Chronicle Advisors LLP
Our Expertise Your Prosperity

Email: abhinav@chronicleadvisors.in
rupali@chronicleadvisors.in
Cell: +918376070493;
+919990837122
www.chronicleadvisors.in

OVERVIEW OF NBFC TAKEOVER

A Non-Banking Financial Company (NBFC) is a form of business entity registered under the Companies Act, 1956 or the Companies Act, 2013. NBFCs are incorporated to engage in the business of financial lending and other financial functions. They are defined under section 45-IA of the RBI Act 1934. Such companies need to obtain a Certificate of Registration (COR) from RBI in order to commence financial business activity. This process is also known as **NBFC registration** or obtaining of an NBFC license from RBI.

Another way to commence such business activity is to go for the NBFC Takeover process.

NBFC TAKEOVER

A Takeover is a process by which one Company purchases the other Company. The Company making the purchase is the Acquirer Company while the one being bought is the Target Company.

The term Takeover of an NBFC means purchasing an existing NBFC by another company or NBFC. The takeover takes place only when both, the Target as well as the Acquirer, are already registered under the Companies Act.

NBFC Takeover Types:

NBFC Takeover can be done in two different ways:

1. ***Friendly Takeover:***

   It is a type of takeover which takes place between the companies with their mutual consent. The Acquirer Company offers the target company for being acquired and the same offer is being accepted by the target company.

2. ***Hostile Takeover:***

   Acquisition of the target company by the acquirer by going directly to the company's shareholders or fighting to replace management to get the acquisition approved. Usually this kind of takeover occurs when an entity attempts to take control of a firm without the consent or cooperation of the target company's Board of Directors.

Pros and Cons of an NBFC Takeover

Pros	Cons
Hiking up profits of the Target Company.	Amount paid during the takeover is less than the actual price in most cases.
Sales and Revenue climbing up.	Conflicts in the new management.
The scale of the economy showing a positive and upward trend.	The target company's hidden liabilities create further problems after the Takeover.
Reduction in the level of competition and competitive pressure.	Cultural clashes due to the merger of the two different companies.
Expansion in market share when two companies in the same domain unite.	These cultural clashes reduce the morale of employees.

Points to remember before taking over an NBFC

Before you opt for the takeover of an NBFC, following points must be considered:

1. Due Diligence of the Target Company;
2. Check the suitability;
3. Evaluate the financial position.

RBI Approval

1. To buy an NBFC, first, check whether the conditions need prior approval from the RBI?

2. Whether the transaction of taking the NBFC over is exempt from such approval?

   RBI has specified certain situations when the Acquirer needs its approval, before initiating the process of buying an NBFC. And for the rest of the cases, no such prior approval is required.

A. *When Prior Approval from RBI is required:*

Prior approval of RBI is required in case significant changes would be made in the management and control of the Target Company. The conditions that require prior approval of RBI are:

a.	Whether there may be or may not be a change in management after sale.
b.	Any change in shareholding of the Company which results in at least 26% of the selling or buying of Paid-Up Capital of the NBFC.
c.	In case of any change in the management of the company which would result in more than 30% director than prior written approval is required.

B. ***When Prior Approval from RBI is not required:***

The approval from RBI is not required in the following situations:

a.	If the shareholding goes beyond 26% as a result of buyback of shares or share reduction in capital after the approval of competent court has been taken.
b.	If there is a change in management by 30%, which includes the Independent Directors or by the rotation of Directors in Board.

Procedure of Application

If your NBFC takeover is meeting any of the above circumstances, then you need to apply to RBI for its approval. The application for the approval is to be made on the letterhead of the company and the following documents are to be attached:

1.	Certificate of Incorporation of Target Company;
2.	NBFC Registration Certificate of Target Company;
3.	Memorandum & Article of association of the Target Company;
4.	Last 3 years Financial Statement of the Target Company;
5.	Cibil Report of Acquirer(s);
6.	Information about the proposed Directors/shareholders, such as their ID proof, Address proof, Education, Qualifications and Experience proof;
7.	Sources of funds used for acquiring shares of the Target NBFC by the Acquirer;
8.	Declaration by all the proposed Directors/shareholders declaring their non-association with any organization that has been denied a Certificate of Registration by the RBI;
9.	Declaration of not having a criminal background and Non-conviction under Section 138 of the Negotiable Instruments Act by all the proposed Directors/shareholders;
10.	Declaration by all the proposed Directors/shareholders affirming their non-association with any entity accepting deposits;
11.	Banker's Report for the proposed Directors/ shareholders;
12.	Business plan of the Company for Next 5 Years.

