



**THE INSTITUTE OF  
Company Secretaries of India**  
IN PURSUIT OF PROFESSIONAL EXCELLENCE  
Statutory body under an Act of Parliament

# CS NITOR

ICSI E-NEWSLETTER



## PRESIDENT MESSAGE

**Dear Professional Colleagues,**

*"Look at the sky. We are not alone. The whole universe is friendly to us and conspires only to give the best to those who dream the work"*

- Dr. A.P.J. Abdul Kalam

As I sat down to write this communiqué, I am reminded of the words "Let me now give my visualization of competitive profile of India in the year, 2020 so that you can map the vision for the professional India and corporate India towards the realization of national development goals", these were the words of our former President, Late Dr. A. P. J. Abdul Kalam, during the inauguration of ICSI Symposium on "Vision for Professional India and Corporate India by the year 2020".

Vision 2020 - the dream of Dr. Kalam envisioned India to be a developed country by 2020. He regarded his nation as a knowledge superpower and strongly advocated an action plan to develop India into a strong nation by the year 2020.

The real tribute to this great son of Mother India would be to work sincerely for his dreams and make this vision a reality, for him, for us, and for the generations to come.

With these words and with all optimism, I present before you this issue of e-CS Nitor with an inspirational quote from Dr. Kalam, "A developed India by 2020, or even earlier, is not a dream. It need not be a mere vision in the minds of many Indians. It is a mission we can all take up – and succeed."

**Regards,**

**CS Atul H. Mehta**

*President*

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## Images



**National Conference on Competition Law Compliances by Enterprises at Kolkata on 20 July, 2015**

*From Left to Right : CS Sutanu Sinha, Chief Executive & Officiating Secretary, ICSI; CS Mamta Binani, Vice President, ICSI; Mr. M. S. Sahoo, Member, Competition Commission of India; Mr. Sunil Kanoria, Vice Chairman, SREI Infrastructure Finance Ltd. and Sr. Vice President, ASSOCHAM; CS S. K. Agrawala, Council Member, ICSI.*



**National Conference on Competition Law Compliances by Enterprises at Kolkata on 20 July, 2015 (Session - I)**

*From Left to Right : CS Sandip Kumar Kejriwal, Vice Chairman, EIRC, ICSI (Convener); Mr. G. R. Bhatia, Partner, Luthra and Luthra Law Offices; Mr. Ved Prakash Mishra, Director, Competition Commission of India; Mr. Shouvik Kumar Guha, Assistant Professor, The WB National University of Juridical Sciences.*



**National Conference on Competition Law Compliances by Enterprises at Kolkata on 20 July, 2015 (Session - II)**

*From Left to Right : Ms. De Rupanjana, Secretary, EIRO, ICSI (Convener); Professor (Dr.) P. Ishwara Bhat, Vice-Chancellor, The WB National University of Juridical Sciences; Mr. Tarun Mathur, Manager, Ernst and Young; Mr. K. K. Sharma, Advocate, Former Director General, CCI, Commissioner of Income Tax.*



**National Seminar on Secretarial Standards at Chennai on 18 July, 2015**

*From Left to Right : CS Nagendra D Rao, Chairman, SIRC, ICSI, CS Ahalada Rao V. Council Member, ICSI and Member SSB, CS (Ms.) Mamta Binani, Vice President, ICSI, CS Pavan Kumar Vijay, Past President, ICSI and Chairman SSB; CS Ramasubramaniam C., Council Member, ICSI.*

## Acceptance of Deposits under Companies Act, 2013

CS M. Kurthalanathan\*  
Practising Company Secretary

### PROHIBITION ON ACCEPTANCE OF DEPOSITS FROM PUBLIC- SECTION 73

No company shall invite, accept or renew deposits under this Act from the public except in a manner provided under this Chapter.

#### Exemption

It shall apply to a company other than;

- a Banking Company
- a NBFC as defined in the RBI Act, 1934 registered with the RBI
- a Housing finance company registered with the National Housing Bank established under the National Housing Bank Act, 1987
- a Company specified by the Central government

A company may, subject to **the passing of a resolution in general meeting** and subject to Companies (Acceptance of Deposit) Rules, 2014 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 such deposits with interest, as may be agreed upon between the company and its members.

#### Conditions

- 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.
- filing a copy of the circular along with such statement with the Registrar within 30 days** before the date of issue of the circular;
- depositing such sum** which shall not be less than **15% 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**;
- providing deposit insurance**
- 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 such deposits; and
- 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:

*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.*

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\* The views expressed are personal views of the author and do not necessarily reflect those of the Institute.

## Apply to Tribunal

Every deposit accepted by a company shall be repaid with interest in accordance with the terms and conditions of the agreement.

Where a company fails to repay the deposit or part thereof or any interest thereon the **depositor concerned may apply to the Tribunal** 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.

