

**Provisions Relating To Non-Banking Institutions Receiving Deposits And Financial Institutions**

**Reserve Bank of India Act, 1934  
CHAPTER IIIB**

**PROVISIONS RELATING TO NON-BANKING INSTITUTIONS RECEIVING DEPOSITS AND FINANCIAL INSTITUTIONS**

**45H.** The provisions of this Chapter shall not apply to the State Bank or a banking company as defined in section 5 of the Banking Regulation Act, 1949 or a corresponding new bank as defined in clause (da) of section 5 of that Act or a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959, a Regional Rural Bank or a co-operative bank or a primary agricultural credit society or a primary credit society:

Chapter IIIB not to apply in certain cases.

10 of 1949  
38 of 1959

Provided that for the purposes of this Chapter, the Tamilnadu Industrial Investment Corporation Limited shall not be deemed to be a banking company.

**45I.** In this Chapter, unless the context otherwise requires, -

(a) “*business of a non-banking financial institution*” means carrying on of the business of a financial institution referred to in clause (c) and includes business of a non-banking financial company referred to in clause (f);

Definitions

(aa) “company ” means a company as defined in section 3 of the Companies Act, 1956 and includes a foreign company within the meaning of section 591 of that Act;

1 of 1956

(b) “corporation” means a corporation incorporated by an Act of any legislature;

(bb) “deposit” includes and shall be deemed always to have included any receipt of money by way of deposit or loan or in any other form, but **does not include**,-

- (i) amounts raised by way of share capital;
- (ii) amounts contributed as capital by partners of a firm;
- (iii) amounts received from a scheduled bank or a co-operative bank or any other banking company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949 ;
- (iv) any amount received from, -

10 of 1949

- (a) the Development Bank,
- (b) a State Financial Corporation,
- (c) any financial institution specified in or under section 6A of the Industrial Development Bank of India Act, 1964, or
- (d) any other institution that may be specified by the Bank in this behalf:

18 of 1964

(v) amounts received in the ordinary course of business, by way of-

- (a) security deposit,
- (b) dealership deposit,
- (c) earnest money,
- (d) advance against order for goods, properties or services,

(vi) any amount received from an individual or a firm or an association of individuals not being a body corporate, registered under any enactment relating to money lending which is for the time being in force in any State; and

(vii) any amount received by way of subscriptions in respect of a chit.

Explanation I.- “Chit” has the meaning assigned to it in clause(b) of Section 2 of the Chit Funds Act, 1982.

40 of 1982

Explanation II. - Any credit given by a seller to a buyer on the sale of any property (whether movable or immovable) shall not be deemed to be deposit for the purposes of this clause;

(c) “financial institution” means any non-banking institution which carries on as its business or part of its business any of the following activities, namely:-

(i) the financing, whether by way of making loans or advances or otherwise, of any activity other than its own;

(ii) the acquisition of shares, stock, bonds, debentures or securities issued by a Government or local authority or other marketable securities of a like nature;

(iii) letting or delivering of any goods to a hirer under a hire-purchase agreement as defined in clause(c) of section 2 of the Hire-Purchase Act, 1972;

26 of 1972

(iv) the carrying on of any class of insurance business;

(v) managing, conducting or supervising, as foreman, agent or in any other capacity, of chits or kuries as defined in any law which is for the time being in force in any State, or any business, which is similar thereto;

(vi) collecting, for any purpose or under any scheme or arrangement by whatever name called, monies in lumpsum or otherwise, by way of subscriptions or by sale of units, or other instruments or in any other manner and awarding prizes or gifts, whether in cash or kind, or disbursing monies in any other way, to persons from whom monies are collected or to any other person,

*but does not include any institution, which carries on as its principal business,-*

*(a) agricultural operations; or*

*(aa) industrial activity; or*

*Explanation.- For the purposes of this clause, "industrial activity" means any activity specified in sub-clauses (i) to (xviii) of clause (c) of section 2 of the Industrial Development Bank of India Act, 1964;*

18 of 1964

(b) the purchase or sale of any goods (other than securities) or the providing of any services; or

(c) the purchase, construction or sale of immovable property, so however, that no portion of the income of the institution is derived from the financing of purchases, constructions or sales of immovable property by other persons;

(d) "firm" means a firm as defined in the Indian Partnership Act, 1932;

(e) "non-banking institution" means a company, corporation or co-operative society;

(f) "non-banking financial company" means-

*(i) a financial institution which is a company;*

*(ii) a non-banking institution which is a company and which has as its principal business the receiving of deposits, under any scheme or arrangement or in any other manner, or lending in any manner;*

(iii) such other non-banking institution or class of such institutions, as the Bank may, with the previous approval of the Central Government and by notification in the Official Gazette, specify.

