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CREDIT INFORMATION REVIEW

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POLICY

KYC Guidelines for NBFCs

To put in place systems and procedures to help control financial frauds, identify money laundering and suspicious activities and to safeguard non-banking finance companies (NBFCs) from being unwittingly used for transfer or deposit of funds derived from criminal activity or for financing of terrorism, the Reserve Bank has announced "Know Your Customer" (KYC) guidelines for NBFCs. These guidelines are also applicable to miscellaneous non-banking companies and residuary non-banking companies. Details:

Customer Identification

KYC should be the key guiding principle for identification of an individual/corporate customer (depositor or borrower). Accordingly, the KYC framework should have two-fold objectives, (i) to ensure customer identification and verifying his identity and residential address and (ii) to monitor transactions of a suspicious nature. NBFCs should ensure that the identity of the customer, including beneficial owner is done based on disclosures by customers themselves. Easy means of establishing identity would be documents such as permanent account number (PAN), ration card, driving licence, Election Commission's identity card, passport, etc., in case of individuals and registration certificate, partnership deed/ agreement, etc., and other reliable documents in respect of companies, firms and other bodies. Verification through such documents should be in addition to the introduction by a person known to the NBFC.

Existing Customers

NBFCs should ensure that gaps and missing information in compliance of KYC guidelines on customer identification procedure for existing customers are bridged and completed before June 30, 2004.

Ceiling/Monitoring of Cash Transactions

Wherever transactions of Rs. 10 lakh and above are undertaken, NBFCs should keep record of these transactions in a separate register maintained at the branch as well as at the registered office. Such information should be made available to regulatory and investigating authorities, when demanded.

Monitoring

NBFCs' board of directors should formulate policies and procedures to operationalise the guidelines and put in place an effective monitoring system to ensure compliance by their branches. Early computerisation of branch/office reporting will facilitate prompt generation of such reports and monitoring.

Internal Control Systems

Duties and responsibilities should be explicitly allocated among the staff for ensuring that policies and procedures are managed effectively and that there is full commitment and compliance to the KYC guidelines in respect of both existing and prospective customers/clients.

Internal Audit/Inspection

Internal auditors must specifically scrutinise and comment on the effectiveness of the measures taken by branches/offices of NBFC in adoption of KYC norms and steps towards prevention of money laundering. Specific cases of violation should be immediately brought to the notice of the head/controlling/registered office.

Records

NBFCs should prepare and maintain proper documentation on their customer relationships and cash transactions of Rs.10 lakh and above. The records of all such transactions should be retained for at least ten years after the transaction has taken place and should be available for perusal and scrutiny by audit functionaries as well as regulators and law enforcement authorities as and when required, at the branch as well as at the registered office.

Training

It is important that all the operating and management staff is made fully aware of the implications and understand the need for strict adherence to KYC norms. NBFCs may take suitable steps to impart training to their operational staff on anti-money laundering measures.

CONTENTS

BANKING

Customer Service Audits

To support broad-based improvement in customer services relating to various banking services, banks have been advised to constitute an *ad-hoc* committee to undertake procedures and performance audit on public services rendered by them. The tasks to be assigned to the committee are :

- To look into simplification of procedures and practices with a view to safeguarding the interests of common persons, be they current or savings account holders, depositors or borrowers, from any unfair procedural practices by banks, e.g., delayed credit of interest, handling of deceased accounts, release of mortgage documents, reversal of erroneous entries in credit cards, updation of passbooks, transparency of charges levied on customers, unilateral debits in the customer accounts, foreign exchange transactions, etc.
- To review the systems in place for providing service to the customers in respect of: (i) meeting their demands for fresh/good notes and coins of all denominations, (ii) exchanging soiled notes, (iii) adjudicating mutilated notes, and (iv) accepting coins and notes either for transactions or in exchange.
- To review the regulations and procedures prescribed by the Reserve Bank that impinge on customer service of banks and make suitable recommendations for their elimination/ rationalisation, especially keeping in view the need to drastically reduce the cost and improve the ease of conducting transactions both for banks and customers.

Banks have been advised to give due publicity through the media and within the bank on the setting up of the *ad-hoc* committee and its membership.

While the *ad-hoc* committees of banks would function for a period of one year, they are expected to complete the work within six months and submit their report to the Reserve Bank to enable the Committee set up by it under the Chairmanship of Dr. S.S.Tarapore to review the existing policies and procedures.

