

# Update



## Chapter V – Acceptance of Deposits by Companies (Sections 73 – 76 of Companies Act, 2013)

### Highlights on draft rules issued by MCA

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## Note

The Ministry of Corporate Affairs (“MCA”) has come up with Phase III of the Draft Rules on three chapters of the Companies Act, 2013 (“the Act”) on October 22, 2013. These Rules are open for public comments till November 1, 2013.

We present below a brief discussion on the draft rules under Chapter V, pertaining to *Acceptance of Deposits by Companies*, which have laid down Companies (Acceptance of Deposit) Rules, 2013.

### **Exemption from the Rules [Clause 1.3]**

The Rules are applicable to all companies except:

- (i) Banking Companies
- (ii) NBFCs registered with RBI

### **Definitions [Clause 2]**

‘**Deposit**’ includes any receipt of money by way of deposit or loan or in any other form, by a company, but does not include-

- (i) Amounts received from CG / SG / from any source whose repayment is guaranteed by CG or SG;
- (ii) Amounts received from foreign government / foreign banks / multilateral financial institutions / foreign government owned development financial institutions / foreign export credit agencies / foreign collaborators / foreign bodies corporate / foreign citizen subject to the provisions of FEMA Act, 1999;
- (iii) Loans or facility received from any banking company / co-operative banks;
- (iv) Loan or financial assistance from PFIs, regional financial institutions, Insurance Companies, Scheduled Banks and Mutual Funds registered with SEBI;
- (v) any amount received against issue of commercial paper or any other instrument issued in accordance with the guidelines or notification issued by the RBI
- (vi) Inter-corporate Deposits
- (vii) Amount received by way of subscriptions to any security including share application money / advance towards allotment which is pending. *Provided that* allotment is to be made within 60 days of receipt of such money failing which money is to be refunded within the next 15 days. If the same is not complied with within the abovementioned 75 days, such application money / advance shall be treated as deposit under the Rules.
- (viii) Amounts received by private companies from directors / shareholders of private companies. Also monies received from any or all of the joint shareholders, whose names are registered in the Register of Members of the company shall be treated as monies received from shareholders;



## Note

- (ix) Amount raised by the issue of bonds or debentures secured by a first charge or a charge ranking pari passu with the first charge on any assets referred to in Schedule III of the Act excluding intangible assets / bonds or debentures which are compulsorily convertible into shares of the company within five years;
- (x) Amount received from an employee not exceeding his annual salary, under a contract of employment which is in the nature of non-interest bearing security deposit;
- (xi) Non-interest bearing amount received or held in trust;
- (xii) Amounts received in the course of business as:
  - a. an advance for supply of goods or services provided it is appropriated against such supply within 180 days of acceptance;
  - b. advance received under an agreement of sale of property provided that such agreements are registered under applicable Registration acts;
  - c. as security deposit for performance of a contract for supply of goods or services;
  - d. Advance received under long term projects / supply of capital goods.

Provided that such amounts shall be treated as deposits if the same becomes refundable since the company did not have the necessary permission / approval to deal in such goods or services or properties.

- (xiii) Unsecured loan brought in by promoters according to agreement with term lending institutions or banks.

**'Depositor'** means any member making deposit u/s 73 or any person making deposit u/s 76 of the Act.

**'Eligible Company'** means a public company u/s 76,

- a. having net worth of not less than 100 crores or turnover of not less than 500 crores ;
- b. Obtained approval of members by special resolution;
- c. Has filed the said resolution to the RoC / RBI, if applicable, before making invitation to public.

### **Acceptance of deposit by companies [Clause 3]**

This Clause lays down certain restrictions on acceptance of deposits by companies.

1. Companies shall not accept / renew deposits repayable on demand or upon receiving a notice within a period of less than 6 months or more than 36 months from the date of acceptance / renewal.
2. The company may accept / renew deposits for less than 6 months, if



## Note

- a. Such deposits do not exceed 10% of aggregate share capital and free reserves; and
  - b. Minimum tenure of be 3 months.
3. In case of joint shareholding, maximum number of shareholders shall not exceed 3.

