

Proposed recommendations of The Companies Law Committee for Deposits under Companies Act, 2013

As we are aware that on 1st February 2016, Ministry of Corporate Affairs uploaded the report of Companies Law Committee on its website. In this post, we will discuss recommendations of the committee for the Deposits.

Definition of Deposit:

The Committee considered the suggestion for making the definition of deposit less restrictive, but felt that adequate prescriptive powers for excluding amounts received by a company from the term 'deposit' have been provided in the definition and no change is, therefore, required.

Recommendations in the definition of Deposit:

Outstanding advance:

The Committee recommended that there is a case for outstanding advances not be treated as deposits even after 365 days, if they are received in the ordinary course of business, as evidenced by a written contract and during normal business cycle subject to disclosure of details of such outstanding amounts in the financial statements. However, such relaxation should be made only after ensuring that all regulatory concerns have been addressed.

Compulsory Convertible Debentures:

Any amount raised by issue of debentures compulsorily convertible into shares of the company within ~~five~~ **TEN** years is excluded from the definition of "deposits".

Exclusion of following from definition of deposit:

- i. The Committee recommended amendment of Rule 2(1)(c) of the Deposits Rules to exclude amounts directly received by a company from Alternate Investment Funds, Domestic Venture Capital Funds and Mutual Funds registered with SEBI, from the definition of deposits.
- ii. The Committee recommended that the MCA may consider excluding unsecured debentures listed as per SEBI Regulations from the definition of deposits.
- iii. Convertible Notes:
The Committee, recommended that convertible notes, convertible into equity or repayable within 5 years from the date of issue, if issued to a person with a minimum



investment size of Rupees Twenty Five lakh brought in a single tranche, should not be treated as deposits under the Companies Act, 2013.

Increase in Deposit of Money in Separate Bank Account for maturity of Deposits:

The Committee recommended that, the requirement for the amount to be deposited and kept in a scheduled bank in a financial year should be changed to not less than twenty percent of the amount of deposits maturing during that financial year.

The Committee said that it would increase the cost of borrowing for the company as well as lock-up a high percentage of the borrowed sums but will be reasonable safeguards for the depositors who have to receive money on maturity of their deposits.

Omission of Deposit Insurance:

Section 73(2)(d) mandates a company accepting deposits to provide for deposit insurance in such manner and to such extent as may be prescribed.

The Committee has noted that insurance companies are not offering any products for covering company deposit default risks, this requirement was already relaxed till 31/03/2016.

As on date none of the insurance companies is offering such insurance products. Considering the above situation, the Committee felt that the provisions of Section 73(2)(d) along with relevant Rules be omitted.

Certificate- Non default for repayment of deposit:

One of the conditions of acceptance of deposit that company has not committed any default in the repayment of deposits. It was recommended that the prohibition on accepting further deposits should apply indefinitely only to a company that had not rectified/made good earlier defaults. However, in case a company had made good an earlier default in the repayment of deposits and the payment of interest due thereon, then it should be allowed to accept further deposits after a period of five years from the date it repaid the earlier defaulting amounts with full disclosures.

Note: This requirement was harsh on companies which might have defaulted due to reasons beyond their control, such as industry conditions at some point of time in the past, but repaid such deposits with earnest efforts thereafter.

Acceptance of deposit by Private Company engages in infrastructure sector:

The Committee recommended to allow to private companies engage in infrastructure sector from the upper limit, as promoters or their relatives or 'Qualified Institutional Buyers' (QIB),



who had invested in the risk capital would already be aware of the business prospects of the company.

Exemptions for newly incorporated Private Company from exemption:

At present private companies are permitted to accept deposits from their members' deposits which amount shall not exceed 100% of their paid up capital and free reserves with relaxed compliance requirements.

But for the Newly Incorporated (Startup) Companies it is very difficult to raise funds for the business. Therefore, the Committee recommended that limits with regard to raising of deposits from members for 'Start-ups' which are private companies may be removed for the first five years from their incorporation.

Note: This provision is a step toward ease of doing business and view behind this must be to encourage new businessman to start their business.

Reduction in Minimum Penalty:

The committee suggest that in case of contravention of section 73 to 76 minimum fine may be modified to Rupees one Crore or twice the deposit accepted, whichever is lower but which could extend to Rupees Ten Crore.

Note: at present penalty in Companies Act u/s 76A is very harsh if Company have accepted small amount of deposit and contravene the provisions of section 73 to 76. Because for any amount of deposit minimum penalty was Rs. 1crore which was very high for the small as well as big entrepreneurs. Therefore, Committee recommended above mentioned minimum penalty.

Publication of circular while accepting deposit:

It was suggested that it should not be mandatory to send individual circulars to members of the company under Rule 4(1) if an advertisement has been issued by a company for acceptance of deposits from public and also when the same is placed on the website of the company.

Note: It is good to advertise and publish the circular instead of sending it to individual Member.

At the end, I would like to disclose that I was part of, "Research Group on Companies Law" constituted by the Institute of Company Secretaries of India. All view here are personal and not of these groups or ICSI