FIDC NEWS

Finance Industry Development Council

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

VOLUME – 7 NO. – 2 | July-September – 2015 | FOR PRIVATE CIRCULATION

Raman Aggarwal
Chairman, FIDC

Dear Friends,

FIDC to work for the resolution of issues facing the NBFC sector

The world economy is passing through turbulent times. Just as the Greek crises ended, came the news of devaluation of Chinese currency and the slowdown in one of the fastest growing economies of the world. This had a ripple effect on the global stock markets including India. At the same time there has been a great dynamism shown by the Indian govt., specially the prime minister, in not only engaging with developed economies with a greater zeal but also urging upon the domestic corporates to seize this opportunity and work towards taking Indian economy to greater heights. The NBFC sector as always has shown tremendous promise to the extent that a recent study done by one of the leading rating agencies, shows that some of the NBFCs have over taken some of the scheduled commercial banks in terms of the overall size of their balance sheet.

It is at this interesting juncture that I have been given the responsibility to take charge of FIDC, which due to the vast experience and selfless efforts of my predecessors, is today the recognized face of the NBFC sector, especially those engaged in asset financing. A great thinker had once said that 21st century is an era of inter dependence and this shall be the key to our future efforts. On the one hand we shall proactively engage with the regulator and the governments both at the centre and state, and on the other hand build strong and ever lasting relationships with other trade bodies like Society of Indian Automobile Manufactures [SIAM], Indian Construction Equipment Manufacturers Association [ICEMA], Indian Banks Association [IBA] and All India Motor Transport Congress [AIMTC]. Affiliation and active participation with the leading chambers of commerce like ASSOCHAM, Federation of Indian Chambers of Commerce & Industry [FICCI], Confederation of Indian Industry [CII] and Indian Merchants Chamber [IMC] shall also be our priority. For this, I seek the blessings of the stalwarts of the sector and the whole hearted cooperation of fellow financiers. We at FIDC remain committed to work for the resolution of issues facing the sector, specially the small and medium sized NBFCs, because we believe that “Small is indeed beautiful”.

Finally, on the pious occasion Ganesh Chaturthi, I pray to Lord Ganesha to bless you all with “Riddhi and Siddhi”.

Raman Aggarwal, Chairman, FIDC

REGULATORY PERIMETER

RBI NOTIFICATIONS & CIRCULARS :

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/2015-2016/108; DNBR (PD) CC No. 051/03.10.119/2015-16; 01.7.2015; All NBFCs, Miscellaneous MNBCs, and RNBCs

Master Circular - Miscellaneous Instructions to all Non-Banking Financial Companies : RBI/2015-2016/107; DNBR (PD) CC. No. 056/03.10.119/2015-16; 01.7.2015; All NBFCs

Master Circular - Returns to be submitted by NBFCs : RBI/2015-2016/87; DNBS.IT.CC.No.01/24.01.191/2015-16; 01.7.2015; All NBFCs (Excluding RNBCs)

Master Circular - Capital Adequacy Standards and Risk Management Guidelines for Standalone Primary Dealers : RBI/2015-2016/106; DNBR (PD) CC. No.062/03.10.119/2015-16; 01.7.2015; All Standalone Primary Dealers

Master Circular – Prudential Guidelines for the Primary Dealers in Government Securities Market : RBI/2015-2016/105; DNBR (PD) CC. No. 063/03.10.119/2015-16; 01.7.2015; All Primary Dealers

Notification as amended up to June 30, 2015 - The Securitisation Companies and Reconstruction Companies

AT A GLANCE

- FIDC to work for the resolution of issues facing the NBFC sector ...Raman Aggarwal, Chairman, FIDC 1
- Regulatory Perimeter 1
- National Summit on Small Business Financing Through MUDRA Bank 3
- Securitisation in India : Ambling Down or Revving up? .....R Gandhi, Dy. Gov. RBI 4
- Leading NBFCs are bigger than many PSBs ....Krishna Kant 6
- Moves 7
- FIDC has become a power to reckon with ..... V S N Murty, Retd. CGM, RBI 7
- Legal Eagle 8
- SEBI Moves 9
- Periscope 10
- RBI’s Regulatory and Supervisory Agenda for NBFCs ....Mahesh Thakkar, D G, FIDC 11
- Performance of Non-Government Non-Banking Financial and Investment (NGNBF&I) Companies, 2013-14 11
- FIDC in Action 12

EDITORIAL COMMITTEE

- MR. RAMAN AGGARWAL ...Chairman, FIDC
- MR. ALOK SONDHI ... Co-Chairman
- MR. R. SRIDHAR
- MR. T. T. SRINIVASARAGHAVAN
- MR. MAHESH THAKKAR ... Director General
- MR. MUKESH GANDHI
- MR. SRINIVAS ACHARYA
- MR. N M MUKHI ... Editor

Infrastructure Equipment Finance

www.srei.com

- Industry leader in infrastructure and construction equipment financing with 30% market share.
- Partnered and financed over 58,000 customers.
- Asset under management of over ₹ 18,600 crore*.

*as on June 30, 2015

(Reserve Bank) Guidelines and Directions, 2003 : RBI/2015-2016/94; DNBR.(PD).CC.No. 03/SCRC/26.03.001/2015-16;01.7.2015

Notification as Amended up to June 30, 2015 - Change in or Take Over of the Management of the Business of the Borrower by Securitisation Companies and Reconstruction Companies (Reserve Bank) Guidelines, 2010 : RBI/2015-2016/93; DNBR(PD)CC.No.04./SCRC/26.03.001/2015-16; 01.7.2015

Notification as amended upto June 30, 2015 - "Mortgage Guarantee Companies (Reserve Bank) Guidelines, 2008" on Registration and Operations of Mortgage Guarantee Company: RBI/2015-2016/73; DNBR.(PD-MGC).C.C.No.03/23.11.001/2015-16; 01.7.2015; The Chairman / CEOs of All Mortgage Guarantee Companies

Notification as Amended up to June 30, 2015 'Mortgage Guarantee Companies Investment (Reserve Bank) Directions, 2008' : RBI/2015-2016/72; DNBR.(PD-MGC).C.C.No.02/23.11.001/2015-16; 01.7.2015; The Chairman / CEOs of All Mortgage Guarantee Companies

Notification as amended up to June 30, 2015 - "Mortgage Guarantee Companies Prudential Norms (Reserve Bank) Directions, 2008" : RBI/2015-2016/71; DNBR.(PD-MGC). C.C. No. 01/ 23.11.001/2015-16; 01.7.2015; The Chairman / CEOs of All Mortgage Guarantee Companies

Master Circulars- Miscellaneous Instructions to NBFC- ND-SI: RBI/2015-2016/28; DNBR (PD) CC.No.055/03.10.119/2015-16; 01.7.2015; All NBFCs

Master Circular – The Non-Banking Financial Company - Factors (Reserve Bank) Directions, 2012 : RBI/2015-2016/27; DNBR (PD) CC.No.049/03.10.119/2015-16; 01.7.2015; All NBFCs

Master Circular– Requirement for Obtaining Prior Approval of RBI in Cases of Acquisition / Transfer of Control of NBFCs: RBI/2015-2016/26; DNBR (PD) CC. No. 061 / 03.10.119 /2015-16; 01.7.2015; All NBFCs (except Primary dealers)

Master Circular– Regulatory Framework for Core Investment Companies (CICs) : RBI/2015-2016/25; DNBR (PD) CC. No. 048/ 03. 10. 119/2015-16; 01.7.2015; All Core Investment Companies

Master Circular – Opening of Branch/Subsidiary/Joint Venture/ Representative office or Undertaking Investment Abroad by NBFCs : RBI/2015-2016/24; DNBR (PD) CC. No. 060/03.10.119/2015-16; 01.7.2015; All NBFCs

Master Circular – "Non-Systemically Important Non-Banking Financial (Non-Deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank) Directions, 2015" : RBI/2015-2016/23; DNBR (PD) CC. No. 044/03.10.119/2015-16; 01.7.2015; All Non-Systemically Important Non-Deposit taking NBFCs

Master Circular – "Non-Banking Financial (Deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank) Directions, 2007" : RBI/2015-2016/22; DNBR (PD) CC. No. 045/03.10.119/2015-16; (As amended up to July 06, 2015); 01.7.2015; All Deposit Taking NBFCs and RNBCs

Master Circular – "Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 1998" : RBI/2015-2016/21; DNBR (PD) CC. No. 042/03.10.119/2015-16; 01.7.2015; All NBFCs (except RNBCs and MNBCs)

Master Circular- 'Non-Banking Financial Company-Micro Finance Institutions' (NBFC-MFIs) – Directions : RBI/2015-2016/20; DNBR (PD) CC.No.047/03.10.119/2015-16; 01.7.2015; All NBFCs (excluding RNBCs)

Master Circular – "Miscellaneous Non-Banking Companies (Reserve Bank) Directions, 1977": RBI/2015-2016/19; DNBR (PD) CC.No.050/03.10.119/2015-16; 01.7.2015; All MNBCs

Master Circular – "Infrastructure Debt Fund-Non-Banking Financial Companies (Reserve Bank) Directions, 2011": RBI/ 2015-2016/18; DNBR (PD) CC.No.046/03.10.119/2015-16; 01.7.2015; All NBFCs

Master Circular – Frauds – Future approach towards monitoring of frauds in NBFCs : RBI/2015-2016/17; DNBR (PD) CC.No.058/03.10.119/2015-16; 01.7.2015; All Deposit taking NBFCs (including RNBCs) and NBFCs-ND-SI

Master Circular - Fair Practices Code : RBI/2015-2016/16; DNBR (PD) CC.No.054/03.10.119/2015-16; 01.7.2015; All NBFCs and RNBCs

Master Circular- Exemptions from the provisions of RBI Act, 1934 : RBI/2015-2016/15; DNBR (PD) CC.No.052/03.10.119/2015-16; 01.7.2015: (i) The Secretary, Ministry of Finance (ii) The Chairman, Securities and Exchange Board of India (iii) President of the Institute of Chartered Accountants of India (iv) President of the Institute of Company Secretaries of India (v) Associations of NBFCs (vi) All NBFCs

