FIDC NEWS

Finance Industry Development Council

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

VOLUME – 8 NO. – 3 | OCTOBER - DECEMBER – 2016 | FOR PRIVATE CIRCULATION

Why small finance faces a big wipeout

What the media and sundry pundits seem scarcely aware of is the carnage [due to demonetisation] occurring in the small-finance sector. This has low visibility, but is absolutely vital for financing the vast majority of small businesses, who have little or no access to the formal banking system. The financiers who reach these millions of small businesses are called non-banking finance companies (NBFCs). They range from big corporates like Bajaj Finance and Shriram Transport Finance to small microfinance institutions. They are able to reach grassroots businesses that banks cannot, and so play a vital but little-appreciated role in greasing the wheels of medium, small and micro enterprises.

Of India's 100 million shopkeepers, barely 2% have the machines to accept credit and debit cards: the rest are cash-based. Much the same is true of a horde of other small businesses, transporters and traders. These small folk have all suffered a sharp drop in business. Many are parts of value chains, starting from raw material producers and ending at the retail level. All are reeling under a shortage of currency notes. On the one hand, customers have reduced spending for want of currency notes. On the other hand, businesses do not garner enough currency notes to make cash repayments of loans. If their current problems last just a few weeks, they will recover. If the problems continue for two months, the damage will be substantial and could spark a mini-financial crisis among the small lenders that keep the economy moving.

NBFCs borrow from banks and lend to small businesses, using the last-mile reach that they have and banks do not. Lending institutions have only a little of their own capital, and borrow the rest, so they are fragile creatures that cannot afford significant defaults. Industrial businesses may be able to withstand significant defaults from customers and recover, because they have a substantial cushion of their own money, and are not so dependent on borrowings. But the capacity of banks and NBFCs to manage defaults is far less because they have small equity cushions and are heavily dependent on borrowed funds.

For lending institutions, loan defaults of 2% are normal; of 6% spell crisis; and of 10% spell potential bankruptcy. So, while most small businesses will survive a month or two of tribulations caused by demonetisation, defaults of no more than 10% can spell disaster for their financiers. Many small businesses cannot repay loans from NBFCs on time because of a drop in business. Many others want to repay but lack the currency notes to do so.

These are not actually defaulters. They are willing to pay but cannot because of bungled demonetisation. Yet the immediate impact on NBFCs is the same as willful default.

NBFCs are reporting a sharp spike in non-payments. One top transport finance company says that only 60% of normal payments are coming in. Some of the smallest microfinance loans, entailing a weekly repayment of a few hundred rupees, are being repaid because the women borrowers are able to garner notes worth Rs 300-400. But larger borrowers who need to repay installments of over Rs 1,000 say they cannot find the currency notes to do so.

The RBI lays down strict rules for finance companies, which have to classify loans overdue beyond a point as dubious or bad loans, and set aside money to cover the gap. If these set-asides are no more than one-eighth of all loans, that can wipe out the net worth of many finance companies. That in turn will mean a financial crisis for the small business sector.

The RBI must immediately relax its rules for financial provisioning, and create ample space and time for small businesses and small finance to recover. What look like defaults should be formally recognised as exceptional events arising out of demonetisation, not as inability to pay. Existing RBI rules will kill small finance, so an immediate relaxation of rules is essential.

SWAMINATHAN S ANKLESARIA AIYAR

PS: Soon after this forceful plea appeared in Times of India on 20th Nov. mercifully RBI came to rescue of lenders on very next day. See item on this page titled: "Lenders allowed more time to classify defaults as NPAs"

REGULATORY PERIMETER

RBI NOTIFICATIONS & CIRCULARS :

RBI NOTIFICATION/ CIRCULARS

Prudential Norms on Income Recognition, Asset Classification and Provisioning pertaining to Advances: RBI/2016-17/143 DBR. No. BP. BC. 37/ 21.04.048/2016-17; All Entities Regulated by the RBI

Compliance to provisions of Master Direction on Know Your Customer (KYC): RBI/2016-17/183 DBR. AML. BC. 48/14.01.01/2016-17; December 15, 2016 [All Regulated Entities]

Prudential Norms on Income Recognition, Asset Classification and Provisioning pertaining to Advances: RBI/2016-17/143 DBR .No. BP. BC. 37/ 21.04.048/2016-17, November 21, 2016; [All Entities Regulated by the RBI]

Lenders allowed more time to classify defaults as NPAs

The RBI on 21st Nov. said it would allow lenders more time to classify defaults as sub-standard owing to the government's decision to scrap high-value banknotes. The decision was taken following representations from the industry suggesting that small borrowers may need additional time to repay dues due to the cancellation of Rs 500 and Rs 1000 notes, said the RBI.

Scheduled commercial banks, cooperative banks, NBFCs and MFIs will

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The largest financer of Tata Vehicles

get an additional 60-day window for classifying stressed standard accounts as non-performing assets (NPAs), if the payments are due between 1 November and 31 December, according to a statement on RBI's website."The additional time given shall only apply to defer the classification of an existing standard asset as substandard and not for delaying the migration of an account across sub-categories of NPA," the statement said.

In its statement, RBI said the exemptions will be available to any running working capital limits available with banks where the sanctioned limit is Rs1 crore or less. Term loans of up to Rs. 1 crore, whether business or personal, secured or otherwise, on the books of any bank or any NBFC, including microfinance companies, would be covered under by this one-time scheme. This would also be applicable on home loans and agriculture loans up to that limit.

The move by RBI is likely to help over a third of the banking system loans. According to RBI data, 35% of the banking system's loans were given to customers where the individual outstanding loan is Rs1 crore or below.Loans extended by banks to micro-finance companies, NBFCs, housing finance companies and those extended by state cooperative banks to district cooperative banks, would also be covered under this rule.

In its guidelines, the regulator said that this is a short-term deferment and will not count as restructuring. Typically, when an account goes from standard to NPA in a bank's book, the lender has to set aside up to 15% of the outstanding amount as a provision. [Live Mint, Nov 22]

RBI Permits 100% Foreign Direct Investment In More Financial Services

The RBI permitted 100 percent foreign direct investment in 'Other Financial Services' carried out by NBFCs, a move which will help attract foreign capital into the country.

"On a review, in consultation with the Government of India, it has been decided to allow foreign investment up to 100 per cent under the automatic route in Other Financial Services," RBI said in a notification. Other Financial Services will include activities which are regulated by any financial sector regulator viz. RBI, SEBI, Insurance Regulatory and Development Authority, Pension Fund Regulatory and Development Authority, National Housing Bank or any other financial sector regulator as may be notified by the Government of India in this regard.

Such foreign investment would be subject to conditionalities, including minimum capitalisation norms, as specified by the concerned regulator or government agency, it said. The notification, however, did not specify the sectors which have been opened up for automatic route.

The present regulations on NBFCs stipulate that FDI would be allowed on automatic route for only 18 specified NBFC activities after fulfilling prescribed minimum capitalisation norms mentioned therein. [Bloomberg/ PTI, Oct. 22]

Loan recasts worth Rs 1 lakh cr fail since CDR cell inception in 2001; here's why

Aggregate loans recast loans worth Rs 1,00,542 crore have failed since the corporate debt restructuring cell (CDR) was set up in 2001. This follows the failure of eight recasts in July for an exposure of approximately Rs 3,000 crore.

Balasubramanian , Chairman of the CDR cell, said most packages fail because of promoters' inability to comply with the CDR provisions. "Among the main reasons for restructuring not working out are the inability of promoters to infuse the requisite equity capital within the defined period and non-compliance to CDR agreement in pledging shares in favour of the consortium of lenders," she said.

Restructuring schemes also often turn futile because promoters are unable to sell non-core assets to mobilise resources as promised.

Balasubramanian said while the moratorium is generally maintained at two years, lenders need to estimate when the company is able to start servicing its debt. "If a company can't generate sufficient cash flow even after five years of recast, then it is not viable to be recast," she said, adding that the moratorium is provided because stressed companies need a breather to ramp up production.

If the company's performance exceeds projections by 25% or more, the company is identified for a successful exit. But, if it fails to meet projections, it is declared a failure. In 2014, four other companies, with total debt obligation of Rs 14,000 crore that had been restructured to make it easier for them to repay loans, failed at the CDR cell. Once the asset is out of the CDR fold, banks have the option of either writing it off or keeping it on their books as NPAs. They can also sell the loan to an asset reconstruction company.

The RBI had allowed lenders to classify restructured accounts under the restructured-standard category till March 2015. However, from April, banks have been instructed to classify restructured accounts as NPAs, and given the continued financial strain across corporate India, chances are that NPA portfolios of some lenders could grow bigger.

The CDR cell did not receive any recast request in FY16. In FY15, the cell approved 54 cases worth Rs 72,560 crore for recast. [Financial Express, Sept. 21]

RBI eases norms for foreign investment in startups

RBI has eased norms for foreign investment in start-ups. The banking regulator said that any Foreign Venture Capital Investors (FVCI) which is registered under the SEBI Regulations can invest in equity or equity linked instrument or debt instrument issued by an Indian 'start-up' irrespective of the sector in which the start-up is engaged. They will not require any approval from RBI. [Business Standard, Oct. 20]

RBI issues guidelines for penalising payment systems and banks

The RBI has issued guidelines for penalising payment systems and banks under the Payments and Settlements Systems Act, 2007 (PSS Act). According to the RBI framework, the following types of offences will be considered for levy of penalty/fine:

· Contravention of provisions of the PSS Act.
· Non-compliance of directions or order made there under.
· Violations of terms and conditions of authorisation.

