

DEPOSITS FOR PRIVATE COMPANIES

From the commencement of Companies Act, 2013, Provisions regarding Prohibition on Acceptance of Deposit shall apply to Private Limited companies also along with Public Limited Company.

Companies need more and more funds for expanding their business activities due to Competitive business environment, which led them to borrow funds from banks and financial institutions. However sourcing of funds puts the Company under management & control of those financial institutions and a part from Capital and Free reserves, main source of fund is Unsecured Loans from Directors, Shareholders, their relatives and other contacts. The alternative sources of finance available for the Companies are equity and preference shares, debentures and other debt securities etc., this has induced companies to call for deposits from the public. Such deposits are unsecured debts and neither management control nor the formalities of charge on assets are putting any hindrances for availing of such amount.

First of all, these provisions / Prohibitions does not apply to a banking Company, a non - banking financial Company as well as any other class of Company as specified by the Central government.

Deposits (Section 73-76)

Definition of deposits has been changed drastically and the following amounts have been included in the definition of deposits in respect to acceptance of Deposit Rules:-

1. Loan from directors if he has not given loan out of his own funds (Borrowed Fund)
2. Loan from relatives of directors.
3. Loan from members.
4. Share application money pending allotment for more than 60 days.
5. Any amount received in the course of or for the purpose of the business, as advance and is outstanding or 365 days.
6. Secured debentures and compulsorily convertible debentures convertible within five years from the date of issue.

Now a Private Company cannot accept deposits from relatives of Directors or Shareholders as was allowed under Companies Act, 1956 unless Section 73 of the Companies Act, 2013 and Companies (Acceptance of Deposit) Rules, 2014 are complied

with. Further share application money pending allotment for more than 60 days shall also be treated as deposits, if not refunded within 15 days.

As per Section 74(1)(a) and Companies (Acceptance of Deposit) Rules, 2014 every company who has accepted deposit before commencement of Companies Act, 2013 has to file a return in Form DPT-4 within 3 months from commencement of Companies Act, 2013 (i.e. upto 30th June, 2014) and further it has to be repaid within 1 year from commencement of this Act.(i.e. by 31st March, 2015)

Process of filling of Form DPT-4:

- Form DPT4 is an attachment Form as it is given in attachment category under download forms.
- It will be attached with Form GNL 2 along with auditor certificate (Form for submission of documents with the Registrar).
- Auditors report in Old format under Companies Act, 1956 will also be attached with this form.(Format is given below.)

Attachments to Form DPT-4 includes:

1. Auditor's certificate;

2. List of depositors indicating name, address, amount deposited, repaid during the year and outstanding, interest due, paid and payable as at the close of the Financial Year and separately indicating deposits not yet matured, matured, claimed and paid and matured, claimed but not paid and matured but not claimed for payment. List of deposits matured, cheques issued but not yet cleared to be shown separately. The details required to be annexed is very much identical to the details required under to be given under Return of deposits.

Now, a Private Company **may accept deposits** from its members subject to fulfillment of the following **conditions**:

- Passing of resolution in a general meeting.
- Issue of circular to members showing the financial position of the Company, the **credit rating** obtained the total number of depositors and the amount due towards deposits in respect of any previous deposits accepted by the Company etc.
- Circular in Form DPT-1
- Deposit Trust Deed in Form DPT - 2 (to be executed seven days before executing circular)

- Filing a copy of the circular with the Registrar within 30 days before the date of issue of the circular.
- Providing deposit insurance.
- Certification by the Company that it has not defaulted in the repayment of deposits.
- Provision of security in respect of deposit and interest and creation of charge on company's properties and assets.
- An amount of not less than 15% of the deposits maturing during a financial year shall be deposited in Deposit Repayment Reserve account which shall not be used for any other purpose.

Precaution- A Private Company being subsidiary of a Public Company shall become public company and all the provisions related to public companies shall apply on such private companies. However, the provision of erstwhile Section 4(7) of the Companies Act, 1956, has been dispensed with and now not applicable w.e.f. 1 April 2014.

Practical Procedure for acceptance of Deposit by Private company

1. Call Board Meeting:
 - To pass resolution for acceptance of deposit from members
 - Approve Draft DPT-1 (Circular)
 - Appoint a Trustee
 - Call General Meeting
 - Authorize Director or Secretary for further process
2. Call General Meeting
 - Pass Ordinary Resolution for acceptance of deposit
3. File form MGT-14 with ROC within 30 days of passing of resolution:
 - Attach Notice, Minute and CTC of Resolution
4. File DPT-1 with ROC at least 30 days before issue of circular, signed by BOD or Person Authorize by Board.
5. Enter into contact with Insurance Company at least 30 days before issue of Circular.
6. Execute Deposit Trust Deed at least 7 days before issuing of circular.
7. Issue Circular (DPT-1) to members through registered post, courier or through Electronic mode.

- Company MAY issue circular in DPT-1 through advertisement also.
- 8. Within 21 days of Acceptance of Deposit company will issue receipt of deposit to Depositor. Receipt will be signed by Person Authorized by Board of Director.
- 9. Make Entry in register within 7 days of issue of receipt.
- 10. Company will create charge on assets of company equal to amount of deposit unsecured by insurance.
- 11. File CHG-1 Within 30 days of Creation of Charge.

NOTE:

1. Private Company can accept deposits from member's up to 25% of paid-up share capital + Free reserve.
2. Company before 30th April each will deposit at least 15% of amount of deposit, whether secured or unsecured, maturing during the year or next financial year in deposit repayment reserve account, maintain with Schedule Bank.
3. Company Before 30th June every year will file DPT-3 with ROC, containing information there in as on 31st March, duly audited by Auditor of company.
4. No trustee can be removed after the issue of circular/advertisement and before the expiry of his term except with the consent of all the Directors Present at a meeting of Board.
5. T & C of Deposit cannot be altered after the issue of circular/ Advertisement or acceptance of Deposit.
6. A panel Rate of Interest 18% shall be payable on nonpayment of matured deposits.

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