

OVERVIEW OF PROVISIONS RELATING TO NON BANKING FINANCIAL INSTITUTIONS (NBFC)



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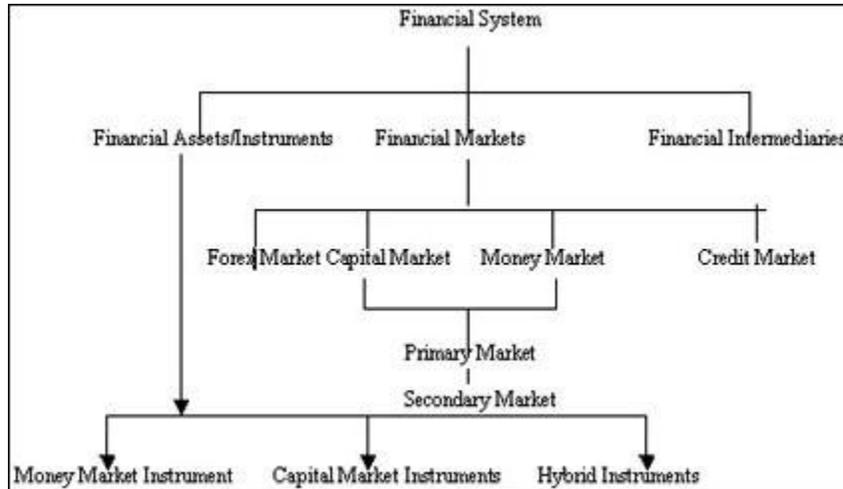
1.0 INTRODUCTION

Non Banking Finance Institutions is a constituent of the institutional structure of the organized financial system in India

The term "Finance" is often understood as being equivalent to "money". However, finance exactly is not money; it is the source of providing funds for a particular activity. Providing or securing finance by itself is a distinct activity or function, which results in Financial Management, Financial Services and Financial Institutions. Finance therefore represents the resources by way funds are needed for a particular activity. We thus speak of 'finance' only in relation to a proposed activity. Finance goes with commerce, business, banking etc. Finance is also referred to as "Funds" or "Capital", when referring to the financial needs of a corporate body.

The Financial System of any country consists of financial markets, financial intermediation and financial instruments or financial products. All these items facilitate transfer of funds and are not always mutually exclusive. Inter-relationships between these are a part of the system e.g. Financial Institutions operate in financial markets and are, therefore, a part of such markets.

The word system, in the term financial system, implies a set of complex and closely connected or inter-linked Institutions, agents, practices, markets, transactions, claims, and liabilities in the economy.



The Financial Intermediaries in the Financial System can broadly be said to comprise of:

- Banks; and
- NBFCs

And NBFCs can be further classified into different types depending on their nature of business.

Further, total Finance sector in India may be classified into Formal and Informal Finance.

The informal sector of finance may be said to refer to all economic activities that fall outside the formal sector that is regulated by economic and legal institutions e.g money lenders, some channels of micro finance and the other not necessarily regulated sectors. Landlords, local shopkeepers, traders, suppliers and professional money lenders, and relatives are the informal sources of micro-finance for the poor, both in rural and urban areas.

The Formal sector can be said to comprise of the Formal and necessarily regulated channels of financing like, finance provided by Banks, Financial Institutions, Non-Banking Financial Institutions, and Micro finance institutions.

2.0 NON BANKING FINANCIAL INSTITUTIONS AND INTERNATIONAL REGULATORY SYSTEM

In most countries, the financial system extends beyond traditional banking institutions to include Non Banking Financial Intermediaries like insurance companies, mutual funds, market makers and other financial service providers.

There has been tremendous growth worldwide in the mobilization of financial resources outside traditional banking systems. Channeled mainly through capital markets, such rapid financial diversification is posing new challenges for regulators in many emerging markets.

These non-banks financial institutions provide services that are not necessarily suited to banks, serve as competition to banks, and specialize in sectors or groups. Having a multi-faceted financial system, which includes non-bank financial institutions, can protect economies from financial shocks. However, in developing countries that lack a coherent policy framework and effective regulations, non-bank financial institutions can exacerbate the fragility of the financial system.

To summarize:

- NBFIs have much to contribute, but they also bring some risks;
- Those risks are best contained by sound regulation that seeks to create a generally level playing field, without stifling either the growth or individuality of NBFIs;
- These objectives notwithstanding, NBFi regulation is generally underdeveloped throughout most of the world;
- The three areas in which improvements are most needed are:
 1. In the legal powers granted to NBFi regulators
 2. In the prudential standards, regulations and rules which, in general, need to become more risk-based to catch up with banking standards;
 3. In the internal practices and processes of regulators where there is a general need for stronger governance standards and for a greater commitment to enforcement among prudential regulators and conduct regulators alike.

What is a Non Banking Financial Institution (NBFI)?

A Non Banking Financial Institution/ Non Banking Financial Intermediary has different definitions in different countries:

- Any institution which is not a bank but is involved in finance
- Financial institutions not taking demand deposits
- Financial institutions not taking any deposit

NBFIs are different types of financial institutions that provide the following types of services:

- Payments
- Liquidity / credit
- Divisibility: break up large denomination and aggregate small denomination
- Store of value
- Information: processing and assessing risks
- Risk pooling: lower the risks of investors

Many NBFIs provide services that are also provided by banks, hence the distinction between banks and NBFIs has become blurred. Many NBFIs belong to supervised conglomerates (or conglomerates that should be supervised).

Types of NBFIs

NBFIs can be classified by the main services they provide:

- Deposit taking institutions (e.g Thrifts, credit unions, savings & loans.)
- Risk-pooling institutions (e.g insurance co.)
- Contractual savings institutions (e.g Mutual funds, pension funds, other investment institutions)
- Market makers (e.g Investment banks, stockbrokers.)
- Specialized sectoral financiers (e.g leasing companies, real state finance co., micro-finance institutions.)
- Financial service providers (e.g Brokers, investment advisers.)

Contributions by NBFIs and Banks

Financial institutions, including banks and non-banks, provide some or all of the following core financial services. These services are often provided in combinations:

1. Some financial institutions provide payments services – by issuing claims that have the capacity to be used in settling transactions. To serve as an effective means of payments, a claim must have a highly stable and reliable value, be

widely accepted in exchange and must be linked to the arrangements for ultimate settlement of value.

2. Liquidity is the ease with which an asset's full market value can be realized once a decision to sell has been made. Financial institutions enhance liquidity through specialization and scale.

3. Divisibility - Divisibility is the extent to which an asset can be traded in small denominations. Financial institutions break up large denomination (lumpy) claims and aggregate small denomination claims to meet divisibility preferences of the community.

4. Store of value is the extent to which an asset provides a reliable store of purchasing power over time - this is fundamental to satisfying savings preferences.

5. Information is costly to access and process. Providing economies of scale in processing and assessing risks is an important role of financial institutions.

6. Risk pooling is the extent to which an asset spreads the default risk of the underlying promises by pooling. By pooling assets, financial institutions have much more scope to risk pool than do individuals.

Banks provide an attractive bundle of most of the core financial services in their deposit product:

- Ability to write cheques on deposits means that banks offer payments services and liquidity equal to that of currency.
- Deposits also offer exceptionally high divisibility (at least to the same level as currency).
- The store of value service is that of a debt promise in that deposits promise repayment at (nominal) face value plus interest.
- Banks resolve the information conflict faced by borrowers and generally enjoy substantial economies of scale in processing and analyzing information.
- Finally, banks risk pool borrowers' promises into a single promise by the intermediary itself.

Rationale for NBFIs

Banks offer all of the services that NBFIs offer, then why do we Need NBFIs? The Answer to this question emerges if we analyse the differences between Banks and NBFIs.

Difference between Banks and NBFIs in India:

NBFCs are doing functions akin to that of banks, however there are a few differences:

- (i) a NBFC cannot accept demand deposits;
- (ii) it is not a part of the payment and settlement system and as such cannot issue cheques to its customers; and
- (iii) deposit insurance facility of Deposit Insurance and Credit Guarantee Corporation (DICGC) is not available for NBFC depositors unlike in case of banks.

In *Southern Technologies limited vs JCIT*, on 11th January 2010, the Supreme Court held that the business operations of NBFCs and banks are quite different. “NBFCs accept deposits from the public for which transparency is the key; hence, we have RBI directions/norms. On the other hand, for banks, weightage must be placed on liquidity. These two concepts, namely, risk and liquidity bring out the basic difference between NBFCs and banks”, the Bench added.

1. Inefficiency of Banks

In principle, there is no reason why banks can't provide all services – indeed to an extent they do. However they are extremely inefficient in providing some services and even face conflicting incentives in providing all services.

In short, the way in which banks provide their core services means that they cannot provide all services equally efficiently.

In order to provide certainty of value for payments, bank deposits must be low risk. This limits the range and nature of assets that banks can hold on the asset side of their balance sheets and thereby the extent to which they can offer risk pooling. It also limits their ability to offer a wide range of store of value services, especially equity type stores of value services.

More generally, NBFIs play a range of roles that are not suitable to banks:

- through the enhancement of equity promises (adding liquidity, divisibility, informational efficiencies and risk pooling services), NBFIs broaden the spectrum of risks available to investors;
- in this way they encourage investment and savings and improve the efficiency of investment and savings;

- through the provision of contingent promises they foster a risk management culture by encouraging those who are least able to bear risk to sell those risks to those better able to manage them; and
- they can enhance the resilience of the financial system to economic shocks

NBFIs complement banks by providing services that are not well suited to banks; they fill the gaps in financial services that otherwise occur in bank-based financial systems.

2. Serve as Competition for Banks

Equally important, NBFIs provide competition for banks in the provision of financial services. NBFIs unbundle bank services and compete with them as providers. They specialize in particular sectors and target particular groups.

3. Economic Development

There is a growing body of hard evidence to suggest that:

- The development of financial intermediaries contributes strongly to economic growth;
- That contribution is increased where intermediation is provided through a balanced combination of NBFIs and banks – in particular, there is a strong correlation between the depth and activeness of non-banks and stock markets on the one hand, and economic development on the other.

In the first place, banks offer assets (deposits) that claim to be capital certain. If this promise is to be honored, then there must be limits to the range and nature of assets that a bank can reasonably take on to its balance sheets. Notwithstanding the existence of universal banking in many parts of the world (i.e., banks also engaged in securities market activities), this consideration implies that bank-based financial system will tend to have a smaller range of equity-type assets than those with a more broadly based structure including a wide range of NBFIs. More generally, NBFIs play range of roles that are not suitable for banks and through their provision of liquidity, divisibility, informational efficiencies, and risk pooling services, they broaden the spectrum of risks available to investors. In this way, they encourage and improve the efficiency of investment and savings. Through the provision of a broader range of financial instruments, they are able to foster a risk management culture by attracting customers who are least able to bear risks and fill the gaps in financial services that otherwise occur in bank-based financial systems.

4. Financial Stability

In a financial sector in which NBFIs are comparatively undeveloped, banks will inevitably be required to assume risks that otherwise might be borne by the stock market, collective investment schemes or insurance companies. However, there is basic incompatibility between the kinds of financial contracts offered by the banks and those offered by the financial institutions. Thus, banks are more likely to fail as a result. One way of minimizing financial fragility in the developing economies may be to encourage a diversity of financial markets and institutions, where investors are able to assume a variety of risks outside the banking system itself. Without this diversity, there is a tendency for all risks to be bundled within the balance sheet of the banking system, which may lead to severe financial crises more likely. This point was widely noted by policymakers in their analysis of the lessons of the Asian currency crisis, for instance.

As Alan Greenspan (1999) pointed out, the impact of the currency crisis in Thailand might have been significantly less severe if some of the risks borne by the Thai banks had instead been borne by the capital markets.

Risks Associated with NBFIs and Why they Need to be Regulated:

While NBFIs can contribute to the economy, they also bring risks and the only way to control these risks is through proper regulation. Risk will vary depending upon the economic functions performed by NBFIs.

The challenge for regulation is striking the right balance between the risks and benefits.

On the one hand, too little or no regulation can lead to crisis and severely impact the vulnerable and the economy. This has been a major attribute to the Asian crisis in the late 90s – finance companies in Thailand and merchant banks in Korea. On the other hand, too strict or inappropriate regulation can hinder innovation and development. The call for ‘deregulation’ in developed economies reflects this.

Getting the right balance is a perpetual challenge for financial regulators and supervisors, not only in the developing countries, but also in developed and advanced economies.

1. To Prevent Systemic Risk

' Systemic' means, - affecting the entire body or organization (the complex whole.) Systemic Risk means the market risk or the risk that cannot be diversified away, as opposed to "idiosyncratic risk", which is specific to individual stocks. It refers to the movements of the whole economy.

A systemic problem can be said to arise when a failure of one institution creates large social costs (contagion, generalized panic, interruption of the payments system, etc):

The essence of systemic risk is therefore the correlation of losses. For example, if one bank goes bankrupt and sells all its assets, the drop in asset prices may induce liquidity problems of other banks, leading to a general banking panic.

Regulation of NBFIs to prevent systemic risk is necessary because NBFIs tend not to adequately internalize systemic risks.

2. Guard against 'regulatory arbitrage' - when different institutions subject to different regulatory constraints can offer the same type of products.

NBFIs can be used as a means of outwitting or evading the intent of regulations imposed on banks.

Competition between NBFIs and banks in providing financial services is healthy. But competition based on lax regulation is unhealthy - and can have disastrous consequences that may affect economic growth and financial stability for years.

This effect has been clearest where NBFIs have been either totally or largely unregulated and have thereby gained a competitive advantage in competing with regulated banks on their own territory.

The fallout from this type of behaviour was widely experienced in the Asian region in the late 1990s.

- In Thailand, finance companies issued high-yielding promissory notes and borrowed offshore, then loaned the funds in local currency to high-risk borrowers who could not meet banking standards - when the crisis hit in mid 1997, the Government was forced to close 69 insolvent finance companies;
- Malaysia experienced similar problems with finance companies that had extended hire -purchase loans;

- In Korea, NBFIs grew very strongly in the pre-97 period precisely because they competed directly with banks, but with a regulatory advantage. The problem re-emerged in a different guise between '97 and '99 when poorly regulated Investment Trust Companies took over as the primary source of corporate finance.
- China has also had problems associated with Investment Trust Companies.

The business in which NBFIs are permitted to engage is ultimately a matter of choice. To illustrate the point, following the crisis in 1997, the Korean Authorities accepted that Merchant Banks in Korea effectively are in the same business as banks and have changed their regulatory requirements so that their merchant banks now face essentially the same capital, provisioning, liquidity, large exposure and foreign exchange requirements as banks.

In contrast, in Australia the decision was taken that Merchant Banks should not be allowed to do the business of banks (defined as taking deposits from the public) and so they are regulated much more lightly than banks.

To prevent regulatory arbitrage between banks and NBFIs there is a need to have a coherent regulatory framework that covers the whole of the financial system and which regulates similar risks in similar ways - regardless of which institutions offer the particular services.

3. Conglomerate Contamination

A major risk with NBFIs arises from their association with banks through conglomerates.

While many countries have quite sound regulatory frameworks for supervising banks, very few have either the legal power or the policy framework for adequately supervising conglomerate groups in which banks own and operate large non-bank subsidiaries.

This problem was also a contributor to the crisis in the late 1990s, most particularly in Korea and Indonesia. But the problem is by no means confined to emerging markets. Australia has lost only two banks through outright failure in the past century. Both failed because of high-risk activities carried out through their unregulated and very large subsidiaries.

4. To Protect consumers against market misconduct

This is one of the primary reasons for NBFIs supervision and regulation – that depositors are protected against the NBFIs failure to repay.

In a perfect market, we would expect individual depositors, policy holders and investors to have information based on which they can assess the institutions before they enter into any deals. The reality is information is not always reliable and customers lack expertise to analyse the information to determine the value of promises made to them by financial institutions. The regulator's role is to ensure that those promises are reasonable, understandable and adequately backed by capital reserves.

To protect the consumers, the regulators need to lay down certain Rules of Conduct for the NBFIs which will help to prevent insider trading, conflict of interest, false advertisement etc. For this purpose the Regulators generally have certain norms like:

- Certain Entry restrictions like licensing etc.
- Disclosure of information
- Financial strength (minimum capital etc.)
- Governance of the NBFIs (responsibilities etc.)
- Rules for conduct of business

5. To enhance efficiency of NBFIs:

To enhance the efficiency of NBFIs and to prevent anti-competitive behavior, the Regulators need to lay down Rules that deal with structure of industries (merger or anti-trust laws), Rules that prevent anti-competitive behavior (collusion; free entry and exit).

6. To Prevent Asymmetric information

Asymmetric Information arises where products and services are sufficiently complex that disclosure itself is not enough to allow consumers to make informed choices (buyers and sellers not equally informed)

In economics and contract theory, information asymmetry deals with the study of decisions in transactions where one party has more or better information than the other. This creates an imbalance of power in transactions which can sometimes cause the transactions to go awry. Information asymmetry models

assume that at least one party to a transaction has relevant information whereas the other(s) do not.

To prevent from creating a situation of asymmetric information, Regulators need to specify norms with respect to the following:

- Entry and exit rules
- Minimum capital or liquidity requirements
- Restrictions to operations and limits
- Risk management requirements and accountability

7. Social objectives

NBFIs have an important role to play in financial and economic development of a country. International experience with government sponsored entities or rules goes to show that it is not clear that the solution is always better than the problem. The Government has to consider various issues like- Not enough financing for a sector? Housing? Agriculture? Others? Are interest rates too high? Etc.

However, under negative (or positive) externalities, private decisions of an organization provide less (or more) than the socially desirable outcome of a service. Therefore regulation by the Government is most essential so that the NBFIs do not overlook its importance and the necessity of fulfilling its social objectives.

8. NBFIs can be popular vehicles for money laundering and financing of terrorism and hence the need for regulation on that front is also in place.

Regulatory Authorities for NBFIs in some Countries

The structure of the regulator can and does take different forms in different jurisdictions. A recent trend has been a shift towards more integrated supervision with banking, insurance and capital market regulation being brought within one organisation.

The United Kingdom's Financial Services Authority is an example of integrated supervision while Australia's twin regulators (ASIC and APRA) focus on prudential and market conduct functions, respectively.

1. United Kingdom :

Financial Services Authority (FSA)

FSA is the Regulator of all providers of financial services in the UK

However, Bank of England retains responsibility for systemic risk.

2. Australia:

Twin regulators

1. Australian Securities and Investments Commission (ASIC):

ASIC is the corporates, markets conduct and financial services regulator. ASIC regulates Australian companies, financial markets, financial services organisations and professionals who deal and advise in investments, superannuation, insurance, deposit taking and credit.

2. Australian Prudential Regulation Authority (APRA):

APRA is the prudential regulator of the Australian financial services industry. APRA oversees banks, credit unions, building societies, general insurance and reinsurance companies, life insurance, friendly societies, and most members of the superannuation industry.

3. Singapore:

Monetary Authority of Singapore (MAS)

MAS covers both prudential supervision of the banking and insurance sectors, capital market regulation and business conduct regulation across the financial system.

4. United States:

Principal Regulatory Agencies of the US Financial System

Regulatory Agency:	Regulatory Areas:
Securities and Exchange Commission SEC	Organized exchanges and financial markets, market participants, mutual funds and investment companies, Section 20 affiliates
Commodities, Futures Trading Commission CFTC	Derivatives markets and participants
Office of Comptroller of the Currency OCC	Federally chartered commercial banks
Federal Reserve System	All member banks, bank holding companies, Section 20 affiliates
Federal Deposit Insurance Corporation FDIC	State chartered commercial and cooperative banks, insured industrial banks
National Credit Union Administration NCUA	Federally chartered credit unions
Office of Thrift Supervision OTS	Savings and loan associations, savings banks
State Banking and Insurance Commissions	State chartered banks (deposit institutions) and insurance companies

Source: Background paper prepared by Terry M. Chuppe. Non-Bank Financial Institutions Regulation, 1996. Mimeo, Washington, D.C.

5. India:

Reserve Bank of India (RBI)

6. Mauritius:

Financial Services Commission (FSC).

7. Malaysia:

Bank Negara Malaysia (BNM), the Central Bank

8. Bangladesh:

Bangladesh Bank (the Central Bank)

9. Phillipines:

The Bangko Sentral ng Pilipinas (Central Bank of the Philippines)

3.0 EMERGENCE OF NBFCs - INDIAN HISTORICAL PERSPECTIVE

The non-banking financial companies (NBFCs) flourished in India in the decade of the 1980s against the backdrop of a highly regulated banking sector. The simplified sanction procedures and low entry barriers encouraged the entry of a host of NBFCs. However, in many cases mismanagement / lack of efficient management resulted in problems arising out of adverse portfolio selection, unprudent operations, inability to manage risk both on asset and liability side. In many cases due to non availability of adequate credit from the banking sector

NBFCs had to rely excessively on unsecured public deposits for their existence / survival by paying higher rate of interest. To service such high cost deposits, some NBFCs were forced to deploy their funds which carried high return coupled with high risk . This ultimately resulted in higher risks for their depositors, which in some cases had culminated in the crisis of confidence and credibility.

The Reserve Bank of India Act, 1934 was amended on 1st December, 1964 by the Reserve Bank Amendment Act, 1963 to include provisions relating to non-banking institutions receiving deposits and financial institutions. It was observed that the existing legislative and regulatory framework required further refinement and improvement because of the rising number of defaulting NBFCs and the need for an efficient and quick system for redressal of grievances of individual depositors.

Also, it was felt necessary to initiate immediate action for the protection of depositors' interest. RBI issued the Non Banking Companies (Reserve Bank) Directions, 1977, guidelines on prudential norms and various other Directions and clarifications, from time to time for governing the activities of NBFCs. Central Government, during 1974, introduced 58A in the Companies Act, 1956 which empowered Central Government to regulate acceptance and renewal of deposits and to frame rules in consultation with Reserve Bank of India (RBI) prescribing (a) the limit up to, (b) the manner and (c) the conditions subject to which deposits may be invited or accepted / renewed by companies. The Central Government in consultation with RBI framed Companies (Acceptance of Deposits) Rules, 1975.

