FIDC NEWS

Finance Industry Development Council

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

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Segregate the exposure on HFCs and NBFCs for debt mutual funds

It is appreciable that SEBI has endeavoured to strengthen the mutual fund industry and introduced Prudential Limits on portfolio concentration risk in debt oriented mutual fund schemes. However, the limits imposed for portfolio concentration risk on debt mutual fund schemes, as are being interpreted at the moment, are expected to have a significant impact on the fund raising of NBFCs. The guidelines imposes a sectoral limit of 30% for a particular debt mutual fund scheme. However, for calculating limits applicable for Finance Sector, a whole host of companies, though having very different kinds of business, are getting clubbed together.

Currently, the Finance Sector definition is all encompassing and includes almost every entity in the business of lending with exception of Public Sector Financial Institutions and Banks which are specifically provided as exceptions, and hence includes all Housing Finance Companies, Asset Finance Companies, Stock Broking, Core Investment Companies and Capital Market Financing entities. This therefore comprises a widely disparate group of entities, which have totally different risk profiles.

We would like to point out that due to the nature of their business, both these kinds of entities, i.e. NBFC-AFCs and HFCs are prolific issuers of debt securities through which they raise funds and deploy them further – NBFCs being the front runners in the 'financial inclusion' agenda of the government by lending to the people in rural and semi-rural areas while HFCs help in fulfilling people's dream of owning their own home. But by clubbing exposure to these two kinds of entities with different risk profiles under a single limit, the ability of debt mutual fund schemes to lend to these different kinds of entities is severely constrained. If these schemes are active investors in these kind of securities wherein they were investing in highly rated debt instruments of NBFC-AFCs and HFCs, the fund raising and fund deploying of these entities can get impacted thereby, adversely impacting other beneficiary sectors of the economy. The FIDC feels strongly that the HFCs may be treated as a separate sector, thereby delineating it from other NBFCs i.e. the exposure on HFCs should not be clubbed along with exposure on NBFCs.

R Sridhar, Chairman, FIDC

REGULATORY PERIMETER

RBI NOTIFICATIONS & CIRCULARS :

1.Implementation of Section 51-A of UAPA, 1967- Updates of the UNSCR 1988 (2011) Sanctions List : RBI/2012-2013/231; DNBS(PD).CC. No 305/03.10.42/2012-13- Oct. 3.

2.Foreign investment in NBFC Sector - Amendment to the Foreign Direct Investment (FDI) Scheme - RBI/2012-13/241; A. P. (DIR Series) Circular No. 41, Oct. 10.

3.NBFCs/RNBCs - Uploading of Reports in 'Test Mode' on FINnet Gateway Reporting - RBI/2012-13/252; DNBS(PD).CC. No307/03.10.42/2012-13-Oct. 16.

4.PRIORITY SECTOR LENDING –TARGETS AND CLASSIFICATION : RBI/2012-13/253 -RPCD. CO. Plan. BC 37/04.09.01/ 2012-13 October 17.

5.Name of Fitch Ratings changed to India Ratings and Research Private Limited (India Ratings) : RBI/2012-13/278, DBOD.No.BP.BC. 54 /21.06.007/2012-13- Nov. 5.

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7.Readiness of major service providers to migrate from IPv4 to IPv6 : RBI/2012-13/289; DNBS(Inf.).CC. No 309/24.01.022/2012-13-Nov. 8.

8.National Telecom Policy, 2012 Migration of current version of Internet Protocol IPv4 to IPv6 : RBI/2012-13/292; UBD.BPD.(PCB) Cir No.24 /09.18.300/2012-13- Nov. 9.

9.Definition of 'Infrastructure Lending' : RBI/2012-13/297 DBOD.BP.BC.No. 58 / 08.12.014 /2012-13- Nov. 20.

10.NBFCs/RNBCs - Implementation of Section 51-A of UAPA, 1967-Updates of the UNSCR 1988 (2011) Sanctions List : RBI/2012-13/305; DNBS(PD).CC. No /03.10.42 /2012-13-Nov. 22.

11.Core Investment Companies - Overseas Investment (Reserve Bank) Directions, 2012- RBI/2012-13/314; DNBS (PD) CC.No.311/03.10.001/2012-13; December 06 , 2012

12. Checklist for apllication form for NBFCs, NBFC-MFIs, NBFC-Factors and Core Investment Companies (CICs)- RBI/2012-13/319 ; DNBS.CC.PD.No. 312 /03.10.01/2012-13-December 07, 2012

13.Implementation of Section 51-A of UAPA, 1967 - Updates of the UNSCR 1267 (1999) /1989 (2011) Committee's Al Qaida Sanctions List- RBI/2012-13/321; DNBS(PD).CC. No 313/03.10.42 /2012-13; Dec. 10.

14.Issuance of rupee denominated co-branded pre-paid cards- RBI/2012-13/325; DBOD.No.FSD.BC. 67/24.01.019/2012-13; Dec.12.

15. Progress report on frauds-RBI/2012-13/328; DNBS.PD.CC. No. 314 /03.10.042 / 2012-13; Dec. 13.

16.Frauds-Classification and Reporting -RBI/2012-13/329; DNBS (PD).CC.No.315/03.10.42/2012-13; Dec. 13

Migrating to CTS 2010 standards cheques-time extended

RBI has extended the time up to March 31, 2013 for banks to ensure withdrawal of non-CTS 2010 Standard cheques and replace them with CTS-2010 Standard cheques, taking into account representations of stake holders. Earlier, RBI had asked all banks to arrange to issue only multi-city/payable at par CTS-2010 standard cheques not later than September 30, 2012 and to withdraw the non-CTS-2010 Standard cheques in circulation before December 31, 2012 by creating customer awareness. Further, banks holding post-dated EMI cheques (received either on their own behalf or on behalf of their NBFC clients) were advised by a circular on 3 Sept. to ensure the replacement of non-CTS-2010 Standard cheques with CTS-2010 standard cheques before December 31, 2012.

RBI has further said that the residual non-CTS-2010 Standard cheques that get presented in the clearing system beyond this extended period will continue to be accepted for the clearing but will be cleared at less frequent intervals. The modalities, charges applicable if any, etc. are being discussed with stakeholders and a separate communication will follow in this regard, adds RBI circular issued on 20 Dec.

NBFCs open to both organic and inorganic route to set up banks

With the Parliament passing the Banking Laws (Amendment) Bill, paving the way for the RBI for issuing final guidelines and inviting applications to set up new banks, NBFCs are considering entry to the sector through the inorganic route by mergers and acquisitions (M&As). Some of the NBFCs, however, said they would prefer organic growth to inorganic growth. If permitted by the RBI, the NBFCs are likely to consider banks at the holding company level and may not convert the NBFC into a bank, according to brokerages. In its draft guidelines, the banking regulator has proposed initial capital requirement of Rs 500 crores and foreign share holding is capped at 25 per cent for the first five years. [Business Standard, Dec 20]

Readiness of major service providers to migrate from IPv4 to IPv6

The RBI has advised that as the current version of Internet Protocol (IPv4) has almost run out of addresses, the broadband revolution has to ride on next generation Internet Protocol (IPv6). The NTP-2012 recognizes the futuristic role of IPv6 and aims to achieve substantial transition to IPv6 in the country. Since migration to IPv6 is an eventuality that has to be accepted and in order to manage migration to IPv6 proactively, it is to be done in a planned way. The migration of all payment gateways, banks, financial institutions, insurance companies etc. including their web sites should be completed preferably by December 2012. RBI has asked to initiate necessary action by constituting a special team to complete the migration within the stipulated time.

Registration of NBFC-Factors

Following the notification by the Central Government of the Factoring Regulation Act, 2011, the Reserve Bank has put in place a detailed regulatory framework for NBFC-Factors on July 23, 2012. NBFC-Factors shall have a minimum Net Owned Fund of Rs.50 million for registration; factoring activity should constitute at least 75 percent of total assets; and income derived from factoring business should not be less than 75 percent of gross income. NBFC-Factors intending to deal in forex through export/import factoring will need an authorisation under FEMA, 1999 from the Reserve Bank."[RBI Website]

RBI harmonies definition for Infrastructure lending

The RBI has harmonises the definition of infrastructure lending for financing by banks and financial institutions to avoid confusion. The definition has been aligned with the master list of Infrastructure sub-sectors notified by the Government on March 27, 2012. The revised definition will be effective from the date of this circular, RBI said in statement. The exposure to projects included under old definition but are excluded from the revised definition, will continue to get benefits under 'infrastructure lending' till the completion of the projects. However, fresh lending to those sub-sectors will not qualify as 'infrastructure lending'. [Busi. Standard, Nov 20/RBI circular Dec. 28]

RBI panel to resolve stress in financial conglomerates

The RBI and the Centre will develop a framework to deal with systemically important financial institutions (SIFI) which came under stress and might require quick resolution of problems. The central bank will set up a high-level working panel (inter-regulatory forum), to recommend a comprehensive resolution regime for all types of financial institutions in India, RBI said in its second quarter review of monetary policy. This inter-regulatory forum, to be headed by RBI's deputy governor (banking supervision), will institutionalise the framework for supervision of financial conglomerates (FCs). It will also develop framework to monitor and for management of systemic risks emanating from their activities. This forum will assist the Financial Stability and Development Council (FSDC) for monitoring the functioning of SIFIs. The forum will be responsible for framing policies for FCs such as identification, group-wide risk management, and corporate governance. The forum would also seek to strengthen the supervisory co-ordination/cooperation mechanism amongst domestic supervisors for effective supervision, the RBI said in its policy announcement. [Business Standard, Oct 31]

RBI sets up panel to speed up financial inclusion

Amid slow progress in bringing the entire population under banking network, the RBI announced setting up of a high level committee to "spearhead" efforts to ensure accessible financial services in the country. The Financial Inclusion Advisory Committee (FIAC) under RBI Deputy Governor Dr. K C Chakrabarty is expected to suggest appropriate regulatory framework to ensure that financial inclusion and financial stability move in tandem, the RBI said in a statement. Stating that there has been significant, "albeit slow", progress towards greater financial Inclusion, the RBI said ensuring accessible and affordable financial services in all the six lakh villages is a "herculean task" and given the enormity of the task, "a lot of ground still needs to be covered". "This calls for a partnership of all the stakeholders," it said. The stakeholders include, RBI, SEBI, IRDA, PFRDA, NABARD, governments, civil society and NGOs, among others, the central bank said. [Moneycontrol.com, Oct 11]

Securitisation market adapting well to revised norms: CRISIL

India's securitisation market is adjusting well to the revised securitisation guidelines issued by the Reserve Bank of India (RBI) in May 2012, according to rating agency CRISIL. After a brief lull following the new guidelines, market activity has resumed, CRISIL said in a statement.The total market volumes from May to mid-October 2012 were stable at Rs 3,400 crores involving 38 transactions. These were Rs 3,500 crores with 38 transactions during the corresponding period last year, CRISIL noted. The dampener in the guidelines is that credit enhancement in direct assignments is not allowed, leading to a shift to the pass through certificate (PTC) route.