Master Circular - Allied activities- Entry into insurance business, issue of credit card and marketing and distribution of certain products : RBI/2015-2016/14; DNBR (PD) CC. No. 059/ 03. 10. 119/2015-16; 01.7.2015; All NBFCs

Master Circular – "Systemically Important Non-Banking Financial (Non-Deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank) Directions, 2015" : RBI/2015-2016/13; DNBR (PD) CC. No.043/03.10.119/2015-16 (As amended up to July 06, 2015); 01.7.2015; All Systemically Important Non-Deposit taking NBFCs

Master Circular – "Non-Banking Financial Companies – Corporate Governance (Reserve Bank) Directions, 2015" : RBI/2015-2016/12; DNBR (PD) CC.No.053/03.10.119/2015-16; 01.7.2015; All NBFCs

Master Circular – Non-Banking Financial Companies Auditor's Report (Reserve Bank) Directions, 2008 : RBI/2015-2016/11; DNBR (PD) CC.No.057/03.10.119/2015-16; 01.7.2015: 1. All NBFCs [Excluding RNBCs] 2. The President, Institute of Chartered Accountants of India

Requirement for obtaining prior approval of RBI in cases of acquisition/ transfer of control of Non-Banking Financial Companies (NBFCs): RBI/2015-2016/122; DNBR (PD) CC.No. 065/03.10.001/2015-16; 09.7.2015; All NBFCs (excluding Primary Dealers)

Early Recognition of Financial Distress, Prompt Steps for Resolution and Fair Recovery for Lenders: Framework for Revitalising Distressed Assets in the Economy - Review of the Guidelines on Joint Lenders' Forum (JLF) and Corrective Action Plan (CAP) : RBI/2015-2016/137; DNBR. CC. PD. No .066/ 03. 10. 01/2015-16; 23.7.2015; All NBFCs

Review of Guidelines on Restructuring of Advances by NBFCs: RBI/2015-2016/144; DNBR.CO.PD.No. 067/03.10.01/2015-16; 30.7.2015; All NBFCs excluding Primary Dealers

NBFCs must get RBI nod for acquisition, transfer of control

The RBI on July 9 said that in cases of acquisition/ transfer of control of NBFCs, parties to the transaction will need to give prior public notice and seek its approval. According to an RBI notification, NBFCs will have to give public notice at least 30 days before effecting the sale or transfer of ownership through sale of shares, or transfer of control with or without sale of shares. Such notice will be given by the NBFC and also by the other party or parties concerned after obtaining RBI permission. The public notice, according to the RBI, has to indicate the intention to sell or transfer ownership, the particulars of the transferee and the reasons for doing so. However, nod not required if shareholding exceeds 26% due to buyback, capital reduction but it is required to be reported to the Reserve Bank not later than one month from its occurrence. [Business Line, July 9]

RBI further eases project loan recast norms for NBFCs

The move will help revive the stalled projects in the economy as NBFC like IL&FS lend for projects. For the lender, classification as a standard asset helps in lower provisioning. The Reserve Bank on July 30 allowed non-bank lenders to retain the 'standard asset' tag on a restructured loan for an extended period if an infrastructure project is mired in court cases or has been stuck due to reasons beyond the control of promoters. The move will help revive the stalled projects in the economy as NBFC like IL&FS lend for projects.

For the lender, classification as a standard asset helps in lower provisioning. [CNBC/PTI, Jul 31]

RBI to allow new kind of NBFC as account aggregator: Rajan

RBI will put in place a regulatory framework to allow a new kind of NBFC which could act as account aggregator, Governor Raghuram Rajan told reporters after the central bank's board meeting held on July 2. The new NBFC would "enable the common man to see all his accounts across financial institutions in a common format", Rajan said.

"Today if a customer wants to know complete view he has to access each individual's website of each individual bank, each mutual fund, each insurance... Here at one go, he can get. It is facilitating the customer to have an immediate view," the Governor said. The idea of such an NBFC had emanated from the Financial Stability and Development Council (FSDC), RBI said in a release. [DNA/PTI, 2 July]

MFIs dominate small finance bank licenses

Reserve Bank on Sept. 16 granted small finance bank licenses to 10 entities, eight of which are microfinance institutions. RBI had received 72 applications for license. Corporate houses and NBFCs that are backed by business houses were not eligible to apply. Going forward, RBI said, "It intends to use the learning from this licensing round and will revise the guidelines and move to giving licenses more regularly, that is, virtually on tap". [BS Reporter, Sept. 17]

RBI grants in-principle nod for 11 payments banks

The Reserve Bank on 19 August granted 'in-principle' approval to 11 entities [out of 41], including Reliance Industries, Aditya Birla Nuvo, Vodafone and Airtel, to set up payments banks and proposed such licenses 'on tap' in future. The other entities which have been given 'in-principle' approval are Department of Posts, Cholamandalam Distribution Services, Tech Mahindra, National Securities Depository Limited (NSDL), Fino PayTech, Sun Pharma's Dilip Shantilal Shanghvi and PayTM's Vijay Shekhar Sharma.

"The 'in-principle' approval granted will be valid for a period of 18 months, during which time the applicants have to comply with the requirements under the guidelines and fulfil the other conditions as may be stipulated by the Reserve Bank," RBI said in a statement. [Hindu, Aug 19]

FIDC welcomes RBI's draft framework on ECBs

The FIDC has hailed the RBI proposal to allow NBFC-AFCs to use ECB funds for financing of all infrastructure equipment (both domestic and foreign). This proposal, which formed part of the draft framework on ECBs released on Sept 23, will boost NBFC-AFCs investment in infrastructure, Raman Aggarwal, newly elected Chairman of FIDC told Business Line.

The draft framework allows NBFC-AFCs to use ECB funds to not only finance foreign infrastructure equipment imported into India, but also domestically manufactured equipment. Current regulatory framework does not allow NBFC-AFCs to use ECB funds to finance domestic (locally manufactured) equipment.

The RBI's draft framework also allows NBFC-AFCs to use ECB funds to undertake all forms of financing. As on date, the only permitted mode of financing is 'leasing'. The proposal now is to allow all forms including hire purchase, loans against hypothecation. Mr. Aggarwal said that the RBI's draft framework has in a way justified the central bank's move of July 2013 allowing NBFC-AFCs to avail ECBs under the automatic route. The draft framework is also in line with the recommendations of the Sahoo Panel report on ECB, he said.

FIDC had last year written to RBI Governor that the restriction on use of ECB funds for financing only imported equipment was "imprudent" and "highly restrictive". It had pointed out that majority of infrastructure equipment are sourced locally and not imported. Majority of the leading infrastructure equipment manufacturers of the world have set base in India either directly or through a joint venture with domestic partner, FIDC had then said. [Business Line, Sept. 25] ■

National Summit on Small Business Financing Through MUDRA Bank – The Way Forward

Organised by ASSOCHAM & FIDC
at New Delhi on July 3, 2015, Inaugural Session of Summit

MUDRA Bill likely to be in parliament in winter session: CEO, MUDRA Bank

A bill towards MUDRA Bank is going to be introduced in winter session of the Parliament to make it operational, said Mr Jiji Mammen, CEO, MUDRA Bank at an ASSOCHAM event held in New Delhi on July 3. The drafting committee has been constituted and the draft bill is already prepared. A couple of rounds of discussion have also taken place but still in a drafting stage. We expect by winter session it could be placed in Parliament, said Mr Mammen while inaugurating a conference on 'National Summit on Small Business Financing Through MUDRA Bank – The Way Forward,' organised by The Associated Chambers of Commerce and Industry of India (ASSOCHAM) with Finance Industry Development Council [FIDC].

Dr Anup K. Pujari, Secretary, Ministry of Micro, Small & Medium Enterprises, said microfinance institutions (MFIs) sector is currently growing and the number of institutions providing micro finance services has gone up to several hundreds. MUDRA aims at addressing these challenges and creating an inclusive economic growth by supporting development and promotional activities in the sector.

Highlighting the accomplishments of Mudra Bank Mr. Mammen said that the scheme for financing, the policy and eligibility criteria for partners has been finalized. "We have already enrolled about 122 partners which includes around 73 banks, 25 microfinance institutions (MFIs), 23-24 non banking finance companies (NBFCs)", added Mr. Mammen.

"We are also in the process of constituting an Information Technology (IT) committee because IT platform is going to be the game changer. We are also in the process of processing the applications we have received around 12 applications from different institutions which are already partners. Around 15 banks have already executed their refinance agreement", said Mammen.

"Till now no loan disbursement has taken place but one proposal has been sanctioned", said MUDRA CEO at an event.

He further said, "Rs. 20,000 crore allocated for disbursement has not taken place. We have already got the allocation made by Reserve Bank of India (RBI) because this budget announcement has to be followed up with an allocation by the RBI that has already been done".

The Reserve Bank of India has allocated Rs. 20,000 crore and we have already received Rs. 5,000 crore. We are expecting to make the disbursement very soon, said Mr. Mammen.

We are working as an NBFC now therefore, facing some challenges on the exposure norms front etc which are different from a Development Financial Institution (DFI). These things need to be considered and RBI is considering some kind of an exemption for us.

He also said, Mudra card is a combination of bank and an MFI. It is a fusion of banking facility as well as MFIs so the borrower will get a better service, adds Mr. Mammen.

"I don't see any challenges at the moment because in the last three months we were in the process of setting up, putting systems in place. We have already short listed the partners and enrolled some of them", he said.

Asked when loan disbursement is likely to take place, Mr. Mammen said, that it should happen in a week's time because 15 banks have already signed General Refinance Agreement with them so any moment they can now approach us for refinancing. Similarly around 12 applications from MFIs and NBFCs are available with us one has already been sanctioned. He said, the first loan sanctioned is of around 30 crore.