### **Limits on Acceptance of Deposits [Clause 4]**

This Clause provides that companies u/s 73(2) shall not accept any deposit if the amount of such deposit together with all other outstanding deposits exceeds 25% of aggregate share capital and free reserves.

It also provides that no Eligible company shall accept / renew:

- (a) Deposits from members if such deposits + all other outstanding deposits from members exceeds 10% of aggregate share capital and free reserves.
- (b) Any other deposit, if the amount of such deposit (except deposit from members) + all other outstanding deposits exceeds 25% of aggregate share capital and free reserves.

### **Rate of Interest [Clause 6]**

Clause 6 lays down that the rate of interest paid on deposits shall not exceed the maximum rate prescribed by RBI for acceptance of deposits by NBFCs.

Similar is provision for payment of brokerages. Provided that only persons authorized by companies to solicit deposits on its behalf shall be entitled to brokerages.

### **Advertisements / Circulars [Clauses 7-12]**

- (1) Companies inviting deposits from members shall dispatch a circular to its members or publish it in the form of an advertisement in Form 1.
- (2) Eligible companies to publish such circular in form of an advertisement in Form 1.
- (3) Eligible companies to upload such circular on its website.
- (4) Such circular, signed by majority of directors, shall be filed with RoC atleast 30 days before its issue.
- (5) Such circular / advertisement shall remain valid for 6 months from closure of the financial year / date on which the financial statements are laid at an AGM / last date on which the AGM was supposed to be held, whichever is earlier.



## Note

### **Deposit Insurance [Clause 13]**

- (1) It provides that companies inviting deposits u/s 73 or 76 shall enter into a contract for providing deposit insurance atleast 30 days before issue of circular or advertisement.
- (2) In case the company defaults, the depositor is entitled to repayment of its deposit by the insurer upto the aggregate monetary ceiling provided in the contract.  
Provided that the contract shall specify that:
  - (a) Where such deposit does not exceed Rs. 20,000/-, full amount shall be refunded to the depositor;
  - (b) Where deposit is in excess of Rs. 20,000/- payment of an amount not less than Rs. 20,000/- shall be refunded.

Provided that the deposit insurance shall be for both principal and interest component of the deposit.

- (3) Insurance premium shall be borne by the company and shall not be recovered from the depositor.
- (4) In case of default in complying with the terms of deposit insurance, rectification shall be made within 30 days, failing which the amount of deposit insured shall be repaid within the next 15 days. Any further non-compliance shall attract liability as provided in the Act.

### **Creation of Security [Clause 14]**

Companies inviting secured deposits u/s 73 or 76 shall create a charge on its assets, as appearing in the balance sheet under Schedule III, excluding intangible assets for an amount not less than the amount remaining unsecured by way of deposit insurance. Such security (not being pledge), either on movable or immovable property, shall be created in favour of a trustee for the deposit holders.

Provided that the amount of such deposit (principal + interest) shall not exceed the market value of the assets on which charge was created.

The company shall also ensure that the total value of deposit (principal + interest) is secured, either by way of deposit insurance or by way of creation of charge on the assets.

### **Deposit Trustees [Clause 15 - 17]**

Clauses 15 – 18 provides for appointment, roles and responsibilities of deposit trustees and meeting of depositors.



## Note

1. Every company inviting deposits u/s 73 or 76 shall appoint deposit trustees for creating security for its deposits, which shall be mentioned on the circular or advertisement to be issued.
2. A deposit trust deed shall be executed in Form 2 atleast 7 days before issue of the circular or advertisement.
3. None of the following person can be appointed as deposit trustees:
  - (a) is a director / KMP / any other officer / an employee of the company or of its holding, subsidiary or associate company or a depositor in the company or their relatives;
  - (b) is indebted to the company / its subsidiary / its holding or associate company
  - (c) has any material pecuniary relationship with the company
  - (d) has entered into any guarantee arrangement in respect of principal debts secured by the deposits or interest thereon
4. Deposit trustees cannot be removed after issue of circular / advertisement and before the expiry of his term except with unanimous consent of all directors present at the meeting of the Board, which shall include an independent director, if any.
5. Meeting of depositors shall be called by the deposit trustees :
  - (a) provided a requisition in writing is filed by 1/10<sup>th</sup> of depositors in value; or
  - (b) upon a default affecting the interest of the depositors.