## Terms and conditions of acceptance of deposits by companies

<i>S.No.</i>	<i>Company</i>	<i>Terms &amp; Conditions</i>
1	No company referred to section 73(2) and no eligible company shall <b>accept or renew any deposit</b> , whether <b>secured or unsecured</b> , which is <b>repayable on demand</b> or upon <b>receiving a notice within a period of less than six months or more than thirty-six months</b> from the date of acceptance or renewal of such deposit.  For the purpose of meeting any of its <b>short-term requirements of funds</b> , a company may accept or renew such deposits for repayment <b>earlier than six months from the date of deposit or renewal</b> , as the case may be,	<ul style="list-style-type: none"><li>• Deposits shall not exceed <b>10% of the aggregate of the paid up share capital and free reserves of the company</b>, and</li><li>• Deposits <b>are repayable not earlier than three months</b> from the date of such deposits or renewal thereof.</li></ul>
2	No company referred to section 73(2) shall <b>accept or renew any deposit from its members</b> .	If the amount of such deposits together with the <b>amount of other deposits outstanding</b> as on the date of acceptance or renewal of such deposit exceeds <b>25% of the aggregate of the paid-up share capital and free reserves</b> of the company
3	(a) No eligible company shall accept or renew any deposit from its members	If the amount of such deposit together with the amount of deposits outstanding as on the date of acceptance or renewal of such deposits from members exceeds <b>10% of the aggregate of the paid-up share capital and free reserves</b> of the company;
	(b) No eligible company shall accept or renew any other deposit	If the amount of such deposit together with the amount of such other deposits, other than the deposit referred to in clause (a), outstanding on the date of acceptance or renewal exceeds <b>25% of aggregate of the paid-up share capital and free reserves</b> of the company
4	No Government company eligible to accept	If the amount of such deposits together with



	deposits under section 76 shall accept or renew any deposit	the amount of other deposits outstanding as on the date of acceptance or renewal exceeds <b>35% of the aggregate of its paid up share capital and free reserves</b> of the company
<b>5</b>	No company referred to section 73(2) or any eligible company shall invite or accept or renew any deposit in any form.	carrying a <b>rate of interest</b> or pay brokerage thereon at a <b>rate exceeding the maximum RoI or brokerage prescribed by the RBI</b> for acceptance of deposits by NBFCs

Where depositors so desire, deposits may be accepted in joint names not exceeding three, with or without any of the clauses, namely, "Jointly", "Either or Survivor", "First named or Survivor", "Anyone or Survivor". The person who is authorised, in writing, by a company to solicit deposits on its behalf and through whom deposits are actually procured shall only be entitled to the brokerage and payment of brokerage to any other person for procuring deposits shall be deemed to be in violation of these rules.

The company shall not reserve to itself either directly or indirectly a right to alter, to the prejudice or disadvantage of the depositor, any of the terms and conditions of the deposit, deposit trust deed and deposit insurance contract after circular or circular in the form of advertisement is issued and deposits are accepted.

### **Form and particulars of advertisements or circulars**

#### ***Issue circular:***

Every **company referred to section 73(2)** intending to invite deposit from its members shall issue a circular to all its members by registered post with acknowledgement due or speed post or by electronic mode in **Form DPT-1**.

#### ***Publish Circular:***

The **circular** may be **published** in English language in an **English newspaper** and in vernacular language in a **vernacular newspaper** having wide circulation in the State in which the registered office of the company is situated.

Every **eligible company** intending to invite deposits shall issue a circular in the form of an advertisement in Form **DPT-1** for the purpose in English language in an English newspaper and in vernacular language in one vernacular newspaper having wide circulation in the State in which the registered office of the company is situated.

#### ***Upload copy of Circular:***

Every company inviting deposits from the public shall **upload a copy of the circular on its website**, if any.

#### ***File copy of Circular with Registrar:***

No company shall issue or allow any other person to issue or cause to be issued on its behalf, any circular or a circular in the form of advertisement inviting deposits, unless such circular or circular in the form of advertisement is issued on **the authority and in the name of the Board of directors of the company**

No circular or a circular in the form of advertisement shall be issued by or on behalf of a company unless, **not less than thirty days before the date of such issue**, there has been **delivered to the Registrar** for registration a copy thereof signed by a majority of the directors of the company as constituted at the time the Board approved the circular or circular in the form of advertisement, or their agents, duly authorised by them in writing.

### ***Validity of Circular***

A circular or circular in the form of advertisement issued shall be valid until-

- the expiry of **six months from the date of closure of the financial year** in which it is issued or
- the **date on** which the financial **statement is laid before the company in AGM** or,
- where the **AGM** for any year has **not been held**, the **latest day on which that meeting should have been held** in accordance with the provisions of the Act, **whichever is earlier** and

A fresh circular or circular in the form of advertisement shall be issued, in each succeeding financial year, for inviting deposits during that financial year.

*The date of the issue of the newspaper in which the advertisement appears shall be taken as the date of issue of the advertisement and the **effective date** of issue of circular **shall be the date of dispatch of the circular***

### **Manner and extent of deposit insurance**

#### ***Enter into Deposit Insurance Contract:***

Every company referred to section 73(2) and every other eligible company inviting deposits shall enter into a contract for providing deposit insurance at least **30 days before the issue of circular or advertisement** or at **least 30 days before the date of renewal**, as the case may be. The amount as specified in the deposit insurance contract shall be deemed to be the amount in respect of both principal amount and interest due thereon.

