

A PREVIEW OF NBFCs

1. What is a Non-Banking Financial Company (NBFC)?

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. A non-banking institution which is a company and which has its principal business of receiving deposits under any scheme or arrangement or any other manner, or lending in any manner is also a non-banking financial company (Residuary non-banking company).

2. NBFCs are doing functions similar to banks. What is difference between banks & NBFCs ?

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

- i. 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; a
- iii. Deposit insurance facility of DICGC is not available for NBFC depositors unlike in case of banks.

3. Is it necessary that every NBFC should be registered with RBI?

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.

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.

4. What are the different types of NBFCs registered with RBI?

The NBFCs that are registered with RBI are:

- i. equipment leasing company;
- ii. hire-purchase company;
- iii. loan company;
- iv. investment company;

The above type of companies may be further classified into those accepting deposits or those not accepting deposits.

- v. Residuary Non-Banking Company.

5. What are the requirements for registration with RBI?

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). The company is required to submit its application for registration in the prescribed format alongwith necessary documents for Bank'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.

6. Can all NBFCs accept deposits and what are the requirements for accepting 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. The NBFCs accepting public deposits should have minimum stipulated Net Owned Fund and comply with the Directions issued by the Bank.

7. Whether NBFCs can accept deposits from NRIs?

Effective from April 24, 2004, NBFCs cannot accept deposits from NRI except deposits by debit to NRO account of NRI provided such amount do not represent inward remittance or transfer from NRE/FCNR (B) account. However, the existing NRI deposits can be renewed.

8. Is there any ceiling on acceptance of Public Deposits? What is the rate of interest and period of deposit which NBFCs can accept?

Yes, there is ceiling on acceptance of Public Deposits. A NBFC maintaining required NOF/CRAR and complying with the prudential norms can accept public deposits as follows:

Category of NBFC	Ceiling on public deposits
EL/HP Companies maintaining CRAR of 15% without credit rating	1.5 times of NOF or Rs 10 crore whichever is less
EL/HP Companies with CRAR of 12% and having minimum investment grade credit rating	4 times of NOF
LC/IC with CRAR of 12% and having minimum investment grade credit rating	1.5 times of NOF

Presently, the maximum rate of interest a NBFC can offer is 11%. The interest may be paid or compounded at rests not shorter than monthly rests.

The NBFCs are allowed to accept/renew public deposits for a minimum period of 12 months and maximum period of 60 months. They cannot accept deposits repayable on demand.

The RNBCs have different norms for acceptance of deposits which are explained elsewhere in this booklet.

9. What are the salient features of NBFCs regulations which the depositor may note at the times of investment?

Some of the important regulations relating to acceptance of deposits by NBFCs are as under:

- a. The NBFCs are allowed to accept/renew public deposits for a minimum period of 12 months and maximum period of 60 months. They cannot accept deposits repayable on demand.
- b. NBFCs cannot offer interest rates higher than the ceiling rate prescribed by RBI from time to time. The present ceiling is 11 per cent per annum. The interest may be paid or compounded at rests not shorter than monthly rests.
- c. NBFCs cannot offer gifts/incentives or any other additional benefit to the depositors.
- d. NBFCs (except certain equipment leasing/hire-purchase finance companies) should have minimum investment grade credit rating.
- e. The deposits with NBFCs are not insured.
- f. The repayment of deposits by NBFCs is not guaranteed by RBI.
- g. There are certain mandatory disclosures about the company in the Application Form issued by the company soliciting deposits.

10. Are Secured debentures treated as Public Deposit? If not who regulates them?

Debentures secured by the mortgage of any immovable property or other asset of the company if the amount raised does not exceed the market value of the said immovable property or other asset are excluded from the definition of 'Public Deposit' in terms of Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 1998. Secured debentures are debt instruments and are regulated by Securities & Exchange Board of India.

11. It is said that rating of NBFCs is necessary before it accepts deposit? Is it true? Who rates them?

An unrated NBFC, except certain equipment leasing/hire-purchase (EL/HP) companies, cannot accept public deposits. An exception is made in case of unrated EL/HP 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 four rating agencies namely, CRISIL, CARE, ICRA and FITCH Ratings India Pvt. Ltd.

