

RBI/2010-11/29
DNBS (PD) CC No. 189 / 03.02.001 / 2010-11

July 1, 2010

To

All Non-Banking Financial Companies (NBFCs)

Dear Sir,

Master Circulars- Miscellaneous Instructions to All Non-Banking Financial Companies

In order to have all current instructions in one place, the Reserve Bank of India has issued master circulars to NBFCs on various subjects. It is advised that miscellaneous directions/ instructions issued upto June 30, 2010, which do not find a place in such master circulars have been compiled herein. A consolidated list of all such instructions is enclosed for ready reference. The master circular has also been placed on the RBI web-site (<http://www.rbi.org.in>).

Yours sincerely

(Uma Subramaniam)
Chief General Manager-in-Charge

Asset Liability Management (ALM) System for NBFCs - Guidelines

It was decided to introduce an ALM System for the Non-Banking Financial Companies (NBFCs), as part of their overall system for effective risk management in their various portfolios. The abovementioned guidelines would be applicable to all the NBFCs irrespective of whether they are accepting / holding public deposits or not. However to begin with, NBFCs (engaged in and classified as equipment leasing, hire purchase finance, loan, investment and residuary non-banking companies) meeting the criteria of asset base of Rs.100 crore (whether accepting / holding public deposits or not) or holding public deposits of Rs. 20 crore or more (irrespective of their asset size) as per their audited balance sheet as of 31 March 2001 would be required to put in place the ALM System.

A system of half yearly reporting was put in place in this regard and the first Asset Liability Management return as on 30 September 2002 was to be submitted to RBI by only those NBFCs which are holding public deposits within a month of close of the relevant half year i.e., before 31 October 2002 and continue thereafter in similar manner. The half yearly returns would comprise of three parts :

- (i) Statement of structural liquidity in format ALM
- (ii) Statement of short term dynamic liquidity in format ALM and
- (iii) Statement of Interest Rate Sensitivity in format ALM.

In the case of companies not holding public deposits, separate supervisory arrangements would be made and advised in due course of time.

[Details in DNBS (PD).CC.No.15 /02.01 / 2000-2001 dated June 27, 2001)

Nomination rules under Section 45QB of RBI Act for NBFC deposits

In terms of Section 45QB of the RBI Act, the depositor/s of NBFCs may nominate, in the manner prescribed under the rules made by the Central Government under Section 45ZA of the Banking Regulation Act, 1949 (B.R.Act). **one person** to whom, in the event of death of the depositor/s, the amount of deposit may be returned by the NBFC. It has been decided in consultation with the Government of India, that the Banking Companies (Nomination) Rules, 1985 are the relevant rules made under Section 45ZA of the B. R. Act. A copy of the rules is enclosed. Accordingly, NBFCs may accept nominations made by the depositors in the form similar to that specified under the said rules.

[Details in DNBS (PD) C.C.No. 27 / 02.05 / 2003-04 dated July 28, 2003]

Safe custody of liquid assets/ Collection of interest on SLR securities

NBFCs including RNBCs are required to maintain liquid assets in the form of Government securities/guaranteed bonds as per the provisions of Section 45-IB of the RBI Act and lodge such securities in a Constituents' Subsidiary General Ledger (CSGL) Account with a scheduled commercial bank (SCB) / Stock Holding Corporation of India Ltd., (SHCIL) or in a demat account with a depository through a depository participant (DP) registered with Securities & Exchange Board of India (SEBI) or with a branch of SCB to the extent such securities are yet to be dematerialised.

In order to protect the interest of depositors, an exclusive CSGL or demat account to hold Government securities shall be maintained for securities held for the purpose of compliance with Section 45-IB of the RBI Act. This account should be operated only for purchase or sale of securities due to increase or decrease in the quantum of public deposits or withdrawal of securities for encashment on maturity or for repayment to depositors in special circumstances, and not be used to undertake repo or other transactions.

In case an NBFC (including RNBC) deals in the government securities in a manner other than that permitted above, another CSGL account may be opened for this purpose.

It is also observed that some of the NBFCs have either not dematerialised the government securities or have dematerialized but failed to report the same to the RBI. For this purpose the quarterly liquid asset return in the reporting formats of NBS 3 and NBS 3A has been amended to include the information about the demat accounts, which will ensure that the information in this regard is not omitted by NBFCs.