***As per MCA's amended CAD rules,2014, "The Companies may accept the deposits without deposit insurance contract till 31<sup>st</sup> March 2015"***

#### ***Details of Deposit Insurance Contract (DIC):***

The deposit insurance contract shall specifically provide that in case the company defaults in repayment of principal amount and interest thereon, the depositor shall be entitled to the repayment of **principal amount of deposits and the interest thereon** by the insurer up to the **aggregate monetary ceiling** as specified in the contract.

In the case of any deposit and interest not exceeding Rs.20,000/-	The DIC shall provide for payment of the full amount of the deposit and interest
In the case of any deposit and the interest thereon in excess of Rs.20,000/-	The DIC shall provide for payment of an amount not less than Rs. 20,000/-for each depositor

The amount of **insurance premium paid** on the insurance of such deposits **shall be borne by the company** itself and **shall not be recovered from the depositors** by deducting the same from the principal amount or interest payable thereon.

#### ***Default in Deposit Insurance Contract:***

If any default is made by the company in complying with the terms and conditions of the deposit insurance contract which makes the insurance cover ineffective-

- the company shall either **rectify the default immediately** or
- enter into a **fresh contract within 30 days** and

#### ***In case of non-compliance-***

- the amount of deposits covered under the deposit insurance contract and interest payable thereon shall be repaid **within the next 15 days** and

- if such a **company does not repay the amount of deposits within said 15 days** it shall pay **15% interest per annum** for the period of delay and shall be treated as having defaulted and shall be liable to be punished in accordance with the provisions of the Act.

## **Creation of Security**

### ***Charge on assets:***

Every company referred to section 73(2) and every eligible company inviting secured deposits shall provide for **security by way of a charge on its assets** as referred to in Schedule III of the Act **excluding intangible assets of the company** for the due repayment of the amount of deposit and interest thereon for an amount which **shall not be less than the amount remaining unsecured by the deposit insurance**.

### ***Assessment by Registered valuer:***

In the case of deposits which are secured by the charge on the assets referred to in Schedule III of the Act excluding intangible assets, the amount of such deposits and the interest payable thereon shall not exceed the market value of such assets as assessed by a **registered valuer**.

The company shall ensure that the total value of the security either by way of **deposit insurance** or by way of **charge** or by both **on company's assets** shall **not be less than the amount of deposits accepted and the interest** payable thereon.

For the purposes of proviso to sub-clause (ix) of clause (c) of sub-rule (1) of rule 2 and sub-rule(1) of rule 6, it is hereby clarified that pending notification of sub-section (1) of section 247 of the Act and finalisation of qualifications and experience of valuers, valuation of stocks, shares, debentures, securities etc. shall be conducted by an **independent merchant banker** who is registered with the SEBI or an **independent chartered accountant in practice** having a **minimum experience of ten years**.

### ***Security for Deposits:***

The security (not being in the nature of a pledge) for deposits shall be created in favour of a trustee for the depositors on:

- specific movable property of the company, or
- specific immovable property of the company wherever situated, or any interest therein

## **Appointment of trustee for depositors**

No company referred to section 73(2) or any eligible company shall issue a circular or advertisement inviting secured deposits unless the company has **appointed one or more trustees for depositors** for creating security for the deposits.

### ***Appointment of Trustee:***

No person including a company that is in the business of providing trusteeship services shall be appointed as a trustee for the depositors, if the proposed trustee –

- (a) is a *director, key KMP or any other officer or an employee* of the company or of its holding, subsidiary or associate company or a depositor in the company;
- (b) is *indebted to the company*, or its subsidiary or its holding or associate company or a subsidiary of such holding company;
- (c) has any *material pecuniary relationship* with the company;

- (d) has *entered into any guarantee arrangement* in respect of principal debts secured by the deposits or interest thereon;
- (e) is related to any person specified in clause (a) above.

#### ***Duties of trustees:***

It shall be the duty of every trustee for depositors to-

- (a) ensure that the *assets of the company on which charge is created together with the amount of deposit insurance are sufficient to cover the repayment of the principal amount* of secured deposits outstanding and interest accrued thereon;
- (b) *satisfy himself that the circular or advertisement inviting deposits does not contain any information which is inconsistent with the terms of the deposit scheme or with the trust deed and is in compliance with the rules and provisions of the Act;*
- (c) ensure that the *company does not commit any breach of covenants and provisions of the trust deed;*
- (d) take such reasonable steps as may be necessary to procure a remedy for any breach of covenants of the trust deed or the terms of invitation of deposits;
- (e) take steps to call a meeting of the holders of deposits as and when such meeting is required to be held;
- (f) supervise the implementation of the conditions regarding creation of security for deposits and the terms of deposit insurance;
- (g) do such acts as are necessary in the event the security becomes enforceable;
- (h) carry out such acts as are necessary for the protection of the interest of depositors and to resolve their grievances

#### ***Obtain written consent:***

A **written consent** shall be **obtained from the trustee for depositors** before their appointment and a statement shall appear in the circular or circular in the form of advertisement with reasonable prominence to the effect that the trustees for depositors have given their consent to the company to be so appointed.

#### ***Execute Deposit Trust Deed:***

The company shall execute a deposit trust deed in **Form DPT-2 at least 7 days** before issuing the circular or circular in the form of advertisement.

