

Guidance Note on the Duty Cast on the Auditors under Section 45-MA of the Reserve Bank of India Act, 1934*

1. The Reserve Bank of India (Amendment) Act, 1974 has inserted a new Section 45-MA in the Reserve Bank of India Act, 1934 with effect from 13th December, 1974. This Section, which is reproduced below, requires the auditors of non-banking institutions to enquire whether or not the institution, in case it has accepted deposits, has furnished to the Reserve Bank of India statements, information or particulars relating to the 'deposits' as are required to be furnished under Chapter IIIB of the Reserve Bank of India Act. It further states that in case the auditor of a non-banking institution is not satisfied about due compliance by it of the aforesaid requirement to furnish statements, information or particulars, it is his duty to make a report to the Reserve Bank giving the aggregate amount of deposits held by the institution.

There is an additional part in this requirement specifically concerning company auditors. If a non-banking company has accepted 'deposits' and in the opinion of the auditor, has failed to furnish the required statements, information or particulars, his duty to report to the Reserve Bank has been combined with his duties under Section 227 of the Companies Act. He is to incorporate the Report made or intended to be made to the Reserve Bank in his Report to the company under Section 227 of the Companies Act.

"Section 45-MA (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 enquiry 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.

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(2) Where, in the case of a non-banking institution, being a 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.”

2. The directions issued by the Reserve Bank of India in exercise of the powers vested under Chapter IIIB referred to above are contained in (a) Non-Banking Financial Companies (Reserve Bank) Directions, 1966; and (b) Miscellaneous Non-Banking Companies (Reserve Bank) Directions, 1973. These directions, at present cover only companies as defined in the Companies Act, 1956, including foreign companies. Under Chapter IIIB of the Reserve Bank of India Act, the Non-Banking Non-Financial Companies (Reserve Bank) Directions, 1966 were also issued but they have been withdrawn with effect from 3rd June, 1975 on the promulgation of the Companies (Acceptance of Deposits) Rules, 1975 under Section 58-A of the Companies Act, 1956. Certain classes of companies like banking companies, insurance companies etc., are exempted from these directions and members may go through the directions to see what classes of companies are exempted.

3. The duty of the auditor is confined to making ‘inquiry’. It is worthwhile to note in this connection that Section 227(1A) of the Companies Act also contains a requirement for ‘inquiry’ into several specified matters and in this connection members’ attention is invited to Statement 204 of the Members Handbook Series issued by the Council of the Institute. Therefore in the context of the requirement of the Reserve Bank of India, the word “to inquire” simply means “to seek information”. The auditor, under the Reserve Bank Act, should be acquainted with the statements, information or particulars required to be submitted under Chapter IIIB of that Act and should ensure that proper evidence is available to show that such statements, information or particulars have been furnished to the Reserve Bank of India.

If the auditor is satisfied that sufficient evidence is available about submission of the statement etc., by the non-banking institution, no further duty rests on him; he is not concerned to look into the accuracy of the statements etc.

4. The auditor of a non-banking financial and miscellaneous non-banking company (including a foreign company) should write to each such company

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along the lines of the enclosed Annexure 'A' irrespective of, whether or not, according to the books of account, any deposits have been obtained by the client.

If the client indicates in reply to the enclosed letter that no deposits have been obtained, the auditor should verify this from the records.

If deposits have been obtained and the client indicates that he has duly furnished the necessary information and particulars to the Reserve Bank of India, the auditor should ask the client to produce evidence to show that he has done so. If the evidence is satisfactory, the auditor has no further obligation because all that he is required to do by the aforesaid provision of the Amendment Act is to satisfy himself that the necessary information, particulars and statements relating to the deposits have been furnished to the Reserve Bank of India.

If the auditor is not satisfied with the evidence indicating that the necessary statements, information or particulars have been furnished to the Reserve Bank of India he should write to the Reserve Bank as per the draft enclosed as Annexure 'B'. It would be noted that the Report to the Reserve Bank is only to contain the aggregate amount of deposits held and the auditor is not required to report his findings on the inquiry. For this purpose, he should ascertain the aggregate amount of the deposits outstanding at the last date of the financial year in respect of which the audit is conducted.

5. Where the auditor is obliged to write to the Reserve Bank pursuant to the preceding paragraph, he should also include the undernoted paragraph in his statutory report to the shareholders, at the end of the usual reporting requirements:

“We have not been satisfied on our inquiry during the course of our audit that the Company has furnished the requisite statements; information or particulars as required to be furnished to the Reserve Bank of India under Chapter IIIB of the Reserve Bank of India Act, 1934, and the aggregate amount of the total deposits outstanding as at the last date of the financial year i.e., 19 is Rs....(X or Nil as the case may be).”