The volumes have remained stable despite two of the revised regulatory norms reducing the availability of assets eligible for securitisation. First, the provision on minimum holding period that requires originators to hold assets longer to increase their seasoning. Secondly, the assets should conform to a maximum interest rate of 8 per cent above the investing banks' base rate to receive priority sector status.Transactions through the PTC route have accounted for over 85 per cent of the total issuances since the guidelines were issued, as against less than 20 per cent in 2011-12. In a PTC, banks and NBFCs can go less than the base rate. Clarity on the income-tax liability of the trust set up for the PTC route will

enhance confidence of investors. In addition, guidelines for resetting of credit enhancement will reduce the overall cost of securitisation for issuers, without necessarily reducing the protection for investors. said Pawan Agrawal, Senior Director, Crisil Ratings. [BS Reporter, Oct 19]

RBI changes definition of sickness for assessing MSE viability

The RBI has modified the definition of sickness and a procedure for assessing the viability of sick micro and small enterprises (MSEs). According to a notification issued by RBI on Nov. 1, "An MSE is considered sick when any of the borrowal accounts of the enterprise remains NPA for three months or more or there is erosion in the net worth due to accumulated losses to the extent of 50 per cent of its net worth." Earlier, an MSE was considered sick if any of the borrowal accounts of the unit remained substandard for more than six months. The stipulation that the unit should have been in commercial production for at least two years has been removed by the RBI. RBI has also laid down the procedure for declaring a unit unviable. [BS Reporter, Nov 02]

RBI tweaks priority sector lending norms

Heeding the demand of bankers, the Reserve Bank of India on Oct. 17 revised priority sector lending norms . Loans up to Rs 2 crore to companies involved in farming and allied activities will be treated as lending for direct agriculture under priority sector lending (PSL) status. Also, credit to housing finance companies for onward lending for rehabilitation of slum dwellers and economically weaker sections will enjoy PSL status . The cap on such loans will be Rs 10 lakh per borrower. The limit on loans to SMEs in services sector under PSL stands doubled to Rs 2 crore. RBI said the eligibility under PSL (for HFC exposure) is capped at five per cent of total priority sector lending. The maturity of bank loans should be coterminous with average maturity of loans given by housing finance companies. Banks should maintain necessary borrower-wise details of underlying portfolio. [BS Reporter, Oct 18]

Priority sector lending: No relief to NBFC-AFCs

The RBI, in response to a representation made on August 9 by FIDC in regard to revised guidelines issued by RBI on priority sector lending said that the "request to include other entities involved in transportation of farm products under direct finance to agriculture under priority sector lending cannot be acceded to." The revised RBI guidelines have restricted the loans to farmers for transportation of their own farm produce only as the eligible category. FIDC had stated that it is unviable for the farmers owning smaller land to buy a truck for their own usage. RBI, in its letter dated September 11, also reiterated that "with effect from 1 April, 2011 loans to Non Banking Financial Companies except MFIs, which satisfy eligibility criteria, are not eligible for classification under priority sector." However, when the FIDC team met RBI Governor on Oct. 17 for pre-policy consultation for second quarter review of monetary policy 2012-13 this issue was raised again.

Core Investment Companies [CICs] -Overseas Investment

Being holding companies CICs may need to invest in both financial and non-financial activities. The RBI has issued a separate set of Directions on Dec. 6 to CICs with regard to their overseas investments. CICs, currently exempted from registration, desiring to make overseas investments in financial sector, would require a Certificate of Registration [CoR] from RBI and shall have to comply with all the regulations applicable to registered CICs. However exempted CICs do not require to be registered with RBI for making investments in non-financial sector.

All CICs investing in joint ventures/subsidiaries/representative offices overseas in financial sector will now require prior approval from the Reserve Bank. The approval will be subject to the CIC fulfilling the conditions enumerated in directions issued by Reserve Bank on December 6, 2012. This modifies earlier RBI directions for overseas investment by NBFCs issued on June 14, 2011. [RBIwebsite]

RBI allows Aadhaar as banking address proof

RBI has expanded the know-your-customer (KYC) norms for opening an account. Accordingly, it has advised banks to use Aadhaar cards as well as job cards issued under Mahatma Gandhi National Employment Rural Employment Guarantee Scheme as a valid address proof for opening of accounts. RBI has also scrapped the requirement of introduction from an existing account holder in a bank for opening new accounts. [Financial Express, Dec. 12]

RBI direction on fraud cases of NBFCs

RBI has asked NBFCs not to close fraud cases until their final disposal by investigating authorities. RBI wants the NBFCs to pursue cases until the examination of staff accountability has been completed, the amount of fraud has been recovered or written off and insurance claim, wherever applicable, has been settled. [Economic Times, 14 Dec.] ■

Stringent capital provisioning to put many NBFCs out of business

Interview of Mr. Umesh Revankar, Managing Director and CEO, Shriram Transport Finance Company Ltd.

Are NBFCs going through a difficult time, given the regulatory changes?

There was a similar crisis in 1998-99. We were dependent on retail deposits and the RBI came down on us. We started building banks' portfolio. From 2002 onwards, NBFCs started securitisation and another source of raising resources came to us. There were similar situations in the past.

How do NBFCs plan to go about securitisation?

There are two ways of securitising - PTC (pass through certificates) and bilateral. In PTC's case, credit enhancement has to be done from the reserves. We don't have further dilution on capital adequacy. Second is bilateral on which RBI has clarified that banks cannot take credit enhancement on securitisation. Now, banks have the option to factor in the risk premium into the rate. For NBFCs, this portfolio is risk free and we do not have to make any provision and comes with zero capital. Earlier, the minimum period was not mentioned. If the loan agreement is three years or more, six months have to be completed and then banks can take it.

Will it affect fund raising?

Existing NBFCs pool performance is known, so they will not face any problem. It will be difficult for the new NBFCs. As far as raising resources is concerned, there should be no difficulty. There are other options for raising funds like NCDs also.

What is the biggest challenge now?

The biggest challenge for NBFC-AFC is to build a team that manages bigger volume. As they grow 10-15% on a big base, they need a team that has culture, and that is a challenge. Making him work with small operators is a challenge. His behaviour could be stressful. There is a generation gap and building attitude among staff and customer is difficult.

How will the Usha Thorat panel recommendations affect NBFC business?

The proposed provisioning norm will affect NBFCs' profitability. For NBFCs, moving from 180 days to 90 days would be difficult. There will be pressure on NBFCs to behave like a bank. NBFCs' customers are completely different from a bank's customers. NBFCs' customers are non-bankable and cash flows are not smooth... When you try to push customer hard, he will go to moneylenders or he may not become the owner (of a truck) and remain a driver. It may not result in financial inclusion.

Another suggestion is to increase capital requirement, for example from 7.5% to 12% for tier-I. Will it lead to consolidation?

Capital adequacy could have an impact. Now, tier-I is at 7.5% and another 7.5% for tier-II. The committee has recommended 12% and 3%. With this, the private equity players may not find it attractive. If you have stringent capital adequacy and provisioning norms, many NBFCs in the business for two generations with Rs.50 or Rs.100 crore would go out.

[In an interview to Shilpy Sinha, Economic Times on 29 October, MD and CEO Umesh Revankar talks about the challenges faced by NBFCs amid regulatory intervention.] ■

PERFORMANCE OF NBFC SECTOR IN 2011-12

NBFCs: Categories and Classifications

1.Three new categories of NBFCs have been created – Infrastructure Debt Funds (NBFC-IDF), Micro Finance Institution (NBFC-MFI) and NBFC-Factors

2.NBFCs are classified into two categories, based on the liability structure, viz., Category 'A' companies (NBFCs accepting public deposits or NBFCs-D), and Category 'B' companies (NBFCs not raising public deposits or NBFCs-ND). NBFCs-D are subject to requirements of capital adequacy, liquid assets maintenance, exposure norms (including restrictions on exposure to investments in land, building and unquoted shares), ALM discipline and reporting requirements; in contrast, until 2006 NBFCs-ND were subject to minimal regulation. Since April 1, 2007, non-deposit taking NBFCs with assets of Rs.1 billion and above are being classified as Systemically Important Non-Deposit taking NBFCs (NBFCs-ND-SI), and prudential regulations, such as capital adequacy requirements and exposure norms along with reporting requirements, have been made applicable to them. The asset liability management (ALM) reporting and disclosure norms have also been made applicable to them at different points of time.

3.NBFCs are also classified in terms of activities into Asset Finance Companies (AFC), Investment Companies (IC), Loan Companies (LC), Infrastructure Finance Companies (IFC), Core Investment Companies (CIC), Infrastructure Debt Fund - Non-Banking Financial Companies (IDF-NBFC), Non-Banking Financial Company– Micro Finance Institutions (NBFC-MFI) and NBFC-Factors. During 2011-12, two new categories of NBFCs, viz., Infrastructure Debt Funds – NBFC (NBFC-IDF) and Micro Finance Institution (NBFC-MFI) – were created and brought under separate regulatory framework. In addition, a new category called NBFC-Factors was introduced in September 2012. Earlier in April 2010, a regulatory framework for Systemically Important Core Investment Companies (CIC NDSI) was created for companies with an asset size of Rs.1 billion and above, whose business is investment for the sole purpose of holding stakes in group concerns, who are not trading in these securities and are accepting public funds. Prudential requirements in the form of Adjusted Net Worth and leverage were also prescribed for CIC-ND-SIs as they were given exemption from NOF, capital adequacy and exposure norms.