#### **Removal of Trustee**

No trustee for depositors shall be removed from office after the issue of circular or advertisement and before the expiry of his term **except with the consent of all the directors present at a meeting of the board.**

In case the company is required to have independent directors, at least **one independent director shall be present** in such meeting of the Board.

#### **Meeting of depositors**

The trustee for depositors shall call a meeting of all the depositors on-

- (a) ***requisition in writing*** signed ***by at least 1/10th of the depositors in value*** for the time being outstanding;
- (b) ***the happening of any event***, which constitutes a default or which, in the opinion of the trustee for depositors, affects the interest of the depositors



## **Form of application for deposits**

No company shall accept, or renew any deposit, whether secured or unsecured, unless an application, in such form as specified by the company, is submitted by the intending depositor for the acceptance of such deposit.

The form of application shall contain a declaration by the intending depositor to the effect that the deposit is not being made out of any money borrowed by him from any other person.

## **Power to nominate**

Every depositor may, at any time, nominate any person to whom his deposits shall vest in the event of his death and the provisions of section 72 shall, as far as may be, apply to the nomination made under this rule.

## **Furnishing of deposit receipts to depositors**

Every company shall, on the acceptance or renewal of a deposit, furnish to the depositor or his agent a receipt for the amount received by the company, **within a period of 21 days from the date of receipt of money or realisation of cheque or date of renewal.**

The receipt shall –

- be signed by **an officer of the company duly authorised by the Board** in this behalf and
- state **the date of deposit,**
- **the name and address of the depositor,**
- **the amount received by the company as deposit,**
- **the rate of interest payable thereon and the date on which the deposit is repayable.**

## **Maintenance of liquid assets and creation of deposit repayment reserve account**

Every company referred to section 73 (2) and every eligible company shall **on or before the 30th day of April of each year deposit the sum** which shall **not be less than 15 % of the amount of its deposits maturing during a financial year** and the financial year next following, with any scheduled bank in a separate bank account to be called as “**deposit repayment reserve account**” and the amount so deposited shall not be utilised for any purpose other than for the repayment of deposits.

The amount remaining deposited **shall not at any time fall below 15%. of the amount of deposits maturing,** until the end of the current financial year and the next financial year.

## **Registers of deposits**

Every company accepting deposits shall maintain at its registered office one or more separate registers for deposits accepted or renewed, in which there shall be entered separately in the case of each depositor the following particulars;

### ***Particulars of deposits:***

- name, address and PAN of the depositor/s;*
- particulars of guardian, in case of a minor;*
- particulars of the nominee;*
- deposit receipt number;*
- date and the amount of each deposit;*
- duration of the deposit and the date on which each deposit is repayable;*

- (g) *rate of interest* or such deposits to be payable to the depositor;
- (h) *due date* for payment of interest;
- (i) *mandate and instructions for payment of interest* and for non-deduction of tax at source, if any;
- (j) date or *dates* on which *the payment of interest* shall be made;
- (k) *details of deposit insurance* including extent of deposit insurance;
- (l) *particulars of security or charge created* for repayment of deposits;
- (m) *any other relevant particulars*;

The entries shall be made **within 7 days from the date of issuance of the receipt** duly **authenticated by a director or secretary of the company** or by **any other officer authorised by the Board** for this purpose.

The register shall be preserved in good order for a period of **not less than 8 years from the financial year in which the latest entry** is made in the register.

### **General provisions regarding premature repayment of deposits**

Where a company makes a repayment of deposits, **on the request of the depositor, after the expiry of a period of six months** from the date of such deposit **but before the expiry of the period for which such deposit was accepted**, the rate of interest payable on such deposit shall be reduced by 1% from the rate which the company would have paid had the deposit been accepted for the period for which such deposit had actually run and the company shall not pay interest at any rate higher than the rate so reduced

### **Exemption**

If the repayment of any deposit before the expiry of the period for which such deposit was accepted by the company is made solely for the purpose of—

- (a) complying with the provisions of **Terms and conditions of acceptance of deposit by companies**.
- (b) providing **war risk** or other **related benefits to the personnel of the naval, military or air forces or to their families**, on an **application made by the associations or societies formed by such personnel**, during the **period of emergency declared under article 352 of the Constitution**.

*If a company referred to section 73(2) or any eligible company permits a depositor to renew his deposit, before the expiry of the period for which such deposit was accepted by the company, for availing of a higher rate of interest, the company shall pay interest to such depositor at the higher rate if such deposit is renewed in accordance with the other provisions of these rules and for a period longer than the unexpired period of the deposit.*

*If the period for which the deposit had run contains any part of a year, then, if such part is less than six months, it shall be excluded and if such part is six months or more, it shall be reckoned as one year.*

### **Return of deposits to be filed with the Registrar**

Every company to which these rules apply, shall on or before the **30th day of June, of every year, file with the Registrar**, a return in **Form DPT-3** along with the fee as provided in Companies (Registration Offices and Fees) Rules, 2014 and **furnish the information contained therein as on the 31st day of March of that year** duly **audited by the auditor of the company**.