**45-IA.(1)** Notwithstanding anything contained in this Chapter or in any other law for the time being in force, no non-banking financial company shall commence or carry on the business of a non-banking financial institution without -

*Requirement of registration and net owned fund*

- (a) obtaining a certificate of registration issued under this Chapter; and
- (b) having the net owned fund of twenty-five lakh rupees or such other amount, not exceeding two hundred lakh rupees, as the Bank may, by notification in the Official Gazette, specify.

(2) Every non-banking financial company shall make an application for registration to the Bank in such form as the Bank may specify:

*Provided that a non-banking financial company in existence on the commencement of the Reserve Bank of India (Amendment) Act, 1997 shall make an application for registration to the Bank before the expiry of six months from such commencement and notwithstanding anything contained in sub-section (1) may continue to carry on the business of a non-banking financial institution until a certificate of registration is issued to it or rejection of application for registration is communicated to it.*

(3) Notwithstanding anything contained in sub-section (1), a non-banking financial company in existence on the commencement of the Reserve Bank of India (Amendment) Act, 1997 and having a net owned fund of less than twenty-five lakh rupees may, for the purpose of enabling such company to fulfil the requirement of the net owned fund, continue to carry on the business of a non-banking financial institution-

- (i) for a period of three years from such commencement; or
- (ii) for such further period as the Bank may, after recording the reasons in writing for so doing, extend,

*subject to the condition that such company shall, within three months of fulfilling the requirement of the net owned fund, inform the Bank about such fulfilment:*

*Provided that the period allowed to continue business under this sub-section shall in no case exceed six years in the aggregate.*

*(4) The Bank may for the purpose of considering the application for registration, require to be satisfied by an inspection of the books of the non-banking financial company or otherwise that the following conditions are fulfilled :-*

*(a) that the non-banking financial company is or shall be in a position to pay its present or future depositors in full as and when their claims accrue;*

*(b) that the affairs of the non-banking financial company are not being or are not likely to be conducted in a manner detrimental to the interest of its present or future depositors;*

*(c) that the general character of the management or the proposed management of the non-banking financial company shall not be prejudicial to the public interest or the interest of its depositors;*

*(d) that the non-banking financial company has adequate capital structure and earning prospects;*

*(e) that the public interest shall be served by the grant of certificate of registration to the non-banking financial company to commence or to carry on the business in India;*

*(f) that the grant of certificate of registration shall not be prejudicial to the operation and consolidation of the financial sector consistent with monetary stability, economic growth and considering such other relevant factors which the Bank may, by notification in the Official Gazette, specify; and*

*(g) any other condition, fulfilment of which in the opinion of the Bank, shall be necessary to ensure that the commencement of or carrying on of the business in India by a non-banking financial company shall not be prejudicial to the public interest or in the interest of the depositors.*

*(5) The Bank may, after being satisfied that the conditions specified in sub-section (4) are fulfilled, grant a certificate of registration subject to such conditions which it may consider fit to impose.*

*(6) The Bank may cancel a certificate of registration granted to a non-banking financial company under this section if such company -*

*(i) ceases to carry on the business of a non-banking financial institution in India; or*

*(ii) has failed to comply with any condition subject to which the certificate of registration had been issued to it; or*

*(iii) at any time fails to fulfil any of the conditions referred to in clauses (a) to (g) of sub-section (4); or*

*(iv) fails -*

*(a) to comply with any direction issued by the Bank under the provisions of this Chapter; or*

*(b) to maintain accounts in accordance with the requirements of any law or any direction or order issued by the Bank under the provisions of this Chapter; or*

*(c) to submit or offer for inspection its books of accounts and other relevant documents when so demanded by an inspecting authority of the Bank; or*

*(v) has been prohibited from accepting deposit by an order made by the Bank under the provisions of this Chapter and such order has been in force for a period of not less than three months:*

*Provided that before cancelling a certificate of registration on the ground that the non-banking financial company has failed to comply with the provisions of clause (ii) or has failed to fulfil any of the conditions referred to in clause (iii) the Bank, unless it is of the opinion that the delay in cancelling the certificate of registration shall be prejudicial to public interest or the interest of the depositors or the non-banking financial company, shall give an opportunity to such company on such terms as the Bank may specify for taking necessary steps to comply with such provision or fulfilment of such condition:*

*Provided further that before making any order of cancellation of certificate of registration, such company shall be given a reasonable opportunity of being heard.*

*(7) A company aggrieved by the order of rejection of application for registration or cancellation of certificate of registration may prefer an appeal, within a period of thirty days from the date on which such order of rejection or cancellation is communicated to it, to the Central Government and the decision of the Central Government where an appeal has been preferred to it, or of the Bank where no appeal has been preferred, shall be final:*

*Provided that before making any order or rejection of appeal, such*

company shall be given a reasonable opportunity of being heard.