Banks have also been advised to nominate a nodal officer to serve as a contact point with the RBI Committee. Banks may furnish his name, designation, telephone numbers (office as well as residence), fax number and e-mail address to the Reserve Bank.

Margins on Financing of Equities Raised

The Reserve Bank has advised all commercial banks that the uniform margin to be applied by them on all advances against shares/ financing of initial public offerings (IPOs)/issue of guarantees has been raised from 40 per cent to 50 per cent with immediate effect.

Banks have also been advised to maintain a minimum cash margin of 25 per cent (within the margin of 50 per cent) in respect of guarantees issued by them for capital market operations. The margin of 50 per cent would apply to all fresh advances/guarantees issued. The existing advances/guarantees issued would continue at the earlier margins until they come up for renewal.

PMRY

The Reserve Bank has advised all scheduled commercial banks that self help groups could be considered for financing under the Prime Minister's Rozgar Yojana (PMRY) provided -

(a) All the members of the self help group individually satisfy the eligibility criteria laid down under the scheme.

(b) Membership of the group should not exceed ten.

(c) Maximum loan limit for a self help group is Rupees ten lakhs.

(d) Assistance would be limited to individual eligibility under the scheme.

Sanctioning Higher Credit Limits under Swarojgar Credit Card Scheme

The Reserve Bank has advised banks that in deserving cases, they may consider sanctioning credit limit higher than the Rs. 25,000 fixed earlier for the benefeciaries under the Swarojgar Credit Card Scheme.

It may be recalled that in September 2003, a new credit facility was introduced for fishermen, rickshaw owners, self-employed persons, etc. (Please see Credit Information Review of October 2003).

Monitoring of Large Value Frauds

The Reserve Bank has advised all commercial banks that their boards should constitute a Special Committee for monitoring and following up cases of frauds involving amounts of Rs 1 crore and above.

The broad guidelines regarding constitution and functions of the Special Committee of the Board are :

Constitution

The Special Committee may be constituted with five members of the board of directors who will include -

- chairman and managing director in case of public sector banks/ managing director in case of State Bank of India(SBI),associate banks of SBI and private sector banks,
- two members from Audit Committee of Board (ACB), and
- two other members from the board excluding the Reserve Bank's nominee.

Functions

The major functions of the Special Committee would be to monitor and review all frauds of Rs 1 crore. The Committee should -

- Identify the systemic lacunae, if any, that facilitated perpetration of the fraud and put in place measures to plug the same.
- Identify the reasons for delay in detection, if any, reporting to top management of the bank and the Reserve Bank.
- Monitor progress of the Central Bureau of Investigation (CBI)/ police investigation, and recovery position and.
- Ensure that staff accountability is examined at all levels in all the cases of frauds and action against the staff, if required, is completed quickly without loss of time.
- Review the efficacy of the remedial action taken to prevent recurrence of frauds, such as strengthening of internal controls.
- Put in place other measures as may be considered relevant to strengthen preventive measures against frauds.

Meetings

The periodicity of the meetings of the Special Committee may be decided according to the number of cases involved. The Committee should, however, meet and review as and when a fraud involving an amount of Rs.1 crore and above comes to light.

Review

The functioning of the Special Committee may be reviewed on a half yearly basis and the reviews may be put up to the board of directors.

As delay in various aspects of frauds like detection, reporting to regulatory and enforcement agencies and action against the perpetrators of the frauds had been causing concern, the Chief Vigilance Commissioner has emphasised the need for paying focused attention on monitoring of frauds at the highest level and suggested constituting a sub-committee of the Board which would be exclusively dedicated to the monitoring of fraud cases.

EXCHANGE CONTROL

Branch Offices/Units in SEZs

It has been decided to grant general permission to foreign companies to establish branch offices/units in special economic zones (SEZs) to undertake manufacturing and service activities. Such permission would, however, be subject to the conditions that such branches/units -

(i) are functioning in those sectors where 100 per cent foreign direct investment is permitted;

(ii) comply with part XI of the Companies Act (Section 592 to 602);

(iii) function on a stand-alone basis ("stand alone basis" means such branch offices would be isolated and restricted to the SEZ alone and no business activity/transaction will be allowed outside the SEZs in India, which includes branches/ subsidiaries of its parent office in India); and

(iv) shall approach an authorised dealer with the following documents in the event of winding-up of business and for remittance of winding-up proceeds :

(a) Auditor's certificate -

- Indicating the manner in which the remittable amount has been arrived and supported by a statement of assets and liabilities of the applicant, and indicating the manner of disposal of assets.
- Confirming that all liabilities in India including arrears of gratuity and other benefits to employees etc., of the branch/office have been either fully met or adequately provided for;
- Confirming that no income accruing from sources outside India (including proceeds of exports) has remained unrepatriated to India.

