

NON-BANKING FINANCIAL COMPANIES

NEED FOR REGISTRATION

- **Section 45-IA** of the Reserve Bank of India Act, 1934 provides that No non-banking financial company shall commence or carry on business of a non-banking financial institution without –
 - (a) obtaining a certificate of registration issued under Chapter IIIB; and
 - (b) having the net owned fund of twenty-five lakh rupees or such other amount, not exceeding two hundred lakh rupees, as the Bank may, by notification in the Official Gazette, specify.

- Reserve Bank of India vide its **PRESS RELEASE dated 8th April 1999** has announced that *“in order to identify a particular company as a non-banking financial company (NBFC), it will consider both, the assets and the income pattern as evidenced from the last audited balance sheet of the company to **decide its principal business**. The company will be treated as an 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 should be 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.”*

- Reserve Bank of India vide its **Notification No. DNBS 132 / CGM (VSNM) – 99, dated 20/04/1999** has increased the requirement of “net owned fund” from Rs.25 lakh to Rs.200 Lakh for the NBFC which commences business of a non-banking financial institution on or after April 21, 1999.

➤ Meaning of Business of a non-banking financial institution

Section 45-I(a) of the Reserve Bank of India Act, 1934

“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);

➤ Meaning of Financial Institution

Section 45-I(c) of the Reserve Bank of India Act, 1934

“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 any institution, which carries on as its principal business

- (a) agricultural operations; or
- (aa) industrial activity; or
- (b) the purchase or sale of any goods (other than securities) or the providing of any services; or
- (c) the purchase, construction or sale of immovable property, so, however, that no portion of the income of the institution is derived from the financing of purchases, constructions or sales of immovable property by other persons;

Explanation- For the purposes of this clause, "industrial activity" means any activity specified in sub-clauses (i) to (xviii) of clause (c) of section 2 of the Industrial Development Bank of India Act, 1964 (18 of 1964).

➤ **Meaning of NBFC**

Section 45-I(f) of Reserve Bank of India Act, 1934

“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 leading 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.

EFFECT OF NON-REGISTRATION

- Sub-section (4A) of Section 58B of the Reserve Bank of India Act, 1934 provides

“If any person contravenes the provisions of sub-section (1) of section 45-IA, he shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to five years and with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.”

➤ Section 58C provides as follows

- (1) “Where a person committing a contravention or default referred to in section 58B is a company, every person who at the time the contravention or default was committed, was incharge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the contravention or default and shall be liable to be proceeded against and punished accordingly:
Provided that nothing contained in this sub-section shall render any such person liable to punishment if he proves that the contravention or default was committed without his knowledge or that he had exercised all due diligence to prevent the contravention or default.”
- (2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the same was committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary, or other officer or employee of the company, such director, manager, secretary, other officer or employee shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.”

COMPLIANCES FOR NBFC

Under	Particular	Frequency	Applicability
<u>Under Reserve Bank of India Act, 1934</u>			
Section 45-IA	NBFC have to make application for registration with RBI and shall not commence or carry on business of a non-banking financial institution without obtaining registration from RBI and maintaining NOF. <u>NOF requirement for NBFC registered</u> Before 21/04/1999 = Rs.25 lacs On or after 21/04/1999 = Rs.200 lacs	One time	All NBFC
Section 45-IB	Maintenance of percentage of assets Invest and continue to invest 5% to 25% (specified by RBI) of deposits outstanding on the last working day of the second preceding quarter in unencumbered approved securities. Notification No. DFC.121/ED(G)-98 dated 31.01.1998 and No. DFC(COC) NO.108-ED(JRP)-97 dated 30.04.1997	Ongoing	NBFC accepting / holding Public Deposit
Section 45-IC	Reserve Fund Every NBFC shall create a reserve fund and transfer therein a sum not less than 20% of its net profit every year as disclosed in the profit and loss account and before any dividend is declared.	Yearly	All NBFC
Section 45-M	Duty of NBFC to furnish statements etc., required by Bank	When asked for	All NBFC

Under Non-Banking Financial Companies Acceptance of Public Deposit (Reserve Bank) Directions, 1998
Notification No.DFC.118/DG(SPT)-98 dated 31.01.1998