### **Penal rate of interest**

Every company shall pay a penal rate of interest **of 18% per annum** for the overdue period in case of deposits, whether secured or unsecured, matured and claimed but remaining unpaid.

## Power of Central Government to decide certain questions :

If any question arises as to the applicability of these rules to a particular company, such question shall be decided by the Central Government in consultation with the RBI.

## Punishment for contravention:

If any company referred to section 73(2) or any eligible company inviting deposits or any other person contravenes any provision of these rules for which no punishment is provided in the Act, the company and every officer of the company who is in default shall be punishable with **fine** which may extend to **Rs.5,000/-** and where **the contravention is a continuing one**, with a further fine which may extend to **Rs.500/- for every day** after the first day during which the contravention continues.

## REPAYMENT OF DEPOSITS ETC. ACCEPTED BEFORE COMMENCEMENT OF THE ACT- SECTION-74

Where in respect of any deposit accepted by a company before the commencement of this Act, the amount of such deposit or part thereof or any interest due thereon remains unpaid on such commencement or becomes due at any time thereafter, the company shall—

- (a) file, **within a period of three months** from such commencement or from the date on which such payments, are due, with the Registrar a statement in **Form DPT-4\*** of all the deposits accepted by the company 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
- (b) **repay within one year from such commencement** or from the date on which such payments are due, **whichever is earlier**.

\*It has been clarified by MCA vide General Circular 27/2014 dated 30<sup>th</sup> June,2014 ,the time period for filing Form DPT-4 is **extended up to 31st August,2014** without any additional fee in term of Section 403 of the act to enable the companies to file the statement with the Registrar.

## Extension of time for repayment

The Tribunal may on an **application** made by the company, **after considering the financial condition of the company**, the amount of deposit or part thereof and the interest payable thereon and such other matters, allow further time as considered reasonable to the company to repay the deposit.

## Penalty

If a company fails to repay the deposit or part thereof or any interest thereon or such further time as may be allowed by the Tribunal –

<b>Company</b>	<b>Fine of Rs.1 Crore upto Rs. 10 Crores</b>
<b>Officer in default</b>	<b>Imprisonment upto 7 years or</b> <b>With fine of Rs. 25 lakhs to Rs. 2 Crores or</b> <b>With both.</b>

## Damages for Fraud- Section-75

Where a company **fails to repay the deposit or part thereof or any interest thereon** or such further time as may be allowed by the Tribunal and it is proved that the deposits had been accepted with **intent to defraud the depositors** or for any **fraudulent purpose**, every officer of the company who was responsible for the acceptance of such deposit shall be personally responsible, without any limitation of liability, for all or any of the losses or damages incurred by the depositors and also liable under section 447 for fraud.

Any suit, proceedings or other action may be taken by any person, group of persons or any association of persons who had incurred any loss as a result of the failure of the company to repay the deposits or part thereof or any interest thereon.

### Penalty

Officer	<p><b><u>Fraud:</u></b></p> <p>Imprisonment for 6 <b>months to 10 years</b> and</p> <p>Fine which shall not be less than <b>amount involved in the fraud but</b> which may extend to <b>3 times the amount involved</b> in the fraud.</p> <p><b><u>Fraud involves public interest:</u></b></p> <p>Imprisonment shall not <b>be less than 3 years</b>.</p>
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### ACCEPTANCE OF DEPOSITS FROM PUBLIC BY CERTAIN COMPANIES- SECTION-76

A public company, having **net worth** of not less than **Rs.100 Crores** or **turnover** of not less than **Rs.500 Crores**, may accept deposits from persons other than its members subject to compliance with the requirements provided in section 73(2) and Companies (Acceptance of Deposit) rules,2014.

#### Obtain rating from Credit Rating Agency

Every company shall be required to obtain the rating (including its **net worth, liquidity** and **ability to pay its deposits** on due date) **from a recognised credit rating agency** for informing the public the rating given to the company at the time of invitation of deposits from the public which **ensures adequate safety** and the **rating shall be obtained for every year during the tenure of deposits**.

#### Create charge on assets

Every company accepting secured deposits from the public shall **within 30 days** of such acceptance, **create a charge on its assets** of an amount not less than the amount of deposits accepted in favour of the deposit holders in accordance with CAD, rules 2014.

Pursuant to provisions of section 76(2) of the Act, the provisions of sections 73 and 74 shall, *mutatis mutandis*, apply to acceptance of deposits from public by eligible companies.

In case of a company which had accepted or invited public deposits under the relevant provisions of the Companies Act, 1956 and rules made under that Act (hereinafter known as "Earlier Deposits") and has been repaying such deposits and interest thereon in accordance with such provisions, the provisions of section 74(1)(b) of the Act shall be deemed to have been complied with if the company complies with requirements under the Act and these rules and continues to repay such deposits and interest due thereon on due dates for the remaining period of such deposit in accordance with the terms and conditions and period of such Earlier Deposits and in compliance with the requirements under the Act and these rules.

The fresh deposits by every eligible company shall have to be in accordance with the provisions of Chapter V of the Act and these rules.