Given the need for continued existence and growth of NBFCs, the need to develop a framework of prudential legislations and a supervisory system was felt especially to encourage the growth of healthy NBFCs and weed out the inefficient ones. Continuing this process, RBI Act, 1934 was amended in 1997 which authorised the Reserve Bank to determine policies, and issue directions to NBFCs regarding income recognition, accounting standards, NPAs, capital adequacy, etc. The amended Act, inter alia, provided for compulsory registration of all NBFCs into three broad categories, viz., (i) NBFCs accepting public deposit; (ii) NBFCs not accepting/holding public deposit; and (iii) core investment companies (i.e., those acquiring shares/securities of their group/holding/subsidiary companies to the extent of not less than 90 per cent of total assets and which do not accept public deposit).

Until some years back, the prudential norms applicable to banking and non-banking financial companies were not uniform. Moreover, within the NBFC group, the prudential norms applicable to deposit taking NBFCs (NBFCs-D)

were more stringent than those for non-deposit taking NBFCs (NBFCs-ND). The absence of capital adequacy requirements resulted in high leverage by the NBFCs. Since 2000 however, the Reserve Bank has initiated measures to reduce the scope of 'regulatory arbitrage' between banks, NBFCs-D and NBFCs-ND.

NBFCs - Committees formed

Various committees were formed in India to review the existing framework and address the shortcomings. Some of the committees and its recommendations are given hereunder:

1. James Raj Committee (1974)

The James Raj Committee was constituted by the Reserve Bank of India in 1974. After studying the various money circulation schemes which were floated in the country during that time and taking into consideration the impact of such schemes on the economy, the Committee after extensive research and analysis had suggested for a ban on Prize chit and other schemes which were causing a great loss to the economy. Based on these suggestions, the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 was enacted.

2. Chakravarty Committee (1984)

This Committee headed by Shri Sukhamoy Chakravarty was formed to review the Working of the Monetary System. It made several recommendations for the development of money market.

3. Vaghul Committee (1987)

As a follow-up to the Chakravarty committee, the RBI set up a Working Group on Money Market under the Chairmanship of Shri N. Vaghul, which submitted its Report in 1987 containing number of measures to widen and deepen the money market.

4. Narasimhan Committee (1991)

This committee was formed to examine all aspects relating to the structure, organization & functioning of the financial system. It also recommended that the supervision of these institutions should be brought within the purview of the agency to be set up for the purpose under the aegis of the RBI. This led to the amendment of the RBI Act in 1997. The RBI Amendment Act 1997 introduced compulsory registration with the RBI of all

existing and newly incorporated NBFCs and prescribed certain minimum capital requirements as basic entry norms for a company to be able to operate as an NBFC.

5. Dr.A.C.Shah Committee (1992)

The Working Group on Financial Companies constituted in April 1992 i.e the Shah Committee set out the agenda for reforms in the NBFC sector. This committee made wide ranging recommendations covering, inter-alia entry point norms, compulsory registration of large sized NBFCs, prescription of prudential norms for NBFCs on the lines of banks, stipulation of credit rating for acceptance of public deposits and more statutory powers to Reserve Bank for better regulation of NBFCs.

6. Khanna Committee (1995)

This Group was set up with the objective of designing a comprehensive and effective supervisory framework for the non-banking companies segment of the financial system.

The important recommendations of this committee are as follows:

- i. Introduction of a supervisory rating system for the registered NBFCs. The ratings assigned to NBFCs would primarily be the tool for triggering on-site inspections at various intervals.
- ii. Supervisory attention and focus of the Reserve Bank to be directed in a comprehensive manner only to those NBFCs having net owned funds of Rs.100 lakhs and above.
- iii. Supervision over unregistered NBFCs to be exercised through the off-site surveillance mechanism and their on-site inspection to be conducted selectively as deemed necessary depending on circumstances.
- iv. Need to devise a suitable system for co-ordinating the on-site inspection of the NBFCs by the Reserve Bank in tandem with other regulatory authorities so that they were subjected to one-shot examination by different regulatory authorities.
- v. Some of the non-banking non-financial companies like industrial/manufacturing units were also undertaking financial activities including acceptance of deposits, investment operations, leasing etc to a great extent. The committee stressed the need for identifying an appropriate authority to regulate the activities of these companies, including plantation and animal husbandry companies not falling under the regulatory control of either Department of Company Affairs or the Reserve Bank, as far as their mobilisation of public deposit was concerned.

- vi. Introduction of a system whereby the names of the NBFCs which had not complied with the regulatory framework / directions of the Bank or had failed to submit the prescribed returns consecutively for two years could be published in regional newspapers.

Most of the recommendations of the Committee were accepted by the Reserve Bank after an in depth analysis and the revised framework for effective supervision of the NBFCs including off-site monitoring of NBFCs is being put in place.

7. Vasudev Committee (1998)

This committee emphasised the need for strengthening of the NBFC sector including entry norms and prudential norms, and dealt with framework for acceptance of public deposits, issues concerning unincorporated financial intermediaries and addresses issues of supervision of NBFCs.

The important recommendations of this committee are as follows:

- i. Present minimum capital requirement of Rs.25 lakhs to be reviewed upwards keeping in view the need to impart greater financial soundness and achieve economies of scale in terms of efficiency of operations and managerial skills.
- ii. As operations of NBFCs are concentrated in remote areas, the RBI may apprise the State Governments of the companies which have been granted registration as well as the companies whose applications have been rejected.
- iii. The present capital adequacy ratio requirement may be maintained at 12% for all rated NBFCs, higher rate of about 15% need to be prescribed by RBI for those NBFCs which seek public deposit without credit rating.
- iv. RBI may stipulate that the NBFCs should invest at least 25% of their reserves in marketable securities apart from the SLR securities already held by the NBFCs.
- v. Linking of quantum of public deposits with credit rating because apart from having the effect of conferring regulatory functions on the rating agencies, it also exposes the NBFCs to frequent asset liability mismatches arising out of changes in credit rating.
- vi. RBI should consider measures for easing the flow of credit from banks to NBFCs and then consider prescribing a suitable ratio as between secured and unsecured deposits for NBFCs.
- vii. Appointment of depositors' grievance Redressal authorities with specified territorial jurisdiction.
- viii. The procedure for liquidation of NBFCs to be substantially in line with those available for banks.

- ix. A separate instrumentality for regulation and supervision of NBFCs under the aegis of the RBI should be set up, so that there is a great focus in regulation and supervision of the NBFC sector.
- x. The Committee felt it was not judicious to introduce a deposit insurance scheme for the depositors in NBFCs because of the moral hazard issues, likelihood of assets stripping and likely negative impact on the growth of a healthy NBFC sector.
- xi. Reserve Bank could use the services of chartered accountants with suitable experience and capabilities to carry out inspection of the smaller NBFCs.

4.0 NON BANKING FINANCIAL COMPANY - MEANING

Non-banking financial companies (NBFCs) engaged in varied financial activities are part of the Indian financial system providing a range of financial services.

Although the terms Non Banking Financial Institution (NBFI) and Non Banking Financial Company (NBFC) is generally used interchangeably in India and when referring to each the meaning implied is the same, however technically there lies a difference in the as the terms have been defined in specific terms in the Reserve Bank of India Act (RBI Act) 1934 and hence the necessity for a separate chapter on the subject.

A Non Banking Financial Institution/ Non Banking Financial Intermediary (NBFI) is prevalent in most countries and may have different forms and different definitions in different countries. NBFI will thus serve the purpose of description of a more universal class while we will use the term NBFC as more suited to India as the definition of NBFC inherently incorporates the fact that it is a company incorporated under the Companies Act, 1956.

NBFC is a company incorporated under the Companies Act, 1956 and desirous of commencing business of non-banking financial institution as defined under Section 45 I(a) of the RBI Act, 1934 which should have a minimum net owned fund of Rs 200 lakh w.e.f April 21, 1999.

A Non-Banking Financial Company (NBFC) is a company registered under the Companies Act, 1956 and is engaged in the business of loans and advances, acquisition of shares/ stock/ bonds/ debentures/ securities issued by Government or local authority or other securities of like marketable nature, leasing, hire-purchase, insurance business, chit business but does not include any institution whose principal business is that of agriculture activity, industrial activity, sale/purchase/construction of immovable property.

'NBFC', is defined under sec. 45-I(f) of the Act, as under "non-banking financial company" means-

- (i) a financial institution which is a company;
- (ii) a non banking institution which is a company and which has as its principal business the receiving of deposits, under any scheme or arrangement or in any other manner, or lending in any manner;
- (iii) such other non-banking institution or class of such institutions, as the bank may, with the previous approval of the Central Government and by notification in the Official Gazette, specify.

For this purpose, the definition of 'Principal Business' given, vide Press Release 1998-99/1269 dated April 8, 1999 may be followed:

"The company will be treated as a non-banking financial company (NBFC) if its financial assets are more than 50 per cent of its total assets (netted off by intangible assets) and income from financial assets is more than 50 per cent of the gross income. Both these tests are required to be satisfied as the determinant factor for principal business of a company."

Definitions of NBFC

Whereas the 'Reserve bank of India Act 1934' itself defines the term NBFC, there is a different definition of the same term viz. NBFC in the 'Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 1988' that the RBI itself has issued under the aforesaid Act of 1934.

A. NBFC under the RBI Act

Under section 45-I(a) of the RBI Act,1934 'business of non banking financial institution ', is defined in terms of the business of a financial institution and NBFC.

NBFI

Sec: 45-I(a) : "business of a non-banking financial institution" means carrying on of the business of a financial institution referred to in clause (c) and includes business of a non-banking financial company referred to in clause (f);]

FI

The Act defines 'Financial Institution' (FI) u/s 45-I(c) as

"financial institution" means any non-banking institution which carries on as its business or part of its business any of the following activities, namely :-

- (i) the financing, whether by way of making loans or advances or otherwise, of any activity other than its own;
- (ii) the acquisition of shares, stock, bonds, debentures or securities issued by a government or local authority or other marketable securities of a like nature;
- (iii) letting or delivering of any goods to a hirer under a hire-purchase agreement as defined in clause (c) of section 2 of the Hire-Purchase Act, 1972 (26 of 1972);
- (iv) the carrying on of any class of insurance business;
- (v) managing, conducting or supervising, as foreman, agent or in any other capacity, of chits or kuries as defined in any law which is for the time being in force in any State, or any business, which is similar thereto;
- (vi) collecting, for any purpose or under any scheme or arrangement by whatever name called monies in lump sum or otherwise, by way of subscriptions or by sale of units, or other instruments or in any other manner and awarding prizes or gifts, whether in cash or kind, or disbursing monies in any other way, to persons from whom monies are collected or to any other person, but does not include-----."

The definition of FI uses the definition of a Non Banking Institution. (NBI)

NBI has been defined under the RBI Act 1934 as follows:

NBI

Sec.45-I(e) : "non-banking institution" means a company, corporation or co-operative society.

NBFC

'NBFC', itself is defined under sec. 45-I(f) of the Act, as under

Sec. 45-I(f):) "non-banking financial company" means-

- (i) a financial institution which is a company;
- (ii) a non banking institution which is a company and which has as its principal business the receiving of deposits, under any scheme or arrangement or in any other manner, or lending in any manner;
- (iii) such other non-banking institution or class of such institutions, as the bank may, with the previous approval of the Central Government and by notification in the Official Gazette, specify.

For this purpose, the definition of 'Principal Business' given, vide Press Release 1998-99/1269 dated April 8, 1999 may be followed: "The company will be treated as a non-banking financial company (NBFC) if its financial assets are more than

50 per cent of its total assets (netted off by intangible assets) and income from financial assets is more than 50 per cent of the gross income. Both these tests are required to be satisfied as the determinant factor for principal business of a company.”

An analysis of forgoing provisions reveals that except for specifically notified categories, a company that is a FI, or a NBI receiving deposits, alone would qualify as an NBFC.

On reading jointly both of the definitions of FI and NBI reveals that for a company to be an NBFC it should either carry on any of the businesses as enumerated in (i) to (vi) of FI Sec. 45-I(c) or it should otherwise receive public deposits in any manner.

B. NBFC under the Non Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 1988

Here the RBI has adopted another definition of NBFC.

NBFC

Para 2(1) (xi) of the Directions defines NBFC as -
Non-banking financial company means only the non-banking institution which is a loan company or an investment company or an asset finance company (w.e.f 6.12.2006) or a mutual benefit financial company.

The terms used in the above definition are also defined in the Directions, as under:

Loan company para 2(1)(viii) of the directions

Loan company means any company which is a financial institution carrying on as it's principal business the providing of finance whether by making loans or advances or otherwise for any activity other than its own but does not include an Asset Finance Company.

Investment company para 2(1)(vi) of the directions

Investment Company is a company which is a financial institution carrying on as it's principal business the acquisition of securities.

Asset Finance Company para 2(1)(ia) of the directions

Asset Finance Company means any company which is a financial institution carrying on as its principal business the financing of physical assets supporting productive / economic activity, such as automobiles, tractors, lathe machines, generator sets, earth moving and material handling equipments, moving on own power and general purpose industrial machines.

Mutual Benefit Financial Company para 2(1)(ix) of the directions

means a company which is a financial institution notified by The Central Government under section 620A of The Companies Act 1956

Each category of above notified companies is an NBFC for the Directions. As per the definition given in the directions, these companies are a 'financial institution'. However, the directions do not define financial institution.

Therefore 'financial institution' mentioned under imports its meaning from the definition in section 45-I(c) of the RBI Act. This is consequent to Para 2(2) of the directions.

As a consequence, each of these four categories of NBFC's under the Directions are also within the statutory meaning under the Act of the term NBFC.

Thus, NBFC's under the Reserve Bank of India Directions are a subset of the NBFC's under the Reserve Bank of India Act.

Classification of NBFCs

Non-banking financial institutions (NBFIs) are an important part of the Indian financial system. The NBFIs at present consist of a heterogeneous group of institutions that cater to a wide range of financial requirements.

However, there is a lacuna in the form of a classification problem of NBFIs. The RBI has identified as many as 12 categories of NBFIs. Five of them are regulated by the RBI; one – chit funds – jointly by the RBI and the Registrar of Chits and two – mutual benefit funds including nidhis and micro finance companies – by the Department of Company Affairs, Government of India. The National Housing Bank (NHB) regulates housing finance companies. The RBI has also included insurance companies, stock broking companies and merchant banking companies among NBFCs. The last two are regulated by the Securities and Exchange Board of India while insurance companies come under the Insurance

Regulatory and Development Authority. Other than the fact that all these come under the category of "non-banks," there are not many common features.

1. NBFCs are also classified in terms of activities into:

- Asset Finance Companies (AFC),
- Investment Companies (IC),
- Loan Companies (LC),
- Infrastructure Finance Companies (IFC),
- Core Investment Companies (CIC),
- Infrastructure Debt Fund - Non-Banking Financial Companies (IDF-NBFC),
- Non-Banking Financial Company- Micro Finance Institutions (NBFC-MFI)
- NBFC-Factors.

During 2011-12, two new categories of NBFCs, viz., Infrastructure Debt Funds - NBFC (NBFC-IDF) and Micro Finance Institution (NBFC-MFI) - were created and brought under separate regulatory framework. In addition, a new category of NBFC-Factors was introduced in September 2012. Earlier in April 2010, a regulatory framework for Systemically Important Core Investment Companies (CIC NDSI) was created for companies with an asset size of ₹1 billion and above, whose business is investment for the sole purpose of holding stakes in group concerns, are not trading in these securities and are accepting public funds. Prudential requirements in the form of Adjusted Net Worth and leverage were also prescribed for CIC-ND-SIs as they were given exemption from NOF, capital adequacy and exposure norms.

An NBFC-MFI is defined as a non-deposit-taking NBFC (other than a company licensed under Section 25 of the Indian Companies Act, 1956) that fulfils the following conditions: (i) Minimum Net Owned Funds of ₹5 crore (₹2 crore for the North-eastern Region), (ii) Not less than 85 per cent of its net assets are in the nature of "qualifying assets", (iii) the income it derives from the remaining 15 per cent assets in accordance with the regulations specified in that behalf. An NBFC which does not qualify as an NBFC-MFI shall not extend loans to the micro finance sector, in excess of 10 per cent of its total assets. Given the functional hardship faced by the MFI sector following the Andhra Pradesh Micro Finance Institutions (Regulations of Money Lending) Ordinance, 2010 and to give reprieve to the sector, the Reserve Bank modified the regulatory framework for MFIs to allow for time for compliance to regulations and allow them to register with the Bank as NBFC-MFI early. Considering the importance of this sector for the development and regulation of micro-finance institutions to promote

financial inclusion, the Micro-Finance Institutions (Development and Regulation) Bill, 2012 was introduced in the Lok Sabha on May 22, 2012.

2. NBFCs are classified into two categories, based on the liability structure, viz.:

- Category 'A' companies (NBFCs accepting public deposits or NBFCs-D);
- Category 'B' companies (NBFCs not raising public deposits or NBFCs-ND).

NBFCs-D are subject to requirements of capital adequacy, liquid assets maintenance, exposure norms (including restrictions on exposure to investments in land, building and unquoted shares), ALM discipline and reporting requirements; in contrast, until 2006 NBFCs-ND were subject to minimal regulation. Since April 1, 2007, non-deposit taking NBFCs with assets of `1 billion and above are being classified as Systemically Important Non-Deposit taking NBFCs (NBFCs-ND-SI), and prudential regulations, such as capital adequacy requirements and exposure norms along with reporting requirements, have been made applicable to them. The asset liability management (ALM) reporting and disclosure norms have also been made applicable to them at different points of time

Systemically important NBFCs

International Monetary Fund has framed principles for regulation of the financial sector, where it suggests that institutions performing similar functions should be subject to similar regulations. Accordingly, All NBFCs-ND with an asset size of Rs.100 crore and more as per the last audited balance sheet are now considered as systemically important NBFCs-ND (NBFC-ND-SI). NBFCs-ND- SI are required to maintain a minimum CRAR of 10 per cent. No NBFC-ND-SI is allowed to (i) lend to any single borrower/group of borrowers exceeding 15 per cent / 25 per cent of its owned fund; (ii) invest in the shares of another company/ single group of companies exceeding 15 per cent / 25 per cent of its owned fund; and (iii) lend and invest (loans/investments taken together) exceeding 25 per cent of its owned fund to a single party and 40 per cent of its owned fund to a single group of parties.

This classification is in addition to the present classification of NBFCs into deposit-taking, and non-deposit-taking NBFCs. [RBI on Financial Regulation of Systemically Important NBFCs and Banks' Relationship with them- dated 12.12.2006]

3. Residuary non-banking companies (RNBCs)

A separate category of NBFCs called the Residuary non-banking companies (RNBCs) also exists as they could not be categorised into any one of the above three categories.

RNBCs are a category of NBFCs whose principal business is acceptance of deposits and investing in approved securities. These companies are required to maintain investments as per directions of RBI, in addition to liquid assets. The functioning of these companies is different from those of NBFCs in terms of method of mobilisation of deposits and requirement of deployment of depositors' funds. However, Prudential Norms Directions are applicable to these companies also.

There is no ceiling on raising of deposits by RNBCs but every RNBC has to ensure that the amounts deposited and investments made by the company are not less than the aggregate amount of liabilities to the depositors.

To secure the interest of depositor, such companies are required to invest in a portfolio comprising of highly liquid and secured instruments viz. Central/State Government securities, fixed deposit of scheduled commercial banks (SCB), Certificate of deposits of SCB/FIs, units of Mutual Funds, etc.

At end-March 2012, there were two RNBCs, registered with the Reserve Bank. One each is located in central and eastern regions. Both the RNBCs are in the process of migrating to other business models and have been directed to reduce their deposit liabilities to 'nil' by 2015

4. Miscellaneous non-banking companies MNBCs (Chit Fund),

The Chit Companies, although governed by the Miscellaneous Non-banking Companies (MNBCs) (Reserve Bank) Directions, 1977, issued by the Reserve Bank with regard to acceptance of deposits, are regulated by the Registrar of Chits of the respective State Governments.

Furthermore, MNBCs, not accepting public deposits have been exempted from submitting returns to the Reserve Bank since December 27, 2005.

5. Mutual benefit financial companies (Nidhis and unnotified Nidhis)

Mutual benefit funds including Nidhi companies are not regulated by the Reserve Bank (except as pertaining to deposit taking activities) as they come under the regulatory purview of the Ministry of Corporate Affairs

6. Housing finance companies.

The National Housing Bank (NHB) regulates housing finance companies

7. Insurance companies

Insurance Companies are regulated by the Insurance Regulatory and Development Authority.

8. Stock broking companies and Merchant banking companies

These companies are regulated by the Securities and Exchange Board of India.

9. Mortgage Guarantee Companies

Mortgage Guarantee Companies have been notified as Non-Banking Financial Companies under Section 45 I(f)(iii) of the RBI Act, 1934.

Supervision of NBFCs by Reserve Bank

The supervisory framework for NBFCs is based on three criteria, viz.,

- (a) the size of NBFC,
- (b) the type of activity performed, and
- (c) the acceptance or otherwise of public deposits.

Towards this end, a four-pronged supervisory strategy comprising –

- (a) on-site inspection based on CAMELS (capital, assets, management, earnings, liquidity, systems and procedures) methodology,
- (b) computerised off-site surveillance through periodic control returns,
- (c) an effective market intelligence network, and
- (d) a system of submission of exception reports by auditors of NBFCs, has been put in place.

The regulation and supervision is comprehensive for companies accepting or holding public deposits to ensure protection of interests of depositors.

Companies holding or accepting public deposits are required to comply with all the directions on acceptance of public deposits, prudential norms and liquid assets, and should submit periodic returns to the Reserve Bank. They are supervised using all the supervisory tools indicated above.

Companies not holding or accepting public deposits are regulated and supervised in a limited manner. They are required to comply only with prudential norms relating to income recognition, accounting standards, asset

classification and provisioning against bad and doubtful debts. They are less frequently inspected. Such companies are now required to submit a monthly return to the Reserve Bank.

