

respect of these securities to exercise any right conferred by the membership in relation to meetings of the company:

**Provided** that the Board may, at any time, give notice requiring any such person to elect either to be registered himself or to transfer the securities, and if the notice is not complied with within ninety days, the Board may thereafter withhold payment of all dividends or interests, bonuses or other moneys payable in respect of the securities, as the case may be, until the requirements of the notice have been complied with.

(9) A nomination may be cancelled, or varied by nominating any other person in place of the present nominee, by the holder of securities who has made the nomination, by giving a notice of such cancellation or variation, to the company in Form No. SH.14.

(10) The cancellation or variation shall take effect from the date on which the notice of such variation or cancellation is received by the company.

(11) Where the nominee is a minor, the holder of the securities, making the nomination, may appoint a person in <sup>76</sup>[Form No. SH.13] specified under sub-rule (1), who shall become entitled to the securities of the company, in the event of death of the nominee during his minority.

### *CHAPTER V*

#### ACCEPTANCE OF DEPOSITS BY COMPANIES

<sup>77</sup>**Prohibition on acceptance of deposits from public**<sup>78</sup>.

**73.** (1) On and after the commencement of this Act, no company shall invite, accept or renew<sup>79</sup> deposits under this Act from the public except in a manner provided under this Chapter:

**Provided** that nothing in this sub-section shall apply to a banking company and non-banking financial company as defined in the Reserve Bank of India Act, 1934 (2 of 1934) and to such other company as the Central Government may, after consultation with the Reserve Bank of India, specify in this behalf.

<sup>80</sup>(2) A company may, subject to the passing of a resolution in general meeting and subject to such rules as may be prescribed<sup>81</sup> in consultation with the Reserve Bank of India, accept deposits from its members on such terms and conditions, including the provision of security, if any, or for the repayment of

76. Substituted for "Form No. SH.14" by the Companies (Share Capital and Debentures) Amendment Rules, 2015, w.e.f. 18-3-2015.

77. Corresponds to section 58A of the 1956 Act.

78. Enforced with effect from 1-4-2014.

79. For meaning of the term "renew", see **Appendix II**.

80. In case of private companies section 73(2)(a) to (e) shall not apply to a private company—

(A) which accepts from its members monies not exceeding one hundred per cent of aggregate of the paid-up share capital, free reserves and securities premium account; or

(B) which is a start-up for five years from the date of its incorporation; or

(C) which fulfils all of the following conditions, namely:—

(a) which is not an associate or a subsidiary company of any other company;

*(Contd. on page 1.190)*

such deposits with interest, as may be agreed upon between the company and its members, subject to the fulfilment of the following conditions, namely:—

- (a) issuance of a circular to its members including therein a statement showing the financial position of the company, the credit rating obtained, the total number of depositors and the amount due towards deposits in respect of any previous deposits accepted by the company and such other particulars in such form and in such manner as may be prescribed<sup>82</sup>;
- (b) filing a copy of the circular along with such statement with the Registrar within thirty days before the date of issue of the circular;
- <sup>83</sup>[(c) depositing, on or before the thirtieth day of April each year, such sum which shall not be less than twenty per cent of the amount of its deposits maturing during the following financial year and kept in a scheduled bank in a separate bank account to be called deposit repayment reserve account;]
- (d) <sup>84</sup>[\*\*\*]

(Contd. from page 1.189)

- (b) if the borrowings of such a company from banks or financial institutions or any body corporate is less than twice of its paid-up share capital or fifty crore rupees, whichever is lower; and
- (c) such a company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under this section:

**Provided** that the company referred to in clause (A), (B) or (C) shall file the details of monies accepted to the Registrar in such manner as may be specified. - *Notification No. GSR 464(E), dated 5-6-2015, as amended by, Notification No. 583(E), dated 13-6-2017.*

