



FIDC NEWS

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(A Self-Regulatory Organisation for Non-Banking Finance Companies (NBFCs) registered with RBI)

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FOR PRIVATE CIRCULATION

Reforms, growth, regulation: New order?

We whole heartedly welcome Dr. Raghuram Rajan as the new Governor of RBI, who, we are sure, would be a reformist and a development oriented regulator. With his entry, fresh breeze is blowing at the Mint Street. Financial sector is abuzz with hope of changes for the better. Reforms, growth and incentive rather than mere regulation seem to be the mantra for governance at the helm of affair with the change of guard.

Through these columns we commit ourselves to fully cooperate with the new Governor's initiatives and strategies for growth of the financial sector. At the same time, we would also like to put forward the problems faced by the NBFC-Asset financing sector. The resolution of these problems will enable RBI to use effectively the instrumentality of the NBFC-AFC sector to step up growth of plummeting economy of our country:

1. Allow the NBFC-AFCs far deeper role in Priority sector lending. Use their widespread presence in unbanked areas for enabling them to carry institutional finance/banking services as banking correspondents. Not using such infrastructure available would be a loss of opportunity to push growth in this vital area.
2. The overall borrowing by NBFC-AFCs can be prudently regulated by RBI, through Capital Adequacy Ratio. Flexibility may be allowed to use various instruments of borrowing, including deposits, which also provide an avenue for savers/investors better earnings, otherwise the savings of ill-informed investors may be lost in ponzy schemes.
3. Allowing NBFC-AFCs recently to avail ECBs under the automatic route is a welcome measure. But there is a need to broaden its scope by allowing NBFC-AFCs to use ECB funds for "Financing" through any mode i.e. lease/hire purchase/loans against hypothecation of ALL infrastructure equipments, both domestic as well as imported.
4. There is a dire need to create a separate window for NBFC-AFCs for providing resource support by way of refinance on the lines of National Housing Bank created for Housing Finance Companies.
5. While regulations for banking sector is being gradually liberalised, there is an equally stronger case for adopting liberal approach rather than micro-management, especially for resource raising of this well managed sector of Asset Financing Companies.
6. Even though, this segment [NBFC-AFC] cannot be loosely termed as "shadow banking", it is being branded so and regulations that are being brought for them in some of the advanced economies are being applied in one or the other form to this sector. This segment's record of performance in all important parameters like CAR, NPAs, earnings etc. is impeccable.
7. There is a feeling of benefit of "arbitrage" for NBFC-AFCs as enjoying less stringent regulations compared to banking sector. Therefore, stringent regulations are being considered/proposed for NBFCs. The fact remains that no traditional AFC-NBFC has taken any advantage of this arbitrage. Instead of NBFCs, it is some banks that have floated such NBFCs to seek the so called arbitrage advantage, which is not permissible for them as banks. Traditional NBFC sector is neither seeker nor beneficiary in this "Arbitrage" game and yet is often at the receiving end.

R Sridhar, Chairman, FIDC

REGULATORY PERIMETER



**R B I
NOTIFICATIONS
& CIRCULARS :**

**Master Circular-
Bank Finance to**

Non-Banking Financial Companies

(NBFCs): RBI/2013-14 / 57 ; DBOD.

BP. BC.No.6/21.04.172/2013-14- July

1, 2013

Master Circular - Returns to be submitted by NBFCs: RBI/2013-14/37; DNBS. PD. CC. No.

335/03.10.042/2013-14- July 1, 2013

Master Circular 2013 – Opening of Branch-Subsidiary-Joint Venture-Representative office or Undertaking Abroad by NBFCs: RBI/2013-14/47; DNBS (PD)

CC No.346/03.02.001/ 2013-14-July 1, 2013

Master Circular - Frauds – Future approach towards monitoring of frauds in NBFCs: RBI/2013-14/39

DNBS.PD.CC. No. 337/ 03. 10. 042/ 2013-14-July 1, 2013

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Master Circular – ‘Know Your Customer’ (KYC) Guidelines – Anti Money Laundering Standards (AML) -‘Prevention of Money Laundering Act, 2002 - Obligations of NBFCs in terms of Rules notified there under’: RBI/2013-14/41; DNBS (PD) CC No.339/03.10.42/2013-14-July 1, 2013

Master Circular- Introduction of New Category of NBFCs - ‘Non Banking Financial Company-Micro Finance Institutions’ (NBFC-MFIs) – Directions: RBI/2013-14/49; DNBS.(PD)CC.No. 347/03.10.38/2013-14-July 1, 2013

Raising Money through Private Placement by NBFCs-Non-Convertible Debentures (NCDs) –Clarification: RBI/2013-14/115; DNBS(PD) CC No.349/03.10.001/2013-14; July 02, 2013

External Commercial Borrowings (ECB) Policy - Non-Banking Finance Company – Asset Finance Companies (NBFC - AFCs)- RBI/2013-14/126 July 8, 2013; A.P. (DIR Series) Circular No. 6,

Migration of Post-dated cheques (PDC)/Equated Monthly Installment (EMI) Cheques to Electronic Clearing Service (Debit): RBI/2013-14/158: DPSS. CO. CHD. No. / 209 / 04. 07. 05 / 2013 -14-July 24, 2013

Financing of Infrastructure - Definition of ‘Infrastructure Lending’: RBI/2013-14/172; DNBS.PD.CC.No. 354 / 03. 10. 001 / 2013 -14-August 02, 2013

Returns to be submitted by NBFCs- Introduction of ‘Branch info’ return: RBI/2013-14/219; DNBS (PD). CC.No. 355/03.02.02/2013-14-Sept. 3, 2013.

Lending Against Security of Single Product – Gold Jewellery: RBI/2013-14/260; DNBS.CC.PD.No.356 /03.10.01/2013-14-Sept. 16, 2013

External borrowing: RBI opens automatic route for asset finance firms

In a relaxation of external commercial borrowing (ECB) policy, the RBI has allowed asset finance companies (AFCs) NBFCs to tap this window under automatic route. Till date, NBFCs under AFC category were allowed to avail ECBs, but only under the approval route. RBI has now said that NBFC-AFCs can avail ECBs under the automatic route so long as the minimum average maturity period is five years. Also, the ECB should be availed to finance the import of infrastructure equipment for leasing to infrastructure projects. ECBs can be availed under the automatic route up to 75 percent of owned funds of NBFCs-AFCs, subject to a maximum of \$ 200 million or its equivalent per financial year, the RBI has said.

AFCs hailed this RBI move to liberalise access to ECBs, but felt that some conditions could deter domestic players from availing this facility. “It’s a liberalisation in the right direction. But it will not have desired effect”, Raman Aggarwal, Senior Vice President and Head of Corporate Affairs, SREI Equipment Finance told Business Line. He said that RBI should have allowed AFCs to avail ECBs under the automatic route even for funding domestic equipments. “If ECBs are allowed for financing domestic equipments, then domestic manufacturing could be encouraged”, Aggarwal said. He said that RBI is stipulating that the imported equipment has to be leased to infrastructure projects. “Now leasing is not happening because of taxation issues. So the condition should be that ECB can be availed for financing of equipments for infrastructure projects”, Aggarwal said. [BusinessLine, July 10]

NBFCs given time till March 2014 to allot customers unique ID

The Reserve Bank extended the time for NBFCs to allot customers unique identification code to March 31, 2014. The RBI had in May said that existing individual customers may also be allotted Unique Customer Identification Code (UCIC) by end-June 2013.

“The time for completing the process of allotting UCIC to existing customers is extended up to March 31, 2014. We, however, reiterate that UCIC should be allotted to all customers while entering into new relationships,” the RBI said on July 4. The increasing complexity and volume of financial transactions necessitate that customers do not have multiple identities within a financial institution or across the financial system, the RBI had said. “The UCIC will help NBFCs to identify customers, track the facilities availed, monitor financial transactions in a holistic manner and enable NBFCs to have a better approach to risk profiling of customers. It would also smoothen

NBFC’s operations for the customers,” the RBI had said. [Economic Times/PTI July 4]

RBI to issue unique identification codes for financial market participants

In a bid to get a better handle on financial transactions, such as equity and currency derivatives, the RBI has invited limited bids from about six entities, including depositories, depository participants and custodians, to issue unique identification codes to market participants.

One or two of the selected entities are likely to be tasked with the responsibility of implementing a global Legal Entity Identifier (LEI) system that will uniquely identify parties to financial transactions. Among others, National Securities Depository Ltd, Central Depository Services (India) Ltd and Stock Holding Corporation of India Ltd have been invited by the central bank to bid for becoming the local operating unit (LOU) to establish the LEI system in the country, said sources clued in to the development.

The global financial crisis of 2008 has spurred the development of a global LEI system. The RBI is the nodal agency for overseeing the LEI system in India. According to the RBI, LEI is a unique global identifier for each legal entity operating in the financial markets. LEI can help in identifying participants in different trading, clearing and settlement systems, thus facilitating aggregation of exposures and identification of linkages across markets as well as institutions, both domestic as well as global. [Business Line, Sept. 13]

RBI details interest payment norms for frozen NBFC deposits

The Reserve Bank came out with detailed procedures for payment of interest by NBFCs on public deposits that have been frozen under directions from government authorities. In a notification, the Reserve Bank said the NBFC will have to obtain a “request letter” from such customers on maturity of their deposits for renewal. If the letter is received within 14 days from the date of maturity, the renewal would have to be done from the date of maturity, the RBI said. “If it exceeds 14 days, NBFCs may pay interest for the overdue period as per the policy adopted by them, and keep it in a separate interest free sub-account,” the RBI said. The amount from the sub-account would be released when the original fixed deposit is released, it added.