(b) No-objection or tax clearance certificate from Income-Tax authority for the remittance.

(c) Confirmation from the applicant that no legal proceedings in any court in India are pending and there is no legal impediment to the remittance.

Exporters can Write-off 10% of Export dues

To provide full flexibility to all exporters and reducing the paper work associated with seeking extension of time or reduction in invoice value or write-off, it has been decided to allow all exporters (including status holder) to -

(i) write-off (including reduction in invoice value) outstanding export dues, and

(ii) extend the prescribed period of realisation beyond 180 days or further period as applicable.

This facility would be available provided**,** the aggregate value of such export bills written-off (including reduction in invoice value) and bills extended for realisation does not exceed 10 per cent of the export proceeds due during the calendar year and such export bills are not under investigation by Enforcement Directorate/Central Bureau of Investigation or any other investigating agencies. This facility would be available in respect of export proceeds falling due from January 1, 2004. In other words, the new facility would be available for exports made after July 1, 2003 and proceeds due for realisation on January 1, 2004 (ie., within the prescribed period of 180 days). In the case

Serial Numbering of Circulars

The Reserve Bank has decided that it will give a running serial number to the circulars issued by all its operational departments with effect from January 1, 2004. The decision has been taken after considering the recommendation of the Advisory Group on Financial Regulations. The work of co-ordinating the serial numbers will be handled by the Press Relations Division of the Reserve Bank.

The Advisory Group on Financial Regulations was set up by the Reserve Bank of India under the chairmanship of Smt. K.J. Udeshi, Deputy Governor, Reserve Bank of India on November 20, 2003. The Advisory Group on Financial Regulations had, at its first meeting held on December 20, 2003, suggested that the Reserve Bank should ensure that all its circulars are serially numbered. It had desired that the numbering should be continuous irrespective of the department from which the circular emanated. It had also been suggested that the Reserve Bank adopt this procedure, preferably with effect from January 1, 2004.

The Reserve Bank will thus give a running serial number to the circulars issued on or after January 1, 2004 by the following departments: (i) Department of Banking Operations and Development (ii) Department of Banking Supervision (iii) Department of Non-Banking Supervision (iv) Department of Government and Bank Accounts (v) Department of Information Technology (vi) Urban Banks Department (vii) Financial Institutions Department (viii) Department of Currency Management (ix) Internal Debt Management Department (x) Rural Planning and Credit Department (xi) Monetary Policy Department (xii) Exchange Control Department (xiii) Industrial and Export Credit Department

The continuous serial number will be in addition to the number given by the respective departments. Each circular will thus bear two numbers - one continuous serial number for the Reserve Bank as a whole and the other departmental number as was given earlier.

The Reserve Bank hopes that this additional information by way of continuous serial number, will help the recipients continuously track the receipt of the Reserve Bank's circulars.

To further facilitate the tracking of the circulars, the Reserve Bank's website (www.rbi.org.in) will publish an index of all the circulars during the year. The index will be maintained serial number-wise as also department-wise and will be kept up-to-date. The recipients may refer to this website to verify whether any circular missed out by them in the serial order was indeed missed or was not meant for them and was therefore not received. If any recipient has missed out any circular meant for them, they may make a request for replacement of that circular to the Press Relations Division at the following contact telephone numbers : Tel. Nos. 22660502 (D)/22661602 (Extn.No. 2856 Fax Nos. 22660358/22658269 E-mail Id : helpprd@rbi.org.in

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of exports where the Reserve Bank has prescribed longer period of realisation, this facility would be available for exports made prior to July 2003, but proceeds of which are due for realisation within the prescribed period of one year.

Exporters dealing with more than one authorised dealer can avail of this facility through each AD, i.e., the limit of 10 per cent for self write-off (including reduction in invoice value) and extension of time for realisation of export proceeds would be applicable for export bills lodged for realisation with that AD. Exporters operating under a consortium of banks or with multiple banks would also have the option of computing the 10 per cent limit on an aggregate basis with all the banks, provided the lead bank of the consortium or in case of multiple banking, a nodal bank undertakes to verify the exporters' annual performance on behalf of all the banks.

