

The MCA provides further clarity on deposit related norms of the Companies Act, 2013

2 April 2015



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Transition:

Immediately

Within the next 3 months

Post 3 months but within 6 months

Post 6 months

Background

The Ministry of Corporate Affairs (MCA) has been issuing various amendments and clarifications to the Companies Act, 2013 (the Act) and the corresponding Rules to remove practical impediments faced by companies while implementing certain provisions of the Act.

Recently, the MCA has amended the Companies (Acceptance of Deposits) Rules, 2014 (deposit Rules – 2014) and has issued clarifications relating to the amounts received by the private companies from their members, directors or their relatives prior to 1 April 2014. The amendments would come into force from the date of its publication in the Official Gazette.

This issue of First Notes summarises the important aspects arising from the amendments and the clarifications provided by the MCA.

Amendments to the deposit Rules – 2014

Treatment of past application money pending allotment

Provisions with regard to deposits were *inter alia*, prescribed in section 58A of the Companies Act, 1956 and the Companies (Acceptance of Deposits) Rules, 1975 (deposit Rules – 1975).

Under the deposit Rules – 1975, amounts received by way of:

- subscriptions to shares, stock, certain bonds or debentures as prescribed, pending allotment, and
- calls in advance on shares, in accordance with the Articles of Association of the company so long as such amounts are

not repayable to the members under the Articles of Association of the company

were not considered as deposits.

The deposits Rules – 2014 have now been amended to provide that unless otherwise required under the Companies Act, 1956 or the Securities and Exchange Board of India Act, 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 shares, stock, bonds or debentures before 1 April 2014, and

- had disclosed in the balance sheet for the financial year ending on or before the 31 March 2014 against which the allotment was pending on 31 March 2015,

the company shall, by 1 June 2015, either:

- return such amounts to the persons from whom these were received,
- allot shares, stock, bonds or debentures, or
- comply with the deposits Rules - 2014.

Credit rating agencies and minimum investment grade rating prescribed

Under first proviso to section 76(1) of the Act, an eligible company will be required to obtain rating (including its net worth, liquidity and ability to pay its deposits on due date) from a recognised credit rating agency at the time of invitation of deposits from the public and every year during the tenure of the deposits.

Eligible companies have been defined in the deposit Rules – 2014 to mean a public company:

- having a net worth of not less than INR1 billion, or a turnover of not less than INR5 billion,
- which has obtained the prior consent of the company in general meeting by a special resolution, and
- filed the said resolution with the Registrar of Companies before making any invitation to the public for acceptance of deposits.

MCA clarification for amounts received by private companies from their members, directors or their relatives prior to 1 April 2014

Requirements under the Companies Act, 1956

Under the deposit Rules – 1975, deposits *inter alia*, excludes:

- any amount received by a private company from a person who, at the time of the receipt of the amount, was a director, relative of director or member, provided that
- the director or member, 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 that the amount is not being given out of funds acquired by him by borrowing or accepting from others.

Current requirements of the Act and the deposit Rules - 2014

The Act and the deposits Rules – 2014 *inter alia*,

Currently, neither the Act nor the deposit Rules – 2014 prescribe a list of recognised credit rating agencies and the minimum rating grade that should be obtained.

The deposit Rules – 2014 now prescribe that every eligible company should obtain, at least once in a year, credit rating for deposits accepted and file a copy of the rating to the Registrar of Companies along with the Return of deposits in Form DPT 3. The names of the rating agency and the minimum investment grading is as below:

Name of agency	Minimum investment grade rating
The Credit Rating Information Services of India Limited	FA – (FA Minus)
ICRA Limited	MA – (MA Minus)
Credit Analysis and Research Limited	CARE BBB(FD)
Fitch Rating India Private Limited	tA-(ind)(FD)
Brickwork Ratings India Private Limited	BWR F A
SME Rating Agency of India Limited	SMERA A”

Other key amendments

Currently, companies can accept deposits without deposit insurance contract till 31 March 2015. The deposit Rules – 2014 have now permitted companies to accept deposits without deposit insurance contract till 31 March 2016 or till the availability of a deposit insurance product, whichever is earlier.

prescribe as follows:

- Section 73(2) of the Act permits a company to accept deposits from its members subject to the prescribed conditions.
- Under the deposits Rules - 2014, deposits *inter alia*, excludes:
 - any amount received from a person who at the time of 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 the amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others.

No specific exclusion has been provided for receipt of money by way of deposit from relatives of the directors under the deposits Rules - 2014.

With regard to any deposits accepted before 1 April 2014, the amount of such deposit or part thereof or any interest due thereon remaining unpaid on 1 April 2014 or becoming due thereafter, section 74(1) of the Act requires a company to:

- file, within a period of three months from 1 April 2014 or from the date on which such payments are due, with the Registrar of Companies a statement of all the deposits accepted and sums remaining unpaid on such amount with the interest payable thereon along with the arrangements made for such repayment, notwithstanding anything contained in any other law for the time being in force or under the terms and conditions subject to which the deposit was accepted or any scheme framed under any law, and
- repay the amount within one year from 1 April 2014 or from the date on which such payments have become due, whichever is earlier.