Other who also spoke were Mr Surendra Nath Tripathi, Joint Secretary, Ministry of Micro, Small & Medium Enterprises, Mr C.D. Srinivasan, Chief General Manager, Reserve Bank of India (RBI), Mr Kavi Arora, M.D. & CEO, Religare Finvest Limited, Mr Amit Saxena, CEO & Wholetime Director, Karvey Financial Services Limited, Mr V.P. Nandakumar, M.D. & CEO, Manappuram Finance Limited, Mr Umesh Govind Revankar, M.D., Shriram Transport Finance Co. Limited, Mr Sankar Chakraborti, Chief Executive Officer, SMERA Rating Limited, Mr Mahesh Thakkar, Director General, Finance Industry Development Council (FIDC), Mr Raman Aggarwal, Co-Chairman, National Council on NBFCs and Mr D.S. Rawat, Secretary General, ASSOCHAM. [ASSOCHAM, July 03] ■

Securitisation in India: Ambling Down or Revving up?

R. Gandhi
Dy. Governor, RBI

"The appetite for Securitisation in India has been on the lower side; it is used largely to meet priority sector lending targets by banks as investors, NBFCs being the originators."

"NBFCs like the Asset Finance Companies (AFC) operating in the SME and Transport financing segments and Micro Finance Institutions (MFI) are very active as originators."

"SEBI is further examining the prospects of setting up a trading and reporting platform where all securitisation transactions will be reported and a central data repository will be available to the securitisation market participants."

Securitisation – Definition

Securitisation is the financial practice of pooling various types of contractual debt such as residential mortgages, commercial mortgages, auto loans or credit card debt obligations (or other non-debt assets which generate receivables) and selling their related cash flows to third party investors as securities, which may be described as bonds, pass-through securities, or collateralized debt obligations (CDOs). Securitisation diversifies credit markets as it breaks the process of lending and funding into several discrete steps, leading to specialisation and economies of scale.

Securitisation actually has two major stages. In the first stage there is sale of single asset or pooling and sale of pool of assets by the owner of the assets ("Originator") to a 'bankruptcy remote' special purpose vehicle ("SPV") in return for an immediate cash payment, and in the second stage repackaging and/or selling of the security interests representing claims on incoming cash flows from the asset or pool of assets to third party investors by issuance of tradable debt securities.

Thus in a nutshell, Securitisation is the process of taking an illiquid asset, or group of assets, and through financial engineering, transforming them into a security.

Early Regulation of Securitisation in India

There is no comprehensive single regulatory framework for the securitisation market *per se*. In effect, only the financial sector has a clear framework for participating in securitisation.

The recommendations of the High Level Committee on Corporate Debt and Securitisation (Chairman: Dr.R.H.Patil) in 2005 proved to be the turning point towards the development of the corporate debt and securitisation market.

The Reserve Bank accepted several of its recommendations and in February 2006, issued guidelines for securitisation of standard assets by Banks, FIs and NBFCs. These guidelines provided the regulatory framework for several critical aspects of securitisation.

In 2007, the Securities Contracts (Regulation) Act 1956 was amended in 2007 to include "securitised instruments" in the definition of "securities". The amendment has paved the way for listing and trading of securitised debt on stock exchanges.

Consequently, the Securities and Exchange Board of India (SEBI) released draft regulations for "Public Offer and Listing of Securitised Debt Instruments" in June 2007 which is yet to be formalised. However, these guidelines envisage a very different transaction structure compared to current market practices.

Earlier, the enactment of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interests Act, 2002 (SARFAESI Act 2002) enabled securitisation of the non-performing assets of Banks, which could sell off their NPAs to asset reconstruction companies registered with RBI. The SARFAESI Act also laid the framework to the constitution of asset reconstruction companies (ARCs) specialising in securitising distressed assets purchased from banks.

Role of the Reserve Bank of India in regulation of Securitisation

The Reserve Bank of India (RBI) is the regulator of the major players in the Indian financial system (banks, financial institutions and NBFCs) and has to ensure that financial intermediaries engage in Securitisation prudently.

The Reserve Bank issued the first set of comprehensive guidelines applicable to banks, financial institutions and non-banking financial companies (NBFCs) on Securitisation in India way back in February 2006. The guidelines covered following aspects relating to Securitisation transactions:

- Broad definitions on important securitisation related concepts such as securitisation, SPV, bankruptcy remote, credit enhancement, first loss facility, liquidity facilities, service provider and underwriting facilities.
- Prescribed detailed 'true sale' criteria and criteria to be met by originators and SPVs. Some important criteria included that originators should not indulge in market making on securities issued by SPV, originators shall not invest in more than 10% of securities issued by SPV, securities cannot have any put option, etc.
- Detailed policy for originators and third parties on provision of credit enhancements, liquidity support/ facilities, underwriting facilities, servicing arrangements, etc.
- Capital adequacy norms for Credit Enhancement - First loss credit enhancement is deducted from capital and second loss facility is risk weighted according to the rating. Credit enhancement cannot be withdrawn/ reduced by the provider throughout the life of the transaction except to cover the losses suffered by SPV.
- Prudential Norms for investment in the securities issued by SPVs.
- Accounting treatment for securitisation transactions - An important feature was that profit / premium arising on account of sale should be amortised over the life of the securities issued or to be issued by the SPV.
- Due diligence framework for securitisation transactions and disclosures to be made by the SPVs/ Trustee and originators.

Based on the lessons learnt from the global financial crisis on Securitisation and with a view to develop an orderly and healthy securitisation market, the RBI guidelines of February 2006 were reviewed and enhancements to the guidelines issued in May 2012. While the securitisation framework in India had been reasonably prudent, certain imprudent practices had reportedly developed like origination of loans with the sole intention of immediate securitisation and securitisation of tranches of project loans even before the total disbursement was complete, thereby passing on the project implementation risk to investors. In view of the same and in accordance with the on-going international work on Securitisation, another important objective of the enhancements was to ensure greater alignment of the interests of the originators and investors and retention of 'skin

in the game' by the originators. These guidelines also covered prudential treatment for transfer of assets through direct assignment of cash flows and underlying securities, if any. The important features of the May 2012 guidelines are as follows:

Prescription of the Minimum Holding Period (MHP): Minimum Holding Period varies from 3 months to 12 months depending upon the tenor of the loan and repayment frequency and is defined in terms of number of installments paid. The criteria governing determination of MHP reflect the need to ensure that i) the project implementation risk is not passed on to the investors and ii) a minimum recovery performance is demonstrated prior to securitisation to ensure better underwriting standards.

- Prescription of Minimum Retention Requirement (MRR) – 5 % for loans up to 24 months and 10% for loans of tenor beyond 24 months. The MRR is primarily designed to ensure that the originating banks have a continuing stake in the performance of securitised assets so as to ensure that they carry out proper due diligence of loans to be securitised.
- 'True sale criteria' made applicable to assignment transactions also.
- Liberalised recognition of cash profit received allowed in view of the mitigation of concerns on 'Originate to Distribute' models.
- Disclosures requirements were strengthened and due diligence expectations were elaborated.
- Stress testing requirements were laid for banks/FIs/ NBFCs in respect of their Securitisation positions. The factors for stress tests could include rise in default rates in the underlying portfolios in a situation of economic downturn, rise in pre-payment rates due to fall in rate of interest or rise in income levels of the borrowers leading to early redemption of exposures, fall in rating of the credit enhancers resulting in fall in market value of securities (Asset Backed Securities/ Mortgage Backed Securities) and drying of liquidity of the securities resulting in higher prudent valuation adjustments, etc.
- Outsourcing of credit decision is not allowed.
- In case of non-compliance with the guidelines, as applicable to originators, no capital relief will be available for originators. For investors, in case of non-compliance with guidelines as applicable to investors, the asset will be risk weighted at 1111% (revised to 1250% in March 2015).
- Certain forms of Securitisation transactions / structures are not allowed - Complex structures such as Re-Securitisation and Synthetic Securitisation is not allowed. Revolving credit facilities cannot be securitized / assigned. Single asset Securitisation are not allowed – as they do not fit into the definition of Securitisation. Securitisation / assignment of loans where both interest and principal are due only at maturity are not allowed – as it is not possible to assess the repayment track record.
- Credit enhancement is not allowed in case of assignment transactions – as the assignment deals are generally carried out among two financial institutions. It is expected that the purchasing institution will do its own due diligence while acquiring assets rather than relying on credit enhancement.

Indian Securitisation market and transaction volumes

The Indian market is still at a nascent stage driven as it is by the needs for meeting priority sector lending targets by banks. The band of originators and investors is narrow with NBFCs as the main originators and banks as investors. Public Sector Banks are mostly absent. Asset backed securitisation (ABS) is the largest securitisation class in India, driven by retail loan portfolio of banks. NBFCs like the Asset Finance Companies (AFC) operating in the SME and Transport financing segments and Micro Finance Institutions (MFI) are very active as originators. Though the market had begun since the year 2000, the GFC obviously has its repercussions in Indian market as well. It is reported that the Indian Securitisation market which reached a high of Rs. 63,730 crore by March 2008 dwindled down to Rs. 28,800 crore in by March 2014.

The micro finance companies play a larger role mainly due to their PSL underlying pools. Another positive development witnessed in recent years is the preference for multiple tranche products as against single tranche structures. Another encouraging factor is the preference for the lower rated senior tranches by the investors. It is reported that during the financial year 2014, the number of AAA ratings at initiation dropped from 45% in 2012 to 26%.

Insurance, Pension and Mutual Funds can play an important role in the Indian securitisation market as they can invest long term and at the same time have the risk appetite, capacity and expertise for taking exposures to the lower tranches. However, the Pension Funds are not allowed to invest in securitisation PTCs and Insurance companies are allowed to invest in high investment grade AAA securities only. MFs are still hesitant to invest in the securitised papers due to past pending court cases as well as lack of clarity on the tax implications for their investments. In the Finance Bill 2013, Mutual Funds were exempted from application of the Distribution Tax imposed on securitisation SPV's.

Low Appetite for Securitisation in Indian financial market

The appetite for Securitisation in India has been on the lower side; it is used largely to meet priority sector lending targets by banks as investors, NBFCs being the originators. This low appetite can be ascribed to several factors, including legal, taxation and stamp duty issues.