4.An NBFC-MFI is defined as a non-deposit-taking NBFC (other than a company licensed under Section 25 of the Indian Companies Act, 1956) that fulfills the following conditions: (i) Minimum Net Owned Funds of Rs.5 crore (Rs.2 crore for the North-eastern Region), (ii) Not less than 85 per cent of its net assets are in the nature of "qualifying assets", (iii) the income it derives from the remaining 15 per cent assets in accordance with the regulations specified in that behalf. An NBFC which does not qualify as an NBFC-MFI shall not extend loans to the micro finance sector, in excess of 10 per cent of its total assets.

> *"Expansion in assets of AFCs [asset finance companies] was noticeable [in 2011-12]."*

NBFC Sector: Consolidation

Non-Banking financial companies' segment is witnessing consolidation. The total number of NBFCs registered with the Reserve Bank declined marginally to 12,385 as at end-June 2012. A similar trend was observed in the case of deposit-taking NBFCs (NBFCs-D) during 2011-12, mainly due to the cancellation of Certificates of Registration (CoR) and their exit from deposit-taking activities. Despite the decline in the number of NBFCs, their total assets as well as net owned funds registered an increase during 2011-12, while public deposits recorded a decline.

The ratio of public deposits of NBFCs to aggregate deposits of Scheduled Commercial Banks (SCBs) in 2011-12 indicates a decline. The ratio of deposits of NBFCs to the broad liquidity aggregate of L3 also declined during the year.

Operations of NBFCs-D

Financial performance of deposit-taking Non-Bank Financial Companies (NBFCs-D) showed improvement. The balance sheet size of NBFCs-D expanded at the rate of 10.8 per cent in 2011-12. The borrowings constituted around two-third of the total liabilities of NBFCs-D. The public deposits of NBFCs-D, which are subject to credit ratings, continued to show an increasing trend during 2011-12. On the assets side, loans and advances remained the most important category for NBFCs-D, constituting about three-fourth of their total assets. The investment constituted the second most important category, which witnessed subdued growth during 2011-12 mainly due to a decline in non-SLR investments. Asset Finance Companies (AFCs) held the largest share in the total assets of NBFCs-D at end-March 2012.

> *"The financial performance of the NBFCs-D segment has witnessed improvement as reflected in the increase in their operating profits mainly emanating from fund based income."*

NBFCs-D: Borrowings

DEPOSITS: A sharp increase was discernible in the share of NBFCs-D with a deposit size of Rs. 500 million and above, accounting for about 93.2 per cent of total deposits at end-March 2012. However, only 7 NBFCs-D belonged to this category, constituting about 3.6 per cent of the total number of NBFCs-D. It indicates that only relatively larger NBFCs-D were able to raise resources through deposits. There was an increase in the share of public deposits in the interest rate range of 10 per cent to 12 per cent during 2011-12. The largest proportion of public deposits raised by NBFCs-D belonged to the short to medium end of the maturity spectrum. In 2011- 12, there was an increase in the shares of deposits for more than 2 years.

BANK & OTHER SOURCES: NBFCs-ND-SI segment continues to rely heavily on bank finance. Banks and financial institutions were the major providers of funds for NBFCs-D, constituting about 50 per cent during 2011-12. This share has come down marginally. Others (which include, inter alia, money borrowed from other companies, commercial paper, borrowings from mutual funds and any other types of funds that were not treated as public deposits) also registered a declining trend.

NBFC-D: Assets

Expansion in assets of AFCs was noticeable. The total assets of NBFCs-D sector registered a moderate growth during 2011-12 mainly due to an increase in the assets of asset finance companies. As at end-March 2012, more than two-third of the total assets of the NBFCs-D sector was held by asset finance companies. Component-wise, advances accounted for the predominant share of total

assets, followed by investment. At end-March 2012, only 6 per cent of NBFCs-D had an asset size of more than Rs. 5,000 million, which had a share of 97 per cent in the total assets of all NBFCs-D. During 2011-12, assets held in the form of loans and advances of NBFCs-D witnessed significant growth, whereas investment declined. These two categories of activities constituted over 90 per cent share in total assets of the NBFCs-D sector.

Table-1: Major Components of Liabilities of NBFCs-D by Classification of NBFCs

(As at end-March)
(Amount in ' billion)

Classification of NBFCs	No. of Companies		Deposits		Borrowings		Liabilities	
	2011	2012P	2011	2012P	2011	2012P	2011	2012P
1	2	3	4	5	6	7	8	9
Asset Finance Companies	174	160	36	45	490	581	740	856
			(89.4)	(76.9)	(70.2)	(71.8)	(70.2)	(73.2)
Loan Companies	43	36	4	13	208	228	314	313
			(10.6)	(23.1)	(29.8)	(28.2)	(29.8)	(26.8)
Total	217	196	40	58	698	809	1,054	1,169

P: Provisional. Note: Figures in parentheses are percentage share to total.

Table-2:: Sources of Borrowings by NBFCs-D by Classification of NBFCs

(Amount in Rs. billion)
As at end-March

Classification	Government		Banks and Financial Institutions		Debentures		Others		Total Borrowings	
	2011	2012P	2011	2012P	2011	2012P	2011	2012P	2011	2012P
1	2	3	4	5	6	7	8	9	10	11
Asset Finance	0.0	0.0	283	300	123	198	84	83	490	581
	(0.0)	(0.0)	(80.2)	(74.9)	(85.7)	(83.3)	(59.0)	(71.2)	(70.2)	(71.8)
Loan59 Companies	54	70	101	20	40	59	33	208	228	
	(100.0)	(100.0)	(19.8)	(25.1)	(14.3)	(16.7)	(41.0)	(28.8)	(29.8)	(28.2)
Total	59	54	353.2	401	143	238	143	116	698	809

P: Provisional
Note: Figures in parentheses are percentage to respective total.Source: Annual Returns.

Table-3 : Major Components of Assets of NBFCs-D by Classification of NBFCs

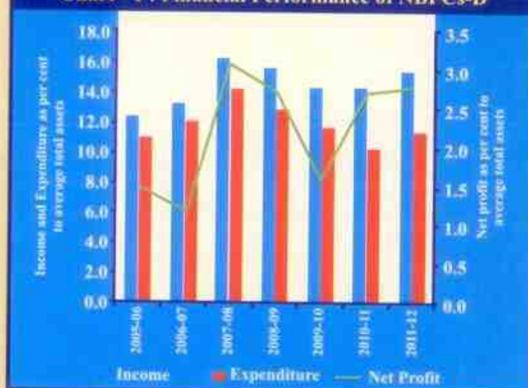
(Amount in Rs. billion)
As at end-March

Classification	Assets		Advances		Investments	
	2011	2012P	2011	2012P	2011	2012P
1	2	3	4	5	6	7
Asset Finance Companies	740	856	557	656	126	180
	(70.2)	(73.2)	(71.5)	(75.0)	(59.9)	(94.1)
Loan Companies	314	313	222	218	85	11
	(29.8)	(26.8)	(28.5)	(25.0)	(40.1)	(5.9)
Total	1,054	1,169	779	874	211	191

P: Provisional Note: Figures in parentheses are percentage to respective total.
Source : Annual Returns.

NBFCs-D: Financial Performance

Fund-based income of the NBFCs-D segment has increased. The financial performance of NBFCs-D witnessed improvement as reflected in the increase in their operating profits during 2011-12. This increase in profit was mainly on account of growth in fund-based income. Expenditure as a percentage to average total assets witnessed a marginal increase during 2011-12. The same trend is seen in terms of income as a percentage to average total assets of NBFCs-D. [Chart-1].



NBFCs-D: Soundness Indicators-Asset Quality

During 2011-12, there was a significant increase in the gross NPAs to total advances of NBFCs-D, which is a deviation from recent trends. Net NPAs which remained negative till 2011 from 2008, with provisions exceeding NPAs registered an increase of 0.5 per cent of total net advances as on March 31, 2012. There was deterioration in the asset quality of asset finance and loan companies during 2011-12 as evident from an increase in the gross NPAs to gross advances ratio for these companies. In order to improve transparency and understanding by borrowers, the Reserve Bank has issued a revised fair practices code. There was an increase in the shares of all three NPA categories of sub-standard, doubtful and loss assets of all companies in 2011-12, underlining the marginal deterioration in asset quality of these institutions. This mainly emanated from asset finance companies.

At end-March 2012, of 190 reporting NBFCs, 187 had CRAR of more than 15 per cent. This could be an indication that the NBFC sector is undergoing a consolidation process in the past few years, wherein weaker NBFCs are gradually exiting and paving the way for stronger ones. The ratio of public deposits to Net Owned Funds (NOF) of NBFCs taken together has more or less remained same as at end-March 2012. There was a significant increase in NOF and public deposits of NBFCs-D during 2011-12. The increase in NOF was mainly concentrated in the category of Rs. 5,000 million and above.

NBFCs-ND-SI

Though borrowing from banks is sizable, a substantial increase in borrowings by way of debentures was witnessed. The assets of NBFCs-ND-SI for the year ended March 2012 showed an increase of 21 percent. Total borrowings (secured and unsecured) by NBFCs-ND-SI showed a significant increase of 23.6 per cent, constituting more than two-third of the total liabilities. Secured borrowings constituted the largest source of funds for NBFCs-ND-SI, followed by unsecured borrowings, reserves and surplus.

The NBFCs-ND-SI segment is growing rapidly. Borrowings comprise their largest source of funds, mostly sourced from banks and financial institutions. To the extent that they rely on bank financing, there is an indirect exposure to depositors. While the concentration of funding has risks, the caps on bank lending to NBFCs may constrain their growth. However, the leverage ratio of the NBFCs-ND-SI sector remains the same as in the previous year. Analysis of region-wise borrowings of the NBFCs-ND-SI reveals the dominance of northern and western regions; together they constitute more than 70 per cent of the total borrowings during the year ended March 2012. The same trend continued during the quarter ended June 2012. All regions registered growth during both the year ended March 2012 and quarter ended June 2012.