5.0 PRE-REQUISITES FOR CARRYING ON BUSINESS OF NBFC

The company desiring to be registered as a NBFC is required to submit its application for registration in the prescribed format along with necessary documents for RBI's consideration. RBI issues Certificate of Registration after satisfying itself that the conditions as enumerated in Section 45-IA of the RBI Act, 1934 are satisfied.

The following pre-requisites mentioned below are cumulative and not alternative.

1. Registration Requirement

In terms of Section 45-IA of the RBI Act, 1934, it is mandatory that every NBFC should be registered with RBI to commence or carry on any business of non-banking financial institution as defined in clause (a) of Section 45 I of the RBI Act, 1934.

The registration is compulsory for all NBFCs, irrespective of their holding of public deposits. The RBI (Amendment) Act, 1997, which introduced comprehensive changes in Chapter III-B, III-C and V, provides for an entry point norm of Rs.25 lakh as the minimum net owned fund (NOF). Subsequently, for new NBFCs seeking registration with the Reserve Bank to commence business on or after April 21, 1999, the requirement of minimum level of NOF was revised upwards to Rs.2 crore. No NBFC can commence or carry on business of a financial institution including acceptance of public deposit without obtaining a Certificate of Registration (CoR) from the Reserve Bank.

The company is required to submit its application for registration in the prescribed format along with necessary documents for RBI's consideration. The Bank issues Certificate of Registration after satisfying itself that the conditions as enumerated in Section 45-IA of the RBI Act, 1934 are satisfied

Requirements to be complied with and documents to be submitted to RBI by NBFCs for obtaining certificate and Registration from RBI

An indicative list of documents/information to be furnished along with the application. All documents/information is to be submitted in duplicate.

1.	Minimum NOF requirement Rs. 200 lakh.
2.	Application to be submitted in two separate sets tied up properly in two separate files.
3.	Annex II to the Application Form to be submitted duly signed by the director/ Authorized signatory and certified by the statutory auditors.
4.	Annex III (directors' profile) to the Application Form to be separately filled up for each director. Care should be taken to give details of bankers in respect of firms/companies/entities in which directors have substantial interest.
5.	In case the directors are associated or have substantial interest in other companies, indicate clearly the activity of the companies (whether NBFC or not).
6.	Board Resolution specifically approving the submission of the application and its contents and authorising signatory.
7.	Board Resolution to the effect that the company has not accepted any public deposit, in the past (specify period)/does not hold any public deposit as on the date and will not accept the same in future without the prior approval of Reserve Bank of India in writing.
8.	Board resolution stating that the company is not carrying on any NBFC activity/stopped NBFC activity and will not carry on/commence the same before getting registration from RBI.
9.	Auditors Certificate certifying that the company is/does not accept/is not holding Public Deposit.
10.	Auditors Certificate certifying that the company is not carrying on any NBFC activity.
11.	Net owned fund as on date.
12.	Certifying compliance with section 45S of Chapter IIIC of the RBI Act, 1934 in which director/s of the company has substantial interest.
13.	Details of changes in the Memorandum and Articles of Association duly certified.
14.	Last three years Audited balance sheet along with directors & auditors report.
15.	Details of clauses in the memorandum relating to financial business.
16.	Details of change in the management of the company during last financial year till date if any and reasons thereof.
17.	Details of acquisitions, mergers of other companies if any together with

	supporting documents.
18.	Details of group companies/associate concerns/subsidiaries/holding companies.
19.	Details of infusion of capital if any during last financial year together with the copy of return of allotment filed with Registrar of Companies.
20.	Details of the bank balances/bank accounts/complete postal address of the branch/bank, loan/credit facilities etc. availed.
21.	Business plan for next three years indicating market segment to be covered without any element of public deposits.
22.	Cash flow statement, asset/income pattern statement for next three years.
23.	Brief background note on the activities of the company during the last three years and the reasons for applying for NBFC registration.
24.	II(b) is the company engaged in any capital market activity? If so, whether there has been any non-compliance with SEBI Regulations? (Statement to be certified by Auditors).
25.	Whether any prohibitory order was issued in the past to the company or any other NBFC/RNBC with which the directors/promoters etc. were associated? If yes, details there of.
26.	Whether the company or any of its directors was/is involved in any criminal case, including under section 138(1) of the Negotiable Instruments Act? If yes, details thereof.
27.	Whether the company was granted any permission by ECD to function as Full-fledged Money Changers?
28.	Whether the company was/is authorised by ECD to accept deposits from NRIs.
29.	Whether "Fit and Proper" Norms for Directors have been fulfilled.

NBFCs exempted from Registration with RBI

However, to obviate dual regulation, certain category of NBFCs which are regulated by other regulators are exempted from the requirement of registration with RBI viz. Venture Capital Fund/Merchant Banking companies/Stock broking companies registered with SEBI, Insurance Company holding a valid Certificate of Registration issued by IRDA, Nidhi companies as notified under Section 620A of the Companies Act, 1956, Chit companies as defined in clause (b) of Section 2 of the Chit Funds Act, 1982 or Housing Finance Companies

regulated by National Housing Bank.

As laid down in RBI Master Circular RBI/2012-13/29 DNBS.PD.CC.No. 282/03.02.004/2012-13 dated July 2nd, 2012 the following are some exemptions from the provisions of RBI Act, 1934 but subject to certain conditions:

- (i) A Housing Finance Institutions has been exempted from provisions of Chapter III B of the RBI Act, 1934
- (ii) A merchant banking company has been exempted from the provisions of Section 45-IA [Requirement of registration and net owned fund], Section 45-IB [Maintenance of liquid assets] and 45-IC [Creation of Reserve Fund] of the RBI Act, 1934 , Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 1998 and Non-Banking Financial Companies Prudential Norms (Reserve Bank) Directions, 1998
- (iii) In the case of Micro Finance Companies, Sections 45-IA, 45-IB and 45-IC of the Reserve Bank of India Act, 1934 shall not apply to certain micro finance companies
- (iv) Mutual Benefit Companies - Sections 45-IA, 45-IB and 45-IC of the Reserve Bank of India Act, 1934 shall not apply to certain Mutual Benefit Companies
- (v) In the case of Government Companies- Sections 45-IB and 45-IC of the Reserve Bank of India Act, 1934 paragraphs 4 to 7 of the Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 1998 and Non-Banking Financial Companies Prudential Norms (Reserve Bank) Directions, 1998 except paragraph 13 A of the said directions relating to submission of information to Reserve Bank in regard to change of address, directors, auditors, etc shall not apply
- (vi) In the case of Venture Capital Fund Companies Section 45-IA and Section 45-IC of the Reserve Bank of India Act, 1934 shall not apply
- (vii) In the case of Insurance/Stock Exchange/Stock Broker/Sub-Broker-The provisions of Section 45-IA, 45-IB, 45-IC, 45MB and 45MC of the Reserve Bank of India Act, 1934 and provisions of Non-Banking Financial Companies Acceptance of Public Deposit (Reserve Bank) Directions contained in Notification No. DFC.118 / DG(SPT)-98 dated January 31. 1998, the Non-Banking Financial Companies Prudential Norms (Reserve Bank) Directions, 1998 dated January 31, 1998 shall not apply
- (viii) In the case of Nidhi Companies, the provisions of Sections 45-IA, 45-IB and 45-IC of the Reserve Bank of India Act, 1934 shall not apply
- (ix) Chit Companies doing the business of chits exclusively are exempted
- (x) Securitisation or Reconstruction Companies registered with the Reserve Bank of India under Section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.
- (xi) Mortgage Guarantee Companies

(xii) Core Investment Companies - The provisions of section 45-IA of the Act shall not apply to a non-banking financial company being a Core Investment Company referred to in the Core Investment Companies (Reserve Bank) Directions, 2011, which is not a Systemically Important Core Investment Company, as defined in clause (h) of sub-paragraph (1) of paragraph 3 of the Core Investment Companies (Reserve Bank) Directions, 2011. The provisions of section 45-IA (1)(b) of the Act also shall not apply subject to the condition that it meets with the capital requirements and leverage ratio as specified in the said directions. The Non-Banking Financial (Non- Deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank) Directions, 2007" shall also not apply to a non-banking financial company being a Core Investment Company referred to in the Core Investment Companies (Reserve Bank) Directions, 2011 (hereinafter referred to as CIC Directions), which is not a systemically important Core Investment Company as defined in clause (h) of sub-paragraph (1) of paragraph 3 of the CIC Directions." The provisions of paragraphs 15, 16 and 18 of these Directions shall not apply to a Systemically Important Core Investment Company as defined in the CIC Directions, subject to the condition that it submits the Annual Auditors Certificate and meets with the capital requirements and leverage ratio, as specified in the CIC Directions".

The list of registered NBFCs is available on the web site of Reserve Bank of India and can be viewed at www.rbi.org.in

2. Incorporation under The Companies Act 1956

It should be a company incorporated under the Companies Act, 1956 and desirous of commencing business of non-banking financial institution as defined under Section 45 I(a) of the RBI Act, 1934

3. Minimum Net Owned Fund

A company incorporated under the Companies Act, 1956 and desirous of commencing business of non-banking financial institution as defined under Section 45 I(a) of the RBI Act, 1934 should have a minimum net owned fund of Rs 25 lakh raised to Rs 200 lakh w.e.f April 21, 1999 Vide Notification no DNBS 132/CGM (VSNM)-99, dated 20-4-1999, by the RBI for an NBFC which commences the business of an NBFC after 21st April 1999. Thus, this specification of higher "net owned fund" is not applicable to NBFCs that commenced business before 21 April 1999.

Net Owned Fund is defined in the Explanation to Section 45-IA of the RBI Act 1934 as follows

(a) The aggregate of the paid-up equity capital and free reserves as disclosed in the latest balance sheet of the company after deducting therefrom-

- (i) accumulated balance of loss;
- (ii) Deferred revenue expenditure; and
- (iii) Other intangible assets; and

(b) Further reduced by the amounts representing-

(1) Investments of such company in shares of-

- (i) Its subsidiaries;
- (ii) Companies in the same group;
- (iii) All other non-banking financial companies; and

(2) The book value of debentures, bonds, outstanding loans and advances (including hire-purchase and lease finance) made to, and deposits with-

- (i) Subsidiaries of such company; and
- (ii) Companies in the same group,

to the extent such amount exceeds ten per cent, of (a) above

General Compliance Requirements

All NBFCs, being companies registered under the Companies Act, have to fulfill compliance relating to the Board of Directors, Share Capital, Management Structure, Audits, Meetings, maintenance as well as publication of books of accounts and general conduct as per the requirements of the Companies Act 1956.

In addition, they have to fulfill the specific requirements of the Reserve Bank of India (RBI) as set out in the Directions and various notifications and amendments by the RBI. The RBI also prescribes a set of compliance norms for all NBFCs. The Prudential Norms for NBFCs accepting public deposits are more rigorous.

6.0 REGULATORY FRAMEWORK FOR NBFCs IN INDIA

The NBFC sector is characterised by its heterogeneity. It is heterogeneous in term of size, business, spread and ownership. It is more than three decades since RBI has started regulating and supervising the functioning of the NBFC sector in India. RBI presently regulates the NBFCs whether undertaking, exclusively or in combination, the activities of asset financing, loaning and investment as their principal business, irrespective of whether they accept public deposits or not.

The scheme of regulation of the deposit acceptance activities of the Non-Banking Companies was conceived in the sixties as an adjunct to monetary and credit policy of the country and also to provide an indirect protection to the depositors by insertion in the year 1963, of a new Chapter III B in the Reserve Bank of India Act, 1934. The regulations till 1997 empowered the Reserve Bank of India, only to regulate or prohibit issue of prospectus or advertisement soliciting deposit, collect information as to deposits and to give directions on matters relating to deposits.

During the nineties a spurt was observed in the number of non-banking companies and the volume of deposits accepted. Proliferation of institutions both financial and non-financial depending mainly or wholly on deposits from public was viewed with concern by the authorities. Further in the absence of any prudential ceiling, the NBFCs deployed their funds where they had little experience and expertise as also lent to those sectors with high risks. The resultant high level of Non Performing Assets aggravated the liquidity crunch faced by many companies and led to significant failures

Amendments to RBI Act and New Regulatory Framework

Various committees, which went into these aspects, strongly recommended that there should be an appropriate regulatory framework over NBFCs and that more powers should be vested with RBI to regulate NBFCs in a better manner. Chapters III-B, III-C and V of the RBI Act were comprehensively amended in January 1997 for vesting more powers with the RBI and providing, *inter alia*, for

minimum entry point norm, compulsory registration with the Reserve Bank of all existing and newly incorporated NBFCs for carrying on and commencement of financial business. RBI put in place in January 1998 a new regulatory framework involving prescription of prudential norms for NBFCs, regulation of deposit taking activity to ensure that the NBFCs function on sound and healthy lines and strengthen the financial system of the country. Regulatory and supervisory attention was focused on NBFCs -D which accept public deposits so as to enable RBI to efficiently discharge its responsibilities to protect the interests of the depositors. The process has helped in ensuring consolidation of NBFC sector as a whole.

With the amendment, any company seeking to commence/carry on business of NBFIs was required to obtain Certificate of Registration from the Bank under Section 45-IA of the RBI Act, 1934 and also have a minimum Net Owned Fund (NOF) of Rs 25 lakhs. The NOF requirement was increased to Rs 200 lakhs w.e.f. April 21, 1999. While giving registration, an evaluation of the quality of management is undertaken by applying 'fit and proper' norm based on the information furnished by the company in respect of the promoters/directors, bankers' report, report from other regulators like SEBI/IRDA etc. (in case the promoters/directors are involved in activities regulated by these institutions). New Companies are not allowed to raise public deposits for period of two years from the date of registration. For allowing these companies to raise public deposits after a period of two years, detailed appraisal/review is undertaken by the Bank.

Further two sets of detailed directions on Prudential norms were issued by RBI in 2007. The directions inter alia, prescribe guidelines on income recognition, asset classification and provisioning requirements applicable to NBFCs, exposure norms, constitution of audit committee, disclosures in the balance sheet, requirement of capital adequacy, restrictions on investments in land and building and unquoted shares.

An Overview of Regulation of NBFCs

(1) Mission	(3) Basic Structure of Regulatory and Supervisory Framework
To ensure that	Prescription of prudential norms
i. the financial companies	akin to those applicable to banks,
function on healthy lines,	function in consonance
* these companies	Submission of periodical Returns
function in consonance	for the purpose of off-site surveillance,

An Overview of Regulation of NBFCs (Concl'd.)

with the monetary policy Supervisory framework comprising framework, so that their (a) on-site inspection (CAMELS functioning does not lead to pattern)

systemic aberrations, (b) off-site Monitoring through returns (c)

market intelligence And (d) Exception reports by statutory auditors,,

* the quality of surveillance Punitive action like cancellation and supervision exercised of Certificate of Registration by the RBI over the NBFCs (CoR), prohibition keeps pace with the developments from acceptance of deposits and in this sector. alienation of assets, filing criminal

complaints and winding up petitions in extreme cases, appointment of the RBI observers in certain cases, etc.

* comprehensive regulation and Co-ordination with State Governments supervision of Asset liability to curb unauthorised and fraudulent and risk management activities, training programmes system for NBFCs, for personnel of NBFCs, State Governments and Police officials.

(2) Amendments to the (4) Other steps for protection of Reserve Bank of India depositors' interest (RBI) Act, 1934

RBI Act was amended Publicity for depositors' education in January 1997 And awareness, workshops / seminars providing for, *inter alia*. for trade and industry organisations, depositors' associations, chartered accountants, etc.

* Entry norms for NBFCs and prohibition of deposit acceptance (save to the extent permitted under the Act) by unincorporated bodies engaged in financial business,

* Compulsory registration, maintenance of liquid assets and creation of reserve fund,

* Power of the RBI to issue directions to an NBFC or to the NBFCs in general

or to a class of NBFCs.

- * Comprehensive regulation and Supervision of deposit taking NBFCs and limited supervision over those not accepting public deposits.

(source- www.rbi.org.in)

Regulatory Framework of NBFC

1. Reserve Bank of India

Governing Body: Department of Non-Banking Supervision of the Reserve Bank of India (DNBS-RBI)

Governing Laws:

- a. CHAPTER IIIB, III-C and V of Reserve Bank of India (RBI) Act 1934;
- b. RBI Directions
- c. RBI Circulars ; Notifications and Guidelines issued from time to time

a. CHAPTER IIIB OF RBI ACT 1934

Provisions relating to Non banking Institutions receiving deposits and Financial Institutions

45H : Chapter IIIB not to apply in certain cases

45 I : Definitions

45-IA :Requirement of Registration and Net owned Fund

45-IB: Maintenance of percentage of assets

45-IC: Reserve Fund

45J: Regulation by Bank on Prospectus

45JA: Power of RBI to determine Policy and issue Directions

45K: Power of RBI to collect information from NBI as to deposits and give Directions

45L: Power of RBI to call information from FI and give Directions

45M: Duty of NBI to furnish statements etc. required by Bank

45MA: Powers & Duties of Auditors

45MB: Power of RBI to prohibit acceptance of deposit and alienation of assets

45MC: Power of RBI to file winding up petition

45N: Inspection

45NA: Deposits not to be solicited by unauthorized person

45NB: Disclosure of Information

45NC: Power of Bank to exempt

45Q: Chapter IIIB to override other laws

45QA: Power of CLB to offer repayment of deposit

45QB: Nomination by Depositors

b. RBI Directions

i. Non Banking Financial Companies Acceptance of Public Deposits(Reserve Bank) Directions 1998

ii. Non Banking Financial (Deposit Accepting or holding) Companies Prudential Norms (Reserve Bank) Directions 2007

iii. Non Banking Financial (Non Deposit Accepting or holding) Companies Prudential Norms (Reserve Bank) Directions 2007

- iv. Non-Banking Financial Companies Auditor's Report (Reserve Bank) Directions, 2008
- v. Reserve Bank of India (Non Banking Financial Companies) Returns Specifications 1997
- vi. Residuary Non Banking Companies (Reserve Bank) Directions 1987
- vii. Miscellaneous Non Banking Companies (Reserve Bank) Directions 1977
- viii. Securitisation Companies and Reconstruction Companies (Reserve Bank) Guidelines and Directions, 2003
- ix. Mortgage Guarantee Companies Investment (Reserve Bank) Directions, 2008
- x. Mortgage Guarantee Companies Prudential Norms (Reserve Bank) Directions, 2008
- xi. Non Banking Financial Company-Micro Finance Institutions' (NBFC-MFIs) (Reserve Bank) Directions 2011
- xii. Non-Banking Financial Company -Factors (Reserve Bank) Directions, 2012

c. RBI Circulars, Notifications and Guidelines Issued from time to time

Master Circulars issued on July 02,2012

1. 'Know Your Customer' (KYC) Guidelines - Anti Money Laundering Standards (AML) -'Prevention of Money Laundering Act, 2002 - Obligations of NBFCs in terms of Rules notified thereunder
2. Miscellaneous Instructions to All Non-Banking Financial Companies
3. Returns to be submitted by NBFCs
4. Introduction of New Category of NBFCs - 'Non Banking Financial Company - Micro Finance Institutions' (NBFC-MFIs) - Directions
5. Regulatory Framework for Core Investment Companies (CICs)
6. Exemptions from the provisions of RBI Act, 1934
7. Opening of Branch-Subsidiary-Joint Venture-Representative office or Undertaking Investment Abroad by NBFCs

8. Fair Practices Code

9. Miscellaneous Instructions to NBFC- ND-SI

10. Corporate Governance

11. Allied activities- entry into insurance business, issue of credit card and marketing and distribution of certain products

12. Frauds - Future approach towards monitoring of frauds in NBFCs

RBI notifications (2011 and 2012) pertaining to NBFC

- Nov 08, 2012 - Readiness of major service providers to migrate from IPv4 to IPv6
- Nov 06, 2012 - Standardisation and Enhancement of Security Features in Cheque Forms - Migrating to CTS 2010 Standards
- Oct 16, 2012 - NBFCs/RNBCs - Uploading of Reports in 'Test Mode' on FINnet Gateway Reporting
- Sep 17, 2012 - NBFCs/RNBCs - Anti-Money Laundering/Combating of Financing of Terrorism - Standards
- Aug 03, 2012 - Non Banking Financial Company-Micro Finance Institutions (NBFC-MFIs) - Directions - Modifications
- Jul 26, 2012 - KYC Norms/ AML Standards/Combating Financing of Terrorism -Risk Categorisation and Updation of Customer Profiles
- Jul 23, 2012 - The Non-Banking Financial Company -Factors (Reserve Bank) Directions, 2012
- Jul 05, 2012 -
 1. Implementation of Section 51-A of UAPA, 1967 - Updates of the UNSCR 1267 (1999) /1989 (2011) Committee's Al Qaida Sanctions List
 2. Implementation of Section 51-A of UAPA, 1967 - Updates of the UNSCR Committee's Al Qaida Sanctions List - Primary (Urban) Co-operative Banks
- May 30, 2012 - Uniformity in Risk weight for assets covering PPP and post COD projects
- May 29, 2012 - Know Your Customer (KYC) guidelines - accounts of proprietary concerns

- May 11, 2012 -

1. Core Investment Companies (Reserve Bank) Directions, 2011 - Clarification on CICs Issuing Guarantees
2. NBFCs - Rating of Fixed Deposits by Brickwork Ratings Pvt Ltd
3. Infrastructure Finance Companies - Eligible Credit Rating Agencies - Brickwork Ratings India Pvt. Ltd.