The payments systems and banks can be asked to hand over penalties between Rs.0.5 million and Rs.10 million. Further, no person can operate a payment system without RBI authorisation. Only stock exchanges are exempt from obtaining such authorisation.

As per the RBI, any violations of the guidelines will be considered as ground for penalties. The entity, on which a penalty has been levied, shall disclose the penalty in its Annual Financial Statements for the year in which the penalty was imposed. RBI shall also make the penalty levied public by disclosing the same on its website. In the event of non-payment of penalty/fine, the provisions of Section 8 of the PSS Act would be applicable and necessary action under PSS Act will be initiated accordingly. [RBI website, Notification Oct. 20, 2016]

RBI norms on one-time settlement for debt ridden sectors soon

In order to provide breather to construction sector, the Reserve Bank is likely to come out soon with detailed norms for one-time settlement of loans in line with the Cabinet decision. "The guidelines for one-time settlement scheme for stressed sectors are almost ready barring some fine-tuning. They should be out any moment" ,adding that it could have benefits in terms of relaxation in debt payment timelines or lowering of provisioning requirement, sources said.

Banks' exposure to the construction sector stands at over Rs 3 lakh crore, and 45 per cent or Rs 1.35 lakh crore of the loans are under stress. Overall, gross NPAs of the public sector banks have surged from 5.43 per cent (Rs 2.67 lakh crore) in 2014-15 to 9.32 per cent (Rs 4.76 lakh crore) in 2015-16.

There could be separate norms which could be with regard to relaxation of margin money requirement for bank guarantees for the construction sector, among other things, sources said. [Deccan Chronicle/ PTI, Nov 2]

RBI Notification on Large Exposures Framework for Banks

RBI on Dec. 1 issued a notification on above aspect notes following for bank exposures to NBFCs.

10.8 Exposure Ceilings proposed under LE Framework for NBFCs

(i) Exposures to NBFCs: Banks' exposures to a single NBFC will be restricted to 15 percent of their eligible capital base. However, based on the risk perception, more stringent exposure limits in respect of certain categories of NBFCs may be considered. (ii) Banks' exposures to a group of connected NBFCs or groups of connected counterparties having NBFCs in the group will be restricted to 25 percent of their Tier I Capital.

10.9 The above exposure limits are subject to all other instructions in relation to banks' exposures to NBFCs. [Source: RBI website]

Non-Banking Finance Companies (NBFCs) - Good Corporate Governance for Business Excellence

FIDC Finance Industry Development Council
Presented by: Raman Aggarwal, Chairman
Email : raman.aggarwal@srei.com

FIDC Chairman Mr. Raman Aggarwal recently attended 16th Annual Convention of Institute of Directors on Corporate Governance and Sustain ability in London from October 17-20, 2016. The Theme for the Session was "Good Corporate Governance for Business Excellence", whereat he made a presentation on "Non-Banking Finance Companies - Good Corporate Governance for Business Excellence", which was highly appreciated by all is placed here under:

FIDC Chairman Mr. Raman Aggarwal making presentation at 16th Annual Convention of Institute of Directors on Corporate Governance and Sustainability in London in October 2016.

NBFCs : Overview (As on March 31, 2016)

➤ No. of Deposit Taking NBFCs (NBFC – D)	=	202
➤ No. of Non-Deposit Taking NBFCs (NBFC – ND)		
• Asset Size <Rs. 500cr(5 Billion)	=	11,260
• Asset Size >= Rs. 500 cr (NBFC-ND-SI)	=	220
➤ **Total No. of NBFCs Registered with RBI**	=	**11,682**
➤ Net Profit (% age to total income)	=	18.3%
➤ Return on Assets (net Profit as %age of total assets)	=	2.2%
➤ Return on Equity (net profit as %age of equity)	=	10.6%
➤ Gross NPA (as %age of total advances)	=	4.6% (Banks 7.6%)
➤ Net NPA (as %age of total advances)	=	2.2% (Banks 4.6%)
➤ CRAR (minimum prescribed by RBI is 15%)	=	24.3% (Banks 13.2%)
➤ Growth on y-o-y basis	=	15.5%

NBFCs : Overview (As on March 31, 2016)

- Contribution of NBFCs to the total assets in the Indian financial system is 9%* (next to banks and Insurance companies and more than Mutual funds)
- Balance Sheets Size of 3 NBFCs Matches or Exceeds some of the Mid Size Public Sector Banks
- Study done by India Ratings & Research Pvt. Ltd :
  - NBFCs account for 13.1 % of total credit in 2014-15
  - Likely to increase to 17.1 % by 2018-19at the cost of Public Sector Banks
  - Combined Market Capitalization of Top 10 NBFCs is twice that of Mid and Small Sized PSBs
- In the last 6 years NBFCs AUM grew at 22.9% as against 15.3% of Public Sector Banks.

**AspertheFinancialStabilityReportdt.December2014*

Legal Frame Work

The Reserve Bank of India Act,1934
(As amended by Reserve Bank of India(Amendment)Act,1997)
- Chapter IIIB : Provisions Relating to Non-Banking Institutions Receiving Deposits and Financial Institutions
- Guidelines/Directions Issued By RBI

Why NBFCs?

- Successful track record of more than 80 years
- Key aspects of financial activity are well regulated (almost at par with banks):
  - Registration with the regulator
  - Minimum size (Net owned Fund)
  - Minimum Capital Adequacy Ratio
  - Prudential Norms on asset classification, income recognition & provisioning
  - Know Your Customer (KYC) & Anti Money Laundering Guidelines
  - Asset Liability Management Guidelines
  - Credit Concentration Norms
  - Maintenance of SLR
  - Code of Fair Business Practices
  - Corporate Governance
- Promote Financial Inclusion- providing credit to the "unbanked" segment
- Prevent concentration of credit risk in banks and compliment the banking services
- NPA levels have been lower than that for banks
- Small & Medium NBFCs are having a local/ regional presence (and the big NBFCs through their branches or franchisees) are well versed with the local conditions/requirements
- Provide tailor made services including counseling

How suitable are NBFCs for Promoting Financial Inclusion

	NBFCs
Reliability	High- 19 Yrs of regulations almost at par with banks
Affordablitiy	High- compared to MFIs &local money lenders
Accessibility	High- As they cater to unbanked segment in rural & semi urban areas
Flexibility	High - A balance between flexibility & low delinquencies maintained

NBFCs have all the key characteristics to achieve Financial Inclusion

Corporate Governance Norms For NBFCs as Prescribed By RBI Overview

- Applicable to NBFCs – D(Deposit Taking) & NBFCs –ND– SI(Non Deposit Taking Systemically Important)
- NBFCs to frame internal guidelines with the approval of the Board of Directors
- May enhance the scope of the guidelines without sacrificing the underlying spirit
- These guidelines to be published on the Companies' website for the information of various stakeholders
- In consonance with the Corporate Governance norms prescribed for banks
- Norms prescribed for NBFCs, in addition to those prescribed under The Companies Act, 2013

Constitution of Committees of the Board

- Audit Committee consisting of not less than 3 members of the Board
  - Same as required u/s177 of The Companies Act 2013
  - Shall have the same powers, functions ,duties as laid down u/s 177 of the Companies Act 2013
  - Must ensure Information System Audit of Internal Systems and Processes at least once in two years to asses operational risks
- Nomination Committee to ensure "Fit and Proper" status of proposed /existing Director
  - shall have the same power, functions and duties as laid down u/s 178 of The Companies Act 2013
- Risk Management Committee to manage the Integrated Risk
  - Besides the Asset Liability Management Committee

Fit & Proper Criteria – Applicable to ALL the Directors (Not only Independent Directors as per The Companies Act)

A Board approved policy for as certaining the Fit and Proper Criteria for the Directors at the time of appointment, and on a continuing process

- Guidelines issued for banks applied to NBFCs mutatis mutandis
- Due diligence to as certain the suitability of the person based on qualification, expertise, track record, integrity and others
- Due diligence to be undertaken at the time of appointment/ renewal of appointment
- Nomination Committee to scrutinise the declarations
- Nomination Committee shall decide on the acceptance or otherwise of the Directors
- A declaration from the Directors information provided, if any, to be March stating the change in the obtained annually as on 31st

- Obtain a declaration and undertaking from the Directors giving additional information in a prescribed format
- Obtain a Deed of Covenant signed by the Directors in a prescribed format
- Furnish a quarterly statement to RBI on change of Directors and a certificate from the Managing Director that Fit and Proper Criteria has been followed
- RBI reserves the right to examine the Fit and Proper Criteria of Directors of any NBFCs

Disclosure and Transparency–In Addition to those under The Companies Act

- To put up before the Board of Directors at regular intervals the following:
  - Progress made in putting in place a Progressive Risk Management System and Risk Management Policy & Strategy
  - Conformity with Corporate Governance standards
- To disclose the following in their Annual Financial Statements :
  - Registration / licence / authorisation obtained from other financial sector regulators
  - Ratings assigned by credit rating agencies & migration of ratings
  - Penalties, if any, levied by any regulator
  - Information namely, area, country of operation and joint venture partners with regard to joint ventures and overseas subsidiaries
  - Asset - Liability profile, extent of financing of parent company products, NPAs & movement of NPAs, details of all off-balance sheet exposures, structured products issued by them as also securitization / assignment11 transactions and other disclosures