6. Since the auditor should be acquainted with the returns, etc., which are to be furnished to the Reserve Bank of India, for the guidance of the members, the specific returns and statements to be furnished by different classes of companies and the due date for each class of company have been

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indicated in Annexure 'C'. Members should ascertain the class of company involved for the purpose of ensuring that they correctly apply the specifications indicated in Annexure 'C'.

7. Since an auditor can satisfy himself about the compliance with the requirements of submission of returns etc., only during the course of carrying out of the audit, it may be reasonably construed that his duty to verify compliance starts from the time he has assumed the office and stretches to the date of his report on the accounts audited. Consequently, he has to verify whether the audited Balance Sheet and the Profit and Loss Account which were laid in the Annual General Meeting in which he was appointed or re-appointed, have been submitted to the Reserve Bank of India or not. As regards the other returns, he is to enquire whether the particulars as of March 31, in case of non-banking financial companies and as of March 31/September 30, in case of miscellaneous non-banking companies have been filed with the Reserve Bank of India within the following June 30, and December 31, respectively. Obviously, in those cases where the auditor has already issued his report on the accounts of the Company before June 30 or December 31, as the case may be, it could not be said that it is the duty of such auditor to look into the compliance with the requirement of submission of the other returns. In such cases, the responsibility for the inquiry into compliance with this requirement naturally falls on the next auditor.

8. No time limit appears to have been set for the auditor to submit his report to the Reserve Bank in the event he is not satisfied about the furnishing of statements etc., by the non-banking institution. However, it should be submitted to the Reserve Bank within a reasonable time of the auditing work being completed. An auditor is not normally concerned with delays in filing returns etc, with the Reserve Bank and, therefore, he should report on the basis of the returns etc. filed by the date he signs his report on the company's accounts or the report of the Reserve Bank of India, whichever is earlier.

9. If the financial figures relating to the deposits are correctly stated in the books of the company, mere non-compliance with the procedural requirement of furnishing the statements, information or particulars to the Reserve Bank of India, will not vitiate the true and fair view of the financial statements of the company nor will it require the auditor to qualify any other part of this report to the shareholders.

10. It is to be noted that this Note is intended as guidance to the members in respect of duty cast on auditors under Section 45-MA of the Reserve Bank of India Act, 1934, and is not intended to be a guidance in respect of matters covered by the Companies (Acceptance of Deposits) Rules, 1975, made under Section 58-A of the Companies Act, 1956.

11. It is to be noted that 'inquiry' to be made as well as the reporting requirement will apply in respect of audit of any financial year of the non-banking institution, undertaken and/or completed on or after 13th December, 1974, even if the financial year may fall before the aforesaid date, so long as the appropriate Directions of the Reserve Bank of India, apply to that financial year, e.g., in the case of a non-banking non-financial company and a non-banking financial company from 1st January, 1967 subject to what has been stated in para 12 as regards non-banking non-financial companies and in the case of a non-banking miscellaneous company from 1st September, 1973.

12. A doubt originally arose as regards the simultaneous operation of Non-Banking Non-Financial Companies (Reserve Bank) Directions, 1966 and the Companies (Acceptance of Deposits) Rules, 1975 which came into operation on 3rd February, 1975, having application on the non-banking non-financial companies, inspite of Rule 12 of the latter Rules which reads as follows:

"On the commencement of these rules, all rules, orders or directions in force in relation to any matter for which provision is made in these rules shall stand repealed, except as respects things done or omitted to be done before such repeal."

The Reserve Bank of India by Notification No. DNBC. 36/DG (S).75 dated June 3, 1975 has withdrawn the Non-Banking Non-Financial Companies (Reserve Bank) Directions, 1966 with immediate effect and has thereby resolved the doubt. However, for the period falling between 3rd February, 1975 and 2nd June, 1975, it seems that non-banking non-financial companies will have to meet the requirements of both the aforesaid Directions and the Rules.

With effect from 3rd June, 1975, though the aforesaid Directions have been cancelled, a transitional requirement has been placed on such companies as were covered by the aforesaid Directions to furnish particulars of Deposits held on 31st March, 1975 to the Reserve Bank before 30th September of that

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year, in Form 'D' and no corresponding duty to inquire and report has been placed on the auditor.

