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STANDING COMMITTEE ON FINANCE

THIRTEENTH LOK SABHA

MINISTRY OF FINANCE
(DEPARTMENT OF ECONOMIC AFFAIRS)

THE FINANCIAL COMPANIES REGULATION BILL, 2000

FORTY FIFTH REPORT

LOK SABHA SECRETRIAT
NEW DELHI

June, 2003/Jyaistha, 1925 (Saka)

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Presented to Hon'ble Speaker on 30 June, 2003

Laid in Lok Sabha on 22 July, 2003

Laid in Rajya Sabha on 22 July, 2003

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45. Shri Dinesh Trivedi

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*Nominated to this Committee vice Sh. Mukhtar Abbas Naqvi w.e.f. 26.3.2003
** Nominated to this Committee w.e.f. 07.04.2003

SECRETARIAT

1.	Shri P.D.T. Achary	-	Additional Secretary
2.	Dr. (Smt.) P.K. Sandhu	-	Joint Secretary
3.	Shri R.K. Jain	-	Deputy Secretary
4.	Shri S.B. Arora	-	Under Secretary

INTRODUCTION

I, the Chairman, Standing Committee on Finance having been authorised by the Committee to submit the Report on their behalf present this Forty-Fifth Report on Financial Companies Regulation Bill, 2000.

2. The Financial Companies Regulation Bill, 2000 introduced in Lok Sabha on 13 December, 2000 was referred to the Committee on 19 December, 2000 for examination and report thereon, by the Hon'ble Speaker, Lok Sabha under Rule 331E of the Rules of Procedure and Conduct of Business in Lok Sabha.

3. The Committee sought memoranda from experts, associations of NBFCs, Small Investors Forum, Chambers of Commerce and individuals on the subject. The Committee heard the views of the representatives of the Investors Grievance Forum and Associations of NBFCs during their study tour to Mumbai, Kerala and Tamil Nadu.

4. The Standing Committee on Finance at their sitting held on 28 January, 2003 heard the views of representatives of the (i) Federation of Indian Chambers of Commerce and Industry (FICCI), (ii) Confederation of Indian Industry (CII), (iii) PHD Chamber of Commerce and Industry (PHDCCI) and (iv) the Institute of Chartered Accountants of India (ICAI).

5. At their sitting held on 29 January, 2003 the Committee first heard the views of (i) Delhi Hire Purchase & Leasing Companies Association, (ii) Andhra Pradesh Federation of Chit Funds, (iii) All India Association of Chit Funds, (iv) The Punjab & Haryana Finance Companies Association and (v) experts in the field. The Committee then took evidence of the representatives of the (i) Ministry of Finance and (ii) Reserve Bank of India.

6. The Committee considered and adopted the draft report at their sitting held on 20 June, 2003.

7. The Committee wish to express their thanks to the representatives of (i) Federation of Indian Chambers of Commerce and Industry, (ii) Confederation of Indian Industry (CII), (iii) PHD Chamber of Commerce and Industry (PHDCCI), (iv) The Institute of Chartered Accountants of India (ICAI), (v) Delhi Hire Purchase & Leasing Companies Association, (vii) Andhra Pradesh Federation of Chit Funds, (viii) All India Association of Chit Funds, (ix) The Punjab & Haryana Finance Companies Association, (x) Ministry of Finance and (xi) Reserve Bank of India for the co-operation extended in placing before them their considered views and perceptions on the subject and for

furnishing written notes and information that the Committee had desired in connection with the examination of the Bill.

8. For facility of reference, recommendations/observations of the Committee have been printed in thick type.

NEW DELHI;
20 June, 2003
30 Jyaistha, 1925 (Saka)

(N. JANARDHANA REDDY)
Chairman,
Standing Committee on Finance

REPORT

Background

1. Since long, Non- Banking Financial Companies (NBFCs) are engaged in a wide range of activities like hire – purchase finance, housing finance, equipment leasing finance, loans, investments, etc. NBFCs have been able to mobilise deposits on a substantial scale in recent years. Several factors have contributed to the rapid growth of NBFCs in India. Comprehensive regulation of the banking system on the one hand and the absence or relatively lower degree of regulation over NBFCs on the other hand have, to a significant extent, contributed to their rapid growth. Further, higher level of customer orientation, fewer pre and post sanction requirements and simple and speedy tailor made services assured them a loyal clientele notwithstanding higher costs. Besides, the higher rate of return offered by NBFCs have drawn a large number of small savers to them. Thus they work like quasi banks and provide fund to the sectors where a credit gap exists. NBFCs have become an accepted and integral part of the Indian financial system in view of their complementary as well as competitive role.

2. An estimation shows that non bank credit cover at least 70% of due requirement for the trading activity. More than 50% of the borrowing requirement of unregistered manufacturing is met by non-bank sources. Nearly 70% of the non-corporate private construction activity is financed by non-banking sector.

3. The Reserve Bank of India has received 36,349 applications since 1998 for grant of certificate of Registration of NBFCs and the same were disposed of as follows:-

Year	Approval	Rejected
1998	6,593	604
1999	1,475	948
2000	1,448	15,850
2001	1,624	1,182
2002	2,955	1,159
Total	14,095	19,743

(1728 applications of Mutual Benefit Companies (Potential Nidhis) and Investment companies are subsequently disposed of leaving a balance of 783 pending)

4. The aggregate of deposits mobilised by Non Banking Financial Companies which have reported to RBI and their percentage to the aggregate deposits of scheduled commercial banks is given below :

(Rs. in crore)

As on	No. of reporting NBFCs (including RNBCs)	Public deposits of reporting NBFCs (including RNBCs)	Percentage of deposits of Scheduled Commercial Banks
1.	2.	3.	4.
March 31, 1998	1646	23703.88	3.7
March 31, 1999	1579	19974.17	2.6
March 31, 2000	1043	19339.61	2.1
March 31, 2001	1018	18181.27	1.7
March 31, 2002	737	18526.35	1.5

As on March 31, 2002, 51 Non Banking Finance Companies (which have reported to RBI) have mobilised public deposits worth Rs. 10 crore and above.

Regulation of NBFCs

5. With the rapid growth of this sector, the need to have regulatory control was felt. In the beginning, Reserve Bank of India (RBI) had been vested with the powers of exercising control over the deposit taking activities of the non-banking institutions since 1963 and those of the unincorporated bodies since 1984 in terms of the provisions contained in Chapters III-B and III-C respectively of the RBI Act 1934. The Government appointed high powered committees from time to time to ensure the smooth functioning of this sector.

Working Group on NBFCs

6. In the year 1992 a working group headed by Shri A.C. Shah was constituted. Some of the major highlights of the Shah Committee recommendations were as follows :

1) Dismantling of all classes of NBFCs and application of uniform regulations to all classes of NBFCs.
2) Companies having NOF of Rs. 50 lakhs or more to get registered with RBI and be given some privileges over the unregistered companies.
3) Registered companies to obtain credit rating by one of the credit-rating agencies notified by the RBI.

4) Restriction on new companies to take deposits for the first two years.
5) Focus to be shifted from liability side of the balance sheet to the asset side of the balance sheet.
6) Introduction of concepts like capital adequacy, credit concentration, etc.
7) Transfer of at least 20 per cent of profit to reserves until reserves equalled equity share capital.
8) Interest rate to be higher by 2 to 3 per cent as compared to commercial banks.
9) Distinction between exempted deposit and regulated deposit to be abolished.
10) Norms for income recognition to be prescribed.
11) Greater role for Auditors.
12) More powers to the Regulatory authority.
13) Ceiling on deposits favoured apart from ceiling on number of depositors in the case of unincorporated bodies.
14) Public awareness programme for depositors in respect of risks associated with placing deposit with the NBFCs.

Expert Group for designing supervisory framework for NBFCs.

7. In the year 1996 an expert group headed by Shri P.R. Khanna was constituted for designing a supervisory framework for NBFCs. The expert group recommended that each NBFC should be given supervisory rating on the basis of its compliance with regulatory norms. This rating was in addition to the rating given by the credit rating agencies. The expert group suggested a set of weightage points to be given based on degree of compliance with the norms. Depending upon the total weightage points, the expert group suggested assigning of ratings ranging from Grade A (means lower risk) to Grade D (means higher risk). The frequency of onsite inspections was linked with the rating.

Amendments of 1997

8. Until January 1997, the focus of regulation was mainly to serve as an adjunct to the monetary and credit policy of RBI. Supervision of Non Banking Financial Companies (NBFCs) was minimal and the powers vested with RBI were inadequate. The experience over the years showed that the above provisions were neither sufficient to regulate the business activities of such companies nor did they provide adequate protection to the depositors. The Working Group on Financial

Companies and the Joint Parliamentary Committee which enquired into the irregularities in securities and banking transactions recommended strongly for a comprehensive legislative framework.

9. RBI Act, 1934 was amended in January, 1997 for effecting comprehensive changes in the statutory provisions for regulation of NBFCs. Some of the important amendments provided for the following :

(1) Compulsory registration of all NBFCs with RBI. Registration to be granted only after satisfaction of the RBI that the company complied with the eligibility criteria laid down in the RBI Act;

(2) Entry point norm of Rs. 25 lakhs for new NBFCs. The existing NBFCs having NOF of less than Rs. 25 lakhs given three years' period to attain the minimum NOF to be primarily eligible for registration;

(3) Maintenance of liquid assets at a specified percentage of public deposits;

(4) Transfer of at least 20 per cent of the net profits to Reserve Fund;

(5) Authorising Company Law Board (CLB) to direct a defaulting NBFC to repay deposits;

(6) Empowering RBI to –

  (i) give Directions to the NBFCs regarding prudential norms;

  (ii) give Directions to the NBFCs and their Auditors on matters relating to Balance Sheet and cause Special Audit as also to impose penalty on erring Auditors;

  (iii) prohibit NBFCs from accepting deposits for violation of the provisions of the RBI Act and direct NBFCs not to alienate their assets;

  (iv) file winding up petition against the erring NBFCs;

  (v) impose penalty directly on the erring NBFCs, etc.

(7) The unincorporated bodies engaged in the business of financial institutions were precluded from accepting deposits, except from the relatives specified in the RBI Act and institutions notified under the RBI Act. These entities were also precluded from issuing advertisement in any manner for soliciting deposits.

(8) The penalties for various violations of the provisions of the RBI Act and the directions issued thereunder were enhanced.

In pursuance of these amendments the Reserve Bank of India had instituted a comprehensive off-site surveillance and on-site inspection mechanism with a focus on

functioning of deposit taking companies. Strict eligibility criteria has been prescribed to ensure that only financially sound and well-managed NBFCs can have access to public deposits. The RBI has also been taking stringent action against errant and recalcitrant companies as detailed below :

(i) filed winding up petitions against 59 companies;

(ii) instituted prosecution proceedings in 58 cases of default by the errant NBFCs for various contraventions including for dishonouring the orders of the CLB;

(iii) filed police complaints in 25 cases;

(iv) rejected applications of 4748 NBFCs holding public deposits out of 5987 such NBFCs (including 509 potential nidhis falling under the jurisdiction of the Department of Company Affairs, Government of India) and prohibited them from accepting further deposits as also alienating their assets except for repayment of public deposits; and

(v) Complaints have been received by RBI against 211 NBFCs not complying with the orders of Company Law Board.

Task Force on NBFCS

10. Despite provision for above safeguards, it was felt by the Government that the existing provisions contained in the Reserve Bank of India Act, 1934 were not adequate because of the large number of defaulting NBFCs and the absence of an efficient and quick system for redressal of grievances of individual depositors. The Central Government appointed a Task Force headed by Shri C.M. Vasudev on the NBFCs, inter alia, to go into the adequacy of the present legislative framework, to devise improvements in the procedure relating to depositors' complaints and to examine the need for separate regulatory agency. The Task Force considered various suggestions received from the NBFCs, representative organisations of the NBFCs, depositors' associations, State Governments and others and made wide ranging recommendations. The highlights of the recommendations are as under :-

1. Delinking of credit rating with quantum of deposits. All hire purchase finance companies and equipment leasing companies having at least minimum investment grade of credit rating to be allowed to have four time of NOF as public deposits.

2. All unrated or underrated hire purchase finance companies and equipment leasing companies having NOF of at least Rs. 25 lacs to be allowed to have

1.50 times of NOF or Rs. 10 crores whichever is lower as public deposits provided they attain a higher capital adequacy ratio of 15 percent.

3. SLR to be maintained at 25 percent.
4. Investments in marketable securities, other than the liquid assets already maintained, to be made at the rate of 25% of reserves.
5. Increase in the minimum capital requirements for entry.
6. Increased protection of interests of depositors by constituting Depositors' Grievances Redressal Authority, first charge of unsecured depositors on liquid assets maintained, formation of information cells by State Governments etc.
7. Rejection of deposit insurance.
8. Unincorporated bodies to be allowed to take loans from companies.

11. While some of the recommendations of the Task Force have been given effect to through issue of directions by the RBI under the provisions of the Reserve Bank of India Act, 1934, the implementation of other recommendations required statutory provisions by an Act of Parliament.

Finance Companies Regulation Bill, 2000

12. To give effect to the recommendations of the Task Force and to remove certain difficulties in the administration of the provisions of Chapters III-B and III-C of the Reserve Bank of India Act, 1934 with certain modifications and certain new safeguards to protect the interest of the depositors and to regulate the financial institutions in a more effective manner, the Financial Companies Regulation Bill, 2000 was introduced in Lok Sabha on 13th December, 2003. The salient features of the Bill are as follows :-

(a) constitution of an Advisory Council consisting of Deputy Governor, RBI as the Chairperson and other members of the Council to advise and make recommendations on matters referred to it by the RBI ;

(b) compulsory registration of all financial companies with the RBI;

(c) requirement of prior approval of the RBI for any substantial change in the management, change in location of its registered office and change in name of a financial company;

(d) enhancement in the ceiling of minimum net owned fund required for registration of a financial company receiving public deposits being raised from rupees two crores to rupees ten crores;

(e) provision requiring owned funds for registration of every financial company which does not receive public deposits with a minimum owned fund of rupees twenty five lakhs which may be raised to rupees two crores by the RBI;

(f) creation of reserve fund and investment of twenty five percent of such fund in specified unencumbered securities;

(g) provision for depositors to have first charge on certain assets of the financial companies which may default in repayment of public deposits and specified unencumbered securities created out of a part of reserve fund;

(h) regulating, or prohibiting from issuing advertisement by any non banking institution;

(i) conferring powers upon the RBI to direct a financial company or a class of financial companies to seek prior approval for appointment of statutory auditors in certain cases;

(j) empowering the RBI to appoint one or more Special Officers;

(k) prohibition of financial companies receiving public deposits for carrying on business other than the business of financial institution;

(l) giving more powers to Board for Company Law Administration constituted under the Companies Act, 1956 for redressal of depositors' grievances;

(m) conferring upon the Board the powers prohibiting alienation of assets by financial companies and attachment and sale of assets of the financial company for effecting repayment of the deposits;

(n) prohibiting all unincorporated bodies from issuing advertisement in any manner for soliciting public deposits;

(o) making certain offences relating to unauthorised acceptance of public deposits as cognizable offences;

(p) making acceptance of public deposits by unincorporated bodies as a congnizable offence.

13. With a view to have an expert opinion on the various provisions of the Bill, the Committee sought memoranda from experts, associations of NBFCs, Small investors forum, Chambers of Commerce and individuals on the subject. The Committee have dwelt at length on the provisions of the Bill and heard the views of

the representatives of the Investors Grievance Forum and Associations of NBFCs of Mumbai, Kerala and Tamil Nadu.

14. In order to seek, further clarifications, the Committee also took the oral evidence of the representatives of the Chambers of Commerce (CII and FICCI), the Institute of Chartered Accountants of India (ICAI), experts, representatives of associations of Hire Purchase & Leasing Companies, Chit Fund Companies and Ministry of Finance (Deptt. of Economic Affairs – Banking Division) and RBI.

15. The Committee examined the provisions of the Bill in detail. It is convinced of the need to have a suitable legislation to properly regulate the operations of the non-banking financial sector with a view to providing adequate safeguards and protection to the investing public and also facilitating the financial transactions in this sector so as to meet the urgent credit requirements of the needy.

The Committee has taken note of the fact that some non-banking financial companies have in the past conducted their activities to the detriment of depositors, who have lost their is hard-earned money. The instances of fly-by-night operators overnight disappearing with the public money have tended to shake the public confidence in the reliability of the non-banking operations. There is, therefore, an urgent need to regulate these operations through a Parliamentary legislation.

The Committee, however, note that the genuine non-banking financial companies are playing a useful role in meeting the credit requirements of the public. Easy access, absence of too many formalities and easy availability of money make the non-banking financial transactions attractive to the public. These genuine operations should be allowed to continue without being hobbled. This is the perspective the Committee has adopted while examining the Bill.

The Committee find that the Bill contains adequate provisions to safeguard the interests of the depositors.

The Committee is in full agreement with the object of protecting the interests of the investing public. However, there are certain provisions which are likely to cause unintended difficulties to these financial companies which can affect the smooth working of this sector. After hearing the representatives of NBFCs, the Government, eminent trade organizations and the Reserve Bank of India, the Committee has come to the conclusion that some of those provisions need to be modified so as to remove such unintended difficulties.