12. What are the symbols of minimum investment grade rating of different companies?

The symbols of minimum investment grade rating of the Credit rating agencies are:

Name of rating agencies	Level of minimum investment grade credit rating (MIGR)
CRISIL	FA- (FA MINUS)
ICRA	MA- (MA MINUS)
CARE	CARE BBB (FD)
FITCH Ratings India Pvt. Ltd.	tA-(ind)(FD)

It may be added that A- is not equivalent to A, AA- is not equivalent to AA and AAA- is not equivalent to AAA.

13. What is 'deposit' and 'public deposit'? Is it defined anywhere?

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.

Thus, the directions have sought to exclude from the definition of public deposit amount raised from certain set of informed lenders who can make independent decision.

14. Can a NBFC which is yet to be rated accept public deposit?

No, a NBFC cannot accept deposit without rating except an EL/HP company complying with prudential norms and having CRAR of 15%, though not rated, may accept public deposit up to 1.5 times of NOF or Rs. 10 crore whichever is less.

15. When a company's rating is downgraded, does it have to bring down its level of public deposits immediately or over a period of time?

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.

16. In case a NBFC defaults in repayment of deposit what course of action can be taken by depositors?

If a NBFC defaults in repayment of deposit, the depositor can approach Company Law Board or Consumer Forum or file a civil suit to recover the deposits.

17. Is there an Ombudsman for hearing complaints against NBFCs?

No, there is no Ombudsman for hearing complaints against NBFCs.

18. What is the role of Company Law Board in protecting the interest of depositors? How one can approach it?

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.

As explained above 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 requisite fee.

19. What are various prudential regulations applicable to NBFCs?

The Bank has issued detailed directions on prudential norms, vide Non-Banking Financial Companies Prudential Norms (Reserve Bank) Directions, 1998. 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.

20. Please explain the terms 'owned fund' and 'net owned fund' in relation to NBFCs?

'Owned Fund' means aggregate of the paid-up equity capital and free reserves as disclosed in the latest balance sheet of the company after deducting therefrom accumulated balance of loss, deferred revenue expenditure and other intangible assets.

The amount of investments of such company in shares of its subsidiaries, companies in the same group and all other NBFCs and the book value of debentures, bonds, outstanding loans and advances made to and deposits with subsidiaries and companies in the same group is arrived at. The amount thus calculated, to the extent it exceeds 10% of the owned fund, is reduced from the amount of owned fund to arrive at 'Net Owned Fund'.

21. What are the responsibilities of the NBFCs accepting/holding public deposits with regard to submission of Returns and other information to RBI?

The NBFCs accepting public deposits should furnish to RBI

- Audited balance sheet of each financial year and an audited profit and loss account in respect of that year as passed in the general meeting together with a copy of the report of the Board of Directors and a copy of the report and the notes on accounts furnished by its Auditors;
- Statutory Annual Return on deposits - NBS 1;
- Certificate from the Auditors that the company is in a position to repay the deposits as and when the claims arise;
- Quarterly Return on liquid assets;
- Half-yearly Return on prudential norms;
- Half-yearly ALM Returns by companies having public deposits of Rs. 20 crore and above or with assets of Rs. 100 crore and above irrespective of the size of deposits ;
- Monthly return on exposure to capital market by companies having public deposits of Rs. 50 crore and above; and
- A copy of the Credit Rating obtained once a year along with one of the Half-yearly Returns on prudential norms as at (v) above.

22. The NBFCs have been made liable to pay interest on the overdue matured deposits if the company has not been able to repay the matured public deposits on receipt of a claim from the depositor. Please elaborate the provisions.

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.

23. What are the documents or the compliance required to be submitted to the Reserve Bank of India by the NBFCs not accepting/holding public deposits?

The NBFCs having assets size of Rs. 500 crore and above but not accepting public deposits are required to submit Quarterly Return on important financial parameters of the company. All companies not accepting public deposits have to pass a board resolution to the effect that they have neither accepted public deposit nor would accept any public deposit during the year.

However, all the NBFCs (other than those exempted) are required to be registered with RBI and also make sure that they continue to be eligible to remain Registered. RBI has powers to cause Inspection of the books of any company and call for any other information about its business activities. For this purpose, the NBFC is required to furnish the information in respect of any change in the composition of its Board of Directors, address of the company and its Directors and the name/s and official designations of its principal officers and the name and office address of its Auditors.