- Mar 26, 2012 -

1. Guidelines on Fair Practices Code for NBFCs
2. Implementation of Section 51-A of UAPA, 1967-Updates of the UNSCR 1267 (1999) /2989 (2011) Committee's Al Qaida Sanctions List

- Mar 21, 2012 -

1. NBFCs - KYC Norms/ AML Standards/ Combating Financing of Terrorism/Obligation of banks under PMLA, 2002- Assessment and Monitoring of Risk

2. NBFCs - Lending Against Security of Single Product - Gold Jewellery

- Mar 15, 2012-

1. Implementation of Section 51-A of UAPA, 1967- Splitting of UNSC 1267 Committee's list of individuals and entities linked to Al-Qaida and Taliban
2. Non- Reckoning Fixed Deposits with Banks as Financial Assets

- Mar 14, 2012 -

1. Implementation of UNSCR 1929 (2010) on Non-proliferation - Government of India Order of November 04, 2011
2. Anti-Money Laundering (AML)/Combating of Financing of Terrorism (CFT) - Standards

- Mar 02, 2012 - Monitoring of frauds

- Dec 30, 2011 -
 1. Revised Capital Adequacy Framework for Off-Balance Sheet Items for NBFCs-Clarification
 2. Issuance of Non-Convertible Debentures (NCDs)
- Dec 02, 2011 - Introduction of New Category of NBFCs - 'Non Banking Financial Company-Micro Finance Institutions' (NBFC-MFIs) - Directions
- Nov 21, 2011 - NBFCs - Infrastructure Debt Funds
- Oct 28, 2011 -
 1. Implementation of Green Initiative of the Government
 2. KYC Guidelines – AML Standards -Prevention of Money Laundering Act, 2002 - Obligations of NBFCs – Revised Reporting Format
 3. List of Terrorist Individuals / Organisations- under UNSCR 1267 (1999) and 1822(2008) on Taliban / AL-Qaida Organisation – NBFCs/RNBCs
- Sep 27, 2011 - Attempt to defraud using fake bank guarantee-modus operandi
- Aug 02, 2011 - List of Terrorist Individuals / Organisations- under UNSCR 1267 (1999) and 1822(2008) on Taliban / AL-Qaida Organisation
- Jul 22, 2011 - NBFCs/RNBCs - List of Terrorist Individuals / Organisations- under UNSCR 1267 (1999)and 1822(2008) on Taliban / AL-Qaida Organisation
- May 27, 2011 - Review of Guidelines on entry of NBFCs into Insurance Business
- May 25, 2011 - Setting up of Central Electronic Registry under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002
- May 20, 2011 - NBFCs/RNBCs - List of Terrorist Individuals / Organisations- under UNSCR 1267 (1999)and 1822(2008) on Taliban / AL-Qaida Organisation
- May 04, 2011 - NBFCs/RNBCs - Anti- Money Laundering/Combating Financing of Terrorism Standards
- May 02, 2011 -
 1. KYC Norms/ Anti- Money Laundering Standards/Combating Financing of Terrorism – NBFCs/RNBCs
 2. List of terrorist individuals/organisations – NBFCs/RNBCs

- Apr 05, 2011 - Operation of deposit account with NBFCs and money mules
- Mar 08, 2011 - Know Your Customer (KYC) norms / Anti-Money Laundering (AML) standards/Combating of Financing of Terrorism (CFT) Obligation of NBFCs under PMLA, 2002
- Feb 17, 2011 - All Deposit Taking NBFCs - CRAR Fifteen percent w.e.f March 31, 2012
- Jan 28, 2011 - NBFCs/RNBCs - Anti- Money Laundering/Combating Financing of Terrorism Standards
- Jan 27, 2011 - Services to Persons with Disability - Training Programme for Employees
- Jan 17, 2011 - Provision of 0.25% for standard assets of NBFCs
- Jan 05, 2011 - Regulatory Framework for Core Investment Companies

2. State Laws on protection of interests of depositors in financial establishments

Some State Laws -

- a. Tamil Nadu Protection of Interest of Depositor's (Financial Establishments) Act 1997 [Tamil Nadu is the first state to enact such an act in the country]
- b. Maharashtra Protection of Interests of Depositors (In Financial Establishments) Act 1999
- c. The Delhi Protection Of Interests Of Depositors (In Financial Establishments) Act, 2001
- d. Bihar Protection of Interests of Depositors (In Financial Establishments) Act, 2002
- e. Gujarat Protection of Interests of Depositors (In Financial Establishments) Act, 2003
- f. The Madhya Pradesh protection of Depositor's Interest Act, 2000

3. The Companies Act 1956

Some applicable sections include:

Section 3 : Definitions of "Company"; "existing company"; "private company";

and “public company”

Section 4: Meaning of “holding company” and “subsidiary”

Section 4A: Public Financial Institutions

Section 43A: Private Company to become public company in certain cases

Section 58A: Deposits not to be invited without issuing an advertisement

Section 58AA: Small Depositors

Section 58AAA: Default in acceptance or refund of deposits to be cognizable

Section 209(1): Books of Accounts to be kept by company

Section 217(1) : Director’s Report

Section 227: Powers and Duties of Auditors

Section 252: Minimum Number of Directors

Section 292A: Audit Committee

Section 370(1B): Loans etc. to companies under the same management

Section 372 (11) : Purchase by company of shares etc. of other companies

Section 620A: Power to modify Act in its application to Nidhis etc.

Section 637A: Power of Central Government or Tribunal to accord approval etc. subject to conditions and to prescribe fees on applications

4. Company’s Rules

- i. Companies (Acceptance of Deposit) Rules, 1975
- ii. Companies (Acceptance of Deposits Amendment) Rules, 1997
- iii. Companies (Application for Extension of time or Exemption under sub-section (8) of section 58A) Rules, 1979

5. Foreign Exchange Regulations

- i. Foreign Exchange Management (Deposit) Regulations 2000
- ii. Foreign Exchange Management (Transfer or issue of Security by a Person Resident outside India) Regulations, 2000

6. Securities Contracts (Regulation) Act 1956

Some applicable sections include:

Section 2(h): Definition of “Securities”

Section 2(j): Definition of “Stock Exchange”

Section 4: Grant of Recognition to Stock Exchanges

7. Housing Finance Companies

The Housing Finance Companies (NHB) Directions 2001

8. Mortgage Guarantee Companies

Mortgage Guarantee Companies Investment (Reserve Bank) Directions, 2008
Mortgage Guarantee Company (Reserve Bank) Guidelines, 2008
Notification No. DNBS (MGC)1/CGM(PK) -2008 dated January 15, 2008
Notification No. DNBS (MGC) 2 /CGM(PK) -2008 dated January 15, 2008

9. Securitisation Companies and Reconstruction Companies

- i. The Securitisation Companies and Reconstruction Companies (Reserve Bank) Guidelines and Directions, 2003
- ii. Exemption to Securitisation or Reconstruction Companies from RBI Act-August 28, 2003
- iii. Quarterly Statement to be submitted by Securitisation Companies/ Reconstruction Companies registered with the Reserve Bank of India under Section 3(4) of the SARFAESI Act - September 26,2008
- iv. Guidelines on declaration of Net Asset Value of Security Receipts issued by Securitisation Company/ Reconstruction Company- May 28, 2007
- v. Master Circular on directions/instructions issued to the Securitisation Companies and Reconstruction Companies - July 01,2008
- vi. Regulation of SCs/RCs-submission of returns and audited balance sheet by SCs/RCs - March 5, 2008

10. Miscellaneous Non-Banking Companies

- i. Non-banking Financial Companies and Miscellaneous Non-Banking Companies (Advertisement) Rules, 1977.
- ii. Miscellaneous Non Banking Companies (Reserve Bank) Directions, 1977
- iii. Chit Funds Act,1982

11. Residuary Non Banking Companies

Residuary Non Banking Companies (Reserve Bank) Directions, 1987

12. Micro Finance Institutions (Development and Regulation) Bill, 2012

13. Reports on Money Lending and Nidhis

Salient features of the RBI regulatory framework

The Reserve Bank regulates and supervises NBFCs as defined in Chapter III B of the RBI Act, 1934. Accordingly, the Reserve Bank has issued a set of directions to regulate the activities of NBFCs under its jurisdiction. Some features of the RBI regulatory framework are as follows:

- An NBFC must have specific authorization to accept deposits from the public.
- NBFC must display the Certificate of Registration or a certified copy thereof at the Registered office and other offices/branches.
- Registration of an NBFC with the RBI merely authorizes it to conduct the business of NBFC. RBI does **not** guarantee the repayment of deposits accepted by NBFCs. NBFCs cannot use the name of the RBI in any manner while conducting their business.
- The NBFC whose application for grant of Certificate of Registration (CoR) has been rejected or cancelled by the RBI is neither authorized to accept fresh deposits nor renew existing deposit. Such rejection or cancellation is also published in newspapers from time to time. Besides, a list of NBFCs permitted to accept public deposits, NBFCs whose applications for CoR has been rejected or whose CoR has been cancelled by the RBI is available on the RBI's web site www.rbi.org.in (go to site map and then NBFC list)
- NBFCs which accept deposits should have minimum investment grade credit rating granted by an approved credit rating agency for deposit collection, except certain Asset Finance (equipment leasing and hire purchase finance) companies and Residuary Non-Banking Companies (RNBCs),
- NBFCs excluding RNBCs cannot
 - Offer a rate of interest on deposits more than that approved by RBI from time to time (current Interest Rate is 12.5%p.a)
 - Accept deposit for a period less than 12 months and more than 60 months
 - Offer any gifts/incentives to solicit deposits from public.
- RNBCs should

-offer a rate of interest of not less than 5% per annum on term deposits and 3.5% on daily deposits, both compounded annually, under extant directions.

-RNBCs cannot accept deposits for a period less than 12 months and more than 84 months.

-RNBCs cannot offer any gifts/incentives to solicit deposits from public

- NBFCs including RNBCs can

-accept deposit only against issue of proper receipt.

-The receipt should bear the name of the company and should be signed by an authorized official of the company.

-The receipt should mention the name of the depositor, the amount in words as well as figures, the rate of interest payable on the deposit amount and the date of repayment of matured deposit along with the maturity amount.

- In the case of brokers/agents etc collecting public deposits on behalf of NBFCs, the depositors should satisfy themselves that the brokers/agents are duly authorized by the NBFC.
- If a deposit taking NBFC fails to repay the deposit or the interest accrued thereon in accordance with the terms and conditions of acceptance of such deposit, redressal of grievance can be through, - the Regional Bench of the Company Law Board at Chennai/ Delhi/ Kolkata/Mumbai
- Acceptance of deposits by companies engaged in activities including plantation activities, commodities trading, multilevel marketing, manufacturing activities, housing finance, nidhis (mutual benefit financial companies), and potential nidhis (mutual benefit company) and companies engaged in collective investment schemes do not come under the purview/regulations of the RBI.
- Individuals, firms and other unincorporated association of individuals or bodies shall not accept deposits from the public-
(i) if his or its business wholly or partly includes any of the financial activities such as loans and advances, acquisition of shares or marketable securities, leasing or hire purchase activities, or
(ii) if his or its principal business is that of receiving deposits or lending in any manner.

7.0 ACCEPTANCE OF PUBLIC DEPOSITS

All NBFCs are not entitled to accept public deposits. Only those NBFCs holding a valid Certificate of Registration with authorisation to accept Public Deposits can accept/hold public deposits. NBFCs authorised to accept/hold public deposits besides having minimum stipulated Net Owned Fund (NOF) should also comply with the Directions such as investing part of the funds in liquid assets, maintain reserves, rating etc. issued by the Bank.

Public Deposit

The term 'deposit' is defined under Section 45 I(bb) of the RBI Act, 1934. 'Deposit' includes and shall be deemed always to have included any receipt of money by way of deposit or loan or in any other form but does not include:

- amount raised by way of share capital, or contributed as capital by partners of a firm;
- amount received from scheduled bank, co-operative bank, a banking company, State Financial Corporation, IDBI or any other institution specified by RBI;
- amount received in ordinary course of business by way of security deposit, dealership deposit, earnest money, advance against orders for goods, properties or services;
- amount received by a registered money lender other than a body corporate;
- amount received by way of subscriptions in respect of a 'Chit'.

Paragraph 2(1)(xii) of the Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 1998 defines a ' public deposit' as a 'deposit' as defined under Section 45 I(bb) of the RBI Act, 1934 and further excludes the following:

- amount received from the Central/State Government or any other source where repayment is guaranteed by Central/State Government or any amount received from local authority or foreign government or any foreign citizen/authority/person;
- any amount received from financial institutions;
- any amount received from other company as inter-corporate deposit;
- amount received by way of subscriptions to shares, stock, bonds or debentures pending allotment or by way of calls in advance if such amount is not repayable to the members under the articles of association of the company;

- amount received from shareholders by private company;
- amount received from directors or relative of the director of a NBFC;
- amount raised by issue of bonds or debentures secured by mortgage of any immovable property or other asset of the company subject to conditions;
- the amount brought in by the promoters by way of unsecured loan;
- amount received from a mutual fund;
- any amount received as hybrid debt or subordinated debt;
- any amount received by issuance of Commercial Paper.

Minimum Net Owned Fund - Deposit Taking NBFCs

On and from January 31, 1998, no non-banking financial company having Net Owned Fund (NOF) of twenty five lakh of rupees (Increased to Rs. 200 lakh) and above shall accept public deposit unless it has obtained minimum investment grade or other specified credit rating for fixed deposits from any one of the approved credit rating agencies at least once a year and a copy of the rating is sent to the Reserve Bank of India along with return on prudential norms. However, this shall not apply to an Asset Finance Company.

To ensure a measured movement towards strengthening the financials of all deposit taking NBFCs by increasing their NOF to a minimum of Rs.200 lakh in a gradual, non-disruptive and non-discriminatory manner, the RBI vide RBI/2007-08/369 -DNBS (PD) C.C. No. 114 /03. 02.059/2007-08 dated June 17, 2008 prescribed that:

In order to strengthen the financial system in general and deposit taking entities in particular NBFCs accepting deposits should be adequately capitalized and at the same time also have a uniform minimum NOF.

To ensure a measured movement towards strengthening the financials of all deposit taking NBFCs by increasing their NOF to a minimum of Rs.200 lakh in a gradual, non-disruptive and non-discriminatory manner, it has been decided to prescribe that:

(a) As a first step, NBFCs having minimum NOF of less than Rs. 200 lakh may freeze their deposits at the level currently held by them.

(b) Further, Asset Finance Companies (AFC) having minimum investment grade credit rating and Capital to Risk-weighted Assets Ratio (CRAR) of 12% may

bring down public deposits to a level that is 1.5 times their NOF while all other companies may bring down their public deposits to a level equal to their NOF by March 31, 2009.

Category of NBFC	Present Ceiling on public deposits	Revised Ceiling on public deposits
AFCs maintaining CRAR of 15% without credit rating and having NOF more than Rs 25 lakh but less than Rs 200 lakh	1.5 times of NOF or Rs 10 crore whichever is less	Equal to NOF
AFCs with CRAR of 12% and having minimum investment grade credit rating and having NOF more than Rs 25 lakh but less than Rs 200 lakh	4 times of NOF	1.5 times of NOF
LCs/ICs with CRAR of 15% and having minimum investment grade credit rating and having NOF more than Rs 25 lakh but less than Rs 200 lakh	1.5 times of NOF	Equal to NOF

AFCs - Asset Finance Companies

LCs - Loan Companies

ICs - Investment Companies

(c) Those companies which are presently eligible to accept public deposits up to a certain level, but have, for any reason, not accepted deposits up to that level will be permitted to accept public deposits up to the revised ceiling prescribed

(d) Companies on attaining the NOF of Rs.200 lakh may submit statutory auditor's certificate certifying its NOF.

(e) The NBFCs failing to achieve the prescribed ceiling within the stipulated time period, may apply to the Reserve Bank for appropriate dispensation in this regard which may be considered on case to case basis.

Credit Rating

No non-banking financial company having Net Owned Fund Two Hundred lakh of rupees and above shall accept public deposit unless it has obtained minimum investment grade or other specified credit rating for fixed deposits from any one

of the approved credit rating agencies at least once a year and a copy of the rating is sent to the Reserve Bank of India along with return on prudential norms.

An unrated NBFC, except certain Asset Finance companies (AFC), cannot accept public deposits. An exception is made in case of unrated AFC companies with CRAR of 15% which can accept public deposit up to 1.5 times of the NOF or Rs 10 crore whichever is lower without having a credit rating. A NBFC may get itself rated by any of the five rating agencies namely, CRISIL, CARE, ICRA, FITCH Ratings India Pvt. Ltd. and Brickwork Ratings India Pvt. Ltd.

Approved Credit Rating Agencies and Minimum Investment Grade Credit Rating

The names of approved credit rating agencies and the minimum credit rating shall be as follows:-

Name of the agency Grade Rating	Minimum investment
(a) The Credit Rating Information Services of India Ltd. (CRISIL)	FA-(FA Minus)
(b) ICRA Ltd.	MA-(MA Minus)
(c) Credit Analysis & Research Ltd. (CARE)	CARE BBB(FD)
(d) Fitch Ratings India Private Ltd.	tA-(ind)(FD)]
(e) Brickwork Ratings India Pvt. Ltd. (Brickwork)	BWR F A

Upgrading/ Downgrading of credit rating

In the event of upgrading or downgrading of credit rating of any non-banking financial company to any level from the level previously held by the non banking financial company, it shall within fifteen working days of its being so rated inform, in writing, of such upgrading/downgrading to the Reserve Bank of India.

If rating of a NBFC is downgraded to below minimum investment grade rating, it has to stop accepting public deposit, report the position within fifteen working days to the RBI and reduce within three years from the date of such

downgrading of credit rating, the amount of excess public deposit to nil or to the appropriate extent permissible under paragraph 4(4) of Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 1998; however such NBFC can renew the matured public deposits subject to repayment stipulations specified above and compliance with other conditions for acceptance of deposits.

NBFCs also issue financial products like Commercial Paper, Debentures etc. to which rating is assigned by rating agencies. The ratings assigned to such products may undergo changes for various reasons ascribed to by the rating agencies.

Therefore RBI vide Notification RBI /2008-09 /372 DNBS (PD) CC. No.134/03.10.001 / 2008-2009 dated 4.02.2009, has clarified that all NBFCs (both deposit taking and non-deposit taking) with asset size of Rs 100 crore and above excluding RNBCs, shall furnish the information about downgrading / upgrading of assigned rating of any financial product issued by them, within fifteen days of such a change in rating, to the Regional Office of the Bank under whose jurisdiction their registered office is functioning.

Period of Deposit

The NBFCs are allowed to accept/renew public deposits for a minimum period of 12 months and maximum period of 60 months. The RNBCs have different norms for acceptance of deposits.

Prohibition from accepting demand deposit

No NBFC can accept/renew any public deposit which is payable on demand.

Interest on Public Deposit

NBFCs cannot offer interest rates higher than the ceiling rate prescribed by RBI from time to time. The present ceiling is 12.5 per cent per annum (on and from April 24, 2007). The interest may be paid or compounded at rests not shorter than monthly rests. This is the maximum permissible rate an NBFC can pay on its public deposits and they may offer lower rates.

Payment of brokerage

On and from January 31, 1998 no non-banking financial company shall pay to any broker on public deposit collected by or through him, -

- (i) brokerage, commission, incentive or any other benefit by whatever name called, in excess of two per cent of the deposit so collected;and
- (ii) expenses by way of reimbursement on the basis of relative vouchers/bills produced by him, in excess of 0.5 percent of the deposit so collected.

Particulars to be specified in application form soliciting public deposits

No non-banking financial company shall accept or renew any public deposit except on a written application from the depositor in the form to be supplied by the company, which form shall contain all the particulars specified in the Non-Banking Financial Companies and Miscellaneous Non-Banking Companies (Advertisement) Rules, 1977, made under section 58A of the Companies Act, 1956 and also contain the specific category of the depositor, i.e. whether the depositor is a shareholder or a director or a promoter of the company or a member of public.

Every non-banking financial company shall obtain proper introduction of the new depositors before opening their accounts and accepting the deposits and keep on its record the evidence which it has relied upon for the purpose of such introduction.

The application form should also contain the following :-

- (a) the credit rating assigned for its fixed deposit and the name of the credit rating agency which rated the company;
- (b) in case of non-repayment of the deposit or part thereof as per the, the depositor may approach Company Law Board;
- (c) in case of any deficiency of the company in servicing its deposit, the depositor may approach the National Consumers Disputes Redressal Forum, the State Level Consumers Disputes Redressal Forum or the District Level Consumers Disputes Redressal Forum for relief;
- (d) a statement that the financial position of the company as disclosed and the representations made in the application form are true and correct and that the company and its Board of Directors are responsible for the correctness and veracity thereof;
- (e) the financial activities of the company are regulated by the Reserve Bank of India;

(f) at the end of application form but before the signature of the depositor, the following verification clause by the depositor should be appended:

“I have gone through the financials and other statements / particulars / representations furnished / made by the company and after careful consideration I am making the deposit with the company at my own risk and volition”.

(g) the information relating to and the aggregate dues from the facilities, both fund and non-fund based, extended to, and the aggregate dues from companies in the same group or other entities or business ventures in which the directors and / or the non-banking financial company are holding substantial interest and the total amount of exposure to such entities.

Advertisement and statement in lieu of advertisement

Every non-banking financial company soliciting public deposit shall comply with the provisions of the Non-Banking Financial Companies and Miscellaneous Non-Banking Companies (Advertisement) Rules, 1977 and shall also specify in every advertisement to be issued thereunder, the following :-

- a. the actual rate of return by way of interest, premium, bonus other advantage to the depositor;
- b. the mode of repayment of deposit;
- c. maturity period of deposit;
- d. the interest payable on deposit;
- e. the rate of interest which will be payable to the depositor in case the depositor withdraws the deposit prematurely;
- f. the terms and conditions subject to which a deposit will be renewed;
- g. any other special features relating to the terms and conditions subject to which the deposit is accepted/renewed;
- h. the information, relating to the aggregate dues (including the non-fund based facilities provided to) from companies in the same group or other entities or business ventures in which, the directors and/or the NBFC are holding substantial interest and the total amount of exposure to such entities; and
- i. that the deposits solicited by it are not insured.

Where an NBFC displays any advertisement in electronic media such as TV, even without soliciting deposits, it should incorporate a caption/band in such advertisements indicating the following:

As regards deposit taking activity of the company, the viewers may refer to the advertisement in the newspaper/information furnished in the application form for soliciting public deposits;

The company is having a valid Certificate of Registration dated _____ issued by the Reserve Bank of India under section 45-IA of the Reserve Bank of India Act, 1934. However, the Reserve Bank of India does not accept any responsibility or guarantee about the present position as to the financial soundness of the company or for the correctness of any of the statements or representations made or opinions expressed by the company and for repayment of deposits/discharge of the liabilities by the company.]

