

Prasanna Naganur & Associates is a firm of company secretaries and a research oriented firm and provides views on many legal amendments and its impact on the corporate society.

We are not any industry specific. We specialize in due diligence, corporate restructuring, transaction advisory, regulatory services, foreign direct investments, capital markets, investment advisory audits, listing under SME exchange, intellectual properties, shareholders disputes, Fund raising.

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# INSIGHT TO UPDATES

- Banking Sector
- Investment  
Advisors
- Mergers &  
Acquisitions

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PRASANNA NAGANUR &  
ASSOCIATES

Company Secretaries

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Greetings to all readers,

It is needless to say that Indian regulatory environment is very dynamic and it demonstrated with three major legal developments in Banking Sector, Capital Markets, Corporate Laws since from the beginning of 2013. It is also expected that the Companies Bill 2012 is also in pipeline to become a full fledged law with certain flexibilities to the entrepreneurs. We are hoping that the bill will be passed sooner.

Securities Exchange Board of India (SEBI) has issued a circular on January 21, 2012 notifying the SEBI (Investment Advisors) Regulations, 2013. SEBI intends to regulate the Investments advisors to protect the interest of public at large. Regulations provide a rigid environment in the Investment Advisory market and confer many duties on the advisors and provide many rights to the Investors. SEBI as a regulator operates as an Investigation agency and can conduct investigations sue moto. With this regulation SEBI strictly states that any person (natural or body corporate) providing the investment advisory services as defined under the regulations needs to have certificate of registration with it. Here are certain important terms that are provided under the regulations;

**“investment advice”** means advice relating to investing in, purchasing, selling or otherwise dealing in securities or investment products, and advice on investment portfolio containing securities or investment products, whether written, oral or through any other means of communication for the benefit of the client and shall include financial planning:

However, investment advice given through newspaper, magazines, any electronic or broadcasting or telecommunications medium, which is widely available to the public shall not be considered as investment advice for the purpose of these regulations.

Professionals such as company secretaries, chartered accountants, Lawyers, cost accountants providing investment advice which is incidental to their profession is not considered as investments advice. Similarly, a SEBI registered stock broker, fund manager of mutual funds, SEBI registered merchant bankers, Insurance agent, Investment advisory specializing in pension funds are also not covered under these regulations.

**“investment adviser”** means any person, who *for consideration*, is engaged in the business of providing investment advice to clients or other persons or group of persons and includes any person who holds out himself as an investment adviser, by whatever name called;

**“Consideration”** means any form of economic benefit including non-cash benefit, received or receivable for providing investment advice;

Any person, who falls under the definition of Investment advisor as per these regulations shall be required to register with SEBI and obtain a certificate of registration which has to be renewed after the expiry of every five years from the date of registration.

### **Registration Requirements:**

1. Applicants are required to have qualifications as provided under Regulation 7. If the applicant is an LLP then all its partners are required to have the said qualification, and in case of company all its directors need to have qualification.
2. Such applicants shall have to have tangible assets of Rs. 1,00,000 in case of an Individual or partnership and Rs. 25,00,000 net worth in case of body corporate.

Application for registration as Investment Advisor has to be made in Form A to the regulations; it shall provide information such as business plans, infrastructure, execution services and such other stringent pre requisites.

### **Certain General Obligations**

*Investment Advisor has to*

- Act in a fiduciary capacity to the clients
- Follow the KYC procedure as prescribed by the SEBI
- Abide by the code of conduct provided under the Schedule III to the regulations;
- Take the approval from the Board in change of control in its structure.
- Ensure that its representatives are having the qualification as prescribed under Regulation 7.
- Maintain the records as prescribed under the regulation 19 and is also required to get such records audited by a Company Secretary in whole time practice or a Chartered Accountant in whole time practice.
- Appoint a compliance Officer in case of a body corporate or partnership firm

### **Amendments in Banking Sector:**

Coming to banking sectors, Reserve Bank of India has released guidelines on licensing of Private Banks on February 21, 2013. Before looking at the new regulations, it is pertinent to see the back ground to these regulations. Since from the nationalization of 14 large banks in 1969 no private banks were registered. RBI has issued a press release in the year 1993 providing guidelines on licensing of new banks with certain conditions, like new banks have to be a company under the Companies Act, 1956, and shall have minimum paid up capital of Rs. 100 Crores, restrictions on voting rights, listing of its shares in stock exchanges, restriction on formation of subsidiary companies up to three years etc.

Now the RBI in its way to liberalize the banking Industry has opened the door for private banks.

While comparing with the guidelines issued in 1993, new guidelines provide liberality to the proposed bankers.

### **Key features of the guidelines are:**

- Eligible Promoters: Entities / groups in the private sector, entities in public sector and Non-Banking Financial Companies (NBFCs) shall be eligible to set up a bank through a wholly-owned Non-Operative Financial Holding Company (NOFHC).

