalgamation.

CHAPTER - IV A

PROCEDURE FOR APPLICATION FOR AMALGAMATION OF AN NBFC WITH A BANKING COMPANY

17. To enable the Reserve Bank of India to consider the application for approval, the banking company shall furnish to Reserve Bank of India information as specified in the Schedule to these Directions (excluding item 4) and also the information and documents listed in paragraph 13 at Chapter III B above.

CHAPTER – V

AMALGAMATION OF A BANKING COMPANY WITH AN NBFC

18. The provisions of Chapter IV / IVA above will also apply mutatis mutandis in the cases where a banking company is amalgamated with an NBFC.

CHAPTER – VI

NORMS FOR BUYING/ SELLING OF SHARES BY PROMOTERS

19. Norms for promoter buying or selling shares directly / indirectly, before, during and after discussion period

SEBI regulations on Prohibition of Insider Trading shall strictly be complied with, as the information relating to takeover / merger and transfer of shares of listed banks / NBFCs are price sensitive. Even in cases of amalgamation of unlisted banks / companies, the SEBI guidelines should be followed in spirit and to the extent applicable.

CHAPTER – VII

REPEAL AND OTHER PROVISIONS

20. With the issue of these Directions, the instructions / guidelines contained in the following circular issued by the Reserve Bank stand repealed:

[DBOD.No.PSBS.BC.89/16.13.100/2004-05 dated May 11, 2005](#) on Guidelines for Merger / Amalgamation of Private Sector Banks.

21. All approvals given under the above circular shall be deemed as given under these Directions.

SCHEDULE

Information and Documents to be furnished along with the Application of Scheme of Amalgamation

1. Draft scheme of amalgamation as placed before the shareholders of the respective companies for approval.

2. Copies of the notices of every meeting of the shareholders called for such approval together with newspaper cuttings evidencing that notices of the meetings were published in newspapers at least once a week for three consecutive weeks in two newspapers circulating in the locality or localities in which the registered offices of the companies are situated and that one of the newspapers was in a language commonly understood in the locality or localities.

3. Certificates signed by each of the officers presiding at the meeting of shareholders certifying the following:
 - (a) A copy of the resolution passed at the meeting;
 - (b) The number of shareholders present at the meeting in person or by proxy;
 - (c) The number of shareholders who voted in favour of the resolution and the aggregate number of shares held by them;
 - (d) The number of shareholders who voted against the resolution and the aggregate number of shares held by them;
 - (e) The number of shareholders whose votes were declared as invalid and the aggregate number of shares held by them;
 - (f) The names and ledger folios of the shareholders who voted against the resolution and the number of shares held by each such shareholder;
 - (g) The names and designations of the scrutineers appointed for counting the votes at the meeting together with certificates from such scrutineers confirming the information given in items (c) to (f) above;

(h) The name of shareholders who have given notice in writing to the Presiding Officer that they dissented from the scheme of amalgamation together with the number of shares held by each of them.

4. Certificates from the concerned officers of the companies giving names of shareholders who have given notice in writing at or prior to the meeting to the banking company that they dissented from the scheme of amalgamation together with the number of shares held by each of them.

5. The names, addresses and occupations of the Directors of the amalgamating company as proposed to be reconstituted after the amalgamation and indicating how the composition will be in compliance with Reserve Bank regulations.

6. The details of the proposed Chief Executive Officer of the amalgamating company after the amalgamation.

7. Copies of the reports of the valuers appointed for the determination of the swap ratios.

8. All relevant information for consideration of the scheme of amalgamation including the following particulars:

(a) annual reports of each of the banking companies for each of the three completed financial years immediately preceding the Appointed Date for amalgamation;

(b) financial results, if any, published by each of the banking companies for any period subsequent to the financial statements prepared for the financial year immediately preceding the Appointed Date;

(c) pro-forma combined balance sheet of the amalgamating company as it will appear as of the Appointed Date consequent on the amalgamation;

(d) computation based on such pro-forma balance sheet of the following :

(i) Tier I Capital

(ii) Tier II Capital

(iii) Risk - Weighted Assets

- (iv) Gross and Net NPAs
- (v) Ratio of Tier I Capital to Risk-Weighted Assets
- (vi) Ratio of Tier II Capital to Risk Weighted Assets
- (vii) Ratio of Total Capital to Risk Weighted Assets
- (viii) Tier I Capital to Total Assets
- (ix) Ratio of Gross and Net NPAs to Advances

9. Information certified by the valuers as is considered relevant to understand the proposed swap ratio including the following particulars:

- (a) the methods of valuation used by the valuers;
- (b) the information and documents on which the valuers have relied and the extent of the verification, if any, made by the valuers to test the accuracy of such information;
- (c) if the valuers have relied upon projected information, the names and designations of the persons who have provided such information and the extent of verification, if any, made by the valuers in relation to such information;
- (d) details of the projected information on which the valuers have relied;
- (e) detailed computations of the swap ratios containing explanations for adjustments made to the published financial information for the purposes of the valuation;
- (f) if these adjustments are made based on valuations made by third parties, details regarding the persons who have made such valuations;
- (g) capitalization factor and weighted average cost of capital (WACC) used for the purposes of the valuation and justification for the same;
- (h) if market values of shares have been considered in the computation of the swap ratio, the market values considered and the source from which such values have been derived;

- (i) if there are more than one valuer, whether each of the valuers have recommended a different swap ratio and if so, the above details should be given separately in respect of each valuer and it may be indicated how the final swap ratio is arrived at.

10. Such other information and explanations as the Reserve Bank may require.