Recently, we undertook an informal and quick survey of the securitisation market in India. The primary objective was to assess the issues facing the market along with the reasons for poor take off in securitisation as a risk transfer and liquidity enhancing product. The sample survey included originators, investors, third party liquidity and credit enhancement providers, servicers and arrangers, SPVs / trustees, credit rating agencies, etc. The major issues highlighted by the participants related to disclosures, low demand for Long Tenor Receivables, lack of Investor base, absence of Secondary market besides the Taxation, Stamp Duty and Legal aspects including Foreclosure Laws.

The way forward – Ambling Down or Revving Up

Though significant progress has been made in reconfiguring Securitisation markets in the aftermath of the global financial crisis, the task of ensuring that these markets contribute to economic growth and financial stability is unfinished.

In this context, we must note that fingers are pointed at the regulatory framework itself. It is alleged that the regulations are conservative, and inhibit the growth of the segment. The restrictions on assignments, the prohibition of re-securitisation, the restrictions on the insurance and pension funds, the restrictive first-loss provisions, the restrictive credit enhancement provisions etc. are mentioned as impediments. With tax related disincentives driving away investors like Mutual funds, and even banks, the critics say the Indian Securitisation market can only be ambling forward.

I beg to differ. In my opinion, the Indian Securitisation Market is raring to go. Let me explain.

Firstly, the priority sector obligations will continue to be a good reason for securitisation. While the upcoming Priority Sector Lending Certificates (PSLC) can kind of dent the market, there will still be need for diversification of portfolios and hence the Securitisation will still have its place.

Secondly, the NBFCs, be they Asset Finance Companies specialising in SME financing or transport financing, or be they MFIs or Housing Finance Companies (HFC), their USP is their capacity to originate loans and advances in sectors where the main stream banks have least penetration. They have comparative advantage and to leverage that they will have good opportunities in resorting to Securitisation.

Thirdly, the new set of differentiated banks, the Small Finance Banks, whose major portfolio will be small loans, will resort to securitisation for diversifying their balance sheet. In all likelihood, they are unlikely to build capacity in large sized lending and will resort to build diversified portfolio of large credit through Securitisation.

Fourthly, given recent experience relating to the stress and non-performance of infrastructure finance and project finance, questions have been raised about the capacity of other than large banks in the credit appraisal of such large credits. This can compel these banks to participate in large infrastructure and project credits through Securitisation after the project has taken off, rather than participating through consortium or multiple banking arrangement before the cash flows have emanated.

For these to happen, there is a need for a change in the mind set and attitude of banks and financial institutions, including the NBFCs.

These institutions should reflect on the following questions:

- Are we good in originating or holding?
- Do we have deep pockets?
- Do we find value in continuous turning over, or in holding on without growth?
- For diversification, do we build our entire portfolio or acquire a part?
- Should we build capacity in all segments of credit or focus on the best suited?

They also need to be ready to let go. Primarily, they should be prepared to parcel out high quality cash flows and share the spoils of good cash flows.

We as regulators are ever ready to assist financial market development. As I understand, initiatives are underway by SEBI to formulate a detailed template mandating disclosure requirements covering granular details of all aspects of securitisation transactions / products. Similarly, SEBI is further examining the prospects of setting up a trading and reporting platform where all securitisation transactions will be reported and a central data repository will be available to the securitisation market participants. IRDA and PFRDA have been requested to look into their rules and regulations to facilitate long term investments by Insurance and Pension funds in securitised products. Reserve Bank will also review the guidelines on an ongoing basis.

[Extract from inaugural Speech delivered by Shri R. Gandhi, Deputy Governor, RBI at "India Securitisation Summit 2015" organized by National Institute of Securities Markets (NISM) on July 14, 2015 at Mumbai.]

• Leading NBFCs are bigger than many PSBs •

Likely to account for 17.1% of total credit by 2018-19, against 13.1% at the end of 2014-15

Krishna Kant

Non-banking finance companies (NBFCs) like Shriram Transport Finance and Bajaj Finance are slowly but steadily claiming the ground so far occupied by small and medium-sized public-sector banks like Oriental Bankof Commerce, Allahabad Bank, Andhra Bank and UCO Bank.

In 2008-09, Reliance Capital was the only NBFC whose balance sheet (net worth) size matched mid-sized state-run banks'. Today, three NBFCs' net worth exceeds $1 billion (Rs 6,400 crore). And the number will rise to five if housing finance companies like HDFC and Indiabulls Housing Finance are included. By comparison, net worth of 10 mid- and small- sized state-run banks is more than $1 billion. For example, Shriram Transport Finance's equity is now comparable with those of Corporation Bank and Andhra Bank, and more than those of Dena Bank, Vijaya Bankand Bank of Maharashtra. Government-owned banks, however, remain ahead of NBFCs in terms of total assets, including equity, deposits and advances.

Growing market Share of NBFCs

India Ratings expects NBFCs to account for 17.1 per cent of the total credit in the country by 2018-19, compared with 13.1 per cent at the end of 2014-15 and 9.4 per cent in 2005-06. Most of this growth is expected to be at the cost of government-owned banks, whose share is estimated to fall to an all-time low of 58.6 per cent by 2018-19 (against 64.5 per cent last year).

"Until a decade ago, NBFCs were marginal players with a small resource base. The equity of leading finance companies is now comparable with or larger than many mid-sized banks," says Ananda Bhoumik, senior director & head (financial institutions), India Ratings & Research, in a recent report on NBFC outlook in India.

The analysis is based on data for government-owned banks with assets of Rs 3 lakh crore or less at the end of March this year, and the country's top 10 listed general non-banking finance companies. It excludes housing loan companies like Indiabulls Housing Finance and HDFC and gold loan companies like Manappuram Finance and Muthoot Finance.

If stock markets are an indicator, it is a matter of time before NBFCs will become larger than most Tier-II and –III state-owned banks. The combined market capitalisation of the top 10 NBFCs (Rs 1.27 lakh crore) is now twice that of mid- and small-sized government banks (Rs 63,500 crore). This gives these NBFCs larger fundraising capacity than government-owned banks.

High growth rate of NBFCs

In the past six years, the combined net worth of top-10 non-specialised NBFCs has grown at a compound annual rate (CAGR) of 20.6 per cent, against the small and mid-sized government banks' 17.1 per cent. During this period, NBFCs' assets under management grew at a CAGR of 22.9 per cent, against the 15.3 per cent annualised growth seen by the government banks in the sample.

The average does not fully reflect the extent of growth seen by retail-focused NBFCs like Bajaj Finance, Mahindra Finance, Shriram City Union and Magma FinCorp. For example, Bajaj Finance's net worth has increased 4.4 times since 2008-09 while its assets have multiplied 12 times during this period, growing at a CAGR of 50 per cent. During this period, Mahindra Finance's net worth grew four times while its assets rose 5.6 times.

Rating agencies largely attribute it to the resource constraints faced by government-owned banks. "The internal accruals for government-owned banks have fallen sharply due to losses from bad loans and general fall in profitability. This has constrained their lending ability," adds Bhoumik of India Ratings.

It has opened up a large market for NBFCs. "There is a large opportunity out there but PSU banks can't meet the demand thanks to their legacy of bad loans and poor profitability. NBFCs are taking full advantage of the situation," says Karthik Srinivasan, Sr VP and co-head financial sector ratings at ICRA.

The trend is likely to continue as most banks credit growth ability is likely to be constrained by their Basel-III capital requirements.

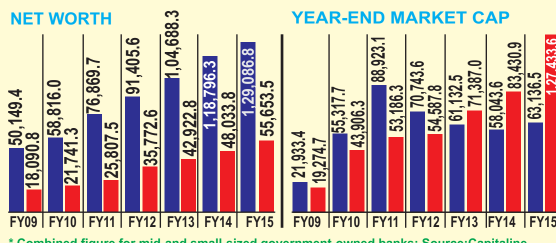
Most NBFCs are focused on a particular niche

India Ratings expects NBFC to account for 17.1 per cent of the total credit in the system by FY19 up from 13.1 per cent at the end of FY15 and 9.4 per cent in FY06. The biggest loser would be government owned banks whose share in overall credit may fall to an all-time low of 58.6 per cent by FY19 from 64.5 per cent last fiscal.

Analysts also attribute it to the niche business models followed by various NBFCs. "Unlike banks who service a whole range of customers, most NBFCs are focussed on a particular niche. It allows them to offer customised solutions and faster turnaround," says Dhananjay Sinha, head institutional research,

Financial Services

NBFCs also operate in customers segments that are not served by PSUs banks such as small & medium enterprises and self-employed. These segments offer higher yields allowing NBFCs to earn superior profit margins which they can leverage to grow even faster. [Business Standard, Aug. 3]

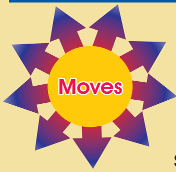


* Combined figure for mid-and small-sized government-owned banks; Source:Capitaline
Compiled by BS Research Bureau

REMARKABLE GROWTH OF NBFC SECTOR

The NBFC sector has scripted a story that is remarkable. It speaks to the truly diverse and entrepreneurial spirit of India. From large infrastructure financing to small microfinance, the sector has innovated over time and found ways to address the debt requirements of every segment of the economy…Over time, the sector has…evolved from being fragmented and informally governed to being well regulated and in many instances, adopted best practices in technology, innovation and risk management as well as governance.

Shinjini Kumar, Partner, Leader - Banking and Capital Markets , PWC



Centre to introduce comprehensive legislation to tackle Ponzi schemes

To curb the menace of ponzi schemes and prevent Saradha-like scams from occurring, the government plans to bring in a comprehensive legislation. At present, such fraudulent activities are dealt with under the SEBI law and State-level laws. "Work is on to prepare a draft of the new legislation," a senior Finance Ministry official told Business Line. Efforts are on to table the Bill by the next Budget Session of Parliament.