*Explanation.* - For the purposes of this section, -

**(I)** “net owned fund” means -

(a) the aggregate of the paid-up equity capital and free reserves as disclosed in the latest balance sheet of the company after deducting therefrom -

(i) accumulated balance of loss;

(ii) deferred revenue expenditure; and

(iii) other intangible assets; and

(b) further reduced by the amounts representing -

(1) investments of such company in shares of -

(i) its subsidiaries;

(ii) companies in the same group;

(iii) all other non-banking financial companies; and

(2) the book value of debentures, bonds, outstanding loans and advances (including hire-purchase and lease finance) made to, and deposits with, -

(i) subsidiaries of such company; and

(ii) companies in the same group,

to the extent such amount exceeds ten per cent. of (a) above.

**(II)** “subsidiaries” and “companies in the same group” shall have the same meanings assigned to them in the Companies Act, 1956.

1 of 1956

**45-IB.**(1) Every non-banking financial company shall invest and continue to invest in India in unencumbered approved securities, valued at a price not exceeding the current market price of such securities, an amount which, at the close of business on any day, shall not be less than five per cent. or such higher percentage not exceeding twenty-five per cent. as the Bank may, from time to time and by notification in the Official Gazette, specify, of

Maintenance of percentage of assets

*the deposits outstanding at the close of business on the last working day of the second preceding quarter :*

*Provided that the Bank may specify different percentages of investment in respect of different classes of non-banking financial companies.*

*(2) For the purpose of ensuring compliance with the provisions of this section, the Bank may require every non-banking financial company to furnish a return to it in such form, in such manner and for such period as may be specified by the Bank.*

*(3) If the amount invested by a non-banking financial company at the close of business on any day falls below the rate specified under sub-section (1), such company shall be liable to pay to the Bank, in respect of such shortfall, a penal interest at a rate of three per cent. per annum above the bank rate on such amount by which the amount actually invested falls short of the specified percentage, and where the shortfall continues in the subsequent quarters, the rate of penal interest shall be five per cent. per annum above the bank rate on such shortfall for each subsequent quarter.*

*(4) (a) The penal interest payable under sub-section (3) shall be payable within a period of fourteen days from the date on which a notice issued by the Bank demanding payment of the same is served on the non-banking financial company and, in the event of a failure of the non-banking financial company to pay the same within such period, penalty may be levied by a direction of the principal civil court having jurisdiction in the area where an office of the defaulting non-banking financial company is situated and such direction shall be made only upon an application made in this behalf to the court by the Bank; and*

*(b) when the court makes a direction under clause (a), it shall issue a certificate specifying the sum payable by the non-banking financial company and every such certificate shall be enforceable in the same manner as if it were a decree made by the court in a suit.*

*(5) Notwithstanding anything contained in this section, if the Bank is satisfied that the defaulting non-banking financial company had sufficient cause for its failure to comply with the provisions of sub-section (1), it may not demand the payment of the penal interest.*

*Explanation. - For the purpose of this section, -*

*(i) "approved securities" means securities of any State Government or of the Central Government and such bonds, both the principal whereof and the interest whereon shall have been fully and unconditionally guaranteed by any such government;*



(ii) “unencumbered approved securities” includes the approved securities lodged by the non-banking financial company with another institution for an advance or any other arrangement to the extent to which such securities have not been drawn against or availed of or encumbered in any manner;

(iii) “quarter” means the period of three months ending on the last day of March, June, September or December.

**45-IC.**(1) Every non-banking financial company shall create a reserve fund and transfer therein a sum not less than twenty per cent. of its net profit every year as disclosed in the profit and loss account and before any dividend is declared.

Reserve fund

(2) No appropriation of any sum from the reserve fund shall be made by the non-banking financial company except for the purpose as may be specified by the Bank from time to time and every such appropriation shall be reported to the Bank within twenty-one days from the date of such withdrawal:

Provided that the Bank may, in any particular case and for sufficient cause being shown, extend the period of twenty-one days by such further period as it thinks fit or condone any delay in making such report.

(3) Notwithstanding anything contained in sub-section (1), the Central Government may, on the recommendation of the Bank and having regard to the adequacy of the paid-up capital and reserves of a non-banking financial company in relation to its deposit liabilities, declare by order in writing that the provisions of sub-section (1) shall not be applicable to the non-banking financial company for such period as may be specified in the order:

Provided that no such order shall be made unless the amount in the reserve fund under sub-section (1) together with the amount in the share premium account is not less than the paid-up capital of the non-banking financial company.

**45J.** The Bank may, if it considers necessary in the public interest so to do, by general or special order, -

Bank to regulate or prohibit issue of prospectus or advertisement soliciting deposits of money.

(a) regulate or prohibit the issue by any non-banking institution of any prospectus or advertisement soliciting deposits of money from the public; and

(b) specify the conditions subject to which any such prospectus

or advertisement, if not prohibited, may be issued.