Where a non-banking financial company intends to accept public deposit without inviting or allowing or causing any other person to invite such deposit, it shall, before accepting such deposit, deliver to the Reserve Bank of India for record, a statement in lieu of advertisement containing all the particulars required to be included in the advertisement pursuant to the Non-Banking Financial Companies and Miscellaneous Non-Banking Companies (Advertisement) Rules, 1977 as also the particulars stated above, duly signed in the manner provided in the aforesaid Rules.

A statement delivered as outlined above shall be valid till the expiry of six months from the date of closure of the financial year in which it is so delivered or until the date on which the balance sheet is laid before the company in general meeting or where the annual general meeting for any year has not been held, the latest day on which that meeting should have been held in accordance with the provisions of the Companies Act, 1956 (1 of 1956), whichever is earlier, and a fresh statement shall be delivered after the expiry of the validity of the statement, in each succeeding financial year before accepting public deposit in that financial year.

Furnishing of receipts to depositors

Every non-banking company shall furnish to every depositor or his agent, a receipt for every amount which has been or which may be received by the company by way of deposit

The said receipt shall be duly signed by an officer entitled to act for the company in this behalf and shall state the date of deposit, the name of the depositor, the amount in words and figures received by the company by way of deposit, the rate of interest payable thereon and the date on which the deposit is repayable.

Register of deposits

Every miscellaneous non-banking company shall keep one or more registers in which shall be entered separately in the case of each depositor the following particulars, namely-

- (a) name and address of the depositor,
- (b) date and amount of each deposit,
- (c) duration and the due date of each deposit,
- (d) date and amount of accrued interest or premium on each deposit,
- (e) date of claim made by the depositor,
- (f) date and amount of each repayment, whether of principal, interest or premium,
- (g) the reasons for delay in repayment beyond five working days and
- (h) any other particulars relating to the deposit

The register or registers aforesaid shall be kept at each branch in respect of the deposit accounts opened by that branch of the company and a consolidated register for all the branches taken together at the registered office of the company and shall be preserved in good order for a period of not less than eight calendar years following the financial year in which the latest entry is made of the repayment or renewal of any deposit of which particulars are contained in the register.

Provided that, if the company keeps the books of account referred to in sub-section (1) of section 209 of the Companies Act, 1956 (1 of 1956) at any place other than its registered office in accordance with the proviso to that sub-section, it shall be deemed to be sufficient compliance with this clause if the register aforesaid is kept at such other place, subject to the condition that the company delivers to the Reserve Bank of India a copy of the notice filed with the Registrar of Companies under the proviso to the said sub-section within seven days of such filing.

Information to be included in the Board's report

In every report of the Board of Directors laid before the company in general meeting under sub-section (1) of section 217 of the Companies Act, 1956 there shall be included in the case of non-banking company, the following particulars or information, namely:

(a) the total number of depositors of the company whose deposits have not been claimed by the depositors or paid by the company after the date on which the deposit became due for repayment or renewal; and

(b) the total amount due to the depositors and remaining unclaimed or unpaid beyond the dates referred to as aforesaid.

(2) The said particulars or information shall be furnished with reference to the position as on the last date of the financial year to which the report relates and if the amounts remaining unclaimed or undisbursed as referred to above exceed in the aggregate the sum of rupees five lakhs, there shall also be included in the report a statement on the steps taken or proposed to be taken by the Board of Directors for the repayment of the amounts due to the depositors and remaining unclaimed or undisbursed.

Nomination facility for Depositors

Nomination facility is available to the depositors of NBFCs. The Rules for nomination facility are provided for in section 45QB of the Reserve Bank of India Act, 1934. Non-Banking Financial Companies have been advised to adopt the Banking Companies (Nomination) Rules, 1985 made under Section 45ZA of the Banking Regulation Act, 1949. Accordingly, depositor/s of NBFCs are permitted to nominate, one person to whom, the NBFC can return the deposit in the event of the death of the depositor/s. NBFCs are advised to accept nominations made by the depositors in the form similar to one specified under the said rules, viz Form DA 1 for the purpose of nomination, and Form DA2 and DA3 for cancellation of nomination and variation of nomination respectively.

Interest on overdue matured deposits

As per Reserve Bank's Directions, overdue interest is payable to the depositors in case the company has delayed the repayment of matured deposits, and such interest is payable from the date of receipt of such claim by the company or the date of maturity of the deposit whichever is later, till the date of actual payment. If the depositor has lodged his claim after the date of maturity, the company would be liable to pay interest for the period from the date of claim till the date of repayment. For the period between the date of maturity and the date of claim it is the discretion of the company to pay interest.

Default in repayment of Deposit

If a NBFC defaults in repayment of deposit, the depositor can approach

- a) Company Law Board (CLB) or / and
- b) Consumer Forum or file a civil suit to recover the deposits.

A depositor can approach any or all of these redressal authorities' i.e consumer forum, court or CLB.

a) Depositor approaches the CLB

Where a non-banking financial company fails to repay any deposit or part thereof in accordance with the terms and conditions of such deposit, the Company Law Board (CLB) either on its own motion or on an application from the depositor directs, by order, the non-banking financial company to make repayment of such deposit or part thereof forthwith or within such time and subject to such conditions as may be specified in the order.

The depositor can approach CLB by mailing an application in prescribed form to the appropriate bench of the Company Law Board according to its territorial jurisdiction with the prescribed fee.

Relevant Forms as laid down in Company law Board Regulations, 1991 are:
 Form 1 - Form of petition to company law board
 Form 2- Interlocutory application
 Form 3- Reference to Company Law Board
 Form 4- Application By Depositor / Debenture Holder Under Section 58A(9) or Section 117C(4) of the Act Or Section 45QA of The Reserve Bank Of India Act, 1934

The details of addresses and territorial jurisdiction of the bench officers of CLB are as under:

Sr. No.	Addresses	Territorial Jurisdiction
1.	Bench Officer, Company Law Board, Northern Region Bench, Shastri Bhavan, 'A' Wing, 5 th Floor, Dr. Rajendra Prasad Road, New Delhi 110 001.	Uttar Pradesh, Jammu & Kashmir, Punjab, Himachal Pradesh, Rajasthan, Haryana and Union Territories of Chandigarh and Delhi
2.	Bench Officer, Company Law Board, Southern Region Bench, Shastri Bhavan, 'A' Wing, 5 th Floor, Block 8, No 26, Haddows Road,	Tamil Nadu, Andhra Pradesh, Kerala, Karnataka, Union Territories of Amindivi, Minicoy and Lakshadweep Islands

	Chennai 600 006.	and Pondicherry
3.	Bench Officer, Company Law Board, Western Region Bench, 2 nd Floor, N.T.C. House, 15, Narottam Morarjee Marg, Ballard Estate, Mumbai-400 038.	Maharashtra, Gujarat, Madhya Pradesh, Goa and Union Territories of Dadra & Nagar Haveli, Daman and Diu.
4.	Bench Officer, Company Law Board, Eastern Region Bench, 9, Old Post Office Street, 6 th Floor, Kolkata 700 001.	West Bengal, Orissa, Bihar, Assam, Tripura, Manipur, Nagaland, Meghalaya, Arunachal Pradesh, Mizoram, Union Territories of Andaman and Nicobar Islands.
5.	Bench Officer, Company Law Board, Principal Bench at New Delhi, Shastri Bhavan, 'A' Wing, 5 th Floor, Dr. Rajendra Prasad Road, New Delhi 110 001.	All Principal Bench matters all over India.

b) Depositor approaches the Court and an official liquidator is appointed :

In a number of cases official liquidators have been appointed on the defaulting NBFCs. Official Liquidator is appointed by the court after giving the company reasonable opportunity of being heard in a winding up petition. The liquidator performs duties of winding up and such duties in reference thereto as the court may impose.

Where the court has appointed an official liquidator or provisional liquidator, he becomes custodian of the property of the company and runs the day-to-day affairs of the company. He has to draw up a statement of affairs of the company in prescribed form containing particulars of assets of the company, its debts and liabilities, names/residences/occupations of its creditors, the debts due to the company and such other information as may be prescribed. The scheme is drawn up by the liquidator and same is put up to the court for approval. The liquidator realizes the assets of the company and arranges to repay the creditors according

to the scheme approved by the court. The liquidator generally inserts advertisement in the newspaper inviting claims from depositors/investors in compliance with court orders. Therefore, the investors/depositors should file the claims within due time as per such notices of the liquidator. The Reserve Bank also provides assistance to the depositors in furnishing addresses of the official liquidator.

c) No Ombudsmen

There is no Ombudsman for hearing complaints against NBFCs. However, in respect of credit card operations of an NBFC, if a complainant does not get satisfactory response from the NBFC within a maximum period of 30 days from the date of lodging the complaint, the customer will have the option to approach the Office of the concerned Banking Ombudsman for redressal of his grievance/s.

Key Prudential Norms for NBFCs accepting public deposits

The Non-Banking Financial (Deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank) Directions, 2007 [Contained in Notification No. DNBS (PD) CC No. 144/ 03.02.001/ 2009-10 dated July 1, 2009) prescribe guidelines on income recognition, asset classification and provisioning requirements applicable to NBFCs, exposure norms, constitution of audit committee, disclosures in the balance sheet, requirement of capital adequacy, restrictions on investments in land and building and unquoted shares.

Key Prudential norms

	NBFCs taking Public Deposits
Net Owned Funds	Rs 2 crore
Capital Adequacy Ratio	Minimum of 15% by March 31, 2012. (vide Notification No. DNBS.224 / CGM(US)-2011 dated February 17, 2011)

Non Performing Assets	Need to make provisions against non performing assets
Credit Rating	Minimum investment grade or other specified credit rating
Period of Public Deposit	Between 1 year and 5 years
Interest Rate on Deposits	Interest rate ceiling specified (now 12.5% per annum)
Transfer to Reserve Fund	20% of profits
Investment in Approved Securities	Minimum 10% of liquid asset in approved securities and 5% in unencumbered term deposits with any scheduled commercial bank

1. Framing & Implementing Policies: The Board of Directors shall frame investment policy for the company and implement the same. Also The BOD of every NBFC granting/intending to grant demand/call loans shall frame a policy for the company and implement the same.

2. Accounting Standards and Guidance Notes issued by Institute of Chartered Accountants of India (ICAI) shall be followed in so far as they are not inconsistent with any the Directions.

3. Every NBFC shall separately disclose in its balance sheet the provisions made as per paragraph 9 of the Directions without netting them from the income or against the value of assets. [According to Para 9 - Every NBFC shall, after taking into account the time lag between an account becoming non-performing, its recognition as such, the realisation of the security and the erosion over time in

the value of security charged, make provision against sub-standard assets, doubtful assets and loss assets as provided in the Paragraph]

4. A NBFC having assets of Rs. 50 crore and above as per its last audited balance sheet shall constitute an Audit Committee, consisting of not less than 3 members of its Board of Directors.

5. Every NBFC shall prepare its balance sheet and profit and loss account as on March 31 every year. Where a NBFC intends to extend the date of its balance sheet as per provisions of the Companies Act, it should take prior approval of the RBI before approaching the Registrar of Companies for this purpose. Further, even in cases where the Bank and the ROC grant extension of time, the NBFC shall furnish to the Bank a proforma balance sheet (unaudited) as on March 31 of the year and the statutory returns due on the said date.

6. Every NBFC shall append to its balance sheet, the particulars in the schedule as set out in Annex to the Directions.

7. No NBFC shall undertake any transaction in government security in physical form through any broker. (It can undertake only through its Constituent Subsidiary Ledger Account (CSGL) Account or its Demat Account)

8. Submission of Statutory Auditor Certificate:

Every NBFC shall submit a Certificate from its Statutory Auditor that it is engaged in the business of NBFIs requiring it to hold a Certificate of Registration under Section 45-IA of the RBI Act. A certificate from the Statutory Auditor in this regard with reference to the position of the company as at end of the financial year ended March 31 may be submitted to the Regional Office of the Department of Non-Banking Supervision under whose jurisdiction the non-banking financial company is registered, latest by June 30, every year. Such certificate shall also indicate the asset / income pattern of the NBFC for making it eligible for classification as Asset Finance Company, Investment Company or Loan Company.

9. Capital Adequacy Requirement:

In terms of paragraph 16 of Non Banking Financial (Deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank) Directions, 2007, every non-banking financial company shall maintain a minimum capital ratio consisting of Tier I and Tier II capital which shall not be less than twelve per cent

(Such ratio shall not be less than fifteen percent by March 31, 2012 vide Notification No. DNBS.224 / CGM(US)-2011 dated February 17, 2011) of its aggregate risk weighted assets on balance sheet and of risk adjusted value of off-balance sheet items. The total of Tier II capital, at any point of time, shall not exceed one hundred per cent of Tier I capital.

“Tier I Capital” means owned fund as reduced by investment in shares of other non-banking financial companies and in shares, debentures, bonds, outstanding loans and advances including hire purchase and lease finance made to and deposits with subsidiaries and companies in the same group exceeding, in aggregate, ten per cent of the owned fund;

“Tier II capital” includes the following:

- (a) preference shares other than those which are compulsorily convertible into equity;
- (b) revaluation reserves at discounted rate of fifty five percent;
- (c) general provisions and loss reserves to the extent these are not attributable to actual diminution in value or identifiable potential loss in any specific asset and are available to meet unexpected losses, to the extent of one and one fourth percent of risk weighted assets;
- (d) hybrid debt capital instruments; and
- (e) subordinated debt to the extent the aggregate does not exceed Tier I capital.

10. Loans against NBFCs own shares is prohibited

11. Submission of half yearly return

With effect from June 30, 2011, all Non-banking financial companies, excluding residuary non-banking companies referred to in paragraphs 1(3)(i)(a) and (b) of the Non-Banking Financial (Deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank) Directions, 2007, shall submit on line a quarterly return within fifteen days of the expiry of the relative quarter as on March 31, June 30, September 30 and December 31 every year, in the format available on <https://cosmos.rbi.org.in>.”

12. Exposure to Capital Market

Every NBFC (inclgd. RNBC) with total assets of Rs. 100 crore and above according to the previous audited balance sheet, shall submit a monthly return within a period of 7 days of the expiry of the month to which it pertains in the format NBS 6 provided in Annex 3 to the Regional Office of the Department of

Non-Banking Supervision of the RBI as indicated in the Second Schedule to the Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 1998 and Schedule B to the Residuary Non-Banking Companies (Reserve Bank) Directions, 1987.

Relevant Provisions of the Companies Act 1956

The following Sections in the Companies Act, 1956 relate to Public deposits

- a) Sec 58A- Deposits not to be invited without issuing an advertisement
- b) Sec 58AA- Small depositors
- c) Sec 58AAA-Default in acceptance or refund of deposits to be cognizable
- d) Sec 58B- Provisions relating to prospectus to apply to advertisement

The relevant rules framed there under include:

- a) Companies (Acceptance of Deposit) Rules, 1975
- b) Companies (Application for Extension of time or Exemption under sub-section (8) of section 58A) Rules, 1979

The important provisions of the Act and the Rules are summarised as under:

1. The rules do not apply to banking companies and financial companies for which RBI have separately prescribed rules.
2. Deposit means deposit of money and include any amount borrowed by a company, but does not include certain types of borrowings; viz. amount received:
 - i. From Government, Local Authority, Foreign Government or any other foreign person, citizen or authority or any amount guaranteed by Government.
 - ii. From Banks.
 - iii. From various Government or semi-Government financial Cos. Or Corporation/insurance Cos. Or a Public financial institution as may be notified by the CG.
 - iv. From any other company.
 - v. By way of security deposit from an employee.
 - vi. By way of security or advance from any purchasing, selling or other agents in the course of business or any advance received against orders for supply of goods, properties or services.
 - vii. By way of subscription to any share, stock, bonds or debentures pending allotment. Any amount received by way of calls in advance so long as this is not repayable under the Articles.
 - viii. In trust or in transit.
 - ix. From a director in case of any company or from a shareholder in case of a private company out of his own funds (that is not borrowed or accepted from

others) including a Company which has become public u/s.43A so long as it retains S. 3(1)(iii) conditions in its Articles. The director/shareholder concerned however has to furnish a declaration in writing to the effect that the amount is not being given out of funds acquired by him by borrowing or accepting from others.

x. By issue of bonds or debentures secured by the mortgage of any immovable property or with an option to convert them into shares. Provided the amount does not exceed the market value of property.

xi. From promoters by way of unsecured loans pursuant to agreement with financial institutions for loans so long as such loans are outstanding.

3. Acceptance of deposits

a) No company shall accept or renew any deposit which is repayable on demand or on notice or after a period of less than six months or more than thirty six months from the date of acceptance or renewal of such deposit

b) No company shall invite or accept or renew any deposits in any form, on a rate of interest exceeding 12.5 per cent per annum at rests which shall not be shorter than monthly rests

c) No company shall pay brokerage to any broker at a rate, exceeding one per cent of the deposits for a period up to one year, one and half per cent of the deposits for a period of more than one year but up to two years, and two percent of the deposits for a period exceeding two years collected by or through such broker, and such payment shall be on one time basis.

d) No company with a net owned fund of less than rupees one crore shall invite public deposits

e) Any person who is authorised by a company, in writing, to solicit deposits on its behalf and through whom deposits are procured will only be entitled to brokerage

4. Invitations of deposits by a company can be made only by means of an advertisement specifying the financial position, management structure and other particulars relating to a company. A company which has defaulted in repayment of deposit or interest thereon is prohibited from inviting deposits.

5. The depositors shall fill the application form supplied by the company. The company in return issues a deposit receipt which is an acknowledgement of debt by the company. The terms and conditions of the deposit are printed on the back of the receipt.

6. The company shall maintain a register of deposits containing the prescribed particulars. Such registers shall be preserved in good order for a period of not less than eight calendar years from the financial year in which the latest entry is made in the register

7. Every company shall file returns of deposits duly certified by their auditor with a Registrar on or before 30th June of every year.

8. The expression 'small depositor' means "a depositor who has deposited (in a financial year) a sum not exceeding twenty thousand rupees in a company and includes his successors, nominees and legal representatives". In case of any default by the company in paying back to them, it shall inform the Tribunal within sixty days from the date of default. The Tribunal will then direct the company to repay to small depositors within a period of thirty days from the date of receipt of intimation of default. On failure to comply with the orders of the Board, the company and its directors shall be punishable with imprisonment and payment of daily fine during the period in which such non-compliance continues. However, if such a defaulting company wants to invite deposits from small depositors, it shall state the complete nature of default in all its future advertisements and application form.

9. Section 58AAA, any default / contravention under sections 58A and 58AA, relating to deposits, will be treated as a cognizable offence. In other words, under this provision, the directors of the defaulting company can be arrested and put behind bars. Incidentally, the courts will take cognizance only of the complaint of the central government or any of its authorised officers.

8.0 SUBMISSION OF RETURNS

NBFCs are required to submit various returns to RBI with respect to their deposit acceptance, prudential norms compliance, etc.

A list of such returns to be submitted by NBFCs-D, NBFCs-ND-SI and others is as under:

A. Returns to be submitted by deposit taking NBFCs

1. NBS-1 Quarterly Returns on deposits in First Schedule. [Annual Return on Deposits as on 31, March 20. . (To be submitted by all Non-Banking Financial Companies accepting / holding public deposits, and MNBCs - except Residuary Non-Banking Companies)]
2. NBS-2 Quarterly return on Prudential Norms is required to be submitted by NBFC accepting public deposits.
3. NBS-3 Quarterly return on Liquid Assets by deposit taking NBFC.
4. NBS-4 Annual return of critical parameters by a rejected company holding public deposits
5. NBS-5 stands withdrawn as submission of NBS 1 has been made quarterly.6

6. NBS-6 Monthly return on exposure to capital market by deposit taking NBFC with total assets of Rs 100 crore and above

7. Half-yearly Asset-Liability Management (ALM) return by NBFC holding public deposits of more than Rs.20 crore or asset size of more than Rs. 100 crore.

8. Audited Balance sheet and Auditor's Report by NBFC accepting public deposits.

B. Returns to be submitted by NBFCs-ND-SI

1. NBS-7 - A Quarterly statement of capital funds, risk weighted assets, risk asset ratio etc., for NBFC-ND-SI

2. Monthly Return on Important Financial Parameters of NBFCs-ND-SI

3. ALM returns:

(i) Statement of short term dynamic liquidity in format ALM [NBS-ALM1] - Monthly,

(ii) Statement of structural liquidity in format ALM [NBS-ALM2] Half Yearly

(iii) Statement of Interest Rate Sensitivity in format ALM -[NBS-ALM3], Half yearly.

C. Quarterly return on important financial parameters of non deposit taking NBFCs having assets of more than Rs.50 crore and above but less than Rs 100 crore

Basic information like name of the company, address, NOF, profit / loss during the last three years has to be submitted quarterly by non-deposit taking NBFCs with asset size between Rs 50 crore and Rs 100 crore.

D. Other Returns

1. As at the end of March every year, all NBFCs are required to submit an annual certificate duly certified by the Statutory Auditors that the company is engaged in the business of NBFIs requiring it to hold the CoR. The certificate shall also

indicate the asset / income pattern of the NBFC for making it eligible for classification as AFC, Investment Company, or Loan Company.

2. An NBFC with FDI has to submit a half yearly (half year ending March and September) certificate to the effect that it has complied with the minimum capitalisation norms and that its activities are restricted to the activities prescribed under FEMA.