The notification follows doubts raised on the payment of interest on such deposit accounts which have either been seized by the government authorities, and/or have been frozen till further clearance is received by the concerned government authorities. “However, the final repayment of the principal and the interest so accrued should be done only after the clearance regarding the same is obtained by the NBFCs from the respective government agencies,” the RBI said. It further said if the depositor does not exercise his option to choose the term of renewal, NBFCs may renew the same for a term equal to the original term. [Economic Times/PTI July 4]

RBI puts on hold debt private placement rules for NBFCs

The RBI said it would hold off implementing a notification issued last week that mandated a minimum wait of six months between two private placements from a non-bank financial firm. Instead, the RBI said a decision on “the appropriate minimum time gap” would be taken by the central bank “in due course,” after the industry raised some concerns about the measures. The clarification could allay the concerns of NBFCs, which rely heavily on capital markets to fund their businesses but have attracted less regulatory oversight than banks. The RBI said NBFCs would be further given time until the end of September to put in place clear plans for raising funds.

The central bank added that its previous notification would not be applicable for primary dealers, while defining private placements as “non-public” issuances of non-convertible debt by NBFCs, clearing doubts if last week’s provisions would have applied to convertible bonds. In another key clarification, the RBI said the earlier provisions would not apply to core investment companies, or special investment vehicles that are created by some NBFC groups to raise funds on behalf of the group. However, the RBI kept other provisions such as the mandate that debt issues must be fully secured by underlying assets, and that only up to 49 investors can buy into a

private placement.

"This notification has come as a relief for NBFCs as they have been given a time period of 3 months to chalk out a resource-raising strategy and make representations to RBI if needed," said B. Prasanna, chief executive at ICICI Securities Primary Dealership. [Reuters, July 3]

RBI should continue to regulate NBFCs: Subbarao

Taking away the regulatory powers of the RBI to supervise NBFCs and other deposit-taking entities may reduce the impact of monetary policy, RBI Governor D. Subbarao said on 12th Aug.. "For monetary policy to be effective, credit creation (that is, by banks and credit institutions like NBFCs) should be regulated by the central bank," said Subbarao, addressing a banking conference organised by industry body FICCI in Mumbai.

According to Subbarao, placing NBFCs under a Unified Financial Authority, as recommended by the Financial Sector Legislative Reforms Commission, will go against financial stability. Explaining his stand, Subbarao said, "One of the major causes of the 2008 financial crisis was that credit intermediation activities were conducted by non-banks (the so-called shadow banks), which were primarily outside the regulatory purview. This raised serious concerns of regulatory arbitrage, requirements for similar regulation of entities performing similar activities, and issues of commonality of risks and synergies of unified regulation for such entities."

He said there are strong inter-linkages between banks and NBFCs and a unified regulation by the same regulator is essential for financial stability. Subbarao, said post-crisis, the (global) trend has been to entrust more, and not less regulation, to central banks.

Following the 2008 global credit crisis, the Government of India constituted the FSLRC "with a view to rewriting and cleaning up the financial sector laws and to bring them in tune with the current requirements". The commission, chaired by justice B. N. Srikrishna, had submitted the report in March 2013. [Business Line, Aug. 13]

RBI to examine financials of 34,754 NBFCs: Namo Narayan Meena

The government today said the Reserve Bank will examine financials of 34,754 NBFCs to ascertain their eligibility. "It has been decided by RBI, that as a one-time measure, the financials of all these 34,754 companies (other than those registered with RBI) will be examined to ascertain their eligibility or otherwise for registration with RBI," Minister of State for Finance Namo Narain Meena said in a written reply in the Rajya Sabha. "The main objective is to determine whether among these companies there are NBFCs that ought to have registered with the RBI for carrying on their NBF (non-banking financial institution) activities," he said.

The Ministry of Corporate Affairs has recently forwarded a list of 34,754 companies which are registered under the Companies Act, 1956 and classified or categorised as NBFCs in the records of the Ministry, he said. These companies may be carrying on NBF activities without mandatory registration as required under Section 451A of RBI Act, 1934, as only 12,375 companies are registered with the RBI as NBFCs (as on February, 2013), he said. Many of these companies are, however, not registered with the central bank as NBFCs and the RBI is ascertaining whether any of these companies are carrying out the business of an NBFC as defined by it, he added. [PTI/Economic Times, Aug 13]

The RBI has started fishing for NBFCs. It has recently shot thousands of notices to companies asking to send their annual reports, for the RBI to examine whether the company is an NBFC or not, stated Vinod Kothari.

Kerala govt gets RBI nod for Islamic banking

The Kerala government has got a go-ahead from the RBI to launch a financial institution following the principles of Islamic finance. Cheraman Financial Services Limited (CFSL) will be floated by Kerala State Industrial Development Corporation to function as a non-banking finance company (NBFC). A formal announcement on CFSL, the latest incarnation of Al Baraka Financial Services, was made on 17th Aug.. Industries minister PK Kunhalikutty and CFSL chairman P Mohamad Ali told reporters that the firm would function as a non-banking finance company with an authorised capital of Rs 1,000 crore. CFSL has already received clearances from the RBI,

the Securities and Exchanges Board of India (SEBI) and the wakf board, the chairman said. The Kerala State Industrial Development Corporation (KSIDC) will be the single largest shareholder in the company, holding 11% shares. The other individual shareholders can hold a maximum of 9% shares. The body will desist from charging interest on loans or give interests on deposits. [Times of India, Aug 18]



Welcome
Dr. Raghuram Rajan
Governor, Reserve Bank of India

Be ready for some swift RBI action under new governor

The new RBI governor Raghuram Rajan's first and most important takeaway from the measures announced on his first day gave enough evidences that the market can look forward to an impressive performance from the RBI.

As for the actual measures, there were steps to internationalise the rupee, liberalise branch banking and bank licensing, reduce the pre-emption of bank resources for investment in government securities and priority-sector lending, allow banks to borrow more from abroad and also allow concessional swapping of dollar deposits raised through (FCNR-B) deposits, encouraging savings by offering CPI-linked inflation-indexed certificates, allow exporters and importers more leeway in cancelling and rebooking forward cover, etc. Some of these steps are very effective in the short term — necessary to arrest the rupee's slide — while some of the steps are sound statements of intent from a longer-term perspective, says B Prasanna, Managing Director & CEO, ICICI Securities Primary Dealership.

RBI to crack down on unauthorised NBFCs

The RBI will get tough with companies which are accepting deposits from the public though they do not have the mandate to do so, a senior central bank official said. A RBI survey has found that there are 96 companies that are accepting deposits without registering with the RBI. "We will initiate legal action against such companies," said Archana Mangalagiri, General Manager, Department of Non-Banking Supervision, RBI.

RBI notifies changes to FEMA, definition of 'control'

The RBI has notified changes to the Foreign Exchange Management Act (FEMA), adjusting sector-specific conditions and also the definition of control. "Control shall include the right to appoint a majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholder agreements or voting agreements," the RBI said. [Financial Express, Sep 14]

Denial of level-field for NBFCs flayed

The NBFCs are increasingly being subjected to the same rigour as banks. In terms of regulation, they have for long been denied their rightful parity with other constituents of the financial system, in spite of the fact that the NPAs of asset financing NBFCs have been consistently lower than that of most banks, according to S. Viji, Chairman, Sundaram Finance Limited. Mr. Viji said the demands of NBFC-AFCs for parity with banks and housing finance companies in respect of differential risk weights for different asset classes, tax treatment of NPA provisions and income relating to NPA accounts had sadly fallen on deaf ears. Viewed in the context of recent and impending regulatory actions, these issues took on even greater significance, he said. The capital adequacy requirements for all NBFCs had been raised from 12 to 15 per cent, significantly higher than that required for banks, he added. [The Hindu, 19 July]

'Branch info' return for NBFCs with assets above Rs. 50 cr.

RBI has asked all deposit taking NBFCs and all Non-deposit taking NBFCs having total assets more than Rs.50 crore to submit a return about their branches i.e. address, date of opening, closure etc. within one month from the date of the circular, [3 Sept.] in respect of all their branches functioning as on June 30, 2013. Thereafter, update on a quarterly basis, the details of the branches opened/closed during the calendar quarter within 10 days of the quarter. [RBI Website 3 Sept.]

Credit Information Companies: Seeking New Frontiers



K. C. Chakrabarty
Dy. Governor,
RBI

“Credit bureaus can serve at a micro as well as at a macro level. While at a micro level they help credit underwriters make an informed decision about a credit applicant, on a macro level, they assist the senior management understand the broad credit market tendencies”

“If borrowers know that lenders have access to their credit histories, they would have a greater incentive to repay loans to maintain access to credit in the future.”

“The Credit Information Companies have a herculean responsibility towards developing a vibrant credit market and spreading consumers' awareness about the importance of credit and its responsible use.”

The Credit Information Companies (CICs) have been in India for around a decade now and I believe it would be appropriate that I focus not just on the role which the CICs have played in India, but also dwell on the next higher level the CICs should aspire to achieve through innovative practices, capability enhancement and improved efficiency.

