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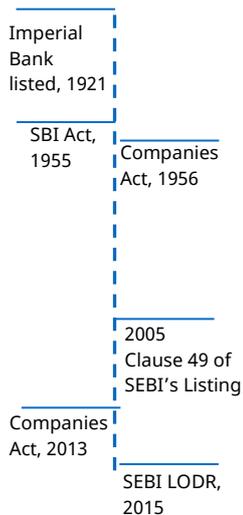
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State Bank of India: weighed down by its own Act

The State Bank of India (SBI) is modernizing itself. It is leveraging technology, improving the quality of disclosures in its annual report, and behaving as any market leader should. But its ability to become a beacon of good corporate governance is being scuttled by the half-century old State Bank of India Act 1955. It is compelled to hold a physical EGM in June, contradicting the rationale behind national lockdowns to contain the spread of COVID-19. IiAS believes that the Bank's board needs to draw the Government's focus on refreshing the State Bank of India Act 1955, so that public shareholders can enjoy the same shareholder rights as in any other listed company.

State Bank of India¹, in its current structure, was formed under The State Bank of India Act 1955 (SBI Act). For entities that have been created under a special act of Parliament, parliamentary fiat is germane to their creation: but these Acts mostly overrule all other applicable regulations. This implies that if there are progressive changes that SEBI or any other regulator makes for listed companies, SBI need not follow them. But SBI is listed and is accountable to public (non- government) shareholders. It must no longer be allowed to operate in isolation.

The SBI Act has been selectively modified over the past half century, but investors have not been allowed inside the tent. In not making the changes that allow public shareholders to assert their rights, SBI continues to be governed in a quaint manner.

IiAS believes that SBI must strive to be ahead of others on corporate governance practices and as a national champion (which it is) it must set the benchmark for others to follow. For this, its board needs to convince the Government of India (GoI) to amend the SBI Act.

E-voting: a necessity

In an age where the Prime Minister's goal is to build a 'Digital India', SBI's stance of not providing e-voting is incomprehensible. The SBI Act allows for votes to be taken either by show of hands or by a poll. This is a relic of the past ages: SBI cannot even issue a postal ballot, cannot allow e-voting, and holding a virtual meeting remains a far cry.

Beyond the convenience that an e-voting facility provides, it importantly changes the way votes are counted. Here each share is counted as a vote (unlike the show of hands method where individuals count as votes independent of their shareholding). This is an important shift, since decisions will be weighed by actual shareholding, rather than by those that have the time to attend a general meeting.

¹ State Bank of India traces its origins to the [Bank of Calcutta](#) formed in 1806. Renamed the [Bank of Bengal](#) it was one of three Presidency banks, the other two being the [Bank of Bombay](#) and the [Bank of Madras](#). Each of these three Presidency banks were incorporated as a joint stock company and were the result of [royal charters](#). All three Presidency banks amalgamated on 27 January 1921, as [Imperial Bank of India](#). The Imperial Bank of India remained a joint stock company but without Government participation.

Pursuant to the provisions of the State Bank of India Act of 1955, the [Reserve Bank of India](#), acquired a controlling interest in the Imperial Bank of India in 1955, when Imperial Bank of India became the State Bank of India. In 2007, RBI sold its shares in the bank to Government of India.

Because the SBI Act does not allow for a virtual vote, let alone a virtual meeting, SBI expects its shareholders to show up to its EGM, where they will vote to appoint shareholder directors. While India has been under a lockdown for over a month, grappling with the rapid growth of the COVID-19, State Bank of India has called for a public gathering of its shareholders at its auditorium on 17 June 2020. Despite the Ministry of Corporate Affairs allowing all other listed companies to hold virtual meetings, State Bank of India is weighed down by a luddite Act, which does not provide for such a meeting. This is a cause of significant concern, since IiAS believes holding the EGM may pose an unnecessary risk to the health and safety of shareholders and the bank's senior management who attend, as well as those associated with organizing this meeting. Asking for a large physical gathering also defies the rationale of the lockdowns which is to break the chain of the COVID-19 spread. This will hold even the lock-down is lifted.

There are other provisions of the SBI Act that have left shareholders feeling irate in the past. Some of these are discussed below:

Dividends and auditor appointment: ignoring the shareholder vote

Shareholders of SBI do not vote on dividends. Dividends are subject to RBI's guidelines and require only a board approval. Similarly, auditor appointments in SBI (and all other public sector banks, for that matter) do not require shareholder approval. While this is not to suggest that IiAS is concerned over SBI's dividend pay-out levels or its auditor appointments, not providing shareholders an opportunity to vote on such matters is in a sense a breach of basic shareholder rights; more so since these decisions require shareholder approval in other listed companies.

