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## COMPANIES (ACCEPTANCE OF DEPOSITS) AMENDMENT RULES, 2016

Ministry of Corporate Affairs, vide dated 29<sup>th</sup> June, 2016, in exercise of the powers conferred by section 73 and 76 read with sub-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:-



- (1) These rules may be called the Companies (Acceptance of Deposits) Amendment Rules, 2016
- (2) They shall come into force on the date of their publication in the Official Gazette.

In the Companies (Acceptance of Deposits) Rules, 2014 (herein after referred to as the principal rules), in rule 2, in sub-rule(1), in clause(c):-

- (i) In sub-clause(ix), for the words “five years” the words “ten years” shall be substituted
- (ii) After sub-clause (ix), the following sub-clause shall be inserted, namely:-  
“(ixa) any amount raised by issue of non-convertible debenture not constituting a charge on the assets of the company and listed on a recognized stock exchange as per applicable regulations made by Securities and Exchange Board of India.”
- (iii) For sub-clause (xi), the following sub-clause shall be substituted, namely:-  
“(xi) any non- interest bearing amount received and held in trust”
- (iv) In sub-clause (xii):-

(A) after item (d) and before proviso, the following items shall be inserted, namely:-

“(e) as an advance towards consideration for providing future services in the form of warranty or maintenance contract as per written agreement or arrangement, if the period for providing such services does not exceed the prevalent as per common business practice or five years , from the date of acceptance of such services whichever is less.

(f) as an advance received and as allowed by any sectoral regulator or in accordance of such services whichever is less ;

(g) as an advance for subscription towards publication, whether in print or in electronic to be adjusted against receipt of such publication.”

(B) in the explanation, the words “referred to in the proviso” shall be omitted

(v) in the explanation, after sub-clause (xiv), the words “shall be treated as deposits”, the word “shall be considered as deposits unless specifically excluded under this clause’ shall be substituted.

(vi) After sub-clause (xiv), the following sub-clause shall be inserted, namely:-

(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;

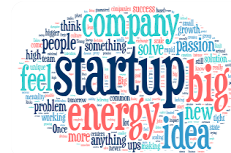
(xvii) an amount of twenty five lakh rupees or more received by a start-up company, by way of a convertible note(convertible into equity shares or repayable within a period not exceeding five



years from the date of issue) in a single tranche, from the person.

Explanation- For the purpose of this clause,-

I. "start-up company" means a private company incorporated under the Companies Act, 2013 or Companies Act, 1956 and recognized as such in accordance with the notification number G.S.R 180(E) dated 17<sup>th</sup> 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 if the start-up company 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 and Mutual Funds registered with the Securities and Exchange Board of India in accordance with regulations made by it."

3. In Rule 3 of the Principal rules,-

(i) In sub-rule (3),-

(a) for the words "twenty five per cent." , the words "thirty five per cent" shall be substituted.

(b) the following proviso shall be inserted namely:-

"Provided that a private company may accept from its members monies not exceeding one hundred per cent of aggregate of the paid up share capital, free reserves and securities premium account and

such company shall file the details of monies so accepted to the Registrar in such manner as may be specified."

(ii) For sub-rule (8), the following sub-rule shall be substituted , namely:-

" (8)- (a) Every eligible company shall obtain, at least once in a year, credit rating for deposit accepted by it and a copy of the rating shall be sent to the Registrar of Companies alongwith the return of deposits in Form DPT-3."

(c)The credit rating referred to in clause (a) shall not be below the minimum investment grade rating or other specified credit rating for the fixed deposits, from any one of the approved credit agencies as specified for Non-Banking Finance Companies in the Non- Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) directions, 1998, issued by the Reserve Bank of India, as amended from time to time."

4. In rule 4 of the principal rules, for sub-rule (2), the following sub-rule shall be substituted, namely:-

"(2) Every eligible company intending to invite deposits shall issue a circular in form of an advertisement in form DPT-1 for the purpose in English language in an English newspaper having country wide circulation and in vernacular language in a vernacular newspaper having wide circulation in the State in which the registered office of the company is situated, and shall also place such circular on the website of the company, if any."