These modifications are contained in the recommendations of the Committee which are dealt with in the subsequent paragraphs of this Report.

Long title / purport of the Bill

16. The Financial Companies Regulation Bill, 2000 proposes to consolidate and amend the law for regulation of Financial Institutions to protect the interests of the depositors of the financial companies and also to prohibit acceptance of deposits by unincorporated bodies.

17. Associations of Finance Companies in their Memoranda submitted to the Committee have suggested that the basic purpose and objective of the Bill is to protect depositors' interest and prohibit deposit acceptance by unincorporated bodies. Therefore, non-deposit taking companies should be excluded from the purview of the Bill.

18. During the oral evidence the representatives of Reserve Bank of India and the Ministry of Finance were asked to spell out their stand on the above suggestion of the Associations of Finance Companies. A representative of RBI explained as under :-

> "There are certain deposit taking companies whom we call 'A' category companies. There are 755 of them whom we have issued registration certificates. There are 13,322 deposit companies whom we call 'B' category companies…… As far as these 13,000 companies are concerned, since they are not accepting deposit, we do not want to regulate them. This is our stand. We have told our stand earlier also but the Government for some reason was saying that because they are involved in financial activities, they should be controlled under the Act."

19. Reiterating their stand that non deposit taking companies should be excluded from the purview of the Bill, the RBI representative further stated as follow :-

> "RBI has taken the view that they should not regulate them because then the supervisory focus will be lost……. If we concentrate on 14000 companies, then we will be losing focus on 755 companies which are actually taking deposits."

20. Reacting to the above views of RBI, the Secretary, Ministry of Finance (Department of Economic Affairs – Banking Divisions) explained that these views of RBI were debated at length in the cabinet and the Government was of the view that the public deposit taking companies will be regulated but there was also the need to regulate other companies which were not public deposit taking companies because the origin of raising the resources might be different but the products they offer were

the same. The Bill imposes more stringent regulations and controls over the public deposit taking companies and lesser for those companies which are non-deposit taking companies.

21. An opinion has also been expressed that it is prudent to exclude investment companies and Special Purpose Vehicles (SPVs) which are limited companies and which do not take deposits, from the purview of the Bill in view of their catalystic role as tools for development and growth of investment activity. While reacting to the proposal, the Government in their reply stated that the nature of business rather its name should be determining factor. Some SPVs may be doing financial business which would require regulation by RBI. However, RBI, in their written reply furnished to the Committee submitted as under :-

> "We agree with the suggestion that it is prudent to exclude investment companies and special purpose vehicles from the purview of the Bill. If the suggestion regarding exclusion of non-deposit taking financial companies from the purview of the Bill is implemented, investment companies and special purpose vehicles which are limited companies and which do not take deposits would stand excluded."

22. The Committee after having considered the view points of the Government and the Reserve Bank of India are of the opinion that the Reserve Bank of India should concentrate on regulation of those incorporated bodies only which are accepting deposits. They are of the considered opinion that the non-deposit taking financial companies, investment companies, Special Purpose Vehicles (SPVs) may be excluded from the purview of the Bill to enable the RBI to adequately and appropriately monitor the activities of deposit taking incorporated bodies. The Committee, therefore, recommend that the Government should carry out a set of consequential amendments in the clauses of the Bill.

Clause 2(1)(d) - Definition of Board

23. As per clause 2(1)(d), 'Board' means the Board of Company Law Administration (Company Law Board) constituted under sub-section (1) of section 10E of the Companies Act, 1956. The Committee were apprised by various associations that Board of Company Law Administration has since been dissolved after the enactment of the Companies (Amendment) Bill, 2002.

24. The Committee note that consequent upon the enactment of the Companies (Amendment) Act, 2002 (No. 11 of 2003), the Board of Company Law Administration has been dissolved and the National Company Law Tribunal (NCLT) has taken its place. The Committee, therefore, recommend that the Government should keep this aspect in view while finalising the legislation.

Clause 2(1) (e) - Definition of Business of Financial Institution

25. Clause 2(1)(e)(iv) of Bill proposes to include the Chit Business in the broad definition of business of financial institution. Clause 2(I) (f) provides that 'Chit' means a chit as defined in Clause (b) of section 2 of the Chit Funds Act, 1982. In this regard FICCI and other associations of Financial Companies have suggested that since the Chit Business is governed by a separate Act - The Chit Funds Act, 1982 and the concerned State Acts, it may be excluded from the purview of the Bill.

26. RBI in their written reply to a query of the Committee stated as under :-

> "We agree with the suggestion to exclude chit business [clause 2(I) (e)(iv)] from the definition of business of financial institution in the Bill. This would exclude all companies and unincorporated bodies (UIBs) engaged in chit business from the ambit of the Bill. By this suggestion, UIBs engaged in chit fund business (which would be deemed to be engaged in non-financial business) would be able to take unlimited deposits from anyone, causing an unintended and undesirable impact in the system. To avoid this possibility, RBI suggested to include in the clause 37(1)(a) the business of Chits, along-with the business of financial institution, as a condition governing prohibition of acceptance of deposits by UIBs."

27. The Ministry of Finance in their written reply stated that it would not be appropriate to exclude the business of Chits from clause 2(e) since this business is also financial business. However, the regulation and supervision of such Chit Fund activities would continue to be done under the Chit Fund Act, 1982 but public deposit taking activities of Chit Fund Companies would fall under the purview of RBI. Appropriate notification can be issued by RBI in this regard as has been done for other financial companies such as Housing Finance Companies and Stock Broking Companies.

28. During the oral evidence of the representatives of Ministry of Finance, the Secretary (Banking & Insurance) deposed as follows :-

> "We also feel that where the Chit fund company is doing only chit fund business, it can be outside the purview of Bill. But when it is part of the financial business, then it will be within the purview of the Bill."

29. After hearing from financial companies engaged in Chit Business, Chambers of Commerce, RBI and the Government, the Committee are of the opinion that no useful purpose will be served by bringing companies that are doing only Chit Business in the ambit of the Bill. They note that Government/ RBI are also in the favour of exclusion of these companies. Hence, they recommend accordingly, and want the Government to bring suitable amendments in the Bill.

Clause 2(1)(i) - Deposits

30. The definition of deposit is governed by Clause 2(1)(i) which defines deposit to include any receipt of money by way of deposit or loan or in any other form but excludes certain specified items.

31. The Committee have received written memoranda for the exclusion of the following amounts :-

(a) In case of Private Limited Companies the deposit of shareholders, as well as deposit of directors.

(b) In Public Limited Companies money received from employees, money received in trust as well as special purpose deposit should be excluded. Also the money deposited with the Company by the promoters as subordinate loan in accordance with the terms and conditions laid down by a financial institution or a bank while sanctioning the loan or other credit facilities, should be excluded from the definition of deposit.

32. Both the Ministry of Finance and RBI in their written replies have agreed to suggestions at (a) and (b) above and submitted as under :-

(i) We agree with the suggestions at (a) and (b) relating to exclusion of the deposits of shareholders as well as deposit of directors received by private limited Financial Companies and the unsecured loans brought in by the promoters in pursuance of stipulations of lending institutions. As hitherto, the proposed exclusions will be notified in the Reserve Bank's Directions, to be reissued after enactment of the Bill.

(ii) As regards exclusion of security deposits received by financial companies from its employees for due performance of duties the same would be exempted when the Bank (RBI) issues directions after enactment of the Bill.

(iii) At present security deposits received from employees to secure due performance of duties is exempted from the definition of public deposits.

(iv) As regards, exclusion of money received in trust, in view of the ambiguous meaning of the term and the possibility of its misuse, the suggestion may not be accepted.

33. The Committee after weighing the pros and cons of the suggestions regarding the items that are to be excluded from the definition of the deposits feel that the receipt of deposits from shareholders, promoters, directors and employees stand merit for consideration for exclusion in view of their contribution towards business promotion and industrial activity. The Committee, therefore, recommend that the deposits of shareholders as well as deposit of directors received by private limited financial companies and the unsecured loans brought in by the promoters in pursuance of stipulation of lending institutions be exempted from the definition of deposits.

Commercial Loan

34. Clause 2(I) (i) provides as under :-

" '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"

As such, the commercial loans which play a vital role in the business of NBFC have been brought within the ambit of the Bill under the definition "deposit".

35. NBFCs have informed the Committee that the important element in public deposit is invitation to public and pre-determined time of repayment/maturity, whereas commercial loans are different as there is no invitation to public but a contractual agreement between borrower and lender wherein each one of them is aware of their legal rights and obligations. No business can run without commercial loans and it is highly unjust to equate the public deposits with commercial loans which are not subject matter for legislation. Hence, the Associations of NBFCs have suggested that the commercial loans should be excluded from the definition of deposit.

36. The Ministry of Finance in their written reply to the Committee stated as follows:-

> "Legally and operationally it has not been found feasible to distinguish between 'loans' and 'deposits'. All borrowings, which are fully secured, are already exempted from the definition of deposit. Further, borrowings from all informed lenders like banks, companies, money lenders and co-operative societies have also been exempted from this definition. Though, it was not the objective to regulate loans, since monies were accepted from uninformed depositors in the past in the guise of a series of bilaterally negotiated loans to circumvent regulations on public deposits, it was decided to include such loans under definition of

'deposits'. Unlike the informed lenders, these lenders may not also be in a position to enforce the terms and conditions, which might be mutually agreed upon."

37. The Committee note that loan and deposit are basically different from each other in terms of the nature of and obligations underlying these two transactions. Loans play a vital role in the business operations of the NBFCs particularly the unincoporated bodies. If the 'loan' is included in the definition of 'deposit' the effect would be that most of the unincoporated bodies and individuals will be put out of business since they are prohibited from taking deposit under clause 37 of the Bill. The only exception is the loan taken from close relatives. The Ministry admits that it was not its intention to regulate loans. But loan is being included in the definition of deposit because there were some cases of misuse in this type of transactions. The Committee feel that this argument is being advanced by the Government without seriously considering the practical aspects of this issue. The NBFCs, particularly unincorporated bodies depend hugely on loan for conducting their business and a total prohibition of the taking of commercial loan cannot be accepted as a reasonable regulative measure. The Bill is intended to regulate the activities of NBFCs and not to prohibit them.

38. The Committee, therefore, recommend that necessary amendments may be made either in the definition clause or clause 37 of the Bill to provide that the commercial loans taken by the NBFCs particularly the unincorporated bodies and individuals from any person which is repayable on demand or on mutually agreed terms shall be exempted from the definition of deposit.

Clause 2(1) (i) (vi) - Issue of debentures

39. The clause 2(1)(i)(vi) provides that any money received against mortgage of immovable property, or against pledge of specific movable property, where the value of such security is not less than the money received is exempt from the definition of deposit. As such, the debentures can be issued against the security of immovable property or against pledge of specific movable property only.

40. Associations of NBFCs in their Memoranda submitted to the Committee have represented that protection of depositors' interest is the main concern that underlines the present Bill. In view of this, any amount raised through the issue of Bonds or Debentures secured by the mortgage or charge on any immovable property or other assets of the Company or with an option to convert them into shares in the

company upto such extent the amount of such bonds or debentures does not exceed the market value of such immovable property or other assets, should also be specifically exempted from the purview of deposits. This is because the funds raised are secured against immovable properties/other assets of the company and the interests of such investors are well protected.

41. Directions of the Reserve Bank make it clear that these companies can buy immovable property only to the extent of 10% of the Net Owned Fund. In this regard the NBFCs have apprised the Committee that the provisions of the Bill will make it virtually impossible for a non banking financial company to raise funds through debentures issued against the security of movable property.

42. When the Ministry of Finance were asked to spell out their stand on this, they agreed with the suggestion that debentures could also be secured by the movable assets as may be specified by RBI, the market value of which may be ascertained by well reputed government registered valuers.

43. With a view to provide greater safeguard to the interests of investors in debentures of NBFCs and eliminate scope of its misuse, it was desired that stringent eligibility criteria be suitably incorporated in this clause to provide appointment of only genuine qualified persons as trustees of each debenture issue. Relatives of NBFCs be ineligible to be appointed as trustees. In this regard, RBI in its written note submitted to the Committee has stated as follows :-

> "We agree with the suggestion about possible misuse of the provisions regarding independent trustees. It may be desirable to specify that close relatives, as defined under the Companies Act, cannot act as Trustees. Further, it may be prescribed that they have to be only SEBI approved entities even for privately placed debentures/bonds."

44. However, Ministry of Finance in their written reply stated as follows on this issue :-

> "Misuse of Debentures is not the problem of NBFCs alone, but all companies. SEBI is separately taking action on this issue. No change in the proposed Bill appears to be necessary in this regard."

45. The Committee are of the opinion that the funds raised through issue of debentures or bonds secured by the mortgage or charge on any immovable property and movable assets of the company are safe investments in view of the possibility of their realisation and feel that the interests of the investors who have contributed their funds can be well protected through the said issue of debentures. They, therefore, desire that provision should be made under this

clause to the effect that debentures could be secured by the immovable/movable assets of the Company, the market value of which may be ascertained by well reputed government registered valuers.

46. The Committee are given to understand that Trustees are appointed for the issue of debentures who have the responsibility to ensure the adequacy of security and timely repayment of Debentures. With a view to secure transparency in the matter of appointment of Trustees, the Committee recommend that suitable provision should be made to prohibit relatives of Directors from being appointed as Trustees rather they may be professionals like Chartered Accountants and Company Secretaries etc. The Committee want that present practice of RBI insisting on financial companies to submit a Certificate for adequacy of security available for debentures may be continued as this will act as an effective mechanism for supervision and control.

<u>Clause 2(1)(i) (vi) – Pledge of movable property</u>

47. This sub clause excludes any Money received against pledge of specific movable property from the definition of deposits.

48. In this regard, it has been represented before the Committee during the hearing of the representatives of Associations of Finance Companies as follows :-

> "The word 'pledge' in the definition of deposits in section 2 should be substituted by the word 'hypothecation' or security because physically we cannot pledge all the asset which a finance company generates in its business"

49. In this regard the Ministry of Finance were asked to spell out the problems which would arise if provision is made for hypothecation in place of pledge. The Ministry of Finance in their written reply had stated that the provision of hypothecation of assets for securing the borrowings may be relevant to the extent the financial companies may borrow from informed lenders like banks, institutions or other corporates. The borrowings from these sources have otherwise also been exempted from the purview of public deposits. As regards individual depositors, the supervision over the use of hypothecated assets would be cumbersome and not feasible. Hence, exemption of the borrowings by financial companies only against security of pledged assets has been provided for. It may also be mentioned this source of exempted borrowings is an addition to other existing exemptions.

50. The Committee agree with the views expressed by the representatives of financial companies that it is not feasible to pledge all

movable assets as pledge requires physical movement of assets to the lender which is impractical for a running company. They are of the opinion that the creation of a charge on movable assets should not be restricted to pledge alone. Any legal form of charge like hypothecation of movable assets should also be permitted. The Committee feel that too many restrictions jeopardise the activities of the NBFCs which cannot be the intention of the Government. Hence the Committee recommend that the word "Pledge of specific movable property" may be replaced by the word "Charge on movable property".

Clause 2 (1)(s) - Public Deposit

51. Public deposit means any receipt of money by way of deposit or loan but does not include –

(i) any amount received from a relative of a director of the financial company;

(ii) any amount received by way of subscription, to any shares, stock, bonds or debentures pending the allotment of the said shares, stock, bonds or debentures and any amount received by way of calls in advance on shares, in accordance with the articles of association of the financial company and retained up to a period not exceeding one hundred and eighty days;

(iii) any amount received from a foreign citizen or a foreign institution;

(iv) any amount received from any other source which may be specified by the Bank in this behalf;

52. It was also pointed out to the Committee that the deposits from the relatives of investors have been exempted from the definition of Deposits whereas Directors' own deposits have not been exempted. There were, therefore, suggestions before the Committee that deposits from directors of the financial companies should also be exempted from the purview of public deposits.

53. In this regard RBI stated in a written reply as follows :-

> "We agree with the suggestion. Presently, deposits received by any Financial Company from its directors are exempt from the purview of 'Public deposit' by issue of Directions by RBI. Such exclusion would also be included in the Bank's Directions, hitherto, when reissued after the enactment of the Bill."

54. Ministry of Finance in its reply stated as under :-

> "We agree with the suggestion. Presently, deposits received by any Financial Company from its directors are exempt from the purview of 'Public deposit', by issue of Directions by RBI. The clause may be

amended to exclude directors' deposits also from the definition of 'public deposits'."

55. The Committee note with surprise that any amount received from a relative of a director of the financial company has been exempted from the purview of "public deposit" whereas the deposits of the directors could not find a place in the exemptions. They have also noted that both RBI and the Government are in favour of such an exemption. They, therefore, recommend that the deposits of directors should also be exempted from the purview of public deposits.

Clauses 3 to 5 – Constitution of Advisory Council

56. Clauses 3 to 5 of the Bill provides that there would be a nine member Advisory Council for Financial Companies under the Chairmanship of Deputy Governor and having members from amongst the representatives of Associations of financial companies and other experts in related areas to advise the Bank in the administration of the Act.

