

# Non Banking Finance Company NIRC, ICSI

# Topics Covered

- Meaning of NBFC
- NBFCs – Liabilities based classification
- NBFCs – Asset based classification
- NBFCs – Size based classification
- Asset Income Approach
- Net owned fund requirement
- Formation Procedure

# Topics Covered

- Raising of Funds
- Compliances – Co's Act, 2013
- Compliances – SEBI Laws
- Compliances – RBI Laws
- No. of Subsidiaries
- Related Party Transactions
- Investment, loan, guarantee etc.

# Topics covered

- Change in Control
- Merger & Amalgamation
- FDI in NBFCs
- Statutory Auditor Certificate
- Auditor's Report
- Returns Requirement
- Recent Amendments

# Banks Vs. Non-Banks

- Both are Financial Intermediaries
- Banks Can:
  - Maintain Demand Deposits (savings/current Accounts)
  - Form a Part of Payment and Settlement Mechanism
- Non-banks Can
  - Accept only term Deposits
  - Does not form Part of Payment and Settlement Mechanism

# Meaning of NBFC

## Section 45I (f) of RBI act, 1934

“Non-banking financial company” means –

- a “**Financial Institution**” which is a company;
- 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;
- such **other Non-Banking Institution** or class of such institutions, as RBI specifies

“Non-Banking Institution” - means a company , corporation or co-operative society

# Types of NBFCs

- Liabilities Based Classification
- Asset Based Classification
- Size Based Classification

# Liabilities Based Classification

- NBFCs having public deposits or NBFCs-D
- NBFCs not having public deposits or NBFCs-ND



# Asset Based Classification

Mainly there are following types of NBFCs

- Asset Finance Company
- Investment Company
- Loan Company
- Core Investment Companies
- Infrastructure Finance Companies
- Factor
- Micro Finance Institutions
- Infrastructure Debt Funds

# Size Based Classification

- In 2006, non-deposit taking NBFCs with assets of Rs. 100 crore and above were labelled as Systemically Important Non-Deposit taking NBFCs (NBFCs-ND-SI), and prudential regulations such as capital adequacy requirements, exposure norms along with, reporting requirements were made applicable to them

# Asset Income Approach

In order to identify a particular company as an NBFC, consider **both, the assets and the income pattern** - **from the last audited balance sheet** to decide **principal business**

**Financial Assets** are more than **50 per cent** of its **Total Assets (netted off by Intangible Assets)**

**AND**

**Income from financial assets** should be **more than 50 per cent** of the **gross income**

# Asset Finance Company

- Asset Finance Company (AFC) would be defined as any company which is a financial institution carrying on as its **principal business** the financing of physical assets supporting productive / economic activity.

60% of Total Assets in Financing Real/Physical Assets &  
60% of Total Income arises from the aforesaid Assets

# Investment Company

Investment Companies (IC) means any company which is a financial institution carrying on as its **principal business** of acquisition of securities

50% of Total Assets in Investment Activity &  
50% of Total Income arises from the aforesaid Assets

# Loan Company

Loan Company(LC) means any company which is a financial institution carrying on as its **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

50% of Total Assets in Lending &  
50% of Total Income arises from the aforesaid Assets

# Infrastructure Finance Co.

IFC means a non-banking finance company which deploys at least 75 per cent of its total assets in infrastructure loans

Minimum Net Owned Funds – INR 300 Lakhs

Acceptance of public deposit not allowed

# Core Investment Companies

CIC means an NBFC which carries on the business of acquisition of shares and securities and which satisfies the following conditions:

Not less than 90% of Net Assets should be in the form of Investment in Group Companies

AND

Not less than 60% of Net Assets are held as equity stake in Group Companies



# NBFC Factor

NBFC Factor means a company which carries on factoring business as its principal business and satisfies the following criteria:

Min NOF - 5 Crores

AND

At least 75% of its total assets should be financial assets

AND

At least 75% of its gross income should be from factoring business

# NBFC - MFI

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:

Min NOF - 5 Crores

AND

Not less than 85% of its net assets are in the nature of “qualifying assets”

# IDF-NBFC

“IDF-NBFC” means a non-deposit taking NBFC that has Net Owned Fund of Rs 300 crores or more and which invests only in **Public Private Partnerships** (PPP) and post commencement operations date (COD) infrastructure projects which have completed at least one year of satisfactory commercial operation and becomes a party to a Tripartite Agreement.