Rotation of Partners of the Statutory Auditors Audit Firm–In Addition to the Provisions under The Companies Act

- The Companies Act, 2013 does not prescribe rotation of "partners"
- To rotate the partner/s of the Chartered Accountant Firm conducting the Audit
- Rotation to bed one every three years so that same partner does not conduct Audit continuously more than three years
- The partner so rotated shall be eligible for conducting the audit after an interval of three year
- To incorporate appropriate terms in the appointment letter of the auditors firm and ensure its compliance

NBFCs-Examples of Good Corporate Governance Good Corporate Governance Practices at SREI

- Board Information System(BIS) for meetings
- Smart phone application–"Srei Chanakyaa" - disseminates statutory alerts and significant happenings in regulations
- Web-based tracking of shareholders information through KARISMA, FINTRAKS (tracking of Insider share movement), INSTA-POLL (electronic voting onl-pads)

  Web based check - into attend AGM
  Web based Document Management System (DMS)
  "SREI Vishwas" (web based compliance tool)–IT enabled legal regulatory compliance support solution–one stop view of the company's compliances & control mechanisms through dashboards

Good Corporate Governance Practices in the NBFC Sector

- Some Leading NBFCs (including SREI) follow 90day over due norm for NPA classification (as against the prescribed norm of 180)
- Almost all the deposit taking NBFCs hold public deposits much below the permissible limits to diversify the portfolio
- Capital Adequacy Ratio is much above the minimum requirement of 15% -adequately capitalised
- FIDC Initiatives:
  - Playing the role of a Self Regulatory Organization (SRO) on a voluntary basis - Board gives equal representation to "big" and "small & medium" NBFCs
  - Co-Chairman has to be a representative of a "small & medium" NBFC
  - Code of Fair Business Practices prescribed and enforced on members (in addition to the one approved by their Board as per RBI norms)
  - "FIDC Handbook on Repossession"– A one of its kind document drafted and enforced to handle a sensitive issue like repossession
  - FIDC in consultation with members, suggested a scheme to RBI and GOI where NBFCs are ready to "voluntarily" get out of acceptance of public deposits, a key concern area for them

Chanakya's *Governance module (4th Century BC) is same as what we practice in Corporate Governance today He said: "In the happiness of the subject lies the benefit of the king and in what is beneficial to the subjects is his own benefit" (Directors should act in such a way so as to benefit the stakeholders, investors, institutions and others who work in the organization)* ■

Raman Aggarwal receiving the Golden Peacock Award for Innovation Management on behalf of Srei Equipment Finance Ltd. The award was presented by Hon. Baroness Sandip Verma (Former Minister in UK Govt for Energy & Climate Change and International Development) in the Presence of Mr. Stephen Haddrill (CEO, Financial Reporting Council, UK), Mr. Vijay Karia(CMD, Ravin Group) and Lt. Gen. J S Ahluwalia (President, Institute of Directors).

Truck Finance in Green Freight

DFAG spoke to Raman Aggarwal, Chairman of the Finance Industry Development Council (FIDC) and Senior Vice President SREI Equipment Finance Limited, to understand how commercial vehicle finance works in India and how the Non Banking Finance Company (NBFC) sector can impact Green Freight.

1. Give us an overview of the truck finance industry. How different are the operations of commercial banks and NBFCs in this space?

RA : Truck finance is perhaps the oldest form of asset backed retail lending in India. NBFCs have been the pioneers in this business and have been playing a very significant role for the last 7-8 decades. More than 95% of trucks sold in India are finance driven. One of the prime reasons for the success of truck financing has been the statutory support. The Motor Vehicles Act, 1988 is a unique legislation which recognizes the rights of the financier and has provisions to register the lien in favor of the financier.

NBFCs have been providing one window service right from advising on the selection of brand, assisting in the purchase, getting the vehicle insured, assisting in getting the vehicle repaired and ensuring speedy claims in case of any accident/ breakdown. The First Time Buyers (FTBs) who are mainly drivers are provided credit by NBFCs to become owners. “Flexibility” based on the borrower’s needs , without compromising on regulatory compliance, is the key to the operations of any NBFC.

2. Where do you see opportunities for green freight for the NBFCs?

Historically NBFCs have shown greater willingness and capacity to take risks. This results from the fact that NBFCs better understand the ground realities and the market dynamics across the asset class / brand of commercial vehicles and across different geographies. As such, any effort towards green freight movement is likely to present new opportunities to NBFCs for their future growth. Any change to green freight movement would entail changes in the vehicle machinery in order to run on cleaner / green fuels which in turn lead to “Retro Fitting “in used vehicles. Financing of used vehicles has been the bread and butter product for NBFCs over the years. A classic example is in complying with the Supreme Court order of fuel conversion to CNG in New Delhi, where NBFCs played an aggressive role in the uptake of CNG conversion kits.

3. What are the key challenges for NBFCs in this sector?

Often major policy decisions related to the emission norms, cleaner fuels and scrapping of old vehicles are taken without engaging financiers. It is imperative to recognise financiers as one of the important stakeholders in commercial vehicle business. One such example can be sited from the fact that NBFCs are not eligible to avail the services of VAHAN which is the National e-Register Of Vehicles.

As per the Central Motor Vehicle Rules, the lien in favour of the financer is not printed on the visual zone of the Smart Card Registration Certificate. This often leads to fraudulent sale purchase of vehicles without the financers consent.

Since 1998 all bank funding to NBFCs for on lending to priority sector, including Small Road Transport Operators (SRTOs), was considered as priority sector lending by banks. This provision has been withdrawn since 2011 which has affected fund raising by NBFCs from banks.

Repossession of vehicles in case of default is an integral part of vehicle financing. Some states have raised demands for the levy of VAT on sale of repossessed vehicles, which is imprudent

Rampant corruption in RTOs across the country has often led to the misuse and improper implementation of Section 51 of The Motors Vehicle Act

There is an urgent need for assigning differential risk weight to different asset classes financed by NBFCs based on studies done by professional agencies, which have assigned a lower risk rate to commercial vehicles. This shall enable NBFCs to leverage more and increase their capacity to lend.

4. Can the owner – driver and those who buy second hand vehicles, (almost 80% of the sector), gain access to green finance to help improve their profits?

As stated earlier, NBFCs, specially small and medium sized NBFCs are majorly into financing second hand commercial vehicles. It is therefore NBFCs, who take the first credit call on the First Time Buyers who are drivers. They help these driver turned owners in purchase, insurance, repairs and maintenance services of the vehicle. NBFCs are the first mainstream players to cater to the un-banked segment of the society which include drivers turned owners.

5. What should the government be doing to promote green freight uptake by the trucking industry? Are measures like truck ban helpful?

It is of prime importance that any move to promote green freight should involve all stakeholders including financiers. Shifting to green freight may often result in scrapping/ replacing old vehicles. This needs to be handled with extreme caution and sensitivity ensuring minimum discomfort and financial loss to the stakeholders. In order to do so, issues that need to be considered and planned in advance are easy availability of green fuel, training of the drivers, easy and affordable technology to convert old vehicles to run on cleaner fuels.

Further, incentives by way of replacement discounts/ subsidies, discounts in insurance premium and increased depreciation rates may be considered. Improving road conditions, timely completion of highway/ expressway construction projects and use of technology in use of tracking devices shall also be helpful. I have always believed that any blanket ban often results in throwing the baby with the bath water.

6. Where do you see the commercial vehicle industry evolving in the medium to long term? What new financial initiatives can be expected?

Today India is one the brightest spots in world economy. Large scale foreign investment has necessitated revamping and building state of the art highways and expressways. With this improvement in road conditions heavier vehicles having increased tonnage capacity shall be the order of the day. This shall be coupled with usage of light / ultra light commercial vehicles run on green fuel to provide the last mile connectivity.

One important aspect that is now becoming an integral part of freight movement is the drivers comfort. Efficiency of vehicles shall be increased by greater use of technology in tracking and toll collection. From the financier’s perspective, it is of prime importance that “leasing” is heavily promoted in India. World over leasing has been used as the most important tool for capital formation. Unfortunately leasing in India has heavily suffered due to imprudent taxation policies of the Government. This needs to be corrected immediately. Further a shift from “entity” based regulation to “activity” based regulation is urgently required to ensure level playing field for banks and NBFCs.

7. On the current topic of demonetization, how do you see its impacts on the industry?

The demonetization is a welcome move by the government. As we cater largely to the un banked sector, there would be some difficulties in the short term, such as loan repayment in old currencies, which we hope will be extended till 31 December 2016, to the NBFCs as well. Faster implementation will reduce the pain for common public. In the long term, there is a great potential with cashless transactions, provided the infrastructure and policies are in place. Banks have been asking that charges on cards, ATM usage be removed and instead incentives be provided. In South Korea, the government provides a 1% cash back for card usage. ■

A silent revolution has been sweeping the country.