24. Can a company pre-pay its public deposits?

A NBFC accepts deposits under a mutual contract with its depositors. In case a depositor requests for premature payment, Reserve Bank of India has prescribed Regulations for such an eventuality in the Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 1998 wherein it is specified that NBFCs cannot grant any loan against a public deposit or make premature repayment of a public deposit within a period of three months (lock-in period) from the date of its acceptance, however in the event of death of a depositor, the company may, even within the lock - in period, repay the deposit at the request of the joint holders with survivor clause / nominee / legal heir only against submission of relevant proof, to the satisfaction of the company.

A NBFC subject to above provisions, if it is not a problem company, may permit after the lock-in period premature repayment of a public deposit at its sole discretion, at the rate of interest prescribed by the Bank.

A problem NBFC is prohibited from making premature repayment of any deposits or granting any loan against public deposits/deposits, as the case may be. The prohibition shall not, however, apply in the case of death of depositor or repayment of tiny deposits i.e. up to Rs. 10000/- subject to lock in period of 3 months in the latter case.

25. Please tell us something about the companies which are NBFCs, but are exempted from registration?

Housing Finance Companies, Merchant Banking Companies, Stock Exchanges, Companies engaged in the business of stock-broking/sub-broking, Venture Capital Fund Companies, Nidhi Companies, Insurance companies and Chit Fund Companies are NBFCs but they have been exempted from the requirement of registration under Section 45-IA of the RBI Act, 1934 subject to certain conditions.

Housing Finance Companies are regulated by National Housing Bank, Merchant Banker/Venture Capital Fund Company/stock-exchanges/stock brokers/sub-brokers are regulated by Securities and Exchange Board of India, Insurance companies are regulated by Insurance Regulatory and Development Authority. Similarly, Chit Companies are regulated by the respective State Governments and Nidhi Companies are regulated by Ministry of Company Affairs, Government of India.

26. There are some entities (not companies) which carry on activities like that of NBFCs. Are they allowed to take deposit? Who regulates them?

Any person who is an individual or a firm or unincorporated association of individual cannot accept deposit except by way of loan from relatives, if his/its business wholly or partly includes business that of loan, investment, hire-purchase or leasing company or principal business is that of receiving of deposits under any scheme or arrangement or in any manner or lending in any manner.

27. We understand that there is no ceiling on raising of deposits by RNBCs, then how safe is deposit with them?

It is true that 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.

28. What is a Residuary Non-Banking Company (RNBC)? In what way it is different from other NBFCs?

Residuary Non-Banking Company is a class of NBFC which is a company and has as its principal business the receiving of deposits, under any scheme or arrangement or in any other manner and not being Investment, Leasing, Hire-Purchase, Loan Company. 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.

29. Can RNBC forfeit deposit if deposit installments are not paid regularly or discontinued?

No Residuary Non-Banking Company shall forfeit any amount deposited by depositor, or any interest, premium, bonus or other advantage accrued thereon.

30. Please tell us something on rate of interest payable by RNBCs on deposits and maturity period of deposits?

The amount payable by way of interest, premium, bonus or other advantage, by whatever name called by a residuary non-banking company in respect of deposits received shall not be less than the amount calculated at the rate of 5% (to be compounded annually) on the amount deposited in lump sum or at monthly or longer intervals; and at the rate of 3.5% (to be compounded annually) on the amount deposited under daily deposit scheme. Further, a RNBC can accept deposits for a minimum period of 12 months and maximum period of 84 months from the date of receipt of such deposit. They cannot accept deposits repayable on demand

31. What is the liquid asset requirement for the deposit taking companies? Where these assets are kept? Does Depositors have any claims on them?

In terms of Section 45-IB of the RBI Act, 1934 the minimum level of liquid asset to be maintained by NBFCs is 15 per cent of public deposits outstanding as on the last working day of the second preceding quarter. Of the 15%, NBFCs are required to invest not less than ten percent in approved securities and the remaining 5% can be in unencumbered term deposits with any scheduled commercial bank. Thus, the liquid assets may consist of Government securities, Government guaranteed bonds and term deposits with any scheduled commercial bank.

The investment in Government securities should be in dematerialised form which can be maintained in Constituents' Subsidiary General Ledger (CSGL) Account with a scheduled commercial bank (SCB) / Stock Holding Corporation of India Limited (SHCIL). In case of Government guaranteed bonds the same may be kept in dematerialised form with SCB/SHCIL or in a dematerialised account with depositories [National Securities Depository Ltd. (NSDL)/Central Depository Services (India) Ltd. (CDSL)] through a depository participant registered with Securities & Exchange Board of India (SEBI). However in case there are Government bonds which are in physical form the same may be kept in safe custody of SCB/SHCIL.

