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Series 461

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PROVISION – ACCEPTANCE OF LOAN FROM SHAREHOLDERS

Specifically Private Limited Companies

Short Summary:

In this editorial author discussing about **Provisions of loan from shareholders by Private Limited Company**, **Process of acceptance of loan from shareholder, Treatment of such loan in DPT-3, Balance Sheet** etc.

There are many ambiguity in the corporate and professionals about treatment of Loan from shareholder, whether considered as deposit or not?

Section/ Rules Involved:

a.	Section 73	Prohibition on Acceptance of Deposit and relevant rules
b.	Section 179	Power of Board of Directors and relevant rules

Important - Circular/ Notification Involved:

a.	Exemption Notification Dated 05th June, 2015
b.	Exemption Notification Dated 13th June, 2017

Forms Involved:

a.	MGT-14	Within 30 days of passing of resolution, if required
b.	DPT-3	Every year till 30th June

Extract of section/ Rules/ Circular shall be mentioned at the end of the article link shall be provided for the same.

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A. PROVISIONS – LOAN FROM SHAREHOLDER:

PRIVATE LIMITED COMPANIES

- ✓ Under Companies Act, 1956 it was allowed to accept loan from the Shareholders and such loan considered as non-deposit.

- ✓ Under Companies Act, 2013 since 01st April, 2014 it was not allowed to accept deposit from shareholder

- ✓ MCA issue **Exemption notification** for Private Limited Companies on 05th June, 2015 states that:

  "Chapter V, clauses (a) to (e) of sub-section (2) of section 73, Shall not apply to a private company which accepts from its members **monies not exceeding one hundred per cent, of aggregate of the paid up share capital and free reserves,** and such company shall file the details of monies so accepted to the Registrar in such manner as may be specified."

- ✓ MCA issue **Exemption notification** for Private Limited Companies on 13th June, 2017 states that:

  "Chapter V, clauses (a) to (e) of sub-section (2) of section 73, Shall not apply to a private company which fulfils all of the following conditions ; namely-

  (a) which is not an associate or a subsidiary company of any other company
  (b) if the borrowings of such a company from banks or financial institutions or any body corporate is less than twice of its paid up share capital or fifty crore rupees, whichever is lower; and

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(c) such a company has no default in repayment of such borrowings subsisting at the time of accepting deposits under this section."

However, one can opine that

S. No.	Date From	- To	Provisions
I.	01-04-2014	05-06-2015	Not allowed to accept loan from shareholders
II.	05-06-2015	13-06-2017	Allowed to accept loan from shareholders upto 100% of paid up share capital and free reserve (subject to exemption of some compliances)
III.	13-06-2017	Continue…	Allowed to accept loan from shareholders any limit if fulfill three conditions mentioned above.

B. PROCESS – ACCEPTANCE OF LOAN FROM SHAREHOLDER:

If private limited company wants to accept loan from the shareholders then such company have to follow the following below mentioned procedure.

STEP-1

To check whether company falls in exemption limit of 05.06.2015 or 13.06.2017 to calculate the amount which such company can accept from shareholders.

STEP-2

- ✓ To Hold a Meeting of Board of Director u/s 179(3)
- ✓ To Pass Board Resolution for Borrowing
- ✓ To issue notice for calling of General Meeting u/s 73(2)

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STEP-3

- ✓ To Hold a Meeting of Shareholders u/s 73(2)
- ✓ To Pass ordinary resolution to accept loan from shareholder

STEP-4

Company shall file e-form DPT-3 for such loan at the time of acceptance of same.

STEP-5

- ✓ Company shall file e-form DPT-3 every year for such loan on or before 30th June.

C. TREATMENT–LOAN FROM SHAREHOLDER:

As per provisions mentioned above Private Limited Company can accept loan from shareholders subject to exemption of compliance of Section 73(2) provision (a) to (e).

However, such loan from shareholder is no where mentioned under exemption list of definition of Deposit.

First:

Therefore, one can opine that,

Loan received from shareholder shall be considered as deposit for Private Limited Company. However, such PVT Company can accept the same subject to above mentioned exemptions.

Second:

- ✓ Every year while filing e-form DPT-3 Company has to show such loan in category of Deposit;

- ✓ Company have to select remote button no. 2 or 4
- ✓ Company has to attach certificate of Statutory Auditor for the same.

D. CONSEQUENCIES:

a) Fine on Contravention on Section 73:

The company shall,

- in addition to the payment of the amount of deposit or part thereof and
- the interest due,
- be punishable with **fine** which **shall not be less than one crore rupees or twice the amount of deposit accepted by the company, whichever is lower** rupees but which may extend to **ten crore rupees**; and
- every officer of the company who is in default shall be punishable with imprisonment which may extend to seven years and with fine which shall not be less than twenty-five lakh rupees but which may extend to two crore rupees,

b) Punishment for non filing of DPT-3: Rule 21

The Company and every officer of the company who is in default shall be punishable with fine which may extend to five thousand rupees and where the contravention is a continuing one, with a further fine which may extend to five hundred rupees for every day after the first day during which the contravention continues

(Author – CS Divesh Goyal, GOYAL DIVESH & ASSOCIATES Company Secretary in Practice from Delhi and can be contacted at csdiveshgoyal@gmail.com). Disclaimer: The entire contents of this document have been prepared on the basis of relevant provisions and as per the information existing at the time of the preparation. Although care has been taken to ensure the accuracy, completeness and reliability of the information provided, I assume no responsibility therefore. Users of this information are expected to refer to the relevant existing provisions of applicable Laws. The user of the information agrees that the information is not a professional advice and is subject to change without notice. I assume no responsibility for the consequences of use of such information. IN

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