It is about the payment systems in India. I said ‘silent revolution’. That is because, the payment systems have been evolving and changes have been continuous over the last 35 years, it has rarely got noticed as a revolutionary change. **R Gandhi, Dy. Governor, RBI**

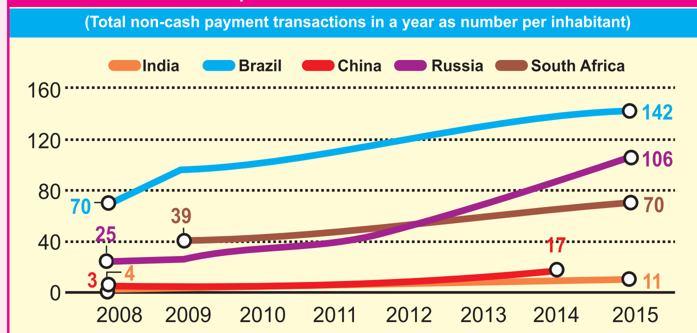
CASHLESS ECONOMY: INDIA HAS MILES TO GO

Bank for International Settlements data shows India lags far behind both emerging and developed markets in the shift towards a cashless economy

The past couple of years have seen a number of initiatives to facilitate cashless transactions in the Indian economy, including the launch of the Unified Payment Interface (UPI) earlier this year (http://bit.ly/2bcgRiQ). Such moves may raise the volume of cashless transactions in India in the years to come but the latest available internationally comparable data shows why moving towards a cashless economy remains a Herculean challenge for the country.

Data pertaining to payment, clearing and settlement systems in 23 major economies, recently released by the Bank for International Settlements (BIS), shows that India lags far behind both emerging market and developed peers in the move towards a cashless economy. Non-cash payments transactions in India amounted to only 11 per inhabitant in 2015, much lower than other BRIC economies, with China reporting 17 such transactions per inhabitant in 2014 (data for China is unavailable for 2015) (see chart 1).

CHART -1: India ranks the lowest among BRICS countries in terms of per capita non-cash transactions*



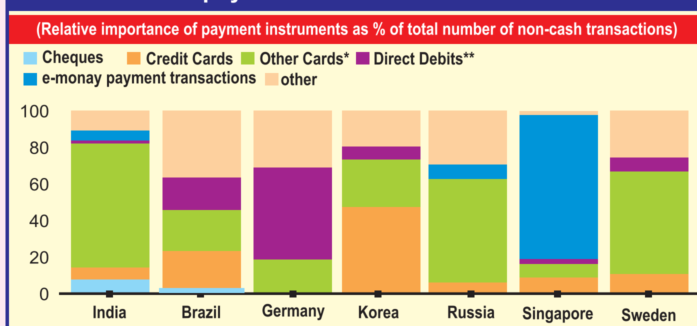
India's case refers to only debit cards

The proportion of non-cash transactions is of course much higher in the advanced economies. The average non-cash retail transactions per inhabitant were 355 in the UK and 403 in the US.

It is not surprising then that India's cash to GDP ratio of 11% is among the highest in the world. The BIS report showed that the only economies with a higher ratio of cash to GDP were Japan, Hong Kong and Switzerland, all of which have interest rates near zero. The fact that countries with near zero interest rates will deal more in cash is reasonable given that low interest rates reduce the cost of holding cash. But India's official repo rate was 6.75% in March 2016, when India's cash to GDP ratio was 11%, almost equal to that of the Eurozone, which has interest rates close to zero.

The level of non-cash transactions has risen even in India over the past few years. Debit cards seem to be the instrument of choice for Indians in making non-cash payments (see chart 2).

CHART -2: Debit cards accounted for the most number of non-cash payment transactions in India in 2015



**** in India's case direct debit refers to electronic clearing system debit within retail electronic clearing**

According to BIS, debit cards accounted for around 70% of the volume of non-cash transactions in India. However, in terms of value, the leader in non-cash payments transactions has been credit transfers between accounts, accounting for 89% of the value of all reported non-cash transactions in India.

While debit cards have been the main instrument aiding India's move away from cash, an international comparison shows that we still have a long way to go in terms of the penetration of debit cards.

In India, one in two people have a debit card, which also typically functions as an automated teller machine (ATM) card. While the number of cards per person in India is low by global standards, in terms of the number of withdrawals per card, India stands in the middle rung among the major economies of the globe.

Withdrawals per card in India are the highest among emerging market economies for which data are available, ignoring the outlier Saudi Arabia.

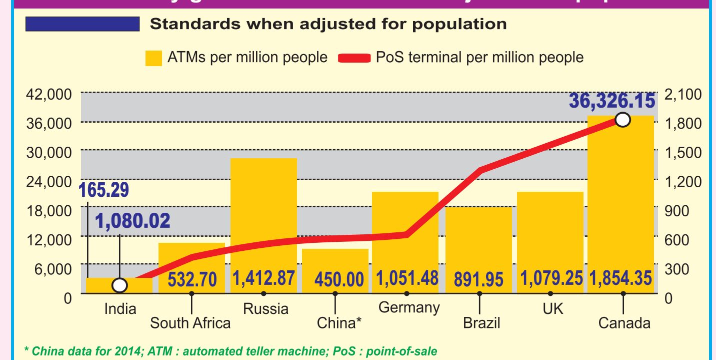
More importantly, the economies which show higher withdrawals per card than India are mostly those countries where interest rates are near zero or sometimes even sub-zero. In fact, Saudi Arabia, which shows the highest number of withdrawals per card, also has a relatively low policy interest rate of 2%. Thus, Indian cardholders have a high propensity to withdraw cash despite relatively higher interest rates, which is most likely a reflection of the high cash usage in the Indian economy.

The high withdrawal rate seems to suggest that ATM cards may impede rather than facilitate a move towards a cashless economy. But that view may be mistaken. Research suggests that a reliable and widespread network of ATMs could reduce the transaction demand for cash.

There are around 165 ATMs per million people in India, the lowest in the BIS sample of major economies and much behind other BRICS economies. Of course, the density of ATMs per geographical area is relatively high in India, when compared to other emerging market (EM) economies. With 62 ATMs per thousand square kilometers, India's density is second only to China's 92 ATMs per thousand kilometers among the major EMs. However, India's ATM network also has to cater to a relatively high population density.

India also lags major economies in terms of the availability of Point of Sale (PoS) terminals which process cashless payments (see chart 3).

CHART-3: Number of PoS terminals and ATMs in India is low by global standards when adjusted for population



** China data for 2014; ATM : automated teller machine; PoS : point-of-sale*

With a large section of population still lacking access to formal banking services, one way to transition towards a cashless economy would be to increase the use of mobile based prepaid instruments (PPI) or e-money products, in which India has shown signs of progress.

According to the BIS, India clocked the fastest growth, both in terms of number and the value of e-money transactions in 2015, among the twenty-three major economies studied by BIS. However, India's growth is from a low base and the value of e-money transactions as yet amounts to only a minuscule 0.05% of all non-cash retail transactions, while accounting for 5.5% of the volume.

Data from the World Bank's Global Financial Inclusion (Global Findex) survey shows that India lags many of the EM peers in terms of mobile money penetration.

India can learn from other countries in the developing world, which have managed to reduce their dependence on cash even while bringing more people in the fold of the formal banking network. ■

Big spike in cybercrimes

The total number of cyber crimes reported in 2013 was 41,319, which rose to 49,455 in 2015

More than 28,000 hacking incidents were reported in 2013, and over 32,000 in 2014. Latest statistics released by the National Crime Records Bureau (NCRB) reflect a massive spike in cybercrimes in India. The total number of cybercrimes reported in 2013 was 41,319, which rose to 49,455 in 2015. The number of cases reported this year till March stands at 14,363.

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BIG SPIKE IN CYBERCRIMES

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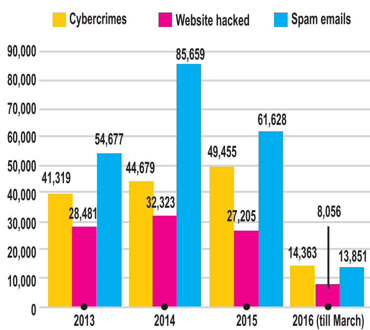
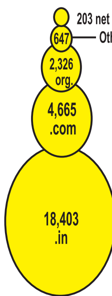
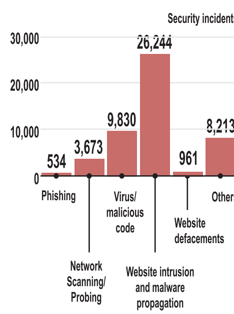
Cybercrimes in India



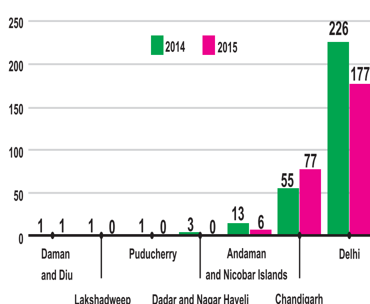
Tracking Indian website defacements



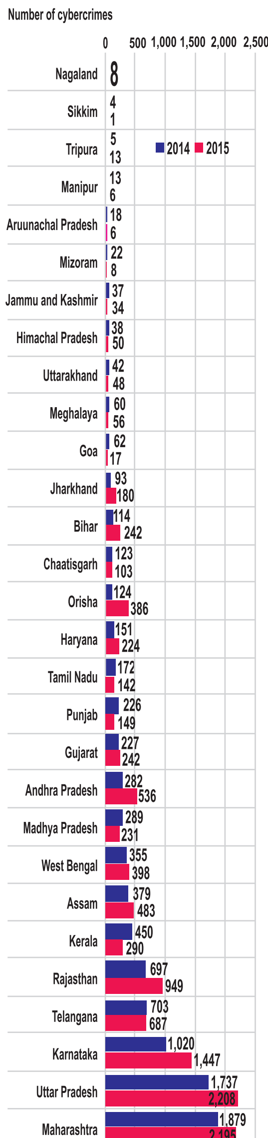
Abuse statistics



Cybercrimes reported in Union territories



Cybercrimes reported in states



Tech innovation also heightening cyber risks

According to consulting firm Deloitte's April 2016 report: Cyber Security, De-Risking India's Banking Industry, the business and technology innovations that financial services companies are adopting for growth, innovation, and cost optimisation, are in turn presenting heightened levels of cyber risks. These innovations, according to the report, have introduced new vulnerabilities and complexities into the financial services technology ecosystem.