NBFCs have been directed to maintain the mandated liquid asset securities in a dematerialised form with the entities stated above at a place where the registered office of the company is situated. However, if a NBFC intends to entrust the securities at a place other than the place at which its registered office is located, it may do so after obtaining in writing the permission of RBI. It may be noted that the liquid assets in approved securities will have to be maintained in dematerialised form only.

The liquid assets maintained as above are to be utilised for payment of claims of depositors. However, deposit being unsecured in nature depositors do not have direct claim on liquid assets.

OBLIGATIONS & PROCEDURES FOR REGISTRATION & NOF

Compulsory Prerequisite

No NBFC can commence or carry on the business of non-banking finance institution without complying with the following two essential pre-requisites: (Section 45-IA(1))

1. The NBFC should obtain a certificate of registration.
2. It must have a NOF of Rs. 25lakh (minimum limit). The limit can be increased upto 2 crore by the RBI, by means of notifications.

Vide notification no. DNBS 132/CGM (VSMN)-99, dated 20.04.1999, the RBI specify the “NOF” to be Rs. 200lakhs, for a NBFC which commence on the business of non-banking finance institution on or after 21st April, 1999.

The specification of higher “NOF” shall not be applicable to such company whose application for certificate of registration under section-IA of the said act is submitted to the RBI on or before 20th April, 1999.

These two requirements are cumulative, and not alternative.

Date of Effect

Section 45-IA of the Act, came into effect from 9-1-1997. The word ‘commence’ and ‘carry on’ in sub section(1) of section 45-IA of the Act makes it clear that the aforesaid requirement must be complied with, not only by NBFC’s formed on or after 9-1-1997 but also NBFC’s in existence on 9-1-1997.

Computation of NOF

The Computation can be made through the following process:

Steps	Particulars	Details
1	Add: Paid up equity capital and free reserves	Say-A
2	Add: Accumulated balances of loss, deferred revenue expenditure, and other intangible assets	Say-B
3	Deduct (B) from (A)	Say-C
4	Add: figures if any under the following items: a. Investments in shares of subsidiaries/companies in the same group/other NBFC’s b. Book value of debentures, bonds, outstanding loans and advances (including hire-purchase and lease finance) made to subsidiaries/companies in the same group c. Deposits with subsidiaries/companies in the same group <i>If the resultant figure exceeds 10% of (C), find out the excess:</i>	Say-D
5	The NOF of the NBFC will be (C-D)	Say-NOF

Note: Under-Provisioning or non-provisioning against the non performing advances and/or decline in the value of investments as per the provisioning requirements of the non banking financial companies prudential norms (Reserve Bank) Directions, 1998 should be reduced from the owned fund before computing the NOF of the company, for the purpose of registration. To the extent of provisions have not been made against any assets, as required under the prudential norms directions or assessed by the management, auditor of the company or an inspecting officer of the RBI, the Asset can be considered to be intangible Asset. Although the entire Asset against which the provisions have not been made doesn’t become intangible asset, the amount of provisions required to be made as per the prudential norms directions should be deducted from the owned fund to determine the NOF of Rs. 25 lakhs required for registration.

Procedure for obtaining registration

1. Submission of application

Application must be submitted to the Regional office of the RBI under whose supervision the company's registered office is situated. Application should be in the prescribed form to be filled in accordance with the instruction given therein. Documents required to be enclosed (9 in number) should also be prepared in accordance with the instructions, and should be attached to the application.

2. Process by the RBI

RBI may have to ensure itself that the conditions spelt out in sub-section 45-IA are fulfilled. These conditions broadly covered the following areas:

- a. Capacity of NBFC to meet the creditors' claim in full, when the claims accrue.
- b. NBFC doesn't conduct its affairs in a manner detrimental to the interest of depositors.
- c. General character of the management of NBFC is not prejudicial to the public interest or the interest of its depositors.
- d. NBFC has adequate capital structure and earning prospectus.
- e. The grant of Certificate will serve public interest.
- f. The grant of Certificate will not be prejudicial to the operation and consolidation of the financial sector consistent with monetary stability, economic growth or such other relevant factor.
- g. Any other conditions which, in the opinion of RBI, shall be necessary to ensure that the business of NBFC shall not be prejudicial to the public interest or in the interest of depositors.