Para 4	Minimum Credit Rating, Prohibition on acceptance of Deposit, repayable on demand, Period of Deposit (12 to 60 Months only), Ceiling on quantum of deposits (depends on status, rating, etc.), Status in case of Downgrading of credit rating, Regularisation of Public Deposit accepted earlier, Ceiling on the rate of interest (max 11%), Payment of Brokerage, etc.	}	ongoing	All NBFC Not applicable subject to 1) not accepting Public Deposit 2) passed a resolution under para 9
Para 4A, 4B	Branches, agents, closures of branches			
Para 5	Information to be included in the Board's report e.g. total no. of accounts of public deposit, total amount due or unpaid, etc.			
Para 6	Safe custody of approved securities			
Para 7	Employee Security Deposit			
Para 8	Copies of balance sheet and accounts together with the Directors' report, auditors' report, notes on accounts, returns in Form – NBS 1 and intimation of any change in address, directors, principal officers, specimen signatures etc should be furnished to the Reserve Bank within 30 days of the occurrence of event.			
Para 9	Non-applicability of Direction to certain types of NBFC a) Insurance company b) Loan company, an investment company, a hire purchase company or equipment leasing company not holding or accepting public deposits and pass a resolution to the effect within 30 days of the commencement of the financial year c) An investment company (investing only in group companies not less than 90% of its assets) and pass a resolution that has not accepted and would not accept Public Deposit and would not trade in such shares/ securities within 30 days of the commencement of the financial year.		Every year within 30 days from the commencement of financial year	All NBFC, which wants to claim exemptions

Under Non-Banking Financial Companies Prudential Norms (Reserve Bank) Directions, 1998
Notification No.DFC.119/DG(SPT)-98 dated 31.01.1998

Para 3, 4, 5, 6	Income recognition Income from NPA shall be recognized only when actually realised. All unrealised income on NPA shall be reversed.	Ongoing	All NBFC
	Income from investment Dividend income on shares and units of Mutual Funds shall be taken on cash basis. Income from Bonds and Debentures from Govt. Securities may be taken on accrual basis. Income from securities (guaranteed by Central Govt. or State Govt.) may be taken on accrual basis.		
	Accounting Standards Accounting standards shall be followed		
	Accounting of investment Board of Directors shall frame investment policy Other requirement regarding accounting of investment		
Para 6A	Need for Policy on Demand / Call Loans Policy for demand / call loan shall be framed	Ongoing	All NBFC giving loan etc.
Para 7, 8, 9	Asset classification Assets shall be classified as Standard, Sub-standard, Doubtful and Loss assets.	Ongoing	All NBFC
	Provisioning requirements Provision for assets (i.e. loans, advances or other credit facilities including bills purchased & discounted, Leased and hire purchased assets) shall be made	Ongoing	
	Disclosure in the Balance Sheet Provision as in para 8 should be disclosed without netting off	Yearly	
Para 9A	Constitution of Audit Committee Company having assets of Rs.50 crore and above shall constitute an Audit Committee.	Ongoing	NBFC having assets of Rs.50 crore and above

Para 9B, 9BB	Accounting Year Every NBFC shall prepare its B/S and P/L as on 31 st March	Yearly	All NBFC
	Schedule to the Balance Sheet Every NBFC shall append to its B/S particulars in the format as set in schedule		
Para 9C	Transaction in Government Securities NBFC shall hold investment in approved securities in a dematerialised form only.	Ongoing	All NBFC
Para 10	Requirement as to Capital adequacy NBFC shall maintain minimum capital ratio	Ongoing	NBFC accepting / holding Public Deposit
Para 11	Loan against NBFC's own shares prohibited No loan against own shares shall be given	Ongoing	All NBFC
Para 11A	NBFC failing to repay public deposit prohibited from making loans and investments	As long as default exists	NBFC accepting / holding public deposit
Para 11B	Restrictions on investment in land and building and unquoted shares Restriction has been specified (10% of NOF)	Ongoing	NBFC accepting / holding public deposit
Para 12	Concentration of credit / investment Restriction has been specified (Lend or invest to single person 15% and group 25%) (Both lend and invest 25% and 40% respectively)	Ongoing	NBFC accepting / holding Public Deposits
Para 13	Submission of half-yearly return Half yearly return in Form – NBS-2 to be submitted	Half Yealy	NBFC accepting / holding Public Deposit and RNBFC
Para 13A	Information in regard to change of address, directors, auditors, Principal officer, etc. to be submitted by NBFC's not accepting/holding public deposit Within 30 days from the date of occurrence of any change	Whenever change occur	All NBFC
Para 13B	Exposure to Capital Market Quarterly return in Form NBS-6	Quarterly	NBFC holding public deposit of Rs.50 crore or more and RNBFC having

			liabilities of Rs.50 crores or more
Para 13C	Norms relating to Infrastructure Loan Restructuring of Infrastructure Loan.		All NBFC giving Infrastructure Loan
<u>Under various Notification / Press release issued by Reserve Bank</u>			
	Circular No. DNBS (DD) CC.No. 15/02.01/2000-01 dated 27/06/2001 Asset – Liability Management (ALM) System	Ongoing	All NBFC having assets more than Rs.100 crores
	Notification No. RBI/2005-06/157 dated 6th September 2005 Monthly return on important financial parameters on NBFC not accepting / holding public deposits and having assets size of Rs.100 crores and above	Monthly	All NBFC having assets more than Rs.100 crores