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## The Companies (Acceptance of Deposits) Amendment, Rules 2015:



In exercise of the powers conferred by sections 73 and 76 read with sub-section (1) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Acceptance of Deposits) Rules, 2014, namely:-

- i) These rules may be called the Companies (Acceptance of Deposits) Amendment Rules, 2015.
- ii) They shall come into force from the date of their publication in the official Gazette.
- In the Companies (Acceptance of Deposits) Rules, 2014-
  - i) in rule 2, in sub-rule (1), in clause (c), -
    - a) in sub-clause (vii), in Explanation (a), the following proviso shall be inserted, namely:- “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 there under to allot any share, stock, bond, or debenture within a specified period, if a company receives any amount by way of subscriptions to any shares, stock, bonds or debentures before the 1st April,2014 and disclosed in the balance sheet for the financial year ending on or before the 31st March, 2014 against which the allotment is pending on the 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) in sub-clause (xii), in item (b),
    - for the words “consideration for property”, the words “consideration for an immovable property” shall be substituted;
    - for the words “against the property”, the words “against such property” shall be substituted;
  - c) in sub-clause (xii), in the Explanation, for the words “referred to in the first proviso” the words “referred to in the proviso” shall be substituted;
- ii) in rule 3, after sub-rule (7), the following sub-rule shall be inserted, namely- “(8) Every eligible company shall obtain, at least once in a year, credit rating for deposits accepted by it in the manner specified and a copy of the rating shall be sent to the Registrar of Companies along with the return of deposits in Form DPT-3;
- iii) in rule 5, in sub-rule (1), for the proviso, the following proviso shall be substituted, namely- “Provided that the companies may accept deposits without deposit insurance contract till the 31st March, 2016 or till the availability of a deposit insurance product, whichever is earlier.”

## Clarification Regarding Applicability of Companies (Acceptance of Deposits), Rules 2014 for amount received by private companies from their members, directors or their relatives before 1<sup>st</sup> April 2014

The Ministry of Corporate Affairs has issued a General Circular No. 5/2015 dated 30th March, 2015 to provide clarification on the amounts received by the private companies before the commencement of the Act which is as follows:



- Amounts received by private companies prior to 1<sup>st</sup> April, 2014 shall not be treated as 'deposits' under the Companies Act, 2013 and Companies (Acceptance of Deposits) Rules, 2014 subject to the condition that relevant private company shall disclose, in the notes to its financial statement for the financial year commencing on or after 1<sup>st</sup> April, 2014 the figure of such amounts and the accounting head in which such amounts have been shown in the financial statement.
- Any renewal or acceptance of fresh deposits on or after 1<sup>st</sup> April, 2014 shall, however, be in accordance with the provisions of Companies Act, 2013 and rules made thereunder.

## Companies (Meetings of Board and its Powers) Amendment Rules, 2015

MCA vide notification dated March 18, 2015 has made amendments in the Companies Act (Meetings of Board and its Powers) Rules, 2014 in order to insert, substitute and omit some of the provisions through Companies (Meetings of Board and its Powers) Amendments Rules, 2015.

In exercise of the powers conferred under sections 173, 175, 177, 178, 179, 184, 185, 186, 188, 189 and section 191 read with section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Meetings of Board and its Powers) Rules, 2014, namely:

- These rules may be called the Companies (Meetings of Board and its Powers) Amendment Rules, 2015.
- **RULE 8**  
In Rule 8 of the Companies (Meetings of Board and its Powers) amendment Rules, 2014 the following powers exercised by the Board of Directors only by means of resolutions passed at meetings of board, in terms of section 179(3) (k), have been omitted:
  - i) Item Number (3): to take note of appointment(s) or removal(s) of one level below the Key Management Person;
  - ii) Item Number (5): to take note of the disclosure of director's interest and shareholding;
  - iii) Item Number (6): to buy, sell investments held by the company (other than trade investments), constituting five percent or

more of the paid up share capital and free reserves of the investee company;

- iv) Item Number (7): to invite or accept or renew public deposits and related matters;
- v) Item Number (8): to review or change the terms and conditions of public deposit;
- vi) Item Number (9): to approve quarterly, half yearly and annual financial statements or financial results as the case may be.

- **RULE 10**

In Rule 10, in the proviso, for the word “principle”, the word “principal” shall be substituted.

### **Companies (Management and Administration) Amendment Rules, 2015**

MCA vide notification dated March 19, 2015 has made amendments in the Companies Act (Management and Administration) Rules, 2014 in order to insert and substitute some of the provisions through Companies (Management and Administration) Amendments Rules, 2015.