It has been made clear by the Reserve Bank of India that the Non- Banking Financial Companies and the Non-Banking Miscellaneous Companies will continue to be governed by the respective Directions which have not been withdrawn and the auditors of such companies are required to carry out the duty specified in Section 45-MA of the Reserve Bank of India Act, 1934.

Annexure A

ABC Company Limited

Dear Sirs,

Reserve Bank of India Act, 1934

Pursuant to the requirements of Section 45-MA of the above Act, and pursuant to the directions issued by the Reserve Bank of India from time to time, we hereby call upon you to furnish the undernoted information as early as possible in connection with our audit of your accounts for the year/period ended.....

- (i) Have you received any deposits of the nature covered by the Reserve Bank of India Act and the directions issued thereunder?
- (ii) Have you furnished the requisite statements, information or particulars to the Reserve Bank of India as are required to be made by you, if any, under Chapter IIIB of the Act, and can you satisfy us by producing documentary evidence indicating that you have done so?
- (iii) If your answer to question (ii) is in the negative, please indicate the balance of the deposits outstanding at the last date of the financial year i.e.

Yours faithfully,

Chartered Accountants

Annexure B

Reserve Bank of India,
Department of Non-Banking Companies,
Post Box No. 571,
15, Netaji Subhas Road,
Calcutta-700 001.

Dear Sirs,

ABC Company Limited

Reserve Bank of India (Amendment) Act, 1974

In connection with the inquiry made by us during the audit of the above mentioned Company for the year/period ended....., please note that we have not been satisfied that the Company has furnished the requisite statements, information or particulars as required to be furnished to the Reserve Bank of India under Chapter IIIB of the Reserve Bank of India Act, 1934, and the aggregate amount of the total deposits outstanding as at the last date of the financial year, i.e. 197 is Rs. (X or Nil as the case may be).

Yours faithfully,

Chartered Accountants

Annexure C

<i>Type of Company</i>	<i>Returns of Statements to be furnished to the Reserve Bank</i>	<i>Period and due date</i>
Non-banking financial companies this includes mainly hire purchase finance companies, investment companies, loan companies, housing finance companies, mutual benefit finance companies and miscellaneous finance companies.	(a) Audited Balance Sheet as at the last date of the financial year & audited Profit and Loss Account in respect of that year are to be submitted unless it has been done so already within 15 days of the general meeting at which they are passed, irrespective of whether or not the company has obtained any deposits during the year. (b) Prescribed returns as per Reserve Bank directions as specified in the First, Second, Third, Fourth or Fifth Schedule to the Non-Banking Financial Companies (Reserve Bank) Directions, 1966 as may be applicable to the class of the company. (c) Particulars of principal officers and directors, changes therein and specimen	(a) The Balance Sheet & Profit & Loss Account to be submitted should relate to the period specified in the previous column. (b) Other returns are to be submitted as of March 31 and should reach the Reserve Bank before June 30, and such returns are to be submitted irrespective of whether or not the company holds any deposits. (c) Original particulars to be filed within one month from 1-1-73 or From the date of commencement of

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	signatures thereof.	business, whichever is later-changes to be filed within one month of date of change.
	(d) Copy of notice filed with the Registrar of Companies under proviso to sub-section (1) of Section 209 of the Companies Act, 1956, if the Registrar of Deposits is kept at a place other than at Registered Office of company, along with other books of account envisaged in the above sub-section.	(d) Within 7 days of the filing of the notice with the Registrar.
Miscellaneous Non-Banking Companies not covered above including mutual benefit companies, chit fund companies, etc.	(a) Audited Balance Sheet as on the last date of each financial year and audited Profit & Loss Account in respect of that year are to be submitted unless it has been done so already within 15 days of the general meeting at which they are passed, if they are not submitted earlier, irrespective of whether or not the company has obtained any deposits during the year.	(a) The Balance Sheet and Profit & Loss Account to be submitted should relate to the period specified in the previous column.
	(b) Prescribed returns as per Reserve Bank directions specified in the Schedule to	(b) Other returns are to be submitted as of March 31, and September 30, and

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Miscellaneous Non-Banking Companies (Reserve Bank) Directions, 1973.	should reach the Reserve Bank before June 30 and December 31 respectively, and such returns are to be submitted irrespective of whether or not the company holds any deposits.
(c) Particulars of principal officers and directors, changes therein and specimen signatures thereof.	(c) Original particulars to be filed within one month from 1-9-73 or from the date of commencement of business, whichever is later changes to be filed within one month of date of change.
(d) (see (d) above).	(d) (see (d)above).