5. In rule 5 of the principal rules, 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 31<sup>st</sup> March, 2017 or till the availability of a deposit insurance product, whichever is earlier.”

6. After rule 16 of the principal rules, the following rule shall be inserted, namely:-

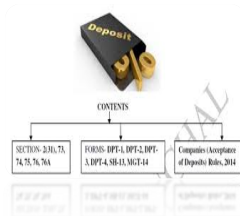
“16A. Disclosures in the financial statement.-

(1) Every company, other than a private company, shall disclose in its financial statement, by way of notes, about the money received from the director.

(2) Every private company, shall disclose in its financial statement, by way of notes, about the money received from the directors, or relatives of directors.”

7. in the principal rules, in the Annexure, Form DPT-1, the following para shall be inserted, namely:-

“DISCLAIMER- 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 deposit schemes.”



## HUF CANNOT BE A PARTNER IN FIRM

Ministry of Corporate Affairs, vide F.No.1/13/2012CL-V dated 27.05.2016 has given clarification based on the Supreme Court ruling in Rashiklal & Company vs CIT that:

“Even if a person nominated by the HUF joins a partnership, the partnership will be between the nominated person and the other partners of the firm. Having regard to the definition of “partnership” and “partners” and in view of the principle laid down in Dulichand case it is not possible to hold that an HUF being fluctuating body of individuals, can enter into a partnership with other individual partners.



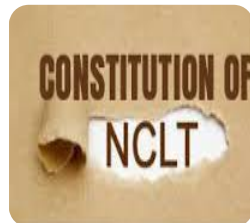
Hindu Undivided Family

- HUF cannot do indirectly what it cannot do directly.
- If a Karta or any other member of the HUF joins a partnership, he can do so only as an individual.
- His rights and obligations vis-à-vis other partners are determined by the Partnership Act and not by Hindu Law. Whatever may be the relationship between an HUF and its nominee partner, in a partnership, neither the HUF nor any member of the HUF can claim to be partner or connected with the partnership through a nominee.
- Where the Karta of an HUF enters into a partnership agreement with a stranger, the Karta alone in the eye of law is the partner”

Therefore it is clarified that HUF cannot be a partner but its Karta or any individual of HUF can be a partner in a partnership firm in its individual capacity and not the HUF.

## CONSTITUTION OF NATIONAL COMPANY LAW TRIBUNAL (NCLT).

Ministry of Corporate Affairs vide F.No.A-45011/14/2016-AD. IV, S.O. 1933(E). dated 01.06.2016, published in the Gazette of India, Extraordinary Part-II, Section -3, Sub-section(ii), dated 01.06.2016. In exercise of the powers conferred by section 408 of the Companies Act,2013 (18 of 2013), the Central Government hereby constitutes the National Company Law Tribunal to exercise and discharge the powers and functions as are, or may be, conferred on it by or under the said Act with effect from the 1st day of June 2016.



Table

S. No	Title of Bench	Location	Territorial Jurisdiction of the Bench
1.	(a) National Company Law Tribunal, Principal Bench, (b) National Company Law Tribunal, New Delhi Bench.	New Delhi	(1) State of Haryana. (2) State of Rajasthan. (3) Union territory of Delhi
2.	National Company Law Tribunal, Ahmedabad Bench.	Ahmedabad	(1) State of Gujarat. (2) State of Madhya Pradesh. (3) Union territory of

			Dadra and Nagar Haveli (4) Union territory of Daman and Diu
3.	National Company Law Tribunal, Allahabad Bench.	Allahabad	(1) State of Uttar Pradesh (2) State of Uttarakhand
4.	National Company Law Tribunal, Bengaluru Bench.	Bengaluru	(1) State of Karnataka
5.	National Company Law Tribunal, Chandigarh Bench.	Chandigarh	(1) State of Himachal Pradesh (2) State of Jammu and Kashmir (3) State of Punjab (4) Union Territory of Chandigarh
6.	National Company Law Tribunal, Chennai Bench.	Chennai	(1) State of Kerala (2) State of Tamil Nadu (3) Union Territory of Lakshadweep (4) Union Territory of Puducherry.
7.	National Company Law Tribunal, Guwahati Bench.	Guwahati	(1) State of Arunachal Pradesh (2) State of Assam (3) State of Manipur



