



The MCA amends certain provisions in deposits rules

20 July 2016

First Notes on

Financial Reporting

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Disclosures

Sector

All

Banking and Insurance

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Relevant to

All

Audit committee

CFO

Others

Transition

Immediately

Within the next 3 months

Post 3 months but within 6 months

Post 6 months

Background

The Companies Act, 2013 (2013 Act) and the Companies (Acceptance of Deposits) Rules, 2014 (the Rules) prescribe the requirements companies should meet to accept deposits.

In the past, the Ministry of Corporate Affairs (MCA) has issued various clarifications/ amendments to certain provisions of Rules vide its circulars dated 31 March 2015 and 16 September 2016.

New development

Recently, on 29 June 2016, MCA through a notification issued Companies (Acceptance of Deposits) Amendment Rules, 2016 which make certain amendments to the Rules. The amendments have come into force from the date of their publication in the official gazette i.e. from 29 June 2016.

This issue of First Notes summarises the important amendments to the Rules made by MCA.

Amendment in the definition of deposit- new/amended exclusions:

- **Amounts raised through bonds or debentures**

- Currently, the amounts raised by the issue of bonds or debentures that are compulsorily convertible into shares of the company within five years are not considered as deposits. The time period of five years has now been amended to 10 years (Clause 2(1)(c)(ix)).

- A new sub-clause 2(1)(c)(ixa) has been inserted which states that amounts raised by the issue of non-convertible debentures not secured by a charge on the assets of the company and listed on a recognised stock exchange as per applicable regulations made by the Securities and Exchange Board of India (SEBI) will not be considered as deposits.

- **Advances received during the course of, or for the purposes of business, of the company**

- a) The MCA has inserted new sub clauses (e), (f) and (g) in Rule 2(1)(c)(xii). These sub-clauses exclude from the definition of deposits the following items:

- An advance received for providing future services in the form of a warranty or maintenance contract as per written agreement or arrangement; where the period of such services does not exceed the period prevalent as per common business practice or five years from the date of acceptance of service (whichever is less).
- Advances received and as allowed by any sectoral regulator or advance received in accordance with the directions of the central or state government.

Amendment in the definition of 'deposit'- new/amended exclusions (Continued)

- Advance for subscription towards publication (whether in print or electronic form) that would be adjusted against the receipt of such publications.
- b) However, if the amounts received in the course of or for the purposes of business, of the company under clause 2(1)(xii), shall be deemed to be deposits on the expiry of 15 days from the date they become due for a refund.
- **Amounts received as subscriptions under a chit fund/collective investment scheme/or by a start-up company**

The MCA has inserted new sub clauses (xv), (xvi), (xvii) and (xviii) in Rule (2)(1)(c). These sub-clauses exclude from the definition of deposits the following items:

- Amounts received by way of subscription in respect of a chit under the provision of the Chit Fund Act, 1982.
- Amounts received by a company under any collective investment scheme in compliance with regulations framed by SEBI.
- Amounts of INR25 lakh or more received by a start-up company, by way of a convertible note (convertible into equity shares or repayable within a period not exceeding five years from the date of issue) in a single tranche, from a person.
- Any amount received by a company from Alternate Investment Funds, Domestic Venture Capital Funds and Mutual Funds registered with SEBI.
- **Receipt of non-interest bearing amounts**
 - Under the current Rules, any non-interest bearing amounts received by a company for any purpose or for the purpose of being 'held in trust' were not considered as deposits. The amendment excludes 'non-interest bearing amounts received by a company and held in trust' from the definition of 'deposit' (Rule 2(1)(c)(xi)).

Increase in base for accepting deposits

- **Amendment to the limit on acceptance of the deposit rule**

Currently, no company (referred under Section 73(2) of the 2013 Act) is allowed to accept or renew any deposit from its members, if the amount of such deposits together with the amount of other deposits outstanding as on the date of acceptance or renewal of such deposits exceeds 25 per cent of the aggregate of the paid-up share capital, free reserves and securities premium account of the company.

This limit of 25 per cent has now been increased to 35 per cent.

- **Exemption to private companies**

Currently, Section 73(2) of the 2013 Act permits a company to accept deposits from its members subject to the specified conditions. On 5 June 2015, MCA had exempted private companies from applying clauses (a) to (e) of Section 73(2) of the 2013 Act if:

- They accept monies from their members not exceeding 100 per cent of the aggregate of the paid-up share capital and free reserves, and
- Inform the details of such monies to the Registrar of Companies (ROC) in the prescribed manner.

The amendment in the Rules now clarifies and includes that private companies could also use securities premium account while calculating the limit for accepting deposits.

Credit rating agencies and minimum investment grade rating prescribed

- Currently, the Rules require that every eligible company should obtain, at least once in a year a credit rating for deposits accepted and file a copy of the rating to the ROC along with the return of deposits in Form DPT-3.

The amended Rules now require that the credit rating should not be below the minimum investment grade rating or other specified credit ratings for fixed deposits from any one of the approved credit rating agencies as specified for Non-Banking Financial Companies in the Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 1998 (issued by the Reserve Bank of India; and as amended from time to time).

Disclosure in the notes to financial statements

- Currently, Rule 2(1)(c)(viii) provides that all companies are required to disclose in the Board's report details of any amount received from a person who, at the time of the receipt of the amount, was a director of the company or a relative of the director of the private company accepted in the Board's report.
- A new Rule 16A has been inserted now which requires:
 - Every company (other than a private company) to disclose in its financial statements by way of notes about the money received from the directors.

- Private companies are required to disclose by way of a note, money received from directors or relatives of directors.

Other amendments

- **Deposit insurance:** Currently, companies can accept deposits without a deposit insurance contract till 31 March 2016.