NBFCs-ND-SI: Financial Performance

The financial performance of the NBFCs- ND-SI sector deteriorated marginally as reflected in the decline in net profit during 2011-12. Both Gross and Net NPAs to total asset of the NBFCs-ND-SI sector increased during the year. The same trend continued as on June 2012.

As on March 31, 2012, the majority of the reporting companies maintained the stipulated minimum norm of 15 per cent capital adequacy as measured by CRAR. Only 10 per cent of the total reporting companies have a CRAR of less than 15 per cent. These companies were also largely dependent on nationalised banks for their term loans, working capital loans and debentures/CPs. New private sector banks have emerged as a second major bank group for these companies to raise term loans and working capital loans.

Overall Assessments

There were signs of a consolidation process in the NBFC sector in terms of number of NBFCs. The balance sheets of NBFCs have, however, showed substantial expansion. The financial performance of the NBFCs-D segment has witnessed improvement as reflected in the increase in their operating profits mainly emanating from fund-based income. However, the financial performance of the NBFCs-ND-SI segment has deteriorated marginally, though the sector is growing faster. Borrowings constitute the largest source of funds mostly sourced from banks and financial institutions for NBFCs. Thus, the heavy reliance on bank financing needs to be monitored closely. In this context, the recent regulatory measures leading to tightening of norms with respect to raising of resources from banks is expected to bring down the NBFC sector's reliance on the banking sector and to look for alternate sources of funds.

In terms of NPAs, there was a significant increase in the gross NPAs to total advances of NBFCs.

[Excerpts from the Reserve Bank of India Report on "Trend and Progress of Banking in India" released on 8 Nov.2012]

REMAULDING NBFC SECTOR

RBI draft guidelines released on 12-12-12 to re-design NBFC regulations with macro objectives are likely to hit hard small NBFC-AFCs as they can hardly grow within two years to attain asset size of Rs.25 crore in present sluggish economy and raise their NOF substantially in such hard liquidity conditions. This stark reality that it may affect financial inclusion endeavours of NBFCs, may lead to closure of some of them hampering credit reach to remote/rural areas and may create some practical operational issues in implementation, needs sympathetic consideration by the regulator. Success of its implementation leading to revitalised NBFC Sector would ultimately depend upon ironing out glitches in the guidelines, with supporting development orientation [as in case of HFCs] towards NBFCs for them to grow and putting NBFCs on equal footing with other financial sector players prior to making even far liberal guidelines effective.

RBI draft guidelines for NBFCs

The RBI has released draft guidelines for NBFCs based on recommendations of the Usha Thorat Committee Report (released in August 2011) on issues and concerns in the NBFC sector. The objective of the committee was to address issues relating to regulatory arbitrage and systemic risk, so as to create a strong and resilient non-banking financial sector. The guidelines address risk concerns by way of higher capital adequacy, changed asset classification and higher provisioning norms and increased disclosures. The guidelines would impact profitability, lead to lower leverage and, consequently, impact RoE. A change in the asset classification from the current 180 days past due (DPD) norm to 90 DPD norm, if implemented, would lead to higher NPL and drive up provisioning costs, thus impacting profitability. Further, 0.4% standard asset provisioning would also impact profitability. [icicidirect.com Research]

SME-NBFCs will be hard hit

RBI draft guidelines issued on Dec. 12 "do not give any relief to small / micro AFCs and would still ensure killing of SME sector (which constitutes more than 80% of the assets of total AFCs) in view of [i]requirement of minimum asset size of Rs. 25 crore for registration by existing companies (within two years); and [ii] compulsory credit rating requirement for acceptance of Public deposits," said Punjab & Haryana Finance Companies Association [PHFCA] in its representation to RBI. "De-registration of companies with less than Rs. 25 crores asset base would be a retrogade step to the 1997 RBI amendments whereby registration was made mandatory for all NBFCs so as to properly regulate the finance sector under one body through-out the country," said Alok Sondhi, secretary general, PHFCA. Such action would "result in mushrooming of non-serious NBFCs which State Governments and other agencies would not be able to manage" apprehends PHFCA.

The effects of such de-registration of small NBFCs is likely to be severe in their operations as courts demand certificate of registration of RBI in cases filed u/s 138 of the Negotiable Instrument Act and other recovery suits being filed against defaulters. More over as per Expert Committee [for Motor Vehicle Act] recommendation:"The lien in the registration certificate shall be marked only in favour of banks & NBFCs which are registered with RBI" which cannot be had by such de-registered entities.

Other issues which will affect the AFCs (NBFC) sector on the whole are [i] reduction in number of days for NPA provisioning to 90 days and [ii] reduction in ceiling on acceptance of public deposits for rated companies from 4 times to 2.5 times of NOF, PHFCA said. It has suggested 120 days norm to be attained over a period of 5 years instead of 2 years as proposed, and have asked that prior to implementation of this NBFCs be allowed deduction for NPA provision under Income tax Act; be covered under SARFESI Act; and are allowed recovery through Debt Recovery Tribunal (DRT) as in case of banks.

In respect of public deposits it is desired that the limit on acceptance of public deposit be retained unchanged as CRAR regulates the total borrowings. NBFCs say "If at all it has to be reduced then AFCs having rating below 'A' should be allowed to accept public deposits up to 3 times of NOF"

AFCs-SME plays an important role in the economic development of the country. The RBI should continue to support this important segment of the financial sector as the Government also encourages SMEs, PHFCA pleaded.

Tough Times Ahead

ASSET RANGE

As or end-March All figures in ₹ million

	No. of Cos 2011	No. of Cos 2012*	Assets 2012*
<2.5	2	0	0
>2.5-5	9	11	45
>5-20	70	55	691
>20-100	73	65	2,917
>100-500	34	34	7,147
>500-1,000	8	11	6,910
>1,000-5,000	6	8	19,052
>5,000	15	12	1,131,913
TOTAL	217	196	1,168,676

*Provisional SOURCE Annual returns, RBI

Usha Thorat Panel Recommendations

NBFCs should have minimum assets of ₹25CR

Minimum equity capital must be 10% of risk-weighted assets

Create two categories of SME-NBFCs

One NBFC from TN said "If this decision is implemented, it will definitely affect the credit reach and penetration to the rural and far off places other than urban and semi urban areas. The mere size of the small NBFCs, make them viable to locate in rural areas and to serve borrowers in these remote locations. So smaller NBFCs should also be encouraged to grow along with the bigger ones." Another NBFC suggests: "instead of exempted NBFC, it should be SME NBFC" and proposes that two categories may be created in this space, i.e. with NOF of Rs.1 crore with financial asset Rs.5 crore and five years for achieving target and these NBFC should be known as SME NBFC; another category of NBFCs with NOF of Rs. 2 crore with financial asset Rs.10 crore.

It will create some stress if applied to NBFC-MFIs

Kishore Kumar Puli, chief of the Andhra Pradesh chapter of Microfinance Institutions Network said, "It's not very clear whether the new rules will apply to NBFC-MFIs. If they are coming under the new regulations, it will create some stress on their operations in the form of higher provisioning and asset classification requirements, given that the customer segment of such NBFCs are totally different,"

Only NBFC-AFC's have been denied access to ECBs

Voicing the concern about availability of avenues for raising funds by NBFC-AFCs the former chairman of FIDC, T T Srinivasaraghvan said "Time and again NBFC-AFC's have been requesting RBI to allow them to raise money through issue of Perpetual Debt Instruments and External Commercial Borrowings. We wish to point out that only NBFC-AFC's have been denied access to ECBs. Even institutions such as NBFC-MFI's are permitted to raise money through this source".

The RBI draft guidelines suggest several regulations, many of which are already covered under the Companies Act and Listing Agreement with SEBI. He therefore suggested that "instead of repeating all the regulations once again for listed NBFCs, RBI may prescribe additional provisions, if any, which are not covered either under Companies Act or listing agreement".

Pointing out the micro-management stance, Mr. Srinivasaraghvan mentioned that under "Para 3 (iv) to Annex 4, prescribes 2 business days to prepare and circulate the minutes of the Board meeting. This does not seem practical." It was suggested that the provisions of the Companies Act in this regard (30 days) may be followed.

Most of the disclosure requirements prescribed by RBI guidelines are already covered under the prevalent Accounting Standards. Each Company is required to follow the respective Accounting Standards. Specifications of the requirements of these Standards as a disclosure are a repetition. Indicating the need to become circumspect about disclosures to be made in public domain he stated that "concentration of advances/ exposures/ NPAs is required to be disclosed. However, to make this mandatory as a part of the Annual Report, which is in public domain, is not relevant to a common shareholder... Further, disclosures such as Top 20 exposures etc. in the public domain would act as information to the competitor, which may be to the detriment of the NBFC. Such information should not be in the public domain," he added.

RBI proposal may put 70% NBFCs out of business; over 9,000 companies may lose licences

More than two-thirds of NBFCs face closure if the Usha Thorat panel recommendation on minimum asset size is implemented by the RBI, shutting a vital

source of funding in many parts of the country. Nearly 9,000 companies lending to borrowers in small towns and villages that lack banking facilities could be in danger of losing their licences as their asset size is less than Rs 25 crore. "Around 70% of NBFCs could go out of business if the proposed requirement of Rs 25 crore of financial assets is accepted," said Mahesh Thakkar, Director-General, Financial Industry Development Council, the representative body of the industry. "There are many companies with asset size of Rs 5-10 crore that will be out of business," he said. The RBI-constituted panel, headed by its former deputy governor Usha Thorat, to tighten rules for NBFCs has proposed that these companies should have minimum assets of Rs 25 crore. Thorat has also suggested that their minimum equity capital be raised to 10% of risk-weighted assets from 7.5%.

The moment the central bank implements the minimum requirement clause, these companies may be covered by the various acts governing moneylenders that are inimical to the corporate way of functioning. "There are 23 different moneylending Acts, which we will have to follow after we get deregistered," said Alok Sondhi, who has been running the Punjab Haryana Finance Cos. for nearly half a century. "Around 85% of the asset finance companies will be be-regulated."

