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The Banking Regulation (Amendment) Ordinance, 2020

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Ordinance Summary

The Banking Regulation (Amendment) Ordinance, 2020

- The Banking Regulation (Amendment) Ordinance, 2020 was promulgated on June 26, 2020. The Ordinance seeks to amend the Banking Regulation Act, 1949, which regulates the functioning of banks and provides details on various aspects such as licensing, management, and operations of banks.
- **Exclusions:** The Act does not apply to certain cooperative societies such as primary agricultural credit societies and cooperative land mortgage banks. The Ordinance amends this provision to state that the Act will not apply to: (i) primary agricultural credit societies, and (ii) cooperative societies whose principal business is long term financing for agricultural development. Further, these societies must not: (i) use the words ‘bank’, ‘banker’ or ‘banking’ in their name or in connection with their business, and (ii) act as an entity that clears cheques.
- **Power to make a scheme for reconstruction or amalgamation without imposing moratorium:** Under the Act, the Reserve Bank of India (RBI) may apply to the central government to place a banking company under moratorium. During the moratorium, no legal action can be initiated or continued against the bank for a period of up to six months. The bank cannot make any payment or discharge liabilities during this period. The Ordinance adds that during the moratorium, the bank cannot grant any loans or make investments in any credit instruments.
- Further, during the moratorium, RBI may prepare a scheme for reconstruction or amalgamation of the bank, if it is satisfied that such an order is needed to secure proper management of the bank, or in the interest of depositors, general public, or the banking system. The Ordinance allows RBI to initiate such a scheme without imposing a moratorium.
- **Issuance of shares and securities by cooperative banks:** The Ordinance provides that a cooperative bank may issue equity shares, preference shares, or special shares on face value or at a premium to its members or to any other person residing within its area of operation. Further, it may issue unsecured debentures or bonds or similar securities with maturity of ten or more years to such persons. Such issuance will be subject to the prior approval of the RBI, and any other conditions as may be specified by RBI.
- The Ordinance states that no person will be entitled to demand payment towards surrender of shares issued to him by a co-operative bank. Further a co-operative bank cannot withdraw or reduce its share capital, except as specified by the RBI.
- **Supersession of Board of Directors:** The Act states that RBI may supersede the Board of Directors of a multi-state cooperative bank for up to five years under certain conditions. These conditions include cases where it is in the public interest for RBI to supersede the Board, and to protect depositors. The Ordinance adds that in case of a co-operative bank registered with the Registrar of Co-operative Societies of a state, the RBI will supersede the Board of Directors after consultation with the concerned state government, and within such period as specified by it.
- **Power to exempt cooperative banks:** The Ordinance states that RBI may exempt a cooperative bank or a class of cooperative banks from certain provisions of the Act through notification. These provisions relate to restrictions of certain types of employment, qualifications of the Board of Directors and, appointment of a chairman. The time period and conditions for the exemption will be specified by RBI.
- **Certain provisions omitted:** The Ordinance omits certain provisions from the Act. Some of these provisions are listed below:
 - The Act restricts cooperative banks from making loans or advances on the security of its own shares. Further, it prohibits the grant of unsecured loans or advances to its directors, and to private companies where the bank’s directors or chairman is an interested party. The Act also specifies conditions when unsecured loans or advances may be granted and specifies the manner in which the loans may be reported to RBI. The Ordinance omits this provision from the Act.
 - The Act states that cooperative banks cannot open a new place of business or change its location outside the city, town or village in which it is currently located, without permission from RBI. The Ordinance omits this provision. The Ordinance also omits a provision requiring a scheduled cooperative bank to maintain assets with a value not exceeding 40% of the its total demand and time liabilities, within India.
 - **Effect of Ordinance:** The provisions of the Ordinance relating to (i) removal of exclusions for certain cooperative societies and (ii) powers to undertake reconstruction and amalgamation without moratorium are effective from the date of its issuance. Other provisions will be notified at a later date.

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