



COMPANY LAW ALERT

MONEY ACCEPTED FROM SHAREHOLDERS ETC.

Chapter V of the Companies Act, 2013, vide Section 73 to 76 read with Rules enacted by the Central Government in consultation with Reserve Bank of India (R.B.I), namely Companies (Acceptance of Deposits) Rules, 2014, lays down the framework within which the invitation and acceptance of deposits from the public and matters connected thereto are regulated and control. The Companies (Acceptance of Deposits) Rules, 2014 are effective from 1st April, 2014.

Section 74(1)(b) of the Companies Act, 2013 lays down that in respect of any deposit accepted by a company before the commencement of this Act, and remaining unpaid on the commencement of this Act or becomes due at any time thereafter, the company shall apart from filing Form DPT 4 shall repay within one year from such commencement or from the date on which such payments are due, whichever is earlier.

It implies that even a private limited company which had accepted money from shareholders and relatives of directors before the commencement of this Act which were not deposits till 31.3.2014 had now become deposits under the Companies Act, 2013.

Hence the companies had to repay all such sums which it had received from shareholders and relatives of directors under the Companies Act, 1956 by 31st March 2015. Such a provision created hardship to many companies as they had received money from shareholders which was legally valid and correct under the Companies Act, 1956. But with the commencement of the Companies Act, 2013, all such money had to be repaid.

The Ministry of Corporate Affairs (MCA) has on 30th March, 2015 vide circular no. 05/2015 has sought to clarify that such amounts (money received from their members, directors or their relatives) received by private companies prior to 1st 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 1st April, 2014 the figure of such amounts and the accounting head in which such amounts have been shown in the financial statement.

However any renewal or acceptance of fresh deposits on or after 1st April, 2014 shall, however, be in accordance with the provisions of Companies Act, 2013 and rules made thereunder.

This clarification from the MCA has brought a clear clarity amongst the stakeholders and a lot of relief to the private limited companies in respect of money accepted from shareholders and relatives of directors till 31.3.2014 as the private limited companies are no longer required to repay these amounts by 31.3.2015.

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General Circular No. 05/2015

F. No. 1/8/2013-CL-V
Government of India
Ministry of Corporate Affairs

5th Floor, A Wing, Shastri Bhavan,
Dr R.P. Road, New Delhi.

Dated: 30th March, 2015

To

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

Subject: Amounts received by private companies from their members, directors or their relatives before 1st April, 2014 - Clarification regarding applicability of Companies (Acceptance of Deposits) Rules, 2014

Sir,

Stakeholders have sought clarifications as to whether amounts received by private companies from their members, directors or their relatives prior to 1st April, 2014 shall be considered as deposits under the Companies Act, 2013 as such amounts were not treated as 'deposits' under section 58A of the Companies Act, 1956 and rules made thereunder.

2.The matter has been examined in consultation with RBI and it is clarified that such amounts received by private companies prior to 1st 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 1st April, 2014 the figure of such amounts and the accounting head in which such amounts have been shown in the financial statement.

3. Any renewal or acceptance of fresh deposits on or after 1st April, 2014 shall, however, be in accordance with the provisions of Companies Act, 2013 and rules made thereunder.

4.This issues with the approval of the competent authority.

Yours faithfully,


(K.M.S. Narayanan)

Assistant Director (Policy)

Copy to:- 1. e-Governance Section and web contents Officer to place this circular on the Ministry website.

2. Guard File.