The continued adoption of alternate channels such as ATMs, kiosks, internet, mobile, cloud, and social media technologies have increased opportunities for attackers, as also the increasing trend towards outsourcing, off shoring, and third-party contracting, which may have further diluted institutional control over IT systems and access points. The modus operandi includes:

Account Takeovers

Cyber criminals have demonstrated their ability to exploit online financial and market systems that interface with the internet, such as the Automated Clearing House (ACH) systems, card payments, and market trades.

Payment Systems

Fraudulent monetary transfers and counterfeiting of stored value cards are the most common result of exploits against financial institutions, payment processors, and merchants.

ATM Skimming

ATM skimming a common global cyber crime, whereby a criminal affixes a skimmer to the outside or inside of an ATM to collect card numbers and personal identification number (PIN) codes.

Point of Sale Terminals

Point of Sale (POS) terminals have been a primary target for cyber criminals engaging in credit card fraud and have resulted in the compromise of millions of credit and debit cards across the globe.

Mobile Banking Exploitation

With more mobile devices being introduced into personal, business, or government networks; they have been increasingly targeted for stealing personally identifiable information (PII). Cyber criminals have successfully demonstrated man-in-the-middle attacks against mobile phones using malwares.[Indian Express, July 22]

Central Bank Directive to Tighten Cyber Security after Debit Card Data Breach

RBI has called on banks to ensure tightened cyber security norms after the country's largest data breach involving debit cards went undetected for three months. All lenders (banks and payment network service providers) will now need to report on their cyber security issues to the RBI on a real-time basis. Another proposal in the offing is a suggestion that banks centralize their cyber security monitoring and have a dedicated operations team in place for the same instead of outsourcing such surveillance.

The current urgency notwithstanding, the RBI directed banks (in as early as June) to collaborate on matters of cyber security as per global best practices to facilitate timely containment of cyber risks. The banking regulator has repeatedly recommended that banks report all unusual activity, irrespective of the success or failure of such cyber intrusions, so that necessary steps can be taken to fortify against future hacks. In order to ensure its directives are complied with, the RBI will begin conducting annual cyber audits of banks, starting in 2017.

Key Elements in Cyber Security Guidelines of RBI

With new notification on June 2, RBI calls upon banks to immediately put in place a cyber security policy duly approved by their board, containing an appropriate approach to combat cyber threats. Among the Key elements to be included in these policies:

- Cyber security policy to be distinct from the broader IT policy/IS security policy of a bank;
- Arrangement for continuous surveillance;
- Ensuring protection of customer information;
- Sharing of information on cyber-security incidents with RBI;
- An immediate assessment of gaps in preparedness to be reported to RBI.

Banks also are called upon to increase cyber security awareness among all stakeholders, including customers, partners and senior management.

Debit card data theft: Bankers agree to unite against cyber threats

A Europe-like cyber security defense alliance is the need of the hour, say banking technology experts

Now, RBI takes complete charge of monitoring debit card data breach RBI steps up focus on cyber security & fraud prevention Security breach scare: RBI tightens noose around cyber fraud, asks banks to replace cards Hitachi claims its systems were not breached in cyber attack

At a time when the banking sector is grappling with a possible systemic risk brought upon by the data breach of 3.2 million cards, banking technology experts at the Business Standard Banking Technology Round Table said banks should collaborate to tighten the security framework.

Even though India is still far from a defined cyber security defense alliance, it could be a pressing need. "We probably need to have a better interoperable system of security in the banking industry to stay one step ahead of fraudsters. In fact, we could have a cyber security defense alliance like the way it works in other nations," said Madhivanan Balakrishnan, chief technology and digital officer, ICICI Bank.

In times of emergencies, the banking system as a whole should come together to reassure customers. The panellists unanimously agreed that the aftermath of the data security breach could have been handled better. Banks individually went on to assure their own customers that their networks were safe, but that did little to restore confidence on a customer who uses another bank's ATM.

This greater emphasis on cyber security also comes at a time when digital and cashless transactions are increasing in the country and some cases of data vulnerability could slip through. As the panellists pointed out, the data attacks have always been present in terms of phishing, vishing schemes etc. But now that these attacks are more co-ordinated, lenders also need to step up security and collaboration.

[Business Standard, Oct. 28]

SEBI steps in to combat cyber crime

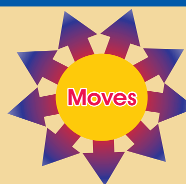
Following reports of cyber security threat in the Indian banking system, SEBI has initiated an urgent review of the overall risk management and has decided to set up a high-level committee to ensure prudent response and quick, corrective measures for any cyber threat. The committee will be headed by a whole-time member of SEBI and will tackle unforeseen circumstances and also oversee the implementation of the regulatory policies across markets in the area of cyber security. The regulator will also ask stock exchanges to create internal task forces that will essentially send alerts to this committee and take measures to safeguard their systems, networks, and databases from cyber-attacks, said the official cited above.

SEBI had in July 2015 issued a set of guidelines for the stock exchanges and other market infrastructure institutions (MIIs) to safeguard their systems. SEBI had said MIIs need to have robust cyber security framework to provide essential facilities and perform systemically critical functions relating to trading, clearing and settlement in the securities market. The mechanism of cyber security and cyber resilience would include governance, identify, protection monitoring and detection, responses and recovery, sharing of information, training and periodic audit, SEBI had said in the circular. [Business Standard, Oct. 23]

Need to have dedicated cyber security law in the country

According to cyber law experts, the regulator will have to enforce the law rather than having advisory and guidelines. "This is a reactive action after the cyber attack in the banking industry, which has already taken place. Such a committee will not deter any future cyber attack. The law itself is deficient as there is no dedicated cyber security law in the country. So, consequently, the roles and duties of intermediaries are not at all defined," said Pavan Duggal, a cyber law specialist. He added there's a need to enforce strict accountability on organisations, which do not follow cyber security standards.

According to security experts, cyber criminals typically use proxy servers with the help of technology to hide their footprints. Trails of such attacks are often encrypted. The International Organization of Securities Commissions, whose member include 120 securities regulator including SEBI, had surveyed 89 exchanges in 2014, which showed more than half of the securities exchanges had been on the receiving end of such attacks.[Business Standard, October 23, 2016]



Finance ministry releases draft bankruptcy bill for financial firms

After passing the bankruptcy code in Parliament for time-bound settlement of insolvency cases in non-financial firms, the finance ministry has released a draft bill to set up a resolution corporation to address similar issues among financial firms. Finance minister Arun Jaitley, in his 2016-17 budget speech, said a comprehensive code on resolution of insolvency cases in financial firms will be introduced as a bill in Parliament in this fiscal. "A systemic vacuum exists with regard to bankruptcy situations in financial firms. This code will provide a specialized resolution mechanism to deal with bankruptcy situations in banks, insurance firms and financial sector entities. This code, together with the Insolvency and Bankruptcy Code 2015, when enacted, will provide a comprehensive resolution mechanism for our economy," he had said.

Following the announcement, on 15 March, the ministry set up a panel under additional secretary Ajay Tyagi to draft and submit the bill. The panel has submitted its report and a draft bill known as The Financial Resolution and Deposit Insurance Bill, 2016 has been drawn up. The finance ministry has sought comments on the bill from all stakeholders by 14 October.

The draft proposes to consolidate the existing laws relating to certain categories of financial institutions known as "covered service providers", including banks, insurance companies, financial market infrastructure, payment systems, and other financial service providers, but excludes individuals and partnership firms.

[Live Mint, Sep 29]

Ponzi scheme crackdown: Draft Bill seeks CBI probe

In a bid to crack down on ponzi and illegal deposit schemes, the Finance Ministry has revised a draft law that now proposes to rope in the Central Bureau of Investigation in such cases, giving the first charge on assets to depositors as well as setting up of an online database of information on deposit taking activity in the country."Several cases of illegal deposit-taking in recent years have been spread across States. To tackle such cases, the Competent Authority has been given the power to refer a case for investigation by the CBI," said the draft "Banning of Unregulated Deposit Schemes and Protection of Depositors' Interests Bill, 2016" [Version 2.0].

