

Acceptance of Deposits (India)

Background and Overview

It is common practice in India for companies to accept deposits from shareholders and/or the general public as an alternate means of financing. Indian companies routinely seek shareholder approval to engage in such financial transactions, pursuant to the Companies Act, 2013, which came into effect in 2014, that requires companies (other than banks and Non-Bank Financial Companies, or NBFCs) to seek shareholder approval to accept deposits from shareholders and/or the public.

The Companies Rules, 2014 (Rules) provide that such deposits (a) shall not exceed 10% of the aggregate of issued shares and free reserves of the company and (b) are repayable not earlier than three months from the date of such deposit. Furthermore, the Rules provide that the interest rate for such deposits shall not exceed the interest rate prescribed by the Reserve Bank of India for acceptance of deposits by NBFCs.

However, most companies provide little to no information regarding the terms and conditions of the deposits when presenting these items for shareholder approval.

Key Changes Under Consideration

ISS currently has no formal policy on acceptance of deposits under India voting guidelines, and these proposals are evaluated on a case-by-case basis, with most proposals receiving AGAINST recommendations due to lack of information. ISS plans to introduce the following voting guideline for 2016.

Generally vote AGAINST proposals to accept deposits from shareholders and/or the public, unless there are no significant causes for shareholder concern regarding the terms and conditions of the deposit.

Sufficient information regarding the deposits must be disclosed, including:

- Justification for the need for additional funding; and
- The interest rate offered, which must not exceed the interest rate prescribed by the Reserve Bank of India (RBI) for acceptance of deposits by non-bank financial companies (NBFCs).

Intent and Impact

The proposed policy will ensure consistency and transparency of ISS recommendations for proposals relating to acceptance of deposits, and require companies to disclose necessary information to ensure that the terms of the deposit are in line with local regulatory requirements.

While many investors agree with ISS' current approach of recommending against proposals that do not provide sufficient information regarding the terms of the deposit, others who are familiar with the India market believe that companies should be granted the freedom to access cheap financing, given that there are regulatory guidelines in place that prevent companies from abusing this authority, provided that they comply with such regulations.

Request for Comment

- Should ISS introduce the new policy to seek better disclosure on the financing needs and terms of the deposits?
- Should acceptance of deposits be treated similarly with other financing decisions such as debt issuances, which the board is generally authorized to undertake without shareholder approval?