MCA further amends deposit norms - mandatory return for all amounts not considered as deposits

6 February 2019

First Notes on

Financial reporting

Corporate law updates

Regulatory and other information

Disclosures

Sector

All

Banking and insurance

Information, communication, entertainment

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Relevant to

All

Audit committee

CFO

Others

Transition

Immediately

Within the next three months

Post three months but within six months

Post six months

Forthcoming requirement

Background

The Companies Act, 2013 (2013 Act) and the Companies (Acceptance of Deposit) Rules, 2014 (Deposit Rules) prescribe the requirements companies should meet to accept deposits from its members or public.

The deposit related provisions are applicable to the following class of companies:

a) A company that accepts deposits from its members. Such a company has to pass a resolution at its general meeting according to the Deposit Rules and subject to the fulfilment of the specified conditions (Section 73(2))

b) A company that is eligible to accept deposits from the public (Section 76) (i.e. eligible company[1] as defined under the Deposits Rules).

New development

On 22 January 2019, the Ministry of Corporate Affairs (MCA) through its notification issued the Companies (Acceptance of Deposits) Amendment Rules, 2019 which makes certain amendments to the Deposit Rules. The amendments have come into force from the date of their publication in the official gazette i.e. 22 January 2019.

This issue of First Notes provides a summary of the amendments made to the Deposit Rules.

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[1]An *eligible company* means a public company fulfilling the following conditions:

a) Net worth of not less than INR100 crore or a turnover of not less than INR500 crore

b) Obtained prior consent of the company in the general meeting by means of a special resolution*, and

c) Filed the said resolution with the Registrar Of Companies (ROC) before making any invitation to the public for acceptance of deposits.

*(*In case, deposit is with respect to the limits specified under Section 180(1)(c) of the 2013 Act, an ordinary resolution may suffice the requirement.)*

Overview of the amendments

- **Amount received from REITs not classified as deposits (Rule 2(1)(c)(xviii)):** The 2013 Act defines the term 'deposits'. It includes any receipt of money by way of deposit or loan or in any other form by a company. However, the term deposit, *inter alia*, excludes following categories of amounts:

  a) Amounts as may be prescribed by the Reserve Bank of India (RBI)

  b) Any amount received by a company from Alternate Investment Funds (AIFs), domestic venture capital funds, Infrastructure Investment Trusts (InvITs), and mutual funds registered with the Securities and Exchange Board of India (SEBI).

  Amendment

  In addition to the above, the amendments to the Deposit Rules now also exclude, any amount received by a company from Real Estate Investment Trusts (REITs), from the definition of deposits.

- **Mandatory filing for transactions not regarded as deposits (Rule 16)**: Currently, every company (covered under the Deposit Rules) is required to file with the Registrar of Companies (ROC) a return of deposits (comprising information contained therein as on 31 March of that year duly audited by the auditor of the company) in Form DPT-3, on or before 30 June of every year along with the specified fees.

  Amendment

  The amendments to the Deposit Rules have inserted an explanation to the above rule. The explanation clarifies that Form DPT-3 should be used for filing:

  a) A return of deposit

  b) Particulars of a transaction **not considered as deposit** or

  c) Both

  by every company, other than a government company.

  (Emphasis added)

- **One-time return for outstanding receipts not considered as deposits (Rule 16A)**: Currently, every company is required to disclose the amount received from a director (also relatives of directors in case of a private company) in the notes to the financial statements.

  Amendment

  In addition to the above disclosures in the financial statements, every company (other than a government company) would need to file with the ROC a **one-time return** in Form DPT-3 for **receipt of money/loan** by a company **outstanding** from 1 April 2014 to 22 January 2019 (i.e. date of publication of the notification in the official gazette) **but not considered as deposits** (as specified in Form DPT-3).

  Such a return is required to be filed **up to 22 April 2019** (i.e. within 90 days from the date of publication of notification in the official gazette) along with specified fees.