It may be possible that there may be a few Government securities/Government guaranteed bonds that have not been dematerialized and are held in physical form which for the purpose of collection of interest are withdrawn from the safe custody with their designated bankers and re-deposited with the banks after collection of interest.

To avoid the process of withdrawal and re-depositing the same it has now been decided that NBFCs/RNBCs shall authorize the designated banks as agents for collection of interest on due dates on these securities held in physical form and lodged for safe custody. NBFCs/RNBCs may approach their designated banker and exercise a Power of Attorney in favour of the designated bank to enable it to collect interest on the securities/ guaranteed bonds held in physical form on the due date.

[Details in DNBS (PD) C.C. No. 28 / 02.02 / 2002-03 dated July 31 ,2003, [DNBS \(PD\) CC No. 37 / 02.02 / 2003-04 dated May 17, 2004](#)]

Requirement of minimum NOF of Rs. 200 lakhs as an additional condition for allowing NBFCs registered in non-public deposit taking category to accept public deposits

In terms of Notification No. DNBS.132 / CGM (VSNM) – 99 dated April 21, 1999, the minimum NOF requirement for the new companies applying for grant of CoR to commence business of an NBFIs was raised to Rs.200 lakhs. NBFCs which were granted CoR in the non-public deposit taking category should meet the minimum capital requirements of Rs.200 lakhs for being eligible to apply to RBI for accepting public deposits.

[Details in [DNBS \(PD\) C.C. No. 42 / 02.59 / 2004-05 dated July 24, 2004](#)]

Prudential Norms Directions - Preparation of Balance Sheet as on March 31 of every year

In terms of paragraph 9B of Non Banking Financial Companies Prudential Norms (Reserve Bank) Directions, 1998 NBFCs are to prepare the Balance Sheet and profit and loss account as on March 31 every year. Whenever an NBFC intends to extend the date of its Balance Sheet as per provisions of the Companies Act, it should take prior approval of the RBI before approaching the ROC for this purpose. It may, however, be clarified that even in the cases where RBI and ROC grant extension of time, the company would be required to furnish to RBI a Proforma Balance Sheet (unaudited) as on March 31 of the year and the statutory returns due on the above date.

[Details in [DNBS \(PD\) C.C. No. 43 / 05.02 / 2004-05 dated August 10, 2004](#)]

Certificate of Registration (CoR) issued under Section 45-IA of the RBI Act, 1934 – Continuation of business of NBFIs - Submission of Statutory Auditors Certificate - Clarification

It has been observed that there are NBFCs which are no longer engaged in the business of NBFIs and hence are not required/ eligible to hold the CoR granted by RBI. but still continue to do so. In order to ensure that CoRs are only held by NBFCs which are actually engaged in the business of NBFIs, all NBFCs should submit a certificate from their Statutory Auditors every year to the effect that they continue to undertake the business of NBFIs requiring holding of CoR under Section 45-IA of the RBI Act, 1934.

It is clarified that the business of non-banking financial institution (NBFIs) means a company engaged in the business of financial institution as contained in Section 45 I(a) of the RBI Act, 1934. For this purpose, the definition of 'Principal Business' given, vide Press Release 1998-99/1269 dated April 8, 1999 may be followed.

[Details in [DNBS \(PD\) C.C. No. 79 / 03.05.002/ 2006-07 dated September 21, 2006](#)
[DNBS \(PD\) C.C. No. 81 / 03.05.002/ 2006-07 dated October 19, 2006](#)]

Operative instructions relating to relaxation/modification in Ready Forward Contracts, Settlement of Government Securities Transactions and Sale of securities allotted in Primary Issues

All NBFCs / RNBCs are instructed to follow the guidelines on transactions in Government Securities as given in the circular IDMD.PDRS.05/10.02.01/2003-04 dated March 29, 2004 meticulously, wherever applicable. The revised guidelines come into effect from April 2, 2004.

All NBFCs including RNBCs may refer to the circular IDMD.PDRS.4777, 4779 & 4783/10.02.01/2004-05 all dated May 11, 2005 addressed to all RBI regulated entities. All NBFCs / RNBCs are instructed to follow the guidelines on transactions in Government Securities as given in the circulars meticulously, wherever applicable. In cases of doubt they may refer to IDMD.