57. The Reserve Bank of India opposing the constitution of such an Advisory Council in a written note submitted to the Committee stated as under : -

"The proposal in the Bill to constitute an Advisory Council for Financial Institutions has been examined afresh in the light of the experience of Reserve Bank of India during the last five years in regulating the activities of Financial Companies under the purview of Board for Financial Supervision (BFS) within the Bank. It is seen that the regulation and supervision functions with respect to Financial Companies have been carried out very efficiently under the guidance and control of BFS. Further, Reserve bank of India has an institutional mechanism for consultations with the industry representatives and experts in the fields through the Informal Advisory Group on Financial Companies. This arrangement has also worked very well. In the circumstances, RBI is of the view that there will be no added advantage to the system by the creation of the Advisory Council at this stage. Accordingly, it is suggested that the relative clause in the Bill may be deleted."

58. The Ministry of Finance in a written note submitted to the Committee had stated its views as follows :-

"Board for Financial Supervision (BFS) is concerned not only with NBFCs but also with banks and other financial institutions. Moreover, it is an apex/controlling body in the RBI whereas the role of Advisory Council, as the name suggests, is purely advisory. BFS will consist of members and experts from different areas and will not be able to give focused attention to the NBFC sector. Thus, the role of Advisory council cannot be replaced by BFS. It is true that an informal

group has come into existence in RBI but creation of Advisory Council will give legislative backing to informal consultations."

59. During the oral evidence of the representatives of RBI and Ministry of Finance when it was asked about the differences of opinion between RBI and Ministry of Finance in regard to Advisory Council on NBFCs, the representative of RBI stated as follows :-

"We have a Board for financial supervision where we have four Directors of the Central Board of the Bank as members. The Governor is the Chairman. I am the vice chairman and other Deputy Governors are members. It is a supervisory and regulatory body for all banks, co-operative banks and NBFCs. So, our stand is that when they are meeting every month and all papers are going to them, there is no need for any separate advisory council"

60. On this issue a representative of Ministry of Finance stated as under :-

"If I could submit on the constitution of an advisory council, though there is no doubt that the Board for Financial Supervision is regulating the activities of financial companies, it is in fact not only confined to NBFCs but also to banks and other financial institutions. So, it is an apex controlling body in the RBI. We had suggested this advisory council as a purely advisory body. The Board for Financial Supervision would consist of members and experts from different areas. They would not be able to give a focused attention to the NBFCs. So, the role of the advisory council would be to act as an informal group. This council would give legislative backing to informal consultations. It is in that context that we had recommended it."

61. The Committee are in agreement with the views expressed by the Reserve Bank of India with regard to the creation of a new advisory body. They are of the opinion that the Board for Financial Supervision within RBI over the years has developed expertise and proficiency which can be of great use for the Bank in administering the Act. They note that RBI has an institutional mechanism for consultation with the industry representatives and experts in the fields through the Informal Advisory Group on Financial Companies and are of the opinion that in lieu of their informal group an "Advisory Group on Finance Companies" may be created as an administrative measure within RBI. They are of the opinion that constitution of an advisory council will not serve any useful purpose. In view of the above, the Committee recommend that clauses 3 to 5 of the Bill may be deleted.

Clause 20 – Certain Financial companies not to carry on other business

62. This clause provides that a financial company, which has been granted certificate of registration under the provisions contained in the Bill, without prior

approval of RBI, shall not carry on any business other than the business of a financial institution.

63. In this regard the Committee have been briefed by one of the Hire purchase Association that the above mentioned proposal of the Bill has been opposed by the Industry's representatives in all their meetings with RBI officials till date. As per the existing RBI guidelines Hire Purchasing Companies are required to maintain 60% of assets and income from Hire Purchase / Leasing Business. In addition to this the Hire purchasing companies are required to invest 15% of the total public deposits in approved government securities. As nearly 75% of the resources are engaged in Hire Purchase and approved securities, the other business will form a small percentage of the main business and starting of a subsidiary company will involve much administrative expenses which will make the business itself unviable and more often such alternative business will be of short term duration and they requested that the present provision may be retained as it is. RBI in its written reply has stated as follows :-

> "stipulation of asset and income criteria to the extent of 60% is intended to ensure classification of financial companies as HP/Leasing. The prescription of investment in approved securities is made with a view to protecting depositors interest and the same is to be made with a reference to the quantum of deposits held/collected by a Financial Company. Despite the stipulation relating to deployment of funds in financial assets, Financial Companies still have scope to invest their residual funds in non-financial activities. Loan/Investment Companies may invest upto 50% of their total assets in non-financial business. In the past, many deposit taking Financial Companies have forayed into unrelated non-financial activities and the losses caused by such businesses have been transmitted to their balance sheets, thus jeopardising the interests of their depositors. As long as the activities are part of the financial business, it is possible for RBI to take a view on the risks attached to such activities. RBI being regulator of the financial system, the non-financial activities cannot be regulated by RBI."

64. In view of the above RBI has stated that the restriction on conducting non-financial business by a public deposit taking Financial Company, in their view, is justified.

65. Ministry of Finance have also expressed similar views. They have further stated that deployment of a certain portion of NBFC assets in non-financial business could lead to problems like loss of focus on core business and exposures taken in respect of non-NBFC activity could impact the NBFC activity adversely;

66. The difficulties associated with the opening of new subsidiary and the initial low volumes are likely to be overcome once the volumes start increasing.

However, Ministry of Finance have stated that RBI may be permitted in clause 20 of the Bill, consider allowing fee based financial activity such as collection of insurance premia, etc. to be undertaken by the financial companies, subject to such conditions as it may deem fit. This would be in addition to the business of a financial institution specified in clause 2(1)(e) of the Bill.

67. The Committee find this provision a restrictive one. Since, the financial companies are required to maintain 60% of their assets and income from Hire Purchase/Leasing Business and to invest 15% of the total public deposits in approved securities, allowing fee based non-financial activities to NBFCs would not jeopardise the interests of the depositors. On the other hand, it would ensure the growth of NBFCs. Hence, the Committee recommend that fee based financial activities such as collection of insurance premia, etc. to be undertaken by the financial companies subject to such conditions as it may deem fit should be permitted without the prior approval of RBI. Necessary amendments should be carried in the clause for this purpose.

Clause 24 – Redressal of Depositors Grievances

68. This clause, inter alia, contains provisions to ensure repayment of public deposits or part thereof not paid by a financial company to the depositor. If a financial company fails to repay any public deposit or part thereof to a depositor in accordance with the terms and conditions of the deposits, the depositors can file an application in the prescribed form to the Board of Company Law Administration. The Board is proposed to be empowered to pass such interim or final orders as it deems fit including attachment of properties and realisation of money by sale of such properties belonging to the financial company which makes a default in repayment of deposits to the depositors.

69. Reserve Bank of India in a written note suggested that the CLB/National Company Law Tribunal may not be able to adjudicate large number of claims of depositors spread throughout the country. The detailed provisions contained in Chapter IV of the Bill may not be really workable. The Consumer Disputes Redressal Fora may be better equipped to deal with the claims of depositors, for which they could be strengthened further.

70. During their appearance before the Committee a representative of Chamber of Commerce and Industry suggested that there should be a reddressal forum at some level like the consumer courts for the depositors. In this regard a representative of the Institute of Chartered Accountants of India (ICAI) during their deposition stated as under :-

> " There is already a decided judgement at the Supreme Court level and because of this, for the depositor to have access to some redress forum, the law cannot be put in here in the Consumer Protection Act itself. There is some forum necessary to take care of all investors whether they are depositors, shareholders or debenture holders."

71. However, the Ministry of Finance in their written reply to a related query have stated that the District Consumer Fora are entertaining and adjudicating the complaints of the depositors of non-banking financial companies at present and the Bank (RBI) is a party to many such complaints. Hence, they do not feel that the depositors face any inability in approaching the Consumer Redressal Forum for relief.

72. The Committee note the practical problems of the large number of small investors in approaching the Board (National Company Law Tribunal) and the need to have an effective alternative redressal mechanism at local level. They are given to understand that Consumers Grievances Redressal Fora are entertaining the depositors' complaints at present. They are, however of the opinion that provision to empower District Consumers Fora may explicitly be provided.

Clause 36 – Procedure for winding up

73. This clause seeks to empower the Bank to file winding up petition of a financial company on the grounds specified in this clause. This provision is on the lines of the provisions contained in section 45MC of the Reserve Bank of India Act, 1934. All the other provisions of the Companies Act, 1956 or any other law for the time being in force, relating to winding up of a company will be applicable.

74. The Reserve Bank of India in its written suggestion submitted to the Committee has stated that :-

> "It is desirable that RBI as a regulator has notice of any proceedings for compromise arrangement or amalgamation or a winding up petition commenced with respect to a financial company so that the Bank may intervene wherever necessary."

75. This was taken up with the Ministry of Finance whether they agree that another sub-clause may be inserted in clause 36 of the Bill to the effect that no order

shall be passed on an application for compromise arrangement or amalgamation or a winding up petition filed by any other person to which a non-banking financial company is a party without issuing notice to RBI Ministry of Finance in their written note informed the Committee that this can be taken care of by issue of suitable directions.

76. The Committee are of the opinion that the RBI being the regulatory body for the purpose should be aware of happenings taking place in the system. Hence they recommend that another sub-clause may be inserted in clause 36 of the Bill to the effect that no order shall be passed on an application for compromise arrangement or amalgamation or a winding up petition filed by any other person to which a non-banking financial company is a party without issuing notice to RBI.

Clause 43 – Penalties for contravention of the provisions

77. This clause provides for penalties for contravention of the provisions of the Bill, rules, regulations, orders made or directions issued there under.

Sub-clause (6) of clause 43 provides that whoever fails to comply with any order made by the Company Law Board, he 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.

78. It was felt that the amount of minimum fine prescribed was too less in comparison to the default and it was, therefore, suggested that the amount of fine should be specified as rupees' five hundred for every day during which such non-compliance continued.

79. It was asked whether RBI and the Ministry of Finance were agreeable to the suggestion that the amount of minimum fine may be specified as rupees five hundred for every day of default. Reserve Bank of India agreed that consequent on the Companies (Amendment) Bill, 2000, which provides for enhancement in the fine to Rs. 500/- for every day of default, necessary amendments may be made to fall in with the same. However, Ministry of Finance stated that no change in the Bill is necessary since there is no upper limit and Rs. 50 per day is only the minimum fine prescribed.

80. The Committee are constrained to note that the amount of minimum fine is too less in comparison to the default. The Committee are not in agreement with the views of the Ministry of Finance in this regard and recommend that necessary amendments should be made in sub clause (6) of

clause 43 to the effect that the minimum amount of fine be raised to rupees five hundred for every day of default.

Accountability of Directors

81. The Committee in their interactions with the Government and others found that there is a need to inculcate responsibility and accountability amongst the directors of deposit taking companies. Hence, the Committee desired that the Government may insert suitable provision in the Bill which should entail the publication of the names of directors and the persons who lend their names to financial companies to mobilise public deposits and they should also file a duly signed affidavit with the Reserve Bank of India to the effect that they would involve themselves in the working of the company because, in case of non-fulfilment of promises by the company, they take an excuse that they are not taking care of the company on a day to day basis.

82. In this regard, during the oral evidence of the Ministry of Finance and RBI, a representative of RBI stated as follows :-

> "This is called a part of corporate governance and in the case of banks, now we have issued instructions to all the banks that all the Directors should enter into a covenant, an agreement with the bank that these are my liabilities and if I fail, this will be the consequences. We have circulated this among the banks about two months back. But none of the banks, the Directors are agreeable to sign this covenant. A lot of resistance is there. However, we are persuading them…. Now, the next stage will be to give some compulsion."

83. In regard to a suggestion that an affidavit should be there between a Director of the NBFC and RBI, the Secretary (Banking Division) stated before the Committee as under :-

> "Sir, if it is exclusively for NBFC and if the Standing Committee makes a recommendation, we will certainly consider it."

84. Ministry of Finance in a written note submitted to the Committee has also stated that Banking Division of the Department of Economic Affairs will forward the above suggestion to the Department of Company Affairs so that it can be prescribed for all companies as it relates to Corporate Governance.

85. The Committee are happy to note that Department of Economic Affairs is recommending to Department of Company Affairs to ensure the publication of names of directors and the persons who lend their names to financial companies as a step towards Corporate Governance. They are given

to understand that in case of Banks, the Directors of the Banks have been mandated to enter into a covenant/agreement with the RBI so as to make them aware of their responsibilities and liabilities. Hence, they feel that there is no reason why this provision can not be extended to deposit taking financial companies. Hence, they recommend that suitable provision may be made.

Clause 45 (5) (c) – Power to arrest

86. As per this clause it shall be lawful for any police officer, if authorised by an officer not below the rank of Superintendent of Police to take into custody and produce before any Judicial Magistrate all such persons as are concerned or against whom a complaint has been made or credible information has been received or a reasonable suspicion exists of their having been concerned with the use of the said premises for purposes connected with or with the promotion or conduct of, any financial institution or acceptance of deposit in contravention of the provisions of this Act.

87. Under the existing provisions contained in section 45T of the RBI Act, an officer of the Bank or the authorised official of the State Government has to seek a search warrant before entering the place where the records, pertaining to the alleged violation of the RBI Act, are kept. In the wake of the proposal that the unauthorised acceptance of public deposits should be made a cognisable offence, it was considered appropriate by the Government to include provisions in the Bill to the effect that powers should be vested with a Police Officer of the rank not below that of the Superintendent of Police of any State to order investigations into the alleged violations of requirement of registration by financial companies and prohibition from acceptance of deposits by unincorporated financial entities and to enter the premises where such incriminating records are kept.

88. Government and RBI have received representations from the NBFCs and their associations against the above provision. NBFC's contention is that the provision has lot of scope for misuse and can have very serious consequences on the well run NBFCs. They have sought deletion of the clause.

89. In this regard, the Government have observed that the provision has been included so as to take quicker action against the unscrupulous persons violating the provisions of the Bill. In order to ensure that the provision is judiciously used, the rank of the police officer to be authorised in this behalf has been kept at a sufficiently senior level. Moreover, such powers are to be utillsed by the police officer only in case of unauthorised and illegal conduct of the business of a financial institution or acceptance of deposits by unregistered NBFCs and unincorporated bodies in

contravention of the provisions of the Bill. It is expected that the authorised and registered NBFCs will have nothing to fear from the provisions.

90. Various Associations of Finance Companies have expressed their apprehensions that this clause gives a very wide and sweeping powers to police, who are legally empowered to arrest any person even on mere suspicion or information. All financial institutions will have financial transactions and a police officer is not a competent authority to decide or judge on the legality or otherwise of a financial transaction. Therefore the blanket power to arrest any persons even on suspicion and without accountability is too harsh and against natural justice. This particular clause of sweeping powers in all likelihood will be widely misused to harass the small and medium type of finance companies.

91. In this regard a representative of Confederation of Indian Industries (CII) during their appearance before the Committee stated as under :-

> ".. there is a clause 45 (5) (c) which has been recommended in this particular Bill. It has given onerous arrest powers even to the police at the local level. So, in our country, this may lead to harassment and corruption. Hence, our recommendation would be that if a re-look and a re-thought can be given to this particular aspect, it would be better."

92. Associations of Finance Companies have also suggested that the powers given to police officers should only be exercised under the orders of an appropriate Court of Law.

93. In regard to the powers given to police officers, during the oral evidence of the representatives of Ministry of Finance and RBI, a representative of RBI deposed before the Committee as follows :-

> "Secondly, regarding the concern that the role of the Recovery Officer will make a complain to the local police and because of that there will be some harassment to the companies, I would like to submit that this provision has been inserted in the context of a few unscrupulous NBFCs seeking to take advantage of the long legal process and then also their attempt to alienate their assets. The safeguard that has been provided in this Bill against harassment is that the authorisation to take action such as searching the premises, taking into custody of persons can bee issued only by a highly ranked police officer, not below the rank of a Superintendent of Police."

94. Ministry of Finance in a written communication on this clause have stated that the intention of the Government was to provide stringent punishment for defaulting companies. However, safeguards to prevent misuse against companies registered with RBI can be provided.

95. The Committee has examined this provision in depth. They agree that adequate provisions should exist in the law to deal with offenders who circumvent the law and commit frauds on the public. The Committee, however, is conscious of the fact that the penal provision in this Bill could be misused by the law enforcement agency. Sub-clause 5(c) of clause 45 is capable of being misused by the police tremendously as it says that a police officer can enter the business premises any time and take into custody any person connected with a financial institution on a mere suspicion. Ground reality tells us that such a provision in the law vests the police with unbridled power to harass people who run their business in a lawful manner. This, the Committee feel, will disrupt the smooth conduct of business and thus adversely affect the financial health of the society.

96. The Committee, therefore, recommend that these harsh provisions should be removed and adequate safeguards provided in the Bill to protect the lawful business operators from harassment by police.