There are 12,371 registered NBFCs as of November 2012, RBI data shows. There are 12,104 non-deposit taking NBFCs while 265 take deposits from retail investors. NBFCs fill a key gap in the Indian financial system by lending to people who cannot meet the strict document and collateral norms set by banks. Also, they serve in regions where the banking system has not reached even four decades after nationalization. To reduce the risk to the financial system, the central bank has been tightening norms for NBFCs that rely on funding from banks. More than half their funds come from banks, which are unable to reach the hinterlands. [Economic Times, Dec. 27]

Proposed RBI norms may hit NBFCs profitability: ICRA

The proposed guidelines by the RBI for the NBFCs are likely to impact the profitability of these entities by 15-20 basis points (0.15-0.20%) in medium-term, according to a research report by the rating agency ICRA. "...The proposed revision in the NPA recognition norm to 90 days [against the existing 180 days], along with the adoption of higher provisioning requirements for NPAs and standard assets [in line with that for banks] could lead to a dip in NBFCs' profitability by 15-20 basis points over the medium term. "...The higher tier-I capital requirement could translate into a decline of around 115 basis points in the sectors' return on equity (ROE)," the report said. As per the proposed guidelines, the NBFCs have to recognise a loan as NPA if it is not serviced for 90 days from the present 180 days. RBI also proposes to implement 10% capital adequacy ratio (CAR) norm for most of the NBFCs. "While this is in general a positive step, some NBFCs offering products with annual or quarterly repayments may find their asset quality turn volatile because of this change," it said. The ICRA added that further increase in tier-I capital as well as risk weights for some other asset classes would reduce the leveraging capacity of NBFCs compared to banks.

The research firm also said lack of access to Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI Act) as well as any liquidity back-up would continue to weigh on the performance of NBFCs. Referring to liquidity management, the report said it may increase the cost of doing business for NBFCs. It, however, added that enhanced disclosures are positive for the NBFCs. According to the proposed guidelines, NBFCs have to seek prior approval from RBI in case of change in shareholding by 25% or above, and appointment of chief executive officer in a NBFC with asset size of more than Rs 1,000 crores, among others. [Business Standard/PTI, Dec. 27]

FIDC swings into Action

FIDC convened a Special Meeting of its Managing Committee on 26th Dec. where all members were invited to consider the issues arising from proposed in Draft RBI Guidelines issued on 12-12-12 as these had far-reaching consequences for NBFC sector. FIDC is proposing to make a detailed representation to RBI in the matter based on deliberations of the meeting.

Seminar on RBI Draft guidelines on NBFCs at Mumbai

The Indian Merchants' Chamber and Finance Industry Development Council (FIDC)are organizing at Mumbai a Discussion Session on "RBI's Draft Guidelines based on Usha Thorat Committee Report on Issues and Concerns in the NBFC Sector" at 4-00 on 7 Jan. 2013. Mr. Anand Sinha, Dy Governor, Reserve Bank of India will be the Chief Guest and Mrs. Usha Thorat Director, Centre for Advanced Financial Research and Learning will be the Guest of Honour at the Session.

ELFA Issues Policy Statement on Comprehensive Tax Reform

During the 51st Annual Convention of the Equipment Leasing and Finance Association [ELFA], the association's Board of Directors issued a Policy Statement on Comprehensive Tax Reform. The statement outlines key principles the association believes are important.The ELFA supports a tax code that promotes economic growth, competition, fairness, and predictability. In order to inform the ongoing tax reform discussion in the U.S. Congress, the ELFA Board has approved the following set of principles for comprehensive tax reform that ELFA will use to evaluate tax reform proposals.

- Treat Owner-Lessors and Owner-Operators in a Tax Neutral Manner
- Maintain Cost Recovery and Interest Deductions
- Maintain the ability of businesses to deduct business interest associated with the financing of equipment.
- Preserve the ability of businesses to count leasing expenses against revenue when they are calculating their income subject to tax.
- Retain the ability of businesses to depreciate capital assets over time according to well-reasoned depreciation schedules.
- Continue provisions in the IRC that promote capital formation, such as 100% expensing and maintaining section 179 expensing levels.
- Provide a Level Playing Field for Lessors and Other Finance Providers
- Maintain Tax-exempt Treatment of State and Local Government Obligations
- Promote a More Competitive International Tax System. [Monitor daily, October 22]

FLA and Police tie-up will continue to save millions

A unique partnership between the police and the motor finance sector has helped to recover over 1,500 cars fraudulently obtained on car finance, saving finance companies millions of pounds and delivering significant savings for consumers. The partnership involves the Finance & Leasing Association's (FLA) sponsorship of the Vehicle Fraud Unit of the ACPO Vehicle Crime Intelligence Service (AVCIS) of UK. [FLA-London, 1 Oct.]

European Equipment Leasing Market Shows Growth H1/12

Leaseurope's biannual survey of the European leasing market reveals that new equipment and vehicle leasing volumes in Europe increased by 3.4% to reach €112 billion in the first half of 2012 compared to the same period a year ago.The European Commission only expects a return to healthier growth levels in 2013. [Monitor daily, Nov.]

DVLA and FLA of U K agree vehicle recovery scheme for financed cars

The Driver and Vehicle Licencing Agency (DVLA) and the Finance & Leasing Association (FLA) launched a vehicle recovery scheme. This ground breaking new agreement enables finance companies to rescue financed cars that have been impounded by the DVLA because the driver has no road tax - driving a car that is subject to a finance agreement without Vehicle Excise Duty (VED) is a breach of the finance contract. [FLA-London, 26 Sept.]

Active Advocacy for its members by CFLA

Chairman Jeffery Hartley, Canadian Finance & Leasing Association [CFLA] said in its latest report: "In the Advocacy highlights, Association achieved important results in Nova Scotia, British Columbia and Alberta. A CFLA delegation appeared before a legislative committee of Québec's Assemblée Nationale and another delegation spent a day discussing proposed changes to lessee and lessor accounting with a member of the International Accounting Standards Board, the accounting rules regulator. A major submission was given to the Canadian Securities Administrators (the body representing all the 10 provincial and 3 territorial securities regulators in Canada) on proposed new rules for securitization in Canada." [CFLA annual report, 2011-12]

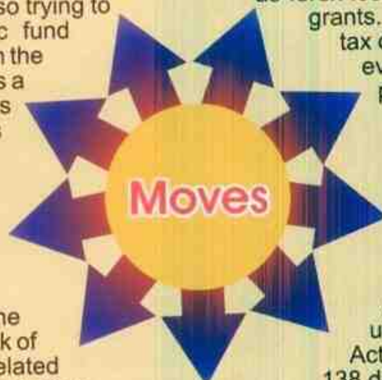
Capital norms eased for foreign-owned NBFC arms

NBFC, with more than 75 per cent foreign direct investment may find it easy to set up downstream subsidiaries. The Government has relaxed the minimum capital requirement norm for such an action. The Department of Industrial Policy and Promotion, in its new press note-9 said, "The Government of India has reviewed the policy and decided to permit NBFCs having foreign investment above 75 per cent but below 100 per cent and with a minimum capitalisation of $50 million, to set up step down subsidiaries for specific NBFC activities, without any restriction on the number of operating subsidiaries and without bringing in additional capital." The new norms will be effective immediately. Commenting on the development, Anish Thakkar, Tax Partner with Ernst & Young, said, "This is a welcome move as joint ventures in the NBFC space will also now be able to form step down subsidiaries which will not be subject to minimum capitalisation requirements." He also said that prior to the issue of Press Note 9 (2012 Series), NBFCs which were 100 per cent foreign owned and that brought in foreign capital of $50 million could incorporate step down subsidiaries to carry on NBFC activities without the subsidiaries having to mandatorily bring in $50 million separately.

"NBFCs having foreign investment more than 75% and up to 100% and with a minimum capitalisation of $50 million, can set up step down subsidiaries for specific NBFC activities," RBI said in a notification. The RBI notification follows government's decision last week in this regard. [Business Line, Oct. 4/Business Standard, Oct.10]

Innovative measures in offing

According to Mr. H R Khan, Dy. Governor, RBI there are thoughts on coming up with policy measures on the International Bank Account Number, which will facilitate portability. "We are also trying to marry banks and post offices in an electronic fund management system," he said. He also stressed on the means by which the payment system could work as a catalyst for financial inclusion. Khan said India was the second largest in terms of cash usage to gross domestic product. He said efforts were being made to make India a "less-cash society". According to him innovative payment systems can handle large account transactions. [BS Reporter, Nov 26]



RBI considering four alternatives to gold

Given Indians' yen for gold and the pressure on the current account due to its import, the Reserve Bank of India is considering introducing four gold-related instruments to ease the physical demand for the yellow metal. [Business Line, Nov. 25]

Merge SEBI, IRDA, PFRDA, FMC: Panel

A government-appointed panel has proposed a super regulator for the financial sector which would subsume the functions of key agencies like SEBI, IRDA, PFRDA and Forward Markets Commission (FMC). The Approach Paper brought out by Financial Sector Legislative Reforms Commission, headed by former justice B N Srikrishna, has also suggested creation of a financial redressal agency (FRA) to address consumer complaints against companies across the financial sector. The other important observations of the Commission, which was appointed by the government last year to recast and update financial sector legislations, include setting up of a separate debt management office (DMO) and financial sector appellate tribunal (FSAT). It will have to submit its report by March 2013. The super regulator for the financial sector which would subsume the functions SEBI, IRDA, PFRDA and FMC be called as Unified Financial Agency (UFA). "These changes will alter the Indian financial landscape from eight financial regulatory agencies to seven," said the Approach Paper on which the Commission will seek comments of stake holders before finalising its report. As regards the Reserve Bank, the Commission said the central bank should focus on monetary policy, ensure consumer protection law in the fields of banking and payments. [Financial Express, Oct 01]

New CBDT norms for taxable income

A panel set up by the finance ministry has recommended amending the Income Tax Act to introduce Tax Accounting Standards (TAS) that companies have to compulsorily follow while calculating their income for tax purposes. The income thus computed, based on which taxes are to be paid, could be quite different from the profit or loss reported in the profit and loss account prepared as per the Companies Act. The proposed TAS, as opposed to the fair-value-based accounting standard based on the International Financial Reporting Standards (IFRS), would practically limit companies' freedom to spread profits across many assessment years to manage tax outgo. The Central Board of Direct Taxes (CBDT) said on Friday that its Accounting Standards Committee has recommended 14 tax accounting standards.