In case of an unlisted public company which is licensed to operate by RBI or SEBI or IRDA from the International Financial Services Centre located in an approved multi services SEZ set-up under the SEZ Act, clauses (a) to (e) of sub-section (2) of section 73, shall not apply to a Specified IFSC public company which accepts from its members, monies not exceeding one hundred per cent of aggregate of the paid up share capital and free reserves, and such company shall file the details of monies so accepted to the Registrar in such manner as may be specified.—*Notification No. GSR 8(E), dated 4-1-2017.*

- 81. See Companies (Acceptance of Deposits) Rules, 2014.
- 82. See Companies (Acceptance of Deposits) Rules, 2014. See also Circular No. 27/2014, dated 30-6-2014 [Clarification regarding filing of Form DPT4]. For details, see **Division Three**.
- 83. Substituted by the Companies (Amendment) Act, 2017, w.e.f. 15-8-2018. Prior to its substitution, clause (c) read as under :
  - “(c) depositing such sum which shall not be less than fifteen per cent of the amount of its deposits maturing during a financial year and the financial year next following, and kept in a scheduled bank in a separate bank account to be called as deposit repayment reserve account;”
- 84. Omitted, *ibid*. Prior to its omission, clause (d) read as under :
  - “(d) providing such deposit insurance in such manner and to such extent as may be prescribed;”

- (e) certifying that the company has not committed any default in the repayment of deposits accepted either before or after the commencement of this Act or payment of interest on <sup>85</sup>[such deposits and where a default had occurred, the company made good the default and a period of five years had lapsed since the date of making good the default;] and
- (f) providing security, if any for the due repayment of the amount of deposit or the interest thereon including the creation of such charge on the property or assets of the company:

**Provided** that in case where a company does not secure the deposits or secures such deposits partially, then, the deposits shall be termed as “unsecured deposits” and shall be so quoted in every circular, form, advertisement or in any document related to invitation or acceptance of deposits.

(3) Every deposit accepted by a company under sub-section (2) shall be repaid with interest in accordance with the terms and conditions of the agreement referred to in that sub-section.

(4) Where a company fails to repay the deposit or part thereof or any interest thereon under sub-section (3), the depositor concerned may apply to the Tribunal<sup>86</sup> for an order directing the company to pay the sum due or for any loss or damage incurred by him as a result of such non-payment and for such other orders as the Tribunal may deem fit.

(5) The deposit repayment reserve account referred to in clause (c) of sub-section (2) shall not be used by the company for any purpose other than repayment of deposits.

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#### **COMPANIES (ACCEPTANCE OF DEPOSITS) RULES, 2014**

##### **Short title, commencement and application.**

**Rule 1 :** (1) These rules may be called the Companies (Acceptance of Deposits) Rules, 2014.

(2) They shall come into force on the 1st day of April, 2014.

(3) These rules shall apply to a company other than -

- (i) a banking company;
- (ii) a non-banking financial company as defined in the Reserve Bank of India Act, 1934 (2 of 1934) registered with the Reserve Bank of India;
- (iii) a housing finance company registered with the National Housing Bank established under the National Housing Bank Act, 1987 (53 of 1987); and
- (iv) a company specified by the Central Government under the proviso to sub-section (1) of section 73 of the Act.

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85. Substituted for “such deposits;” by the Companies (Amendment) Act, 2017, w.e.f. 15-8-2018.

86. See rules 73 and 88 and Form No. NCLT-11 and Annexure B of the NCLT Rules, 2016. Prescribed fees under National Company Law Tribunal Rules, 2016 is Rs. 500 (Application by depositor for repayment of deposit or interest).