  (Emphasis added)

- **Revised Form DPT-3**: The amendments have also issued revised Form DPT-3. The key changes made vis-à-vis old form are as follows:

  a) A new section requiring 'purpose of the return' has been inserted i.e. it requires a company to specify whether the form pertains to:

     i. Return of deposit

     ii. Particulars of transactions by a company not considered as deposit as per Rule 2(1)(c) of the Deposit Rules or

     iii. Return of deposit and particulars of transactions by a company not considered as deposit.

  b) It requires separate disclosure of total amounts of outstanding money or loan received by a company but not considered as deposits as per Rule 2(1)(c) of the Deposit Rules as specified in Rule 16(A)(3).

c) Additionally, it requires separate disclosure of receipt of money or loan by a company but not considered as deposits at the end of financial year against each specified category. These, *inter alia*, includes, any amount received from:

   i. Governments (Indian or foreign)

   ii. Any other company

   iii. A person who at the time of receipt of the amount, was a director of the company (or relative of a director, in case of a private company)

   iv. Public financial institutions/insurance companies/scheduled banks as loan or financial assistance.

Our comments

The amendments are aimed towards increasing transparency on the part of the companies accepting deposits from its members or public. Such companies are mandatorily required to file a revised Form DPT-3 for all the transactions which have not been considered as deposits during the year. Such a return is required to be filed up to 30 June of every year.

Additionally, a one-time return is required to be filed by all such companies with respect to the receipt of money or loan outstanding from 1 April 2014 till 22 January 2019 but not considered as deposits. This one-time return is required to be filed in revised Form DPT-3 by 22 April 2019. This requirement is likely to be onerous on companies as they will be required to collate the data beginning 1 April 2014 till date within a period of 90 days. Therefore, companies should initiate the process of extracting such information to ensure timely filing of the return.

The revised Form DPT-3 contains a detailed section which requires the disclosure of a number of financial transactions classified in 13 categories. The coverage of these transactions is quite pervasive, as it covers most financial transactions including amounts received from governments, both Indian and foreign, including government bodies, loans from banks and financial institutions, advances from customers for goods, services and property, inter-corporate receipts, proceeds from issue of commercial paper, bonds and debentures, share application money and loans from directors. Therefore, it would practically require most financial transactions of the company to be aggregated under the 13 categories and related sub-categories as prescribed by the government. Considering that all these transactions and balances are part of the audited financial statements of a company, with many of them being subject to additional disclosures in the financial statements, the benefits that could accrue from such additional reporting remain to be seen.

The bottom line

The companies would need to gather data from previous years in respect of all receipts of money and loan outstanding but not considered as deposits.

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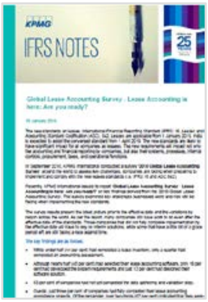

Global Lease Accounting Survey - Lease Accounting is here: Are you ready?

10 January 2019

Recently, KPMG International issued its report **‘Global Lease Accounting Survey - Lease Accounting is here: Are you ready?’** on key findings derived from the ‘2018 Global Lease Accounting Survey’. The survey examined key challenges businesses were and may still be facing when implementing the new standards.

Read full report

Missed an issue of Accounting and Auditing Update or First Notes

Issue no. 30 – January 2019

The topics covered in this issue are:

- IFRS 16, *Leases*: Impact on real estate sector
- Impact of the new revenue standard on education sector
- AICPA's National Conference 2018 - An update
- Audit committee role and responsibilities - An overview
- Regulatory updates.

SEBI proposes norms for direct listing of equity shares within and outside India

22 December 2018

On 12 June 2018, the Securities and Exchange Board of India (SEBI) formed an ‘*Expert committee for listing of equity shares of companies incorporated in India on foreign stock exchanges and of companies incorporated outside India on Indian stock exchanges’* (the committee). On 4 December 2018, SEBI released the report of the committee with a proposed framework for such direct listing.

This issue of First Notes aims to provide an overview of the key recommendations made by the committee with respect to direct listing of equity shares in Indian and foreign stock exchanges.

Voices on Reporting

KPMG in India is pleased to present Voices on Reporting – a series of knowledge sharing calls to discuss current and emerging issues relating to financial reporting.

Voices on Reporting – quarterly update publication (for the quarter ended 31 December 2018) provides summary of key updates from the Ministry of Corporate Affairs, the Securities and Exchange Board of India and the Institute of Chartered Accountants of India.

The publication can be accessed at KPMG in India website.

Feedback/queries can be sent to aaupdate@kpmg.com

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