

‘In today’s environment, hoarding knowledge ultimately erodes your power. If you know something very important, the way to get power is by actually sharing it’.



Article on filing of return of deposit or particulars of transaction not considered as deposit or both in New Form DTP~3 with MCA



STATUTORY PROVISIONS

Chapter V of Companies Act, 2013 “Acceptance of deposits by company” read with Companies (Acceptance of Deposits) Rules, 2014

➤ Section 73(1) of Companies Act, 2013

Prohibition on acceptance of deposits from public

On and after the commencement of this Act, **no company** shall invite, accept or renew deposits under this Act from the public except in a manner provided under this Chapter:

Provided that nothing in this sub-section shall apply to a banking company and nonbanking financial company as defined in the Reserve Bank of India Act, 1934 (2 of 1934) and to such other company as the Central Government may, after consultation with the Reserve Bank of India, specify in this behalf.

➤ Rule 1(3) of Companies (Acceptance of Deposits) Rules, 2014

These rules shall apply to a company **other than** –

- i) a banking company;
- ii) a non-banking financial company as defined in the Reserve Bank of India Act, 1934 (2 of 1934) registered with the Reserve Bank of India;
- iii) a housing finance company registered with the National Housing Bank established under the National Housing Bank Act, 1987 (53 of 1987); and
- iv) a company specified by the Central Government under the proviso to sub-section (1) of section 73 of the Act.

Rule 16 of Companies (Acceptance of Deposits) Rules, 2014

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.

2 *Explanation*

*It is hereby clarified that Form DPT-3 shall be used for filing return of deposit **or particulars of transaction not considered as deposit** or both by every company other than Government company.*

1 *Rule 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.

3 (3) Every company other than Government company shall file **a onetime return of outstanding receipt of money or loan by a company but not considered as deposits**, in terms of clause (c) of sub-rule 1 of rule 2 from the 01st April, 2014 to the date of publication of this notification in the Official Gazette, as specified in Form DPT-3 within ninety days from the date of said publication of this notification along with fee as provided in the Companies (Registration Offices and Fees) Rules, 2014

➤ **4** *Old Form DTP-3 substituted by New form*

1. *[Inserted vide MCA Notification No. G.S.R. 639(E), dated 29th June, 2016 effective from date of publication in the official gazette i.e. 29th June, 2016]*

2, 3 & 4. *[Inserted vide MCA Notification No. G.S.R. 42(E), dated 22 January, 2019 effective from date of publication in the official gazette i.e. 22 January, 2019]- Click [**HERE**](#) for gazetted notification*



ANALYSIS

EVERY COMPANY

[Other Than Banking Company, Non-Banking Finance Company, Housing Finance Company & Specified Companies]

File **ANNUAL RETURN** with registrar

- ✍ In new form DTP-3
- ✍ Information of deposits as on 31st March of that year audited by Statutory auditors
- ✍ Every year – On or before 30th June

File **ONE TIME RETURN** with registrar

- ✍ In new form DTP-3
- ✍ On or before 22 April 2019
- ✍ Details of outstanding receipt of money or loan by a company but not considered as deposits, **[Amounts EXCLUDED from definition of deposits in terms of clause (c) of sub-rule 1 of rule 2]- See note below**
- ✍ Details for period from the 01st April, 2014 to 22 January 2019.

Not Applicable
to Government
Companies

NOTE ON AMOUNTS NOT CONSIDERED AS DEPOSITS**DEFINITIONS OF DEPOSITS****Section 2(31) of Companies Act, 2013**

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 may be prescribed in consultation with the Reserve Bank of India.

Rule 2(1)(c) of Companies (Acceptance of Deposits) Rules, 2014.

Deposit includes any receipt of money by way of deposit or loan or in any other form, by a company, but **does not include** **Exceptions**

(i) any amount received from the Central Government or a State Government, or any amount received from any other source whose repayment is guaranteed by the Central Government or a State Government, or any amount received from a local authority, or any amount received from a statutory authority constituted under an Act of Parliament or a State Legislature;

(ii) any amount received from foreign Governments, foreign or international banks, multilateral financial institutions (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, foreign export credit agencies, foreign collaborators, ***foreign bodies corporate and foreign citizens, foreign authorities or persons resident outside India subject to the provisions of Foreign Exchange Management Act, 1999 (42 of 1999) and rules and regulations made there under;***

(iii) any amount received as a 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 notified by the Central Government under section 51 of the Banking Regulation Act, 1949 (10 of 1949), or a corresponding new bank 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 from a co-operative bank as defined in clause (b-ii) of section 2 of the Reserve Bank of India Act, 1934 (2 of 1934) ;

(iv) any amount received as a loan or financial assistance from Public Financial Institutions notified by the Central Government in this behalf in consultation with the Reserve Bank of India or any regional financial institutions or Insurance Companies or Scheduled Banks as defined in the Reserve Bank of India Act, 1934 (2 of 1934);

(v) any amount received against issue of commercial paper or any other instruments issued in accordance with the guidelines or notification issued by the Reserve Bank of India;

(vi) *any amount received by a company from any other company* ^{Inter-Corporate Loans}

(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;***

Explanation. - For the purposes of this sub-clause, it is hereby clarified that –

(a) Without prejudice to any other liability or action, if the securities for which 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**, such amount shall be treated as a deposit under these rules.