The proposed legislation appears to be an upgraded version of the earlier effort of amending the Prize Chits and Circulation Schemes (Banning) Act 1978. [Business Line, July 23]

Government plans bond guarantee entity with Rs 5,000-crore corpus to boost market

The government plans to set up a guarantor for corporate bonds in an initiative aimed at boosting the market for such debt instruments by giving comfort to investors. The proposed Bond Guarantee Corporation of India, which will have a net worth of around Rs 5,000 crore, is envisaged as a non-government entity with a 51% stake for the private sector. For a fee, it will underwrite bonds issued by both public and private sector companies in order to enhance their ratings to attract investments from insurers and pension funds that are mandated to park funds only in top tier paper.

The finance ministry has prepared a blueprint for setting up the company backed by government support. The finance ministry is also looking to rope in the Asian Development Bank as a partner. "The capital structure of the proposed firm will have 25% paid-up equity capital, of which government will hold less than 48% stake," the official said.

Both the government and the central bank have repeatedly expressed the need to deepen and widen the corporate bond market, which is dwarfed by public borrowing. As of March 2013, the corporate debt market accounted for 5.4% of the country's gross domestic product (GDP). The proposed firm will initially offer credit-enhancement products; under which partial guarantee support will be provided to boost ratings of long term bonds. [ET Bureau July 22]

New task force to curb illegal money pooling schemes

To crack down on black money being routed through illegal money pooling schemes, a joint task force of all financial regulators, including the RBI, IRDA, SEBI and PFRDA, is being set up to monitor all such schemes. At present, money pools of under Rs.100 crore are not scrutinised by SEBI. The latest move is aimed at preventing duping of investors by illegal collective investment schemes. According to SEBI sources, the proposal has been mooted under the aegis of the Financial Intelligence Unit — India (FIU-IND), the central agency responsible for receiving, processing, analysing and disseminating information relating to suspect financial transactions. "The idea is to set up a task force at the level of every financial regulator to identify and crack down on such illegal money pools, which, in turn, would get centralised at the level of FIU-IND," said an official. [Business Line, July 29]

Cabinet Clears Gold Bond, Monetisation Schemes

The Cabinet on Sept. 9 approved Gold Bond and Gold Monetisation schemes to reduce the metal's demand in physical form and fish out idle gold lying with households and other entities. The bonds will be issued in 2, 5 and 10 grams of gold or other denominations and the tenor of the bond could be for a minimum of 5-7 years so that it protects investors from medium-term volatility in gold prices, Finance Minister, Arun Jaitley said. The Gold Bond scheme will have an annual cap of 500 grams per person. Under this scheme instead of buying physical gold, Indian residents can buy the gold bonds, he added.

As regards the Gold Monetisation Scheme, the minister said people holding idle gold can deposit it in banks for either short, medium or long term. "This is not a black money immunity scheme and normal taxation laws would be applicable," Mr. Jaitley added. By taking advantage of gold monetisation scheme, people can deposit idle gold with authorised agencies and take advantage of the price escalation of gold as well as earn interest on the deposit, he said.

"The deposit tenure would be short, medium or long term and if the idle gold is deposited in banking system then at the time of redemption people can get the actual value of gold and physical gold can be obtained if it is a short-term deposit. Besides, people will also get the interest," Mr. Jaitley said. An official statement issued after the Cabinet meeting said that a Gold Reserve Fund will be created which will bear the risk of gold price changes. [Outlook, Sept 09]

Task Force on Financial Redressal Agency

The Government has set up a Task Force on Financial Redress Agency (FRA), as recommended by the Financial Sector Legislative Reforms Commission (FSLRC), on June 5, 2015, with the following Terms of Reference: Review the international best practices in consumer grievance redress, including ombudsmen and other dispute resolution mechanisms, with a focus on the financial sector. Review the present practices of management of financial consumer redress in India. Support the Ministry of Finance in procuring the services of competent consultant(s) to operationalise the FRA. Guide and monitor the consultant(s) in order to develop the design, business model, funding, financial controls, risk management plan, administrative plan, process manuals, information technology system and accountability and reporting mechanisms, etc. The Task Force will complete its task within one year. [ASSOCHAM Economic Weekly 26 July]

Will weed out bad elements in tax dept: Adhia

The new Revenue Secretary Hasmukh Adhia has listed ensuring preparedness for Goods & Services Tax (GST), bringing transparency in the tax administration, and curbing corrupt practices in the tax department as his top priorities. "Simplification of rules and procedures and transparency through use of technology will be the topmost items that will get my attention in the next few months. This would also mean that we would like to also identify certain bad elements in the department because of whom the department has got a bad name," Adhia said.

He also invited people to give their suggestions on taxation reforms and reforms required in procedures. He said taxpayers could get in touch with him on his personal e-mail. "I can assure everybody that even the whistleblowers can feel free to write to me. Only I open those e-mails. So people can be assured that the information will be very, very confidential and I'd like people to give me information about malpractices going on or even the suggestions which can improve the tax administration," he said. [Business Line, Sept 1]

FIDC has become a power to reckon with

V.S.N.Murty, Retd Chief General Manager, Reserve Bank of India

When I was heading the Department of Non-Banking Supervision, RBI, we had taken various Regulatory and Supervisory measures to strengthen the NBFC Sector and restore public confidence as it was recognized that this vital segment of the Indian Financial system was playing an important role in asset creation.

The period 1996-2000 was very crucial in the evolution of regulatory process to achieve the objective of consolidating this significant sector, safe guarding the depositors' interests as also ensuring the restoration of public confidence. Along with initiating various measures, had also pioneered the idea of consultation process with the Industry which resulted in the creation of Consultative Committee and the periodical meetings where constructive discussions were being held before taking any regulatory measures.

Another important area where I played a very vital role was the establishment of FIDC as a semi Regulatory Body by bringing together all the three Regional Associations and in affording recognition to it from RBI.I am extremely happy to observe that those measures initiated have helped in consolidating the sector, public confidence has been restored and FIDC has been functioning in the desired direction and to a great extent the avowed purpose of creating FIDC has been/is being achieved. Today FIDC has become a power to reckon with. I also would like to place on record the support extended by the NBFC Sector in general and the past and present Managing Committee members in particular in carrying out the most difficult task throughout the critical period.

V.S.N.Murty,
Retd Chief General Manager,
Reserve Bank of India

CBDT expresses concern over frivolous appeals

The Central Board of Direct Taxes (CBDT) has cautioned its field officers against making frivolous appeals, stating that “litigation” must be pursued only in “deserving cases”. In an internal communiqué addressed to the field officers, the CBDT Member (A&J) S K Ray expressed dismay that necessary due diligence and caution were not being exercised while preferring appeals. This was despite several earlier instructions on the matter. Roy also highlighted that courts were taking a “stern” view as far as the income-tax department’s actions on litigation matters were concerned.

Reacting to the CBDT move, Aseem Chawla, Partner, MPC Legal, a law firm, said it was noteworthy that the internal communique made a reference to a series of court and tribunal orders where the callous approach of the tax department was highlighted. What is important is sincere implementation in the spirit of such directive,” Chawla said. [Business Line, July 9]

Court leniency leads to arrears’

A court should not take too lenient a view when a company is apparently trying to avoid its obligations regarding payment of debts, the Supreme Court observed while allowing the appeal of Stantech Projects Engg Ltd against the judgment of the Calcutta High Court. “The high court has been inexplicably and unjustifiably considerate,” the Supreme Court stated and added: “It is this kind of leniency that results in proliferation and prolongation of litigation, which approach has led to an almost insurmountable pendency of litigation… The defaulting company has abused the judicial process in order to delay the discharge of an acknowledged debt for almost a quarter of a century, in which period it has continued in business.” The remarks came in the appeal in which Stantech had filed a winding up petition against Nicco Corporation Ltd alleging that it had failed to repay admitted debts. The high court accepted the submission of Nicco that a junior lawyer had mistakenly made certain concessions and therefore it should not be bound by it. The Supreme Court rejected the prayer and said that in fact the junior had “displayed legal sagacity” in getting the winding-up of the company postponed and obtaining leave to pay the debt in installments “to avoid certain commercial death.” [Business Standard, Aug.23]

Bounced cheque: Company need not be accused

In a case of bounced cheque, it is not necessary to complain specifically against the company if the managing director is the sole proprietor. It is enough if the MD alone is made the accused under the Negotiable Instruments Act; the Supreme Court stated in its judgment, Mainuddin Abdul Sattar vs Vijay Dalvi. The Bombay High Court view opposed to this was wrong and it was set aside by the apex court. In this case, real estate firm Salvi Infrastruture Ltd could not provide a flat to its customer, and the customer wanted the money back. The MD issued a cheque to discharge the liability but it was dishonoured by the bank, leading to a criminal complaint before the magistrate. He dismissed the complaint as the complaint was only against the MD and not against the firm. This view was upheld by the high court. The Supreme Court held that both the courts were wrong. There was no necessity for the payee to prove that the MD was in charge of the daily affairs of the company, by virtue of the position he held in this case. Therefore, he was ordered to be taken into custody immediately to undergo five months’ simple imprisonment. He was also asked to pay compensation which would be double the cheque amount with nine per cent simple interest. [Business Standard, July 26]

Cheque as security should not bounce

The Delhi High Court last week reversed the acquittal of two persons who deposited a cheque as security with a firm which conducted trading in shares on credit basis. When the cheque bounced, the firm filed complaint against the two persons. The Delhi magistrate acquitted them on the ground that the cheque was issued as security and not in discharge of any debt or liability as mentioned in the Negotiable Instruments Act. Moreover, when the cheque was handed over, there was no transaction between the parties. The firm appealed to the high court, and in the judgment, Credential Leasing & Credits Ltd vs Shruti Investments, the court held that the magistrate applied wrong principles to acquit the accused persons. It ruled that the debt or other liability need not be in existence on the date of issuance of the cheque, i.e. on the date of its delivery to the drawee on the date that the cheque bears. The only reference to time in Section 138 is the point of time when the cheque is returned unpaid by the drawer’s bank. The court also rejected the argument of the accused persons that as the cheque was issued as security in respect of a contingent liability, the complaint would not be maintainable. [Business Standard, July 5]