**Definitions.**

**Rule 2 :** (1) In these rules, unless the context otherwise requires,—

- (a) “Act” means the Companies Act, 2013 (18 of 2013);
- (b) “Annexure” means the Annexure attached to these rules;
- (c) “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) any amount received from the Central Government or a State Government, or any amount received from any other source whose repayment is guaranteed by the Central Government or a State Government, or any amount received from a local authority, or any amount received from a statutory authority constituted under an Act of Parliament or a State Legislature ;
  - (ii) any amount received from foreign Governments, foreign or international banks, multilateral financial institutions (including, but not limited to, International Finance Corporation, Asian Development Bank, Commonwealth Development Corporation and International Bank for Industrial and Financial Reconstruction), foreign Governments owned development financial institutions, foreign export credit agencies, foreign collaborators, foreign bodies corporate and foreign citizens, foreign authorities or persons resident outside India subject to the provisions of Foreign Exchange Management Act, 1999 (42 of 1999) and rules and regulations made thereunder;
  - (iii) any amount received as a loan or facility from any banking company or from the State Bank of India or any of its subsidiary banks or from a banking institution notified by the Central Government under section 51 of the Banking Regulation Act, 1949 (10 of 1949), or a corresponding new bank as defined in clause (d) of section 2 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970) or in clause (b) of section 2 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980), or from a co-operative bank as defined in clause (bii) of section 2 of the Reserve Bank of India Act, 1934 (2 of 1934) ;
  - (iv) any amount received as a loan or financial assistance from Public Financial Institutions notified by the Central Government in this behalf in consultation with the Reserve Bank of India or any regional financial institutions or Insurance Companies or Scheduled Banks as defined in the Reserve Bank of India Act, 1934 (2 of 1934);
  - (v) any amount received against issue of commercial paper or any other instruments issued in accordance with the guidelines or notification issued by the Reserve Bank of India;
  - (vi) any amount received by a company from any other company;
  - (vii) any amount received and held pursuant to an offer made in accordance with the provisions of the Act towards subscription to any securities, including share application money or advance towards allotment of securities pending allotment, so long as such amount is appropriated only against the amount due on allotment of the securities applied for;

*Explanation.*—For the purposes of this sub-clause, it is hereby clarified that -

- (a) Without prejudice to any other liability or action, if the securities for which application money or advance for such securities was received cannot be allotted within sixty days from the date of receipt of the application money or advance for such securities and such application money or advance is not refunded to the subscribers within fifteen days from the date of

completion of sixty days, such amount shall be treated as a deposit under these rules :

<sup>87</sup>[**Provided** that unless otherwise required under the Companies Act, 1956 (1 of 1956) or the Securities and Exchange Board of India Act, 1992 (15 of 1992) or rules or regulations made thereunder to allot any share, stock, bond, or debenture within a specified period, if a company had received any amount by way of subscriptions to any shares, stock, bonds or debentures before the 1st April, 2014 and disclosed it in the balance sheet for the financial year ending on or before the 31st March, 2014 against which the allotment is pending on the 31st March, 2015, the company shall, by the 1st June, 2015, either return such amounts to the persons from whom these were received or allot shares, stock, bonds or debentures or comply with these rules.]

(b) Any adjustment of the amount for any other purpose shall not be treated as refund;

<sup>88</sup>[(viii) 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:

**Provided** that the director of the company or relative of the director of the private company, as the case may be, from whom money is received, furnishes to the company at the time of giving the money, a declaration in writing to the effect that the amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others and the company shall disclose the details of money so accepted in the Board's report;]

(ix) any 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 of the company or bonds or debentures compulsorily convertible into shares of the company within <sup>89</sup>[ten years];

**Provided** that if such bonds or debentures are secured by the charge of any assets referred to in Schedule III of the Act, excluding intangible assets, the amount of such bonds or debentures shall not exceed the market value of such assets as assessed by a registered valuer;

<sup>90</sup>[(ixa) any amount raised by issue of non-convertible debenture not constituting a charge on the assets of the company and listed on a recognised stock exchange as per applicable regulations made by Securities and Exchange Board of India;]

87. Inserted by the Companies (Acceptance of Deposits) Amendment Rules, 2015, w.e.f. 31-3-2015.

88. Substituted by the Companies (Acceptance of Deposits) Second Amendment Rules, 2015, w.e.f. 15-9-2015. Prior to its substitution, sub-clause (viii) read as under :

“(viii) any amount received from a person who, at the time of the receipt of the amount, was a director of the company:

