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News Alert on following three notifications/ order issued by MCA on June 29, 2016 and June 30, 2016

1. Companies (Acceptance of Deposits) Amendment Rules, 2016
2. Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2016
3. Companies (Removal of Difficulties) Third Order, 2016



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Mumbai Off :

1005, Hubtown Solaris
Off Western Express Highway
East End of Andheri Flyover
Andheri(East) Mumbai-400069

Landline: + 91-22-2684-5920/21

Fax: + 91-22-6678-7499

Mobile : + 91-982-017-7691

Hyderabad Off :

My Home Hub, 4th Floor, C Block, Madhupur,
Hi-Tech City, Hyderabad, AP 500 081

A. COMPANIES (ACCEPTANCE OF DEPOSITS) RULES, 2014

Ministry of Corporate Affairs (“MCA”) vide notification dated June 29, 2016 has issued Companies (Acceptance of Deposits) Amendment Rule, 2016. In the Companies (Acceptance of Deposits) Rules, 2014 (hereinafter referred to as the principle rules) following major amendment are introduced:

1. **Receipt of money by Company in following manner will not be treated as deposit:**
 - a) Any amount raised by issue of secured compulsorily convertible debenture, **convertible into shares of the Company within 10 years** (earlier it was 5 year).
 - b) Any amount raised by issue of **unsecured non-convertible debenture and listed** on recognized stock exchange.
 - c) Any non-interest bearing amount **received and held in trust**.
 - d) Any amount received 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 5 years from the date of acceptance of such service whichever is less.
 - e) Any amount received as an advance and as allowed by **any sectoral regulator or in accordance with directions of Central or State Government**.
 - f) Any amount received as an advance for subscription towards **publication**, whether in **print or in electronic** to be adjusted against receipt of such publications
 - g) Any amount received by way of subscription in respect of a **chit under the Chit Fund Act, 1982**
 - h) Any amount received by the Company under any **collective investment scheme**
 - i) An amount of **25 lac or more received by start up Company** by way of convertible note (Convertible into Equity Shares or repayable **within a period not exceeding 5 years** from the date of issue) in a **single trench from a person**.
 - j) Any amount received by a Company from **AIF (Alternate investment funds), domestic venture capital funds and MF (Mutual Funds)** registered with SEBI.

2. Company Can accept Deposit or renew Deposits **from its members** upto maximum of **35 % of the aggregate of paid up share capital and free reserves** of the Company subject to compliance of provisions of the Companies Act, 2013 (earlier it was 25% only)
3. Every public Company having net worth of Rs 100cr or more or turnover of Rs. 500cr or more shall **obtain credit rating for deposits accepted by** it, atleast once in a year, and file the same with **Roc in Form DPT-3**. Further such Company before inviting deposits issue a circular in English newspaper having country wide circulation and place such circular on website of the Company, if any.
4. **Disclosure in Financial Statement:**
 - a) Every Company, **other than a private Company**, has to disclose in its financial statement, **by way of notes**, about the **money received from the director**.
 - b) Every **private company** has to disclose in its financial statement, by way of notes, about the **money received from the directors, or relatives of directors**.
5. In form DPT-1 circular/ advertisements inviting deposits to be filed Roc shall comprise a disclaimer stating that :

“such advertisement should not in any way be deemed or construed that the same has been cleared or approved by the Registrar or Central Government. The Registrar or Central Government does not take any responsibility either for the financial soundness of any deposit scheme for which the deposit is being accepted or invited or for the correctness of the statements made or opinions expressed in the circular or circular in the Form of advertisement. The depositors should exercise due diligence before investing in the deposits schemes.”

The link of the above Notification is as under:

http://www.mca.gov.in/Ministry/pdf/Rules_30062016.pdf

B. COMPANIES (APPOINTMENT AND REMUNERATION OF MANAGERIAL PERSONNEL) AMENDMENT RULES, 2016

Ministry of Corporate Affairs (“MCA”) vide notification dated June 30, 2016 amended Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2016.

1. **Form MR- 1 is not required to be filed** for appointment of following KMPs
 - a) Chief Executive Officer (CEO),
 - b) Company Secretary (CS)
 - c) Chief Financial Officer (CFO)

2. **Following disclosures are not required to be made in Board’s report of the Listed Companies:**
 - a) the explanation on the relationship between average increase in remuneration and company performance;
 - b) comparison of the remuneration of the Key Managerial Personnel against the performance of the company;
 - c) variations in the market capitalization of the company, price earnings ratio as at the closing date of the current financial year and previous financial year and percentage increase over decrease in the market quotations of the shares of the company in comparison to the rate at which the company came out with the last public offer in case of listed companies, and in case of unlisted companies, the variations in the net worth of the company as at the close of the current financial year and previous financial year;
 - d) comparison of the each remuneration of the Key Managerial Personnel against the performance of the company;
 - e) the key parameters for any variable component of remuneration availed by the directors;
 - f) the ratio of the remuneration of the highest paid director to that of the employees who are not directors but receive remuneration in excess of the highest paid director during the year.

3. Details of top ten employees in terms of remuneration drawn and the name of every employee who is in receipt of remuneration of Rs.1.2 crores per annum or Rs.8.5 lacs per month is required to disclosed in the Board’s report (earlier it was Rs.60 lac per annum and Rs.5lac per month).

The link of the above Notification is as under;

http://www.mca.gov.in/Ministry/pdf/AmendmentRules_01072016.pdf

C. COMPANIES (REMOVAL OF DIFFICULTIES) THIRD ORDER, 2016.

Ministry of Corporate Affairs (“MCA”) vide notification dated June 30, 2016 has provided clarification relating to section 139(2) of the Companies Act, 2013 which with respect to appointment of statutory auditors as follows:

- a) Every listed Company;
- b) Unlisted public Company having paid up capital of Rs.10 crores or more;
- c) Private Companies having paid up capital of Rs. 20 crores or more;
- d) All Companies having paid up capital less than the aforesaid limits but having public borrowing from Financial Institution, Banks or public deposits of Rs. 20 crores or more

is required to comply with the provisions of the Section 139 (2) of the Companies Act, 2013 with respect to appoint statutory auditors from the **first annual general meeting of the Company** held after **completion of 3 years** from the date of commencement of Companies Act, 2013 i.e after March 31, 2017.

The link of the above Notification is as under;

http://www.mca.gov.in/Ministry/pdf/ROD_Third_Order_2016.pdf

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Amita Desai & Co. Company Secretaries

Mumbai Off :

1005, Hubtown Solaris
Off Western Express Highway
East End of Andheri Flyover
Andheri(East) Mumbai-400069

Landline: + 91-22-2684-5920/21

Fax: + 91-22-6678-7499

Mobile : + 91-982-017-7691

Hyderabad Off :

My Home Hub, 4th Floor, C Block, Madhupur,
Hi-Tech City, Hyderabad, AP 500 081

Chief Editor: Mrs. Amita Desai

**Editor: For Amita Desai & Co.
CS Chintan Sheth
CS Mahima Pandya**