

Corpsec Hotline

February 20, 2010

INFRASTRUCTURE NBFCs – A NEW CHAPTER WRITTEN BY THE RBI

"Infrastructure has a direct bearing on sustainability of growth and overall development. The economic miracle of the high-growth Asian economies was accompanied by substantial investments in infrastructure. In the Indian context, though there has been considerable improvement in infrastructure development there are still significant gaps that need to be bridged"¹. The Eleventh Five Year Plan of the Government of India envisages an infrastructure investment equaling US\$ 514 billion, of which 30 per cent would be brought in by the private sector².

The Reserve Bank of India ("RBI"), taking into account the infrastructural needs of the country, is trying to provide the necessary impetus for facilitating investment into the infrastructure sector. Recently, the RBI has amended the External Commercial Borrowing ("ECB") policy resulting in creation of favorable conditions for infrastructure development.³

Taking it a step further, the RBI has amended the Non Banking Financial (Non Deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank) Directions, 2007 ("NBFC Directions"), by way of **RBI/2009-10/316 DNBS.PD. CC No. 168 / 03.02.089 /2009-10, dated February 12, 2010** (the "Amendment"). The Amendment introduces a new category of Non-Banking Financial Company ("NBFC") called the 'Infrastructure Finance Company' ("IFC").

Currently (i.e. prior to the Amendment), the RBI classified NBFCs under three categories, viz., asset finance companies, loan companies and investment companies. The RBI was requested to incorporate a separate category of infrastructure financing NBFCs in view of the critical role played by the infrastructure NBFC's in providing credit to the infrastructure sector. The RBI has now introduced IFC's upon the request of NBFC's predominantly engaged in the infrastructure sector.⁴

The Amendment defines an IFC to be a NBFC which deploys at least 75 per cent of its total assets in infrastructure loans.⁵ The Amendment prescribes that an NBFC should ⁶

1. not accept deposits from the public;
2. have net owned funds of INR 3 billion (INR Three Billion) or above;
3. have a minimum credit rating 'A' or equivalent of CRISIL, FITCH, CARE, ICRA or equivalent rating by any other accredited rating agencies; and
4. have a Capital to Risk Assets Ratio of 15 percent (with a minimum Tier I capital of 10 percent); to be considered as an IFC.

A NBFC which intends to change its status to an NBFC-IFC and satisfies the abovementioned conditions may approach the RBI with relevant documents (Certificate of Registration, certificate from their statutory auditors confirming the asset/ income pattern of the company as on March 31, of the latest financial year) for a change in classification.

The Amendment also provides for relaxation of concentration of credit norms as provided under the NBFC Directions.

The NBFC Directions with respect to credit concentration applicable to NBFCs (other than IFCs) do not permit NBFCs to:

1. lend to
 - a. any single borrower exceeding fifteen per cent of its owned fund; and
 - b. any single group of borrowers exceeding twenty five per cent of its owned fund.
2. invest in
 - a. the shares of another company exceeding fifteen per cent of its owned fund; and
 - b. the shares of a single group of companies exceeding twenty five per cent of its owned fund.
3. lend and invest (loans/investments taken together) exceeding,
 - a. twenty five per cent of its owned fund to a single party; and
 - b. forty per cent of its owned fund to a single group of parties.⁷

These credit concentration norms mentioned above have been relaxed for IFCs. Pursuant to the amendment IFCs

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are permitted to:

1. lending to
 - a. any single borrower up to 25 percent of its owned fund; and
 - b. any single group of borrowers, up to 40 percent of its owned fund.
2. lending to and invest in, (loans/investments being taken together)
 - a. a single party up to 30 percent of its owned fund; and
 - b. a single group of parties up to 50 percent of its owned fund.⁸

However, the limits with respect to investment have not been changed. Therefore an IFC will not be permitted to invest in:

- a. the shares of another company exceeding fifteen per cent of its owned fund; and
- b. the shares of a single group of companies exceeding twenty five per cent of its owned fund.

Further, the Amendment not only introduces IFCs but also enables NBFC's to provide 'infrastructure loan'⁹ for the purpose of laying down and / or maintenance of gas, crude oil and petroleum pipelines. However, NBFCs can no longer provide infrastructure loans for the construction of educational institutions and hospitals as the same is not regarded as an 'infrastructure loan'.

Implications:

The RBI has certainly recognized the importance of the infrastructure sector by creating the IFC classification. By relaxing the credit limit concentration the RBI has also demonstrated an awareness of the capital intensive nature of infrastructure projects. The Amendment definitely facilitates a focus on infrastructure. It also opens up a large opportunity for private players to lend to the infrastructure sector.

The Amendment provides a boost to companies which seek to obtain 'infrastructure loans' for laying down and / or maintenance of gas, crude oil and petroleum pipelines.

However, on the flipside, pursuant to the Amendment, loans for the purpose of the construction of educational institutions and hospitals would not qualify as infrastructure loans. Consequently, the specific norms relating to infrastructure loans under Paragraph 20 of the NBFC Directions would not apply to such loans. The Amendment does not inhibit loans being given by NBFCs for this purpose. IFCs can also provide loans to this sector as long as loans for the purpose of the construction of educational institutions and hospitals do not exceed 25% of its total assets. The impact of amending the definition of infrastructure loans in such a manner however, is yet to be assessed.

1 Para 9.2, Chapter 9, Energy, Infrastructure and Communications, Economic Survey of India 2008-2009, available at <http://indiabudget.nic.in/>, last visited February 17, 2010, at 12:10 pm.

2 Para 9.141, Chapter 9, Energy, Infrastructure and Communications, Economic Survey of India 2008-2009, available at <http://indiabudget.nic.in/>, last visited February 17, 2010, at 12:13 pm.

For further details, please refer to our earlier hotline "External Commercial Borrowing Policy Amended" dated December 16, 2009 available at http://www.nishithdesai.com/New_Hotline/CorpSec/CORPSEC%20HOTLINE_Dec1709.htm

3 Para 178, Second Quarter Review of Monetary Policy 2009 -10, Reserve Bank of India, October 27, 2009, Mumbai available at <http://rbidocs.rbi.org.in/rdocs/notification/PDFs/ISQRO271009.pdf>, last visited February 17, 2010 at 11:30 am.

4 Para 2 (viiia), NBFC Directions.

5 Para 19A, NBFC Directions.

6 Para 18 and 20, NBFC Directions.

7 Para 20 (12A), NBFC Directions.

8 Para 2 (1) (viii), NBFC Directions.

9 Para 2 (1) (viii) (ha), NBFC Directions.

- **Basava Rao & Kartik Ganapathy**

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