Exporters should submit a statement to the concerned AD, within a month from the close of the calendar year, giving details of export proceeds due, realised and not realised. Export bills due in the year 2004, for which the exporter has extended the period of realisation on his own (within the 10 per cent limit) or sought extension of time from the AD, but unrealised as at the end of calendar year 2004, would be computed for export proceeds due in the following year. The AD would be required to verify the statement with his records and review the export performance of the exporter during the calendar year to ascertain that in cases where the 10 per cent limit of self extension, write-off (including reduction in invoice value) and non-realisation has been breached, the exporter has sought necessary approval for write-off, reduction in invoice value or extension of time, as the case may be, for the excess over the 10 per cent limit before the end of the calendar year. In cases where exporters have failed to comply with this requirement, ADs should promptly advise the concerned exporter to seek extension of time/reduction in invoice value/write-off in respect of non-realisation in excess of the 10 per cent limit, failing which, the AD should inform the exporter about the withdrawal of this facility of self write-off/ extension of time, within a month, under advice to the concerned regional office of the Reserve Bank.

Limits Raised for Remittances without Documentation

To further liberalise the availability of foreign exchange to individuals, the limit for foreign exchange remittance for miscellaneous purposes without documentation formalities, has been raised from USD 500 to USD 5000 with immediate effect.

The Reserve Bank has clarified that authorised dealers need not obtain any document, including Form A-2, as long as the exchange is being purchased for a permissible current account transaction; the amount does not exceed USD 5000 or its equivalent; and the payment is made by a cheque drawn on the applicant's bank account or by a demand draft. ADs may, however, obtain a simple letter from the applicant containing the basic information, viz., name and address of the applicant and the beneficiary, amount to be remitted and the purpose of remittance.

RBI's General Permission for SEBI registered FIIs

Currently, on the basis of a 'no objection' from Securities and Exchange Board of India (SEBI), a Foreign Institutional Investor (FII) has to approach the Reserve Bank of India for opening a bank account (either in foreign currency and/or in rupees) to enable it to invest in the Indian capital market. SEBI registers it as an FII thereafter.

In order to simplify the procedure for registration of the FIIs, it has been decided to do away with the requirement of obtaining clearance from the Reserve Bank and SEBI separately. Authorised dealers have now been allowed, through general permission, to open a bank account (either in foreign currency and/or in rupees) for an FII that has already been registered with SEBI.

The permission granted could also be treated as the Reserve Bank's permission to the investee company/ies for (a) registering the transfer of shares/debentures etc.,in favour of the SEBI registered FIIs/sub-accounts of FIIs, and (b) for issue of shares on account of conversion of debentures purchased by the SEBI registered FIIs/sub-accounts of FIIs.

NRI Status for Indian Students Abroad

Taking into account the definition of resident under FEMA and the intention of the student to stay abroad for uncertain period though not for permanent settlement, it has been decided to now treat students, as NRIs from the FEMA angle. As NRIs, the students would be eligible to receive remittances from India, as follows :

(i) Up to USD 100,000 from close relatives from India on self-declaration towards maintenance, which could also include remittances towards their studies.

(ii) Up to USD 1 million out of sale proceeds/balances in their account maintained with an AD in India.

(iii) All other facilities available to NRIs under FEMA.

(iv) Educational and other loans which were availed by them (as residents in India).

The Reserve Bank has also clarified that these instructions do not dilute, in any way, the utilisation of the existing foreign exchange remittance facilities to students in regard to their academic pursuits.

The Reserve Bank had been receiving representations from Indian students studying abroad requesting that they may be treated as non-resident Indians (NRIs) under FEMA. The purport of their argument was that though they are students, they are, in reality, not dependent for a dominant part of their expenses on remittances from their households in India. Often they are permitted to work and have to undertake certain related financial transactions.

Clarification on Advance Remittance for Imports

The Reserve Bank has clarified that a public sector company or a department/undertaking of the central/state government/s which is not in a position to obtain a guarantee from an international bank of repute against an advance payment for imports exceeding USD 100, 000 is required to obtain a specific waiver for the bank guarantee from the Ministry of Finance, Government of India before making advance remittance.

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