3. With regard to overseas investment a Quarterly Return is to be submitted by all NBFCs to the Regional Office of DNBS and also Department of Statistics and Information Management (DSIM)

Reporting dates and Due dates for Returns to be submitted by NBFCs

Sr No	Name of the Return	Short Name	Periodicity	Reference Date	Reporting Time	Due on	Purpose	To be submitted by
1.	Quarterly Returns By deposit taking NBFCs (As required by “Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 1998”.)	NBS1	Quarterly	31st March/ 30th June/ 30th Sept/ 31st Dec	15 days	15th April/ 15th July/ 15th Oct/ 15th Jan	Details of Assets And Liabilities	NBFCs-D
2.	Quarterly Statement of Capital Funds, Risk Assets etc as required under the Non-Banking Financial Companies Prudential Norms (Reserve Bank) Directions 2007 By deposit taking NBFCs	NBS2	Quarterly	31st March/ 30th June/ 30th Sept/ 31st Dec	15 days	15th April/ 15th July/ 15th Oct/ 15th Jan	Capital Funds, Risk Assets, Asset Classification etc	NBFCs-D
3.	Quarterly Return on Statutory Liquid Assets as per Section 45 IB of the Act By Deposit Taking NBFCs	NBS3	Quarterly	31st March/ 30th June/ 30th Sept/ 31st Dec	15 days	15th April/ 15th July/ 15th Oct/ 15th Jan	Statutory Liquid Assets	NBFCs-D
4.	Annual Return on Repayment of Deposits by the Rejected	NBS4	Annual	March 31	30 days	May 01	Details of Public Deposits, Liabilities	NBFCs Other holding public deposits

	Companies holding Public Deposits (The return was subsequently simplified for better response)					whose application for Certificate of Registration under Section 45-IA of RBI Act, 1934 have been rejected
5.	Monthly Return on NBS6 Capital Market Exposure	Monthly	As at the end of the month	7 days	7th day of next month	Details of Capital Market Exposure of NBFCs-D
6.	Quarterly Return of NBS7 Capital Funds, Risk-Asset Ratio from NBFCs-ND-SI (Supervisory Return)	Quarterly	31st March/ 30th June/ 30th Sept/ 31st Dec	15 days	15th April/ 15th July/ 15th Oct/ 15th Jan	Capital Funds, NBFCs-ND-Assets, SI Risk Weighted off-balance sheet items (Non-Funded Exposures), Asset Classification etc.
7.	Asset-Liability Management (ALM) Return	Half yearly	31st March/ 30th Sept	1 month	30th April/ 30th Oct	Structural Liquidity, Short-term dynamic deposit of Rs 20 crore and/or asset size of more than Rs. 100 crore NBFCs-D
8.	A Statement of short term dynamic liquidity in format ALM -NBS-ALM1	Monthly	As at end of the month	10 days	10th day of next month	Short-term dynamic liquidity NBFC-ND-SI
9.	Statement of structural liquidity in format ALM – NBS-ALM2	Half yearly	31st March/ 30th Sept	20 days	20th April/ 20th Oct	Structural liquidity NBFC-ND-SI
10.	Statement of Interest Rate Sensitivity in format ALM-NBS-ALM3.	Half yearly	31st March/ 30th Sept	20 days	20th April/ 20th Oct	Interest Rate sensitivity NBFC-ND-SI
11.	Monthly Return on Important Financial Parameters of NBFCs not accepting/holding	Monthly	end of every month	7 days	7th of next month	Sources and Application of Funds, Profit and Loss Account, NBFC-ND-SI

public deposits and having asset size of Rs.100 crore and above			Asset Classification, Bank's/FIs exposure on the company, Details of Capital Market Exposure, Foreign Sources etc.
12. Quarterly return to be submitted by non-deposit taking NBFCs with asset size of Rs 50 crore and above but less than Rs 100 crore,	Quarterly.	31st March/within a 30th June/period of 30th Sept/one month 31st Dec from the close of the quarter	Basic information like name of the company, address. NOF, profit / loss during the last three years
13. Quarterly Return to be submitted by NBFCs having overseas investment	Quarterly.	31st March/within a 30th June/period of 30th Sept/one month 31st Dec from the close of the quarter	Name of the All NBFCs WOS/JV, Country and date of incorporation Date of NoC from DNBS, Business undertaken
<p>Note: NBFCs-D -> Deposit taking Non-Banking Financial Companies (NBFCs); NBFCs-ND -> Non-Deposit taking NBFCs. NBFCs-ND-SI -> Non-Banking Financial Companies (NBFCs) not accepting/holding public deposits and having asset sizes of Rs.100 crore and above (also termed as Systemically Important NBFCs or in short NBFCs-ND-SI)</p>			

9.0 ANTI MONEY LAUNDERING STANDARDS

The Prevention of Money Laundering Act, 2002 (PMLA) is in force since 1st July 2005. Under PMLA certain exclusive and concurrent powers are conferred on the Director, Financial Intelligence Unit, India (FIU-IND).

Financial Intelligence Unit - India (FIU-IND) was set by the Government of India vide order dated 18th November 2004 as the central national agency responsible for receiving, processing, analyzing and disseminating information relating to

suspect financial transactions. FIU-IND is an independent body reporting directly to the Economic Intelligence Council (EIC) headed by the Finance Minister.

Section 13(2) of the Prevention of Money Laundering Act, 2002, empowers the Director, FIU-IND to impose fine on any banking company, financial institution or intermediary for failure to comply with the obligations of maintenance of records, furnishing information and verifying the identity of clients. The amount of fine may vary from ten thousand rupees to one lakh rupees for each failure.

Section 12 of the Prevention of Money Laundering Act, 2002 lays down following obligations on banking companies, financial institutions and intermediaries.

"12. (1) Every banking company, financial institution and intermediary shall -

(a) maintain a record of all transactions, the nature and value of which may be prescribed, whether such transactions comprise of a single transaction or a series of transactions integrally connected to each other, and where such series of transactions take place within a month;

(b) furnish information of transactions referred to in clause (a) to the Director within such time as may be prescribed;

(c) verify and maintain the records of the identity of all its clients, in such a manner as may be prescribed.

Provided that where the principal officer of a banking company or financial institution or intermediary, as the case may be, has reason to believe that a single transaction or series of transactions integrally connected to each other have been valued below the prescribed value so as to defeat the provisions of this section, such officer shall furnish information in respect of such transactions to the Director within the prescribed time. (2) The records referred to in sub-section (1) shall be maintained for a period of ten years from the date of cessation of the transactions between the clients and the banking company or financial institution or intermediary, as the case may be."

Notifications issued by RBI

(i) DNBS(PD). CC 68 /03.10.042/2005-06 April 5, 2006

(ii) DNBS(PD). CC 126/03.10.042/ 2008- 09 August 5, 2008

- (iii) DNBS(PD). CC 164/03.10.042/ 2009- 10 November 13, 2009
- (iv) DNBS(PD).CC. No 170 /03.10.42 /2009-10 April 23 , 2010
- (v) DNBS(PD) CC.No 171/03.10.42/2009-10 April 23 , 2010
- (vi) DNBS(PD).CC. No.172/03.10.42 /2009-10 April 30, 2010
- (vii) DNBS(PD) CC.No 175/03.10.42/2009-10 May 26, 2010
- (viii) DNBS(PD) CC.No 198/03.10.42/2010-11dated August 26, 2010
- (ix) DNBS(PD).CC. No 247 /03.10.42 /2011-12 October 28, 2011

'Know Your Customer' (KYC) Guidelines - Anti Money Laundering Standards

The 'Know Your Customer' guidelines were issued in February 2005 revisiting the earlier guidelines issued in January 2004 in the context of the Recommendations made by the Financial Action Task Force (FATF) on Anti Money Laundering (AML) standards and on Combating Financing of Terrorism (CFT).

i. An obligation has been cast on the banking companies, financial institutions and intermediaries, by the Prevention of Money Laundering Act, 2002 (Chapter IV), to comply with certain requirements in regard to maintenance of record of the transactions of prescribed nature and value, furnishing of information relating to those transactions and verification and maintenance of the records of identity of all its clients in prescribed manner. Accordingly, instructions were issued to NBFCs vide circular DNBS (PD) CC No. 48 /10.42/ 2004-05 dated February 21, 2005.

As regards deposits collected by persons authorised by NBFCs including brokers/agents etc. inasmuch as such persons are collecting the deposits on behalf of the NBFC, it shall be the sole responsibility of the NBFC to ensure full compliance with the KYC guidelines by such persons. The NBFC should make available all information to the Bank to verify the compliance with the KYC guidelines and accept full consequences of any violation by the persons authorised by NBFCs including brokers/agents etc. who are operating on its behalf.

ii. As an extension of the KYC Guidelines, NBFCs should put in place a process of due diligence in respect of persons authorised by NBFCs including brokers/agents etc. collecting deposits on behalf of the company through a uniform policy for appointment and detailed verification. Details of due diligence conducted may be kept on record with the company for verification. Compliance in this regard were to be reported to RBI by December 31, 2005.

In the depositors' interests and for enhancing transparency of operations, the companies should have systems in place to ensure that the books of accounts of persons authorised by NBFCs including brokers/agents etc, so far as they relate to brokerage functions of the company, are available for audit and inspection whenever required.

iii. All deposit receipts should bear the name and Registered Office address of the NBFC and must invariably indicate the name of the persons authorised by NBFCs including brokers/agents etc. and their addresses who mobilised the deposit and the link office with the telephone number of such officer and/or persons authorised by NBFCs including brokers/agents etc in order that there is a clear indication of the identifiable contact with the field persons and matters such as unclaimed / lapsed deposits, discontinued deposits, interest payments and other customer grievances are appropriately addressed. The companies may also evolve suitable review procedures to identify persons authorised by NBFCs including brokers/agents etc. in whose cases the incidence of discontinued deposits is high for taking suitable action.

iv. It was clarified in March 2006 that although flexibility in the requirement of documents of identity and proof of address has been provided in the circular mentioned above yet there may be instances where certain persons, especially, those belonging to low income group both in urban and rural areas may not be able to produce such documents to satisfy the NBFC about their identity and address. Hence, it has been decided to further simplify the KYC procedure for opening accounts by NBFCs for those persons who intend to keep balances not exceeding rupees fifty thousand (Rs. 50,000/-) in all their accounts taken together and the total credit in all the accounts taken together is not expected to exceed rupees one lakh (Rs. 1,00,000/-) in a year.

Accordingly, in case a person who wants to open an account is not able to produce documents mentioned in Annexure II of DBOD circular enclosed with our circular dated February 21, 2005, NBFCs may open accounts as described in paragraph 2 above, subject to

a) introduction from another account holder who has been subjected to full KYC procedure. The introducer's account with the NBFC should be at least six month old and should show satisfactory transactions. Photograph of the customer who proposes to open the account and also his address needs to be certified by the introducer, or

b) any other evidence as to the identity and address of the customer to the satisfaction of the NBFC.

v. While opening accounts as described above, the customer should be made aware that if at any point of time, the balances in all his/her accounts with the NBFC (taken together) exceeds rupees fifty thousand (Rs. 50,000/-) or total credit in the account exceeds rupees one lakh (Rs. 1,00,000/-), no further transactions will be permitted until the full KYC procedure is completed. In order not to inconvenience the customer, the NBFC must notify the customer when the balance reaches rupees forty thousand (Rs. 40,000/-) or the total credit in a year reaches rupees eighty thousand (Rs. 80,000/-) that appropriate documents for conducting the KYC must be submitted otherwise the operations in the account will be stopped when the total balance in all the accounts taken together exceeds rupees fifty thousand (Rs. 50,000/-) or the total credit in the accounts exceeds rupees one lakh (Rs. 1,00,000/-) in a year. NBFCs were advised to issue suitable instructions to their branches for implementation in this regard.

vi. It was further clarified to NBFCs in April 2008 that for the purpose of Circular dated February 21, 2005 the term 'being satisfied' means that the NBFC must be able to satisfy the competent authorities that due diligence was observed based on the risk profile of the customer in compliance with the extant guidelines in place. An indicative list of the nature and type of documents/ information that may be relied upon for customer identification was also given in the Annex-VIII to this circular. It may happen that Annex-VIII, which was clearly termed as an indicative list, may be treated by some NBFCs as an exhaustive list as a result of which a section of public may be denied access to financial services. NBFCs are, therefore, advised to take a review of their extant internal instructions in this regard.

vii. It is clarified that permanent correct address, as referred to in Annex-VIII of this circular, means the address at which a person usually resides and can be taken as the address as mentioned in a utility bill or any other document accepted by the NBFC for verification of the address of the customer. In case utility bill is not in the name of person depositing money but is close relative wife, son, daughter and parents etc. who live with their husband, father/mother and son, NBFCs can obtain an identity document and a utility bill of the relative with whom the prospective customer is living along with a declaration from the relative that the said person (prospective customer) wanting to open an account is a relative and is staying with him/her. NBFCs can use any supplementary evidence such as a letter received through post for further verification of the address. While issuing operational instructions to the branches on the subject,

NBFCs should keep in mind the spirit of instructions issued by the Reserve Bank and avoid undue hardships to individuals who are, otherwise, classified as low risk customers.

viii. In terms of extant instructions, NBFCs are required to put in place a system of periodical review of risk categorisation of accounts and the need for applying enhanced due diligence measures in case of higher risk perception on a customer. NBFCs are further advised that such review of risk categorisation of customers should be carried out at a periodicity of not less than once in six months. NBFCs also introduce a system of periodical updation of customer identification data (including photograph/s) after the account is opened. The periodicity of such updation should not be less than once in five years in case of low risk category customers and not less than once in two years in case of high and medium risk categories.

ix. NBFCs have been further advised in terms of extant instructions that KYC/AML guidelines issued by Reserve Bank of India shall also apply to their branches and majority owned subsidiaries located outside India, especially, in countries which do not or insufficiently apply the FATF Recommendations, to the extent local laws permit. It is further clarified that in case there is a variance in KYC/AML standards prescribed by the Reserve Bank and the host country regulators, branches/overseas subsidiaries of NBFCs are required to adopt the more stringent regulation of the two.

x. Letter issued by Unique Identification Authority of India (UIDAI) containing details of name, address and Aadhaar number

The Government of India issued a Notification No. 14/2010/F.No. 6/2/2007-ES dated December 16, 2010 which recognises the letter issued by Unique Identification Authority of India (UIDAI) containing details of name, address and Aadhaar number, as an officially valid document as contained in Rule 2(1)(d) of the PML Rules, 2005.

It has been decided to accept the letter issued by the (UIDAI) as an officially valid document for opening of accounts. Attention was invited to Annex VI para 3 of Master Circular No 231 dated July 1, 2011 on KYC/AML/PMLA dealing with customer identification. All NBFCs were advised that, while opening accounts based on Aadhaar also, NBFCs must satisfy themselves about the current address of the customer by obtaining required proof of the same as per extant instructions.

Further all NBFCs were advised to confirm compliance to these instructions to Regional Offices of DNBS under whose jurisdiction they are registered.

Prevention of Money Laundering Act, 2002 - Obligations of NBFCs in terms of Rules notified thereunder'

1. NBFCs were advised to appoint a Principal Officer and put in place a system of internal reporting of suspicious transactions and cash transactions of Rs.10 lakh and above. In this connection, Government of India, Ministry of Finance, Department of Revenue, issued a notification dated July 1, 2005 in the Gazette of India, notifying the Rules under the Prevention of Money Laundering Act (PMLA), 2002. In terms of the Rules, the provisions of PMLA, 2002 have come into effect from July 1, 2005. Section 12 of the PMLA, 2002 casts certain obligations on the NBFCs in regard to preservation and reporting of customer account information. NBFCs are, therefore, advised to go through the provisions of PMLA, 2002 and the Rules notified there under and take all steps considered necessary to ensure compliance with the requirements of section 12 of the Act *ibid*.

2. Maintenance of records of transactions

NBFCs should introduce a system of maintaining proper record of transactions prescribed under Rule 3, as mentioned below:

- (i) all cash transactions of the value of more than rupees ten lakh or its equivalent in foreign currency;
- (ii) all series of cash transactions integrally connected to each other which have been valued below rupees ten lakh or its equivalent in foreign currency where such series of transactions have taken place within a month and the aggregate value of such transactions exceeds rupees ten lakh;
- (iii) all cash transactions where forged or counterfeit currency notes or bank notes have been used as genuine and where any forgery of a valuable security has taken place;
- (iv) all suspicious transactions whether or not made in cash and in manner as mentioned in the Rules framed by Government of India under the Prevention of Money Laundering Act , 2002.

3. Information to be preserved

NBFCs are required to maintain the following information in respect of transactions referred to in Rule 3:

- the nature of the transactions;
- the amount of the transaction and the currency in which it was denominated;
- the date on which the transaction was conducted; and
- the parties to the transaction.

4. Maintenance and Preservation of records

NBFCs should take appropriate steps to evolve a system for proper maintenance and preservation of account information in a manner that allows data to be retrieved easily and quickly whenever required or when requested by the competent authorities. Further, NBFCs should maintain for at least ten years from the date of cessation of transaction between the NBFCs and the client, all necessary records of transactions, both domestic or international, which will permit reconstruction of individual transactions (including the amounts and types of currency involved if any) so as to provide, if necessary, evidence for prosecution of persons involved in criminal activity.

NBFCs should ensure that records pertaining to the identification of the customer and his address (e.g. copies of documents like passports, identity cards, driving licenses, PAN, utility bills etc.) obtained while opening the account and during the course of business relationship, are properly preserved for at least ten years after the business relationship is ended. The identification records and transaction data should be made available to the competent authorities upon request.

(i) The Prevention of Money Laundering (Amendment) Act, 2009 (No. 21 of 2009) has come into force with effect from June 01, 2009 as notified by the Government. In terms of Sub-Section 2(a) of Section 12 of The Prevention of Money Laundering (Amendment) Act, 2009 (PMLA, 2009), the records referred to in clause (a) of Sub-Section (1) of Section 12 shall be maintained for a period of ten years from the date of transaction between the clients and the banking company and in terms of Sub-Section 2(b) of Section 12 of the Act *ibid*, the records referred to in clause (c) of Sub-Section (1) of Section 12 shall be maintained for a period of ten years from the date of cessation of transaction between the clients and the banking company.

(ii) NBFCs (including RNBCs) are advised to maintain for at least ten years from the date of transaction between the NBFC (including RNBC) and the client, all necessary records of transactions referred to at Rule 3 of the Prevention of Money-Laundering (Maintenance of Records of the Nature and Value of Transactions, the Procedure and Manner of Maintaining and Time for Furnishing Information and Verification and Maintenance of Records of the Identity of the Clients of the Banking Companies, Financial Institutions and Intermediaries) Rules, 2005 (PMLA Rules), both domestic or international, which will permit reconstruction of individual transactions (including the amounts and types of currency involved, if any) so as to provide, if necessary, evidence for prosecution of persons involved in criminal activity.

(iii) However, records pertaining to the identification of the customer and his address (e.g. copies of documents like passports, identity cards, driving licenses, PAN card, utility bills etc.) obtained while opening the account and during the course of business relationship, as indicated in paragraph 4 of the of the above said Master Circular dated July 1, 2009, would continue to be preserved for at least ten years after the business relationship is ended as required under Rule 10 of the Rules *ibid*.

5. Reporting to Financial Intelligence Unit-India

It is advised that in terms of the PMLA rules, NBFCs are required to report information relating to cash and suspicious transactions to the Director, Financial Intelligence Unit-India (FIU-IND) at the following address:

Director, FIU-IND,
Financial Intelligence Unit-India,
6th Floor, Hotel Samrat,
Chanakyapuri,
New Delhi-110021

1) NBFCs should carefully go through all the reporting formats. There are altogether five reporting formats prescribed for a banking company viz. i) Manual reporting of cash transactions ii) Manual reporting of suspicious transactions iii) Consolidated reporting of cash transactions by Principal Officer of the bank iv) Electronic data structure for cash transaction reporting and v) Electronic data structure for suspicious transaction reporting which are enclosed to this circular. The reporting formats contain detailed guidelines on the

compilation and manner/procedure of submission of the reports to FIU-IND. NBFCs are advised to adopt the format prescribed for banks with suitable modifications. It would be necessary for NBFCs to initiate urgent steps to ensure electronic filing of cash transaction report (CTR) as early as possible. The related hardware and technical requirement for preparing reports in an electronic format, the related data files and data structures thereof are furnished in the instructions part of the concerned formats. However, NBFCs which are not in a position to immediately file electronic reports may file manual reports to FIU-IND. While detailed instructions for filing all types of reports are given in the instructions part of the related formats, NBFCs should scrupulously adhere to the following:

(a) The cash transaction report (CTR) for each month should be submitted to FIU-IND by 15th of the succeeding month. While filing CTR, individual transactions below rupees fifty thousand may not be included;

(b) The Suspicious Transaction Report (STR) should be furnished within 7 days of arriving at a conclusion that any transaction, whether cash or non-cash, or a series of transactions integrally connected are of suspicious nature. The Principal Officer should record his reasons for treating any transaction or a series of transactions as suspicious. It should be ensured that there is no undue delay in arriving at such a conclusion once a suspicious transaction report is received from a branch or any other office. Such report should be made available to the competent authorities on request;

(c) The Principal Officer will be responsible for timely submission of CTR and STR to FIU-IND;

(d) Utmost confidentiality should be maintained in filing of CTR and STR with FIU-IND. The reports may be transmitted by speed/ registered post, fax, email at the notified address;

(e) It should be ensured that the reports for all the branches are filed in one mode i.e. electronic or manual;

(f) A summary of cash transaction report for the NBFC as a whole may be compiled by the Principal Officer of the NBFC in physical form as per the format specified. The summary should be signed by the Principal Officer and submitted both for manual and electronic reporting.

6. NBFCs may not put any restrictions on operations in the accounts where an STR has been made. However, it should be ensured that there is no tipping off to the customer at any level.

7. In terms of instructions contained in the guidelines on 'Know Your Customer Norms' and 'Anti-Money Laundering Measures' of circular dated February 21, 2005, NBFCs are required to prepare a profile for each customer based on risk categorization. Further, vide paragraph 4 of our circular DNBS(PD). CC 68 /03.10.042/2005-06 dated April 5, 2006, the need for periodical review of risk categorization has been emphasized. It is, therefore, reiterated that NBFCs, as a part of transaction monitoring mechanism, are required to put in place an appropriate software application to throw alerts when the transactions are inconsistent with risk categorization and updated profile of customers. It is needless to add that a robust software throwing alerts is essential for effective identification and reporting of suspicious transactions.

