

### Audit Of Non Banking Financial Company

#### A NBFC has been categorised as follows-

- Non-Banking Financial Company accepting/holding public deposits
- Non-Banking Financial Company not accepting/holding public deposits

#### For audit purpose RBI has categorises the NBFC as follows

- In the case of a non-banking financial company accepting/holding public deposits
- In the case of a non-banking financial company not accepting public deposits
- 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

The Audit of an NBFC is conducted through Section 227 of the Companies Act, 1956 (1 of 1956) Apart from this Auditor have to kept in mind direction issued by RBI dated 2 january 1998 via notification no DFC. 117 /DG(SPT)-98 called Auditor's Report (Reserve Bank) Directions, 1998."

#### The Audit of an NBFC includes matters related to

- Acceptance of Public Deposits
- Crediting Rating
- Prudential Norms regarding Income recognition ,asset classification, provisions,exposure limits
- Capital adequacy
- Liquidity requirements
- Submission of periodic returns

**Deposit-** (same as in section 58A of companies act) means any deposit of money with and includes any amount borrowed by a company but shall not include such categories which may be prescribed in consultation with RBI. The definition of the term "deposit" is inclusive and not restrictive and includes within its scope all amounts borrowed by a company except the exempt categories. The words "any amount borrowed by the company" are clear and unambiguous and include all loans also. These words have to be given their literal meaning in view of the fact that they are clear and plain. This is also the principle of interpretation laid down by the Supreme Court in the case of Nelson Motis vs Union of India AIR 1992. It is also an established principle of interpretation that where a definition is an inclusive definition than the court cannot interpret the same in a restrictive manner (State of Bombay vs Hospital Mazdoor Sabha AIR) 1960 SC

**Auditors obligation in case NBFC has made a non compliance -**

Where, in the case of a Non-Banking Financial Company, the statement regarding any of the items referred to in paragraph A B C above is unfavourable or qualified, or in the opinion of the auditor the company has not complied then-

*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*

Under Section 45MA(2) of the RBI Act 1934 contravention should also be part of auditor's Report under section 227(2) of the Companies act 1956.

**The directions of Reserve Bank of India applies in following ways-**

**A) Applicable to all non-banking financial companies(for all category) - an auditor have to specify in his report that -**

Whether the company has applied for registration as provided in Section 45-IA 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, :-

(i) **whether the public deposits accepted by the company together with other borrowings indicated below viz.,**

- (a) from public by issue of unsecured non-convertible debentures/bonds;
- (b) from its shareholders by a public limited company and

- (c) **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 are within the limits admissible to the company as per the provisions of the Non-Banking Financial Companies (Reserve Bank) Directions, 1998;

[**(ia) whether the public deposit** held by the company in excess of the quantum of such deposit permissible to it under the provisions of Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 1998 are regularised in the manner provided in the directions;]

**(ii) 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;

**(iii) 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;**

**(iv) 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.

**(v) 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;**

**(vi) Whether the company has complied with the prescribed liquidity requirement and kept the approved securities with a designated bank.**

**(vii) 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**

**(viii) 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.**

**(ix) In case of opening of new branches or offices to collect deposits or closure thereof and in the case of appointment of agent, whether the company has complied with the requirements contained in the Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 1998 contained in Notification No. DFC. 118/DG (SPT)-98 dated January 31, 1998].**

**C) 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, :

- (i) whether the Board of Directors has passed a resolution for the nonacceptance of any public deposits.
- (ii) whether the company has accepted any public deposits during the relevant period/year; and
- (iii) 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, :

- (i) whether the Board of Directors has passed a resolution for the nonacceptance of public deposits;
- (ii) whether the company has accepted any public deposits during the relevant period/year;
- (iii) whether the company has through a Board resolution identified the group/holding/subsidiary companies;
- (iv) 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.
- (v) 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.