3. Issue of Certificate

RBI will thereafter grant a certificate of registration, with or without specified conditions. {sec. 45-IA(5)}

4. Cancellation of Registration

RBI can cancel the registration in the following situation:[Section 45-IA (6)]

- a. When NBFC ceases to carry on business.
- b. When NBFC fails to comply with any condition specified by RBI while granting certificate of registration-(1) above.
- c. When NBFC is at any time found to have failed to fulfill any of the conditions mentioned in processing by the RBI -(2) above.
- d. When NBFC fails to comply with any directions issued by RBI.
- e. When NBFC fails to maintain accounts in accordance with any law, or with any direction or order issued by RBI.
- f. When NBFC fails to submit or offer for inspection its books of accounts and other relevant documents when demanded by RBI.
- g. When NBFC has been prohibited from accepting deposit by an order of RBI, and that order has been in force for not less than 3 months.

5. Procedure for cancellation of Registration

- a. NBFC should be given a reasonable opportunity of being heard.
- b. Where action for cancellation is proposed on the grounds stated as (1) or (2) above, NBFC must generally be given an opportunity by the RBI for taking necessary steps to comply with the conditions, except in cases where RBI is of the opinion that the delay in canceling the certificate of registration shall be prejudicial to public interest or the interest of the depositors or the NBFC.

6. Appellate Remedy

If RBI rejects the application for registration, or if RBI cancels the certificate of registration, the company can prefer an appeal to the Central Government within 30 days from the date on which the order was communicated to it.

The decision of Central Government on the appeal, if any, filed by the NBFC shall be final. [Sec. 45-IA(7)]
Where no appeal has been preferred by the NBFC within stipulated time, the decision of RBI shall be final[Sec. 45-IA(7)].

7. Utilisation of Funds during interregnum

Till such time as the certificate of registration is granted by RBI, the NBFC can keep its capital funds invested in any types of deposits with a Bank.

Investment in any other type of securities will invite penal action.

NBFC'S DIRECTIONS TO AUDITORS

In exercise of the powers conferred by sub-section (1A) of section 45MA of the Reserve Bank of India Act, 1934 (2 of 1934), Reserve Bank of India, hereby, gives to every auditor the directions hereinafter specified.

1. Short title, application and commencement of the directions

- These directions shall be *known as "Non-Banking Financial Companies Auditor's Report (Reserve Bank) Directions, 1998."*
- These directions shall *apply to every auditor of a non-banking financial company* as defined in Section 45I(f) of the Reserve Bank of India Act, 1934 (2 of 1934).
- These directions shall come into force with effect *from January 2, 1998.*

2. Auditor's Report to contain matters specified in paragraphs 3 and 4

In addition to every report made by the auditor under Section 227 of the Companies Act, 1956 (1 of 1956) on the accounts of a non-banking financial company examined by him for every financial year ending on any day on or after the commencement of these directions, the auditor shall also ***make a separate report to the Board of Directors of the Company*** on the matters specified in paragraphs 3 and 4 below.

3. Matters to be included in the auditor's report

The auditor's report on the accounts of a non-banking financial company shall include a statement on the following matters, namely,:

A. In the case of all non-banking financial companies whether the company has applied ***for registration*** as provided in Section 45IA of the Reserve Bank of India Act, 1934 (2 of 1934), if it is a company incorporated before January 9, 1997 and whether it has received any communication from Reserve Bank of India about the grant of or refusal of certificate of registration to it, and whether the company has obtained a certificate of registration from the Reserve Bank of India if it is a company incorporated on or after January 9, 1997.

B. In the case of a non-banking financial company accepting/holding public deposits

Apart from the matters enumerated in (A) above, the auditor shall include a statement on the following matters, namely, :-

- whether the ***public deposits*** accepted by the company together with other borrowings indicated below viz.,
 1. from public by issue of unsecured non-convertible debentures/bonds;
 2. from its shareholders by a public limited company and
 3. any other type of deposit which has not been excluded from the definition of 'public deposit' in the Non-Banking Financial Companies (Reserve Bank) Directions, 1998
 4. ***are within the limits admissible to the company*** as per the provisions of the Non-Banking Financial Companies (Reserve Bank) Directions, 1998;