The board: not really independent

SBI's board structure is defined in the SBI Act: it is required to have a chairperson and a vice-chairperson, two managing directors, one employee representative director, upto six directors (minimum two) having special knowledge of the working of co-operative institutions and of rural economy or experience in commerce, industry, banking or finance and four shareholder directors. An RBI nominee and the Government of India (GoI) / Ministry of Finance (MoF) nominee too are a must on the board (Exhibit 1).

IiAS considers shareholder directors and some of the directors representing different slices of the economy, to be independent for the purposes of board composition. In practice though, other than the shareholder directors, all board members need the GoI approval, which could raise legitimate questions about the board's ability to distance itself from the GoI's agenda and run the bank independently: the interest of the largest shareholder and that of the entity are not always aligned.

Mergers and acquisitions: grievance redressal, without a vote

Mergers and acquisitions can change the nature and future of an existing business. Such transactions may also affect ownership, as issue of shares for consideration could dilute existing shareholders. Therefore, shareholders must have a right to vote on such transactions. This right is indelible to equity ownership and is basic hygiene for a well-governed institution. The SBI Act denies its shareholders these rights: shareholders can only voice their objections – a 'grievance redressal mechanism' will decide whether these concerns have merit.

SBI has long been the cushion for the banking sector. GoI has used SBI's size to merge weaker (- sometimes failing) banks, to protect the retail customers. In 2016 and 2017, the Bhartiya Mahila Bank and a number of SBI's subsidiaries/associate banks, were merged into SBI (- these were in part to help the bank bulk up). None of these transactions were put to shareholder vote. The GoI's decision to have SBI infuse Rs. 60.2bn acquire 48.2% in Yes Bank in March 2020 too is part of the national agenda to avoid bank failures. SBI's shareholders bear the eventual impact on capital, dilution and return ratios, without having approved of these transactions.

Calling for a shareholder meeting: it takes about Rs. 273 bn

Shareholders can requisition a meeting only if they own at least 20% of SBI's equity², which at current market value, aggregates Rs. 272.8 bn in equity value³. Admittedly, the 10% threshold set by Companies Act 2013 is high - but at a 20% threshold, it is virtually impossible for any investor to requisition a meeting. These are protectionist thresholds, leftovers of a nascent nation and a socialist mindset. It is no longer relevant, and these thresholds need to be substantially lowered, recognizing that competition creates efficiency and value.

The Board needs to petition GoI for changes in the SBI Act

SBI's corporate governance standards are being quelled by the SBI Act, and the SBI Act can be changed only by Parliament. With the Parliament not being in session, and not likely to be in session until the COVID 19 spread slows down, the board must lobby with the GoI to have an ordinance passed by the President of India to, at the very least, allow the bank to hold virtual meetings.

Thereafter, the board needs to keep the MoF's focus on modernising the SBI Act and go through the parliamentary processes needed to secure these changes permanently.

Note: With the government's decision to list Life Insurance Corporation of India (LIC), the government should also use this opportunity to review revise the Life Insurance Corporation Act, 1956.

² 50 shares of SBI carry one vote

³ SBI's market capitalization on 19 May 2020 was Rs.1.4 trillion

Exhibit 1: Board Composition on 29 April 2020

S N o	Name	Occupation	Category	Tenure (yrs)	AC	NRC	SRC	CSR	Attendance (%) – FY19	Other Directorships
1	Rajnish Kumar	Chairperson	ED	5					100%	2
2	Arjit Basu	MD - Commercial Clients Group & IT	ED	2					92%	0
3	Dinesh Khara	MD - Global Banking & Subsidiaries	ED	4	M			M	93%	2
4	Challa Sreenivasulu Setty	MD - Retail & Digital Banking	ED	<1			M		-	0
5	Debashish Panda	GoI Nominee	NED	<1	M				-	0
6	Chandan Sinha	Nominee Director - RBI	NED	4	M				93%	0
7	Sanjeev Maheshwari	Part Time Non-Official Director – Chartered Accountant	ID	<1	M	M	M		-	1
8	Ms. Purnima Gupta	Part Time Non-Official Director	ID	2	M	M	M	M	80%	0
9	Pushpendra Rai	Part Time Non-Official Director	ID	4					87%	0
10	Sanjiv Malhotra	Shareholder Director	ID	6		M	C	M	73%	0
11	B. Venugopal Nayar	Shareholder Director	ID	2	M		M	M	38%	0
12	Bhaskar Pramanik	Shareholder Director	ID	3	M			M	87%	1
13	Basant Seth	Shareholder Director	ID	3	C	C		M	93%	2

Source: SBI's website

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