Refund not end of bank fraud trial

In a case of fraud against a bank, the accused person cannot get away by ‘settling’ the criminal complaint by repaying the amount involved, the Supreme Court stated in the judgment, Central Bureau of Investigation vs Maninder. The complaint was that the accused person opened a current account in the name of a firm with Punjab National Bank in Ludhiana and got an advance. Later, the vigilance officer of the bank found that the bill of lading produced by him was forged. Therefore, Maninder was arrested and criminal prosecution was launched against him under the penal code provisions and the Prevention of Corruption Act. He moved the Delhi high court claiming that he had settled the affair with the bank after paying the amount and, therefore, the complaint should be quashed. The court did so. Therefore, the CBI filed an appeal. Allowing the appeal, the Supreme Court stated the high court should not have exercised its discretion to quash the complaint without adequate reason. “In such economic offences, Court must not only keep in view that money has been paid to the bank which has been defrauded but also society at large. It is not a case of simple assault or a theft of a trivial amount; but the offence with which we are concerned is a well planned and was committed with a deliberate design with an eye of personal profit regardless of consequence to the society at large. To quash the proceeding merely on the ground that the accused has settled the amount with the bank would be a misplaced sympathy. If the prosecution against the economic offenders is not allowed to continue, the entire community is aggrieved,” it said. [Business Standard, Sept 6]

Cheque bounce cases: Cabinet gives nod for promulgation of an ordinance

The Union Cabinet on Sept. 16 gave its nod for promulgation of an ordinance to fast track resolution of cheque-bounce cases. The ordinance route is being pursued again as the Negotiable Instruments (amendment) Bill 2015—which was passed by the Lok Sabha in the first week of August—was yet to be discussed and approved by the Rajya Sabha. The earlier one was promulgated in mid-June.

Raman Aggarwal, chairman, who had discussion with the officials of Finance Ministry, said, “The new ordinance will have a retrospective effect and will be effective from the date the old ordinance lapsed.” The Negotiable Instruments (Amendment) Bill, 2015 which has already been passed by the Lok Sabha and is now pending in the Rajya Sabha is likely to be taken up in the winter session, he added.

Mahesh Thakkar, Director General, FIDC said “this is a big relief and a welcome development for all. FIDC was earlier asked to submit its views and suggestions on the matter and we had made a detailed representation on similar lines.”

295 obsolete laws face the axe in legal pruning

Continuing with the exercise of repealing obsolete Acts, the Cabinet on July 16 approved a Bill seeking to scrap a set of 295 obsolete Acts dealing with several issues, including changes in marriage laws and cement hoarding. The Repealing and Amending (Fourth) Bill, 2015, will be introduced in Lok Sabha for annulling 295 Acts, several of them over 30 years old, which have been declared as redundant by respective central ministries.

According to the data compiled by the Legislative Department of the Law Ministry, with the passage of two similar Bills in Parliament, 125 archaic laws have already been repealed. Another two Bills are pending parliamentary approval. Once these Bills are cleared, another 945 laws - including 758 Appropriation Acts - will be repealed. [Business Standard, July 17] ■

BSE fines 530 companies for delay in appointing women directors

The Bombay Stock Exchange (BSE) has slapped fines on 530 listed companies for failing to meet a deadline to appoint a women director and boost gender diversity in their boardrooms, a BSE official said on July 14. The SEBI last year imposed a quota of at least one female director on the board of every listed firm, and warned of "very serious" consequences if the thousands of companies did not comply by an April 1 deadline.

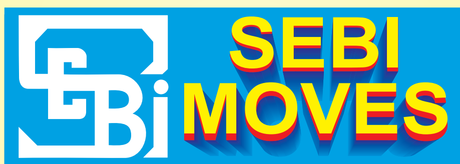
The National Stock Exchange (NSE) said it had also sent out letters informing 260 listed firms, many of which are also listed on the BSE, of its intention to levy fines. An NSE spokesman said SEBI could take further action against companies which had not paid up fines and appointed a woman director by Sept 30, 2015. [Financial Express, July 15]

Cabinet approves foreign investment in AIFs

To attract more overseas money into the country, the Union Cabinet on July 29 cleared a proposal allowing foreign entities to invest in Alternative Investment Funds (AIFs). The decision will help make available more funds to start-ups, early stage ventures, small and medium enterprises (SMEs), which are generally considered as high risk investments. [Financial Express/PTI, July 29]

Disclose details of associates, SEBI tells alternative investment funds

SEBI has clarified that alternative investment funds (AIFs) need to disclose details of all associates in which their sponsors, managers, directors or partners hold at least 15 per cent stake (either individually or collectively) in its information or placement memorandum. This is irrespective of whether such associates exist in India or abroad, SEBI said. Responding to the query raised by Peninsula Brookfield India Real Estate Fund, SEBI in an informal guidance note on July 14 said, the term associate would not apply to those entities where the interest is below 15 per cent. [Business Line, July 15]



FMC will come under SEBI ambit from Sept 28

The merger of commodity forward market regulator Forward Market Commission (FMC) with the capital market regulator, the SEBI will be effective from September 28. The government issued a notification on August 28, as a result of which Forward Contracts Regulation Act (FCRA) 1952 gets repealed and Regulation of Commodity Derivatives Market will shift to SEBI under Securities Contracts Regulation Act (SCRA) 1956 with effect from September 28. [Business Line, Sept 2]

Promoters, not investors should first feel the pinch: SEBI's U K Sinha

In a stern warning on non- compliance of rules by listed firms, regulator SEBI has said the promoters must face the penal action first and the trading suspension or delisting would be the last resort so as to safeguard the interest of investors. The assertion comes in the backdrop of trading having been suspended in shares of more than 1,000 companies for several years for various penal reasons, including for the non-compliance to listing rules.

Explaining further, the SEBI chief said that the first stage of any penal action must be to "hurt the promoter financially". "Therefore, we have provided under this SOP that you (promoter) cannot get your dividend. We put a ban on the promoter's economic interest. He cannot get dividend and he cannot sell shares. "Then we impose penalty on promoters, then on the management and after a series of other actions, ultimately comes the suspension," Sinha said. [Financial Express/PTI, Aug. 9]

With start-up listing norms, SEBI turns on the funding tap

The SEBI's move approving start-ups to list and raise capital from domestic markets through the Institutional Trading Platform (ITP) will not only open up fresh funding avenues for budding entrepreneurs, but will also discourage them from choosing alternate listing platforms like NASDAQ in the US and AIM in the UK.

Expanding the scope of the ITP for companies to raise funds, the SEBI said, "The said platform will be made accessible to companies which are intensive in their use of technology, information technology, intellectual property, data analytics, bio-technology, nano-technology to provide products, services or business platforms with substantial value addition and with at least 25 per cent of the pre-issue capital being held by qualified institutional buyers (QIBs)."

The lock-in period for the entire pre-issue capital will be 6 months for all shareholders. Only two categories of investors — institutional investors and non-institutional investors (NIIs) other than retail individual —investors can participate. The minimum application size will be Rs 10 lakh and minimum trading lot also will be Rs 10 lakh.

When an issue is listed, the broking house informs its customers about the same and then bids on behalf of its eligible customers who agree to participate. Since the issue is underwritten by investment bankers, the broking house gets the share allocation through the investment bankers. [Financial express, June 28]

SNIPETS:

Related party transactions : In case of related party transactions, SEBI has now eased the rules for listed companies allowing them to secure a simple majority [by passing ordinary resolution] instead of a three-fourth majority of disinterested shareholders when voting on such transactions.

Provide reasons for pledging shares : SEBI has directed promoters of companies to give reasons for pledging their shares when they disclose creation of a pledge/ encumbrance to stock exchanges. Promoters also have to include the name of the lender and the trustee who may hold shares directly.

Norms for municipal bonds : The SEBI brought out regulations on the issue and listing of debt securities by municipalities. According to the regulations, a municipality looking to issue debt should not have a negative net worth in the three immediately preceding financial years and the issuer should not have defaulted in repayment of debt securities or loans obtained from banks or financial institutions, during the last 365 days.

SEBI eases delisting norms : Making delisting norms easier, SEBI said promoters either will have to ensure that at least 25 per cent of minority shareholders participate in such a process or can demonstrate that the entire 100 per cent investors have been approached.

SEBI to review surveillance systems; fast-track enforcements: To further tighten its noose on manipulators and black money launderers in the stock markets, regulator SEBI will undertake a comprehensive review of its surveillance systems including with help from independent experts and also fast-track its enforcement actions.

Watch out for firms in foreign debt holes: SEBI to rating agencies

The SEBI has asked rating agencies to keep a close watch on companies with high foreign borrowings through instruments such as external commercial borrowings and foreign currency convertible bonds.. SEBI officials met senior officials of seven credit-rating agencies, following a spate of recent downgrades that have hit the Rs 13-lakh-crore domestic mutual fund sector.

Sources said SEBI also sought to know how much of their foreign-exchange exposure was hedged, as well as the impact of the recent rupee depreciation on them. [Business Standard, Sept 17]

Update website within 2 days for any new info: SEBI to cos

"The listed entity shall update any change in the content of its website within two working days from the date of such change in content," the SEBI said. The listed firms also need to ensure that the contents of the website are correct. The directive is a part of SEBI's new listing regulations, which have replaced the provisions contained in the erstwhile listing agreement. The earlier agreement required the listed companies to keep their websites updated, but was silent on periodicity of the updation of content. [Business Standard/PTI, Sept. 20]

E-tailing biggies rope in NBFCs to woo sellers with easy loans

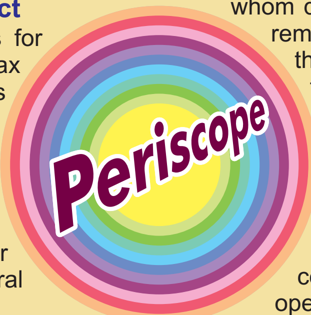
To encourage more sellers join their online channels, e-commerce majors, including Flipkart, Snapdeal, Amazon, eBay, are tying up with non-banking lenders for extending loans to those keen to sell products through these online marketplaces. Several new-age NBFCs like Capital Float, NeoGrowth and Capital First, as well as online finance companies such as Lendingkart and loan facilitators like SMEcorner, are teaming up with e-commerce players to offer sellers quick and hassle-free loans.