[Details in [DNBS \(PD\) CC No. 38 /02.02/2003-04 dated June 11, 2004](#), [DNBS \(PD\) CC No.49 /02.02/2004-05 dated June 9, 2005](#)]

Prior Public Notice about change in control / management

**Need for public notice before (a) closure of the branch/office by any NBFC
(b) sale/transfer of ownership by an NBFC**

(a) NBFC should give at least three months public notice prior to the date of closure of any of its branches/ offices in, at least, one leading national news paper and a leading local (covering the place of branch / office) vernacular language newspaper indicating therein the purpose and arrangements being made to service the depositors etc.

(b) (i) A public notice of 30 days shall be given before effecting the sale of, or transfer of the ownership by sale of shares, or transfer of control, whether with or without sale of shares. Such public notice shall be given by the NBFC and also by the transferor, or the transferee or jointly by the parties concerned.

For this purpose, the term 'control' shall have the same meaning as defined in Regulation 2(1) (c) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.

(ii) The public notice should indicate the intention to sell or transfer ownership / control, the particulars of transferee and the reasons for such sale or transfer of ownership / control. The notice should be published in one leading national and another in leading local (covering the place of registered office) vernacular language newspaper.

Change in management and mergers/amalgamation

It has been observed that the change in management also takes place by way of amalgamation / merger of an NBFC with another NBFC or a non-financial company and as such, these mergers / amalgamations would tantamount to the change in the management, as aforesaid.

It would be obligatory on the part of such an NBFC seeking change in management or merger or amalgamation with any other company to give an option to every depositor to decide whether to continue the deposits with the company under the new management or the transferee company or not. The company would also be obliged to make the payment to the depositors who seek the repayment of their deposits. The Bank would view the non-compliance of the above instructions very seriously and penal action would be initiated against the defaulter company on the merits of each case.

The following changes are effected in the above instructions in January 2006:

(i) **Merger and amalgamation in terms of the High Court Order.**

(a) Where merger and amalgamation takes place in terms of the High Court order in pursuance of Sections 391 and 394 of the Companies Act 1956, the company shall inform the Bank about merger or amalgamation along with Court's order approving the same within a period of one month from the date of the order. As the public notice is given by the companies under the Companies Act 1956 and Rules made thereunder, no further public notice is required to be given by the companies in terms of the Bank's Circular as mentioned above.

(b) However there will be no change in other instructions contained in paragraph 5(iii) (b) of the Company Circular DNBS (PD) .CC No.12/02.01/99-2000 dated January 13, 2000.

(ii) Other cases

Where merger and amalgamation or change in the management of the company takes place upon sale / transfer otherwise than as stated in sub-paragraph (i) above, the NBFCs (including RNBCs)(deposit taking and non-deposit taking companies) should give prior public notice of 30 days.

[Details in Company Circular DNBS (PD) CC.No.11/02.01/99-2000 dated November 15, 1999, DNBS (PD) CC No.12/02.01./99-2000 dated January 13, 2000, DNBS (PD) CC No. 63 / 02.02 / 2005-06 dated January 24, 2006 and DNBS (PD) CC No. 82 / 03.02.02 / 2006-07 dated October 27, 2006]

Cover for public deposits – creation of floating charge on Liquid Assets by deposit taking NBFCs

NBFCs raise funds for their operations from various sources like public deposits, bank borrowings, inter-corporate deposits, secured/unsecured debentures, etc.

In order to ensure protection of depositors interest, NBFCs should ensure that at all times there is full cover available for public deposits accepted by them. While calculating this cover the value of all debentures (secured and unsecured) and outside liabilities other than the aggregate liabilities to depositors may be deducted from the total assets. Further, the assets should be evaluated at their book value or realizable/market value whichever is lower for this purpose. It shall be incumbent upon the NBFC concerned to inform the Regional Office of the Reserve Bank in case the asset cover calculated as above falls short of the liability on account of public deposits. NBFCs accepting/holding public deposits were directed to create a floating charge on the statutory liquid assets invested in terms of Section 45-IB of the RBI Act, 1934, in

favour of their depositors. Such charge should be duly registered in accordance with the requirements of the Companies Act, 1956.

In view of the practical difficulties expressed by the NBFCs in creating charge on the statutory liquid assets in favour of large number of depositors, it was subsequently decided that NBFCs accepting/ holding public deposits may create the floating charge on the statutory liquid assets maintained in terms of Section 45-IB of the RBI Act, 1934 and notifications issued by the Bank from time to time, in favour of their depositors through the mechanism of 'Trust Deed'.