Mr. Alok Nigam, Joint Secretary (BO), Dept of Financial Services, Ministry of Finance, Government of India and Chairman, Key Advisory Group on NBFCs joined the meeting of Managing Committee of FIDC held at New Delhi on 22 Nov. as a special invitee and interacted with the members of FIDC

The implications of TAS for companies' tax liability are huge. This is because of the difference in revenue recognition in many areas such as forex losses/gains, construction contracts and government grants. TAS-compliant profit calculation and the resultant tax demand on firms would differ from that of IFRS and even some of the existing accounting standards. The panel said that Section 145 of the Income Tax Act should be amended to implement TAS. [Financial Express, Oct 27]

Cheque bounce cases: FinMin mulls 'Lok Adalat type' redress mechanism

To cut down the number of cheque-dishonour cases, the Finance Ministry is looking at an alternative dispute resolution mechanism, such as a Lok Adalat. The idea is to consider prosecution under Section 138 of the Negotiable Instruments (NI) Act only if the alternative mechanism too fails. Section 138 deals with penalties in case of dishonour of cheques due to insufficient funds in the bank account of the drawer. Further, cheques taken as security without stating the amount of debt may be excluded from the purview of the Section. These measures were suggested to the Finance Ministry by a committee constituted by the Ministry of Law and Justice. Under Section138, the drawer of the cheque, which has been returned unpaid by a bank because money in the account is insufficient, is deemed to have committed an offence that is punishable with imprisonment up to two years, or with fine that may be up to twice the amount of the cheque, or both.

Parliament approves changes in SARFAESI Act

In a move expected to empower debt recovery by lenders, Parliament on Monday approved the Bill to amend the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act), amending two Acts — SARFAESI Act 2002, and Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (DRT Act). Amendments will allow banks and asset reconstruction companies (ARCs) to convert any part of the debt of the defaulting company into equity. Such a conversion would imply that lenders or ARCs would tend to become an equity holder rather than being a creditor of the company. It also allow banks to bid for any immovable property they have put out for auction themselves, if they do not receive any bids during the auction. In such a scenario, banks will be able to adjust the debt with the amount paid for this property. This enables the bank to secure the asset in part fulfilment of the defaulted loan. Banks can then sell this property to a new bidder at a later date to clear off the debt completely. However lenders will be able to carry this property on their books only for seven years, as per the Banking Regulation Act, 1949. [FE BUREAU, Dec. 11]

SEBI MOVES

SEBI lays down strict rules for rejection of offer documents

Capital markets regulator SEBI issued a framework for the rejection of draft offer documents filed with it before issue of securities. In the future, SEBI will reject offer documents if it believes investor safety is compromised or the quality of disclosures are inadequate or risk associated with the issue are high. SEBI Chairman U K Sinha issued a general order in this regard, which comes into effect immediately. This is the first time the regulator has issued such a framework. SEBI has set the strict rejection criteria based on the issuer's capital structure, objective for fund raising, business model or financial performance. The regulator has said issues where ultimate promoters are unidentifiable or where there are instances of circular transactions for building up the capital or net worth of the issuer will be straightway rejected SEBI has also said offer documents would be rejected :

* if the issue proceeds are used towards repayment of loan or inter-corporate deposits or major portion is proposed to be utilised for the purpose, which does not create any tangible asset.

* if the time gap between raising the funds and proposed utilisation of the same is unreasonably long, the offer document will be rejected.

*If the business model of companies is "exaggerated, complex or misleading and the investors may not be able to assess the risks associated with such business models.

*If there is a sudden spurt in the financial performance of a company ahead of filing a draft offer document.

*if there are pending litigations and the issuer's survival is dependent on the outcome of such litigations.

The entities whose draft offer documents are rejected will not be allowed to access Capital markets for at least one year from the date of such rejection, SEBI has said. The regulator has given a one-month time for issuers to withdraw their offer documents that are pending with the board. SEBI has said the list of offer documents that are rejected would be made public by hosting it on its website. [BS Reporter, Oct 12]

SEBI unveils IPO safety draft norms

According to SEBI, the safety net mechanism would be available for all securities allotted to original resident retail individual allottees, who had made an application for up to Rs 50,000. "The total obligation on safety net provider will be capped at five per cent of the issue size," the market regulator said. Noting that it would be mandatory for all IPOs, SEBI said the safety net provision would be triggered in cases where the price of the shares has depreciated by more than 20 per cent from the issue price. [Financial Express, Sep 28]

SEBI moves to boost corporate bond market

Markets regulator SEBI may allow primary dealers (PDs) and banks to play the role of market makers in public issues of corporate bonds by allowing them to give two-way quotes in a screen-based trading system, two people familiar with the development said. Financial sector regulators – SEBI, RBI and IRDA-- have met a few times this month to discuss the proposal, they said preferring anonymity. "SEBI wants to allow market making in corporate bonds as it will bring more liquidity in the secondary market, which, in turn, will help in better price discovery," said a regulatory official. [ET Bureau Dec 25]

SEBI alters disclosure rules for listed firms

The SEBI on Oct. 3 announced a slew of changes in disclosure requirements by listed companies to increase transparency on voting during resolutions and provide better comparative figures of quarterly results. [Financial Chronicle, Oct 05]

Securitisation-clarity needed on taxation issues

SEBI chairman U K Sinha said one of the reasons why securitisation is not picking up is due to taxation issues and said the government should clarify on some problems. "Asset management companies have received notices that they have to pay taxes. This is a matter on which government has to clarify what the final position is. One of the reasons why securitisation is not doing good is due to taxation issues," he said. SEBI will facilitate with any changes in the regulatory requirements, if needed, Sinha added. [Business line/PTI, Oct 17]

BEYOND BOUNDARIES

Dead money: Cash has been piling up on companies' balance-sheets since before the crisis

Companies in USA have been net suppliers, instead of users, of funds to the rest of the economy since 2008. Firms in the S&P 500 held roughly $900 billion of cash at the end of June, according to Thomson Reuters, down a bit from a year earlier but still 40% up on 2008. Japanese companies' liquid assets have soared by around 75% since 2007, to $2.8 trillion, according to ISI Group, a broker. Cash stockpiles have continued to grow in Britain and Canada, too, to the immense frustration of policymakers there. "Dead money" is how Mark Carney, the Bank of Canada's governor, has described the nearly $300 billion in cash Canadian companies now hold, 25% more than in 2008. Mr Carney admonished them to "put money to work and if they can't think of what to do with it, they should give it back to their shareholders." Business leaders and conservative critics cite that cash mountain as proof that meddlesome federal regulations and America's high corporate-tax rate is locking up cash and depressing investment. But that cannot explain why the same phenomenon prevails worldwide. Low interest rates have reduced borrowing costs, adding roughly a percentage point to American profit margins, according to BCA Research. (Yet rock-bottom interest rates also make it less attractive to hold cash.) The financial crisis has made firms more skittish about relying on banks or securities markets for funds. Since questions were raised in 2008 about the ability of General Electric's finance arm to fund itself, the company has been stockpiling cash: $85 billion at the end of the third quarter, the most in the S&P 500. Between now and 2016, GE expects to generate $100 billion in cash, enough to finance investment, acquisitions and dividends, and to buy back enough stock that shares outstanding will be lower than before the crisis. Asked recently if GE was tempted to spend more of its cash pile on acquisitions, Jeffrey Immelt, the chief executive, replied: "It's not burning a hole in our pocket." [Economist-London, Nov.3]

China: Lending companies to get boost

Chinese lending companies extended 141.4 billion yuan in the first nine months, according to data released by the People's Bank of China on 7 Nov. China had a total of 5,629 lending companies that do not take in deposits. The outstanding loans they extended amounted to 533 billion yuan, said the bank. Pan Gongsheng, deputy governor of the central bank, said last week the government will accelerate development of small financial institutions that focus on providing support to small businesses, including such lending companies, to improve credit support to small businesses. The authorities are gearing up to clear up barriers preventing private capital f rom set t ing up such ins t i tut ions independently, he said. China should encourage private lending companies with good operating conditions to transform into commercial banks that could also take in deposits, said Wu Xiaoling, a former deputy central bank governor and now vice-chairman of the National People's Congress Financial and Economic Affairs Committee. The limitation that lending companies cannot get bank loans for more than 50 percent of their assets should be abandoned, the All-China Federation of Industry and Commerce suggested earlier. [ChinaDaily Europe, 8 Nov.]

Flood of foreign capital into South Korea is seen as potential danger

Lower interest rates overseas have helped pump new foreign investment into the South Korean stock market over the past year, so much so that instability might be an outgrowth, says Lee Soo-jung, a researcher at Korea Investment and Securities. "Ample global liquidity revived the preference for risky assets, while foreign-exchange gains due to the Korean won's strength and Korean firms' stable profits attracted foreign investors," Lee said. [The Korea Herald (Seoul), 17 Dec.]

Apex Court rules financiers can re-possess vehicles

The Supreme Court has categorically upheld the financiers' right to re-possess a vehicle in case of default. Also, in case the vehicle is seized by the financier, no criminal action can be taken against the financier as he is the legal owner, the apex court said in a recent ruling. The ruling in the Anup Sharma vs Bhola Nath Sharma & other case, will strengthen the hands of asset-financing NBFCs, say industry observers. "The law can be summarised that in an agreement of hire purchase, the purchaser remains merely a trustee/bailee in behalf of the financier/financial institution and ownership remains with the latter. Thus, in case the vehicle is seized by the financier, no criminal action can be taken against him as he is re-possessing the goods owned by him," the two-judge bench of B. S. Chauhan and Fakir Mohammad said in an order dated October 30.