97. The Committee also recommend that the regulators should investigate the matter first and only after being convinced of criminal intent/diversion of resources for non-permitted use, arrest should be recommended and made. For this purpose regulators/RBI may appoint well qualified investigating officers. They want that this clause may be amended accordingly.

Provision for Recovery Tribunals/Recovery Officers

98. Associations of Finance Companies have informed the Committee that the long standing demand of the NBFC industry for making provisions to facilitate timely recovery of dues from their borrowers had not been catered to. They have also stated that they have been requesting the Government to make provisions in the new Bill for appointment of Recovery Officers and Recovery Tribunals on the lines of those provided for Housing Finance Companies under the National Housing Bank (Amendment) Act, 2000. In this regard a representative of Confederation of Indian Industry deposed before the Committee as under :-

> "If the NBFCs have to become stronger, there has to be a mechanism which has to be put in place through the realisation by the NBFCs on the loans which they are giving. It should be done in a proper manner and that is the reason why we have suggested that for the DRT and for the new Securitisation Bill which has been introduced where only banks and financial institutions can be dealt with, NBFCs should also be included. Because if we are able to

realise our money, then we will definitely be able to pay to the depositors because there are very few errant NBFCs who are now left after the storm which has taken place in the NBFC sector and many of the NBFCs have been wiped off. So, our first suggestion would be to see that NBFCs are included in the DRT and the Securitisation Bill so that we can realise the money."

99. In a Memorandum submitted to the Committee it has been recommended in this regard that a Debt Recovery Tribunal (DRT) for expediting the recovery of debts due to the NBFCs may be set-up. It has been stated further that the experience with DRTs for banks has been to a large extent positive in terms of reducing the NPA and collection period. A similar recovery mechanism can help in NBFCs reducing their NPA levels. Some portion of the administrative overheads of operating the DRT can be recovered from the NBFCs. It is also important that a system of prior audit for "due diligence" may be adopted in order to make this operational. This is required from the point of view of discouraging inefficient and improper practices in lending which could give rise to NPAs. In a sense one should reduce the "moral hazards" in terms of such recovery tribunals so that they have not perceived as an easy option by the lenders.

100. In regard to the suggestions of the NBFCs and others, RBI in its written reply stated as under :-

(i) In addition to regulating Housing Finance Institutions (HFIs), NHB refinances HFIs while RBI is only a regulatory authority for financial companies. Since RBI does not refinance Financial Companies, associating RBI in appointment of Recovery Officers would go beyond the scope of the regulations. Further, realisation of sale of house property by the Recovery Officer is far simpler than realising dues of Financial Companies which have various kinds of collaterals as receivables, movable assets, etc. The institution of Recovery Officer for Financial Companies may not, therefore, be of effective support to Financial Companies.

(ii) The solution for recovery of dues by Financial Companies may lie in :

(a) extending the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Ordinance, 2002 to them. There is an enabling provision for this in the Ordinance.

(b) Extending the provisions of the Debt Recovery Tribunal.

101. Attention of the Ministry of Finance was brought to the suggestions of RBI at (a) and (b) above and was asked whether it agreed with these suggestions. In its written reply, Ministry of Finance has stated that this can be done by issue of Notification(s) under DRT Act and Securitisation Act.

102. The Committee find that there is no effective mechanism in vogue for ensuring recovery of dues of NBFCs. They are of the opinion that the lack of any such mechanism is scuttling the growth of this sector. They feel that unless they (NBFCs) recover their dues speedily and effectively, they will continue to make defaults in respect of repayment to their depositors. They are given to understand that similar provisions exist in the National Housing Bank Act in respect of Housing Finance Companies. Hence, they recommend that the Government should take expeditious steps to extend the provision of both the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and Recovery of Debt Due to Banks and Financial Institutions Act, 1993, to the NBFCs.

<u>Refinance Institution for NBFCs</u>

103. Associations of NBFCs have pleaded for the setting up of a refinance institution on the lines of National Housing Bank that provides funds to the housing finance companies. In this regard a representative of Federation of Indian Chamber of Commerce and Industry (FICCI) deposed before the Committee as under :-

> "The basic purpose of all these things is to protect the depositors, reduce the reliance on the depositors' money when the depositors' money is not forthcoming because of the low credibility of the institution. If banks are not funding, where do we go for this funding? We need to create a single refinance agency for the NBFC, which will take care of all these things. There is a separate agency for the housing finance companies. Why not create an agency totally under the Central Government or the Ministry of Finance which will refinance the NBFC sector and which will have the criterion laid down? If each company fulfils that criterion only then it will get the money. That will reduce the emphasis on the public deposits and the tendency to go for the public deposits, lure the public and try to dupe them. If we have a window which is opened for us, which is under the control of the agency – Central Government or the RBI – it will make all the difference…."

104. In regard to the above suggestion, the Ministry of Finance in their written reply have not agreed to the suggestion and clarified their position that the existing refinance institutions are under stress because of paucity of funds. Further, in view of

the very large number of NBFCs, it would not be possible to extend refinance facilities to them. Moreover, RBI is slowly exiting from the refinance activities.

105. The Committee are not satisfied with the reply furnished by the Government. They feel that there is an urgent need for the Government to initiate steps for the healthy and orderly growth of NBFCs along-with proper protection of depositors. To achieve the above goals and to reduce the reliance of NBFCs on investors' deposits, the Committee recommend that the Government should set up a separate refinancing institution for NBFCs on the lines provided to housing finance companies.

Tax relief/benefits to NBFCs

106. Associations of NBFCs have apprised the Committee that the NBFCs are subject to multiple taxation (such as imposition of Service Tax, Sales Tax etc.) and the companies which are into infrastructure financing are not provided with tax benefits.

107. In this regard a representative of CII during their appearance before the Committee stated as under :

> "The other confusion which exists in the NBFC sector is multiple taxation. We have to pay State Sales Tax, we have to pay the entry tax, and we are subjected to double taxation by way of service charges on the same product. So, at the end of the day if a genuine NBFC, after paying all the taxes, thinks that he can make profit, it is very difficult to do so. If the NBFCs have paid everything by way of taxes and cannot make profit, then they will try to find ways and means of earning profit which is not correct. That is how they are exposing the depositors to a lot of risk. Therefore, our suggestion would be to see that on the taxation part of it the NBFC products which are being offered by way of hire purchase or whatever, there should be tax clarity."

108. On multiple taxation a representative of a Hire Purchase & Leasing Association has stated as follows :-

> "Sir, we do not enjoy the tax benefits that are on par with banks and financial institutions because when it comes to regulation, all prudential norms are as applicable to banks as they are to the financial companies. When it comes to tax benefits, they have deductions allowed for the provisioning they make for non-performing assets, but we do not have. Hire purchase and leasing, as I said, are the only activities that are subject to sales tax and service tax both. You would appreciate that any financial transaction can either be a sale or it can be a service and it cannot be both. But unfortunately, we are being subject to both, sales tax as well as service tax."

109. It has also been further informed by NBFCs that under the existing provisions u/s 36(1) (viia) in the Income Tax Act, a provision for bad and doubtful debts made by banks and financial institutions is allowed as a deduction to the extent of 7.5% from the gross total income. NBFC's are also compulsorily required to make provisions for NPAs. However provisions made by NBFCs in line with such prudential norms fixed by RBI are disallowed by tax authorities when assessing their income tax liabilities. These provisions made against non-performing assets are in the nature of business expenses, incurred wholly and exclusively for business operations by the NBFC.

110. In regard to providing tax relief to NBFCs, Ministry of Finance in a written note submitted to the Committee have stated as follows :-

> "Service tax is leviable on specified banking and other financial services provided by Non Banking Financial Companies (NBFCs) and other corporates with effect from 16.7.2001.
>
> With regard to the proposal to provide any relief/tax benefits/depreciation to NBFCs, it may be noted that any NBFC, engaged in providing long term finance by way of loan or equity to infrastructure, housing and other undertakings, would be entitled to exemption of tax in respect of interest and dividend income. However, some issue in connection with enhancement of flow of institutional finance to the unorganised sector for providing tax benefits to NBFCs under the Income tax Act, are under examination.
>
> Sales tax is a state subject under Entry 54 (List –II) of the 7th Schedule to the Constitution of India. Relief/tax benefit, if any, in respect of the levy of sales tax can only be granted by the concerned State Government."

111. The Committee expect the Ministry of Finance to examine the matter of multiple taxation expeditiously and the genuine concerns of NBFCs should be resolved at the earliest so as to provide level playing field to them vis-à-vis banks.

Definition of leasing & hypothecation

112. The Hire Purchase & Leasing Associations which have appeared before the Committee have desired that a provision should be made to incorporate a specific and clear definition of leasing, hypothecation into the Bill. In this regard a representative of these associations has stated as under :-

> "…… today unfortunately leasing in our country has lost its shine and this tool, which is very cost effective as important tool of funding, is getting killed due to lack of clear definition and multiple taxation….. our neighbouring country, Sri Lanka, has recently come out with a policy on leasing just to highlight the importance of leasing as a tool."

113. Ministry of Finance were asked whether they agree with the demand of leasing companies. They informed the Committee in their reply that as per practice, the lease and hire purchase finance transactions are distinguishable from loan and other credit transactions by certain characteristics in the relative agreements. While there is no legal definition available for these terms, the ICAI has recently defined in AS-19 the term financial lease and the operating lease. Still the definition of hire purchase finance is not available in any other authentic document. The suggestion can be examined.

114. The Committee are constrained to note that despite such a wide coverage to the leasing and hire purchase finance companies over the years, there is no legal definition available for lease finance and hire purchase finance in any statute and these companies are suffering due to lack of clear definition. The Committee recommend that a provision should be made to incorporate a specific and clear definition of leasing, hypothecation, etc. in the Bill.

Exemption of Money Lending Activities of Kerala and Tamil Nadu

115. A view point has been expressed that the Kerala Money Lenders (KML) Act, 1958 has proved to be an effective control over money lending operations in Kerala State so has the Tamil Nadu Act in Tamil Nadu. The Act, over the years, in order to contain the growth of unlicensed money lenders has prohibited the commencement of business without obtaining license and empowered certain officers with powers to enter and seize the records kept in the custody of such money lenders, to summon witnesses, to compel the production of accounts and documents, to demand additional security when there is excess of liabilities over the assets of the money lender and also to impose penalties for the contravention of the provisions of the KML Act 1958.

116. In the light of above it has been suggested that Licensed Money Lenders/Pawn Brokers in Kerala and Tamilnadu may be exempted from the purview of the Financial Companies Regulation Bill, 2000 in the matter of acceptance of deposit from public.

117. In regard to the above suggestion, the Ministry of Finance in their written reply stated that the Bill is a Central Act and would be applicable to whole of India. In the past exemptions have been granted on the ground that the entire activity is regulated by some other regulator viz. Insurance Companies by IRDA, a notified Nidhi

Companies by DCA. In the instant case, only the lending activities of the money lenders/pawn brokers are regulated by KMLA & TNMLA. Financial activity carries an inherent risk hence such entities are not allowed to borrow from the public who are uninformed. Per contra, there is no restriction placed on borrowing from banks and other FIs who are informed and can evaluate the proposal based on commercial judgement. In view of the above, the Government is not in favour of granting exemption to money lenders/pawn brokers in Kerala & Tamil Nadu, in the matter of acceptance of deposit from public.

118. The Committee have been apprised that most of these financial companies working in rural areas are advancing money by collecting small deposits from local people and advances are mainly made to small traders, artisans and agriculturists. Hence, they recommend that the Government should consider exclusion from the purview of the Bill such finance companies which are comprehensively regulated by any of the State Acts.

NEW DELHI;
20 June, 2003
30 Jyaistha, 1925 (Saka)

N. JANARDHANA REDDY,
Chairman,
Standing Committee on Finance

NOTE OF DISSENT ON THE FINANCIAL COMPANIES REGULATION BILL, 2000 RECEIVED FROM SHRI RUPCHAND PAL, MP (LOK SABHA)

* * *

1. I had already mentioned that acceptance of Deposit in any Form in the taking of loan or through debentures etc. should never be allowed as through dubious and innovative ways the unscrupulous operators have been found in the past to escape the law and loot the precious savings of the small investors who are allured by unusually high rates of returns. So my amendment is that acceptance of loan or issue of/against debentures should not be allowed any name of acceptance of deposit. The concerned paragraph should be suitably amended to ensure that acceptance of any form of deposit in any name or form should be brought within the purview of the Bill.

2. I have already mentioned in the 20th June, 2003 meeting that those who operate in the rural areas and proposed to be exempted in the Draft Report as because they provide loan to the small traders etc. is unacceptable to me as it would provide opportunity to the large operators to dupe the gullible investors. So my amendment is that no company should be allowed to be outside the purview of the law as because there are supposely providing loan to small providing loan to small traders etc. in the rural areas as there is the danger of the situation being exploited by large inter-state operators through dubious ways.

3. The exclusion of Investment Companies and SPVs along-with the others is not acceptable to me as we have seen in the past that investment Companies in various avtars sometimes as plantation companies, sometimes as some other entity in several dubious ways exploiting small investors. So also SPV is a wide connotation. I believe the very purpose of the Bill to protect the small investors will be foiled to a large extent if the investment companies, the SPVs are allowed as it had been done in the Draft Report. The mention of "Investment Companies, SPVs should be deleted.

4. Some of the penalty provisions in the Bill has been considered to be too harsh and proposed to be removed so that police could not abuse or misuse the provision. This is also not acceptable to me as any law for that matter may be abused or misused by law-enforcing agencies. But there are judiciary and legislators to look into in cases of abuse, misuse, distortion or aberration. In the case of present law also the penalty provision should be made as stringent and deterrent as possible so that the small investors in the light of our past bitter experience can be provided adequate protection and the public confidence can be restored in the mobilizing of resources.

5. The most important aspect which should be emphasized in the Final Report is that the Bill must clearly make provision for ensuring transparency and accountability for the Directors and associates who are responsible for accepting deposits from the public.

6. Lastly, I would like that a new provision is incorporated in the Bill, saying that “any attempt to allure investors through unusually high rates of returns should be forthwith enquired into by appropriate authorities.”

-SD/-

(RUPCHAND PAL)

MINUTES OF THE THIRD SITTING OF STANDING COMMITTEE ON FINANCE

The Committee sat on Tuesday, 28 January, 2003 from 1000 to 1200 hours.

PRESENT

Shri. N. Janardhana Reddy – Chairman

MEMBERS

LOK SABHA

2. Shri Raashid Alvi
3. Shri Trilochan Kanungo
4. Shri Rattan Lal Kataria
5. Dr. C. Krishnan
6. Shri Sudarsana E.M. Natchiappan
7. Capt. Jai Narain Prasad Nishad
8. Shri Rupchand Pal
9. Shri Prabodh Panda
10. Shri Prakash Paranjpe
11. Shri Raj Narain Passi
12. Shri Ramsinh Rathwa
13. Shri Chada Suresh Reddy
14. Shri Jyotiraditya Madhavrao Scindia
15. Shri T.M. Selvaganapathi
16. Shri Kharbela Swain

RAJYA SABHA

17. Dr. Manmohan Singh
18. Dr. T. Subbarami Reddy
19. Shri Murli Deora
20. Shri Prithviraj Chavan
21. Shri Mukhtar Abbas Naqvi
22. Shri M. Rajasekara Murthy
23. Dr. Biplab Dasgupta
24. Shri Prem Chand Gupta
25. Shri Palden Tsering Gyamtso
26. Shri Dinesh Trivedi

SECRETARIAT

1.	Dr. (Smt.) P.K. Sandhu	-	Joint Secretary
1.	Shri R.K. Jain	-	Deputy Secretary
2.	Shri S.B. Arora	-	Under Secretary

WITNESSES

Federation of Chambers of Commerce and Industries (FICCI)

1. Mr. Mahesh Thakkar, Executive Director, Association of Leasing and Financial Services Company
2. Shri M.R. Bhandari, FCA
3. Shri S. Hazra, Director, FICCI

PHD Chamber of Commerce and Industry

1. Shri Satish Garotra, Co-Chairman, Finance, Banking & Insurance Committee, PHDCCI
2. Shri L.R. Puri, Director J.K.Credit & Finance Ltd.
3. Shri M.K. Aggarwal, Former Dy. Managing Director, SBI
4. Shri H.K. Wadhawan, Dy. General manager, J.K. Credit & Finance Ltd.
5. Shri T.G. Keswani, Secretary, Finance, Banking & Insurance Committee, PHDCCI

Confederation of Indian Industry (CII)

1. Shri Hemant Kanoria, MD, SREI International Finance Ltd.
2. Shri Rajiv Goel, CFO, Escorts Finance Ltd.
3. Shri N.B. Mathur, Adviser, CII

The Institute of Chartered Accountants of India (ICAI)

1. Sh. R. Bupathy, Vice President, ICAI
2. Shri Vinod Jain, Council Member
3. Shri Amarjit Chopra, Council Member
4. Dr. Ashok Haldia, Secretary

2. At the outset, the Chairman welcomed the representatives of the Federation of Chambers of Commerce and Industries (FICCI), the PHD Chamber of Commerce and Industry, the Confederation of Indian Industry (CII) and the Institute of Chartered Accountants of India (ICAI) to the sitting of the Committee and invited their attention to Direction 55 of the Directions by the Speaker, Lok Sabha.