Insolvency board to be functional from 1 December

The Insolvency and Bankruptcy Board of India (IBBI) will become operational by 1 December, within six months of the related law being passed in Parliament. According to a person familiar with the development, the 10-member IBBI will begin to execute its functions—regulating insolvency professionals and agencies and information utilities under the bankruptcy code—from December. Earlier this week, the government notified final regulations for registration and model bye-laws for insolvency professionals and agencies. The regulations will come into effect on 29 November. IBBI chairman M.S. Sahoo said the board would become operational as soon as possible. The board is likely to notify the rules for insolvency resolution and liquidation process by the end of this month[Live Mint, Nov. 25]

Corporate tax cut likely

Hoping to give a boost to India Inc, which is yet to show definite signs of recovery, the Centre plans to announce a 1-1.5 per cent cut in the corporate tax rate. "This is one of the announced commitments of the government. Along with the rollout of the Goods and Services Tax (GST), a reduction in the corporate tax rate could give an impetus to industry," said an official close to the development. [Business Line, 7 Dec.]

Aadhaar-enabled payment to replace debit, credit cards

The Unique Identification Authority of India has planned to increase biometric authentication capacity through Aadhaar to 40 crore a day from 10 crore to encourage more use of the platform for realising a cashless society. The government is concurrently working on developing a common mobile phone app that can be used by shopkeepers and merchants for receiving Aadhaar-enabled payments bypassing credit and debit cards, pin and password.

SC harmonises debt recovery laws

The Supreme Court ruled that the Debt Recovery Tribunal (DRT) constituted under the DRT Act has jurisdiction to entertain an appeal arising from the SARFAESI Act even if the amount involved is less than Rs. 10 lakh. This explanation became necessary because there was some grey area in the DRT Act and the SARFAESI Act regarding loans below Rs. 10 lakh. In this case, State Bank of Patiala vs Mukesh Jain, the loan was below Rs. 10 lakh. The DRT Act says it has jurisdiction for suits only above Rs.10 lakh; otherwise the bank should move the civil court. But, SARFAESI Act bars any role to the civil court. Therefore, the court had to harmonise the provisions. The Supreme Court did so and allowed the appeal of the bank, against the ruling of the Delhi High Court. [Business Standard, 14 Nov.]

Discretion in penalty for cheque bounce

If two or more cheques are issued consecutively in a common transaction between the same parties and they bounce, the punishment of imprisonment could run concurrently — and not one after the other — for each bouncer. In this case, Shyam Pal vs Dayawati, the man borrowed ~5 lakh two times from the woman. He returned the money in two cheques with consecutive numbers. Both were returned for insufficiency of funds, leading to two complaints by the woman invoking Section 138 of the Negotiable Instruments Act. The trial court sentenced the accused person to 10-month simple imprisonment for each invalid cheque. He moved appeals arguing that as both the complaints had arisen out of successive transaction in a series between the same parties, and had been tried together on the basis of the same set of evidence, the sentence ought to have run concurrently and not separately. But, the appeal court and the Delhi High Court rejected this argument. On appeal, the Supreme Court set aside the orders of courts below and directed that the accused person shall undergo the sentence concurrently in this case. The Criminal Procedure Code confers discretion on the judge and it should be exercised according to the circumstances of the case. In this case, the accused person had already undergone 10 months imprisonment. The court observed that "the legal position favours the exercise of discretion to the benefit of prisoners in cases where the prosecution is based on a single transaction, no matter even if different complaints might have been filed." [Business Standard, 7 Nov.]

Sale of defaulter's properties upheld

The Supreme Court has set aside the order of the Madras High Court which had ruled that the sale of two properties of a borrower firm was illegal. In this case, ICICI Bank Ltd vs M/s Aburubam & Co, the properties were put on public auction due to payment default but there were no takers. So, the bank itself bought it. The borrower firm challenged the sale in the Debt Recovery Tribunal and its appellate tribunal where it lost. But, the high court asked the tribunal to reconsider the sale as it found two illegalities. The SC found both the findings wrong. It said that the argument that the borrower was not allowed to participate in the fixing of the offset price was wrong because it was a party to the recovery proceedings and the offset price was set by the valuation officer. Secondly, there was no violation of the provisions of the Income Tax Rules, as there was no bar on the bank to participate in the public auction once the invitation to bid did not result in any response from any interested bidder. [Business Standard, 7 Nov.]

Defaulters have no claim on sale price

Defaulting borrowers have no right to claim any share in the proceeds of sale after the lender-bank becomes the owner of the mortgaged property, the Supreme Court ruled in the appeal case, State Bank of Travancore vs R Sobhana. In this case, the bank granted a loan for Rs. 15,000 to a couple against an equitable mortgage. When the loan was not repaid, the bank sold it in auction for Rs. 10 lakh. The borrowers claimed a share in the excess amount received by the bank. The request was rejected. The borrowers moved the Kerala high court, which allowed their petition and asked the bank to pay them Rs. 6.5 lakh. The high court also made scathing remarks about the attitude of the bank. The Supreme Court expunged the adverse remarks against the bank and ruled that the borrower had no right to the proceeds of the sale. However, in this case, the husband had died, the widow was paralysed, her daughter was mentally retarded and the son was a psychiatric patient. So the court exercised its extraordinary powers to order the bank to give the widow Rs. 5 lakh. [Business Standard, 3 Oct.]

Defaulters' photos in ads illegal

A secured-creditor bank cannot publish the photographs of directors and guarantors of a defaulting company in a routine manner for pressurising them to repay the loan. The Sarfaesi Act and related rules do not authorise creditors to do so, said the Calcutta High Court, while severely indicting Punjab National Bank (PNB) for grossly abusing its powers, and violating its own rules. In this case, Metsil Exports Ltd vs PNB, the firm took a loan but failed to repay it. The bank issued a demand notice, to which the firm filed objections. However, the bank went ahead and published the demand notice along with photographs of directors and guarantors in two prominent Kolkata daily newspapers. The firm and one of the directors objected to it as violation of their right to live with dignity (Art 21 of the Constitution). They demanded compensation. The bank chairman defended the action arguing that she had "reason to believe" that the firm would not pay. It was further argued that the high courts of Bombay, Madhya Pradesh, Madras, Chhattisgarh and Gujarat had held that banks could publish photographs of defaulters. Rejecting PNB's pleas, the Calcutta High Court stated that the photos were published at the demand notice stage itself when the firm had filed objections. The firm and directors have not been declared "will ful defaulters"; so their photos cannot be published in a "routine manner". The bank itself in a circular had instructed that photos should not be published in such circumstances. The high court directed PNB to publish an apology in the same newspapers in view of the "gross abuse of authority". The demand for compensation was rejected but the bank shall pay costs. [Business Standard, Nov. 21]

SC dismisses NSEL appeal as 'totally frivolous'

The Supreme Court dismissed a petition of National Spot Exchange (NSEL) for relief against a high court (HC) order on the applicability of the Maharashtra Protection of Interests of Depositors (MPID) Act on its affairs. NSEL had pleaded for a stay on the proceedings for attachment of its assets and that of its directors, initiated by the MPID court in Mumbai. The bench of judges A K Sikri and N V Ramana said the petition was "totally frivolous" and dismissed it after imposing a fine ('costs') of Rs 5,000 on the bourse for having filed it.

In the petition, NSEL wished to challenge the Bombay HC judgment of October 2015, dismissing its plea. Arguing that application of MPID on it was "beyond competence/without jurisdiction", the exchange had sought a stay, on the HC order and on all the proceedings at the MPID court. Its argument was that the MPID law pertained primarily to deposits and that facilitating of trading and effecting of settlements through payment and delivery on an exchange platform would not amount to accepting deposits under the Act. [Business Standard, October 28, 2016]

SC upholds constitutional validity of Goods Entry Tax

The constitutional validity of Entry Tax imposed by States on goods coming in from other states was upheld by the nine judges Constitution Bench of Supreme Court. Entry tax is imposed by many state governments on the movement of goods from one state to another. It is levied by the state that receives goods. The bench was handling 2,000 cases filed by various companies against the states levying tax on the movement of goods. They argued that the tax levied was against the concept of free trade.

Advocating for the centre, Attorney General Mukul Rohatgi said that since GST has passed, the issue of entry tax should be resolved according to that and the Supreme Court should not intervene. However, the SC said there are far too many cases pending and they need to be taken care of first.

Companies argued that removing entry tax laws would make way for the Goods and Services Tax and its enforcement. On the other hand, states said that their sovereign right to tax the movement of good should not be taken away. States said it was their Constitutional right to pass laws on subjects mentioned in 'State List' and 'Concurrent List'. [Business Standard, Nov 11]

‘Non-disclosure of attack could be a violation’ SEBI

Non-disclosure by listed banks to stock exchanges about issues such as cyber attacks on their systems or their ATM networks being infected by malware could amount to violation of SEBI regulations on listing obligations and disclosure requirements, say experts.

“As per the SEBI Listing Regulations, a listed company has to ensure timely and accurate disclosure of all material events to stock exchanges. Specifically, in terms of Regulation 30 of the said Regulations, a listed company has to disclose to the stock exchanges all such material events as soon as reasonably possible and not later than 24 hours from the occurrence of event or later along with an explanation for delay,” said Tejesh Chitlangi, Partner IC Legal.