In exercise of the powers conferred by section 108 read with sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules:

- In Companies (Management and Administration) Rules, 2014, for rule 20, the following shall be substituted, namely:  
“20. **Voting Through Electronic Means**

- i) The provisions of this rule shall apply in respect of the general meetings for which notices are issued on or after the date of commencement of this rule.
- ii) Every Company other than a Company referred to in Chapter XB or Chapter XC of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 having its equity shares listed on a recognized stock exchange or a company having not less than one thousand members, shall provide to its members facility to exercise their right to vote on resolutions proposed to be considered at general meetings by electronic means.
- iii) A member may exercise his right to vote through voting by electronic means on resolutions referred to in sub-rule (2) and the company shall pass such resolutions in accordance with the provisions of this rule.
- iv) A Company which provides the facility to its members to exercise voting by electronic means shall comply with the procedure mentioned in rules.

### **Companies (Share Capital and Debentures) Amendment Rules, 2015**

In exercise of the powers conferred under sub-clause (ii) of clause (a) of section 43, sub-clause (d) of sub-section (1) of section 54, subsection (2) of section 55, sub-section (1) of section 56, sub-section (3) of section 56, sub-section (1) of section 62, sub-section (2) of section 42, clause (f) of subsection (2) of section 63, sub-section (1) of section 64 , clause (b) of sub-section (3) of section 67, sub-section (2) of section 68, sub-section

(6) of section 68, sub-section (9) of section 68, sub-section (10) of section 68, sub-section (3) of section 71, sub-section (6) of section 71, sub-section (13) of section 71 and sub-sections (1) and (2) of section 72, read with sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Share Capital and Debentures) Rules, 2014, namely:-

- These rules may be called the Companies (Share Capital and Debentures) Amendment Rules, 2015.
- They shall come into force from the date of their publication in the Official Gazette.
- In the Companies (Share Capital and Debenture) Rules, 2014,-
  - i) For rule 3, the following rule shall be substituted, namely:-

“3. Application.- The provisions of these rules shall apply to:

- a. All unlisted public companies;
  - b. All private companies;
  - c. Listed companies so far as they do not contradict or conflict with any other regulation framed in this regard by the Securities and Exchange Board of India.
- ii) In rule 5, in sub rule(3), in clause (b),
    - a) the first proviso shall be omitted
    - b) in the second proviso for the words “provided further that”, the words “provided that” shall be substituted;
    - c) in the third proviso for the words “provided also that”, the words “provided further that” shall be substituted;

- iii) in rule 6, in sub rule (2), in clause (c), for the words “within fifteen days”, the words “within forty-five days” shall be substituted;
- iv) in rule 12, in sub-rule (1), in the explanation, in clause (c), the words “or of an associate company” shall be omitted;
- v) in rule 13, in sub-rule (1),- (a) in the proviso, for the words “provided that” the words “provided further that” shall be substituted and before the proviso as so amended, the following proviso shall be inserted, namely:-

“Provided that in case of any preferential offer made by a company to one or more existing members only, the provisions of sub-rule (3) of rule 14 of Companies (Prospectus and Allotment of Securities) Rules, 2014 shall not apply.”

- vi) In rule 18,-
  - (a) In sub- rule (1)-
    - (A) In clause (d), for sub- clauses (i) and (ii), the following sub clauses shall be substituted, namely:-
      - (i) Any specific movable property of the company; or
      - (ii) Any specific immovable property wherever situate, or any interest therein:

Provided that in case of a non- banking financial company, the charge or mortgage under sub- clause (i) may be created on any movable property"

- (B) In clause (d), after sub- clause (ii), following proviso shall be inserted, namely:-

“Provided further that in case of any issue of debentures by a Government company which is fully secured by the guarantee given by the Central Government or one or more State

Government or by both, the requirement for creation of charge under this sub-rule shall not apply.”

Provided also that in case of any loan taken by a subsidiary company from any bank or financial institution the charge or mortgage under this sub- rule may also be created on the properties or assets of the holding company;

b) In sub rule (5), for the words “within sixty days of allotment of debentures”, the words “within three months of closure of the issue or offer” shall be substituted

c) After sub- rule (8), following sub- rules shall be inserted, namely:-

(9) Nothing contained in this rule shall apply to any amount received by a company against issue of commercial paper or any other similar instrument issued in accordance with the guidelines or regulations or notification issued by the Reserve Bank of India.

(10) in case of any offer of foreign currency convertible bonds or foreign currency bonds issued in accordance with the Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 or regulations or directions issued by the Reserve Bank of India the provisions of this rule shall not apply unless otherwise provided in such scheme or regulations or directions.

vii) in rule 19, in sub- rule (11), for the word, letters and figures “Form No. SH- 14”, the word, letters and figures “Form SH- 13” shall be substituted.

### **Clarification relating to grant of Loans and Advances by companies to their employees with regards to section 185 and 186 of the companies Act, 2013.**

MCA vide notification No. 1/32/2013-CL.V, dated March 10, 2015 clarified that loans and/or advances made by the companies to their employees, other than the managing or whole time directors (which is governed by section 185) are not governed by the requirements of section 186 of the Companies Act, 2013. This clarification will, however, be applicable if such loans/advances to employees are in accordance with the conditions of service applicable to employees and are also in accordance with the remuneration policy, in cases where such policy is required to be formulated.

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