

Companies required to return Loans from shareholders-Directors' relatives by 31.03.2015

REQUIREMENTS OF SEC 74 & RULE 20

1) a) As per sec 74 of Companies Act, 2013 & Rule 20 of the Companies (acceptance of deposit) Rules, 2014, If deposit or any interest remains unpaid on commencement of this Act, Company shall file, within 3 months (i.e. 30th June, 2014), with ROC a statement in "Form DPT4" of all deposits accepted & sums remaining unpaid and Company shall repay the dues on or before 31.03.2015 or on due date of repayment, whichever is earlier.

b) Tribunal may, on application made by Company, allow further time to repay the deposit.

c) Penalties –

- i) To Company – shall pay deposit and interest along with fine Rs. 1 crore to Rs. 10 crores and
- ii) To officer in default - Imprisonment upto 7 years or fine Rs. 25 Lakhs to Rs. 2 Crores, or both.

YES, LOAN CAN BE TREATED AS DEPOSITS

2) Loan is covered under definition of deposits under Company Act, 2013 read with deposit Rules, 2014.

3) Definition of deposits

- a) If loan is received from any other company by any Company, it is not covered as deposits.
- b) Under New Company law, if loan is received by any company (both Public & Pvt) from directors, it will not be covered as deposits provided director gives a declaration that loan is out of own fund (not by taking loan). However, if loan is received from shareholders or director's relative by any Co, these will be covered as deposits.
- c) If loan is received from other individuals by any company (both Public & Pvt), these will be covered as deposits.

4) A question arises, if any loan is received by a Co. from shareholder or director's relative under Co Act, 1956, should we include these as deposit in Form DPT4 or not?

Answer: Yes, include these as deposits in Form DPT4.

Reasons:

- i) The meaning of the term "deposit" under sec 74 of Co Act, 2013. Hence, these will be included as deposits in Form DPT4.
- ii) The intention of introduction of sec 74 is to repay all old deposits within one year time or extended time. MCA wants that all deposits accepted have to follow new Act & New Rules.
- iii) This view can also be supplemented by the fact that legislature is giving enough time i.e. 1 year time to repay the deposits existing on 1st April, 2014 to comply with new Act & New Rules.
- iv) ROC is expected to take this view.

HOW TO FILE DPT 4?

5) As per MCA web site, Form DPT4 is an attachment Form as it is given in attachment category.

6) It will be attached with Form GNL 2 (Form for submission of documents with the Registrar). This will be filed in others category in point 3 of FORM GNL 3.

7) Auditors report in Old format under Companies Act, 1956 will also be attached with this form.

RETURN OF ALLOTMENT IS TO BE FILED FROM NEXT YEAR IN "FORM DPT 3" (I.E. 2015)

8)

- a) Rule 16 of The Companies (Acceptance of Deposit) Rules, 2014 requires that every company to which these rules apply, shall on or before the 30th day of June, of every year, file with the Registrar, a return in Form DPT-3 along with the fee as provided in Companies (Registration Offices and Fees) Rules, 2014 and furnish the information contained therein as on the 31st day of March of that year duly audited by the auditor of the company.
- b) Form DPT-3 will be filed as an attachment to Form GNL-2 (Circular No. 09/2014 dated 25.04.2014).
- c) DPT-3 will be pre-certified by auditors of the company (Rule 12(b)(ii) of The Companies Registration Offices and Fees (Amendment) Rules, 2014)

- d) The computation of Net Worth in Form DPT-3 requires data of latest audited balance sheet preceding the date of the return i.e. 31.03.2015.
- e) This return of allotment will be filed from next year as relevant provision is applicable from 1st April, 2014.

Penalties for non compliance or not repaying deposits by 31-03-2015 are very severe:-

On the company:-	Minimum 1 Crore, Maximum 10 Crores
On every officer who is in default:-	Minimum 25 Lakhs, Maximum of 2 Crores with or without imprisonment of upto 7 Years.

Fees for Filing of GNL-2 and DPT-4

In case of Company having share capital Nominal Share Capital Fee applicable

Less than 1,00,000	Rupees 200
1,00,000 to 4,99,999	Rupees 300
5,00,000 to 24,99,999	Rupees 400
25,00,000 to 99,99,999	Rupees 500
1,00,00,000 or more	Rupees 600

In case of Company not having share capital Fee

Rupees 200 per document

Additional Fees (Applicable in case of Return of Deposits)

Up to 30 days	2 times of normal fees
More than 30 days and up to 60 days	4 times of normal fees

More than 60 days and up to 90 days	6 times of normal fees
More than 90 days and up to 180 days	10 times of normal fees
More than 180 days	12 times of normal fees

ile ROC Filings in the above sequence:-

(a) Prepare a attachment in DPT-4 (On the letter head of the company).

Please be noted that the letter head should contain the CIN no of the company.

Download DPT-4 in word format

DPT-4 Format for Companies Act 2013

Download DPT-4 in PDF Format

DPT-4 Required to be filed for deposits

(b) Prepare a Auditors Certificate (On letter head of Auditor)

Download the auditors certificate in word format from the following link.

Auditors Certificate for acceptance of deposits to be prepared on letter head of the Chartered Accountant.

Download the auditors certificate in PDF format from the following link.

Auditors Certificate for acceptance of deposits to be prepared on letter head of the Chartered Accountant.

(c) Prepare a Annexure 1 which contains details about the deposits. The format is not prescribed but still we have tried to prepare some good format for the same.

Download Annexure 1 format for Auditor's Certificate in Excel.

Annexure 1 for Auditors Certificate describing the deposits paid, raised and closed during the year

Download Annexure 1 format for Auditor's Certificate in Word.

Annexure 1 for Auditor's Certificate required for GNL-2

Download Annexure 1 format for Auditor's Certificate in PDF

Annexure 1 for Auditor's Certificate required for GNL-2

Miscellaneous Penalty:- (Penalty for not filing DPT-4 by 30th June 2014