			(4) State of Mizoram (5) State of Meghalaya (6) State of Nagaland (7) State of Sikkim (8) State of Tripura
8.	National Company Law Tribunal, Hyderabad Bench.	Hyderabad	(1) State of Andhra Pradesh (2) State of Telangana
9.	National Company Law Tribunal, Kolkata Bench.	Kolkata	(1) State of Bihar (2) State of Jharkhand (3) State of Odisha (4) State of West Bengal (5) Union Territory of Andaman and Nicobar Islands
10.	National Company Law Tribunal, Mumbai Bench.	Mumbai	(1) State of Chhattisgarh (2) State of Goa (3) State of Maharashtra

Companies Act, 2013 (18 of 2013), the Central Government hereby constitutes the National Company Law Appellate Tribunal for hearing appeals against the orders of the National Company Law Tribunal with effect from the 1<sup>st</sup> day of June, 2016.

### DATE OF TRANSFER OF CASES PENDING BEFORE COMPANY LAW TRIBUNAL (CLB) TO NCLT

Ministry of Corporate Affairs vide F.No 1/30/CLB/2013/CL-V, dated 01.06.2016 in exercise of the powers conferred by clause (a) of sub-section (1) of section 434 of the Companies Act, 2013 (18 of 2013), the Central Government appoints the 1<sup>st</sup> day of June, 2016, on which all matters or proceedings or cases pending before the Board of Company Law Administration (Company Law Board) shall stand transferred to the National Company Law Tribunal and it shall dispose of such matters or proceedings or cases in accordance with the provisions of the Companies Act, 2013 or the Companies Act, 1956.



### COMPANIES (AUTHORISED TO REGISTER) AMENDMENT RULES, 2016

MCA vide F.No.01/35/2013-CL-V, dated 31.05.2016. To be published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i). In exercise of powers conferred by sub-section (1) and (2) of section 469 read with section 366 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Authorised to Registered) Rules, 2014, namely:-

### CONSTITUTION OF NATIONAL COMPANY LAW APPELLATE TRIBUNAL (NCLAT).

Ministry of Corporate Affairs vide F.No.A-45011/14/2016-AD.IV, S.O.1932(E).dated 01.06.2016. published in the Gazette of India, Extraordinary Part-II, Section -3, Sub-section(ii), dated 01.06.2016. In exercise of the powers conferred by section 410 of the



1. (i) These rules may be called the Companies (Authorised to Register) Amendment Rules, 2016.

(ii) They shall come into force from the date of their publication in the Official Gazette.

2. In the Companies (Authorised to Registered) Rules, 2014 (herein after referred to as the principal rules),-

(a) In rule 1, for sub-rule (I), the following sub-rule shall be substituted, namely:-

“(I) Companies (Authorised to Registered) Rules, 2014.”

(b) in rule 2, in sub-rule (I), after clause (1), the following clause shall be inserted, namely :-

(g) "firm" means a firm as defined in section 4 of the Indian Partnership Act, 1932 (9 of 1932);

3. In rule 3 of principal rules, sub-rule (2),-

(i) clause (a),-

(A) in sub-clause (i), for the words "were partners of the Limited Liability Partnership", the words "were partners of the Limited Liability Partnership or firm as the case may be" shall be substituted

(B) in sub-clause (iv), for the words "addresses of the partners of the Limited Liability Partnership", the words "addresses of the partners of the Limited Liability Partnership or firm as the case may be" shall be substituted

(C) for sub-clause (v) the following sub-clause shall be substituted namely:-

"(v) in case of a firm, deeds of partnership, bye laws or other instrument constituting or regulating the company and duly verified in

the manner provided in sub-rule (4) and in case the deed of partnership was revised at any time in the past copies of the principal and all subsequent deeds including the latest deed, along with the certificate of the registration issued by Registrar of firms, in case the firm is registered".

