DEPOSITS UNDER NEW COMPANIES ACT ARE A CRITICAL ISSUE FOR ALL COMPANIES, MOSTY FOR PRIVATE LIMITED COMPANIES. ON EVERY ISSUE RELATED TO DEPOSITS THERE ARE MANY VIEWS.

REQUIREMENT OF DPT-4

COMPANY LAW UPDATE:
Why old loan from shareholders, relatives & other individuals be treated as deposits in DPT4?

1) Deposit for the purpose of sec 74 shall be as per new co act & deposit rules. Such definition states that loan from shareholders, relatives & other individuals who are not directors at the time of giving loan, shall be treated as deposits.
2) Again, the intention of inclusion of sec 74 to new co act is that all deposits as per old act should be identified & reported to ROC by 30th June (30th August Now) & repay by 31st March, 2015.
3) Had the intention of the new companies Act were to use definition of deposits as per Co Act, 1956, it would have expressly stated so.
4) **Also note that Section 74 states that deposit as on commencement of this Act i.e. 1st April, 2014, it does not states deposits as on 31st March, 2014. The definition of deposits as on 1.4.2014 should be used. How can we apply definition of deposits as per Old Act on 1.4.2014.**
5) Lastly, to avoid disputes & to avoid risk of crores of penalty, it is better to recognize these as deposits, file in DPT 4 & return the loan by 31.3.2015 as per sec 74.

FAQ'S

1. 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.

2. How TO FILE DPT 4?

Answer: As per MCA web site,

- 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.

3. Is Loan will be treated as Loan?

Answer: YES, LOAN CAN BE TREATED AS DEPOSITS

1. Loan is covered under definition of deposits under Company Act, 2013 read with the Companies (acceptance of deposit) Rules, 2014.
2. Definition of the term "deposits" under Companies (acceptance of deposit) Rules, 2014, states the following:

   a.) If loan is received from any other company by any co., it **will not cover** deposits.

   b) If loan is received by any company (both Public & Private) 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) .

c) However, if loan is received from shareholders or director's relative by any Co, these **will be covered** as deposits.

d) If loan is received from other individuals by any company (both Public & Pvt), these **will be covered** as deposits.

4. Intention of Ministry behind section 74?

Answer :

i) The meaning of the term "deposit" under sec 74 under Co Act, 2013 will be as per sec 2(34) of the 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.

MY VIEWS ON SOME POINTS:

1. If a Private Company accepted any amount from its director before 31st March, 2014. From 1st April, 2014 this amount will be treated as Deposits and Private Company require filing form- DPT-4 as per procedure given above.
2. If Company accepted application money before 31st march 2014 then from 1st April 2014 it will treat as deposit or not have 2 Two views:
    - Ist: Company can assume this amount as deposit and have to file DPT-4 and repay upto 31st March, 2015.
    - IInd: Company can repay this amount before 15june, 2014,(with in 60+15 days from applicability of this section).

    NOW PLEASE SHARE YOUR VIEWS ON MY EMAIL ID OR PHONE NO. GIVEN BELOW ON THIS MATTER

3. Where loan/deposits were not falling in the definition of Deposits under Companies (Acceptance of Deposits) Rules, 1975 on 31.03.2014 and now the loan/deposits falls in the definition of deposits under Companies (Acceptance of Deposits) Rules, 2014:
   Answer: DPT-4 requires to be file and require to repay amount upto 31st March, 2015 AND DPT-3 to be filed from 30.06.2015onwards.
4. DPT-3 is applicable for companies who have deposits as on 31.03.2014 and now those deposits falls in the definition of deposit under Companies (Acceptance of Deposit) Rules, 2014.
5. However, DPT-4 is a one-time form, this being applicable for this year only (30.06.2014). In fact, the section 74 will lose its relevance after one year of the commencement of Act. It is through DPT-4, ROC will keep a track of those companies which need to repay loan/deposit before 31.03.2015.

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DRAFT FORMAT OF AUDITOR CERTIFICATE

TO WHOMSOEVER IT MAY CONCERN

This is to certify that M/S XYZ PRIVATE LIMITED, having CIN No. U17110MH1996PTC104672 has accepted *deposits from relatives of the directors of the company and associate firm. Total deposits outstanding as on 1st April, 2014 amounts to Rs. 1,10,000/- received from 5 (Five) Depositors. Details of the party wise deposits are enclosed in Annexure -1.

We further certify that, as explained to us by the management, these deposits do not bear any maturity date. We were further explained that no interest is payable on the Deposits as indicated in the said Annexure.

We have verified the records maintain by the Company for these deposits and details as given in Annexure are found to be true and correct.

FOR ABC& CO
Chartered Accountants
Firm Registration No.

ABC –Proprietor
(Membership No.)
Place: Mumbai
Date: 16.06.2014

*The company had taken these Unsecured Loans prior to 1st April 2014 and at the time of receipt these were not deposits Pursuant to Rule 2 (b) (ix) of Companies (Acceptance of Deposits) rules 1975.Further the above List of Depositors does not include sums accepted from other Companies and Directors, which is not a Deposit as per Rule 2(c)(vi) and Rule 2(c)(viii) respectively of Companies (Acceptance of Deposits) Rules, 2014.