“Any fraud/material wrong perpetuating on a mass scale with respect to a product of a listed company may qualify as a material event. A violation may lead to regulatory warning, imposition of fines or other penalties depending upon the gravity of non-compliance,” he added. [Business Line, Oct. 20]

SEBI tightens norms for credit rating companies

SEBI asked credit rating agencies to frame detailed rules for rating criteria, processes and responsibilities of rating analysts and increase the range of their disclosures. Raters have 60 days to adhere to these norms.

The capital markets regulator asked rating companies to define on what basis they rate companies and how the rating process is carried out. This would include a clear set of criteria for analysing financial ratios, treatment of consolidation of firms, parent group’s support, and nature of business and so on while rating any instrument.

SEBI said that every such rating has to be reviewed periodically and disclosed publicly. Any change in the rating process or policies also has to be disclosed by a rater on its website along with the original provision so that investors can understand the changes.

SEBI also asked raters to make a complete and timely disclosure about the rationale for rating changes and the history of ratings for all instruments issued by the company so that investors are able to take an informed decision while dealing in any security associated with the same company or its group firms. [Mint, Oct. 25]

SEBI to ask rating agencies to disclose compensation

SEBI is likely to ask credit rating agencies (CRAs) to disclose the general nature of compensation arrangements with the rated entities, including exchange of gifts.

This is to address the conflict of interest arising from agencies charging companies for rating their securities. Agencies will have to include a note in their operations manual on how they manage this conflict. Further, any conflict of interest owing to the composition of members in the ratings committee has to be reported during an internal audit of the agencies.

“Investors relying on rating agencies should be aware of the monetary compensation given to the agencies. This will help them decide whether the rating, especially a positive one, is fair or not, and if there is an arm’s length distance between the issuer and the agency,” said TejeshChitlangi, partner, IC Legal. [Business Standard, Oct. 15]

Delisted entities: SEBI mandates freezing of promoters’ demat accounts if they fail to pay fines

Promoters of a company compulsorily delisted from the stock exchanges will soon find their own shareholdings frozen, according to the diktats of a new circular from SEBI. From last year, SEBI has been tightening the screws on errant promoters in whose companies, for different reasons, trading in their shares on recognized stock exchanges has been suspended. For instance, BSE has over 400 companies in whose shares trading has been suspended. Earlier, SEBI had empowered stock exchanges to compulsorily delist companies that violate the terms of their listing agreements or in which trading has been suspended for long periods. Promoters of such companies are barred from accessing the capital markets, directly or indirectly, for 10 years from the date of the company’s compulsory delisting. They are also not allowed to sell or pledge their shares until they provide a viable exit option to public shareholders, including buying them from the shareholders at a fair value.

In the latest circular, SEBI has ruled that if a non-compliant listed entity fails to pay the fine levied by the stock exchange, the exchange can, upon expiry of the period indicated in the notice issued by it, freeze holdings in other securities in the demat accounts of the promoter and promoter group to the extent of liability which shall be calculated on a quarterly basis. If the promoter does not pay the penalty for two consecutive periods, then the depository can freeze holdings in the demat accounts of the promoter and the promoter group.[(Business Line, Oct. 26]

SEBI to use drum-beaters, loudspeakers for attachment notices

SEBI, which was given powers to attach properties in the wake of large-scale defaults by entities collecting money fraudulently from gullible investors, plans to rope in third-party agencies “for providing services of affixture of notices/summons and public announcement of proclamation of attachments, sale notices, etc” at all its offices.

These agencies, which can be registered asset reconstruction companies, reputed NBFCs or detective and other professional agencies having a good track record of recovery work, will need to affix the orders, notices, summons and other communications at addresses provided by SEBI.

“If, at the time of affixture, the addressee is found to be available at the address the order/notice/letter/summons/ etc may be served personally on the addressee,” SEBI said. Besides, these agencies will have to “make a proclamation of attachment/sale at or nearby the attached property, by beat of drum or by public announcement through loudspeakers,” the regulator said. SEBI said it can consider issuing necessary directions or instructions to the defaulters or the revenue and local authorities to extend assistance to the agency in the process. [Deccan Chronicle/PTI, Oct 20]

SEBI tightens promoter-investor profit sharing rules

SEBI in its board meeting on Nov. 23 took following decisions:

SEBI has tightened corporate governance rules on profit-sharing deals between promoters of companies and investors such as private equity funds. The regulator said company promoters or management wanting to enter into agreements with investors or a third party can do so only after getting the permission of the board and shareholders. “All such agreements entered during the past three years from the date of notification shall be informed to the stock exchanges for public dissemination including those which may not be currently valid,” said SEBI. Existing agreements, which are still valid, also need to be informed to the stock exchanges and “interested persons” in such deals will not be allowed to vote on such resolutions, it said.

Angel Funds: SEBI cut the minimum investment requirement by angel funds in a venture to Rs 25 lakh from Rs 50 lakh and reduced the lock-in period to one year from three years. The cap on the number of angel investors in a scheme has been raised to 200 from 49. Aligning the definition of start-ups for angel fund investments to that of Department of Industrial Policy & Promotion (DIPP), SEBI has allowed these funds to invest in start-ups incorporated within five years. Earlier, these funds could not invest in start-ups incorporated after three years. The regulator has also allowed angel funds to invest in overseas venture capital undertakings up to 25% of their investible corpus.

Unlisted NCDs and securitised debt instruments : SEBI has allowed foreign portfolio investors (FPIs) to invest in unlisted NCDs or bonds of an Indian company. “Investments in the unlisted corporate debt securities shall subject to minimum residual maturity of three years and end use-restriction on investment in real estate business, capital market and purchase of land,” the regulator said. Till now, FPI investment in unlisted debt securities was permitted only in infrastructure companies. Also, investment by FPIs in securitised debt instruments was not allowed. SEBI said FPI investments in unlisted corporate debt securities and securitised debt instruments shall not exceed Rs. 35, 000 crore. Their investments in securitised debt instruments shall not be subject to the minimum 3-year residual maturity requirement, it said. [ET Bureau, Nov 23]

FIDC Managing Committee Meeting in progress at Mumbai on 14th December 2016.

Pre-Budget Meeting with the Finance Minister

In a pre-budget meeting of heads of banks and financial institutions with finance minister Arun Jaitley on December 20, Raman Aggarwal, chairman, FIDC, suggested that eligibility norms for NBFCs to avail of refinance from MUDRA should be made favourable. This would enable small and medium-sized NBFCs to shift from acceptance of public deposits in tune with the RBI's policy; and instead avail of refinance from MUDRA.

He also made a case for removal of the minimum loan ticket size of Rs. 1 crore for NBFCs to use the SARFAESI law for recovery of dues. The Government had on August 6, 2016 notified a 2015-16 Budget provision (15 months back) allowing NBFCs to avail of the SARFAESI law for recovery of dues. However, it has been stipulated that the SARFAESI law facility would be available only in cases where the minimum lending ticket size is Rs. 1 crore. This had come as a big surprise to the NBFC sector. [Business Line, Dec. 21]

FIDC also pleaded for considering tax issues favorably, to bring the much desired parity with banks, FIs including HFCs. Mr. Aggarwal also submitted the original copies of Representation to both the FM and the Minister of State. Further copies were handed over to Secretary Financial Services, Chairmen of CBDT and CBEC, Chief Eco Advisor and officials of TRU.

NBFCs' loan share may rise by 300 bps in next 3 fiscals: Crisil

Non-banking financial companies (NBFCs) will raise their share of overall loans by 300 basis points (bps) to 17.6% in the next three fiscals, ratings agency Crisil said in a statement on Nov.23. This will be equivalent to the growth that the companies have seen in the last five years, largely on the back of mortgages and medium, small and micro enterprises (MSME) funding.

The growth in market share will come "by leveraging innovation, origination and customer connect, and by diversifying their funding profile", Crisil wrote. NBFCs may even edge past public sector banks in terms of growth as the latter set remains circumspect about new lending because of the asset quality troubles they are battling. The ratings agency expects NBFCs to grow the higher-yielding unsecured MSME financing book, going ahead.

Gurpreet Chhatwal, business head for large corporates at Crisil Ratings, said, "Domestic NBFCs have leveraged their unique strengths and some of them have scaled up to become world-class institutions. NBFCs with assets of over Rs.40,000 crore more than trebled to 10 from three in the last four fiscals." Products that constituted just 16% of NBFC advances in fiscal 2012 will constitute 40% by fiscal 2019, the statement said. [FE Bureau, Nov. 24]

NBFCs seen posting up to 84% growth in Q2 earnings

NBFCs are likely to post earnings growth of between 20% and 84% Y-o-Y during the July-September quarter, according to Kotak Institutional Equities. NBFCs are expected to benefit from falling borrowing costs even as operational trends remain unchanged during the quarter, the brokerage said.

"We do not find significant change in NIM (net interest margin) q-o-q (quarter-on-quarter) (baring seasonal variations) as gradual reprising down of liabilities is getting passed on as well," Kotak Institutional Equities observed. "A sharp decline in bond yields is incrementally benefitted the large AAA-rated NBFC and small players; the impact of the same should be visible in 2H." [FE Bureau, Oct. 20]

Asset backed retail loans' quality to improve in 2 years: Moody's

Moody's Investors Service said the asset quality of retail loans backing Indian asset-backed securities (ABS) will improve over the next two years, despite an expected uptick in non-performing loans. It expected the performance of loans backing commercial vehicles and construction equipment to improve owing to favourable operating conditions and increased efforts by originators to prevent delinquent loans from progressing into NPLs.