# Net Owned Fund Requirement

MIN. INR 200 LAKHS AT ALL THE TIME  
UNLESS OTHERWISE SPECIFIED

# Formation Procedure

- A company with main object clause/ancillary clause for carrying out NBFIs activities (check object clause)
- Obtain checklist of requirements from RBI website
- Fill up prescribed form, available on RBI website, according to instructions with the requirements
- Fill up the e-form provided in excel format
- Get the required certifications of the statutory auditors/chartered accountants (as the case may be)
- Submit softcopy on RBI website before submission of the hard copy.

# Formation Procedure Contd...

- Obtain the printout of successful submission of the softcopy. Mention the date of submission on the print if date is not appearing on print.
- Submit the hardcopy application in duplicate to regional office of RBI
- Each page in the application file should be numbered
- Prepare the application in triplicate so that a replica is with the applicant for future reference.

# Commencement of Business

- NBFC must commence its business within 6 months from the date of CoR
- If not commenced within 6 months, CoR will stand withdrawn
- No change in control prior to commencement of its business

# Change in Name

**PRIOR PERMISSION OF THE  
RBI IS REQUIRED**



# Raising of Funds

Private  
Placement

Public Issue

Equity/preference  
instruments, bond,  
commercial papers,  
debentures, deposits,  
bank finance to NBFCs  
etc.

# Compliances - Co's Act, 2013

## ***Borrowing Vs Lending***

- Passing of Board Resolution under Section 179 of the Companies Act, 2013
- Shareholders Resolution under Section 180(1)(a) and Section 180(1)(c) of the Companies Act, 2013
- Preferential issue – Section 42 of the Companies Act, 2013 and Rules made there under
- Compliance under Companies (Acceptance of Deposits) Rules, 2013 (*yet to be notified*) – *will not be applicable if NBFC is a borrower.*

# Compliances - SEBI Laws

## *Borrowing Vs Lending*

- Compliance with applicable rules & regulations of recognized stock exchange in India
- Compliance with the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009
- Compliance with the SEBI (Issue and Listing of Debt Securities) Regulations, 2008
- Compliance with SEBI (Debenture Trustee) Regulations, 1993

# Compliances -RBI Laws

## ***Borrowing Vs Lending***

- Issuance of Non-Convertible Debentures (Reserve Bank) Directions, 2010, as issued by the RBI (*applicable if maturity period is upto 1 year*)
- RBI Circular dated July 27, 2013 (Raising Money through Private Placement by NBFCs-Debentures etc.)
- Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 1998
- Master Circular on ECB Guidelines dated
- Consolidated FDI Policy 2013 issued by DIPP

# No. of Subsidiaries

- Section 186(1) of the Companies Act, 2013
- Exemption to NBFCs – not available
- Two layers of investment companies are allowed
- Horizontal Vs Vertical

# L/G/S to Specified Category

- Section 185 of the Companies Act, 2013
- Loan, Guarantee & security to Related Party
- Exemption to those companies who provide the same in the ordinary course of business
- Interest on the loan as per the rate prescribed by the RBI

# Investment, Loan, Guarantee etc.

- Section 186 of the Companies Act, 2013
- Exemption to those companies who are engaged in the business of financing of companies
- Interpretation of the word '*financing*'

# Change in Control

- ‘Control’ shall have the same meaning as defined in the SEBI takeover code
- Subhkam Ventures - SAT Judgment (year 2010) – Supreme Court Judgment (SAT judgment will not constitute precedent)
- NBFC – D & NBFC – ND : Prior Public Notice (Transferor & Transferee or jointly)
- NBFC – D : Prior permission of RBI



# Merger & Amalgamation

- Prior Public Notice
- Copy of Court's order to be delivered to RBI within 1 month from the date of order
- option to every depositor to decide whether to continue the deposits
- NBFC – D : Prior permission of the RBI
- Cross Border Merger – RBI is yet to specify Rules, presently prior permission is required

# FDI in NBFCs

- Approval Route/FIPB approval
- 18 categories under NBFC
- Minimum Capitalization Norms
- Not allowed to set up subsidiary for any other activity
- Leasing & Finance covers only financial leases and not operating leases.

