

NBFC – Factors

Q.1. What is Factoring?

The Factoring Act, 2011 defines the 'Factoring Business' as "*the business of acquisition of receivables of assignor by accepting assignment of such receivables or financing, whether by way of making loans or advances or in any other manner against the security interest over any receivables*". However, credit facilities provided by banks in the ordinary course of business against security of receivables and any activity undertaken as a commission agent or otherwise for sale of agricultural produce or goods of any kind whatsoever and related activities are expressly excluded from the definition of Factoring Business. The Factoring Act has laid the basic legal framework for factoring in India.

Q 2. What is an NBFC-Factor?

Ans. NBFC- Factor means a non-banking financial company fulfilling the Principal business criteria i.e. whose financial assets in the factoring business constitute at least 75 percent of its total assets and income derived from factoring business is not less than 75 percent of its gross income, has Net Owned Funds of Rs. 5 crore and has been granted a certificate of registration by RBI under section 3 of the Factoring Regulation Act, 2011.

Q 3. What are the entry point norms for NBFC-Factor?

Ans, Every company registered under Section 3 of the Companies Act 1956 seeking registration as NBFC-Factor shall have a minimum Net Owned Fund (NOF) of Rs. 5 crore. Existing companies seeking registration as NBFC-Factor but do not fulfil the NOF criterion of Rs. 5 crore may approach the Bank for time to comply with the requirement.

Q 4. What would happen with the existing companies registered with RBI as NBFCs and conducting factoring business that constitute less than 75 percent of total assets / income?

Ans. Such a company shall have to submit to RBI, a letter of its intention either to become a Factor or to unwind the business totally, and a road map to this effect. The company would be granted CoR as NBFC-Factor only after it complies with the twin criteria of financial assets and income. If the company does not comply within the period as specified by the Bank, it would have to unwind the factoring business.

Q 5. Is it compulsory for all entities to get registered with RBI to conduct factoring business?

Ans. Yes. An entity not registered with the Bank may not conduct the business of factoring unless it is an entity mentioned in Section 5 of the Act i.e. a bank or any corporation established under an Act of Parliament or State Legislature, or a Government Company as defined under section 617 of the Companies Act, 1956.

Q.6. If a company does not fulfill the principal business criteria for factoring and has no intention of getting itself registered as a Factor with the Bank, can it continue to do factoring activities with its group entities.

Ans : No. As per Section 3 of the Factoring Act 2011, no Factor can commence or carry on the factoring business without a) obtaining a CoR from the Reserve Bank, b) fulfilling the principal business criteria.

Q.7. Can NBFC-Factors undertake Import and Export Factoring?

Ans : Yes, however, such NBFC-Factors will need to obtain the necessary authorization from the Foreign Exchange Department of the Bank under FEMA 1999 as amended and adhere to all the FEMA regulations in this regard.

Q.8 Is it necessary for NBFC-Factors to register every factoring transaction with the Central Registry?

Under Section 19 of the Factoring Act, 2011 every Factor is under obligation to file the particulars of every transaction of assignment of receivables in his favour with the Central Registry to be set-up under section 20 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002), within a period of thirty days from the date of such assignment or from the date of establishment of such registry, as the case may be.

Q.9 Do NBFC-Factors have to comply with a separate set of prudential regulations?

Ans : No, The provisions of Non-Banking Financial (Non-deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank) Directions, 2007 or Non-Banking Financial (Deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank) Directions, 2007, as the case may be and as applicable to a loan company shall apply to an NBFC-Factor.

Q.10. Are there a separate set of Returns that the NBFC-Factor has to submit?

Ans : The submission of returns to the Reserve Bank will be as specified presently in the case of registered NBFCs.