[Details in DNBS (PD) C.C No. 47/ 02.01/ 2004-05 dated February 07, 2005 and DNBS (PD) C.C No. 87 /03.02.004/2006-07 dated January 4, 2007]

FIMMDA Reporting Platform for Corporate Bond Transactions

SEBI has permitted FIMMDA to set up its reporting platform for corporate bonds. It has also been mandated to aggregate the trades reported on its platform as well as those reported on BSE and NSE with appropriate value addition.

All NBFCs would be required to report their secondary market transactions in corporate bonds done in OTC market, on FIMMDA's reporting platform with effect from September 1, 2007. Detailed operational guidelines in this regard would be issued by FIMMDA. In the meanwhile, the NBFCs may approach FIMMDA directly for participating in the mock reporting sessions.

[Details in DNBS.PD/ C.C. No. 105/ 03.10.001/2007-08 dated July 31, 2007]

Unsolicited Commercial Communications - National Do Not Call Registry

It is an emerging practice in India to engage agents/outsource business operations for the purpose of soliciting or promoting any commercial transactions using telecommunication mode. There is a need to protect the right to privacy of the members of public and to curb the complaints relating to unsolicited commercial communications being received by customers/non-customers, as part of best business practices.

Telecom Regulatory Authority of India (TRAI) has framed the Telecom Unsolicited Commercial Communications (UCC) Regulations for curbing UCC. Further, the Department of Telecommunications (DoT) has issued relevant guidelines for telemarketers alongwith the registration procedure on June 6, 2007. These guidelines have made it mandatory for telemarketers to register themselves with DoT or any other agency authorized by DoT and also specified that the telemarketers shall comply with the Guidelines and Orders/Directions issued by DoT and Orders/Directions/Regulations issued by Telecom Regulatory Authority of India (TRAI) on Unsolicited Commercial Communications(UCC). The detailed procedure in this regard is also available on TRAI's website (www.traigov.in).

NBFCs are therefore; advised

- (i) not to engage Telemarketers (DSAs/DMA) who do not have any valid registration certificate from DoT, Govt of India, as telemarketers; (ii) to furnish the list of Telemarketers (DSAs/DMA) engaged by them along with the registered telephone numbers being used by them for making telemarketing calls to TRAI; and
- (iii) to ensure that all agents presently engaged by them register themselves with DoT as telemarketers .

[Details in DNBS.PD/ C.C No. 109/ 03.10.001/2007-08 dated November 26, 2007]

Requirement of minimum NOF of Rs. 200 lakh for all deposit taking NBFCs

In accordance with the consultative approach adopted by the Bank in framing of guidelines, a draft circular on enhancement of minimum NOF level for deposit taking NBFCs was placed on web-site www.rbi.org.in on May 21, 2007.

The suggestions/comments received in this regard were considered. To ensure a measured movement towards strengthening the financials of all deposit taking NBFCs by increasing their NOF to a minimum of Rs.200 lakh in a gradual, non-disruptive and non-discriminatory manner, it has been decided to prescribe that:

- (a) As a first step, NBFCs having minimum NOF of less than Rs. 200 lakh may freeze their deposits at the level currently held by them.
- (b) Further, Asset Finance Companies (AFC) having minimum investment grade credit rating and CRAR of 12% may bring down public deposits to a level that is 1.5 times their NOF while all other companies may bring down their public deposits to a level equal to their NOF by March 31, 2009..
- (c) Those companies which are presently eligible to accept public deposits upto a certain level, but have, for any reason, not accepted deposits upto that level will be permitted to accept public deposits upto the revised ceiling prescribed above.
- (d) Companies on attaining the NOF of Rs.200 lakh may submit statutory auditor's certificate certifying its NOF.
- (e) The NBFCs failing to achieve the prescribed ceiling within the stipulated time period, may apply to the Reserve Bank for appropriate dispensation in this regard which may be considered on case to case basis.

[\[DNBS \(PD\) C.C. No. 114 /03. 02.059 / 2007-08 dated June 17, 2008\]](#)

Reclassification of NBFCs

In terms of Company Circular DNBS.PD. CC No. 85 / 03.02.089 /2006-07 dated December 06, 2006 it was advised that NBFCs financing real / physical assets for productive / economic activity will be classified as Asset Finance Company (AFC) as per the criteria given under paragraph 4 of that circular. Consequent upon re-classification of NBFCs, in the proposed structure the following categories of NBFCs will emerge:

- (i) Asset Finance Company
- (ii) Investment Company
- (iii) Loan Company

Accordingly, it was advised that the companies satisfying the conditions specified may approach the Regional Office in the jurisdiction of which their Registered Office is

located, along with the original Certificate of Registration (CoR) issued by the Bank to recognize their classification as Asset Finance Companies. Their request must be supported by their Statutory Auditors' certificate indicating the asset / income pattern of the company as on March 31, 2006.