2. I believe that the CICs have an important role to play in dissemination of awareness about credit information. The ability of CICs to effectively perform this role will determine the future growth of the CIC business and that of individual companies within this industry. I would also be dwelling upon the information literacy function of CICs.

3. The credit information services have witnessed impressive growth over the last two decades. I understand that between 1990 and 2011 the number of credit bureaus in the world has tripled. While the Asian crisis in the late 1990s triggered the growth of bureaus in Asia, Eastern Europe saw significant activity in early 2000s and the Middle East and Africa in the late 2000s. A recent survey showed that 134 countries across the globe either had a credit bureau or a credit registry at the end of 2011.

Value of a robust information infrastructure in an economy

4. The World Bank's "Ease of Doing Business Report 2012", mentions that there is a strong linkage between depth of credit information index and credit penetration. Credit information index is influenced by the institutional mechanisms in an economy for gathering and disseminating credit information. Public registries and credit bureaus play a very important role in boosting the information infrastructure. Key developed economies like the US and UK demonstrate a strong and mature credit bureau environment.

5. In developing economies, lending, especially to retail, is, in a large measure, made possible by credit bureaus, which perform the vital task of collating and distributing reliable credit information to the underwriter. As you all know, reports from the bureau contain information about the payment behaviour of consumers and commercial entities, including data on timely fulfilment or delinquency behaviour pertaining to financial obligations. Let me emphasize that credit bureaus can serve at a micro as well as at a macro level. While at a micro level they help credit underwriters make an informed decision about a credit applicant, on a macro level, they assist the senior management understand the broad credit market tendencies and also help the banks benchmark their performance against the industry on various dimensions such as sourcing, portfolio quality, delinquency, etc. At the level of a regulator, bureaus can play a pivotal role in providing insights that can drive effective policy changes. They can also provide important inputs for the banking supervisors in monitoring systemic risks. A further use of the bureau at a regulatory level may be to analyze appropriate capital and provisioning strategies for banks and, in particular, to assess whether current capital and provisioning regulations match up to actual risks. At the level of the society, as I mentioned a little while ago, the CICs have to work towards making individuals and financial entities credit information literate. This would involve generating awareness about the importance of credit history and the need for maintaining a healthy credit record.

6. Credit bureaus also provide other benefits for both borrowers and lenders. For example, if borrowers know that lenders have access to their credit histories, they would have a greater incentive to repay loans to maintain access to credit in the future. A 2010 World Bank study indicates that half of all customers would be more likely to pay their bills on time if they knew that those payments were reported to credit bureaus. Further, borrowers who have established a good credit record with a credit bureau may gain bargaining power for the terms of credit. Information sharing between lenders reveals borrowers' debt exposure to all participating lenders, thereby generating a view about their aggregate indebtedness.

7. Lending in emerging economies like India, while presenting unique opportunities, also brings in attendant challenges. While India has a large work force and an increasingly affluent middle class with rising disposable incomes, the extent of credit penetration is still quite low compared to global standards. One of the key reasons for this is the information asymmetry between the lender and the borrower. Lenders have limited financial information and cannot undertake automatic screening. Average loan amounts are also curtailed to address this information risk. Contract enforcement and repossession norms are certain other issues that plague lender confidence and, thus, in the process, hinder credit off-take. It is in this context that the role of the CICs assumes significance. The CICs should help identify the credit worthy people in the system. Based on the information that they have, the CICs should develop appropriate analytics, help lubricate the credit market and facilitate the provision of credit to the people who, otherwise, don't get credit from the formal financial system. The purpose of having CICs in the system would be best served when the credit needs of deserving people are met in a timely manner and at a reasonable cost.

8. For lenders, credit bureaus' collection and transformation of borrower information into a credit score also helps reduce transaction costs associated with lending by providing a standardized benchmark that a lender may use to judge a borrower's creditworthiness. This can also help in cutting down the turnover time in processing credit requests, thereby promoting operational efficiency. In fact, banks and the CICs have a symbiotic relationship where both can help each others' business processes and, thereby, improve their respective efficiencies.

Positive and Negative Data Sharing

9. Credit history data can be broadly categorized as: negative data and positive data. The negative reporting includes information pertaining to unfulfilled financial obligations such as defaults, amounts in arrears, court judgments, and other adverse information. Typically, these serve as inputs for generating a black list. Positive data, on the contrary, contains information on an individual's open and closed accounts and this repayment history can be used to create and classify credit profiles of

borrowers. Similarly, banks can identify premium borrowers and provide more customised service to them. According to Doing Business survey data, approximately 70 percent of all bureaus and registries surveyed provide both positive and negative data, often referred to as “comprehensive credit reporting” or “full-file credit reporting.”

10. Research has shown that full file reporting has significant benefits over negative data. In simulation exercises carried out in some countries, the approval rates have increased by up to 88% when using full file reporting.

11. RBI has been rather proactive in adopting some of the global best practices of positive data sharing right from the inception. Even mature bureau markets like Brazil and Australia have started witnessing a move towards a limited positive data sharing environment only as late as 2013. Several other jurisdictions have also started evaluating the possibility of increasing the scope of credit reporting.

History of Credit Reporting in India

12. We have seen significant progress in strengthening the credit infrastructure in India since the advent of the first credit information bureau about a decade ago. The Credit Information Companies (Regulation) Act, 2005 (CICRA) was introduced to provide for the regulation of credit information companies and to facilitate efficient distribution of credit. Further, the entry of Foreign Investors, i.e. companies with an established track record of running credit information bureaus in well regulated environments was permitted. With the realisation that competition will bring better technology and efficiency in the system, four companies were issued ‘in-principle’ approval to set up CICs.

Indian Experience of Credit Reporting

13. Let me now briefly allude to some of the key patterns of bureau usage in India during the first decade of their existence. The bureau data has been primarily used in the retail segment, especially while approving credit cards, personal loans, home loans and auto loans. A major chunk of this has been accounted for by the private banks and foreign banks, with the public sector banks only recently starting to use them in a significant way. The credit reports have been the main product of use by banks. The banks have predominantly used inputs from the CICs during loan origination or for the occasional portfolio review and the use of value added products and services has been marginal and only recently started gaining importance.

Key Challenges facing Credit Information Companies

14. Let me now highlight some of the common challenges facing CICs today. If the CICs have to seize the opportunities that the future holds for them, they need to overcome these challenges and come up with effective solutions, particularly to the problems concerning the quality of available data.

(i) Accuracy of Data

The quality of the credit reports and other products given to credit institutions is dependent on the consistency and quality of the data reported by financial institutions. In fact, reliable and accurate data is the foundation on which the edifice of a successful CIC business can be erected. Submission of inaccurate and incomplete data to CICs is a common occurrence which, in turn, leads to inaccuracies in the credit reports and resultant consumer disputes. Credit Institutions should put in place mechanisms to improve the quality of data captured in their source systems which will not only improve their own operations but, in turn, also translate into improved data submission. The issue of furnishing of timely and accurate credit information on their borrowers by the credit institutions has been engaging the attention of Reserve Bank of India. As you might be aware, RBI has set up a Committee under the Chairmanship of Shri Aditya Puri, Managing Director, HDFC Bank Ltd. to examine the available formats for furnishing of credit information by credit institutions to the CICs in respect of different sectors. Additionally, the Committee’s mandate also includes suggesting best practices for the guidance of credit institutions in respect of usage of credit information as a part of their credit appraisal process.

(ii) Need for maintenance of up-to-date data

The CICRA mandates that the data should be submitted by credit institutions on a monthly basis. While most of the Scheduled

Commercial Banks, large NBFCs and Housing Finance Companies are submitting data on a monthly basis, the co-operative banks and smaller NBFCs submit data intermittently. The use of CIC inputs during the credit appraisal process at lending institutions can only be effective if the data is up-to-date.

(iii) Complete Data

The CICRA mandates that credit information pertaining to all credit facilities should be reported. However, evidence suggests that due to limitations of use of technology in banking systems, entire data, often, does not get reported. Further, for certain banks, data gets rejected due to lack of proper identifiers like PAN, Passport, Voter ID, driving licence, etc. The incompleteness of data is observed not only in old or previously opened accounts but also in new accounts across various credit institutions. These gaps in data could lead to certain credit facilities not appearing in an individual’s credit report, thus giving an inaccurate picture of his indebtedness/credit worthiness and, thereby, failing to achieve the very objectives for which the CICs exist. In order to ensure completeness of credit data, it is essential that data is collected on a regular and comprehensive basis from all institutions performing the lending function. This includes not just the commercial banks, but also the NBFCs, RRBs, co-operatives, including urban co-operative banks and rural co-operatives, etc. The ability of CICs to bring together all the pieces of the jigsaw would determine the utility of the resultant credit information. I again see a major role for the CICs here as they can assist banks in data quality diagnostics and data improvement based on their expertise.

I would like to emphasize that the job of CICs is not just to act as a collector and distributor of data. Instead, they need to fulfil the mandate of being a perpetuator of information literacy by processing the data collected from various sources into credible and usable credit information and by helping the users of information, both lenders and borrowers, to integrate this information into their decision making processes.