3. The Committee, then heard the views of the representatives of the above mentioned Chambers of Commerce and the Institute of Chartered Accountants of India (ICAI) on the provisions of the Financial Companies Regulation Bill, 2000.

4. Thereafter, the Members raised queries which were replied to by the witnesses.

5. The evidence was concluded.

6. A verbatim record of proceedings has been kept.

The witnesses then withdrew.

The Committee then adjourned.

MINUTES OF THE FOURTH SITTING OF STANDING COMMITTEE ON FINANCE

The Committee sat on Wednesday, 29 January, 2003 from 1000 to 1130 hours and 1145 to 1330 hours.

PRESENT

Shri. N. Janardhana Reddy – Chairman

MEMBERS

LOK SABHA

2. Shri Omar Abdullah
3. Shri Raashid Alvi
4. Shri Sudip Bandyopadhyay
5. Smt. Renuka Chowdhury
6. Shri Trilochan Kanungo
7. Shri Rattan Lal Kataria
8. Dr. C. Krishnan
9. Shri Sudarsana E.M. Natchiappan
10. Shri Prabodh Panda
11. Shri Raj Narain Passi
12. Shri Pravin Rashtrapal
13. Shri Ramsinh Rathwa
14. Shri Kirit Somaiya
15. Shri Kharbela Swain

RAJYA SABHA

16. Dr. T. Subbarami Reddy
17. Shri Murli Deora
18. Shri Prithviraj Chavan
19. Shri M. Rajasekara Murthy
20. Dr. Biplab Dasgupta
21. Shri Prem Chand Gupta
22. Shri Palden Tsering Gyamtso
23. Shir Dinesh Trivedi

SECRETARIAT

1.	Shri P.D.T. Achary	-	Additional Secretary
2.	Dr. (Smt.) P.K. Sandhu	-	Joint Secretary
3.	Shri R.K. Jain	-	Deputy Secretary
4.	Shri S.B. Arora	-	Under Secretary

WITNESSES

Part – I

Delhi Hire Purchase & Leasing Companies Association **Time at 1000 hours**

1. Shri B.S. Sidhu, President,
2. Shri Raman Aggarwal, Secretary,
3. Shri Sudershan Lal, Executive Member

Andhra Pradesh Federation of Chit Funds

1. Shri B. Surya Prakash Rao, President
2. Shri Ch. Janardhan Reddy, Secretary General
3. Shri V. Nageswar Rao, Executive Committee Member

All India Association of Chit Fund

1. Shri T.S. Sivaramakrishnan, President
2. Shri Manohar Lal Dange, Vice Presient
3. Shri Rakesh Kumar, Council Member

The Punjab & Haryana Finance Companies Association

1. Shri Ashok Syal, Secretary General
2. Shri S.D. Chug, Honaorary Secretary

Experts

1. Navneet Jyoti, Chartered Accountant
2. Rajesh Gupta, Chartered Accountant.

Part- II

Ministry of Finance & Company Affairs **Time at 1145 hours**

1. Smt. Vineeta Rai, Secretary (Banking & Insurance)
2. Shri Shekhar Agarwal, Joint Secretary (BO&A)

Reserve Bank of India

1. Shri G.P. Muniappan, Deputy Governor
2. Shri N. Sadasivan, Executive Director
3. Shri C.S. Murthy, Chief General Manager

4. Shri K.D. Zacharias, Legal Adviser

Part – I

2. At the outset, the Chairman welcomed the representatives of the Delhi Hire Purchase & Leasing Companies Association, the Andhra Pradesh Federation of Chit Funds, the All India Association of Chit Fund, the Punjab & Haryana Finance Companies Association and the experts - S/Shri Navneet Jyoti and Rajesh Gupta to the sitting of the Committee and invited their attention to the provisions contained in Direction 55 of the Directions by the Speaker, Lok Sabha.

2. The Committee, then heard the views of the representatives of the above mentioned Associations and experts on the provisions of the Financial Companies Regulation Bill, 2000.

3. Thereafter, the Members raised queries which were replied to by the witnesses.

4. The evidence was concluded.

A verbatim record of proceedings has been kept.

The witnesses then withdrew.

The Committee then adjourned to meet again at 1145 hours.

Part – II

2. At the outset, the Chairman welcomed the representatives of the Ministry of Finance & Company Affairs (Deptt. of Economic Affairs – Banking Division) and Reserve Bank of India to the sitting of the Committee and invited their attention to the provisions contained in Direction 55 of the Directions by the Speaker, Lok Sabha.

3. The Committee then took evidence of the representatives of the Ministry of Finance & Company Affairs and Reserve Bank of India on the provisions of the Financial Companies Regulation Bill, 2000.

4. Thereafter, the Members raised queries which were replied to by the witnesses.

5. The evidence was concluded.

6. A verbatim record of proceedings has been kept.

The witnesses then withdrew.

The Committee then adjourned.

MINUTES OF THE TWELFTH SITTING OF STANDING COMMITTEE ON FINANCE

The Committee sat on Friday, 20 June, 2003 from 1100 to 1220 hours.

PRESENT

Shri. N. Janardhana Reddy – Chairman

MEMBERS

LOK SABHA

2. Shri Raashid Alvi
3. Shri Trilochan Kanungo
4. Shri Rattan Lal Kataria
5. Dr. C. Krishnan
6. Shri Sudarsana E.M. Natchiappan
7. Capt. Jai Narain Prasad Nishad
8. Shri Rupchand Pal
9. Shri Prabodh Panda
10. Shri Raj Narain Passi
11. Shri Ramsinh Rathwa
12. Shri Chada Suresh Reddy
13. Shri Jyotiraditya Madhavrao Scindia

RAJYA SABHA

14. Dr. Manmohan Singh
15. Shri Prithviraj D. Chavan
16. Shri M. Rajasekara Murthy
17. Dr. Biplab Dasgupta
18. Shri Amar Singh
19. Shri Prem Chand Gupta
20. Shri Raj Kumar Dhoot
21. Shri Praful Patel
22. Shri Dinesh Trivedi

SECRETARIAT

1.	Shri P.D.T. Achary	-	Additional Secretary
2.	Shri R.K. Jain	-	Deputy Secretary
3.	Shri S.B. Arora	-	Under Secretary

2. At the outset, the Chairman welcomed the Members to the sitting of the Committee and requested them to consider the draft Reports on (i) the Financial Companies Regulation Bill, 2000 and (ii) the Industrial Development Bank (Transfer of Undertaking and Repeal) Bill, 2002.

3. The Committee, thereafter, took up for consideration the draft report on the Financial Companies Regulation Bill, 2000. The Committee

after deliberations adopted the draft report on the Financial Companies Regulation Bill, 2000 with the following modification :-

Page No. 10, Para No. 22, Line 6

For	"should"
Substitute	"may"

4. Shri Rupchand Pal, MP did not agree to some of the recommendations contained in the draft report. He expressed his desire to submit notes of dissent for incorporation in the report.

5. XX XX XX XX.

6. The Committee, thereafter, authorised the Chairman to finalise the reports in the light of suggestions received from the Members in writing and also to make consequential verbal changes and present the same to the Parliament.

The Committee then adjourned

THE FINANCIAL COMPANIES REGULATION BILL, 2000

ARRANGEMENT OF CLAUSES

CHAPTER I

PRELIMINARY

CLAUSES

THE FINANCIAL COMPANIES REGULATION BILL, 2000

A

BILL

to consolidate and amend the law for regulation of financial institutions, to protect the interests of the depositors, to ensure monetary stability and economic growth and to rationalise credit system and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Fifty-first Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement.-(*1*) This Act may be called the Financial Companies Regulation Act, 2000.

(*2*) It extends to the whole of India.

(*3*) It shall come into force on such date, as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

2. Definitions.-(*1*) In this Act, unless the context otherwise requires,—

(*a*) "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;

(*b*) "Advisory Council" means the Council constituted under section 3;

(*c*) "the Bank" means, the Reserve Bank of India, constituted by the Reserve Bank of India Act, 1934 (2 of 1934);

(*d*) "Board" means the Company Law Board constituted under section 10E of the Companies Act, 1956 (1 of 1956);

(*e*) "business of financial institution" means,—

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

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

(*iii*) the letting or delivering of any goods to a hirer under a hire-purchase finance agreement or to a lessee under a financial lease agreement;

(*iv*) managing, conducting or supervising, as foreman, agent or in any other capacity, of chits or any business similar thereto;

(*v*) receiving deposits from or providing loans or advances against securities to its shareholders;

(*vi*) receiving public deposit in any manner;

(*vii*) such other business or class of business as the Bank may, with the previous approval of the Central Government, by notification, specify;

(*f*) "chit" means a chit as defined in clause (*b*) of section 2 of the Chit Funds Act, 1982 (40 of 1982);

(*g*) "company" means a company as defined in section 3 of the Companies Act, 1956 (1 of 1956) and includes a foreign company within the meaning of section 591 of that Act;

(*h*) "corporation" means a corporation incorporated by an Act of any legislature;

(*i*) "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*) a banking company as defined in section 5 of the Banking Regulation Act, 1949 (10 of 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 (38 of 1959) or a Regional Rural Bank as defined in the Regional Rural Banks Act, 1976 (21 of 1976);

(*B*) a co-operative bank as defined in clause (*cci*) of section 5 of Banking Regulation Act, 1949 (10 of 1949);

(*C*) a corporation or a company or a co-operative society registered under an Act of any legislature;

(*D*) the Central Government or a State Government or a local authority;

(*E*) any other source whose repayment is guaranteed by the Central Government or a State Government;

(*F*) a foreign Government or a foreign authority;

(*G*) the Asian Development Bank or International Finance Corporation being a corporation referred to in the International Finance Corporation (Status, Immunities and Privileges) Act, 1958 (42 of 1958));

(*H*) any other institution that may be specified by the Bank in this behalf;

(*iv*) the amounts received in the ordinary course of business, by way of—

(*A*) security deposit,

(*B*) dealership deposit,

(*C*) earnest money, or

(*D*) advance against order for specific goods, properties or services;

(*v)* 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;

(*vi*) any money received against mortgage of immovable property, or against pledge of specific movable property, where the value of such security is not less than the money received; and

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

Explanation.—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 purpose of this clause;

(*j*) "depositor" includes a person who has made a deposit and heirs, legal representatives, assignee and executor and administrator of the depositor or such heirs, legal representatives and assignees, as the case may be;

(*k*) "financial company" means a financial institution being a company;

(*l*) "financial institution" means a non-banking institution which is carrying on as its principal business the business of financial institution;

(*m*) "High Court", in relation to a financial company means the High Court, exercising jurisdiction in the place where the registered office of the financial company is situated or, in the case of financial company incorporated outside India, where its principal place of business in India is situated;

(*n*) "net owned fund" means —

(*A*) the aggregate of the paid-up equity capital and free reserves as dislcosed in the latest balance-sheet of the company after deducting there from —

(*i*) accumulated balance of loss;

(*ii*) deferred revenue expenditure;

(*iii*) other intangible assets; and

(*B*) further reduced by the amounts representing —

(*1*) investments of such company in shares of—

(*i*) its subsidiaries or holding company;

(*ii*) companies in the same group;

(*iii*) all other 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 or holding company of such company; and

(*ii*) companies in the same group,

to the extent such amount exceeds ten per cent; of (*A*) above.

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

(*p*) "notification" means a notification published in the Official Gazette;

(*q*) "owned fund" means the aggregate of the paid-up equity capital and free resences as disclosed in the latest balance-sheet of the company after deducting therefrom—

(*i*) accumulated loss;

(*ii*) defined revenue expenditure; and

(*iii*) other intangible assets;

(*r*) "prescribed" means prescribed by rules made under this Act;

(*s*) "public deposit" means the deposit as defined in clause (*i*) but does not include—

(*i*) any amount received from a relative of a director of the financial company;

(*ii*) any amount received by way of subscription to any shares, stock, bonds or debentures pending the allotment of the said shares, stock, bonds or debentures and any amount received by way of calls in advance on shares, in accordance with the articles of association of the company and retained up to a period not exceeding one hundred and eighty days;

(*iii*) any amount received from a foreign citizen or a foreign institution;

(*iv*) any other source that may be specified by the Bank in this behalf;

(*t*) "record" includes the records maintained in the form of books or stored in a computer or in such other form as may be specified by the Bank from time to time;

(*u*) "regulation" means the regulation made by the Bank under this Act;

(*v*) "unencumbered approved securities" includes the approved securities lodged by a 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.

(*2*) Words and expressions used but not defined in this Act but defined in the Reserve Bank of India Act, 1934 (2 of 1934) or the Banking Regulation Act, 1949 (10 of 1949) or in the Reserve Bank of India Act, 1934 or the Companies Act, 1956 (1 of 1956) or the National Housing Bank Act, 1987 (53 of 1987) shall have the meaning assigned to them in those Acts.

CHAPTER II

ADVISORY COUNCIL

3. Constitution of Advisory Council.-(*1*) The Bank may, by notification constitute a council to be known as Advisory Council for Financial Institutions.

(*2*) The Council shall consist of the following members, namely:—

(*a*) a Deputy Governor of the Bank nominated by the Governor— Chairperson;

(*b*) such number of members not exceeding three to be nominated by the Bank from amongst the persons having special knowledge of banking, law, accountancy, business management, transport sector, investment, marketing, conduct of business of financial institutions;

(*c*) not more than four numbers to be nominated by the Bank from amongst the representatives of associations of financial institutions, depositors' associations, if any, and any other person having the special knowledge of and the professional experience in the area which, in the opinion of the Bank, would be useful to the Bank in administration of the provisions of this Act;

(*d*) Chief General Manager-in-Charge of the department in the Bank administering the provisions of this Act — *Ex fficio* member.

(*3*) The tenure of office of the Chairperson and *ex officio* member of the Council shall be co-terminus with their term as the Deputy Governor or the Chief General Manager, as the case may be.

(*4*) The members of the Council nominated under clauses (*b*) and (*c*) of sub-section (*2*) shall hold office for such term not exceeding five years as the Bank may specify:

Provided that the member shall be eligible for re-nomination.

(*5*) The Council shall meet at such time and places, and shall observe such rules of procedure in regard to the transaction of business at its meetings (including quorum at such meetings) as may be provided by regulations.

(*6*) The Chairperson or, if for any reason, he is unable to attend the meeting of the Council, any other member chosen by the members present from amongst themselves at the meeting shall preside at the meeting.

(*7*) All questions which come up before any meeting of the Council shall be decided by a majority vote of the members present and voting, and in the event of an equality of votes, the Chairperson or in his absence, the person presiding, shall have a casting vote.

(*8*) The fee and allowances to be made to the members referred to in clauses (*b*) and (*c*) of sub-section (*2*) and the manner of filling up of vacancy and the procedure to be followed in discharge of their functions shall be such as may be specified by regulations.

4. Functions of advisory Council.-(*1*) The function of the Council shall be to advise on any matter under the Act or arising therefrom which may be referred by the Bank.

(*2*) The Council shall submit its recommendations to the Bank within such period as may be specified by the regulations.

(*3*) The recommendations of the Council shall not be binding on the Bank

5. Disqualifications for nomination of members of advisory Council.-No person shall be eligible to be nominated under clauses (*b*) and (*c*) of sub-section (*2*) of section 3, if he—

(*a*) is, or at any time has been, adjudged as an insolvent; or

(*b*) has made a default in making a payment to his creditors; or

(*c*) has become physically or mentally incapable of acting as a member;

(*d*) is or at any time has been a director or an employee of a financial company against which an order prohibiting such company from accepting public deposit was issued by the Bank; or

(*e*) has been at any time convicted for an offence under this Act; or

(*f*) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or

(*g*) has in the opinion of the Bank so abused his position as to render his continuation in office detrimental to the public interest.

CHAPTER III

REGULATION OF FINANCIAL INSTITUTIONS

6. Registration of financial companies.-(*1*) Notwithstanding anything contained in this Act or in any other law for the time being in force, no financial company shall commence or carry on the business of a financial institution without obtaining a certificate of registration issued under this sub-section:

Provided that a non-banking financial company which had obtained a certificate of registration in accordance with the provisions of section 45-IA of the Reserve Bank of India Act, 1934 (2 of 1934), as it stood immediately before the commencement of this

Act, shall be deemed to have obtained the certificate or registration under this sub-section:

Provided further that no financial company shall accept or hold public deposit unless such company has been authorized by the Bank and such authorization is recorded by the Bank in its certificate of registration:

Provided also that a non-banking financial company which—

(*a*) had been issued a certificate of registration in accordance with the provisions of section 45-IA of the Reserve Bank of India Act, 1934 (2 of 1934) as it stood immediately before the commencement of this Act; and

(*b*) was entitled to accept public deposit under that Act,

shall be deemed to have obtained the certificate of registration under this section.