(D) after sub-clause (viii), the following sub-clauses shall be inserted;

"(ix) an undertaking that the proposed directors shall comply with the requirements of Indian Stamp Act, 1899 (2 of 1899) as applicable

(x) a statement of assets and liabilities of the Limited Liability Partnership or the firm, as the case may be, duly certified by a chartered accountant in practice made as on a date not earlier than thirty days of the filing of form no.URC-1

(xi) a copy of latest income tax return of the Limited Liability Partnership or firm as the case may be."

(ii) in clause (b),-

(A) in sub-clause (iv), for the words "addresses of the partners of the Limited Liability Partnership", the words "addresses of the partners of the Limited Liability Partnership or firm as the case may be" shall be substituted

(B) for sub-clause (v), the following sub-clause shall be substituted, namely:-

"(v) a copy of instrument constituting or regulating the company and duly verified in the manner provided in sub-rule (4) and in case the deed of partnership was revised at any time in the past, copies of principal and all the subsequent deeds including the latest deed, along



with the certificate of the registration issued by Registrar of firms if any"

(C) after sub-clause (viii), the following sub-clauses shall be inserted;

"(ix) an undertaking that the proposed directors shall comply with the requirements of Indian Stamp Act, 1899 (2 of 1899);

(x) a statement of assets and liabilities of the Limited Liability Partnership or the firm, as the case may be, duly certified by a chartered accountant in practice which is made as on a date not earlier than thirty days of the filing of form no.URC-1

(xi) a copy of latest income tax return of the Limited Liability Partnership or firm as the case may be."

4. (i). in rule 3 of the principal rules, for sub-rule (3), the following sub-rule shall be substituted, namely;

"(3) An undertaking, from all the members or partners providing that in the event of registration as a company under Part I of Chapter XXI of the Act, necessary documents or papers shall be submitted to the registering or other authority with which the company was earlier registered, for its dissolution as a firm"

(ii) in sub-rule (4) for the words "designated partners of the Limited Liability Partnership" the words "designated partners of the Limited Liability Partnership or authorized partners of the firm as the case may be" shall be substituted'

5. In rule 4 of the principal rules, in sub-rule (1), for the words "in a newspaper and in English and in the principal vernacular language of the district in which Limited Liability Partnership is in existence and circulated in that district" the words "in a newspaper in English and in any vernacular language, circulating in the district in which Limited

Liability Partnership or the firm as the case may be is situate shall be substituted".

6. In rule 5 of the principal rules,-

(A) for clause (i) the following clause shall be substituted;

"(i) where a firm has obtained a certificate of registration under section 367, an intimation to this effect shall be given within fifteen days of such registration to the concerned Registrar of firms under which it was originally registered, along with papers for its dissolution as a firm"

(B) in clause (iii) for the words "concerned Registrar (LLP)" the words "Registrar of firms" and for the words "Registrar of Companies (LLP), the words "Registrar of Firms" shall be substituted;

(C) in clause (v) for the words "a statement of Proceedings, if any, by or against the Limited Liability Partnership", the words "a statement of proceedings, if any, by or against the Limited Liability Partnership or the firm as the case may be" shall be substituted.

## **RBI RELEASES UNIFORM FORMAT OF 'STATUTORY AUDITOR'S CERTIFICATE TO BE SUBMITTED BY NBFCs**

With a view to ensure consistency in the manner in which the information is received from the Auditors, Reserve Bank of India vide its circular DNBS (PPD) CC.NO./04/66.14.001/2015-16, DATED 23-6-2016 has given a uniform format of the SAC.