- 'Fit and Proper' criteria: Entities / groups should have a past record of sound credentials and integrity, be financially sound with a successful track record of 10 years. For this purpose, RBI may seek feedback from other regulators and enforcement and investigative agencies.
- Corporate structure of the NOFHC: The NOFHC shall be wholly owned by the Promoter / Promoter Group. The NOFHC shall hold the bank as well as all the other financial services entities of the group.
- Minimum voting equity capital requirements for banks and shareholding by NOFHC: The initial minimum paid-up voting equity capital for a bank shall be `5 billion. The NOFHC shall initially hold a minimum of 40 per cent of the paid-up voting equity capital of the bank which shall be locked in for a period of five years and which shall be brought down to 15 per cent within 12 years. The bank shall get its shares listed on the stock exchanges within three years of the commencement of business by the bank.
- **Regulatory framework:** The bank will be governed by the provisions of the relevant Acts, relevant Statutes and the Directives, Prudential regulations and other Guidelines/Instructions issued by RBI and other regulators. The NOFHC shall be registered as a non-banking finance company (NBFC) with the RBI and will be governed by a separate set of directions issued by RBI.
- **Foreign shareholding in the bank:** The aggregate non-resident shareholding in the new bank shall not exceed 49% for the first 5 years after which it will be as per the extant policy.
- **Corporate governance of NOFHC:** At least 50% of the Directors of the NOFHC should be independent directors. The corporate structure should not impede effective supervision of the bank and the NOFHC on a consolidated basis by RBI.
- **Prudential norms for the NOFHC:** The prudential norms will be applied to NOFHC both on stand-alone as well as on a consolidated basis and the norms would be on similar lines as that of the bank.
- **Exposure norms:** The NOFHC and the bank shall not have any exposure to the Promoter Group. The bank shall not invest in the equity / debt capital instruments of any financial entities held by the NOFHC.
- **Business Plan for the bank:** The business plan should be realistic and viable and should address how the bank proposes to achieve financial inclusion.
- **Other conditions for the bank :**
  - The Board of the bank should have a majority of independent Directors.
  - The bank shall open at least 25 per cent of its branches in unbanked rural centres (population upto 9,999 as per the latest census)
  - The bank shall comply with the priority sector lending targets and sub-targets as applicable to the existing domestic banks.

- Banks promoted by groups having 40 per cent or more assets/income from non-financial business will require RBI's prior approval for raising paid-up voting equity capital beyond `10 billion for every block of `5 billion.
  - Any non-compliance of terms and conditions will attract penal measures including cancellation of license of the bank.
- **Additional conditions for NBFCs promoting / converting into a bank:** Existing NBFCs, if considered eligible, may be permitted to promote a new bank or convert themselves into banks.
  - **Corporate governance of NOFHC:** At least 50% of the Directors of the NOFHC should be independent directors. The corporate structure should not impede effective supervision of the bank and the NOFHC on a consolidated basis by RBI.
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  - **Business Plan for the bank:** The business plan should be realistic and viable and should address how the bank proposes to achieve financial inclusion.
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    - The Board of the bank should have a majority of independent Directors.
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    - The bank shall comply with the priority sector lending targets and sub-targets as applicable to the existing domestic banks.
    - Banks promoted by groups having 40 per cent or more assets/income from non-financial business will require RBI's prior approval for raising paid-up voting equity capital beyond `10 billion for every block of `5 billion.
    - Any non-compliance of terms and conditions will attract penal measures including cancellation of license of the bank.
- (xii) **Additional conditions for NBFCs promoting / converting into a bank:** Existing NBFCs, if considered eligible, may be permitted to promote a new bank or convert themselves into banks.

## Amendments in Securities Law:

Securities Exchange Board of India (SEBI) the Regulator of Indian Security market, on January 13, 2013 issued a circular bearing No. CIR/CFD/DIL/5/2013 through which it has amended the compliance requirement for listed companies with respect to scheme of arrangements under section 391 to 394 of the Companies Act, 1956.

This new circular imposes certain new obligations on the listed companies such making an application to the stock exchanges under clause 24 (f) of the Listing Agreement as per the Annexure I to the new circular along with documents as prescribed under para 2 of Part A. And it also requires other procedural formalities such as a valuation report from the Independent Chartered Accountant and more importantly such report shall be approved by the Audit Committee. In addition this requirements the circular mandates certain other obligations on the companies, below are the key obligations.

- Listed companies at the time of sending the notice to the shareholders for passing resolution on scheme of arrangement has to obtain an Observation Letter from the stock exchange and such letter has to be attached with notice of the members meeting where the scheme will be placed and such observation letter has to be attached with the petition to be filed with the High Court.
- Such observation letter and the scheme of arrangement as per the applicable sections of the Companies Act, 1956 and also the documents mentioned in Para 2 of Part A of Annexure I to this Circular has to be placed in the website of the company within 24 hours of receiving such letter.
- Scheme shall be submitted to the Hon'ble High Court within six months from the date of receipt of the observation letter.
- Listed companies shall ensure that the Scheme submitted with the Hon'ble High Court for sanction, provides for obtaining shareholders' approval through special resolution passed **through postal ballot and e-voting**, after disclosure of all material facts in the explanatory statement sent to the shareholders in relation to such resolution. **The Scheme shall also provide that the special resolution shall be acted upon only if the votes cast by public shareholders in favor of the proposal amount to at least two times the number of votes cast by public shareholders against it.**

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