Provided that unless otherwise required under the Companies Act, 1955 (I of 1956) or the Securities and Exchange Board of India Act, 1992 (15 of 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 any shares, stock, bonds or debentures before the 1st April, 2014 and disclosed it in the balance sheet for the financial year ending on or before the 31st March, 2014 against which the allotment is pending on the 31st March, 2015, the company shall, by the 1st June 2015, either return such amounts to the persons from whom these were received or allot shares, stock, bonds or debentures or comply with these rules¹

(b) **Any adjustment of the amount for any other purpose shall not be treated as refund.**

~~(viii) any amount received from a person who, at the time of the 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 to the effect that the amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others;²~~

“(viii) any amount received from a person who, at the time of the receipt of the amount, was a **director of the company** or a **relative of the director of the private company:**

Provided that the director of the company or relative of the director of the private company, 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 to the effect that the amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others and the **company shall disclose the details of money so accepted in the Board’s report**²

(ix) any amount raised by the 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:~~ 10 years³

Provided that 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 amount of such bonds or debentures shall not exceed the market value of such assets as assessed by a registered valuer;

“(ixa) any amount raised by issue of non-convertible debenture not constituting a charge on the assets of the company and listed on a recognised stock exchange as per applicable regulations made by Securities and Exchange Board of India.”⁴

(x) Any amount received from an employee of the company not exceeding his annual salary under a contract of employment with the company in the nature of non-interest bearing security deposit;

~~(xi) any non interest bearing amount received or held in trust~~⁵

“(xi) Any non-interest bearing amount received and held in trust;

(xii) Any amount received in the course of, or for the purposes of, the business of the company, -

(a) as an advance for the supply of goods or provision of services accounted for in any manner whatsoever provided that such advance is appropriated against supply of goods or provision of services **within a period of three hundred and sixty five days from the date of acceptance of such advance:**

Provided that in case of any advance which is subject matter of any **legal proceedings** before any court of law, the said time limit of three hundred and sixty five days shall not apply:

(b) as advance, accounted for in any manner whatsoever, received in connection with ~~consideration for property~~ **Consideration of immovable property**⁶ under an agreement or arrangement, provided that such advance is adjusted ~~against the property~~ **against such property**⁶ in accordance with the terms of agreement or arrangement;

(c) As security deposit for the performance of the contract for supply of goods or provision of services;

(d) As advance received under long term projects for supply of capital goods except those covered under item (b) above

(e) as an advance towards consideration for providing future services in the form of a warranty or maintenance contract as per written agreement or arrangement, if the period for providing such services does not exceed the period prevalent as per common business practice or five years, from the date of acceptance of such service whichever is less⁷

f) as an advance received and as allowed by any sectoral regulator or in accordance with directions of Central or State Government⁷

g) as an advance for subscription towards publication, whether in print or in electronic to be adjusted against receipt of such publications⁷

Provided that if the amount received under items (a), (b) and (d) above becomes refundable (with or without interest) due to the reasons that the company accepting the money does not have necessary permission or approval, wherever required, to deal in the goods or properties or services for which the money is taken, then the amount received shall be deemed to be a deposit under these rules:

Explanation. - For the purposes of this sub-clause the amount ~~referred to in the first proviso⁸~~ ~~referred to in the proviso⁹~~ shall be deemed to be deposits on the expiry of fifteen days from the date they become due for refund.

(xiii) any amount brought in by the promoters of the company by way of unsecured loan in pursuance of the stipulation of any lending financial institution or a bank subject to fulfilment of the following conditions, namely: -

(a) the loan is brought in pursuance of the stipulation imposed by the lending institutions on the promoters to contribute such finance;

(b) the loan is provided by the promoters themselves or by their relatives or by both; and

(c) the exemption under this sub-clause shall be available only till the loans of financial institution or bank are repaid and not thereafter;

(xiv) any amount accepted by a Nidhi company in accordance with the rules made under section 406 of the Act.

Explanation. - For the purposes of this clause, any amount. -

(a) received by the company, whether in the form of instalments or otherwise, from a person with promise or offer to give returns, in cash or in kind, on completion of the period specified in the promise or offer, or earlier, accounted for in any manner whatsoever, or

(b) any additional contributions, over and above the amount under item (a) above, made by the company as part of such promise or offer, ~~shall be treated as a deposit~~ "shall be considered as deposits unless specifically excluded under this clause"⁹

(xv) any amount received by way of subscription in respect of a chit under the Chit Fund Act, 1982 (40 of 1982)¹⁰

(xvi) any amount received by the company under any collective investment scheme in compliance with regulations framed by the Securities and Exchange Board of India¹⁰

(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 a person¹⁰.

Explanation. - For the purposes of this sub-clause, -

I. "start-up company" means a private company incorporated under the Companies Act, 2013 or Companies Act, 1956 and recognised as such in accordance with notification number G.S.R. 180(E) dated 17th 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 of 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, **Infrastructure Investment Trusts¹¹** and Mutual Funds registered with the Securities and Exchange Board of India in accordance with regulations made by it¹⁰

- [1. Amendment Rules 2015, clause 2(1)(a) applicable from 31.03.2015]
- [2. Second Amendment Rules 2015, clause 2 applicable from 15.09.2015]
- [3. Amendment Rules 2016, clause 2(i) applicable from 29.06.2016]
- [4. Amendment Rules 2016, clause 2(ii) applicable from 29.06.2016]
- [5. Amendment Rules 2016, clause 2(iii) applicable from 29.06.2016]
- [6. Amendment Rules 2015, clause 2(1)(b) applicable from 31.03.2015]
- [7. Amendment Rules 2016, clause 2(iv) applicable from 29.06.2016]
- [8. Amendment Rules 2015, clause 2(1)(c) applicable from 31.03.2015]
- [8. Amendment Rules 2016, clause 2(iv)(B) applicable from 29.06.2016]
- [9. Amendment Rules 2016, clause 2(v) applicable from 29.06.2016]
- [10. Amendment Rules 2016, clause 2(vi) applicable from 29.06.2016]
- [11. Amendment Rules 2017, clause 2(b) applicable from 11.05.2017]