Reacting to this ruling, Raman Aggarwal, Director, Finance Industry Development Council (FIDC), said it has cleared the confusion around "re-possession." It would go a long way in improving the recovery scenario for asset financing NBFCs. Aggarwal said earlier there was negativity around repossession in the light of mis-interpretation of various judgments. The court orders never questioned the right of financiers' to re-possess, but they wanted the malpractices (in repossession) to be checked, he said. In September 2009, FIDC, a self-regulatory organisation for asset financing NBFCs in India, had come out with a handbook on 'Repossession,' which contained all the do's and don'ts of repossession. [Business Line, Nov. 6]

Apex Court reverses own verdict on cheque dishonour

Complaints can be filed even after second, subsequent notice.

The beneficiary of a cheque who chose not to prosecute the drawer after serving the first notice on him can do so after serving on him a notice the second and subsequent times, held the Supreme Court. In MSR Leathers v. Palaniappan and Another, the Court overturned its own verdict delivered in Sadanandan Bhadran's case in 1998. In that case it had held that if the beneficiary of a cheque after serving notice on the defaulting drawer – within a month of notice of dishonour – to pay up within fifteen days, does not follow it up with a complaint to the magistrate within a month of lapse of the fifteen days' time to pay up, he forfeits the right to file a complaint with the magistrate if his second and subsequent notices also remain unheeded.

The Apex Court wondered why in the earlier judgement it had not examined the doctrine of waiver of right to prosecute to condone his failure to prosecute hot on the heels of the first default. A beneficiary of cheque might waive his right to prosecute for a variety of reason including the possibility of the drawer landing funds on the second and subsequent occasions. Instead the Apex Court had in the earlier verdict chosen to press in the doctrine of absolution according to which when a person does not prosecute a person in respect of a non-cognizable offence he is deemed to have pardoned the defaulter. Taking a refreshing new look into the issue, the Court pointed out that a beneficiary cannot be presumed to have granted absolution but given more opportunities for the defaulter to pay up. Viewed in this light, the cause of action rose each time, the beneficiary served notice and gave time to pay up. In other words, it did not die with his failure to prosecute after the first notice as was held in the earlier judgement. In any case, the Court pointed out, the law has since been amended to vest the magistrate with the power to file a complaint within a month of failure to pay up within fifteen days of the notice which is a tacit statutory admission of the right to waive prosecution for the time being. [Business Line, Oct. 2]

Cheque bounce complaint valid

The Supreme Court ruled that a complaint of bounced cheque need not be signed in the first instance, but can be verified later before the magistrate. The Supreme Court rejected the argument of the accused person that the complaint against him was not signed and therefore not valid. He had sent 57 cheques as payment for supplying yarn by Reliance Industries. They were returned by the bank with the remark, "exceeds arrangement". The metropolitan magistrate recorded the verification statement and issued summons against the accused. He challenged it in several courts without success. The Supreme Court said in its judgment in the case, Indra Kumar vs RIL: "The complaint under Section 138 of the Negotiable Instruments Act without signature is maintainable when such complaint is verified by the complainant and the process is issued by the magistrate after due verification. [Business Standard, Nov. 26]

Don't levy new fee on cheque-bounce cases, judgment reviews: SC to Govt.

The Supreme Court on Oct. 16 restrained the Delhi government from levying enhanced court fee on filing of cheque-bounce cases, written statements in civil matters and while seeking review of judgments. Modifying its interim order, a bench led by Justice G S Singhvi asked the Delhi government not to charge anything from litigants if they filed cases relating to bounced cheques under the Negotiable Instruments (NI) Act. "Clarifying the position, we direct that the interim order passed by this court on September 26 shall stand modified in the following terms: no court fee shall be payable on written statements simplicitor; no court fee shall be payable under Section 138 of NI Act and applications for review," read the court order. [Financial Express, Oct 17]

Apex court order on contingent deposits will impact non-banks in Kerala, says expert

A Supreme Court order saying contingent deposits received by NBFCs are taxable will impact such companies in Kerala. This is because of the accounting methodology employed, says Sherry Oommen, senior adviser of Kochi-based GyanMagnus Associates (GMA). The case pitted Sundaram Finance against assistant commissioner of income tax, Chennai, over contingent deposits received from leasing/hire purchase customers. The court held that these deposits were assessable to tax since they were not kept in a separate interest-bearing account. In fact, they formed part of the business turnover, the court said.

It based its decision on a well-established legal principle that the legal character of the transaction is the key to determining the source of receipt, Oommen said. In view of the ruling, it would be prudent for NBFCs holding contingent deposits towards tax liability to create separate interest-bearing accounts. These deposits would not then get characterised as 'income' in the hands of NBFCs. Otherwise, they would be chargeable to tax. Sundaram Finance has collected an amount of Rs 36.47 lakh as contingent deposit from customers in anticipation of potential sales tax liability. The amount was collected on ad hoc basis and was not offered to tax since it was refundable depending on outcome of the pending appeal before the High Court. The appeal was against the orders passed by the sales tax authorities for assessment years 1997-98 to 2000-01. The question before the top court was to decide whether the amount collected is income of the assessee under section 28 of the Income tax Act, 1961 for assessment year 1998-99. The assessee argued that the amount collected was an imprest with a liability to refund and bore the characteristics of deposits. Hence it was not taxable in the year of receipt but was taxable only in the year in which the liability to refund the sales tax ceased. The apex court observed that the taxing authorities could not ignore the legal character of the transaction, which is the source of receipt. The court applied 'substance over form' test to declare the amount as income assessable to tax, Oommen said. [Business Line, Oct 22]

Cheque signature mismatch may lead to criminal proceedings: SC

A person may face criminal proceedings if a cheque issued by him gets dishonoured on the ground that his signature does not match the specimen signature available with the bank, the Supreme Court has said. A SC Bench set aside the verdict of Gujarat High Court which had held that criminal proceedings for dishonouring of cheque can be initiated only when the cheque is dishonoured because of lack of sufficient amount in the bank account and not in case where a cheque is returned due to mismatch of signature of account holder. "Just as dishonour of a cheque on the ground that the account has been closed is a dishonour falling in the first contingency referred to in Section 138 of Negotiable Instrument Act, so also dishonour on the ground that the 'signatures do not match' or that the 'image is not found', which too implies that the specimen signatures do not match the signatures on the cheque would constitute a dishonour within the meaning of Section 138 of the Act," the bench said. The apex court, however, said that in such cases of dishonouring of cheques, the account holder must be given a notice and an opportunity to arrange the payments before initiation of criminal proceedings against him. "Dishonour on account of such changes that may occur in the course of ordinary business of a company, partnership or an individual may not constitute an offence by itself because such a dishonour in order to qualify for prosecution under Section 138 shall have to be preceded by a statutory notice where the drawer is called upon and has the opportunity to arrange the payment of the amount covered by the cheque," it said. [PTI /Business Line, 2 Dec.]

Asset finance NBFCs to see sharp increase in credit costs: Fitch

Credit cost for NBFCs is likely to rise sharply in view of the persistent economic weakness, as per Indian Ratings & Research, a Fitch group company. "Credit costs may double in the next 12 to 18 months from 2011-12 levels while gross non-performing-loans may rise to over 3% of loans from 1.9%. The spike in credit costs is likely to be prominent for companies with large unseasoned books," said the agency in its note. Continued sluggish industrial growth along with reduced infrastructure activity, judicial restrictions on mining activities and lower food grain output has reduced cash flow of borrowers. Freight rates have not matched the increases in diesel prices and is likely to have a lagged impact on the asset quality of NBFCs.

"The static pool data analysed by India Ratings for the rated pools demonstrate early trends of rising delinquencies across asset classes, though with varying degrees," said the report. The strong asset growth during 2010-11 and 2011-12 and the resulting competition for market share has led to some dilution in risk mitigation practices in some cases. Stronger borrower cash flows, a relatively lower risk appetite post 2008-09 and the denominator effect of steep loan growth in 2010-11 and 2011-12 led to credit costs declining to a four-year low in 2011-12 at only 41% of 2008-09 credit costs. This is, however, set to rise in the current and next financial year. [Business Standard, Oct 30]

MF investment cap to push up funding costs for NBFCs: ICRA

Rating agency ICRA said market regulator SEBI's directive [circular, dated September 13, 2012] for investment caps on debt mutual funds could adversely impact the funding costs for NBFCs and Housing Finance Companies (HFCs). Certain debt mutual fund schemes, such as long-term FMPs (Fixed Maturity Plans) have been a preferred route for the NBFC (Non-Banking Finance Company) sector to raise medium to long term funds at attractive rates from the bond markets, ICRA said in a research note. However, the latest SEBI guidelines capping the investment limits of debt MFs to one particular sector at 30% of net assets would impact the funding to NBFCs, which includes HFCs as well under the regulatory framework.

Evaluating the impact of the new regulations, ICRA said that at an industry level, investments in G-Secs and financial sector account for over 66% of total Assets under Management (AUM) of debt schemes, with 15% in NBFCs. Although the cap has been set at 30%, ICRA said, it believes that the new guidelines are likely to impact some of the income schemes of fund houses that have a higher proportion of investments in NBFCs. As per ICRA estimates, around one-third of total schemes would breach exceed the 30% cap, even after excluding the top-rated (AAA) NBFCs that are classified as PFIs. "We also believe that NBFCs engaged in capital market financing activities and other segments that are not eligible for bank funding could see moderation in business levels. "Accordingly NBFCs' reliance on banking credit will go up further," ICRA said. "However, any regulatory tightening on that front may push the NBFCs to adopt a more expensive public issue route or slow down the credit growth. Thus it will be important for these entities to have adequate back-up bank lines and maintaining liquidity buffers at all time, thereby increasing the overall cost of borrowing for the NBFCs," it added. [Business Standard, Oct 03]

Regulatory uncertainty is greatest risk faced by pvt cos'

Regulatory uncertainty is the greatest risk that private investors are facing today, a top government official has said. "We are entering into a completely new area of regulatory uncertainty. Regulatory uncertainty is the greatest risk that private investors are facing," Arvind Mayaram, Secretary, Department of Economic Affairs said. "We have seen this regulatory risk starting with the 2G (spectrum) case... which is not strictly PPP, but there is certainly private investment and it takes spectrum which is something public forever," he said. Delivering the keynote address in a conference on Public Private Partnership (PPP) here, he said, these have now actually become part of the public policy. "This is an area which is now coming under judicial scrutiny, but other than judicial scrutiny, there is other question of auditing part," he said. On the auditing part, CAG (Comptroller and Auditor General of India) has also demanded that it should get the right to look into the financial audit of the private sector involved, he said. He also emphasised on the need for minimising the regulatory risk involved in the PPP projects. [PTI/Business Line, Oct. 8]

FIDC Director General Mr. Mahesh Thakkar with RBI Governor Mr. D Subba Rao at a Function at IMC, Mumbai on 20 11 12.