As substantial time has elapsed, since the issue of the circular, it has now been decided that erstwhile EL/HP NBFCs should, duly supported by Statutory Auditors' Certificate as on March 31, 2008, immediately approach the Regional Office concerned for appropriate classification latest by December 31, 2008 after which NBFCs which have not opted for the classification would be deemed to be loan companies.

[Details in [DNBS.PD. CC No. 85 / 03.02.089 /2006-07 dated December 06, 2006](#) and [DNBS.PD. CC No. 128 / 03.02.059 /2008-09 dated September 15, 2008](#)]

Monitoring Framework for non-deposit taking NBFCs with asset size of Rs 50 crore and above but less than Rs 100 crore

It was decided to call for basic information from non-deposit taking NBFCs with asset size of Rs 50 crore and above but less than Rs 100 crore at quarterly intervals. The first such returns for the quarter ended September 2008 were to be submitted by first week of December 2008. The quarterly return as at the end of each quarter were to be filed online with the Regional Office of the Department of Non-Banking Supervision in whose jurisdiction the company was registered, within a period of one month from the close of the quarter, while the the procedure/system for online submission would be conveyed at a later date.

Applicable NBFCs were later advised to submit the above return as hard copy and soft copy (via e-mail in Excel format) to the Regional Office of the Department of Non-Banking Supervision in whose jurisdiction their company was registered, within a period of one month from the close of the quarter, till the online procedure in this regard is advised.

[Details in [DNBS.PD/ CC.No. 130 / 03.05.002 /2008-09 dated September 24, 2008](#) and [DNBS.PD/ CC.No. 137 / 03.05.002 /2008-09 dated March 02, 2009](#)]

Accounting for taxes on income- Accounting Standard 22- Treatment of deferred tax assets (DTA) and deferred tax liabilities (DTL) for computation of capital

As creation of DTA or DTL would give rise to certain issues impacting the balance sheet of the company, it is clarified that the regulatory treatment to be given to these issues are as under :-

- The balance in DTL account will not be eligible for inclusion in Tier I or Tier II capital for capital adequacy purpose as it is not an eligible item of capital.
- DTA will be treated as an intangible asset and should be deducted from Tier I Capital.
- NBFCs may keep the above clarifications in mind for all regulatory requirements including computation of CRAR and ensure compliance with effect from the accounting year ending March 31, 2009.

In this connection it is further clarified that

DTL created by debit to opening balance of Revenue Reserves or to Profit and Loss Account for the current year should be included under 'others' of "Other Liabilities and Provisions."

DTA created by credit to opening balance of Revenue Reserves or to Profit and Loss account for the current year should be included under item 'others' of "Other Assets."

Intangible assets and losses in the current period and those brought forward from previous periods should be deducted from Tier I capital.

DTA computed as under should be deducted from Tier I capital:

(i) DTA associated with accumulated losses; and

(ii) The DTA (excluding DTA associated with accumulated losses) net of DTL. Where the DTL is in excess of the DTA (excluding DTA associated with accumulated losses), the excess shall neither be adjusted against item (i) nor added to Tier I capital."

[Details in [DNBS \(PD\) C.C. No. 124/ 03.05.002/ 2008-09 dated July 31, 2008](#) and

[DNBS.PD/ CC. No. 142/ 03.05.002 /2008-09 dated June 9, 2009](#)]

The Non-Banking Financial Companies (Deposit Accepting) (Approval of Acquisition or Transfer of Control) Directions, 2009.

In exercise of the powers conferred by sections 45K and 45L of the Reserve Bank of India Act, 1934 (2 of 1934) and of all the powers enabling it in this behalf, Reserve Bank of India having considered it necessary in the public interest and being satisfied that for the purpose of enabling the Bank to regulate the credit system to the advantage of the country, it is necessary so to do, gives to every deposit taking NBFC the Directions hereinafter specified.

Short title and commencement of the Directions

1. (1) These Directions shall be known as the Non-Banking Financial Companies (Deposit Accepting) (Approval of Acquisition or Transfer of Control) Directions, 2009.
- (2) These Directions shall come into force with immediate effect.