"Although retail loans originated by NBFCs account for the bulk of assets backing Indian ABS, we expect improving macroeconomic conditions and more rigorous collection processes by originators will boost their underlying performance," Moody's Analyst Vincent Tordo said.

The underlying performance and asset quality of retail loans backing Indian asset-backed securities (ABS) will improve over the next two years due to tightened recognition criteria; Moody's said. The new NPL criteria require NBFCs to recognise loans that are 150 days or more in arrears as NPLs, compared to 180 days previously. The standard will further tighten to 120 days from March 2017 and 90 days from March 2018.

While Moody's expects NPL ratios reported by NBFCs to rise over the next two years as a result of the new criteria, it expects the improving underlying performance to be reflected in lower delinquencies rates. [Business Standard / PTI, Oct. 13]

China unveils plans to cut corporate debt, to push debt-to-equity swaps

China unveiled guidelines to reduce rising corporate debt levels which some analysts fear could destabilize the world's second-largest economy. The government will take a multi-pronged approach to cutting company debt, including encouraging mergers and acquisitions, bankruptcies, debt-to-equity swaps and debt securitization, according to guidelines issued by State Council, or the cabinet. Corporate China sits on $18 trillion in debt, equivalent to about 169 percent of gross domestic product (GDP). [REUTERS, Oct 10]

Excess corporate debt a medium-term risk to India's growth trajectory: IMF

Excess debt on the books of Indian companies remains a medium-term risk to India's growth trajectory, the International Monetary Fund (IMF) said. Excess corporate debt also increases risks to banks, IMF said in its Global Financial Stability Report. "Banking systems are vulnerable to further declines in growth or profits, particularly in countries at later stages of the credit cycle (such as India), where slowing credit growth and risks from elevated levels of non-performing loans are most acute," it said.

IMF said though growth expectation for India for 2016-17 has been revised slightly higher to 7.6% from 7.4% projected earlier, medium-term macroeconomic challenges remain. "External conditions may turn less supportive if US dollar strength resumes, perhaps as a result of renewed expectations for higher rates in the United States, which could test the resilience of emerging market economies again," IMF said, without naming India. [Live Mint, Oct 06]

Securitisation volume may reach Rs 1 trillion this yr: Crisil

Securitisation volume in the first six months of 2016-17 year increased to Rs 45,000 crore and is likely to reach close to all-time high of Rs 1 lakh crore by the end of the fiscal, says a report.

During the first quarter of this fiscal, securitisation volume was estimated at around Rs 17,000 crore while it was about Rs 28,000 crore in the second quarter. "We expect issuance volume for the current fiscal to edge closer to an all-time high of Rs 1 trillion, given the sharper focus of both public and private sector banks on growing their retail books, the incremental priority-sector lending (PSL) targets set for foreign banks, and a widening of the investor base following greater clarity on dividend distribution tax," Crisils senior director Krishnan Sitaraman said. Pass-through certificate (PTC) transactions have rebounded strongly, totting up to Rs 22,500 crore for the first half, nearly trebling from the near Rs 7,500 crore logged in the first quarter. [India Today/PTI, October 27, 2016]

NBFCs seek parity with banks in accepting old Rs.500/1,000 notes

Asset financing non-banking finance companies (NBFC-AFCs) want the RBI to allow them to accept till December 30 the demonetised Rs.500 and Rs.1,000 notes towards borrower repayments. FIDC representing NBFC-AFCs — has written to the RBI in this regard, Raman Aggarwal, Chairman, FIDC, told Business Line.

"We have requested that NBFC-AFCs also be given the same dispensation as banks. They (RBI) have allowed banks to accept old notes so long as these are credited to the customer's deposit or loan accounts and CTR/STR reporting is done. We are also ready to adhere to currency transaction/suspicious transaction reporting under Prevention of Money Laundering Act," Aggarwal said.

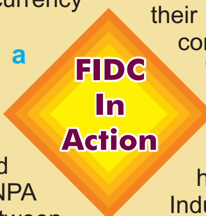
Ever since demonetisation was announced on November 8, lakhs of customers — mainly transport operators, farmers, equipment hirers, SMEs and small traders — are coming to the offices of member NBFCs with old currency notes, which the firms are unable to accept, Aggarwal noted.

"The current demonetisation has introduced significant uncertainty in the minds of our customers as well as among the NBFCs on how loans would be serviced until the currency situation stabilises," says the FIDC letter to RBI.

At the same time, FIDC has hailed the government and the RBI move to take the bold step of demonetisation towards fighting the menace of unaccounted wealth and illegal infusion of fake currency in the system. [Business Line, Nov. 14]

60-day repayment relief is for lenders, not a payment holiday for borrowers

The provisioning relaxation for lenders has been misinterpreted as a payment holiday for borrowers



The RBI on Nov. 21 provided lenders — banks, NBFCs and microfinance companies — a breather, by relaxing NPA recognition norms by 60 days, for payments due between November 1 and December 31. While this will offer some leeway to lenders on the provisioning front, it does not imply a 60-day holiday for borrowers to pay their dues. Borrowers may still incur additional interest and penalty on account of delay in payment of their EMIs. The relaxation on loan classification will offer respite to lenders on the provisioning front.

The provisioning relaxation for lenders has been misinterpreted as a payment holiday for borrowers.

"The RBI has not stated that lenders have to defer collections. All that the RBI is stating is that in case of overdue accounts in this period, we need not set aside additional provisions for the short term. TT Srinivasaraghavan, Managing Director, Sundaram Finance, reiterates the same point stating that the circular is intended for lenders and not for borrowers. "Only some sections of borrowers have been impacted by the cash crunch and may not be able to service their payments. So, the RBI has given lenders a little leeway for recognising such delinquencies. It is not a loan waiver scheme," says Srinivasaraghavan.

In view of some leading news papers headlines saying "Borrowers get additional 60 days to repay loans: RBI" or "Small borrowers get 60 more days to repay loans" for instance, Mukesh Gandhi, chairman, Gujarat Finance Companies Association drawing attention of RBI said, "It is very likely to be understood by all borrowers that they have received an extension of two months for repayment and would delay/postpone their EMIs/repayment of installment[s] till 31't December 2016." he suggested the RBI "to issue some clarification so that mis-impression arising from media report is dispelled."

Small borrowers who repay their dues through cash have been impacted the most and the leeway is required more from the point of view of ease of repayment. Banks are allowed to collect old Rs. 500 and Rs. 1,000 notes from borrowers, but NBFCs and MFIs have not been allowed to do so.

FIDC plea for extending 60 day period

FIDC pleaded on Dec. 21 to extend the 60 day period for recognition of delinquency and non-performing loans till the conclusion of the current financial year, i. e. the classification of a borrower as on November 1, 2016 should be kept at the same status till April 1, 2017 to help prevent creation of undue stress in the system which is for reasons beyond the control of both the lenders and the borrowers.

Hundreds of NBFCs face closure threat on tighter rating norms

Nearly 200 NBFCs face closure in the next few months, as they don't meet the RBI's mandated requirement of minimum investment grade credit rating to accept deposits. These companies, comprising mostly localised small-time lenders, have now approached the regulator seeking relaxation in rating norms, pointing out that they are treated just like any large NBFC, industry insiders said.

In 2014, RBI had said that one of the primary regulatory requirements for accepting public deposits is to obtain a minimum investment grade credit rating. NBFCs are allowed to raise 1.5 times their net worth as deposit to fund their operations. But many companies are unable to raise funds at competitive costs.

"Close to 190 NBFCs are facing closure as they will not be allowed to raise deposits and they do not have any other avenues to raise funds," said Alok Sondhi, managing director at PK Finance, a Punjab-based small NBFC. "We have met with the RBI to ask for relaxation of rating norms." Industry executives said small NBFCs with an asset base of less than Rs 5 crore are treated on par with a large NBFC having asset base of Rs 500 crore and above.

More than 80% of the 11,000 NBFCs registered with the RBI are small and medium sized. These are family-run companies that have built a niche for themselves in their limited area of operation. "There is a crying need to provide these companies with an alternative source of funding," said Raman Aggarwal, chairman at FIDC Finance Industry Development Council, a self-regulatory organisation for NBFCs. All small NBFCs should also be allowed to avail refinance from state-run Micro Units Development and Refinance Agency Bank (MUDRA Bank), he added.

Creating a refinance mechanism for NBFCs has also been a long standing demand of the sector. [Economic Times, Oct 25]

Credit Rating Requirement under Examination of RBI

The small NBFCs feeling pinch of provision made by Regulator making credit rating mandatory for the deposit taking NBFCs, may have some solace in recent RBI response to FIDC representation. Regulator on Nov. 25 letter said, "The issue of mandatory credit rating for acceptance of deposits is under examination."

FIDC as a representative body has requested the Regulator to have formalised arrangement for engagement with FIDC wherein meeting with the Governor/ Deputy Governor at least twice a year and the Department level meeting at every quarter may be held to have "proactive " engagement rather than the current practice of "reactive" engagement. RBI responding positively said "your proposal for periodical meetings of FIDC with this department has been noted."

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