**45JA.** (1) *If the Bank is satisfied that, in the public interest or to regulate the financial system of the country to its advantage or to prevent the affairs of any non-banking financial company being conducted in a manner detrimental to the interest of the depositors or in a manner prejudicial to the interest of the non-banking financial company, it is necessary or expedient so to do, it may determine the policy and give directions to all or any of the non-banking financial companies relating to income recognition, accounting standards, making of proper provision for bad and doubtful debts, capital adequacy based on risk weights for assets and credit conversion factors for off-balance sheet items and also relating to deployment of funds by a non-banking financial company or a class of non-banking financial companies or non-banking financial companies generally, as the case may be, and such non-banking financial companies shall be bound to follow the policy so determined and the directions so issued.*

*Power of Bank to determine policy and issue directions.*

(2) *Without prejudice to the generality of the powers vested under sub-section (1), the Bank may give directions to non-banking financial companies generally or to a class of non-banking financial companies or to any non-banking financial company in particular as to -*

(a) *the purpose for which advances or other fund based or non-fund based accommodation may not be made; and*

(b) *the maximum amount of advances or other financial accommodation or investment in shares and other securities which, having regard to the paid-up capital, reserves and deposits of the non-banking financial company and other relevant considerations, may be made by that non-banking financial company to any person or a company or to a group of companies.*

**45K.** (1) The Bank may at any time direct that every non-banking institution shall furnish to the Bank, in such form, at such intervals and within such time, such statements, information or particulars relating to or connected with deposits received by the non-banking institution, as may be specified by the Bank by general or special order.

*Power of Bank to collect information from non-banking institutions as to deposits and to give directions.*

(2) Without prejudice to the generality of the power vested in the Bank under sub-section(1), the statements, information or particulars to be furnished under sub-section(1) may relate to all or any of the following matters, namely, the amount of the deposits, the purposes and periods for which, and the rates of interest and other terms and conditions on which, they are received.

(3) The Bank may, if it considers necessary in the public interest so to do, give directions to non-banking institutions either generally or to any non-banking institution or group of non-banking institutions in particular, in respect of any matters relating to or connected with the receipt of deposits, including the rates of interest payable on such deposits, and the periods for which deposits may be received.

(4) If any non-banking institution fails to comply with any direction given by the Bank under sub-section(3), the Bank may prohibit the acceptance of deposits by that non-banking institution.

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(6) Every non-banking institution receiving deposits shall, if so required by the Bank and within such time as the Bank may specify, cause to be sent at the cost of the non-banking institution a copy of its annual balance-sheet and profit and loss account or other annual accounts to every person from whom the non-banking institution holds, as on the last day of the year to which the accounts relate, deposits higher than such sum as may be specified by the Bank.

**45L.** (1) If the Bank is satisfied that for the purpose of enabling it to regulate the credit system of the country to its advantage it is necessary so to do, it may-

Power of Bank to call for information from financial institutions and to give directions.

(a) require financial institutions either generally or any group of financial institutions or financial institution in particular, to furnish to the Bank in such form, at such intervals and within such time, such statements, information or particulars relating to the business of such financial institutions or institution, as may be specified by the Bank by general or special order,

(b) give to such institutions either generally or to any such institution in particular, directions relating to the conduct of business by them or by it as financial institutions or institution.

(2) Without prejudice to the generality of the power vested in the Bank under clause(a) of sub-section(1), the statements, information or particulars to be furnished by a financial institution may relate to all or any of the following matters, namely, the paid-up capital, reserves or other liabilities, the investments whether in Government Securities or otherwise, the persons to whom, and the purposes and periods for which, finance is provided and the terms and conditions, including the rates of interest, on which it is provided.

(3) In issuing directions to any financial institution under clause(b) of sub-section(1), the Bank shall have due regard to the conditions in which, and the objects for which, the institution has been established, its statutory responsibilities, if any, and the effect the business of such financial institution is likely to have on trends in the money and capital markets.

**45M.** It shall be the duty of every non-banking institution to furnish the statements, information or particulars called for, and to comply with any direction given to it, under the provisions of this Chapter.

Duty of non-banking institutions to furnish statements, etc., required by Bank.

**45MA.** (1) It shall be the duty of an auditor of a non-banking institution to inquire whether or not the non-banking institution has furnished to the Bank such statements, information or particulars relating to or connected with deposits received by it, as are required to be furnished under this Chapter, and the auditor shall, except where he is satisfied on such inquiry that the non-banking institution has furnished such statements, information or particulars, make a report to the Bank giving the aggregate amount of such deposits held by the non-banking institution.

Powers and duties of auditors

*(1A) The Bank may, on being satisfied that it is necessary so to do, in the public interest or in the interest of the depositors or for the purpose of proper assessment of the books of account, issue directions to any non-banking financial company or any class of non-banking financial companies or non-banking financial companies generally or to the auditors of such non-banking financial company or companies relating to balance sheet, profit and loss account, disclosure of liabilities in the books of account or any matter relating thereto.*

(2) Where, in the case of a non-banking financial company, the auditor has made, or intends to make, a report to the Bank under sub-section(1), he shall include in his report under sub-section(2) of section 227 of the Companies Act, 1956, the contents of the report which he has made, or intends to make to the Bank..