### PUNISHMENT FOR CONTRAVENTION OF SECTION 73 OR SECTION 76 OF THE SECTION 76A

Where a company accepts or invites or allows or causes any other person to accept or invite on its behalf any deposit in contravention of the manner or the conditions prescribed under section 73 or section 76 or rules made thereunder or if a company fails to repay the deposit or part thereof or any interest due



thereon within the time specified under section 73 or section 76 or rules made thereunder or such further time as may be allowed by the Tribunal under section 73,—

- (a) the company shall, in addition to the payment of the amount of deposit or part thereof and the interest due, be punishable with fine which shall not be less than one crore rupees but which may extend to ten crore rupees; and
- (b) every officer of the company who is in default shall be punishable with imprisonment which may extend to seven years or with fine which shall not be less than twenty-five lakh rupees but which may extend to two crore rupees, or with both:

Provided that if it is proved that the officer of the company who is in default, has contravened such provisions knowingly or wilfully with the intention to deceive the company or its shareholders or depositors or creditors or tax authorities, he shall be liable for action under section 447.

## Definitions

<b><u>Deposit</u></b>	<b>Section 2(31) of CA, 2013</b> “deposit” includes any receipt of money by way of deposit or loan or in any other form by a company, but does not include such categories of amount as prescribed in the rule 2(c) of Companies (Acceptance of Deposit) Rules, 2014, in consultation with the RBI.
	<b>Rule 2 (C) of CAD Rules, 2014</b> (i) any amount received from the <i>Central Government</i> or a <i>State Government</i> , or any amount received from any <i>other source whose repayment is guaranteed</i> by the <i>Central Government</i> or a <i>State Government</i> , or any amount received from a <i>local authority</i> , or any amount received from a <i>statutory authority</i> constituted under an Act of Parliament or a State Legislature.
	(ii) any amount received from <i>foreign Governments, foreign or international banks, multilateral financial institutions</i> (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, <i>foreign export credit agencies, foreign collaborators, foreign bodies corporate and foreign citizens, foreign authorities</i> or persons resident outside India subject to the provisions of FEMA, 1999 (42 of 1999) and rules and regulations made there under;
	(iii) any amount received as a <i>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</i> notified by the Central Government under section 51 of the Banking Regulation Act, 1949 (10 of 1949), or a <i>corresponding new bank</i> 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 <i>from a co-operative bank</i> as defined in clause (b-ii) of section 2 of the RBI Act, 1934 (2 of 1934).
	(iv) any amount received as a <i>loan or financial assistance from Public Financial Institutions</i> notified by the Central Government in this behalf in consultation with the RBI or any <i>regional financial institutions</i> or <i>Insurance Companies</i> or <i>Scheduled Banks</i> as defined in the RBI Act, 1934 (2 of 1934)
	(v) any amount received against <i>issue of commercial paper</i> or <i>any other instruments</i> issued in accordance with the guidelines or notification issued by the RBI

	<p>(vi) any amount received <i>by a company from any other company</i>;</p> <p>(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;</p> <p>(a) if the securities for which <i>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</i>, such amount shall be treated as a <i>deposit under these rules</i>.</p> <p>(b) any <i>adjustment of the amount</i> for any other purpose shall not be treated as refund.</p>
	<p>(viii) any amount <i>received from a person who, at the time of the receipt of the amount, was a director of the company</i></p> <p>The director from whom money is received, furnishes to the company at the time of giving the money, <i>a declaration in writing to the effect</i> that the amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others</p>
	<p>(ix) any amount raised by the <i>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 five years</i>.</p> <p>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 <i>amount of such bonds or debentures shall not exceed the market value of such assets as assessed by a registered valuer</i>;</p>
	<p>(x) any amount received from <i>an employee of the company not exceeding his annual salary under a contract of employment</i> with the company in the nature of non-interest bearing security deposit</p>
	<p>(xi) any <i>non-interest bearing amount</i> received or held in trust</p>
	<p>(xii) any amount received <i>in the course of, or for the purposes of, the business</i> of the company,-</p> <p>(a) as an <i>advance for the supply of goods or provision of services</i> accounted for in any manner whatsoever provided that such <i>advance is appropriated against supply of goods or provision of services</i> within a period of 365 days from the date of acceptance of such advance.</p> <p>In case of any advance which is subject matter of any legal proceedings before any court of law, the said time limit of 365 days shall not apply</p> <p>(b) as <i>advance</i>, accounted for in any manner whatsoever, <i>received in connection with consideration for property under an agreement or arrangement</i>, provided that such advance is adjusted against the property in accordance with the terms of agreement or arrangement</p>

