

Guidelines on Gold Savings Scheme

The GJF recently held discussions with 25 top-notch corporate leaders on the impact of various rules under the new Companies Act, 2013 (effective from April 2014) as well as various notifications published till date in relation to the Act. Consequent to analysing the points of the discussion as well as expert advice sought and given by leading law firms in the country, the GJF has decided to make a formal representation to the Union Ministry of Corporate Affairs, requesting clarity and appealing for adequate time for compliance. Pending the representation and clarifications from the relevant ministry, the **All India Gems & Jewellery Trade Federation (GJF)** hereby issues the following guidelines to help members fully understand the impact of the Act.

At the outset it must be noted that these guidelines have been issued in general interest and should not be considered as binding legal advice. No member or any other company should consider themselves to be bound by such guidelines. Each member and any other company are advised to take legal advice in their individual capacities and formulate their course of action. The GJF will not be held responsible for any act or for any liability on any of the members or any other company.

These guidelines have been issued purely in good faith. GJF members and any other company relying on the guidelines should also ensure that no third party raises a claim on the GJF and accordingly also protect the GJF against any possible claims. The guidelines are applicable in the present situation, until adequate clarifications are received from the relevant ministry.

Guidelines

The Act specifies that monies received from public will not be treated as “deposit” if the same is received in the normal course of business, resulting in a sale of goods or services.

However due to various interpretations the term “deposit” is being implied to include monies received by companies, both private and public, under jewellery savings plans/gold deposit plans operated by jewellery companies in India, especially where *money is received in the form of instalments or otherwise from a person with a promise of offer to give returns in cash or in kind on completion of the period specified in the promise or offer.*

The GJF believes that the monies so received should not qualify as a “deposit” and hence should be considered to be out of the purview of the Companies (Acceptance of Deposit) Rules, 2014 and the restrictions under the Act.

- However as abundant caution, till such time the GJF receives clarity from the Union Ministry of Corporate Affairs (MCA), it advises all jewellery companies to modify the operation of the plans to restrict the plans up to a maximum of 365 days. Members are advised to ensure that acceptance of payments for such plans are closed and the necessary sale recorded within 364 days latest from the date of commencement of the scheme — even if clients do not voluntarily close the same. If required, members are suggested to bill the client for a relevant product (of relevant value) such as gold or silver and keep aside the same in the client's name as safekeeping, till the client collects jewellery for the same. No cash is to be returned to any client in any event. It would be important to ensure that all transactions under the schemes culminate in sale of jewellery and that the respective scheme documentation clearly mentions that the scheme is a methodology of sale, where the consideration is being collected in instalments. There should not be a single transaction where no sale takes place in pursuance to the money collected under the scheme.



- There should be no mention of any benefits being extended to any client in any form, whether they are benefits like free instalments, lower rates, etc. The only thing that can be mentioned in the scheme documentation and treatment is that the additional amount is being provided as a discount. It should be ensured that there should be no possible interpretation of any “return” being provided by the member to its customer. We understand that only a clear understanding that a mere discount, as usually provided by the jeweller, will help us clarify that it is merely a sale transaction which is offering a discount and a varied methodology of payment.
- Do not use any terminology such as “interest” in your marketing or in-store communications.
- Refrain from using any banking or NBFC terms in your communications with clients and public.
- Ensure that you limit your total monies collected through the schemes to equal or below 25 per cent of the net worth of your company.
- Ensure that if you give any discount for plans within 11 months or 365 days, the discount does not exceed 12 per cent per annum calculated in simple or cumulative interest methods.
- Already enrolled members in your plans may be intimated immediately regarding the changes brought about by the Act. In case of any enrolled members, who have deposited for a period greater than 365 days, such

plans should be immediately culminated into sales. The existing customers may be requested to join the new plans which are issued in accordance with these guidelines.

- All new enrolments should be in compliance of the provisions of the Act and must be limited to 365 days at the most and when members do not close within a period of 364 days, then on the 365th day such monies shall be treated as mentioned above — for billing and safekeeping.
- These provisions currently apply only to private and public limited companies. Partnerships and sole proprietorships are currently not covered under these rules.
- Review all your marketing literature and ensure all terms and conditions are clearly printed and signatures are taken from customers at the time of enrolment as the plan must clearly define all the above rules.
- Ensure that a nominee name is included in the enrolment forms to ensure monies are claimed by such named nominees. This will also ensure that monies or the jewellery are not left with companies for long periods and nominees may be called when required to close the accounts since monies shall not remain unclaimed for periods greater than 365 days.
- Members are recommended to account for all such monies under “sundry creditors” in your books of accounts.
- Ensure that monies collected from consumers are used only for stock or as bank deposits and not diverted to any other use to ensure consumer safety and protection. The Government is particularly concerned about any default in commitments made to unwary consumers. Consumer protection is taken seriously.

We hope the above clarifications will meet with your requirements as the GJF has given priority to this issue. It will keep all its valued members updated on further clarifications to be received from the Government in this regard. ■