1 of 1956

*(3) Where the Bank is of the opinion that it is necessary so to do in the public interest or in the interest of the non-banking financial company or in the interest of the depositors of such company, it may at any time by order direct that a special audit of the accounts of the non-banking financial company in relation to any such transaction or class of transactions or for such period or periods, as may be specified in the order, shall be conducted and the Bank may appoint an auditor or auditors to conduct such special*

*audit and direct the auditor or the auditors to submit the report to it.*

*(4) The remuneration of the auditors as may be fixed by the Bank, having regard to the nature and volume of work involved in the audit and the expenses of or incidental to the audit, shall be borne by the non-banking financial company so audited.*

**45MB.** *(1) If any non-banking financial company violates the provisions of any section or fails to comply with any direction or order given by the Bank under any of the provisions of this Chapter, the Bank may prohibit the non-banking financial company from accepting any deposit.*

*Power of Bank to prohibit acceptance of deposit and alienation of assets.*

*(2) Notwithstanding anything to the contrary contained in any agreement or instrument or any law for the time being in force, the Bank, on being satisfied that it is necessary so to do in the public interest or in the interest of the depositors, may direct, the non-banking financial company against which an order prohibiting from accepting deposit has been issued, not to sell, transfer, create charge or mortgage or deal in any manner with its property and assets without prior written permission of the Bank for such period not exceeding six months from the date of the order.*

**45MC.***(1) The Bank, on being satisfied that a non-banking financial company,-*

*Power of Bank to file winding up petition.*

*(a) is unable to pay its debt; or*

*(b) has by virtue of the provisions of section 45-IA become disqualified to carry on the business of a non-banking financial institution; or*

*(c) has been prohibited by the Bank from receiving deposit by an order and such order has been in force for a period of not less than three months; or*

*(d) the continuance of the non-banking financial company is detrimental to the public interest or to the interest of depositors of the company,*

*may file an application for winding up of such non-banking financial company under the Companies Act, 1956.*

*1 of 1956*

*(2) A non-banking financial company shall be deemed to be unable to pay its debt if it has refused or has failed to meet within five working days any lawful demand made at any of its offices or branches and the Bank certifies in*

writing that such company is unable to pay its debt.

(3) A copy of every application made by the Bank under sub-section (1) shall be sent to the Registrar of Companies.

(4) All the provisions of the Companies Act, 1956 relating to winding up of a company shall apply to a winding up proceeding initiated on the application made by the Bank under this provision. 1 of 1956

**45N.** (1) The Bank may, at any time, cause an inspection to be made by one or more of its officers or employees or other persons(hereafter in this section referred to as the inspecting authority)- Inspection

(i) of any non-banking institution, including a financial institution, for the purposes of verifying the correctness or completeness of any statement, information or particulars furnished to the Bank or for the purpose of obtaining any information or particulars which the non-banking institution has failed to furnish on being called up to do so; or

(ii) of any non-banking institution being a financial institution, if the Bank considers it necessary or expedient to inspect that institution.

(2) It shall be the duty of every director or member of any committee or other body for the time being vested with the management of the affairs of the non-banking institution or other officer or employee thereof to produce to the inspecting authority all such books, accounts and other documents in his custody or power and to furnish that authority with any statements and information relating to the business of the institution as that authority may require of him, within such time as may be specified by that authority.

(3) The inspecting authority may examine on oath any director or member of any committee or body for the time being vested with the management of the affairs of the non-banking institution or other officer or employee thereof, in relation to its business and may administer an oath accordingly.

**45NA.** No person shall solicit on behalf of any non-banking institution either by publishing or causing to be published any prospectus or advertisement or in any other manner deposits of money from the public unless-

Deposits not to be solicited by unauthorised persons

(a) he has been authorised in writing by the said non-banking

institution to do so and specifies the name of the institution which has so authorised him, and

(b) the prospectus or advertisement complies with any order made by the Bank under section 45J and with any other provision of law for the time being in force, applicable to the publication of such prospectus or advertisement.

**45NB.** (1) *Any information relating to a non-banking financial company, -*

*Disclosure of information.*

*(i) contained in any statement or return submitted by such company under the provisions of this Chapter; or*

*(ii) obtained through audit or inspection or otherwise by the Bank,*

*shall be treated as confidential and shall not, except otherwise provided in this section, be disclosed.*

*(2) Nothing in this section shall apply to -*

*(a) the disclosure by any non-banking financial company, with the previous permission of the Bank, of any information furnished to the Bank under sub-section (1);*

*(b) the publication by the Bank, if it considers necessary in the public interest so to do, of any information collected by it under sub-section (1) in such consolidated form as it may think fit without disclosing the name of any non-banking financial company or its borrowers;*

*(c) the disclosure or publication by the non-banking financial company or by the Bank of any such information to any other non-banking financial company or in accordance with the practice and usage customary amongst such companies or as permitted or required under any other law:*