The MCA amendment now permits companies to accept deposits without a deposit insurance contract till 31 March 2017 or till the availability of a deposit insurance product, whichever is earlier (Rule 5(1)).

- **Advertisement to invite deposits from public:** Currently, an eligible company, intending to invite deposits is required to issue a circular in the form of an advertisement in Form DPT-1 in English in an English newspaper and in a vernacular language in a newspaper published in that same language. The newspapers should have a wide circulation in the state in which the registered office of the company is situated.

The amended Rules now require the eligible company to issue the circular in the form of an advertisement in Form DPT-1 in English in an English newspaper having **country-wide circulation; and the circular is also required to be placed on the website of the company, if any** (Rule 4(2)). (*Emphasis added to present changes*)

- **New disclaimer requirement in DPT-1:** The MCA has added a disclaimer to the form DPT-1. The disclaimer states:

'It is to be distinctly understood that filing of circular or circular in the Form of advertisement with the Registrar should not in any way be deemed or construed that the

same has been cleared or approved by the registrar or central government. The registrar or central government does not take any responsibility either for the financial soundness of any deposit scheme for which the deposit is being accepted or invited or for the correctness of the statements made or opinions expressed in the circular or circular in the Form of advertisement. The depositors should exercise due diligence before investing in the deposits schemes.'

- **New definitions:** The MCA has added the definitions of start-up company and convertible notes in the Rules which are as below:

- **A start-up company** has been defined as a private company incorporated under the 2013 Act or under the Companies Act, 1956 and is notified under G.S.R. 180(E) dated 17 February 2016 issued by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry.
- **A convertible note** is defined as an instrument issued on receipt of money, which is initially received as a debt and is repayable at the option of the holder of the instrument, or is convertible in equity shares of the start-up company upon occurrence of specified events and as per other terms and conditions agreed to. The number of equity shares, specified events and other terms and conditions are indicated in the instrument.

Our comments

- The amendments can help with ease of doing business for companies for example the new exclusions from the definition of deposits include start-up companies receiving amounts of INR25 lakh or more by way of a convertible note in a single tranche, increase in the base for accepting of deposits, extending time period for companies to accept deposits without a deposit insurance contract till 31 March 2017, etc.

The bottom line

The companies should carefully monitor whether amounts raised through bonds, debentures or advances received during the course of, for the purposes of business would fall within the definition of deposits.



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KPMG in India's IFRS institute



KPMG in India is pleased to re-launch its IFRS institute - a web-based platform, which seeks to act as a wide-ranging site for information and updates on IFRS implementation in India.

The website provides information and resources to help board and audit committee members, executives, management, stakeholders and government representatives gain insight and access to thought leadership publications that are based on the evolving global financial reporting framework.

IFRS Notes



Ind AS Transition Facilitation Group (ITFG) issues clarifications - Bulletin 3

13 July 2016

The ITFG held its third and fourth meeting on 23 May 2016 and 22 June 2016, respectively, and issued its third bulletin (Bulletin 3) on 2 July 2016 to provide clarifications on 14 issues in relation to the application of Ind AS, as considered in its meetings.

Our issue of IFRS Notes provides an overview of key clarifications provided by the ITFG.

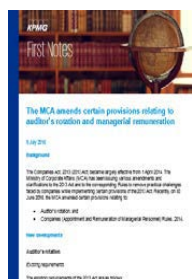
Missed an issue of Accounting and Auditing Update or First Notes?



June 2016

The June 2016 issue of the Accounting and Auditing Update focusses on the consumer markets sector and highlights key matters relating to accounting, financial reporting and regulatory areas relevant to this sector. The Indian Accounting Standards (Ind AS) largely converged with the International Financial Reporting Standards (IFRS) are bringing about a paradigm shift in financial reporting in India. Our article highlights two key areas of impact: revenue recognition and the consideration of embedded leases and explains the new accounting requirements in these areas and the expected challenges that are likely to be faced by the sector. The publication also features an interaction with Mr. V. Srinivasan, Chief Financial Officer and Company Secretary, Godrej Consumer Products Limited and explores some key accounting, reporting and other topical matters relevant to the industry. This publication also carries an article on fraud risk, which assesses key implications of fraud risk areas on this sector. We also seek to highlight considerations and challenges that companies in this sector could face while implementing Internal Financial Controls and key updates in the Foreign Direct Investment policy relating to this sector.

In this publication, we lay emphasis on how transfer pricing affects the sector, via complex issues relating to advertisement, marketing and promotion expenditure and an overview of the recent judgements of Indian courts in this area. We also cast our lens on distinct features and challenges associated with accounting and reporting for the liquor industry, a key sub-sector within consumer markets.



The MCA amends certain provisions relating to auditor's rotation and managerial remuneration

8 July 2016

The Companies Act, 2013 (2013 Act) became largely effective from 1 April 2014. The Ministry of Corporate Affairs (MCA) has been issuing various amendments and clarifications to the 2013 Act and to the corresponding Rules to remove practical challenges faced by companies while implementing certain provisions of the 2013 Act. Recently, on 30 June 2016, the MCA amended certain provisions relating to:

- Auditor's rotation, and
- Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014.

Our First Notes provide an overview of the amendments made by the MCA.



KPMG in India is pleased to present Voices on Reporting – a monthly series of knowledge sharing calls to discuss current and emerging issues relating to financial reporting.

In our recent call, on 11 July 2016, we covered the following topics:

- SEBI relaxes norms for Ind AS compliant quarterly results
- MoF defers ICDS by one year
- ITFG: Clarification Bulletin 3.

Feedback/queries can be sent to aaupdate@kpmg.com

Previous editions are available to download from: www.kpmg.com/in

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