The CICs, I understand, receive raw credit data and provide processed credit reports only to entities that are enlisted as their members. I have a fundamental question with regard to this practice. What if the customer has never sought any credit facility from the enlisted members of that CIC or, else, has a good credit history with them. The customer would, then, have a good credit report even when he might have been a defaulter elsewhere. A pertinent question to ask, therefore, is what is being done to address the issue of sharing of information across the CICs. I understand that in the mature markets like the US, there are institutions that generate credit reports about an individual by accessing databases maintained by all the three major CICs present there. I believe we would need to work out a similar mechanism if the objective of having CICs has to be fully served and the credit intermediation process in India has to become efficient. Let me emphasize that ownership of credit data should not be the basis of competitive advantage among CICs. Instead, innovations in the way the data is used and the value added services that CICs may provide based on the processed information ought to be the basis for seeking competitive advantage in this industry.

Another basic issue that needs attention is the availability of a unique identifier for individuals. We have instructed our banks to assign unique IDs to all their customers for easy identification and monitoring. I must admit, however, that the progress has been far from satisfactory. The magnitude of the problem gets further accentuated when it is considered on a system wide basis, especially when one takes into cognizance alternative sources of finance for individuals/companies in the shadow banking space. I believe that unless the individuals/entities are recognized with a unique identifier, for example, an Aadhaar (for individuals) or a Legal Entity Identifier (for entities), a work in progress under G-20 mandate at present, there would always be a shadow of doubt over the quality and accuracy of the credit reports and, consequently, a cause for discomfort for the lenders in using them for credit decision making. I would solicit your wholehearted support for the success of the initiatives of the Government and regulators towards introduction of a unique identifier through Aadhaar and the Legal

Entity Identifier, as and when the latter becomes operational.

(iv) Consumer disputes

Another very important challenge for the sector is handling the consumer grievance. It is incumbent upon CICs to put in place a responsive public grievance redressal mechanism for swift and transparent redressal of grievances. In accordance with the CICRA, the credit information company can make correction, deletion or addition to the credit information only after such correction, deletion or addition has been certified as correct by the concerned credit institution. It is essential that both CICs and banks address consumer complaints in a swift, comprehensive and time bound manner as this would have repercussions for the potential borrower in accessing timely credit. Though the source of the data is the lending institution, CICs also need to adopt a proactive approach by taking up customer complaints with these institutions and working towards their expeditious resolution.

Way Forward

15. With a decade having passed since the setting up of the first credit bureau in India, the time is appropriate for the industry to debate on how to take the business forward and how to ensure that it delivers on its critical mandate in the coming days. For me, the future for the CICs lies in greater innovation and offering more value added services. Leveraging on the data available with them, the CICs need to create and customize reports as per the needs of its user groups. As part of this, the CICs could give reports on industry sectors, geographic areas and also issue triggers/warnings to lenders on likely credit events. The CICs would progressively need to enlarge their information database by bringing more and more customer segments under their fold. Thus, besides focusing on individuals, midsize and large corporates, they must make efforts to build information on the credit histories of SMEs, NGOs, Charities, Not-for profit organizations, etc. In preparation for providing value-added services, the CICs would need to build elaborate databases on additional information not directly linked to the credit information. Other than broad basing their information system so as to include data from utility companies, retailers, etc., CICs may need to collate specific information like details of mortgaged assets, previous defaults, recoveries, write-offs, involvement in frauds or other criminal activities, etc. The value-added services by the CICs based on classified information mentioned above, would support more advanced risk management capabilities at the lending institutions.

16. I believe that data available at CICs can be effectively used by banks and financial institutions to assist in credit risk management at various stages across their customer's life cycle. Its use in customer acquisition and customer monitoring has been quite prevalent. With regard to customer acquisition, with technological advancement, the stage is getting primed for multi-bureau decision making. For credit exposures above certain threshold, reports from multiple bureaus could be considered while underwriting. At the monitoring stage, CICs can furnish a 360 degree view of customers, thereby enabling portfolio risk assessment and early warning triggers to identify and address delinquency. Further, at the collection stage, CICs can help entities in reaching their not so easily contactable base, thereby improving recoveries.

17. From a strategic perspective, CICs, which represent the collective aggregates of the banking industry, can be a useful source of benchmarking performance with respect to peer categories or the segment as a whole. CICs can also provide a geographical profiling of credit growth and delinquency that can help banks in deciding their expansion or consolidation strategy.

18. In the commercial segment, the use of the bureaus has not been to the same extent as in the consumer banking domain. SMEs are a big growth driver of any economy accounting for a majority of jobs and exports. Inadequate credit flow has been one of the factors constraining the growth of the SME sector. One of the reasons for banks' reluctance to lend to this group is the unavailability of reliable information for banks to assess the creditworthiness of SME units. In fact, contrary to popular perception, the levels of impairment in case of SME borrowers are far lesser than that in case of other larger borrowers. Hence, there is a strong case for providing greater credit to this business segment. Here, I see a significant role for the CICs in

building an information base on SMEs and assisting banks in their credit decision making. I would urge the CICs to take urgent steps to bridge this information void and help facilitate flow of credit to SMEs, which would provide an impetus to the overall economic growth environment.

Identity Fraud – An Emerging Threat and Role of the CICs in combating it

19. According to the Norton Cybercrime Report 2011 more than two thirds of online adults (69 percent) have been a victim of cybercrime in their lifetime, and every second 14 adults become a victim of cybercrime, resulting in more than one million cybercrime victims every day. The situation is equally alarming in India. Fraud, especially in the banking domain, assumes great significance due to the associated reputational and monetary losses. Incidence of frauds can severely dent the confidence in the financial system, particularly at a time when we are trying to use technology as the medium to bring more and more of the excluded masses into the formal financial system. Fraudsters employ innovative ways of impersonating others using altered KYC documents. They also apply for credit at multiple banks at the same time by exploiting vulnerabilities in banks' systems and processes. Alternately, fraudsters can also apply for credit from the same bank at multiple locations assuming different identities.

20. While guidelines around KYC norms have been strengthened and the banks are being encouraged to provide unique customer IDs at the institutional level, the credit bureaus have capabilities to play an important role in preventing such frauds by providing a holistic view of the individual and highlighting the different variations of ID information, as provided to different credit providers. Also, data sharing mechanism amongst banks can help in identifying serial fraudsters by picking up inter-temporal and inter-bank inconsistencies of application data to provide an early warning mechanism to identify potential risk cases.

21. Further, in a robust KYC system, banks could consider using multi-database checks on an individual's identity at the time of underwriting that encompasses different identifier databases like UID, PAN, Voter ID, Passport, etc. This will help in rooting out many cases of identity frauds through fraudulent documentation.

22. From a consumer's perspective, CICs hold key information on the enquiries made towards obtaining credit. If a fraudster assumes someone's identity and applies for credit across institutions, this information can be transmitted to individual banks as triggers or warning signals. I foresee that the next wave of innovation would be around developing tools and analytics in preventing frauds arising from identity thefts and I am glad to note that the conference has devoted a session for deliberating on the issue of frauds.

Role of Alternate Data Sources as supplement to banking data

23. The current banking policy places a lot of emphasis on financial inclusion. A key enabler tying up with the theme of financial inclusion is the information infrastructure and decisioning architecture necessary to bridge the information asymmetry divide for individuals who are first-time borrowers from the banking system. In order to reach out to individuals who never had any access to traditional banking channels or who have no credit footprint, some indicator of payment behaviour demonstrated by such individuals in their day-to-day lives need to be analysed during the process of underwriting. This could be the payment of utility bills such as water or electricity, telecom bill repayment, rental payments, healthcare payments, etc. These data sources are, typically, called alternate data which are supplements for banking repayment data. With alternate data, the coverage of people with some kind of payment history increases. Including alternative payment data is an effective method to build or restore/rebuild a good credit history, something which the industry could consider in the future as it evolves further and matures in terms of competitiveness and customer sensitivity.

24. From this perspective, low-score is always better than no score—Unscoreable persons are almost always rejected by mainstream lenders when applying for credit. For such people, many of whom might actually be credit-worthy, the sole recourse

would be to borrow from the money lenders. By virtue of being scoreable, a person greatly improves his/her chance of entering the credit mainstream. Regulators across the globe have started acknowledging the role of alternate data sources in improving financial inclusion and, hence, bureaus in those geographies have started collecting non-traditional, non-credit data to augment the banking data.

Conclusion

25. Before I conclude, I must reemphasize that the Credit Information Companies have a herculean responsibility towards developing a vibrant credit market and spreading consumers' awareness about the importance of credit and its responsible use. Consumers need to be sensitized through awareness campaigns about the importance of credit information reports as a means for knowing their financial liabilities and about its importance in determining their credit worthiness. This is especially important for the young population who are new to the credit market. To my mind, the key deliverable for the CICs in the coming days would be to facilitate a smoother credit decision making process and, thereby, bring down the cost of financial transactions and credit intermediation in the banking/financial system for the benefit of the masses, especially for the retail and SME segments. A major spin-off benefit for the banking industry would be in terms of better quality of credit portfolio.

26. I believe that the next wave of financial innovation would be around providing financial services to a large section of the unbanked population. This would require presence of the necessary tools, techniques, processes, technology, infrastructure and enabling regulations. As most of the target population would be first time credit seekers, it would require an aggregation of information on credit proxies on these individuals. Scoring and evaluation techniques will follow. Banks, Insurance and Telecom companies will do well in making the best use of the presence of existing CICs in India, during their credit appraisal processes. CICs should, on their part, continuously remain engaged in innovation to support these entities at multiple levels through various value added services and products encompassing their customer's entire life cycle.