# Provisioning Norms

## Classification of Assets

- Standard Assets
  - Interest and Principal Repayment are regular
- Sub-standard assets
- Doubtful Assets
- Loss Assets

Non performing assets (NPA) – Interest /Principial outstanding for more than six months



# Statutory Auditor Certificate (All NBFCs)

## Submission of certificate from statutory auditors

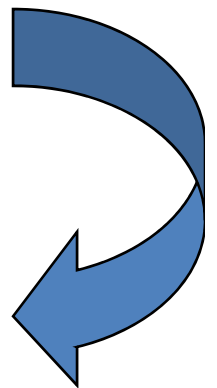
- Certificate at the end of FY certifying the eligibility of the company to hold Certificate of Registration as NBFC
- Certificate to indicate asset and income pattern
- To be given within one month from the finalisation of the balance sheet not later than 30<sup>th</sup> Dec. in any case



NIRC, ICSI

"Every non-banking financial company shall finalise its balance sheet within a period of 3 months from the date to which it pertains"

Sharad Tyagi



# Auditor's Report



## Auditors to submit Report to the Board of Directors

The auditor shall also make a **separate report to the Board of Directors of the Company**

# Auditor's Report...

## **Matters to be included in the auditor's report**

The auditor's report (Issued to Directors) on the accounts of a NBFC shall include a statement on the following matters, namely:

### **In the case of **all** non-banking financial companies**

I. Whether the company is engaged in the business of NBFIs and whether it has obtained a Certificate of Registration (CoR) from the Bank

# Auditor's Report...

II. In the case of a company holding CoR issued by the RBI, whether that company is entitled to continue to hold such CoR in terms of its asset/income pattern as on March 31<sup>st</sup> of the applicable year.

III. If the company is classified as AFC, Whether the NBFC has been correctly classified as AFC as defined in RBI Directions with reference to the business carried on by it during the applicable financial year.

# Auditor's Report...

## In the case of an NBFC-ND

The auditor shall include a statement on: -

- i. Whether the Board of Directors has passed a resolution for non- acceptance of any public deposits.
- ii. Whether the company has accepted any public deposits during the relevant period/year;
- iii. Compliance with the prudential norms



# Auditor's Report...

## Additional Reporting in respect of **NBFC-ND-SI**

(a) Calculation and compliance with Capital adequacy requirements

(b) Whether annual statement of capital funds, risk assets/exposures and risk asset ratio (NBS-7) was furnished to the bank within the stipulated period

# Auditor's Report...

## Other Requirements:

1. Reasons to be stated for unfavourable or qualified statements
2. Obligation of auditor to submit an exception report to the Bank (RBI)
  - Auditor to make a report to the regional office containing the details of **unfavorable or qualified** statements and about the **non-compliance**, as the case may be, in respect of the company

# Returns Requirements

- **NBFC – D** : 7 types of return
- **NBFC-ND-SI** : 6 types of return
- **NBFC – ND** having asset size more than 50 crores and above but less than 100 crores : quarterly return - basic information (NoF, profit & loss last 3 years etc.)
- **NBFC with FDI** : half yearly return on compliance of Minimum Capitalization Norm
- **NBFC having overseas investment** : quarterly return

# Recent Amendments

- NBFCs need to display grievance redressal mechanism and contact details of grievance redressal officer at prominent place in offices/branches/places of business
- Fair Practices Code (which should preferably in the vernacular language as understood by the borrower) based on the guidelines announced should be put in place by all NBFCs with the approval of their Boards

# Recent Amendments...cont...

- Revision in format for submission of returns for PMLA compliances and Uploading of Reports in 'Test Mode' on FINnet Gateway for PMLA Reporting
- Facility to NBFC-ND-SI - Direct Access to Negotiated Dealing System-Order Matching
- Change in Loan to Value ratio for companies predominantly in loan against gold products

# Recent Amendments...cont...

- Amendments to definition of infrastructure loan
- NBFCs cannot become partners in partnership firms
- Review of Guidelines on entry of NBFCs into Insurance Business
- RBI issued “NBFC (Opening of Branch/Subsidiary/Joint Venture/Representative Office or Undertaking Investment Abroad by NBFCs) Directions, 2011”

# Recent Amendments...cont...

- Guidelines for Credit Default Swaps - NBFCs as users
- Revision in External Commercial Borrowings (ECB) Policy – Infrastructure Finance Companies (IFCs)
- Guidelines on classification of frauds, approach towards monitoring of and reporting system for frauds for deposit taking NBFCs to apply for NBFC-ND-SI also.

**THANK YOU**



**Contact Details:**

Sharad Tyagi  
Associate Partner  
Seth Dua & Associates

Mb: 9717105904

E-mail: [c.s.sharad@gmail.com](mailto:c.s.sharad@gmail.com)