Once the above documents are ready, the application is to be submitted to the Regional Office of the DNBS (Department of Non-Banking Supervision), of the district where the Registered Office of the NBFC is located. RBI may pose some queries or ask for clarifications or proofs on points mentioned in the application for approval. All such queries must be answered, well in time, so that your application with RBI doesn't get delayed.

Generally, approval from RBI takes about 2-3 months, depending on the case.

Public Notice

If the Takeover causes change in Management/Control, a 30 days prior notice shall be given in one leading national newspaper and one local newspaper stating the transfer of ownership or control by sale of shares *(whether with or without transfer of shares).*

A Public Notice shall contain the following things:

a.	Particulars of the Transferee.
b.	Intention of selling or transferring the Ownership or Control.
c.	Reasons for selling or transferring the Ownership or Control

Procedure for NBFC Takeover

On getting the approval from RBI approval for the takeover, a public notice is to be given in one leading national and one leading local newspaper at least 30 days before such sale of shares, or transfer of control, is to take place, whether it is with or without share transfer.

A. **MOU (Memorandum of Understanding):** For taking over an NBFC, at first, an MOU is signed with the Target Company. It specifies that both the companies are agreeing to the takeover. It is signed by the Directors of both the companies i.e. Acquirer Company and the Target Company. At the time of endorsing MOU, token money is handed to the Target Company by the Acquirer. MOU defines the responsibilities and requirements of each party.

B. **Convening of Board Meeting:** After the MOU has been signed, a Board Meeting shall be convened in both the companies to discuss the following matters;

   a. Date, timing, place of convening Extra Ordinary General Meeting (EGM).
   b. For passing required resolutions to take over an NBFC, in the EGM.
   c. Replying to the queries from RBI about the takeover scheme.

C. **Public Notice:** After the application for takeover has been approved by the RBI, a public notice to invite any objection of the public on the takeover. This notice is to be published in two leading newspapers *(as mentioned in the previous heading)* within 30 days of such approval.

D. **Share Transfer Agreement:** After 31 days have been passed of the newspaper notice being published, the Share Transfer Agreement is to be signed and the remaining consideration to be paid to the Target company.

E. **NOC from Creditors:** A NOC (No Objection Certificate) from the creditors of the Target Company is to be taken before the sale of business or transfer of business.

F. **Assets Transfer:** If no objections have been received and the RBI has approved the takeover then the transfer of assets shall take place. But the transfer should not violate any clause of the agreement.

G. **Evaluation:** The Target Company gets evaluated. This shall be following the rules provided by RBI. The approved technique for evaluation is DCF i.e. Discounted Cash Flow Method. This determines the net present value of the entity. Afterward, a certificate shall be obtained from a Chartered Accountant briefing the method adopted for valuation.

H. **Notice to Regional Office:** Now an application is to be submitted to the Regional Office of RBI. It must be on the letterhead of the company. All changes in the management structure of the NBFC after the takeover is also to be intimated continuously to RBI. The application contains details about:

   a. ID, address, and qualifications of the proposed directors and shareholders.
   b. Shareholders who are acquiring the NBFC and their source of funds.
   c. Declaration by the Directors and the shareholders that they are not associated with any unincorporated entity which is accepting the deposit.
   d. Declaration by the Directors that no criminal proceedings have been initiated against them in the past or are pending against them in any court of law.

How Chronicle Advisors can help you-

We, at Chronicle Advisors help you to take over the Management of an Existing NBFCs and further engage with the Regional Departments of RBI for getting the same approved. Chronicle Advisors can assist you with hassle free NBFC Takeover in India. Our professional team helps our client on "turnkey" methodology which takes care of approvals, legal compliances, registrations with authorities etc.

---*****---