- whether the **credit rating** for fixed deposits of _____ (mention the rating) assigned by the Credit Rating Agency viz., _____ (Name of the agency) on _____ (the date) is in force and the aggregate amount of deposits outstanding as at any point during the year has exceeded the limit specified by the Rating Agency;
- whether the company has **defaulted in paying** to its depositors the interest and /or principal amount of the deposits after such interest and/or principal became due;
- whether the company has **complied with the prudential norms** on income recognition, accounting standards, asset classification, provisioning for bad and doubtful debts, and concentration of credit/investments as specified in the directions issued by the Reserve Bank of India in terms of the Non-Banking Financial Companies Prudential Norms(Reserve Bank) Directions, 1998.
- whether the **capital adequacy ratio** as disclosed in the return submitted to the Reserve Bank of India in terms of the Non-Banking Financial Companies Prudential Norms (Reserve Bank) Directions, 1998 has been correctly determined and whether such ratio is in compliance with the minimum Capital to Risk Asset Ratio prescribed by Reserve Bank of India;
- Whether the company has complied with the prescribed **liquidity requirement** and kept the approved securities with a designated bank.
- whether the company has furnished to the Reserve Bank of India within the stipulated period the **half-yearly return on prudential norms** as specified in the Non-Banking Financial Companies Prudential Norms (Reserve Bank) Directions, 1998; and
- whether the company has furnished to the Reserve Bank of India within the stipulated period the **return on deposits** as specified in the First Schedule to the Non-Banking Financial Companies (Reserve Bank) Directions, 1998.

C. In the case of a non-banking financial company not accepting public deposits

Apart from the aspects enumerated in (A) above, the auditor shall include a statement on the following matters, namely, :

- whether the Board of Directors has passed a **resolution for the non- acceptance** of any public deposits.
- whether the company has **accepted any public deposits** during the relevant period/year; and
- whether the company has **complied with the prudential norms** relating to income recognition, accounting standards, asset classification and provisioning for bad and doubtful debts as applicable to it.

D. In the case of a non-banking financial company which is an investment company not accepting public deposits and which has invested not less than 90 percent of its assets in the securities of its group/holding/subsidiary companies as long term investments

Apart from the matters enumerated in (A) above, the auditor shall include a statement on the following matters, namely, :

- whether the Board of Directors has passed a **resolution for the non- acceptance of public deposits**;
- whether the company has **accepted any public deposits** during the relevant period/year;
- whether the company has through a **Board resolution identified the group/holding/subsidiary companies**;
- whether the **cost of investments** made in group or **holding or subsidiary companies** is not less than 90 percent of the cost of the total assets of the company at any point of time throughout the accounting period/year.
- whether the company has continued to **hold securities of group or holding or subsidiary companies** as long term investments and has not traded in those investments during the accounting year/period.

4. Reasons to be stated for unfavourable or qualified statements

Where, in the auditor's report, the statement regarding any of the items referred to in paragraph 3 above is unfavourable or qualified, the auditor's report shall also state the reasons for such unfavourable or qualified statement, as the case may be. Where the auditor is unable to express any opinion on any of the items referred to in paragraph 3 above his report shall indicate such fact together with reasons thereof.

5. Obligation of auditor to report to Reserve Bank of India

Where, in the case of a Non-Banking Financial Company, the statement regarding any of the items referred to in paragraph 3 above is unfavourable or qualified, or in the opinion of the auditor the company has not complied with the provisions of the Non-Banking Financial Companies (Reserve Bank) Directions, 1998 or the Non-Banking Financial Companies Prudential Norms (Reserve Bank) Directions, 1998 to the extent applicable to the said company or the provisions of the Chapter IIIB of the Reserve Bank of India Act, 1934 (2 of 1934), it shall be the obligation of the *auditor to make a report containing the details of such unfavourable or qualified statements* and/or about the non-compliance, as the case may be, in respect of the company to the concerned Regional Office of the Department of Non-Banking Supervision of the Reserve Bank of India under whose jurisdiction the registered office of the company is located as per Second Schedule to the Non-Banking Financial Companies (Reserve Bank) Directions, 1998.

6. Applicability of Non-Banking Financial Companies (Reserve Bank) Directions 1998

For the purposes of this Order, reference to the Non-Banking Financial Companies (Reserve Bank) Directions 1998 shall include the Non-Banking Financial Companies (Reserve Bank) Directions 1977 as in force for the relevant period.