8. In paragraph 7 of circular dated April 5, 2006, referred to above, NBFCs were advised to initiate urgent steps to ensure electronic filing of cash transaction report (CTR) and Suspicious Transaction Reports (STR) to FIU-IND. It has been reported by FIU-IND that many NBFCs are yet to file electronic reports. It is, therefore, advised that in case of NBFCs, where all the branches are not yet fully computerized, the Principal Officer of the NBFC should cull out the transaction details from branches which are not computerized and suitably arrange to feed the data into an electronic file with the help of the editable electronic utilities of CTR/STR as have been made available by FIU-IND on their website <http://fiuindia.gov.in>.

9. In paragraph 7(I)(a) of circular dated April 5, 2006, referred to above, NBFCs were advised to make Cash Transaction Reports (CTR) to FIU-India for every month latest by 15th of the succeeding month. It is further clarified that cash transaction reporting by branches/offices of NBFCs to their Principal Officer should invariably be submitted on monthly basis (not on fortnightly basis) and the Principal Officer, in turn, should ensure to submit CTR for every month to FIU-IND within the prescribed time schedule.

10. In regard to CTR, it is reiterated that the cut-off limit of Rupees ten lakh is applicable to integrally connected cash transactions also. Further, after consultation with FIU-IND, it is clarified that :

a) For determining integrally connected cash transactions, NBFCs should take into account all individual cash transactions in an account during a calendar

month, where either debit or credit summation, computed separately, exceeds Rupees ten lakh during the month. However, while filing CTR, details of individual cash transactions below rupees fifty thousand may not be indicated. Illustration of integrally connected cash transactions is furnished in Annex-I;

b) CTR should contain only the transactions carried out by the NBFC on behalf of their clients/customers excluding transactions between the internal accounts of the NBFC;

c) All cash transactions, where forged or counterfeit Indian currency notes have been used as genuine should be reported by the Principal Officer to FIU-IND immediately in the format (Counterfeit Currency Report - CCR) as per Annex-II . Electronic data structure has been furnished in Annex-IV to enable NBFCs to generate electronic CCRs. These cash transactions should also include transactions where forgery of valuable security or documents has taken place and may be reported to FIU-IND in plain text form.

11. As stated in paragraph 4 of the Guidelines on KYC Norms/AML Measures annexed to circular DNBS(PD). CC 48 /10.42/2004-05 dated February 21, 2005, NBFCs are required to pay special attention to all complex, unusual large transactions and all unusual patterns of transactions, which have no apparent economic or visible lawful purpose. It is further clarified that the background including all documents/office records/memorandums pertaining to such transactions and purpose thereof should, as far as possible, be examined and the findings at branch as well as Principal Officer level should be properly recorded. These records are required to be preserved for ten years as is required under PMLA, 2002. Such records and related documents should be made available to help auditors in their work relating to scrutiny of transactions and also to Reserve Bank/other relevant authorities.

12. In paragraph 7 of April 5, 2006 circular, NBFCs have been advised that the customer should not be tipped off on the STRs made by them to FIU-IND. It is likely that in some cases transactions are abandoned/ aborted by customers on being asked to give some details or to provide documents. It is clarified that NBFCs should report all such attempted transactions in STRs, even if not completed by customers, irrespective of the amount of the transaction.

13. While making STRs, NBFCs should be guided by the definition of 'suspicious transaction' as contained in Rule 2(g) of Rules *ibid*. It is further clarified that NBFCs should make STRs if they have reasonable ground to believe that the transaction involve proceeds of crime generally irrespective of the amount of

transaction and/or the threshold limit envisaged for predicate offences in part B of Schedule of PMLA, 2002 .

14. In the context of creating KYC/AML awareness among the staff and for generating alerts for suspicious transactions, NBFCs may consider the indicative list of suspicious activities contained in Annex-V to the Master Circular.

15. Prevention of Money-laundering (Maintenance of Records of the Nature and Value of Transactions, the Procedure and Manner of Maintaining and Time for Furnishing Information and Verification and Maintenance of Records of the Identity of the Clients of the Banking Companies, Financial Institutions and Intermediaries) Amendment Rules, 2009/10 - Obligation of banks/Financial institutions

Government of India vide its Notification No.13/2009/F.No.6/8/2009-ES dated November 12, 2009, subsequently vide Notification February 12, 2010 and June 16,2010 has amended the Prevention of Money-laundering (Maintenance of Records of the Nature and Value of Transactions, the Procedure and Manner of Maintaining and Time for Furnishing Information and Verification and Maintenance of Records of the Identity of the Clients of the Banking Companies, Financial Institutions and Intermediaries) Rules, 2005. NBFCs and RNBCs were advised to study details of notification and the amendments clearly noted and spread across their organisation and to strictly follow the amended provisions of PMLA Rules and ensure meticulous compliance with these Rules.

16. Assessment and Monitoring of Risk

In terms of paragraph 2 of Annex vi of the Master Circular DNBC(PD)CC No 231/03.10.42 / 2011 -12 dated July 01, 2011 on Know Your Customer (KYC) norms /Anti-Money Laundering (AML) standards/Combating of Financing of Terrorism (CFT)/Obligation of banks under PMLA, 2002, NBFCs are required to prepare a risk profile of each customer and apply enhanced due diligence measures on higher risk customers. Some illustrative examples of customers requiring higher due diligence have also been provided in the paragraph under reference. Further, paragraph 5 of Annex vi of the Master Circular requires NBFCs to put in place policies, systems and procedures for risk management keeping in view the risks involved in a transaction, account or banking/business relationship.

The Government of India had constituted a National Money Laundering/Financing of Terror Risk Assessment Committee to assess money

laundering and terror financing risks, a national AML/CFT strategy and institutional framework for AML/CFT in India. Assessment of risk of Money Laundering /Financing of Terrorism helps both the competent authorities and the regulated entities in taking necessary steps for combating ML/FT adopting a risk-based approach. This helps in judicious and efficient allocation of resources and makes the AML/CFT regime more robust. The Committee has made recommendations regarding adoption of a risk-based approach, assessment of risk and putting in place a system which would use that assessment to take steps to effectively counter ML/FT. The recommendations of the Committee have since been accepted by the Government of India and needs to be implemented.

Accordingly, NBFCs should take steps to identify and assess their ML/FT risk for customers, countries and geographical areas as also for products/ services/ transactions/delivery channels, in addition to what has been prescribed in our Master Circular dated July 1, 2011, referred to in paragraph 2 above. NBFCs should have policies, controls and procedures, duly approved by their boards, in place to effectively manage and mitigate their risk adopting a risk-based approach as discussed above. As a corollary, NBFCs would be required to adopt enhanced measures for products, services and customers with a medium or high risk rating.

In this regard, Indian Banks' Association (IBA) has taken initiative in assessment of ML/FT risk in the banking sector. This has circulated to its member banks on May 18, 2011 and a copy of their Report on Parameters for Risk Based Transaction Monitoring (RBTM) as a supplement to their guidance note on Know Your Customer (KYC) norms / Anti-Money Laundering (AML) standards issued in July 2009, is available on the IBA website. The IBA guidance also provides an indicative list of high risk customers, products, services and geographies. NBFCs may use the same as guidance in their own risk assessment.

17. Prevention of Money Laundering Act, 2002 - Obligations of NBFCs in terms of Rules notified thereunder'-Reporting Format under Project FINnet

Reference was invited to Master Circular No 231 dated July 1, 2011 on 'Know Your Customer' (KYC) Guidelines- Anti Money Laundering (AML) Standards. In terms of the extant instructions, NBFCs were required to report information/data relating to Cash and Suspicious Transactions to the Director, Financial Intelligence Unit-India (FIU-IND) in the prescribed format.

The present multiple data files reporting format mentioned in Annex-II and Annex-IV of para 28 c of the Master circular No 291 is being replaced by a new

single XML file format as provided in the 'Download' section of the FIU-IND website (<http://fiuindia.gov.in>).

All NBFCs were requested to carefully go through the revised reporting format and initiate urgent steps to build capacity to generate reports, which are compliant with the new reporting XML format specifications. The exact date of transition from the old reporting format to the new format will to be communicated separately.

10. FAIR PRACTICES CODE

The Fair Practices Code of the NBFCs should be put up on their website, if any, for the information of various stakeholders.

NBFCs were advised on September 28, 2006 (Guidelines on Fair Practices Code-[DNBS (PD) CC No. 80 / 03.10.042 / 2005-06 dated September 28, 2006), to prescribe the broad guidelines on fair practices that are to be framed and approved by the boards of directors of all non-banking financial companies (including RNBCs). The fair practices code so framed and approved by the board of directors is to be published and disseminated on the website of the company, if any, for the information of the public

Vide Master Circular RBI/2012-13/27 DNBS (PD) CC No. 286/03.10.042/2012-13 dated July 2nd, 2012 consolidated all earlier circulars on the topic

Guidelines on Fair Practices Code for NBFCs

(i) Applications for loans and their processing

(a) All communications to the borrower shall be in the vernacular language or a language as understood by the borrower.

(b) Loan application forms should include necessary information which affects the interest of the borrower, so that a meaningful comparison with the terms and conditions offered by other NBFCs can be made and informed decision can be taken by the borrower.

(c) The NBFCs should devise a system of giving acknowledgement for receipt of all loan applications. Preferably, the time frame within which loan applications will be disposed of should also be indicated in the acknowledgement.

(ii) Loan appraisal and terms/conditions

The NBFCs should convey in writing to the borrower, the amount of loan sanctioned along with the terms and conditions including annualised rate of interest and method of application thereof and keep the acceptance of these terms and conditions by the borrower on its record. As complaints received against NBFCs generally pertain to charging of high interest / penal interest, NBFCs shall mention the penal interest charged for late repayment in bold in the loan agreement.

(iii) Disbursement of loans including changes in terms and conditions

(a) The NBFCs should give notice to the borrower of any change in the terms and conditions including disbursement schedule, interest rates, service charges, prepayment charges etc. NBFCs should also ensure that changes in interest rates and charges are effected only prospectively. A suitable condition in this regard should be incorporated in the loan agreement.

b) Decision to recall / accelerate payment or performance under the agreement should be in consonance with the loan agreement.

(c) NBFCs should release all securities on repayment of all dues or on realisation of the outstanding amount of loan subject to any legitimate right or lien for any other claim NBFCs may have against borrower. If such right of set off is to be exercised, the borrower shall be given notice about the same with full particulars about the remaining claims and the conditions under which NBFCs are entitled to retain the securities till the relevant claim is settled/paid.

(iv) General

(a) NBFCs should refrain from interference in the affairs of the borrower except for the purposes provided in the terms and conditions of sanction of the loan (unless new information, not earlier disclosed by the borrower, has come to the notice of the lender).

(b) In case of receipt of request for transfer of borrowal account, either from the borrower or from a lender which proposes to take over the account, the consent or otherwise i.e. objection of the NBFC, if any, should be conveyed within 21

days from the date of receipt of request. Such transfer shall be as per transparent contractual terms in consonance with law.

(c) In the matter of recovery of loans, the NBFCs should not resort to undue harassment.

(v) Grievance Redressal Mechanism

The Board of Directors of NBFCs should also lay down the appropriate grievance redressal mechanism within the organization to resolve disputes arising in this regard. Such a mechanism should ensure that all disputes arising out of the decisions of lending institutions' functionaries are heard and disposed of at least at the next higher level. The Board of Directors should also provide for periodical review of the compliance of the Fair Practices Code and the functioning of the grievances redressal mechanism at various levels of management. A consolidated report of such reviews may be submitted to the Board at regular intervals, as may be prescribed by it.

(vi) Fair Practices Code (which should preferably in the vernacular language or a language as understood by the borrower) based on the guidelines outlined hereinabove should be put in place by all NBFCs with the approval of their Boards within one month from the date of issue of this circular. NBFCs will have the freedom of drafting the Fair Practices Code, enhancing the scope of the guidelines but in no way sacrificing the spirit underlying the above guidelines. The same should be put up on their web-site, if any, for the information of various stakeholders.

vii) Regulation of excessive interest charged by NBFCs

(a) The Board of each NBFC shall adopt an interest rate model taking into account relevant factors such as, cost of funds, margin and risk premium, etc and determine the rate of interest to be charged for loans and advances. The rate of interest and the approach for gradations of risk and rationale for charging different rate of interest to different categories of borrowers shall be disclosed to the borrower or customer in the application form and communicated explicitly in the sanction letter.

(b) The rates of interest and the approach for gradation of risks shall also be made available on the web-site of the companies or published in the relevant newspapers. The information published in the website or otherwise published should be updated whenever there is a change in the rates of interest.

(c) The rate of interest should be annualised rates so that the borrower is aware of the exact rates that would be charged to the account.

(viii) Complaints about excessive interest charged by NBFCs

The Reserve Bank has been receiving several complaints regarding levying of excessive interest and charges on certain loans and advances by NBFCs. Though interest rates are not regulated by the Bank, rates of interest beyond a certain level may be seen to be excessive and can neither be sustainable nor be conforming to normal financial practice.

Boards of NBFCs are, therefore, advised to lay out appropriate internal principles and procedures in determining interest rates and processing and other charges.

In this regard the guidelines indicated in the Fair Practices Code about transparency in respect of terms and conditions of the loans are to be kept in view.

(ix) Clarification regarding repossession of vehicles financed by NBFCs

NBFCs must have a built in re-possession clause in the contract/loan agreement with the borrower which must be legally enforceable. To ensure transparency, the terms and conditions of the contract/loan agreement should also contain provisions regarding: (a) notice period before taking possession; (b) circumstances under which the notice period can be waived; (c) the procedure for taking possession of the security; (d) a provision regarding final chance to be given to the borrower for repayment of loan before the sale / auction of the property; (e) the procedure for giving repossession to the borrower and (f) the procedure for sale / auction of the property. A copy of such terms and conditions must be made available to the borrowers in terms of circular wherein it was stated that NBFCs may invariably furnish a copy of the loan agreement along with a copy each of all enclosures quoted in the loan agreement to all the borrowers at the time of sanction / disbursement of loans, which may form a key component of such contracts/loan agreements.

The Reserve Bank has revised the guidelines on Fair Practices Code (FPC) for all NBFCs issued on September 28, 2006 in the light of the recent developments in the NBFC sector. The salient features of the revised circular dated March 26, 2012 are as follows:

General

- (a) All communications to the borrower shall be in the vernacular language or a language as understood by the borrower.
- (b) Loan application forms should include necessary information that affects the interests of the borrower.
- (c) Loan agreement should contain all details.
- (d) NBFCs should refrain from interference in the affairs of the borrower except for the purposes provided in the terms and conditions of the loan agreement.
- (e) In the matter of recovery of loans, the NBFCs should not resort to undue harassment and ensure that the staffs are adequately trained to deal with customers.
- (f) The Board of Directors of NBFCs should also lay down the appropriate grievance redressal mechanism within the organisation.
- (g) The Fair Practices Code should be put in place by all NBFCs with the approval of their Boards. The same should be put up on their website.
- (h) Boards of NBFCs should lay out appropriate internal principles and procedures to determine interest rates and processing and other charges.
- (i) The Board of each NBFC shall adopt an interest rate model taking into account relevant factors, such as cost of funds, margins and risk premium.
- (j) NBFCs must have a built-in re-possession clause in the contract/loan agreement with the borrower which must be legally enforceable.
- (k) To ensure transparency, the terms and conditions of the contract/loan agreement should also contain provisions regarding: (a) notice period before taking possession; (b) circumstances under which the notice period can be waived; (c) the procedure for taking possession of the security; (d) a provision regarding final chance to be given to the borrower for repayment of loan before

the sale / auction of the property; (e) the procedure for giving repossession to the borrower and (f) the procedure for sale/ auction of the property.

11. MONITORING OF FRAUDS

The Reserve Bank has issued guidelines (Master Circular No. RBI/2012-13/23 DNBS.PD.CC. No.283/03.10.042/2012-13 dated July 2nd, 2012) to NBFCs (including RNBCs) on classification of frauds, approach towards monitoring of frauds and reporting requirements from time to time under Section 45K and 45 L of the RBI Act, 1934.

While the primary responsibility for preventing frauds lies with NBFCs themselves, a reporting system for frauds prescribed by the abovementioned Master Circular is given in the following paragraphs:

- NBFCs should ensure that a reporting system is in place so that frauds are reported without any delay.
- NBFCs should fix staff accountability in respect of delays in reporting of fraud cases to the Reserve Bank.
- NBFCs may, strictly adhere to the fixed timeframe fixed for reporting fraud cases to the Reserve Bank failing which NBFCs would be liable for penal action as prescribed under the provisions of Chapter V of the RBI Act, 1934.
- NBFCs should specifically nominate an official of the rank of General Manager or equivalent who will be responsible for submitting all the returns
- In order to have uniformity in reporting, frauds have been classified as under based mainly on the provisions of the Indian Penal Code:

(a) Misappropriation and criminal breach of trust.

(b) Fraudulent encashment through forged instruments, manipulation of books of account or through fictitious accounts and conversion of property.

(c) Unauthorised credit facilities extended for reward or for illegal gratification.

(d) Negligence and cash shortages.

(e) Cheating and forgery.

(f) Irregularities in foreign exchange transactions.

(g) Any other type of fraud not coming under the specific heads as above.

- Cases of 'negligence and cash shortages' and 'irregularities in foreign exchange transactions' referred to in items (d) and (f) above are to be reported as fraud if the intention to cheat / defraud is suspected / proved. However, the following cases where fraudulent intention is not suspected / proved, at the time of detection, will be treated as fraud and reported accordingly:

(a) cases of cash shortages more than Rs.10,000/- and

(b) cases of cash shortages more than Rs. 5000/- if detected by management / auditor / inspecting officer and not reported on the occurrence by the persons handling cash.

- NBFCs having overseas branches/offices should report all frauds perpetrated at such branches/offices also to the Reserve Bank as per the given format and procedure
- Frauds involving Rs. 1 lakh and above
Fraud reports should be submitted in all cases of fraud of Rs. 1 lakh and above perpetrated through misrepresentation, breach of trust, manipulation of books of account, fraudulent encashment of FDRs unauthorised handling of securities charged to the NBFC, misfeasance, embezzlement, misappropriation of funds, conversion of property, cheating, shortages, irregularities, etc.
- Fraud reports should also be submitted in cases where central investigating agencies have initiated criminal proceedings suo moto and/or where the Reserve Bank has directed that they be reported as frauds.
- Wherever information is available, NBFCs may also report frauds perpetrated in their subsidiaries and affiliates/joint ventures. Such frauds should, however, not be included in the report on outstanding frauds and the quarterly progress reports referred to below.
- The fraud reports in the prescribed format should be sent to the Central Office (CO) of the Reserve Bank of India, Department of Banking Supervision, Frauds Monitoring Cell where the amount involved in fraud is Rs 25 lakhs and above and to Regional Office of the Reserve Bank of India, Department of Non-Banking Supervision under whose jurisdiction the Registered Office of the NBFC falls where the fraud amount involved in fraud is less than Rs 25 lakh , in the format given in FMR - 1, within three weeks from the date of detection.

- A copy of FMR-1 where the amount involved in the Fraud is Rs 25 lakhs and above should also be submitted to the Regional Office of the Department of Non-Banking Supervision of Reserve Bank of India under whose jurisdiction the Registered Office of the NBFC falls.
- Frauds involving Rs. 25 lakh and above
In respect of frauds involving Rs. 25 lakh and above, in addition to the requirements given above, NBFCs may report the fraud by means of a D.O. letter addressed to the Chief General Manager-in-charge of the Department of Banking Supervision, Reserve Bank of India, Frauds Monitoring Cell, Central Office and a copy endorsed to the Chief General Manager-in-charge of the Department of Non-Banking Supervision, Reserve Bank of India, Central Office within a week of such frauds coming to the notice of the NBFC. The letter may contain brief particulars of the fraud such as amount involved, nature of fraud, modus operandi in brief, name of the branch/office, names of parties involved (if they are proprietorship/ partnership concerns or private limited companies, the names of proprietors, partners and directors), names of officials involved, and whether the complaint has been lodged with the Police. A copy of the D.O. letter should also be endorsed to the Regional Office of Reserve Bank, Department of Non-Banking Supervision under whose jurisdiction the Registered Office of the NBFC is functioning.
- NBFCs should submit a copy of the Quarterly Report on Frauds Outstanding in the format given in FMR - 2 to the Regional Office of the Reserve Bank of India, Department of Non-Banking Supervision under whose jurisdiction the Registered Office of the NBFC falls irrespective of amount within 15 days of the end of the quarter to which it relates.
- NBFCs should furnish a certificate, as part of the above report, to the effect that all individual fraud cases of Rs. 1 lakh and above reported to the Reserve Bank in FMR - 1 during the quarter have also been put up to the NBFC's Board and have been incorporated in Part - A (columns 4 and 5) and Parts B and C of FMR - 2.
- Progress Report on Frauds - NBFCs should furnish case-wise quarterly progress reports on frauds involving Rs. 1 lakh and above in the format given in FMR - 3 to the Central Office (CO) of the Reserve Bank of India, Department of Banking Supervision, Frauds Monitoring Cell where the amount involved in fraud is Rs 25 lakhs and above and to Regional Office of the Reserve Bank of India, Department of Non-Banking Supervision under whose jurisdiction the Registered Office of the NBFC falls where the fraud amount involved in fraud is less than Rs 25 lakh within 15 days of the end of the quarter to which it relates.
- NBFCs should ensure that all frauds of Rs. 1 lakh and above are reported to their Boards promptly on their detection. Such reports should, among other things, take note of the failure on the part of the concerned officials,

- and consider initiation of appropriate action against the officials responsible for the fraud.
- Quarterly Review of Frauds
 - Annual Review of Frauds
 - Guidelines to be followed for reporting Frauds to the Police

12. CORPORATE GOVERNANCE

Listed NBFCs which are required to adhere to listing agreement and rules framed by SEBI on Corporate Governance are already required to comply with SEBI prescriptions on Corporate Governance.

The Guidelines on Corporate Governance (Master Circular RBI/2012-13/25 DNBS (PD) CC No.288/03.10.001/2012-13 dated July 2nd, 2012) are applicable to

1. All Deposit taking NBFCs with deposit size of Rs 20 crore and above
2. All non-deposit taking NBFCs with asset size of Rs 100 crore and above (NBFC-ND-SI).