	<p>(c) as <i>security deposit for the performance of the contract</i> for supply of goods or provision of services</p> <p>(d) as <i>advance received under long term projects</i> for supply of capital goods except those covered under item (b) above</p> <p>If the <i>amount received becomes refundable (with or without interest)</i> due to the reasons that the <i>company accepting the money does not have necessary permission or approval</i>, wherever required, to deal in the goods or properties or services for which the money is taken, then the <i>amount received shall be deemed to be a deposit</i> under these rules.</p> <p><i>The amount shall be deemed to be deposits on the expiry of 15 days from the date they become due for refund.</i></p> <p>(xiii) any amount brought in by the promoters of the company by way of <i>unsecured loan</i> in pursuance of the <i>stipulation of any lending financial institution or a bank</i> subject to fulfillment of the following conditions, namely</p> <p>(a) <i>the loan is brought in pursuance of the stipulation imposed by the lending institutions</i> on the promoters to contribute such finance;</p> <p>(b) <i>the loan is provided by the promoters themselves or by their relatives or by both;</i> and</p> <p>(c) <i>the exemption shall be available only till the loans of financial institution or bank are repaid</i> and not thereafter</p>
	<p>(xiv) any <b>amount accepted by a Nidhi company</b> in accordance with the rules made under <b>section 406 of the Act</b></p> <p>(a) <b>received by the company</b>, whether in <b>the form of instalments</b> or otherwise, from a <b>person with promise or offer to give returns, in cash or in kind, on completion of the period</b> specified in the promise or offer, or earlier, accounted for in any manner whatsoever, or</p> <p>(b) any <b>additional contributions</b>, over and above the amount <b>made by the company as part of such promise or offer</b> shall be <b>treated as a deposit</b>;</p>
<b>Depositor</b>	<p>(i) any <i>member of the company</i> who has made a <i>deposit with the company</i> in accordance with the <i>provisions section 73(2) of the Act</i>, or</p> <p>(ii) any <i>person who has made a deposit with a public company</i> in accordance with the <i>provisions of section 76 of the Act</i>;</p>
<b>Eligible Company</b>	<p>“eligible company” means a <i>public company as referred to section 76 (1)</i>, having a <i>net worth of not less than Rs. 100 Crores</i> or a <i>turnover of not less than Rs. 500 Crores</i> and which has <i>obtained the prior consent of the company in general meeting by means of a special resolution</i> and also <i>filed the said resolution with the Registrar of Companies</i> before making any invitation to the Public for acceptance of deposits</p> <p>An eligible company, which is accepting deposits within the limits specified under section 180(1)(c), may accept deposits by <i>means of an ordinary resolution</i></p>
	fees” means fees as specified in the Companies (Registration Offices and Fees) Rules, 2014;
<b>Form or e-form</b>	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
<b>Section</b>	section” means section of the Act;
<b>Trustee</b>	“trustee” means the trustee as defined in section 3 of the Indian Trusts Act, 1882 (12 of 1882).

**Circulars, Notifications, Orders, Amendments**



No. 1/19/2013-CL-V  
Government of India  
Ministry of Corporate Affairs

5th Floor, A Wing, Shastri Bhavan,  
Dr R.P. Road, New Delhi  
Dated 21<sup>st</sup> JULY, 2015

To

All Regional Directors,  
All Registrars of Companies,  
All Stakeholders.

Subject: Clarification with regard to circulation and filing of financial statement  
under relevant provisions of the Companies Act, 2013-reg.

Sir,

Stakeholders have drawn attention to the proviso to section 101(1) of the Companies Act, 2013 (Act) which allows general meetings to be called at a shorter notice than twenty one days, and sought clarification as to whether provisions of section 136 would also allow circulation of financial statements at a shorter notice if conditions under section 101 are fulfilled.

1.2 The matter has been examined and it is clarified that a company holding a general meeting after giving a shorter notice as provided under section 101 of the Act may also circulate financial statements (to be laid/considered in the same general meeting) at such shorter notice.

2.1 Attention has also been drawn to the provisions of clause (a) of fourth proviso to section 136(1) which require every company having a subsidiary or subsidiaries to place on its website, if any, separate audited accounts in respect of each of its subsidiary. Further, fourth proviso to section 137(1) requires that a company shall attach along with its financial statements to be filed with the Registrar, the accounts of its subsidiary(ies) which have been incorporated outside India and which have not established their place of business in India. Clarification has been sought on -

(a) Whether a company covered under above provisions can place/file unaudited accounts of a foreign subsidiary if the audit of such foreign subsidiary is not a mandatory legal requirement in the country where such foreign subsidiary has been incorporated and such audit has not been conducted, and;


*p.no. 2 contd.,*

(b) Whether accounts of such foreign subsidiary would need to be as per format under Schedule III/Accounting Standards or the format as per country of incorporation of the foreign subsidiary would be sufficient.

2.2 The matter has been examined in the Ministry in consultation with ICAI and it is clarified that in case of a foreign subsidiary, which is not required to get its accounts audited as per legal requirements prevalent in the country of its incorporation and which does not get such accounts audited, the holding/parent Indian may place/file such unaudited accounts to comply with requirements of Section 136(1) and 137(1) as applicable. These, however, would need to be translated in English, if the original accounts are not in English. Further, the format of accounts of foreign subsidiaries should be, as far as possible, in accordance with requirements under Companies Act, 2013. In case this is not possible, a statement indicating the reasons for deviation may be placed/filed alongwith such accounts.

This issues with the approval of the competent authority.

Yours faithfully

  
(KMS Narayanan)  
Assistant Director

Copy to:-

1. e-Governance Section and Web Contents Officer to place this circular on the Ministry's website
2. Guard File

## MINISTRY OF CORPORATE AFFAIRS

### NOTIFICATION

New Delhi, the 20th July, 2015

**G.S.R. 563(E).**—In exercise of the powers conferred by Section 28A of the Chartered Accountants Act, 1949 (38 of 1949), the Central Government hereby makes the following amendments in the notification of the Government of India in the Ministry of Corporate Affairs, published in the Gazette of India, Extraordinary, Part-II, Section 3, Sub-section (i), *vide* number G.S.R. 38(E), dated the 19<sup>th</sup> January, 2011.

