

De Jure

July 02, 2016

Amendment to Companies (Acceptance of Deposit) Rules, 2014



The Ministry of Corporate Affairs ("MCA") has issued the Companies (Acceptance of Deposits) Amendment Rules, 2016 on June 29, 2016 ("**Amended Deposit Rules**") which sets out various amendments to the Companies (Acceptance of Deposits) Rules, 2014 ("**Deposit Rules, 2014**").

The definition of the term deposit¹ is an inclusive definition which covers any receipt of money by way of deposit or loan or in any other form except for certain amounts. Thus, the definition has to be read with the negative list set out in the Deposit Rules, 2014 popularly referred to as the exclusions. The exclusions, *amongst others*, covers any amount received from the Central Government or State Government or any banking company or a Public Financial Institution, received against issue of commercial paper, received as subscription amount or share application money, raised by issue of secured debentures or compulsorily convertible debentures, etc.

AMENDMENT TO DEFINITION OF DEPOSIT

Amongst other amendments, the Amended Deposit Rules, have included some additional exceptions to the term deposit as defined under the Deposit Rules, 2014 namely:

- **Compulsorily Convertible Debentures.** Any amount raised by debentures compulsorily convertible with tenure of 10 years. [\[Our View: Earlier, only debentures converting within a period of 5 years was covered under such exemption.\]](#)
- **Non-Convertible Debentures.** Any amount raised by unsecured NCD listed on a Stock Exchange. [\[Our View: This is a new exemption that enables companies to issue NCDs without creating any charge on their assets provided that they are listed. This is a breather for companies as opposed to the Deposit Rules, 2014 which required creation of charge for issue of any kind of NCDs.\]](#)
- Any non-interest bearing amount received **and** held in trust. [\[Our View: This is a minor variation by replacing "or" with "and", and would cover amounts held in escrow.\]](#)
- Any amounts received during the **course of business** of the Company in relation to-
 - (a) agreements for providing future services in the form of warranty or maintenance;
 - (b) any amounts received pursuant to directions of government or by any sectoral regulator;
 - (c) any advance received for subscription towards publication. [\[Our View: These are in addition to the four existing exceptions, which](#)

¹ Rule 2(1)(c) of the Companies (Acceptance of Deposits) Rules, 2014

enhances the normal business operations of companies.]

- Subscription amount received in respect of a chit under the **Chit Fund Act, 1982**. [*Our View: Earlier, only amounts accepted by a Nidhi Company were covered under the ambit of these exceptions.*]
- **SEBI regulated Schemes or Funds**. Any amounts received by a company under any Collective Investment Scheme or from a registered Alternate Investment Funds, Domestic Venture Capital Funds and Mutual Funds registered with SEBI. [*Our View: This newly introduced exception is a good move since CIS, AIF, DVCF and Mutual Funds are in any event regulated by SEBI.*]
- **Start-Up**. Any amount of Rs. 25,00,000 or more raised by way of a convertible note by a Start-Up company. The highlights of this exemption have already been discussed in our De Jure circulated on July 1, 2016.

OTHER HIGHLIGHTS OF THE AMENDMENT

- **Enhancement of limit upto 35%** of paid up share capital, free reserves and securities premium account as opposed to 25% earlier for acceptance of deposits.
- **For private companies**. Acceptance of monies from members not exceeding 100% of paid up share capital, free reserves and securities premium account.
- **Minimum Credit Rating requirement**.
- **Advertisement** in Form DPT-1 for the purpose of inviting deposits.
- **Disclosure in the Financial Statement**. Private companies to disclose money received from the directors, or relatives of directors and other companies to disclose only money received from the directors.
- **Issue of a disclaimer** alongwith Form DPT-1.

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