Prolvided also that a non-banking financial company which had obtained a certificate of registration in accordance with the provisions of section 45-IA of the Reserve Bank of India Act, 1934 (2 of 1934), as it stood immediately before the commencement of this Act, and was entitled to hold or accept public deposit in accordance with the provisions of said Act, shall within six months from the date of commencement of this section, surrender to the Bank the certificate of registration and obtain a certificate of registration autherising it to hold or accept public deposit:

(*2*) Every 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, which had made an application for registration in accordance with the provisions of section 45-IA of the Reserve Bank of India Act, 1934 (2 of 1934) as it stood immediately before the commencement of this Act, but which has not been issued a certificate of registration under that Act, before commencement of this Act, shall be deemed to have made an application under this section and if it was entitled to accept public deposit under that Act, it may continue to accept, hold and refund public deposits in accordance with the provisions of this Act until a certificate of registration is issued to it or rejection of application for registration is communicated to it.

(*3*) The Bank may, for the purpose of considering the application for registration, require to be satisfied by an inspection of the records and books of the financial company or otherwise that the following conditions are fulfilled,—

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

(*b*) that the affairs of the financial company are being or are not likely to be conducted in a manner detrimental to the interests of its depositors;

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

(*d*) that the 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 financial company;

(*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 specify;

(*g*) any other condition, fulfilment of which in the opinion of the Bank, shall be necessary to ensure that acceptance of public deposits in India by a financial

company shall not be prejudicial to the public interest or to the interests of the depositors.

(*4*) The Bank may, after being satisfied that the conditions specified in sub-section (3) are fulfilled, grant a certificate of registration, subject to such conditions, which it may consider, fit to impose.

(*5*) Every financial company shall obtain prior approval of the Bank for any substantial change in its management, change in location of its registered office and change in its name.

Explanation.—For the purposes of this sub-section, the expression "substantial change in management" means the change in the management by way of transfer of shares or amalgamation or transfer of the business of the company:

Provided that decision of the Bank, whether the change in management of a financial company is a substantial change in its management or not shall be final.

(*6*) The Bank may, cancel a certificate of registration granted to a financial company, if such company—

(*a*) ceases to carry on its business; or

(*b*) ceases to accept or hold public deposit; or

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

(*d*) at any time fails to fulfil any of the conditions referred to in clauses (*a*) to (*g*) of sub-section (*3*); or

(*e*) fails to,—

(*i*) comply with any direction issued by the Bank under the provisions of this Act; or

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

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

(*iv*) obtain prior approval of the Bank required under sub-section (*5*);

(*f*) has been prohibited from accepting deposit by an order made by the Bank under the provisions of this Act or was prohibited under the provisions of the Reserve Bank of India Act, 1934 (2 of 1934) 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 financial company has failed to comply with the provisions of clause (*c*) or has failed to fulfil any of the conditions referred to in clause (*d*) or sub-clause (*iv*) of clause (*e*), 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 interests of the depositors or the 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 provisions 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 financial company aggrieved by an 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:

Provided that before making any order of rejection of appeal, such company shall be given a reasonable opportunity of being heard.

(*8*) A financial company which is holding public deposits and whose application for grant of certificate of registration has been rejected or certificate of registration has been cancelled shall, notwithstanding the rejection of its application for grant of certificate of registration or cancellation of certificate of registration, be deemed to be a financial company until it repays entire public deposit held by it.

(*9*) Any branch or office in India of a company referred to in section 591 of the Companies Act, 1956 (1 of 1956), accepting public deposit in India, shall be a financial company for the purposes of this Act.

7. Requirement of net owned fund.-(*1*) Every financial company, which intends to accept or hold the public deposits, shall, before making an application for grant of certificate of registration under sub-section (*2*) of section 6 and at all time during which registration continues to be valid, have net owned fund of not less than two hundred lakhs of rupees or such other amount, not exceeding ten crores of rupees, as the Bank may, by a notification, specify:

Provided that the net owned fund held, by a non-banking financial company, which—

(*a*) had been issued a certificate of registration in accordance with the provisions of section 45-IA of the Reserve Bank of India Act, 1934 (2 of 1934) as it stood immediately before the commencement of this Act; and

(*b*) was entitled to accept public deposit,

shall be deemed to be the net owned fund required under this Act:

Provided further that the net owned fund held by a non-banking financial company, in accordance with the provisions of section 45-IA of the Reserve Bank of India Act, 1934 (2 of 1934), as it stood immediately before the commencement of this Act, which made an application for registration in accordance with the provisions of section 45-IA but has not been granted a certificate of registration before the commencement of this Act, shall be deemed to be the net owned fund required under this Act:

Provided also that a non-banking financial company, referred to in the first proviso and second proviso having net owned fund of less than two hundred lakhs of rupees before the commencement of this Act, shall increase its net owned fund to such sums and within such time as may be specified by the Bank in this behalf.

(*2*) Every financial company other than referred to in sub-section (1), shall, before making an application for grant of certificate of registration under sub-section (2) of section 6 and at all time during which registration continues to be valid, have owned fund of not less than twenty five lakhs of rupees or such other amount, not exceeding two crores of rupees, as the Bank may, by a notification, specify:

Provided that the owned fund held, by a non-banking financial company, which has been issued a certificate of registration in accordance with the provisions of section 45-IA of the Reserve Bank of India Act, 1934 (2 of 1934) shall be deemed to be the owned fund required under this sub-section.

Provided further that, the owned fund held by a non-banking financial company, in accordance with the provisions of section 45-IA of the Reserve Bank of India Act, 1934 (2 of 1934), as it stood immediately before the commencement of this Act, which made an application for registration in accordance with the provisions of section 45-IA but has not been granted a certificate of registration before the commencement of this Act, shall be deemed to be the owned fund required under this Act:

Provided also that a non-banking financial company, referred to in the first proviso or second proviso having owned fund of less than twenty five lakhs of rupees before the commencement of this Act, shall increase its owned fund to such sums and within such time as may be specified by the Bank in this behalf.

(*3*) The Bank, by notification, specify,—

(*i*) different amount of minimum net owned fund for different class of financial companies; and

(*ii*) different amount of minimum owned fund for different class of financial companies.

8. Maintenance of assets.-(*1*) Every financial company which accepts or holds public deposits, shall invest and continue to invest in India,—

(*a*) in unencumbered term deposit with a scheduled bank, other than a co-operative bank or a regional rural bank; or

(*b*) 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 such percentage not exceeding twenty-five per cent. as the Bank may, from time to time, by notification, specify, of the public deposits outstanding at the close of business on the last working day of the preceding month:

Provided that such investment in term deposit shall not exceed five per cent. or such per cent. as the Bank may, by notification, specify from time to time:

Provided further that the Bank may, by notification, specify different percentages of investment in respect of different classes of financial companies.

Explanation.—For the purposes of this section, the expressions "public deposits" and "term deposit" shall include the amount of accrued interest.

(*2*) For the purpose of ensuring compliance with the provisions of this section, the Bank may require every such 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 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 month, the rate of penal interest shall be five per cent. per annum above the bank rate on such shortfall for each subsequent month.

(*4*) (*a*) The penal interest 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 financial company and, in the event of a failure of the 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 financial company is situated:

Provided that such direction shall be made only upon an application made in this behalf to the court by the Bank.

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

(*5*) Notwithstanding anything contained in this section, if the Bank is satisfied that the defaulting 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.

9. Reserve fund.-(*1*) Every financial company, which has accepted or accepts public deposit, 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.

(*2*) No appropriation of any sum from the reserve fund shall be made by the 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 appropriation :

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 Bank may, having regard to the adequacy of the paid-up capital and reserves of a financial company in relation to its liabilities to repay the public deposit, declare by order in writing that the provisions of sub-section (*1*) shall not be applicable to the financial company for such period and to such extent, 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*) is not less than the paid-up capital of the financial company.

(*4*) The Bank may, in the public interest or in the interest of the depositors, direct any such financial company or any class of financial companies to invest a part of such reserve fund not exceeding twenty-five per cent, of such fund in any specified unencumbered securities.

10. First charge over assets in favour of depositors.-In the event of a financial company making any default in repayment of public deposit, all the depositors who made such public deposits shall have a first charge over the assets maintained under section 8 and the specified unencumbered securities referred to in sub-section (*4*) of section 9.

11. Regulation of advertisement soliciting deposit.-The Bank may, if it considers necessary in the public interest so to do, by general or special order,—

(*a*) regulate or prohibit the issue by any non-banking institution, or in its name or on its behalf, of any prospectus or advertisement soliciting deposit; and

(*b*) specify, by notification, the conditions subject to which, any such prospectus or advertisement, if not prohibited, may be issued.

12. Power to call for information.-(*1*) The Bank may, at any time, call for, at any time from a financial institution or a class of financial institutions, any statement, information and particulars relating to conduct of business of the financial institution or the class of financial institutions in such form, at such intervals and within such time, as may be specified by the Bank by general or special order.

(*2*) Without prejudice to the generality of the powers vested in the Bank under sub-section (*1*), the statements, information or particulars to be furnished under that sub-section, may relate to all or any of the following matters, namely:—

(*a*) the amount of the deposits;

(*b*) the purposes and periods for which such deposits may be accepted;

(*c*) the rate of interest on such deposits;

(*d*) other terms and conditions for acceptance of such deposits;

(*e*) the paid-up capital, reserves or other liabilities;

(*f*) the investments, whether in Government securities or otherwise;

(*g*) the persons to whom, and the purposes and periods for which, finance is provided;

(*h*) the terms and conditions, including the rate of interest, on such finance is provided;

(*i*) items of income and expenditure.

(*3*) The Bank may call for, at any time from a non-banking institution or a class of non-banking institutions any statement, information and particulars relating to conduct of business of the non-banking institution or the class of non-banking institutions in such form and within such time, as may be specified by the Bank by general or special order, for the purpose of ascertaining as to whether it is carrying on any business of a financial institution or for ascertaining whether prospectus or the advertisement soliciting deposit issued, if any, by it or in its name or on its behalf, is in public interest or in the interests of the depositors or in the interest of the credit system of the country or for any matters relating thereto.

(*4*) It shall be the duty of every financial institution and non-banking institution to furnish the statements, information and particulars called for, and to comply with any order issued under this section to it in this behalf.

13. Power to determine policy.-(*1*) If the Bank is satisfied that, in the public interest or to regulate the credit system of the country to its advantage or to prevent the affairs of any financial institution being conducted in a manner detrimental to the interest of the depositors or in a manner prejudicial to the interest of the financial institution, it is necessary or expedient so to do, it may determine the policy on any matter relating to or connected with the conduct of business of financial institution.

(*2*) Without prejudice to the generality of the powers vested in the Bank under sub-section (*1*), the policy may be related to or connected with receipt of deposit, including the rate of interest payable on such deposit, the period for which such deposits may be received and the manner of receipt of such deposit, 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 any of the matters referred to in sub-section (*2*) of section 12 including those relating to deployment of funds by a financial institution or a class of financial institutions generally, as the case may be and financial institutions shall be bound to follow the policy so determined.

14. Power to issue directions to financial institutions.-(*1*) If the Bank is satisfied that, in the public interest or to regulate the credit system of the country to its advantage or to prevent the affairs of any financial institution being conducted in a manner detrimental to the interests of the depositors or in a manner prejudicial to the interest of the financial institution, it is necessary or expedient so to do, it may, at any time, issue directions to a financial institution or a class of financial institutions in respect of any matters relating to or connected with the conduct of business of financial institution.

(*2*) Without prejudice to the generality of the powers vested under sub-section (*1*), the Bank may give directions relating to—

(*a*) any matter connected with receipt of deposit, including the rate of interest payable on such deposit, the period for which such deposits may be received and the manner of receipt of such deposit;

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

(*c*) 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 financial institution and other relevant considerations, which may be made by that financial institution to any person or a group of persons or a company or group of companies;

(*d*) any matter of policy referred to in section 13 or any matter relating thereto or connected therewith.

(*3*) Every financial institution 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 financial institution, a copy of its annual balance-sheet and profit and loss account or other annual accounts or any other information to every person from whom the financial institution holds, as on the last day of the year to which the accounts relate, public deposit higher than such sum as may be specified by the Bank.

(*4*) It shall be the duty of every financial institution to comply with any direction given to it under this section.

15. Power to issue directions to auditors and duties of auditors.-(*1*) The Bank may, on being satisfied that it is necessary so to do, in the public interest or in the interests of the depositors or for the purpose of proper assessment of the records and books of account of a financial institution or a class of financial institutions,—

(*a*) issue directions to the auditor of a financial institution or class of financial institutions on any matter relating to balance-sheet, profit and loss account, disclosure of liabilities in the records and books of account;

(*b*) direct a financial company or class of financial companies to appoint auditor with the prior approval of the Bank for such period and subject to such conditions as the Bank may specify;

(*c*) appoint an auditor or auditors to conduct special audit of the accounts of a financial company in relation to any such transaction or class of transactions or such period, as may be specified in the order, and direct the auditor or the auditors to submit the report to it.

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

(*3*) It shall be the duty of an auditor of a financial institution to inquire whether or not the financial institution has furnished to the Bank such statements, information or particulars as are required to be furnished under this Act and the auditor shall, except where he is satisfied on such inquiry that the financial institution has furnished such statements, information or particulars and complied with all the directions and orders issued by the Bank under this Act, make a report to it giving details of such defaults.

(*4*) Where, in the case of a financial company, the auditor has made, or intends to make, a report to the Bank under sub-section (*3*), he shall include in his report under sub-section (*2*) of section 227 of the Companies Act, 1956 (1 of 1956), the contents of the report which he has made, or intends to make to the Bank.

16. Power to prohibit acceptance of deposit.-If any financial company violates any provisions of this Act or fails to comply with any direction given or order issued by the Bank under this Act, the Bank may prohibit the financial company from accepting any deposit.

17. Power to prohibit alienation of assets.-(*1*) The Bank may, on being satisfied that it is necessary so to do in the public interest or in the interests of the depositors, direct a financial company—

(*a*) against which an order prohibiting it from accepting deposit has been issued; or

(*b*) which has violated any provision of this Act or failed to comply with any direction given or order issued by the Bank under this Act,

not to sell, transfer, create charge or mortgage or deal in any manner with its property and assets including the cash balance with it or the credit balance in its bank account; or not

to increase the remuneration or honorarium or any benefit payable or extendable to its directors, advisors, consultants or employees or any person; or not to appoint any such personnel except for protection of its legal rights, properties and assets, without prior written permission of the Bank, for such period not exceeding one year from the date of the direction:

Provided that the Bank may after recording the reasons extend the said period from time to time:

Provided further that the period under this sub-section shall in no case exceed five years in the aggregate.

(*2*) Notwithstanding anything contained in any law for the time being in force, any alienation, of property or assets referred to in sub-section (*1*) by way of sale, mortgage or otherwise, made in contravention of the direction under that sub-section shall be void.

18. Power to appoint Special Officer.-(*1*) If the Bank is of the opinion that —

(*a*) the affairs of the financial company are being conducted in a manner prejudicial to the public interest or in any manner detrimental to the interest of the financial company or its depositors; or

(*b*) any order or direction issued by the Bank to a financial company under this Act has not been complied with, it may appoint one or more persons as Special Officers to obtain the information regarding conduct and affairs of such company or to ensure compliance with the order or direction issued by the Bank for such period and on such terms and conditions as the Bank deems fit.

(*2*) In particular and without prejudice to the provisions contained in sub-section (*1*), the Special Officer may,—

(*a*) call for any information connected with the affairs of the financial company and forward the same to the Bank;

(*b*) identify the financial transaction of such financial company which would require or required approval of the Bank;

(*c*) consider the application of the company where approval of the Bank is required, if so authorised by the Bank in respect of such financial transactions;

(*d*) approve, in consultation with the Bank, the mode of investment;

(*e*) perform such other functions as may be specified by the Bank.

(*3*) It shall be the duty of every financial company referred to in sub-section (*1*) to afford the Special Officer necessary facility to check or verify cash, stocks, securities or such other valuable articles or things or records, books of account and furnish such other information relating to any matter which may be useful or relevant in discharge of his duties.

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

(*a*) of any financial institution, if the Bank considers it necessary or expedient to inspect that financial institution; or

(*b*) of any non-banking 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 has not been furnished or for determining whether the non-banking institution is a financial 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 financial institution or the non-banking institution, as the case may be, or other officer or employee thereof to

produce before the inspecting authority all such records, books, accounts and other documents in his custody or power and to furnish to that authority with any statement and information relating to the business of the institution as the inspecting authority may require of him, within such time as may be specified by the inspecting 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 financial institution or the non-banking institution or other officer or employee thereof, in relation to conduct of its business and may administer an oath accordingly.

20. Certain financial companies not to carry on other business.-No financial company, which has been granted a certificate of registration under sub-section (*4*) of section 6, shall carry on, without prior approval of the Bank, any business other than the business of financial institution:

Provided that a financial company, or a non-banking financial company, which is carrying on any business other than the business of financial institution on or before the commencement of this Act, shall cease to carry on any such business within three years from the date of commencement of this Act.

Explanation.—For the purposes of this section, the business carried on by a financial company or a non-banking financial company shall not include the business carried on by its subsidiary.

21. Deposits not to be solicited by unauthorized person.-No person shall solicit on behalf of any financial 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—

(*a*) he has been authorised in writing by the said financial 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 or direction issued by the Bank under this Act or with the requirement of any other provision of law for the time being in force, applicable to the publication of such prospectus or advertisement.