"Small businesses struggle to get loans. With e-commerce becoming more mainstream, it is encouraging several entrepreneurs to set up businesses online," SMEcorner's founder and Chief Executive Samir Bhatia told PTI. SMECorner has tied up with Snapdeal, Flipkart, eBay and Paytm, among other e-commerce players, to play a catalyst role to secure easier loans for sellers, he said. It has also partnered with several leading NBFCs.

Lendingkart, which recently raised $10 million from private equity funding, has also tied up with Flipkart, Snapdeal and Amazon to offer easier loans to sellers who want funds in excess of Rs 1,00,000. In May, the nation's largest lender, State Bank of India, also jumped on the bandwagon and tied up with Amazon India to help e-commerce sellers access loans.

Partnering with SMEcorner is expected to fulfil the funding needs of 50,000 sellers estimated to be listed on eBay. Both Flipkart and Amazon had stated earlier this year that they aimed to more than double the number of sellers on their platforms to 1,00,000 each by the end of the year, while Snapdeal had targeted to get 10,00,000 sellers on board over the next three years. [Business Standard, July 13]

FinMin notifies rules on foreign account tax Act



The Finance Ministry has come up with the rules for information reporting under the Foreign Account Tax Compliance Act (FATCA), spelling out the timelines and the entities have to comply with the new requirements. The new rules are significant as it also provides reporting timelines for OECD's Common Reporting Standard (CRS), which India signed on June 3 this year. CRS sets out a standard basis for automatic tax information exchange between member countries (OECD and G20) through respective bilateral tax treaties.

The Central Board of Direct Taxes (CBDT) move to notify the rules came just a month after India and the US signed a intergovernmental agreement (IGA) to implement FATCA with a view to promote transparency between the two countries on tax matters.

As per the IGA, Financial institutions in India will be required to report tax related information relating to U.S. account holders directly to the Indian Government, which will, in turn, relay that information to the U.S.A. The U.S.A. will provide similar information relating to Indian account holders in the U.S, although the exchange of information is not fully reciprocal at present. The exchange of information on an automatic basis is likely to begin by end of September 2015. The new FATCA rules—which run into 61 pages—prescribe the information to be maintained by the reporting financial institutions in India.

From a reporting entity perspective, the new CBDT rules provide several exclusions in respect of FATCA compliance. The categories of entities that are now excluded for FATCA compliance include Regional Rural Banks, Urban Cooperative Banks, State Cooperative Banks, Local Area Banks, Government pension fund for staff, Gratuity fund and Provident Funds. [Business Line, Aug 8]

India, US sign FATCA to curb tax evasion

Come September 30, India and the US will start sharing information about bank accounts or financial investments made by their citizens in each other's countries. This move will help curb offshore tax evasions. Both countries, on July 9, signed an Inter Governmental Agreement (IGA) to implement the Foreign Account Tax Compliance Act (FATCA) to promote transparency on tax matters.

Besides, FATCA India also signed multilateral agreement on June 3, which will enable automatic exchange of information on multilateral basis with about 92 countries or so starting 2017. Commenting on the new agreement, Bahroze Kamdin, Partner with Deloitte Haskins & Sells LLP, said that with new international agreements on FATCA and CRS (Common Reporting System), Indian financial institutions will be will be required to be geared up to exchange tax information of more than 60 countries.

Rakesh Nangia, Managing Partner of Nangia, said that now that the FATCA signing is out of the way, focus will now shift on the regulators such as the RBI, SEBI, etc., to expedite and issue the necessary guidelines for reporting. [Business Line, July 9]

T T Srinivasaraghvan and Members of the Managing Committee, FIDC welcome and greet Raman Aggarwal, New chairman of FIDC

As drivers log on to taxi aggregators, NBFCs spot lending opportunity

The exponential growth of taxi aggregators in the country has turned into a lucrative new business opportunities for banks and NBFCs for whom demand for loans for passenger cars have otherwise remained subdued. And to cash in on the demand for loans that are converting drivers into taxi-owners, the financiers are gearing up with new schemes and greater engagement with the operators that results in higher safety of loan repayments.

"Passenger commercial segment is now a big business opportunity for us. We are working with almost all taxi aggregators including Uber, Ola, Meru and others and getting closely engaged with the companies as well as the taxi-owners to ensure that the operators have greater financial discipline which helps us to bring down the risk associated with the loan, which in turn brings down the rate of interest that we charge," AK Bhattacharya, head, passenger commercial division of Shriram Transport Finance Co, told DNA. To make the loan disbursal convenient and hassle-free, the NBFCs are committing a processing time of a maximum two days. The taxi-aggregators are consistently sharing daily revenue and payment details of drivers in real time with the NBFCs so that the loans don't turn sticky. [DNA, 27 March]

SBI, ICICI Bank are too big to fail: RBI

The RBI on Aug. 31 designated State Bank of India (SBI) and ICICI Bank Ltd, the country's two largest lenders, as Domestic Systemically Important Banks (D-SIBs), meaning their collapse could have a cascading impact on the entire financial system and the economy. [LiveMint, Sept.1]

To go active by Dec, NIIF will work like a sovereign fund

The proposed Rs.20,000-crore National Investment and Infrastructure Fund (NIIF) is likely to be set up as a trust in which the government will contribute 49 per cent at most, with the rest of the funds coming in from long-term institutional investors, pension funds and sovereign wealth funds.

There could also be an intermediate company looking at day-to-day operations. Minister of State for Finance Jayant Sinha said it will be 'operational' by the end of this calendar year. The NIIF, which may take the role of a sovereign wealth fund, is being set up primarily to address the gap in equity financing of large-gestation, commercially viable infrastructure projects in the country. "This will not be a government entity. The NIIF will be an investment manager and put in equity in commercially viable infrastructure projects. It will not be a project management firm," [Business Line, July 31]

RBI's Regulatory and Supervisory Agenda for NBFCs and its likely impact

The RBI Annual Report for 2014-15 released on August 27 has the following key takeaways:

Agenda for 2014-15: Implementation Status [Para VI.46 & 47]:

Review of the Regulatory Framework for NBFCs

The NBFC sector has evolved considerably in terms of its size, operations, technological sophistication and entry into newer areas of financial services and products. Accordingly, the entire regulatory framework for the sector was reviewed with a view to transitioning, over time, to an activity-based regulation of NBFCs while ensuring that NBFCs having lower risk profiles will be lightly regulated.

Aligning NBFC Regulation

Aligning regulation of the non-banking financial sector with that of the banking sector not only fosters competition but also helps lower regulatory arbitrage and contain a possible buildup of systemic risks outside the banking system. Accordingly, a number of regulatory initiatives were undertaken covering lending by NBFCs against shares, restructuring of advances, structuring of long term project loans to infrastructure and core industries, levy of foreclosure charges and private placement of nonconvertible debentures.

1. NBFCs - Department of Non Banking Regulation (DNBR)

Agenda for 2015-16 [Para: VI.50]

The process of regulatory convergence between banks and non-banks will be taken forward in 2015-16. Further, activity based regulation is envisaged for the sector, thereby doing away with multiple categories of NBFCs. As a first step, NBFCs are being progressively classified into two broad heads - core investment companies and non - core investment companies. In addition, government owned NBFCs are being brought in within the regulatory ambit of the Reserve Bank.

2. NBFCs - Department of Non Banking Supervision (DNBS): [Para VI.63 & 64]

This department is the supervisory wing of NBFCs and it aims at establishing an enabling environment for a healthy and sound NBFC sector while protecting the interests of depositors, customers and other stakeholders as also safeguarding the country's financial system from contagion risks out of this sector. The department also endeavours to increase public awareness on the legal/ regulatory framework for entities engaged in various types of financial activities.

Agenda for 2014-15: Implementation Status

Deposit taking and systemically important' non-deposit taking NBFCs continued to be the focus of on-site inspections. During 2014-15, 72 deposit taking companies and 182 non-deposit taking companies were inspected.

Agenda for 2015-16: Para: [VI.66]

Small NBFCs which have so far been exempted from regulatory returns will be covered under off-site monitoring in 2015-16. For dissemination of information amongst SLCC members/ general public, a dedicated website will be launched in the coming year. CRILC information on large borrowers from NBFCs will be taken up for analysis once the platform is fully operationalised. The consultative approach followed by the department is proposed to be formalised to having periodical interactions with the industry in 2015-16.

3. Foreign Exchange Department (FED)

Agenda for 2015-16: [Para: V.31]

The task of simplifying the ECB guidelines is an ongoing process and the Reserve Bank will also take into account the recommendations of the Committee to Review the Framework of Access to Domestic and Overseas Capital Markets (Phase II, Part II: Foreign Currency Borrowing, Report III; Chairman: Shri M.S. Sahoo). Encouraged by the stabilisation of EDPMS, the Reserve Bank will initiate work on installing an import data processing and monitoring system (IDPMS) in coordination with the government agencies.

[The RBI has issued Draft ECB Framework on Sept. 23. See details on page-3 in item titled: FIDC welcomes RBI's draft framework on ECBs.] ■

MAHESH THAKKAR, Director General, FIDC

Performance of Non-Government Non-Banking Financial and Investment (NGNBF&I) Companies, 2013-14

The Reserve Bank on Sept. 9 released on its website the data related to the performance of NGNBF&I companies (including Chit fund/Kuri and Mutual Fund companies) for 2013-14. The data have been compiled based on audited annual accounts data of 18,225 companies, of which 17,636 companies' data are based on Ministry of Corporate Affairs (MCA) systems and remaining 589 companies' data are as collated by Department of Statistics and Information Management, RBI (not included in the select NGNBF&I of MCA), which closed their accounts during the period April 2013 to March 2014. The data draw a comparative picture over the three years period 2011-12 to 2013-14 based on a common set of companies.

