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QUICK BITES – PROVISION OF DEPOSIT

1.	**Whether loan from LLP shall be considered as Non- Deposit?**
	As per definition of deposit loan from LLP doesn't covered in exempted list therefore same shall be considered as Deposit for the Companies.
2.	**Whether Private Limited Company can accept loan from LLP.**
	As loan from LLP shall be considered as deposit. Private Limited Companies can't accept Deposit. Therefore, one can opine that Private Limited Company can't accept loan from Shareholders.
3.	**Whether there is any situation when private limited companies can accept loan from LLP?**
	Private Limited Companies can accept Loan from shareholders. If LLP is share holder of Private Limited company in such situation it can accept loan from LLP.
4.	**If at the time of acceptance of Loan nature of lender was Company, however later on during the term of continuation of loan such company convert themselves into LLP. Whether shall be treatment of such loan?**
	To decide whether a loan deposit or not, nature on the date of transaction shall be considered. If at the time of acceptance of loan lender was Company then change in status of lender later on doesn't impact the borrower Company.
5.	**If a Private Company receive loan from Director cum shareholder. Such loan shall be considered as loan from Director or Shareholder?**
	Such loan shall be considered as loan from shareholder or director, depend upon followings: • Nature of such transaction in Financial Statement of Company • Whether declaration received that as director it is from his own fund. • Whether compliances of acceptance of loan from shareholder done or not.

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	On the analysis of above transaction it can be finalize nature of such loan can be identified.
6.	**If a promoter director, bring fund into company from the borrowed fund. Whether such loan can be considered as exempted deposit?**
	As per provisions, company can receive loan from director. If such loan is taken from directors own fund shall be considered as exempted deposit otherwise shall be considered as Deposit. EXCEPT As per provisions if loan is received from **promoters** under stipulation of Bank, (whether given from borrowed fund or own fund) shall be considered as exempted deposit.
7.	**Whether acceptance of deposits from HUF of director permissible as exempted deposit?**
	As per provisions of act, private limited Companies can accept deposit from the relatives of Directors. Definition of relatives includes "members of HUF of director". However, HUF is not a living person and cannot be 'relative'. Therefore loan received from HUF of director shall be considered as deposit.
8.	Whether a member can give loan to company from borrowed fund?
	There is no stipulation on members of company to give loan from their own fund. Therefore, they are free to give loan from either from own or borrowed fund.
9.	A company accept loan from individual. At the time of acceptance of loan such individual was director but later on such person resigned form position of Director. What shall be treatment of such loan?
	For the purpose of this question, position of person at the time of lending of loan to company shall be considered. At the time of acceptance such person was director therefore, his resignation doesn't impact nature of loan
10.	Whether deposit/ loan can be repay by issue of shares?

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	Deposit / loan can be repay by loan only if company with the provision of section 62 i.e. conversion of loan to shares.
11.	Whether the provisions of Chapter V are applicable to NBFC registered with RBI
	As per proviso of Section 73(1) provisions of deposit not applicable on NBFC and Banking Companies.
12.	Whether loan received from members shall be considered in category of Non-deposit?
	Definition of deposit is exclusive definition. However, such exclusive list doesn't cover loan from shareholders. Therefore, even private company can accept loan from shareholders subject to some exemption but such loan shall be considered as Deposit.
13.	Whether loan from sole-proprietorship of director shall be considered as deposit?
	As the sole proprietor ship is relating to director only. He is the whole & sole owner of same and funds of sole-prop. Considered as funds of individual only. Therefore, loan received from sole-prop of directors shall be considered as exempted deposit subject to declaration from director that these funds are not borrowed.
14.	Whether private limited company required filing any form with ROC at the time of acceptance of loan from Shareholder?
	As per exemption notification and deposit rules, private limited companies are required to file e-form DPT-3 at the time of acceptance of loan from shareholders.
15.	Whether private limited companies are required to hold general meeting for acceptance of loan from shareholder?
	As per section 73(2) a company may subject to passing of ordinary resolution in general meeting can accept loan from the shareholders. Therefore, PVT companies are required to pass ordinary resolution for acceptance of loan from shareholders.
16.	The word 'renew' also means 'acquire again'
	Jagjivan Hiralal Doshi v. Registrar of Companies [1989] 65 Comp. Cas. 553

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	(Bom.) When a company is unable to repay the deposits and, therefore, renews them, what it does is to accept the old deposits for a longer period. The word 'renew' means 'to acquire again'. Hence, renewal of fixed deposits amounts to receiving fresh deposits within the meaning of section 58A of the 1956 Act.

(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 NO EVENT SHALL I SHALL BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL OR INCIDENTAL DAMAGE RESULTING FROM, ARISING OUT OF OR IN CONNECTION WITH THE USE OF THE INFORMATION