27. I hope today's Conclave helps in generating awareness and throws up practical ideas on the subject. I am hopeful that committed CIC entities through their linkage with the overseas parents and also backed by experience gained in matured markets, would be able to bring in technical knowhow and expertise into India and, in the process, ensure availability of easier, quicker and cheaper credit for the people at the bottom of the pyramid.

[Edited version of Inaugural address by Dr. K. C. Chakrabarty, Deputy Governor, Reserve Bank of India at the Experian India Conclave 2013 organised in Mumbai on July 5, 2013.] ■

Financial frauds on the rise

Despite tightening of regulations worldwide, be it on corporate laws or banking norms, frauds continue to plague government, companies and banks. A survey by Association of Certified Fraud Examiners on 1,388 cases across 94 countries show companies across the globe lost 5% in revenue or \$3.5 trillion due to frauds with financial sector topping the list in terms of number of frauds detected. A detailed analysis by Reserve Bank of India deputy governor KC Chakrabarty revealed while the number of fraud cases in the banking sector has fallen from 24,791 in FY10 to 13,293 in FY13, the amount involved has risen from Rs 2,038 crore to Rs 8,646 crore. This means frauds are coming down but getting more high profile. PSU banks have been soft targets as they accounted for 83% of the amount siphoned off from the system. Of the total number of fraud cases detected, private banks accounted for 55% but the amount involved was 12.9% of the industry aggregate. Majority of frauds are related to loan advances. Increase in the cases of large value fraud involving Rs 50 crore and above in accounts financed through consortium or multiple banking arrangements is a "newly emerging but unwelcome trend", warns Chakrabarty. What may be the root cause behind the disturbing trends in bank frauds is lack of proper due diligence before sanctioning loans. While economic slowdown does increase chances of loan defaults, a rising tendency of willful defaults and frauds cannot be ruled out. Indeed, the proportion of fraud amount to banks' gross NPAs has trebled to 3.4% in the last four years. High NPAs and losses due to frauds crimp profit margins and prevent banks from lowering interest rates. Clearly, banks need to improve their risk management and increase vigil on high-value loans rather than trying to clean up their books by aggressive NPA write-offs. [Financial Express, 10 Aug.]

1. Fraud cases detected globally

ACFE surveys how companies lose 5% of revenues or \$3.5 trillion globally due to frauds. Financial sector alone accounted for over a fifth of all frauds cases

Category	No. of Cases	% of Total	Amount (₹ cr)
Banking & Fin. Services	2,29	16.7	2,32,000
Insurance	78	5.7	95,000
Government	1,41	10.3	1,00,000
Manufacturing	1,39	10.1	2,00,000
Education	88	6.4	36,000
Health Care	92	6.7	2,00,000
Retail	83	6.1	1,00,000
Religious, Charitable or social services	54	3.9	85,000
TOTAL	1,338	100	\$3.5 cr

Source : Association of Certified Fraud Examiners

2. RBI Check list of frauds in Financial Sector

Commercial banks accounted for over 95% of fraud cases and amount involved

Category	No. of Cases	Amount involved (₹ cr)
Commercial Banks	1,69,190	29,910
NBFCs	935	155
UCBs	6,345	1,057
FIS	77	279
TOTAL	1,76,547	31,401

NBFCs likely to face tough time for 12 months



An interview of TT Srinivasaraghavan, Managing Director, Sundaram Finance Ltd. By CNBC-TV18 on Sept.

Q: On account of high interest rates plus slowing auto sales the operating environment for auto non-banking financial companies

(NBFCs) has weakened a bit. How is the situation currently and will the second half be better on account of monsoon, what could be the growth rates?

A: It will take either a brave man or a fool to stick his neck out on forecasts but what you said is true, we started with Q1 numbers being reasonably good but Q2 performance has slowed down significantly, largely on account of what is happening in broader economy and specifically in the auto sector because commercial vehicle (CV) and car sales have slowed. Therefore, asset financing NBFCs like us have felt the impact of that slowdown. In the second half, everyone is talking about the monsoon dividend. One hopes that is not over hyped but there should be some positives out of bountiful monsoon that we had. Also because of what has happened on the rupee, if exports start to pickup, that too can add some life back and if goods movement at ports improves, that should help at least commercial vehicle sales to an extent and usually the festive season is good for passenger car sales. So if you put these two together, there is some room to expect that H2 will be better than H1.

Q: Can you give us an outlook for the full year in terms of profitability?

A: We don't give guidance. We expect the industry to go through a rough time this year simply because of what was happening in the broader economy. Commercial vehicle operators are under significant strain therefore, we don't see any dramatic growth even if the industry ends flat. I think they would have done very well, the commercial vehicle industry. I don't think you are talking about any exciting numbers happening with people who financed the auto industry. I don't think I will stick my neck out in terms of numbers but it is fair to say that we are going through a period of trough and this will play out over the next 12 months at least and then we will see an uptick. But this is something that the industry goes through every six-seven years so I don't think there is any need to over-hype it. [CNBC TV 18, 21 Sept.] ■

Tight cap on pvt placement for fund raising by firms

Aimed at tightening the norms for the much-abused private placement route of raising funds, the government on Sept. 20 proposed a stringent cap on private placement route for fund raising by companies under the new Companies Act, 2013. These norms are part of the second set of draft rules for the implementation of the new companies law. It prescribes:

- Offer of securities has been approved by the shareholders by way of a Special Resolution.
- The number of private placement to 200 persons in one financial year subject to maximum of four such offers in a financial year.
- Maintain a minimum gap of 60 days between any two such offers.
- Offer shall be with an investment size of not less than Rs 50,000 per person.

The second set of draft rules also bring clarity on the issues of private placement, registered valuers, creation of National Company Law Board (NCLB) and the tribunal (NCLBT) among others. [Financial Express, Sept. 21]

Finance firms set to launch ATMs as demand spreads

Indian corporates have lined up plans to roll out ATMs, a year after the RBI gave its nod to non-banking companies to set up ATMs. First off the block, Tata Communications Payment Solutions (TCPL), a wholly-owned subsidiary of Tata Communications, plans to set up 15,000 ATMs in India under the brand name, Indicash.

Muthoot Finance, engaged in the business of financing against the security of gold ornaments, wants to leverage its network of 3,853 branches to set up white-label ATMs - industry parlance for non-banking entities launching their branded ATMs, but using the RBI-mandated National Financial Switch network. Srei Infrastructure Finance has received in-principle approval from the apex bank to set up such ATMs.

The reason for companies wanting to get into this segment is largely due to the fact that despite banks setting up ATMs averaging a growth of 23-25 per cent, the deployment has been primarily in Tier-1 and Tier-2 cities, said a tech analyst. This leaves the semi-urban and rural areas without access to services, such as ATMs, he added.

London-based RBR, a research and consulting firm, in a report said India's ATM density is 74 per million people and 48 per \$1 billion of GDP, way below other BRIC countries, which on an average, have 246 ATMs per million people. [Business Line, Aug. 9]

NBFCs want status quo over private placement norms

Finance Industry Development Council (FIDC) - an association of asset financing non banking financial companies (NBFCs) will approach RBI to have status quo on private placement of non convertible debentures (NCD) norms issued by the central bank few days ago. "We would be making a representation from association because of hardships created due to this sudden regulation" said R Sridhar, chairman, FIDC. "Since capital adequacy norms take care of gearing, there is no need of having fresh caps on fixed deposits and bringing restrictions on fundraising," Sridhar added.

A top official of an asset financing company said that association has already written to RBI on the issue. RBI, in late June issued a circular for NBFCs which restricted NBFCs private placements twice a year and capped the number of investors to 49 in each private placement. It also said that the investor investing in this instrument should invest minimum of Rs 25 lakh. However RBI after few days lifted the gap of six months between the private placements of NCDs and said that it would be reviewed later by the central bank.

But NBFCs are lobbying with RBI to lift maximum investor cap as well as minimum investment amount. They say if someone has done something wrong, why should someone who is doing business genuinely should suffer? "NBFCs are already raising resources and doing well and because somebody has done something so we are also getting affected so status quo should be maintained would be represented to RBI" Sridhar said.

Privately placed NCDs are one of the biggest sources for NBFCs to raise money. "We have told (as association) RBI that if they want to cap retail investors they can do so but don't cap the institutional investors" said a top official of a NBFC. "Institutional investors are well read investors and they are completely aware of the risks involved and only after understanding the risks they invest in NCDs so it doesn't make sense to cap those investors" this official added. "What happens



Welcome
Mr. N S Vishwanathan,
Principal Chief General Manager,
Reserve Bank of India, DNBS

if say 51 institutions are interested in NCD" he further said.

According to industry players most big NBFCs however don't raise money through private placement of NCDs to retail investors and they place such NCDs only with institutional investors. FIDC seems to be also interested in protecting smaller NBFCs even if big NBFCs aren't affected by raising minimum subscription amount to Rs 25 lakh. "When you put 25 lakh restriction retail (investor) is out" said Sridhar. "There should be exemption given to NBFCs who are doing well" he said.