### **Form of application and furnishing of deposit receipt [Clauses 18 – 21]**

Clauses 18 and 19 provides that every intending depositor intending to accept the deposit invitation made by the company shall submit an application to the company, in a form prescribed by the company, declaring that the deposit is not being made from money borrowed by it. The depositor may also make a nomination in this behalf.

Clause 20 provides that the company shall furnish a deposit receipt to the depositor upon acceptance / renewal of a deposit within 2 weeks of the date of receipt of money or realization of cheques.

### **Deposit Redemption Reserve Account [Clause 22 and 23]**

1. Companies accepting deposits u/s 73 and 76 shall deposit not less than 15% of the amount of deposit maturing during the current and next financial year in a deposit repayment reserve account maintained with a scheduled bank, which shall be kept free from charge or lien.



## Note

2. Such amount shall be deposited within 30<sup>th</sup> of April every year.
3. Such amount shall not fall below 15% of the deposits maturing during the current and next financial year and shall not be utilized for any purpose other than for repayment of deposits.

### **Alteration of terms or conditions [Clause 24]**

No terms or conditions of the deposit, trust deed, or deposit insurance shall be altered or modified after its issue.

### **Register of Deposit [Clause 25]**

1. Companies accepting deposits shall maintain a register of deposits, entering particulars of each depositor, as provided in the Rules, within 7 days of issue of the deposit receipt.
2. Entries made shall be authenticated by a director / company secretary / any officer authorized by the Board.
3. Such register shall be preserved for atleast 8 years from the financial year on which the last entry was made.

### **Prepayment of Deposits [Clause 26]**

1. This Clause provides that in case of premature repayment of deposits, being not earlier than 6 months, the rate of interest shall be 1% less than what the depositor would have earned if he would have continued till actual maturity or the contracted rate, whichever is lower.
2. Exceptions to the above Rule:
  - (a) Prepaid to comply with the NBFC (Reserve Bank) Directions, 1966; or
  - (b) For complying with provisions of Rule 3 i.e. acceptance of deposits; or
  - (c) providing war risk or other related benefits to the personnel of the naval, military or air forces or to their families
3. If a company u/s 73 or an Eligible company permits a depositor to renew his deposit before its maturity for availing higher rate of interest, such higher rates shall be applicable if the deposit is renewed in accordance with the provisions of these Rules and for a period exceeding the actual maturity period.

## *Note*

### **Return of Deposit to be filed with Registrar [Clause 27]**

Every company to which these rules apply shall file to the RoC, within 30<sup>th</sup> June of every year, a return Form 3 containing information as on 31<sup>st</sup> March of that year. Such return shall be duly audited by the auditor who shall also file his report.

Such report shall be simultaneously filed with the RBI, if applicable.

### **Penal Rate of Interest [Clause 28]**

Penalty @ 18% p.a. on the overdue period shall be payable on the unpaid amount of deposits which have matured and been claimed.

### **Applicability of Sections 73, 74 and 75 on Eligible companies [Clause 30]**

1. Sections 73, 74 and 75 shall apply to Eligible companies accepting public deposits
2. This Clause also clarifies that deposits accepted under Companies Act, 1956 and rules made thereunder and complying with those provisions and terms of the such earlier deposits, shall be deemed to have complied with the provisions of section 74(1)(b). In case of default, the provisions of section 74(2) shall apply failing which penalties u/s 74(3) and 75 shall apply.
3. All fresh deposits shall be made in accordance with Chapter V of the Act and these Rules.

### **Penalty for contravention [Clause 31]**

In case of contravention of any provision of these Rules, for which no penalty has been provided under the Act, every officer of the company in default or such other person shall be punishable with fine which may extend to Rs. 10,000 and where contravention is a continuing one, with a further fine which may extend to Rs. 1,000 for every day after the first day during which the contravention continues.

In case the RoC, either by himself or on representation, is satisfied that a company has accepted deposits for fraudulent or unlawful purpose, he may initiate action u/s 206(4) of the Act.