2. In the said notification, against serial number (1) and entries relating thereto, the following serial number and entries shall be substituted with effect from the date of publication of this notification in the Official Gazette, namely:—

“(1) Dr. (Smt.) Parvinder Sohi Behuria, IRS (Retd.)                      Chairperson”.

C-1/9, Humayun Road,

New Delhi-110003

[F. No. 1/15/2010-PI]

MANOJ KUMAR, Jt. Secy.

**Note:**—The principal notification was published in the Gazette of India, Extraordinary, Part-II, Section 3, Sub-section (i) *vide* number G.S.R. 38(E), dated the 19<sup>th</sup> January, 2011 and subsequently amended *vide* number G.S.R. 684(E), dated the 16<sup>th</sup> September, 2011, G.S.R. 441(E), dated the 12<sup>th</sup> June, 2012, number G.S.R. 486(E), dated the 21<sup>st</sup> June, 2012, G.S.R. 810(E), dated the 5<sup>th</sup> November, 2012, G.S.R. 131(E), dated the 1<sup>st</sup> March, 2014, G.S.R. 569(E), dated the 7<sup>th</sup> August, 2014 and G.S.R. 837(E), dated the 24<sup>th</sup> November, 2014.



# 16<sup>th</sup>

## National Conference of Practising Company Secretaries

"Conference for Governance Practices"



**Theme : PCS – Calibrating Competence for Achieving Excellence**

**Venue : "Bolgatty Palace and Island Resort (KTDC),  
Mulavukadu, Kochi - 682504, Kerala"**

**August 13, 2015 – 11.45 am to 6.30 pm (Thursday)  
August 14, 2015 – 7.00 am to 4.30 pm (Friday)**



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## **Extension of last date of payment of the Annual Subscription for Licentiate for 2015-16**

The payment of Licentiate Subscription for the year 2015-16 became due for payment w.e.f. 1<sup>st</sup> April, 2015. The last date for payment of the same was 30<sup>th</sup> June, 2015 which has now been extended upto 31<sup>st</sup> August, 2015. The annual Licentiate subscription payable is Rs.1,000/- per year.

The Licentiatees who want to renew their enrollment as Licentiate, are requested to remit at the Institute's Headquarters or Regional/ Chapter offices a sum of Rs.1000/- (Rupees One thousand only) through cheque at par or Demand Draft payable at New Delhi drawn in favour of "The Institute of Company Secretaries of India" indicating their Name and Licentiate number on the reverse of the Cheque/ Demand Draft and the details of remittance may please be intimated at email id [meena.bisht@icsi.edu](mailto:meena.bisht@icsi.edu). The payment may please be made so as to reach the Institute on or before 31<sup>st</sup> August, 2015.

In case the Licentiate subscription for 2015-16 has already been remitted, please send the particulars of the remittance at email Id [meena.bisht@icsi.edu](mailto:meena.bisht@icsi.edu) to link up the same and update the records.

For queries, if any, please write to Ms. Meena Bisht, at email id [meena.bisht@icsi.edu](mailto:meena.bisht@icsi.edu) or contact at telephone No.011-45341062.

## **Extension in the last date for payment of Annual Membership and Certificate of Practice Fee for the Year 2015-16**

The annual membership and certificate of practice fee for the year 2015-16 became due for payment w.e.f. 1<sup>st</sup> April, 2015. The last date for payment of fee was 30<sup>th</sup> June, 2015 which has been extended upto 31<sup>st</sup> August, 2015.

The membership and certificate of practice fee payable is as follows:

- 1) Annual Associate Membership fee Rs.1125/- (\*)
  - 2) Annual Fellow Membership fee Rs.1500/- (\*)
  - 3) Annual Certificate of Practice fee Rs.1000/- (\*\*)
- A member who is of the age of sixty years or above can claim 50% concession and a member who is of the age of seventy years or above can claim 75% concession in the payment of Associate/Fellow Annual Membership fee subject to the furnishing of declaration in writing duly signed that the member is not in any gainful employment or in practice.
  - \*\*The certificate of practice fee must be accompanied by a declaration in form D duly completed in all respects and signed. The requisite form 'D' is available on the website of Institute [www.icsi.edu](http://www.icsi.edu) and also printed elsewhere in the journal.

### **MODE OF REMITTANCE OF FEE**

The fee can be remitted by way of:

- (i) Online mode through payment gateway of the Institute's website ([www.icsi.edu](http://www.icsi.edu))
- (ii) Cheque at par/Demand draft or Pay order payable at New Delhi (indicating on the reverse name and membership number) drawn in favour of 'The Institute of Company Secretaries of India' or in cash at the Institute's Headquarter or Regional/Chapter offices.

For queries, if any, the members may please write to Mr. Saurabh Bansal, Asst. Education Officer at email id [saurabh.bansal@icsi.edu](mailto:saurabh.bansal@icsi.edu)



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