**Provided** that the director from whom money is received, furnishes to the company at the time of giving the money, a declaration in writing to the effect that the amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others;”

89. Substituted for “five years” by the Companies (Acceptance of Deposits) Amendment Rules, 2016, w.e.f. 29-6-2016.

90. Inserted, *ibid*.

- (x) any amount received from an employee of the company not exceeding his annual salary under a contract of employment with the company in the nature of non-interest bearing security deposit;
- <sup>91</sup>[(xi) any non-interest bearing amount received and held in trust;]
- (xii) any amount received in the course of, or for the purposes of, the business of the company,—
- (a) as an advance for the supply of goods or provision of services accounted for in any manner whatsoever provided that such advance is appropriated against supply of goods or provision of services within a period of three hundred and sixty five days from the date of acceptance of such advance:  
**Provided** that in case of any advance which is subject matter of any legal proceedings before any court of law, the said time limit of three hundred and sixty five days shall not apply;
- (b) as advance, accounted for in any manner whatsoever, received in connection with <sup>92</sup>[consideration for an immovable property] under an agreement or arrangement, provided that such advance is adjusted <sup>93</sup>[against such property] in accordance with the terms of agreement or arrangement;
- (c) as security deposit for the performance of the contract for supply of goods or provision of services;
- (d) as advance received under long term projects for supply of capital goods except those covered under item (b) above;
- <sup>94</sup>[(e) as an advance towards consideration for providing future services in the form of a warranty or maintenance contract as per written agreement or arrangement, if the period for providing such services does not exceed the period prevalent as per common business practice or five years, from the date of acceptance of such service whichever is less;
- (f) as an advance received and as allowed by any sectoral regulator or in accordance with directions of Central or State Government;
- (g) as an advance for subscription towards publication, whether in print or in electronic to be adjusted against receipt of such publications:]
- Provided** that if the amount received under items (a), (b) and (d) above becomes refundable (with or without interest) due to the reasons that the company accepting the money does not have necessary permission or approval, wherever required, to deal in the goods or properties or services for which the money is taken, then the amount received shall be deemed to be a deposit under these rules.

91. Substituted by the Companies (Acceptance of Deposits) Amendment Rules, 2016, w.e.f. 29-6-2016. Prior to its substitution, sub-clause (xi) read as under :

“(xi) any non-interest bearing amount received or held in trust;”

92. Substituted for “consideration for property” by the Companies (Acceptance of Deposits) Amendment Rules, 2015, w.e.f. 31-3-2015.

93. Substituted for “against the property”, *ibid*.

94. Items (e), (f) and (g) inserted by the Companies (Acceptance of Deposits) Amendment Rules, 2016, w.e.f. 29-6-2016.

*Explanation.*—For the purposes of this sub-clause the amount <sup>95</sup>[\*\*\*\*] shall be deemed to be deposits on the expiry of fifteen days from the date they become due for refund.

- (xiii) any amount brought in by the promoters of the company by way of unsecured loan in pursuance of the stipulation of any lending financial institution or a bank subject to fulfilment of the following conditions, namely:—
  - (a) the loan is brought in pursuance of the stipulation imposed by the lending institutions on the promoters to contribute such finance;
  - (b) the loan is provided by the promoters themselves or by their relatives or by both; and
  - (c) the exemption under this sub-clause shall be available only till the loans of financial institution or bank are repaid and not thereafter;
- (xiv) any amount accepted by a Nidhi company in accordance with the rules made under section 406 of the Act.

*Explanation.*—For the purposes of this clause, any amount.—

- (a) received by the company, whether in the form of instalments or otherwise, from a person with promise or offer to give returns, in cash or in kind, on completion of the period specified in the promise or offer, or earlier, accounted for in any manner whatsoever, or
- (b) any additional contributions, over and above the amount under item (a) above, made by the company as part of such promise or offer,
  - <sup>96</sup>[shall be considered as deposits unless specifically excluded under this clause];
- <sup>97</sup>(xv) any amount received by way of subscription in respect of a chit under the Chit Fund Act, 1982 (40 of 1982);
- (xvi) any amount received by the company under any collective investment scheme in compliance with regulations framed by the Securities and Exchange Board of India;
- (xvii) an amount of twenty five lakh rupees 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.