22. Disclosure of information prohibited.-(*1*) Any information relating to a financial institution,—

(*a*) contained in any statement or return submitted by such institution under the provisions of this Act; or

(*b*) 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 financial institution, with the previous permission of the Bank, of any information referred to in sub-section (*1*);

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

(*c*) the disclosure or publication by the financial institution or by the Bank of any such information to any other financial institution or its borrowers in accordance with the practice and usage customary amongst such financial institutions or as permitted or required under any other law:

Provided that a financial institution shall not publish, except in accordance with the practice and usage customary amongst financial institutions or as permitted or required under any law, any information referred to in sub-section (*1*).

(*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 interests of the depositors or the financial institution or to prevent the affairs of any financial institution being conducted in a manner detrimental to the interests 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 financial institution 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 Act.

CHAPTER IV

REDRESSAL OF DEPOSITORS GRIEVANCES

23. Repayment of public deposit.-Every public deposit accepted by a financial company shall, unless renewed, be repaid in accordance with the terms and conditions of such deposit.

24. Application to Board and functions of Board.-(*1*) Where a financial company has failed to repay any public deposit or part thereof to a depositor, in accordance with the terms and conditions of such deposit, the depositor may make an application to the Board.

(*2*) Every application under sub-section (*1*) shall be in such form and accompanied by such documents or other evidence and by such fee as may be prescribed:

Provided that the fee may be prescribed having regard to the amount of deposit due to be recovered.

(*3*) On receipt of the application under sub-section (*1*), the Board shall issue summons requiring the financial company to show cause within twenty days of the service of summons as to why the relief prayed for should not be granted.

(*4*) The financial company shall, at or before the first hearing or within such time as the Board may permit, present a written statement of its defence.

(*5*) Where the financial company claims to set off against the depositors' demand any ascertained sum of money legally recoverable by him from such depositor, the financial company may, at the first hearing of the application, but not afterwards unless permitted by the Board, present a written statement containing the particulars of the debt sought to be set-off.

(*6*) The written statement shall have the same effect as a plaint in a cross-suit so as to enable the Board to pass a final order in respect of the original claim and of the set-off, if any.

(*7*) A financial company in an application may, in addition to its right of pleading a set-off under sub-section (*5*), set up, by way of counter-claim, including its claim in the nature of damages, against the claim of the depositor, any right or claim in respect of a cause of action accruing to the financial company against the depositor either before or after the filing of the application but before the financial company has delivered its defence or before the time for delivering its defence has expired.

(*8*) A counter-claim under sub-section (*7*) shall have the same effect as a cross-suit so as to enable the Board to pass a final order on the same application, both on the original claim and on the counter-claim.

(*9*) The depositor shall be at liberty to file a written statement in answer to the counter-claim of the financial company within such period as may be fixed by the Board.

(*10*) Where a financial company sets up a counter-claim and the depositor contends that the claim thereby raised ought not to be disposed of by way of counter-claim but in

an independent action, the depositor may, at any time before issues are settled in relation to the counter-claim, apply to the Board for an order that such counter-claim may be excluded, and the Board may, on the hearing of such application, make such order as it thinks fit.

(*11*) The Board may make an interim order, whether by way of injunction or stay or attachment, against the financial company to debar it from transferring, alienating or otherwise dealing with, or disposing of, any property and asset belonging to it without the prior permission of the Board.

(*12*) (*A*) Where, at any stage of the proceedings, the Board is satisfied, by affidavit or otherwise, that the financial company, with intent to obstruct or delay or frustrate the execution of any order for the recovery of unpaid public deposit that may be passed against it,—

(*i*) is about to dispose of the whole or any part of its property or assets; or

(*ii*) is about to remove the whole or any part of its property from the local limits of the jurisdiction of the Board; or

(*iii*) is likely to cause any damage or mischief to the property or assets or affect its value by misuse or creating third party interest,

the Board may direct the financial company, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, or to produce and place at the disposal of the Board, when required, the said property or assets or the value of the same, or such portion thereof as may be sufficient to satisfy the certificate for the recovery of unpaid public deposit, or to appear and show cause why it should not furnish security.

(*B*) Where the financial company fails to show cause why it should not furnish security, or fails to furnish the security required, within the time fixed by the Board, the Board may order the attachment of the whole or such portion of the properties or assets of the financial company as appears to it to be sufficient to satisfy any certificate for the recovery of unpaid public deposit.

(*13*) The depositor shall, unless the Board otherwise directs, specify the property or assets required to be attached and the estimated value thereof.

(*14*) The Board may also in the order direct the conditional attachment of the whole or any portion of the property or assets specified under sub-section (*13*).

(*15*) If an order of attachment is made without complying with the provisions of sub-section (*12*), such attachment shall be void.

(*16*) The Board may, after giving the depositor and the financial company an opportunity of being heard, determine the amount of deposits due and pass such interim or final order, including the order for payment of interest from the date on or before which payment of the amount is found due up to the date of realisation or actual payment, within such time or in such manner as the Board thinks fit to meet the ends of justice.

(*17*) The Board shall send a copy of every order passed by it to the applicant and the financial company.

(*18*) **If any financial company fails to comply with an order passed by the Board under sub-section (*16*), the Board may appoint one or more Recovery Officers and issue a certificate to the Recovery Officer for recovery of the amount of unpaid public deposit specified in the certificate.**

(*19*) In the case of disobedience of an order made by the Board under sub-section (*11*) or sub-section (*12*) or under sub-section (*16*) or sub-section (*20*) or breach of any of the terms on which the order was made, the Board may order the properties and assets of the person guilty of such disobedience or breach to be attached and may also order such

person to be detained in the civil prison for a term not exceeding three months, unless in the meantime the Board directs his release.

(*20*) Where it appears to the Board to be just and convenient, the Board may, by order—

(*a*) appoint a receiver of any property or assets, whether before or after grant of certificate for recovery of unpaid public deposit;

(*b*) remove any person from the possession or custody of the property;

(*c*) commit the same to the possession, custody or management of the receiver;

(*d*) confer upon the receiver all such powers, as to bringing and defending suits in the courts or filing and defending applications before the Board and for the realisation, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of documents as the owner himself has, or such of those powers as the Board thinks fit; and

(*e*) appoint a Commissioner for preparation of an inventory of the properties of the financial company or for the sale thereof.

(*21*) The application made to the Board under sub-section (*1*) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the application finally within one hundred and eighty days from the date of receipt of application.

(*22*) The Board may make such orders and give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice.

25. Right to legal representation.-The depositor or the financial company may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to present his or its case under this Act before the Board.

Explanation.—For the purposes of this section,—

(*a*) "chartered accountant" means a chartered accountant as defined in clause (*b*) of sub-section (*1*) of section 2 of the Chartered Accountants Act, 1949 (38 of 1949) and who has obtained a certificate of practice under sub-section (*1*) of section 6 of that Act;

(*b*) "company secretary" means a company secretary as defined in clause (*c*) of sub-section (*1*) of section 2 of the Company Secretaries Act, 1980 (56 of 1980) and who has obtained a certificate of practice under sub-section (*1*) of section 6 of that Act;

(*c*) "cost accountant" means a cost accountant as defined in clause (*b*) of sub-section (*1*) of section 2 of the Cost and Works Accountants Act, 1959 (23 of 1959) and who has obtained a certificate of practice under sub-section (*1*) of section 6 of that Act;

(*d*) "legal practitioner" means an advocate, Vakil or an attorney of any High Court, and includes a pleader in practice.

26. Limitation.-The provisions of the Limitation Act, 1963 (36 of 1963) shall, as far as may be, apply to an application made to the Board.

27. Members, officers and other employer of Board to be public servants.-The member or other officers and employees of the Board and the Recovery Officer, Receiver

and shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

28. Civil court not to have jurisdiction.-No civil court (except the Supreme Court or a High Court exercising jurisdiction under article 226 or 227 of the Constitution) shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Board is empowered by or under this Act to determine and no injunction shall be granted by any court or authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

29. Appeal to High Court.-Any person aggrieved by any decision or order of the Board may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Board to him on any question of fact or law arising out of such order:

Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period allow it to be filed within a further period not exceeding sixty days.

30. Modes of recovery of unpaid public deposit.-The Recovery Officer shall, on receipt of the certificate issued under sub-section (*18*) of section 24, proceed to recover the amount of unpaid public deposit specified in the certificate by one or more of the following modes, namely:—

(*a*) attachment and sale of movable or immovable property of the financial company or any other person against whom the order is passed;

(*b*) arrest of any person, who at the time of receiving public deposit or default in repayment thereof was incharge of and was responsible to the financial company for the conduct of business of the financial company, and his detention in prison.

31. Validity of certificate and amendment thereof.-(*1*) It shall not be open to the financial company to dispute before the Recovery Officer the correctness of the amount specified in the certificate and no objection to the certificate on any other ground shall also be entertained by the Recovery Officer.

(*2*) Notwithstanding the issue of certificate to a Recovery Officer, the Board shall have power to withdraw the certificate or correct any clerical or arithmetical mistake in the certificate by sending an intimation to the Recovery Officer.

(*3*) The Board shall intimate to the Recovery Officer any order withdrawing or cancelling a certificate or any correction made by it under sub-section (*2*).

32. Stay of proceedings under certificate and amendment or withdrawn thereof.-(*1*) Notwithstanding that a certificate has been issued to the Recovery Officer for the recovery of any amount, the Board may grant time for the payment of the amount, and thereupon the Recovery Officer shall stay the proceedings until the expiry of the time so granted.

(*2*) Where a certificate for the recovery of amount has been issued, the Board shall keep the Recovery Officer informed of any amount paid or time granted for payment, subsequent to the issue of such certificate to the Recovery Officer.

(*3*) Where the order giving rise to demand of amount for recovery of unpaid public deposit has been modified in appeal, and, as a consequence thereof the demand is reduced, the Board shall stay the recovery of such part of the amount of the certificate as pertains to the said reduction for the period for which the appeal remains pending.

(*4*) Where the amount of unpaid public deposit is reduced or enhanced as a result of an appeal, the Board shall, when the order which was the subject matter of such appeal has become final and conclusive, amend the certificate or withdraw it, as the case may be.

33. Other modes of recovery.-(*1*) Where a certificate has been issued to the Recovery Officer under sub-section (*18*) of section 24, the Recovery Officer may, without prejudice to the modes of recovery specified in section 30, recover the amount of unpaid public deposit by any one or more of the modes provided under this section.

(*2*) (*a*) The Recovery Officer may, at any time by notice in writing, require any person from whom money is due or may become due to the financial company or to any person who holds or may subsequently hold money for or on account of the financial company, to pay the Recovery Officer either forthwith upon the money becoming due or being held or within the time specified in the notice (not being before the money becomes due or is held) so much of the money as is sufficient to pay the amount of public deposit payable by the financial company or the whole of the money when it is equal to or less than that amount.

(*b*) A notice under this sub-section may be issued to any person who holds or may subsequently hold any money for or on account of the financial company jointly with any other person and for the purposes of this sub-section, the shares of the joint holders in such amount shall be presumed, until the contrary is proved, to be equal.

(*c*) A copy of the notice shall be forwarded to the financial company at its registered office.

(*d*) Save as otherwise provided in this sub-section, every person to whom a notice is issued under this sub-section shall be bound to comply with such notice, and in particular, where any such notice is issued to a post office, bank, financial institution, or an insurer, it shall not be necessary for any pass book, deposit receipt, policy or any other document to be produced for the purposes for any entry, endorsement or the like to be made before the payment is made notwithstanding any rule, practice or requirement to the contrary.

(*e*) Any claim in respect of any property or assets in relation to which a notice under this sub-section has been issued arising after the date of the notice shall be void as against any demand contained in the notice.

(*f*) Where a person to whom a notice under this sub-section is sent objects to it by a statement on oath that the sum demanded or the part thereof is not due to the financial company or that he does not hold any money for or on account of the financial company then, nothing contained in this sub-section shall be deemed to require such person to pay any such sum or part thereof, as the case may be, but if it is discovered that such statement was false in any material particular, such person shall be personally liable to the Recovery Officer to the extent of his own liability to the defendant on the date of the notice, or to the extent of the financial company's liability for any sum due under this Act, whichever is less.

(*g*) The Recovery Officer may, at any time or from time to time amend or revoke any notice under this sub-section or extend the time for making any payment in pursuance of such notice.

(*h*) The Recovery Officer shall grant a receipt for any amount paid in compliance with a notice issued under this sub-section and the person so paying shall be fully discharged from his liability to the financial company to the extent of the amount so paid.

(*i*) Any person discharging any liability to the financial company after the receipt of a notice under this sub-section shall be personally liable to the Recovery Officer to the extent of his own liability to the financial company so discharged or to the extent of the financial company's liability for any public deposit due under this Act, whichever is less.

(*j*) If a person to whom a notice under this sub-section is sent fails to make payment in pursuance thereof to the Recovery Officer, such person shall be liable for the

payment of the amount specified in the notice and further proceedings may be taken against him for the realisation of the amount as if it were an unpaid deposit due from him, in the manner provided in this Act and the notice shall have the same effect as an attachment of a public deposit by the Recovery Officer in exercise of his powers under section 30.

(*3*) The Recovery Officer may apply to the court in whose custody there is money belonging to the financial company for payment to him of the entire amount of such money, or if it is more than the amount of public deposit due an amount sufficient to discharge the amount of public deposit so due.

(*4*) The Recovery Officer may, by order, at any stage of the execution of the certificate of recovery, require any person, and in case of a company any of its officers against whom or which the certificate of recovery is issued, to declare on affidavit the particulars of his or its assets.

(*5*) The Recovery Officer may recover any amount of public deposit due from the financial company by distraint and sale of his movable property in the manner laid down in the Third Schedule to the Income-tax Act, 1961 (43 of 1961).

34. Application of certain provisions of the Income-tax Act, 1961.-The provisions of the Second and Third Schedules to the Income-tax Act, 1961 (43 of 1961) and the Income-tax (Certificate Proceedings) Rules, 1962 as in force from time to time shall, as far as possible, apply with necessary modifications as if the said provisions and the rules referred to the amount of unpaid public deposit under this Act instead of to the Income-tax:

Provided that any reference under the said provisions and the rules to the "assessee" shall be construed as a reference to the financial company under this Act.

35. Appeal against order of Recovery Officer.-(*1*) Not withstanding anything contained in section 34, any person aggrieved by an order of the Recovery Officer made under this Act may, within thirty days from the date on which a copy of the order is issued to him prefer on appeal to the Board.

(*2*) On receipt of an appeal under sub-section (*1*), the Board may, after giving an opportunity to the appellant to be heard, and after making such enquiry as it deems fit, confirm, modify or set aside the order made by the Recovery Officer in exercise of his powers under sections 30 to 34 (both inclusive).

CHAPTER V

WINDING UP

36. Power of Bank to file winding up petition.-Where,—

(*a*) a financial company has, by virtue of section 6 or section 7 become disqualified to carry on the business of financial institution or from accepting public deposit; or

(*b*) a financial company has been prohibited by the Bank from receiving public deposit and such prohibition continues for a period of three months or more; or

(*c*) the Bank is satisfied that—

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

(*ii*) the continuance of a financial company is detrimental to public interest or the interests of the depositors of the financial company,

the Bank may, file an application for winding up of such financial company under the Companies Act, 1956 (1 of 1956) or under any other law for the time being in force.

(*2*) A 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 (1 of 1956) or any other law for the time being in force 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.

CHAPTER VI

PROHIBITION FROM ACCEPTANCE OF PUBLIC DEPOSITS BY UNINCORPORATED BODIES

37. Public deposit not to be accepted in certain cases.-(*1*) No person, being an individual or an unincorporated association of individuals shall accept any public deposit—

(*a*) if his or its business, wholly or partly includes any of the businesses of financial institution as contained in clause (*e*) of sub-section (*1*) of section 2; or

(*b*) if his or its business is that of receiving public 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 way of loan by an individual from any of his relatives, or by an unincorporated association from any of the relatives of the individuals constituting it.

(*2*) Where any person referred to in sub-section (*1*) holds any public deposit on the date of commencement of this Act, 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 one year from the date of such commencement, whichever is earlier.

(*3*) No person, being an individual, or an unincorporated association of individuals shall, issue or cause to be issued any advertisement in any form for soliciting deposit.

Explanation.—For the purpose of this section, a person shall be deemed to be a relative of another if, and only if,—

(*a*) they are members of a Hindu undivided family; or

(*b*) they are husband and wife; or

(*c*) 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.

38. Power of District Magistrate to call for information.-If the District Magistrate has reason to believe that any individual or unincorporated association of individuals has contravened or is contravening the provisions of section 37, he may call from such individual or unincorporated association of individuals any information relating to

acceptance of public deposit or repayment thereof or cause an inspection of the records, books of account and documents and take such action as he deems fit.

CHAPTER VII

GENERAL PROVISIONS

39. Central Government's power to give direction.-(*1*) The Central Government may, from time to time, give such direction to the Bank as it may, after consultation with the Governor of the Bank, consider it necessary in the public interest.