In order to enable NBFCs to adopt best practices and greater transparency in their operations following guidelines are proposed for consideration of the Board of Directors of the class of NBFCs to whom this circular is addressed :

Constitution of Audit Committee

- i) In terms of extant instructions, an NBFC having assets of Rs. 50 crore and above as per its last audited balance sheet is already required to constitute an Audit Committee, consisting of not less than three members of its Board of Directors, the instructions shall remain valid.
- ii) In addition, NBFC-D with deposit size of Rs 20 crore may also consider constituting an Audit Committee on similar lines.

Constitution of Nomination Committee

iii) The importance of appointment of directors with 'fit and proper' credentials is well recognised in the financial sector. In terms of Section 45-IA(4)(c) of the RBI Act, 1934, while considering the application for grant of Certificate of Registration to undertake the business of non-banking financial institution it is necessary to ensure that the general character of the management or the proposed management of the non-banking financial company shall not be prejudicial to the interest of its present and future depositors. In view of the interest evinced by various entities in this segment, it would be desirable that NBFC-D with deposit size of Rs 20 crore and above and NBFC-ND-SI may form

a Nomination Committee to ensure 'fit and proper' status of proposed/existing Directors.

Constitution of Risk Management Committee

iv) The market risk for NBFCs with Public Deposit of Rs.20 crore and above or having an asset size of Rs.100 crore or above as on the date of last audited balance sheet is addressed by the Asset Liability Management Committee (ALCO) constituted to monitor the asset liability gap and strategize action to mitigate the risk associated. To manage the integrated risk, a risk management committee may be formed, in addition to the ALCO in case of the above category of NBFCs.

Disclosure and transparency

v) The following information should be put up by the NBFC to the Board of Directors at regular intervals as may be prescribed by the Board in this regard:

- progress made in putting in place a progressive risk management system, and risk management policy and strategy followed
- conformity with corporate governance standards viz. in composition of various committees, their role and functions, periodicity of the meetings and compliance with coverage and review functions, etc.

Connected Lending

The Bank has received suggestions in the matter with reference to paragraph 2(vi) of the circular dated May 28, 2007 containing instructions on connected lending. The suggestions are being studied and the instructions contained in paragraph 2 (vi) of the said circular will become operational after final evaluation of the suggestions and modifications, if any considered necessary.

NBFCs shall frame their internal guidelines on corporate governance, enhancing the scope of the guidelines without sacrificing the spirit underlying the above guidelines and it shall be published on the company's web-site, if any, for the information of various stakeholders.

Rotation of partners of the statutory auditors audit firm - with public deposits/deposits of Rs 50 crore and above

The need for good corporate governance has been gaining increased emphasis over the years. Globally, Companies are adopting best corporate practices to

increase the investors confidence as also that of other stakeholders. Scrutiny of the books of account conducted by auditors rotated periodically would add further value in strengthening corporate governance.

In this context, it would be desirable if NBFCs with public deposits / deposits of Rs 50 crore and above, stipulate rotation of partners of audit firms appointed for auditing the company. The partner/s of the Chartered Accountant firm conducting the audit could be rotated every three years so that same partner does not conduct audit of the company continuously for more than a period of three years. However, the partner so rotated will be eligible for conducting the audit of the NBFC after an interval of three years, if the NBFC, so decides. Companies may incorporate appropriate terms in the letter of appointment of the firm of auditors and ensure its compliance.

13. FOREIGN EXCHANGE INVESTMENT IN NBFCs

Schedule 1 to Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 notified by the Reserve Bank vide Notification No. FEMA 20/2000-RB dated 3rd May 2000, as amended from time to time, read with Sr.No.24.2 of Annex B to A.P. (DIR Series) Circular No. 137 dated June 28, 2012 pertains to sector specific conditions for FDI in NBFCs.

As per Sr.No.24.2 of Annex B to A.P. (DIR Series) Circular No. 137 dated June 28, 2012:

Foreign investment (100%) in NBFC is allowed under the automatic route in only the following activities:

- (i) Merchant Banking
- (ii) Under Writing
- (iii) Portfolio Management Services
- (iv) Investment Advisory Services
- (v) Financial Consultancy
- (vi) Stock Broking
- (vii) Asset Management
- (viii) Venture Capital
- (ix) Custodian Services
- (x) Factoring
- (xi) Credit Rating Agencies
- (xii) Leasing & Finance
- (xiii) Housing Finance

- (xiv) Forex Broking
- (xv) Credit Card Business
- (xvi) Money Changing Business
- (xvii) Micro Credit
- (xviii) Rural Credit

Conditions for Foreign Investment in NBFC:

(1) Investment would be subject to the following minimum capitalization norms:

(i) US \$0.5 million for foreign capital up to 51% to be brought upfront

(ii) US \$ 5 million for foreign capital more than 51% and up to 75% to be brought upfront

(iii) US \$ 50 million for foreign capital more than 75% out of which US\$ 7.5 million to be brought upfront and the balance in 24 months.

(iv) There is a specific exception for 100% foreign-owned NBFCs where there is no restriction on establishing downstream subsidiaries without further capitalizing each subsidiary with the minimum required foreign investment. However, this specific dispensation was not available to NBFCs where foreign investment is between 75% and 100%. By way of a Press Note No. 9 (2012) Series, the Government has now brought such NBFCs on par with 100% foreign-owned NBFCs, whereby they can also set up downstream subsidiaries without further capitalizing each one of them with the requirement minimum amount.

NBFCs (1) having foreign investment more than 75% and up to 100%, and (2) with a minimum capitalisation of US\$ 50 million, can set up step down subsidiaries for specific NBFC activities, without any restriction on the number of operating subsidiaries and without bringing in additional capital. The minimum capitalisation condition as mandated by para 3.10.4.1 of DIPP Circular 1 of 2012 dated April 10, 2012 on Consolidated FDI Policy, therefore, shall not apply to downstream subsidiaries.

(v) Joint Venture operating NBFCs that have 75% or less than 75% foreign investment can also set up subsidiaries for undertaking other NBFC activities, subject to the subsidiaries also complying with the applicable minimum capitalisation norm mentioned in (i), (ii) and (iii) above and (vi) below.

(vi) Non-Fund based activities : US \$0.5 million to be brought upfront for all permitted non-fund based NBFCs irrespective of the level of foreign investment subject to the following condition:

It would not be permissible for such a company to set up any subsidiary for any other activity, nor it can participate in any equity of an NBFC holding/operating company.

Note: The following activities would be classified as Non-Fund Based activities:

- (a) Investment Advisory Services
- (b) Financial Consultancy
- (c) Forex Broking
- (d) Money Changing Business
- (e) Credit Rating Agencies

(vii) This will be subject to compliance with the guidelines of RBI.

Note:

(i) Credit Card business includes issuance, sales, marketing & design of various payment products such as credit cards, charge cards, debit cards, stored value cards, smart card, value added cards etc.

(ii) Leasing & Finance covers only financial leases and not operating leases.

(2) The NBFC will have to comply with the guidelines of the relevant regulator/s, as applicable.

14. OVERSEAS INVESTMENTS BY NBFCs

The Reserve Bank has issued Master Circular No. RBI/2012-13/28 DNBS (PD) CC No.292/03.02.001/2012-13 dated July 2nd, 2012 on Opening of Branch-Subsidiary-Joint Venture- Representative office or Undertaking Investment Abroad by NBFCs.

1. Overseas Investment by NBFCs- No Objection (NoC) from Department of Non-Banking Supervision (DNBS), RBI

NBFCs were advised to refer to Regulation No. 7 of the Foreign Exchange Management (Transfer or Issue of Any Foreign Security) (Amendment) Regulations, 2004, dated July 07, 2004, in terms of which an Indian party requires prior approval of the concerned regulatory authorities both in India and abroad, to make an investment in an entity outside India engaged in financial services activities. Further in terms of para B.5.3 of the Master Circular on Direct Investment in Joint Venture (JV) / Wholly owned subsidiary (WOS) abroad dated July 01, 2009 issued by Foreign Exchange Department, RBI, regulated entities in the financial sector making investments in any activity overseas are required to comply with the above regulation.

Instances have been observed where NBFCs have made overseas investments without regulatory clearance of the Department of Non-Banking Supervision, Reserve Bank of India. Any investments made by NBFCs without regulatory clearance is a violation of FEMA 2004 and attracts penal provisions.

In this regard, it is emphasised that all NBFCs desirous of making any overseas investment must obtain 'No Objection' (NoC) of the Department of Non-Banking Supervision of RBI before making such investment, from the Regional Office in whose jurisdiction the head office of the company is registered.

Applications in this regard shall clearly state the activities intended to be undertaken by the overseas entity. NBFCs may also note that in terms of the Regulations *ibid*, they are not permitted to make direct investment in a foreign entity engaged in activities not approved under FEMA.

2. The Non-Banking Financial Companies (Opening of Branch/Subsidiary/Joint Venture/ Representative Office or Undertaking Investment Abroad by NBFCs) Directions, 2011.

Prior Approval of RBI in cases of Opening of branch/subsidiary/joint venture/representative office or undertaking investment abroad by NBFCs

1. No NBFC shall open subsidiaries/joint ventures/representative office abroad or shall make investment in any foreign entities without obtaining prior approval in writing from the Reserve Bank of India. The application from the NBFC seeking No Objection would be considered subject to these directions.

2. These directions are in addition to those prescribed by Foreign Exchange Department for opening of branches abroad or for investments in Joint

Venture/Wholly Owned Subsidiary.

3. The following general and specific conditions are prescribed for permitting subsidiaries/joint ventures/representative office or making investments abroad by a NBFC (both deposit taking and non-deposit taking) registered with RBI.

General conditions

- a. Investment in non-financial service sectors shall not be permitted.
- b. Direct investment in activities prohibited under FEMA or in sectoral funds will not be permitted.
- c. Investments will be permitted only in those entities having their core activity regulated by a financial sector regulator in the host jurisdiction.
- d. The aggregate overseas investment should not exceed 100% of the NoF. The overseas investment in a single entity, including its step down subsidiaries, by way of equity or fund based commitment shall not be more than 15% of the NBFC's owned funds.
- e. Overseas investment should not involve multi layered, cross jurisdictional structures and at most only a single intermediate holding entity shall be permitted.
- f. Capital to Risk-weighted Assets Ratio (CRAR)
 - (i) The CRAR of the deposit taking NBFCs, post investment in subsidiary abroad, should be not less than that applicable to deposit taking NBFCs in terms of Non-Banking Financial (Deposit Accepting or Holding) Companies Prudential Norms(Reserve Bank) Directions, 2007, as amended from time to time;
 - (ii) The CRAR of the NBFC-ND-SI, post investment in subsidiary abroad, should be not less than that applicable to them in terms of Non-Banking Financial (Non-Deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank) Directions, 2007, as amended from time to time;
 - (iii) The CRAR of the non-deposit taking NBFCs (other than NBFC-ND-SI), post investment in subsidiary abroad, should not be less than 10%, or as modified from time to time;
- g. The NBFC should continue to maintain required level of NOF after accounting for investment in the proposed subsidiary/investment abroad as prescribed in the explanation to Section 45-IA of the RBI Act, 1934.
- h. The level of Net Non-Performing Assets of the NBFC should not be more than 5% of the net advances;
- i. The NBFC should be earning profit for the last three years and its performance in general should be satisfactory during the period of its existence.
- j. The NBFC shall comply with the regulations issued under FEMA, 1999 from time to time;
- k. Regulatory compliance and servicing of public deposits, if held by the NBFC,

should be satisfactory

l. The NBFC shall comply with the KYC norms;

m. SPVs set up abroad or acquisition abroad shall be treated as investment or subsidiary/joint venture abroad, depending upon percentage of investment in overseas entity;

n. An annual certificate from statutory auditors shall be submitted by the NBFC to the Regional Office of Department of Non-Banking Supervision (DNBS) where it is registered, certifying that it has fully complied with all the conditions stipulated under these Guidelines for overseas investment;

o. A quarterly return in the enclosed format shall be submitted by the NBFC to the Regional Office of DNBS and also Department of Statistics and Information Management (DSIM)

p. If any adverse features come to the notice of the Bank, the permission granted shall be withdrawn. All approvals for investment abroad shall be subject to this condition.

Specific conditions.

(A) Opening of Branch

As a general policy, NBFCs shall not be allowed to open a branch abroad. However Non-banking financial companies which have already set up branch(es) abroad for undertaking financial business shall be allowed to continue to operate them subject to complying with the revised guidelines, as applicable.

(B) Opening of subsidiary abroad by NBFCs

In case of opening of a subsidiary abroad by the NBFCs, all the conditions as stipulated above shall be applicable. The NoC to be issued by the Bank is independent of the overseas regulators' approval process.

In addition, the following stipulations are made, which shall be applicable to all NBFCs:

a. In case of opening of subsidiary abroad, the parent NBFC shall not be permitted to extend implicit or explicit guarantee to or on behalf of such subsidiaries;

b. No request for letter of comfort in favour of the subsidiary abroad from any institution in India shall be permitted;

c. It shall be ensured that NBFC's liability in the proposed overseas entity is restricted to its either equity or fund based commitment to the subsidiary;

d. The subsidiary being established abroad should not be a shell company i.e "a company that is incorporated, but has no significant assets or operations." However companies undertaking activities such as financial consultancy and advisory services with no significant assets shall not be considered as shell companies;

e. The subsidiary being established abroad by the NBFC should not be used as a vehicle for raising resources for creating assets in India for the Indian operations;

f. In order to ensure compliance of the provisions, the parent NBFC shall obtain periodical reports/audit reports about the business undertaken by the subsidiary abroad and shall make them available to Reserve Bank and inspecting officials of the Bank;

g. If the subsidiary has not undertaken any activity or such reports are not forthcoming, the approvals given for setting up a subsidiary abroad shall be reviewed/ recalled;

h. The permission granted to any NBFC for setting up of overseas subsidiary shall be subject to condition that the subsidiary shall make disclosure in its Balance Sheet to the effect that liability of the parent entity in the proposed overseas entity shall be limited to its either equity or fund based commitment to the subsidiary;

i. All the operations of the subsidiary abroad shall be subject to regulatory prescriptions of the host country.

(C) Joint Ventures abroad

Investments abroad, other than in subsidiaries also shall be governed by same guidelines as those applicable to subsidiaries.

(D) Opening of representative offices abroad by NBFCs

The representative office can be set up abroad for the purpose of liaison work, undertaking market study and research but not undertaking any activity which involves outlay of funds, provided it is subject to regulation by a regulator in the

host country. As it is not envisaged that such office would be carrying on any activity other than liaison work, no line of credit should be extended.

The parent NBFC shall obtain periodical reports about the business undertaken by the representative office abroad. If the representative office has not undertaken any activity or such reports are not forthcoming, the approvals given for the purpose shall be reviewed/ recalled.

3. The Policy will be reviewed based on experience gained.
4. Violation of these directions shall invite penal action under the provisions of Reserve Bank of India Act, 1934.

15. WORKING GROUP ON THE ISSUES AND CONCERNS IN THE NBFC SECTOR

The Board for Financial Supervision (BFS) in its meeting held on September 29, 2010, desired that a Working Group be constituted with experts to study the issues and concerns in the NBFC sector. Accordingly, a Working Group (WG) was set up under the Chairmanship of Smt. Usha Thorat, Director, Centre for Advanced Financial Research and Learning (CAFRAL).

The Working Group submitted its Report on August 23rd, 2011 and apart from various recommendations on various aspects, recommended the following Legislative Changes:

1. The Working Group is of the view that insurance business and chit fund business should be omitted from Section 45I(c) of the RBI Act 1934 whenever the amendments are taken up. New forms of business which may require to be regulated by RBI may be separately identified for inclusion in Section 45 I(c) at that time, or flexibility may be given to RBI to include in the said list of businesses, any other business from time to time.
2. The present limit of Rs. 2 crore is too small to enable a financial entity to carry on business in such a manner that there are economies of scale and scope. A higher entry barrier in the form of a higher Net Owned Fund (NOF) requirement is necessary so that only serious players enter the sector. Hence, a minimum requirement of Rs. 2 crore in start up NOF is grossly inadequate from the perspective of financial soundness and solvency. The Working Group feels as

and when the RBI Act amendments are taken up, Section 45IA (1) (b) of the RBI Act 1934 should be amended to prescribe entry level criteria as a floor without a cap on the power of RBI to specify a higher requirement of NOF.

3. Banks and NBFCs are in similar businesses of lending and investing. Since the assets of the two financial entities are similar, it is necessary that they be subject to similar prudential norms for asset classification, income recognition and provisioning. However, the tax treatments for provisions are not similar. It is therefore proposed that the tax treatment for provisions made by NBFCs for regulatory purposes should be similar to that for banks.

4. Unlike banks and Public Financial Institutions (PFIs), most NBFCs (except those which are PFIs under Section 4A of the Companies Act) do not enjoy the benefits deriving from the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act 2002, even though their clients/borrowers may be exactly the same. The Working Group is of the view that there is a good case for considering NBFCs to be notified by Central Government under Section 2(1) (m) (iv) of SARFAESI Act, 2002.

5. In regulating NBFCs, RBI should have the power to legally prescribe fit and proper conditions and have the powers to remove the directors in the event they are not found fit or proper and even appoint directors where it is necessary to do so in public interest and in the interest of financial stability. There should also be powers to supersede the Board in the interest of financial stability and constitute a fresh Board. Also provisions similar to those in banks for obtaining prior approval of RBI for any significant acquisition of ownership and control in any NBFC could be made part of the legislation. This may be considered at the time of comprehensive legislation change for the financial sector.

6. Suitable amendments may be carried out in the RBI Act, 1934, making it obligatory for NBFCs to obtain prior approval of the RBI for any merger, acquisitions or change in management or control.

About the Author

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Mr.Rajkumar S Adukia is an eminent business consultant, academician, writer, and speaker. A senior partner of Adukia & Associates he has authored more than 34 books on a wide range of subjects. His books on IFRS namely, “Encyclopedia on IFRS (3000 pages) and The Handbook on IFRS (1000 pages) has served number of professionals who are on the lookout for a practical guidance on IFRS. The book on “Professional Opportunities for Chartered Accountants” is a handy tool and ready referencer to all Chartered Accountants.

In addition to being a Chartered Accountant, Company Secretary, Cost Accountant, MBA, Dip IFR (UK), Mr. Adukia also holds a Degree in Law and Diploma in Labor Laws. He has been involved in the activities of the Institute of Chartered Accountants of India (ICAI) since 1984 as a convenor of Kalbadevi CPE study circle. He was the Chairman of the Western Region of Institute of Chartered Accountants of India in 1997 and has been actively involved in various committees of ICAI. He became a member of the Central Council in 1998 and ever since he has worked tirelessly towards knowledge sharing, professional development and enhancing professional opportunities for members. He is a regular contributor to the various committees of the ICAI. He is currently the Chairman of Committee for Members in Industry and Internal Audit Standard Board of ICAI.

Mr. Adukia is a rank holder from Bombay University. He did his graduation from Sydenham College of Commerce & Economics. He received a Gold Medal for highest marks in Accountancy & Auditing in the Examination. He passed the Chartered Accountancy with 1st Rank in Inter CA & 6th Rank in Final CA, and 3rd Rank in Final Cost Accountancy Course in 1983. He started his practice as a Chartered Accountant on 1st July 1983, in the three decades following which he left no stone unturned, be it academic expertise or professional development. His level of knowledge, source of information, professional expertise spread across a wide range of subjects has made him a strong and sought after professional in every form of professional assignment.

He has been coordinating with various professional institutions, associations' universities, University Grants Commission and other educational institutions. Besides he has actively participated with accountability and standards-setting organizations in India and at the international level. He was a member of J.J. Irani committee which drafted Companies Bill 2008. He is also member of Secretarial Standards Board of ICSI. He represented ASSOCHAM as member of Cost Accounting Standards Board of ICWAI. He was a member of working group of Competition Commission of India, National Housing Bank, NABARD, RBI, CBI etc.

He has served on the Board of Directors in the capacity of independent director at BOI Asset management Co. Ltd, Bharat Sanchar Nigam Limited and SBI Mutual Funds Management Pvt Ltd. He was also a member of the London Fraud Investigation Team

Mr. Rajkumar Adukia specializes in IFRS, Enterprise Risk Management, Internal Audit, Business Advisory and Planning, Commercial Law Compliance, XBRL, Labor Laws, Real Estate, Foreign Exchange Management, Insurance, Project Work, Carbon Credit, Taxation and Trusts. His clientele include large corporations, owner-managed companies, small manufacturers, service businesses, property management and construction, exporters and importers, and professionals. He has undertaken specific

assignments on fraud investigation and reporting in the corporate sector and has developed background material on the same.

Based on his rich experience, he has written numerous articles on critical aspects of finance-accounting, auditing, taxation, valuation, public finance. His authoritative articles appear regularly in financial papers like Business India, Financial Express, Economic Times and other professional / business magazines. He has authored several accounting and auditing manuals. He has authored books on vast range of topics including IFRS, Internal Audit, Bank Audit, Green Audit, SEZ, CARO, PMLA, Anti-dumping, Income Tax Search, Survey and Seizure, Real Estate etc. His books are known for their practicality and for their proactive approaches to meeting practice needs.

Mr. Rajkumar is a frequent speaker on trade and finance at seminars and conferences organized by the Institute of Chartered Accountants of India, various Chambers of Commerce, Income Tax Offices and other Professional Associations. He has also lectured at the S.P. Jain Institute of Management, Intensive Coaching Classes for Inter & Final CA students and Direct Taxes Regional Training Institute of CBDT. He also develops and delivers short courses, seminars and workshops on changes and opportunities in trade and finance. He has extensive experience as a speaker, moderator and panelist at workshops and conferences held for both students and professionals both nationally and internationally.. Mr. Adukia has delivered lectures abroad at forums of International Federation of Accountants and has travelled across countries for professional work.

Professional Association: *Mr. Rajkumar S Adukia with his well chartered approach towards professional assignments has explored every possible opportunity in the fields of business and profession. Interested professionals are welcome to share their thoughts in this regard.*

Some of the notable publications authored by Mr. Rajkumar S Adukia

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