"This is channel which NBFCs have been raising and no NBFC has defaulted and it's a secured instrument which is good for investors also" argued Sridhar. He further said, "If good companies are restricted from raising resources then what happens to investors?" [Business Standard, July 11]

RBI may consider fraud registry to deal with financial crimes:

"Establishment of a Fraud Registry on the lines of credit information bureau could be considered by the (central bank)," said RBI Deputy Governor K C Chakrabarty while addressing a conference on 'Financial Fraud and Risk Prevention'. [Economic Times, July 26]

Credit bureaus should have a provision for Aadhar in systems

Credit information bureaus should use Aadhaar number to enable smoother working of the credit market and root out cases of identity frauds, RBI Deputy Governor K C Chakrabarty said. "Let us have only one ID, that is Aadhaar, which will be much more convenient to the people and easier to identify. I feel that all credit bureaus should have a provision for the Aadhaar number in their systems," he said. He said usage of the Aadhaar number will make the functioning of lenders easy as the information can be shared easily across the lenders and also help prevent frauds. [Business Standard, July 5]

'Cheaper repeat loans likely for zero-default borrowers'

Repeat loans are soon likely to be cheaper for zero-default borrowers, Credit Information Bureau (India) said. The credit score of every individual or organisation who avails loans is calculated on a scale of 300 to 900, and borrowers having a score of 750 and above are considered to be very creditworthy.

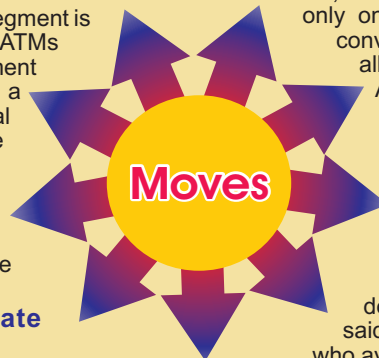
"Since the RBI has categorically mentioned in its report the possible introduction of risk-based pricing, banks in India are taking the cue and implementing. It is a scenario that's likely to open up very soon," said Cibil senior vice-president Harshala Chandorkar. "World over, the banks have already moved to this model and there is little doubt that Indian banks, too, will follow this trend", she added. [Financial Express, Aug 8]

Finmin working on bankruptcy law to fast-track recast of firms

A separate bankruptcy law may be on the cards. Finance minister P Chidambaram has recently flagged this idea to the chiefs of public sector banks, official sources said. The government reckons that a separate bankruptcy law/code and efficient bankruptcy courts would help fast-track restructuring/winding up of indebted companies and prevent deterioration of their assets. Replicating legislation and best-practices in countries like the US is what is aimed at. The current thinking is that a separate Bankruptcy Act will look into all the matters relating to corporate bankruptcy, including those involving cross-border issues.

As per the official data, the numbers of companies under liquidation as on March 31, 2012, at various high courts stood at 5,727, out of which 1,046 cases were pending for over 20 years. Till 2012, 4.16 lakh companies, out of a total of 13 lakh registered in India, were identified as defunct or inactive. India is the only major emerging economy among the BRIC nations not to have separate bankruptcy legislation.

The new companies law has provision regarding winding up and liquidation. The proposed National Company Law Tribunal (NCLT) will be able to deal with defunct companies at a much faster rate. [Financial Express, Sep 03]



Law ministry says e-KYC valid

In what could do away with the need for physical documents to avail of financial and government services, the law ministry has approved fulfillment of know-your-customer (KYC) norms electronically, through Aadhaar or the unique identification number. A government official said the ministry felt since the Information Technology Act considered electronic documents on a par with physical ones, e-KYC was valid. The finance ministry has written to the RBI, as well as other regulators such as the SEBI, to issue directives for financial companies to start accepting e-KYC. The use of e-KYC would not only hasten linkage of bank accounts with Aadhaar for the Direct Benefits Transfer programme, it would also save banks the huge cost incurred in document verification and storage, the official said.

Once e-KYC is implemented, one can open a bank account by providing his/her Aadhaar number and authenticating his/her biometrics. The servers of banks or other financial companies, which would be connected with the UIDAI (Unique Identification Authority of India) server, would check if the details provided by the person are correct. After a customer gives his/her consent, the data drawn from the UIDAI servers for authentication could also be digitally stored by the bank for reference. RBI has already notified Aadhaar number are valid proof of address and identity.[Business Standard, 9Aug.]

Govt. to enforce New Companies Act in phases

One of the top priorities of the ministry of corporate affairs (MCA) is to facilitate the setting up of the National Company Law Tribunals (NCLTs). In parallel, the draft rules of the new Companies Act will be finalized through a process of consultation with all stakeholders. The provisions of the Companies Act, 2013, which recently got Presidential assent, will be enforced in phases. While 98 sections of the New Act are now in force, for which a notification for commencement was issued on September 12, the remaining sections will be notified in a phased manner. The relevant provisions pertaining to these newly notified sections, as contained in the earlier Companies Act, 1956, will stand repealed.

"The new Act is comprehensive with 470 sections. Those sections which require functioning of new bodies - such as the tribunal, or prescription of relevant rules/forms - will be brought in force after the preparatory action is completed. By 2013 end, a majority of the sections will be notified and the balance will be notified by the end of the fiscal year - March 31, 2014," said Sachin Pilot, minister of corporate affairs, replying to a question raised by TOI.

Earlier, MCA has released the first set of draft rules on 10 Sept., which cover 16 of total 29 chapters. Stakeholders can offer comments by Oct. 8 after which the rules will be issued.

The new Act, providing for sweeping changes in the way companies operate and are regulated in the country would replace nearly six-decade old Companies Act 1956.

Some key facts of the new Act :

- Rewrites extensively new provisions for investor protection, better corporate governance and corporate social responsibility. Several new terms defined.
- The Bill prescribes 33 new definitions including that of CEO, CFO etc.
- Class action suit, better disclosure in financial statements and disclosure of interests of directors etc. are incorporated. It streamlines procedures relating to disclosure of transactions with parties related to directors, promoters etc.
- It provides for prohibition on forward dealings in securities of company by key managerial personnel, Insider trading rules and restriction on non-cash transactions involving directors.
- Single person company, Provision for women directors; Cap on number of persons in a private company raised to 200. E-voting recognized.
- India may be among the first in the world to make social welfare spending by companies part of the law but new norms would be applicable only on about 1% of total active companies in the

country.[Business Standard, Aug. 8/Economic Times Aug.31/Times of India Sept.17]

Prosecution for bounced cheque

1. Only the drawer of a cheque which bounced can be prosecuted under the Negotiable Instruments Act. The person who signed the cheque is liable and not all those whose names appear on the cheque, the Supreme Court stated in the case, Aparna Shah vs Sheth Developers Ltd. In this case, the wife was partner in a joint venture, but the concerned cheque was signed only by her husband. She was prosecuted and the Bombay High Court allowed it to go on. Her appeal was allowed by the Supreme Court, which clarified that the prosecution under the N I Act alone was barred in such cases. Other remedies against her will not be affected by this order.

2. In another ruling on bouncing cheques, the Supreme Court ruled that **a complaint can be filed either at the place where the drawer resides or the place where the payee resides.** In this case, Nishant Aggarwal vs Kailash Kumar, there were business dealings between them residing at Guwahati in Assam and Bhiwani in Haryana. "The amplitude of the Act is very wide and expansive," the judgment said and added that filing a complaint in Bhiwani was proper, though it was objected to by the Guwahati business partner who argued that it was the court there which had jurisdiction.

3. In a cheque bouncing case, the sentence shall normally run concurrently for the same set of offences, and not consecutively, the Supreme Court ruled last week in the case V K Bansal versus Haryana Financial Corporation. In this case, a director of a group of companies took loans from the corporation for three of the firms. The repayment cheques bounced and therefore 15 cases under Section 138 of the Negotiable Instruments Act were filed against him by the corporation and he was convicted in them and sentenced to undergo

imprisonment from six months to one year. Appeals to the high court were also dismissed. He moved the Supreme Court, pleading that the sentences should run concurrently and not consecutively. The court, after analysing Section 427 of the Criminal Procedure Code, which deals with such situation, stated that the court has discretion to pass such orders to benefit the prisoner in case the prosecution is based on a single transaction, no matter several complaints have been filed. Applying the principle, the court analysed the complaints and ruled that except in one case, the sentences shall run concurrently. [Business Standard, July 14]

4. The period of limitation of one month for filing a complaint, prescribed under Section 142(b) of the Negotiable Instruments Act 1881, has to be calculated by excluding the date on which the cause of action arose (when cheque was dishonoured), a larger Bench of the Supreme Court held in the case of Econ Antri Ltd vs Rom Industries Ltd. Resolving doubts over two differing views on the issue, the apex court in its new judgment settled the question by holding that the case, in Saketh India Ltd vs India Securities Ltd, laid down the correct proposition of law and should be followed by all courts below.

Unlisted shares are securities

Shares of a public limited company, though not listed in the stock exchange, come within the definition of 'securities' and therefore the provisions of the Securities Contracts (Regulation) Act will apply to them, the Supreme Court, upholding the view of the Calcutta High Court in the case, Bhagwati Developers Ltd vs Peerless General Finance & Investment Co. Bhagwati had lodged transfer deeds in respect of 14,120 shares with Peerless for transfer. However, the latter did not accede to the request on the ground that the transfer violated the Act, which restricted certain contracts. Bhagwati moved the Company Law Board arguing that the shares were not 'securities' as Peerless shares have not been listed in any stock exchange and they were not 'marketable'. The board held that Peerless rightly refused registration of the transfer. It explained that the Act was applicable to a company even though its shares may not be listed on any recognised stock exchange. This principle was upheld by the Supreme Court, while dismissing the appeal of Bhagwati.[Business Standard, July 21]



SEBI sets terms for public offer exemption for NBFCs

NNBFCs will be exempt from making a public offer (leading to a listing on the exchanges) only if they prove that the securities offered to over 50 entities are subscribed to only by the entities, SEBI has ruled. This is to ensure that the public does not subscribe to the offer. The order also applies to public finance institutions.

