

The Enabling Act

Banks were the entities solely authorised by RBI to accept public deposits. However various other entities did solicit public deposits with a promise of high returns but failed to fulfill repayment obligations due to either acting as shell companies or not having an implementable business model or operating with an intent to defraud, and created turmoil in the financial markets. To instill financial discipline and enhance public confidence on the financial intermediaries, the Reserve Bank of India (RBI) amended - The RBI Act of 1934 in the year 1997 and introduced Chapter III B for regulating Non Banking Institutions receiving deposits and Chapter III C for Prohibiting acceptance of deposits by Unincorporated Bodies like individuals, partnership firms and Association of individuals/persons (AoP). A Non-Banking Non-Financial Company can accept deposits as governed by the Companies Acceptance of Deposits Rules, 1975 which has been amended as Companies (Acceptance of Deposits Rules), 2014 post introduction of The Companies Act, 2013. The Registrar of Companies in the respective State Governments monitor these activities on behalf of their regulator - Ministry of Corporate Affairs (MCA).

Apart from RBI and MCA, National Housing Board (NHB) is the only other entity that regulates deposit acceptance activities of Housing Finance Companies. Given the background, let us understand through the definitions provided under Section 45-I of Chapter III B of The RBI Act, 1934, which are the entities that would be governed under the Act and what are the activities that would be governed:

Clause f: **Non Banking Financial Company** means a "**financial institution**" which is a company; 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; and 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.

Clause e: "**Non-Banking Institution**" means a company, corporation or cooperative society.

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:-

- a. The financing, whether by way of making loans or advances or otherwise, of any activity other than its own;

- b. The acquisition of shares, stock, bonds, debentures or securities issued by a Government or local authority or other 'Marketable Securities' of a like nature;
- c. 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.
- d. The carrying on of any class of insurance business;
- e. 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;
- f. Collecting, for any purpose or under any scheme or arrangement by whatever name called, monies in lump sum 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. any agricultural operations; or b. any industrial activity; or c. purchase or sale of any goods (excluding Marketable Securities); or d. the providing of any services; or the purchase, construction or sale of immovable property.

Clause 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).

By comprehending the above definitions, it is to be noted that the intent of the regulator is to govern the acceptance of deposits by any entity which is not a Bank. The activities of a non banking financial institution are defined to define the broad scope of financial sector activities, however these activities are not governed by RBI unless they are pursued as the primary business activity or deposits have been accepted from public. The Act has no intent of governing any non financial activity or business.

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