*Explanation.*—For the purposes of this sub-clause,—

- I. “start-up company” means a private company incorporated under the Companies Act, 2013 or Companies Act, 1956 and recognised as such in accordance with notification number G.S.R. 180(E), dated 17th February, 2016 issued by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry;
- II. “convertible note” means an instrument evidencing receipt of money initially as a debt, which is repayable at the option of the holder, or which is convertible into such number of equity shares of the start-up company

95. Words “referred to in the proviso” omitted by the Companies (Acceptance of Deposits) Amendment Rules, 2016, w.e.f. 29-6-2016. Earlier the quoted words were amended by the Companies (Acceptance of Deposits) Amendment Rules, 2015, w.e.f. 31-3-2015.

96. Substituted for “shall be treated as a deposit”, *ibid.*

97. Sub-clauses (xv) to (xviii) inserted, *ibid.*



upon occurrence of specified events and as per the other terms and conditions agreed to and indicated in the instrument.

- (xviii) any amount received by a company from Alternate Investment Funds, Domestic Venture Capital Funds <sup>98</sup>], Infrastructure Investment Trusts] <sup>99</sup>], *Real Estate Investment Trusts*] and Mutual Funds registered with the Securities and Exchange Board of India in accordance with regulations made by it.]
- (d) “depositor” means,—
- (i) any member of the company who has made a deposit with the company in accordance with the provisions of sub-section (2) of section 73 of the Act, or
- (ii) any person who has made a deposit with a public company in accordance with the provisions of section 76 of the Act;
- (e) “eligible company” means a public company as referred to in sub-section (1) of section 76, having a net worth of not less than one hundred crore rupees or a turnover of not less than five hundred crore rupees and which has obtained the prior consent of the company in general meeting by means of a special resolution and also filed the said resolution with the Registrar of Companies before making any invitation to the Public for acceptance of deposits:
- Provided** that an eligible company, which is accepting deposits within the limits specified under clause (c) of sub-section (1) of section 180, may accept deposits by means of an ordinary resolution;
- (f) “fees” means fees as specified in the Companies (Registration Offices and Fees) Rules, 2014;
- (g) “Form” or “e-Form” means a form set forth in Annexure to these rules which shall be used for the matter to which it relates;
- (h) “section” means section of the Act;
- (i) “trustee” means the trustee as defined in section 3 of the Indian Trusts Act, 1882 (12 of 1882).

(2) Words and expressions used in these rules but not defined and defined in the Act or in the Reserve Bank of India Act, 1934 (2 of 1934) or in the Companies (Specification of Definitions Details) Rules, 2014, shall have the meanings respectively assigned to them in the said Acts or in the said rules.

**Terms and conditions of acceptance of deposits by companies.**

**Rule 3 :** (1) On and from the commencement of these rules,—

- (a) no company referred to in sub-section (2) of section 73 and no eligible company shall accept or renew any deposit, whether secured or unsecured, which is repayable on demand or upon receiving a notice within a period of less than six months or more than thirty-six months from the date of acceptance or renewal of such deposit:
- Provided** that a company may, for the purpose of meeting any of its short-term requirements of funds, accept or renew such deposits for repayment earlier than six months from the date of deposit or renewal, as the case may be, subject to the condition that - (a) such deposits shall not exceed ten per cent of the aggregate of the [paid-up share capital, free reserves and securities premium account] of the company, and

98. Inserted by the Companies (Acceptance of Deposits) Amendment Rules, 2017, w.e.f. 11-5-2017.

99. Inserted by the Companies (Acceptance of Deposits) Amendment Rules, 2019, w.e.f. **22-1-2019**.

1. Substituted for “paid-up share capital and free reserves” by the Companies (Acceptance of Deposits) Second Amendment Rules, 2015, w.e.f. 15-9-2015.