*Provided that any such information received by a non-banking financial company under this clause shall not be published except in accordance with the practice and usage customary amongst companies or as permitted or required under any other law.*

*(3) Notwithstanding anything contained in this Act or in any other law for the time being in force, the Bank, if it is satisfied that, in the public interest or in the interest of the depositors or the non-banking financial*

*company or to prevent the affairs of any non-banking financial company being conducted in a manner detrimental to the interest of the depositors, it is expedient so to do, may, either on its own motion or on being requested, furnish or communicate any information relating to the conduct of business by any non-banking financial company to any authority constituted under any law.*

*(4) Notwithstanding anything contained in any law for the time being in force, no court or tribunal or other authority shall compel the Bank to produce or to give inspection of any statement or other material obtained by the Bank under any provisions of this Chapter.*

**45NC.** *The Bank, on being satisfied that it is necessary so to do, may declare by notification in the Official Gazette that any or all of the provisions of this Chapter shall not apply to a non-banking institution or a class of non-banking institutions or a non-banking financial company or to any class of non-banking financial companies either generally or for such period as may be specified, subject to such conditions, limitations or restrictions as it may think fit to impose.*

*Power of Bank to exempt.*

**45O.** [Penalties] Rep. by the Reserve Bank of India(Amendment) Act, 1974(51 of 1974), s.22.

**45P.** [Cognizance of offences] Rep. by s. 22, *ibid.*

**45Q.** *The provisions of this Chapter shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.*

*Chapter IIIB to override other laws.*

**45QA.** *(1) Every deposit accepted by a non-banking financial company, unless renewed, shall be repaid in accordance with the terms and conditions of such deposit.*

*Power of Company Law Board to order repayment of deposit*

*(2) Where a non-banking financial company has failed to repay any deposit or part thereof in accordance with the terms and conditions of such deposit, the Company Law Board constituted under section 10E of the Companies Act, 1956 may, if it is satisfied, either on its own motion or on an application of the depositor, that it is necessary so to do to safeguard the interests of the company, the depositors or in the public interest, direct, by order, the non-banking financial company to make repayment of such deposit or part thereof forthwith or within such time and subject to such conditions as may be specified in the order:*

*1 of 1956*



*Provided that the Company Law Board may, before making any order under this sub-section, give a reasonable opportunity of being heard to the non-banking financial company and the other persons interested in the matter.*

**45QB.** (1) *Where a deposit is held by a non-banking institution to the credit of one or more persons, the depositor or, as the case may be, all the depositors together may nominate, in the manner prescribed by rules made by the Central Government under section 45ZA of the Banking Regulation Act, 1949, one person to whom in the event of the death of the sole depositor or the death of all the depositors, the amount of deposit may be returned by the non-banking institution.*

*Nomination by depositors.*

*10 of 1949.*

(2) *Notwithstanding anything contained in any other law for the time being in force, or in any disposition, whether testamentary or otherwise, in respect of such deposit, where a nomination made purports to confer on any person the right to receive the amount of deposit from the non-banking institution, the nominee shall, on the death of the sole depositor or, as the case may be, on the death of all the depositors, become entitled to all the rights of the sole depositor or, as the case may be, of the depositors, in relation to such deposit to the exclusion of all other persons, unless the nomination is varied or cancelled in the manner prescribed by rules made by the Central Government under section 45ZA of the Banking Regulation Act, 1949.*

*10 of 1949*

(3) *Where the nominee is a minor, it shall be lawful for the depositor making the nomination to appoint, in the manner prescribed by rules made by the Central Government under section 45ZA of the Banking Regulation Act, 1949, any person to receive the amount of deposit in the event of his death during the minority of the nominee.*

*10 of 1949*

(4) *Payment by a non-banking institution in accordance with the provisions of this section shall constitute a full discharge to the non-banking institution of its liability in respect of the deposit: `*

*Provided that nothing contained in this sub-section shall affect the right or claim which any person may have against the person to whom any payment is made under this section.*

(5) *No notice of the claim of any person, other than the person or persons in whose name a deposit is held by a non-banking institution, shall be receivable by the non-banking institution, nor shall the non-banking institution be bound by any such notice even though expressly given to it:*

*Provided that where any decree, order, certificate or other authority from a court of competent jurisdiction relating to such deposit is produced*

*before a non-banking institution, the non-banking institution shall take due note of such decree, order, certificate or other authority.*

### **CHAPTER III – C**

#### **PROHIBITION OF ACCEPTANCE OF DEPOSITS BY UNINCORPORATED BODIES**

##### **45R Interpretation**

The words and expressions used in this Chapter and defined in Chapter III B shall have the meanings respectively assigned to them therein.