IIFCL halves interest rates on foreign currency loans

Infrastructure companies might now get foreign currency loans at about half the prevailing market prices, with the UK arm of India Infrastructure Finance Company Ltd (IIFCL) cutting the interest rates by up to 275 basis points (bps). Project developers can now get loans at Libor plus 200 bps, against the market rate of Libor plus 550 bps. The benefit can also be availed of by project developers which have already raised money through external commercial borrowing (ECB), with IIFC (UK) providing take-out financing to the extent of 100 per cent of the residual amount. As ECBs are for a shorter duration of about five years, take-outs by IIFC (UK) will allow developers access long-term loans. IIFC (UK) has also agreed to remove the condition that 80 per cent of the total lending should be for public-private partnership (PPP) projects. This would allow the financing company to meet the requirements of private companies importing machinery from abroad. [Business Standard, Oct 11]

Govt banks line up 2,000 cr bad loan sale

The market for bad loans is gaining momentum with public sector banks lining up at least Rs 2,000 crore of sale of non-performing asset during the current financial year. According to bankers at least three banks have started negotiation with asset reconstruction companies for the sale of bad assets. Bankers pointed out they will prefer all cash deals rather than security receipts for the sale of their bad assets, as cash receipts directly help their profitability while security receipts needs to be marked-to-market. Most of the NPAs that are considered for sale are mid corporate accounts.

All cash deals of stressed asset deals had dried up in the last few years following introduction of stricter norms by RBI. Bankers also pointed out since asset reconstruction companies were not keen for all cash deal, that has also resulted in fewer transaction in this segment. According to RBI data, as on end June security receipts issued by securitization and reconstruction companies were at Rs 16,700 crore, higher by Rs 200 crore than in end March. As at end-June 2012, banks subscribed to almost 70 per cent of total security receipts issued by 14 securitisation/reconstruction companies. In recent times, one of the biggest deals of bad loans took place when Barclays sold its non-performing credit card portfolio to Kotak Mahindra Bank. [Business Standard, Nov 14]

India lost Rs 6,600 cr to fraud in FY12: E&Y report

Businesses in India recorded losses worth a whopping Rs 6,600 crore in the last financial year, with a significant portion of these frauds occurring in the financial services sector .About 63 per cent of the fraud cases in FY12 were reported in the financial services sector. Banks were the most common victims, followed by insurance and mutual fund companies, according to Fraud Indicator, a first-of-its-kind report by consulting firm Ernst & Young. The report attributes the high number of frauds in the financial sector to oversight from the senior management, deviation from processes, lapses in the system, etc. The report shows losses incurred by banks due to fraud rose 88 per cent in 2010-11, exceeding Rs 3,790 crore. About 79 per cent of the major fraud cases (cases worth more than Rs 1,000 lakh) were due to the involvement of senior managements of companies and their direct interference in the company's decisions. The total value of frauds against investors was about Rs 2,700 crore. [BS Reporter, Nov 02]

Permit NBFCs access to ECBs through the automatic route.

FIDC pleaded to finance minister to permit NBFCs access to ECBs through the automatic route saying that NBFCs would be able to provide more cost effective loans in case they are given access to alternate sources of low cost borrowings like foreign currency loans through External Commercial Borrowings [ECBs]. The Key Advisory Group constituted by the Ministry of Finance in their report in January had suggested that "limited domestic sources of funding, available to NBFCs is hampering their growth and ability to provide cost effective funding." Access to such funding would help NBFCs in improving financial inclusion and penetration in unbanked areas. Outlining broad contours for the ECBs that may be permitted to NBFCs FIDC suggested that NBFCs having NOF above Rs. 100 crore be permitted for tenures of three years and above , with cost of borrowings as per existing ECB norms. Foreign Currency exposures arising from ECBs, should be hedged and end use of ECB funds may be restricted to sectors like, financing commercial vehicles, equipment and machinery, construction of health care facilities, infrastructure projects, educational institutions and other priority sector areas. End-use certification may be made mandatory and a cap on ECBs for NBFC –SIs at USD 5 billion.

Deadline for withdrawal of all Non-CTS 2010 Standard Cheques extended

FIDC is pleased to note that RBI has extended time by 3 months till 31 March 2013 taking into account representations of FIDC and other stake holders.FIDC had pleaded to RBI to extend the deadline for withdrawal of all Non-CTS 2010 Standard Cheques till September 30, 2013 so as to provide sufficient time to NBFCs and banks to approach every borrower and replace all the post dated cheques. RBI had mandated to withdraw these types of cheques from 31 Dec.2012. RBI has further said in a circular dated 20 Dec. that the residual non-CTS-2010 Standard cheques that get presented in the clearing system beyond this extended period will continue to be accepted for the clearing but will be cleared at less frequent intervals. FIDC had, in its representation, requested the RBI to ensure that all criminal cases in various courts under Section 138 of Negotiable Instruments Act for bouncing of Non-CTS 2010 Standard cheques should not be affected.

Classification of Asset Financing NBFCs

FIDC has taken up with RBI Dy. Governor the concern of some of the member AFC-NBFCs from Tamilnadu and Kerala in view of stand taken by some of the RBI's inspecting officials that 'finance for the purchase of passenger cars, two-wheelers, etc would not qualify to be treated as Asset finance'. They have been asked that 'such Assets should be excluded while calculating the percentage of income and assets for the 60% norm prescribed for determining the status as an AFC.' They have also contended that these assets are for the personal use of the borrowers and do not generate any income and therefore should be excluded for the purpose of classification as AFC.

In view of the seriousness of the matter FIDC took up with RBI on Oct. 04 saying that RBI has in 2006 made a separate classification for NBFCs engaged in financing tangible assets and in financing real/physical assets supporting economic activity such as automobiles, general purpose industrial machinery and the like as asset financing companies [AFCs]. The interpretation that such Assets should be used for commercial purposes or generate income is without any basis and a narrow interpretation of this nature would virtually bring automobile sales in the country to a grinding halt as "over 80% of all Automobiles sold in the country are financed." The FIDC said "that the laudable objective of creating a distinct class of finance companies who finance tangible assets would be completely defeated if they are classified as loan companies."

Retain the hypothecation details on the smart card

FIDC has requested the Principal Secretary cum Commissioner (Transport), Govt. of NCT of Delhi to withdraw the directions of the Circular No.F.No.1 (60)/TPT/CB/2007/1732-36 dated 27.08.2012 not to print the hypothecation details on the smart card (Registration Certificate) of the Vehicles and save the hypothecation details in the RTO records only. Raman Aggarwal, past co-chairman, FIDC explaining the genesis said "it is mandatory on the part of the registering authority to record the existence of hire purchase, lease or hypothecation agreements in the registration certificates, while registering the vehicles which are subject to the said agreements." He added that "the directions are contrary to the provisions of Sec.51 (1) of the Motor Vehicles Act. " The recording in the registration certificates of the Motor Vehicles regarding the existence of hire purchase/lease/hypothecation agreements are not merely concerned with parties to the agreement but a notice in *rem*, providing safeguards to the public, he stated. If these particulars are not mentioned, "there is every possibility of concealing the existence of the said agreement and the vehicles will be sold as if they are free from any encumbrance. Thus, the directions in the circular, if carried out, will facilitate the commission of fraud and illegal resale of the vehicles," he cautioned.

FIDC In Action

FIDC Interaction with Authorities

Implementation of Mrs. Usha Thorat Committee recommendations: Mr. Raman Aggarwal, past co-chairman told the members of FIDC about the con-call held between MOF, RBI and NBFCs on 22 10 12 regarding implementation of recommendations of Mrs. Usha Thorat Committee and the likely changes that are coming in the RBI notification. He stated to FIDC members that RBI has assured that whatever changes that RBI is likely to make in the prevailing regulations, shall be done in a gradual manner giving sufficient time to the companies to adopt them.

Meeting with Jt. Secretary, MoF: Mr. Alok Nigam, Joint Secretary (BO), Dept of Financial Services, Ministry of Finance, Government of India and Chairman, Key Advisory Group on NBFCs joined the meeting of Managing Committee of FIDC held at New Delhi on 22 Nov. as a special invitee and interacted with the members. He appreciated the role of NBFCs in the Financial Inclusion agenda of the Government of India and said there is a huge unbanked area in the vast country like India where NBFCs are providing useful services. The issues of Priority Sector Lending, External Commercial Borrowing, Working Group Report, Consortium Banking, Cheques to be CTS2010 compliant, NBFCs to be included in SARFAESI etc. were taken up. He assured one more round of meeting with RBI before the Working Group Report is finalised. He also suggested FIDC to work hand-in-hand with IBA, as many of FIDC issues are common and affect both Banks and NBFCs. The members were quite appreciative of the positive approach of Mr. Nigam. [Please see photo on P. 8]

A high profile meeting with RBI Governor and his team: A Pre-Policy consultation meeting of FIDC with RBI Governor and his team for the second quarter review of Monetary Policy 2012-13 was held on 17 October 2012. At the high profile meeting with RBI Governor, all four Dy. Governors, Executive Directors, Chief General Managers I /C and advisers at RBI were present. All pertinent issues affecting NBFC sector were presented/discussed by FIDC team including issue of priority sector lending at this meeting. Team felt that the RBI Governor was very considerate.

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