Definitions

2. For the purpose of these Directions, unless the context otherwise requires,-
 - (a) "control" shall have the same meaning as is assigned to it under clause (c) of sub-regulation (1) of regulation 2 of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.
 - (b) "NBFC" means non-banking financial company as defined in clause (xi) of subparagraph (1) of Paragraph 2 of Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 1998.

Prior approval of RBI in cases of acquisition or transfer of control of deposit taking NBFCs

Any takeover or acquisition of control of a deposit taking NBFC, whether by acquisition of shares or otherwise, or any merger/amalgamation of a deposit taking NBFC with another entity, or any merger/amalgamation of an entity with a deposit taking NBFC, shall require prior written approval of Reserve Bank of India.

Application of other laws not barred

The provisions of these Directions shall be in addition to, and not in derogation of the provisions of any other law, rules, regulations or directions, for the time being in force.

Exemptions

The Reserve Bank of India may, if it considers necessary for avoiding any hardship or for any other just and sufficient reason, exempt any NBFC or class of NBFCs, from all or any of the provisions of these Directions either generally or for any specified period, subject to such conditions as the Reserve Bank of India may impose.

(Details are in Notification No. DNBS.(PD) 208/ CGM(ANR)-2009 dated September 17, 2009)

Introduction of Interest Rate Futures- NBFCs

All NBFCs(excluding RNBCs)were advised to refer to the Directions issued by the Reserve Bank of India in terms of **Notification No. FMD. 1 /ED(VKS) - 2009 dated August 28, 2009**, covering the framework for trading of Interest Rate Futures (IRFs) in recognized exchanges in India.

It has been decided that NBFCs may participate in the designated interest rate futures exchanges recognized by SEBI, as clients, subject to RBI / SEBI guidelines in the matter, for the purpose of hedging their underlying exposures.

NBFCs participating in IRF exchanges may submit the data in this regard half yearly, in the format enclosed, to the Regional office of the Department of Non-Banking Supervision in whose jurisdiction their company is registered, within a period of one month from the close of the half year.

(Details are in DNBS.PD.CC.No.161 /3.10.01/ 2009-10 dated September 18, 2009)

Compliance with FDI norms-Half yearly certificate from Statutory Auditors of NBFCs

NBFCs having FDI whether under automatic route or under approval route have to comply with the stipulated minimum capitalisation norms and other relevant terms and conditions, as amended from time to time under which FDI is permitted.

As such these NBFCs are required to submit a certificate from their Statutory Auditors on half yearly basis (half year ending September and March) certifying compliance with the existing terms and conditions of FDI. Such certificate may be submitted not later than one month from the close of the half year to which the certificate pertains, to the Regional Office in whose jurisdiction the head office of the company is registered.

(Details are in [DNBS \(PD\).CC. No 167 /03.10.01 /2009-10 dated February 04, 2010](#))

Overseas Investment by NBFCs- No Objection (NoC) from DNBS, RBI

NBFCs were advised to refer to Regulation No. 7 of the Foreign Exchange Management (Transfer or Issue of Any Foreign Security) (Amendment) Regulations, 2004, dated July 07, 2004, in terms of which an Indian party requires prior approval of the concerned regulatory authorities both in India and abroad, to make an investment in an entity outside India engaged in financial services activities. Further in terms of para B.5.3 of the Master Circular on Direct Investment in Joint Venture (JV) / Wholly owned subsidiary (WOS) abroad dated July 01, 2009 issued by Foreign Exchange Department, RBI, regulated entities in the financial sector making investments in any activity overseas are required to comply with the above regulation.

Instances have been observed where NBFCs have made overseas investments without regulatory clearance of the Department of Non-Banking Supervision, Reserve Bank of India. Any investments made by NBFCs without regulatory clearance is a violation of FEMA 2004 and attracts penal provisions.

In this regard, it is emphasised that all NBFCs desirous of making any overseas investment must obtain 'No Objection' (NoC) of the Department of Non-Banking Supervision of RBI before making such investment, from the Regional Office in whose jurisdiction the head office of the company is registered.

Applications in this regard shall clearly state the activities intended to be undertaken by the overseas entity. NBFCs may also note that in terms of the Regulations *ibid*, they are not permitted to make direct investment in a foreign entity engaged in activities not approved under FEMA.