##### **45S. Deposits not to be accepted in certain cases**

- (1) No person, being an individual or a firm or an unincorporated association of individuals shall, accept any deposit-
  - (i) if his or its business wholly or partly includes any of the activities specified in clause (c) of section 45-I; or
  - (ii) if his or its principal business is that of receiving of deposits under any scheme or arrangement or in any other manner, or lending in any manner:

PROVIDED that nothing contained in this sub-section shall apply to the receipt of money by an individual by way of loan from any of his relatives or to the receipt of money by a firm by way of loan from the relative or relatives of any of the partners.

- (2) Where any person referred to in sub-section (1) holds any deposit on the 1<sup>st</sup> day of April 1997 which is not in accordance with sub-section (1), such deposit shall be repaid by that person immediately after such deposit becomes due for repayment or within three years from the date of such commencement, whichever is earlier :

PROVIDED that if the bank is satisfied on an application made by any person to the bank that such person is unable to pay a part of the deposits for reasons beyond his control or such repayment shall cause extreme hardship to him, it may, by an order in writing, extend such period by a period not exceeding one year subject to such conditions as may be specified in the order.

- (3) On and from the 1<sup>st</sup> day April, 1997, no person referred to in sub-section (1) shall issue or cause to be issued any advertisement in any form for soliciting deposit.

*Explanation:* For the purposes of this section, a person shall be deemed to be a relative of another if, and only if-

- (i) they are members of a Hindu undivided family; or
- (ii) they are husband and wife; or
- (iii) the one is related to the other in the manner indicated in the List of relatives below:

***List of relatives***

1. Father, 2. Mother (including step - mother), 3. Son (including step-son), 4. Son's wife, 5. Daughter (including step-daughter), 6. Father's father, 7. Father's mother, 8. Mother's mother, 9. Mother's father, 10. Son's son, 11. Son's son's wife, 12. Son's daughter, 13. Son's daughter's husband, 14. Daughter's husband, 15. Daughter's son, 16. Daughter's son's wife, 17. Daughter's daughter, 18. Daughter's daughter's husband, 19. Brother (including step-brother), 20. Brother's wife 21. Sister (including step-sister), 22. Sister's husband.

**45T. Power to issue search warrants**

- (1) Any court having jurisdiction to issue a search warrant under the Code of Criminal Procedure, 1973 (2 of 1974) may, on an application by an officer of the bank or of the State Government authorised in this behalf stating his belief that certain documents relating to acceptance of deposits in contravention of the provisions of section 45S are secreted in any place within the local limits of the jurisdiction of such court, issue a warrant to search for such documents.
- (2) A warrant issued under sub-section(1) shall be executed in the same manner and shall have the same effect as a search warrant issued under the Code of Criminal Procedure, 1973.

**CHAPTER V  
PENALTIES**

**58B.**(1) Whoever in any application, declaration, return, statement, information or particulars made, required or furnished by or under or for the purposes of any provisions of this Act, or any order, regulation or direction made or given thereunder or in any prospectus or advertisement issued for or in connection with the invitation by any person, of deposits of money from the public wilfully makes a statement which is false in any material particular knowing it to be false or wilfully omits to make a material statement shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.

Penalties.

(2) If any person fails to produce any book, account or other document or to furnish any statement, information or particulars which, under this Act or any order, regulation or direction made or given thereunder, it is his duty to produce or furnish or to answer any question put to him in pursuance of the

provisions of this Act or of any order, regulation or direction made or given thereunder, he shall be punishable with fine which may extend to two thousand rupees in respect of each offence and if he persists in such failure or refusal, with further fine which may extend to one hundred rupees for every day, after the first during which the offence continues.

(3) If any person contravenes the provisions of section 31, he shall be punishable with fine which may extend to the amount of the bill of exchange, hundi, promissory note or engagement for payment of money in respect whereof the offence is committed.

(4) If any person discloses any credit information, the disclosure of which is prohibited under section 45E, he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

*(4A) If any person contravenes the provisions of sub-section (1) of section 45-IA, he shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to five years and with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.*

*(4AA) If any auditor fails to comply with any direction given or order made by the Bank under section 45MA, he shall be punishable with fine which may extend to five thousand rupees.*

*(4AAA) Whoever fails to comply with any order made by the Company Law Board under sub-section (2) of section 45QA, shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to a fine of not less than rupees fifty for every day during which such non-compliance continues.*

(5) If any person *other than an auditor* -

(a) receives any deposit in contravention of any direction given or order made under Chapter IIIB; or

*(aa) fails to comply with any direction given or order made by the Bank under any of the provisions of Chapter IIIB; or*

(b) issues any prospectus or advertisement otherwise than in accordance with section 45NA or any order made under section 45J, as the case may be,

he shall be punishable with imprisonment for a term which may extend to three

years and shall also be liable to fine which may extend, -

(i) in the case of a contravention falling under clause (a), to twice the amount of the deposit received; and

(ii) in the case of a contravention falling under clause (b), to twice the amount of the deposit called for by the prospectus or advertisement.