The Companies Act specifies that any offer of securities made to over 50 persons automatically triggers a public offer and listing. SEBI passed an ex-parte interim order against Alchemist Holdings (AHL) for not complying with the Companies Act. SEBI said that AHL raised Rs 444.67 crore through redeemable preference shares from 426,676 entities without approval. SEBI barred AHL and its seven directors from collecting money, disposing of any asset without its permission and from diverting the money.

All the entities have to treat this ex-parte interim order as a show cause notice and have 15 days to respond. [Business Line, Sept. 21]

SEBI working on norms to incorporate new powers

Government re-promulgated on Sept. 20 the ordinance giving more powers to SEBI to crack down on ponzi schemes, get phone call records to check insider trading and carry out search and seizure operations. The Ordinance amending the Securities Laws was promulgated by President Pranab Mukherjee on July 18 after the Cabinet gave its approval to amend the SEBI Act, 1992 to give market regulator SEBI power to crackdown on ponzi schemes. The ordinance lapsed on September 19, since Parliament could not pass the Securities Laws (Amendment) Bill 2013 in the recently concluded Monsoon session. Therefore a need was to re-promulgate the ordinance. [Business Standard, Sept 21]

Securities and Exchange Board of India (SEBI), is framing new regulations and operational framework to start exercising the powers that it has been newly bestowed with. A team at SEBI is said to be working on at least two new set of regulations that will enable it

to conduct search and seizure operations and recover money through disgorgement, sources said. Disgorgement is to repay ill-gotten gains to those affected. Also, new systems are being put in place for early detection and crackdown of collective investment schemes (CIS).

The Centre has provided SEBI with more powers by promulgating ordinance on July 18 to effectively act against violators by conducting search and seizure operations and to recover dues from them by attachment and sale of assets.

SEBI has now been allowed to access information and records of any person, including a bank, where it feels it's relevant for any investigation with respect to a transaction related to the securities market. It also has been allowed to enter and search for documents in any building, vessel or aircraft or break open a lock. In cases where a person fails to pay the penalty imposed by SEBI or fails to comply with the disgorgement order, SEBI can now recover dues by attachment or sale of immovable or movable property, bank accounts or even detain the person. SEBI is said to be working on the operational framework and the processes that need to be followed by its officials to ensure that the powers are not misused by them.

Other areas where SEBI could announce changes in the depository regulations, consent regulations, which have now been given legal sanity and also on establishment of new courts for providing speedy trial of offences. [Business Standard, Aug. 22]

The changes are part of as many as 22 amendments made by the government in three main Acts governing SEBI and its operations — the SEBI Act, the Securities Contracts Regulation Act (SCRA) and the Depositories Act — through a 16-page Ordinance.

For speedy trial of offences under various SEBI regulations, the Ordinance also provides for setting up of "as many special courts as may be necessary" by the central government. Such courts would consist of a single judge to be appointed by the central government with concurrence of the Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working. Till the time a Special Court is established, any offences committed under SEBI

Acts would be tried by a Session Court. If a person fails to pay the penalty imposed by SEBI or fails to comply with any direction for refund of money or any disgorgement orders, the recovery officer appointed by SEBI can proceed to recover such an amount. [Business Standard, July 22]

SEBI widens fraudulent, unfair trade practices list

SEBI has decided to tighten norms for tackling fraudulent and unfair trade practices so as to hold individuals as well as market entities equally guilty for manipulations by removing a regulatory lacunae. SEBI is also expanding the list of activities that attract penal actions under its Prevention of Fraudulent and Unfair Trade Practices regulations, a senior official said.

The capital markets watchdog is planning to strictly enforce these norms, which cover a wide array of manipulative activities, such as publishing advertisements with misleading or distorted information to influence the investors' decision, planting of false or misleading news and inducing investors to carry out transactions for personal gains, he said. SEBI's board decided to include unauthorised Collective Investment Schemes (CIS) in the list of fraudulent and unfair trade practices.

SEBI has come across many cases where it has been claimed that the norms do not explicitly permit penal action against individuals fund houses and foreign funds, for certain 'fraudulent and unfair trade practices' like front running, withholding of key information from the investor and making false promises or claims to induce the clients into a securities transaction. Another major change being implemented by SEBI in this regard relates to an amendment that would leave the list of 'fraudulent and unfair trade practices' open ended, rather than restricting it to 19 broad categories currently. [PTI/Financial Chronicle, Aug 18]

SNIPPETS:

Registration of Investment Advisors : SEBI asks investment advisers to take registration certificate by October 21 to continue their services. Banks, NBFCs and corporates would have to segregate their investment advisory services from other activities and need to have a minimum worth of Rs 25 lakh.

Amending reporting of financial results : SEBI intends to modify the formats for finance companies, which can be used for both banking companies and other finance companies. Companies will also be required to disclose half-yearly consolidated financial statements if there is a variation in the numbers by over 20%, when compared to the corresponding amounts in the stand-alone financial results. In respect of foreign subsidiaries and joint ventures, the consolidated results must include reviewed/audited results of such number of foreign subsidiaries that, together with the reviewed/audited results of all Indian subsidiaries/JVs, constitute not less than 80% of the consolidated turnover/net worth/profit (loss).

Aligning SEBI private placement norms with Companies Bill:

The government has asked SEBI to set up a committee to look into compatibility of SEBI regulations for private placement of securities with the proposed measures in this regard in the new Companies Bill. The suggestion has been made by the Corporate Affairs Ministry amid rising instances of private placement being misused by various entities for raising of funds from public.

New Measures : SEBI has recently proposed various new measures for issuance and listing of non-convertible redeemable preference shares. Besides, the regulator is also working on re-defining a host of terms and instruments in this regard, such as Non-Convertible Redeemable Preference Shares, Perpetual Non-Cumulative Preference Shares, and Innovative Perpetual Debt Instruments.

SEBI mulls higher penalties, public censure for defaulters : To make its enforcement actions more effective, market regulator SEBI is considering a significant increase in its monetary penalties, as also steps like public censure, against the errant entities. The fines imposed in India have always been criticised for being too small as compared to many other countries.



Complements Mr. R Sridhar, Chairman, FIDC



R Sridhar, 54: MD & CEO, Shriram Capital is classed as one of the 15 India's best strategists: identified by Economic Times -15 dreamers who have translated their insight into reality. He rose from niche to leadership. "Sridhar has the ability to look at the big picture while not losing sight of the details," says chief of TPG Capital India. [ET 22 Sept.]

Impact of RBI's recent measures to check the rupee's depreciation on the cost of borrowing for NBFCs.

RBI's recent measures to check the rupee's depreciation have created a level of volatility in shorter-range interest rates and marginal impact on the longer-term rates. This is going to have some impact on the margin of NBFCs, said N Sivaraman, president and whole-time director of L&T Finance Holdings in an interview. RBI has said this is a temporary measure but it is more than three weeks now. People were expecting this to be rolled back in three weeks. It really creates a skew. The yield curve has become inverted once again and the credit curve has become inverted. Government securities are quoting a far higher price than even corporate bonds of similar tenures. This is curious. The level of excess holding with banks is getting liquidated to generate funds for lending and other needs. It has become a curious situation which has its own risk. In the way you plan financing, in the way you make your investments in the short term... all these are creating chaos in the system. This needs to be corrected. [Business Standard, 12 Aug.]

Most transactions still done through cash, cheques

Despite RBI's efforts to promote electronic banking, almost 90 per cent of payments are estimated to be collected through cash/cheque, according to RBI's annual report. "Despite availability of a wide range of payments instruments and channels, there are significant operational and cost inefficiencies in the bill collection processes. It is estimated that over 30,800 million bills are generated each year in just the top 20 cities in the country," RBI research quoted in the report said.

On the positive side, the Real Time Gross Settlement System (RTGS) processed transactions to a settlement value of around Rs 8 lakh crore on March 28, 2013, which is the highest value settled through RTGS on a business day, the annual report said. The National Electronic Funds Transfer (NEFT) handled a record volume of 47 million transactions valued at around Rs 360,200 crore in March 2013. As at end March 2013, 55 banks with a customer base of around 23 million were providing mobile banking service in India. During 2012-13, 53 million transactions valued at around Rs 6,000 crore were transacted, thus registering a growth of 108 per cent and 229 per cent, respectively, over the previous year. [Reuters/Sify.com, 23 Aug.]

NBFCs to report double-digit RoE: ICRA

Despite a slowdown in growth, NBFCs are expected to report a double-digit return on equity in the short to medium term, said a report by rating agency ICRA. However, gold-loan companies could continue to remain under pressure in the short term. "The rise in delinquencies and credit costs for NBFCs has been on expected lines. Although a challenging operating environment could continue to weigh on the asset quality of NBFCs, diversity in the borrower base, security based lending and proactive monitoring could keep the eventual losses under check," said the report.

The cost of funding would continue to remain high for NBFCs. Furthermore, the future cost of funding of NBFCs could also be impacted by the July 2013 RBI guidelines on funds raised by NBFCs through private placements of debentures, which cap the maximum number of investors to 49 for private placement issuances, the report added. [Business Standard, 21 Aug.]