(Details are in [DNBS \(PD\).CC.No.173/03.10.01/2009-10 dated May 03, 2010](#))

Finance for Housing Projects – Incorporating clause in the terms and conditions to disclose in pamphlets/brochures/advertisements, information regarding mortgage of property to the NBFC

In a case which came up before the Hon'ble High Court of Judicature at Bombay, the Hon'ble Court observed that the bank granting finance in housing, should insist on projects, disclosure of the charge or any other liability on the plot in question or development project being duly made in the Brochure or pamphlet etc. which may be published by developer/owner inviting public at large to purchase flats and properties. The Court also added that this obviously would be part of the terms and conditions on which the loan may be sanctioned by the bank.

Keeping in view the above, it is felt desirable that while granting finance to housing / development projects, NBFCs also should stipulate as a part of the terms and conditions that:

(i) the builder / developer / owner / company would disclose in the Pamphlets / Brochures / advertisements etc., the name(s) of the entity to which the property is mortgaged.

(ii) the builder / developer / owner / company should indicate in the pamphlets / brochures, that they would provide No Objection Certificate (NOC) / permission of the mortgagee entity for sale of flats / property, if required.

NBFCs were advised to ensure compliance with the above stipulations and funds should not be released unless the builder / developer / owner /company fulfils the above requirements.

(Details are in [DNBS \(PD\) C.C No. 174 /03.10.001/2009-10 dated May 6, 2010](#))

Appendix

List of circulars

Sl. No.	Circular No.	Date
1)	DNBS (PD) CC.No.11/02.01/99-2000	November 15, 1999
2)	DNBS (PD) CC No.12/02.01./99-2000	January 13, 2000
3)	DNBS (PD).CC.No.15 /02.01 / 2000-2001	June 27, 2001
4)	DNBS (PD) C.C. No. 27 / 02.05 / 2003-04	July 28, 2003
5)	DNBS (PD) C.C. No. 28 / 02.02 / 2002-03	July 31 ,2003
6)	DNBS (PD) CC No. 37 / 02.02 / 2003-04	May 17, 2004
7)	DNBS (PD) CC No. 38 /02.02/2003-04	June 11, 2004,
8)	DNBS (PD) C.C. No. 42 / 02.59 / 2004-05	July 24, 2004
9)	DNBS (PD) C.C. No. 43 / 05.02 / 2004-05	August 10, 2004

10)	DNBS (PD) C.C No. 47/ 02.01/ 2004-05	February 07, 2005
11)	DNBS (PD) CC No.49 /02.02/2004-05	June 9, 2005
12)	DNBS (PD) CC No. 63 / 02.02 / 2005-06	January 24, 2006
13)	DNBS (PD) C.C. No. 79 / 03.05.002/ 2006-07	September 21, 2006
14)	DNBS (PD) C.C. No. 81 / 03.05.002/ 2006-07	October 19, 2006
15)	DNBS (PD) CC No. 82 / 03.02.02 / 2006-07	October 27, 2006
16)	DNBS.PD. CC No. 85 / 03.02.089 /2006-07	December 06, 2006
17)	DNBS (PD) C.C No. 87 /03.02.004/2006-07	January 4, 2007
18)	DNBS.PD/ C.C. No. 105/ 03.10.001/2007-08	July 31, 2007
19)	DNBS.PD/ C.C No. 109/ 03.10.001/2007-08	November 26, 2007
20)	DNBS (PD) C.C. No. 114 /03. 02.059 / 2007-08	June 17, 2008
21)	DNBS (PD) C.C. No. 124/ 03.05.002/ 2008-09	July 31, 2008
22)	DNBS.PD. CC No. 128 / 03.02.059 /2008-09	September 15, 2008
23)	DNBS.PD. Notification No 208	September 17, 2008
24)	DNBS.PD CC.No. 130 / 03.05.002 /2008-09	September 24, 2008
25)	DNBS.PD CC.No. 137 / 03.05.002 /2008-09	March 02, 2009
26)	DNBS.PD CC No .142/03.05.002/2008-2009	June 9, 2009
27)	DNBS (PD).CC. No 167 /03.10.01 /2009-10	February 04, 2010
28)	DNBS.PD. CC No.168/03.02.089 /2009-10	February 12 , 2010
29)	DNBS (PD).CC.No.173/03.10.01/2009-10	May 03, 2010
30)	DNBS (PD) C.C No. 174 /03.10.001/2009-10	May 6, 2010