(5A) If any person contravenes any provision of section 45S, he shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to twice the amount of deposit received by such person in contravention of that section, or two thousand rupees, whichever is more, or with both:

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgement of the court, the imprisonment shall not be less than one year and the fine shall not be less than one thousand rupees.

(5B) Notwithstanding anything contained in section 29 of the Code of Criminal Procedure, 1973, it shall be lawful for a Metropolitan Magistrate or a Judicial Magistrate of the first class to impose a sentence of fine in excess of the limit specified in that section on any person convicted under sub-section (5A).

2 of 1974.

(6) If any other provision of this Act is contravened or if any default is made in complying with any other requirement of this Act or of any order, regulation or direction made or given or condition imposed thereunder, any person guilty of such contravention or default shall be punishable with fine which may extend to two thousand rupees and where a contravention or default is a continuing one, with further fine which may extend to one hundred rupees for every day after the first, during which the contravention or default continues.

**58C.** (1) Where a person committing a contravention or default referred to in section 58B is a company, every person who, at the time the contravention or default was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the contravention or default and shall be liable to be proceeded against and punished accordingly:

Offences by companies.

Provided that nothing contained in this sub-section shall render any such person liable to punishment if he proves that the contravention or default was committed without his knowledge or that he had exercised all due diligence to prevent the contravention or default.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the same was committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary, or other officer or employee of the company, such director, manager, secretary, other officer or employee shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Explanation 1. - Any offence punishable under this Act shall be deemed to have been committed at the place where the registered office or the principal place of business, as the case may be, in India, of the company is situated.

Explanation 2. - For the purpose of this section, -

(a) “a company” means any body corporate and includes a corporation, a non-banking institution, a firm, a co-operative society or other association of individuals;

(b) “director”, in relation to a firm, means a partner in the firm.

**58D.** Nothing contained in section 58B shall apply to, or in respect of, any matter dealt with in section 42.

Application of section 58B barred.

**58E.** (1) No court shall take cognizance of any offence punishable under this Act except upon a complaint in writing made by an officer of the Bank, generally or specially authorised in writing in this behalf by the Bank, and no court other than that of a Metropolitan Magistrate or a Judicial Magistrate of the first class or a court superior thereto shall try any such offence:

Cognizance of offences.

Provided that in respect of any offence punishable under sub-section (5A) of section 58B, a complaint in writing may also be made by an officer of the State Government, generally or specially authorised in writing in this behalf by that Government.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 a Magistrate may, if he sees reason so to do, dispense with the personal attendance of the officer of the Bank filing the complaint, but the Magistrate may in his discretion, at any stage of the proceedings, direct the personal attendance of the complainant.

2 of 1974.

**58F.** A court imposing any fine under this Act may direct that the whole or any part thereof shall be applied in, or towards payment of, the costs of the proceedings.

Application of fine.

**58G.** (1) Notwithstanding anything contained in section 58B, if the contravention or default of the nature referred to in section 58B is committed by a non-banking financial company, the Bank may impose on such non-banking financial company -

*Power of Bank to impose fine.*

(a) a penalty not exceeding five thousand rupees; or

(b) where the contravention or default is under sub-section (4A) or clause (a) or clause (aa) of sub-section (5) of section 58B, a penalty not exceeding five lakh rupees or twice the amount involved in such contravention or default, where the amount is quantifiable, whichever is more; and where such contravention or default is a continuing one, further penalty which may extend to twenty-five thousand rupees for every day, after the first, during which the contravention or default continues.

(2) For the purpose of imposing penalty under sub-section (1), the Bank shall serve a notice on the non-banking financial company requiring it to show cause why the amount specified in the notice should not be imposed as a penalty and a reasonable opportunity of being heard shall also be given to such non-banking financial company.

(3) Any penalty imposed by the Bank under this section shall be payable within a period of thirty days from the date on which notice issued by the Bank demanding payment of the sum if served on the non-banking financial company and, in the event of failure of the non-banking financial company to pay the sum within such period, may be levied on a direction made by the principal civil court having jurisdiction in the area where the registered office or the head office of the non-banking financial company is situated:

*Provided that no such direction shall be made, except on an application made by an officer of the Bank authorised in this behalf, to by the principal civil court.*

(4) The court which makes a direction under sub-section (3), shall issue a certificate specifying the sum payable by the non-banking financial company and every such certificate shall be enforceable in the same manner as if it were a decree made by the court in a civil suit.

(5) No complaint shall be filed against any non-banking financial company in any court of law pertaining to any contravention or default in respect of which any penalty has been imposed by the Bank under this section.

(6) Where any complaint has been filed against a non-banking financial company in a court in respect of contravention or default of the

*nature referred to in section 58B, no proceedings for imposition of penalty against that non-banking financial company shall be taken under this section.*

59 to 61.Rep. by Act 20 of 1937.s.3 Sch.II.

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Note: Words and figures in *italics* inserted/substituted by the Reserve Bank of India (Amendment) Act, 1997 (No. 23 of 1997)