Highlights:

Growth in financial income as well as total income, total expenditure, operating profit as well as net profit and total borrowings of the select 18,225 NGNBF&I declined during 2013-14. However, on the assets side, share of long-term loans and advances rose significantly during 2013-14.Performance details of various categories of NGNBF&I is summarized in the following table. It could be seen that income and net profit of Loan Finance companies and Asset Finance Companies have shown significant rise in F Y 2013-14 over previous year.

Performance of various categories of NBFCs in 2013-14 over previous year [Rs. in million]

Category	No.of Cos	Funds		Total Income	Net profit
		Internal*	Long term Borrowing		
All Activities					
2012-13	18225	564758	786190	1560777	248555
2013-14	18225	413613	529350	1774989	295993
Share trading & Inv. Holding					
2012-13	7862	86224	66182	284000	63233
2013-14	7862	84817	58457	303276	66166
Loan Finance					
2012-13	2646	140333	323034	605006	92545
2013-14	2646	183758	130530	700836	122251
Asset Finance					
2012-13	2995	65801	218938	269419	33518
2013-14	2995	53043	210345	313893	43569
Diversified					
2012-13	466	82136	13408	11673	-5336
2013-14	466	10372	10942	21726	1623
Miscellaneous					
2012-13	4256	190264	164628	390679	64595
2013-14	4256	81623	119075	435258	62384

*includes capital and reserves.

RBI press release further notes:

- The select NGNBF&I companies continued to rely mainly on external sources for funds in business expansion; however their share in total sources of funds declined marginally during 2013-14 as compared to the previous year.
- The share of funds mobilised through long-term borrowings by select NGNBF&I declined marginally to 34.9 per cent in 2013-14 from 35.3 per cent in the previous year. The funds were used predominantly for expanding their long-term loans portfolios.
- The share of long-term loans and advances extended by select NGNBF&I companies in total uses of funds increased significantly to 62.9 per cent in 2013-14 from 48.0 per cent recorded in 2012-13.

However, a turnaround is expected in the months ahead owing to improved macroeconomic conditions coupled with positive measures taken for unclogging stalled projects and timely implementation of supportive polices and reforms. [RBI Website / RBI Bulletin, Sept.2015] ■

Raman Aggarwal
New Chairman, FIDC

Mr. Raman Aggarwal is elected as the new Chairman of FIDC on Sept 19. He has more than 24 years of working experience in the NBFC sector and is currently working as Senior Vice President with **SREI Equipment Finance Ltd.**, which is a Joint Venture of SREI Infrastructure Finance with BNP Paribas Lease Group. He is one of the promoters of FIDC and was the Co-Chairman for the initial period of 6 years. He has been a member of the Key Advisory Group on NBFCs setup by Ministry of Finance and is currently the Co-Chairman of the National Council of NBFCs at ASSOCHAM.

Mr. Alok Sondhi

Mr. Alok Sondhi, Managing Director, Punjab Kashmir Finance Ltd, is re-elected as co-chairman of FIDC on 19 Sept. 2015 for the period of 1 year. Earlier, he was elected as co-chairman of FIDC on 20 September, 2011.

FIDC In Action

Creation of category of small NBFCs

FIDC has pleaded that all deposit- taking NBFCs be categorized into two categories viz.: (i) SMALL NBFCs: all NBFCs-D with NOF from Rs. 2 crores to Rs.10 crores, and (ii) LARGE NBFCs: all NBFCs-D with NOF above Rs. 10 crores. Prudential norms should be applicable to the Large Category NBFCs and small NBFCs category should be exempted from some of the requirements of prudential norms, on the lines of the norms prescribed for Non-Deposit Taking NBFCs (NBFCs-ND) with assets up to Rs.500 cr., as may be decided.

This was necessitated due to revised regulatory framework of November 10, 2014 making all prudential norms applicable to all deposit taking NBFCs [ND-SI] including small NBFC-D with NOF of even Rs. 2 crore. “Small NBFC-D cannot afford to comply with all these norms,” says Mahesh Thakkar, Director General, FIDC. This is very essential for the survival of small NBFCs and to make small entities easy to function, he added.

FIDC seeks exemption from state Money Lender’s Act under Mudra Bill

FIDC, in view of proposed bill for Mudra Bank being drafted which is likely to be tabled in the winter session of Parliament, submitted a representation to Mudra Bank on twin issues, i. e. to seek exemption from state Money Lender’s Act and to ensure that there is no overlap or duality in regulation of NBFCs.

Mr.Mahesh Thakkar, Director General, FIDC pointed out that “all NBFCs have to be mandatorily registered with RBI and are being regulated under Chapter III B of The RBI Act, 1934, many state governments have been asking NBFCs to get registered under The State Money Lenders' Act. This has resulted in lot of avoidable hardships and harassment of RBI registered NBFCs.” So, he suggested that “a clear provision stating that all RBI registered NBFCs are outside the purview of the State Money Lenders' Act, is made in the proposed bill on MUDRA.”

While currently all NBFCs (including NBFCs-MFIs) are registered and regulated by RBI under The RBI Act, 1934, MUDRA envisages recognising the whole category of institutions including NBFCs and MFIs as last mile financiers and they would be called “Small Business Finance Companies (SBFCs)” and these entities are proposed to be regulated by MUDRA. FIDC has, therefore, requested to ensure that there is no overlap or duality in regulation of NBFCs.

FIDC suggestions to the amendment to the Arbitration and Conciliation Act, 1996

FIDC took up with Law Commission some important suggestions for inclusion/exclusion of proposed amendments to the present Arbitration and Conciliation Act, 1996 which is undergoing welcome amendments with the main object of providing a fair, expeditious and cost-effective means of dispute resolution. FIDC in its representation made on June 26 said that “among various proposed significant amendments, certain amendments needed reconsideration.” FIDC suggested that the word “claims” be also included under section 7(1) of the amendment after the word “disputes,” as the arbitration clause in majority of the loan agreements includes claims also along with the disputes for adjudication through arbitration. More over a suitable clarification is also needed to be provided by way of explanation to section 7 or by way of adding a sub section, specifying that all disputes or claims as provided under section 7(1) includes disputes or claims arising out of mortgage, to overcome the effect of a recent judgment of the Apex Court which has held that ‘Mortgage claims are not arbitrable’

In respect of amended section 8(ii) conferring power on the judicial authority to decide the existence of the arbitration agreement or its validity would cause substantial delay in completion of the arbitral process. Upon the constructive reading of the explanation, the arbitrator is given power to decide his jurisdiction as a preliminary issue. FIDC, therefore, suggested to delete section 8(ii) and also the explanation.

Mahesh Thakkar, Director General, FIDC pleaded that “in view of the Apex Court judgment, it is to be clarified specifically that under section 36 that the award becomes decree after the time for making an application to set aside the arbitral award has expired or such application has been refused and having become decree, the award enjoys all privileges and advantages provided under any other enactments as applicable to decree.”

Issuance of notification giving coverage to NBFCs under the SARFAESI Act

Hon’ble Finance Minister Arun Jaitley in his Budget speech on 28 February, 2015 has announced that to bring parity in regulation of Non-Banking Financial Companies (NBFCs) with other financial institutions in matters relating to recovery, it is proposed that NBFCs registered with RBI and having asset size of Rs. 500 crore and above will be considered for notifications as ‘Financial Institution’ in terms of the SARFAESI Act, 2002.

But under the provision of Section 2(1)(m)(iv) such Notification shall cover all NBFCs rather than NBFCs having asset size of Rs. 500 crore and above as announced in the Budget. Raman Aggarwal, chairman, FIDC who followed up with the officials of Finance Ministry for issuance of Notification says, “Since this coverage is to a class or classes of NBFCs, as mentioned in 31A(1)(b), so 31A(2) has to be followed. As per 31A (2), the notification has to be laid before both the houses of Parliament for a period of 30 days, which may be in one or two sessions.”

He informed that ‘the Draft Notification has been laid in Rajya Sabha last week and was laid in Lok Sabha yesterday [i.e. July 27]’. The notification is likely to go to the Winter session also (since 30 days time is there), unless of course both the houses approve it with or without any amendment, he said.

VAT on sale of repossessed vehicle

Some states demand VAT on sale of repossessed vehicle although “in reality, there is no ‘Value addition’ done by NBFCs in such cases to make them pay ‘Value Addition Tax,” said Mr.T T Srinivasaraghvan, former, chairman of FIDC. ’Despite this fact, there are negative judgments from courts in this regard,’ he added. To deal with this issue it was decided by the Managing Committee, FIDC that Legal Committee and Representation Committee of FIDC will look into all aspects and suggest action plan.

FIDC pleads for softening terms of refinance by MUDRA Bank

FIDC in its representation to MUDRA Bank pleaded to soften terms of refinance especially for small NBFCs with portfolio of less than Rs. 500 crore. FIDC has asked to dispense/relax the external rating requirement and restrict the stipulation for clean track record of minimum 2 years with RBI for such NBFCs.

FIDC also suggested in respect of eligibility criteria and parameters for the Term Loan Assistance Scheme for larger NBFCs that the norm of NBFC being in business could be relaxed up to 3 years [in place of 5 years] by the respective sanctioning authorities based on merits. Upfront fee may be relaxed up to 0.50% or lower [in place of 1 %] by the Sanctioning Committee. Need based relaxation can be considered based on the merit for interest rates and external rating range of BBB+ and above. The repayment period may also be aligned with tenure of RIDF allocation allowed by RBI, not exceeding 4 years. ■

Published by :

Raman Aggarwal, Chairman
for and on behalf of
Finance Industry Development Council,
101/103, Sunflower, 1st Floor, Rajawadi Road No. 2,
Ghatkopar (East), Mumbai-400077, INDIA.
Phone : 91-2221027324 / 91 98200 35553
Director General : maheshthakkar45@yahoo.in
Website : www.fidcindia.org

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

Courtesy: Economic Times

I can't deliver him Ramrajya. But I owe him at least a low interest rate regime !

Printed by : Aditya Print Shop (Ph.) 079-26579959