(*2*) The Central Government may, from time to time, require the Bank to furnish such returns, statements and such other particulars in regard to any proposed or existing measures for regulation of financial institutions, in such form and in such manner as the Central Government may specify, and the Bank shall furnish to the Central Government such returns, statements and particulars.

40. Power to exempt.-The Bank on being satisfied that in the public interest, or in the interests of the depositors, or in the interest of the financial institution, it is necessary so to do, may declare by notification, that any or all of the provisions of this Act, shall not apply to a financial institution or a class of financial institutions or a financial company, or to any class of financial companies either generally or for such period as may be specified in the notification, subject to such conditions, limitations or restrictions as it may think fit to impose.

41. Protection of action taken in good faith.-(*1*) No suit, prosecution or other legal proceeding shall lie against the Central Government or the Bank or the Special Officer or any other person for anything, which is in good faith done or intended to be done under this Act or in pursuance of any order, rule, regulation, direction made or given thereunder.

(*2*) No suit or other legal proceeding shall lie against the Central Government or the Bank or the liquidator or the Special Officer or any of their officers or employees or authorised person for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under this Act or in pursuance of any order, rule, regulation or made or direction issued thereunder.

(*3*) No member of the Advisory Council including the Chairperson and *ex officio* member shall incur any liability for tendering any advice to the Bank and no action shall lie against them in respect of any such advice.

42. Nomination by depositor.-(*1*) Where a public deposit is held by a financial company 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 as may be prescribed, 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 financial company.

(*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 under sub-section (*1*) purports to confer on any person the right to receive the amount of public deposit from a financial company, 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 depositors, 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 as may be prescribed:

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.

(*3*) Where the nominee is a minor, it shall be lawful for the depositor making the nomination to appoint, in the manner as may be prescribed, any person to receive the amount of deposit in the event of his death during the minority of the nominee.

(*4*) Payment by a financial company in accordance with the provisions of this section shall constitute a full discharge to the financial company of its liability in respect of the deposit.

(*5*) No notice of claim of any person, other than the person or persons in whose name a deposit is held by a financial company, shall be receivable by the financial company, nor shall the financial company 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 financial company, the financial company shall take due note of such decree, order, certificate or other authority.

CHAPTER VIII

PENALTIES

43. Penalties.-(*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, rules, regulations 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 particulars 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.

(*2*) If any person fails to produce any record, 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 ten thousand rupees in respect of each offence and if he persists in such failure or refusal, with further fine which may extend to one thousand rupees for every day after the first during which offence continues.

(*3*) If any person discloses any information, the disclosure of which is prohibited under section 22, he shall be punishable with imprisonment for a term, which may extend to three years, or with fine, which may extend to one thousand rupees, or with both.

(*4*) If any person contravenes the provisions of section 6 or section 7, 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.

(*5*) If any auditor fails to comply with any direction given or order made by the Bank under section 15, he shall be punishable with fine, which may extend to ten thousand rupees.

(*6*) Whoever, fails to comply with any order made by the Board, he 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.

(*7*) If any person,—

(*a*) receives any public deposit in contravention of any direction given or order made by the Bank in exercise of the powers under this Act; or

(*b*) fails to comply with any direction given or order made by the Bank under any of the provisions of this Act; or

(*c*) issues any prospectus or advertisement otherwise than in accordance with section 21 or any order made or direction given by the Bank under this Act,

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,—

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

(*b*) in the case of a contravention falling under clause (*c*), to twice the amount of the public deposit called for by the prospectus or advertisement or one lakh rupees, whichever is more.

(*8*) If any person contravenes the provisions of section 37, he shall be punishable with imprisonment for a term, which may extend to three years, or with fine, which may extend to twice the amount of public deposit received by such person in contravention of that section, or fifty 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 judgment of the court, the imprisonment shall not be less than one year and the fine shall not be less than ten thousand rupees.

(*9*) 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, rules or regulations or direction made or given or notification issued or condition imposed thereunder, any person guilty of such contravention or default shall be punishable with fine which may extend to twenty thousand rupees and where, a contravention or default is a continuing one, with further fine, which may extend to one thousand rupees for every day after the first, during which the contravention or default continues and with imprisonment for a term not exceeding three years or with both.

(*10*) Notwithstanding anything contained in section 29 of the Code of Criminal Procedure, 1973 (2 of 1974), it shall be lawful for a Metropolitan Magistrate or Judicial Magistrate of the First Class to impose a sentence or fine in excess of the limit specified in that section on any person convicted under this section.

44. Offences by companies.-(*1*) Where a person committing a contravention or default referred to in section 43 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 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:

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 or 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.—For the purpose of this section, any offence punishable under this Act shall be deemed to have been committed at the place where the registered office of the financial company is situated or in the case of financial company incorporated outside India where its principal place of business in India, is situated.

Explanation 2.—For the purposes of this section,—

(*a*) "company" means any body corporate and includes a firm or other association of individuals; and

(*b*) "director", in relation to a firm, means a partner in the firm.

45. Cognizance of offences.-(*1*) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every offence under sub-sections (*4*), (*6*), clause (*a*) of sub-section (*7*) and sub-section (*8*) of section 43 shall be cognizable and no Court, inferior to that of a Chief Metropolitan Magistrate or as the case may be, Judicial Magistrate of the First Class or a Court superior thereto shall try any offence punishable under this Act.

(*2*) Save as those enumerated under sub-section (*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 authorized in writing in this behalf by the Bank, and no Court other than that of a Chief Metropolitan Magistrate or a Judicial Magistrate of the First Class or the Court superior thereto shall try such offence.

(*3*) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), a Magistrate if he sees reason so to do, may 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.

(*4*) 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 incurred by the Bank.

(*5*) It shall be lawful for any Police Officer, if authorised by an officer not below the rank of Superintendent of Police,—

(*a*) to enter, if necessary by force, whether by day or night with such assistance as he considers necessary, any premises which he has reason to suspect, are being used for purposes connected with the conduct of any financial institution or acceptance of deposit in contravention of the provisions of this Act;

(*b*) to search the said premises and the persons whom he may find therein;

(*c*) to take into custody and produce before any Judicial Magistrate all such persons as are concerned or against whom a complaint has been made or credible information has been received or a reasonable suspicion exists of their having been concerned with the use of the said premises for purposes connected with, or with the promotion or conduct of, any financial institution or acceptance of deposit in contravention of the provisions of this Act;

(*d*) to seize all things found in the said premises or elsewhere which are intended to be used, or reasonably suspected to have been used, in connection with any such activities as aforesaid;

(*e*) to examine any person having control of, or employed in connection with, any activities as aforesaid or any person connected with such activities;

(*f*) to order the production of any document, book or record in the possession or power of any person having the control of, or employed in connection with, any activities as aforesaid;

(*g*) to inspect and seize any records, register, books of account, documents or any other literature found in the said premises; and

(*h*) to submit necessary report for the purpose of taking any action against any such person for violation of any of the offences specified under sub-section (*1*).

(*6*) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall, apply insofar as they are not inconsistent with the provisions of this Act, to the searches and seizures made under this Act.

46. Power of banks to impose penalty.-(*1*) Notwithstanding anything contained in section 45, if a contravention or default other than those contained in sub-section (*1*) of that section, is committed by a financial company, the Bank may, impose on such financial company, 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 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 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 a notice issued by the Bank demanding payment is served on the financial company and, in the event of failure of the 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 principal place of business of the 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.

(*4*) The Court, which makes a direction under sub-section (*3*), shall issue a certificate, specifying the sum payable by the 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 financial company in any court 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 financial company in a court in respect of contravention or default of the nature referred to in section 45, no proceedings for imposition of penalty against that financial company shall be taken under this section.

CHAPTER IX

POWER TO MAKE RULES, REGULATIONS AND AMENDMENT OF RESERVE BANK OF INDIA ACT

47. Power to make rules.-(*1*) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

(*2*) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(*a*) the form of application, the documents and the fee which shall accompany such application under sub-section (*2*) of section 24;

(*b*) the manner of nomination of one person by the depositors under sub-section (*1*) of section 42;

(*c*) the manner of varying of cancelling the nomination in the event of death of the sole depositor or all the depositors under sub-section (*2*) of section 42;

(*d*) the manner in which a minor nominee may be made under sub-section (*3*) of section 42; and

(*e*) any other matter which is to be or may be, prescribed, or in respect of which provision is to be made or may be made by rules.

48. Power to make regulations.-(*1*) The Bank may, by notification, make regulations consistent with the provisions of this Act and the rules made thereunder to carry out the purposes of this Act.

(*2*) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

(*a*) determination of time, place and observation of such rules and procedures in regard to transaction of business at the meetings of the Advisory Council under sub-section (*5*) of section 3;

(*b*) the fees and allowances to be made to the nominated members, the manner of filling up of vacancy and the procedure to be followed in discharge of their functions under sub-section (*8*) of section 3;

(c) the period within which the recommendations shall be made by the Advisory Council to the Bank under sub-section (*2*) of section 4.

49. Rules and regulations to be laid before Parliament.-Every rule and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

50. Act not to apply in certain cases.-The provisions of this Act shall not apply to the State Bank of India or a banking company as defined in section 5 of the Banking Regulation Act, 1949 (10 of 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 (38 of 1959) or a Regional Rural Bank or a co-operative bank or a primary agricultural credit society or a primary credit society or an insurance company registered under the Insurance Act, 1938 (4 of 1938) or a company registered as a stock broker under the Securities and Exchange Board of India Act, 1992 (15 of 1992) or a company registered as merchant banker under the Securities and Exchange Board of India Act, 1992 or a housing finance institution which is a company registered under the National Housing Bank Act, 1987 (53 of 1987).

51. Provisions of this Act to override other laws.-The provisions of this Act 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.

52. Power to remove difficulties.-(*1*) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to it to be necessary or expedient for removing the difficulty:

Provided that no order shall be made under this section after the expiry of two years from the commencement of this Act.

(*2*) Every order made under this section shall be laid, as soon as may be after it is made before each House of Parliament.

53. Repeal of certain provisions of reserve Bank of India Act, 1934 and savings.-(*1*) Sections 45H to 45T, sub-sections (*4A*), (*4AA*), (*4AAA*), (*5*), (*5A*) and (*5B*) of section 58B, proviso to sub-section (*1*) of section 58-E and section 58G of the Reserve Bank of India Act, 1934 (2 of 1934) are hereby be repealed.

(*2*) Notwithstanding such repeal, anything done or any action taken under the provisions of the said Act shall, in so far as such things or action is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the provisions of the Act as if the said provisions were inforce when such things was done or such action was taken and shall continue in force accordingly until superceded by anything done or any action taken under this Act.

STATEMENT OF OBJECTS AND REASONS

The activities of the non-banking institutions and unincorporated bodies receiving deposits are regulated in terms of the provisions of Chapters III-B and III-C of the Reserve Bank of India Act, 1934. The Reserve Bank of India Act, 1934 was amended in 1997 to provide several safeguards for the Non-Banking Financial Companies (NBFCs) so as to ensure their viability. Some of such safeguards, *inter alia*, are compulsory registration of the NBFCs with the Reserve Bank of India (RBI), stipulation of minimum requirement of net-owned funds, creation of reserve fund and transfer of certain percentage of profits every year to the fund and prescription of liquidity requirement, issuing directions by the RBI encompassing aspects, such as, income recognition, accounting standards, provision for bad and doubtful debts, capital adequacy to ensure sound and healthy operations and the quality of assets of these companies, issuing directions to the auditors of the NBFCs, special audit of, the NBFCs, prohibition of acceptance of deposits by, the NBFCs, vesting powers with the Company Law Board for directing the defaulting NBFCs to make repayment of deposits.

2. Despite provision for above safeguards, it was felt that the existing provisions contained in the Reserve Bank of India Act, 1934 were not adequate because of the large number of defaulting NBFCs and the absence of an efficient and quick system for redressal of grievances of individual depositors. The Central Government appointed a Task Force on the NBFCs, *inter alia*, to go into the adequacy of the present legislative framework, to devise improvements in the procedure relating to depositors' complaints and to examine the need for separate regulatory agency. The Task Force considered various suggestions received from the NBFCs, representative organisations of the NBFCs, depositors' associations, State Governments and others and made wide ranging recommendations. While some of the recommendations of the Task Force have been given effect to through issue of directions by, the RBI under the provisions of the Reserve Bank of India Act, 1934, the implementation of RBI other recommendations require statutory force by an Act of Parliament.

3. To give effect to the recommendations of the Task Force and to remove certain difficulties in the administration of the provisions of Chapters III-B and III-C of the Reserve Bank of India Act, 1934, the Central Government has decided to enact a new legislation incorporating therein the provisions contained in the said Chapters of the Reserve Bank of India Act, 1934 with certain modifications and certain new safeguards to protect the interests of the depositors and regulate the financial institutions in a more effective manner. The salient features of the proposed legislation are as follows:—

(*a*) constitution of an Advisory Council consisting of Deputy Governor, RBI as the Chairperson and other members of the Council to advise and make recommendations on matters referred to it by the RBI;

(*b*) compulsory registration of all financial companies with the RBI;

(*c*) requirement of prior approval of the RBI for any substantial change in the management, change in location of its registered office and change in name of a financial company;

(*d*) enhancement in the ceiling of minimum net owned fund required for registration of a financial company receiving public deposits being raised from rupees two crores to rupees ten crores;

(*e*) provision requiring owned funds for registration of every financial company which does not receive public deposits with a minimum owned fund of rupees twenty-five lakhs which may be raised to rupees two crores by RBI;

(*f*) creation of reserve fund and investment of twenty-five percent. of such fund in specified unencumbered securities;

(*g*) provision for depositors to have first charge on certain assets of the financial companies which may default in repayment of public deposits and specified unencumbered securities created out of a part of reserve fund;

(*h*) regulating, or prohibiting from issuing advertisement by any non-banking institution;

(*i*) conferring powers upon the RBI to direct a financial company or a class of financial companies to seek prior approval for appointment of statutory auditors in certain cases;

(*j*) empowering the RBI to appoint one or more Special Officers;

(*k*) prohibition of financial companies receiving public deposits for carrying on business other than the business of financial institution;

(*l*) giving more powers to Board for Company Law Administration constituted under the Companies Act, 1956 for redressal of depositors' grievances;

(*m*) conferring upon the Board the powers prohibiting alienation of assets by financial companies and attachment and sale of assets of the financial company for effecting repayment of the deposits;

(*n*) prohibiting all unincorporated bodies from issuing advertisement in any manner for soliciting public deposits;

(*o*) making certain offences relating to unauthorised acceptance of public deposits as cognizable offences;

(*p*) making acceptance of public deposits by unincorporated bodies as a cognizable offence.

4. The Bill seeks to achieve the above objects.

YASHWANT SINHA.

NEW DELHI;

The 30*th November*, 2000.

FINANCIAL MEMORANDUM

Clause 3 of the Bill provides for constitution of the Advisory Council for Financial Institutions. The expenditure for the Advisory Council shall be borne by the Reserve Bank of India and no expenditure is envisaged out of the Consolidated Fund of India.

Clause 18 of the Bill provides for appointment of Special Officers by Reserve Bank of India. The expenditure relating to Special Officers shall be borne by the Reserve Bank of India and no expenditure is envisaged out of the Consolidated Fund of India.

Clause 24 of the bill provides for making an application to the Board for Company Law Administration by a depositor in the event of a financial company failing to replay and public deposit or part thereof. The Board for Company Law Administration is already existing and no additional expenditure is contemplated. This clause also provides for appointment of Recovery Officers, receivers and commissioners. They will be appointed from the existing officers in the Department of Company Affairs and the Board for Company Law Administration and, therefore, no additional expenditure is envisaged. The provisions of the Bill would not require any other recurring or non-recurring expenditure.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 47 of the Bill confers power upon the Central Government to make rules for carrying out the provisions of the Bill. The matter in respect of which such rules may be made relate, *inter alia*, to provide for the form of appreciation the documents and the fee which shall accompany such application under sub-section (2) of section 24; the manner of nomination of one person by the depositors under sub-section (1) of section 42; the manner of varying or cancelling the nomination in the event of death of the sole depositor or all the depositors under sub-section (2) of section 42; the manner in which minor may be nominee made under sub-section (3) of section 42; and any other matter which is to be, or may be, prescribed.

2. Clause 48 of the Bill confers power upon the Bank to make regulations consistent with the provisions of the Bill and the rules made thereunder to carry out the purposes of the Bill. The matters in respect of which such regulations may be made, relate *inter alia*, to provide for determination of time, place and observation of such rules and procedures in regard to transaction of business at the meetings of Advisory Council under sub-section (5) of section 3; the fees and allowances to be made to the nominated members, the manner of filling up of vacancy and the procedure to be followed in discharge of their functions under sub-section (8) of section 3 and the period written which the recommendations shall be made by the Advisory Council to the Bank under sub-section (2) of section 4.

3. The rules made by the Central Government and the regulations made by the Bank shall be laid, as soon as may be, after they are made, before each House of Parliament.

4. The matter in respect of which the rules and regulations may be made are generally matters of procedure and administrative details and it is not practicable to provide for them in the Bill itself. The delegation of the legislative power is, therefore, of a normal character.