Format of Certificate of the Statutory Auditors' Certificate (SAC)





(On the letter head of the Statutory Auditors of the company)

We have examined the books of accounts and other records of .....(Name of company) for the Financial Year ending March 31, 20..... On the basis of the information submitted to us, we certify the following:

(Write NA whichever is not applicable)

Sl.	Particulars	Details
1	Name of the company	
2	Certificate of Registration No.	
3	Registered office Address	
4	Corporate office Address	
5	The company has been classified by RBI as : (Investment Company/Loan Company/AFC/NBFC-MFI/NBFC-Factor/IFC/IDF-NBFC)	
6	Net Owned Fund (in Rs. Crore) (Calculation of the same is given in the Annex)	
7	Total Assets (in Rs. Crore)	
8	Asset-Income pattern: (in terms of RBI Press Release 1998-99/1269 dated April 8, 1999) (a) % of Financial Assets to Total Assets (b) % of Financial Income to Gross Income (NBFC-Factor/NBFC-MFI/AFC/IFC may also report	

	separately below)	
9	Whether the company was holding any Public Deposits, as on March 31, ____? If Yes, the amount in Rs. Crore	(Yes/No)
10.	Has the company transferred a sum not less than 20% of its Net Profit for the year to Reserve Fund? (in terms of Sec 45-IC of the RBI Act, 1934).	(Yes/No/NA)
11	Has the company received any FDI? If Yes, did the company comply with the minimum capitalization norms for the FDI?	(Yes/No)
12	If the company is classified as an NBFC-Factor; (a) % of Factoring Assets to Total Assets (b) % of Factoring Income to Gross Income	
13	If the company is classified as an NBFC-MFI; % of Qualifying Assets to Net Assets (refer to Notification DNBS.PD.No.234 CGM (US) 2011 dated December 02, 2011)	
14	If the company is classified as an AFC; (a) % of Advances given for creation of physical/real assets supporting economic activity to Total Assets (b) % of income generated out of these assets to Total Income	
15	If the company is classified as an NBFC-IFC	

	% of Infrastructure Loans to Total Assets	
16	Has there been any takeover/acquisition of control/ change in shareholding/ Management during the year which required prior approval from RBI? (please refer to per DNBR (PD) CC. No.065/03.10.001/2015-16 dated July 09, 2015 on the subject for details)	(Yes/No) If yes, please specify.

In terms of paragraph 2 of Notification No. DNBS.201/DG(VL)-2008 dated September 18, 2008, a separate report to the Board of Directors of the company has been made.

I have read and understood paragraph 5 of Notification No. DNBS.201/DG(VL)-2008 dated September 18, 2008.

Signature and Stamp of the Statutory Auditor:                      Date: .....

Place: .....

#### Annex

	Capital Funds - Tier I	(Rs. In crore)
1.	Paid up Equity Capital	
2.	Pref. shares to be compulsorily converted into equity	
3.	Free Reserves:	
	a. General Reserve	

	b. Share Premium	
	c. Capital Reserves	
	d. Debenture Redemption Reserve	
	e. Capital Redemption Reserve	
	f. Credit Balance in P&L Account	
	g. Other free reserves (may be specified)	
4.	Special Reserves	
	Total of 1 to 4	
5.	Less: i. Accumulated balance of loss	
	ii. Deferred Revenue Expenditure	
	ii. Deferred Tax Assets (Net)	
	iii. Other intangible Assets	
	Owned Fund	
6.	Investment in shares of	
	(i) Companies in the same group	
	(ii) Subsidiaries	
	(iii) Wholly Owned Subsidiaries	
	(iv) Other NBFCs	
7.	Book value of debentures, bonds outstanding loans and advances, bills	

	purchased and is counted (including H.P. and lease finance) made to, and deposits with (i) Companies in the same group	
	(ii) Subsidiaries	
	(iii) Wholly Owned Subsidiaries/Joint Ventures Abroad	
8.	Total of 6 and 7	
9.	Amount in item 8 in excess of 10% of Owned Fund	
10.	Net Owned Fund	

# VERENDRA KALRA & CO

CHARTERED ACCOUNTANTS

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