Though section 74(1) of the Act permitted grandfathering of above deposits, it was unclear whether amounts received prior to 1 April 2014 (but not qualifying as deposits under the Companies Act, 1956)

and the remaining unpaid amount could now be considered as deposits under the Act. Considering these amounts as deposits might affect the cash flows of the company where the remaining maturity period of the deposits is more than one year.

Clarification provided by the MCA

With the aim to clear the ambiguity around treatment of amounts received by private companies from their members, directors or their relatives prior to 1 April 2014, the MCA in consultation with the Reserve Bank of India has provided the following clarifications:

- Amounts received by private companies from their members, directors or their relatives prior to 1 April 2014 should not be treated as deposits under the Act and the deposits Rules – 2014 subject to the condition that the relevant private company discloses, in the notes to its financial statement for the financial year commencing on or after 1 April 2014, the figure of such amounts and the accounting head in which such amounts have been shown in the financial statements.
- Any renewal or acceptance of fresh deposits on or after 1 April 2014 should, however, be in accordance with the provisions of the Act and the deposits Rules - 2014.

Our comments

- By prescribing the procedures on treatment of receipt of money in the past against which allotment of shares/ stock/bonds/ debentures is pending, the MCA has tried to address a valid concern that had been raised by various stakeholders.
- The MCA clarification seeks to provide a transitional relief to private companies, who probably have been struggling with the implications of these amounts received, under the Act and the deposits Rules – 2014, being treated as deposit and resultant compliance requirements.
- The amendments and clarifications are expected to help in the thorough implementation of the Act.

The bottom line

The amendments/clarifications provided by the MCA are a welcome step as companies in India prepare to report on their full year financial statements for the year ending 31 March 2015. Some more work remains to be done and we could expect further clarifications and amendments on other aspects relating to the implementation of the Act.

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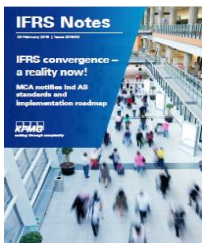
Introducing KPMG in India IFRS Institute



KPMG in India is pleased to re-launch 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



IFRS convergence – a reality now! MCA notifies Ind AS standards and implementation roadmap

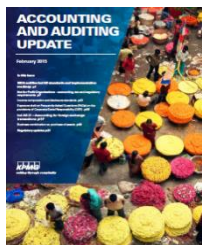
This issue of our IFRS Notes provides a high level analysis of the much awaited Indian Accounting Standards (Ind AS) that are converged with International Financial Reporting Standards (IFRS), which was finally notified by the Ministry of Corporate Affairs on 16 February 2015.

The notification of these IFRS converged standards aims to fill up significant gaps that exist in the current accounting guidance, and India can now claim to have financial reporting standards that are contemporary and virtually on par with leading global standards. This in turn may improve India's place in global rankings on corporate governance and transparency in financial reporting.

With the notification of 39 Ind AS standards together with the implementation roadmap, coupled with the progress made on finalising the Income Computation and Disclosure Standards (ICDS), the government has potentially addressed several hurdles which possibly led to deferment of Ind AS implementation in 2011.

Companies should make an impact assessment and engage with stakeholders, both internal and external, to deal with their respective areas of impact and ensure a smooth transition.

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



February 2015

The February 2015 edition of the Accounting and Auditing Update captures the recent notification by the Ministry of Corporate Affairs on the timeline for adoption of Indian Accounting Standards (Ind AS) in India and release of the 39 Ind AS. We have provided an overview of the revised drafts ICDS (2015) that will help determine taxable income.

We discussed some of the issues faced by the Not for Profit Organisations and assess sector specific accounting, tax and regulatory requirements. As is the case each month, we covered key regulatory developments during the recent past and also highlighted the salient aspects of the recently issued exposure draft on the 'frequently asked questions' on the provisions of the Corporate Social Responsibility by the Institute of Chartered Accountants of India.



The MCA revamps e-voting norms; relaxes compliance requirements

The Ministry of Corporate Affairs (MCA) has been issuing various amendments and clarifications to the Companies Act, 2013 (the Act) and to the corresponding Rules to remove practical challenges faced by companies while implementing certain provisions of the Act. Recently, the MCA has amended the following Rules :

- The Companies (Management and Administration) Rules, 2014
- The Companies (Share Capital and Debentures) Rules, 2014
- The Companies (Meetings of Board and its Powers) Rules, 2014.

Amendments to the above Rules will come into force from the date of publication in the Official Gazette. Our First Notes summarises the important aspects arising from the general circular issued by the MCA on 10 March 2015.



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.

On 18 March 2015, we covered the following topics :

- (1) Overview of section 143(12) of the Companies Act, 2013
- (2) Persons covered for reporting under section 143(12) of the Companies Act, 2013
- (3) Reporting on frauds in various scenarios.

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