India slips two positions on global innovation index 2013

India dropped two places from its last year's position of 64 to 66 on the Global Innovation Index (GII) 2013. The index, which ranks 142 countries across the world on their innovation capacity and efficiency, is published by Cornell University, INSEAD, World Intellectual Property Organization and Confederation of Indian

Industry. This year's toppers in the GI were Switzerland and Sweden, followed by the UK, the Netherlands and the US. These countries were among the top 10 last year, too. "The results of the GI provide testimony to the global nature of innovation today. Several new players have increased their innovation capabilities and outputs," said Soumitra Dutta, co-editor of the report and a top official at Cornell University.

This year's findings suggest India fared relatively better on criteria such as gross capital formation (as a percentage of gross domestic product) (rank 9), investment in new business (rank 20), industrial cluster development (rank 29), growth rate as a percentage of PPP GDP/worker (rank 14), computer and information services exports (rank 1) and creative goods exports (rank 11). But, its low ranking in parameters such as political stability (rank 123), ease of starting business (rank 128), school life expectancy (rank 109), pupil-teacher ratio (rank 108) and knowledge absorption (rank 122) was instrumental in its downward journey. [Business Standard, July 3]

Public offerings from NBFCs may surge: Expert

Public offerings from finance companies, including NBFCs, could surge in the coming days due to uncertainty over fund raising through private placement, an industry expert said. "A lot of companies are mulling to raise funds through public offerings," Executive Director of Shriram Transport Finance Company Parag Sharma said.

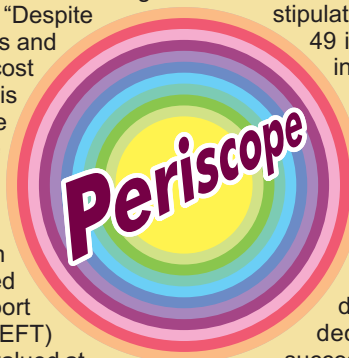
"RBI has advised NBFCs to frame a policy on frequency and quantum of funds required by them for private placement and submit it before September 30, but ultimately the bank (RBI) would decide on fund raising gap and the quantum," he said adding that in the meanwhile there would be uncertainty over the issue. With RBI's stipulation that private placement should not have more than 49 investors, and the minimum subscription from single investor should be Rs 25 lakh, the quantum of fund mobilisation is low, Sharma said adding that more companies would be compelled to take public offering route.

As per industry estimates, market size of private placement of debt in India is pegged at close to Rs 50,000 crore annually. The RBI on July 2 announced that the proposal to have a minimum gap of six months for private placement of non-convertible debentures (NCDs) has been kept in abeyance while a decision on appropriate time gap between two successive issuances of privately placed NCDs would be taken by it in due course. [Economic Times/PTI July 11]

Be cautious while borrowing overseas, RBI tells infra firms

In the backdrop of the rupee continuously hitting new lows against the dollar, a top central bank official asked infrastructure project developers to exercise abundant caution in tapping overseas borrowings as they don't generate matching foreign exchange earnings. "While I do appreciate the recent measures by the Government of India and the RBI (to give a leg up to the infrastructure sector), I wish to sound a note of caution here due to a couple of reasons," said K. C. Chakrabarty, Deputy Governor, RBI, at an infrastructure finance conclave in Agra. He was referring to several concessions given to the infrastructure sector by the Government for credit enhancement, import of capital goods, utilisation of trade credit and the RBI initiatives to boost infrastructure financing by relaxing the overseas borrowing norms and treating debt due to lenders in public private partnership (PPP) projects as secured finance.

"First and foremost, as finance professionals, we must realise that in efficient markets, cost of borrowing in any currency, when adjusted for exchange rate differential, should be the same. Therefore, if one finds an arbitrage opportunity, it can only be for a short term. "Adjusted for hedge cost, the external borrowing cannot be cheaper. The only way a firm can potentially benefit from borrowing in overseas markets is by gambling on the exchange rate and retaining an un-hedged forex exposure," said Chakrabarty. He said it is important to conduct a cost-benefit analysis in running an un-hedged/partially hedged exposure before accessing external finance. [Business Line, Aug. 20]



Allow ECB for domestic equipments and allow other modes of financing

FIDC requested Reserve Bank on July 17 to broaden the scope for allowing NBFC-AFCs to use ECB funds for "Financing" by any mode i.e. lease/hire purchase/loans against hypothecation etc. for both domestic and imported infrastructure equipment. RBI had allowed on July 8 NBFC-AFCs to avail of ECB under the automatic route with minimum average maturity period of five years in order to finance the import of infrastructure equipment for leasing to infrastructure projects- with such restrictive mode of financing.

Permit NBFCs to issue shelf prospectus

Business requirements for resource mobilization being similar to banks and financial institutions [FIs], FIDC pleaded with market regulator SEBI to allow NBFCs to raise fund periodically on a continued basis through modalities of "shelf prospectus." Although, the RBI has permitted the NBFCs to raise resources in the form of secured non convertible debentures, "it may not be practically feasible for NBFCs to issue secured NCDs in fits and starts while need for working funds arises on a continuous basis," said Mr. Sridhar, FIDC Chairman. Banks and FIs enjoy certain concessions under which they obtain approval from SEBI for 'Shelf Prospectus' whereby they are permitted to raise fixed amount every year, any time in various tranches. SEBI was requested on Aug. 5 to "take up this matter with Ministry of Corporate Affairs to permit NBFCs to avail the benefits of 'Shelf Prospectus', similar to benefits currently enjoyed by FIs." added Mr. Sridhar.

Retain status quo on private placement of NCDs

FIDC pleaded in a representation to RBI to "grant exemption from the ceiling of 49 investors and minimum amount of Rs. 25 lakh for issue of secured NCDs by such of the NBFCs which are serving the non-corporate MSME sector of the country and supporting Financial Inclusion in their own way," as such privately placed Secured NCDs to retail investors are well regulated under the Companies Act and the present RBI regulations.

Mahesh Thakkar, Director General, FIDC said, "SEBI has permitted 180 days validity for the shelf prospectus (offer document) in respect of debenture issue. Within this period and the limits specified therein, the Companies are permitted to raise funds as and when required, with necessary addendums. On similar lines, the regulations may prescribe the overall validity of multiple issuances for an offer document. This would ensure the desired planning of funds requirement by the NBFCs". He further added that, "Issuances through private placements to retail individual and institutional investors / FIIs and HNIs be kept out of the preview of these guidelines".

In respect of Security cover for debentures by private placement or public issue FIDC requested that the existing position as permitted under section 113 and section 117 of The Companies Act and para 15 of SEBI (issue and listing of Debt securities regulations 2008) be retained to NBFCs as well, as applicable to other corporate issuers of debentures.

FIDC has approached RBI to have status quo on private placement of non convertible debentures (NCD) norms issued by the central bank "because of hardships created due to this sudden regulation" said R Sridhar, Chairman, FIDC. "Since capital adequacy norms take care of gearing, there is no need of having fresh caps on fixed deposits and bringing restrictions on fundraising," Sridhar added.



FIDC 9th Annual General Meeting, Managing Committee Meeting and Interactive Meeting with Mr. N S Vishwanathan, Principal Chief General Manager, RBI, DNBS at Mumbai on 21st September 2013.



Mr. N S Vishwanathan, Principal Chief General Manager, RBI, DNBS addresses the members of FIDC on 21 Sept, 2013

FIDC Action on Private Placement of NCDs

FIDC has not only submitted a detailed representation to RBI on 17 July on the issues affecting NBFC sector as a result of RBI Circular dated 27th June 2013 and clarification thereon dated 2nd July 2013 on raising money through private placement by NBFCs-Debentures, but also closely followed up with Dy. Governor, Executive Director and Principal Chief General Manager, RBI in this regard. The Chairman felt that all retail NCDs, even issued for period above one year are affected. FIDC also proposes to take up this matter with the new Governor at its ensuing meeting in October 2013. RBI- DNBS has assured that the clarifications will be issued in the matter very shortly.

Representation on taxation matters

FIDC has made a representation to Dr Parthasarthy Shome Committee, constituted by Ministry of Finance on taxation issues, said Mr. Raman Aggarwal, former co-chairman of FIDC. FIDC is now to send a revised representation to the Committee based on the discussion with the committee and in the format required, he added. Mr. T T Srinivasaraghavan, former chairman suggested that FIDC should seek appointment with CBDT Chairman and members for all direct tax issues of NBFC sector.

NBFC Seminar at Mumbai and Delhi

FIDC, as proposed by the co-chairman Mr. Alok Sondhi, will organise high profile NBFC seminar to create positive climate for NBFC Sector. Mahesh Thakkar, director general will work on organising two such seminars, one in Mumbai and the other in Delhi in the current financial year, with the help of apex associations and chambers.

Re-appointment of Chairman and Co-chairman of FIDC

Mr. R Sridhar is reappointed as chairman and Mr. Alok Sondhi as co-chairman of FIDC for the further period of 1 year till the conclusion of next annual general meeting.



R. Sridhar
Chairman, FIDC
Managing Director,
Shriram Capital Ltd.



Alok Sondhi
Co-Chairman, FIDC
Managing Director,
Punjab Kashmir
Finance Ltd.

**FIDC
In
Action**

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Suggestions and feed-back

We would appreciate your views, suggestions and feed-back to make the 'FIDC News' more useful and illuminating. Your inputs and contributions too are welcome on : fidcnews@gmail.com

- Editorial Committee

